



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

Case No. IT-05-87-T  
Date: 26 February 2009  
Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Iain Bonomy, Presiding  
Judge Ali Nawaz Chowhan  
Judge Tsvetana Kamenova  
Judge Janet Nosworthy, Reserve Judge

**Acting Registrar:** Mr. John Hocking

**Judgement of:** 26 FEBRUARY 2009

**PROSECUTOR**

v.

**MILAN MILUTINOVIĆ  
NIKOLA ŠAINOVIĆ  
DRAGOLJUB OJDANIĆ  
NEBOJŠA PAVKOVIĆ  
VLADIMIR LAZAREVIĆ  
SRETEN LUKIĆ**

**PUBLIC**

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**JUDGEMENT**

**Volume 1 of 4**

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## I. INTRODUCTION

1. On 24 May 1999 an indictment against Slobodan Milošević, Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, and Vljako Stojiljković (Case No. IT-99-37-I) was confirmed, charging each of the Accused with responsibility for crimes allegedly committed in Kosovo in 1999. Following the transfer of Slobodan Milošević on 29 June 2001 to the custody of the Tribunal, his trial commenced on 12 February 2002 on an amended Kosovo indictment, as well as on indictments alleging crimes committed in Bosnia and Herzegovina and Croatia.

2. Subsequently, Dragoljub Ojdanić was transferred to the custody of the Tribunal on 25 April 2002, followed by Nikola Šainović on 2 May 2002 and Milan Milutinović on 20 January 2003. Vljako Stojiljković took his own life on 13 April 2002. On 2 October 2003 an indictment against Nebojša Pavković, Vladimir Lazarević, Vlastimir Đorđević, and Sreten Lukić (Case No. IT-03-70-I), charging them with responsibility for the same crimes allegedly committed in Kosovo, was confirmed. Vladimir Lazarević was transferred to the custody of the Tribunal on 3 February 2005, followed by Sreten Lukić on 4 April 2005 and Nebojša Pavković on 25 April 2005.

3. On 8 July 2005 Trial Chamber III issued a decision granting a motion from the Office of the Prosecutor (“Prosecution”) to join cases IT-99-37-PT and IT-03-70-PT, and ordering the Prosecution to submit a consolidated indictment by 15 August 2005.<sup>1</sup> The joint case was then assigned the case number IT-05-87-PT.<sup>2</sup> As he remained at-large in June 2006, Vlastimir Đorđević was severed from the trial proceedings, and a Third Amended Joinder Indictment (“Indictment”) was confirmed as the operative Indictment in the trial of Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, and Sreten Lukić (collectively, “Accused”). The trial commenced on 10 July 2006.<sup>3</sup>

4. In the course of the trial and in concluding this Judgement, the Trial Chamber had one core task: to determine whether the Prosecution had proved the guilt of any of the Accused on any of the charges. The standard of proof—beyond reasonable doubt—presents a high hurdle for the Prosecution to overcome. The Trial Chamber’s energies in deliberating upon the evidence have been expended upon addressing that issue. Coincidentally, the narrative of this Judgement includes information which may help to provide a fuller understanding of events in 1998 and 1999 in

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<sup>1</sup> *Prosecutor v. Milutinović, Šainović, and Ojdanić*, Case No. IT-99-37-PT, and *Prosecutor v. Pavković, Lazarević, Đorđević, and Lukić*, Case No. IT-03-70-PT, Decision on Prosecution Motion for Joinder, 8 July 2005.

<sup>2</sup> Decision of the Registrar, Case No. IT-05-87-PT, 11 July 2005.

<sup>3</sup> Order Replacing Third Amended Joinder Indictment and Severing Vlastimir Đorđević, 26 June 2006

Kosovo. This Judgement is, however, simply one element in an array of material from which historians will derive a complete historical account.

5. In Volume 1 of this Judgement, the Chamber sets forth the law applicable to this case and the Chamber's findings upon the political and constitutional structures of the FRY and Serbia, the armed conflict that is the subject of the Indictment, and the diplomatic efforts to resolve that conflict. In Volume 2, the Chamber sets forth its findings in relation to the crimes alleged to have been committed from March to June 1999 in Kosovo by the forces of the FRY and Serbia. In Volume 3, the Chamber makes findings as to the individual criminal responsibility of the six Accused. Volume 4 contains annexes to the Judgement, including an analysis of the evidence in relation to the individually named murder victims.

#### A. THE INDICTMENT

6. The Accused are charged under Articles 7(1) and 7(3) of the Statute of the Tribunal ("Statute") for their alleged role in crimes said to have been committed between 1 January and 20 June 1999 in Kosovo by forces of the Federal Republic of Yugoslavia ("FRY") and the Republic of Serbia ("Serbia"). Specifically, the Accused are alleged to be responsible for deportation, a crime against humanity (count 1); forcible transfer as "other inhumane acts," a crime against humanity (count 2); murder, a crime against humanity and a violation of the laws or customs of war (counts 3 and 4); and persecutions, a crime against humanity (count 5). According to the Indictment, the Accused participated in a joint criminal enterprise to modify the ethnic balance in Kosovo in order to ensure continued control by the FRY and Serbian authorities over the province. The Prosecution further alleges that the purpose of the joint criminal enterprise was to be achieved through a widespread or systematic campaign of terror or violence, including the various crimes specified in each of the counts of the Indictment.

7. The Indictment is divided into six sections, headed respectively: The Accused; Position of the Accused; Individual Criminal Responsibility; Charges; General Allegations; and Background and Context for the Allegations. In addition, eleven schedules attached to the Indictment contain lists of people who, the Prosecution contends, are known to have been killed at various locations in Kosovo.

8. The section headed "the Accused" gives some details about each of the Accused and briefly, and fairly accurately, outlines the positions that they are alleged to have held at the relevant time: Milutinović was the President of the Republic of Serbia from December 1997 to December 2002; Šainović was the Deputy Prime Minister of the FRY from February 1994 to November 2000;



Ojdanić was the Chief of the General Staff of the Yugoslav Army (“VJ”) from November 1998, and in 2000 became the Federal Minister of Defence; Pavković was the Commander of the 3<sup>rd</sup> Army of the VJ from December 1998 to early 2000, and then became the Chief of the General Staff of the VJ; Lazarević was the Commander of the Priština Corps of the VJ in 1999, and in December 1999 became the Chief of Staff of the 3<sup>rd</sup> Army of the VJ, and then Commander of the 3<sup>rd</sup> Army; and Lukić was Head of the Serbian Ministry of Internal Affairs (“MUP”) Staff for Kosovo from May 1998, and after June 1999 became the Assistant Chief of the Public Security Department of the police and the Chief of Border Administration of the Border Police of the Serbian Ministry of Interior in Belgrade.

9. The following section, entitled “Position of the Accused,” provides more details concerning not only the formal positions occupied by the Accused, but also summarising the powers and authority allegedly exercised by each of them.

10. The section entitled “Individual Criminal Responsibility” consists of a number of sub-sections. In the first, the Prosecution clarifies that each of the Accused is charged with planning, instigating, ordering, committing, or otherwise aiding and abetting the commission of the crimes alleged in the Indictment. It further states that it does not allege that any of the Accused was the physical perpetrator of the crimes, but rather that by “commission” it refers to their participation in a joint criminal enterprise. According to the Indictment, this joint criminal enterprise came into existence no later than October 1998 and involved a number of individuals including the Accused. It asserts that the participants in the joint criminal enterprise included the physical perpetrators of the crimes alleged (being “unidentified persons who were members of command and co-ordinating bodies and members of the forces of the FRY and Serbia”), or the participants in the joint criminal enterprise implemented their objectives through members of the forces of the FRY and Serbia whom they controlled.<sup>4</sup> The “forces” are stated to include both army (VJ) and police (MUP) forces, and the Indictment contends that at least one VJ and at least one MUP unit participated in each of the crimes charged.<sup>5</sup> Finally, the Prosecution also alleges that the Accused are responsible

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<sup>4</sup> During its oral submissions responding to the Accused’s motions for acquittal, the Prosecution stated that “in light of the appeals judgement in Brdjanin ... *we intend now to only proceed on the basis of that alternative articulation*, that these six members of the [joint criminal enterprise] used members of the forces of the FRY and Serbia that they had control over to carry out the deportations, forced transfers, murders, and persecutions.” T. 12577 (3 May 2007) (emphasis added). *See also* the more complete discussion of this issue in the section devoted to the second physical element of joint criminal enterprise.

<sup>5</sup> Paragraph 20 of the Indictment states, “At least one VJ and at least one MUP unit participated in each of the crimes enumerated in Counts 1 to 5 of this Indictment.” This sentence was added to the Indictment in response to decisions of the Chamber and in order to put the Accused upon adequate notice of the case they had to meet. *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Decision on Defence Motions Alleging Defects in the Form of the Proposed Amended Joinder Indictment, 22 March 2006, paras. 4–10; Decision on Motion to Amend the Indictment, 11 May 2006, paras. 5–6. However, each fact alleged in an indictment need not be proved beyond reasonable doubt in order for

under Article 7(3) of the Statute for failure to prevent or punish the perpetrators of the crimes who were their subordinates.

11. The following sub-section is headed “Overview of the Joint Criminal Enterprise”, and outlines the commanding positions allegedly occupied by the Accused in the FRY and Serbian political, military, and/or security force structure. It then repeats its assertion of a deliberate and widespread or systematic campaign of expulsion of Kosovo Albanians, the creation of an atmosphere of fear and oppression, and a deliberate campaign of property destruction. The subsequent sub-sections deal with each of the Accused in turn, again laying out their alleged roles and responsibilities and setting out certain “facts” from which the Prosecution asserts the only inference to be drawn is the participation of the Accused in the crimes charged. For each Accused, the Indictment also here lists the factors from which it can be inferred that they had the requisite state of mind for the various forms of responsibility alleged under Articles 7(1) and 7(3).

12. The section on “Charges” elaborates the allegations against the Accused in five counts. Under count 1 of the Indictment the Prosecution describes how the deportation of Kosovo Albanians was carried out in early 1999 from 13 municipalities and particular towns and villages in those municipalities. It should be noted that these descriptions also contain information about killings, property destruction, theft, sexual assaults, beatings, and other forms of violence, which the Prosecution alleges contributed to an atmosphere of fear and oppression created by the FRY and Serbian forces to facilitate the expulsion of the Kosovo Albanian population. Count 2, “other inhumane acts (forcible transfer)”, refers back to the facts alleged in the first count. Counts 3 and 4, murder, also provide significant factual details of a number of alleged killings in various locations in Kosovo. Many of these locations and individual incidents overlap with those described under counts 1 and 2. Finally, under the fifth count, persecution, the Indictment avers that the forces of the FRY and Serbia executed a campaign of persecution against the Kosovo Albanian population, including by way of forcible transfer and deportation, murder, sexual assault, and wanton destruction or damage of religious sites. With regard to the murders, the Indictment “re-alleges and incorporates by reference” the previous paragraphs concerning counts 3 and 4, thereby charging those specific murders also as persecution.<sup>6</sup> Surprisingly, however, there is no similar

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a finding of guilt to be entered against an accused, and “material facts” that have to be pleaded in an indictment to provide the accused with the information necessary to prepare his defence are not always necessarily facts that have to be proved beyond a reasonable doubt in the final Judgement. See *Prosecutor v. Ntagerura et al.*, Case No. ICTR-99-46-A, Judgement, 7 July 2006, p. 58, note 356. The presence of at least one VJ and at least one MUP unit (*i.e.*, both the MUP and the VJ) at each crime site therefore is not a fact that must have been proved by the Prosecution in order to secure a conviction in relation to each crime site. Whether a particular Accused is responsible for crimes committed by only the MUP or only the VJ in a specific location has been dealt with on a case-by-case basis in the Judgement.

<sup>6</sup> Indictment, para. 76.

treatment of “deportation” and “forcible transfer” as a form of persecution, and therefore the specific deportations and forcible transfers alleged under counts 1 and 2, and laid out in paragraph 72, are not also charged as forms of persecution; rather, only the general allegation of the forcible transfer and deportation of approximately 800,000 Kosovo Albanians are charged as persecution under count 5.<sup>7</sup> No specific allegations of sexual assault are included in the persecution charges, but only those that are mentioned in paragraph 27 in general terms and in paragraph 72. With regard to the wanton destruction of or damage to Kosovo Albanian religious sites as a form of persecution, paragraph 77(d) of the Indictment lists the damage or destruction of mosques in 14 locations throughout Kosovo.

13. The penultimate section of the Indictment, headed “General Allegations”, simply asserts that there was an armed conflict in Kosovo at all times relevant to the Indictment, and that the acts and omissions charged as crimes against humanity were part of a widespread or systematic attack against the Kosovo Albanian civilian population.

14. Finally, in the section entitled “Background and Context for the Allegations”, the Indictment provides some historical, geographical, constitutional, and political information, as well as a broad description of the conflict between the Kosovo Liberation Army and the forces of the FRY and Serbia, and the NATO air-strikes.

## B. PROCEDURAL HISTORY

15. In May and June 2006 the parties filed their pre-trial briefs. The Prosecution also filed its witness and exhibit lists in May 2006. Following a period of pre-trial custody, the Accused were granted provisional release in 2005. On 26 May 2006 the Chamber suspended the provisional release of the Accused and required them to return to the United Nations Detention Unit by 4 July 2006 in anticipation of the start of the trial.<sup>8</sup>

16. The Chamber conducted a pre-trial conference in the case on 7 July 2006. Following the pre-trial conference, on 11 July 2006 the Chamber issued its “Decision on Application of Rule

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<sup>7</sup> T. 12778–12779 (18 May 2007) (“Finally, under the fifth count, ‘Persecutions,’ paragraph 77 of the indictment asserts that the accused are responsible for a campaign of persecution against the Kosovo Albanian population. While this paragraph refers in general to deportation and forcible transfer as among the ways in which this persecution was conducted, along with murder, sexual assault, and wanton destruction or damage of religious sites, the Chamber notes that the specific allegations of forcible transfer and deportation contained in paragraph 72 are not incorporated by reference into count 5. The Chamber brought this fact to the attention of the Prosecution in court on 30th October, but the Prosecution took no action to address it, and therefore the persecutions alleged in count 5 do not include by means of the deportation and forcible transfer of Kosovo Albanians described in paragraph 72.”).

<sup>8</sup> Order Suspending Provisional Release of Each Accused, 26 May 2006.

73bis” in which, in application of Rule 73 bis (D) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), it made the following order:

Pending further order by the Chamber, the Prosecution may present evidence in relation to all crime sites and incidents listed in paragraph 72; and all crime sites and incidents listed in paragraph 75, except subparagraphs (a), (e), and (j) (including subparagraph (j)(i)), which set forth the charges in respect of Račak/Rečak, Padalište/Padalishte, and Dubrava/Dubravë Prison.<sup>9</sup>

Thus the Chamber refused to allow evidence to be led in relation to each of the crime sites of Račak/Rečak, Padalište/Padalishta, and Dubrava Prison, on the ground that what allegedly occurred there was not, unlike other killing sites, associated with locations from which persons were allegedly forcibly displaced, and thus did not fall within “the nature or theme” of the Prosecution case.<sup>10</sup> The legal result of this decision is that the charges in the Indictment relating to paragraphs 75(a), (e), and (j) still exist and the Accused are still charged in relation thereto. The Chamber, at the end of this Judgement, will orders the parties to make appropriate submissions regarding how to proceed in relation to these existing charges.

17. Trial commenced on 10 July 2006. The following day the Chamber issued an order regulating certain matters relating to procedure and evidence.<sup>11</sup> This order’s temporal requirement for the disclosure of material to be used on cross-examination was later modified on agreement of the parties to require the disclosure of such material at the commencement of the direct examination of a witness.<sup>12</sup>

18. The Accused were provisionally released over the summer 2006 recess.<sup>13</sup> Although the Chamber denied the Accused provisional release over the winter 2006 recess,<sup>14</sup> it later permitted some of the Accused a temporary provisional release on compassionate or humanitarian grounds.<sup>15</sup>

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<sup>9</sup> Decision on Application of Rule 73bis, 11 July 2006, para. 13(a).

<sup>10</sup> Decision on Application of Rule 73 bis, 11 July 2006, paras. 10–13; *see also* Decision Denying Prosecution’s Request for Certification of Rule 73 bis Issue for Appeal, 30 August 2006.

<sup>11</sup> Order on Procedure and Evidence, 11 July 2006.

<sup>12</sup> Decision on Joint Defence Motion for Modification of Order on Procedure and Evidence, 16 August 2006.

<sup>13</sup> Decision on Joint Motion for Temporary Provisional Release During Summer Recess, 1 June 2006.

<sup>14</sup> Decision on Joint Defence Motion for Provisional Release During Winter Recess, 5 December 2006.

<sup>15</sup> *See, e.g.*, Decision on Milutinović Motion for Temporary Provisional Release, 7 December 2007; Decision on Lazarević Motion for Temporary Provisional Release, 18 June 2007; Decision on Pavković Motion for Temporary Provisional Release, 18 June 2007, para. 6; Decision on Šainović Motion for Temporary Provisional Release, 7 June 2007; Decision on Ojdanić Motion for Temporary Provisional Release, 4 July 2007; Decision on Pavković Motion for Temporary Provisional Release, 14 March 2008; Decision on Šainović Motion for Temporary Provisional Release, 4 April 2008; Decision on Lazarević Motion for Temporary Provisional Release, 15 April 2008; Decision on Ojdanić Motion for Temporary Provisional Release, 10 July 2008; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-AR65-6, Decision on “Prosecution’s Appeal from Decision on Lazarević Motion for Temporary Provisional Release Dated 26 September 2008”, 23 October 2008.

Several appeals against the denial of provisional release were lodged during the course of the trial, all of which were rejected by the Appeals Chamber, except one.<sup>16</sup>

19. On a number of occasions the Chamber considered and refused motions to stay the proceedings or to sever a particular Accused, Pavković, from the proceedings.<sup>17</sup> The Chamber also refused three motions from the Ojdanić Defence to stay the proceedings because of its purported inability to investigate on the ground in Kosovo. After considerable efforts on the part of the Chamber and the United Nations Mission in Kosovo (“UNMIK”) to facilitate such access, the Ojdanić Defence unilaterally refused to engage in further dialogue with UNMIK about alternate arrangements for carrying out investigations.<sup>18</sup>

20. The Chamber made efforts, both during the pre-trial and trial phase of the proceedings, to facilitate agreement between the parties upon material facts relating to the Indictment. Although no agreement was reached upon any material facts, the parties did agree upon the admission of numerous documents.<sup>19</sup>

21. During the Prosecution case the Chamber received evidence from 117 witnesses both *viva voce* and/or via Rules 92 *bis*, *ter*, and *quater*. The Chamber also admitted numerous documents from the bar table on motion of the Prosecution.<sup>20</sup> The Chamber issued many decisions regulating the conduct of the Prosecution case, regarding subpoenas, evidence taken by video-link conference, protective measures, disclosure, admission of evidence, and amendment of the Prosecution’s witness and exhibit list. Two of these many decisions are discussed briefly in the next paragraph.

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<sup>16</sup> *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-AR65.2, Decision on Interlocutory Appeal of Denial of Provisional Release During Winter Recess, 14 December 2007; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-AR65.5, Decision on “Lazarević Defence Appeal Pursuant to Rule 116 *bis* Against the Trial Chamber’s Denial of Temporary Provisional Release” 18 December 2007; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-AR65.4, Decision on “Sreten Lukić’s Appeal Pursuant to Rule 116 *bis* Against the Trial Chamber’s Denial of Temporary Provisional Release,” 18 December 2007; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-AR65.3, Decision on “Pavković Appeal Pursuant to Rule 116 *bis* Against the Decision on Pavković Motion for Temporary Provisional Release, dated 12 December 2007,” 18 December 2007.

<sup>17</sup> *See, e.g., Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Decision on Pavković Motion to Set Aside Joinder or in the Alternative to Grant Severance, 7 September 2005, p. 4; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Decision on Nebojša Pavković’s Motion to Delay Start of Trial or in the Alternative to Reconsider and Grant Previous Motion for Severance, 2 December 2005, p. 2; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Second Decision on Motions to Delay Proposed Date for Start of Trial, 28 April 2007, paras. 2, 6; Decision on Pavković Motion for Partial Severance, 27 September 2007.

<sup>18</sup> Decision on Ojdanić Motion for Stay of Proceedings, 9 June 2006, paras. 4–6; Decision on Second Ojdanić Motion for Stay of Proceedings, 19 October 2006, paras. 9–11; Decision on Ojdanić Third Motion for Stay of Proceedings, 27 August 2007, paras. 38–44.

<sup>19</sup> *See, e.g.,* Second Order on Agreed Facts, 15 February 2007; Order for Submissions on Joint Prosecution and Defence Notice Regarding Translation of Exhibits Admitted into Evidence by Agreement, 31 July 2007.

<sup>20</sup> *See* Decision on Prosecution Motion for Admission of Evidence in Connection with Philip Coe, 23 March 2007; Decision on Prosecution’s Third Request for Admission of Documents from the Bar Table, 23 March 2007; Decision on Prosecution Motion to Admit Documentary Evidence, 10 October 2006.

22. At the very beginning of the trial the Prosecution sought to have admitted into evidence two human rights reports—*As Seen, As Told* and *Under Orders*—which were prepared by international organisations and which contained hearsay accounts of events in Kosovo during the Indictment period. The reports were based on statements given by unidentified Kosovo Albanians to the organisations’ field workers, who recorded the statements and submitted them to supervisors who edited and summarised the material for inclusion in the reports. The Chamber exercised its discretion not to admit them on the ground that the Prosecution had not adequately demonstrated sufficient indicia of their reliability as hearsay documentary evidence. The Chamber also noted that some of the material in the reports was based upon other documents that were a better and more direct source of information, some of which were to be tendered during the trial.<sup>21</sup>

23. Towards the end of the Prosecution’s case the Chamber denied the Prosecution’s motion to add Wesley Clark to its Rule 65 *ter* witness list; this denial was based upon the fact that the restrictions placed by the United States of America upon the modalities by which Clark was to testify—*e.g.*, limitations upon the areas of cross-examination—resulted in the probative value of his proposed evidence being substantially outweighed by the need to ensure the Accused’s right to a fair trial.<sup>22</sup> The Appeals Chamber affirmed the Chamber’s decision in this regard.<sup>23</sup>

24. The Chamber decided to manage the Prosecution phase of the proceedings by allocating to it a temporal limit for the adducement of its evidence-in-chief. Although allocated 260 hours for the presentation of its evidence,<sup>24</sup> the Prosecution used only 166 hours.<sup>25</sup>

25. On 1 May 2007 the Prosecution closed its case-in-chief and the Chamber immediately invited the Defence to make their submissions pursuant to Rule 98 *bis*. From 1–7 May the Chamber heard oral submissions from each of the Accused requesting the Chamber to acquit them upon all five counts in the Indictment, and from the Prosecution in response to these requests. The Chamber adjourned to consider the matter and reconvened on 18 May 2007 to render its oral ruling

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<sup>21</sup> Decision on Evidence Tendered Through Sandra Mitchell and Frederick Abrahams, 1 September 2006, paras. 19–25..

<sup>22</sup> Second Decision on Prosecution Motion for Leave to Amend Its Rule 65 *ter* Witness List to Add Wesley Clark, 16 February 2007.

<sup>23</sup> *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-AR73.1, Decision on Interlocutory Appeal Against Second Decision Precluding the Prosecution from Adding General Wesley Clark to Its 65 *ter* Witness List, 20 April 2007; Decision on Prosecution Request for Certification of Interlocutory Appeal of Second Decision on Addition of Wesley Clark to Rule 65 *ter* List, 14 March 2007.

<sup>24</sup> Decision on Use of Time, 9 October 2006, p. 6; November 2006 Report on Time, 11 December 2006, pp. 1–2, note 3.

<sup>25</sup> See March 2007 Report on Use of Time, 2 April 2007; May 2007 Report on Use of Time, 18 June 2007.

on the motions. The Chamber denied each of the motions for a judgement of acquittal in all respects.<sup>26</sup>

26. Pursuant to an order of the Chamber, the Accused filed their Rule 65 *ter* witness and exhibit lists on 15 June 2007.<sup>27</sup> They also sought and were granted several extensions of time in which to fulfil their disclosure obligations in respect of expert witness reports.<sup>28</sup>

27. At the pre-defence conference held on 22 June 2007 the Chamber, after having set out possible means by which the Defence could reduce its estimates for the presentation of its evidence, such as use of Rules 92 *bis* and *ter*, tendering of documents from the bar table, and agreement on the admission of documents, made an oral ruling setting the time for the presentation of the Defence case at 240 hours.<sup>29</sup>

28. On 6 August 2007 the Milutinović Defence case commenced,<sup>30</sup> and the other Defence teams presented their evidence in the order in which the Accused were listed in the Indictment. The Chamber heard from 123 witnesses during the Defence case, with the Accused Lazarević being the only Accused electing to take the stand in his own defence. The Chamber also admitted numerous documents from the bar table via motions from the Defence.<sup>31</sup>

29. During the Defence case the Ojdanić Defence raised specific challenges in relation to two reports allegedly sent by the 3<sup>rd</sup> Army to the Supreme Command Staff during the NATO air campaign. These reports were dated 25 May and 4 June 1999 and concerned criminal activities by MUP members in Kosovo; the essence of the challenges was that the reports had been forged and

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<sup>26</sup> T. 12771–12808 (18 May 2007).

<sup>27</sup> Order on the Close of the Prosecution Case-in-Chief, Rule 98 *bis* Proceedings, and Defence Rule 65 *ter* Filings, 5 March 2007.

<sup>28</sup> *See, e.g.*, Order Re Disclosure of Expert Reports, 3 August 2007; Second Order Re Disclosure of Expert Reports, 11 September 2007.

<sup>29</sup> T. 12821–12848 (22 June 2007). As the case unfolded, the Milutinović Defence used approximately 23 hours to present its case, the Šainović Defence 20 hours, the Ojdanić Defence 40 hours, and the Pavković Defence less than four hours. Decision on Use of Time Remaining for Defence Phase of Trial, 21 November 2007. The Chamber expressed its hope that the Accused would reach agreement on the ultimate allocation of time among themselves. T. 12847–12848 (22 June 2007), T. 17629–17639 (25 October 2007). However, on 21 November 2007, the Chamber issued an order allocating the remaining Defence time between the Lazarević and Lukić teams, who used 75 and 79 hours, respectively. Decision on Use of Time Remaining for Defence Phase of Trial, 21 November 2007; Report on Use of Time in the Trial Period Ending 30 April 2008, 16 May 2008.

<sup>30</sup> Decision on Joint Defence Motion to Postpone Trial Schedule, 23 May 2007.

<sup>31</sup> *See, e.g.*, Decision on Milutinović Request for Admission of Documents from Bar Table, 19 September 2007; Decision on Šainović Motion Requesting Admission of Documents from Bar Table, 4 September 2007; Decision on Ojdanić Motion for Admission of Documents from Bar Table, 25 October 2007; Decision on Pavković First Renewed Motion for Admission of Documents from Bar Table, 27 September 2007; Decision on Lazarević Motion for Admission of Documents from Bar Table, 16 January 2008; Decision on Lukić Defence Motions for Admission of Documents from Bar Table, 11 June 2008; Decision on Lukić Motion for Reconsideration of Trial Chamber's Decision on Motion for Admission of Documents from Bar Table and Decision on Defence Request for Extension of Time for Filing of Final Trial Briefs, 2 July 2008.

falsely inserted into the VJ General Staff logbook and VJ archives. The Chamber ultimately allowed detailed evidence to be led in relation to this issue, including that of a handwriting expert.<sup>32</sup>

30. After the Lukić Defence closed its case on 21 April 2008,<sup>33</sup> the Chamber turned to several joint expert witnesses called by the Defence, whose evidence was completed on 16 May 2008.<sup>34</sup>

31. Between 19 and 21 May the Chamber heard evidence from Milan Đaković, whom it invited to give evidence under Rule 98.<sup>35</sup> On 8 and 9 July 2008 Aleksandar Dimitrijević gave evidence, pursuant to a summons issued for his attendance, but only after the President of the Tribunal reported the Republic of Serbia to the United Nations Security Council for failing to serve the summons upon the witness.<sup>36</sup> The Chamber invited Christopher Hill and Boris Mayorski, two of the members of the negotiating troika at the Rambouillet and Paris peace talks in February and March 1999, to give evidence so that as complete a picture as possible of the circumstances in which the talks ultimately foundered might be obtained; however, the Chamber was unable to arrange their attendance.<sup>37</sup>

32. The parties made no applications for the adducement of rebuttal and rejoinder evidence.<sup>38</sup> They filed their final trial briefs on 15 July 2008.<sup>39</sup> The Chamber heard closing arguments from 19 until 27 August 2008.<sup>40</sup>

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<sup>32</sup> Decision on Joint Ojdanić and Lukić Request to Call Živojin Aleksić and Dušan Mladenovski, 3 April 2008; Decision on Objection Under Rule 94 *bis* to Handwriting Expert Živojin Aleksić, 17 April 2008; Decision on Pavković Motion to Call Handwriting Expert, 13 May 2008; *see also* Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 245, 246; P1725 (3<sup>rd</sup> Army Request to Supreme Command Staff, 4 June 1999); P1459 (3<sup>rd</sup> Army Report on the non-compliance of MUP organs, 25 May 1999), also admitted as 3D1106.

<sup>33</sup> T. 25754–25755 (21 April 2008).

<sup>34</sup> T. 26346 (16 May 2008).

<sup>35</sup> Letter from Presiding Judge to Milan Đaković, 18 March 2008.

<sup>36</sup> Summons Pursuant to Rules 54 and 98, 13 May 2008; Order to Government of the Republic of Serbia, 13 May 2008; Letter from President of Tribunal to President of United Nations Security Council, 17 June 2008 (filed 23 June 2008); Summons Pursuant to Rules 54 and 98, 25 June 2008; Order to Government of Republic of Serbia, 25 June 2008; Order on Testimony via Video-Conference Link for Aleksandar Dimitrijević and Decision on Defence Request to interview Him Prior to His Testimony, 1 July 2008.

<sup>37</sup> T. 26573 (21 May 2008); Letter from Presiding Judge to Christopher Hill, 16 April 2008 (filed 18 April 2008); Letter from Presiding Judge to Boris Mayorski, 16 April 2008 (filed 18 April 2008).

<sup>38</sup> Order on Filing of Rebuttal Applications Pursuant to Rule 85, 18 April 2008; Order on Procedure for Close of Proceedings, 2 May 2008, para. 4.

<sup>39</sup> *See, e.g.*, confidential Lukić Defence Notice of Filing of Corrigendum Defense Final Trial Brief, 18 July 2008; Lukić Defence Motion to Replace Public Redacted Version of Final Trial Brief, 7 August 2008.

<sup>40</sup> Order on Procedure for Close of Proceedings, 2 May 2008. This order was recalled and new dates were set. T. 26767 (9 July 2008).



### C. APPROACH TO EVIDENCE

33. *The witnesses.* In this Tribunal, a Trial Chamber is not an investigating organ. Investigation is in the hands of the Office of the Prosecutor. While Judges have authority to order parties to produce additional evidence, and themselves summon witnesses, this power can be exercised by Trial Chambers to only a limited extent in the absence of an investigative arm under their control. It is where the Chamber is of the view that issues raised by the parties could be productively explored by examining a witness not called by the parties that such power is likely to be used. It is highly unlikely that such an exercise would ever provide the principal foundation for the most significant findings in any prosecution before this Tribunal. As it is, the findings in this Judgement are based almost exclusively on the evidence the parties have chosen to present to the Chamber.

34. Some helpful supplementary evidence was obtained from the two witnesses called by the Chamber, Milan Đaković and Aleksandar Dimitrijević. Đaković was called by the Trial Chamber because of a challenge to the authenticity and reliability of handwritten records of meetings of a group of prominent political figures and senior army and police officers, which was called the “Joint Command for Kosovo and Metohija”. The Joint Command is discussed in detail in a subsequent section of this Judgement. Đaković kept a handwritten record of events and statements made at these meetings. This is just one of a surprising number of documents whose authenticity and reliability were challenged during the trial. Dimitrijević was a senior VJ officer who was recorded on occasions, particularly in minutes of the Collegium of the Chief of Staff of the VJ, as voicing criticisms of the activity of the Priština Corps and 3<sup>rd</sup> Army in Kosovo and of the alleged interference of civilians, *viz.* senior politicians, in the commanding of the army. He was removed from his position as Head of the Security Administration of the VJ General Staff on the eve of the commencement of the NATO bombing campaign on 23 March 1999. In view of his apparent knowledge of certain controversial issues at the heart of the case, the Chamber considered that testimony from him would assist it to evaluate the evidence already presented about his involvement in these matters.

35. *The basic rules.* Throughout the trial the Chamber has applied Rule 89 of the Rules, as well as the significant body of jurisprudence upon evidentiary issues that has developed at the Tribunal since its inception. Where *lacunae* existed, the Chamber applied rules of evidence that best favoured a fair determination of the matter before it, consonant with the spirit of the Statute and general principles of law. The Chamber admitted direct and circumstantial evidence, percipient and hearsay evidence, and primary and secondary evidence—in the form of oral testimony,

documentary evidence, and written statements in lieu of oral testimony pursuant to Rules 92 *bis*, 92 *ter*, and 92 *quater*.

36. *Admissibility and weight.* Evidence is relevant if it tends to make the existence of any fact that is of consequence to the determination of an issue in a case more or less probable than it would be without the evidence.<sup>41</sup> Weight refers to the qualitative assessment of the probative value that the Trial Chamber ascribes to a specific item of evidence in relation to facts in issue in the case. The weight given to evidence is determined by a multitude of factors, and evidence can be given whatever weight the Chamber considers appropriate. It should also be noted that the admission of an item of evidence necessarily means that the Chamber found it to be relevant and to have probative value. The Chamber, in its final deliberations pursuant to Rule 87, ascribed appropriate weight to the evidence admitted during the trial in the context of the entire trial record, no matter who adduced the evidence.<sup>42</sup>

37. *Corroboration.* The Appeals Chamber has held that the evidence of a single witness on a material fact does not, as a matter of law, require corroboration.<sup>43</sup> However, in such a situation, the Trial Chamber has carefully scrutinised the evidence before relying upon it to a decisive extent. Evidence admitted that was not subjected to cross-examination, such as evidence admitted pursuant to Rule 92 *quater*, was only relied upon if it was corroborated by other evidence adduced in the trial.<sup>44</sup> Such corroboration may include other witness testimony, documentary evidence, or audio and video evidence.

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<sup>41</sup> See *Prosecutor v. Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92*bis*(C), 7 June 2002, para. 35 (“evidence is admissible only if it is relevant and it is relevant only if it has probative value, general propositions which are implicit in Rule 89(C)”); see also *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Order on Procedure and Evidence, 11 July 2006 (as modified by the “Decision on Joint Defence Motion for Modification of Order on Procedure and Evidence,” 16 August 2007).

<sup>42</sup> See *Prosecutor v. Limaj et al.*, Case No. IT-03-66-T, Judgement, 30 November 2005, para. 10; *Prosecutor v. Halilović*, Case No. IT-01-48-T, Judgement, 16 November 2005, para. 14; *Prosecutor v. Blagojević & Jokić*, Case No. IT-02-60-T, Judgement, 17 January 2005, para. 20; but see *Prosecutor v. Simić et al.*, Case No. IT-95-9-T, Judgement, 17 October 2003, para. 18; *Prosecutor v. Naletilić & Martinović*, Case No. IT-98-34-A, Judgement, 3 May 2006, para. 9; *Prosecutor v. Vasiljević*, Case No. IT-98-32-T, Judgement, 29 November 2002, para. 13; *Prosecutor v. Krnojelac*, Case No. IT-97-25-T, Judgment, 15 March 2002, para. 68; *Prosecutor v. Kunarac et al.*, Case No. IT-96-23-T & IT-96-23/1-T, Judgement, 22 February 2001, para. 560; cf. *Prosecutor v. Hadžihasanović & Kubura*, Case No. IT-01-47-A, Judgement, 22 April 2008, para. 71.

<sup>43</sup> See *Prosecutor v. Tadić*, Case No. IT-94-1-T, Opinion and Judgement, 7 May 1997, paras. 535–539; *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-A, Judgement, 24 March 2000, para. 62.

<sup>44</sup> See *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Second Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *quater*, 5 March 2007, para. 11; Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *quater*, 16 February 2007, para. 7; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Decision on Prosecution’s Rule 92 *bis* Motion, 4 July 2006, para. 22; *Prosecutor v. Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92*bis*(C), 7 June 2002, p. 9, note 34; *Prosecutor v. Halilović*, Case No. IT-01-48-T, Judgement, 16 November 2005, para. 19; *Prosecutor v. Blagojević & Jokić*, Case No. IT-02-60-T, Judgement, 17 January 2005, para. 26.

38. *Hearsay evidence.* Hearsay evidence is traditionally defined as an out of court statement that is offered for the proof of its contents, and can be in the form of testimony or documents. Hearsay is admissible pursuant to Rule 89(C), provided that it is relevant and has probative value and provided that its probative value is not substantially outweighed by the need to ensure a fair trial in terms of Rule 89(D). The inability of the parties to cross-examine the declarant of the hearsay statement, the level of attenuation of the statement (*e.g.*, double or triple hearsay), and “the infinitely variable circumstances which surround hearsay evidence” have all been taken into account by the Chamber when attributing weight to hearsay evidence.<sup>45</sup> The Chamber has treated hearsay evidence with a greater level of circumspection than percipient evidence. This was a factor in relation to *inter alia* the evidence derived from the statements of four potential witnesses who died before they were able to give evidence in the trial: Antonio Russo, Ibrahim Rugova, Halil Morina, and Sadik Januzi. Moreover, the Chamber did not rely upon hearsay statements of Momčilo Perišić, when they were reported through witness Ratomir Tanić.<sup>46</sup>

39. *Circumstantial evidence.* The Prosecution may satisfy its burden of proof with direct or circumstantial evidence, in accordance with the principle set out in *Prosecutor v. Delalić et al.*:

A circumstantial case consists of evidence of a number of different circumstances which, taken in combination, point to the guilt of the accused person because they would usually exist in combination only because the accused did what is alleged against him . . . . Such a conclusion must be established beyond reasonable doubt. It is not sufficient that it is a reasonable conclusion available from that evidence. It must be the *only* reasonable conclusion available. If there is another conclusion which is also reasonably open from that evidence, and which is inconsistent with the innocence of the accused, he must be acquitted.<sup>47</sup>

40. *Expert evidence.* The Chamber admitted and weighed testimony and reports of several expert witnesses and, in doing so, considered factors such as the professional competence of the expert, the methodologies used by the expert, and the reliability of the findings made in light of

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<sup>45</sup> See *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR73, Decision On Prosecutor’s Appeal on Admissibility of Evidence, 16 February 1999, para. 15 (“Since such [hearsay] evidence is admitted to prove the truth of its contents, a Trial Chamber must be satisfied that it is reliable for that purpose, in the sense of being voluntary, truthful and trustworthy, as appropriate; and for this purpose may consider both the content of the hearsay statement and the circumstances under which the evidence arose; or, . . . the probative value of a hearsay statement will depend upon the context and character of the evidence in question.”); *Prosecutor v. Tadić*, Case No. IT-94-1-T, Decision on the Defence Motion on Hearsay, 5 August 1996, paras. 15–19; *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Decision on the Standing Objection of the Defence to the Admission of Hearsay with No Inquiry as to Its Reliability, 21 January 1998, paras. 10, 12.

<sup>46</sup> See T. 24308–24310 (17 March 2008) (private session). Following the discussion footnoted in this transcript, the Chamber did not consider it appropriate to rely on these hearsay statements.

<sup>47</sup> See *Prosecutor v. Delalić et al.*, Case No. IT-96-21-A, Judgement, 20 February 2001, para. 458 (emphasis in original).

these factors and other evidence accepted by the Chamber.<sup>48</sup> The Chamber also took into account the proximity of the expert to the party offering him or her as an expert, as well as the expert's involvement in the events alleged in the Indictment.<sup>49</sup>

41. *Evidence of Accused.* Of the six co-Accused, only Lazarević elected to give evidence during the trial. In accordance with Article 21(4)(g) of the Statute, the Chamber has drawn no adverse findings from other Accused's decision not to give evidence. The Chamber has also given equal consideration to the evidence of Lazarević as it has given to the evidence of all other witnesses.

42. Each of the Accused, with the exception of Ojdanić, was subjected to interview with Prosecution in terms of Rule 43. These interviews were admitted into evidence in the course of the Prosecution case. Since the Accused Lazarević gave evidence and was available for cross-examination on behalf of his co-Accused, his interview was considered as evidence-at-large in the trial. On the other hand, the interviews of each of the other Accused were considered as evidence in relation to the Accused who gave the interview on any matter affecting the case for or against him, but were taken into account in relation to co-Accused only on matters not going to the acts and conduct or state of mind of the co-Accused.<sup>50</sup>

43. This approach is more favourable to the Accused than that laid down as appropriate by the Appeals Chamber in *Prosecutor v. Prlić et al.* The *Prlić* decision was rendered on 23 November 2007, after the Prosecution in *Milutinović et al.* had stated in clear terms that, in relation to acts and conduct of Accused and their state of mind, it sought to limit the application of statements contained in the interview, other than that of Lazarević, to the particular interviewed Accused. It remained for the Trial Chamber to determine what parts of the interviews did and did not relate to acts and conduct or state of mind of the Accused.

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<sup>48</sup> See *Prosecutor v. Martić*, Case No. IT-95-11-T, Judgement, 12 June 2007, para. 29; *Prosecutor v. Vasiljević*, Case No. IT-98-32-T, Judgement, 29 November 2002, para. 20; *Prosecutor v. Blagojević & Jokić*, Case No. IT-02-60-T, Judgement, 17 January 2005, para. 27.

<sup>49</sup> See, e.g., *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Objections Pursuant to Rule 94 bis to Expert Evidence of Ratko Marković, 3 August 2007, paras. 3–6.

<sup>50</sup> See *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Decision on Prosecutor Motion to Admit Documentary Evidence, 10 October 2006, para. 44 (admitting interviews into evidence); *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR73.6, Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlić's Questioning Into Evidence, 23 November 2007, paras. 56–61 (holding that such statements must be corroborated if they are to be used against a co-accused to prove any "critical element" of Prosecution case); Decision on Use of Prosecution Interviews of Accused, 20 March 2008.

44. The Accused Ojdanić, pursuant to Rule 84 *bis* (A), gave an unsworn statement at the commencement of the trial on 10 July 2006;<sup>51</sup> and the Chamber, pursuant to Rule 84 *bis* (B), took this statement into account in its final deliberations.

45. *The breadth of the case.* The Prosecution chose to present a case founded upon a multitude of alleged events in 15 separate municipalities which was later reduced to 13 by the Chamber. The Prosecution led evidence from a small number of people in relation to each of the municipalities, but invited the Chamber to make wide-ranging findings about the perpetration of crimes and the movement of hundreds of thousands of people and the murders of many hundreds of people. It may be that at the end of the day the limited number of witnesses led were all that were available to the Prosecution, bearing in mind that it did not fully utilise the time available to present its case in chief. The net effect is that the Chamber had the very onerous task of carefully considering whether the witnesses presented were sufficiently reliable to enable such wide-ranging conclusions to be based on their evidence.

46. Both Prosecution and Defence faced the problem of marshalling their evidence in a way that would enable them to optimise its presentation within a reasonable time. Conscious of this, and of the fact that it is unrealistic in a case of the magnitude of this one to expect that all evidence should be presented by oral examination in real time in court, the Chamber was willing throughout to consider receiving evidence in written form, whether as part (even the bulk) of the evidence of a witness, or in free-standing documents shown to be relevant and of probative value without being specifically addressed by a witness. As a result, all parties had adequate time in which to present their respective cases.

47. *Statements admitted in terms of Rule 92 ter.* In order to enable witnesses to give evidence on all matters about which they had relevant information, the Chamber found it to be in the interests of justice to allow the parties to tender significant parts of the evidence of witnesses in the form of written statements. Such witnesses appeared before the Chamber, confirmed the accuracy of the statement tendered, and were available for cross-examination. However, one witness for the Milutinović Defence gave evidence via Rule 92 *ter* without appearing for cross-examination, which was waived by the Prosecution; and the evidence of Zoran Đinđić was admitted via Rule 92 *quater* by agreement of the Prosecution.<sup>52</sup>

48. In relation to the tendering of evidence in written form in lieu of oral testimony, there is one practice that has caused the Trial Chamber concern. In most instances the witness statement

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<sup>51</sup> Dragoljub Ojdanić, T. 478–492 (10 July 2006).

tendered was prepared in its final form, by Prosecution or Defence teams, in the days immediately before the witness gave evidence. There was surprisingly little sign that the Prosecution, in particular, had endeavoured to clarify the terms of witness statements taken around the time of and shortly after the events in issue since that time. Even where the witness had subsequently given evidence in another case, there was little, if any, indication of follow-up to clarify points with the witness thereafter. As a result, there were often last minute changes made, including to some fairly old statements. Some of these changes were significant. Parties were generally quick to notify these changes to the other parties; nevertheless, on occasion, the possibility arose that further time might be required by one of the other parties to prepare for proper cross-examination. The Chamber was, throughout, sympathetic to the possibility of an adjournment being required for that purpose. In the end no party claimed to have been prejudiced by this in a way that required the Chamber to grant any relief that was refused. There remains, however, for the Chamber, the issue that it is generally unsatisfactory to find that the statement of a witness is altered at the last minute, especially if there is a less than entirely satisfactory explanation therefor. In deciding that it was in the interests of justice to admit statements, including those altered at a late stage, the Chamber was conscious of the need to have regard to these circumstances in its ultimate deliberations.

49. *Inconsistent statements.* Throughout the trial the parties attempted to impeach the credibility of witnesses with earlier statements claimed to be inconsistent with *viva voce* testimony or later statements. That applied particularly to witnesses called by the Prosecution to give evidence of underlying offences alleged in the Indictment. The Chamber carefully assessed each and every potential inconsistency and factored it into its assessment of the reliability of the witness's evidence on each issue. The passage of time, the difference in questions put to the witnesses at different stages of the investigation and in court, and the traumatic situations in which the witnesses found themselves during the events about which they testified were all taken into account by the Chamber in evaluating the significance of such inconsistencies. Minor inconsistencies between prior statements and in-court testimony did not lead the Chamber to automatically reject the evidence as unreliable. Witnesses testifying under such circumstances cannot be expected to recall events in precise sequence or detail, and discrepancies between different witnesses' evidence also did not necessarily lead to a finding of a lack of reliability. Where the essence of the events was able to be recalled in acceptable detail, such minor discrepancies or inaccuracies were not a bar to reliance upon the evidence.

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<sup>52</sup> T. 12809–12812 (22 June 2007).

50. On some occasions, witnesses were challenged on the basis of other statements they had made or statements of other witnesses with knowledge of the same events, but the allegedly inconsistent statements were not adequately demonstrated and the contradicting witnesses were not led. Where that occurred, the Trial Chamber has generally left out of account any part of the inconsistent or contradictory statement that was not accepted by the witness challenged, but has taken account of any other admitted evidence bearing on the point in issue.

51. *Cross-examination.* It is also unrealistic in a case of this size to expect the cross-examining party to cross-examine on every point challenged. A realistic approach requires the cross-examiner to prioritise his cross-examination and to challenge the more significant evidence against him and, where the witness is able to give evidence relevant to the cross-examiner's case, to put to that witness the nature of that case that is in contradiction of the evidence given by the witness, pursuant to Rule 90(H)(ii). Inevitably, not every base can be covered, and there will be occasions where a point, upon which a party would have wished to cross-examine, will have been missed. The Chamber has been acutely alive to this possibility.

52. The difficulty is compounded by the fact that the Defence is not required to disclose to the Prosecution details of its witnesses and exhibits until the close of the Prosecution case-in-chief. That seems to have led, surprisingly, to the Defence carrying out significant investigations at a late stage, and possibly becoming aware, after Prosecution witnesses had been led, of information that ought to have been put to witnesses for their comment. There were thus occasions when witnesses called by the Defence contradicted witnesses called by the Prosecution, but the particular contradiction, which may be of importance, was not put to the witness for comment during the Prosecution case. Where this situation has apparently arisen, the Chamber has taken into account, in evaluating the evidence, the fact that the Prosecution witness was not given the opportunity to comment.

53. *Notable features of oral testimony.* The Trial Chamber detected a tendency for some witnesses to overstate or exaggerate the events of which they spoke and the impact or effects of these events. That is understandable where two opposing sides are set against each other in conflict and they continue to bear a measure of animosity towards one another. Whether exaggeration so taints evidence as to make it unreliable is a question of circumstances and degree. In many such instances the Chamber has been able to identify information upon which it could rely.

54. Some features of the way in which certain witnesses gave evidence caused the Chamber greater concern. Senior officials of the government, political parties, the army, and the police, who were used to participating actively in the routine work of their organisations, often tended to rely

for their answers upon the terms of a document as sacrosanct, to the point of excluding even the possibility that events in fact happened differently from the way anticipated when the document was written. It was difficult at times for such a witness to even contemplate the possibility that a fact spoken to by another witness, different from what was said in the document, was in fact the case. This apparent reliance upon the absolute bureaucratic integrity and consistency of the operation and work of an organisation seemed at times to be a reassuring refuge from having to address the stark realities of the conduct of forces that ought to have been subject to a regime of discipline.

55. A number of Kosovo Albanian witnesses, living in areas where the Kosovo Liberation Army ("KLA") had a presence and were widely known to be active, denied any knowledge of the KLA's activity or even presence in the area. In some instances, even when confronted with apparently reliable material clearly indicating a basis for concluding that the witness must have known something of the KLA, the witness maintained the denial. This seemed to border upon the irrational.

56. *Reliability and probative value of documentary evidence.* The Chamber considered the source of the documents, to the extent known, and did not admit a document if there were substantial doubts as to its authenticity. The Chamber carefully scrutinised the thousands of documents that were tendered, some of which were adduced through a witness, some from the bar table,<sup>53</sup> and others by agreement of the parties.<sup>54</sup> However, the Chamber did not automatically accept the statements contained in admitted documents to be an accurate portrayal of the facts. The Chamber evaluated each and every document admitted into evidence within the context of the trial record as a whole.<sup>55</sup> The Chamber, throughout the trial, admitted certain documents for a limited purpose only, and thus considered them to that extent in its evaluation of them. Moreover, in

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<sup>53</sup> See, e.g., Decision on Prosecution Motion for Admission of Evidence in Connection with Philip Coo, 23 March 2007; Decision on Prosecution's Third Request for Admission of Documents from the Bar Table, 23 March 2007; Decision on Prosecution Motion to Admit Documentary Evidence, 10 October 2006; Decision on Milutinović Request for Admission of Documents from Bar Table, 19 September 2007; Decision on Šainović Motion Requesting Admission of Documents from Bar Table, 4 September 2007; Decision on Ojdanić Motion for Admission of Documents from Bar Table, 25 October 2007; Decision on Pavković First Renewed Motion for Admission of Documents from Bar Table, 27 September 2007; Decision on Lazarević Motion for Admission of Documents from Bar Table, 16 January 2008; Decision on Lukić Defence Motions for Admission of Documents from Bar Table, 11 June 2008; Decision on Lukić Motion for Reconsideration of Trial Chamber's Decision on Motion for Admission of Documents from Bar Table and Decision on Defence Request for Extension of Time for Filing of Final Trial Briefs, 2 July 2008.

<sup>54</sup> See, e.g., *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Second Order on Agreed Facts, 15 February 2007; Order for Submissions on Joint Prosecution and Defence Notice Regarding Translation of Exhibits Admitted into Evidence by Agreement, 31 July 2007.

<sup>55</sup> See *Prosecutor v. Martić*, Case No. IT-95-11-T, Judgement, 12 June 2007, para. 30.



accordance with the “Order on Procedure and Evidence,”<sup>56</sup> where only a portion of a lengthy document was translated and tendered as evidence, the Chamber only considered the translated portion as having been admitted into evidence.

57. On a number of occasions, witnesses claimed that documents of the authorities of the Republic of Serbia, or the FRY, were not authentic, were inaccurate, or did not mean what they appeared to say. Sometimes, the effect of such evidence was to suggest that officials did not actually occupy important posts to which they appeared to have been appointed. As a result, the analysis of the *de jure* responsibility of certain people has turned out to be more complex than one would expect in a bureaucratic regime where appointments are usually made by written order.

58. It is a function of the e-court system employed in this case that the parties enter the title of a document when they upload it to the e-court system. The Chamber has sometimes found it appropriate to use a different title for a document other than the one given it by the parties. The title of a document has not impacted the weight ascribed to it by the Chamber and has formed no part of the Chamber’s decision in relation to it.

59. *Evaluation of the evidence.* Following upon receipt of the final briefs and hearing the closing arguments, the Trial Chamber carefully reviewed the trial record. The Chamber has considered the evidence against and for each Accused separately and has reached a separate verdict in relation to each charge in respect of each Accused. The Chamber has given consideration to the evidence of every witness, whether called by the Prosecution, the Defence, or the Chamber, and to all the submissions of all the parties.

60. Throughout its consideration of the evidence, the Chamber has had regard to the lapse of time since the events and its possible impact upon the reliability of the evidence. It has had regard to demeanour, conduct, and circumstances of each individual witness in assessing the reliability of the evidence of that witness. The Chamber has had the advantage, in the case of almost every witness, of being able to observe that witness giving evidence in its presence, to study the demeanour and conduct of the witness in court, and to form an impression of whether the witness appeared to be trying to give a reliable account.

61. While reliability and credibility are often referred to as separate concepts, credibility is essentially a factor of reliability. The ultimate question is whether the evidence is reliable. It may be unreliable for a number of reasons, including the fact that it is not accurate. The Chamber also

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<sup>56</sup> *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Order on Procedure and Evidence, 11 July 2006, para. 6 (as modified by the “Decision on Joint Defence Motion for Modification of Order on Procedure and Evidence,” 16 August

considered the potential bias or partiality on the part of witnesses and whether witnesses might have had a motive for giving false testimony whenever circumstances suggested any of these possibilities. Some witnesses displayed such a lack of candour toward the Chamber that their evidence was essentially rejected. Other witnesses were found to be reliable upon some issues, but less reliable (or even unreliable) upon others; where the Chamber found a witness to be not credible upon one issue, it did not automatically discard all of his or her evidence, but rather assessed the witness's credibility upon each issue in light of the evidence in the trial as a whole.<sup>57</sup> Where the Chamber relies on the evidence of any witness in the course of its Judgement, that is because it found the witness to be reliable upon the issue in question. Where the Chamber relies upon documents in the course of its Judgement, this is because it finds them to be authentic and reliable in relation to the point in issue. Where the Chamber has considered it appropriate and necessary to explain why it has accepted or rejected the evidence of any witness upon a particular point, it has provided such an explanation. The same is true in relation to documents. However, in many instances, the Chamber has not found it necessary to provide an explanation of the basis upon which it has decided to accept or reject evidence. Generally speaking, that has been because the members of the Chamber formed the view that the witness or document was reliable upon the point in question. Where evidence was admitted by agreement of the parties, the Chamber generally accepted it.

62. *Burden of proof and standard of proof.* The requirement of Rule 87(A), that “[a] finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt”, is related to an accused’s presumption of innocence set forth in Article 21(3) of the Statute.<sup>58</sup> In order for an accused to be found guilty of a crime charged in an indictment, the Prosecution must prove beyond a reasonable doubt (a) each element of the statutory

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2007).

<sup>57</sup> See *Prosecutor v. Tadić*, Case No. IT-94-1-T, Opinion and Judgement, 7 May 1997, para. 541 (“The reliability of witnesses, including any motive they may have to give false testimony, is an estimation that must be made in the case of each individual witness. It is neither appropriate, nor correct, to conclude that a witness is deemed to be inherently unreliable solely because he was the victim of a crime committed by a person of the same creed, ethnic group, armed force or any other characteristic of the accused. That is not to say that ethnic hatred, even without the exacerbating influences of violent conflict between ethnic groups, can never be a ground for doubting the reliability of any particular witness. Such a conclusion can only be made, however, in the light of the circumstances of each individual witness, his individual testimony, and such concerns as the Defence may substantiate either in cross-examination or through its own evidence-in-chief.”); *Prosecutor v. Limaj et al.*, Case No. IT-03-66-T, Judgement, 30 November 2005, para. 15 (“The Chamber has also been conscious that many victim-witnesses with Albanian roots had family links in varying degrees to each other or were from villages located near to the village of another witness or witnesses. The cultural factors of loyalty and honour, discussed earlier, may also have affected their evidence as to the events, and the Chamber has, therefore, sought to take account of this. ... The Chamber further observed that a significant number of witnesses requested protective measures at trial, and expressed concerns for their lives and those of their family. This context of fear, in particular with respect to witnesses still living in Kosovo, was very perceptible throughout the trial. ... The Chamber has sought, *inter alia*, to give due consideration to these matters as it has undertaken the very difficult task, in this case, of evaluating the evidence.”).

<sup>58</sup> See *Martić* Appeal Judgement, paras. 55–63.

crime (including the *mens rea* and *actus reus* of the underlying offence and the general requirements for the statutory crime) and (b) the mental and physical elements of at least one of the forms of responsibility with which the accused is charged.<sup>59</sup>

63. Implicit in the requirement that a Trial Chamber make findings upon the elements of the underlying offences, statutory crimes, and forms of responsibility is that “the presumption of innocence requires that each fact on which an accused’s conviction is based must be proved beyond reasonable doubt”.<sup>60</sup> This does not mean that each fact alleged in an indictment needs to be proved beyond reasonable doubt in order for a finding of guilt to be entered against an accused. “Material facts” that have to be pleaded in an indictment to provide the accused with the information necessary to prepare his defence are not always necessarily facts that have to be proved beyond a reasonable doubt in the final Judgement.<sup>61</sup> However, if a Trial Chamber relies upon a fact in order to make a finding upon an element of the underlying offence, statutory crime, or form of responsibility, then that fact must be established beyond reasonable doubt.<sup>62</sup> The Chamber has of course only relied upon such a fact where it was proved to its satisfaction, but does not endlessly repeat the phrase “beyond reasonable doubt” throughout the Judgement.

64. *Requirement for legal and factual findings.* Although an accused has the right to a reasoned opinion under Article 23 of the Statute and Rule 98 *ter* of the Rules, the Trial Chamber is not required to discuss every factual assertion made in the Indictment or every legal argument put to it. Minor inconsistencies commonly occur in witness testimony and documents without rendering them unreliable, and it is within the discretion of the Chamber to evaluate the evidence and to consider whether the evidence as a whole is reliable, without discussing every inconsistency or explaining every detail of its assessment, or dealing with all evidence which is not in keeping with a finding of the Chamber. In circumstances where this arose, the Chamber in its final deliberations has carefully assessed and weighed the evidence and found that it did not prevent it from arriving at its actual finding, even where the evidence is not specifically discussed in the Judgement.<sup>63</sup> The Chamber also emphasises that, where an item of evidence is not mentioned in this Judgement, it does not mean that it has not been considered.

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<sup>59</sup> See, e.g., *Prosecutor v. Milošević*, Case Nos. IT-99-37-AR73, IT-01-50-AR73, IT-01-51-AR73, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 April 2002, para. 31; *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004, para. 484.

<sup>60</sup> See *Prosecutor v. Ntagerura et al.*, Case No. ICTR-99-46-A, Judgement, 7 July 2006, para. 175.

<sup>61</sup> See *Prosecutor v. Ntagerura et al.*, Case No. ICTR-99-46-A, Judgement, 7 July 2006, p. 58, note 356.

<sup>62</sup> See *Prosecutor v. Ntagerura et al.*, Case No. ICTR-99-46-A, Judgement, 7 July 2006, para. 174; *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Judgement, 28 February 2005, para. 23.

<sup>63</sup> See *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Judgement, 28 February 2005, para. 23; *Prosecutor v. Naletilić and Martinović*, Case No. IT-98-34-A, Judgement, 3 May 2006, para. 603; *Prosecutor v. Brđanin*, Case No. IT-99-36-A, Judgement, 3 April 2007, para. 11.

#### D. PARTICULAR TERMINOLOGY USED

65. The Chamber here explains its use of a number of expressions in the Judgement. Other particular linguistic or terminological issues are dealt with where they arise. In order for an individual to be convicted of a crime under the Statute, the Prosecution must prove three, or in some cases four, sets of elements beyond a reasonable doubt, namely the *actus reus* and *mens rea* of the underlying offence, any specific requirements of the underlying offence, the general requirements of the statutory crime, and the physical and mental elements of the relevant form of responsibility.

66. The “underlying offence” of the crime consists of conduct analogous to that which would constitute a crime under national law, such as for example murder, and each underlying offence therefore contains its own *actus reus* and *mens rea* elements. Some of the underlying offences have additional, “specific requirements”; for example persecution requires discriminatory intent. The “general requirements” of the crime, sometimes referred to as “*chapeau* elements”, are specific to the Article in question and serve to qualify an underlying offence as an international crime over which the Tribunal has jurisdiction. Finally, an accused can only be held responsible for a crime under the Statute through one of the forms of individual criminal responsibility in Articles 7(1) and 7(3) of the Statute, and each of these forms of responsibility has both physical and mental elements that must be proved before liability can attach.

67. The elements of an underlying offence and the elements of a form of responsibility are often assigned the same terminology of “*mens rea*” and “*actus reus*” in the jurisprudence of the Tribunal; however, this can lead to confusion when it is necessary for the elements of an underlying offence to be analysed separately from the elements of a form of responsibility. This occurs when an accused is not the physical perpetrator of a crime, such as in the instant case. The terminology of “*mens rea*” and “*actus reus*” is therefore used in this Judgement for the elements of an underlying offence, and “mental element” and “physical element” are employed for the elements of a form of responsibility, with the latter relating to the conduct of the accused and its effect upon the commission of a crime that must be established for a particular form of responsibility, and the former relating to the accused’s mental state in order for criminal liability to attach.

68. An accused need not physically perpetrate a crime in order to be found individually criminally responsible for its commission. As is clear from the text of Articles 4(3), 7(1), and 7(3) of the Statute, there are several means, of which physical commission is only one, by which an accused may be found responsible for the perpetration of a crime. While the jurisprudence

alternatively refers to these means as “forms”, “heads”, and “modes” of responsibility or liability, the Chamber generally has employed the term “forms of responsibility” throughout the Judgement.

69. The forms of responsibility other than physical commission define the relationship between the accused and other persons who were involved in perpetrating the crime. The jurisprudence alternatively designates the person who physically perpetrates a crime as the “principal perpetrator”,<sup>64</sup> the “principal offender”,<sup>65</sup> the “immediate perpetrator”,<sup>66</sup> and the “physical perpetrator”.<sup>67</sup> For the sake of clarity and internal consistency, the Chamber has utilised the term “physical perpetrator” throughout the Judgement. Moreover, where there is a person involved in the crime who is between the physical perpetrator and the accused in the chain of command, he has been termed an “intermediary perpetrator”, in order to distinguish with precision the different relationships between all the relevant players in respect of their individual criminal responsibility.<sup>68</sup>

70. The Chamber has drawn a distinction in the Judgement between the terms “count” and “charge”. A charge consists of a potential basis for the imposition of liability that is factually and/or legally distinct from any other alleged in the indictment;<sup>69</sup> a count alleges the commission of a statutory crime on the basis of one or more charges, and may encompass charges related to many different individually named victims, various different geographic locations, and several different forms of responsibility. A count is nothing more than a means by which the Prosecution organises the charges in an indictment, and an accused may be convicted of a count if only one of the charges under that count is established. It is each charge therefore that holds the potential of exposing the accused to individual criminal liability.

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<sup>64</sup> See, e.g., *Kvočka et al.* Appeal Judgement, para. 90; *Blaškić* Appeal Judgement, para. 48; *Krnojelac* Appeal Judgement, para. 84.

<sup>65</sup> See, e.g., *Kvočka et al.* Appeal Judgement, para. 251; *Krnojelac* Appeal Judgement, para. 75; *Blagojević* Trial Judgement, para. 702.

<sup>66</sup> See, e.g., *Prosecutor v. Ademi and Norac*, Case No. IT-04-78-PT, Decision for Referral to the Authorities of the Republic of Croatia Pursuant to Rule 11bis, 14 September 2005, para. 36; *Prosecutor v. Martić*, Case No. IT-95-11-PT, Decision on Preliminary Motion Against the Amended Indictment, 2 June 2003, para. 29.

<sup>67</sup> See, e.g., *Brđanin* Trial Judgement, para. 334 note 881; *Kvočka et al.* Trial Judgement, para. 261.

<sup>68</sup> Cf. *Brđanin* Appeal Judgement, para. 362 (“This issue also allows the Appeals Chamber to raise a matter of terminology. The parties and the Trial Chamber have used various expressions to identify the people ‘on the ground’ who ‘pulled the trigger’ or otherwise committed the *actus reus* of the crimes identified in the indictment. These expressions include ‘material perpetrators’, ‘physical perpetrators’, or ‘Relevant Physical Perpetrators’ (also, ‘RPPs’) when referring to members of the army and Serb paramilitary forces. However, at times, crimes might have been committed by omission, without any ‘physical’ or ‘material’ acts. Moreover, the *actus reus* carried out by these individuals might have not been accompanied by the requisite *mens rea*. Thus, the Appeals Chamber refers to these individuals, in the discussions that follow, as persons who carry out the *actus reus* of the crime(s) or, more simply, as ‘principal perpetrators.’”) (footnote omitted).

<sup>69</sup> See *Prosecutor v. Halilović*, Case No. IT-01-48-PT, Decision on Prosecutor’s Motion Seeking Leave to Amend the Indictment, 17 December 2004, para. 30.

71. The language used in the Republic of Serbia, Bosnia and Herzegovina, and Croatia is referred to at the Tribunal as “BCS”.<sup>70</sup> However, the language spoken in Serbia and described by the witnesses in this case is Serbian, and when referring to witnesses’ accounts the term “Serbian” is used in this Judgement. When referring to the names of places in Kosovo, which differ between the Albanian and BCS versions, both versions are given, separated by a slash, as with “Priština/Prishtina”.

72. Throughout the Judgement, the Chamber uses “Macedonia” to refer to the “Former Yugoslav Republic of Macedonia”. The former is the term predominately used by the witnesses, and its use herein does not connote any socio-political determinations on the part of the Chamber.

73. The Chamber also notes that throughout the trial a number of military witnesses, including Lazarević, made a distinction between an “action” and an “operation” conducted by the VJ. For example, Lazarević explained that “action” is a “form of combat action at the lowest tactical level within the framework of tactical and joint tactical units, and the numbers involved are 100 men or fewer to up to several hundred or several thousand men.” On the other hand, an “operation” is the “most complex form of combat action carried out on a large area according to a certain plan and has as its aim an operative or a strategic goal.” Lazarević concluded that the overall engagement of the Priština Corps for three months in the defence of the country during the NATO bombing was considered an operation and that this was the only operation at the time. Everything else within that operation was an “action” or a “fight” or a “battle”.<sup>71</sup> The Chamber acknowledges this evidence but also notes that, in the English language, the plain meaning of the term “operation” denotes strategic movement of troops in general.<sup>72</sup> Accordingly, the Chamber does not restrict its use of the term “operation” in the Judgement to the limited meaning given by the military witnesses.

74. For ease of reading and consistent with the approach taken in Rule 2(B) of the Rules of Procedure and Evidence the Chamber uses the masculine gender to include the feminine, where appropriate.

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<sup>70</sup> Cf. *Limaj et al.* Trial Judgement, para. 9.

<sup>71</sup> Vladimir Lazarević, T. 18295–18296 (14 November 2007). See also Ljubiša Diković, T. 19987 (11 December 2007); Tomislav Mladenović, T. 17611 (25 October 2007); Krsman Jelić, T. 19059 (26 November 2007).

<sup>72</sup> See *The Oxford English Dictionary*, 2<sup>nd</sup> ed., 1989, vol. X, p. 849.

## II. APPLICABLE LAW

### A. LEGAL STANDARDS FOR INDIVIDUAL CRIMINAL RESPONSIBILITY

#### 1. Introduction

75. Each of the six Accused is charged with responsibility for the crimes alleged in the Indictment pursuant to Article 7(1) and 7(3) of the Statute. The text of Article 7 is quoted in full below:

#### **Article 7** **Individual criminal responsibility**

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.

76. Because the Prosecution alleges all possible forms of responsibility in respect of each charge, the Chamber has the discretion, and indeed the obligation, to choose under which form or forms of responsibility to assess the evidence in respect of each Accused.<sup>73</sup> A Chamber is not obliged to make exhaustive factual findings on each and every charged form of responsibility, and may opt to examine only those that describe the conduct of the accused most accurately.<sup>74</sup> Nevertheless, the Chamber is bound in the exercise of its discretion by certain guiding principles on concurrent convictions and forms of responsibility.<sup>75</sup>

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<sup>73</sup> *Krstić* Trial Judgement, para. 602; *Furundžija* Trial Judgement, para. 189; *Semanza* Trial Judgement, para. 397.

<sup>74</sup> See *Krstić* Trial Judgement, para. 602; *Kunarac et al.* Trial Judgement, paras. 388–389.

<sup>75</sup> The Chamber will follow the practice of the Appeals Chamber in using the term “concurrent convictions” to describe simultaneous convictions pursuant to different forms of responsibility enshrined in Articles 7(1) and 7(3), reserving the term “cumulative convictions” to describe simultaneous convictions for more than one substantive crime in respect of the same conduct. See *Jokić* Judgement on Sentencing Appeal, para. 24; *Kordić* Appeal Judgement, paras. 35, 1030; *Blaškić* Appeal Judgement, paras. 89–93; *Kajelijeli* Appeal Judgement, para. 81; but see *Gacumbitsi* Trial Judgement, para. 266 (using the term “cumulative convictions” when referring to simultaneous convictions pursuant to different

77. First, where the Prosecution establishes the elements of both commission and another form of responsibility under Article 7(1) in respect of a crime, the Chamber must identify the most appropriate form of liability. If a Chamber opts to convict an accused for the commission of the crime, the Chamber may consider any involvement in the ordering, instigating, or planning of the crime as an aggravating factor in sentencing.<sup>76</sup> However, an accused cannot be convicted for a crime through more than one form of responsibility in relation to the same conduct.

78. Second, a Chamber may not concurrently convict an accused under any of the forms of responsibility in Article 7(1) on the one hand, and either of the forms in Article 7(3) on the other, in relation to the same conduct. The Appeals Chamber has held,

Where both Article 7(1) and Article 7(3) responsibility are alleged under the same count, and where the legal requirements pertaining to both of these heads of responsibility are met, a Trial Chamber should enter a conviction on the basis of Article 7(1) only, and consider the accused's superior position as an aggravating factor in sentencing.<sup>77</sup>

However, if a Chamber's factual findings satisfy the requirements of both forms of responsibility in Article 7(3)—the failure to prevent and the failure to punish—but do not satisfy the requirements of any form of responsibility in Article 7(1), the Chamber may enter a conviction on either or both of the Article 7(3) forms.<sup>78</sup>

79. The Appeals Chamber in *Blaškić* determined that Article 7(1) forms of responsibility generally take precedence over Article 7(3) forms, where both forms of responsibility are charged in respect of certain conduct.<sup>79</sup> In general, Article 7(1) concerns the accused's direct responsibility

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forms of responsibility). The Chamber discusses the law on cumulative convictions in a later section of this Judgement.

<sup>76</sup> See *Brđanin* Trial Judgement, para. 268; *Stakić* Trial Judgement, para. 443.

<sup>77</sup> *Blaškić* Appeal Judgement, paras. 91–92; see also *Kvočka et al.* Appeal Judgement, para. 104; *Kordić* Appeal Judgement, paras. 33–35 (following *Blaškić* Appeal Judgement); *Kajelijeli* Appeal Judgement, paras. 81–82, 91 (vacating the accused's Article 6(3) conviction for genocide after having determined that the Trial Chamber had erroneously convicted him under both Articles 6(1) and 6(3) on the same facts, but nevertheless maintaining the Trial Chamber's sentence as accurately reflecting the aggravating effect of the accused's superior position); *Čelebići* Appeal Judgement, para. 745.

<sup>78</sup> *Strugar* Trial Judgement, para. 373; *Blagojević* Trial Judgement, para. 793.

<sup>79</sup> *Blaškić* Appeal Judgement, para. 91; see also *Kamuhanda* Appeal Judgement, Partial Dissenting Opinion of Judge Shahabuddeen, para. 410 (underlining in original; italics indicating emphasis added):

The *Blaškić* rule is based on the illogicality of holding, under article 7(1) of the ICTY Statute, that the crime committed by a subordinate was in the first instance ordered by the accused himself, and of at the same time holding, under article 7(3), that the accused, as the superior, failed to prevent the commission of the crime by the subordinate or failed to punish the subordinate for committing it. The assumption of the ordering situation under the article 7(1) is that the accused *actively advanced* the commission of the crime; the assumption of the command responsibility situation under article 7(3) is that he did not. The Appeals Chamber, in effect, held that instead of entering simultaneous convictions (under both provisions) based on such assumptions, the superior/subordinate relationship should be considered as an aggravating factor in sentencing the accused for ordering, for which alone he should be convicted.



while Article 7(3) deals with his indirect responsibility.<sup>80</sup> However, there are some forms of Article 7(1) liability that may more appropriately be classified, along with the Article 7(3) forms, as entailing indirect responsibility.<sup>81</sup> As superior responsibility under Article 7(3) is the archetypal form of omission liability for superiors,<sup>82</sup> the Trial Chamber considers that the Appeals Chamber in *Blaškić* did not intend for a form of omission liability arising out of Article 7(1) to take precedence over superior responsibility under Article 7(3). The Trial Chamber therefore interprets *Blaškić* as merely establishing a preference for those manifestations of Article 7(1) forms of responsibility that involve the active advancement of a crime—for example, aiding and abetting through positive action—and not precluding a conviction pursuant to Article 7(3) where the only available Article 7(1) forms of responsibility are realised by means of an omission.<sup>83</sup>

80. With these considerations in mind, the Chamber will now discuss the elements and other relevant features of the forms of responsibility charged.

## 2. Planning

81. The Prosecution establishes the physical and mental elements of planning by proving that the accused intentionally designed an act or omission<sup>84</sup> with the intent that a crime or underlying offence be committed in the execution of that design, or with the awareness of the substantial likelihood<sup>85</sup> that a crime or underlying offence would be committed in the execution of that design.<sup>86</sup>

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The Trial Chamber in *Krstić* stated that Article 7(3) responsibility is also subsumed where a superior incurs criminal responsibility under the joint criminal enterprise doctrine for the acts of his subordinates. *Krstić* Trial Judgement, para. 605.

<sup>80</sup> See *Prosecutor v. Blaškić*, Case No. IT-95-14, Decision on the Defence Motion to Dismiss the Indictment Based upon Defects in the Form Thereof (Vagueness/Lack of Adequate Notice of Charges), 4 April 1997, para. 31; *Blaškić* Appeal Judgement, para. 91; *Blagojević* Trial Judgement, para. 683.

<sup>81</sup> *Blaškić* Appeal Judgement, para. 664; *Mrkšić et al.* Trial Judgement, para. 555 (stating that responsibility for omission under Article 7(1) “resembles that of a commander under Article 7(3) of the Statute”).

<sup>82</sup> See *Hadžihasanović* Command Responsibility Decision on Interlocutory Appeal, para. 16.

<sup>83</sup> In *Strugar*, the Trial Chamber, noting that the accused had attempted to stop his subordinates’ illegal acts and that the Tribunal’s jurisprudence was unsettled as to whether and how an omission could form the *actus reus* of aiding and abetting, held that “the Accused’s failure to take more effective measures to stop the unlawful shelling of the Old Town is more properly regarded in the context of the Accused’s responsibility as a superior under Article 7(3) of the Statute.” *Strugar* Trial Judgement, para. 355.

<sup>84</sup> The accused need only design an “act or omission”—and not necessarily a crime or underlying offence *per se*—if he has the intent that a crime or underlying offence be committed in execution of the plan, or if he is aware of the substantial likelihood that a crime or underlying offence will be committed. *Kordić* Appeal Judgement, paras. 31, 976.

<sup>85</sup> The standard of “awareness of the substantial likelihood” was first articulated by the Appeals Chamber in *Blaškić* in respect of ordering under Article 7(1). After undertaking a comparative analysis of the standards of recklessness and *dolus eventualis* in several national legal systems, the Chamber held as follows:

[I]t appears that under the Trial Chamber’s standard, any military commander who issues an order would be criminally responsible, because there is always a possibility that violations could occur. The Appeals Chamber

82. While the Prosecution need not prove that the crime or underlying offence with which the accused is charged would not have been perpetrated but for the accused's plan, the Appeals Chamber has held that the plan must have been a factor "substantially contributing to ... criminal conduct constituting one or more statutory crimes that are later perpetrated."<sup>87</sup>

### 3. Instigating

83. The Prosecution establishes the physical and mental elements of instigating by proving that the accused, through either an act or an omission, intentionally prompted another to act in a particular way,<sup>88</sup> with the intent that a crime or underlying offence be committed as a result of such prompting, or with the awareness of the substantial likelihood that a crime or underlying offence would be committed as a result of such prompting.<sup>89</sup> Liability for instigating may ensue through implicit, written, or other non-verbal prompting by the accused,<sup>90</sup> and does not require that the accused have "effective control" over the perpetrator or perpetrators.<sup>91</sup> Additionally, the accused's prompting may occur not only through positive acts, but also through omissions.<sup>92</sup>

84. While the Appeals Chamber has held that the accused's prompting must have been a factor "substantially contributing to the conduct of another person committing the crime", the Prosecution need not prove that the crime or underlying offence would not have been perpetrated but for the accused's prompting.<sup>93</sup>

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considers that an awareness of a *higher likelihood of risk* and a volitional element must be incorporated in the legal standard.

*Blaškić* Appeal Judgement, para. 41 (emphasis added).

<sup>86</sup> *Kordić* Appeal Judgement, paras. 26, 31; *Nahimana et al.* Appeal Judgement, para. 479; *Semanza* Trial Judgement, para. 380 (planning "envisions one or more persons formulating a method of design or action, procedure, or arrangement for the accomplishment of a particular crime").

<sup>87</sup> *Kordić* Appeal Judgement, para. 26.

<sup>88</sup> The accused need only prompt another to "act in a particular way"—and not necessarily to commit a crime or underlying offence *per se*—if he has the intent that a crime or underlying offence be committed in response to such prompting, or if he is aware of the substantial likelihood that a crime or underlying offence will be committed. *Kvočka et al.* Trial Judgement, para. 252.

<sup>89</sup> *Kordić* Appeal Judgement, paras. 27, 32; *Brđanin* Trial Judgement, para. 269.

<sup>90</sup> *Brđanin* Trial Judgement, para. 269; *Blaškić* Trial Judgement, paras. 280–281.

<sup>91</sup> *Semanza* Appeal Judgement, para. 257. "Effective control" has been described as having the material ability to prevent and/or punish the commission of the instigated crimes or underlying offences. *Čelebići* Appeal Judgement, para. 197.

<sup>92</sup> *Brđanin* Trial Judgement, para. 269; *Galić* Trial Judgement, para. 168.

<sup>93</sup> *Kordić* Appeal Judgement, para. 27; *Nahimana et al.* Appeal Judgement, para. 480; *Kvočka et al.* Trial Judgement, para. 252 (holding that it must be shown that "the conduct of the accused was a clear contributing factor to the conduct of the other person(s)"); *Kordić* Trial Judgement, para. 387 (holding that "the contribution of the accused [must have] in fact had an effect on the commission of the crime"); *Tadić* Trial Judgement, para. 674 (holding that "the prosecution must prove that there was participation in that the conduct of the accused contributed to the commission of the illegal act").

#### 4. Ordering

85. The Prosecution establishes the physical and mental elements of ordering by proving that the accused intentionally instructed another to carry out an act or engage in an omission,<sup>94</sup> with the intent that a crime or underlying offence be committed in the execution of those instructions, or with the awareness of the substantial likelihood that a crime or underlying offence would be committed in the execution of those instructions.<sup>95</sup>

86. While the Prosecution need not prove that there existed a formal superior-subordinate relationship between the accused and the physical perpetrator or intermediary perpetrator,<sup>96</sup> it must provide “proof of some position of authority on the part of the accused that would compel another to commit a crime in following the accused’s order.”<sup>97</sup> Such authority may be informal and of a temporary nature,<sup>98</sup> and as a consequence the order issued by the accused need not be legally binding upon the physical perpetrator or intermediary perpetrator.

87. The order need not take any particular form; it need not be in writing.<sup>99</sup> However, ordering requires a positive act; it cannot be committed by omission.<sup>100</sup> Because the Appeals Chamber has held that the accused need merely “instruct another person to commit an offence”,<sup>101</sup> it is clear that liability for ordering may ensue where the accused issues, passes down, or otherwise transmits the order, and that he need not use his position of authority to “convince” the physical perpetrator or intermediary perpetrator to commit the crime or underlying offence.<sup>102</sup> Furthermore, the accused need not give the order directly to the physical perpetrator,<sup>103</sup> and an intermediary lower down than the accused on the chain of command who passes the order on to the physical perpetrator may also be held responsible as an orderer for the perpetrated crime or underlying offence, as long as he has the requisite state of mind.<sup>104</sup>

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<sup>94</sup> The accused need only instruct another to carry out an act or engage in an omission—and not necessarily a crime or underlying offence *per se*—if he has the intent that a crime or underlying offence be committed in the execution of the order, or if he is aware of the substantial likelihood that a crime or underlying offence will be committed. *Semanza* Appeal Judgement, paras. 359–364.

<sup>95</sup> *Kordić* Appeal Judgement, paras. 28, 30; *Martić* Appeal Judgement, paras. 221–222.

<sup>96</sup> *Kordić* Appeal Judgement, para. 28; *Semanza* Appeal Judgement, para. 361.

<sup>97</sup> *Semanza* Appeal Judgement, para. 361; *see also* *Kordić* Appeal Judgement, para. 28.

<sup>98</sup> *Semanza* Appeal Judgement, paras. 363, 364 (finding that the accused—a civilian mayor with no formal position in the Rwandan military hierarchy—had the necessary authority over Interahamwe fighters to render him liable for ordering them to kill Tutsis at Musha church, and that the Trial Chamber had erred in not convicting him under this form of responsibility).

<sup>99</sup> *Strugar* Trial Judgement, para. 331; *Blaškić* Trial Judgement, para. 281.

<sup>100</sup> *Galić* Appeal Judgement, para. 176.

<sup>101</sup> *Kordić* Appeal Judgement, para. 28.

<sup>102</sup> *See* *Krstić* Trial Judgement, para. 601; *Blaškić* Trial Judgement, para. 281.

<sup>103</sup> *Kordić* Trial Judgement, para. 388; *Blaškić* Trial Judgement, para. 282.

<sup>104</sup> *Kupreškić et al.* Trial Judgement, paras. 827, 862.

88. While the accused's issuance of the order must have been a factor substantially contributing to the physical perpetration of a crime or underlying offence,<sup>105</sup> the Prosecution need not prove that the crime or underlying offence would not have been perpetrated but for the accused's order.<sup>106</sup>

##### 5. Aiding and abetting

89. The Prosecution establishes the physical elements of aiding and abetting by proving (a) that the accused provided practical assistance, encouragement, or moral support to the perpetration of a crime or underlying offence<sup>107</sup> and (b) that such practical assistance, encouragement, or moral support had a substantial effect upon the commission of a crime or underlying offence.<sup>108</sup>

90. An accused may aid and abet not only by means of positive action, but also through omission.<sup>109</sup> The Trial Chamber in *Mrkšić et al.* held that, aside from the "approving spectator" form of omission,<sup>110</sup> responsibility for aiding and abetting could also arise where the accused was under a duty to prevent the commission of a crime or underlying offence and failed to do so, provided that his inaction had a substantial effect upon the commission of the crime or underlying offence and that the accused possessed the requisite state of mind.<sup>111</sup> In *Ntagerura et al.*, the Appeals Chamber found that an accused could be held liable for culpable omissions,<sup>112</sup> and it

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<sup>105</sup> *Strugar* Trial Judgement, para. 332; *Galić* Trial Judgement, para. 169; *Tadić* Trial Judgement, para. 674.

<sup>106</sup> *Strugar* Trial Judgement, para. 332.

<sup>107</sup> *Blaškić* Appeal Judgement, para. 45; *Vasiljević* Appeal Judgement, para. 102. Aiding and abetting actually constitute two discrete activities. "Aiding" consists of giving practical assistance to the physical perpetrator or intermediary perpetrator, and "abetting" consists of "facilitating the commission of an act by being sympathetic thereto"—in other words, giving encouragement or moral support to the physical perpetrator or intermediary perpetrator. *Akayesu* Trial Judgement, para. 484; see also *Kvočka et al.* Trial Judgement, para. 254; *Blaškić* Trial Judgement, para. 284 note 510.

<sup>108</sup> *Blaškić* Appeal Judgement, para. 46; *Vasiljević* Appeal Judgement, para. 102.

<sup>109</sup> *Nahimana et al.* Appeal Judgement, para. 482.

<sup>110</sup> The *Aleksovski* Trial Chamber described, at paragraph 87, this form of aiding and abetting as follows:

By being present during the mistreatment, and yet not objecting to it notwithstanding its systematic nature and the authority he had over its perpetrators, the accused was necessarily aware that such tacit approval would be construed as a sign of his support and encouragement. He thus contributed substantially to the mistreatment. Accordingly, the accused must be held responsible for aiding and abetting under Article 7(1) in the physical and mental abuse which detainees were subjected to.

<sup>111</sup> In *Mrkšić et al.*, the Trial Chamber analysed the Appeal Judgement in *Blaškić* and concluded that the appellant's conviction in respect of his failure to prevent the use of detainees as human shields in breach of his duty must have been for aiding and abetting. *Mrkšić et al.* Trial Judgement, paras. 553–554. In *Blaškić*, the Appeals Chamber stated that it "leaves open the possibility that in the circumstances of a given case, an omission may constitute the *actus reus* of aiding and abetting". *Blaškić* Appeal Judgement, para. 47.

<sup>112</sup> The Trial Chamber in *Ntagerura et al.* stated that a culpable omission required the following elements: "(a) the accused must have had a duty to act mandated by a rule of criminal law; (b) the accused must have had the ability to act; (c) the accused failed to act intending the criminally sanctioned consequences or with awareness and consent that the consequences would occur; and (d) the failure to act resulted in the commission of the crime." *Ntagerura et al.* Trial Judgement, para. 659. In upholding this general approach, the Appeals Chamber expressly questioned whether, under requirement (a), the duty had to be one under a rule of *criminal law*, as opposed to any legal obligation. *Ntagerura et al.* Appeal Judgement, para. 334.

repeated this approach some months later in *Galić*.<sup>113</sup> The Chamber follows this approach, and considers that, along with the “approving spectator” doctrine, this form of responsibility also encompasses culpable omissions, where (a) there is a legal duty to act, (b) the accused has the ability to act, (c) he fails to act either intending the criminal consequences or with awareness and consent that the consequences will ensue, and (d) the failure to act results in the commission of the crime.

91. The accused may aid and abet at one or more of three possible stages of the crime or underlying offence—“planning, preparation or execution”<sup>114</sup>—and the lending of practical assistance, encouragement, or moral support may occur before, during, or after the crime or underlying offence occurs.<sup>115</sup> No evidence of a plan or agreement between the aider and abettor and the physical perpetrator or intermediary perpetrator is required.<sup>116</sup>

92. Although the practical assistance, encouragement, or moral support provided by the accused must have a substantial effect upon the commission of the crime or underlying offence,<sup>117</sup> the Prosecution need not prove that the crime or underlying offence would not have been perpetrated but for the accused’s contribution.<sup>118</sup> Moreover, liability for aiding and abetting under the Statute cannot be inchoate: the accused cannot be held responsible under Article 7(1) for aiding and abetting if a crime or underlying offence is never actually carried out with his assistance, encouragement, or moral support.<sup>119</sup> Notwithstanding the requirement that the crime or underlying offence be ultimately committed, however, the physical perpetrator or intermediary perpetrator need not have been tried or even identified,<sup>120</sup> even where the crime or underlying offence requires specific intent,<sup>121</sup> and the perpetrator or perpetrators need not have been aware of the accused’s contribution.<sup>122</sup>

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<sup>113</sup> In confirming this form of liability for culpable omission, the Appeals Chamber in *Galić* noted paragraph 334 of the *Ntagerura et al.* Appeals Judgement, and simply referred to a legal duty to act, rather than a duty under a rule of criminal law. *Galić* Appeal Judgement, para. 175; see also *Orić* Appeal Judgement, para. 43.

<sup>114</sup> Article 7(1) of the Statute.

<sup>115</sup> *Blaškić* Appeal Judgement, para. 48.

<sup>116</sup> *Tadić* Appeal Judgement, para. 229; *Brđanin* Appeal Judgement, para. 263; *Simić et al.* Trial Judgement, para. 162.

<sup>117</sup> *Kvočka et al.* Appeal Judgement, para. 90; *Blaškić* Appeal Judgement, para. 46; *Naletilić* Trial Judgement, paras. 63, 507.

<sup>118</sup> *Blaškić* Appeal Judgement, para. 48; *Simić et al.* Appeal Judgement, para. 85.

<sup>119</sup> *Aleksovski* Appeal Judgement, para. 165.

<sup>120</sup> *Brđanin* Trial Judgement, para. 273; *Stakić* Trial Judgement, para. 533.

<sup>121</sup> *Krstić* Appeal Judgement, para. 143; *Krnojelac* Trial Judgement, paras. 489–490 (finding the accused responsible for aiding and abetting persecution where the physical perpetrator or intermediary perpetrator of the crime were not identified).

<sup>122</sup> *Tadić* Appeal Judgement, para. 229; *Simić et al.* Trial Judgement, para. 161.

93. The Prosecution establishes the mental elements of aiding and abetting by proving (a) that the accused intentionally performed an act with the knowledge that such act would lend practical assistance, encouragement, or moral support to the commission of a crime or underlying offence,<sup>123</sup> and (b) that the accused was aware of the essential elements of the crime or underlying offence for which he is charged with responsibility, including the mental state of the physical perpetrator or intermediary perpetrator.<sup>124</sup>

94. Although the accused's lending of practical assistance, encouragement, or moral support must itself be intentional, intent to commit the crime or underlying offence is not required.<sup>125</sup> Instead, the accused must have knowledge that his acts or omissions assist the principal perpetrator or intermediary perpetrator in the commission of the crime or underlying offence.<sup>126</sup> Such knowledge need not have been overtly expressed and may be inferred from the circumstances.<sup>127</sup> Furthermore, although the accused must be aware, at a minimum, of the essential elements of the substantive crime or underlying offence for which he is charged with responsibility as an aider and abettor,<sup>128</sup> he need not know the intangible thoughts and feelings of the person or persons who in fact physically perpetrate the crime or underlying offence.<sup>129</sup> The requirement that the aider and abettor need merely know of the physical perpetrator or intermediary perpetrator's intent—and need not share it—applies equally to specific-intent crimes or underlying offences such as persecution as a crime against humanity.<sup>130</sup>

## 6. Joint criminal enterprise

95. The Appeals Chamber has held that the form of responsibility labelled “committing” in Article 7(1) of the Statute implicitly encompasses co-participation in a joint criminal enterprise:<sup>131</sup>

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<sup>123</sup> *Blaškić* Appeal Judgement, para. 49; *Vasiljević* Appeal Judgement, para. 102.

<sup>124</sup> *Aleksovski* Appeal Judgement, para. 162; *Simić et al.* Appeal Judgement, para. 86.

<sup>125</sup> *See Kunarac et al.* Trial Judgement, para. 392; *see also Krstić* Appeal Judgement, Partial Dissenting Opinion of Judge Shahabuddeen, para. 66:

Intent must always be proved, but the intent of the perpetrator of genocide is not the same as the intent of the aider and abettor. The perpetrator's intent is to commit genocide. The intent of the aider and abettor is not to commit genocide; his intent is to provide the means by which the perpetrator, if he wishes, can realise his own intent to commit genocide.

<sup>126</sup> *Blaškić* Appeal Judgement, para. 49; *Vasiljević* Appeal Judgement, para. 102.

<sup>127</sup> *Strugar* Trial Judgement, para. 350; *Martić* Trial Judgement, para. 451. *See Kvočka et al.* Appeal Judgement, para. 237; *Vasiljević* Appeal Judgement, paras. 120, 128.

<sup>128</sup> *Blaškić* Appeal Judgement, para. 50; *Simić et al.* Appeal Judgement, para. 86; *Tadić* Appeal Judgement, para. 229.

<sup>129</sup> *Aleksovski* Appeal Judgement, para. 162; *Blagojević* Trial Judgement, para. 727.

<sup>130</sup> *Krstić* Appeal Judgement, paras. 140, 143; *Vasiljević* Appeal Judgement, para. 142–143; *Krnojelac* Trial Judgement, para. 489.

<sup>131</sup> *Kvočka et al.* Appeal Judgement, para. 79; *Krnojelac* Appeal Judgement, para. 73; *Prosecutor v. Milutinović, Šainović, and Ojdanić*, Case No. IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction – Joint Criminal Enterprise, 21 May 2003, para. 20; *Tadić* Appeal Judgement, para. 188; *see also Brđanin* Appeal

This provision covers first and foremost the physical perpetration of a crime by the offender himself, or the culpable omission of an act that was mandated by a rule of criminal law. However, the commission of one of the crimes envisaged in Articles 2, 3, 4 or 5 of the Statute might also occur through participation in the realisation of a common design or purpose.<sup>132</sup>

Accordingly, an accused charged with criminal responsibility due to his participation in a joint criminal enterprise is appropriately understood to be a co-perpetrator, or a co-participant, in the commission of the crime or underlying offence with which he is charged.<sup>133</sup> Criminal liability through participation in a joint criminal enterprise can arise in relation to any of the crimes or underlying offences within the Tribunal's jurisdiction,<sup>134</sup> including crimes or underlying offences requiring specific intent, such as persecution as a crime against humanity.<sup>135</sup>

96. The Appeals Chamber has held that three categories of joint criminal enterprise existed in customary international law at the time of the events in the former Yugoslavia.<sup>136</sup> In the first or "basic" category of joint criminal enterprise, all members, acting pursuant to a common purpose, possess the same intent to commit a crime or underlying offence, and the crime or underlying offence is committed by one or more of them, or by others acting at their behest.<sup>137</sup> The second category, "systemic" joint criminal enterprise, is characterised by the existence of an organised criminal system, as in the case of detention camps in which the prisoners are mistreated pursuant to a common purpose.<sup>138</sup> The third category, "extended" joint criminal enterprise, involves cases in which the accused, or any other member of the joint criminal enterprise, in order to further the common criminal purpose, uses persons who, in addition to (or instead of) carrying out the *actus reus* of the crimes or underlying offences forming part of the common purpose, commit crimes or

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Judgement, para. 410. Note, however, that in the *Brđanin* Appeal Judgement, Judge Meron stated in a separate opinion that, where a joint criminal enterprise member orders a non-member to carry out a crime within the common criminal purpose of the joint criminal enterprise, then other members of the joint criminal enterprise would be responsible for ordering, rather than committing, this crime. *Brđanin* Appeal Judgement, Separate Opinion of Judge Meron, para. 8. Various Chambers have alternatively referred to joint criminal enterprise with the terms "common criminal plan", "common criminal purpose", "common design or purpose", "common criminal design", "common purpose", "common design", and "common concerted design". See, e.g., *Tadić* Appeal Judgement, paras. 185, 187–188, 191, 193, 195, 202–204, 225; *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, para. 24; *Vasiljević* Appeal Judgement, para. 100; *Prosecutor v. Milutinović, Šainović, and Ojdanić*, Case No. IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction – Joint Criminal Enterprise, 21 May 2003, para. 36.

<sup>132</sup> *Tadić* Appeal Judgement, para. 188.

<sup>133</sup> *Vasiljević* Appeal Judgment, para. 102; *Krnojelac* Appeal Judgement, para. 73 (overruling the Trial Chamber's holding that joint criminal enterprise is a form of accomplice liability).

<sup>134</sup> *Tadić* Appeal Judgement, para. 188.

<sup>135</sup> See *Kvočka et al.* Appeal Judgement, para. 240; *Krnojelac* Appeal Judgement, para. 111.

<sup>136</sup> *Tadić* Appeal Judgement, paras. 195–226 (reviewing post-World War II war crimes cases; the International Convention for the Suppression of Terrorist Bombing, entered into force on 23 May 2001, UN Doc. A/52/49 (1998); Rome Statute; and relevant national legislation and case law); *Vasiljević* Appeal Judgement, para. 96; *Krnojelac* Appeal Judgement, paras. 30–32; *Brđanin* Appeal Judgement, para. 364 (citing *Tadić*, *Vasiljević*, and *Krnojelac* Appeal Judgements).

<sup>137</sup> *Tadić* Appeal Judgement, paras. 197, 220; *Brđanin* Appeal Judgement, para. 365.

underlying offences going beyond that purpose. In such a case, the accused may be found responsible for such crimes or underlying offences provided that he participated in the common criminal purpose with the intent to further it, and that, in the circumstances of the case, (a) it was reasonably foreseeable to him that the crime or underlying offence would be perpetrated by one or more of the persons used by him (or by any other member of the joint criminal enterprise) in order to carry out the *actus reus* of the crimes or underlying offences forming part of the common purpose and (b) he willingly took that risk (*dolus eventualis*).<sup>139</sup>

a. Physical elements

97. The Appeals Chamber has identified three broad physical elements as shared by all three categories of joint criminal enterprise: (a) a plurality of persons; (b) the existence of a common plan, design, or purpose that amounts to or involves the commission of a crime or underlying offence provided for in the Statute; and (c) the participation of the accused in the common plan, design, or purpose.<sup>140</sup>

*i. The joint criminal enterprise consisted of two or more persons*

98. For joint criminal enterprise liability to arise, the accused must act with at least one other person,<sup>141</sup> but the two or more persons that make up a joint criminal enterprise need not be organised into any sort of military, political, or administrative structure.<sup>142</sup> The Appeals Chamber has held that it is necessary to “identify the plurality of persons belonging to the [joint criminal enterprise] (even if it is not necessary to identify by name each of the persons involved).”<sup>143</sup> There is no upper limit on the size or scope of the joint criminal enterprise.<sup>144</sup> The Appeals Chamber clarified in *Brđanin* that it is not necessary for the physical perpetrator or intermediary perpetrator

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<sup>138</sup> *Tadić* Appeal Judgement, paras. 202–203, 220; *Krnojelac* Appeal Judgement, para. 89.

<sup>139</sup> *Brđanin* Appeal Judgement, paras. 365, 411; *Blaškić* Appeal Judgement, para. 33; *Tadić* Appeal Judgement, para. 204.

<sup>140</sup> *Brđanin* Appeal Judgement, para. 364 (citing *Tadić* Appeal Judgement); *Tadić* Appeal Judgement, para. 227.

<sup>141</sup> *Kvočka et al.* Appeal Judgement, para. 81; *Brđanin* Appeal Judgement, paras. 364, 439.

<sup>142</sup> *Vasiljević* Appeal Judgement, para. 100; *Tadić* Appeal Judgement, para. 227.

<sup>143</sup> *Brđanin* Appeal Judgement, para. 430. The *Brđanin* Trial Chamber in its Judgement declined to consider joint criminal enterprise liability as between the accused and several individuals that the Prosecution at trial had argued made up the “others” alleged in the indictment—including members of the Serb police, Serb armed civilians, and unidentified individuals—because the indictment failed to plead the identities of such persons or the group to which they belonged. *Brđanin* Trial Judgement, para. 346. The Trial Chamber did, however, evaluate the possibility of a joint criminal enterprise between the accused and members of the army and Serb paramilitary forces, persons whose individual identities were unknown but whose group had been pleaded in the indictment. *Brđanin* Trial Judgement, paras. 347–355. This was upheld on appeal. *Brđanin* Appeal Judgement, paras. 237, 444–449.

<sup>144</sup> *Prosecutor v. Karemera, Ngirumpatse, and Nzirorera*, Case No. ICTR-98-44, Decision on Jurisdictional Appeals: Joint Criminal Enterprise, 12 April 2006, paras. 15–16.



of the crime or underlying offence to be a member of the joint criminal enterprise.<sup>145</sup> On the basis of several post-World War II cases and its analysis of the Tribunal's jurisprudence, the Appeals Chamber in *Brđanin* held that

what matters in a first category [of joint criminal enterprise] is not whether the person who carried out the *actus reus* of a particular crime is a member of the [joint criminal enterprise], but whether the crime in question forms part of the common purpose. In cases where the principal perpetrator of a particular crime is not a member of the [joint criminal enterprise], this essential requirement may be inferred from various circumstances, including the fact that the accused or any other member of the [joint criminal enterprise] closely cooperated with the principal perpetrator in order to further the common criminal purpose. In this respect, when a member of the [joint criminal enterprise] uses a person outside the [joint criminal enterprise] to carry out the *actus reus* of a crime, the fact that the person in question knows of the existence of the [joint criminal enterprise]—without it being established that he or she shares the *mens rea* necessary to become a member of the [joint criminal enterprise]—may be a factor to be taken into account when determining whether the crime forms part of the common criminal purpose. However, this is not a *sine qua non* for imputing liability for the crime to that member of the [joint criminal enterprise].<sup>146</sup>

99. It was also held by the Appeals Chamber in *Brđanin* that, in order to hold a member of a joint criminal enterprise responsible for crimes or underlying offences committed by non-members of the enterprise, it has to be shown (a) that the crime or underlying offence can be imputed to one member of the joint criminal enterprise (not necessarily the accused) and (b) that this member—when using a physical perpetrator or intermediary perpetrator—acted in accordance with the common plan. The existence of this link is to be assessed on a case-by-case basis.<sup>147</sup>

*ii. A common plan, design, or purpose existed that amounted to or involved the commission of a crime or underlying offence provided for in the Statute*

100. For all three categories of joint criminal enterprise, the Prosecution must prove that a “common plan, design, or purpose” existed, which amounted to or involved the commission of a particular crime or, alternatively, a particular underlying offence set forth in the Statute of the Tribunal.<sup>148</sup>

101. For the first and third categories of joint criminal enterprise, which are the categories relevant to the present case, the requirement of proof that there was a common plan, design, or purpose to commit a crime or underlying offence is fulfilled where the Prosecution proves that the accused and at least one other person, who may or may not be the physical perpetrator or

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<sup>145</sup> Accordingly, the Prosecution need not prove that the physical perpetrator or intermediary perpetrator shared with the joint criminal enterprise members the intent to commit the crime that is the object of the joint criminal enterprise. *Brđanin* Appeal Judgement, para. 410.

<sup>146</sup> *Brđanin* Appeal Judgement, para. 410 (footnote omitted).

<sup>147</sup> *Brđanin* Appeal Judgement, para. 413; *Martić* Appeal Judgement, paras. 168–169.

intermediary perpetrator, came to an express or implied agreement that a particular crime or underlying offence would be committed.<sup>149</sup> With regard to the first form of the joint criminal enterprise, an essential requirement in order to impute to any accused member of the joint criminal enterprise liability for a crime or underlying offence committed by another person is that the crime or underlying offence in question forms part of the common criminal purpose. In cases where the person who carried out the *actus reus* of the crime or underlying offence is not a member of the joint criminal enterprise, the key issue remains the ascertainment of whether the crime or underlying offence in question forms part of the common criminal purpose.<sup>150</sup> This may be inferred from the fact that the accused or any other member of the joint criminal enterprise closely co-operated with the physical perpetrator or intermediary perpetrator in order to further the common criminal enterprise.<sup>151</sup>

102. For all three forms of joint criminal enterprise, the common purpose need not be previously arranged or formulated, but may materialise spontaneously.<sup>152</sup> A Chamber may infer that a common plan or purpose existed by examining the totality of the circumstances surrounding the commission of a crime or underlying offence.<sup>153</sup> For example, the way in which the crime or underlying offence is committed may support an inference that it must have been pursuant to a common plan.<sup>154</sup> In these cases, the Prosecution is not required to adduce documentary or other explicit evidence of the plan's existence.<sup>155</sup>

*iii. The accused participated in the common plan, design, or purpose*

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<sup>148</sup> *Tadić* Appeal Judgement, para. 227; *Kvočka et al.* Appeal Judgement, para. 81.

<sup>149</sup> *Krnjelac* Trial Judgement, para. 80. See also *Brđanin* Appeal Judgement, para. 415.

<sup>150</sup> *Brđanin* Appeal Judgement, para. 418; *Martić* Trial Judgement, para. 438.

<sup>151</sup> *Brđanin* Appeal Judgement, para. 410; *Martić* Trial Judgement, para. 438.

<sup>152</sup> The Appeals Chamber in *Brđanin* held the following:

[T]he Appeals Chamber does not consider that any form of JCE liability requires an additional understanding or agreement to commit that particular crime between the accused and the principal perpetrator of a crime. What JCE requires in any case is the existence of a common purpose which amounts to, or involves, the commission of a crime.

The common purpose need not be previously arranged or formulated; it may materialize extemporaneously.

*Brđanin* Appeal Judgement, para. 418 (citing *Tadić* Appeal Judgement, para. 227(ii)); see *Martić* Appeal Judgement, para. 123.

<sup>153</sup> *Vasiljević* Appeal Judgement, para. 100; *Ntakirutimana* Appeal Judgement, para. 466; *Blagojević* Trial Judgement, paras. 699, 721 (inferring the existence of a common plan to commit murder, extermination, and persecutions at Srebrenica from the fact that over 7,000 Muslim men and boys were captured, detained, murdered, and buried over the course of five days and stating that "this would not have been possible unless there was a plan and co-ordination between the members of the joint criminal enterprise").

<sup>154</sup> *Vasiljević* Appeal Judgement, paras. 100, 109; *Furundžija* Appeal Judgement, para. 119; *Tadić* Appeal Judgement, para. 227; *Ntakirutimana* Appeal Judgement, para. 466; *Blagojević* Trial Judgement, para. 699; *Brđanin* Trial Judgement, para. 262; *Simić et al.* Trial Judgement, para. 158; *Krnjelac* Trial Judgement, para. 80 ("The circumstances in which two or more persons are participating together in the commission of a particular crime may themselves establish an unspoken understanding or arrangement amounting to an agreement formed between them then and there to commit that crime.") (emphasis added); *Krstić* Trial Judgement, para. 611.

<sup>155</sup> See *Brđanin* Trial Judgement, para. 353.

103. For joint criminal enterprise liability to arise, the accused must have participated in at least one aspect of the common plan, design, or purpose involved in the commission of a crime or underlying offence provided for in the Statute.<sup>156</sup> In order to fulfil this element, the accused need not have physically committed the crime or underlying offence that is the object of the joint criminal enterprise, or any other offence for that matter.<sup>157</sup> Indeed, he need not even be present at the time and place of the physical perpetration of the crime or underlying offence.<sup>158</sup> Furthermore, unlike aiding and abetting, an accused charged with responsibility for a crime or underlying offence due to his participation in a joint criminal enterprise need not act or fail to act in a way that assists, encourages, or lends moral support to another in the perpetration of a crime or underlying offence.<sup>159</sup> Rather, the accused need merely act or fail to act “in some way ... directed to the furtherance of the common plan or purpose.”<sup>160</sup> In *Galić*, the Appeals Chamber stated that an omission may lead to responsibility under Article 7(1), where there is a legal duty to act.<sup>161</sup> Consistent with this approach, in *Kvočka et al.*, the Appeals Chamber held that an accused can participate in a joint criminal enterprise by passive, rather than active, conduct.<sup>162</sup> While, in that case the Appeals Chamber was discussing the second category of joint criminal enterprise, given that the requirement that the accused participated in the common plan, design, or purpose is common to all three forms of joint criminal enterprise, this Chamber considers that such participation by omission may also extend to the other two forms of joint criminal enterprise, so long as the accused’s failure to act amounted to a significant contribution to the common criminal plan.

104. In *Brđanin*, the Appeals Chamber considered that “not every type of conduct would amount to a significant enough contribution to the crime for this to create criminal liability for the accused regarding the crime in question”.<sup>163</sup> It went on to state that, “although the [accused’s] contribution

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<sup>156</sup> *Vasiljević* Appeal Judgement, paras. 100, 119; *Tadić* Appeal Judgement, paras. 197, 227; *Brđanin* Appeal Judgement, para. 427.

<sup>157</sup> *Kvočka et al.* Appeal Judgement, para. 99; *Brđanin* Appeal Judgement, para. 427.

<sup>158</sup> *Krnojelac* Appeal Judgement, para. 81; see also *Simić et al.* Trial Judgement, para. 158.

<sup>159</sup> *Blaškić* Appeal Judgement, paras. 45, 50 (holding that an aider and abettor must have known that his own acts or omissions assisted in the commission of the specific crime for which he is charged via Article 7(1)); *Vasiljević* Appeal Judgement, para. 102.

<sup>160</sup> *Tadić* Appeal Judgement, para. 229; see also *Kvočka et al.* Appeal Judgement, para. 187 (clarifying that the requisite contribution can be performed by either an act or an omission); *Brđanin* Appeal Judgement, para. 427.

<sup>161</sup> *Galić* Appeal Judgement, para. 175.

<sup>162</sup> *Kvočka et al.* Trial Judgement, para. 309; see also *Brđanin* Appeal Judgement, para. 427; *Mpambara* Trial Judgement, para. 24 (citing *Kvočka et al.* Appeal Judgement, para. 195).

<sup>163</sup> *Brđanin* Appeal Judgement, para. 427 (footnote omitted).

need not be necessary or substantial, it should at least be a significant contribution to the crimes for which the accused is to be found responsible.”<sup>164</sup>

105. Moreover, the accused’s acts or omissions “must form a link in the chain of causation”,<sup>165</sup> and the significance of his contribution is relevant for determining whether such a link existed. The actual physical perpetration of a crime or underlying offence by an accused, while not required for joint criminal enterprise liability, tends to support a finding that his participation was significant if the crime or underlying offence advanced the goal of the enterprise. An accused’s leadership status and approving silence likewise militate in favour of a finding that his participation was significant,<sup>166</sup> and although low- or mid-level actors may incur joint criminal enterprise liability, in most situations the accused will not be someone readily replaceable.<sup>167</sup> Other factors to consider when evaluating whether the accused’s level of participation in the joint criminal enterprise was sufficiently significant include the size of the enterprise, the functions performed by the accused and his efficiency in performing them, and any efforts made by the accused to impede the efficient functioning of the joint criminal enterprise.<sup>168</sup>

106. As joint criminal enterprise is a form of “commission” under Article 7(1), an accused convicted for his participation in the joint criminal enterprise is guilty of the substantive crime or underlying offence committed, regardless of the role that he played in the enterprise.<sup>169</sup> The relative significance of a particular accused’s role in the joint criminal enterprise may, however, be taken into account when determining his sentence.<sup>170</sup>

#### b. Mental elements

107. Subject to the few exceptions that have been highlighted above, the three categories of joint criminal enterprise have the same physical elements. The major differences among the categories lie in their divergent mental elements.<sup>171</sup> In light of the fact that the Accused in the present case are

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<sup>164</sup> *Brđanin* Appeal Judgement, para. 430.

<sup>165</sup> *Blagojević* Trial Judgement, para. 702 (citing *Brđanin* Trial Judgement, para. 263).

<sup>166</sup> *Kvočka et al.* Appeal Judgement, paras. 101, 192 (cautioning that an accused’s position of authority, while relevant for establishing his awareness of the system and his participation in perpetuating the system’s criminal purpose, is only one factor that a Chamber should take into account when determining whether the accused participated in the common purpose); *Kvočka et al.* Trial Judgement, paras. 292, 309.

<sup>167</sup> *Kvočka et al.* Trial Judgement, para. 309.

<sup>168</sup> *Kvočka et al.* Trial Judgement, para. 311.

<sup>169</sup> *Vasiljević* Appeal Judgement, para. 111; *Blagojević* Trial Judgement, para. 702; *Stakić* Appeal Judgement, para. 64.

<sup>170</sup> *Babić* Judgement on Sentencing Appeal, para. 40; see also *Kvočka et al.* Trial Judgement, para. 282 (approving of differentiation made by U.S. Military Tribunal in *The United States of America v. Otto Ohlenforf et al.*, Trials of War Criminals Before the Nuremberg Military Tribunals under Control Council Law No. 10 (1950), vol. IV, p. 373 (“*Einsatzgruppen* case”), between significant and insignificant contributors to the joint criminal enterprise through the imposition of harsher sentences on those with greater moral culpability).

<sup>171</sup> *Tadić* Appeal Judgement, para. 228; *Brđanin* Appeal Judgement, para. 365.

charged with responsibility for the crimes alleged in the Indictment under only the first and the third categories of joint criminal enterprise, the mental elements for the second category are not elaborated here.

*iv. Mental elements for the first category of joint criminal enterprise*

108. The Prosecution must prove that the accused voluntarily participated in at least one aspect of the common purpose<sup>172</sup> and, furthermore, that the accused shared with the other joint criminal enterprise members the intent to commit the crime or underlying offence.<sup>173</sup> Whilst Chambers typically differentiate the first category of joint criminal enterprise from the third by stating that all members of the joint criminal enterprise in a first-category joint criminal enterprise must possess the same intent,<sup>174</sup> the Prosecution need not prove, as an element of the first category, that every single person alleged to have been a member of the joint criminal enterprise shared the intent to commit the crime or underlying offence that is the object of the joint criminal enterprise.<sup>175</sup>

109. As regards a first-category joint criminal enterprise, where the criminal object consists of a crime requiring specific intent, the Prosecution must prove not only that the accused shared with others the general intent to commit the underlying offence—for example, the intent to kill for “murder” as an underlying offence of persecution as a crime against humanity or “killing members of the group” as an underlying offence of genocide—but also that he shared with the other joint criminal enterprise members the specific intent required of the crime or underlying offence.<sup>176</sup> Therefore, in the case of persecution, the accused must have shared the intent to discriminate against a protected group.<sup>177</sup>

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<sup>172</sup> *Vasiljević* Appeal Judgement, para. 119; *Tadić* Appeal Judgement, para. 196; *Brđanin* Appeal Judgement, para. 365; *Blagojević* Trial Judgement, para. 703.

<sup>173</sup> *Kvočka et al.* Appeal Judgement, para. 110; *Brđanin* Appeal Judgement, paras. 365, 429.

<sup>174</sup> *Kvočka et al.* Appeal Judgement, para. 82; *Vasiljević* Appeal Judgement, para. 101; *Krnjelac* Appeal Judgement, para. 84; *Tadić* Appeal Judgement, para. 196; *Ntakirutimana* Appeal Judgement, para. 467; *Blagojević* Trial Judgement, para. 703; *Brđanin* Trial Judgement, para. 264; *Simić et al.* Trial Judgement, paras. 156, 157, 160; *Vasiljević* Trial Judgement, para. 64; *Stakić* Appeal Judgement, para. 65; *Krajišnik* Trial Judgement, paras. 879, 883.

<sup>175</sup> See *Simić et al.* Trial Judgement, paras. 995–997, 1009–1011, 1017–1019 (determining whether the mental elements of the first category of joint criminal enterprise were fulfilled by looking only at the intent of the accused and physical perpetrator or intermediary perpetrator).

<sup>176</sup> *Kvočka et al.* Appeal Judgement, para. 110.

<sup>177</sup> *Kvočka et al.* Appeal Judgement, para. 110; *Krnjelac* Appeal Judgement, para. 111; *Simić et al.* Trial Judgement, para. 156 (holding that a first-category joint criminal enterprise accused charged with persecutions must have had discriminatory intent), para. 997 (finding Simić guilty of persecution after concluding that he “shared the intention of other participants in the joint criminal enterprise to arrest and detain non-Serb civilians” in Bosanski Šamac, Brčko, and Bijeljina, and after drawing the inference that he “could not have accepted the continued arrest and detention of non-Serb civilians ... without exercising discriminatory intent”); *Krnjelac* Trial Judgement, para. 487 (finding that the Prosecution had not adequately established the accused’s “conscious intention to discriminate”, that “the Accused did not share the intent to commit any of the underlying crimes charged as persecution pursuant to any joint criminal enterprise”, and that therefore “the crime of persecution cannot be established on the basis of any of these underlying crimes as part of a joint criminal enterprise in which the Accused was involved”).

v. *Mental elements for the third category of joint criminal enterprise*

110. For an accused to incur liability for a crime or underlying offence that falls outside the common purpose of the joint criminal enterprise, the Prosecution must prove that he intended both to participate in the joint criminal enterprise and to further its criminal objectives,<sup>178</sup> but it need not prove that the accused had the intent—general or specific<sup>179</sup>—to commit the crime or underlying offence that was committed. As the Appeals Chamber has held, “the third category of joint criminal enterprise is no different from other forms of criminal liability which do not require proof of intent to commit a crime on the part of an accused before criminal liability can attach.”<sup>180</sup>

111. In addition to the intent to participate in the joint criminal enterprise and the intent to further its objectives, the Prosecution must prove a third mental sub-element, described in the following terms by the Appeals Chamber in *Kvočka et al.*:

[I]n order to be held responsible for crimes which were not part of the common criminal purpose, but which were nevertheless a natural and foreseeable consequence of it, the accused must also know that such a crime might be perpetrated by a member of the group, and willingly take the risk that the crime might occur by joining or continuing to participate in the enterprise.<sup>181</sup>

Trial and Appeal Judgements have variously held that the accused must be aware that such a crime or underlying offence (a) was a “natural and foreseeable consequence” of the common purpose,<sup>182</sup> (b) was a probable consequence of the joint criminal enterprise,<sup>183</sup> (c) would “most likely” occur,<sup>184</sup> or (d) was merely a possible consequence, rather than substantially likely to occur.<sup>185</sup> The Chamber will adopt the formulation of the Appeals Chamber that it has to be reasonably foreseeable on the basis of the information available to the accused that the crime or underlying offence would be committed.<sup>186</sup>

112. The Appeals Chamber has held that the crime or underlying offence, described above, with which the accused is charged pursuant to the third category of joint criminal enterprise must in fact

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<sup>178</sup> *Kvočka et al.* Appeal Judgement, para. 83; *Tadić* Appeal Judgement, para. 220.

<sup>179</sup> *Brđanin* Joint Criminal Enterprise Decision on Interlocutory Appeal, para. 6.

<sup>180</sup> *Brđanin* Joint Criminal Enterprise Decision on Interlocutory Appeal, para. 7; see also *Tadić* Appeal Judgement, paras. 232–237.

<sup>181</sup> *Kvočka et al.* Appeal Judgement, para. 83; *Mrkšić et al.* Trial Judgement, para. 546.

<sup>182</sup> *Brđanin* Trial Judgement, para. 265; see also *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, para. 30; *Tadić* Appeal Judgement. See *Tadić* Appeal Judgement, para. 204.

<sup>183</sup> *Krstić* Appeal Judgement, para. 150.

<sup>184</sup> *Tadić* Appeal Judgement, para. 220.

<sup>185</sup> *Blaškić* Appeal Judgement, para. 33.

<sup>186</sup> *Brđanin* Joint Criminal Enterprise Decision on Interlocutory Appeal, para. 5; *Martić* Appeal Judgement, para. 83.

have been committed.<sup>187</sup> Liability under this form of responsibility therefore may not be inchoate: the accused cannot be held responsible, even if he was aware that the crime or underlying offence was reasonably foreseeable, if that crime or underlying offence was not ultimately committed.

## 7. Superior responsibility

113. The principle of individual criminal responsibility of superiors for failing to prevent or punish crimes or underlying offences committed by their subordinates was well established in customary and conventional international law at the time of the events in the former Yugoslavia,<sup>188</sup> applying not only to international but also to non-international armed conflicts.<sup>189</sup> For an accused to incur responsibility under Article 7(3), his subordinate must have committed an act constituting a crime or underlying offence under the Statute of the Tribunal, and the accused must have either omitted to prevent the subordinate from committing the crime or underlying offence, or omitted to punish the subordinate subsequent to the commission of the crime or underlying offence.<sup>190</sup>

114. The Appeals Chamber has held that a superior may be responsible when a subordinate plans, instigates, orders, commits, or aids and abets a crime within the jurisdiction of the Tribunal, so long as the other requisite elements of superior responsibility are fulfilled.<sup>191</sup> A superior's criminal liability for crimes or underlying offences committed by subordinates also includes their commission by omission.<sup>192</sup> As a consequence, although the Trial Chamber will employ the term "commission" in general statements throughout its discussion of Article 7(3), such language should not be taken as an endorsement of the proposition that superior responsibility can only be engaged for the failure to prevent and/or punish subordinates who are responsible for the perpetration of crimes or underlying offences through their positive acts.

115. For an accused to be held responsible for the commission of a crime or underlying offence pursuant to Article 7(3), three elements must be fulfilled: (a) there must have been a superior-subordinate relationship between the accused and the person or persons who committed the crime or underlying offence; (b) the superior must have known or had reason to know that the crime or underlying offence was about to be, was being, or had been committed; and (c) the accused must

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<sup>187</sup> *Krstić* Appeal Judgement, para. 150; *Brdanin* Joint Criminal Enterprise Decision on Interlocutory Appeal, para. 5.

<sup>188</sup> *Blaškić* Appeal Judgement, paras. 78, 85; *Halilović* Appeal Judgement, para. 63; *Čelebići* Appeal Judgement, para. 195.

<sup>189</sup> *Hadžihasanović* Command Responsibility Decision on Interlocutory Appeal, para. 31; *see also Strugar* Trial Judgement, para. 357.

<sup>190</sup> *See Kordić* Appeal Judgement, para. 900.

<sup>191</sup> *Nahimana et al.* Appeal Judgement, para. 485–486 (citing *Blagojević* Appeal Judgement, paras. 280–282); *see also Orić* Appeal Judgement, para. 47.

<sup>192</sup> *Orić* Appeal Judgement, paras. 21, 43.

have failed to take the necessary and reasonable measures to prevent the subordinate or subordinates from committing the crime or underlying offence, and/or to punish them subsequent to such commission.<sup>193</sup> The Trial Chamber discusses each of these elements below.

116. The duty to prevent and the duty to punish are distinct and separate responsibilities under international law, and an omission to carry out either duty may give rise to its own charge in an indictment.<sup>194</sup> An accused superior cannot make up for his failure to prevent the commission of a crime or underlying offence simply by punishing the perpetrators afterwards. In other words, even if the superior discharges his legal obligation to punish the perpetrators, he may still be convicted in respect of the crimes or underlying offences that they committed because he failed to prevent such commission in the first place.<sup>195</sup> Notwithstanding the status of the failure to prevent and the failure to punish as separate forms of responsibility, the majority of the requirements for liability under these two forms are identical, including that there must have existed a superior-subordinate relationship, that the accused must have known or had reason to know of subordinate crimes or underlying offences, and that the accused must have failed to take measures that were necessary and reasonable.

- a. There was a superior-subordinate relationship between the accused and the person or persons who committed the crime or underlying offence

117. Formal designation as a commander or a superior is not required in order to trigger Article 7(3) responsibility: such responsibility can arise by virtue of a superior's *de facto* as well as *de jure* power over those who committed the crime or underlying offence.<sup>196</sup> The key to establishing the existence of a superior-subordinate relationship for any accused superior—whether *de facto* or *de jure*, military or civilian—is that he exercised effective control over the actions of the alleged

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<sup>193</sup> *Kordić* Appeal Judgement, para. 839; *Halilović* Appeals Judgement, para. 59.

<sup>194</sup> *Hadžihasanović* Appeal Judgement, para. 259; *Blaškić* Appeal Judgement, para. 83.

<sup>195</sup> *Strugar* Trial Judgement, para. 373 (holding that, “if a superior has knowledge or has reason to know that a crime is being or is about to be committed, he has a duty to prevent the crime from happening and is not entitled to wait and punish afterwards”); *Blagojević* Trial Judgement, para. 793 (holding that “the failure to take the necessary and reasonable measures to prevent an offence of which a superior knew or had reason to know cannot be cured simply by subsequently punishing the subordinate for the commission of the offence”); *Semanza* Trial Judgement, para. 407 (“If a superior is aware of the impending or on-going commission of a crime, necessary and reasonable measures must be taken to stop or prevent it. A superior with such knowledge and the material ability to prevent the commission of the crime does not discharge his responsibility by opting simply to punish his subordinates in the aftermath.”) (footnote omitted).

<sup>196</sup> *Čelebići* Appeal Judgement, paras. 191–192; *Kajelijeli* Appeal Judgement, para. 85.



subordinates.<sup>197</sup> In other words, the accused must have had the material ability to prevent or punish the alleged subordinates' commission of offences.<sup>198</sup>

118. An important implication of the standard of effective control is that Article 7(3) liability may ensue on the basis of both direct and indirect relationships of subordination; every person in the chain of command who exercises effective control over subordinates is responsible for the crimes or underlying offences of those subordinates—provided that the other requirements of Article 7(3) are met—no matter how far down the chain the subordinates happen to have been.<sup>199</sup>

- b. The accused must have known or had reason to know that the crime or underlying offence was about to be, was being, or had been committed

119. Inherent in the notion that the accused must have knowledge or reason to know of the commission of the crime or underlying offence for which he is charged is a requirement that he know or have reason to know that all the elements of that crime or underlying offence have been, are being, or are about to be fulfilled by his subordinates.<sup>200</sup> Consequently, in respect of persecution, the accused must have knowledge or reason to know that the relevant subordinates possessed discriminatory intent.<sup>201</sup>

120. An accused has “reason to know” if he has information available to him putting him on notice of the need for additional investigation,<sup>202</sup> in order to ascertain whether his subordinates were about to engage, were engaging, or had engaged in conduct constituting a crime or underlying offence under the Statute of the Tribunal.<sup>203</sup> This information does not need to be specific; if a military commander, for example, has received information that some of the soldiers under his command have a violent or unstable character, or have been drinking prior to being sent on a mission, he may be considered as having the requisite knowledge.<sup>204</sup> It is not required that he actually acquainted himself with such information: it suffices that such information was available

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<sup>197</sup> *Bagilishema* Appeal Judgement, para. 56 (holding that “the case law of the International Tribunals makes it mandatory to use the effective control test for both *de jure* and *de facto* superiors”).

<sup>198</sup> *Kordić* Appeal Judgement, para. 840; *Blaškić* Appeal Judgement, paras. 67, 375; *Halilović* Appeal Judgement, para. 59 (holding that “the accused has to be, by virtue of his position, senior in some sort of formal or informal hierarchy to the perpetrator”).

<sup>199</sup> *Blaškić* Appeal Judgement, para. 67; *Čelebići* Appeal Judgement, para. 252; *Strugar* Trial Judgement, paras. 362, 366; *Blagojević* Trial Judgement, para. 791; *Brđanin* Trial Judgement, para. 276.

<sup>200</sup> *Krnjelac* Appeal Judgement, para. 155; *see also* *Čelebići* Trial Judgement, para. 393.

<sup>201</sup> *See* *Brđanin* Trial Judgement, para. 721; *see also* *Krnjelac* Appeal Judgement, paras. 187–188.

<sup>202</sup> *Čelebići* Appeal Judgement, para. 238; *Hadžihasanović* Appeal Judgement, para. 28 (holding that the information “may be general in nature and does not need to contain specific details on the unlawful acts which have been or are about to be committed”, but must be “sufficiently alarming to justify further inquiry”) (footnote omitted); *Strugar* Appeal Judgement, para. 304 (holding that the test is whether there is “sufficiently alarming information putting a superior on notice of the risk that crimes *might* subsequently be carried out by his subordinates”) (emphasis added).

<sup>203</sup> *Blaškić* Appeal Judgement, para. 62; *Krnjelac* Appeal Judgement, para. 154; *Strugar* Appeal Judgement, para. 298.

to him.<sup>205</sup> Trial Chambers have held that a stricter test should be applied to non-military superiors than to military superiors in this regard,<sup>206</sup> but this Chamber adheres to the approach of the Appeals Chamber in *Čelebići*, which did not distinguish between the two categories of superior.<sup>207</sup> Furthermore, if an accused deliberately refrains from obtaining further information, despite having the means to do so, he may be considered to have had “reason to know”.<sup>208</sup> However, the accused’s duty to investigate further only arises from the time at which admonitory information becomes available to him, and a failure to seek out such information in the first place will not, on its own, trigger liability under Article 7(3).<sup>209</sup>

- c. The accused failed to take the necessary and reasonable measures to prevent and/or punish the crimes or underlying offences of the subordinate or subordinates

121. For either of the two forms of responsibility in Article 7(3), the Prosecution must prove that the accused failed to take measures that were necessary and reasonable.<sup>210</sup> As the assessment of which measures qualify as necessary and reasonable “is not a matter of substantive law but of evidence”,<sup>211</sup> a Chamber should not attempt to divine such measures in the abstract, but must instead take into consideration all the circumstances of the particular case before it.<sup>212</sup>

122. It is primarily the accused’s degree of effective control—that is, his material ability to prevent and/or punish the crimes or underlying offences of his subordinates—that guides a Chamber in determining whether he took measures that were necessary and reasonable in the

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<sup>204</sup> *Čelebići* Appeal Judgement, para. 238; *Krnjelac* Appeal Judgement, para. 154.

<sup>205</sup> *Čelebići* Appeal Judgement, para. 239; *Mrkšić et al.* Trial Judgement, para. 564.

<sup>206</sup> *Muvunyi* Trial Judgement, para. 473 (citing with approval *Kayishema* Trial Judgement, paras. 227–228). Both of these Judgements refer to article 28 of the Rome Statute.

<sup>207</sup> *Čelebići* Appeal Judgement, para. 239.

<sup>208</sup> *Čelebići* Appeal Judgement, para. 226; *Blaškić* Appeal Judgement, para. 406; *Mrkšić et al.* Trial Judgement, para. 564.

<sup>209</sup> *Blaškić* Appeal Judgement, paras. 62–64 (overruling Trial Chamber’s holding that a superior has “reason to know” where his absence of knowledge is the result of negligence in the discharge of his duties); *Čelebići* Appeal Judgement, para. 226 (holding that Article 7(3) of the Statute is concerned with superior liability arising from failure to act in spite of knowledge, but that neglect of a duty to acquire such knowledge does not feature in the provision as a separate offence, and a superior is not therefore liable under the provision for such failures but only for failing to take necessary and reasonable measures to prevent or to punish); *Kvočka et al.* Trial Judgement, para. 317 (“Article 7(3) does not impose a duty upon a superior to go out of his way to obtain information about crimes committed by subordinates, unless he is in some way put on notice that criminal activity is afoot.”).

<sup>210</sup> *Blaškić* Appeal Judgement, para. 72; *Stakić* Trial Judgement, para. 461; *Blaškić* Trial Judgement, para. 294; *Čelebići* Trial Judgement, para. 346.

<sup>211</sup> *Blaškić* Appeal Judgement, para. 72.

<sup>212</sup> *Blaškić* Appeal Judgement, para. 417; *Strugar* Trial Judgement, para. 378 (listing examples of the type of circumstances that may be relevant to a “necessary and reasonable” inquiry, including whether specific orders prohibiting or stopping the criminal activities were or were not issued; what measures to secure the implementation of these orders were or were not taken; and, after the commission of the crime, what steps were taken to secure an adequate investigation and to bring the perpetrators to justice); *Kordić* Trial Judgement, para. 445.

circumstances.<sup>213</sup> “Necessary” measures are those appropriate for the superior to discharge his obligation, evincing a genuine effort to prevent or punish, and “reasonable” measures are those reasonably falling within the material powers of the superior.<sup>214</sup> Although a superior is “not obliged to perform the impossible”,<sup>215</sup> the Appeals Chamber has held that he is obliged to take all measures that are within his material possibility.<sup>216</sup> In addition, a superior’s duty cannot be discharged by the issuance of “routine” orders, and any measures taken by him should be specific and closely linked to the acts that they are intended to prevent.<sup>217</sup> Since Article 7(3) contains no requirement of causality, a superior’s failure to take the necessary and reasonable measures to prevent the crimes or underlying offences of his subordinates does not have to have caused those crimes or underlying offences.<sup>218</sup>

123. In addition to proving the existence of all the common elements discussed above, the Prosecution, in order to establish the first form of responsibility under Article 7(3)—the failure to prevent—must prove that the accused failed to take the necessary and reasonable measures to prevent his subordinates’ commission of crimes or underlying offences in spite of a material ability to do so.<sup>219</sup> For example, if the accused’s material ability to intervene merely allows that he report imminent or ongoing crimes or underlying offences of which he knows or has reason to know to the competent authorities, then such reporting may be sufficient to satisfy his duty to prevent.<sup>220</sup> In order to establish the second form of responsibility under Article 7(3)—the failure to punish—the Prosecution must prove that the accused failed to take the necessary and reasonable measures within his material ability to ensure that punishment was dispensed upon his subordinates for having committed the crime or underlying offence for which the accused is charged.<sup>221</sup> If an accused superior’s actual and legal powers allow him to dispense punishment upon his subordinates himself, he may incur Article 7(3) liability. If such powers do not allow him to dispense punishment, however, he may be able to avoid Article 7(3) liability by simply undertaking an

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<sup>213</sup> *Blaškić* Appeal Judgement, para. 72; *Kayishema* Appeal Judgement, para. 302; *Strugar* Trial Judgement, para. 372.

<sup>214</sup> *Halilović* Appeal Judgement, para. 63.

<sup>215</sup> *Krnojelac* Trial Judgement, para. 95; *Orić* Trial Judgement, para. 329.

<sup>216</sup> *Blaškić* Appeal Judgement, para. 417; see also *Bagilishema* Appeal Judgement, para. 35; *Kayishema* Appeal Judgement, para. 302.

<sup>217</sup> *Hadžihasanović* Trial Judgement, paras. 153, 155; see also *Hadžihasanović* Appeal Judgement, para. 33 (stating that the test of what constitutes “necessary and reasonable” measures is one of evidence and not substantive law, and dismissing the Prosecution argument that the Trial Chamber erred in holding that disciplinary measures are sufficient to discharge a superior of his duty to punish crimes).

<sup>218</sup> *Blaškić* Appeal Judgement, para. 77; *Kordić* Appeal Judgement, para. 832.

<sup>219</sup> *Halilović* Appeal Judgement, para. 63; *Strugar* Trial Judgement, para. 374.

<sup>220</sup> See *Blagojević* Trial Judgement, para. 793; *Stakić* Trial Judgement, para. 461.

<sup>221</sup> See *Blaškić* Appeal Judgement, para. 417; *Mrkšić et al.* Trial Judgement, para. 568.

investigation, or by forwarding the information in his possession to his own superior or to the prosecutorial authorities.<sup>222</sup>

## B. REQUIREMENTS AND ELEMENTS OF STATUTORY CRIMES

### 1. Article 3 of the Statute of the Tribunal

#### a. General requirements for violations of the laws or customs of war

124. The introductory paragraph to Article 3 of the Statute of the Tribunal provides that “[t]he International Tribunal shall have the power to prosecute persons violating the laws or customs of war”, and the sub-paragraphs of the Article provide a non-exhaustive list of offences that qualify as such violations.<sup>223</sup> Article 3 is a residual provision, conferring jurisdiction over any serious offence against international humanitarian law not covered by Articles 2, 4, or 5—in addition to the offences expressly listed in the Article’s sub-paragraphs.<sup>224</sup> No definition of a violation of the laws or customs of war is provided in the Statute, but the jurisprudence of the Tribunal has established the following general requirements:

- (a) the existence of a state of internal or international armed conflict;
- (b) the existence of a nexus between the acts of the physical perpetrator and the armed conflict;
- (c) the conduct of the physical perpetrator infringes a rule of international humanitarian law, whether conventional or customary in nature;
- (d) the violation of the relevant rule must entail the individual criminal responsibility of the person in breach of the rule; and
- (e) the violation must be “serious”.<sup>225</sup>

*i. A state of internal or international armed conflict existed during the period relevant to the indictment*

125. One of the requirements of Article 3 is the existence of an armed conflict.<sup>226</sup> Although historically there was no precise definition of the term “armed conflict” in international law,<sup>227</sup> the

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<sup>222</sup> See *Kvočka et al.* Trial Judgement, para. 316.

<sup>223</sup> *Tadić* Jurisdiction Decision on Interlocutory Appeal, para. 91.

<sup>224</sup> *Tadić* Jurisdiction Decision on Interlocutory Appeal, para. 91; see also *Halilović* Trial Judgement, para. 23; *Hadžihasanović* Trial Judgement, para. 17; *Orić* Trial Judgement, para. 252; *Krajišnik* Trial Judgement, para. 842; *Martić*, Trial Judgement, para. 40.

<sup>225</sup> The Chamber discusses requirements (d) and (e) together in the same sub-section below.

<sup>226</sup> *Tadić* Jurisdiction Decision on Interlocutory Appeal, para. 67; *Čelebići* Trial Judgement, para. 182; *Furundžija* Trial Judgement, para. 59; *Hadžihasanović* Trial Judgement, para. 13; *Martić* Trial Judgement, para. 40.

<sup>227</sup> See Jean Pictet (ed.), *Commentary, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (1952, 1<sup>st</sup> reprint 1995) (“ICRC Commentary to First Geneva Convention”), p. 49.

Tribunal has used the test as articulated by the *Tadić* Appeals Chamber in 1995, according to which “an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.”<sup>228</sup> The existence of an armed conflict does not depend upon the views of the parties to the conflict.<sup>229</sup>

126. Trial Chambers assessing internal armed conflicts must consider both the intensity of the conflict and the organisation of the parties to the conflict<sup>230</sup> in order to exclude banditry, civil unrest, and unorganised and short-lived insurrections, all of which are not subject to international humanitarian law.<sup>231</sup> An internal armed conflict need not be “generalised” in the sense that the entire territory is involved in the conflict; the requirement of protracted armed violence may be satisfied by evidence of localised areas in which “serious fighting for an extended period of time” occurred.<sup>232</sup>

*ii. There was a nexus between the crimes alleged and the armed conflict*

127. Although there must be a connection between the crimes alleged and the armed conflict, the Prosecution need not establish that actual combat activities took place in the area where the offences are alleged to have occurred; “[i]t is sufficient that the alleged crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict.”<sup>233</sup> The *Kordić* Trial Chamber further noted that “in order for norms of international humanitarian law to apply in relation to a particular location ... [a]ll that is required is a showing that a state of armed conflict existed in the larger territory of which [that] location forms a part.”<sup>234</sup>

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<sup>228</sup> *Tadić* Jurisdiction Decision on Interlocutory Appeal, para. 70; see also *Halilović* Trial Judgement, para. 24; *Limaj et al.* Trial Judgement, para. 84; *Hadžihasanović* Trial Judgement, para. 14; *Orić* Trial Judgement, para. 254; *Martić* Trial Judgement, para. 41.

<sup>229</sup> *Akayesu* Trial Judgment, para. 603.

<sup>230</sup> See *Tadić* Trial Judgement, para. 562; see also *Limaj et al.* Trial Judgement, para. 89 (finding that some degree of organisation by the parties will suffice to establish the existence of an armed conflict); *Orić* Trial Judgement, para. 254 (finding that some degree of organisation is necessary to establish the existence of an armed conflict). The *Limaj et al.* Trial Judgement found that the determination of intensity of a conflict and the organisation of the parties are factual matters which need to be decided in light of the particular evidence and on a case-by-case basis. *Limaj et al.* Trial Judgement, para. 90.

<sup>231</sup> *Tadić* Trial Judgement, para. 562; see also *Čelebići* Trial Judgement, para. 184; *Kordić* Appeal Judgement, para. 341; *Limaj et al.* Trial Judgement, paras. 84, 87.

<sup>232</sup> See *Kordić* Trial Judgement, para. 31 (affirmed by *Kordić* Appeal Judgement, paras. 333–341); see also *Tadić* Jurisdiction Decision on Interlocutory Appeal, para. 70; *Naletilić* Trial Judgement, para. 177.

<sup>233</sup> *Tadić* Jurisdiction Decision on Interlocutory Appeal, para. 70; see also *Stakić* Appeal Judgement, para. 342; *Martić* Trial Judgement, para. 43.

<sup>234</sup> *Kordić* Trial Judgement, para. 27 (affirmed by *Kordić* Appeal Judgement, paras. 314, 320–321); see also *Orić* Trial Judgement, para. 255 (finding that the norms of international humanitarian law apply regardless of whether actual combat activities are taking place in a particular location).

128. The *Blaškić* Trial Chamber, adopting the approach of the *Tadić* and *Čelebići* Trial Chambers with regard to the nexus requirement, also held that “a crime need not be part of a policy or practice officially endorsed or tolerated by one of the parties to the conflict, or ... be in actual furtherance of a policy associated with the conduct of the war or in the actual interest of a party to the conflict”.<sup>235</sup> However, it needs to be shown that the conflict played a substantial part in the perpetrator’s ability to commit the crime, his decision to commit it, the manner in which it was committed, or the purpose for which it was committed.<sup>236</sup>

*iii. The conduct must infringe a rule of international humanitarian law, whether customary or conventional in nature*<sup>237</sup>

129. The substantive rules comprising the body of international humanitarian law are found primarily in the Hague Conventions of 1899 and 1907 and the Geneva Conventions of 1949. Article 3 common to the four Geneva Conventions (“Common Article 3”) is regarded as the core of customary international humanitarian law. As the Appeals Chamber held in *Čelebići*,

It is indisputable that common Article 3, which sets forth a minimum core of mandatory rules, reflects the fundamental humanitarian principles which underlie international humanitarian law as a whole, and upon which the Geneva Conventions in their entirety are based. These principles, the object of which is the respect for the dignity of the human person, developed as a result of centuries of warfare and had already become customary law at the time of the adoption of the Geneva Conventions because they reflect the most universally recognised humanitarian principles. These principles were codified in common Article 3 to constitute the minimum core applicable to internal conflicts, but are so fundamental that they are regarded as governing both internal and international conflicts.<sup>238</sup>

130. In addition to these customary rules, prohibitions relevant to the conduct of parties to an armed conflict may also be found in international treaties or agreements. In those circumstances, however, two additional requirements must be satisfied: the agreement must have been

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<sup>235</sup> *Blaškić* Trial Judgement, para. 70; *see Tadić* Trial Judgement, para. 573. For the purposes of Article 3, it is not necessary for the parties to the conflict in question to be states, and it is clear from the *Tadić* Trial Judgement’s language that its holding is equally applicable to internal armed conflicts. *Tadić* Trial Judgement, para. 573. *See also Halilović* Trial Judgement, para. 29; *Stakić* Appeal Judgement, para. 342 (concluding that, in order to find a nexus, it is sufficient that the alleged crimes be closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict).

<sup>236</sup> *Krajišnik* Trial Judgement, para. 846; *see also Kunarac et al.* Appeal Judgement, para. 58; *Hadžihasanović* Trial Judgement, para. 16; *Stakić* Appeal Judgement, para. 342.

<sup>237</sup> *Tadić* Jurisdiction Decision on Interlocutory Appeal, para. 94(i)–(ii).

<sup>238</sup> *Čelebići* Appeal Judgement, para. 143 (footnotes omitted); *see also Tadić* Jurisdiction Decision on Interlocutory Appeal, paras. 89, 134; *Hadžihasanović* Trial Judgement, para. 29; *Orić* Trial Judgement, para. 261; *Krajišnik* Trial Judgement, para. 843; *Martić* Trial Judgement, para. 45; *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v U.S.)* (Merits), 1986 I.C.J. Reports 14, para. 218.

“unquestionably binding on the parties at the time of the alleged offence”, and the agreement cannot be “in conflict with or derogate from peremptory norms of international law”.<sup>239</sup>

*iv. The violation of the rule must entail individual criminal responsibility and must be serious (“gravity requirement”)*

131. In order for the Tribunal to exercise its jurisdiction—which is limited to “serious violations of international humanitarian law”<sup>240</sup>—over an accused for an alleged breach of a rule of international humanitarian law, (a) the violation of that particular rule must entail the imposition of individual criminal responsibility and must constitute a breach of a rule protecting important values, and (b) the breach must involve grave consequences for the victim.<sup>241</sup>

132. Murder, the only underlying offence charged in the Indictment under Article 3, falls into this category, as is described below.

b. Murder as a violation of the laws or customs of war

133. Article 3 is a residual provision,<sup>242</sup> and therefore the list of offences in Article 3 is illustrative, rather than exhaustive.<sup>243</sup> In the present case, the charges of murder as violations of the laws or customs of war are based on Common Article 3.<sup>244</sup> As this key provision of the Geneva Conventions is the codification of the fundamental principles of international humanitarian law,<sup>245</sup> violations of its prohibitions fall within the ambit of Article 3 of the Statute.<sup>246</sup> Indeed, it is well

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<sup>239</sup> *Tadić* Jurisdiction Decision on Interlocutory Appeal, para. 143.

<sup>240</sup> Article 1 of the Statute; *see also Tadić* Jurisdiction Decision on Interlocutory Appeal, para. 94 and para. 90 (referring to the Preamble of the Statute, as well as Articles 1, 9(1), 10(1), 10(2), 23(1), and 29(1)).

<sup>241</sup> *Tadić* Jurisdiction Decision on Interlocutory Appeal, para. 94(iii), 129–130; *Čelebići* Appeal Judgement, paras. 179–180 (affirming the *Čelebići* Trial Chamber’s holding that imposing criminal responsibility for violations of common article 3 does not violate the principle of legality, or *nullum crimen sine lege*); *see also Galić* Appeal Judgement, para. 92 (finding that individual criminal responsibility can be inferred from, *inter alia*, state practice indicating an intention to criminalise the prohibition, including statements by government officials and international organisations, as well as punishment of violations by national courts and military tribunals).

<sup>242</sup> *Tadić* Jurisdiction Decision on Interlocutory Appeal, para. 91; *see also Martić* Trial Judgement, para. 40.

<sup>243</sup> *Tadić* Jurisdiction Decision on Interlocutory Appeal, paras. 87, 91–92; *Furundžija* Trial Judgement, paras. 131–133; *Kordić* Trial Judgement, para. 167.

<sup>244</sup> Indictment, Count 4. Common article 3 provides, in relevant part:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely ....

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture[.]

(Underlining indicating emphasis added.)

<sup>245</sup> *Halilović* Trial Judgement, para. 31.

<sup>246</sup> *Krajišnik* Trial Judgement, para. 843; *Hadžihasanović* Trial Judgement, para. 18; *Tadić* Jurisdiction Decision on Interlocutory Appeal, para. 89; *Čelebići* Appeal Judgement, paras. 133–136.

settled in the Tribunal's jurisprudence that the charge of murder as a violation of the laws or customs of war satisfies the three general legal requirements—requirements (c), (d), and (e)—for the applicability of Article 3.<sup>247</sup> Common Article 3 forms part of the corpus of customary international humanitarian law, and murder “breach[es] a rule protecting important values and involving grave consequences for the victims ... and that it entails individual criminal responsibility.”<sup>248</sup>

134. Consequently, although murder is not specifically listed in Article 3, it does constitute a crime within the jurisdiction of the Tribunal. However, in order for a murder to be characterised as a serious violation of international humanitarian law, it must be proved that the underlying offence was committed against those taking no active part in the armed conflict.<sup>249</sup> For the purposes of charges under Article 3, the international or internal nature of the conflict is irrelevant.<sup>250</sup> However, the perpetrator of the crime must have known or should have been aware that the victim was taking no active part in the hostilities; it is the specific situation of the victim at the moment the crime was committed that must be taken into account in determining the victim's protection under Common Article 3.<sup>251</sup>

135. With regard to the specific charges of murder contained in the Indictment, the Chamber will discuss whether or not the remaining general requirements for Article 3 crimes—namely the existence of an armed conflict, and a link between the charged murders and the armed conflict—are met, in the sections below dealing with events alleged to have taken place in Kosovo from March to June 1999.

*i. Elements of murder as an underlying offence*

136. Having addressed the general requirements, the Trial Chamber now turns to the specific elements of the underlying offence of murder. The Indictment includes charges of murder under both Article 3 and Article 5 of the Statute, and the elements of murder laid out here are equally applicable to both.

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<sup>247</sup> *Kunarac et al.* Appeal Judgement, para. 68 (holding that serious violations of common article 3 automatically satisfy the *Tadić* jurisdictional criteria).

<sup>248</sup> *Strugar* Trial Judgement, para. 219; *see also* *Čelebići* Appeal Judgement, paras. 147, 153–174; *Tadić* Jurisdiction Decision on Interlocutory Appeal, paras. 128–136; *Halilović* Trial Judgement, para. 31.

<sup>249</sup> *Tadić* Trial Judgement, paras. 615–616; *Martić* Trial Judgement, para. 47; *Krajišnik* Trial Judgement, para. 847; *Orić* Trial Judgement, para. 258; *Halilović* Trial Judgement, para. 32; *see also* *Halilović* Trial Judgement, paras. 33–34 (discussing how to determine whether or not a victim was taking part in the armed conflict).

<sup>250</sup> *See Prosecutor v. Delić*, Case No. IT-04-83-PT, Decision on Defence Motion Alleging Defects in the Form of the Indictment and Order on Prosecution Motion to Amend the Indictment, 13 December 2005, para. 41; *Halilović* Trial Judgement, para. 25; *Hadžihasanović* Trial Judgement, para. 18; *Orić* Trial Judgement, para. 252; *Martić* Trial Judgement, para. 42.

<sup>251</sup> *Martić* Trial Judgement, para. 47; *Krajišnik* Trial Judgement, para. 847; *Halilović* Trial Judgement, para. 36.



137. The *actus reus* for murder is the death of an individual as a result of an act or omission of the physical perpetrator.<sup>252</sup> With regard to the causation requirement, the specification that death must have occurred “as a result of” the physical perpetrator’s act or omission need not have been the sole cause for the victim’s death; it is sufficient that the “perpetrator’s conduct contributed substantially to the death of the person”.<sup>253</sup> While causation may be inferred from the circumstances of the case, that conclusion must be the only reasonable inference to be drawn from the evidence adduced at trial.<sup>254</sup>

138. The *mens rea* for murder is satisfied when the Prosecution proves one of two alternative mental states beyond a reasonable doubt: the physical perpetrator either intended his act or omission to cause the death of the victim or intended to inflict serious injury or grievous bodily harm in reckless disregard of the consequences for human life.<sup>255</sup> The *mens rea* can also be fulfilled by the intermediary perpetrator or the accused.

139. The satisfaction of the *actus reus* and *mens rea* requirements will be assessed in those sections dealing with specific murder charges.

## 2. Article 5 of the Statute of the Tribunal

### a. Jurisdictional requirements of Article 5

140. Article 5, entitled “Crimes against humanity”, endows the Tribunal with jurisdiction “to prosecute persons responsible for [certain] crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population”. As is the case with Article 3, Article 5 contains a requirement that the offences be “committed in armed conflict”.<sup>256</sup> This is a jurisdictional limitation that is specific to the Tribunal. The armed conflict requirement for Article 5 comprises two parts, proof that (a) there was an armed conflict and (b) the

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<sup>252</sup> *Kvočka et al.* Appeal Judgement, para. 261.

<sup>253</sup> *Martić* Trial Judgement, para. 58; *Orić* Trial Judgement, para. 347; *Kvočka et al.* Appeal Judgement, para. 261; *Galić* Appeal Judgement, para. 149; *Čelebići* Appeal Judgement, para. 423; *Kordić* Appeal Judgement, para. 37.

<sup>254</sup> See *Krnojelac* Trial Judgement, para. 326 (concerning Articles 3 and 5(a)); see also *Kvočka et al.* Appeal Judgement, para. 260; *Brđanin* Trial Judgement, paras. 380, 385, and 388 (concerning Articles 2(a), 3, and 5(a)–(b)); *Orić* Trial Judgement, para. 347.

<sup>255</sup> *Galić* Trial Judgement, para. 150 (discussing Article 5); *Čelebići* Trial Judgement, para. 439 (discussing Articles 2(a) and 3); *Kupreškić et al.* Trial Judgement, para. 561 (concerning Article 5(a)); See *Kvočka et al.* Appeal Judgement, para. 261; *Martić* Trial Judgement, para. 58 (concerning Articles 3 and 5(a)); *Kordić* Appeal Judgement, paras. 36–37 (concerning Articles 2(a) and 3); *Čelebići* Appeal Judgement, paras. 422–423 (concerning Articles 2(a) and 3); *Orić* Trial Judgement, 30 June 2006, para. 346 (concerning Articles 2, 3, and 5); *Kordić* Trial Judgement, paras. 229, 233 (concerning Articles 2(a) and 3); *Krstić* Trial Judgement, para. 495 (concerning Articles 3 and 5(a)–5(b)).

<sup>256</sup> Article 5 of the Statute applies to acts committed in both internal and international armed conflicts. See *Tadić* Jurisdiction Decision on Interlocutory Appeal, paras. 141–142; see also *Tadić* Appeal Judgement, para. 251.

offences charged in the indictment are objectively linked, both geographically and temporally, with the armed conflict.<sup>257</sup>

141. The test for the existence of an armed conflict for the purposes of this jurisdictional requirement is the same as that used in the context of Article 3: either a resort to armed force between states or protracted armed violence between governmental authorities and organised armed groups or between such groups within a state.<sup>258</sup>

b. General requirements for crimes against humanity

142. Since, unlike Article 3, the list of crimes in Article 5 is comprehensive, a charged offence must fall within the scope of the latter Article's sub-paragraphs in order for it to be considered a crime against humanity within the Tribunal's jurisdiction. However, one category of offences punishable under Article 5—inhumane acts—is designed as a residual provision *internal to* Article 5.<sup>259</sup>

143. The Appeals Chamber has identified the following five general requirements for crimes against humanity:

- (a) There must be an attack.
- (b) The attack must be directed against any civilian population.
- (c) The attack must be widespread or systematic.
- (d) The acts of the perpetrator must be part of the attack.
- (e) The perpetrator must know that there is an attack on the civilian population and know, or take the risk, that his acts comprise part of this attack.<sup>260</sup>

i. *There must be an attack*

144. The concept of an “attack” is not identical to that of an “armed conflict”, seeing as an attack can precede, outlast, or continue during an armed conflict, but need not be a part of it.<sup>261</sup> “Attack in the context of a crime against humanity can be defined as a course of conduct involving the

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<sup>257</sup> *Kunarac et al.* Appeal Judgement, para. 83; *Tadić* Appeal Judgement, paras. 239, 249, 251; *Martić* Trial Judgement, para. 48; *Kupreškić et al.* Trial Judgement, para. 546.

<sup>258</sup> *Tadić* Jurisdiction Decision on Interlocutory Appeal, para. 70.

<sup>259</sup> See *Kordić* Appeal Judgement, para. 117 (quoting and endorsing the view of the *Kupreškić et al.* Trial Judgement at para. 563 that “inhumane acts as crimes against humanity were deliberately designed as a residual category, as it was felt undesirable for this category to be exhaustively enumerated”) (internal quotation marks omitted).

<sup>260</sup> See generally *Kunarac et al.* Appeal Judgement, paras. 85, 102.

<sup>261</sup> *Kunarac et al.* Appeal Judgement, para. 86; *Tadić* Appeal Judgement, para. 251; *Limaj et al.* Trial Judgement, para. 182.

commission of acts of violence. It is not limited to the use of armed force; it encompasses any mistreatment of the civilian population.”<sup>262</sup> In addition, there is no requirement that an attack directed against a civilian population be related to the armed conflict.<sup>263</sup>

*ii. The attack must be directed against any civilian population*

145. The Appeals Chamber has held that the status of the targeted group as civilian is one of the elements that characterise a crime against humanity.<sup>264</sup> Moreover, the *Kunarac* Appeal Judgement explained that “[i]t is sufficient to show that enough individuals were targeted in the course of the attack, or that they were targeted in such a way as to satisfy the Chamber that the attack was in fact directed against a civilian ‘population’, rather than against a limited and randomly selected number of individuals.”<sup>265</sup>

146. A population is considered a “civilian population” if it is predominantly civilian in nature.<sup>266</sup> The presence of combatants within the population at issue does not alter its civilian character.<sup>267</sup> Since under customary international law—unlike the specific situation of the statutory definition applicable to the Tribunal—a crime against humanity need not occur during an armed conflict, the Chamber is not limited by the definition of civilian status in international humanitarian law, but that body of law may provide useful guidelines for defining the victims of a crime against humanity.<sup>268</sup>

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<sup>262</sup> *Blagojević* Trial Judgement, para. 543 (citing *Kunarac et al.* Appeal Judgement, para. 86, and quoting *Kunarac et al.* Appeal Judgement, para. 89, which endorsed *Kunarac et al.* Trial Judgement, para. 415) (footnote and internal quotation marks omitted); see also *Limaj et al.* Trial Judgement, para. 182.

<sup>263</sup> *Šešelj* Appeal Jurisdiction Decision, para. 13.

<sup>264</sup> *Blaškić* Appeal Judgement, para. 107.

<sup>265</sup> *Kunarac et al.* Appeal Judgement, para. 90; see *Kordić* Appeal Judgement, para. 95; *Blaškić* Appeal Judgement, para. 105; see also *Kunarac et al.* Trial Judgement, para. 424 (giving the examples of “a state, a municipality or another circumscribed area” as illustrations of the term “geographical entity”, the population of which is targeted by the attack); *Limaj et al.* Trial Judgement, para. 187; *Stakić* Appeal Judgement, para. 247.

<sup>266</sup> *Blagojević* Trial Judgement, para. 544 (citing *Krnjelac* Trial Judgement, para. 56; *Tadić* Trial Judgement, para. 638); see also *Limaj et al.* Trial Judgement, para. 186.

<sup>267</sup> Earlier judgements have expressed this last concept in a slightly different manner, holding that “the presence within a population of *members of resistance groups, or former combatants, who have laid down their arms*, does not alter its civilian characteristic.” *Blaškić* Appeal Judgement, para. 113 (emphasis added) (followed in *Blagojević* Trial Judgement, para. 544). The *Blaškić* Appeal Chamber considered the extent to which the presence of combatants within a civilian population altered the character of that population, and whether there was a threshold at which the population was deprived of its civilian character. It held that, in order to determine whether the presence of soldiers within a civilian population deprives the population of its civilian character, the number of soldiers, as well as whether they are on leave, must be examined. *Blaškić* Appeal Judgement, paras. 113–115; see also *Martić* Trial Judgement, paras. 50–55.

<sup>268</sup> See, e.g., *Tadić* Trial Judgement, para. 639:

[T]his definition of civilians contained in Common Article 3 is not immediately applicable to crimes against humanity because it is a part of the laws or customs of war and can only be applied by analogy. The same applies to the definition contained in Protocol I and the Commentary, Geneva Convention IV, on the treatment of civilians, both of which advocate a broad interpretation of the term “civilian”.

147. In order to give full effect to the object and purpose of customary international law prohibiting crimes against humanity, it is necessary to adopt a broad definition of the key terms that extends as much protection as possible.<sup>269</sup> A “civilian” is anyone who is neither a member of the armed forces of a party to a conflict,<sup>270</sup> nor a member of a group of “[i]nhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units”.<sup>271</sup> Moreover, the Appeals Chamber has held that the definitions of “civilian” in Articles 3 and 5 are the same and that

[u]nder Article 5 of the Statute, a person *hors de combat* may ... be the victim of an act amounting to a crime against humanity, provided that all other necessary conditions are met, in particular that the act in question is part of a widespread or systematic attack against any civilian population.<sup>272</sup>

148. Although there is no numerical rule clearly denoting the point at which a population loses its civilian character, the Chamber considers that the requirement that the population under attack be “predominantly civilian” provides a standard against which the facts of a particular case may be judged.

149. The expression “directed against” requires that, in the context of a crime against humanity, the civilian population is the primary object of the attack. In order to determine whether an alleged attack was so directed, the Trial Chamber will consider *inter alia* the following factors:

the means and method used in the course of the attack; the status of the victims; their number; the discriminatory nature of the attack; the nature of the crimes committed in the course of the attack; the resistance to the assailants at the time; and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war. To the extent that the alleged crimes against humanity were committed in the course of an armed conflict, the laws of war

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See also *Blaškić Appeal Judgement*, para. 110; *Limaj et al. Trial Judgement*, para. 223 (citing *Tadić Trial Judgement*, para. 639); *Galić Appeal Judgement*, para. 144..

<sup>269</sup> *Kupreškić et al. Trial Judgement*, para. 547; *Jelisić Trial Judgement*, para. 54; *Tadić Trial Judgement*, para. 639; see also *Kayishema Trial Judgement*, para. 127.

<sup>270</sup> See Third Geneva Convention, article 4(A)(1)–(3) (defining categories of prisoners of war); see also Additional Protocol I, article 43(1) (“The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct or its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party.”).

<sup>271</sup> Third Geneva Convention, article 4(A)(6). This provision is generally understood as referring to a *levée en masse*. See *Halilović Trial Judgement*, para. 34 note 79.

<sup>272</sup> *Martić Appeal Judgement*, paras. 272–321 (entire discussion), 299, 313, 302 (holding that the definition of civilian contained in article 50 of Additional Protocol I reflects the definition of civilian for the purpose of applying Article 5 of the Statute).

provide a benchmark against which the Chamber may assess the nature of the attack and the legality of the acts committed in its midst.<sup>273</sup>

*iii. The attack must be widespread or systematic*

150. Under the jurisprudence of the Tribunal, the attack must constitute “a pattern of widespread or systematic crimes” in order to distinguish crimes against humanity from isolated or unconnected crimes against individuals.<sup>274</sup> The requirement that the attack be widespread or systematic is disjunctive.<sup>275</sup> Only the attack, not the individual acts for which the accused is responsible, must be widespread or systematic.<sup>276</sup> The term “widespread” refers to the large-scale nature of the attack and the number of targeted persons,<sup>277</sup> while the term “systematic” refers to the organised nature of the acts of violence and the improbability of their random occurrence.<sup>278</sup> Patterns of offences, in the sense of the non-accidental repetition of similar criminal conduct on a regular basis, are a common expression of such systematic occurrence.<sup>279</sup>

151. The assessment of what constitutes a “widespread” or “systematic” attack is essentially a relative exercise, because it depends upon the civilian population that was attacked.<sup>280</sup> A Chamber must therefore “first identify the population which is the object of the attack and, in light of the means, methods, resources and result of the attack upon the population, ascertain whether the attack was indeed widespread or systematic”.<sup>281</sup> The consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities, or any identifiable patterns of crimes may all be taken into account in determining whether the attack satisfies either or both requirements of a “widespread” or “systematic” attack

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<sup>273</sup> *Kunarac et al.* Appeal Judgement, para. 91 (followed by *Kordić* Appeal Judgement, para. 96; *Blaškić* Appeal Judgement, para. 106); see also *Limaj et al.* Trial Judgement, para. 185 (citing *Kunarac et al.* Appeal Judgement, para. 91).

<sup>274</sup> *Tadić* Appeal Judgement, para. 248; see also *Mrkšić* Rule 61 Decision, para. 30; Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808, UN Doc. No. S/25704, 3 May 1993, para. 48 (“Crimes against humanity refer to inhumane acts of a very serious nature, such as wilful killing, torture or rape, committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.”) (emphasis added).

<sup>275</sup> *Kunarac et al.* Appeal Judgement, para. 93 (citing *Tadić* Appeal Judgement, para. 248); *Limaj et al.* Trial Judgement, para. 183.

<sup>276</sup> *Blaškić* Appeal Judgement, para. 101; *Kordić* Appeal Judgement, para. 94; *Kunarac et al.* Appeal Judgement, para. 96; see also *Limaj et al.* Trial Judgement, para. 189.

<sup>277</sup> *Blaškić* Appeal Judgement, para. 101; *Kordić* Appeal Judgement, para. 94; *Kunarac et al.* Appeal Judgement, para. 94.

<sup>278</sup> *Blaškić* Appeal Judgement, para. 101; *Kordić* Appeal Judgement, para. 94; *Kunarac et al.* Appeal Judgement, para. 94.

<sup>279</sup> *Blaškić* Appeal Judgement, para. 101; *Kordić* Appeal Judgement, para. 94; *Kunarac et al.* Appeal Judgement, para. 94; see also *Limaj et al.* Trial Judgement, para. 183.

<sup>280</sup> *Kunarac et al.* Appeal Judgement, para. 95 (citing *Kunarac et al.* Trial Judgement, para. 430); see also *Limaj et al.* Trial Judgement, para. 183 (citing *Kunarac et al.* Appeal Judgement, para. 95).

<sup>281</sup> *Kunarac et al.* Trial Judgement, para. 430 (endorsed by *Kunarac et al.* Appeal Judgement, para. 95).

with respect to a given civilian population.<sup>282</sup> The existence of a plan or policy is not a required legal element of a crime against humanity,<sup>283</sup> although it may be relevant in evaluating the evidence presented to prove that an attack was directed against a civilian population and that it was widespread or systematic.<sup>284</sup>

*iv. The acts of the physical perpetrator must form part of this attack*

152. It is the conduct of the physical perpetrator that must form part of the attack. The acts of the physical perpetrator need not be committed in the midst of an attack on a civilian population in order to be considered part of that attack. An offence that is committed before or after the main attack against the civilian population or away from it could still, if sufficiently connected, be part of that attack.<sup>285</sup> While the determination of whether a given offence is sufficiently connected to the attack will depend upon the facts of the case, the offence cannot be an isolated act: it should not be so far removed from the attack that, having considered the context and circumstances in which it was committed, it cannot reasonably be said to have been part of that attack.<sup>286</sup> All other conditions being met, a single or relatively limited number of acts on the physical perpetrator's part would qualify as a crime against humanity, unless those acts may be said to be isolated or random.<sup>287</sup>

*v. The perpetrator must know that there is an attack on the civilian population and know, or take the risk, that his acts comprise part of this attack*

153. This requirement relates to the relationship between the offence and the attack on the civilian population. However, the term "perpetrator" introduces an element of uncertainty concerning whether it is the conduct and knowledge of the physical perpetrator, or whether it is the conduct and knowledge of an accused who is not the physical perpetrator, or even some other person, such as an intermediary perpetrator, with which the Chamber need be concerned. Due to the fact that the prior jurisprudence of the Tribunal has not squarely addressed this issue and due to its applicability to the instant case, the Trial Chamber will now briefly discuss this general

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<sup>282</sup> *Kunarac et al.* Appeal Judgement, para. 95; *see also Limaj et al.* Trial Judgement, para. 183 (citing *Kunarac et al.* Appeal Judgement, para. 95).

<sup>283</sup> *See Kunarac et al.* Appeal Judgement, para. 98 note 114; *see also Limaj et al.* Trial Judgement, paras. 184, 212.

<sup>284</sup> *Kunarac et al.* Appeal Judgement, para. 98; *Blaškić* Appeal Judgement, para. 120; *Kordić* Appeal Judgement, para. 98; *see also Limaj et al.* Trial Judgement, paras. 184, 212.

<sup>285</sup> *Kunarac et al.* Appeal Judgement, para. 100; *see also Limaj et al.* Trial Judgement, para. 189.

<sup>286</sup> *Kunarac et al.* Appeal Judgement, para. 100; *Krajišnik* Trial Judgement, para. 706(d); *Kupreškić et al.* Trial Judgement, para. 550; *see also Krnojelac* Trial Judgement, para. 55 ("A crime committed several months after, or several kilometres away from, the main attack against the civilian population could still, if sufficiently connected, be part of that attack.") (citing *Kunarac et al.* Trial Judgement, para. 417 *et seq.*).

<sup>287</sup> *Blaškić* Appeal Judgement, para. 101; *Kordić* Appeal Judgement, para. 94; *Kunarac et al.* Appeal Judgement, para. 96.

requirement of a crime against humanity and its relationship to the physical or intermediary perpetrator and the accused.

154. Throughout the Tribunal's jurisprudence on this issue, the terms "perpetrator" and "accused" have been used interchangeably.<sup>288</sup> The earliest—and most often cited—substantive discussion of the two relationship requirements occurs in the *Tadić* Appeal Judgement. In relation to the Trial Chamber's discussion of "purely personal motives" in the context of crimes against humanity, the Appeals Chamber stated the following:

The Appeals Chamber agrees that it may be inferred from the words "directed against any civilian population" in Article 5 of the Statute that the acts of the *accused* must comprise part of a pattern of widespread or systematic crimes directed against a civilian population and that the *accused* must have known that his acts fit into such a pattern.<sup>289</sup>

Although no authority was cited for the proposition that the accused must know that the conduct charged fits into the pattern of crimes, the holding that the acts of the accused must comprise part of the pattern is described in the relevant footnote as "already ... recognised by this Tribunal in the *Vukovar Hospital* Rule 61 Decision".<sup>290</sup> The language of that Rule 61 decision, however, seems to refer to the physical perpetrator—or at least an accused who is also the physical perpetrator of the crimes at issue—not an accused whose involvement in the commission of the crimes or underlying offences is more attenuated.<sup>291</sup>

155. Similarly, the actual practice of the Tribunal, as reflected in Trial and Appeal Judgements, demonstrates that the requirement that the conduct charged relate to the attack on the civilian population is satisfied by proof that the underlying offences comprise part of the attack, regardless

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<sup>288</sup> See, e.g., *Tadić* Appeal Judgement, para. 248 (referring to "the accused"); *Kunarac et al.* Appeal Judgement, para. 85 (referring to both "the accused" and "the perpetrator") and para. 99 (referring to "knowledge on the part of the *accused* that there is an attack on the civilian population and that his act is part thereof") (emphasis added); *Blaškić* Appeal Judgement, para. 124 ("The Appeals Chamber considers that the *mens rea* of crimes against humanity is satisfied when the *accused* has the requisite intent to commit the underlying offence(s) with which he is charged, and when he knows that there is an attack on the civilian population and also knows that his acts comprise part of that attack.") (emphasis added); see also *Blaškić* Trial Judgement, para. 257 (using the terms interchangeably in the same paragraph); *Kupreškić et al.* Trial Judgement, para. 544 ("The following elements can be identified as comprising the core elements of crimes against humanity: ... that the *perpetrator* had knowledge of the wider context in which his act occurs) (emphasis added); *Kunarac et al.* Trial Judgement, para. 410 (using the term "perpetrator", but citing *Tadić* Appeal Judgement, para. 248, which uses the term "accused"), para. 418 (restating the relationship requirements as existing between "the acts of the *accused* and the attack") (emphasis added), paras. 433–435 (using the terms interchangeably).

<sup>289</sup> *Tadić* Appeal Judgement, para. 248 (footnote and original emphasis omitted) (emphases added).

<sup>290</sup> *Tadić* Appeal Judgement, para. 248 note 311.

<sup>291</sup> *Mrkšić* Rule 61 Decision, para. 15 (noting that "the responsibility of the accused for the acts for which they have been charged could be established not only because of their position of authority but also because of *their direct participation in the commission of those acts*") (emphasis added); see also *ibid.* para. 30.

of whether they are physically committed by the accused or merely by those for whose acts he bears responsibility.<sup>292</sup>

156. Insofar as knowledge of the context in which the underlying offence occurs is concerned,<sup>293</sup> the Chamber's earlier discussion of the law pertaining to individual criminal responsibility makes clear that, if the physical perpetrator of an underlying offence is not the accused, his mental state is not necessarily determinative of the question whether that offence constitutes a crime over which the Tribunal has jurisdiction, although it is important for the determination that his conduct in fact constituted an offence. Thus, if the non-accused physical perpetrator is not aware of the context of his crimes, but his superior or an intermediary perpetrator is, these crimes would still constitute crimes against humanity, provided the other general requirements of crimes against humanity are satisfied as well.

157. Although it may be simpler to express the situation where conduct constitutes a crime against humanity by saying that this requirement is satisfied if *the accused*—whether he is the physical perpetrator or a person at whose behest the physical perpetrator is acting—knows that the conduct for which he bears responsibility is part of the attack, the Trial Chamber considers that such a formulation is at once under-inclusive and over-inclusive. It is under-inclusive because, by referring solely to the accused, it would exclude from classification as crimes against humanity the situation where a non-accused superior of the physical or intermediary perpetrator fulfils the knowledge requirement. Only an overly narrow reading of the law would lead to the conclusion that in such a case an offence otherwise satisfying the general requirements would not constitute a crime against humanity. On the other hand, the above definition has the potential for being over-inclusive in situations where neither the physical nor the intermediary perpetrator knows of the context of his offences and the person with knowledge of this context is too far removed from the commission of the offence for such knowledge to be relevant, like an aider and abettor, or the

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<sup>292</sup> See, e.g., *Kupreškić et al.* Trial Judgement, para. 544 (“The following elements can be identified as comprising the core elements of crimes against humanity: ... second, that the acts were part of a widespread or systematic occurrence of crimes directed against a civilian population”); *Blaškić* Trial Judgement, para. 429, p. 267 (noting that the accused did not physically commit the offences charged, and convicting him “of having *ordered* a crime against humanity” for five categories of underlying offences) (emphasis added); *Blaškić* Appeal Judgement, para. 98 (endorsing the *Blaškić* Trial Chamber's description of the first relationship requirement, which made no reference to the author of the offences constituting crimes against humanity, even though the Appeals Chamber itself in the same paragraph stated that “the acts of an accused” must be part of the attack), para. 102 (“[T]he Appeals Chamber concludes that the Trial Chamber was correct in stating that acts constituting crimes against humanity must be part of a widespread or systematic attack against civilians.”); cf. *Kordić* Appeal Judgement, para. 117 (recognising, in the context of inhumane acts as crimes against humanity, that the underlying offences may be committed by either the accused or his subordinates).

<sup>293</sup> The Chamber notes that the Appeals Chamber has implicitly disapproved of references to “context” for the purposes of discussions of the general requirements for Article 5, at least with regard to the listing of those elements. Compare *Kunarac et al.* Appeal Judgement, para. 85, with *Kunarac et al.* Trial Judgement, para. 410. For the purposes of conciseness, however, the Chamber will frequently refer to the “attack” as the context of the underlying conduct of the physical perpetrator. The full statement of the general requirements for Article 5 is included below.



mental state of the person is legally irrelevant to the establishment of the crime, such as a superior who could only be liable under Article 7(3). The Chamber considers that in such circumstances an offence should not qualify as a crime against humanity.<sup>294</sup>

158. The Chamber reiterates that, for an underlying offence to be categorised as a crime against humanity on the basis of an individual's knowledge of the context in which it occurs, the relationship between the individual and the commission of an offence must be sufficiently direct or proximate. In the view of the Trial Chamber, the sufficient directness or proximity of the said relationship is best caught by the requirement that the individual *intended* that the offence be committed, inherent in four forms of responsibility provided in the Statute: commission, planning, ordering, and instigating. Under all of these forms of responsibility, the knowledge of the context of an offence is part of the mental process resulting in the commission of the offence in question. By contrast, where only individuals whose state of mind does not have to reach the level of intent—such as an aider and abettor or a superior who fails to prevent or punish—possess this knowledge, the offence should not be categorised as a crime against humanity. This is so regardless of whether that individual is the accused or not. Put more simply, as long as someone has knowledge of the context in which the offences occurred, and that person is not merely aiding and abetting or failing to prevent or punish these offences, crimes against humanity will have been committed. Thus, an underlying offence may qualify as a crime against humanity in at least two situations: first, where both relationship requirements are satisfied by the physical perpetrator, because he both commits acts or omissions that form part of the attack and knows that his conduct is part of the attack; and second, even if the physical perpetrator lacks knowledge of the context in which his conduct occurs, where the planner, orderer, instigator of that conduct, or member of the joint criminal enterprise knows that it forms part of the attack.

159. The Chamber stresses here that this analysis should not be confused with the question of whether the accused bears criminal responsibility for a particular crime against humanity. Instead, the above is simply a determination as to whether such a crime was committed at all.

160. Turning to the general requirement itself, the Chamber therefore notes that it can be broken down into two sub-elements: the physical perpetrator, or the person who planned, ordered, or instigated his conduct (a) knows that there is a widespread or systematic attack on the civilian

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<sup>294</sup> The Chamber notes here that the above analysis has been performed with only two actors in mind, namely the physical perpetrator and the person at whose behest he is acting. However, this is the simplest chain of command or authority, and there could be a number of intermediaries between those two persons.

population and (b) knows or takes the risk that the conduct of the physical perpetrator comprises part of that attack.<sup>295</sup> This requirement does not entail knowledge of the details of the attack.<sup>296</sup>

161. As a matter of law, this requirement is not to be confused with the motives of either the physical perpetrator, or the person at whose behest he is acting, for taking part in the attack, because a crime against humanity may be committed for “purely personal” reasons.<sup>297</sup> The physical perpetrator, or the person at whose behest he acts, need not share the purpose or goal behind the attack, and it is irrelevant whether he intended the underlying offences to be directed against the targeted population or merely against the victim or victims concerned.<sup>298</sup> It is the attack, not the underlying offences, that must be directed against the targeted population, and the physical perpetrator, or the person at whose behest he is acting, need only know or take the risk that the acts for which he is responsible are part of that attack.<sup>299</sup>

#### *vi. Conclusion*

162. In light of the Tribunal’s jurisprudence and practice, and for the reasons set out above, the Trial Chamber is of the view that the following is the clearest statement of the general requirements for Article 5:

- (a) There must be an attack.
- (b) The attack must be directed against any civilian population.
- (c) This attack must be widespread or systematic.
- (d) The acts of the physical perpetrator must be part of the attack.
- (e) Either the physical perpetrator or the person who planned, ordered, or instigated the acts of the physical perpetrator or a member of the joint criminal enterprise, must know that there is an attack on the civilian population and know, or take the risk, that his acts comprise part of this attack.

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<sup>295</sup> See *Kordić* Appeal Judgement, para. 99; *Blaškić* Appeal Judgement, paras. 124–125; *Kunarac et al.* Appeal Judgement, paras. 99, 102–103.

<sup>296</sup> See *Kunarac et al.* Appeal Judgement, para. 102; see also *Limaj et al.* Trial Judgement, para. 190.

<sup>297</sup> See *Kunarac et al.* Appeal Judgement, para. 103; *Tadić* Appeal Judgement, paras. 248, 252, 272. Although the *Kunarac et al.* Appeal Judgement also held that, “[a]t most, evidence that [the accused] committed the acts for purely personal reasons could be indicative of a rebuttable assumption that he was not aware that his acts were part of that attack”, this holding seems appropriate only in the context of a perpetrator-accused. In light of this Trial Chamber’s views of the distinction between a physical perpetrator and a non-perpetrator accused, the fact that the offence was actually physically committed for purely personal reasons would be irrelevant to the question of whether that offence constituted a crime against humanity.

<sup>298</sup> See *Kunarac et al.* Appeal Judgement, para. 103.

<sup>299</sup> See *Kunarac et al.* Appeal Judgement, paras. 102, 103; *Blaškić* Appeal Judgement, paras. 121–127.

c. Elements of forcible displacement as an underlying offence: forcible transfer and deportation

163. The Accused are each charged with deportation and other inhumane acts (forcible transfer) as crimes against humanity. A number of elements of these offences are the same and are discussed herein under the heading “forcible displacement”,<sup>300</sup> an umbrella term used for convenience by the Chamber throughout the Judgement to mean both deportation and forcible transfer.

164. The *actus reus* of forcible displacement is (a) the displacement of persons by expulsion or other coercive acts, (b) from an area in which they are lawfully present, (c) without grounds permitted under international law.<sup>301</sup> The *mens rea* for the offence is the intent to displace, permanently or otherwise, the victims within the relevant national border (as in forcible transfer) or across the relevant national border (as in deportation).<sup>302</sup>

165. Several judgements rendered by the Tribunal have found that:

[B]oth deportation and forcible transfer relate to the involuntary and unlawful evacuation of individuals from the territory in which they reside. Yet, the two are not synonymous in customary international law. Deportation presumes transfer beyond State borders, whereas forcible transfer relates to displacements within a State.<sup>303</sup>

An essential element is the involuntary nature of the displacement.<sup>304</sup> Trial and Appeals Chambers have consistently held that it is the absence of “genuine choice” that makes a given act of displacement unlawful.<sup>305</sup> In this context, the Appeals Chamber has held that genuine choice cannot be inferred from the fact that consent was expressed where the circumstances deprive the consent of any value.<sup>306</sup> In addition, Trial and Appeals Chambers have inferred a lack of genuine choice from threatening and intimidating acts that are calculated to deprive the civilian population of exercising its free will, such as the shelling of civilian objects, the burning of civilian property,

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<sup>300</sup> See *Simić et al.* Trial Judgement, paras. 123–124; *Krnojelac* Trial Judgement, para. 473.

<sup>301</sup> *Krnojelac* Trial Judgement, para. 474.

<sup>302</sup> *Martić* Trial Judgement, para. 111; *Stakić* Appeal Judgement, para. 278, 307, 317; cf. *Milošević* Rule 98 bis Decision, para. 78; but see *Naletilić* Appeal Judgement, Judge Schomburg’s Dissenting Opinion, para. 24.

<sup>303</sup> *Krstić* Trial Judgement, para. 521; see also *Krnojelac* Trial Judgement, paras. 474, 476; *Krnojelac* Appeal Judgement, paras. 218, 222–224; *Simić et al.* Trial Judgement, para. 129; *Brđanin* Trial Judgement, para. 540; *Blagojević* Trial Judgement, para. 595.

<sup>304</sup> *Brđanin* Trial Judgement, para. 543; *Simić et al.* Trial Judgement, para. 125.

<sup>305</sup> *Krnojelac* Appeal Judgement, para. 229; *Blagojević* Trial Judgement, para. 596; *Brđanin* Trial Judgement, para. 543; *Stakić* Appeal Judgement, para. 279.

<sup>306</sup> *Krnojelac* Appeal Judgement, para. 229. See also *Milošević* Rule 98 bis Decision, para. 72; *Simić et al.* Trial Judgement, para. 125; *Stakić* Appeal Judgement, para. 279.

and the commission of or the threat to commit other crimes “calculated to terrify the population and make them flee the area with no hope of return”.<sup>307</sup>

166. There are two general grounds under international law according to which displacement of persons is legitimate: it may be carried out either for the security of a civilian population or for imperative military reasons.<sup>308</sup> In either case, the chief distinction between an illegitimate forcible displacement and a permissible evacuation is that, in the case of the latter, “persons thus evacuated [are] transferred back to their homes as soon as the hostilities in the area in question have ceased.”<sup>309</sup> It is therefore unlawful to use evacuation measures as a pretext to forcibly dislocate a population and seize control over a territory.<sup>310</sup>

167. The Appeals Chamber has held that the offences of deportation and forcible transfer do not require intent that the victims be displaced permanently, only that they be intentionally displaced.<sup>311</sup> As with the knowledge requirement for all crimes against humanity and the specific intent requirement for persecution, the Chamber notes that the intent to displace the victims may be that of either the physical perpetrator or the planner, orderer, or instigator of the physical perpetrator’s conduct, or a member of the joint criminal enterprise.

*i. Deportation as a crime against humanity*

168. In addition to satisfying the *actus reus* and *mens rea* of the underlying offence of deportation, the Prosecution must also prove the general requirements of Article 5 for it to qualify as a crime against humanity under Article 5(d).

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<sup>307</sup> *Simić et al.* Trial Judgement, para. 126.

<sup>308</sup> See *Blagojević* Trial Judgement, para. 597; *Brđanin* Trial Judgement, para. 556. Additional Protocol II lists the security of the population and imperative military reasons as the only justifications for evacuation of a civilian population. Additional Protocol II, article 17(1). In addition to these two exceptions, the *Blagojević* Trial Chamber held that the law allows evacuations for humanitarian reasons. The Chamber based its conclusion upon article 17 of Additional Protocol II, which provides in part that “[t]he displacement of the civilian population shall not be ordered for reasons related to the conflict[.]” *Blagojević* Trial Judgement, para. 600. The Commentary to article 17 indicates that for other reasons—such as the outbreak or risk of outbreak of epidemics, natural disasters, or the existence of a generally untenable and life-threatening living situation—displacement of the civilian population may be lawfully carried out by the parties to the conflict. See ICRC Commentary to Additional Protocol II, para. 4855; *Blagojević* Trial Judgement, para. 600.

<sup>309</sup> *Brđanin* Trial Judgement, para. 556 (quoting article 49 of Fourth Geneva Convention). The official commentary notes that “evacuation must not involve the movement of protected persons to places outside the occupied territory, unless it is physically impossible to do otherwise. Thus as a rule, evacuation must be to reception centres inside the territory.” ICRC Commentary to Fourth Geneva Convention, p. 280 (footnote omitted); see also Additional Protocol II, article 17(2); ICRC Commentary to Additional Protocol II, paras. 4858–4865.

<sup>310</sup> *Blagojević* Trial Judgement, para. 597; see also Commentary to Additional Protocol II, para. 4854.

<sup>311</sup> *Stakić* Appeal Judgement, paras. 307, 317; but see *Naletilić* Appeal Judgement, Judge Schomburg’s Dissenting Opinion, para. 24.

169. Although not directly relevant to the instant case, the Chamber briefly notes that the difference between deportation and forcible transfer has been narrowed by the Appeals Chamber, which held in *Stakić* that, under certain circumstances, displacement across a *de facto* border may be sufficient to amount to deportation.<sup>312</sup>

*ii. Other inhumane acts as crimes against humanity: forcible transfer*

170. For a physical perpetrator's act or omission to constitute an inhumane act as a crime against humanity under Article 5(i), four specific requirements have been identified in the Tribunal's jurisprudence: (a) the conduct must cause serious mental or physical suffering to the victim or constitute a serious attack upon human dignity;<sup>313</sup> (b) the conduct must be of equal gravity to the conduct enumerated in Article 5;<sup>314</sup> and (c) the physical perpetrator must have performed the act or omission deliberately<sup>315</sup> (d) with the intent to inflict serious physical or mental harm upon the victim or commit a serious attack upon human dignity<sup>316</sup> or with the knowledge that his act or omission would probably cause serious physical or mental harm to the victim or constitute a serious attack upon human dignity.<sup>317</sup>

171. The jurisprudence of the Tribunal indicates that the underlying offence of forcible transfer constitutes the statutory crime of other inhumane acts.<sup>318</sup>

172. Applying the above analysis, in order to prove that forcible transfer as the crime against humanity of "other inhumane acts" was committed, the Prosecution must prove (a) the *actus reus* and *mens rea* of forcible displacement, (b) the general requirement of crimes against humanity, and (c) the four specific requirements for other inhumane acts, set out above.

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<sup>312</sup> *Stakić* Appeal Judgement, para. 300; see also *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2, Review of Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, 20 October 1995, para. 23.

<sup>313</sup> *Kordić* Appeal Judgement, para. 117; *Krnojelac* Trial Judgement, para. 130; *Tadić* Trial Judgement, para. 729.

<sup>314</sup> *Kordić* Appeal Judgement, para. 671; *Blagojević* Trial Judgement, para. 580; *Galić* Trial Judgement, para. 152; *Simić et al.* Trial Judgement, para. 74; *Vasiljević* Trial Judgement, para. 234; *Krnojelac* Trial Judgement, para. 130; *Kordić* Trial Judgement, para. 269; *Tadić* Trial Judgement, para. 729; *Kajelijeli* Trial Judgement, para. 932; *Kayishema* Trial Judgement, para. 154.

<sup>315</sup> *Blagojević* Trial Judgement, para. 626; *Simić et al.* Trial Judgement, para. 74; *Vasiljević* Trial Judgement, para. 234; *Krnojelac* Trial Judgement, para. 130.

<sup>316</sup> *Kordić* Appeal Judgement, para. 117; *Blagojević* Trial Judgement, para. 628; *Simić et al.* Trial Judgement, para. 76; *Vasiljević* Trial Judgement, para. 236; *Krnojelac* Trial Judgement, para. 132; *Blaškić* Trial Judgement, para. 243; *Kayishema* Trial Judgement, para. 154.

<sup>317</sup> See *Blagojević* Trial Judgement, paras. 627–628; *Simić et al.* Trial Judgement, paras. 75–76; *Galić* Trial Judgement, para. 154; *Vasiljević* Trial Judgement, paras. 235–236; *Krnojelac* Trial Judgement, paras. 131–132.

<sup>318</sup> *Stakić* Appeal Judgement, para. 317; *Blagojević* Trial Judgement, para. 629; *Kupreškić et al.* Trial Judgement, para. 566.

d. Elements of murder as a crime against humanity

173. The elements of murder as an underlying offence falling within Article 3 of the Statute have been laid out above. These elements are equally applicable where murder is charged as an underlying offence of crimes against humanity under Article 5(a). Therefore, in order to prove that murder as a crime against humanity was committed, the Prosecution must prove (a) the *actus reus* and *mens rea* of murder and (b) the general requirements of crimes against humanity set out above.

e. Specific requirements for persecution as a crime against humanity

174. In addition to the general requirements listed above for crimes against humanity, certain specific requirements must also be satisfied in order for an underlying offence to qualify as persecution under Article 5(h).

*i. Physical element of persecution*

175. A number of underlying offences are charged as persecution. The underlying conduct for persecution is generally described in Tribunal jurisprudence as an act or omission that (a) discriminates in fact and (b) denies or infringes upon a fundamental right laid down in customary international law or treaty law.<sup>319</sup>

176. The Trial and Appeals Chambers of the Tribunal have consistently emphasised that the crime against humanity of persecution requires intent to discriminate on political, racial, or religious grounds. Moreover, in practice, discrimination on the basis of ethnicity has been accepted as a ground upon which the requirement is satisfied.<sup>320</sup> The Trial Chamber holds that the Kosovo Albanian population constituted an ethnic group, which falls within the ambit of Article 5(h) of the Statute, and therefore that discrimination against Kosovo Albanians because of their membership in this group would fulfil the intent requirement of persecution.

177. With regard to the first requirement, in order to constitute a “discriminatory act”, the underlying conduct in question must “discriminate in fact”.<sup>321</sup> An act is discriminatory when a victim is targeted because of his membership in one of the protected groups.<sup>322</sup> The question of whether “discrimination in fact” should be evaluated objectively or subjectively has been the

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<sup>319</sup> *Krnjelac* Appeal Judgement, para. 185; *Blaškić* Appeal Judgement, para. 131; *Vasiljević* Appeal Judgement, para. 113.

<sup>320</sup> See *Kupreškić et al.* Trial Judgement, paras. 636, 589, 591, 780; *Kordić* Appeal Judgement, para. 111; *Krstić* Trial Judgement, para. 538; *Kvočka et al.* Appeal Judgement, paras. 366, 455; *Krnjelac* Appeal Judgement, para. 185; *Simić et al.* Trial Judgement, para. 56; *Brđanin* Trial Judgement, paras. 992, note 2484, 993.

<sup>321</sup> See *Blagojević* Trial Judgement, para. 583; *Brđanin* Trial Judgement, para. 992; *Krnjelac* Trial Judgement, para. 431; *Stakić* Trial Judgement, para. 732; *Vasiljević* Trial Judgement, para. 244.

<sup>322</sup> *Blagojević* Trial Judgement, para. 583.

subject of some dispute between Trial Judgements. The Appeals Chamber has settled this dispute in favour of a subjective approach.<sup>323</sup>

178. With regard to the second requirement, not every denial or infringement of a fundamental right is sufficiently serious to qualify as a potential crime against humanity.<sup>324</sup> The act or omission underlying persecution as a crime against humanity, whether considered in isolation or in conjunction with other acts, may be listed under the other sub-headings of Article 5 and must in any event attain an equal level of gravity to the crimes listed in Article 5 of the Statute.<sup>325</sup>

179. In deciding whether an underlying act or omission satisfies the equal gravity requirement, Trial Chambers may consider whether the conduct constitutes a specific offence arising under other Articles of the Statute,<sup>326</sup> but the conduct need not be explicitly mentioned in the Statute.<sup>327</sup> Although persecution often refers to a series of acts, a single act or omission may be sufficient.<sup>328</sup> When applying the gravity requirement, however, particularly to conduct that does not constitute an offence under the Statute or a crime under international law, “the acts must not be considered in isolation, but in context, by looking at their cumulative effect.”<sup>329</sup>

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<sup>323</sup> *Krnjelac* Appeal Judgement, para. 185:

[T]he Appeals Chamber considers that a Serb mistaken for a Muslim may still be the victim of the crime of persecution. The Appeals Chamber considers that the act committed against him institutes discrimination in fact, vis-à-vis the other Serbs who were not subject to such acts, effected with the will to discriminate against a group on grounds of ethnicity.

See *Naletilić* Trial Judgement, para. 636 note 1572:

In the view of the Chamber, a teleological interpretation of the element “discriminatory basis” demands to take into account the fact that the power to define the “targeted group” rests solely in the hands of the perpetrator group. If a certain person is defined by the perpetrator as belonging to the targeted group, this definition thus becomes “discriminatory in fact” for the victim as it may not be rebutted, even if such classification may be incorrect under objective criteria.

<sup>324</sup> See, e.g., *Kupreškić et al.* Trial Judgement, para. 621; *Krnjelac* Trial Judgement, para. 434; *Naletilić* Trial Judgement, para. 635; *Simić et al.* Trial Judgement, para. 48; *Brđanin* Trial Judgement, para. 995.

<sup>325</sup> *Kvočka et al.* Appeal Judgement, para. 321; *Blaškić* Appeal Judgement, para. 135; *Krnjelac* Appeal Judgement, paras. 199, 221; *Naletilić* Appeal Judgement, para. 574.

<sup>326</sup> *Kvočka et al.* Appeal Judgement, para. 323.

<sup>327</sup> *Kvočka et al.* Appeal Judgement, para. 323; *Krnjelac* Trial Judgement, para. 434; *Naletilić* Trial Judgement, para. 635; *Kupreškić et al.* Trial Judgement, para. 614. While some Trial Judgements state that conduct constituting crimes under Articles 2 and 3 of the Statute are necessarily of sufficient gravity to constitute persecution, other Trial Judgements indicate that offences enumerated under those Articles must be independently examined to determine if they rise to the same level of gravity as crimes enumerated under Article 5. Compare *Krnjelac* Trial Judgement, para. 439, with *Brđanin* Trial Judgement, para. 995. Four subsequent Appeal Judgements to discuss the physical element of persecution neither noted this difference of opinion nor took a position on the question. See *Kvočka et al.* Appeal Judgement, paras. 321–323; *Kordić* Appeal Judgement, para. 102; *Blaškić* Appeal Judgement, para. 135; *Krnjelac* Appeal Judgement, para. 199.

<sup>328</sup> *Blaškić* Appeal Judgement, para. 135 (quoting *Vasiljević* Appeal Judgement, para. 113).

<sup>329</sup> *Kvočka et al.* Appeal Judgement, para. 321 (citing, *inter alia*, *Kupreškić et al.* Trial Judgement, paras. 615(e), 622 (discussing acts that may not, in and of themselves, be so serious as to constitute a crime against humanity); *Krnjelac* Trial Judgement, para. 434 (referring to conduct that is not, by definition, serious enough to constitute a crime against humanity); see also *Naletilić* Appeal Judgement, para. 574.

*ii. Mental element of persecution: discriminatory intent*

180. In order to constitute persecution, the underlying act or omission must have been carried out deliberately, with the intention to discriminate on one of the grounds listed in Article 5(h)—political, racial, or religious.<sup>330</sup> Although the requirement of discriminatory intent may not be satisfied merely by reference to the allegedly discriminatory nature of an attack characterised as a crime against humanity, it “may be inferred from such a context as long as, in view of the facts of the case, circumstances surrounding the commission of the alleged acts substantiate the existence of such intent.”<sup>331</sup>

181. With regard to the question of who must have the requisite discriminatory intent, namely the physical perpetrator or the accused who planned, ordered, or instigated the conduct of the physical perpetrator, the Trial Chamber considers that, so long as it is proved that one of these individuals possessed discriminatory intent, this element is satisfied. The Chamber reiterates here that this analysis should not be confused with the question of whether the accused bears criminal responsibility for persecution. Instead, the above is simply a determination as to whether such persecution was committed at all.

f. Elements of charged forms of persecution on political, racial, or religious grounds

*i. Murder as a form of persecution*

182. The first specific requirement for persecution—that the conduct in question deny or infringe a fundamental right and constitute an offence of equal gravity to the crimes listed in Article 5—is a question of law, and it is well established in the Tribunal’s case law that the underlying offence of murder satisfies this requirement.<sup>332</sup> In order to prove that murder was committed as a form of persecution, the Prosecution must prove (a) the *actus reus* and *mens rea* of murder, (b) the specific requirements of persecution, and (c) the general requirements of crimes against humanity, all of which are set out above.

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<sup>330</sup> *Kvočka et al.* Appeal Judgement, para. 320; *Krnojelac* Appeal Judgement, para. 185; *Vasiljević* Appeal Judgement, para. 113; *Blaškić* Appeal Judgement, para. 131; *see also Krnojelac* Trial Judgement, para. 431 note 1290 (“Although the Statute refers to the listed grounds in the conjunctive, it is settled in the jurisprudence of the Tribunal that the presence of discriminatory intent on any one of these grounds is sufficient to fulfil the *mens rea* requirement for persecution[.]”) (citing *Tadić* Trial Judgement, para. 713); *Stakić* Appeal Judgement, para. 328 (holding that the *mens rea* for persecution consists of the intent to commit the underlying act and the intent to discriminate on political, racial, or religious grounds).

<sup>331</sup> *Blaškić* Appeal Judgement, para. 164 (citing *Krnojelac* Appeal Judgement, para. 184). In a different case, the Appeals Chamber has held that, on the facts of the case then before it, “the intent to contribute to the joint criminal enterprise and discriminatory intent is one and the same thing.” *Kvočka et al.* Appeal Judgement, para. 347; *see also Naletilić* Appeal Judgement, paras. 129, 146.

<sup>332</sup> *See, e.g., Kordić* Appeal Judgement, para. 106 (citing *Blaškić* Appeal Judgement, para. 143; *Kupreškić et al.* Trial Judgement, para. 615).



*ii. Sexual assault as a form of persecution*

183. The charges of persecution set out in count 5 of the Indictment include “[t]he sexual assault by forces of the FRY and Serbia of Kosovo Albanians, in particular women”.<sup>333</sup> The Indictment does not use the word “rape”, and it is not stated whether the term “sexual assault” is intended to include rape. Moreover, although it is apparent from the jurisprudence of the Tribunal that both rape and sexual assault are punishable under the Statute, it is less clear whether “sexual assault” as used in those judgements is a term of art referring to a sexual offence that is short of rape, or whether it is a general term that encompasses the offence of rape.<sup>334</sup> In the present case, the Chamber will interpret count 5 as charging the form of persecution termed “sexual assault” as an offence that may include rape where there is evidence of sexual penetration, as well as other forms of sexual assault, the elements of which are discussed below.

184. Although the Statute does not list “sexual assault” as a crime falling within the ambit of Articles 2, 3, 4, or 5, a number of authorities establish the jurisdiction of the Tribunal over sexual assault offences. Firstly, it is clear from the report produced by the Secretary-General in 1993, entitled “Rape and Abuse of Women in the Territory of the Former Yugoslavia”, which makes several references to sexual assaults, that it was intended for the Tribunal to have jurisdiction in relation to sexual offences beyond rape.<sup>335</sup> Furthermore, Annex II of the Final Report of the Commission of Experts set up by Security Council Resolution 780 (1992) comprised a legal study of rape and sexual assault: this Annex expressly provided that sexual assaults other than rape, such as “enforced prostitution and painful circumcision”, are “considered to be crimes of a very serious nature with a wide range of severe effects on the victim”.

185. The Tribunal’s Rules include specific provisions for dealing with victims of sexual assault, such as Rule 34, which reiterates the importance of meeting the needs of victims of and witnesses to this offence. Rule 96 in turn relates specifically to evidence in cases of sexual assault and affirms the Tribunal’s intent to prosecute not only rapes, but also other types of sexual assault.

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<sup>333</sup> Indictment, para. 77(c).

<sup>334</sup> Compare *Brđanin* Trial Judgement, Section IX.F.2.b (discussing rape and sexual assault under two different headings, and describing the latter category as, *inter alia*, “any sexual assault falling short of rape”), with *Stakić* Trial Judgement, para. 757 (distinguishing, under the heading “Rapes and sexual assaults”, between rape and “any other sexual assault falling short of actual penetration”) (emphasis added), *Kunarac et al.* Trial Judgement, Section IV.D (discussing Rule 96 and the issue of evidence in cases of sexual assault under the general heading “Rape”), and *Furundžija* Trial Judgement, para. 186 (distinguishing between rape and “any serious sexual assault falling short of actual penetration”); see also *Furundžija* Trial Judgement, paras. 182, 184 (distinguishing, in the context of its discussion of national law, between sexual assault and rape).

<sup>335</sup> Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808, UN Doc. No. S/25704, 3 May 1993, para. 48 (“Crimes against humanity refer to inhumane acts of a very serious nature... In the conflict in the territory of the former Yugoslavia, such inhumane acts have taken the form of so-called ‘ethnic cleansing’ and widespread and systematic rape and other forms of sexual assault, including enforced prostitution.”).

186. An express confirmation of the Tribunal’s jurisdiction over sexual assault as an offence distinct from rape is found in the *Furundžija* Judgement, which states that “international criminal rules punish not only rape but also any serious sexual assault falling short of actual penetration.”<sup>336</sup> A similar statement is found in the *Stakić* Trial Judgement.<sup>337</sup> These decisions do not, however, set out explicitly the *actus reus* and *mens rea* of “sexual assault”, nor clarify which of the categories of crimes laid out in the Tribunal’s Statute encompass it.

187. As noted above, in order to constitute persecution, the Trial Chamber must find that “sexual assault” entails the denial or infringement of a fundamental right, and is of equal gravity to the other offences listed in Article 5 of the Statute. However, as a form of persecution, it need not be demonstrated that “sexual assault” itself constituted a crime under international law at the time of commission of the relevant acts.<sup>338</sup>

#### (A) Denial or infringement of a fundamental right

188. The term “sexual assault” is not explicitly used in any international human rights treaty.<sup>339</sup> The Convention on the Elimination of All Forms of Discrimination Against Women does not mention sexual assault, although it makes reference to the prohibition on “exploitation of prostitution”.<sup>340</sup> The right not to be sexually assaulted has, however, been subsumed under more general fundamental rights relating to physical integrity.<sup>341</sup>

189. A number of Tribunal and ICTR judgements indicate that sexual assault may also be considered as a form of torture or cruel, inhuman, or degrading treatment.<sup>342</sup> This view is consistent with the finding of the Commission of Experts that, under international humanitarian

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<sup>336</sup> *Furundžija* Trial Judgement, para. 186.

<sup>337</sup> *Stakić* Trial Judgement, para. 757.

<sup>338</sup> *Kvočka et al.* Appeal Judgement, para. 323 (implicitly overruling *Blaškić* Appeal Judgement, para. 139; *Kordić* Appeal Judgement, para. 103).

<sup>339</sup> Article 27 of Fourth Geneva Convention provides that women shall be “especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.” Additional Protocol II to the Geneva Conventions prohibits “outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault”.

<sup>340</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), entered into force 3 September 1981, 1249 U.N.T.S. 13, article 6.

<sup>341</sup> *Furundžija* Trial Judgement, para. 170 (“No international human rights instrument specifically prohibits rape or other serious sexual assaults. Nevertheless, these offences are implicitly prohibited by the provisions safeguarding physical integrity, which are contained in all of the relevant international treaties.”)

<sup>342</sup> *Čelebići* Trial Judgement, paras. 495–496 (finding that rape and other forms of sexual violence may constitute torture); *Kvočka et al.* Trial Judgement, paras. 144–145 (reaffirming the classification of rape as torture and finding that other forms of sexual violence and threat of rape can also amount to torture); *Kunarac et al.* Trial Judgement, paras. 711, 816 (finding that the rapes included in the indictment constituted a form of torture, because they were committed with intent to discriminate against “Muslims in general” and the “victim in particular”); *Akayesu* Trial Judgement, paras. 687, 731 (finding that rape may constitute a form of torture for the purposes of criminal liability, recognising that

law, rape and other forms of sexual assault can be categorised as “‘torture or ... other form of inhuman or degrading treatment’, ‘wilfully causing great suffering’ or other terms of such a nature”.<sup>343</sup>

190. In addition, a number of judgements support the view that sexual assault may constitute an offence that amounts to an “inhumane act” or “outrage upon personal dignity”.<sup>344</sup> The ICTR explicitly held in the *Akayesu* case that “[s]exual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact” including forced nudity.<sup>345</sup> The Judgement further found that forced nudity constituted an inhumane act,<sup>346</sup> and convicted the accused for *inter alia* inhumane acts as a crime against humanity.<sup>347</sup>

191. In *Tadić*, the Trial Chamber concluded that mutilation of a sexual nature, as well as other types of severe bodily harm, constitutes “inhumane acts” that cause “injury to a human being in terms of physical or mental integrity, health or human dignity”,<sup>348</sup> and the *Čelebići* Judgement highlighted that sexual violence constitutes a violation of “the inherent dignity and the right to physical integrity of the human being”.<sup>349</sup>

192. This Trial Chamber concludes therefore that “sexual assault” falls within various provisions safeguarding physical integrity, and, as was expressly mentioned in *Furundžija*, “[t]he right to physical integrity is a fundamental one, and is undeniably part of customary international law.”<sup>350</sup> The offence in question may also constitute an “outrage upon personal dignity”, a violation of a fundamental right.

#### (B) Equal gravity requirement

193. Having been classified as falling within crimes such as “torture” and “inhumane acts”, among others, sexual assault offences may reach the requirement of gravity equal to that of other crimes against humanity enumerated in Article 5 of the Statute, particularly since both “torture” and

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it is sufficiently serious to constitute “severe pain or suffering” for the purposes of the definition of torture, and explicitly mentioning that acts of rape and sexual violence may constitute genocide).

<sup>343</sup> Final Report of the United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), UN Doc. No. S/1994/674, 28 December 1994, Annex II, p. 5.

<sup>344</sup> See, e.g., *Furundžija* Trial Chamber Judgement, para. 272; *Kunarac et al.* Trial Judgement, paras. 766–774; *Akayesu* Trial Judgement, para. 688.

<sup>345</sup> *Akayesu* Trial Judgement, para. 688.

<sup>346</sup> *Akayesu* Trial Judgement, para. 697.

<sup>347</sup> *Akayesu* Trial Judgement, p. 179.

<sup>348</sup> *Tadić* Trial Judgement, para. 729.

<sup>349</sup> *Čelebići* Trial Judgement, para. 491.

<sup>350</sup> *Furundžija* Trial Judgement, para. 170.

“inhumane acts” are expressly listed as underlying offences within the ambit of Article 5. The Chamber therefore concludes that “sexual assault” is a form of persecution and thus is punishable as a crime against humanity, so long as the equal gravity requirement is satisfied.<sup>351</sup> In reaching its conclusions concerning the elements of “sexual assault” below, the Chamber has throughout been mindful of the equal gravity requirement that qualifies the offence as a form of persecution.

### (C) Elements

194. Having established that “sexual assault” fulfils the criteria for consideration as a form of persecution, the elements of the offence that are here applied must now be clarified.

195. As noted above, the ICTR explicitly held in *Akayesu* that “[s]exual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact” including forced nudity.<sup>352</sup> In *Brđanin*, the Trial Chamber found that the offence of sexual assault “embraces all serious abuses of a sexual nature inflicted upon the integrity of a person by means of coercion, threat of force or intimidation in a way that is humiliating and degrading to the victim’s dignity.”<sup>353</sup>

196. These cases provide some indication of the types of conduct short of sexual penetration that may be considered to constitute “sexual assault”, rather than the narrower offence of rape, which does require such penetration. However, no international treaty sets out the elements of sexual assault as an offence recognised by international law.<sup>354</sup> Similarly, the elements of sexual assault in customary international law have never been elaborated.<sup>355</sup>

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<sup>351</sup> See *Brđanin* Trial Judgement, para. 1012.

<sup>352</sup> *Akayesu* Trial Judgement, para. 688.

<sup>353</sup> *Brđanin* Trial Judgement, para. 1012; see also *Furundžija* Trial Judgement, para. 186; *Stakić* Trial Judgement, para. 757.

<sup>354</sup> The Chamber notes that the Elements of Crimes for the International Criminal Court define the “crime against humanity of sexual violence” punishable under article 7(1)(g) of the Rome Statute as follows: “[Commission of] an act of a sexual nature against one or more persons or [causing] such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person’s or persons’ incapacity to give genuine consent.” See Assembly of State Parties to the Rome Statute of the International Criminal Court, 1st session, 3–10 September 2002, Part II.B. Elements of Crimes, ICC-ASP/1/3, article 7(1)(g)-6, para. 1. As stated by the Appeals Chamber in *Krstić*, the Elements of Crimes are not binding rules, but only auxiliary means of interpretation of the substantive definitions of crimes given in the Rome Statute itself. See *Krstić* Appeal Judgement, para. 224 note 366.

<sup>355</sup> The term sexual assault is not used in any of the Geneva Conventions or the Additional Protocols; instead, the language of the Conventions is broad, requiring, *inter alia*, respect for the person and honour of protected persons, their humane treatment, and the protection of women from attacks upon their “honour”, particularly “rape, enforced prostitution, or any form of indecent assault.” Fourth Geneva Convention, article 27. Common article 3 additionally prohibits “outrages upon personal dignity, in particular humiliating and degrading treatment”.

197. Analysis of the situation in a number of common law and civil law jurisdictions leads to the conclusion that, while the majority do not have a codified, elements-based definition of the term “sexual assault”, they do generally have provisions on the prosecution and punishment of offences similar to sexual assault. These domestic systems often provide for a range of different types of offences that could be considered to fall within the more general category of sexual assault that is here under discussion.<sup>356</sup>

198. Overall, analysis of domestic approaches to sexual assault offences shows some common elements. Generally, it is required that sexual assault be committed through the exercise of violence, force, constraint or other form of coercion on the victim. Threat to use violence against the victim or, in some cases, against a third person, can also be sufficient.<sup>357</sup> However, a number of jurisdictions place the emphasis upon absence of the victim’s consent rather than highlighting the use of violence or threats by the perpetrator.<sup>358</sup> However, the Chamber observes that the apparent disparity in approach is of a formal nature only. As stated above, the Trial Chamber in *Brđanin* found that for a finding of the offence of sexual assault, a person must be subjected to “coercion, threat of force, or intimidation”.<sup>359</sup> In *Akayesu*, the ICTR embraced a broad understanding of coercion, holding that it may be evidenced by “[t]hreats, intimidation, extortion and other forms of duress which prey on fear or desperation” as well as be inherent “in certain circumstances, such as armed conflict”.<sup>360</sup> In this light, when a victim performed an act without giving genuine consent to

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<sup>356</sup> For example, under Scots common law there exist, *inter alia*, laws against indecent assault, shameless indecency, offences against young persons, and lewd and libidinous practices. See England and Wales Sexual Offences Act 2003, Schedule 3. The England and Wales Sexual Offences Act 2003 includes provisions covering, among others, offences such as abuse of positions of trust, incest, exposure, voyeurism, child sex offences, bestiality, and penetration of a corpse. The French *Code Pénal* makes a reference to “sexual aggression” under article 222-22. The German Criminal Code of 13 November 1998 (*Strafgesetzbuch, StGB*) deals with “crimes against sexual self-determination” under Chapter 13. Article 521 of the Italian *Codice Penale* relates to “violent acts of lust”. The terms “sexual coercion” and “sexual exploitation” are contained in Chapter 6 of the Swedish Penal Code of 1962, as amended on 1 May 1999. The Criminal Code of the Russian Federation includes “forcible actions of sexual character” in article 132. The Penal Code of Kenya, section 144, relates to “indecent assaults on females”. The Canadian Criminal Code, section 265, defines sexual assault as intentional touching without consent. An objective test is applied in determining whether the impugned conduct has the requisite sexual nature for the purposes of constituting “sexual assault” and whether, viewed in light of all the circumstances, the sexual or carnal context of the assault is visible to a reasonable observer. Supreme Court of Canada in *R. v. S. (P.L.)*, [1991] 1 S.C.R. 909.

<sup>357</sup> See, e.g., French *Code Pénal*, article 222-22; German Criminal Code of 13 November 1998 (*Strafgesetzbuch, StGB*), section 177(1); Dutch Penal Code of 3 March 1881, as amended by the Act of 7 October 1996, article 246; Swedish Penal Code of 1962, as amended on 1 May 1999, chapter 6, section 2; Criminal Code of the Russian Federation, articles 132–133; Criminal Code of the Socialist Republic of Serbia of 1977, as amended by Act No. 44/1998, article 103(1); Canadian Criminal Code, section 265(1); Egyptian Penal Code, article 268; Criminal Code of Japan, article 176; Criminal Code of the People’s Republic of China of 1 July 1979, as amended on 14 March 1997, article 237; Indian Penal Code, section 351.

<sup>358</sup> See, e.g., England and Wales Sexual Offences Act 2003, sections 3–4.

<sup>359</sup> *Brđanin* Trial Judgement, para. 1012; see also *Furundžija* Trial Judgement, para. 186; *Stakić* Trial Judgement, para. 757; Special Court for Sierra Leone, *Prosecutor v. Brima, Kamara, and Kanu*, Case No. SCSL-04-16-T, Judgement, 20 June 2007, para. 720.

<sup>360</sup> *Akayesu* Trial Judgement, para. 688 (emphasis added):

the same, the necessary implication is that that person had been coerced to do so. Therefore, in this respect, domestic solutions are consonant with the existing international jurisprudence.

199. The Statute and jurisprudence of the Tribunal only contain rape and sexual assault, rather than other categories of offences of a sexual nature. The Trial Chamber is, therefore, of the view that a broad approach to the requisite elements is appropriate, so long as the equal gravity requirement for its characterisation as a form of persecution is taken account of.<sup>361</sup> Thus, the Chamber considers that “sexual assault” may be committed in situations where there is no physical contact between the perpetrator and the victim, if the actions of the perpetrator nonetheless serve to humiliate and degrade the victim in a sexual manner. Indeed, limiting the elements of sexual assault to non-consensual touching would contradict existing jurisprudence such as in the case of *Akayesu*, where it was held that “[s]exual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact” including forced nudity.<sup>362</sup> Furthermore, the Chamber considers that it would be inappropriate to place emphasis on the sexual gratification of the perpetrator in defining the elements of “sexual assault”. In the context of an armed conflict, the sexual humiliation and degradation of the victim is a more pertinent factor than the gratification of the perpetrator, and it is this element that provides specificity to the offence.

200. Any form of coercion, including acts or threats of violence, detention, and generally oppressive surrounding circumstances, is simply evidence that goes to proof of lack of consent. In addition, the Trial Chamber is of the view that when a person is detained, particularly during an armed conflict, coercion and lack of consent can be inferred from these circumstances. In this regard, the force required for a sexual assault is only that which is necessary to perform the act of a sexual nature, and actual coercion is not a required element.

201. The Chamber therefore finds that, in addition to the general requirements of crimes against humanity, and the specific requirements of persecutions, the Prosecution must prove that the following elements have been satisfied beyond a reasonable doubt, in order to establish that the underlying offence of sexual assault as a form of persecution, as a crime against humanity, has been committed:

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The Tribunal considers sexual violence, which includes rape, as any act of a sexual nature which is committed on a person *under circumstances which are coercive*. ... The Tribunal notes in this context that *coercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict* or the military presence of Interahamwe among refugee Tutsi women at the bureau communal.

<sup>361</sup> The Presiding Judge, at the pre-trial conference, expressed his view that rape was a serious crime and therefore it was unnecessary for the Prosecution to call an expert witness on this issue. See T. 287–290 (7 July 2006).

<sup>362</sup> *Akayesu* Trial Judgement, para. 688.

- (a) The physical perpetrator commits an act of a sexual nature on another, including requiring that person to perform such an act.
- (b) That act infringes the victims's physical integrity or amounts to an outrage to the victim's personal dignity.
- (c) The victim does not consent to the act.
- (d) The physical perpetrator intentionally commits the act.
- (e) The physical perpetrator is aware that the act occurred without the consent of the victim.

(D) Rape as a type of sexual assault

202. As noted above, the Trial Chamber considers that rape may be considered as a specific type of sexual assault offence, and evidence of rape may, therefore, be considered as evidence supporting charges of sexual assault as a form of persecution. Indeed, in the present case, evidence of rape was led without the Defence objecting that "rape" was not charged in count 5. This Trial Chamber considers rape to be evidence of sexual assault, as a form of persecution, as a crime against humanity.

203. In this respect, the Chamber recalls that, after extensive reviews of the law pertaining to rape in international instruments and national jurisdictions, the *Furundžija* and *Kunarac et al.* Trial Chambers articulated the following definition of rape in international law:

[T]he *actus reus* of the crime of rape in international law is constituted by: the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances. The *mens rea* is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.<sup>363</sup>

*iii. Damage to or destruction of religious and cultural property as a form of persecution*

204. The charges of persecutions set out in count 5 of the Indictment also include "wanton destruction or damage of Kosovo Albanian religious sites[,] ... cultural monuments and Muslim sacred sites".<sup>364</sup> While "destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science" is

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<sup>363</sup> *Kunarac et al.* Trial Judgement, para. 460 (building on the definition set forth in *Furundžija* Trial Judgement, para. 185), affirmed by *Kunarac et al.* Appeal Judgement, paras. 127–128. For the respective reviews of international and national law, see *Furundžija* Trial Judgement, paras. 165–185, and *Kunarac et al.* Trial Judgement, paras. 436–460.

<sup>364</sup> Indictment, para. 77(d).

specifically made punishable as a violation of the laws or customs of war under Article 3(d) of the Statute, no such classification exists under Article 5. Nevertheless, it is now settled by the Appeals Chamber that “destruction of property”, which belongs to a given civilian population, can be punished pursuant to Article 5(h) depending upon the extent and the nature of that destruction and provided all the elements of Article 5(h) are satisfied.<sup>365</sup> The Appeals Chamber in *Blaškić* based its analysis on an assumption that destruction of religious or cultural property is subsumed under the broader category of “destruction of property”.<sup>366</sup> Having made this finding, the Appeals Chamber in *Blaškić* then proceeded on the assumption that destruction of religious or cultural property is subsumed under the broader category of “destruction of property”; this approach was likely affected by the way in which the indictment in that case was framed, whereby all property, including religious property, was subsumed under one heading of “destruction and plunder of property”.<sup>367</sup> Some Trial Chambers, on the other hand, have treated destruction of religious or cultural property as a category of persecution separate from the broad category of destruction of civilian property. Thus, for example, the Trial Chamber in *Stakić* discussed two categories of destruction of property as persecution, namely, “destruction of, or wilful damage to, religious and cultural buildings”,<sup>368</sup> and “destruction, wilful damage and looting of residential and commercial properties”.<sup>369</sup> The Appeals Chamber has not determined whether destruction of religious and cultural property is serious enough to be an underlying offence of persecution separate from the broad category of destruction of civilian property.

205. However, the *Kordić* Trial Chamber has held, and this Trial Chamber agrees, that destruction of religious property amounts to “an attack on the very religious identity of a people” and, as such, manifests “a nearly pure expression” of the notion of crimes against humanity.<sup>370</sup> For this reason, the Chamber considers that the Tribunal’s jurisprudence specifically prohibits destruction of religious sites and cultural monuments as persecution, a crime against humanity.

206. Extrapolating from the Tribunal’s jurisprudence regarding the elements of Article 3(d) of the Statute, as well as the jurisprudence dealing with destruction of property as an underlying offence of persecution as a crime against humanity, the Trial Chamber finds that, in addition to the

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<sup>365</sup> *Blaškić* Appeal Judgement, paras. 144–149; *Kordić* Appeal Judgement, para. 108.

<sup>366</sup> See *Blaškić* Appeal Judgement, para. 145 (supporting the observation that various legal instruments protect the right to property with a reference to article 53 of Additional Protocol I, the object of which is the protection of cultural objects and places of worship).

<sup>367</sup> See *Blaškić* Trial Judgement, paras. 227–233.

<sup>368</sup> *Stakić* Trial Judgement, paras. 765–768, 811–813; see also *Krajišnik* Trial Judgement, paras. 773–783, 829–840 (referring to two separate categories of destruction of civilian property, namely “destruction of private property” and “destruction of cultural and sacred sites”).

<sup>369</sup> *Stakić* Trial Judgement, paras. 761–764.

<sup>370</sup> *Kordić* Trial Judgement, paras. 206–207; see also *Stakić* Trial Judgement, para. 766.



general requirements of crimes against humanity and the specific requirements of persecution, the Prosecution must prove the *actus reus* and *mens rea* of wanton destruction or damage of religious sites and cultural monuments, as a form of persecution, a crime against humanity. The *actus reus* of this underlying offence is as follows: (a) the religious or cultural property must be destroyed or damaged extensively; (b) the religious or cultural property must not be used for a military purpose at the time of the act; and (c) the destruction or damage must be the result of an act directed against this property.<sup>371</sup> The *mens rea* required for the offence is that the physical perpetrator, intermediary perpetrator, or accused acted with the intent to destroy or extensively damage the property in question, or in reckless disregard of the likelihood of its destruction or damage.<sup>372</sup>

207. Regarding the first element of the *actus reus*, neither damage to nor destruction of property is explicitly mentioned as a crime under Article 5. In order to rise to the level of equal gravity of the enumerated crimes under Article 5 of the Statute, and therefore constitute persecution, Trial Chambers have held that the impact of the deprivation of destroyed property must be serious, such as where the property is indispensable, a vital asset to the owners, or the means of existence of a given population.<sup>373</sup> For the same reasons, the Trial Chamber concludes that, if the property in question is not destroyed, the damage to it must be extensive in order to satisfy the equal gravity requirement.<sup>374</sup> In this context, the terms “destruction” and “damage” are given their plain and common meanings, where the former term signifies demolition or reduction to a useless form,<sup>375</sup> and the latter refers to physical injury or harm to an object that impairs its usefulness or value.<sup>376</sup>

208. Regarding the second element of the *actus reus*, in order for its damage or destruction to constitute a crime against humanity, the property in question must not have been used for a military purpose at the time when the acts of hostility directed against this property took place. According to the Appeals Chamber in the *Brđanin* case, the burden is on the Prosecution to establish that the destruction or damage in question was not justified by military necessity. In other words, there is

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<sup>371</sup> *Blaškić* Appeal Judgement, paras. 144–149 (citing, *inter alia*, articles 51–53 of Additional Protocol I and article 147 of First Geneva Convention); *Kordić* Trial Judgement, paras. 206, 362; *Stakić* Trial Judgement, paras. 765–7; *Blaškić* Trial Judgement, paras. 227–234; *Brđanin* Trial Judgement, paras. 596–599, 1021, 1023; *Strugar* Trial Judgement, para. 308; *Krajišnik* Trial Judgement, para. 782.

<sup>372</sup> *Strugar* Appeal Judgement, para. 277; *Kordić* Appeal Judgement, para. 74; *Krajišnik* Trial Judgement, para. 782; *Stakić* Trial Judgement, para. 761.

<sup>373</sup> *Naletilić* Trial Judgement, para. 699; *Kupreškić et al.* Trial Judgement, para. 631; *cf.* *Stakić* Trial Judgement, para. 763 (“When the cumulative effect of such property destruction is the removal of civilians from their homes on discriminatory grounds, the wanton and extensive destruction and/or plundering of Bosnian Muslim civilian dwellings, buildings, business, and civilian personal property and livestock may constitute the crime of persecution.”) (quotation marks and footnote omitted).

<sup>374</sup> See *Kordić* Appeal Judgement, para. 108 (“The Appeals Chamber finds that the destruction of property, *depending on the nature and extent* of the destruction, may constitute a crime of persecutions of equal gravity to other crimes listed in Article 5 of the Statute.”) (emphasis added) (citing *Blaškić* Appeal Judgement, para. 149).

<sup>375</sup> See *The Oxford English Dictionary*, 2<sup>nd</sup> ed., 1989, vol. IV, pp. 538–539.

no presumption to that effect.<sup>377</sup> The Appeals Chamber also held that determining whether the destruction or damage occurred due to military necessity involves determination of what constitutes a military objective, and then referred to Article 52 of Additional Protocol I as containing the widely acknowledged definition of military objectives.<sup>378</sup> The fact that the building in question was located in the immediate vicinity of the military objectives does not justify its destruction since it is its use, and not its location, that determines the loss of protection.<sup>379</sup>

209. Regarding the third element of the *actus reus*, the requirement of causality will be satisfied when the damage to or destruction of property results from an act directed against this property.<sup>380</sup> Thus, for example, damage to protected property caused by ongoing fighting in its vicinity or even within it would not constitute a crime against humanity.<sup>381</sup>

210. The *mens rea* for this underlying offence is satisfied when the physical perpetrator committed the act that resulted in the destruction, with the intent to destroy or damage the religious or cultural property in question, or in reckless disregard of the likelihood of such destruction or damage.

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<sup>376</sup> See *The Oxford English Dictionary*, 2<sup>nd</sup> ed., 1989, vol. IV, p. 224.

<sup>377</sup> *Brđanin* Appeal Judgement, para. 337. The Trial Chamber notes that this discussion in *Brđanin* took place in the context of Article 3(d); however, as stated above, the Chamber nevertheless finds that the conclusions therein apply to destruction of religious or cultural buildings as a form of persecution, a crime against humanity. See also *Strugar* Trial Judgement, paras. 309–310 (holding that the protection accorded to cultural property is lost where such property is used for military purposes; and finding that the “military purposes” exception is consistent with the 1907 Hague Regulations and the Additional Protocols). The Appeals Chamber implicitly confirmed this finding, when it held that the Trial Chamber reasonably concluded that the attack on the Old Town was not justified by military necessity. *Strugar* Appeal Judgement, para. 279.

<sup>378</sup> *Brđanin* Appeal Judgement, para. 337.

<sup>379</sup> *Strugar* Trial Judgement, para. 310; *Naletilić* Trial Judgement, para. 604; *Martić* Trial Judgement, para. 98; but see *Blaškić* Trial Judgement, para. 185.

<sup>380</sup> *Strugar* Trial Judgement, para. 308.

<sup>381</sup> See, e.g., *Blaškić* Trial Judgement, para. 419 (accepting as a potentially exculpatory argument that the reason for the destruction of a school and a church was that they “became locations of fighting following the attack by the Fourth Military Police Battalion”) (quotation marks omitted).

### III. HISTORICAL BACKGROUND

211. Paragraphs 80 to 99 of the Indictment set out the Prosecution's position on the background and context for the crimes alleged, prior to the commencement of NATO air attacks on targets throughout the FRY on 24 March 1999. These paragraphs allege that, beginning in the late 1980s, Kosovo was placed firmly under the control of the federal and Serbian government authorities in a system that was highly repressive and discriminatory against the Kosovo Albanian population. They detail the emergence of the Kosovo Liberation Army in response to these events, and the start of an armed conflict between it and government forces. Specific incidents are described, beginning in February 1998, and attempts by the international community to address the crisis are briefly set out, ending with the collapse of these efforts immediately prior to the start of the NATO campaign.

212. These allegations are set out both to provide context for the crimes alleged in the Indictment (and for the responsibility of each of the Accused for these crimes), and to demonstrate the genesis of the alleged joint criminal enterprise, which the Prosecution asserts came into existence no later than October 1998. Against that background the Chamber can make any necessary findings with regard to the historical development of the Kosovo crisis up until 1998 without delving into a detailed examination of the entire disputed history of the region. Later sections discuss the formation and operation of the KLA, the response of the FRY/Serbian authorities and military and security forces in 1998, and the international and domestic efforts to negotiate a solution to the crisis in 1998 and early 1999.

#### A. 1989 CONSTITUTIONAL AMENDMENTS

213. Under the Constitution of the Socialist Federal Republic of Yugoslavia ("SFRY"), promulgated in February 1974, the SFRY comprised six republics and two autonomous provinces. Both of these provinces—Kosovo and Vojvodina—formed part of the Socialist Republic of Serbia. This Constitution gave the provinces a significant degree of autonomy, which included the power to draft their own constitutions, to have their own constitutional courts, to have a representative in the SFRY Presidency in Belgrade, and the right to initiate proceedings before the Constitutional Courts of Yugoslavia and Serbia.<sup>382</sup> In addition, they were represented, along with the republics, in the

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<sup>382</sup> P1623 (SFRY Constitution, 1974), articles 4, 206, 321, 375(3), 375(6); Ratko Marković, T. 13446 (13 August 2007); Radomir Lukić, T. 26240–26241 (15 May 2008).

SFRY Chamber of Republics and Provinces and the Federal Chamber, which was a legislative body with the power to amend the SFRY Constitution.<sup>383</sup>

214. Although not entered into evidence in the present proceedings, the Chamber notes that the Constitution of the Socialist Autonomous Province of Kosovo also came into force in 1974, recognising Kosovo as a part of Serbia.

215. The 1974 Constitution of Serbia in turn provided that the “working people and the nations and nationalities of Serbia shall exercise their sovereign rights in the Socialist Republic of Serbia and the socialist autonomous provinces in accordance with their constitutional rights”.<sup>384</sup> It further established the equality of the “nations and nationalities” in Serbia and guaranteed the right of each “nationality” to use its own language, and for minority “nations and nationalities” to be educated in their own language in schools and other educational institutions.<sup>385</sup>

216. According to constitutional experts Radomir Lukić and Ratko Marković, led by the Šainović and Milutinović Defences respectively, the provinces were atypical because they were represented in the Federation independently of Serbia, as though they were the subjects of the Federation and not of the Republic of Serbia.<sup>386</sup> For example, they were given *Kompetenz Kompetenz*, that is, the competence to rule on their own jurisdiction, which, according to Lukić, was the most important part of the “right to self-organizing”.<sup>387</sup> Furthermore, under the arrangement, Kosovo also enjoyed a measure of judicial autonomy. Thus, according to Lukić, the province had its own courts, and legal proceedings would end in the province. The state courts did not have authority over the decisions of the courts of the autonomous province.<sup>388</sup> However, the Constitution of Serbia also provided that, if a provincial law or enactment was inconsistent with a rule of the Republic, the republican rule would apply until the matter was settled by the Constitutional Court of Serbia.<sup>389</sup>

217. This state of affairs resulted in dissatisfaction amongst some constitutional experts in Serbia. They wrote a confidential document in 1977, commissioned by the Presidency of Serbia,

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<sup>383</sup> P1623 (SFRY Constitution, 1974), articles 284–285, 400–401; Radomir Lukić, T. 26314–26315 (16 May 2008).

<sup>384</sup> P1848 (Constitution of the Socialist Republic of Serbia, 1974), Basic Principles, I.

<sup>385</sup> P1848 (Constitution of the Socialist Republic of Serbia, 1974), articles 145, 147.

<sup>386</sup> Ratko Marković, T. 13074–13075, 13077–13078 (8 August 2007); Radomir Lukić, T. 26243 (15 May 2008).

<sup>387</sup> Radomir Lukić, T. 26242–26243 (15 May 2008).

<sup>388</sup> Radomir Lukić, T. 26302 (16 May 2008).

<sup>389</sup> P1848 (Constitution of the Socialist Republic of Serbia, 1974), article 229.

which criticised the 1974 constitutional arrangement of the republic for giving an excessive degree of power to the autonomous provinces.<sup>390</sup>

218. Later, in the early 1980s, following the death of SFRY President Josip Broz “Tito”, demonstrations took place as the Kosovo Albanians sought full recognition for Kosovo as a republic within the SFRY. Some of these demonstrations turned violent, and the police and the Yugoslav Army were deployed.<sup>391</sup> On the other hand, there were increasing calls by the Serbs for reduction of the autonomy of Kosovo. By March 1989 these calls led to approval from the SFRY Assembly for amendment of the Serbian Constitution in terms of “conclusions” that identified a need to “normalise” the “deteriorated situation” in Kosovo, and to *inter alia* “take measures immediately for establishing the criminal and other responsibility of those who have inspired or organised counter-revolutionary activities in Kosovo,” and to stem the emigration of Serbs and Montenegrins from Kosovo.<sup>392</sup> These conclusions referred to “special measures” that had already been put in place in Kosovo, which were also described by Human Rights Watch researcher Frederick Abrahams, who stated that the federal authorities had assumed responsibility for security within the province.<sup>393</sup> The SFRY Assembly further concluded that the process for amending the Serbian Constitution “should be finalised as soon as possible.”<sup>394</sup>

219. Prior to their adoption by the Serbian Assembly, the proposed amendments to the Serbian Constitution required approval from the Kosovo Assembly itself, which met on 23 March 1989. Both Veton Surroi, a Kosovo Albanian journalist, and Frederick Abrahams testified that this session of the Kosovo Assembly was held while the Assembly building in Priština/Prishtina was surrounded by police and military vehicles, although Abrahams was not present at the time.<sup>395</sup> Surroi also stated that he had seen a photograph indicating that one person who participated in the vote was not in fact a member of the Assembly. He further stated that he had heard that pressure to support the measures was put on members of the Assembly prior to the vote, although he had not spoken to any member of the Assembly who claimed to have voted in favour of the amendments due to such pressure.<sup>396</sup> The Chamber also received evidence—by way of a witness statement and

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<sup>390</sup> Ratko Marković, T. 13074–13084 (8 August 2007), discussing 1D125 (Presidency of the Socialist Republic of Serbia Working Group “Blue Book”, 11 March 1977).

<sup>391</sup> Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 3; Adnan Merovci, P2588 (witness statement dated 13 April 2000), para. 4; Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4310. See also Miroslav Mijatović, 6D1492 (witness statement dated 29 January 2008), para. 3.

<sup>392</sup> 1D751 (Conclusions of the SFRY Assembly, 3 March 1989), p. 1.

<sup>393</sup> Frederick Abrahams, P2228 (witness statement dated 24 January 2002), e-court p. 13.

<sup>394</sup> 1D751 (Conclusions of the SFRY Assembly, 3 March 1989), p. 2.

<sup>395</sup> Veton Surroi, T. 4534 (10 October 2006); Frederick Abrahams, P2228 (witness statement dated 24 January 2002), e-court p. 14.

<sup>396</sup> Veton Surroi, T. 4534–4535 (10 October 2006).

the transcript of his testimony in the Milošević trial of the deceased leader of the Democratic League of Kosovo (*Lidhja Demokratike e Kosovës*, “LDK”), Ibrahim Rugova—that pressure was exerted to influence the voting, and that the ten members of the Assembly who voted against the amendments were later subjected to reprisals.<sup>397</sup>

220. After receiving approval from the SFRY Assembly and positive votes in the provincial assemblies, on 28 March 1989 the Serbian Assembly adopted the proposed constitutional amendments.<sup>398</sup> Ratko Marković asserted throughout his evidence that the amendments did not affect the autonomous status of the two provinces, as provided by the SFRY Constitution, but rather simply effected a “redistribution of competencies”.<sup>399</sup> Similarly Lukić, while accepting that these amendments changed the position of the province of Kosovo within the republic by conferring power on the republican organs to legislate and exert judicial control over laws in the province, and by removing several powers from the provinces, also asserted that Kosovo’s autonomy was not reduced by the changes.<sup>400</sup> However, Lukić conceded that, following the constitutional amendments of 1990, Kosovo no longer had full judicial autonomy because it did not have legislative authority, but only an executive organ and it no longer had its own Supreme Court or Constitutional Court.<sup>401</sup>

221. The Chamber is in no doubt that the Kosovo Albanians perceived the amendments as removing the substantial autonomy previously enjoyed by Kosovo and Vojvodina, and that, in fact, that was their effect. For example, the regulation of education and the taxation system was placed within the jurisdiction of the Government of Serbia, and responsibility for the public security services was placed under republican control.<sup>402</sup> All were previously within the exclusive competence of the provincial authorities. Two amendments were of particular significance: the removal of the need for the consent of the provincial assemblies to further constitutional

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<sup>397</sup> Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4191.

<sup>398</sup> P858 (Decision to Pass Amendments IX to XLIX to the Constitution of the Socialist Republic of Serbia, 28 March 1989), p. 1.

<sup>399</sup> Ratko Marković, T. 13085 (8 August 2007).

<sup>400</sup> Radomir Lukić, T. 26244–26245 (15 May 2008); 2D393 (Expert Report of Radomir Lukić), e-court p. 21. According to Lukić, the highest legal document of a province was its statute as envisaged by the Constitution. However, territorial autonomy was never constituted in Kosovo by statute because the Kosovo Albanian citizens failed to recognise the constitutional order of Serbia. By way of contrast, the statute of Vojvodina was established in 1991 and never challenged. 2D393 (Expert Report of Radomir Lukić), e-court pp. 26–27.

<sup>401</sup> Radomir Lukić, T. 26305 (16 May 2008).

<sup>402</sup> *Compare* P1848 (Constitution of the Socialist Republic of Serbia, 1974), articles 299(10), 300–301, *with* P858 (Decision to Pass Amendments IX to XLIX to the Constitution of the Socialist Republic of Serbia, 28 March 1989), Amendments XXXII Item 4, XXXIII Items 4, 11, 13. *See also* Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4191–4192.

amendments affecting the whole republic; and the greater power of the Serbian Presidency to use MUP forces in Kosovo to “protect the constitutional order”.<sup>403</sup>

222. Following these constitutional amendments the situation in Kosovo deteriorated, with public protests leading to street violence.<sup>404</sup>

## B. DEVELOPMENT OF THE CRISIS

223. During 1990 the crisis in Kosovo intensified. On 26 June the Serbian Assembly declared that “special circumstances” existed in Kosovo due to “activities directed at overthrowing the constitutional order and the territorial integrity”.<sup>405</sup> On 2 July the members of the Kosovo Assembly were prevented from entering the Assembly building and dramatically issued a “constitutional statement” declaring Kosovo an independent republic. The Serbian Assembly formally suspended the Kosovo Assembly on 5 July.<sup>406</sup> The unsanctioned Assembly proceeded to draft a new “Kosovo Constitution”, which was subsequently endorsed in a local referendum.<sup>407</sup> In September 1990 a new Serbian Constitution further restricted the limited autonomy exercised by Kosovo.<sup>408</sup> The Kosovo Constitutional Court was later effectively abolished by decree of the Serbian Assembly.<sup>409</sup>

224. Frederick Abrahams characterised Kosovo at this time as like a “police state”.<sup>410</sup> In a 1992 report the United Nations Special Rapporteur on human rights in the former Yugoslavia expressed concern about discrimination against the Albanian population, allegations of torture and

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<sup>403</sup> Compare P1848 (Constitution of the Socialist Republic of Serbia, 1974), articles 363, 427, 430, with P858 (Decision to Pass Amendments IX to XLIX to the Constitution of the Socialist Republic of Serbia, 28 March 1989), Amendments XLIII, Item 3, XLVII Items 1, 6.

<sup>404</sup> Frederick Abrahams, P2228 (witness statement dated 24 January 2002), e-court p. 14; Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T) T. 4190–4191.

<sup>405</sup> P1855 (Decision Establishing that Special Circumstances Have Arisen in the Territory of the Socialist Autonomous Province of Kosovo, 26 June 1990), article 1; P1854 (The Law on the Action of Republican Agencies under Special Circumstances), article 2 para. 1.

<sup>406</sup> P1857 (Law on Termination of the Activity of the Assembly of the SAP of Kosovo, 5 July 1990); Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4193; Ratko Marković, T. 13283 (10 August 2007). The declaration of independence was declared invalid and quashed by the Constitutional Court of the SFRY in February 1991. P1870 (Decision to Assess the Constitutionality of the Constitutional Declaration of Kosovo, 20 May 1991), pp. 2–4.

<sup>407</sup> Frederick Abrahams, P2228 (witness statement dated 24 January 2002), e-court p. 14; Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4193–4194. See also Petar Damjanac T. 23701–23702 (5 March 2008).

<sup>408</sup> P855 (Constitution of the Republic of Serbia, 1990), articles 73, 109, 100.

<sup>409</sup> P875 (Decision on Relieving of Duty the Judge [*sic*] of the Kosovo Constitutional Court, Municipal Court Judges and Judges and Officers of the Municipal Organs for Misdemeanours, and Election of Judges to the District Court and Municipal Courts in Kosovo, 28 December 1990); see P855 (Constitution of the Republic of Serbia, 1990), articles 125, 130 (giving to the Constitutional Court of Serbia the power to rule on the constitutionality of the statutes of autonomous provinces).

<sup>410</sup> Frederick Abrahams, P2228 (witness statement dated 24 January 2002), e-court p. 14.

mistreatment in detention, and restrictions on the freedom of information.<sup>411</sup> According to Veton Surroi and Ibrahim Rugova, Albanian radio and television was restricted and newspapers were closed.<sup>412</sup> The Special Rapporteur also described how, from the early 1990s, Kosovo Albanians employed in public enterprises and institutions, including banks, hospitals, the post office, and schools, were sacked in large numbers.<sup>413</sup>

225. The Chamber has heard from several witnesses that Kosovo Albanian teachers refused to implement a new school curriculum introduced in 1990 or 1991, leading to the dismissal of many.<sup>414</sup> Kosovo Albanian schoolteacher Sabit Kadriu testified that Kosovo Albanian teachers were prevented from entering school premises for the new school year beginning in September 1991.<sup>415</sup> Kosovo Albanian pupils, who wished to be schooled in the Albanian language, were unable to attend classes.<sup>416</sup> As a result, the LDK and other Kosovo Albanian political parties developed an unofficial education system using private dwellings to hold classes for Kosovo Albanian children.<sup>417</sup> In June 1991 the Serbian Assembly issued a decision which removed a number of officials and professors at the University of Priština/Prishtina, and replaced them with non-Albanians. The University's assembly and several faculty councils were dissolved and replaced by provisional organs staffed predominantly by Serbs. These new organs controlled the disbursement of salaries and were obliged to report regularly to the Serbian Ministry of Education.<sup>418</sup> Kosovo Albanian students were unable to attend classes at the University at that

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<sup>411</sup> P808 (Report on the situation of human rights in the territory of the former Yugoslavia prepared by Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, 17 November 1992), paras. 99–113.

<sup>412</sup> Veton Surroi, T. 4538–4539 (10 October 2006); Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4197. *See also* P864 (various Decisions of the Serbian Assembly on assuming control of media outlets, 19 July 1990) (assuming state control of, *inter alia*, three newspapers in Kosovo); P884 (Law on Public Information, 28 March 1991) (creating restrictive conditions for the operation of the press).

<sup>413</sup> P808 (Report on the situation of human rights in the territory of the former Yugoslavia prepared by Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, 17 November 1992), paras. 100, 105–106, 113. *See also* Adnan Merovci, P2588 (witness statement dated 13 April 2000), pp. 4–5.

<sup>414</sup> Baton Haxhiu, T. 6073 (8 November 2006); Frederick Abrahams, P2228 (witness statement dated 24 January 2002), e-court p. 14. *See also* P808 (Report on the situation of human rights in the territory of the former Yugoslavia prepared by Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, 17 November 1992), para. 105 (stating that “thousands of teachers [had been] dismissed because they refused to teach the new curricula instituted by the Government of the Republic of Serbia in 1990,” and estimating that as a consequence 400,000 children had not attended school for approximately two years).

<sup>415</sup> Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 4.

<sup>416</sup> Fuat Haxhibeqiri, T. 1127–1132 (8 August 2006); Merita Deda, T. 1418–19 (10 August 2006).

<sup>417</sup> Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 4; Fuat Haxhibeqiri, P2308 (witness statement dated 28 August 2001), p. 2 (describing the situation in Đakovica/Gjakova municipality specifically); Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4198–4199.

<sup>418</sup> P889 (Decision on Taking Temporary Measures for the Social Protection of Self-Management Rights and Socially-Owned Property of the University of Priština and the Faculties Comprised within it, 27 June 1991), pp. 3–14. *See also* Frederick Abrahams, P2228 (witness statement dated 24 January 2002), e-court p. 14.



time, and so a parallel university education system was organised by the Kosovo Albanians, holding classes in private homes.<sup>419</sup>

226. In May 1992 unofficial parliamentary elections confirmed the LDK as the majority political party, and its leader, Ibrahim Rugova, was declared “president”. Subsequent elections for the Serbian National Assembly were boycotted by the Kosovo Albanians. A so-called “parallel system” thus developed, involving an unofficial “government” and the provision of services to the Kosovo Albanian population financed by a substantial émigré community and a voluntary “solidarity tax”.<sup>420</sup>

227. The Serbian authorities continued to encourage immigration or return to Kosovo by Serbs and Montenegrins, while Kosovo Albanians began to leave the province in large numbers.<sup>421</sup> In November 1992 the Serbian Assembly issued a Declaration on the Rights of National Minorities, which illustrates the tense and polarised situation at that time.<sup>422</sup> This blamed the human rights situation on “a change to the ethnic structure ... forcibly imposed by the Albanian separatist movement in recent decades.”<sup>423</sup> It described the recent history of Kosovo as one of “ethnic cleansing” of the Serbs and a process of “Albanisation” aimed at the secession of Kosovo and the creation of a “Greater Albania”. It referred to the Republic of Albania as the country of origin of the Kosovo Albanian population and accused it of backing attempts at secession. The tone of the entire Declaration seems designed to inspire fear amongst the Serb population of Kosovo of their Kosovo Albanian neighbours, who were portrayed as an ideologically homogeneous and dangerous group.

228. The Chamber has heard evidence of a system of discrimination against Kosovo Albanian workers through the 1990s. Some witnesses testified about mass dismissals of Kosovo Albanians from positions in industry and the public sector and their replacement by Serbs.<sup>424</sup> Others stated

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<sup>419</sup> Baton Haxhiu, P2478 (witness statement dated 22 August 2001), e-court p. 9; Rahim Latifi, P2382 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 3637–3640 (describing his own experiences, beginning in 1992, with the agriculture faculty of the University of Priština/Pristinë).

<sup>420</sup> Fuat Haxhibeqiri, T. 1180 (8 August 2006); Frederick Abrahams, P2228 (witness statement dated 24 January 2002), e-court p. 15; Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4198–4199; Ratko Marković, T. 13285 (10 August 2007).

<sup>421</sup> P901 (Programme of the Fund for the Development of the Republic of Serbia until the end of the Year 1992, 9 July 1992), p. 1; Frederick Abrahams, P2228 (witness statement dated 24 January 2002), e-court p. 15; P808 (Report on the situation of human rights in the territory of the former Yugoslavia prepared by Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, 17 November 1992), paras. 100, 104.

<sup>422</sup> P1348 (Declaration on Human Rights and the Rights of National Minorities, 27 November 1992).

<sup>423</sup> P1348 (Declaration on Human Rights and the Rights of National Minorities, 27 November 1992), items 3–4.

<sup>424</sup> Fuat Haxhibeqiri, P2308 (witness statement dated 28 August 2001), p. 2 (describing the situation in Đakovica/Gjakova municipality specifically); Bedri Hyseni, P2270 (witness statement dated 8 May 1999), e-court p. 2, P2270 (witness statement dated 1 September 2001), e-court p. 7; K63, P2443 (witness statement dated 28 May 2003), para. 2 (stating that he and others were dismissed from their jobs because they refused to join the SPS party); Sabit

that Kosovo Albanian workers were presented with a document to sign to indicate their loyalty to the state authorities, and that those who did not sign were dismissed.<sup>425</sup> Two witnesses also described difficulties they and other Kosovo Albanians had in gaining employment, which they considered to be due simply to the fact that they were Kosovo Albanian.<sup>426</sup>

229. Several official documents support these accounts of organised, state-sanctioned discrimination in the workplace. In July 1991, several Decisions from the Serbian Assembly were adopted pertaining to the removal of predominantly Kosovo Albanian officials in various business enterprises across Kosovo and their replacement by non-Albanians.<sup>427</sup> For example, in Vučitrn/Vushtrria the Kosovo Albanian director of the *Polet* company, along with the members of the Workers' Council, the Disciplinary Committee, and the Committee of Self-Managing Workers' Control, were all replaced by non-Albanian individuals. The reasons given for their dismissal included "illegal occurrences" in the enterprise, as well as a petition from "workers of Serbian and Montenegrin nationality", and abuse by the Workers' Council of the predominant position of the Kosovo Albanian workers. Reference was also made to the participation of the Kosovo Albanian workers in a general strike held on 3 September 1990.<sup>428</sup> Similar grounds were given for the dismissals of Kosovo Albanian directors and workers' councils in enterprises in *inter alia* Podujevo/Podujeva (claiming that the "Šiptar" workers had damaged inter-ethnic relations), "Gričar" (stating that the *Separacija Bentokos* enterprise had taken on "a large number of unproductive workers of Šiptar nationality which ha[d] exacerbated even more the bad relations and situation in the enterprise"), Vučitrn/Vushtrria (asserting that, in the *Kosovo-Trans* enterprise, the qualifications of the Kosovo Albanian workers were "extremely unsuitable", and noting that they "d[id] not recognise the municipal, provincial and republican bodies nor the constitution and laws of the Republic of Serbia"), Đakovica/Gjakova (accusing the managers of the forestry estate of selling timber and using the proceeds to finance "Albanian separatism"), Dečani/Dečan, Peć/Peja (stating that due to the "director's extremely familiar attitude to the workers of Šiptar nationality,

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Kadriu, P2377 (witness statement dated 10 December 2000), p. 4; Adnan Merovci, P2588 (witness statement dated 13 April 2000), pp. 4–5; Ibrahim Rugova, P2613 (witness statement dated 3 November 2001), p. 3, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4194–4195 (estimating that between 1989 and 1993, about 150,000 Kosovo Albanians were dismissed from their jobs out of a total workforce of 240,000). *But cf.* Adnan Merovci, P2588 (witness statement dated 13 April 2000), p. 5 (saying that some police officers "left" under pressure, perhaps implying a measure of personal choice); Petar Damjanac T. 23699–23702 (5 March 2008) (stating that in the early 1990s, Kosovo Albanians employed in the Ministry of the Interior staged a walk-out); Momir Pantić, 6D1604 (witness statement dated 26 March 2008), para. 4 (stating that some of his Kosovo Albanian colleagues in the Ministry of the Interior were forced to leave their jobs by the "Albanian political leadership").

<sup>425</sup> Fuat Haxhibeqiri, T. 1124–1126 (8 August 2006); Bedri Hyseni, P2270 (witness statement dated 1 September 2001), e-court p. 7; Veton Surroi, T. 4536–4537 (10 October 2006).

<sup>426</sup> Nazlie Bala, P2262 (witness statement dated 30 June 2001), e-court p. 5; Bedri Hyseni, P2270 (witness statement dated 1 September 2001), e-court p. 7.

<sup>427</sup> P893 (Decisions published in the Official Gazette of the Republic of Serbia, 31 July 1991).

<sup>428</sup> P893 (Decisions published in the Official Gazette of the Republic of Serbia, 31 July 1991), pp. 1, 4–5

interethnic and interpersonal relations in the enterprise ha[d] been disrupted”), and Mališevo/Malisheva.<sup>429</sup>

230. As noted above, in 1992 the United Nations Special Rapporteur on human rights in the former Yugoslavia expressed concern about discrimination against the Albanian population of Kosovo, including discrimination in labour relations, the dismissal of thousands of Kosovo Albanian workers, and the effect of the Law on Labour Relations under Special Circumstances. He also referred to the requirement imposed on Kosovo Albanian workers to sign a document confirming their acceptance of the measures taken by the Serbian authorities in Kosovo, which was described by witnesses Veton Surroi, Fuat Haxhibeqiri, and Bedri Hyseni.<sup>430</sup>

### C. ATTEMPTS TO ADDRESS THE CRISIS

231. The Chamber heard evidence about attempts made to negotiate an end to the crisis, primarily from Ratomir Tanić. Tanić testified that by the mid-1990s he had a long-standing working relationship with the Serbian State Security Service, and had also accepted a position as an advisor to the president of the New Democracy political party (at the time part of the coalition government of Serbia) in 1994 or 1995.<sup>431</sup> He was personally involved, on behalf of New Democracy, in negotiations with the Kosovo Albanians from 1995 to 1997, on instructions from Slobodan Milošević.<sup>432</sup> Tanić asserted that Milošević and the Kosovo Albanians agreed that a third-party should be involved in the negotiations, and thus the Bertelsmann Science Foundation and Monsignor Paglia of the Community of San Egidio, a Vatican para-diplomatic organ, were chosen.<sup>433</sup>

232. According to Tanić, under the auspices of the Bertelsmann Science Foundation a collaborative project report, *Exploring Futures for Kosovo: Kosovo Albanians and Serbs in Dialogue*, was prepared and “served as the basis for negotiations involving the international community.”<sup>434</sup> During the negotiations the Kosovo Albanians were represented by Fehmi Agani,

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<sup>429</sup> P893 (Decisions published in the Official Gazette of the Republic of Serbia, 31 July 1991), pp. 17, 26, 30–31, 40, 44–45, 49, 59–60.

<sup>430</sup> P808 (Report on the situation of human rights in the territory of the former Yugoslavia prepared by Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, 17 November 1992), paras. 99–113.

<sup>431</sup> Ratomir Tanić, T. 6279–6283 (10 November 2006). See also P695 (New Democracy Press Conference, reported in *Politika*, 16 September 1994).

<sup>432</sup> Ratomir Tanić, 1D44 (witness statement dated 19 July 2000), paras. 1, 4–5; Ratomir Tanić, T. 6285, 6289 (10 November 2006).

<sup>433</sup> Ratomir Tanić, 1D44 (witness statement dated 19 July 2000), para. 12.

<sup>434</sup> Ratomir Tanić, T. 6308–6309 (10 November 2006). See generally P704 (*Exploring Futures for Kosovo: Kosovo Albanians and Serbs in Dialogue*, August 1997) (addressing a number of then contemporary issues in Kosovo, and including contributions from politicians and scholars—including Veton Surroi).

who was appointed by Ibrahim Rugova. While the negotiations were conducted “discretely”, they did result in a document that Tanić described as an “agreement” emphasising the need for dialogue, international assistance, and respect for democratic principles and human rights.<sup>435</sup> However, according to Tanić, the negotiations foundered when Milošević withdrew his support for them in 1997.<sup>436</sup>

233. While the Chamber has reservations about some aspects of the evidence given by Ratimir Tanić, his involvement in negotiations with the Kosovo Albanians in the 1995 to 1997 period is confirmed by Veton Surroi and Baton Haxhiu. Surroi described his own participation in negotiations conducted under the auspices of the Bertelsmann Science Foundation, which resulted in a document called “Joint Recommendations on the Kosovo Conflict”, setting out a framework for future talks about the status of Kosovo.<sup>437</sup> Haxhiu also testified that he had heard that Fehmi Agani had been involved in negotiations with people from the New Democracy party, including Ratimir Tanić.<sup>438</sup> While Surroi expressed doubts about Tanić and his sincerity, particularly with regard to his relationship with Milošević,<sup>439</sup> and Haxhiu questioned Tanić’s position and attitude,<sup>440</sup> the evidence given by both confirms that there were processes being undertaken involving both the Kosovo Albanian and the Serbian sides seeking ways to resolve the situation in Kosovo in the mid-1990s.

234. The involvement of Monsignor Paglia of the Community of San Egidio led to the signing of the San Egidio Agreement. This agreement aspired to the “normalization of the education system for Albanian youth in Kosovo” and the return of Albanian teachers and students to schools. It also established a “mixed group” for its implementation.<sup>441</sup> According to Veton Surroi, this Agreement did not become public knowledge until after its signature by Slobodan Milošević and Ibrahim Rugova on 1 September 1996.<sup>442</sup> Rugova testified in the *Milošević* case that, as a gesture of good

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<sup>435</sup> P2481 (undated attachment to Tanić witness statement, headed “Jointly Agreed Positions”).

<sup>436</sup> Ratimir Tanić, T. 6312–6314 (10 November 2006).

<sup>437</sup> Veton Surroi, P2361 (witness statement dated 27 August 2001), pp. 9–10. *See generally* P712 (Joint Recommendations on the Kosovo Conflict, Bertelsmann Science Foundation, 1997).

<sup>438</sup> Baton Haxhiu, P2478 (witness statement dated 22 August 2001), e-court p. 11.

<sup>439</sup> Veton Surroi, P2361 (witness statement dated 27 August 2001), p. 9.

<sup>440</sup> Baton Haxhiu, T. 6135 (8 November 2006).

<sup>441</sup> Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4207, P2613 (witness statement dated 3 November 2001), p. 5.

<sup>442</sup> Veton Surroi, P2361 (witness statement dated 27 August 2001), p. 9. *See generally* P715 (Milošević-Rugova Education Agreement, 1 September 1996); 1D559 (Milošević-Rugova Education Agreement, 1 September 1996) (providing an alternate translation).

faith, he signed the agreement only in his name, not as President of Kosovo, as this position was not recognised by the FRY/Serbian authorities.<sup>443</sup>

235. When no concrete steps were taken to realise the agreement, Kosovo Albanian students participated in demonstrations in both 1997 and 1998.<sup>444</sup> According to Baton Haxhiu these demonstrations were violently quelled by the Serbian police, who used tear gas and beat many of the student demonstrators.<sup>445</sup> A secondary agreement, contemplating the gradual re-opening of the university and schools and allowing for the sharing of facilities by Albanian and Serb students, was signed on 23 March 1998.<sup>446</sup> The Institute of Albanology was the first to re-open, on 31 March 1998, but few other faculties followed suit.<sup>447</sup> In June 1998 Monsignor Paglia, who had been involved in the negotiation of the original agreement, sent a letter to Serbian President Milutinović, expressing dissatisfaction with the implementation process and referring to discussions that he considered to have been “devoid of any result, because of the Serb prejudicial question”, which, he said, opposed the concession of spaces to Albanian students in the University.<sup>448</sup> He noted that the deadline of 31 May, which had been set for the re-opening of university faculties, had not been met, and stated that the Albanian side was willing to comply with the terms of the agreement.<sup>449</sup>

236. Despite some further developments in mid-1998, the agreement was never fully implemented, and the deepening crisis in that year rendered further steps in the direction of real implementation impossible.<sup>450</sup>

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<sup>443</sup> Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4209.

<sup>444</sup> Veljko Odalović, T. 14465–14466 (27 August 2007) (stating that there was great difficulty in negotiating how a text on the implementation of the agreement should be worded, and thus no concrete measures were put in place); Baton Haxhiu, P2478 (witness statement dated 22 August 2001), e-court p. 9.

<sup>445</sup> Baton Haxhiu, T. 6076–6078 (8 November 2006).

<sup>446</sup> 2D1 (Agreed measures for the implementation of the accord on education, 23 March 1998); Veton Surroi, T. 4583 (10 October 2006).

<sup>447</sup> Veton Surroi, T. 4582 (10 October 2006) (stating that two or three colleges were re-opened, along with the faculty of philosophy and the technical faculty); Baton Haxhiu, T. 6076 (8 November 2006) (stating that none of the university colleges were re-opened to Albanian students, and that the only institute that was permitted was the Institute of Albanology); Ibrahim Rugova, P2613 (witness statement dated 3 November 2001), p. 6 (stating that the Institute of Albanology and one faculty were re-opened).

<sup>448</sup> P2885 (Letter to Milan Milutinović from Monsignor Paglia, 4 June 1998).

<sup>449</sup> P2885 (Letter to Milan Milutinović from Monsignor Paglia, 4 June 1998). However, Milomir Minić and Zoran Anđelković testified that it was the firm intention of the government to implement the agreement. Milomir Minić, T. 14783 (31 August 2007); Zoran Anđelković, T. 14653–14654 (30 August 2007).

<sup>450</sup> Veton Surroi, T. 4582–4583 (10 October 2006), P2362 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 3403; Wolfgang Petritsch, T. 10781 (1 March 2007); Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4211.

#### D. FINDINGS

237. The Chamber concludes that from around 1989 differences between the aspirations of the majority of the Kosovo Albanian population and the designs of the FRY and Serbian state authorities created a tense and unstable environment. Efforts by the authorities to exert firmer control over the province and to diminish the influence of the Kosovo Albanians on local governance, public services, and economic life polarised the community. Indeed, laws, policies, and practices were instituted that discriminated against the Albanians, feeding into local resentment and feelings of persecution. At the same time, fears among the minority non-Albanian population of Kosovo were heightened by state rhetoric and the actions of the Kosovo Albanians creating their own “parallel” institutions. These fears increased with the emergence of the Kosovo Liberation Army in 1996 and its actions thereafter, as discussed further below. While some efforts were made in the mid-1990s to address the situation in Kosovo, no serious attempts to resolve the deepening crisis were engaged in by either side until the international community became involved. These diplomatic initiatives and the involvement of some of the Accused in them are discussed below.

238. Having set out the background to the conflict in Kosovo that intensified in 1998 and 1999, and before addressing the events of those years in detail, the Chamber next discusses the political and constitutional framework of the FRY and Serbia, and analyses in particular the powers of the Serbian President, who at the time was the Accused Milan Milutinović.

#### IV. POLITICAL AND CONSTITUTIONAL STRUCTURE AND FUNCTIONING OF THE FRY AND SERBIA IN 1998 AND 1999

##### A. CONSTITUTIONAL STRUCTURE OF THE FRY AND REPUBLIC OF SERBIA

239. At the same time as the situation in Kosovo was deteriorating in the late 1980s and early 1990s, the SFRY began to break up. In 1989 the Socialist Republic of Slovenia adopted certain amendments to its Constitution overriding some of the provisions of the SFRY Constitution, which was eventually followed by Slovenia's proclamation of independence in December 1990. At around the same time the same course of action was followed in Croatia.<sup>451</sup> There ensued a period of political uncertainty. That was followed on 28 September 1990 by the proclamation by the Assembly of the Socialist Republic of Serbia of the Constitution of the Republic of Serbia ("Serbian Constitution").<sup>452</sup> This Constitution, as will be seen below, contained provisions unusual for a federal unit which were made in anticipation of the creation of an independent Serbian state. Eighteen months later, on 27 April 1992, following the secession of other federal units, the Federal Council of the SFRY issued a decision on the proclamation of the Constitution of the FRY.<sup>453</sup> This federation, consisting of the Republic of Serbia and the Republic of Montenegro, subsisted until 2003. In the period relevant to this Indictment the Serbian Constitution of 1990 and the FRY Constitution of 1992 were in force.

##### 1. Constitutional structure of the Republic of Serbia

240. In terms of article 9 of the Serbian Constitution, "constituent and legislative power" was vested in the National Assembly; the "executive power" was vested in the Government; and the Serbian President represented the Republic of Serbia, as well as its "state unity".<sup>454</sup> With respect to the territorial organisation of the Republic of Serbia, the Constitution provided that the autonomous provinces of Vojvodina and Kosovo and Metohija would each have their own assembly, executive council, and agencies of administration.<sup>455</sup> As discussed above, these powers were less extensive than those previously enjoyed under the SFRY Constitution of 1974.<sup>456</sup>

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<sup>451</sup> Ratko Marković, T. 13115–13116 (8 August 2007).

<sup>452</sup> P855 (Decision on the Proclamation of the Constitution of the Republic of Serbia, 28 September 1990).

<sup>453</sup> P856 (Decision on the Proclamation of the Constitution of the Federal Republic of Yugoslavia, 27 April 1992).

<sup>454</sup> P855 (Constitution of the Republic of Serbia, 1990), article 9.

<sup>455</sup> P855 (Constitution of the Republic of Serbia, 1990), article 111; 1D330 (Law on the Territorial Organisation of the Republic of Serbia and Local Self-Government), article 14.

<sup>456</sup> See Section III.

241. The Constitution also made provision for the Republic of Serbia to regulate its territorial integrity and international relations with other states, to deal with its defence and security, and to take emergency measures.<sup>457</sup> However, at the same time, article 135 provided as follows:

The rights and duties vested under the present Constitution of the Republic of Serbia, which is part of the Socialist Federal Republic of Yugoslavia, and which, under the Federal Constitution, are to be exercised in the Federation shall be exercised in accordance with the Federal Constitution.<sup>458</sup>

The federal constitution in question was the SFRY Constitution.<sup>459</sup>

242. Each of the state organs had a number of specific powers and responsibilities to enable it to fulfil its respective constitutional roles. For example, the Serbian National Assembly could, *inter alia*, decide on amending the Constitution, adopt laws and general enactments, determine the territorial organisation of the Republic, decide on war and peace, and effect control over the work of the Government and other organs.<sup>460</sup> The National Assembly also elected its president and vice-presidents, ministers of the Republic, and deputy prime ministers, from among the Assembly representatives.<sup>461</sup>

243. It was for the Government of the Republic of Serbia, comprising the prime minister, deputy prime ministers, and ministers,<sup>462</sup> to conduct the policy of the Republic and execute laws of the National Assembly in accordance with the Serbian Constitution.<sup>463</sup> It also supervised the workings

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<sup>457</sup> P855 (Constitution of the Republic of Serbia, 1990), article 72.

<sup>458</sup> P855 (Constitution of the Republic of Serbia, 1990), article 135.

<sup>459</sup> Ratko Marković, a constitutional law expert who as a member of the constitutional commission participated in the creation of the Serbian Constitution, was questioned extensively about this article. He explained that it was the product of the constitutional commission. Ratko Marković, T. 13311–13326 (10 August 2007), T. 13632–13633 (14 August 2007). When asked by the Chamber how long it would have taken to amend the Serbian Constitution in case of SFRY dissolution instead of pre-emptively creating the ministries, Marković responded that it would have taken a minimum of two months. Ratko Marković, T. 13279 (9 August 2007). It was also suggested to Marković that a decision about article 135 was a political one, rather than legal, and he was therefore asked how many politicians were on the commission. Marković commented that most decisions relating to the Constitution were political but was adamant that the decision on article 135 was not made by side-stepping the constitutional commission and was simply a product of the circumstances at the time, including the fact that Socialist Republic of Croatia had a similar provision in its constitution. Furthermore, at the time, none of those working on the commission realised the importance this provision would later get during the proceedings before the Tribunal. Ratko Marković, T. 13320–13326 (10 August 2007), T. 13629–13671 (15 August 2007).

<sup>460</sup> P855 (Constitution of the Republic of Serbia, 1990), article 73.

<sup>461</sup> Ratko Marković, T. 12994–12995 (7 August 2007); P855 (Constitution of the Republic of Serbia, 1990), article 78; 1D413 (Decision on Election of Deputy Prime Minister and Minister of Interior in the Government of Republic of Serbia, 15 April 1997).

<sup>462</sup> P855 (Constitution of the Republic of Serbia, 1990), article 91; 1D375 (Law on Amendments to the Law on the Government of the Republic of Serbia), article 2. On 1 July 1993, a new position of a Deputy Minister was created. It was to provide for a person that would be available to the National Assembly in case of the absence of a minister him or herself. See Ratko Marković, T. 12993–12994 (7 August 2007); 1D376 (Law on Changes and Amendments to the Law on State (Republic) Administration), article 44(a); 1D413 (Decision on Election of Deputy Prime Minister and Minister of Interior in the Government of Republic of Serbia, 15 April 1997).

<sup>463</sup> P855 (Constitution of the Republic of Serbia, 1990), article 90(1).



of the ministries and special organisations.<sup>464</sup> At the request of the President of Serbia, the Government was bound to take a position on certain issues within its jurisdiction and inform the President of this within a period that the President determined, which could not be shorter than 48 hours.<sup>465</sup>

244. As for the powers and responsibilities of the President of the Republic of Serbia, these were governed by articles 83, 85, 89, and 132 of the Serbian Constitution. According to article 83, the President could *inter alia* propose to the National Assembly a candidate for the post of Prime Minister after hearing the opinion of the majority in the National Assembly;<sup>466</sup> promulgate laws by ordinance;<sup>467</sup> conduct affairs in the sphere of relations between the Republic of Serbia and other states and international organisations in accordance with law;<sup>468</sup> lead the armed forces in peace- and war-time, and organise preparations for defence in accordance with law;<sup>469</sup> establish the fact of an immediate danger of war, or proclaim a state of war, if the National Assembly was unable to meet and after obtaining an opinion from the Prime Minister;<sup>470</sup> and, during a state of war or immediate danger of war, pass enactments relating to questions falling within the competence of the National Assembly.<sup>471</sup> Further, the President was obliged, at the proposal of the Government, and if the security of the Republic was threatened, to proclaim a state of emergency and adopt instruments for taking measures required by such circumstances.<sup>472</sup> Article 85 provided that the President could ask the Government to “state its positions concerning issues falling within its jurisdiction,”<sup>473</sup> while article 89 gave the President the power to dissolve the National Assembly on the basis of a formal and well-reasoned proposal by the Government.<sup>474</sup> The President could also, pursuant to article 132 of the Serbian Constitution, make proposals for amending the Constitution, which would then be voted on by the National Assembly.<sup>475</sup> According to his oath of office, the President was to

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<sup>464</sup> P855 (Constitution of the Republic of Serbia, 1990), article 90(7).

<sup>465</sup> P1862 (Law on Serbian Government), article 19; 1D374 (Rules of Procedure of the Government of the Republic of Serbia), article 47.

<sup>466</sup> P855 (Constitution of the Republic of Serbia, 1990), article 83(1); 1D372 (Rules of Procedure of the National Assembly of the Republic of Serbia), article 117.

<sup>467</sup> P855 (Constitution of the Republic of Serbia, 1990), articles 83(3), 84; 1D372 (Rules of Procedure of the National Assembly of the Republic of Serbia), article 119; IC132 (Power Point presentation on differences between a decree and an ordinance).

<sup>468</sup> P855 (Constitution of the Republic of Serbia, 1990), article 83(4).

<sup>469</sup> P855 (Constitution of the Republic of Serbia, 1990), article 83(5).

<sup>470</sup> P855 (Constitution of the Republic of Serbia, 1990), article 83(6).

<sup>471</sup> P855 (Constitution of the Republic of Serbia, 1990), article 83(7). With respect to this power of enacting laws, any laws enacted in this manner have to be submitted to the National Assembly for approval as soon as the National Assembly is in a position to meet.

<sup>472</sup> P855 (Constitution of the Republic of Serbia, 1990), article 83(8). *See also* 1D349 (Decision on the formation of the support services of the President of the Republic, 17 July 1992).

<sup>473</sup> P855 (Constitution of the Republic of Serbia, 1990), article 85.

<sup>474</sup> P855 (Constitution of the Republic of Serbia, 1990), article 89.

<sup>475</sup> P855 (Constitution of the Republic of Serbia, 1990), article 132.

devote him or herself to the preservation of the sovereignty and integrity of the Republic of Serbia, and to the realisation of civil and human rights, as well as the preservation of peace and welfare, for all its citizens.<sup>476</sup>

245. On 11 February 1991, in preparation for the dissolution of the SFRY, the National Assembly enacted a Law on Ministries. Article 5 of that law provided for the creation of 20 ministries to carry out day-to-day governmental functions in their areas of responsibility, some of which were reserved to the federal authorities, and including Ministries of Defence, Interior, International Economic Relations and Economic Development, and Foreign Affairs.<sup>477</sup> In addition, the Law on Defence of 18 July 1991, dealing with the rights and responsibilities of the Republic of Serbia in the domain of defence, made provisions for matters falling under the jurisdiction of the Federal Government.<sup>478</sup> For example, article 5 provided for the duties of the Serbian President in organising preparations for defence, including among other things, to “lead the armed forces” in times of peace and war;<sup>479</sup> issue plans for the defence of the Republic of Serbia;<sup>480</sup> order the implementation of measures for a state of alert,<sup>481</sup> and have the authority to order the use of police in war, in times of an immediate threat of war, and in emergency situations, in order to protect the rights and obligations of the Republic of Serbia and its citizens, as provided for by the Serbian Constitution.<sup>482</sup> However, despite the provision referring to the “armed forces” of Serbia, no Serbian army existed during the relevant Indictment period. Rather, the Yugoslav Army (“VJ”) was the only official armed force, representing the FRY as a whole.

246. Following the creation of the new Federation in 1992 a law was passed abolishing the Ministries of Defence, Foreign Affairs, and International Economic Relations and Economic Development, all of which were deemed federal ministries. The other ministries, including the Serbian Ministry of Interior, continued to operate.<sup>483</sup> Surprisingly, similar amendments were not made to the Law on Defence, or to article 83 of the Serbian Constitution, thus ostensibly leaving the Serbian President in charge of the “armed forces” and defence issues.

247. As far as the Serbian President’s relationship to the Serbian Ministry of Interior (“Serbian MUP”) is concerned, the Serbian Law on Internal Affairs provided that, “at the request of the

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<sup>476</sup> P855 (Constitution of the Republic of Serbia, 1990), article 86; 1D372 (Rules of Procedure of the National Assembly of the Republic of Serbia), article 116.

<sup>477</sup> 1D456 (Law on Ministries), article 5.

<sup>478</sup> P1874 (Serbian Law on Defence).

<sup>479</sup> P1874 (Serbian Law on Defence), article 5(1).

<sup>480</sup> P1874 (Serbian Law on Defence), article 5(2).

<sup>481</sup> P1874 (Serbian Law on Defence), article 5(3).

<sup>482</sup> P1874 (Serbian Law on Defence), article 5(5).

<sup>483</sup> 1D142 (Law Amending the Law on Ministries), article 5, also admitted as 1D457.

National Assembly and the President of the Republic”, the Minister of Interior should submit a report on the work of the Ministry, and on the security situation in the Republic, at any time.<sup>484</sup> In addition, pursuant to article 6 of the Law on Ranks of Members of the Ministry of Interior, the President could promote senior officials to the rank of General, or promote Generals to higher General ranks within the MUP.<sup>485</sup> He could also grant exceptional promotions to Generals and senior officials on the recommendation of the Minister of Interior.<sup>486</sup>

## 2. Constitutional structure of the FRY

248. The FRY Constitution, which superseded the prior SFRY Constitution in April 1992, provided that the FRY was a sovereign federal state founded on the equality of its member republics, namely Serbia and Montenegro.<sup>487</sup> According to article 6, a member republic was to be sovereign in matters which were not reserved under the FRY Constitution to the jurisdiction of the FRY.<sup>488</sup> In addition, within its competences, a member republic could maintain relations with foreign states, join international organisations, and conclude international agreements, as long as those agreements did not operate to the detriment of the FRY.<sup>489</sup> Finally, article 115 of the FRY Constitution provided that the Constitutions and the legislation of Serbia and Montenegro should be in conformity with the FRY Constitution.<sup>490</sup>

249. Section IV of the FRY Constitution regulated the jurisdiction of the FRY. Article 77 thereof provided for the FRY to, through its organs, enact and enforce federal legislation in matters concerning *inter alia* international relations and the defence and security of the FRY.<sup>491</sup>

250. As in Serbia, the principal state organs were the Assembly, the Government, and the President. The Federal Assembly was composed of a Chamber of Citizens and a Chamber of Republics. Although Serbia had a far greater population than Montenegro, the Chamber of Republics was composed of an equal number of representatives from each Republic as part of the checks and balances for ensuring proper representation of both.<sup>492</sup> Its powers and responsibilities included deciding on war and peace, and proclaiming a state of war, state of imminent threat of

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<sup>484</sup> P1737 (Serbian Law on Internal Affairs), article 9.

<sup>485</sup> P1015 (Law on the Ranks of Members of the Ministry of Interior), article 6, also admitted as 1D237.

<sup>486</sup> P1015 (Law on the Ranks of Members of the Ministry of Interior), article 10, also admitted as 1D237. *See also* article 13 of the same Law.

<sup>487</sup> 1D139 (Constitution of the FRY, 1992), articles 1, 2.

<sup>488</sup> 1D139 (Constitution of the FRY, 1992), article 6.

<sup>489</sup> 1D139 (Constitution of the FRY, 1992), article 7.

<sup>490</sup> 1D139 (Constitution of the FRY, 1992), article 115.

<sup>491</sup> 1D139 (Constitution of the FRY, 1992), article 77.

<sup>492</sup> 1D139 (Constitution of the FRY, 1992), article 80; Ratko Marković, T. 12977 (7 August 2007).

war, or state of emergency,<sup>493</sup> as well as appointing the FRY President and the FRY Prime Minister.<sup>494</sup>

251. The Federal Government comprised a prime minister, deputy prime minister, and federal ministers.<sup>495</sup> Its tasks included formulation and conduct of domestic and foreign policy;<sup>496</sup> fostering of relations between the FRY and other states and international organisations;<sup>497</sup> direction and co-ordination of the work of federal ministries;<sup>498</sup> calling for general mobilisation and organising of any defence preparations;<sup>499</sup> in the event of the Federal Assembly being unable to meet, proclamation of an imminent threat of war, state of war, or emergency, subject to the opinion of the FRY President and the Presidents of the Federal Assembly Chambers;<sup>500</sup> and, in the same circumstances, adoption of measures regulating matters within the jurisdiction of the Federal Assembly.<sup>501</sup> The FRY Prime Minister had the power to appoint and remove ministers, including deputy prime ministers, but there had to be support for this in the Federal Assembly.<sup>502</sup> The number of deputy prime ministers or the total number of Cabinet ministers was not defined by the Constitution; instead it was left for the prime minister to decide. The same was the case with the scope of work of the deputy prime ministers and ministers without portfolio.<sup>503</sup> According to Radomir Lukić, under the FRY Constitution the role of the Prime Minister was absolutely dominant in relation to other ministry positions to such an extent that the other Federal Cabinet members were essentially advisors without any scope for autonomous work and decision-making.<sup>504</sup>

252. The functions of the FRY President included representing the FRY at home and abroad,<sup>505</sup> promulgating federal laws by ordinance;<sup>506</sup> and, after having heard the opinions of spokesmen for

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<sup>493</sup> 1D139 (Constitution of the FRY, 1992), article 78(3).

<sup>494</sup> 1D139 (Constitution of the FRY, 1992), article 78(7).

<sup>495</sup> 1D139 (Constitution of the FRY, 1992), article 100. *See also* 1D254 (Decree on Establishment of Federal Government services); 1D266 (Decision on the Appointment of the President and Members of the Law Council of the Federal Government).

<sup>496</sup> 1D139 (Constitution of the FRY, 1992), article 99(1).

<sup>497</sup> 1D139 (Constitution of the FRY, 1992), article 99(2); 1D246 (Law on Foreign Affairs, 4 December 1998).

<sup>498</sup> 1D139 (Constitution of the FRY, 1992), article 99(7).

<sup>499</sup> 1D139 (Constitution of the FRY, 1992), article 99(9).

<sup>500</sup> 1D139 (Constitution of the FRY, 1992), article 99(10).

<sup>501</sup> 1D139 (Constitution of the FRY, 1992), article 99(11). The Federal Government is obliged to seek an approval of the Federal Assembly for these measures as soon as the latter is able to convene.

<sup>502</sup> Momir Bulatović, T. 13900–13901 (17 August 2007); 1D139 (Constitution of the FRY, 1992), article 102.

<sup>503</sup> 2D393 (Expert Report of Radomir Lukić), e-court pp. 82–83.

<sup>504</sup> 2D393 (Expert Report of Radomir Lukić), e-court p. 84.

<sup>505</sup> 1D139 (Constitution of the FRY, 1992), article 96(1); 1D223 (Rules of Procedure of the Federal Government, 14 September 1994), articles 3 and 16; 1D261 (Decision Amending the Rules of Procedure of the Federal Government, 5 June 1998).

the parliamentary groups in the Federal Assembly, nominating candidates for the FRY Prime Minister.<sup>507</sup> Unlike the President of the Republic of Serbia, the FRY President was elected by the Federal Assembly, structured as set out in paragraph 250, rather than by popular vote because the eligible voters in Serbia far outnumbered those in Montenegro.<sup>508</sup>

253. According to Radomir Lukić, the Constitutional system of the FRY was based on a “chancellor” type of government, and, as stated above, the key role in the Federal Cabinet was accorded to the FRY Prime Minister.<sup>509</sup> In contrast, he asserted that the President of the Federal Republic had “very weak” powers and authority according to the FRY Constitution, except in relation to the army. He later conceded that he recalled reading in newspapers that Slobodan Milošević was the most powerful person in Yugoslavia during his tenure as the FRY President, but refused to discuss whether this was an accurate description of the reality or how that fitted with the theoretical position set out by him.<sup>510</sup>

254. Lukić also testified that, because the constituent republics of the FRY retained sovereign powers in all issues that were not expressly regulated by the Constitution of the FRY, no organ of the FRY Government, including the FRY President, held any legal powers over the republican Ministries of Interior.<sup>511</sup> When presented with examples of Milošević ordering the engagement of the Serbian (Republican) MUP in Kosovo, Lukić reiterated that there existed no constitutional provision allowing for this.<sup>512</sup>

### 3. Constitutional and statutory position of the VJ

255. Section VIII of the FRY Constitution dealt with the Army of the FRY (“*Vojska Jugoslavije*” or “VJ”). Article 135 provided that in both war- and peace-time the VJ was under the command of the FRY President, “in accordance with decisions” of the Supreme Defence Council (“SDC”). The same article provided that Supreme Defence Council consisted of the FRY President and the

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<sup>506</sup> 1D139 (Constitution of the FRY, 1992), article 96(2); IC132 (Power Point presentation on differences between a decree and an ordinance).

<sup>507</sup> 1D139 (Constitution of the FRY, 1992), article 96(3).

<sup>508</sup> Ratko Marković, T. 12977 (7 August 2007).

<sup>509</sup> Radomir Lukić, T. 26214–26217 (15 May 2008).

<sup>510</sup> Radomir Lukić, T. 26217–26218, 26258–26263 (15 May 2008). In response to questions from the Chamber, Lukić explained that Milošević, as the FRY President, was able to reach an agreement with Holbrooke on the reduction of Serbian MUP forces in Kosovo because he, as well as the Prime Minister of the FRY and the FRY Minister of Foreign Affairs, held the constitutional power, pursuant to article 96(1) of the FRY Constitution, to enter into treaties and make agreements with international community. In other words, according to Lukić, the FRY President, and not the President of Serbia, embodied the contractual power of the FRY. Radomir Lukić, T. 26280 (15 May 2008), T. 26293–26297 (16 May 2008).

<sup>511</sup> Radomir Lukić, T. 26220–26221 (15 May 2008).

<sup>512</sup> Radomir Lukić, T. 26339–26343 (16 May 2008).

presidents of the member republics, and that the former was to preside over the Supreme Defence Council.<sup>513</sup> Article 136 then gave the FRY President the power to appoint, promote, and dismiss VJ officers.<sup>514</sup>

256. On 18 May 1994, after adoption by the Federal Assembly, the FRY Law on Defence was proclaimed by the FRY President at the time, Zoran Lilić.<sup>515</sup> Article 8 of that statute provided that, in case of an imminent threat of war, a state of war, or a state of emergency, the FRY President shall, “in accordance with decisions of the Supreme Defence Council”, order measures of readiness, mobilisation, and use of the VJ, in order to prevent and eliminate the threat to the defence and security of the country.<sup>516</sup>

257. As discussed in more detail below in Section VI.A.1.d, article 40 of the FRY Law on Defence provided for the powers and responsibilities of the FRY President in the domain of defence. He could, “in accordance with the decisions of the Supreme Defence Council”, order the implementation of the country’s defence plan;<sup>517</sup> command the VJ in wartime and peace;<sup>518</sup> and decide on the country’s territorial division into military areas.<sup>519</sup> It was for the Supreme Defence Council, on the other hand, to adopt the country’s defence plan;<sup>520</sup> to render decisions in accordance with which the FRY President commands the VJ;<sup>521</sup> to assess possible war and other threats to the defence and security of the country;<sup>522</sup> to determine the equipment and weapons needed for the country’s defence;<sup>523</sup> to determine the arrangement of the territory for the country’s defence;<sup>524</sup> to determine the strategy of armed conflict and rules on the use of forces in defence of the FRY, and the conduct of war;<sup>525</sup> to approve the basic elements of training programmes and plans for the defence of the FRY;<sup>526</sup> and to perform other tasks as defined by federal law.<sup>527</sup> The

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<sup>513</sup> ID139 (Constitution of the FRY, 1992), article 135.

<sup>514</sup> ID139 (Constitution of the FRY, 1992), article 136.

<sup>515</sup> P985 (FRY Law on Defence).

<sup>516</sup> P985 (FRY Law on Defence), article 8.

<sup>517</sup> P985 (FRY Law on Defence), article 40(1).

<sup>518</sup> P985 (FRY Law on Defence), article 40(2).

<sup>519</sup> P985 (FRY Law on Defence), article 40(3).

<sup>520</sup> P985 (FRY Law on Defence), article 41(1).

<sup>521</sup> P985 (FRY Law on Defence), article 41(2).

<sup>522</sup> P985 (FRY Law on Defence), article 41(3).

<sup>523</sup> P985 (FRY Law on Defence), article 41(4).

<sup>524</sup> P985 (FRY Law on Defence), article 41(5).

<sup>525</sup> P985 (FRY Law on Defence), article 41(6).

<sup>526</sup> P985 (FRY Law on Defence), article 41(7).

<sup>527</sup> P985 (FRY Law on Defence), article 41(8).

President of the Supreme Defence Council —i.e. the FRY President—was to ensure the implementation of the Supreme Defence Council’s decisions.<sup>528</sup>

258. Also on 18 May 1994, the Law on the VJ was proclaimed by Lilić.<sup>529</sup> Article 4 of that statute provided that the FRY President should command the VJ in war and peace, “in accordance with the decisions of the Supreme Defence Council”, mirroring the terms of article 40(1) of the FRY Law on Defence.<sup>530</sup> It was for the FRY President to, among other things, decide on the deployment of the VJ and approve a plan for its use;<sup>531</sup> regulate and order the readiness of the VJ in case of an imminent threat of war, state of war, or state of emergency;<sup>532</sup> issue orders for mobilisation of the army;<sup>533</sup> and issue basic regulations and other acts related to the deployment of the VJ.<sup>534</sup> The FRY President also had the power to appoint VJ Generals, award honorary ranks to non-citizens who rendered special services to the VJ,<sup>535</sup> promote a professional officer to the rank of general at the proposal of the chief of the General Staff,<sup>536</sup> and decide on other promotions, as well as removals from the service.<sup>537</sup>

259. Radomir Lukić testified that the FRY Government held no command authority over the VJ or its internal organisation, besides the conduct of foreign policy.<sup>538</sup> As for the “civilian control” over the VJ, that was regulated by the Federal Assembly which would, when necessary, enact legislation pertaining to the VJ.<sup>539</sup>

## B. POWERS OF THE PRESIDENT OF THE REPUBLIC OF SERBIA

260. The extent of the powers of Milutinović as the President of the Republic of Serbia has been a highly contentious issue in the present case. It is the Prosecution’s position that the President of Serbia was a powerful individual, as illustrated by the powers given to him under the Serbian and the FRY Constitutions, as well as the Law on the VJ, the Law on Defence, the Law on Internal

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<sup>528</sup> P985 (FRY Law on Defence), article 41.

<sup>529</sup> P984 (FRY Law on the VJ).

<sup>530</sup> P984 (FRY Law on the VJ), article 4.

<sup>531</sup> P984 (FRY Law on the VJ), article 4(3).

<sup>532</sup> P984 (FRY Law on the VJ), article 4(4).

<sup>533</sup> P984 (FRY Law on the VJ), article 4(5).

<sup>534</sup> P984 (FRY Law on the VJ), article 4(6).

<sup>535</sup> P984 (FRY Law on the VJ), article 28.

<sup>536</sup> P984 (FRY Law on the VJ), article 46.

<sup>537</sup> P984 (FRY Law on the VJ), article 151. *See also* article 208 where the President has the power to restore a commissioned officer’s rank which was lost due to disciplinary issues.

<sup>538</sup> Radomir Lukić, T. 26219 (15 May 2008).

<sup>539</sup> Radomir Lukić, T. 26219 (15 May 2008).

Affairs, and the Law on the Ranks of Members of the Ministry of Interior.<sup>540</sup> However, the Prosecution did not lead any witnesses to assess the powers vested in the President of Serbia by the Serbian Constitution. Rather, it focused its evidence on the constitutional and the *de facto* role of the Milutinović when he occupied the position. The latter will be addressed below in the section of the Judgement dealing with the role and responsibilities of Milutinović.

261. The position of the Milutinović Defence, on the other hand, is that, in comparison to the FRY President, the authority and the competence vested in the President of the Republic of Serbia was limited and restrictive, particularly with respect to the relationship between the President and the Serbian Government, as well as the relationship between the President and the National Assembly.<sup>541</sup> Looking at the specifics of the President's powers under the Serbian Constitution, the Milutinović Defence contends that the President of Serbia could not conduct relations with foreign states, as this was within the competence of the federal organs,<sup>542</sup> and in particular that he did not have authority to request reports from the Serbian Government or the MUP.<sup>543</sup> The Milutinović Defence also tendered into evidence an interview given in 1997 by Zoran Đinđić, at the time the leading member of the opposition in Serbia, in which he stated that a President of Serbia had very few powers and that his position was symbolic.<sup>544</sup>

262. The Prosecution did not call any expert witness on constitutional law issues. The Milutinović Defence called a constitutional law professor, Ratko Marković, to explain the nuances in many of the constitutional provisions. Marković, who was personally involved in the drafting of the Serbian Constitution,<sup>545</sup> testified at length and provided an expert opinion on the topic of the President's powers.<sup>546</sup> Nevertheless, given Marković's participation in the creation of the Serbian Constitution, the weight to be given to his expert evidence is, in the Chamber's view, somewhat reduced. On the one hand, since the Serbian Constitution was partly Marković's handiwork, he can be said to have extensive knowledge as to the purpose of various constitutional provisions listed therein. On the other hand, his opinion was being offered on a matter in which he was personally involved rather than one on which he had no personal role and from which he was independent. In addition, the Chamber heard evidence about Marković's close relationship to the regime in Serbia, where he held the position of Deputy Prime Minister, and the suggestion that he had close ties with

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<sup>540</sup> Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 562–568.

<sup>541</sup> Milutinović Final Trial Brief, 15 July 2008, paras. 20–24.

<sup>542</sup> Milutinović Final Trial Brief, 15 July 2008, paras. 25–26.

<sup>543</sup> Milutinović Final Trial Brief, 15 July 2008, paras. 28–38.

<sup>544</sup> 1D635 (Zoran Đinđić's interview with Blic, 30 October 1997).

<sup>545</sup> Ratko Marković, T. 13269–13275 (9 August 2007).

<sup>546</sup> 1D682 (Ratko Marković's Expert Opinion on the Powers and Position of the President of the Republic of Serbia).



Slobodan Milošević.<sup>547</sup> These factors taken together mean that the Chamber does not have the confidence in the impartiality of his expressions of opinion that it might have in the case of a genuinely independent expert. Thus, as evidenced below, the Chamber finds Marković to be credible on certain issues, but not on others. The Chamber will outline Marković's evidence and specify which parts it deems unpersuasive.

263. Marković began his testimony by saying that the Serbian Constitution had a dual purpose and relevance: it was meant to avoid a constitutional vacuum in Serbia in the event of the dissolution of the SFRY, but was also meant to bring about a radical reform of the constitutional system, introducing new principles and new institutions.<sup>548</sup> Once the FRY Constitution was enacted, the Serbian Constitution had to be harmonised with it.<sup>549</sup> As for the powers of the President, Marković testified that even though his mandate came from the electorate, his powers were considerably narrower than those of the head of state in a "regular" presidential system, where—as a result of direct elections—the head of state is the sole organ of executive government.<sup>550</sup> Instead, the President's powers in Serbia were determined exclusively by articles 83 to 85, 89 and 132(1) of the Serbian Constitution and, according to Marković, he could not be afforded any additional powers by law.<sup>551</sup>

264. It was Marković's evidence that the Presidential powers could be divided into three categories, namely, those relating to: (a) the President representing the "state of Serbia"; (b) the President representing a "stable non-operational executive"; and (c) special powers granted to the President in irregular circumstances, where there is a disruption between the legislative and the executive power.<sup>552</sup> Many of these powers, however, were affected by the highly unusual article 135 of the Serbian Constitution quoted above. This provision was added in order to counteract some of the provisions in the Serbian Constitution which gave the republican organs certain powers falling under federal jurisdiction, all with a view to preparing Serbia for the dissolution of the

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<sup>547</sup> For example, Wolfgang Petritsch, who dealt with Marković during negotiations in Rambouillet and Paris, described Marković as a true "yes-man". Wolfgang Petritsch, P2792 (witness statement dated 9 June 1999), p. 3. During cross-examination, Marković vehemently denied the suggestion that Milošević influenced his work on the commission in order to provide for the President's powers over the army. Ratko Marković, T. 13310–13319 (10 August 2007).

<sup>548</sup> Ratko Marković, T. 12877–12878 (6 August 2007).

<sup>549</sup> Ratko Marković, T. 12879 (6 August 2007).

<sup>550</sup> Ratko Marković, T. 13261–13264 (9 August 2007); 1D682 (Ratko Marković's Expert Opinion on the Powers and Position of the President of the Republic of Serbia), para. 2.1.

<sup>551</sup> Ratko Marković, T. 12876–12877 (6 August 2007), T. 13268–13269 (9 August 2007); 1D682 (Ratko Marković's Expert Opinion on the Powers and Position of the President of the Republic of Serbia), para. 2.2.

<sup>552</sup> Ratko Marković, T. 12887–12890, 12894–12909 (6 August 2007); 1D682 (Ratko Marković's Expert Opinion on the Powers and Position of the President of the Republic of Serbia), para. 2.3; IC131 (Power-Point presentation illustrating the three categories of President's powers).

SFRY. They were the so-called “reserved competencies”, to be exercised in the event of Serbia becoming an independent state.<sup>553</sup>

265. Marković also pointed out that the Republic of Serbia did not have its own army and that, therefore, a relationship between the President of Serbia and the VJ could only be established through his *ex officio* membership of the SDC.<sup>554</sup> Thus, article 83(5) of the Serbian Constitution, which provided that the Serbian President was to “lead the armed forces”, was devoid of meaning in the absence of any Serbian armed forces and was an example of a reserved power or competence.<sup>555</sup> However, as stated earlier, unlike the Law on Ministries, this provision was never amended to bring the Serbian Constitution into line with the FRY Constitution.

266. The first of the three categories of powers described by Marković, namely representation of Serbia, covered the President’s authority to conduct foreign relations,<sup>556</sup> grant pardons,<sup>557</sup> and confer decorations and awards established by law.<sup>558</sup> With regard to the conduct of foreign relations, article 83(4) was inserted in order to provide a constitutional basis for the President taking on this role, should Serbia become an independent state. Since this never eventuated, the Serbian President was never able, in practice, to conduct foreign relations.<sup>559</sup> The Chamber notes, however, that this provision remained in force and gave some legitimacy to Milutinović’s presence in Rambouillet and Paris in 1999, as discussed further below.<sup>560</sup>

267. In connection to the second category of powers set out in above, Marković explained that his term “non-operational executive” referred to the fact that the Serbian President, although close to the executive branch of the Government, had no operational executive powers.<sup>561</sup> The President could (a) propose a candidate for Prime Minister to the National Assembly, after hearing the

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<sup>553</sup> 1D682 (Ratko Marković’s Expert Opinion on the Powers and Position of the President of the Republic of Serbia), paras. 2.7–2.8, 2.30. Marković conceded that this was an unconstitutional course of action from the point of view of the SFRY Constitution, but noted that Serbia had to prepare itself for the dissolution of the SFRY, T. 13304–13306 (10 August 2007).

<sup>554</sup> Ratko Marković, T. 13002–13003 (7 August 2007); 1D682 (Ratko Marković Expert Opinion on the Powers and Position of the President of the Republic of Serbia) para. 3.44.

<sup>555</sup> Ratko Marković, T. 12902, 12905–12906, 12931–12932, 12935–12939 (6 August 2007); 1D139 (Constitution of the FRY, 1992), articles 99(9) and 135. *See also* Radomir Lukić, T. 26324–26325 (16 May 2008).

<sup>556</sup> Ratko Marković, T. 12940–12944 (6 August 2007); P855 (Constitution of the Republic of Serbia, 1990), article 83(4).

<sup>557</sup> P855 (Constitution of the Republic of Serbia, 1990), article 83(9).

<sup>558</sup> P855 (Constitution of the Republic of Serbia, 1990), article 83(10); 1D682 (Ratko Marković’s Expert Opinion on the Powers and Position of the President of the Republic of Serbia), para. 2.4. Marković explained that such a law was never passed, T. 12907 (6 August 2007).

<sup>559</sup> Marković, T. 12900, 12909–12913 (6 August 2007); 1D682 (Ratko Marković’s Expert Opinion on the Powers and Position of the President of the Republic of Serbia), paras. 2.5–2.6, 2.8; 1D139 (Constitution of the FRY, 1992), article 96(1).

<sup>560</sup> *See* Sections V and VIII.C.

<sup>561</sup> Ratko Marković, T. 12889 (6 August 2007).

opinions of the majority of its representatives;<sup>562</sup> (b) propose to the National Assembly candidates for the president and justices of the Constitutional Court;<sup>563</sup> (c) promulgate laws by ordinance;<sup>564</sup> and (d) submit proposals to amend the Constitution.<sup>565</sup>

268. With respect to the first three of these powers, according to Marković the President had no autonomy whatsoever. For example, as far as proposals of candidates for different posts were concerned, he was tied to the opinion of the majority of the National Assembly representatives, since the final decision on the appointment was made by the National Assembly.<sup>566</sup> Marković accepted that, if the majority in the National Assembly came from the same party as the President and his nominee for the post of Prime Minister, that nominee's election would be almost certain. However, he then explained that since 1992 there had not been a homogeneous party majority in the National Assembly.<sup>567</sup>

269. With regard to the power to promulgate laws by ordinance, Marković testified that the President was obliged to promulgate any law that had been adopted by the National Assembly. While he could exercise his right to a suspensive veto, whereby he could return the law to the National Assembly for a second round of voting, this had to be done in the seven-day period after the law had been passed. The only real consequence was that the Assembly would vote on the law twice. The second vote was to be taken without any discussion, and was to be adopted if the same majority by which it had been adopted the first time was reached. If adopted again, the President was obliged to promulgate the said law. For all those reasons this was one of the weakest possible forms of participation by the President in the legislative process.<sup>568</sup> When asked during cross-examination if the President's decision to suspend a law could, in fact, have a significant effect, especially in cases where he exercised it just before the proclamation of a state of war, Marković responded that, in those circumstances, the law would be suspended until the next session of the National Assembly, for as long as that may be.<sup>569</sup> In the Chamber's view the exercise of this power could have had a significant impact if war or a state of emergency intervened. However, the

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<sup>562</sup> P855 (Constitution of the Republic of Serbia, 1990), article 83(1).

<sup>563</sup> P855 (Constitution of the Republic of Serbia, 1990), article 83(2).

<sup>564</sup> Ratko Marković, T. 12940–12944 (6 August 2007); P855 (Constitution of the Republic of Serbia, 1990), article 83(3).

<sup>565</sup> P855 (Constitution of the Republic of Serbia, 1990), article 132(1); 1D682 (Ratko Marković's Expert Opinion on the Powers and Position of the President of the Republic of Serbia), para. 2.16.

<sup>566</sup> Ratko Marković, T. 12898–12899, 12932–12934 (6 August 2007); 1D682 (Ratko Marković's Expert Opinion on the Powers and Position of the President of the Republic of Serbia), paras. 2.17–2.20, 3.14–3.17.

<sup>567</sup> Ratko Marković, T. 12890–12891 (6 August 2007).

<sup>568</sup> Ratko Marković, T. 12899–12900, 12953–12955 (6 August 2007), T. 12984 (7 August 2007); 1D682 (Ratko Marković's Expert Opinion on the Powers and Position of the President of the Republic of Serbia), paras. 2.21–2.22, 3.1–3.9.

<sup>569</sup> Ratko Marković, T. 13339–13341 (10 August 2007).

Chamber heard no evidence of Milutinović exercising a suspensive veto prior to the war in the FRY.

270. Finally, the President had the power to propose an amendment to the Constitution, and thus had what Marković termed a “constituent initiative”. However, the ultimate decision to amend lay with the National Assembly.<sup>570</sup>

271. As for the third category of powers, according to Marković the powers the President had in a state of necessity were as follows: to lead the armed forces in peacetime and in wartime, as well as organise mobilisation and preparation for defence;<sup>571</sup> to declare an imminent threat of war, or proclaim a state of war, if the National Assembly was unable to meet and after receiving the opinion of the Prime Minister;<sup>572</sup> to pass enactments, at his own initiative or at the proposal of the government, relating to the competence of the National Assembly, which he would then have to submit to the National Assembly for ratification as soon as the Assembly was able to meet again,<sup>573</sup> and at the proposal of the Government, to proclaim a state of emergency and issue enactments to take measures required by such circumstances, if the security of the Republic of Serbia was threatened.<sup>574</sup> Moreover, Marković testified that almost all powers that the President had during irregular circumstances belonged to the category of reserve competencies, to be used only if the Republic of Serbia became an independent state.<sup>575</sup> The one exception was the power to pass enactments relating to the competence of the Serbian National Assembly.<sup>576</sup> However, this could also be labelled a reserve competence to the extent that the President could not pass decrees unless and until the federal organs declared one of the three states of emergency, and, in addition, could not pass enactments in relation to matters falling within the jurisdiction of the FRY.<sup>577</sup>

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<sup>570</sup> 1D682 (Ratko Marković’s Expert Opinion on the Powers and Position of the President of the Republic of Serbia), paras. 2.23–2.24; P855 (Constitution of the Republic of Serbia, 1990), article 132.

<sup>571</sup> P855 (Constitution of the Republic of Serbia, 1990), article 83(5). It is important to note, however, that despite Marković’s position that the President’s power to lead armed forces existed during a state of necessity alone—when the division of competencies between the legislative and the executive bodies was disturbed—article 83(5) did not contain such explicit restriction and even provided that the President was to lead these forces in peacetime, as well as wartime.

<sup>572</sup> P855 (Constitution of the Republic of Serbia, 1990), article 83(6).

<sup>573</sup> Ratko Marković, T. 12951–12952 (6 August 2007); P855 (Constitution of the Republic of Serbia, 1990), article 83(7).

<sup>574</sup> P855 (Constitution of the Republic of Serbia, 1990), article 83(8).

<sup>575</sup> The Serbian President’s powers enumerated in article 83(6) and (8) were vested in the Federal Assembly and the Federal Government and were, thus, his reserve competencies; *see* Ratko Marković, T. 12900, 12919–12921 (6 August 2007); 1D682 (Ratko Marković’s Expert Opinion on the Powers and Position of the President of the Republic of Serbia), paras. 2.33–2.34; 1D139 (Constitution of the FRY, 1992), articles 78(13), 99(10) and (11). *See also* P1664 (Decision to proclaim a state of imminent threat of war, 23 March 1999); P1311 (Decision to end the state of war, 25 June 1999).

<sup>576</sup> 1D682 (Ratko Marković’s Expert Opinion on the Powers and Position of the President of the Republic of Serbia), paras. 2.25–2.28.

<sup>577</sup> Ratko Marković, T. 12902–12905, 12922–12923 (6 August 2007).

272. With respect to the power to pass enactments, Marković explained that, following the FRY Government's declaration of a state of war on 24 March 1999, the President of the Republic of Serbia passed 16.<sup>578</sup> After the state of war ceased, they were submitted to the National Assembly where they were ratified and subsequently declared null and void, as they were deemed unnecessary during peacetime.<sup>579</sup> In addition, all 16 were proposed by the Government, rather than on the initiative of the President.<sup>580</sup> Accordingly, Marković concluded that, in view of article 135 of the Serbian Constitution, while the federal state existed, "all the aforementioned constitutional powers of the President of the Republic were exercised by the relevant federal organ". In particular he concluded that in March 1999 it was the relevant organs of the FRY, and not the Serbian President, that exercised command over the VJ.<sup>581</sup>

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<sup>578</sup> The 16 decrees are: P993 (Decree on Internal Affairs During a State of War, 31 March 1999; Decree on Assembly of Citizens During the State of War, 1 April 1999; Decree on Citizens' Domicile and Residence During the State of War, 1 April 1999; Decree on Identity Cards During the State of War, 31 March 1999); 1D158 (Decree on Assessment, Payment and Control of Public Revenue During a State of War, 19 April 1999); 1D161 (Decree on the Public Spending Budget of the Republic of Serbia for April, May, and June 1999 and Measures for Staying Within the Budget During the State of War, 20 April 1999); 1D163 (Decree on Solidarity Funds for the Employed Temporarily Without Work Due to War Actions, 23 April 1999); 1D166 (Decree on Employment and Compensatory Pay to Employees in Companies Whose Facilities, Means of Production and Equipment Were Destroyed in War Operations, 23 April 1999); 1D169 (Decree on Payment of Contributions Pursuant to Mandatory Welfare Insurance for Employees in Certain Enterprises, 15 May 1999); 1D172 (Decree on Trade in Goods, Services and Inspection During a State of War, 21 May 1999); 1D175 (Decree on the 1998 Annual Budget Report of the Republic of Serbia, 21 May 1999); 1D178 (Decree on the Final Report of the Budget of the Autonomous Province for Kosovo for 1998, 26 May 1999); 1D181 (Decree on Special Requirements for Organising Games of Chance During a State of War, 29 May 1999); 1D187 (Decree on Amendments for the Decree on Providing Solidarity Funds for the Employed Temporarily Without Work Due to War Actions, 9 June 1999); 1D189 (Decree on the Composition of the Government, 15 June 1999); and 1D478 (Decree Amending the Decree on Assessment, Payment and Control of Public Revenue During a State of War, 4 June 1999).

<sup>579</sup> Ratko Marković, T. 12925–12931 (6 August 2007), T. 13243–13261 (9 August 2007); 1D682 (Ratko Marković's Expert Opinion on the Powers and Position of the President of the Republic of Serbia), para. 2.29; 1D190 (Accused Milutinović's Letter to President of National Assembly regarding verification of Decrees signed during state of war, 25 June 1999); 1D192 (Law confirming decrees passed by the President of the Republic during the state of war).

<sup>580</sup> Ratko Marković, T. 13291–13295 (10 August 2007); P1862 (Law on Government), article 18. The Defence introduced 15 of the 16 decrees in the draft form in which they were sent to the President of the Republic for adoption, see 1D144 (Draft Text of a Decree on Identity Cards During the State of War, 6 April 1999); 1D147 (Draft Text of a Decree on Assembly of Citizens During the State of War, 6 April 1999); 1D150 (Draft Text of a Decree on Citizens' Domicile and Residence During the State of War, 6 April 1999); 1D153 (Draft Text of a Decree on Internal Affairs During a State of War, 6 April 1999); 1D156 (Draft Text of a Decree on Assessment, Payment and Control of Public Revenue During a State of War, 14 April 1999); 1D159 (Draft Text of a Decree on the Public Spending Budget of the Republic of Serbia for April, May, and June 1999 and Measures for Staying Within the Budget During the State of War, 20 April 1999); 1D162 (Draft Text of a Decree on Solidarity Funds for the Employed Temporarily Without Work Due to War Actions, 23 April 1999); 1D164 (Draft Text of a Decree on Employment and Compensatory Pay to Employees in Companies Whose Facilities, Means of Production and Equipment Were Destroyed in War Operations, 23 April 1999); 1D167 (Draft Text of a Decree on Payment of Contributions Pursuant to Mandatory Welfare Insurance for Employees in Certain Enterprises, 15 May 1999); 1D173 (Draft Text of a Decree on the 1998 Annual Budget Report of the Republic of Serbia, 25 May 1999); 1D176 (Draft Text of a Decree on the Final Report of the Budget of the Autonomous Province for Kosovo for 1998, 25 May 1999); 1D179 (Text of a Decree on Special Requirements for Organising Games of Chance During a State of War, 29 May 1999); 1D182 (Draft of a Decree Amending the Decree on Assessment, Payment and Control of Public Revenue During a State of War, 4 June 1999); 1D185 (Draft Text of a Decree on Amendments for the Decree on Providing Solidarity Funds for the Employed Temporarily Without Work Due to War Actions, 9 June 1999); 1D479 (Draft Text of a Decree on Trade in Goods, Services and Inspection During a State of War, 21 May 1999).

<sup>581</sup> 1D682 (Ratko Marković's Expert Opinion on the Powers and Position of the President of the Republic of Serbia), para. 2.30.

273. When questioned about whether his power to issue decrees meant that the President was in fact an “operational executive” during irregular circumstances, Marković accepted that, during a state of war, or threat of war, the President, together with the cabinet, acted in the place of the National Assembly, but reiterated that their enactments had to be ratified upon the return to normality.<sup>582</sup> He disagreed with the proposition that the President—during irregular circumstances—could refuse to issue a decree proposed by the Government, stating that it really was the Government that was replacing the National Assembly, and that the President was there merely to give his consent, as during peacetime.<sup>583</sup>

274. Article 89 of the Constitution, which Marković did not include in any of the three categories of powers of the President of Serbia, was concerned with the relationship between the President and the National Assembly. It provided that the President had the power to dissolve the National Assembly after having received a formal and well-reasoned proposal by the Government.<sup>584</sup> According to Marković, the dissolution process was to be initiated by the Government, although the President had to give his approval before the dissolution could be carried out and had the discretion to refuse.<sup>585</sup>

275. Article 85 of the Constitution governed the relationship between the President and the Serbian Government. It provided that the President could ask the Government to “state its positions concerning issues falling within its jurisdiction”.<sup>586</sup> According to Marković, this was the only independent constitutional power the President had with respect to the Government. However, the President could not order the Government to take action on these issues, and could not exert

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<sup>582</sup> Ratko Marković, T. 13288–13289 (10 August 2007).

<sup>583</sup> Ratko Marković, T. 13289–13291, 13295–13296 (10 August 2007), T. 13628–13629 (15 August 2007). During cross-examination, Marković was asked whether the National Assembly could refuse to ratify the decrees issued by the President and, if so, what would the consequences be. He responded that this was possible, as these were matters falling within the jurisdiction of the National Assembly. In that case, it was for the representatives to decide how to deal with the situation and whether to inquire as to who made a mistake. In terms of the practical effect on the status of the decree in question and the things done pursuant to it, Marković stated that the National Assembly could conclude that the law is no longer in force and, if of the view that it was unconstitutional, move the Constitutional Court to establish this. This would only affect the future use of the decree and not the past use. Ratko Marković, T. 13302–13304 (10 August 2007).

<sup>584</sup> P855 (Constitution of the Republic of Serbia, 1990), article 89.

<sup>585</sup> Ratko Marković, T. 12973–12974, 12983–12984 (7 August 2007), T. 13334–13336 (10 August 2007); 1D682 (Ratko Marković’s Expert Opinion on the Powers and Position of the President of the Republic of Serbia), paras. 3.11–3.13.

<sup>586</sup> P855 (Constitution of the Republic of Serbia, 1990), article 85; P1862 (Law on Government), article 19.

influence on the Government to relinquish or change its position.<sup>587</sup> Thus, in Marković's view, the Constitution had completely removed the President's connection with the state administration.<sup>588</sup>

276. When asked by the Chamber the purpose of article 85, Marković explained that this related to the President's need to be informed about the Government's work, and was also a tool that the President could use to exert pressure on the Government by mobilising public opinion in respect of certain issues.<sup>589</sup> Marković agreed that, if the President enjoyed popularity at the relevant time, and because of his high level of democratic legitimacy, he could mobilise the media and the public and, effectively, create changes in Government policy. However, it was his opinion that such a change of policy would only happen if the President was also the leader of a major political party.<sup>590</sup> It was clear from Marković's testimony that Slobodan Milošević was such a President since the powers and constitutional position of the Serbian President were the most contentious issues in 1990 because Slobodan Milošević, a popular and charismatic politician whose "real power ... did not have any grounds in the Constitution", was likely to occupy the position at that time. According to Marković, it was only when Milošević no longer held the post that the Serbian Constitution was properly evaluated and the insignificance of the powers granted to the Serbian President realised.<sup>591</sup>

277. Marković also stated that the "weak" power contained in article 85 of the Constitution and the resulting lack of a constitutional connection between the President of Serbia and the state administration meant that the relationship between the two was governed by different laws. In this context Marković referred to the MUP, where the connection between it and the President was governed by the Law on Internal Affairs and the Law on Ranks of Members of the Ministry of Interior.<sup>592</sup> In the Law on Internal Affairs the President of the Republic was mentioned in two out of 74 articles. Article 9 provided:

At the request of the National Assembly and the President of the Republic, the Minister must submit a report on the work of the Ministry of the Interior and on the security situation in the Republic.

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<sup>587</sup> Ratko Marković, T. 12956–12957 (6 August 2007), T. 13327–13329 (10 August 2007); 1D682 (Ratko Marković's Expert Opinion on the Powers and Position of the President of the Republic of Serbia), paras. 3.18–3.19; P1862 (Law on Serbian Government), article 19.

<sup>588</sup> Ratko Marković, T. 12984–12990 (7 August 2007); 1D682 (Ratko Marković's Expert Opinion on the Powers and Position of the President of the Republic of Serbia), paras. 3.20–3.21; P1823 (Law on State Administration).

<sup>589</sup> Ratko Marković, T. 12985–12988 (7 August 2007).

<sup>590</sup> Ratko Marković, T. 13328–13334, 13336–13338 (10 August 2007). *See also* Radomir Lukić, T. 26327–26328 (16 May 2008).

<sup>591</sup> Ratko Marković, T. 13266–13267 (9 August 2007); 1D682 (Ratko Marković's Expert Opinion on the Powers and Position of the President of the Republic of Serbia), paras. 1.1, 4.9–4.17.

<sup>592</sup> 1D682 (Ratko Marković's Expert Opinion on the Powers and Position of the President of the Republic of Serbia), para. 3.22.

Marković considered this power to be meaningless with respect to the President alone as, unlike the National Assembly, he had no authorisation to hold members of the Government, including the Minister of Interior, accountable. In addition, the use of “and” in the article implied that the request had to be a joint and simultaneous request by both the President and the National Assembly.<sup>593</sup> He also explained that there was no need for this power since the President had the powers of oversight of the Government granted by article 85. He did not explain why Article 9 had been enacted.<sup>594</sup>

278. As stated earlier, the President was also mentioned in article 17 of the Law on Internal Affairs, which provided that, in a state of emergency in part of the territory of the Republic of Serbia, the MUP was to take measures to safeguard security, as specified by orders and other documents issued by the President, with a view to lifting the state of emergency.<sup>595</sup> Marković explained that this provision did not grant any additional powers to the President, but merely referred back to article 83 of the Serbian Constitution.<sup>596</sup>

279. As far as the Law on the Ranks of Members of the Ministry of Interior was concerned, the President could promote by decree an authorised official with the rank of Colonel or above to the rank of General or above.<sup>597</sup> This, according to Marković, was only a formality as the relevant candidates had to satisfy conditions regulated by articles 7 and 8.<sup>598</sup> Pursuant to article 10 of the same law, the President could also—at the suggestion of the Minister of Interior—grant accelerated promotion to an officer with a senior rank to the rank of General. This could not be done independently, without a recommendation from the Minister of Interior.<sup>599</sup> Finally, the President could—again on the recommendation of the Minister of Interior—reduce or rescind disciplinary measures stopping promotion for persons due to be promoted.<sup>600</sup> Persons promoted to the rank of

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<sup>593</sup> Ratko Marković, T. 12991–12992 (7 August 2007), T. 13345–13347 (10 August 2007); 1D682 (Ratko Marković’s Expert Opinion on the Powers and Position of the President of the Republic of Serbia), paras. 3.23–3.28; P1737 (Law on Internal Affairs), article 9.

<sup>594</sup> Ratko Marković, T. 13350–13352 (10 August 2007). Furthermore, Marković thought that article 9 was unconstitutional as it granted a power to the President and the National Assembly that was not articulated by the Constitution. Ratko Marković, T. 13345–13350 (10 August 2007). Radomir Lukić, on the other hand, disagreed with Marković’s position and testified that there was nothing unconstitutional in requiring Republican organs to co-operate. Radomir Lukić, T. 26335–26337, 26345 (16 May 2008).

<sup>595</sup> P1737 (Law on Internal Affairs), article 17.

<sup>596</sup> 1D682 (Ratko Marković’s Expert Opinion on the Powers and Position of the President of the Republic of Serbia), paras. 3.29–3.30.

<sup>597</sup> P1015 (Law on the Ranks of Members of the Ministry of Interior), article 6(1).

<sup>598</sup> 1D682 (Ratko Marković’s Expert Opinion on the Powers and Position of the President of the Republic of Serbia), paras. 3.32–3.33.

<sup>599</sup> 1D682 (Ratko Marković’s Expert Opinion on the Powers and Position of the President of the Republic of Serbia), paras. 3.34–3.35.

<sup>600</sup> 1D682 (Ratko Marković’s Expert Opinion on the Powers and Position of the President of the Republic of Serbia), para. 3.36; P1015 (Law on the Ranks of Members of the Ministry of Interior), article 13.



General did not have to account for their work to the President, but were responsible exclusively to the Minister of Interior, or to the Government.<sup>601</sup>

280. During cross-examination Marković was asked whether the catch-all phrase in article 83(12) of the Serbian Constitution, which provided that the President “shall ... conduct other affairs in accordance with the Constitution”, meant that he could do anything as long as that was consistent with the Serbian Constitution. He responded that this phrase was merely a reference to the powers listed elsewhere in the Constitution, namely those in articles 84, 85, 89, and 132(1). He clarified that the President could only be held responsible if he violated the Constitution, and whether such violation had taken place could only be assessed by the National Assembly if the powers were explicitly enumerated in the Constitution.<sup>602</sup> In 2003 the Constitutional Court of Serbia ruled on this issue, holding that the powers of the President derived only from the Constitution and could not be expanded by legislation. According to the Court, article 83(12) referred simply to the applicable provisions of the Constitution other than article 83(1) to (11).<sup>603</sup>

281. With respect to the President’s removal from office, Marković testified that this could happen through the President’s own will or through the will of the people who elected him. With respect to the latter, it was necessary for the National Assembly to establish—by a two-thirds majority—that the President had violated the Serbian Constitution and only then would the recall be put to a popular vote. It was in this way that the President was said to be responsible to the citizens of the Republic of Serbia.<sup>604</sup>

282. From all of the above Marković concluded that the position of the President of the Republic of Serbia was a weak one, as he was not vested with decision-making powers despite the fact that he was a representative organ equal to the National Assembly in terms of legitimacy. Thus, he did not exercise legislative, executive, or judicial authority but merely represented the Republic of Serbia and expressed its state unity as proclaimed by article 9 of the Serbian Constitution.<sup>605</sup>

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<sup>601</sup> Ratko Marković, T. 12996–12998 (7 August 2007); 1D682 (Ratko Marković’s Expert Opinion on the Powers and Position of the President of the Republic of Serbia), para. 3.40. This law was later abolished as it unconstitutionally extended the powers of the President of Serbia. Ratko Marković, T. 12942–12948 (6 August 2007), T. 12965–12967 (7 August 2007); 1D639 (Decision of Constitutional Court of Serbia, 1 July 2003).

<sup>602</sup> Ratko Marković, T. 13268–13269, 13275–13277 (9 August 2007). *See also* Radomir Lukić, T. 26328–26330 (16 May 2008).

<sup>603</sup> 1D639 (Decision of Constitutional Court of Serbia, 1 July 2003), p. 2.

<sup>604</sup> Ratko Marković, T. 12967–12973 (7 August 2007); P855 (Constitution of the Republic of Serbia, 1990), articles 87 and 88.

<sup>605</sup> Ratko Marković, T. 12979–12980 (7 August 2007); 1D682 (Ratko Marković’s Expert Opinion on the Powers and Position of the President of the Republic of Serbia), para. 2.38.

283. In Marković's opinion, the system operated in this manner because of historical exigencies rather than logic. Since the Serbian Constitution—after decades of a single-party system—had established a multi-party system, it was thought that the new multi-party parliamentary democracy would not function without crises and interruptions. In addition, the Serbian Constitution was drafted when the SFRY was experiencing a serious political crisis. Thus, it was vital for there to be a President that would have a high degree of democratic legitimacy but could not act as an autocrat. He was simply meant to epitomise state unity and thus guarantee stability.<sup>606</sup> His entire function was almost completely summarised in the terms of his oath, which was not a legal norm and thus would not incur any legal, as opposed to moral or political, penalties.<sup>607</sup>

284. The Chamber accepts that a number of the President's powers in the Serbian Constitution were indeed reserve powers or competencies to be used in the event of Serbia becoming an independent state. However, the Chamber is also of the view that there existed provisions in the Serbian Constitution which could have been used by a President who had charisma and popular support to exert influence over the Government Ministries and policies. For example, the power in article 85, as conceded by Marković himself, was ultimately dependant on the popular and political support of a particular President and had potential therefore to be of great significance. Indeed, Slobodan Milošević, who was President of Serbia until 1997, the leader of a major political party in Serbia at the time of his Presidency, and also considered a highly charismatic individual, was able to exert much influence over various Republican, and even Federal, organs and institutions.<sup>608</sup>

285. As for the President's influence over staff of the Ministry of Interior, the Chamber accepts that the President could promote high level police officers only on the recommendation of the Minister of Interior. However, again assuming that the President had charisma and political influence, through this position he would have been able to exert influence over senior appointments in the Ministry. In respect of article 9 of the Law on Internal Affairs, the Chamber accepts Marković's evidence and is of the view that the opening words of that article require the request to be a simultaneous and joint request by the National Assembly and the President.

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<sup>606</sup> 1D682 (Ratko Marković's Expert Opinion on the Powers and Position of the President of the Republic of Serbia), paras. 4.1–4.8.

<sup>607</sup> Ratko Marković, T. 12957–12963 (6 August 2007); 1D682 (Ratko Marković's Expert Opinion on the Powers and Position of the President of the Republic of Serbia), para. 4.5; 1D752 (The Federal Republic of Germany Basic Law), article 56.

<sup>608</sup> 1D682 (Ratko Marković's Expert Opinion on the Powers and Position of the President of the Republic of Serbia), paras. 4.16–4.17. *See also* Branislav Simonović, T. 25647–25648 (17 April 2008).

However, as also conceded by Marković, this power was already embodied in article 85 of the Serbian Constitution which provided for President's powers of oversight over the Government.<sup>609</sup>

286. In conclusion, the Chamber is of the view that the powers of the President of Serbia over Government Ministries and organs, including the Ministry of Interior, potentially could allow for significant oversight. However, the extent to which they were used to its full potential depended on the person holding the post. As for the "armed forces" of the federation, the Chamber accepts Marković's evidence that article 83(5) was devoid of meaning in light of article 135 of the FRY Constitution.

### C. POLITICAL FUNCTIONING OF THE FRY AND SERBIA IN 1998 AND 1999

287. As outlined above, the two Constitutions, and other legislation, set out the basic political and constitutional structure of the FRY and Serbia. By 1998 and 1999 this system had been in place for some eight to nine years. The Trial Chamber now turns to the evidence of how this system worked in practice at the time relevant to this Indictment.

288. The strongest political party at the time relevant to the Indictment was the Socialist Party of Serbia ("SPS") led by Slobodan Milošević. The party on its own formed a government in Serbia only once, after the first elections in 1990; from the next election, however, it remained in power by forming coalition governments. Following the 1993 election its coalition partner within Serbia was the party called New Democracy. After the 1997 election the SPS formed a coalition government with the Serb Radical Party led by Vojislav Šešelj, and the Yugoslav Left Party ("JUL") led by Mira Marković, Slobodan Milošević's wife.<sup>610</sup> At the Federal level there were coalitions throughout.<sup>611</sup>

289. Milan Jovanović, who between 1993 and 2000 worked as a secretary at the technical services section of the Main board of the SPS, testified that the "supreme body" within the party was the Congress, which met once every four years or more frequently if necessary. The Congress then elected the Main Board, which was the "supreme body" in the period between any two Congress meetings and which consisted of up to 250 people. The Main Board elected the Executive Board, which was the executive body of the SPS numbering up to 35 persons, as well as the Secretary General, all the vice-presidents, and the members of various commissions and councils. The president of the SPS had the power to make nominations for the post of vice-

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<sup>609</sup> Ratko Marković, T. 13351 (10 August 2007).

<sup>610</sup> Milan Jovanović, T. 14144–14145 (21 August 2007), T. 14221 (22 August 2007).

<sup>611</sup> Milan Jovanović, T. 14145 (21 August 2007).

president of the SPS, and also had the power to propose the removal of the same.<sup>612</sup> Jovanović testified that Slobodan Milošević, as President of the SPS, chaired the Main Board meetings and also enjoyed a large degree of authority and influence over the work of the SPS.<sup>613</sup>

290. In March 1996 an SPS Congress was held at which Šainović was elected vice-President of the SPS, while Milutinović was elected to the Main Board where he remained throughout the Indictment period.<sup>614</sup> On 24 April 1997, however, Šainović was removed from his position of Vice-President at the proposal of Slobodan Milošević, and following a decision of the Main Board. During the same session he was appointed a member of the SPS Executive Board, which was, according to Milan Jovanović, a relegation from a high, individual office into a collective organ.<sup>615</sup>

291. On 15 July 1997 Slobodan Milošević was elected by the Federal Assembly to serve a term of four years as President of the FRY.<sup>616</sup> On 21 December 1997 Milutinović was elected President of the Republic of Serbia by popular vote,<sup>617</sup> and remained in that position until 29 December 2002.<sup>618</sup> The President of the Republic of Montenegro was Milo Đukanović, who had defeated Momir Bulatović in elections held in early 1998.<sup>619</sup> Milošević, Milutinović, and Đukanović were thus the members of the Supreme Defence Council in 1998 and 1999.<sup>620</sup>

292. On 24 March 1998 the Serbian National Assembly elected Prime Minister Mirko Marjanović and five Deputy Prime Ministers of the Republic of Serbia, among whom was Ratko Marković.<sup>621</sup> On the same day the National Assembly also elected Government ministers, including Vlajko Stojiljković (Minister of Interior), Života Ćosić (Minister of Mining and Energy

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<sup>612</sup> Milan Jovanović, T. 14141–14144 (21 August 2007).

<sup>613</sup> Milan Jovanović, T. 14143 (21 August 2007).

<sup>614</sup> Milan Jovanović, T. 14197 (22 August 2007); P2875 (SPS website: Report about 3<sup>rd</sup> SPS congress, 3 March 1996).

<sup>615</sup> Milan Jovanović, T. 14197–14199 (22 August 2007); 2D25 (Minutes of 10<sup>th</sup> session of SPS Main Board, 24 April 1997), p. 2.

<sup>616</sup> P476 (Decision on election of FRY President, 15 July 1997).

<sup>617</sup> 1D421 (Report on Final Results of the Presidential Elections of the Republic of Serbia, 23 December 1997). *See also* 1D415 (Decision to Hold a Second Round of the Election for the President of the Republic of Serbia, 26 September 1997); 1D416 (Decision on the Candidates for the Election of the President of the Republic of Serbia in the Repeated Elections on 5 October 1997, 26 September 1997); 1D417 (Decision on the Scheduling of Elections for the President of the Republic of Serbia, 21 October 1997); 1D418 (Report on the Full Election Results for President of the Republic of Serbia Held on 21 September and 5 October 1997, 22 October 1997); and 1D420 (Decision on Re-Running Elections for the President of the Republic of Serbia, 9 December 1997) for background to this election. Ratko Marković also explained that there were two presidential elections in 1997; the Accused Milutinović was elected at the second round of the second election. Ratko Marković, T. 12855 (6 August 2007). Dragan Tomić was an acting Serbian President from July to December 1997. 1D417 (Decision on the Scheduling of Elections for the President of the Republic of Serbia, 21 October 1997).

<sup>618</sup> Ratko Marković, T. 12885 (6 August 2007).

<sup>619</sup> Momir Bulatović, T. 13799 (16 August 2007), T. 13866 (17 August 2007).

<sup>620</sup> Momir Bulatović, T. 13866 (17 August 2007); Ratko Marković, T. 13353 (10 August 2007); Aleksandar Vasiljević, T. 8635–8636 (18 January 2007), P2600 (witness statement dated 14 January 2007), para. 7; P1000 (Minutes of 8<sup>th</sup> SDC session, 25 December 1998).

<sup>621</sup> The five Deputies were Milovan Bojić, Ratko Marković, Tomislav Nikolić, Dragomir Tomić, and Vojislav Šešelj.

Supplies), and Zoran Anđelković (Minister of Youth and Sports).<sup>622</sup> Later that year Radomir Marković was appointed Assistant Minister of Interior.<sup>623</sup>

293. With respect to the federal organs, on 9 January 1998 the then Federal Prime Minister, Radoje Kantić, appointed Živadin Jovanović as Federal Minister of Foreign Affairs.<sup>624</sup> The FRY Government at the time consisted of coalition partners from Montenegro and Serbia. However, due to internal political differences in Montenegro, that Government was toppled. In essence, the Montenegrin ruling party split into two factions, one led by Đukanović and the other by Bulatović. The former was advocating the independence of Montenegro from Serbia, whereas the latter was supportive of the federation. Bulatović's faction formed a new party, the Socialist People's Party of Montenegro and, following the toppling of the FRY Government, became the SPS's coalition partner in a bid to preserve the federation.<sup>625</sup> Thus, on 20 May 1998, upon being given a mandate by the FRY President to form a government, the Federal Assembly elected Momir Bulatović as the new Prime Minister of the FRY.<sup>626</sup> He in turn, on the same date, issued a decision on the composition of the FRY Government. According to this decision, Bulatović practically retained all Serbian members of the previous Government, including Šainović who already held one of the five FRY Deputy Prime Minister posts. As such, his responsibilities were in the area of foreign policy.<sup>627</sup> The cabinet of the new Government would meet every Thursday and issue decisions.<sup>628</sup>

294. Bulatović gave evidence that from the creation of the FRY in 1992 the various FRY Governments did not have time to develop the capabilities of some of the federal bodies and institutions, due mainly to engagements in negotiations surrounding the conflicts in neighbouring Croatia and Bosnia and Herzegovina, and due also to the sanctions imposed on the FRY. According to Bulatović, while the FRY exercised full power in the field of foreign affairs, the entire field of the security services had never been established at the federal level. The Federal Ministry of Interior only had about 1,000 policemen, used exclusively to provide security for embassies and other diplomatic buildings in Belgrade. The Federal Government had no authority

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<sup>622</sup> P909 (Decision on Election of Prime Minister, Deputy Prime Ministers and Other Ministers, 24 March 1998).

<sup>623</sup> 1D437 (Decision to Appoint Assistant Minister of Interior, 5 November 1998).

<sup>624</sup> Živadin Jovanović, T. 13984, 13986 (20 August 2007); 1D258 (Decision Appointing Federal Minister of Foreign Affairs, 9 January 1998).

<sup>625</sup> Momir Bulatović, T. 13799–13800 (16 August 2007), T. 13866–13868 (17 August 2007); Milan Jovanović, T. 14145 (21 August 2007).

<sup>626</sup> Momir Bulatović, T. 13868–13869 (17 August 2007); Živadin Jovanović, T. 13986 (20 August 2007); 1D249 (Decision on the Election of the Federal Prime Minister, 20 May 1998).

<sup>627</sup> Momir Bulatović, T. 13869–13870 (17 August 2007); Matković T. 14589 (29 August 2007); 1D260 (Decision on Composition of Federal Government, 22 May 1998).

<sup>628</sup> Momir Bulatović, T. 13838–13839 (16 August 2007); Andreja Milosavljević, T. 14310–14311 (23 August 2007).

over the Serbian MUP.<sup>629</sup> Radomir Lukić testified that no FRY organs—including the FRY President—had any legal powers over the republican MUPs, but noted that it was legally permissible for FRY organs to co-operate, exchanging information with republican organs in order to settle a disturbance on part of the territory of the FRY.<sup>630</sup> Ultimately, regardless of the constitutional theory of this particular situation, the fact of the matter was that the Republican MUP had more power than the Federal MUP. How that power was used will be explored later.<sup>631</sup>

295. Bulatović also testified that during the Kosovo crisis in 1998 and 1999 the Federal Ministry of Foreign Affairs established its own headquarters in Kosovo in order to liaise with the large number of foreign diplomats arriving to the area.<sup>632</sup> Živadin Jovanović, the then Federal Minister of Foreign Affairs, confirmed this evidence and testified that in May 1998 he decided to open an office in Priština/Prishtina and, soon after that, another two outposts in Ranilug/Ranllug and Kosovska Mitrovica/Mitrovica. He stated that this was necessary in order to give professional assistance to the representatives of the local authorities who had no experience in maintaining international contacts, and also to assist the civilian foreign diplomatic representatives who visited Kosovo. These outposts functioned in accordance with instructions from the Federal Ministry of Foreign Affairs, or the Minister himself. The staff working in the outposts reported daily on their activities to the Ministry.<sup>633</sup> Jovanović was extensively cross-examined on the issue of funding of the Ministry and conceded that Mihalj Kertes, the then director of the Federal Customs Administration, handed to them—on three different occasions—a total of at least 1.4 million German marks in cash. According to Jovanović, this money was used to (a) repair Ministry buildings after the NATO bombing; (b) repair a state building intended for foreign diplomats; and (c) send a large number of diplomats to Rambouillet.<sup>634</sup>

296. Following the establishment of these outposts in Kosovo, it was decided by Bulatović, at the instigation of Milošević,<sup>635</sup> that Šainović, who had experience with the Dayton Accords, should be

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<sup>629</sup> Momir Bulatović, T. 13801–13803 (16 August 2007), T. 13856, 13870–13871 (17 August 2007). Bulatović testified that the Federal Minister of Interior was Petar Gračanin. He was later replaced by Pavle Bulatović. The next Federal Minister of Interior was Zoran Sokolović, while Pavle Bulatović became the Federal Minister of Defence. Momir Bulatović also confirmed that in 1993, Jovica Stanišić—the head of the RDB at the time—and other members of Serbian MUP, took over the premises of the Federal MUP. Thus, all the main technical resources that belonged to the Federal MUP came under the Serbian MUP’s jurisdiction, signaling the beginning of the strong degradation of the Federal MUP. *See also* Momir Bulatović, T. 13872–13875 (17 August 2007); Radomir Lukić, T. 26225 (15 May 2008).

<sup>630</sup> Radomir Lukić, T. 26277–26279 (15 May 2008), T. 26291 (16 May 2008).

<sup>631</sup> *See* Section VI.A.3.

<sup>632</sup> Momir Bulatović, T. 13817–13819 (16 August 2007).

<sup>633</sup> Živadin Jovanović, T. 13995–13996 (20 August 2007), T. 14105 (21 August 2007). *See also* Veljko Odalović, T. 14389–14390 (24 August 2007), 14414 (27 August 2007).

<sup>634</sup> Živadin Jovanović, T. 14096–14102 (21 August 2007).

<sup>635</sup> *See* Section VIII.D.3.

sent to Kosovo to head the “political and diplomatic coordination”.<sup>636</sup> Following his move to Kosovo, Šainović attended weekly cabinet sessions where he would inform Bulatović and the FRY Government of the situation in Kosovo.<sup>637</sup>

#### D. ADMINISTRATION OF KOSOVO

297. As stated above in Section III, a number of problems plagued local government in Kosovo due to the lack of willingness among the Kosovo Albanian population to support local organs of the Government. As a result, efforts were made by the Government to organise the province and create local organs that would implement the laws of the Republic of Serbia in the province.

##### 1. Local self-government

298. In 1992 the Republic of Serbia was divided into a number of geographical units for the purpose of local government. As a result, Kosovo was divided into five Districts, namely, the Kosovo District, Peć/Peja District, Prizren District, Kosovska Mitrovica/Mitrovica District, and Kosovo Morava Valley District. Each of these districts consisted of a number of municipalities.<sup>638</sup> Kosovo District encompassed 10 municipalities and was one of the largest districts in the Republic of Serbia. On 17 April 1998 Veljko Odalović, a member of the SPS, was appointed Head of the Kosovo District by the Serbian Government.<sup>639</sup> Odalović explained that districts were bodies formed by the Serbian Government to conduct the Government’s administrative activities on the ground. In addition, they were to implement Serbian laws throughout the Republic including Kosovo, were responsible exclusively to the Government of Serbia, and did not have any jurisdiction over security issues. Odalović regularly informed the Government of all his activities as Head of the Kosovo District.<sup>640</sup>

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<sup>636</sup> Momir Bulatović, T. 13817–13819 (16 August 2007), T. 13891–13898 (17 August 2007). *See also* Živadin Jovanović, T. 13997 (20 August 2007); Duško Matković, T. 14589 (29 August 2007); Zoran Anđelković, T. 14652 (30 August 2007); Milomir Minić, T. 14743–14744 (31 August 2007).

<sup>637</sup> Momir Bulatović, T. 13820–13821 (16 August 2007), T. 13898–13900 (17 August 2007); Živadin Jovanović, T. 13998–14000 (20 August 2007).

<sup>638</sup> Veljko Odalović, T. 14387–14389 (24 August 2007); Andreja Milosavljević, T. 14269 (23 August 2007); P966 (Decree on the Performance of Duties of Ministries and Special Organisations Outside its Offices, 30 January 1992), article 4.

<sup>639</sup> Veljko Odalović, T. 14382–14384, 14836 (24 August 2007), T. 14452–14456, 14482–14483 (27 August 2007); P978 (Decision Appointing Chief of the Kosovo District, 17 April 1998).

<sup>640</sup> Veljko Odalović, T. 14385–14387 (24 August 2007), T. 14424 (27 August 2007); Zoran Anđelković, T. 14652 (30 August 2007).

299. In addition, Andreja Milosavljević, who was a Minister for local self-management in the Serbian Government from 1994 to March of 1998,<sup>641</sup> gave evidence that one of his duties when he held this post was to deal with issues surrounding the functioning of the administrative organs. He explained that the Serbian Government was obliged, pursuant to the Law on the Territorial Organisation of the Republic of Serbia, to set up municipal councils, which were meant to replace the work of the municipal assembly and its executive committee, and thus ensure the functioning of the municipalities.<sup>642</sup>

300. In late 1997, and throughout 1998, the five districts in Kosovo had to deal with an influx of foreign diplomats and journalists. Odalović himself had a large number of contacts with international representatives and struggled due to the lack of appropriate services for keeping track of all the contacts. As a result, in one of his regular reports to the Serbian Government, Odalović drew attention to the fact that more support was needed. Given also the influx of high level foreign diplomats, Odalović informed the Federal Minister of Foreign Affairs—Živadin Jovanović—of his need for help.<sup>643</sup> As stated earlier, the authorities responded by appointing Milosavljević as a co-ordinator of state bodies in Kosovo,<sup>644</sup> by opening an office staffed with Ministry of Foreign Affairs staff, as well as two additional outposts; and by sending Šainović to Priština/Prishtina.<sup>645</sup>

301. Milosavljević was to co-ordinate the work of Kosovo's civilian state organs and implement measures and policies pursued by the Serbian Government through any enactments that had been or might be adopted. More specifically, he was to co-ordinate among the Serbian ministries, the heads of the five Kosovo districts, and the presidents of all the municipalities in Kosovo. He also reported on his progress to the person who appointed him, namely the Serbian Prime Minister, Mirko Marjanović, at least once a week.<sup>646</sup> When Šainović arrived in Kosovo, the two men would exchange information regularly about their work.<sup>647</sup> Milosavljević stayed in Priština/Prishtina in

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<sup>641</sup> Andreja Milosavljević, T. 14325 (24 August 2007); Zoran Anđelković, T. 14652 (30 August 2007); 1D385 (Decision on the Election of Prime Minister, Deputy Prime Ministers and Ministers of the Government of the Republic of Serbia, 18 March 1994).

<sup>642</sup> Andreja Milosavljević, T. 14257–14259 (23 August 2007).

<sup>643</sup> Veljko Odalović, T. 14389–14390 (24 August 2007), T. 14414 (27 August 2007).

<sup>644</sup> Andreja Milosavljević, T. 14321 (23 August 2007); 2D356 (Decision on Milosavljević's Appointment as Coordinator of the Work of State Organs in Kosovo, 3 June 1998).

<sup>645</sup> Veljko Odalović, T. 14415 (27 August 2007); Zoran Anđelković, T. 14652 (30 August 2007); Duško Matković, T. 14588–14589 (29 August 2007); Milomir Minić, T. 14743–14744 (31 August 2007); 2D99 (FRY Ministry of Foreign Affairs Memo on Outpost Staff, 11 November 1998). *See also* Andreja Milosavljević, T. 14304–14306, 14308 (23 August 2007), T. 14358 (24 August 2007).

<sup>646</sup> Andreja Milosavljević, T. 14262–14266, 14268–14272, 14311–14312 (23 August 2007), T. 14336–14338 (24 August 2007).

<sup>647</sup> Andreja Milosavljević, T. 14304–14306, 14308 (23 August 2007), T. 14358 (24 August 2007).



the same building as the VJ Priština Corps officers including Pavković.<sup>648</sup> During his mandate Republican headquarters were set up in Belgrade to deal with the distribution of supplies and humanitarian aid to people in Kosovo, as well as parallel centres throughout the districts and municipalities in Kosovo.<sup>649</sup> Milosavljević left Kosovo on 28 September 1998 on account of illness.<sup>650</sup>

## 2. Working Group for Kosovo

302. In addition to the local government organs present in Kosovo, the major political party, the SPS, also decided that it should have some presence in Kosovo. For that reason, at the 16<sup>th</sup> session of the Main Board of the SPS held on 10 June 1998, Milošević proposed that a working group be formed with the task of co-ordinating political activities of the SPS in Kosovo. This meeting was attended by the members of the Main Board, and included Milutinović and Šainović,<sup>651</sup> as well as Živadin Jovanović, in his capacity as one of the five deputy chairmen of the Main Board of the SPS,<sup>652</sup> Zoran Anđelković, a member of the Main Board of the SPS and the Minister for Youth and Sport in the Serbian Government,<sup>653</sup> Duško Matković, a Vice-President of the SPS in charge of economic issues and a deputy in the National Assembly of Serbia,<sup>654</sup> and Milomir Minić, a member of the Main Board of the SPS and a deputy in the FRY Assembly.<sup>655</sup> Milan Jovanović also attended in his capacity as secretary for technical services.<sup>656</sup>

303. A platform for the policy of the SPS vis-à-vis Kosovo was adopted based on a number of fundamental principles which were as follows: all problems had to be resolved by peaceful means, through direct dialogue among all ethnic communities in Kosovo; such dialogue had to start immediately; a solution for Kosovo had to be based on the broadest possible autonomy, which

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<sup>648</sup> Andreja Milosavljević, T. 14294–14296 (23 August 2007), T. 14345, 14372–14374 (24 August 2007); IC138 (Map of Priština/Prishtina marked by Milosavljević to show the location of his office in Priština/Prishtina).

<sup>649</sup> Andreja Milosavljević, T. 14285–14287 (23 August 2007), T. 14340–14341, 14364–14367 (24 August 2007).

<sup>650</sup> Andreja Milosavljević, T. 14267 (23 August 2007).

<sup>651</sup> Zoran Anđelković, T. 14651, 14713 (30 August 2007); Živadin Jovanović, T. 14075–14079 (21 August 2007); Matković, T. 14586–14587 (29 August 2007); Milomir Minić, T. 14742–14743 (31 August 2007); P1012 (Minutes of 16<sup>th</sup> Session of the Main Board of SPS, 10 June 1998).

<sup>652</sup> In that capacity, Živadin Jovanović was in charge of international relations on behalf of the party. Živadin Jovanović, T. 14075–14076 (21 August 2007); P1012 (Minutes of 16<sup>th</sup> session of the Main Board of SPS, 10 June 1998).

<sup>653</sup> Zoran Anđelković, T. 14650–14651 (30 August 2007); P1012 (Minutes of 16<sup>th</sup> Session of the Main Board of SPS, 10 June 1998).

<sup>654</sup> Duško Matković, T. 14585 (29 August 2007); P1012 (Minutes of 16<sup>th</sup> Session of the Main Board of SPS, 10 June 1998).

<sup>655</sup> Milomir Minić, T. 14741 (31 August 2007); P1012 (Minutes of 16<sup>th</sup> Session of the Main Board of SPS, 10 June 1998). Minić was also a president of a Chamber of Citizens in the Federal Assembly.

<sup>656</sup> Milan Jovanović, T. 14145–14148 (21 August 2007); P1012 (Minutes of 16<sup>th</sup> Session of the Main Board of SPS, 10 June 1998).

would take into account all standards pertaining to human rights and the rights of national minorities; violence had to be condemned as a method of attaining political goals; and the international community should include Serbia and the FRY in international integration processes as soon as possible, in order to send “a signal to the terrorists” in Kosovo that violence would not be tolerated.<sup>657</sup>

304. The Main Board accepted Milošević’s proposal of a three-man working group for Kosovo. It was decided that it should be headed by Minić and include Matković and Anđelković.<sup>658</sup> According to Milan Jovanović, the main purpose of the Working Group was to seek a political solution in Kosovo and to calm down the situation.<sup>659</sup> Anđelković testified that it was financed by a company owned by the SPS, which was being managed by Anđelković at the time and that the Main Board, as the founder of this company, paid for all Working Group expenses.<sup>660</sup> Milan Jovanović testified, however, that a member of the SPS Main Board, Mihalj Kertes, handed approximately two million German Marks in cash to him for the purpose of financing the SPS as a whole. Generally very evasive on this issue, Milan Jovanović explained that this money was not customs money and instead was collected from different donors.<sup>661</sup> The Chamber notes here that, although the Prosecution mentioned Kertes’s involvement in financing of certain bodies and ministries throughout the trial, it did not make any specific submissions in its final brief or closing arguments as to the relevance of that issue to this case.

305. Immediately upon its arrival in Kosovo—sometime in mid-June 1998—the Working Group attended a meeting of the SPS provincial board. According to Matković, the atmosphere at that meeting was unpleasant and tensions were high. Members of the SPS, who, according to Matković, must have included representatives of non-Serb communities, told the group that the situation in Kosovo was problematic, that normal life was disrupted, that the Serbs were leaving their homes, and that the KLA had taken control of certain areas. The party and its president, Slobodan Milošević, were criticised heavily. Following this meeting the Working Group went back to Belgrade and reported to Milošević about the party members’ grievances.<sup>662</sup>

306. According to its members, all of whom testified before the Chamber, the Working Group’s activities consisted of obtaining information, holding meetings with political actors, and talking to

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<sup>657</sup> Milan Jovanović, T. 14148–14149 (21 August 2007).

<sup>658</sup> Zoran Anđelković, T. 14721 (31 August 2007); Živadin Jovanović, T. 14077–14079 (21 August 2007); Duško Matković, T. 14587 (29 August 2007); Milomir Minić, T. 14743 (31 August 2007); Milan Jovanović, T. 14149 (21 August 2007); P1012 (Minutes of 16<sup>th</sup> Session of the Main Board of SPS, 10 June 1998), p. 6.

<sup>659</sup> Milan Jovanović, T. 14150 (21 August 2007).

<sup>660</sup> Zoran Anđelković, T. 14721–14724 (31 August 2007).

<sup>661</sup> Milan Jovanović, T. 14201–14203 (22 August 2007).

people. The members of the group would regularly meet mayors, municipality presidents, and representatives of state bodies, including the military and the police. They testified that these meetings were mostly concerned with the exchange of information.<sup>663</sup> Minić was in charge of political talks with provincial leaders; Matković toured Kosovo's companies in order to keep production running, and worked closely with Milosavljević, the co-ordinator of state bodies in Kosovo; and Anđelković toured various areas in Kosovo, in a bid to talk to people and convince them not to leave their homes. In that context, Anđelković worked with Milosavljević on humanitarian issues, such as the delivery of aid in order to encourage people to return to their homes.<sup>664</sup> According to Anđelković, Matković, and Minić, neither Milosavljević nor Šainović was superior or subordinated to the Working Group.<sup>665</sup> The Working Group submitted regular reports to the SPS party headquarters on its work and on the views expressed by the citizens and activists they came into contact with. Minić was in daily telephone contact with the secretary of the Executive Board.<sup>666</sup>

307. The Working Group remained in Kosovo until the situation calmed down following a "successful anti-terrorist operation" by the forces of FRY and Serbia which will be discussed later.<sup>667</sup> On 10 September 1998 its members met with Milošević. Matković explained that the purpose of the meeting was to discuss the best way of returning life in Kosovo to normal. The Working Group presented a proposal for a temporary executive council in Kosovo, which Milošević accepted.<sup>668</sup> On 22 September 1998 the Executive Board of the SPS met, and those attending included Milutinović in his capacity as the Serbian President. It was concluded that the situation in Kosovo was getting back to normal.<sup>669</sup> This session was a review of what had been done pursuant to the conclusions reached by the Main Board on 10 June 1998. The Working

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<sup>662</sup> Duško Matković, T. 14590–14591 (29 August 2007); Milomir Minić, T. 14744–14745 (31 August 2007).

<sup>663</sup> Zoran Anđelković, T. 14654–14656 (30 August 2007); Duško Matković, T. 14591–14595 (29 August 2007); Milomir Minić, T. 14747–14751 (31 August 2007); Milan Jovanović, T. 14150–14151 (21 August 2007).

<sup>664</sup> Zoran Anđelković, T. 14653 (30 August 2007); T. 14358–14359 (24 August 2007); Veljko Odalović, T. 14416–14417 (27 August 2007); Duško Matković, T. 14587 (29 August 2007); Milomir Minić, T. 14745–14746 (31 August 2007); Milan Jovanović, T. 14156–14157, 14159–14162 (22 August 2007); 2D53 (Minutes of 87<sup>th</sup> Session of SPS Executive Board, 11 September 1998), pp. 2–4. According to Milosavljević, the three men did not have dealings with the foreign diplomats, although Anđelković might have had dealings due to his position as a Minister in the Serbian Government. Andreja Milosavljević, T. 14307–14308 (23 August 2007). Indeed, Anđelković confirmed that he had dealings with foreign representatives but this was in his capacity as the President of the TEC; Zoran Anđelković, T. 14671 (30 August 2007).

<sup>665</sup> Zoran Anđelković, T. 14654 (30 August 2007); Matković, T. 14588 (29 August 2007); Milomir Minić, T. 14752 (31 August 2007).

<sup>666</sup> Milan Jovanović, T. 14151 (21 August 2007), T. 14157–14158 (22 August 2007).

<sup>667</sup> Milan Jovanović, T. 14151 (21 August 2007). *See also* Section VI.C.

<sup>668</sup> Duško Matković, T. 14638–14639 (30 August 2007).

<sup>669</sup> Milan Jovanović, T. 14163–14165 (22 August 2007); 2D56 (Minutes of 88<sup>th</sup> Session of SPS Executive Board, 22 September 1998).

Group's activities in Kosovo diminished thereafter.<sup>670</sup> On 29 October 1998—following its meeting with the SPS provincial board in Kosovo and another meeting with Milošević—the Working Group's activities ceased altogether.<sup>671</sup> Anđelković remained in Kosovo in his new capacity as the President of the Temporary Executive Council.<sup>672</sup>

### 3. Temporary Executive Council

308. On 28 September 1998 the Serbian National Assembly, at its 2<sup>nd</sup> Extraordinary Session and pursuant to article 73 of the Serbian Constitution, passed a decision forming the Provisional or Temporary Executive Council of the Autonomous Province of Kosovo and Metohija ("TEC"), to perform the executive function envisaged by article 111 of the Serbian Constitution.<sup>673</sup> The National Assembly also elected the Minister of Youth and Sport, Zoran Anđelković, as the president of the TEC.<sup>674</sup> Anđelković then appointed 16 Council members.<sup>675</sup> At a session held in Priština/Prishtina on 15 October 1998, the TEC reached a decision on its own organisation and operation,<sup>676</sup> and also adopted the TEC Rules of Procedure in October 1998.<sup>677</sup>

309. According to article 2 of the decision establishing the TEC, it was, among other things, to implement laws and other regulations and general acts of the Republic of Serbia under its responsibility; to adopt acts within its own area of responsibility; to establish the principles of internal organisation of the provincial administration organs and services; to appoint and replace executive officers in the provincial administration organs; and to form professional and other services relevant for its operation.<sup>678</sup> It had the power to issue decisions, orders, instructions, decrees, and conclusions.<sup>679</sup> It distributed humanitarian aid to all citizens of Kosovo,<sup>680</sup> and

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<sup>670</sup> Milan Jovanović, T. 14166–14167 (22 August 2007).

<sup>671</sup> Milomir Minić, T. 14787–14794 (31 August 2007); Milan Jovanović, T. 14152 (21 August 2007), T. 14219–14221 (22 August 2007). On 14 October 1998, the Executive Board met and concluded that the Working Group would continue its work with the SPS provincial board in order to explain to the latter the terms of the Milošević-Holbrook Agreement. This meeting was held at the end of the month of October and was the last time the three men operated as a team. Milan Jovanović, T. 14168–14169 (22 August 2007); 2D77 (Minutes of 89<sup>th</sup> Session of SPS Executive Board, 14 October 1998), p. 3.

<sup>672</sup> Milan Jovanović, T. 14152 (21 August 2007).

<sup>673</sup> Zoran Anđelković, T. 14656–14657 (30 August 2007); Milan Jovanović, T. 14155–14156 (22 August 2007); P907 (Decision forming TEC, 28 September 1998); 2D63 (Minutes from the Session of the Serbian National Assembly). The Chamber notes that throughout the trial this body was interchangeably referred to as Temporary Executive Council and Provisional Executive Council. The Chamber will use the former expression, and its acronym ("TEC"), in this Judgement.

<sup>674</sup> Zoran Anđelković, T. 14651 (30 August 2007); P908 (Decision appointing the TEC President, 28 September 1998).

<sup>675</sup> Zoran Anđelković, T. 14657 (30 August 2007); P976 (Decision appointing TEC members, 3 October 1998), p. 1.

<sup>676</sup> P976 (Decision on the Organisation and Operation of the TEC, 15 October 1998), p. 2, also admitted as 1D454.

<sup>677</sup> P1205 (Rules of Procedure of the Temporary Executive Council, October 1998).

<sup>678</sup> P976 (Decision on the Organisation and Operation of the TEC, 15 October 1998), article 2, also admitted as 1D454.

<sup>679</sup> P976 (Decision on the Organisation and Operation of the TEC, 15 October 1998), article 17, also admitted as 1D454.

Anđelković, as the President of the TEC, had extensive dealings with foreign diplomats.<sup>681</sup> The TEC also sent reports, when it considered this was necessary, to various addresses, including the Serbian President's office and the office of the Serbian Prime Minister.<sup>682</sup> Zoran Anđelković and Milan Jovanović both testified that the purpose of this body was to have an election in Kosovo as soon as possible, and thereby constitute appropriate authorities, such as the provincial assembly and the provincial executive council.<sup>683</sup> This was, as will be discussed below in Section V, one of the requirements of the Holbrooke-Milošević Agreement.

310. The former Head of the Kosovo District, Veljko Odalović, testified that there was no overlapping jurisdiction between the TEC and the districts in Kosovo, although there was close co-operation. The TEC was only meant to last until conditions for election were ensured. Thus, its activities were projected to be completed within a period of nine months.<sup>684</sup> On 19 April 1999 the TEC established a humanitarian staff to help displaced persons to return to their homes.<sup>685</sup> As a member of this staff, Odalović was invited to attend meetings of the TEC, which he did whenever he could. In addition, the TEC would ask heads of districts to attend meetings in order to provide information to the TEC members on various matters, such as education, and to help the TEC to meet its mandate.<sup>686</sup>

311. In discussing the issue of legitimacy of the TEC, constitutional law expert Ratko Marković testified that article 73 of the Serbian Constitution did not give the National Assembly the power to create such a body. He explained first that article 111 of the Constitution referred to an executive council as among the organs of the autonomous provinces. However, he further explained that, according to the Constitution, this body had to be elected by a provincial assembly. Since this was not possible in 1998 (because there was no functioning assembly in Kosovo), the TEC was established by the National Assembly. However, as a consequence, it was a temporary body.<sup>687</sup> Marković concluded that article 13 of the Law on the Implementation of the Constitution, which provided that the National Assembly was to substitute the provincial organs until such time as they

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<sup>680</sup> Zoran Anđelković, T. 14668–14670 (30 August 2007); 5D412 (Lazarević's letter to TEC, 13 May 1999), also admitted as 1D454.

<sup>681</sup> Zoran Anđelković, T. 14671 (30 August 2007).

<sup>682</sup> Zoran Anđelković, T. 14724–14728 (31 August 2007); P2900 (TEC Report sent to the Office of the Serbian President, 16 April 1999).

<sup>683</sup> Zoran Anđelković, T. 14657 (30 August 2007); Milan Jovanović, T. 14156 (22 August 2007).

<sup>684</sup> Veljko Odalović, T. 14387–14389 (24 August 2007).

<sup>685</sup> Veljko Odalović, T. 14426–14427 (27 August 2007); 2D375 (Decision to set up a Staff on Humanitarian Issues, 19 April 1999). The TEC also set up a staff for coordination between the civilian structures, on one side, and the VJ and the MUP on the other. *See* 2D375 (Decision to set up a Staff for Co-ordination Between Civilian Structures and the VJ and MUP, 19 April 1999).

<sup>686</sup> Veljko Odalović, T. 14450–14452 (27 August 2007).

<sup>687</sup> Ratko Marković, T. 13500–13504 (14 August 2007).

were properly elected, formed the basis for it to establish the TEC.<sup>688</sup> Thus, the constitutionality of the creation of the TEC depended upon the Serbian Constitution and the Constitutional Law on the Implementation of the Constitution being read together.<sup>689</sup> Regardless of the constitutional theory behind the creation of this body, the Chamber is of the view that it was available as a mechanism through which there could have been compliance with the terms of the Holbrooke-Milošević Agreement which demanded that the FRY/Serbian authorities “complete the rules and procedure” for elections in Kosovo by 9 November 1998.<sup>690</sup>

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<sup>688</sup> Ratko Marković, T. 13504–13506 (14 August 2007).

<sup>689</sup> Ratko Marković, T. 13506–13517 (14 August 2007).

<sup>690</sup> *See* Section V.

## V. DIPLOMATIC EFFORTS

### A. GENERAL CHARACTER OF DIPLOMATIC EFFORTS DURING THE KOSOVO CONFLICT

312. As the crisis in Kosovo worsened in 1998,<sup>691</sup> the major points of contention between those representing the Kosovo Albanian community on the one hand, and the authorities of the FRY and Serbia on the other, crystallised. The fundamental position of the FRY and Serbian authorities was that any solution for Kosovo must respect the territorial integrity, sovereignty, and internationally recognised boundaries of the FRY and Serbia, and be based on full respect for the equality of all citizens and national communities in Kosovo. Some form of broad self-government within the national communities of Kosovo was contemplated, while outright independence was firmly rejected. There was also great reluctance to have a presence of foreign troops on the territory of the FRY.<sup>692</sup> On the other side, the position of the Kosovo Albanian representatives was that there should be a popular referendum which would lead to eventual independence for Kosovo. They also sought assurances that the KLA would not be disbanded.<sup>693</sup>

313. As it became increasingly clear throughout 1998 that direct negotiations between the Kosovo Albanians and the FRY/Serbian authorities were unlikely to take place, and that settlement would not be achieved, international attention turned to mediation by international intermediaries.<sup>694</sup> Efforts to promote a political solution between the parties were accompanied by the application of sanctions against the FRY, and persistent threats of NATO military action, both apparently intended to bring pressure to bear on the parties to negotiate a peaceful settlement.<sup>695</sup>

314. The principal international body involved in negotiations concerning Kosovo in 1998 and into 1999 was the “Contact Group,” which was initially constituted in response to the crisis in Bosnia and Herzegovina during the first half of the 1990s, and was composed of representatives from the United Kingdom, France, Germany, Italy, the European Union, the United States, and Russia.<sup>696</sup> As discussed below, from a very early stage in its involvement the Contact Group firmly

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<sup>691</sup> P455 (UNSC Resolution 1160).

<sup>692</sup> 1D204 (Government of Serbia Endorsement of the Holbrooke–Milošević Agreement, 14 October 1998); 1D91 (Joint Proposal of the Agreement on the Political Framework of Self-Governance in Kosovo, 20 November 1998). *See also* Wolfgang Petritsch, T. 10870–10871 (2 March 2007).

<sup>693</sup> Wolfgang Petritsch, T. 10870–10872 (2 March 2007).

<sup>694</sup> Wolfgang Petritsch, T. 10872 (2 March 2007).

<sup>695</sup> *See* Section VI.F.

<sup>696</sup> Wolfgang Petritsch, T. 10710 (28 February 2007). The high ranking politicians involved with the Contact Group were: Madeleine Albright, the U.S. Secretary of State; Robin Cook, the British Foreign Secretary; Hebert Vedrine, the French Foreign Minister; Joschke Fisher, the German Foreign Minister; Lamberto Dini, the Italian Foreign Minister, Igor Ivanov of the Russian Federation, and Wolfgang Petritsch, representing the E.U. Veton Surroi, T. 4549 (10 October 2006).

rejected the idea of an independent Kosovo, while making it clear that there should be greater autonomy for the province.

## B. PRE-RAMBOUILLET DIPLOMATIC EFFORTS

### 1. Initial efforts to produce a political solution

315. As ways were sought to forge a settlement, the international community's involvement in negotiations intensified in the year leading up to the February 1999 Rambouillet Conference. The United States was particularly active in putting pressure on the Kosovo Albanians to go to the negotiating table. Shortly after elections were held for a "shadow" parliament in Kosovo in March 1998, U.S. Special Envoy to the Balkans, Robert Gelbard, urged the Kosovo Albanians to form a negotiating team, later called the "G15," to represent their interests in discussions with the state authorities.<sup>697</sup>

316. Professor Ratko Marković, who was one of five Deputy Prime Ministers of the Republic of Serbia at the time, explained that similar demands were made of the FRY/Serbian side by the international community. This, coupled with escalating KLA activity, encouraged the Serbian Government to appoint a group of representatives to engage in negotiations with the Kosovo Albanians. As a result, on 10 March 1998 the Government appointed Marković to head this group and negotiate with the leaders of Kosovo Albanian political parties, as well as with representatives from "public and cultural life in Kosovo".<sup>698</sup> The Government issued a statement on 11 March 1998, informing the public of these developments and inviting the Kosovo Albanian representatives to attend talks scheduled to take place the very next day, 12 March, in Priština/Prishtina.<sup>699</sup> In addition individual invitations were sent out to Kosovo Albanian leaders at their private addresses.<sup>700</sup> One notable event around this time, which occurred immediately before the appointment of Ratko Marković, was an action by the FRY/Serbian authorities against Adem

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<sup>697</sup> Veton Surroi, P2361 (witness statement dated 27 August 2001), p. 3.

<sup>698</sup> Ratko Marković, T. 13124–13128, 13135–13136 (8 August 2007); 1D78 (Statement of the Government of the Republic of Serbia, 11 March 1998). The delegation also included Ratomir Vico, Andreja Milosavljević, and Ivan Sedlak. The delegation was later expanded to include Milovan Bojić and Tomislav Nikolić. In addition, the President of the FRY also appointed his own special envoy, namely Vladan Kutlešić. *See also* Andreja Milosavljević, T. 14261–14262 (23 August 2007), T. 14332–14335 (24 August 2007). The Republican activities in this respect were supported by the FRY Government. 2D32 (FRY Ministry of Foreign Affairs record of 76<sup>th</sup> session of the FRY Government, 25 March 1998).

<sup>699</sup> 1D78 (Statement of the Government of the Republic of Serbia, 11 March 1998).

<sup>700</sup> Ratko Marković, T. 13128 (8 August 2007).



Jashari, a well-known KLA member, which resulted in the deaths of a large number of members of his family and gave rise to international condemnation.<sup>701</sup>

317. The invited representatives of the Kosovo Albanians did not attend the 12 March 1998 meeting. The Serbian delegation scheduled another meeting for the next day, and then scheduled meetings for every day of the following week, but each time the representatives of the major Kosovo Albanian political parties did not attend.<sup>702</sup> The only invitees who responded by attending were the representatives of two smaller Kosovo Albanian political parties, namely Faik Jashari and Sokol Qusa, as well as the representatives of other ethnic communities in Kosovo.<sup>703</sup> In light of the failure of the Kosovo Albanians to show up, the President of the Republic of Serbia, Milan Milutinović, offered to become a guarantor of the talks.<sup>704</sup>

318. On 31 March 1998 the United Nations Security Council adopted Resolution 1160, with a view to encouraging progress in the negotiating process. The Security Council criticised the use of “excessive force by Serbian police forces” against civilians in Kosovo, and strongly condemned all acts of terrorism by the KLA. It further affirmed the commitment of all UN member states to the sovereignty and territorial integrity of the FRY, and called on both sides immediately to enter into negotiations, noting the readiness of the Contact Group to facilitate them. In addition to accepting that the principles for a solution to the problem should be based on the territorial integrity of the FRY, the resolution also stated that they should include a substantially greater degree of autonomy and meaningful self-government for Kosovo.<sup>705</sup>

319. During the period from April to November 1998 the Serbian delegation, now also including Milutinović, made further attempts to open a political dialogue and organise meetings with representatives of the major political parties representing the Kosovo Albanians. Thus, on approximately 16 occasions, invitations were sent to these representatives, but they continued to be

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<sup>701</sup> See Section VI.C.3.

<sup>702</sup> Ratko Marković, T. 13128–13131 (8 August 2007), T. 13479 (13 August 2007). Marković testified that the Albanians had proper notice, public announcements, and private invitations sent to their home addresses, of the talks instigated by the Serbian delegation. Ratko Marković, T. 13135, 13144–13152 (8 August 2007). Jovan Kojić also testified that many times in 1998 he typed and sent invitations for meetings/talks in the name of Milutinović to Albanian leaders, but they did not reply. Only Adem Demaqi replied which indicated to Kojić that Albanian leaders had “no desire to reach any agreement.” Jovan Kojić, T. 13744–13745 (16 August 2007), 1D741 (witness statement dated 27 July 2007), para. 37. See also 1D67 (Letter of Rexhep Qosja and Hydajet Hyseni to Milutinović, 20 November 1998). Veljko Odalović, Head of the Kosovo District in 1998, testified that invitations to the leaders of the Kosovo Albanian political parties were handed out via the Kosovo district. A courier from his office would hand the invitations to the Albanian leaders at their addresses. Veljko Odalović, T. 14399–14400 (24 August 2007).

<sup>703</sup> Ratko Marković, T. 13133 (8 August 2007), T. 13479–13480 (13 August 2007).

<sup>704</sup> 1D79 (Declaration of the President of the Republic of Serbia Milan Milutinović on the Political Process in Kosovo); Jovan Kojić, 1D741 (witness statement dated 27 July 2007), para. 34.

<sup>705</sup> P455 (UNSC Resolution 1160).

ignored by the leaders of the main Kosovo Albanian parties. Again it was the representatives of Kosovo's ethnic minorities and of smaller Kosovo Albanian parties that attended those meetings.<sup>706</sup>

320. The Chamber notes that the circumstances in which these meetings were arranged and attended by only certain invitees were explored a number of times in the evidence. There were issues over whether the short notice given on occasions indicated that these were not genuine attempts to arrange meaningful negotiations, and there was some attention given to discrepancies in the date of one of those invitations.<sup>707</sup> Having reviewed all the evidence, the Chamber finds that, while the initial attempts to arrange the meetings in fairly peremptory terms were not conducive to encouraging Kosovo Albanian co-operation and could have been handled more diplomatically, at the end of the day the real reason for the two sides not getting together was that their respective positions were just too far apart. In addition, these efforts must be placed in the context of the events unfolding on the ground in Kosovo, which included the Jashari incident in the spring and major combat activities of the MUP and the VJ forces from early summer to September 1998, pursuant to the Plan for Combating Terrorism, discussed further below.<sup>708</sup>

321. The meetings which did take place between the Serbian delegation and representatives of Kosovo's ethnic minorities, as well as minor Kosovo Albanian parties, resulted in late November in a "Joint Proposal of the Agreement on the Political Framework of Self-Governance in Kosovo and Metohija".<sup>709</sup> However, although that document was endorsed on 25 November 1998 in Priština/Prishtina by all those involved in the negotiations, they ultimately represented only a small percentage of the population in Kosovo. It was signed on behalf of the FRY by the Deputy Prime Minister, Vladan Kutlešić, while Marković signed on behalf of the Republic of Serbia. As for Kosovo Albanians, representatives of only two smaller political parties signed.<sup>710</sup> According to

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<sup>706</sup> Ratko Marković, T. 13143–13160 (8 August 2007), T. 13482–13483, 13485–13488 (13 August 2007); 1D82 (The Statement of the Government of the Republic of Serbia on Kosovo, 31 March 1998); 1D83 (The Statement of the President of the Republic of Serbia, 7 April 1998); 1D18 (Marc Weller, *The Crisis in Kosovo 1989–1999*), e-court p. 349, section 7; 1D64 (Letter from Agani to Marković, 17 August 1998); 1D61 (Letter from Marković to Agani, 17 August 1998). On 2 October 1998 Marković sent out yet another invitation to Fehmi Agani inviting him for talks as soon as possible, but this effort also yielded no result. 1D63 (Letter from Marković to Agani, 2 October 1998). *See also* 2D163 (FRY Ministry of Justice report to FRY Government on the situation in Kosovo), p. 11.

<sup>707</sup> *See e.g.* Ratko Marković, T. 13476–13478, 13490–13491 (13 August 2007); Wolfgang Petritsch, T. 10786–10788 (1 March 2007), T. 10956–10957 (2 March 2007).

<sup>708</sup> Wolfgang Petritsch, T. 10956–10957 (2 March 2007). The sequence of events leading to the Plan for Combating Terrorism is dealt with in Section VI.E.1.

<sup>709</sup> 1D91 (Joint Proposal of the Agreement on the Political Framework of Self-Governance in Kosovo, 20 November 1998). *See also* Ratko Marković, T. 13175–13180 (9 August 2007); Milan Jovanović, T. 14183 (22 August 2007).

<sup>710</sup> According to Marković, this agreement was based on the talks involving Hill and O'Brien. The agreement was also signed by the representatives of the following ethnic minorities: Serbian and Montenegrin, Turkish, Gorani, Muslim, Romany, and Egyptian. Ratko Marković, T. 13175–13180 (9 August 2007); T. 13532 (14 August 2007). *See also* Milan Jovanović, T. 14183–14184 (22 August 2007); 1D91 (Joint Proposal of the Agreement on the Political Framework of Self-Governance in Kosovo); 1D603 (Milan Milutinović's Press Statement, 20 November 1998); 1D620 (Declaration by the signatories to the Agreement, 25 November 1999); 1D671 (Politika press report on the Agreement,

Milan Jovanović, the essence of the joint proposed agreement was to establish full equality of rights for all ethnic communities in Kosovo by creating a special procedure for the Kosovo Assembly which would eliminate the possibility of any ethnic community outvoting any other community.<sup>711</sup>

322. In addition to the above efforts, U.S. Ambassador to Macedonia, Christopher Hill, with the assistance of his legal expert, James O'Brien, acted as a facilitator and a mediator between the two sides in 1998 and into 1999, in an effort to assist in the drafting of a plan for the autonomy of Kosovo. Marković and Milutinović were both involved in these talks, which were conducted in parallel with the unsuccessful attempts to hold direct negotiations. Hill and O'Brien presented their proposals to the Serbian delegation for their comments. Hill and O'Brien then gave these comments to the Kosovo Albanians and later conveyed their views back to the Serbian delegation.<sup>712</sup> The mediation efforts resulted in a number of draft agreements, including some proposals which were later integrated into the draft agreement in Rambouillet.<sup>713</sup> In summary, these drafts set out a political approach to ending the crisis, with provisions for protecting the territorial integrity and sovereignty of the FRY, ensuring equality for, and respecting the rights of, all national communities in Kosovo, and establishing a legal framework for self-government for the

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26 November 1998); 2D163 (FRY Ministry of Justice report to FRY Government on the situation in Kosovo, 29 December 1998), pp. 13–14.

<sup>711</sup> Milan Jovanović, T. 14184–14186 (22 August 2007). *See also* 1D91 (Joint Proposal of the Agreement on the Political Framework of Self-Governance in Kosovo), Section IV. Following the signing of the Priština Declaration, Milutinović met with the signatories again on 9 December 1998 to continue negotiations on further activities for reaching political solution in Kosovo. The participants also discussed the latest draft presented by Christopher Hill and rejected it as it departed significantly from the draft agreement. This meeting was also attended by Šainović. *See* 1D605 (Milan Milutinović's Press Statement, 9 December 1998).

<sup>712</sup> Ratko Marković, T. 13165–13167 (8 August 2007); Jovan Kojić, 1D741 (witness statement dated 27 July 2007), paras. 34–35; Živadin Jovanović, T. 13997 (20 August 2007). *See* 1D625 (Agreement on rights of national communities in Kosovo – USA proposal, 7 July 1998); 1D610 (Agreement on rights of national communities in Kosovo – Yugoslav proposal, 11 July 1998); 1D611 (Agreement on rights of national communities in Kosovo – Yugoslav proposal, 13 July 1998); 1D612 (Agreement on rights of national communities in Kosovo – Yugoslav proposal, 14 July 1998); 1D626 (Agreement on rights of national communities in Kosovo – USA proposal, 20 July 1998); 1D613 (Agreement on rights of national communities in Kosovo – Yugoslav proposal, 26 July 1998); 1D614 (Agreement on rights of national communities in Kosovo – Yugoslav proposal, 27 July 1998); 1D615 (Agreement on rights of national communities in Kosovo – Yugoslav proposal, 28 July 1998); 1D616 (Agreement on rights of national communities in Kosovo – Yugoslav proposal, 29 July 1998); 1D730 (Kosovo Albanian comments on the US draft document, 16 September 1998); 1D617 (Comment and remarks on the US draft document, 25 September 1998), also admitted as 1D728; 1D701 (Agreement on rights of national communities in Kosovo – USA proposal, 29 September 1998); 1D618 (Agreement on rights of national communities in Kosovo – Yugoslav proposal, 30 September 1998); 1D702 (Agreement on rights of national communities in Kosovo – USA proposal, 6 October 1998); 1D694 (Agreement on rights of national communities in Kosovo – USA proposal, 9 October 1998); 1D695 (Agreement on rights of national communities in Kosovo – Yugoslav proposal, 29 October 1998); 1D703 (Agreement on rights of national communities in Kosovo – USA proposal, 29 October 1998); 1D696 (Agreement on rights of national communities in Kosovo – Yugoslav proposal, 1 November 1998); 1D627 (Agreement on rights of national communities in Kosovo – USA proposal, 2 November 1998); 1D628 (Agreement on rights of national communities in Kosovo – USA proposal, 13 November 1998).

<sup>713</sup> Ratko Marković, T. 13166 (8 August 2007), T. 13175 (9 August 2007); Wolfgang Petritsch, T. 10711 (28 February 2007).

Kosovo Albanians.<sup>714</sup> Austrian Ambassador to the FRY, Wolfgang Petritsch, who also was involved in the negotiations, confirmed that by December 1998 KLA leaders like Adem Demaqi were being obstructive, especially in their criticism of Hill and Holbrooke, but, since they represented a significant number of the Kosovo Albanian people, negotiations had to include them.<sup>715</sup>

323. The Chamber also heard evidence of one face-to-face meeting between the Serbian delegation and the leaders of the major Kosovo Albanian parties on 22 May 1998.<sup>716</sup> U.S. Ambassador Richard Holbrooke worked with both sides throughout May 1998 to negotiate a settlement and, with his encouragement, a meeting between President Milošević and a group of five Kosovo Albanian representatives from the G15 (“G5”) took place on 15 May 1998. The members of the G5 were: Ibrahim Rugova, LDK leader; Veton Surroi, a Kosovo Albanian journalist; Fehmi Agani, Rugova’s closest aide; Mahmut Bakalli, a former communist party leader in Kosovo; and Pajazit Nushi, Head of the Council for the Defence of Human Rights and Freedoms.<sup>717</sup> During this meeting the conversation focused mainly on human rights concerns and police action in Kosovo; the status of Kosovo was not discussed.<sup>718</sup> Milošević and the members of G5 then agreed that weekly meetings between the Kosovo Albanian representatives and the Serbian authorities should commence. The first was scheduled for 22 May.<sup>719</sup>

324. When the Kosovo Albanian delegation later threatened not to participate in the 22 May meeting, because of what they perceived as increased military action by FRY/Serbian forces in Kosovo, Ambassador Holbrooke called Surroi and told him that, if the Kosovo Albanian delegation did not attend the talks, they would “lose the trust of the U.S.”<sup>720</sup> The Kosovo Albanian delegation eventually agreed to attend the meeting and, according to Surroi, were able to share their views on the security situation in Kosovo with the Serbian delegation.<sup>721</sup> However, Ratko Marković

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<sup>714</sup> See e.g. 1D695 (Agreement on rights of national communities in Kosovo – Yugoslav proposal, 29 October 1998); 1D604 (Milan Milutinović’s Press Statement, 23 November 1998).

<sup>715</sup> Wolfgang Petritsch, T. 10829–10830 (1 March 2007). See also 1D18 (Marc Weller, The Crisis in Kosovo 1989–1999), e-court pp. 373–379.

<sup>716</sup> Ratko Marković, T. 13154 (8 August 2007).

<sup>717</sup> Veton Surroi, P2361 (witness statement dated 27 August 2001), pp. 3–4. The G15 was pared down to a five-member team because it was thought that fifteen people would be “too unwieldy for negotiations.” In his statement, Surroi noted that members of the Kosovo delegation felt it was necessary to act in accordance with the wishes of Holbrooke and the U.S. government, one of which was to “break the notion that there could be no international mediation”.

<sup>718</sup> Veton Surroi, P2361 (witness statement dated 27 August 2001), pp. 4–6. Specifically, Surroi noted that the participants discussed the death of the Jashari family and police operations in Prekaz.

<sup>719</sup> Veton Surroi, P2361 (witness statement dated 27 August 2001), p. 7.

<sup>720</sup> Veton Surroi, P2361 (witness statement dated 27 August 2001), p. 7.

<sup>721</sup> Veton Surroi, P2361 (witness statement dated 27 August 2001), p. 7. In order to agree to the meeting, a compromise was required between the Serbian representatives, who wanted no international presence, and the Kosovo Albanians who wanted formal international mediation. The parties agreed to allow Hill to sit in the room next door and follow the

regarded it as more of a ceremonial meeting, or an overture to future talks, and testified that there was no substantive discussion at this time. When the Kosovo Albanian delegation wanted Marković to meet with Ambassador Hill, who was presumably at the premises, Marković refused to meet with him rather than them.<sup>722</sup> He testified that both sides expressed readiness, in principle, to hold further talks, but did not discuss the logistics and modes of such talks.<sup>723</sup>

325. The proposed weekly meetings did not take place. Several members of the Kosovo Albanian delegation travelled to the U.S. on 29 May to meet with President Clinton and other high-level American officials.<sup>724</sup> On this occasion Clinton reportedly told the delegation that “Bosnia would not be repeated.”<sup>725</sup> While they were in the U.S., the delegation received reports that a large offensive by forces of the FRY and Serbia had begun around Dečani/Dečan in the west of Kosovo.<sup>726</sup>

## 2. Kosovo Diplomatic Observer Mission (“KDOM”)

326. At the same time as the negotiations described above were being conducted, an agreement was reached on 16 June 1998, between FRY President Milošević and Russian Republic President Boris Yeltsin, which gave foreign diplomatic representatives in the FRY, as well as the representatives of the ICRC and UNHCR, full power to observe and monitor what was happening on the ground in Kosovo as a measure to stabilise the increasingly violent situation and to allow time for a political solution to be found. The agreement also announced the FRY’s willingness to begin negotiations with the OSCE and that it welcomed its mission to Kosovo.<sup>727</sup> This move signalled a change in the FRY policy of resistance to the internationalisation of the conflict in Kosovo, and was seen by the international community as a “very encouraging step” on the part of Milošević.<sup>728</sup> However, continuing violence during June 1998 led to U.S. Ambassador Holbrooke going to Belgrade to meet with Milošević to try to find a solution. An agreement for the creation of a formal international observer mission, known by the acronym KDOM, was reached and later

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discussions. Among other members, the Kosovo Albanians were represented by Fehmi Agani, Veton Surroi, Blerim Shala, Mahmut Bakalli, and Bajram Kelmendi. *See also* Ratko Marković, T. 13154, 13159 (8 August 2007).

<sup>722</sup> Ratko Marković, T. 13154, 13159 (8 August 2007), T. 13489–13490 (13 August 2007).

<sup>723</sup> Ratko Marković, T. 13160 (8 August 2007).

<sup>724</sup> Veton Surroi, P2361 (witness statement dated 27 August 2001), p. 7. These members were Ibrahim Rugova, Bujar Bukoshi, Fehmi Agani, and Veton Surroi.

<sup>725</sup> Veton Surroi, P2361 (witness statement dated 27 August 2001), p. 8.

<sup>726</sup> Veton Surroi, P2361 (witness statement dated 27 August 2001), p. 8. Surroi interpreted this as Milošević’s response to their meeting with Clinton. *See also* Section VI.C below.

<sup>727</sup> 2D371 (Joint Statement by Slobodan Milošević and Boris Yeltsin, 16 June 1996); 2D359 (Government of Serbia’s endorsement of Milošević-Yeltsin agreement, 17 June 1998); Shaun Byrnes, T. 12129–12130, 12133–12134 (16 April 2007); Ratko Marković, T. 13155 (8 August 2007); Momir Bulatović, T. 13814 (16 August 2007); Živadin Jovanović, T. 13990–13991 (20 August 2007).

endorsed by the UN Security Council.<sup>729</sup> As a result of this agreement, the presence of international representatives in Kosovo increased considerably.<sup>730</sup>

327. Shaun Byrnes, who was part of the KDOM organised by the U.S. Embassy, testified that KDOM encompassed three international observer missions. These were organised by Russia (“Ru-KDOM”), the European Union (“EU-KDOM”), and the United States (“US-KDOM”).<sup>731</sup> A pre-existing monitoring mission of the European Commission,<sup>732</sup> which had been there since May 1998, was transformed into EU-KDOM. US-KDOM started operating at the end of July 1998, and Ru-KDOM was established in early September 1998.<sup>733</sup> Byrnes testified that the primary mission of KDOM was to report on events in Kosovo to the international community. It was felt that an obvious international presence on the ground could help calm things down. The heads of the three missions would make a joint weekly report to the Contact Group Ambassadors in Belgrade.<sup>734</sup> Karol John Drewienkiewicz, former Kosovo Verification Mission Chief of Operations and Deputy Head of Mission, testified that “KDOM observers had a very limited mandate and were purely forward outposts of their respective Belgrade Embassies”.<sup>735</sup> Joseph Maisonneuve, Head of the Kosovo Verification Mission Regional Centre in Prizren, explained that KDOM’s role was based mostly on bilateral agreements between the FRY authorities and specific nations, and as an example pointed to an agreement between Shaun Byrnes, on behalf of the U.S., and Vlastimir Đorđević.<sup>736</sup>

328. On 23 September 1998 the UN Security Council passed Resolution 1199, based on KDOM reports and referring back to Resolution 1160, endorsing “the steps taken to establish effective international monitoring of the situation in Kosovo”, and welcoming the establishment of KDOM. However, it also noted its grave concern about the “rapid deterioration in the humanitarian situation

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<sup>728</sup> Wolfgang Petritsch, T. 10789–10791 (1 March 2007).

<sup>729</sup> Shaun Byrnes, T. 12130, 12132–12133 (16 April 2007). *See also* Momir Bulatović, T. 13814–13816 (16 August 2007); Živadin Jovanović, T. 13991–13993 (20 August 2007).

<sup>730</sup> Živadin Jovanović, T. 13993–13996 (20 August 2007); 2D367 (Letter to the Federal Ministry of Foreign Affairs regarding the List of Foreign Diplomats currently in Priština/Prishtina).

<sup>731</sup> Shaun Byrnes, T. 12130 (16 April 2007). Karol John Drewienkiewicz also mentioned a French-KDOM of 15 personnel based in Kosovska Mitrovica/Mitrovica and a Canadian-KDOM (“Ca-KDOM”) of nine personnel based in Priština/Prishtina, when he began his role assisting the KVM to absorb the KDOM in November 1998. Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), para. 41.

<sup>732</sup> This mission was active all over former Yugoslavia, including the FRY, and had its headquarters in Sarajevo. From May 1998 it was also present in Kosovo. Jan Kickert, T. 11202–11203, 11210–11211 (7 March 2007).

<sup>733</sup> Shaun Byrnes, T. 12134 (16 April 2007).

<sup>734</sup> Shaun Byrnes, T. 12132–12133, 12137 (16 April 2007). Dušan Lončar, a member of the Commission of the Federal Government for the Co-Operation with the Kosovo Verification Mission, testified that KDOM was also monitoring army movements and taking inventories of the weapons prior to KVM’s arrival. Dušan Lončar, T. 7602 (30 November 2006).

<sup>735</sup> Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), para. 40.

<sup>736</sup> Joseph Maisonneuve, P2772 (witness statement dated 10 March 2000), e-court p. 14, para. 11.

throughout Kosovo” and “reports of increasing violations of human rights and international humanitarian law”. The resolution demanded that all parties cease hostilities; the FRY authorities to cease the action of the security forces and order their withdrawal, and the Kosovo Albanian leadership to condemn all terrorist action. It called for a meaningful dialogue between the parties, “without preconditions and with international involvement”, and demanded that the FRY authorities “enable effective and continuous monitoring in Kosovo.”<sup>737</sup> Following this resolution, Milutinović met with Hill in order to discuss issues relevant to peace and stability in Kosovo. It was established at the meeting that urgent renewal and intensification of dialogue between the state delegation and representatives of Kosovo Albanian political parties was needed in order to resolve outstanding issues.<sup>738</sup> At around the same time, as stated earlier, the FRY/Serbian authorities were making attempts to negotiate with the Kosovo Albanians, who continued to be persistent in their refusals to participate in the negotiating process.

### 3. October 1998: The Holbrooke-Milošević Agreement

329. In early October 1998 the United States, with the backing of the Contact Group, sent Ambassador Holbrooke to Belgrade in an attempt to secure the compliance of the FRY and Serbian authorities with UN Security Council Resolutions 1160 and 1199.<sup>739</sup> Holbrooke was not a witness in this trial but featured in the testimony of a number of witnesses and in documentary exhibits. Holbrooke explained to Petritsch that he had “clear instructions” from Washington first to warn Milošević about the consequences should talks prove unsuccessful, and then to push for military action if they failed.<sup>740</sup>

330. On 12 and 13 October 1998 Holbrooke reported to NATO and asked the NATO council to make an “activation order” or ACTORD, enabling the secretary-general of NATO to use force against the FRY, once certain conditions were satisfied, without further recourse to the member states. The NATO council agreed and Holbrooke went back to Belgrade with the ACTORD as a

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<sup>737</sup> P456 (UNSC Resolution 1199, 23 September 1998). *See also* Wolfgang Petritsch, T. 10760–10761 (1 March 2007).

<sup>738</sup> 1D86 (Public statement from President’s Office, 29 September 1998). *See also* Wolfgang Petritsch, T. 10800–10804 (1 March 2007); P556 (Austrian Embassy Dispatch, 30 September 1998).

<sup>739</sup> Milošević reportedly told Holbrooke that “all provisions of the UN resolution [1199] had been fulfilled.” P2654, (Austrian Embassy Dispatch, 7 October 1998), p. 1. However, there is evidence to suggest that the FRY was knowingly violating Resolution 1199. *See* P926 (Minutes of the VJ Collegium of the VJ General Staff, 28 October 1998), p. 12, where the leadership of the VJ admits that “something from Resolution 1199 has not been implemented,” specifically that the MUP troop levels had not been decreased and that some VJ units had not withdrawn as required by the resolution. In a 24 December 1998 meeting of the VJ Collegium, Ojdanić admits that there had been “some breaches of the signed agreement and declarations at the time [he] came to this post.” P924 (Minutes of the VJ Collegium of the VJ General Staff, 24 December 1998), p. 26. *See also* P560 (Austrian Embassy Dispatch, 7 October 1998), p. 1.

<sup>740</sup> P2654 (Austrian Embassy Dispatch, 7 October 1998), p. 1.

bargaining chip.<sup>741</sup> As a result, he was able to establish “a framework for a formal agreement with the FRY”, leaving the details to be agreed later.<sup>742</sup> This framework is widely referred to as the Holbrooke-Milošević Agreement, although there was no written record of it.<sup>743</sup>

331. Adnan Merovci, personal secretary of the LDK leader Ibrahim Rugova, testified that the Holbrooke-Milošević Agreement demanded withdrawal of some of FRY/Serbian forces from Kosovo, but stated that his knowledge of this came from the media, explaining that he never saw the Agreement with his own eyes.<sup>744</sup> Živadin Jovanović, the Minister of Foreign Affairs, who signed a follow up agreement on the Kosovo Verification Mission (“KVM”), also testified that he had never seen the Agreement and thus could not say what exactly its terms were with respect to withdrawal of forces and cessation of hostilities.<sup>745</sup> What is certain, in light of the follow up agreements and the evidence of a number of witnesses, is that at least partial withdrawal of FRY/Serbian forces from Kosovo was contemplated to comply with UN Security Council Resolution 1199.<sup>746</sup>

332. In mid-October 1998 the Holbrooke-Milošević Agreement was separately endorsed by the governments of Serbia and the FRY.<sup>747</sup> The FRY/Serbian authorities invited an OSCE verification mission to monitor the situation in Kosovo.<sup>748</sup> Since the Holbrooke-Milošević Agreement was the second time that the FRY/Serbian authorities had permitted the international community involvement, this was a very important step forward.<sup>749</sup>

333. In its endorsement of the Holbrooke-Milošević Agreement the Serbian Government stated that a number of principles were agreed upon, including respect for territorial integrity and sovereignty of the FRY, and full equality of all citizens in Kosovo. In addition, it outlined a timetable framework for the realisation of the political solution. According to that timetable, by: (a) 19 October 1998, an agreement was to be reached on the status of the international presence in

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<sup>741</sup> Decisions by the NATO council are taken on the basis of unanimity.

<sup>742</sup> Klaus Naumann, T. 8246–8247 (13 December 2006), P1767 (notes of OTP interviews), paras. 9–10.

<sup>743</sup> Klaus Naumann, P1767 (notes of OTP interviews), para. 10.

<sup>744</sup> Adnan Merovci, T. 8540 (17 January 2007); P2588 (Merovci’s witness statement dated 12 April 2000), para. 31.

<sup>745</sup> Živadin Jovanović, T. 14023–14024 (20 August 2007). *See also* Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), para. 8, where he states that the Holbrooke-Milošević agreement was never signed.

<sup>746</sup> *See, e.g.*, John Crosland T. 9867–9869 (8 February 2007) who testified that he was in charge of overseeing this withdrawal. *See also* P658 (KVM Agreement, 16 October 1998), which explicitly refers back to Resolution 1199 and the need for all parties to comply with it.

<sup>747</sup> P656 (Endorsement of the Serbian Government, 13 October 1998 and Statement of the FRY Government, 14 October 1998). *See also* 1D204 (Government of Serbia Endorsement of the US Special Envoy Richard Holbrooke and FRY President Slobodan Milošević Agreement, 14 October 1998).

<sup>748</sup> Života Ćosić, T. 13698 (15 August 2007). *See also* 2D318 (Note of FRY Ministry of Foreign Affairs regarding the talks between Šainović and De Mistura, Head of the UN Mission to Kosovo, held on 19 October 1998); 2D77 (Minutes of the 90th Session of the Executive Board of the SPS); Milan Jovanović, T. 14167–14168 (22 August 2007).

<sup>749</sup> Wolfgang Petritsch, T. 10826–10827 (1 March 2007).



Kosovo, including the OSCE; (b) 2 November, an agreement containing core elements for a political settlement was to be reached, using a 2 October 1998 paper by the Contact Group as a basis; and (c) 9 November, the rules and procedure for elections in Kosovo were to be completed.<sup>750</sup>

334. Consequently, on 14 October 1998 the FRY Government authorised the then Foreign Minister, Živadin Jovanović, to conclude an agreement with the chairman of the OSCE, Bronislaw Geremek, for the deployment and operation of a verification mission.<sup>751</sup> On 16 October 1998 Jovanović and Geremek signed an agreement for the establishment of the KVM (“KVM Agreement”).<sup>752</sup> The KVM Agreement provided *inter alia* that the purpose of the mission was to ensure compliance by all parties with Resolution 1199; KVM verifiers would be able to travel throughout Kosovo to investigate reports of cease-fire violations; the military and police forces would provide weekly reports to the verifiers on the movement of troops into or out of Kosovo; KVM would receive updates from the relevant FRY/Serbian authorities on allegations of “abusive actions” by the military and police personnel, and the status of legal actions against these individuals; and KVM would be able to, when invited or upon request, accompany VJ and MUP forces.<sup>753</sup> On 15 October 1998, Momčilo Perišić, Chief of the VJ General Staff, and Wesley Clark, Supreme Allied Commander of NATO, signed an agreement allowing NATO to provide air-surveillance in aid to the KVM mission, as a means of implementing the Holbrooke-Milošević Agreement.<sup>754</sup> This agreement also provided for NATO to inspect various sites and equipment of the FRY Airforce and Air Defence within certain delineated areas of Kosovo, including cantonment (storage) sites.

335. Following the Holbrooke-Milošević Agreement in October, Milutinović sent out a number of letters on 14 November 1998 inviting, yet again, the representatives of the leading Kosovo Albanian parties, as well as representatives of minorities in Kosovo, to a meeting in Priština/Prishtina, citing the Holbrooke-Milošević Agreement as the basis for the talks.<sup>755</sup> He also

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<sup>750</sup> 1D204 (Government of Serbia Endorsement of the US Special Envoy Richard Holbrooke and FRY President Slobodan Milošević Agreement, 14 October 1998), p. 3–4. *See also* 1D601 (Milan Milutinović’s Press Statement), also admitted as 2D354; 2D163 (FRY Ministry of Justice report to FRY Government on the situation in Kosovo, 29 December 1998), p. 12.

<sup>751</sup> Živadin Jovanović, T. 14007 (20 August 2007); 2D78 (FRY Government scheduling of its 25<sup>th</sup> session to discuss draft agreement with the OSCE, 14 October 1998).

<sup>752</sup> P658 (KVM Agreement, 16 October 1998), also admitted as P432. *See also* Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), para. 8; 2D81 (FRY Government Correspondence regarding text of agreement between the FRY and OSCE).

<sup>753</sup> P658 (KVM Agreement, 16 October 1998), section III, paras. 1–2, 4–5, 8, also admitted as P432.

<sup>754</sup> P454 (Clark-Perišić Agreement, 15 October 1998), also admitted as P440 but includes an alternate cover letter. *See also* Klaus Naumann, T. 8248–8249, 8258 (13 December 2006).

<sup>755</sup> 1D62 (Letters sent by Milan Milutinović to Kosovo Albanian representatives, 14 November 1998), also admitted as 1D621. Milutinović also sent letters to three prominent Kosovo Albanians—Rexhep Qosja, Adem Demaqi, and

issued a press statement announcing that these invitations had been sent and included both Hill and Petritsch among other foreign diplomats.<sup>756</sup> This meeting took place on 18 November 1998, and was once again not attended by the leaders of the leading Kosovo Albanian political parties, but only by representatives of various ethnic minorities living in Kosovo and of smaller Kosovo Albanian parties.<sup>757</sup> While Petritsch did not attend this meeting, he stated that he considered it a big step forward as, for the first time, the international negotiators were included, along with the Kosovo Albanians, in the process by the Serbian authorities.<sup>758</sup>

336. On 20 November Milutinović also met with representatives of different political parties within Serbia. The discussion revolved around the views and proposals of these parties and how a “universally acceptable platform” could be reached for a solution to the Kosovo problem. It was agreed that the political solution should be based on the Holbrooke-Milošević Agreement. The democratic self-government of Kosovo within the framework of the FRY and Serbian Constitutions was emphasised.<sup>759</sup>

### C. KOSOVO VERIFICATION MISSION

337. The KVM Agreement stipulated that “KDOM will act in place of the OSCE Verification Mission pending its establishment. Once the OSCE is operational, KDOM will be absorbed by the Verification Mission.”<sup>760</sup> However, the EU-KDOM and the US-KDOM retained a “small representation” in Priština/Prishtina in order to support Hill and Petritsch’s diplomatic efforts until the failure of the Rambouillet talks.<sup>761</sup>

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Hydajet Hyseni—requesting meetings as a means to encourage talks; Ratko Marković, T. 13172–13173 (8 August 2007); 1D66 (Milan Milutinović’s letter to Rexhep Qosja, Hydajet Hyseni, and Adem Demaqi, 19 November 1998). On 20 November 1998, Rexhep Qosja and Hydajet Hyseni sent a response to Milutinović stating that they did not believe that improvised and hasty private discussions could contribute to resolving the problem in Kosovo and that for that reason they could not attend any such discussions. Ratko Marković, T. 13530–13531 (14 August 2007); 1D67 (Letter sent by Rexhep Qosja and Hydajet Hyseni to Milutinović, 20 November 1998).

<sup>756</sup> 1D88 (Milan Milutinović’s Press Statement, 14 November 1998).

<sup>757</sup> Ratko Marković, T. 13172 (8 August 2007); 1D622 (Introductory statement by Milutinović at the talks with the representatives of national communities in Kosovo); 1D623 (Concluding remarks by Milutinović at the talks with the representatives of national communities in Kosovo); 1D92 (Adem Demaqi’s letter to Milutinović, 24 November 1998). *See also* 2D117 (FRY Ministry of Foreign Affairs outpost memo re 18 November negotiations, 17 November 1998).

<sup>758</sup> Wolfgang Petritsch, T. 10810–10811 (1 March 2007); 1D68 (Petritsch’s note to Milutinović, delivered on 17 November 1998).

<sup>759</sup> 1D602 (Milan Milutinović’s Press Statement, 20 November 1998).

<sup>760</sup> P658 (KVM Agreement, 16 October 1998), para. 5, also admitted as P432.

<sup>761</sup> Živadin Jovanović, T. 14009 (20 August 2007); Shaun Byrnes, T.12170–12172 (16 April 2007); Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), para. 42. In addition, according to Drewienkiewicz, UK-KDOM, consisting of approximately 40 personnel, was absorbed into KVM in “early December” 1998, and Ru-KDOM and Ca-KDOM, consisting of approximately 8 personnel each, were both absorbed into KVM in January 1999. An element of US-KDOM operating in Peć/Peja, consisting of approximately 30 personnel, was absorbed into KVM

338. The role envisaged for the KVM was to “verify compliance by all parties in Kosovo with UN Security Council Resolution 1199, and report instances of progress and/or non-compliance to the OSCE Permanent Council, the UN Security Council, and other organisations”.<sup>762</sup> Additionally, the KVM would *inter alia* supervise elections in Kosovo,<sup>763</sup> report on the maintenance of a cease-fire by all parties,<sup>764</sup> and verify the numbers, movements, and locations of FRY/Serbian military and police forces.<sup>765</sup> For that purpose its members would be able to travel across Kosovo and would also receive updates from the relevant FRY/Serbian authorities on allegations of “abusive actions” by the military and police personnel, and the status of legal actions against these people.<sup>766</sup> U.S. Ambassador William Walker was appointed KVM Head of Mission on 22 October 1998,<sup>767</sup> while Karol John Drewienkiewicz was Deputy Head.<sup>768</sup>

339. The KVM Agreement provided that the KVM would function for one year, with an option for extension.<sup>769</sup> It allowed for 2,000 unarmed OSCE “verifiers”, seconded from the OSCE countries, to be based principally in Priština/Prishtina, with a “field presence” in various locations around Kosovo, and a liaison office in Belgrade.<sup>770</sup> The KVM Agreement also allowed for the provision of further “technical experts”.<sup>771</sup> As the OSCE did not have significant staff of its own, OSCE member states—who provided the funding—staffed the KVM.<sup>772</sup> One notable feature of the KVM Agreement is that it was entered into between the Government authorities and the OSCE. As such it imposed obligations on the FRY and Serbia, but did not involve the KLA as a party or impose any obligations on that organisation.

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“just before Christmas” in 1998, while the main body of US-KDOM, consisting of approximately 60 personnel was absorbed into KVM in January 1999.

<sup>762</sup> P658 (KVM Agreement, 16 October 1998), section II, para. 1, also admitted as P432. The details of the establishment, termination, specific terms of reference, composition and facilities, and field presence of the KVM were all set out in the Agreement.

<sup>763</sup> P658 (KVM Agreement, 16 October 1998), section II, para. 4, also admitted as P432.

<sup>764</sup> P658 (KVM Agreement, 16 October 1998), section III, para. 1, also admitted as P432.

<sup>765</sup> P658 (KVM Agreement, 16 October 1998), section III, paras. 2–5, also admitted as P432.

<sup>766</sup> P658 (KVM Agreement, 16 October 1998), section III, paras. 1–2, 4–5, 8, also admitted as P432.

<sup>767</sup> P634 (Chronology of major events in Kosovo from 15 October to 18 April 1999), e-court p. 2.

<sup>768</sup> Joseph Maisonneuve, P2772 (witness statement dated 10 March 2000), para. 8; Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), para. 32; P634 (Chronology of major events in Kosovo from 15 October to 18 April 1999), e-court p. 2.

<sup>769</sup> P658 (KVM Agreement, 16 October 1998), section I, para. 10, also admitted as P432.

<sup>770</sup> Sandra Mitchell, T. 526 (10 July 2006); P658 (KVM Agreement, 16 October 1998), section IV, paras. 2–5, also admitted as P432.

<sup>771</sup> P658 (KVM Agreement, 16 October 1998), section IV, para. 2, also admitted as P432.

<sup>772</sup> Sandra Mitchell, T. 499 (10 July 2006).

340. During the period from 17 to 21 October 1998 a delegation from the OSCE Secretariat in Vienna travelled around Kosovo on a “fact finding mission”,<sup>773</sup> attending several meetings with relevant FRY authorities, including a Serbian delegation in Belgrade, to discuss various requirements for the KVM.<sup>774</sup> On 19 October 1998 the FRY Government established a “Commission of the Federal Government for the Co-operation with the OSCE Mission for Verification in Kosovo and Metohija”, headed by FRY Deputy Prime Minister, Nikola Šainović and included senior politicians as well as VJ and MUP officials.<sup>775</sup> The workings of this Commission will be described in more detail below, in Section VI.D.

341. The KVM was a large operation, divided into various branches of responsibility. On 5 November 1998 several deputy heads of Mission were appointed with responsibilities in various areas.<sup>776</sup> The KVM established its headquarters in Priština/Prishtina on 11 November 1998, following which five KVM regional centres were opened in Prizren (RC1), Kosovska Mitrovica/Mitrovica (RC2), Peć/Peja (RC3), Gniljane/Gjilan (RC4), and Priština/Prishtina (RC5).<sup>777</sup> Each of these centres had staff members assigned as liaisons with the VJ, the MUP, and the KLA. Altogether the KVM regional centres had responsibility over 42 co-ordination centres to monitor a wider area more effectively.<sup>778</sup> These field operations were set up within 90 days of the signing of the Agreement but the KVM, as a whole, never reached anything like its intended staffing level.<sup>779</sup>

342. Liaison reports, daily reports and mission reports (on the operations side), and fusion working papers (on the analysis side) were regularly circulated throughout the KVM reporting hierarchy.<sup>780</sup> The KVM verifiers monitored and reported on the movements and operations of FRY/Serbian forces, confrontations that occurred between FRY/Serbian forces and the KLA,

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<sup>773</sup> Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), para. 11; P634 (Chronology of major events in Kosovo from 15 October to 18 April 1999), p. 2. *See also* 2D87 (FRY Ministry of Foreign Affairs report on the visit of the OSCE Technical Team, 23 October 1998).

<sup>774</sup> Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), paras. 12, 18–19.

<sup>775</sup> Živadin Jovanović, T. 14026–14029 (20 August 2007); 2D8 (FRY Government decision establishing Federal Commission for Co-operation with KVM, 19 October 1998); 2D9 (FRY Government supplement to decision establishing Federal Commission for Co-operation with KVM, 29 October 1998); 2D81 (FRY Government correspondence regarding text of agreement between FRY and OSCE). *See also* Veljko Odalović, T. 14423–14424 (27 August 2007); Milomir Minić, T. 14756–14757 (31 August 2007).

<sup>776</sup> Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), para. 34; P763 (KVM Human Rights Division Operational Plan, 17 December 1998).

<sup>777</sup> Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), para. 49; P634 (Chronology of major events in Kosovo from 15 October to 18 April 1999), e-court p. 2. Joseph Maisonneuve was head of RC1. *See* Joseph Maisonneuve, P2772 (witness statement dated 10 March 2000), para. 6.

<sup>778</sup> Karol John Drewienkiewicz, T. 7741, 7745–7749 (4 December 2006), P2508 (witness statement dated 23 June 2000), paras. 44, 49; Sandra Mitchell, T. 498–499 (10 July 2006); Joseph Maisonneuve, P2772 (witness statement dated 10 March 2000), para. 6.

<sup>779</sup> Sandra Mitchell, T. 498–499 (10 July 2006).

<sup>780</sup> Karol John Drewienkiewicz, T. 7738–7748 (4 December 2006).

incidents of violence, and various other “significant events” throughout Kosovo on a near daily basis.<sup>781</sup>

343. On 5 November 1998 Serbian President Milutinović made a public statement affirming Serbia’s commitment to a solution to the Kosovo conflict by political means and its support of the KVM mission. Milutinović stated that the KVM was agreed to in order to verify the truth, and eliminate rumours, speculation, and organised media incitement.<sup>782</sup> According to Momir Bulatović, former Prime Minister of the FRY, the FRY/Serbian authorities supported this effort through a great investment in staff and resources during the KVM mandate, in order to help the verifiers.<sup>783</sup>

#### D. MEETINGS WITH NATO REPRESENTATIVES

344. General Klaus Naumann and General Wesley Clark attended three meetings with FRY President Milošević between the conclusion of the Holbrooke-Milošević Agreement on 13 October 1998 and January 1999. The first such meeting took place on 15 October 1998 and also involved VJ Chief of General Staff Momčilo Perišić, Milutinović, and Javier Solana, the Secretary-General of NATO. The purpose of the meeting was to convey to Milošević the seriousness of NATO’s intentions regarding the FRY’s activities in Kosovo and its failure to withdraw forces.<sup>784</sup> The meeting lasted approximately five hours, and the majority of talking was done by Solana and Milošević. Milošević was reminded of the existence of the ACTORD and told that the FRY could be bombed unless there was a substantial reduction in the number of VJ and MUP personnel in Kosovo. According to Naumann, Milošević then asked Perišić about the number of forces in Kosovo, to which the latter responded that NATO intelligence reports regarding the “excess” of VJ troops were accurate. Naumann further testified that he and his colleagues believed that Milošević was the centre of power in the FRY, which is why, at the end of the meeting, Solana spoke to Milošević one-on-one, telling him that NATO’s threats were serious and that there was no more time left to play games.<sup>785</sup>

345. Naumann testified that a series of meetings followed, the first of which took place in Belgrade on 24 October 1998, involving Milošević on the one side and Clark and Naumann on the

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<sup>781</sup> P407 (OSCE/KVM Bluebook).

<sup>782</sup> Ratko Marković, T. 13170–13172 (8 August 2007); 1D45 (Milan Milutinović’s Press Statement, 5 November 1998). See also Živadin Jovanović, T. 14008 (20 August 2007); Momir Bulatović, T. 13816–13817, 13834 (16 August 2007); Milan Jovanović, T. 14168 (22 August 2007); 2D67 (Conclusions of the FRY Federal Assembly), para. 11; 2D77 (Minutes of the 90th Session of the Executive Board of the SPS), p. 2.

<sup>783</sup> Momir Bulatović, T. 13816–13819 (16 August 2007).

<sup>784</sup> Klaus Naumann, T. 8247–8248 (13 December 2006), P1767 (notes of OTP interviews), paras. 3–4; P2512 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6965–6973.

<sup>785</sup> Klaus Naumann, T. 8250–8251 (13 December 2006), P1767 (notes of OTP interviews), paras. 5–7.

other. Also present were Perišić, Milutinović and Šainović, and a number of MUP Generals. This meeting lasted 90 minutes, its purpose being to warn Milošević again that he should reduce the MUP and VJ presence in Kosovo, and to urge the FRY and Serbian forces to cease their use of disproportionate force against the civilian population. Milošević was again told about the ACTORD and the fact that NATO could attack the FRY within 48 hours. However, he denied the use of disproportionate force, including the accusation that it was directed against civilians.<sup>786</sup>

346. Immediately following this meeting a number of technical meetings took place with a larger delegation, which included Shaun Byrnes of US KDOM.<sup>787</sup> The FRY side consisted of Milutinović, Šainović, and various military and police officers, including Vlastimir Đorđević and two other MUP Generals whose names Naumann could not remember. The primary issue discussed was the number of FRY/Serbian forces that should be present in Kosovo.<sup>788</sup>

347. Later in the day, still on 24 October 1998, on the advice of Perišić the NATO representatives met with Milošević again in the presence of the same group of people. Pressure was put on Milošević for some two hours and, in the end, having talked to his advisors, including Milutinović and Perišić, he agreed to meet the NATO demands and asked that the details of the agreement relating to VJ and MUP numbers be negotiated with Milutinović, Perišić, and Đorđević. These negotiations lasted approximately six hours until, at 5:00 a.m. on 25 October, the agreement was framed in a manner which Milutinović was prepared to take to Milošević.<sup>789</sup> According to Milorad Obradović, who also participated in these negotiations, Perišić accepted the agreement but told Naumann and Clark that the KLA would have to comply with it as well, and that, if this were not the case, he would be compelled to return the VJ units to the territory from which they had withdrawn. Clark and Naumann agreed to this demand and promised it would be taken care of.<sup>790</sup> All parties then met with Milošević at 10:00 a.m. on 25 October 1998. The agreement, often referred to as the Clark-Naumann Agreement was signed by those who negotiated it but, according to Naumann, he and Clark had great difficulty in persuading Milošević to sign it. Milošević

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<sup>786</sup> Klaus Naumann, T. 8249–8257 (13 December 2006), P1767 (notes of OTP interviews), paras. 11–13, P2512 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6974–6980.

<sup>787</sup> Shaun Byrnes, T. 12142, 12155–12157 (16 April 2007). Byrnes was not sure whether Milutinović chaired the Plenary.

<sup>788</sup> Shaun Byrnes, T. 12142, 12155–12157 (16 April 2007), Klaus Naumann, P1767 (notes of OTP interviews), paras. 14–16, P2512 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6980–6981.

<sup>789</sup> Klaus Naumann, T. 8251–8252 (13 December 2006), P1767 (notes of OTP interviews), paras. 17–21, P2512 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6981–6984; P395 (Clark-Naumann Agreement, 25 October 1998).

<sup>790</sup> Milorad Obradović, T. 14933–14936 (4 September 2007). *See also* P928 (Minutes of the Collegium of the VJ General Staff, 30 December 1998), p. 17.

eventually did sign, after consulting with Milutinović.<sup>791</sup> The Šainović Defence argued that this was not an agreement, but rather a political statement.<sup>792</sup> In light of the statement of the measures to be undertaken by the FRY, the signatures to the record, and the testimony of Naumann,<sup>793</sup> it is clear that, regardless of the term used to describe the document, it contained a set of conditions to which the FRY leadership had to adhere.

348. The terms of the Clark-Naumann Agreement, insofar as they related to the VJ, stated that forces and equipment would be reduced to the levels prior to the outbreak of “terrorist activities” in February 1998.<sup>794</sup> VJ forces would return to barracks except for three “company-sized teams” to protect communication lines. VJ border guards would remain in position along the international border.<sup>795</sup> Any heavy or special equipment or weaponry transferred to the MUP by the VJ would be withdrawn from Kosovo or returned to the VJ. In relation to the MUP, special police units were to be removed from Kosovo, and the numbers of forces reduced to the February 1998 levels.<sup>796</sup> Heavy equipment remaining under MUP control would be returned to cantonment sites.

349. The redeployments were to be carried out by midday on 27 October 1998. In ensuring the implementation of the provisions, the Agreement provided that the FRY/Serbian authorities were counting on the assistance of KVM, among others. In order to verify the implementation of the provisions in the Agreement, VJ and MUP commanders were to provide detailed weekly reports of the manning, weapons, and activities of their forces, and immediate notification to the international monitors of any deployments contrary to the provisions of the Agreement.<sup>797</sup> Finally, the Agreement provided that, as a last resort, the FRY retained the right to respond proportionately and in self-defence to “terrorist activity” or violations of the law that endangered the lives of its citizens and representatives.<sup>798</sup>

350. According to Naumann, the intent of the Agreement was also that police numbers within Kosovo should be reduced from the existing levels of 14,000–15,000 down to the peace-time levels of 10,000.<sup>799</sup> Yet another product of these technical meetings was the “Understanding between KDOM and the Ministry of Interior of the Republic of Serbia” signed by Shaun Byrnes and

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<sup>791</sup> Klaus Naumann, T. 8252–8253 (13 December 2006), P1767 (notes of OTP interviews), paras. 22–23, P2512 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T.), T. 6985–6989.

<sup>792</sup> Šainović Final Trial Brief, 29 July 2008 (public version), para. 302.

<sup>793</sup> Klaus Naumann P1767 (notes of OTP interviews), para. 22.

<sup>794</sup> P395 (Clark-Naumann Agreement, 25 October 1998), e-court p. 2.

<sup>795</sup> P395 (Clark-Naumann Agreement, 25 October 1998), e-court pp. 2–3; Shaun Byrnes, T. 12161–12164 (16 April 2007).

<sup>796</sup> P395 (Clark-Naumann Agreement, 25 October 1998), e-court pp. 2–3.

<sup>797</sup> P395 (Clark-Naumann Agreement, 25 October 1998), e-court p. 3.

<sup>798</sup> P395 (Clark-Naumann Agreement, 25 October 1998), e-court p. 4; Shaun Byrnes, T. 12198 (16 April 2007).

Vlastimir Đorđević on 25 October 1998, granting verifiers and their equipment freedom of movement to carry out their missions.<sup>800</sup>

351. Following this meeting Clark and Naumann flew back to Brussels and met with NATO Secretary-General Solana. They also reported to the NATO Council, which decided not to launch air-strikes provided that the FRY complied with the agreement.<sup>801</sup> According to Naumann, the FRY complied with the agreement until about mid-November. Between 5,000 and 6,000 Serbian policemen were withdrawn from Kosovo. Then, in the second half of November and in December 1998, NATO observed an increasing number of incidents in Kosovo, most of them instigated by the KLA which was trying to fill the vacuum left by the withdrawing FRY/Serbian forces. Naumann conceded that the lack of any agreement with the KLA was NATO's biggest mistake, and explained that this happened because NATO had earlier publicly labelled the KLA as a terrorist organisation and thus was unable to enter into an agreement with it. As a result, NATO received a number of reports about a deteriorating situation in Kosovo, including redeployment of FRY troops, additional check-points, and use of disproportionate force.<sup>802</sup>

352. In light of the deteriorating situation, and following an incident in the village of Račak/Reçak (Štimlje/Shtima municipality) on 15 January 1999, the NATO Council decided to set up a third meeting between Clark and Naumann on one side, and Milošević on the other. It took place on 19 January 1999 and lasted seven hours. Other participants included Milutinović and Šainović. The purpose was to warn Milošević yet again that there should be no repetition of the kind of action that had taken place in Račak/Reçak, and to persuade him to abide by the terms of the Clark-Naumann Agreement. Milošević was then provided with a list of five to ten incidents where the KVM had observed the use of disproportionate force. Milošević denied all allegations and defended the actions of the FRY/Serbian forces.<sup>803</sup> Following this meeting Clark and Naumann again submitted a report to the NATO Council, conceding that none of the incidents they had information about were instigated by the FRY/Serbian forces but nevertheless recommending that the ACTORD be reinstated.<sup>804</sup> Naumann testified that at this point a "political decision was taken" that NATO should "no longer be in the driving seat" of the negotiations and that the Contact Group should take over. It was only later, when the diplomatic process in France failed, that NATO was

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<sup>799</sup> Klaus Naumann, P1767 (notes of OTP interviews), para. 16.

<sup>800</sup> Shaun Byrnes, T. 12159–12160 (16 April 2007); P394 (Understanding between KDOM and Ministry of Interior of the Republic of Serbia, 25 October 1998).

<sup>801</sup> Klaus Naumann, T. 8263 (13 December 2006), P1767 (notes of OTP interviews), para. 27.

<sup>802</sup> Klaus Naumann, T. 8263–8266, 8277–8280 (13 December 2006), P1767 (notes of OTP interviews), para. 28.

<sup>803</sup> Klaus Naumann, T. 8268–8270 (13 December 2006), P1767 (notes of OTP interviews), paras. 30–38, P2512 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6998–7009.

<sup>804</sup> Klaus Naumann, T. 8270–8271 (13 December 2006), P1767 (notes of OTP interviews), para. 39.



brought back in.<sup>805</sup> Nevertheless, on 30 January Solana sent a letter to the FRY authorities informing them of a decision of the NATO Council authorising him to approve air strikes against the FRY.<sup>806</sup>

#### E. FEBRUARY 1999: RAMBOUILLET AND PARIS CONFERENCES

353. On 29 January 1999, citing unrelenting violence between the KLA and FRY/Serbian forces as well as the recent incident in Račak/Reçak, the Contact Group called for a peace conference in Rambouillet, France, to begin on 6 February 1999, and asked U.K. Foreign Secretary Robin Cook to go to Belgrade and Priština/Prishtina to ask FRY President Slobodan Milošević and the Kosovo Albanians to attend the conference which would be co-chaired by Cook and French Foreign Minister Hubert Védrine. The Co-Chairmen served as spokesmen for the conference itself, as well as conduits between the delegations and the Contact Group.<sup>807</sup>

354. On 30 January 1999 the Contact Group formulated “non-negotiable principles” on the basis of which the talks at Rambouillet were to proceed. These included the preservation of the territorial integrity of the FRY and neighbouring countries and harmonisation of FRY and Serbian legal frameworks with any interim agreement. They also included a requirement for a mechanism for a final settlement after an interim period of three years and provided for “international involvement and full co-operation by the parties on implementation”.<sup>808</sup> Ratko Marković testified that, in the view of the FRY/Serbian delegation, these principles were to be adopted as they were, and possibly incorporated into any document that might have resulted from meetings between the two delegations at Rambouillet.<sup>809</sup>

355. On 4 February 1999 the Serbian National Assembly accepted the invitation of the Contact Group to attend the negotiations, and authorised the Serbian Government to appoint a delegation.<sup>810</sup> The National Assembly also formulated a number of principles based on which the crisis could be resolved. These were as follows: (a) political means and dialogue as the only way for a peaceful and democratic resolution of the crisis in Kosovo, (b) full observance of the territorial integrity and

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<sup>805</sup> Klaus Naumann, T. 8274–8275 (13 December 2006).

<sup>806</sup> 2D204 (Announcement from the FRY Government, 1 February 1999).

<sup>807</sup> P979 (Statement by the Contact Group, 29 January 1999), p. 2; Ratko Marković, T. 13195 (9 August 2007), T. 13546 (14 August 2007); Wolfgang Petritsch, T. 10921 (2 March 2007).

<sup>808</sup> 1D18 (Marc Weller, *The Crisis in Kosovo 1989–1999*), e-court p. 414. *See also* Ratko Marković, T. 13181–13184 (9 August 2007); Momir Bulatović, T. 13846 (17 August 2007); Živadin Jovanović, T. 14050–14051, 14054–14055 (20 August 2007).

<sup>809</sup> Ratko Marković, T. 13181 (9 August 2007).

<sup>810</sup> 1D443 (Conclusions of the National Assembly of the Republic of Serbia), p. 5; Ratko Marković, T. 13184–13185 (9 August 2007). *See also* Milan Jovanović, T. 14173–14175, 14179–14180 (22 August 2007); 2D206 (Minutes of the 95<sup>th</sup> Session of the Executive Committee of the Main Board of the SPS, held on 3 February 1999).

sovereignty of Serbia and the FRY, (c) full equality of all citizens, and all ethnic communities and groups in Kosovo, (d) solutions co-ordinated with the Constitutions of Serbia and the FRY and with international standards in the area of human and civil rights, (e) Kosovo could not be granted the status of a republic, but only autonomy within Serbia and the FRY, according to the highest standards, (f) rejection of any measure which would change the territorial integrity and sovereignty and attempt to effectuate the secession of Kosovo from Serbia, and (g) rejection of presence of foreign troops in the territory of the FRY on any pretext of implementing the agreement reached.<sup>811</sup>

356. Marković testified that the Serbian delegation was not given *carte blanche*, but was obliged to abide by these principles in their negotiations and any agreement formulated at Rambouillet. He stated that, except for the last one, namely non-acceptance of foreign troops, all principles were identical to the ten non-negotiable principles used by the international community in their appeals to solve the crisis in Kosovo by peaceful means.<sup>812</sup> Momir Bulatović confirmed that the FRY had some problems in accepting the Contact Group's non-negotiable principle referring to international involvement in the FRY, if that implied a foreign military presence.<sup>813</sup> The FRY/Serbian position was that there should be no foreign military presence on the territory of the FRY other than the international presence as defined by the Holbrooke-Milošević and KVM Agreements.<sup>814</sup> Živadin Jovanović, Minister of Foreign Affairs at the time, also testified that the delegation did not have the authority to discuss the territorial integrity of the country.<sup>815</sup> Milan Jovanović, a member of the SPS, expressed the view that, on the one hand, the FRY/Serbian delegation had a clear mandate, and, on the other, had sufficient manoeuvring space for seeking institutional solutions.<sup>816</sup> Having looked at the non-negotiable principles, as well as the principles laid out by the Serbian National Assembly, the Chamber accepts that the most important difference between the two related to the interpretation of the international involvement in the FRY. However, it also appears that the Contact Group's principles envisaged harmonisation of the FRY/Serbian legal framework with the interim agreement, thereby establishing the precedence of the agreement over the country's legal framework. In contrast, the Serbian National Assembly commanded that any future agreement be co-ordinated with the Constitutions of the FRY and Serbia, thus establishing the primacy of the two Constitutions over the agreement.

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<sup>811</sup> 1D443 (Conclusions of the National Assembly of the Republic of Serbia), p. 5; Ratko Marković, T. 13184–13187 (9 August 2007). The FRY Government also created a working group, which was to monitor and support the negotiations in Rambouillet; 2D209 (FRY Ministry of Foreign Affairs – Note from the 3<sup>rd</sup> meeting of the working group, 8 February 1998).

<sup>812</sup> Ratko Marković, T. 13188 (9 August 2007).

<sup>813</sup> Momir Bulatović, T. 13846–13847 (17 August 2007).

<sup>814</sup> 2D221 (Position of the Federal Ministry of Foreign Affairs on the question of the deployment of foreign troops in Kosovo for the purpose of the meeting in Rambouillet); Momir Bulatović, T. 13846–13847 (17 August 2007).

357. Implementing the decision of the National Assembly, the Serbian Government appointed a delegation of twelve members representing both the FRY and the Republic of Serbia. The delegation included Šainović; Vladan Kutlešić, who was a Deputy Prime Minister of the FRY at the time and Milošević's personal envoy; and Vladimir Štambuk, a Deputy Chairman of the National Assembly at the time and a representative from the JUL (the Yugoslav Leftist party). Ratko Marković was appointed head of the delegation, and the same Kosovo Albanians who signed the Priština Declaration, as well as other ethnic minorities, were also represented on the governmental team.<sup>817</sup> According to Petritsch the contribution of these minorities to the discussions was negligible.<sup>818</sup> However, Marković testified that the delegation worked as a united team and that decisions were made by consensus.<sup>819</sup>

358. The Rambouillet conference opened formally on 6 February 1999, and was scheduled to conclude on 13 February 1999. During the course of the conference the end date was twice postponed, first to 20 February and then to 23 February.<sup>820</sup>

359. The FRY/Serbian delegation arrived at Rambouillet on 6 February. Petritsch testified that Šainović was seen as the political head of the delegation, although Marković was officially its head.<sup>821</sup> Marković explained that, while Šainović was one of the members of the delegation, he was also a Deputy Prime Minister of the FRY Government, and thus the most senior political figure in the delegation.<sup>822</sup> Živadin Jovanović also testified that Šainović participated in the talks because he was the person most privy to diplomacy and various international activities concerning the problem of Kosovo, and because he was the one with the most international contacts, being the Chairman of the Commission for Co-operation with the KVM.<sup>823</sup> Milutinović was not an official

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<sup>815</sup> Živadin Jovanović, T. 14054 (20 August 2007).

<sup>816</sup> Milan Jovanović, T. 14180 (22 August 2007).

<sup>817</sup> P967 (Serbian Government decision to appoint Rambouillet delegation, 4 February 1999). In addition to Šainović, Kutlešić, and Štambuk, members of the delegation were Vojislav Živković, president of the provincial board of SPS at the time; Guljbehar Šabović, member of the Temporary Executive Council; Refik Senadović, representative of the Muslim ethnic community; Zejnelabidin Kurejš, representative of the Turkish ethnic community and the Turkish Democratic Party; Ibro Vait, representative of the Gorani ethnic community; Farik Jashari, president of the Kosovo Democratic Initiative; Sokol Qusa, president of the Albanian Democratic Reform Party; Ljuan Koka, representative of the Roma ethnic community and president of the League of Roma Yugoslavia Co-ordination Board; and Ćerim Abazi, representative of the Egyptian ethnic community. *See also* Momir Bulatović, T. 13845–13846 (17 August 2007); Živadin Jovanović, T. 14053 (20 August 2007).

<sup>818</sup> Wolfgang Petritsch, P2792 (witness statement dated 9 June 1999), pp. 2–3.

<sup>819</sup> Ratko Marković, T. 13538 (14 August 2007).

<sup>820</sup> 1D32 (Minutes of session of the National Assembly, 23 March 1999), p. 6.

<sup>821</sup> Wolfgang Petritsch, T. 10717 (28 February 2007); T. 10717 (1 March 2007). *See also* P967 (Serbian Government decision to appoint Rambouillet delegation, 4 February 1999).

<sup>822</sup> Ratko Marković, T. 13545 (14 August 2007). *See also* Zoran Anđelković, T. 14661 (30 August 2007).

<sup>823</sup> Živadin Jovanović, T. 14053 (20 August 2007).

member of the FRY/Serbian delegation, but attended the talks from 10 February 1999,<sup>824</sup> and appeared to serve as its *de facto* spokesperson.<sup>825</sup> Marković explained that Milutinović attended the meeting on his own initiative because he “represent[ed] Serbia and expresse[d] [its] unity”.<sup>826</sup>

360. The Kosovo Albanian delegation was more homogeneous, comprising only ethnic Albanians. At the same time, it was fractious, and included political figures like LDK leader Ibrahim Rugova, who had been elected “President” of Kosovo in 1992, publishers Veton Surroi and Blerim Shala, and KLA leaders Hashim Thaqi and Jakup Krasniqi.<sup>827</sup> Ljubivoje Joksić, who worked in the State Security department of the Serbian MUP based in Kosovo, testified that his department had “intelligence” about members of the KLA refusing to go to Rambouillet, and about LDK leader Rugova not wanting their presence as equal decision-makers and negotiators in the process. Joksić also stated that foreign representatives, including Shaun Byrnes, persuaded the KLA to participate in the negotiations, promising them that the U.S. would support their cause.<sup>828</sup> Shaun Byrnes, however, testified that he could not recall having a conversation of this kind with any KLA members.<sup>829</sup> The Chamber finds Byrnes’ lack of any recollection surprising and considers that, in light of the involvement of the U.S. in the negotiating process through its various envoys, the presence of KLA representatives in the Kosovo Albanian delegation was with the approval of the U.S.

361. The two delegations met face-to-face only once during the entire conference. That was on 14 February 1999.<sup>830</sup> Instead, negotiations were conducted through “shuttle diplomacy,” whereby the delegations would work on the draft text separately in different parts of the same palace. The three principal negotiators, Austrian Ambassador Petritsch, acting as the European Union’s Special Envoy for Kosovo, Russian envoy Ambassador Boris Mayorski, and U.S. Ambassador Hill, often called the “troika”, would then take changes from both sides and integrate them into the agreement

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<sup>824</sup> Ratko Marković, T. 13194, 13222 (9 August 2007). *See also* 1D94 (Letter from Ratko Marković to Ambassadors Hill, Petritsch, and Mayorski, requesting meeting with both delegations and announcing that Milutinović would be available to attend).

<sup>825</sup> Wolfgang Petritsch, P2792 (witness statement dated 9 June 1999), p. 3. According to Ambassador Petritsch, Milutinović arrived at Rambouillet around 11 February 1999 and became progressively engaged in the discussions; Wolfgang Petritsch, T. 10848 (2 March 2007); P2793 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 7221.

<sup>826</sup> Ratko Marković, T. 13194 (9 August 2007), T. 13541 (14 August 2007).

<sup>827</sup> Wolfgang Petritsch, T. 10735–10736, 10838 (1 March 2007); P2658 (Austrian Embassy Dispatch, 25 February 1998), p. 3; Shaun Byrnes, T. 12265 (17 April 2007). Professor Mark Weller and U.S. lawyer and Ambassador Morten Abramovich provided consultancy assistance to the Kosovo Albanian delegation. Wolfgang Petritsch, T. 10776–10777 (1 March 2007), 10865 (2 March 2007). *See also* Veton Surroi, T. 4551–4553 (10 October 2006).

<sup>828</sup> Ljubivoje Joksić, T. 21968–21969, 21971 (8 February 2008); 6D206 (Official RDB note, 26 February 1999).

<sup>829</sup> Shaun Byrnes, T. 12222–12228 (17 April 2007).

<sup>830</sup> Veton Surroi, T. 4553–4554 (10 October 2006); Wolfgang Petritsch, P2792 (witness statement dated 9 June 1999), pp. 2–3.

before presenting them to the other side for further comment.<sup>831</sup> Petritsch and Mayorski were primarily responsible for negotiating the political aspects of the settlement, while Hill was involved with the implementation provisions, including the issue of the presence of NATO troops in order to implement the various provisions of the agreement.<sup>832</sup> Jan Kickert, Petritsch's Second Secretary, liaised with the Kosovo Albanian delegation and reported to the Austrian Government on events in general at Rambouillet.<sup>833</sup>

362. Conflicting evidence exists about the level and nature of the FRY/Serbian delegation's commitment to the Rambouillet negotiations. Several conference participants testified to their belief that Milošević was controlling the FRY/Serbian position, because members of the delegation were in constant communication with Belgrade, despite the fact that outside contact was forbidden by the conference ground rules.<sup>834</sup> Indeed, Šainović once sought and received permission to leave Rambouillet in order to consult with Milošević. Živadin Jovanović and Ratko Marković explained that Šainović went to Belgrade because the delegation was asked to state its position and accept solutions that were not in keeping with the ten non-negotiable Contact Group principles.<sup>835</sup>

363. According to Veton Surroi, the Kosovo Albanian delegates had the impression that the FRY/Serbian team was not serious because only a small number of them appeared to know the contents of the documents on the table, and they did not give comments or responses to the "initial draft documents" but instead simply insisted on the Kosovo Albanian delegation signing the Contact Group's "non-negotiable principles". Surroi also explained that the FRY/Serbian delegation did not submit any significant proposals.<sup>836</sup> However, that is inconsistent with the

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<sup>831</sup> Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4324; Wolfgang Petritsch, T. 10710–10712 (28 February 2007); Ratko Marković, T. 13183, 13192–13193 (9 August 2007); Veton Surroi, T. 4549 (10 October 2006). The Chamber notes that it made an attempt during the trial to call Ambassadors Mayorski and Hill to give evidence for the Chamber but was ultimately unsuccessful. *See also* Section I.B above.

<sup>832</sup> Wolfgang Petritsch, T. 10710 (28 February 2007). Kickert noted that one of the reasons that security issues were discussed with the U.S. was that the EU was viewed by the Serbian leadership as "a soft power, not taken seriously and certainly not on par with the American". Jan Kickert, T. 11236 (7 March 2007).

<sup>833</sup> Jan Kickert, T. 11239 (7 March 2007).

<sup>834</sup> Wolfgang Petritsch, T. 10714 (28 February 2007); P2792 (witness statement dated 9 June 1999), p. 2, P2793 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 7219–7220; P2662 (Austrian Embassy Dispatch, 10 February 1999), p. 1 which provides that the FRY/Serbian delegation has already finished drafting its comments on one of the drafts and was waiting for "directives from Belgrade". *See also* Ibrahim Rugova, P2613 (witness statement dated 24 April 1999), p. 7, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4219.

<sup>835</sup> Živadin Jovanović, T. 14055 (20 August 2007), 14120–14121 (21 August 2007); Ratko Marković, T. 13542–13546, 13553–13554 (14 August 2007). Petritsch testified that, as a result of these contacts between the FRY/Serbian delegation and Belgrade, the Kosovo Albanian delegation insisted on the same treatment. Accordingly, the negotiators had to give permission to Thaqi to leave France in order to attend a meeting with Demaqi. Wolfgang Petritsch, P2792 (witness statement dated 9 June 1999), pp. 2–3; P562 (Austrian Embassy Dispatch, 20 February 1997), p. 2.

<sup>836</sup> Veton Surroi, T. 4558–4559, 4594–4595 (10 October 2006), P2361 (witness statement dated 27 August 2001), p. 8.

Contact Group's public statement of 16 February to the effect that the troika had received "comprehensive comments" from both delegations.<sup>837</sup>

364. The evidence indicates that the FRY/Serbian delegation participated actively in the negotiations at Rambouillet, but that their approach changed at a later stage. Petritsch opined that early in the negotiations "the Serbian ... team ... had a mandate to compromise and come to an agreement on the political aspects of the proposal ... they were competent and willing to seek a mutually agreed solution."<sup>838</sup> However, the situation seemed to change later on and, as there was no parliamentary sitting between the Rambouillet conference and the second round of talks in Paris that gave the negotiating team any new mandate, any change in tactics or position had to come from President Milošević himself.<sup>839</sup> The Chamber notes here that, according to the FRY Constitution, the FRY President could represent the FRY both at home and abroad.<sup>840</sup>

365. The possibility of an attack by NATO on the territory of the FRY was discussed throughout the Rambouillet conference; however, Ambassador Petritsch testified that it was unclear whether Milošević believed that this would actually happen.<sup>841</sup>

366. In preparation for the conference Hill had prepared a 24-page draft agreement, based on his earlier drafts, which detailed elements of a political settlement giving greater autonomy and powers of self-governance to Kosovo, while still protecting the territorial integrity and sovereignty of the FRY.<sup>842</sup> This draft, referred to as the "political part" of the Rambouillet agreement,<sup>843</sup> and consisting of a framework agreement and annexes 1 (Constitution of Kosovo), 3 (Elections), and 6 (Ombudsman), was distributed to the FRY/Serbian delegation on the morning of 7 February. The delegation had two objections at the outset. First, it found that some of the ten non-negotiable principles that had been set out by the Contact Group were not fully envisaged in the draft. Therefore, the FRY/Serbian delegation proposed to the Kosovo Albanian delegation to meet and

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<sup>837</sup> Veton Surroi, T. 4558–4559 (10 October 2006); 1D18 (Marc Weller, The Crisis in Kosovo 1989-1999, Press Briefing by Spokesman for Contact Group, 16 February 1999), e-court p. 429.

<sup>838</sup> Wolfgang Petritsch, P2792 (witness statement dated 9 June 1999), p. 2. The Serb negotiators Petritsch specifically referred to are Vladan Kutlešić, Ratko Marković, and Nikola Šainović.

<sup>839</sup> Wolfgang Petritsch, P2792 (witness statement dated 9 June 1999), p. 2.

<sup>840</sup> 1D139 (Constitution of the FRY, 1992), article 96(1).

<sup>841</sup> Wolfgang Petritsch, T.10718 (28 February 2007), P2792 (witness statement dated 9 June 1999), p. 8, where he stated that "[i]t appeared as if Milošević did not expect NATO to bomb Serbia." Života Čosić testified that the Government of Serbia, as well as the general population, did not believe that the NATO bombing would occur. They were convinced that "there would be a peaceful solution for the crisis". Života Čosić, T. 13664 (15 August 2007).

<sup>842</sup> See 1D18 (Marc Weller, The Crisis in Kosovo 1989-1999, Interim Agreement for Peace and Self-government in Kosovo, Initial Draft, 6 February 1999), e-court pp. 418–425.

<sup>843</sup> Ratko Marković, T. 13214 (9 August 2007).

sign statements accepting these principles. The Kosovo Albanians refused to do so.<sup>844</sup> However, on 11 February 1999, following a recommendation from the Co-Chairmen of the conference, the FRY/Serbian delegation issued a signed statement accepting the principles.<sup>845</sup> The Kosovo Albanian delegation again refused to sign the principles. The negotiators then inserted into the preamble of the new draft of the agreement, and into the preamble of the proposed Constitution for Kosovo in annex 1, the non-negotiable principles defined by the Contact Group.<sup>846</sup> Although both Petritsch and Surroi testified that the signing of the Contact Group principles was not necessary, as the very attendance of all the parties indicated their acceptance of the same,<sup>847</sup> the Chamber is of the view that this reasoning is circuitous and, in fact, confirms the position of the FRY/Serbian side. Had mere attendance automatically signified the acceptance of the principles, there would have been no reluctance on behalf of the Kosovo Albanians to sign them in the first place.

367. The FRY/Serbian delegation's second objection related to the fact that it thought that it had not been provided with the entire text of the draft agreement, as suggested by the numbering of the annexes. Marković testified that, despite the continuous requests of the FRY/Serbian delegation to receive the entire text, it was only on the day of the expiry of the last deadline set by the Contact Group for the original conclusion of the talks, namely 13 February 1999, that the FRY/Serbian delegation received annex 4 entitled "Economic Issues".<sup>848</sup>

368. On 14 February 1999 U.S. Secretary of State, Madeleine Albright, arrived in Rambouillet in order to move the negotiations forward. She immediately chaired the only face to face meeting between the two delegations. She then met with both delegations separately. She told the Kosovo Albanian delegation that it would be "abandoned" by the U.S. and the international community if it

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<sup>844</sup> Ratko Marković, T. 13189–13193 (9 August 2007); 13549 (14 August 2007); 1D122 (Letter from Ratko Marković to Ambassadors Hill, Petritsch, and Mayorski requesting that general principles be signed, 9 February 1999); 1D123 (Letter from Ratko Marković to Ambassadors Hill, Petritsch, and Mayorski requesting a meeting with all parties involved, 9 February 1999); 1D32 (Minutes of the session of the National Assembly, 23 March 1999), p. 6. *See also* Živadin Jovanović, T. 14056 (20 August 2007).

<sup>845</sup> Marković testified that the idea of signing the statement with the ten principles had been prompted by the Co-chairman of the meeting, Robin Cook, Minister of Foreign Affairs of the Great Britain, which is also reflected in the statement. He also concluded that Cook was a member of the original Contact Group and that he continued to share the position of a body which he belonged to. Ratko Marković, T. 13193, 13195 (9 August 2007). *See also* 1D124 (Statement signed by the FRY/Serbian delegation at the Rambouillet Meeting on 11 February 1999); 1D32 (Minutes of the session of the National Assembly, 23 March 1999), pp. 5–6.

<sup>846</sup> 1D32 (Minutes of the session of the National Assembly, 23 March 1999), p. 6. *See also* Wolfgang Petritsch, T. 10712–10713 (28 February 2007); P2662 (Austrian Embassy Dispatch, 10 February 1999), p. 1, which provides that the FRY/Serbian delegation dropped its demands for the signing of general elements following the mediators' assurances that the "sovereignty and territorial integrity of the FRY" would be preserved.

<sup>847</sup> Wolfgang Petritsch, T. 10712–10713 (28 February 2007), T. 10846–10847 (2 March 2007); Veton Surroi, T. 4562–4564 (10 October 2006).

<sup>848</sup> Ratko Marković, T. 13196–13198 (9 August 2007). *See* 1D96 (Letter from Ratko Marković to Ambassadors Hill Petritsch, and Mayorski, requesting all relevant documents intended for discussions, Rambouillet); 1D32 (Minutes of the session of the National Assembly, 23 March 1999), p. 6.

did not sign the agreement that was on the table.<sup>849</sup> She told the FRY/Serbian delegation that, if it did not agree, the FRY would be bombed.<sup>850</sup> Petritsch complained to his government in Vienna that her presence was an attempt by the U.S. to take over the negotiations.<sup>851</sup>

369. The FRY/Serbian delegation received annex 4(A) of the agreement, entitled “Humanitarian Issues, Reconstruction, and Development”, on 15 February 1999.<sup>852</sup> At that point the negotiators confirmed that all the annexes adopted by the Contact Group had been given to them. On 16 February the FRY/Serbian delegation submitted to the negotiators their comments in relation to the draft agreement which, as mentioned earlier, the Contact Group referred to as “comprehensive”.<sup>853</sup>

370. Petritsch testified that the Contact Group had agreed from the outset to hand out annexes one at a time in order to avoid confusion, and to take a “step by step approach”, thus confirming that neither delegation received all annexes at once.<sup>854</sup> He also explained that at times the Contact Group had trouble agreeing among themselves on certain parts of the agreement and was thus unable to table them and present them to the parties.<sup>855</sup>

371. The Chamber notes here that a number of dispatches reporting on the progress of the Rambouillet negotiations, prepared by the Austrian Embassy in Belgrade and sent to the Austrian Foreign Affairs Office in Vienna, were admitted into evidence.<sup>856</sup> The Chamber found them to be a generally reliable record of contemporaneous events. According to one dispatch of 18 February 1999, on 16 February in the middle of the negotiations Hill travelled to Belgrade and had a three-hour long meeting there with Milošević and Milutinović. The discussions revolved around the most sensitive issues for the FRY/Serbian side, including the condition that the sovereignty and territorial integrity of Serbia and the FRY was not to be disturbed, and that there was to be no deployment of foreign military forces.<sup>857</sup> On 18 February 1999 Milutinović met Hill again, this

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<sup>849</sup> Veton Surroi, T. 4553–4554 (10 October 2006). *See also* Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4218, P2613 (witness statement dated 3 November 2001), p. 8; 6D1670 (U.S. report on Rambouillet talks).

<sup>850</sup> Veton Surroi, T. 4554 (10 October 2006). *See also* 6D1670 (U.S. report on Rambouillet talks).

<sup>851</sup> Wolfgang Petritsch, T. 10752 (1 March 2007); P2658 (Austrian Embassy Dispatch, 25 February 1999), pp. 1–2.

<sup>852</sup> Ratko Marković, T. 13196–13198 (9 August 2007). *See* 1D96 (Letter from Ratko Marković to Hill, Petritsch, and Mayorski, requesting all relevant documents intended for discussions); 1D32 (Minutes of the session of the National Assembly, 23 March 1999), p. 6.

<sup>853</sup> Ratko Marković, T. 13198–13200 (9 August 2007); 1D589 (Letter from Ratko Marković to Hill, Petritsch, and Mayorski submitting single text of the agreement on self-government in Kosovo, 16 February 1999); 1D18 (Marc Weller, *The Crisis in Kosovo 1989-1999*, Press Briefing by Spokesman for Contact Group, 16 February 1999), e-court p. 429; 1D32 (Minutes of the session of the National Assembly, 23 March 1999), p. 6.

<sup>854</sup> Wolfgang Petritsch, T. 10843 (2 March 2007).

<sup>855</sup> Wolfgang Petritsch, T. 10842–10843 (2 March 2007); P2658 (Austrian Embassy Dispatch, 25 February 1999), p. 1.

<sup>856</sup> Wolfgang Petritsch, T. 10712 (28 February 2007).

<sup>857</sup> Wolfgang Petritsch, T. 10718 (28 February 2007); P2661 (Austrian Embassy Dispatch, 18 February 1999), p. 1. *See also* Wolfgang Petritsch, P2792 (witness statement dated 9 June 1999), p. 4.



time in Paris. Petritsch explained that Hill and the other international negotiators welcomed Milutinović's presence at Rambouillet as one of the political decision-makers, and wanted to speak to him in order to achieve an agreement as quickly as possible. This meeting, however, was recorded in a dispatch as having a negative outcome and being "absolutely unproductive", because the most contentious issues, such as the military aspects of the agreement, remained open. Milutinović took a more active stance during the remainder of the negotiations at Rambouillet.<sup>858</sup>

372. On 18 February, having considered the comments on the initial draft made by the two sides, the Contact Group presented a new version of the agreement, which now included annexes 1, 3, 4, 4(A), 6, and a new annex 8 which read as follows:

Three years after the entry into force of the Agreement, there shall be a comprehensive assessment of the Agreement under international auspices with the aim of improving its implementation and determining whether to implement proposals by any Party for additional steps.<sup>859</sup>

This draft also stated that "paramilitary and irregular forces in Kosovo" were incompatible with the terms of the Agreement.<sup>860</sup>

373. The Kosovo Albanian delegation rejected the draft, as it disagreed with the political component and with "unilateral alteration of the most fundamental principles which underpin the political agreement as a whole", the major problem being with the insertion of the term "sovereignty" next to the "territorial integrity" of the FRY.<sup>861</sup> In a press statement the Kosovo Albanian delegation outlined its position that a referendum on the further status of Kosovo must be held following the expiry of an interim period and stated that any reference to sovereignty would constrain it in that respect; it objected to the process itself, arguing that it was based on separate negotiations and unilateral amendments. However, Veton Surroi had to concede that it was the Kosovo Albanian delegation itself that had insisted on this process and refused to sign the non-negotiable principles.<sup>862</sup>

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<sup>858</sup> Wolfgang Petritsch, T. 10724 (28 February 2007); P563 (Austrian Embassy Dispatch, 19 February 1999), p. 2.

<sup>859</sup> 1D18 (Marc Weller, *The Crisis in Kosovo 1989-1999, Interim Agreement for Peace and Self-Government in Kosovo*, 2<sup>nd</sup> draft, 18 February 2007), e-court pp. 431-438. *See also* Veton Surroi, T. 4559-4560 (10 October 2006); Wolfgang Petritsch, T. 10721-10722 (28 February 2007); P2661 (Austrian Embassy Dispatch, 18 February 1999), p. 2.

<sup>860</sup> 1D18 (Marc Weller, *The Crisis in Kosovo 1989-1999, Interim Agreement for Peace and Self-Government in Kosovo*, 2<sup>nd</sup> draft, 18 February 2007), e-court pp. 431, Framework, article 2, section 2.

<sup>861</sup> 1D18 (Marc Weller, *The Crisis in Kosovo 1989-1999, Kosova Delegation Statement on New Proposal for a Settlement*, 18 February 2007), e-court pp. 441-442; Veton Surroi, T. 4560-4561 (10 October 2006). *See also* P563 (Austrian Embassy Dispatch, 19 February 1999), pp. 1-2.

<sup>862</sup> 1D18 (Marc Weller, *The Crisis in Kosovo 1989-1999, Kosova Delegation Statement on New Proposal for a Settlement*, 18 February 2007), e-court pp. 441-442; Veton Surroi, T. 4561-4565 (10 October 2006).

374. Petritsch testified that, although the FRY/Serbian delegation also criticised the draft, as it granted a high degree of self-government to Kosovo and appeared to take precedence over the FRY and Serbia's legal framework, nevertheless it was ready to accept it.<sup>863</sup> However, the next day, 19 February, the delegation submitted its written opinion on the draft demanding deletion of entire sections. This resulted in long meetings between Marković, Kutlešić, and lawyers of the negotiators.<sup>864</sup> The Kosovo Albanian delegation also provided its written comments.<sup>865</sup>

375. On 19 February KLA leader Hashim Thaqi was given permission to leave Rambouillet. He travelled to Ljubljana, Slovenia, where he met with Adem Demaqi, who was the political representative of the KLA at the time. Upon his return, he indicated to the troika that this meeting had been positive and that he would be able to sign the draft agreement. On the same day some members of the Kosovo Albanian delegation met with Wesley Clark, who had come to Rambouillet, and who tried to persuade them to sign the agreement. In doing so Clark informed the Kosovo Albanian delegation about the existence of missing annexes 2, 5, and 7, dealing with the implementation side of the agreement, including military implementation. Petritsch testified that at that point these annexes had been drafted internally by NATO experts but had not been circulated at the conference,<sup>866</sup> which appeared to contradict his earlier testimony that "practically the whole text" was known to the parties as of 18 February.<sup>867</sup> Later, during cross-examination, Petritsch explained that he was told by Hill that the implementation annexes were handed over to the FRY/Serbian Delegation on 18 February but were rejected.<sup>868</sup> Curiously, the Austrian Embassy's email dispatch of 19 February recorded that the annexes had been given to the Kosovo Albanian delegation but made no mention of them being handed over to the FRY/Serbian delegation.<sup>869</sup> Petritsch explained this by saying that military presence could only be negotiated with the state actor, while a non-state actor, such as the Kosovo Albanians, had no say. This is why, according to Petritsch, it was more important to note in the dispatch that Kosovo Albanians were informed of the existence of the annexes and not record the same information with respect to the FRY/Serbian side.<sup>870</sup> The Chamber notes that one of the provisions of annex 7 referred to demilitarisation of

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<sup>863</sup> Wolfgang Petritsch, T. 10722–10723 (28 February 2007), T. 10856 (2 March 2007); P563 (Austrian Embassy Dispatch, 19 February 1999), p. 1.

<sup>864</sup> Wolfgang Petritsch, T. 10726–10727 (28 February 2007); P562 (Austrian Embassy Dispatch, 20 February 1999), p. 1.

<sup>865</sup> P562 (Austrian Embassy Dispatch, 20 February 1999).

<sup>866</sup> Veton Surroi, T. 4565–4566 (10 October 2006); Wolfgang Petritsch, T. 10866–10868 (2 March 2007), P2792 (witness statement dated 9 June 1999), pp. 2–3; P562 (Austrian Embassy Dispatch, 20 February 1997), p. 2.

<sup>867</sup> Wolfgang Petritsch, T. 10701 (28 February 2007).

<sup>868</sup> Wolfgang Petritsch, T. 10921–10926 (2 March 2007).

<sup>869</sup> P563 (Austrian Embassy Dispatch, 19 February 1999), p. 1.

<sup>870</sup> Wolfgang Petritsch, T. 10926 (2 March 2007).

forces other than VJ, MUP, and local police forces, thereby implying the dissolution of the KLA, a matter that would obviously require to be negotiated with the KLA delegation.<sup>871</sup>

376. It would appear that the FRY/Serbian delegation had at least some notice, possibly only from media reports, of what was proposed in this part of the agreement, since on 18 February the FRY Foreign Ministry issued a statement to all the members of the Federal Government, in which it stated that the FRY/Serbian delegation “did not receive any ‘military annex’ or similar military proposals at the Rambouillet”, that the Contact Group never discussed the same with the delegation, and that the FRY would not accept any foreign troops on its territory.<sup>872</sup> Živadin Jovanović testified that this correspondence was prepared as a reaction to statements in the media about the necessity to allow the NATO presence in Kosovo.<sup>873</sup> However, Momir Bulatović testified that this correspondence was a “diplomatic response” of the Ministry to the “military annex offered to the negotiators in Rambouillet.”<sup>874</sup>

377. During intensive discussions held on the night of 19 February the FRY/Serbian delegation and the Contact Group negotiators managed to conclude their negotiations on the political parts of the draft agreement, including annexes 1, 3, and 6. Marković testified that the FRY/Serbian delegation was prepared to accept the political agreement provided that some corrections were made in the offered text. In particular, it wanted the constitution to reflect the fact that Kosovo was an integral part of the Republic of Serbia and that Serbia had all state powers in Kosovo. In the night between the 19 and the 20 February 1999, in the presence of Petritsch and O’Brien, the FRY/Serbian delegation accepted these changes and managed to reach “a high degree of agreement”. However, all these changes also needed to be approved by the Kosovo Albanian delegation. According to Marković, even by the second deadline on 20 February, the FRY/Serbian delegation still had not received the full text of the agreement, despite assurances given by the negotiators on 15 February.<sup>875</sup>

378. On 20 February 1999, the last scheduled day for meetings, both sides met separately with members of the Contact Group, including Madeleine Albright. Thaqi, on behalf of the Kosovo Albanian delegation, was asked if the delegation would accept the draft agreement, but failed to provide either a positive or a negative answer, which was contrary to the positive answer he had

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<sup>871</sup> P474 (Document entitled Interim Agreement for Peace and Self-Government in Kosovo (Rambouillet Agreement, February 23, 1999), Chapter 7, article V.

<sup>872</sup> 2D221 (FRY Ministry of Foreign Affairs’ correspondence to Momir Bulatović, 18 February 1999).

<sup>873</sup> Živadin Jovanović, T. 14061 (20 August 2007).

<sup>874</sup> Momir Bulatović, T. 13847 (17 August 2007).

<sup>875</sup> Ratko Marković, T. 13197–13198, 13213–13215 (9 August 2007).

given to Petritsch before the meeting. As a result, the meeting was adjourned.<sup>876</sup> Following the adjournment, the FRY/Serbian delegation and Milutinović were summoned to meet the Contact Group. When asked whether it would be ready to accept the draft of 18 February, Milutinović responded in the affirmative.<sup>877</sup>

379. As a result of Thaqi's refusal to accept the draft agreement, the Rambouillet conference was extended for another three days until 23 February. On 21 February Thaqi, Rugova, and Rexhep Qosja<sup>878</sup> had a working lunch with Madeleine Albright. During the lunch they indicated that they wanted the agreement to include a reference to a referendum on independence of Kosovo. As an alternate, they asked for a "side letter" from the U.S. which would refer to "expressed will of the people" as a factor in the ultimate determination of the status of Kosovo and would give assurances that the U.S. understood this phrase to be a reference to a referendum.<sup>879</sup> By 4:15 a.m. on 22 February an agreement was reached with the Kosovo Albanians on all points with the exception of the review clause in annex 8. The FRY/Serbian delegation also indicated its agreement, but it too objected to the review clause. By 5:25 a.m. the Kosovo Albanians were informed of a new review clause which included all Kosovo Albanian proposals, except for the reference to a referendum. Instead, it referred to the "expressed will of the people".<sup>880</sup> According to Petritsch, the term "expressed" was later removed from the final version of clause 8, in order to tone down the "will of the people".<sup>881</sup> In the course of that night the U.S. provided the side letter it had promised, giving assurances that this phrase would be interpreted as a reference to a referendum on the status of Kosovo.<sup>882</sup> The FRY/Serbian delegation was not aware of this letter.<sup>883</sup> Indeed, Marković testified that he found out about the existence of letters and messages between the U.S. and the Kosovo Albanian delegation in Rambouillet only after having read books about the negotiations.<sup>884</sup>

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<sup>876</sup> Wolfgang Petritsch, T. 10864–10865, 10869 (2 March 2007); Veton Surroi, T. 4566–4568 (10 October 2006).

<sup>877</sup> Wolfgang Petritsch, T. 10873–10874 (2 March 2007).

<sup>878</sup> At the time, Rexhep Qosja was a leader of the United Democratic Movement party, which consisted of a number of disgruntled LDK members and also had ties with the KLA; Veton Surroi, T. 4551–4552 (10 October 2006).

<sup>879</sup> Veton Surroi, T. 4568–4569, 4571 (10 October 2006).

<sup>880</sup> Wolfgang Petritsch, T. 10736–10737 (1 March 2007); P2660 (Austrian Embassy Dispatch, 22 February 1999), p. 1.

<sup>881</sup> Wolfgang Petritsch, T. 10739–10741 (1 March 2007); P474 (Document entitled Interim Agreement for Peace and Self-Government in Kosovo (Rambouillet Agreement), February 23, 1999), Chapter 8.

<sup>882</sup> 1D18 (Marc Weller, *The Crisis in Kosovo 1989-1999*, Draft for annex 8, article 1(3) and proposed draft side-letter, 22 February 1999), e-court p. 449. The proposed text for the review clause read:

Three years after entry into force of this agreement, an international meeting shall be convened to determine a mechanism for a Final Settlement for Kosovo on the basis of the expressed will of the people, opinions of relevant authorities, each Party's efforts regarding the implementation of this Agreement, and the Helsinki Final Act, and to undertake a comprehensive assessment of the implementation of this Agreement and to consider proposals by any Party for additional measures.

<sup>883</sup> Wolfgang Petritsch, T. 10737 (1 March 2007).

<sup>884</sup> Ratko Marković, T. 13212 (9 August 2007).

380. Veton Surroi then informed Petritsch that he wanted a similar undertaking from the European Union. Petritsch strongly rejected this request.<sup>885</sup> Following a discussion between the American and E.U. negotiators, Albright agreed with the E.U. position and, together with other negotiators, told the Kosovo Albanian delegation that that a popular referendum on independence and the continued existence of the KLA were “out of the question.”<sup>886</sup> The offer of the side letter was ultimately withdrawn when the Kosovo Albanian delegation failed to sign the agreement on time.<sup>887</sup> Petritsch noted these events in his daily dispatch to Vienna, where he commented that the Kosovo Albanian’s “stubborn stance” on a referendum appeared not to be the real reason behind their reluctance to accept the draft agreement; rather, the main problem was the fact that the agreement foresaw the dissolution of the KLA, and Thaqi, as one of the leaders of the KLA, did not want to agree to this.<sup>888</sup>

381. During the afternoon of 22 February, it was clear that Thaqi had not accepted the draft agreement. Since the two sides were watching each other closely, this refusal by Thaqi to accept the agreement also prompted the FRY/Serbian delegation to do the same. According to Petritsch, the FRY/Serbian delegation rejected most of the revisions made and even questioned some of the already settled parts of the agreement.<sup>889</sup> Marković explained the reasons behind the rejection of the agreement on 22 February by saying that it was only at 7:00 p.m. on 22 February, at a meeting with the troika, that the FRY/Serbian delegation was finally given annexes 2 (Police and Civilian Public Security), 5 (Implementation I), 7 (Implementation II), and the new version of the review clause in annex 8. According to Marković, annex 8 was a great concession to the Kosovo Albanian delegation. In addition, the delegation learnt from Ambassador Mayorski that annexes 2, 5, and 7 were not agreed upon by the members of the Contact Group, unlike the other annexes; annexes 2 and 7 had not even been discussed at all by the troika; and annex 5 had been discussed, but no decision had been made on its adoption.<sup>890</sup> After consulting the whole delegation, Marković

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<sup>885</sup> Wolfgang Petritsch, T. 10741–10742 (1 March 2007), T. 10890, 10894–10897 (2 March 2007); P2660 (Austrian Embassy Dispatch, 22 February 1999), pp. 1–2; Veton Surroi, T. 4571–4572 (10 October 2006). Surroi rejected the Defence’s suggestion that the side letter was vetoed by the E.U. and Russia. Rather, he stated that the side letter was withdrawn upon the Kosovo Albanian delegation’s failure to sign the agreement on time.

<sup>886</sup> Wolfgang Petritsch, T. 10741–10742 (1 March 2007); P2660 (Austrian Embassy Dispatch, 22 February 1999), p. 1.

<sup>887</sup> Veton Surroi, T. 4572, 4574 (10 October 2006); *but see* Wolfgang Petritsch, T. 10896 (2 March 2007) suggesting that the issuance of a side letter was inappropriate and that this might have been the reason it was withdrawn.

<sup>888</sup> Wolfgang Petritsch, T. 10733–10735 (1 March 2007); P2660 (Austrian Embassy Dispatch, 22 February 1999), p. 1.

<sup>889</sup> Wolfgang Petritsch, T. 10745–10747 (1 March 2007); P2659 (Austrian Embassy Dispatch, 23 February 1999), p. 1; P2658 (Austrian Embassy Dispatch, 25 February 1999).

<sup>890</sup> Ratko Marković, T. 13201–13204 (9 August 2007), 13550–13551 (14 August 2007); 1D97 (Letter from Ratko Marković to Hill, Petritsch, and Mayorski); 1D32 (Minutes of the session of the National Assembly, 23 March 1999), p. 6.

refused to accept them, stating that the troika had assured them on 15 February that they had the entire draft agreement at that time.<sup>891</sup>

382. Nevertheless, the process continued and minor changes were made to the draft during the night between 22 and 23 February. On 23 February 1999 at 9:30 a.m. both delegations received the final text of the agreement, which, in addition to the framework agreement, included “chapters”, as opposed to annexes, 1, 2, 3, 4, 4A, 5, 6, 7, and 8.<sup>892</sup> This final draft agreement was signed by the three members of the troika on behalf of the Contact Group. However, Mayorski’s signature did not extend to chapters 2 and 7 because, as stated earlier, these had not been discussed by the Contact Group.<sup>893</sup> As for chapter 5, Marković explained that Mayorski, in the presence of the other two negotiators, stated that it was not adopted and it was not even put to the vote.<sup>894</sup> However, he appears to have signed it nevertheless.

383. The delegations were asked to submit their responses to all these documents by no later than 1:00 p.m. that day.<sup>895</sup> The FRY/Serbian delegation did not accept the agreement because of the provisions dealing with a foreign military presence in the FRY (chapter 7, appendix B) which it considered gave too much power to NATO forces in the FRY.<sup>896</sup> Its expressed view was that the deployment of foreign troops in Kosovo was neither considered nor accepted at the level of the Contact Group and hence could not be the subject of talks or agreement on Kosovo.<sup>897</sup> Petritsch, on the other hand, explained that NATO forces would be present only in Kosovo and that chapter 7 also allowed for the presence of 1,500 VJ soldiers in the border belt and 1,000 soldiers in other areas of Kosovo. This, according to Petritsch, indicated that the international community was committed to preserving FRY’s territorial integrity and sovereignty.<sup>898</sup> However, Rade Čučak, a VJ officer in charge of securing the state border, testified that the figure of 1,500 soldiers was

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<sup>891</sup> 1D97 (Letter from Ratko Marković to Hill, Petritsch, and Mayorski, 22 February 1999).

<sup>892</sup> Wolfgang Petritsch, T. 10700–10701 (28 February 2007), 10756 (1 March 2007); P474 (Document entitled Interim Agreement for Peace and Self-Government in Kosovo (Rambouillet Agreement, February 23, 1999); P2659 (Austrian Embassy Dispatch, 23 February 1999), p. 1; 1D32 (Minutes of the session of the National Assembly, 23 March 1999), p. 7.

<sup>893</sup> 1D98 (Letter from negotiators, on behalf of the Contact Group signed by Hill, Mayorski (except Chapters 2 and 7), and Petritsch, 23 February 1999); Ratko Marković, T. 13204–13205 (9 August 2007).

<sup>894</sup> Ratko Marković, T. 13203–13204, 13207–13208 (9 August 2007). *See also* Wolfgang Petritsch, T. 10694–10695 (28 February 2007).

<sup>895</sup> Ratko Marković, T. 13204 (9 August 2007); 1D32 (Minutes of the session of the National Assembly, 23 March 1999), p. 7.

<sup>896</sup> Živadin Jovanović, T. 14059–14060 (20 August 2007). *See also* 1D32 (Minutes of the session of the National Assembly, 23 March 1999), pp. 8, 11–12.

<sup>897</sup> 2D241 (FRY Ministry of Foreign Affairs Report to the FRY Government regarding talks between Živadin Jovanović and Joschka Fischer), p. 6.

<sup>898</sup> Wolfgang Petritsch, T. 10704–10709 (28 February 2007); P474 (Document entitled Interim Agreement for Peace and Self-Government in Kosovo (Rambouillet Agreement), February 23, 1999), chapter 7.

unrealistic, and pointed to a KVM estimate from mid-February 1999 of the need for at least 6,600 soldiers in order to adequately protect the border.<sup>899</sup>

384. Another reason for rejecting the draft related to the issue of timing. Marković stressed that the newly included chapters 2, 5, and 7 constituted almost half of the full text of the agreement and that it was, therefore, impossible to respond to them within such a short period of time.<sup>900</sup> Petritsch, on the other hand, explained that the negotiators knew at the time that the parties would not agree since both indicated that they needed more time. Accordingly, the troika only asked of the parties that they indicate if they would be willing to continue negotiations after a recess of two and a half weeks. It was also understood, according to Petritsch, that the political part of the agreement was more or less settled, whereas the implementation part was to be dealt with after the recess.<sup>901</sup>

385. Given that Marković was adamant that the FRY/Serbian delegation did not receive any military or implementation annexes until 22 February and, in support, provided letters which were sent to the troika complaining of this state of affairs, and given that Petritsch's evidence about the distribution of the implementation parts was based on what he was told by Hill, who was not available to give evidence before the Chamber, the Chamber is unable to conclude with sufficient certainty that the FRY/Serbian delegation was indeed given the implementation parts of the agreement already on 18 February. Indeed, Petritsch himself reported to his government that some of the annexes/chapters reached the parties at a later stage, as there was internal disagreement about them among the troika.<sup>902</sup> The Chamber notes that the annexes/chapters over which there was internal disagreement were in fact annexes 2, 5, and 7. In addition, given that annex/chapter 7 essentially contained a provision for demilitarisation of the KLA, which was always a controversial issue for Thaqi, it is possible that Clark wanted to ensure acceptance by the Kosovo Albanian delegation before these annexes/chapters were handed over to the FRY/Serbian side.

386. On 23 February Ratko Marković sent a letter which, according to Petritsch, the Contact Group understood to mean that the negotiations had failed. Petritsch then met with Šainović and conveyed to him that the letter would be taken as the end of the Rambouillet talks. Several hours later a second letter arrived, indicating that the FRY/Serbian delegation would be ready to continue

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<sup>899</sup> Rade Čučak, T. 14853–14854 (4 September 2007); Karol John Drewienkiewicz, T. 7803–7805 (4 December 2006), P2508 (witness statement dated 23 June 2000), para. 176; P640 (KVM report entitled “Kosovo border Issues”, 21 June 2000). *See also* Milan Kotur, T. 20650–20651 (21 January 2008). The Chamber notes that exhibit P640 is wrongly dated and that this report was in fact compiled in mid-February 1999, following Drewienkiewicz and Kotur's meeting and touring of the border.

<sup>900</sup> Ratko Marković, T. 13208 (9 August 2007); Wolfgang Petritsch, T. 10921–10924 (2 March 2007). *See also* 1D99 (Letter from Milan Milutinović and Ratko Marković to Madeleine Albright, 5 March 1999); 1D32 (Minutes of the session of the National Assembly, 23 March 1999), p. 8. *See also* Živadin Jovanović, T. 14062 (20 August 2007).

<sup>901</sup> Wolfgang Petritsch, T. 10700–10701 (28 February 2007), T. 10927–10928 (2 March 2007).

with the negotiations, and even discuss international presence, without restricting it to civilian presence. Another couple of hours later a third letter arrived, again indicating willingness to continue negotiating and agreeing to discuss the scope of the international presence in Kosovo, but also emphasising the sovereignty and territorial integrity of the FRY.<sup>903</sup> The FRY/Serbian delegation stated that “major progress has been achieved in the talks in Rambouillet in defining political solution on substantial self-government of Kosovo respectful of sovereignty and territorial integrity of Republic of Serbia and FRY”. It particularly emphasised “that there can be no independence for Kosovo Metohija nor the third republic.” It expressed full readiness “to continue the work, in line with the positive spirit of this meeting” pointing out that “direct talks between the two delegations would be very useful.”<sup>904</sup> The position of the FRY/Serbian delegation, that it was willing to accept the political agreement from Rambouillet, was repeated at a press conference held by Milutinović in Paris on 23 February 1999. He stated *inter alia* that “they made considerable efforts to achieve some results at the conference, which will probably be the starting point for the next meeting”.<sup>905</sup>

387. As far as the Kosovo Albanian delegation was concerned, it also received the full agreement in the morning of 23 February and was to respond in the afternoon. As the deadline approached, Hill joined the Kosovo Albanian delegation for lunch, upset that no response was forthcoming. During this lunch an idea emerged for the Kosovo Albanian delegation to send letters to Albright, as well as the other Contact Group negotiators, containing its view on chapter 8.<sup>906</sup> Thus, in a letter sent to Madeleine Albright alone, the Kosovo Albanian delegation conveyed its willingness to accept the agreement, but also expressed its understanding that the agreement did not preclude a referendum in Kosovo. It stated that the results of this referendum would then be conveyed to the international meeting convened to determine the mechanism for a final settlement, as called for in chapter 8.<sup>907</sup> Petritsch conceded that this letter to Albright was exactly the kind of unilateral agreement between the Kosovo Albanians and the U.S. that was earlier rejected by the E.U.

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<sup>902</sup> P2658 (Austrian Embassy Dispatch, 25 February 1999), p. 1.

<sup>903</sup> Wolfgang Petritsch, T. 10747–10748 (1 March 2007), T. 10928–10934 (2 March 1999), P2792 (witness statement dated 9 June 1999), p. 4; P625 (Letter to Hill, Petritsch, and Mayorski signed by Ratko Marković, 23 February 1999), also admitted as 1D582. *See also* 1D18 (Marc Weller, *The Crisis in Kosovo 1989-1999*), e-court pp. 466. According to Petritsch, during the later negotiations in Paris, Milutinović announced that he had drafted this letter. Wolfgang Petritsch, P2792 (witness statement dated 9 June 1999), p. 4.

<sup>904</sup> Ratko Marković, T. 13209 (9 August 2007); P625 (Letter to Hill, Petritsch, and Mayorski signed by Ratko Marković, 23 February 1999), also admitted as 1D582; 1D32 (Minutes of the session of the National Assembly, 23 March 1999), p. 7.

<sup>905</sup> Ratko Marković, T. 13215 (9 August 2007); 1D586 (Press Conference held by Milutinović in Paris, 23 February 1999), p. 1. *See also* 2D288 (Announcement from the FRY Government session, 25 February 1999).

<sup>906</sup> Veton Surroi, T. 4574–4578 (10 October 2006).

<sup>907</sup> 1D18 (Marc Weller, *The Crisis in Kosovo 1989–1999*), e-court p. 467.



negotiators. He maintained that it never became a part of the Rambouillet process albeit it was delivered to Albright.<sup>908</sup>

388. At 4:30 p.m. that same day the Kosovo Albanian delegation also issued a public statement announcing that it would sign the agreement in two weeks' time and that, at the end of a three year interim period, it would hold a referendum in Kosovo in order to ascertain the will of the people as provided for in chapter 8 of the agreement. It also stated that the Kosovo Albanian delegation expected a "rapid employment of NATO on the ground as an essential part of the Agreement."<sup>909</sup> Both Hill and Petritsch worked on this statement with the Kosovo Albanian delegation.<sup>910</sup> Petritsch explained that this was done because the international community recognised that it could not prevent anyone from organising a referendum, but that the decisive issue would be the status of such a referendum. The international community wanted this referendum or the will of the people to be only one of the factors to be considered when such a decision was being made, as opposed to it being the decisive factor.<sup>911</sup>

389. Using the letter sent to Madeleine Albright by the Kosovo Albanian delegation, and despite the positive letter sent by the FRY/Serbian delegation to the troika, a U.S. State Department spokesperson publicly announced that the Kosovo Albanians had signed up to the agreement "and had chosen peace", and that the FRY/Serbian delegation had failed to do the same.<sup>912</sup> However, the Chamber is of the view that there is no basis in the evidence to conclude that the FRY/Serbian delegation was any less committed to the pursuit of peace at this stage of the negotiations. This is confirmed by the Contact Group's conclusion at the end of the conference that, while the negotiations were difficult, the parties had reached a consensus on allowing substantial autonomy for Kosovo, with mechanisms ready to go into place for democratic elections, protection of human rights and national minorities, and a fair legal system.<sup>913</sup> In addition, Petritsch testified that both

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<sup>908</sup> Wolfgang Petritsch, T. 10906–10911, 10916–10918 (2 March 2007); 1D32 (Minutes of the session of the National Assembly, 23 March 1999), pp. 7–8. *See also* 1D206 (Video clip from the Fall of Milošević by BBC); 1D205 (Transcript of video clip from the Fall of Milošević by BBC); Branko Krga, T. 16790–16791 (3 October 2007); P941 (Minutes of the Collegium of the General Staff of the VJ for 24 February 1999), p. 4.

<sup>909</sup> 1D18 (Marc Weller, *The Crisis in Kosovo 1989–1999*), e-court p. 467.

<sup>910</sup> P2659 (Austrian Embassy Dispatch, 23 February 1999), pp. 1–2.

<sup>911</sup> Wolfgang Petritsch, T. 10897–10901, 10904–10905 (2 March 2007); P2659 (Austrian Embassy Dispatch, 23 February 1999), pp. 1–2.

<sup>912</sup> 1D206 (Video clip from the Fall of Milošević by BBC); 1D205 (Transcript of video clip from the Fall of Milošević by BBC).

<sup>913</sup> Wolfgang Petritsch, T. 10756–10758 (1 March 2007); P2814 (Contact Group Statement, 23 February 1999), paras. 1, 3, 4.

sides needed more time and had agreed to a second round of talks in Paris, scheduled for 15 March 1999, at which time the implementation parts of the accord would be finalised.<sup>914</sup>

390. During the hiatus between talks at Rambouillet and the follow-up meeting in Paris member states of the Contact Group, particularly the U.S., directly lobbied FRY President Milošević to accept the draft agreement and tried to convince him that an international monitoring presence in Kosovo was necessary.<sup>915</sup> Petritsch and German Foreign Minister, Joschka Fischer, travelled to Belgrade around 27 February to meet with Milošević and Milutinović. While Fischer met privately with Milošević, Petritsch spoke with Milutinović who refused to discuss the proposed text or the political aspects of the agreement. According to Petritsch, this was his first indication that the FRY/Serbian side would not ultimately sign the agreement.<sup>916</sup> On 1 March Knut Vollebaek met with Milošević in Belgrade in order to persuade him to accept a NATO-led military force in Kosovo. Milošević's response was negative. Following the meeting, his office issued a statement for the public to the effect that the international presence in Kosovo should be limited to that defined by the KVM Agreement.<sup>917</sup> On 2 March 1999 Milutinović met with Hill in Belgrade, while Vollebaek went to Kosovo to meet with some members of the Kosovo Albanian delegation, as well as Zoran Anđelković, the Head of the TEC at the time. Vollebaek was optimistic about his talks with Kosovo Albanians who indicated they would be signing the Rambouillet Agreement. Hill, on the other hand, reported that there were substantial differences between the views of the FRY/Serbian authorities and the international community on the issue of implementation and international military presence.<sup>918</sup>

391. Ratko Marković testified, however, that on 5 March 1999 he and Milutinović held a meeting with the FRY/Serbian delegation and that the delegation was prepared to continue with talks.<sup>919</sup> Wolfgang Petritsch, on the other hand, testified that Milutinović issued a statement for the public on 5 March which clearly indicated the change of attitude on behalf of the FRY/Serbian delegation in regard to the Rambouillet process, albeit expressing willingness to continue talks.<sup>920</sup> The FRY/Serbian authorities appear to have considered that the internationals involved in the negotiating process were trying to proceed with undue hast. In letters of 5 March 1999, addressed to U.S. Secretary of State, Madeleine Albright and many other international officials, Milutinović

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<sup>914</sup> Wolfgang Petritsch, T. 10700–10701 (28 February 2007); P2814 (Contact Group Statement, 23 February 1999), para. 4.

<sup>915</sup> Wolfgang Petritsch, T. 10724–10726 (28 February 2007).

<sup>916</sup> Wolfgang Petritsch, P2792 (witness statement dated 9 June 1999), p. 5.

<sup>917</sup> P460 (KVM Report for 1 March 1999), para. 1.

<sup>918</sup> P461 (KVM Report for 2 March 1999), paras. 1–2.

<sup>919</sup> Ratko Marković, T. 13219–13220 (9 August 2007).

<sup>920</sup> Wolfgang Petritsch, T. 10758 (1 March 2007).

and Marković expressed their concern regarding the “unprecedented campaign to have the representatives of political parties of Albanian separatist movement, even before 15 March and the continuation of the agreed talks, sign the text of the non-existent ‘Agreement’ of 23 February (at 9:30 a.m.)” They further stated that “the present campaign to sign the non-existent ‘document’ surprises [them] and causes indignation because it is obviously [*sic*] that they are seeking to impose the policy of *fait accompli*, which may seriously undermine further continuation of the negotiating process.”<sup>921</sup>

392. The FRY/Serbian delegation travelled to Paris on 14 March 1999 and the talks resumed on 15 March. This time Milutinović was present from the outset.<sup>922</sup> In an attempt to include in the draft agreement the elements of substantial autonomy and to harmonise the entire text with the ten non-negotiable principles of the Contact Group, the FRY/Serbian delegation sent to the troika a revised version of the Rambouillet draft agreement from which it took out all provisions that were “in contravention of the declared principle of sovereignty and territory [*sic*] integrity” of the FRY, namely “everything that is against equality of national communities, everything that is over and above international assistance in resolving the issue in Kosovo ... and which means an introduction of an international protectorate”.<sup>923</sup> The next day, Milutinović made a statement in which he stated that “the delegation of the Government of the Republic of Serbia is prepared to accept the political part of the Agreement on Kosovo and Metohija if the objections raised by the delegation yesterday are accepted.”<sup>924</sup> He also stated that the agreement had to be signed before there could be any discussion of its implementation, and concluded that the scope and character of that implementation should be discussed at a later date.<sup>925</sup> The Co-Chairmen replied that the Contact Group, at a meeting on 15 March, unanimously concluded that no essential changes to the political parts of the text of 23 February 1999 were acceptable; only technical adjustments could be taken into consideration. At the same time the Contact Group underlined that it was necessary to move

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<sup>921</sup> Ratko Marković, T. 13218–13219 (9 August 2007); 1D99 (Letter from Milan Milutinović and Ratko Marković to Madeleine Albright, 5 March 1999); 1D595 (Letter from Milan Milutinović and Ratko Marković to Hubert Vedrine, 5 March 1999); 1D594 (Letter from Milan Milutinović and Ratko Marković to Joschka Fischer, 5 March 1999); 1D593 (Letter from Milan Milutinović and Ratko Marković to Lamberto Dini, 5 March 1999); 1D592 (Letter from Milan Milutinović and Ratko Marković to Robin Cook, 5 March 1999); 1D591 (Letter from Milan Milutinović and Ratko Marković to Igor Ivanov, 5 March 1999); 1D32 (Minutes of the session of the National Assembly, 23 March 1999), p. 8.

<sup>922</sup> Ratko Marković, T. 13222 (9 August 2007).

<sup>923</sup> 1D32 (Minutes of the session of the National Assembly, 23 March 1999), p. 9. *See also* Milan Jovanović, T. 14187–14192, 14213–14214 (22 August 2007); 2D384 (Agreement on Self-Government in Kosovo of 15 March 1999).

<sup>924</sup> 1D587 (Milan Milutinović’s Press Statement, 16 March 1999).

<sup>925</sup> 1D587 (Milan Milutinović’s Press Statement, 16 March 1999); 1D32 (Minutes of the session of the National Assembly, 23 March 1999), pp. 7–9.

immediately to discuss the elements of implementation of the agreement, and that the parties had to adopt the agreement in full, including its provisions on implementation.<sup>926</sup>

393. Petritsch testified that it was clear and obvious to the troika at that point that Milutinović had come with instructions from Milošević to refuse to accept any aspect of the deal. The FRY/Serbian delegation completely back-tracked on any compromise that they had agreed to in February. The negotiations were dead.<sup>927</sup> In Petritsch's view this was because Milošević had changed his mind and decided to reject the proposed agreement in its entirety. This was an unfortunate decision since the proposed agreement was "quite good for the Serbs": it expressly supported the protection of the FRY's borders, and indicated that the type and nature of the military force that would have been deployed in Kosovo to implement the agreement would probably have been sanctioned by the UN Security Council.<sup>928</sup> While conceding in cross-examination that after Rambouillet there remained some unresolved issues with respect to the political side of the agreement, Petritsch maintained that the FRY/Serbian delegation was told in Paris that only implementation would be discussed. He explained that this was done for practical reasons in order to complete the hard part of the negotiations, namely that relating to implementation, before the parties could go back to discussing the finer points of the political agreement.<sup>929</sup> This was in contrast to the position of the FRY/Serbian delegation that the talks on implementation could be held only after agreement on political solution was reached.<sup>930</sup>

394. On 17 March 1999 Marković sent a letter to the negotiators asking them to organise a joint meeting of the two delegations so that they could hear directly from the other side their comments on the FRY/Serbian delegation's proposals.<sup>931</sup> On the same day Nikola Čičanović, a secretary to the FRY/Serbian delegation, sent a request to the Co-Chairmen of the Paris negotiations asking for information on the plan of work for the negotiations.<sup>932</sup> Marković explained that there was no fixed plan of work or agenda for the Paris meetings, no fixed rules of procedure, and that they insisted that such rules of procedure for the meeting be adopted.<sup>933</sup>

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<sup>926</sup> 1D32 (Minutes of the session of the National Assembly, 23 March 1999), p. 9.

<sup>927</sup> Wolfgang Petritsch, P2792 (witness statement dated 9 June 1999), p. 5.

<sup>928</sup> Wolfgang Petritsch, P2792 (witness statement dated 9 June 1999), p. 6.

<sup>929</sup> Wolfgang Petritsch, T. 10930–10936 (2 March 2007); 1D18 (Marc Weller, *The Crisis in Kosovo 1989–1999*, Three letters sent to negotiators by the FRY/Serbian delegation on 23 February 1999), e-court p. 466.

<sup>930</sup> 1D32 (Minutes of the session of the National Assembly, 23 March 1999), p. 9.

<sup>931</sup> Ratko Marković, T. 13222–13223 (9 August 2007); 1D110 (Letter from Ratko Marković to Ambassadors Hill, Petritsch, Mayorski, requesting joint meeting, 17 March 1999).

<sup>932</sup> 1D111 (Letter from Nikola Čičanović to the Co-Chairmen of the Paris conference asking for a work plan, 17 March 1999)

<sup>933</sup> Ratko Marković, T. 13223 (9 August 2007); 1D32 (Minutes of the session of the National Assembly, 23 March 1999), p. 8.

395. In response the FRY/Serbian delegation received a recommendation to start discussing chapter 5 on implementation; however, because this proposal was at odds with the position that what was to be implemented had to be defined first, and only after that could ways of implementation be discussed, the delegation rejected that proposal.<sup>934</sup>

396. On 18 March 1999 the representatives of ethnic minorities living in Kosovo, who were part of the FRY/Serbian delegation, sent a letter to Robin Cook and Hubert Vedrine, Co-Chairmen of the Contact Group. In the letter they complained that the text of the proposed agreement departed from the Contact Group principles because it favoured only Kosovo Albanians by establishing the process of decision-making based on majority.<sup>935</sup> On the same day the delegation of the Kosovo Albanians signed the draft Rambouillet agreement of 23 February.<sup>936</sup> Immediately afterwards the FRY/Serbian delegation sent its own version of the “agreement on self-government in Kosovo and Metohija” to the Co-Chairmen of the meeting, incorporating elements of the Rambouillet agreement, without the chapters on implementation.<sup>937</sup> Ambassador Petritsch testified that also on 18 March 1999 Hill met with Milutinović in Paris. Hill characterised this meeting as “absolutely unproductive.”<sup>938</sup>

397. On 19 March 1999 the Co-Chairmen issued a statement in which they stated that the Rambouillet agreement represented “the only peaceful solution to the problem of Kosovo”, and that the “Kosovo delegation in Paris has taken that opportunity and committed itself to the agreement in its entirety by signing it,” whereas the FRY/Serbian delegation had tried to dispute the Rambouillet agreement again. For this reason, following consultations with the Contact Group, they reached the conclusion “that it serves no purpose to further prolong the talks.” They postponed the negotiations and would not continue the talks “unless the Serbs declare that they accept the agreement.” They stated that they would immediately start consultations with their partners and allies in order to be ready to act; that they would be in contact with the NATO Secretary General, and that they requested the OSCE to undertake necessary measures for the security of the KVM.<sup>939</sup>

398. Mayorski, Hill, and Petritsch met with Milošević on 22 March 1999 to emphasise the benefits of the agreement for the FRY and Serbia. Petritsch testified that Milošević did not seem to

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<sup>934</sup> 1D32 (Minutes of the session of the National Assembly, 23 March 1999), p. 9.

<sup>935</sup> 1D114 (Letter to Hubert Vedrine and Robin Cook, concerning disapproval with Rambouillet process, 18 March 1999).

<sup>936</sup> 1D32 (Minutes of the session of the National Assembly, 23 March 1999), p. 9.

<sup>937</sup> 1D32 (Minutes of the session of the National Assembly, 23 March 1999), p. 10.

<sup>938</sup> Wolfgang Petritsch, T. 10723–10724 (28 February 2007); P563 (Austrian Embassy Dispatch, 19 February 1999), p. 2.

<sup>939</sup> 2D242 (Minutes from the 52 Session of the FRY Government held 19 March 1999 and the Announcement by the Co-Chairmen from 19 March 1999 in the annex), pp. 3–5; Živadin Jovanović, T. 14064–14066 (20 August 2007).

know the specifics of the agreement, and that it was clear to the diplomats that “he had decided not to engage in any discussion whatsoever.”<sup>940</sup> Mayorski offered to set up a new round of negotiations in which every possibility was “back on the table”—an offer which was completely outside of the negotiators’ mandate—but Milošević refused this avenue.<sup>941</sup> After making a final attempt at agreement with Milošević in Belgrade, Holbrooke announced the failure of negotiations on 23 March 1999. That same day NATO Secretary General Solana directed Wesley Clark to commence air strikes, which began the following day.<sup>942</sup> When questioned by the Chamber on the issue of bombing, Naumann denied that the decision to launch air-strikes against the FRY had already been made by NATO by January 1999, and explained that the final decision was prompted by the failure of the March 1999 talks in France, and the increase in violence on the ground in Kosovo.<sup>943</sup>

399. The FRY/Serbian delegation submitted a report to the National Assembly of the Republic of Serbia during the session held on 23 March 1999.<sup>944</sup> Marković, as head of the delegation, explained to the National Assembly the main reasons for the rejection of the agreement, including that at the continuation of the meeting in Paris all essential issues relating to the political side of the agreement were closed, despite some issues remaining unresolved; that the delegation received no reply to its objection that more than half of the text of the agreement had not been determined by the Contact Group; that the agreement separated state sovereignty from the territorial integrity of Serbia and the FRY; that in the agreement “substantial autonomy” in Kosovo assumed the form of a state for the Albanian majority, and minority protection for other ethnic minorities; that two different texts of the agreement were available in Paris, one of which was partially adopted by the Contact Group, while the other was drawn up by the FRY/Serbian delegation on the basis of the elements for substantial self-government in Kosovo and the ten starting principles of the Contact Group; and that there were no rules of procedure and no direct negotiations between the parties.<sup>945</sup>

400. Milutinović also addressed the National Assembly and expressed his own views on the Rambouillet/Paris talks, which, according to Marković, objectively illustrated the situation at the

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<sup>940</sup> Wolfgang Petritsch, P2792 (witness statement dated 9 June 1999), p. 8.

<sup>941</sup> Wolfgang Petritsch, P2792 (witness statement dated 9 June 1999), p. 8.

<sup>942</sup> Klaus Naumann, T. 8339 (14 December 2006). *See also* 2D244 (FRY Ministry of Foreign Affairs outpost in Kosovo – Memorandum re imminent threat of attack, 24 March 1999); 2D293 (FRY Government declaration of state of war, 23 March 1999); 2D295 (FRY Ministry of Information Statement, 25 March 1999).

<sup>943</sup> Klaus Naumann, T. 8338–8340 (14 December 2006). Naumann was also questioned about various statements made already in 1998 by Clark and Solana, about preserving NATO’s credibility and “moving things forward”, but explained that, even though these concerns were real, the bombing would not have taken place on the basis of those concerns alone. Klaus Naumann, T. 8346–8348 (14 December 2006).

<sup>944</sup> Ratko Marković, T. 13228–13229 (9 August 2007); 1D32 (Minutes of the session of the National Assembly, 23 March 1999).

<sup>945</sup> 1D32 (Minutes of the session of the National Assembly, 23 March 1999), p. 11; Ratko Marković, T. 13551–13553 (14 August 2007).

talks. Milutinović stated that the delegation did as much as it could in the given circumstances, but that it was exposed to “unprecedented pressure”, since the main focus of the talks was the deployment of foreign troops on their territory.<sup>946</sup> After considering the report by the FRY/Serbian delegation, the National Assembly unanimously adopted the conclusions, which were published in the Official Gazette, and in which the Assembly *inter alia* condemned the impending NATO attack; requested the UN Security Council to prevent it; requested the governments of all UN and OSCE member states to support the resumption of the political process; and approved the actions of the FRY/Serbian delegation during the negotiations.<sup>947</sup>

401. On the basis of his experience from the negotiations in Priština/Prishtina, Rambouillet, and Paris, Marković opined that for the Kosovo Albanians there was no alternative resolution for the situation to independence for Kosovo.<sup>948</sup> The Kosovo Albanians signed the agreement only when chapter 8 was included in it, formulating the possibility that the eventual status of Kosovo would be decided taking into account first and foremost the will of the people living in Kosovo.<sup>949</sup> Marković testified that, despite all the problems recounted above, the FRY/Serbian delegation saw the Rambouillet negotiations as constituting progress. In his view progress was made towards some sort of political solution regarding the autonomy of Kosovo, in particular with respect to the Constitution, Elections, and Ombudsman in Kosovo.<sup>950</sup> However, from the very beginning of the negotiations the position of the troika and the Contact Group was that it was possible to agree to and sign only the entire agreement and not just specific parts; the agreement was therefore an “all or nothing” proposition.<sup>951</sup> In addition, Marković explained that a great deal of pressure was put upon the FRY/Serbian delegation to accept the agreement by the threat of bombing.<sup>952</sup> He asserted that he was convinced that the Government of the Republic of Serbia sincerely wanted the situation in Kosovo to be resolved by peaceful means rather than by armed conflict.<sup>953</sup> Živadin Jovanović stated his belief that there were no real talks in Rambouillet, and that the purpose of the conference was to portray the FRY and Serbia as unco-operative, thereby providing a pretext for the

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<sup>946</sup> 1D32 (Minutes of the session of the National Assembly, 23 March 1999), pp. 29–30. *See also* Ratko Marković, T. 13576 (14 August 2007).

<sup>947</sup> Ratko Marković, T. 13229–13231 (9 August 2007); 1D33 (Conclusions of the National Assembly of the Republic of Serbia after considering the report of the delegation to the Rambouillet and Paris talks, 23 March 1999). The FRY Government did the same; 2D245 (FRY Government report, 26 March 1999).

<sup>948</sup> Ratko Marković, T. 13227 (9 August 2007).

<sup>949</sup> Ratko Marković, T. 13228 (9 August 2007).

<sup>950</sup> Ratko Marković, T. 13208–13209 (9 August 2007).

<sup>951</sup> Ratko Marković, T. 13205–13207 (9 August 2007); Živadin Jovanović, T. 14062–14063 (20 August 2007); 2D241 (FRY Ministry of Foreign Affairs Report to the FRY Government regarding talks between Živadin Jovanović and Joschka Fischer), pp. 6–7.

<sup>952</sup> Ratko Marković, T. 13577 (14 August 2007).

<sup>953</sup> Ratko Marković, T. 13220–13222 (9 August 2007); T. 13556 (14 August 2007).

preparation of the subsequent NATO attack on the FRY.<sup>954</sup> Momir Bulatović also opined that the negotiations in Rambouillet were in fact devoid of negotiation.<sup>955</sup> Milan Jovanović further gave his view that the invitation to the talks at Rambouillet was “an ultimatum”, and that the Contact Group was merely looking for a reason to launch an intervention in Kosovo.<sup>956</sup>

#### F. WITHDRAWAL OF THE KVM

402. As it became clear that there was not going to be agreement between the parties, on 19 March 1999 the then OSCE Chairman in Office Knut Vollebaek ordered the immediate withdrawal of the KVM from Kosovo.<sup>957</sup> Sandra Mitchell testified that the KVM withdrew because of the conduct and increased presence of Serbian security forces deployed in Kosovo; the deteriorating security situation prevented the KVM from being able to carry out its mandate.<sup>958</sup> By noon on 20 March 1999 the KVM, consisting by then of approximately 1,300 international personnel,<sup>959</sup> had evacuated to Macedonia.<sup>960</sup>

403. The pull-out from Kosovo signalled the end of the KVM mandate but did not end the work of the OSCE in the region. On 27 March 1999 it was announced that the KVM would be reduced to operating with a framework staff of 250 personnel in Macedonia. On 1 April 1999 a KVM taskforce of 70 personnel was ordered to assist the UNHCR in Albania. On 3 April 1999 another KVM taskforce of 80, which eventually grew to 110 personnel, began supporting the UNHCR in Macedonia.<sup>961</sup>

#### G. FINDINGS

404. The Chamber is of the view that in 1998 efforts were made by the FRY/Serbian authorities to negotiate with the Kosovo Albanians, but that these efforts were not reciprocated due to the absence of international involvement. At the same time these efforts must be placed in the context of the events unfolding on the ground in Kosovo, in particular major actions of the MUP and the VJ

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<sup>954</sup> Živadin Jovanović, T. 14061–14066 (20 August 2007); 2D241 (FRY Ministry of Foreign Affairs Report to the FRY Government regarding talks between Živadin Jovanović and Joschka Fischer); 2D242 (Minutes from 52<sup>nd</sup> Session of FRY Government, held on 19 March 1999 and annexed Announcement of the Co-Chairpersons at Rambouillet and Paris).

<sup>955</sup> Momir Bulatović, T. 13846 (17 August 2007).

<sup>956</sup> Milan Jovanović, T. 14174 (22 August 2007).

<sup>957</sup> Knut Vollebaek, P2634 (witness statement dated 8 January 2002), paras. 72–78. *See also* 2D247 (FRY Government’s draft conclusions on withdrawal of KVM).

<sup>958</sup> Sandra Mitchell, T. 561 (11 July 2006). *See also* Richard Ciaglini, T. 6818–6819 (17 November 2006).

<sup>959</sup> Sandra Mitchell, T. 499 (10 July 2006); Richard Ciaglini, T. 6821 (17 November 2006); P460 (OSCE Document: KVM mission Report for 1 March 1999), e-court p. 3.

<sup>960</sup> P634 (Chronology of major events in Kosovo from 15 October to 18 April 1999), e-court p. 7.

<sup>961</sup> P634 (Chronology of major events in Kosovo from 15 October to 18 April 1999), e-court pp. 7–8; P764 (KVM Refugee Monitoring Plan).



forces. Thus, as pointed out by Wolfgang Petritsch, it may not be surprising that the Kosovo Albanians were reluctant to engage on their own with the FRY/Serbian authorities.<sup>962</sup> However, there was a responsibility on the part of the authorities of the FRY and Serbia to overcome that, to build confidence, treat Kosovo Albanians as equal citizens of the FRY, and assuage their grievances with respect to constitutional changes brought about in 1989 by means of political dialogue.

405. The evidence outlined above shows that the FRY/Serbian authorities' initial persistent reluctance to have an international presence, whether civilian or military, on its territory abated somewhat, leading to their entering into the October Agreements and, at the very late stages of the Rambouillet talks, accepting that there should be further negotiations on an international presence in Kosovo not limited to a civilian presence. The Chamber is convinced that there was a prospect of a negotiated solution following the October Agreements. It was at that point that the FRY/Serbian forces ceased their activities and withdrew. The KLA and their activities had been subdued and displaced civilians began returning to their homes. Unfortunately these Agreements did not impose any obligation upon the KLA. It was not party to the Agreements and thus not committed to any undertaking. The situation in Kosovo in general remained delicate and fragile.

406. With respect to the negotiations in Rambouillet and Paris, the Prosecution argues in its final brief that it was the FRY/Serbian delegation that caused these to fail. The only basis for the disruptive posture of the Serbian delegation, according to the Prosecution, was that they intended to derail the negotiation process and destroy the possibility that it may bring about a peaceful resolution of the Kosovo crisis.<sup>963</sup> The Milutinović Defence, on the other hand, argues that the evidence demonstrates that the allegations concerning Rambouillet and Paris are baseless and incorrect, and that the facts instead show that the state delegation came to France to continue the process of achieving an agreement on self-government in Kosovo.<sup>964</sup>

407. The Chamber is of the view that the FRY/Serbian delegation went to Rambouillet genuinely in search of a solution. This was confirmed by Wolfgang Petritsch who testified that the delegation came to Rambouillet prepared and willing to work. However, the negotiations were fraught with problems which ultimately contributed to their failure. For example, although the Kosovo Albanian delegation was no doubt equally concerned about the outcome of the talks, its fragmented nature meant that the members' views were not uniform and they were indecisive and prone to changes of heart. The insistence of the troika on a piecemeal approach to handing out draft annexes of the

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<sup>962</sup> Wolfgang Petritsch, T. 10956–10957 (2 March 2007).

<sup>963</sup> Prosecution Final Trial Brief, 29 July 2008 (public version), para. 260.

Agreement did not encourage confidence in the process. The involvement of the U.S. Secretary of State, Madeleine Albright, midway through the conference, while it provided added impetus to the negotiating process, also introduced confusion and uncertainty into the position of the international negotiators. In the end these problems led only to agreement to interrupt the talks and resume in Paris in March. There was room for optimism since the FRY/Serbian delegation, aware of the seriousness of the threat of NATO to attack, had indicated its commitment to the political part of the deal.

408. By the time the FRY/Serbian delegation arrived in Paris, it was very wary of the troika and the negotiation process as a whole, as indicated by the letters of 5 March where it complained of the “campaign” on behalf of the international community to have the Kosovo Albanians sign the draft text of 23 February even before the negotiations continued on 15 March. In fact the delegation returned wishing to qualify the final position on which it had signed off at Rambouillet. Whatever the personal position of the members of the negotiating team was, Milošević clearly demonstrated that he had no interest in a successful outcome that would modify Serbian authority over Kosovo. In addition, it was told upon arrival that no material changes could be made to the political agreement and that any technical issues remaining would be discussed only after the implementation part was agreed.

409. The negotiations never really got started again. The Kosovo Albanians had already secured all that they could from the negotiators and had resigned themselves to that. The international negotiators, faced with FRY/Serbian authorities’ intransigence on an international presence, ultimately abandoned the negotiations and the course of peace and resorted to the NATO air campaign.

410. While it is tempting, in view of the position ultimately taken by Milošević, to place the blame for the failure of the diplomatic efforts to find a solution for the Kosovo problem upon his shoulders, the real cause of the breakdown is much more complex. Although the FRY/Serbian delegation was unaware of concessions being discussed with the Kosovo Albanians, these concessions did relate to the matter which was at the heart of the impasse in discussions for both parties, *viz.* the extent to which the sovereignty and territorial integrity of the FRY and Serbia would be preserved and indeed guaranteed into the future. How the ultimate status of Kosovo would be determined and what international presence there should be on its territory were the critical issues. The foregoing review of events demonstrates that the international negotiators did

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<sup>964</sup> Milutinović Final Trial Brief, 15 July 2008, para. 183.

not take an entirely even-handed approach to the respective positions of the parties and tended to favour the Kosovo Albanians.

411. One little passage of evidence is illustrative of the predicament. Obrad Kesić testified that on 14 April 1999 he participated in a meeting initiated by the White House with representatives of the Serbian community. At the meeting President Clinton stated that the provision for allowing a referendum for the Albanians in Kosovo went too far and that, if he were in the shoes of Milošević, he probably would not have signed the draft agreement either.<sup>965</sup> Although President Clinton initially referred to the intervention of NATO in terms of responding to a humanitarian crisis, he also said that the issues that led to the bombing no longer mattered and that the main issues, which ensured the bombing would continue indefinitely, were that the credibility of the U.S. was at stake, the credibility of NATO was at stake, and his personal credibility as President of the United States was at stake.<sup>966</sup>

412. Accordingly, the Chamber is of the view that the diplomatic efforts to solve the Kosovo problem failed for a combination of reasons relating to the intransigence of both parties and the way in which the negotiations were handled. As stated earlier, the positions of the two sides were always so far apart that it is extremely difficult to imagine agreement ever being reached. In its analysis of the evidence the Chamber has tried to demonstrate how each of the three parties involved contributed to the ultimate failure of the Rambouillet/Paris process and the negotiations which preceded it throughout 1998 and 1999.

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<sup>965</sup> Obrad Kesić, T. 14489 (27 August 2007).

<sup>966</sup> Obrad Kesić, T. 14489 (27 August 2007).

## VI. THE ARMED CONFLICT

### A. FORCES OF THE FRY AND SERBIA

#### 1. The Yugoslav Army in 1998–1999

##### a. Constitutional and legal regulation of the VJ

413. The structure and functioning of the Army of the Federal Republic of Yugoslavia (*Vojska Jugoslavije* “VJ”) during 1998 and 1999 was governed by, *inter alia*: (a) the FRY Constitution adopted on 27 April 1992;<sup>967</sup> (b) the FRY Law on Defence adopted in 1994;<sup>968</sup> (c) the Law on the VJ adopted in 1994, in accordance with article 134, paragraph 4, of the FRY Constitution, which provided that “... [a] federal law shall be adopted regulating the Army of Yugoslavia”; and (d) the Rules of Service of the VJ.<sup>969</sup> Of these, the Law on the VJ was intended to serve as the main body of rules regulating the organisation and function of the VJ.<sup>970</sup>

414. Article 133 of the FRY Constitution provided that the FRY “shall have an Army to defend its sovereignty, territory, independence, and constitutional order”.<sup>971</sup> The FRY Law on Defence characterised the VJ as “the main armed force and organiser of the armed struggle and all other forms of armed resistance to the enemy” in the defence of the country, and stated that it “shall unite all participants in the armed struggle and command all combat activities”.<sup>972</sup>

415. Article 8 of the FRY Law on Defence provided that, in case of an imminent threat of war, a state of war, or a state of emergency, the FRY President shall, “in accordance with decisions of the Supreme Defence Council”, order measures of readiness, mobilisation, and use of the VJ, in order to prevent and eliminate the threat to the defence and security of the country.<sup>973</sup> Security and protection tasks related to the defence of the FRY were to be carried out by the VJ, while specific tasks were to be carried out by the “Federal Ministry of the Interior”.<sup>974</sup>

416. The FRY Law on Defence also provided for the rights and duties of the Federal Government<sup>975</sup> and the Federal Ministry of Defence.<sup>976</sup> The latter performed administrative and

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<sup>967</sup> 1D139 (Constitution of the FRY, 1992).

<sup>968</sup> P985 (FRY Law on Defence), article 1.

<sup>969</sup> P1085 (Rules of Service of the Yugoslav Army, 27 December 1993) (“VJ Rules of Service”), pp. 1, 4; 4D532 (Rules of Service of the Yugoslav Army, 1996) (“1996 VJ Rules of Service”).

<sup>970</sup> P984 (FRY Law on the VJ), article 1; 1D139 (Constitution of the FRY, 1992), article 134.

<sup>971</sup> 1D139 (Constitution of the FRY, 1992), article 133; *see also* 4D532 (1996 VJ Rules of Service), rule 1.

<sup>972</sup> P985 (FRY Law on Defence), article 16.

<sup>973</sup> P985 (FRY Law on Defence), article 8.

<sup>974</sup> P985 (FRY Law on Defence), article 11.

<sup>975</sup> P985 (FRY Law on Defence), article 42.

specialist tasks related to the implementation of the country's defence policy and the implementation of the defence system.<sup>977</sup>

b. Structure of the VJ

417. The VJ was divided into three services: the Land Forces, the Air Force and Anti-Aircraft Defence, and the Navy.<sup>978</sup> These services were, in turn, divided into combat arms and supporting arms, and divided themselves into sections and specialist services.<sup>979</sup> The "highest professional and staff organ" for the preparation and use of the VJ was its General Staff, which was composed of the Chief of the General Staff and his assistants, along with their support staff.<sup>980</sup>

418. The Land Forces were the biggest and most important force of the VJ and were divided into Armies.<sup>981</sup> In 1998–1999 there were three Armies: the 1<sup>st</sup> Army (headquartered in Belgrade, Serbia), the 2<sup>nd</sup> Army (headquartered in Podgorica, Montenegro), and the 3<sup>rd</sup> Army (headquartered in Niš, Serbia).<sup>982</sup>

419. Operational Units were the highest level of unit in the VJ, followed by Combined/Joint Tactical Units, and Basic Tactical Units.<sup>983</sup> An Operational Unit was comprised of a corps, such as the Priština Corps, which united the forces in a combat zone and was in charge of armed combat operations.<sup>984</sup> Each corps could have various Combined/Joint Tactical Units and/or Basic Tactical Units subordinated to it, depending on the operational objective being coordinated.<sup>985</sup>

420. The Basic Tactical Units were permanent formations of the VJ which served as the building blocks for Operational and Combined/Joint Tactical Units. In descending size, these units were

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<sup>976</sup> P985 (FRY Law on Defence), articles 43–47.

<sup>977</sup> P985 (FRY Law on Defence), article 43.

<sup>978</sup> P984 (FRY Law on the VJ), article 2; *see also*, 3D1116 (Radovan Radinović's Expert Report), pp. 80–81.

<sup>979</sup> P984 (FRY Law on the VJ), article 2.

<sup>980</sup> P984 (FRY Law on the VJ), article 5; P1041 (Command and Control Manual), p. 97; 3D1116 (Radovan Radinović's Expert Report), pp. 88–89; P1739 (List of Members of the VJ General Staff).

<sup>981</sup> P1041 (Command and Control Manual), p. 99.

<sup>982</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 10; 3D1116 (Radovan Radinović's Expert Report), pp. 80–81.

<sup>983</sup> Miodrag Simić, 3D1089 (witness statement dated 15 August 2007), para. 16; *see also* 3D1116 (Radovan Radinović's Expert Report), p. 81.

<sup>984</sup> P1041 (Command and Control Manual), p. 99; Miodrag Simić, 3D1089 (witness statement dated 15 August 2007), para. 16.

<sup>985</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 42–46; *see also* Dragan Živanović, T. 20532–20534 (18 January 2008); P1041 (Command and Control Manual), p. 99–100; Vladimir Lazarević, T. 17829–17830 (7 November 2007), T. 18743–18744 (21 November 2007).

battalions, companies, and platoons.<sup>986</sup> Platoons were composed of squads, normally numbering three.<sup>987</sup>

421. According to the Law on the VJ, the membership of the VJ consisted of: professional soldiers, soldiers performing their compulsory military service, students in military academies and in secondary level military schools, students attending schools for reserve officers, and individuals in the reserve forces while they were performing their military duty in the army.<sup>988</sup> The reserve forces were largely made up of men between the ages of 18 and 60 who had completed their compulsory service.<sup>989</sup> During a state of war the VJ could be reinforced by volunteers.<sup>990</sup>

422. All citizens of the FRY had the obligation to perform compulsory military service in peacetime and wartime.<sup>991</sup> Compulsory military service was organised by the Military Territorial Organs and consisted of three stages: (a) recruitment duty, (b) compulsory military service duty, and (c) duties in the reserve forces.<sup>992</sup> Anyone who had been called up was referred to as a military conscript before, during, and after doing compulsory service.<sup>993</sup> Once the mandatory military service was completed, the conscripts were discharged from the VJ and automatically became part of the reserve forces.<sup>994</sup>

423. The Chamber has heard, however, that in 1998–1999 Kosovo Albanians and other minorities were under-represented in the VJ.<sup>995</sup> Based on the records kept in the VJ, it was noted that many ethnic Albanians were failing to report for duty and refused to do military service;<sup>996</sup> Tomislav Mitić confirmed that within the Prizren Military Department approximately 26,000 Kosovo Albanians did not respond to the call-up.<sup>997</sup> One of the reasons for that failure was, according to Slobodan Kosovac, who from 1 April 1999 was the Chief of the Administration for Recruitment, Mobilisation, and System Issues in the General Staff/Supreme Command Staff of the

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<sup>986</sup> P1041 (Command and Control Manual), pp. 99–100; *see also* Vlatko Vuković, 5D1401 (witness statement dated 5 January 2008), para. 3.

<sup>987</sup> Slobodan Kosovac, T. 15836–15837 (18 September 2007).

<sup>988</sup> P984 (FRY Law on the VJ), article 9; *see also* 4D532 (1996 VJ Rules of Service), rule 2.

<sup>989</sup> P984 (FRY Law on the VJ), articles 315–316.

<sup>990</sup> P984 (FRY Law on the VJ), article 15; P985 (1995 FRY Law on Defence), article 18.

<sup>991</sup> P984 (FRY Law on the VJ), article 279.

<sup>992</sup> P984 (FRY Law on the VJ), article 282.

<sup>993</sup> P984 (FRY Law on the VJ), article 284; Radovan Radinović, T. 17346–17347 (19 October 2007); Žarko Kostić, T. 17524–17525 (23 October 2007).

<sup>994</sup> P984 (FRY Law on the VJ), article 314; *see also* Radovan Radinović, T. 17347 (19 October 2007).

<sup>995</sup> Milivoje Novković, T. 16261–16262 (24 September 2007); Slobodan Kosovac, T. 15792 (17 September 2007).

<sup>996</sup> Slobodan Kosovac, T. 15795–15796 (17 September 2007); Krsman Jelić, T. 19072–19073 (26 November 2007); *see also* 3D1116 (Radovan Radinović's Expert Report), p. 37.

<sup>997</sup> Tomislav Mitić, 5D1390 (witness statement dated 27 December 2007), para. 5.

VJ, that Kosovo Albanians who responded to the call for compulsory military service were often threatened in their communities.<sup>998</sup>

424. The reserve forces were comprised of military conscripts who had completed their compulsory military service, or who had fulfilled their obligation to do their compulsory military service in some other way, as well as female conscripts.<sup>999</sup> As explained by Zlatomir Pešić, who was the Commander of the Priština Military District in 1999, once a conscript had completed his compulsory military service, his name would be added to the list of reserve forces and he would be assigned by the Military District to either a MUP or a VJ unit.<sup>1000</sup> Conscripts could be assigned to a regular VJ unit or a Military Territorial Detachment (which could be activated during wartime).<sup>1001</sup>

425. During a state of war, imminent threat of war, or state of emergency, the VJ was authorised to be reinforced with volunteers who were “individuals who are not subject to compulsory military service and military conscripts who do not have wartime assignments”.<sup>1002</sup> Thus, in terms of rights and duties, volunteers were considered equal to service members of the VJ.<sup>1003</sup>

### c. VJ uniforms

426. Service members had a duty to wear uniforms when performing official tasks.<sup>1004</sup> According to the VJ Rules of Service, the prescribed military uniform was set out in the “Military Uniform Regulations”, but this document has not been entered into evidence in the present case.<sup>1005</sup>

#### i. Regular VJ uniforms

427. According to K73 and K82, the camouflage pattern of the standard uniform worn in the VJ was a mixture of brown, black and three shades of green.<sup>1006</sup> The use of multiple shades of green gave the uniform a predominantly green appearance. Two similar patterns of camouflage uniforms were issued, designated M-89 and M-93, and referring to the year in which a certain uniform model

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<sup>998</sup> Slobodan Kosovac, T. 15795–15796 (17 September 2007).

<sup>999</sup> P984 (FRY Law on the VJ), article 315.

<sup>1000</sup> Zlatomir Pešić, T. 7151, 7168 (22 November 2006).

<sup>1001</sup> Zlatomir Pešić, T. 7151 (22 November 2006).

<sup>1002</sup> P984 (FRY Law on the VJ), article 15.

<sup>1003</sup> P984 (FRY Law on the VJ), article 15; 3D481 (Supreme Command order, 14 April 1999), p. 2; *see also* Slobodan Kosovac, T. 15859 (18 September 2007); Đorđe Ćurčin, 3D1121 (witness statement dated 24 August 2007), para. 30.

<sup>1004</sup> P984 (FRY Law on the VJ), article 32; 4D532 (1996 VJ Rules of Service), para. 24.

<sup>1005</sup> *See* 4D532 (1996 VJ Rules of Service), para. 24.

<sup>1006</sup> K73, T. 3310–3311 (13 September 2006); K82, P2863 (witness statement dated 14 September 2006), para. 2; *see also* P1599 (Photograph depicting activities of the armed organisations of the FRY and Serbia) (described by both K73 and K82 as depicting the regular VJ uniform); K90, T. 9297 (29 January 2007) (identifying the bottom right camouflage pattern on exhibit IC42 as the pattern found on the regular VJ uniforms).

was adopted, namely 1989 and 1993, respectively.<sup>1007</sup> On the left shoulder of the uniform, VJ members wore a patch depicting a double-headed eagle above the FRY flag.<sup>1008</sup> The Lazarević Defence submitted that members of the Priština Corps actually wore olive-green uniforms, arguing that this fact “is corroborated by numerous pieces of evidence in the case”.<sup>1009</sup> The Chamber notes that VJ reservists’ uniforms were olive-green in colour, as described below, but accepts the evidence that members of the VJ also wore a camouflage uniform which combined brown, black, and three shades of green, as described above.

428. Military personnel were obliged to always be “clean-shaven” and their hair had to be trimmed in a prescribed way.<sup>1010</sup> K73 confirmed this, testifying that VJ soldiers were not allowed to have beards and that, if a person did have one, this might be a sign that the person in question was in fact a reservist.<sup>1011</sup>

429. Although there were regulations about proper attire for VJ personnel, the Chamber has heard some evidence that during the NATO air campaign these regulations were not always strictly adhered to.<sup>1012</sup>

*ii. VJ reservists*

430. Zlatomir Pešić testified that reservists were issued various uniforms due to a shortage of uniforms in 1999. Two of these uniform types were camouflage and corresponded to the regular M-89 and M-93 VJ uniforms described above. The third pattern was the M-77 pattern uniform, commonly known as SMB, an abbreviation for “*sivo maslinasta boja*” or “olive drab”, as it was of solid olive-green colour.<sup>1013</sup> Reservists did not wear any insignia on their uniform, but had VJ insignia on their berets.<sup>1014</sup>

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<sup>1007</sup> Zlatomir Pešić, T. 7280, 7293 (24 November 2007).

<sup>1008</sup> K73, T. 3298, 3310–3311 (13 September 2006); K82, P2863 (witness statement dated 14 September 2006), para. 2; K90, T. 9285–9286 (29 January 2007); P1323 (Exhibit containing different examples of insignia used by VJ and MUP units), insignia 3; *see also* P1592 (Photograph depicting activities of the armed organisations of the FRY and Serbia); P1599 (Photograph depicting activities of the armed organisations of the FRY and Serbia); P1605 (Photograph depicting activities of the armed organisations of the FRY and Serbia); P2586 (Photographs depicting joint VJ and MUP operations in Kosovo), e-court p. 5.

<sup>1009</sup> Lazarević Final Trial Brief, 29 July 2008 (public version), para. 398.

<sup>1010</sup> 4D532 (1996 VJ Rules of Service), para. 25.

<sup>1011</sup> K73, T. 3310–3311 (13 September 2006).

<sup>1012</sup> 3D692 (Report on inspection of PrK, 29 May 1999), p. 3; 5D563 (175<sup>th</sup> Infantry Brigade Combat Report to PrK, 19 May 1999), p. 1; K89, T. 9129 (24 January 2007); Radojko Stefanović, T. 21705 (5 February 2008).

<sup>1013</sup> Zlatomir Pešić, T. 7156–7157 (22 November 2006), 7248 (23 November 2006), 7280, 7293 (24 November 2006); *see also* Abdylhaqim Shaqiri, T. 2808–2809 (5 September 2006); Abdullah Salihu, P2255 (witness statement dated 12 March 2002), p. 7.

<sup>1014</sup> Zlatomir Pešić, T. 7324–7325 (24 November 2006).



*iii. VJ military police*

431. Members of the VJ Military Police wore the regular VJ uniform, with white belts and VJ Military Police insignia.<sup>1015</sup> Units trained specifically for anti-terrorist operations had some additional equipment. K73 testified that members of one such unit were better equipped and armed than the rest of its battalion. Thus, the members of the unit wore, on top of standard green camouflage uniforms, green or grey combat vests.<sup>1016</sup> Their uniforms bore the standard insignia of the VJ.<sup>1017</sup> Depending on the kind of operation they were engaged in, black, camouflaged or white face masks would also be worn, as well as black berets, or U.S.-type “Panama” helmets.<sup>1018</sup>

*iv. Ribbons*

432. There is some evidence that VJ uniforms were sometimes used by civilians and members of the KLA in order to engage in illegal activity.<sup>1019</sup> To minimise the illegitimate use of VJ uniforms, ribbons were used at times as additional identifiers on top of uniforms. Two orders in evidence relate to this practice. In July 1998 both the MUP and VJ units in Kosovo were instructed to use white, yellow, and red coloured ribbons, or combinations thereof,<sup>1020</sup> in reaction to an incident when police uniforms were used illegitimately by the KLA to capture a police officer.<sup>1021</sup> In the middle of April 1999 all members of the 37<sup>th</sup> Motorised Brigade were ordered to be properly “marked” with red ribbons.<sup>1022</sup> The Pavković and Lazarević Defence claimed that VJ members never wore any ribbons on their uniforms,<sup>1023</sup> referring to a MUP document from April 1999 stating that.<sup>1024</sup> However, despite this document, Petar Damjanac confirmed having seen such ribbons worn by the VJ in the field.<sup>1025</sup> The fact that at least some VJ members wore ribbons at certain

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<sup>1015</sup> K73, T. 3297 (13 September 2006); K90, T. 9285–9286 (29 January 2007); *see also* P1323 (Exhibit containing different examples of insignia used by VJ and MUP units), insignia 4.

<sup>1016</sup> K73, T. 3295–3298 (13 September 2006); *see also* P1592 (Photograph depicting activities of the armed organisations of the FRY and Serbia).

<sup>1017</sup> *See* P1323 (Exhibit containing different examples of insignia used by VJ and MUP units), insignia 2.

<sup>1018</sup> K73, T. 3297–3298, 3301–3303 (13 September 2006), T. 3424 (14 September 2006); *see also* P1592 (Photograph depicting activities of the armed organisations of the FRY and Serbia) (depicting soldiers with helmets that the witness described as Yugoslav-made copies of the so-called US Panama helmet).

<sup>1019</sup> Dušan Gavrančić, T. 22730–22731 (19 February 2008); 5D549 (Report of the 175th Light Infantry Brigade, 27 April 1999); 4D248 (Dispatch of 3rd Army Command, 12 April 1999).

<sup>1020</sup> 6D667 (Plan for marking MUP and VJ units, 25–31 July 1998).

<sup>1021</sup> Radojica Nikčević, T. 23237–23238 (26 February 2008); Dragan Paunović, T. 21856–21857 (8 February 2008).

<sup>1022</sup> 6D1473 (Order of 37th Motorised Brigade for special security measures, 15 April 1999), p. 2.

<sup>1023</sup> Pavković Final Trial Brief, 28 July 2008 (public version), para. 375; Lazarević Final Trial Brief, 29 July 2008 (public version), para. 398.

<sup>1024</sup> 6D237 (Chart of identifying ribbons worn by police units during mid 1999, 13 April 1999), p. 1.

<sup>1025</sup> Petar Damjanac, T. 23778–23779, 23832 (6 March 2008).

times during the period relevant to the Indictment was also corroborated by other eyewitnesses' accounts.<sup>1026</sup>

d. Command and control

*i. Political control: the FRY President and the Supreme Defence Council*

433. Under article 135 of the FRY Constitution, the VJ was commanded by the FRY President in accordance with decisions of the Supreme Defence Council (SDC), the composition of which is dealt with below.<sup>1027</sup> The President of the FRY was often referred to as the "Supreme Commander".<sup>1028</sup>

434. Article 40 of the FRY Law on Defence provided the rights and duties of the FRY President in the domain of defence. He or she was, "in accordance with the decisions of the Supreme Defence Council", to order the implementation of the country's defence plan; to command the VJ in wartime and peace; and to decide on the country's territorial division into military areas.<sup>1029</sup> According to the Law on the VJ, the duty to command the VJ "in accordance with decisions of the Supreme Defence Council" included, among other things, to decide on the deployment of the VJ and approve a plan for its use, regulate and order the readiness of the VJ in case of an imminent threat of war, state of war, or state of emergency, issue orders for mobilisation of the army, and issue basic regulations and other acts related to the deployment of the VJ.<sup>1030</sup>

435. The SDC, on the other hand, had the responsibility to adopt the country's defence plan, render decisions in accordance with which the FRY President commanded the VJ, assess possible war and other threats to the defence and security of the country, determine the equipment and weapons needed for the country's defence, determine the arrangement of the territory for the country's defence, determine the strategy of armed conflict and rules on the use of forces in defence of the FRY, and the conduct of war, approve the basic elements of training programmes and plans

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<sup>1026</sup> See, e.g., K24, T. 4772–4773 (12 October 2006), T. 4791 (13 October 2006) (private session); K25, P2439 (witness statement dated 12 September 2001), p. 20; Dragan Paunović, T. 21859 (7 February 2008).

<sup>1027</sup> ID139 (Constitution of the FRY, 1992), article 135.

<sup>1028</sup> 3D1116 (Radovan Radinović's Expert Report), p. 99; Milorad Obradović, T. 15042 (5 September 2007).

<sup>1029</sup> P985 (FRY Law on Defence), article 40(1)–(3).

<sup>1030</sup> P984 (FRY Law on the VJ), article 4(3)–(6).

for the defence of the FRY, perform other tasks as defined by federal law.<sup>1031</sup> The President of the SDC (also the FRY President) was to ensure the implementation of the SDC's decisions.<sup>1032</sup>

436. The composition, powers, and functioning of the SDC after 23 March 1999 has been an area of particular contention in the present proceedings between the Prosecution and the Milutinović Defence.

(A) Composition of the SDC

437. In terms of article 135 of the FRY Constitution, the SDC consisted of three members, namely the Federal President as chairman, as well as the Presidents of the Republic of Serbia and the Republic of Montenegro.<sup>1033</sup> The first SDC Rules of Procedure were adopted on 23 July 1992.<sup>1034</sup> They provided that "final decisions" of the SDC were to be adopted when "the majority of Council members are present",<sup>1035</sup> and that its sessions could be called by the SDC chairman or at the initiative of the other members.<sup>1036</sup> All members of the SDC could put forward agenda proposals for its meetings.<sup>1037</sup> Additionally, the SDC could adopt decisions and conclusions without holding sessions, "on the basis of consultations among Council members."<sup>1038</sup>

438. On 23 March 1999, the eve of the commencement of the NATO air campaign, new SDC Rules of Procedure were adopted. These changed the necessary quorum and extended the circle of persons able to call a SDC session. Accordingly, in addition to the chairman and SDC members, the Chief of the General Staff and the Federal Minister of Defence, or their representatives, now had to be present at all SDC session in order for that session to be held; however, these additional members did not have voting powers.<sup>1039</sup> The sessions could also be convened at the proposal of the additional members,<sup>1040</sup> who could put forward agenda proposals.<sup>1041</sup> All its decisions had now

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<sup>1031</sup> P985 (FRY Law on Defence), articles 41(1)–(8). The fact that the SDC was also to adopt the country's defence plan is supported by P1011 (Ivan Marković, ed., *The Application of Rules of the International Law of Armed Conflicts* (2001)), p. 72 (describing aspects of this plan, and stating that it was made on the basis of a decision of the SDC).

<sup>1032</sup> P985 (FRY Law on Defence), article 41.

<sup>1033</sup> ID139 (Constitution of the FRY, 1992), article 135.

<sup>1034</sup> P2622 (Rules of Procedure of the SDC, 23 July 1992).

<sup>1035</sup> P2622 (Rules of Procedure of the SDC, 23 July 1992), article 7. The Chamber notes, however, that the next paragraph of that article refers to the adoption of both "decisions" and "conclusions", as does article 8.

<sup>1036</sup> P2622 (Rules of Procedure of the SDC, 23 July 1992), article 4.

<sup>1037</sup> P2622 (Rules of Procedure of the SDC, 23 July 1992), article 5.

<sup>1038</sup> P2622 (Rules of Procedure of the SDC, 23 July 1992), article 7.

<sup>1039</sup> P1738 (Rules of Procedure of the SDC, 23 March 1999), article 3; Ratko Marković, T. 13352–13354 (10 August 2007).

<sup>1040</sup> P1738 (Rules of Procedure of the SDC, 23 March 1999), article 3.

<sup>1041</sup> P1738 (Rules of Procedure of the SDC, 23 March 1999), article 5.

to be adopted by consensus, including decisions on appointments, promotions, and retirement of VJ Generals and admirals pursuant to the proposal of the Chief of the General Staff.<sup>1042</sup>

(B) Powers of the SDC

439. It has been a central part of the Prosecution case against Milutinović that the SDC was a collective body which could (and did) make decisions relating to the use or deployment of the VJ in Kosovo. In support of this argument the Prosecution relied on the various constitutional provisions referred to above, the minutes of SDC sessions, and the evidence of General Aleksandar Vasiljević, who was formerly the Deputy Head of the VJ Security Administration.<sup>1043</sup> The Milutinović Defence, on the other hand, argued that the VJ was commanded solely by the FRY President, informally termed the “Supreme Commander”, and that the SDC was merely an advisory body concerned mostly with national defence and VJ budgetary issues.<sup>1044</sup> In support of this position, the Milutinović Defence also relied on the relevant constitutional provisions and SDC minutes. Its expert witness, Ratko Marković, discussed these in the course of his evidence and report on the powers of the President of the Republic of Serbia.<sup>1045</sup>

440. The Chamber has carefully analysed both the minutes and the stenographic notes of the SDC sessions between 28 October 1997 and 23 March 1999 in evidence in this case, in order to determine how the body worked and the nature of the decisions made by it.<sup>1046</sup> Eight of the nine SDC sessions were attended by FRY President Slobodan Milošević, the Montenegrin President (Momir Bulatović and later Milo Đukanović), and the Serbian President (Dragan Tomić and then Milutinović). Others who also regularly attended were the Chief of the General Staff, the FRY Prime Minister, and the FRY Minister of Defence. As well as the military and political situation in the FRY, the military budget was one of the main items discussed at these sessions, as were the various changes to senior VJ personnel. The details of these sessions are discussed in Section VIII pertaining to the individual criminal responsibility of Milutinović, Ojdanić, and Pavković.

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<sup>1042</sup> P1738 (Rules of Procedure of the SDC, 23 March 1999), article 4. Article 4 of the new Rules of Procedure stated that “[t]he Supreme Council shall conduct its work at the sessions and adopt all decisions with consensus”. It is unclear if these decisions could still be adopted without sessions being held, as under article 7 of the previous rules.

<sup>1043</sup> Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 130–136.

<sup>1044</sup> Milutinović Final Trial Brief, 29 July 2008 (public version), paras. 64–66.

<sup>1045</sup> 1D682 (Ratko Marković’s Expert Opinion on the Powers and Position of the President of the Republic of Serbia).

<sup>1046</sup> 1D691 (Minutes of 1<sup>st</sup> SDC session, 28 October 1997); 1D692 (Minutes of 2<sup>nd</sup> SDC session; 10 November 1997); P1573 (Minutes of 3<sup>rd</sup> SDC session, 24 December 1997); 1D550 (Minutes of 4<sup>th</sup> SDC session, 8 January 1998); P1574 (Minutes of 5<sup>th</sup> SDC session, 9 June 1998); P1575 (Minutes of 6<sup>th</sup> SDC session, 4 October 1998); P1576 (Minutes of 7<sup>th</sup> SDC session, 24 November 1998); P1000 (Minutes of 8<sup>th</sup> SDC session, 25 December 1998); P1577 (Minutes of 9<sup>th</sup> SDC session, 23 March 1999). The stenographic notes correspond to seven of those nine sessions: 1D756 (Shorthand notes of 1<sup>st</sup> SDC session, 28 October 1997); 1D757 (Shorthand notes of 2<sup>nd</sup> SDC session, 10 November 1997); 1D758 (Shorthand notes of 3<sup>rd</sup> SDC session, 24 December 1997); 1D759 (Shorthand notes of 4<sup>th</sup> SDC session, 8 January

441. According to Aleksandar Vasiljević, the overall command of the VJ vested in the SDC during peacetime and in the “Supreme Command” during wartime, both being headed at the relevant time by FRY President Milošević.<sup>1047</sup> Vasiljević further clarified that, in peacetime, the SDC was a collective body issuing decisions on engaging the armed forces and doing so through the General Staff, the latter commanding the VJ in accordance with “state guidance”.<sup>1048</sup>

442. Witnesses led by the Defence also gave some insight into the nature and the powers of the SDC. General Branko Gajić, who was Vasiljević’s predecessor at the Security Administration, testified that the SDC was a political body, which made decisions in the area of defence. Once these decisions were made, the FRY President, as the Supreme Commander, conveyed them down the chain of command by issuing orders to the Chief of the General Staff.<sup>1049</sup>

443. The military expert brought by the Ojdanić Defence, Radovan Radinović, stated in his expert report that the SDC was at the helm of the VJ, in both war and peace. In other words, according to Radinović, the SDC was the “Supreme Command” of the VJ *at all times* and, even though this term was not explicitly provided for in the relevant laws, it was implied by article 135 of the FRY Constitution and article 41 of the Law on Defence.<sup>1050</sup> Turning to the state of war in 1999, Radinović stated that the FRY President was at the top of the VJ chain of command but that he was still bound by the decisions of the SDC.<sup>1051</sup> He qualified this relationship, however, by saying that it was acceptable so long as the SDC functioned in its full membership, that is, “until the President of the Republic of Montenegro removed himself from it of his own volition”.<sup>1052</sup> Nevertheless, according to Radinović, even though the Montenegrin President was not available anymore, the FRY President was able, for the credible commanding of the VJ, to draw on the unanimous decision of the full SDC session held in October 1998 that, if attacked, the FRY would defend itself by all means.<sup>1053</sup>

444. General Miodrag Simić, who was an assistant to the FRY Minister of Defence and on 2 April 1999 assumed the duty of Assistant to the Chief of the Supreme Command Staff for the Land

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1998); 1D760 (Shorthand notes of 5<sup>th</sup> SDC session, 9 June 1998); P2831 (Shorthand notes of 6<sup>th</sup> SDC session, 4 October 1998); 1D761 (Shorthand notes of 8<sup>th</sup> SDC session, 25 December 1998).

<sup>1047</sup> Aleksandar Vasiljević, T. 8635 (18 January 2007); Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 7.

<sup>1048</sup> Aleksandar Vasiljević, T. 8640 (18 January 2007).

<sup>1049</sup> Branko Gajić, T. 15296 (7 September 2007).

<sup>1050</sup> 3D1116 (Radovan Radinović’s Expert Report), pp. 80–84.

<sup>1051</sup> Indeed, later on, Radinović concluded that this meant that at the top of the chain of command was in fact the SDC, then the FRY President, and only then the General Staff. 3D1116 (Radovan Radinović’s Expert Report), pp. 96–99; see also Radovan Radinović, T. 17261 (18 October 2007).

<sup>1052</sup> 3D1116 (Radovan Radinović’s Expert Report), p. 94.

Forces,<sup>1054</sup> stated that the SDC was concerned with the country's defence, which covered *all* subjects relevant to defence, such as, for example, economy, traffic, and agriculture, as well as the army.<sup>1055</sup>

445. However, in support of the Milutinović Defence position that the role of the SDC in commanding the VJ was a limited one, Ratko Marković testified that the ultimate commander of the VJ was the FRY President and not the SDC.<sup>1056</sup> In addition, according to Marković the VJ could not be commanded by a collegial organ such as the SDC, but only by an individual, namely the FRY President. Marković also emphasised that the President of Serbia was merely one member of the SDC holding a single vote, and that he could not, by himself, make binding decisions.<sup>1057</sup> According to Marković, the reason for inserting provision for the SDC in the FRY Constitution was to “federalise” an important function relating to the VJ, and thus symbolise the equal status of the two member republics of the FRY. This was also the reason why the SDC members were not elected but became members *ex officio*, by virtue of their positions.<sup>1058</sup> The Milutinović Defence indeed emphasises that the SDC was a federal entity, and that defence and security were exclusively within the powers of the FRY, rather than the constituent republics.<sup>1059</sup> According to the FRY Constitution, the FRY President was one of the federal organs responsible for formulating policy on defence and security.<sup>1060</sup>

446. Marković argued that the SDC did not perform its functions in strict accordance with the FRY Constitution because it did not adopt “decisions” but, rather, passed “conclusions” of a political nature, and this on two occasions only, in June and October of 1998.<sup>1061</sup> In his view, the fact that there was no enactment to govern the form of these “decisions” and that they were never published anywhere would also indicate that these were political conclusions.<sup>1062</sup>

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<sup>1053</sup> 3D1116 (Radovan Radinović's Expert Report), pp. 94–97; P1575 (Minutes of 6<sup>th</sup> SDC session, 4 October 1998), p. 9.

<sup>1054</sup> Miodrag Simić, T. 15470–15471 (12 September 2007).

<sup>1055</sup> Miodrag Simić, T. 15600–15603 (13 September 2007).

<sup>1056</sup> 1D682 (Ratko Marković's Expert Opinion on the Powers and Position of the President of the Republic of Serbia) para. 3.60.

<sup>1057</sup> Ratko Marković, T. 12936 (6 August 2007); 1D682 (Ratko Marković's Expert Opinion on the Powers and Position of the President of the Republic of Serbia) paras. 3.59–3.60.

<sup>1058</sup> Ratko Marković, T. 13013–13015 (7 August 2007).

<sup>1059</sup> Milutinović Final Trial Brief, 15 July 2008, para. 64.

<sup>1060</sup> 1D139 (Constitution of the FRY, 1992), articles 77, 96–98.

<sup>1061</sup> Ratko Marković, T. 13021–13022 (7 August 2007); P1574 (Minutes of 5<sup>th</sup> SDC session, 9 June 1998), P1575 (Minutes of 6<sup>th</sup> SDC session, 4 October 1998); *see also* Ratko Marković, T. 13036–13037 (7 August 2007) (explaining the meaning of a “conclusion”).

<sup>1062</sup> Ratko Marković, T. 13021–13023 (7 August 2007).

447. Marković concluded that the position of the FRY President, as a federal organ and as the chairman of the SDC, carried greater weight than the Presidents of the republics, especially since he had to bear in mind the interests of both federal units.<sup>1063</sup> However, when questioned by the Chamber as to who would have prevailed had the FRY President voted one way and the other two members opposed him, Marković conceded that, according to the 1992 SDC Rules of Procedure,<sup>1064</sup> it would be the latter two Presidents who would prevail.

448. To illustrate his position, Marković referred to the minutes of the SDC session held on 9 June 1998, where one of the “conclusions” adopted was for the VJ to intervene, if “terrorist activities of the Albanian separatist movement escalated”.<sup>1065</sup> He reiterated that this conditional conclusion could not be a decision on the basis of which one could command the VJ and that it necessitated further expert decision.<sup>1066</sup> In support of this argument the Milutinović Defence points to the operative order to fight terrorism in Kosovo, issued by the FRY President on 21 July 1998,<sup>1067</sup> and asserts that this indicates that the conclusions of the SDC were not themselves binding orders.<sup>1068</sup> Marković performed the same analysis with respect to the sixth session of the SDC, held on 4 October 1998, when it concluded that, if the FRY was attacked, it would be defended by all means.<sup>1069</sup> However, when asked about the way in which the VJ was deployed in Kosovo, Marković conceded that it must have been this conclusion that led to the deployment of the VJ in Kosovo and its use after 23 March 1999, when no SDC sessions were held. Marković in the end accepted that “conclusions” were used and relied upon as if they were “decisions”.<sup>1070</sup>

449. Marković then juxtaposed the “conclusions” adopted by the SDC to article 4 of the Law on the VJ, which states that the FRY President is to command the VJ in accordance with SDC decisions, by issuing “orders, commands, and decisions”,<sup>1071</sup> and concluded that the two taken together illustrated perfectly the independent role of the FRY President in commanding the VJ.<sup>1072</sup> Marković explored a number of other rather academic and technical points in relation to the

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<sup>1063</sup> Ratko Marković, T. 13024–13025 (7 August 2007).

<sup>1064</sup> Ratko Marković, T. 13405–13416 (13 August 2007).

<sup>1065</sup> P1574 (Minutes of 5<sup>th</sup> SDC session, 9 June 1998), p. 4.

<sup>1066</sup> Ratko Marković, T. 13037–13038 (7 August 2007).

<sup>1067</sup> See 4D100 (PrK Report to 3<sup>rd</sup> Army re engagement of units, 22 July 1998), p. 1; 4D101 (PrK Plan for the engagement of units in Kosovo, 23 July 1998), p. 1.

<sup>1068</sup> Milutinović Final Trial Brief, 15 July 2008, para. 87.

<sup>1069</sup> Ratko Marković, T. 13029–13030, 13038–13039 (7 August 2007); P1575 (Minutes of 6<sup>th</sup> SDC session, 4 October 1998), p. 9.

<sup>1070</sup> Ratko Marković, T. 13363–13366 (10 August 2007); *see also* Ratko Marković, T. 13420–13422 (13 August 2007).

<sup>1071</sup> P984 (FRY Law on the VJ), article 4.

<sup>1072</sup> Ratko Marković, T. 13039–13041 (7 August 2007).

application of the FRY Constitution and laws to the role of the Supreme Commander and the SDC, but these need not be discussed further.<sup>1073</sup>

450. Marković's view that the SDC did not make decisions was directly contradicted by Momir Bulatović, former President of Montenegro and FRY Prime Minister. In his opinion the sessions of the SDC would have been "totally meaningless" if decisions had not been taken.<sup>1074</sup> He identified the three conclusions in the minutes of 9 June 1998 as decisions made in accordance with proposals put forward by the relevant expert, in this case Perišić.<sup>1075</sup>

451. Having thus carefully looked at all SDC materials in evidence, the Chamber is satisfied that the SDC had the power to make, and did make, decisions relating to the use of the VJ. It is unconvinced by Marković's assertion that the SDC only adopted political conclusions, which is contradicted by all the other evidence, including that of Momir Bulatović. These decisions, such as the one of 4 October 1998 relating to the country's defence, were then used by the FRY President, known by some as the "Supreme Commander", to command the VJ and instruct the General Staff to issue more specific orders to its various units.<sup>1076</sup> Indeed, as confirmed by Marković and Radinović, it was this particular decision of 4 October 1998 that was used as a green light by the FRY President to command the VJ from 23 March 1999, and during the state of war that followed. Furthermore, while the President of the FRY chaired the SDC and was responsible for implementing its decisions through commands to the VJ, the other members of the SDC were not without power or responsibility. The Presidents of Serbia and of Montenegro could each call for an SDC session to be convened, could propose items for the agenda, and could raise objections to courses of action being proposed by Milošević. They could also together outvote him up until the change to the rules of 23 March 1999 and thereafter could block any decisions with which they disagreed through the need for consensus.

(C) SDC meetings after 23 March 1999 and existence of the Supreme Command

452. While asserting that the SDC continued to function after 23 March 1999, the Prosecution also argues that, with the declaration of war, a body called the Supreme Command came into

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<sup>1073</sup> See Ratko Marković, T. 13028–13032, 13050–13053, 13060–13063, 13044–13047 (7 August 2007); T. 13404, 13416, 13428–13430, 13433–13435 (13 August 2007), T. 13641–13643 (15 August 2007)

<sup>1074</sup> Momir Bulatović, T. 13859–13862 (17 August 2007).

<sup>1075</sup> P1574 (Minutes of 5<sup>th</sup> SDC session, 9 June 1998), p. 4; Momir Bulatović, T. 13861–13864 (17 August 2007).

<sup>1076</sup> That Milošević was referred to as the Supreme Commander is confirmed in the following documents concerning his role as Commander-in-Chief: 1D459 (Vojska 1, 27 March 1999), e-court p. 2; 1D460 (Vojska 4, 5 April 1999), e-court p. 2; 1D461 (Vojska 5, 7 April 1999), e-court p. 3; 1D462 (Vojska 6, 10 April 1999), e-court p. 1; 1D463 (Vojska 8–9, 14 April 1999), e-court p. 3; 1D467 (Vojska 16, 29 April 1999), e-court p. 1; 1D468 (Vojska 20–21, 10 May 1999), e-court p. 2.



existence, which included the members of the SDC and which took over the SDC's functions.<sup>1077</sup> The Milutinović Defence, on the other hand, argues that no SDC meetings were held after 23 March 1999,<sup>1078</sup> and challenges both the existence of the Supreme Command and its membership, in so far as it is alleged to have included Milutinović.<sup>1079</sup> Whatever the title of the body used, the fundamental issue in dispute is whether an entity existed and functioned during the state of war, which exercised formal command over the VJ, and which included Milošević, Milutinović, and others. In light of the interlinked nature of the arguments and evidence in relation to the existence of the Supreme Command and the continuation of SDC meetings during the state of war, the Trial Chamber will here address these two issues together.

453. A number of witnesses stated that no SDC sessions were held after 23 March 1999, and the Chamber has received no documentary records of any such meeting.<sup>1080</sup> Simić however testified that the SDC's command post was located in the same underground facility where the Supreme Command Staff was. During the war and following his appointment to the Supreme Command Staff he saw Milošević and Milutinović in that facility once.<sup>1081</sup> General Ljubomir Anđelković, who in 1998 and 1999 was Chief of Section for Communications, Informatics, and Electronic Operations in the VJ, stated that the SDC command post, as of 9 April 1999, was in the same building where the VJ collegium would meet, on Dražer Street in Belgrade.<sup>1082</sup> Major-General Spasoje Mučibabić, Chief of the Operations Administration of the General Staff of the VJ at the relevant time, also testified that he saw Milošević and Milutinović, but never Đukanović, in the building on Dražer Street in Belgrade several times during the NATO bombing.<sup>1083</sup>

454. General Milorad Obradović, Head of the Section for Operations and Staff Affairs until 3 March 1999, and then Commander of the 2<sup>nd</sup> Army, noted that the SDC functioned well on the whole but that there was some talk of Montenegrin President Đukanović's lack of attendance at SDC meetings during the war.<sup>1084</sup> When it was put to him that the SDC did not meet after 23 March 1999, and for the duration of the state of war, Obradović said that in mid-April of 1999 he heard that the order on resubordination of the MUP to the VJ could not be carried out due to the

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<sup>1077</sup> Prosecution Final Trial Brief, 29 July 2008 (public version), para. 142.

<sup>1078</sup> Milutinović Final Trial Brief, 15 July 2008, para. 66.

<sup>1079</sup> Milutinović Final Trial Brief, 15 July 2008, para. 88.

<sup>1080</sup> Branko Krga, T. 16841–16842, 16896–16899 (4 October 2007); 3D898 (Supreme Command Staff Intelligence Department Briefing, 28 March 1999), p. 2; Radovan Radinović, T. 17260–17263 (18 October 2007); Miodrag Simić, T. 15628 (14 September 2007).

<sup>1081</sup> Miodrag Simić, T. 15634–15635 (14 September 2007).

<sup>1082</sup> Ljubomir Anđelković, T. 16423–16426 (26 September 2007).

<sup>1083</sup> Spasoje Mučibabić, T. 16578–16580 (28 September 2007).

<sup>1084</sup> Milorad Obradović, T. 15127–15128 (6 September 2007).

fact that Đukanović was not taking part in the activities of the SDC. However, he had no first-hand knowledge of whether any SDC meetings were held after 23 March 1999.<sup>1085</sup>

455. Evidence which suggests that the SDC did meet after 23 March 1999 includes the decisions on VJ appointments and promotions that were passed after that date,<sup>1086</sup> even though from that moment onwards they were supposed to have been under the jurisdiction of the SDC, as opposed to the FRY President alone.<sup>1087</sup>

456. Other evidence that the SDC continued to exist and meet is provided by references to the SDC at briefings of the Chief of the Supreme Command Staff on 26 and 28 March 1999. In the former meeting, Ojdanić ordered that a map be prepared for the SDC.<sup>1088</sup> In the latter meeting, Branko Gajić expressed support for the idea of presenting an assessment of the state of the VJ, and its deployment, to the members of the SDC.<sup>1089</sup> Ljubomir Savić, Deputy Head of the Training Department of the Priština Corps, testified in response to questioning on the hierarchy in the VJ that, once the war had started, the SDC was the highest command body.<sup>1090</sup> Additionally, the general directive for the use of the VJ in Kosovo, sent out by Ojdanić on 9 April 1999, assumed the continued operation of the SDC.<sup>1091</sup>

457. Aleksandar Vasiljević stated that in wartime the SDC would continue to pass decisions, but that the FRY President was the ultimate power, or the “Supreme Commander”, who would pass on these SDC decisions to the Chief of the General Staff, which in wartime became the Supreme Command Staff. Vasiljević explained that the term “Supreme Commander” was an unofficial hangover from the days of the SFRY.<sup>1092</sup> When questioned further about the distinction between the VJ hierarchy in times of war and peace, Vasiljević seemed to imply that there was none, and that the SDC became the “Supreme Command”, so that its function did not cease to exist in wartime.<sup>1093</sup>

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<sup>1085</sup> Milorad Obradović, T. 15154–15156 (6 September 2007).

<sup>1086</sup> Miodrag Simić, T. 15709–15711 (14 September 2007).

<sup>1087</sup> P1738 (Rules of Procedure of the SDC, 23 March 1999), article 4; Branko Fezer, 3D1118 (witness statement dated 3 September 2007), paras. 1–3.

<sup>1088</sup> 3D580 (Briefing to the Supreme Command Staff, 26 March 1999), p. 4. Milovan Vlajković stated that this order would make sense if it was a map of the forces of the VJ. However, when asked about these references to the SDC and whether it had meetings during the war, he stated that he did not know because those meetings were held at a different location. Milovan Vlajković, T. 16089–16090 (20 September 2007).

<sup>1089</sup> 3D581 (Briefing to the Supreme Command Staff, 28 March 1999), p. 3.

<sup>1090</sup> Ljubomir Savić, T. 21028–21029 (24 January 2008).

<sup>1091</sup> P1481 (Supreme Command Staff directive for engagement of VJ in defence against the NATO, 9 April 1999), p. 11.

<sup>1092</sup> Aleksandar Vasiljević, T. 8640–8641 (18 January 2007);

<sup>1093</sup> Aleksandar Vasiljević, T. 8641–8643 (18 January 2007); P2592 (Extract from Vasiljević diary, 17 May 1999), p. 1.

458. Milorad Obradović also explained that the Supreme Command existed in war and consisted of the three SDC members, as well as the General Staff of the VJ which, in war, was referred to as the Supreme Command Staff.<sup>1094</sup> Obradović confirmed, however, that there was no constitutional or statutory provision which provided for the existence of the Supreme Command. This evidence was supported by several other witnesses led by the Defence.<sup>1095</sup> Milovan Vlajković, who was *Chef de Cabinet* of the Chief of the General Staff at the time, testified that the term “Supreme Command” was used in communication amongst “ourselves” but that it was simply a war-time name for the SDC. Vlajković explained that at the beginning of the war his office would address documents to “Mr. President” and “President of the SDC”, but that this was changed in the beginning of April 1999 after which the documents were addressed to the “Supreme Commander”. Vlajković did not, however, explain how his office came to the understanding that SDC became the “Supreme Command” during war time.<sup>1096</sup>

459. As discussed above, Radovan Radinović testified that the SDC was the “Supreme Command” of the VJ at all times and, even though this term was not explicitly provided for in the relevant laws, it was implied by article 135 of the FRY Constitution and article 41 of the Law on Defence.<sup>1097</sup> Although he found no records of a meeting of the SDC being held during the NATO bombing, daily operative reports prepared by the Supreme Command Staff, which amalgamated all the combat reports from subordinate commands, would be sent to the “Supreme Commander”, the President of Serbia, the Minister of Defence, the Chief of the Supreme Command Staff, and other persons.<sup>1098</sup> Moreover, on being shown records of a briefing to Ojdanić on 11 April 1999, Radinović acknowledged that it indicated that a meeting of a group of military and senior political figures was planned for the following day, but he did not know whether this meeting ever happened or not.<sup>1099</sup>

460. That meeting is referred to in the minutes of a briefing of the Chief of the Supreme Command Staff on 11 April 1999.<sup>1100</sup> At that briefing Ojdanić stated that there would be another briefing at 9:00 a.m. the following day with the “Supreme Command”, and listed as present

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<sup>1094</sup> Milorad Obradović, T. 15127–15129 (6 September 2007).

<sup>1095</sup> Zlatoje Terzić, T. 15929–15935 (19 September 2007); Ljubomir Anđelković, T. 16426 (26 September 2007); Spasoje Mučibabić, T. 16578–16580 (28 September 2007).

<sup>1096</sup> Milovan Vlajković, T. 16089–16093 (20 September 2007); *see also* 3D581 (Minutes of briefing, 28 March 1999), p. 3.

<sup>1097</sup> 3D1116 (Radovan Radinović’s Expert Report), pp. 80–84.

<sup>1098</sup> Radovan Radinović, T. 17263 (18 October 2007), 3D1116 (Radovan Radinović’s Expert Report), p. 121.

<sup>1099</sup> Radovan Radinović, T. 17329–17331 (19 October 2007); *see also* 3D728 (Briefing to the Chief of Staff of the Supreme Command, 11 April 1999), p. 3; Milovan Vlajković, T. 16099–16100 (20 September 2007).

<sup>1100</sup> 3D728 (Briefing to the Chief of Staff of the Supreme Command, 11 April 1999).

Milošević, Milutinović, Lukić,<sup>1101</sup> Šainović, and Pavković, along with Smiljanić, Krga, and himself.<sup>1102</sup> The minutes state that these individuals would be briefed on a draft plan the next morning. That plan was referred to in another document, an order from Ojdanić to the Commander of the 3<sup>rd</sup> Army to prepare a proposal for a decision, which would be presented to the Supreme Commander and Supreme Command Staff on 11 April 1999.<sup>1103</sup> On 12 April Milošević attended a meeting of the Supreme Command Staff and issued an order on breaking up the KLA forces, based on the draft plan drawn up the day before.<sup>1104</sup>

461. Branko Gajić testified that the Supreme Command was different from the SDC and consisted of the FRY President and the General Staff of the VJ, but did not include the two republican presidents. He also stated that the Supreme Command was not regulated by law and that the terminology was taken over from the old SFRY days.<sup>1105</sup> However, when questioned about the “commander in chief’s” decisions from and after 24 March 1999, Gajić stated that these were made in accordance with decisions of the SDC.<sup>1106</sup> Gajić also denied knowing whether any ministers and/or politicians, other than the FRY President, were members of the Supreme Command.<sup>1107</sup>

462. General Branko Krga, who was Chief of the Intelligence Administration of the VJ General Staff from January 1999, testified that the “Supreme Command” did not exist “normatively”, meaning that it was not defined in the Constitution, nor in any of the statutes.<sup>1108</sup> This is supported by a submission in proceedings against Slobodan Milošević provided by Serbia and Montenegro, which stated that no body with the name “Supreme Command” existed in the relevant legal instruments at the time pertaining to the Indictment.<sup>1109</sup> According to Krga, had the Supreme Command existed, it should have included the members of the SDC, the FRY Prime Minister, the FRY Defence Minister, the Minister of Interior, and the Finance Minister, as well as some other high-ranking officials of the state.<sup>1110</sup> He later conceded that the composition or powers of the Supreme Command did not necessarily have to be written down for it to exist and/or function.<sup>1111</sup>

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<sup>1101</sup> He is described as “Sreten, adjutant of the MUP unit from Kosovo” and Branko Gajić agreed that this is a reference to Sreten Lukić, T. 15416 (11 September 2007).

<sup>1102</sup> 3D728 (Briefing to the Chief of Staff of the Supreme Command, 11 April 1999), p. 3.

<sup>1103</sup> P1480 (Order to prepare plans to defend against terrorist aggression, 9 April 1999).

<sup>1104</sup> 4D420 (Communication from Pavković to Supreme Command Staff re Resubordination of the MUP, 20 April 1999), p. 1.

<sup>1105</sup> Branko Gajić, T. 15296–15297 (7 September 2007), T. 15434–15436 (12 September 2007).

<sup>1106</sup> Branko Gajić, T. 15436 (12 September 2007).

<sup>1107</sup> Branko Gajić, T. 15437 (12 September 2007).

<sup>1108</sup> Branko Krga, T. 16841–16843, 16906–16908 (4 October 2007).

<sup>1109</sup> 1D35 (Submission of Serbia and Montenegro in case of *Prosecutor v. Milošević*, 29 December 2003), p. 3.

<sup>1110</sup> Branko Krga, T. 16841–16843, 16906–16908 (4 October 2007).

<sup>1111</sup> Branko Krga, T. 16909–16910 (4 October 2007).

463. Miodrag Simić testified that the Supreme Command consisted of the Supreme Commander and the Supreme Command Staff.<sup>1112</sup> This is supported by the evidence of Aleksandar Dimitrijević, who testified that during the war the SDC ceased to exist, and that it was just the Supreme Commander and the Supreme Command Staff who commanded the VJ.<sup>1113</sup> Simić also stated that in wartime the Supreme Commander commanded the VJ, but would convey relevant information to the members of the SDC, as well as to other persons, such as the Federal Prime Minister. In total, there were some 15 to 16 addressees to whom this information was sent.<sup>1114</sup> When it was put to him that the SDC operated in a state of war under the name of “Supreme Command”, Simić denied this and responded that this would disrupt the fundamental elementary principle of subordination and singleness of command.<sup>1115</sup> He was then shown a portion of the minutes of a session of the Supreme Command Staff Collegium, held on 9 April 1999, which appears to indicate that the “Supreme Command” was something other than simply a combination of the “Supreme Commander” and the Supreme Command Staff.<sup>1116</sup> Simić denied that the 15 or 16 people who received information from the “Supreme Commander”, as described above, comprised the “Supreme Command”. He explained that the regular procedure was for the Chief of the Supreme Command Staff to have evening briefings with his staff. Based on the conclusions of these briefings, a report would be drafted and submitted not only to the FRY President, but also to the same 15 or 16 addressees, who included the other two members of the SDC.<sup>1117</sup> Simić was also confronted with the evidence previously given by Obradović.<sup>1118</sup> He agreed with Obradović to the extent that the FRY President commanded the VJ in accordance with the decisions of the SDC, but disagreed with the idea that the SDC became the “Supreme Command”.<sup>1119</sup>

464. Colonel-General Spasoje Smiljanić, Chief of the First Administration of the VJ in 1998, and then Commander of the Air Force and Air Defence from early 1999, also testified that the “Supreme Command” consisted of the FRY President, who was the “Supreme Commander”, and “his staff”, the latter being the Supreme Command Staff. According to Smiljanić, this was the only

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<sup>1112</sup> Miodrag Simić, T. 15599–15600 (13 September 2007).

<sup>1113</sup> Aleksandar Dimitrijević, T. 26645 (8 July 2008).

<sup>1114</sup> Miodrag Simić, T. 15600–15603, 15610 (13 September 2007).

<sup>1115</sup> Miodrag Simić, T. 15602–15603 (13 September 2007).

<sup>1116</sup> P929 (Minutes of the Collegium of the Chief of Staff of the Supreme Command, 9 April 1999), pp. 38–39.

<sup>1117</sup> Miodrag Simić, T. 15604–15612 (13 September 2007).

<sup>1118</sup> Milorad Obradović, T. 15128 (6 September 2007).

<sup>1119</sup> This is because in such a case the “Supreme Commander” would not be able to command over the other two members of the SDC, which, in turn, would disrupt the singleness of command. Miodrag Simić, T. 15625–15627 (14 September 2007).

way in which the singleness of command could be preserved. Smiljanić denied that there were any civilians on the “Supreme Commander’s” staff.<sup>1120</sup>

465. Commenting on the statement that in times of war the SDC became the Supreme Command, but with an extended membership in order to include the relevant military personnel, constitutional law expert, Ratko Marković, said that it would have been impossible to extend the membership of the SDC due to the limits imposed by the FRY Constitution, but that other people could attend its sessions, if invited. When it was suggested to him that the SDC Rules of Procedure were changed on the same day that the state of emergency was proclaimed in the FRY in March 1999, and that this would seem to support the contention that the Supreme Command came into being when a state of war was declared, Marković accepted that there had to be a functioning body during the state of war, which was to deal with the defence of the country,<sup>1121</sup> but emphasised that the terms “Supreme Commander” and “Supreme Command” did not appear in the FRY Constitution.<sup>1122</sup>

466. In his interview with the Prosecution, Lazarević explained that his understanding of the term “Supreme Command” was that it was composed of the members of the SDC, the Minister of Defence, the FRY Prime Minister, and the Minister of Interior.<sup>1123</sup>

467. The evidence demonstrates that one member of the SDC, namely Montenegrin President Đukanović, no longer participated in SDC meetings after December 1998, but the body nonetheless met on 23 March 1999, and changed its rules of procedure, indicating that the remaining members anticipated further meetings after that date. While there is no direct evidence of such meetings after 23 March 1999, the SDC retained *de jure* command over the VJ during wartime. Whether the remaining SDC members functioned during the NATO air campaign under the umbrella of the title “Supreme Defence Council” or became part of a body referred to as the “Supreme Command”, it is clear that they retained their respective *de jure* roles in the command of the VJ as prescribed in the revised SDC rules of procedure. While there is no doubt that Milošević, as the “Supreme Commander”, was at the apex of the executive chain of command of the VJ throughout the conflict, it is equally clear that Milutinović was a fully informed recipient of daily Supreme Command Staff amalgamated operative reports with power to convene the Supreme Defence Council to address issues of concern within its mandate.

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<sup>1120</sup> Spasoje Smiljanić, T. 15782–15784 (17 September 2007).

<sup>1121</sup> Ratko Marković, T. 13438–13443 (13 August 2007).

<sup>1122</sup> Ratko Marković, T. 13653–13654 (15 August 2007); *see also* P1319 (Interview of Pavković by Belgrade RTS Television), p. 4.

<sup>1123</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 241–243.

*ii. Military command and control: the General Staff*

468. During the period relevant to the Indictment, the military command body immediately subordinated to the civilian leadership of the VJ was the General Staff.<sup>1124</sup> The Law on the VJ describes the General Staff as the highest professional and staff organ for the preparation and use of the VJ in times of peace and war.<sup>1125</sup> In broad terms, it was responsible for training officers and soldiers, manning the ranks of the VJ, forming plans for the development of the VJ and for the use of the VJ in potential combat situations, and providing the civilian leadership of the VJ with information and proposals to facilitate strategic decision-making.<sup>1126</sup>

469. As discussed above, during a state of war the General Staff became known as the Supreme Command Staff.<sup>1127</sup> Radovan Radinović gave evidence that this adjustment in title, and its practical effects—which are detailed below—occurred in March 1999, under the control of Ojdanić as the Chief of the General Staff. According to Radinović this evolution was not formally regulated, but was orchestrated in accordance with the professional standards applicable in the General Staff.<sup>1128</sup>

(A) The Chief of the General Staff

470. According to the FRY Law on Defence, the Chief of the General Staff was the highest ranking military officer in the VJ, although subordinated to the civilian organs of command over the VJ.<sup>1129</sup> Momčilo Perišić held the position from 26 August 1993 until 24 November 1998, when he was removed from office following a discussion in the SDC, and replaced by Ojdanić, who held the post until February 2000.<sup>1130</sup>

471. The primary function of the Chief of the General Staff was to command the VJ through the issuing of orders to strategic units and other officers of the VJ immediately subordinate to him, within the limits placed upon him by federal laws, in order to accomplish the directives of the

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<sup>1124</sup> P984 (FRY Law on the VJ), article 5; Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 9.

<sup>1125</sup> P984 (FRY Law on the VJ), article 5; *see also*, P1041 (Command and Control Manual), p. 97; 3D1116 (Radovan Radinović's Expert Report), p. 84.

<sup>1126</sup> 3D1116 (Radovan Radinović's Expert Report), p. 84.

<sup>1127</sup> 3D1116 (Radovan Radinović's Expert Report), p. 89; Spasoje Mučibabić, T. 16578 (28 September 2007); Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 9, T. 8643 (18 January 2007); Miodrag Simić, T. 15599 (13 September 2007); P950 (Vladimir Lazarević interview with the Prosecution), pp. 241–245. There is evidence that on occasion the General Staff was also referred to as the Strategic Group Command. Miodrag Simić, 3D1089 (witness statement dated 15 August 2007), para. 16.

<sup>1128</sup> 3D1116 (Radovan Radinović's Expert Report), p. 89.

<sup>1129</sup> P984 (FRY Law on the VJ), article 6; Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 9, T. 8639–8643 (18 January 2007).

President of the FRY.<sup>1131</sup> The Chief of the General Staff was thus responsible for commanding the Land Forces, the Air Force and Air-Defence, and the Navy.<sup>1132</sup>

472. Article 6 of the FRY Law on Defence provided that the Chief of the General Staff should issue orders, rules, commands, instructions, and “other documents” to the VJ, in order to implement “documents issued by the [FRY] President”.<sup>1133</sup> The Chief of the General Staff could also issue orders directly to secondary levels of subordination, such as the Priština Corps, but in such a case the commander in receipt of the order was duty bound to inform his superior.<sup>1134</sup> He also had the power to request special reports, outside of the ordinary reporting lines, directly from secondary levels of subordination, including the Priština Corps.<sup>1135</sup>

473. The Chief of the General Staff had the power to appoint officers, non-commissioned officers, and soldiers to all positions in the VJ, excepting the positions of general or commanding officer performing duties for which the rank of general had been determined as a requirement for which approval of the Supreme Commander was required.<sup>1136</sup> He could make exceptional proposals, for approval by the FRY President, for the promotion of a professional officer to the rank of general.<sup>1137</sup>

474. As noted above, on 23 March 1999 new SDC Rules of Procedure were adopted, which required the attendance of the Chief of the General Staff at SDC sessions.<sup>1138</sup> The new rules also allowed him to convene sessions of the SDC and to propose items for the agenda.<sup>1139</sup> He could also make proposals to the SDC on issues of appointments, promotions, and the retirement of VJ Generals and admirals, which in turn would be adopted by consensus of the membership of the

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<sup>1130</sup> P796 (Record on the hand-over of the duty of Chief of the VJ’s General Staff, between Momčilo Perišić and Dragoljub Ojdanić, 27 November 1998).

<sup>1131</sup> P984 (FRY Law on the VJ), article 6; P1041 (Command and Control Manual), p. 97.

<sup>1132</sup> P984 (FRY Law on the VJ), article 5; P1041 (Command and Control Manual), p. 97; P1319 (Interview of Pavković by Belgrade RTS Television), p. 3.

<sup>1133</sup> P984 (FRY Law on the VJ), article 6; *see also* P1041 (Command and Control Manual), p. 97.

<sup>1134</sup> Vladimir Lazarević, T. 17939 (8 November 2007)

<sup>1135</sup> Vladimir Lazarević, T. 17939 (8 November 2007).

<sup>1136</sup> P984 (FRY Law on the VJ), articles 16, 152. The Chief of the General Staff could only promote officers to a rank above colonel on an exceptional basis, P984 (FRY Law on the VJ), article 46.

<sup>1137</sup> P984 (FRY Law on the VJ), article 46.

<sup>1138</sup> P1738 (Rules of Procedure of the SDC, 23 March 1999), article 3; Ratko Marković, T. 13353 (10 August 2007).

<sup>1139</sup> P1738 (Rules of Procedure of the SDC, 23 March 1999), articles 3, 5.



SDC.<sup>1140</sup> However, according to Radinović, the Chief of the General Staff at no point acquired voting rights or decision-making powers within the SDC and so was not a member of that body.<sup>1141</sup>

475. The Chief of the General Staff/Supreme Command Staff was provided with material, logistical, and organisational support in carrying out his responsibilities by the Office of the Chief of the General Staff and, during times of war, by the Supreme Command Staff. In 1998 and 1999, the Chief of the Office of the Chief of General Staff/Supreme Command Staff was Milovan Vlajković.<sup>1142</sup>

#### (B) Composition of the General Staff

476. The operational combat groups subordinated to the General Staff included the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Armies.<sup>1143</sup> Also subordinated to the General Staff were a number of sections and independent administrations of the VJ responsible for various support functions, such as planning operations and gathering intelligence.<sup>1144</sup> The nature and composition of the subordinate bodies of the General Staff of the VJ did not alter in any significant way when it became the Supreme Command Staff.<sup>1145</sup>

477. The Chamber heard a substantial volume of evidence pertaining to the various sections and independent administrations of the General Staff, primarily from witnesses led by the Defence. It has carefully considered all this evidence, which has shed light on how the VJ functioned in 1998 and 1999, but finds it unnecessary to set out this evidence in detail here.<sup>1146</sup> Importantly, the highest body for managing issues relating to the security of the VJ was the Security Administration of the General Staff,<sup>1147</sup> which was broadly responsible for intelligence, counter-intelligence, and protection of the VJ from threats from foreign, criminal, and terrorist elements, and operated the

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<sup>1140</sup> P1738 (Rules of Procedure of the SDC, 23 March 1999), article 4.

<sup>1141</sup> 3D1116 (Radovan Radinović's Expert Report), p. 82. Marković gave evidence that these additional members could not have voting powers as this would be in direct contravention of the FRY Constitution. Ratko Marković, T. 13353–13354 (10 August 2007).

<sup>1142</sup> Milovan Vlajković, 3D1112 (witness statement dated 17 August 2007), para. 2.

<sup>1143</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 10.

<sup>1144</sup> 3D1116 (Radovan Radinović's Expert Report), p. 85; P1739 (List of Members of the VJ General Staff).

<sup>1145</sup> 3D1116 (Radovan Radinović's Expert Report), pp. 85–88; Spasoje Smiljanić, T. 15783 (17 September 2007). *See* the diagrams representing the structure of the General Staff and Supreme Command Staff at p. 85 and p. 87, respectively.

<sup>1146</sup> *See, e.g.*, Miodrag Simić, T. 15481–15482 (12 September 2007), 3D1089 (witness statement dated 15 August 2007), para. 7; Milorad Obradović, T. 14918–14919 (4 September 2007); Đorđe Ćurčin, 3D1121 (witness statement dated 24 August 2007), p. 3; Milan Uzelac, T. 16157 (21 September 2007); Branko Krga, 3D1120 (witness statement dated 13 August 2007), p. 4; Ljubomir Anđelković, T. 16386–16387 (26 September 2007); Negovan Jovanović, T. 14893 (4 September 2007); Slobodan Kosovac, T. 15795–15796 (17 September 2007).

<sup>1147</sup> Branko Gajić, 3D1084 (witness statement dated 8 August 2007), para. 4; Aleksandar Dimitrijević, T. 26582 (8 July 2008) (testifying that the Security Department was also known as the “counter-intelligence service”).

military police.<sup>1148</sup> There were security organs at every level of command within the VJ, which reported up to the Security Administration, including on crimes committed by VJ members.<sup>1149</sup> The function of the security organs of the VJ was described as being equivalent to that of the police in a civilian system, as is discussed in more detail below.<sup>1150</sup>

478. The VJ collegium was a body composed of the closest associates and subordinates of the Chief of the General Staff.<sup>1151</sup> It included the heads of the sections of the General Staff—also known as Assistant Chiefs—and the heads of the independent administrations.<sup>1152</sup> Prior to the NATO air campaign and up until 18 March 1999, collegium meetings were held frequently.<sup>1153</sup> The FRY President would on occasion also attend these meetings.<sup>1154</sup> At collegium meetings the leadership of the General Staff discussed issues of a general nature or of long-term significance, including, by way of example, personnel matters and material financial provisions.<sup>1155</sup> During the NATO campaign, daily briefings to the Chief of the Supreme Command Staff, which are described below, were held instead of collegium meetings.<sup>1156</sup>

#### (C) Supreme Command Staff

479. Several witnesses testified that the Supreme Command Staff shifted location from the General Staff headquarters building to the basic command post 124 metres below ground on Dražer Street, in Belgrade, during the NATO bombing.<sup>1157</sup> The Chief of the Supreme Command Staff and some of the administrations moved right at the outset of the NATO bombing on 24 March 1999.<sup>1158</sup> Other sections, including the Operations Centre, remained at the General Staff headquarters building until 4 April 1999.<sup>1159</sup> However, there is also evidence that during the

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<sup>1148</sup> Branko Gajić, 3D1084 (witness statement dated 8 August 2007), para. 4.

<sup>1149</sup> Geza Farkaš, T. 16293, 16304, 16306, 16318, 16322 (25 September 2007).

<sup>1150</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 9.

<sup>1151</sup> Aleksandar Vasiljević, T. 8795 (22 January 2007); Đorđe Ćurčin, T. 16939 (5 October 2007).

<sup>1152</sup> Radovan Radinović, T. 17326–17327 (19 October 2007).

<sup>1153</sup> Radovan Radinović, T. 17327–17328 (19 October 2007); Đorđe Ćurčin, T. 17004 (5 October 2007). *See, e.g.*, P934 (Minutes of the Collegium of the General Staff of the VJ for 11 February 1999); P937 (Minutes of the Collegium of the General Staff of the VJ for 18 February 1999); P940 (Minutes of the Collegium of the General Staff of the VJ for 21 February 1999); P941 (Minutes of the Collegium of the General Staff of the VJ for 24 February 1999); P933 (Minutes of the Collegium of the General Staff of the VJ for 4 March 1999); P935 (Minutes of the Collegium of the General Staff of the VJ for 11 March 1999); and P938 (Minutes of the Collegium of the General Staff of the VJ for 18 March 1999).

<sup>1154</sup> Đorđe Ćurčin, T. 16937–16938 (5 October 2007).

<sup>1155</sup> Radovan Radinović, T. 17328–17329 (19 October 2007); Spasoje Mučibabić, T. 16552 (27 September 2007).

<sup>1156</sup> However, minutes from one collegium held during that period have been admitted into evidence. *See* P929 (Minutes of the Collegium of the General Staff of the VJ for 9 April 1999).

<sup>1157</sup> Ljubomir Anđelković, T. 16422–16426 (26 September 2007); Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 8; Staniša Ivković, T. 16519–16520 (27 September 2007).

<sup>1158</sup> Staniša Ivković, T. 16520 (27 September 2007).

<sup>1159</sup> Staniša Ivković, T. 16520 (27 September 2007).

NATO bombing the members of the Supreme Command Staff were dispersed amongst various buildings in and around Belgrade.<sup>1160</sup>

480. During the bombing Ojdanić held daily briefings with the senior members of the Supreme Command Staff on the situation in Kosovo in the basic command post of the Supreme Command Staff.<sup>1161</sup> These briefings were usually held during the evening,<sup>1162</sup> but on occasion, when necessary to discuss a specific issue, they were held in the morning.<sup>1163</sup> At the briefings the Chief of the Supreme Command Staff, or his Deputy, would issue tasks, and abbreviated notes were taken by the Chief of the Office of the Chief of the Supreme Command Staff.<sup>1164</sup> The Chamber has carefully analysed these notes in order to understand the functioning of the Supreme Command Staff and the responsibilities of its members.<sup>1165</sup>

481. The briefing notes in evidence indicate that the Chief of the Supreme Command Staff was provided with regular updates on matters affecting the VJ, which ranged from combat operations and losses suffered, to the manning of the various units and the logistical supplies available to the units. On this basis, it can be seen that during the NATO airstrikes the Supreme Command Staff worked in a collegial but still hierarchical fashion. Thus, information was shared freely amongst the members of the collegium of the General Staff/Supreme Command Staff.

*iii. The chain of command and communications in the VJ*

482. As discussed above, the SDC and the President of the FRY exercised political control over the VJ. Immediately subordinate to this civilian leadership in the VJ chain of command was the General Staff/Supreme Command Staff.<sup>1166</sup> Within the land forces, subordinate to the General

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<sup>1160</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 8; Đorđe Ćurčin, T. 17006–17008 (5 October 2007).

<sup>1161</sup> Radovan Radinović, T. 17328 (19 October 2007); Branko Krga, T. 16782–16783 (3 October 2007); Milovan Vlajković, 3D1112 (witness statement dated 17 August 2007), para. 18, T. 16085–16086 (20 September 2007); Milan Radoičić, 3D1111 (witness statement dated 17 August 2007), para. 11, T. 16133 (21 September 2007); Đorđe Ćurčin, T. 17006–17008 (5 October 2007).

<sup>1162</sup> Branko Krga, T. 16891 (4 October 2007); Spasoje Mučibabić, T. 16552 (27 September 2007); Miodrag Simić, 3D1089 (witness statement dated 15 August 2007), para. 7.

<sup>1163</sup> Branko Krga, T. 16891 (4 October 2007).

<sup>1164</sup> Miodrag Simić, 3D1089 (witness statement dated 15 August 2007), para. 7; Milan Radoičić, 3D1111 (witness statement dated 17 August 2007), para. 11.

<sup>1165</sup> Branko Gajić, T. 15384–15385 (11 September 2007); Milovan Vlajković, T. 16085–16086 (20 September 2007). Branko Krga testified that no minutes were kept of these meetings. Branko Krga, T. 16891 (4 October 2007). However, Spasoje Mučibabić testified that he and Colonel Paškaš would take handwritten minutes at these briefings, using a notebook. Spasoje Mučibabić, T. 16553 (27 September 2007).

<sup>1166</sup> P984 (FRY Law on the VJ), article 5; Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 9.

Staff, was the 3<sup>rd</sup> Army, whose zone of responsibility encompassed southern Serbia.<sup>1167</sup> The 3<sup>rd</sup> Army was divided into two corps, the Niš Corps and the Priština Corps, with the latter having responsibility for the area of Kosovo.<sup>1168</sup> These units are discussed in more detail below.

483. According to its manual, the VJ operated according to principles of unity and singleness of command. The principle of unity of command required that all component sections of the VJ and affiliated organisations work together in pursuit of a common goal, and function according to common legal, methodological, and doctrinal standards. The principle of singleness of command required that at every level in the chain of command there was only one commander with responsibility for the tasks assigned. The commander could delegate authority to subordinates, but always retained responsibility for all decisions taken and actions performed by his unit or section.<sup>1169</sup> However, the Chief of the General Staff could issue orders directly to secondary levels of subordination, as discussed above.<sup>1170</sup>

484. Subordinated commanding officers had the obligation to carry out orders issued by superior officers, without objection, fully, precisely, and on time.<sup>1171</sup> However, the officers also had the duty not to carry out an order if it constituted a crime.<sup>1172</sup> Orders could be issued verbally or in writing, and had to be “complete, brief and clear”,<sup>1173</sup> in addition to being “realistic and feasible”.<sup>1174</sup> Orders regulating “significant issues”, such as the “protection of human lives”, had to be issued in writing.<sup>1175</sup>

485. During the NATO campaign the Chief of the Supreme Command Staff, Ojdanić, would brief FRY President Milošević on a regular basis about VJ operations on the ground, and would then provide him with daily combat reports.<sup>1176</sup> Milošević, as the Supreme Commander, would

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<sup>1167</sup> Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 17, T. 17643 (26 October 2007); P950 (Vladimir Lazarević interview with the Prosecution), pp. 14–15; Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 12.

<sup>1168</sup> Ljubiša Stojimirović, T. 17646 (26 October 2007); Zlatimir Pešić, P2502 (witness statement dated 30 January 2004), paras. 6–9; *see also* 4D240 (Structure, Deployment and Manning level of the 3rd Army Military-Territorial Component, 14 January 1999), p. 1.

<sup>1169</sup> P1041 (Command and Control Manual), pp. 61–62.

<sup>1170</sup> Vladimir Lazarević, T. 17939 (8 November 2007).

<sup>1171</sup> P1041 (Command and Control Manual), p. 62; P984 (FRY Law on the VJ), article 3.

<sup>1172</sup> P984 (FRY Law on the VJ), article 37; 4D532 (1996 VJ Rules of Service), rules 33, 35; *see also* P950 (Vladimir Lazarević interview with the Prosecution), pp. 74–75; Đura Blagojević, 5D1402 (witness statement dated 27 December 2007), para. 32.

<sup>1173</sup> 4D532 (1996 VJ Rules of Service), rule 34.

<sup>1174</sup> 4D532 (1996 VJ Rules of Service), rule 35.

<sup>1175</sup> In urgent cases, orders could be issued verbally, but were to be subsequently delivered in writing, by the next working day at the latest. 4D532 (1996 VJ Rules of Service), rule 34.

<sup>1176</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 16; Radovan Radinović, T. 17238–17239 (18 October 2007). Đorđe Ćurčin testified that these meetings took place every day during the conflict; Đorđe Ćurčin, T. 16979–16980 (5 October 2007).

issue basic tasks to Ojdanić,<sup>1177</sup> on which Ojdanić would report back to the Supreme Command Staff at their evening briefings.<sup>1178</sup> At the conclusion of the meetings that he chaired, Ojdanić would usually hand out tasks to those present, which included tasks related to military operations.<sup>1179</sup> Ojdanić and his staff would assist the Supreme Commander by drafting orders.<sup>1180</sup> The General Staff/Supreme Command Staff would also issue its own orders, with Ojdanić's approval.<sup>1181</sup>

486. During the NATO bombing the drafting of orders occurred at the command post of the Supreme Command Staff in Belgrade.<sup>1182</sup> Orders of the Supreme Command Staff were formulated on the basis of a "working map", which showed the location of all VJ units and their activities in the previous 24 hour period.<sup>1183</sup> Information used to update the map on an ongoing basis came from combat reports from subordinate units.<sup>1184</sup> The orders sent out to subordinate units from the Supreme Command Staff would in turn take the form of a set of specific orders attached to a topographic map, showing the units in the relevant area and their tasks.<sup>1185</sup> Milorad Obradović testified that, in practice, the Chief of the Supreme Command Staff would sign the map accompanying the text of the orders.<sup>1186</sup> Indeed, numerous orders on the record are signed by Ojdanić as the Chief of the Supreme Command Staff, and other reports are listed as having been received or prepared by members of the Supreme Command Staff.<sup>1187</sup>

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<sup>1177</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 15; Branko Gajić, T. 15417 (11 September 2007).

<sup>1178</sup> Đorđe Ćurčin, T. 16979–16980 (5 October 2007).

<sup>1179</sup> *See, e.g.*, 3D721 (Briefing to the Supreme Command Staff, 3 April 1999), pp. 4–5; 3D728 (Briefing to the Chief of Staff of the Supreme Command, 11 April 1999), pp. 3–5.

<sup>1180</sup> Radovan Radinović, T. 17248 (18 October 2007); Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 15.

<sup>1181</sup> Miodrag Simić, T. 15480–15481 (12 September 2007), 3D1089 (witness statement dated 15 August 2007), paras. 28–29; Milorad Obradović, T. 14919, 14924 (4 September 2007); Ljubomir Anđelković, T. 16403–16404 (26 September 2007); Radovan Radinović, T. 17238–17239 (18 October 2007).

<sup>1182</sup> Ljubomir Anđelković, T. 16403–16404, 16422 (26 September 2007).

<sup>1183</sup> Miodrag Simić, T. 15473–15474 (12 September 2007).

<sup>1184</sup> Miodrag Simić, T. 15476 (12 September 2007); Vlade Nonković, T. 16216–16217 (24 September 2007).

<sup>1185</sup> Milorad Obradović, T. 15080–15082 (6 September 2007); *see also* Milan Đaković, T. 26398 (19 May 2008).

<sup>1186</sup> Milorad Obradović, T. 15080–15081 (6 September 2007).

<sup>1187</sup> *See, e.g.*, P1479 (Supreme Command Staff Order on Volunteers, 7 April 1999), p. 3; P1488 (Order to resubordinate MUP forces to the army and navy commanders, 18 April 1999), pp. 1–2; and P1920 (Supreme Command Staff order, 29 May 1999), p. 2; P1493 (VJ General Staff/Supreme Command Staff order, 13 May 1999), p. 2. All of these orders are signed by Ojdanić as Chief of the Supreme Command Staff. *See also* P1899 (Overview of sentenced persons, 30 May 1999), pp. 2–3 (stamped as originating from the General Staff legal administration, ordered by the Chief of the Supreme Command Staff, and distributed by the Staff of the Supreme Command); P1951 (Order re visit by the Russian delegation, 30 March 1999), pp. 1–2 (signed by Ojdanić as Chief of the Supreme Command Staff, and sent from the Supreme Command Staff, but stamped as prepared by the VJ General Staff).

487. This methodology of creating orders was the standard practice at the army, corps and brigade levels as well.<sup>1188</sup> After the orders were received by the relevant subordinate groups, their commanders would draft specific plans and orders for implementation by their subordinate units.<sup>1189</sup> At the subordinate levels of the chain of command, written orders would also usually have attachments, such as topographical charts/maps of certain areas, schemes, and graphics.<sup>1190</sup> According to Milan Đaković, written orders and maps “were inseparable ... you couldn’t have one without the other”.<sup>1191</sup> In principle, all combat operations were supposed to be planned by the 3<sup>rd</sup> Army with the authorisation of the General Staff/Supreme Command Staff, except for situations where there had been a sudden attack on one of its units.<sup>1192</sup> That 3<sup>rd</sup> Army unit would not have to wait for approval from the General Staff/Supreme Command Staff to conduct defensive operations, as they were empowered under the “military rule” to defend themselves.<sup>1193</sup>

488. Complementing the flow of orders down the chain of command was a system of reporting up that chain, ultimately to the General Staff/Supreme Command Staff. The Command and Control Manual of the VJ required that there be a continuous flow of information between superior and subordinate commanders.<sup>1194</sup> In general the reporting system for the VJ forces in Kosovo worked as follows. Brigades carrying out operations on the ground submitted to the Priština Corps Command daily reports covering enemy activities, results of engagement, and problems with units and territory.<sup>1195</sup> These reports would then be amalgamated into a single report, which was passed up to the 3<sup>rd</sup> Army command. The 3<sup>rd</sup> Army command would condense the reports it received and pass on its own report to the General Staff/Supreme Command Staff. Finally, the reports from the various Armies would be condensed by the General Staff/Supreme Command Staff and passed on to *inter alios* the Supreme Commander, the Chief of the General Staff/Supreme Command Staff, and the Federal Minister of Defence, in the form of a daily combat report.<sup>1196</sup>

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<sup>1188</sup> Milorad Obradović, T. 15081–15082 (6 September 2007); Velimir Obradović, T. 17368–17369 (22 October 2007).

<sup>1189</sup> Milorad Obradović, T. 15080–15081 (6 September 2007); Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 15. *See also* Velimir Obradović, T. 17369–17370 (22 October 2007).

<sup>1190</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 74–76; *see also* Tomislav Mladenović, T. 17591–17593 (25 October 2007); Krsman Jelić, T. 18957, 18960 (23 November 2007); Mihajlo Gergar, T. 21487–21488 (31 January 2008); 5D1329 (Map–decision of the 211<sup>th</sup> Armoured Brigade).

<sup>1191</sup> Milan Đaković, T. 26397–26398 (19 May 2008).

<sup>1192</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 415–418.

<sup>1193</sup> Branko Krga, T. 16889 (4 October 2007).

<sup>1194</sup> P1041 (Command and Control Manual), p. 63.

<sup>1195</sup> Miodrag Simić, 3D1089 (witness statement dated 15 August 2007), para. 14; Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), paras. 15–18, T. 8659 (18 January 2007). Where subordinate units operating on the ground came under sudden attack, and thus reacted without specific orders, as referred to above, this would always be reported up the chain of command. Branko Krga, T. 16888–16889 (4 October 2007).

<sup>1196</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), paras. 15–18, T. 8659 (18 January 2007); Milorad Obradović, T. 15016 (5 September 2007); Branko Gajić, 3D1084 (witness statement dated 8 August 2007), para. 146.

489. There is evidence that prior to and during the NATO air campaign the Chief of the General Staff required that reports from certain subordinate units be provided directly to the General Staff/Supreme Command Staff. For example, after the incident in Račak/Recak in January 1999, Ojdanić ordered that the Priština Corps provide him with daily reports, in addition to those he received from the 3<sup>rd</sup> Army.<sup>1197</sup> In February Ojdanić ordered a special report directly from the Priština Corps on an incident in Suva Reka/Suhareke.<sup>1198</sup> Later on, during the NATO campaign, Ojdanić again ordered that reports from the Priština Corps be sent to both the 3<sup>rd</sup> Army Command and the Supreme Command Staff.<sup>1199</sup> Lazarević testified that this practice continued from 12 April until the end of the conflict.<sup>1200</sup>

490. The receipt and compiling of the daily combat reports for dissemination to the General Staff/Supreme Command Staff would be carried out by an Operations Duty Team.<sup>1201</sup> On the basis of this information, a permanent record, known as the “war log”, was created.<sup>1202</sup> If a report from the 3<sup>rd</sup> Army was received too late to be summarised, then it would be passed on in its entirety.<sup>1203</sup>

491. The Operations Duty Team of the General Staff/Supreme Command Staff was supported by the Operations Centre of the First Administration of the Section for Operations and Staff Activities, which operated 24 hours a day and was connected by secure and non-secure phone lines with all directly subordinated commands of the Armies, specialist services, and, later in the conflict, with the Corps commands.<sup>1204</sup> In addition to receiving reports from subordinate bodies, the General Staff/Supreme Command Staff would gather information by sending teams to inspect and instruct the subordinate units of the VJ in the field.<sup>1205</sup>

492. The security officers attached to army units and military police units had parallel reporting obligations through the regular reporting line and through separate reports to the Security Administration. The former reports would consist of sections of general combat reports from the unit in which they were embedded. Thus, within the 3<sup>rd</sup> Army Saša Antić, the head of the security

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<sup>1197</sup> P939 (Minutes of the Collegium of the General Staff of the VJ for 21 January 1999), p. 31; Milorad Obradović, T. 15016 (5 September 2007).

<sup>1198</sup> 5D251 (PrK Review of Combat Clashes, 23 February 1999); Vladimir Lazarević, T. 17939 (8 November 2007).

<sup>1199</sup> Vladimir Lazarević, T. 18156 (13 November 2007), T. 18782 (22 November 2007). The previous order to the PrK to send reports must have lapsed at some point prior to or during the NATO campaign.

<sup>1200</sup> Vladimir Lazarević, T. 18637 (20 November 2007).

<sup>1201</sup> Staniša Ivković, 3D1117 (witness statement dated 20 August 2007), paras. 6–8; Đorđe Ćurčin, 3D1121 (witness statement dated 24 August 2007), paras. 25–26.

<sup>1202</sup> Vlade Nonković, T. 16216–16217 (24 September 2007).

<sup>1203</sup> Đorđe Ćurčin, T. 16955 (5 October 2007).

<sup>1204</sup> Staniša Ivković, 3D1117 (witness statement dated 20 August 2007), paras. 5–6, T. 16521 (27 September 2007).

<sup>1205</sup> Miodrag Simić, 3D1089 (witness statement dated 15 August 2007), para. 12; Đorđe Ćurčin, 3D1121 (witness statement dated 24 August 2007), paras. 40–41; Ljubomir Savić, 5D1392 (witness statement dated 27 December 2007), para. 6.

department, would assist in the preparation of the section of the combat report sent to the Supreme Command Staff that concerned security matters.<sup>1206</sup> The separate reports from the security officers in the various units to the Security Administration would be condensed by the Security Administration into one report and distributed to the members of the General Staff/Supreme Command Staff.<sup>1207</sup> Similar parallel reporting structures existed for all the specialist assistant commanders embedded in the levels of the VJ below the General Staff/Supreme Command Staff, such as the Logistics Section,<sup>1208</sup> and personnel from the military justice system, who reported to the Legal Administration.<sup>1209</sup> However, these parallel reporting processes were altered during the NATO bombing, as is described below. In addition to the information contained in the combat reports, Assistant Commanders—in particular for Moral Guidance, Security, Intelligence, Communications, and Logistics—would sometimes send reports through their specialised-functional line of command to the appropriate Sectors and Administrations of the General Staff/Supreme Command Staff.<sup>1210</sup>

493. After the initial wave of NATO bombing, a combat report of the General Staff/Supreme Command Staff reported that, despite damage, the communications system of the VJ was operational.<sup>1211</sup> Miodrag Simić testified that during the conflict the Supreme Command Staff had “uninterrupted command communication” with the commands of the subordinate units carrying out operations in Kosovo.<sup>1212</sup> Velimir Obradović, who was the Chief of the Operations Centre of the 3<sup>rd</sup> Army Command, testified that communications were properly operational throughout the war.<sup>1213</sup> Božidar Delić, then commander of the 549<sup>th</sup> Motorised Brigade, testified that the command system functioned in the usual way during that time, but that communications were hampered due to NATO’s targeting of communication centres.<sup>1214</sup> Miodrag Janković, who was the Chief of the Communications Department of the 3<sup>rd</sup> Army, said that during the NATO air campaign

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<sup>1206</sup> Ljubiša Stojimirović, T. 17675–17677 (26 October 2007), 4D506 (witness statement dated 2 October 2007), para. 46. For example, the 3<sup>rd</sup> Army Command was in charge—along with the PrK Command—of implementing a counter-intelligence operation in Kosovo against the KLA. The Security Administration of the VJ’s General Staff/Supreme Command Staff was in charge of following the implementation of the plan through combat reports being sent directly by the Security Organs of both, the 3<sup>rd</sup> Army and the PrK Command. Thus, the 3<sup>rd</sup> Army Command was only obliged to report directly the Security Administration in the VJ’s General Staff/Supreme Command Staff under exceptional circumstances. Geza Farkaš, T. 16362–16363 (25 September 2007); Branko Gajić, 3D1084 (witness statement dated 8 August 2007), para. 13.

<sup>1207</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), paras. 15–18, T. 8661 (18 January 2007).

<sup>1208</sup> Ljubiša Stojimirović, T. 17675–17677 (26 October 2007); Velimir Obradović, T. 17387 (22 October 2007).

<sup>1209</sup> Stanimir Radosavljević, T. 17456–17457 (23 October 2007).

<sup>1210</sup> Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 46.

<sup>1211</sup> 3D801 (Supreme Command Staff Combat Report, 27 March 1999), p. 5.

<sup>1212</sup> Miodrag Simić, 3D1089 (witness statement dated 15 August 2007), para. 11; *see also* 3D813 (VJ General Staff Combat Report, 8 April 1999), p. 8; 3D814 (Supreme Command Staff Combat Report, 9 April 1999), p. 8.

<sup>1213</sup> Velimir Obradović, T. 17360–17361 (22 October 2007).

<sup>1214</sup> Božidar Delić, T. 19289 (29 November 2007).



working communications between the 3<sup>rd</sup> Army and the Supreme Command Staff were maintained, allowing reports to be received and orders to be sent, but difficulties were experienced in communications between the lower levels, such as from “corps command to brigade commands, from brigade to battalion commands, and from battalion commands towards commands of companies” and so on.<sup>1215</sup> The difficulties experienced at lower levels of command were also confirmed and described by other witnesses.<sup>1216</sup>

494. However, even where electronic communications were disrupted, other means of commanding the VJ units in Kosovo remained available, and orders continued to be issued to subordinate commands and reported back to the chain of command in combat reports. Miloš Mandić stated that wire and courier liaison was established with subordinate units, but that “wire liaison was constantly severed by terrorists”.<sup>1217</sup> Lazarević stated in his interview with the Prosecution that due to the NATO bombing difficulties were experienced with preparing written reports at the lower levels of command.<sup>1218</sup> When asked how he would receive sufficient information on what the units of the Priština Corps were doing, in order to decide how to deploy such units in future tasks, he explained that he would “very often” visit the units in the field, and he would often do so with the 3<sup>rd</sup> Army Commander.<sup>1219</sup> Ljubomir Savić, Deputy Head of the Training Department of the Priština Corps, confirmed that senior officers from the Priština Corps visited his unit frequently “for the purpose of control and providing assistance”.<sup>1220</sup>

e. VJ military justice system

495. The Chamber heard from several witnesses about the system that operated within the VJ in 1998 and 1999 for the investigation and prosecution of VJ personnel thought to be responsible for the commission of criminal acts. The evidence pertaining to the overall structure of the military justice system, and how it was supposed to function, is not controversial among the parties. A significant issue in contention between the Prosecution and the Ojdanić, Pavković and Lazarević Defence, however, is how the system operated in practice in the period of the NATO bombing, and whether it was being manipulated or abused.

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<sup>1215</sup> Miodrag Janković, T. 17550–17558 (25 October 2007); Miodrag Janković, 4D504 (witness statement dated 1 October 2007), paras. 28–52; Ljubomir Anđelković, T. 16402–16403 (26 September 2007).

<sup>1216</sup> Miloš Mandić, 5D1391 (witness statement dated 8 January 2008), paras. 23, 25; Ljubomir Savić, 5D1392 (witness statement dated 27 December 2007), para. 12; Goran Jevtović, 5D1385 (witness statement dated 24 December 2007), para. 27; *see also* P950 (Vladimir Lazarević interview with the Prosecution), pp. 81–82.

<sup>1217</sup> Miloš Mandić, 5D1391 (witness statement dated 8 January 2008), para. 23.

<sup>1218</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 81–82.

<sup>1219</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 84–85.

<sup>1220</sup> Ljubomir Savić, 5D1392 (witness statement dated 27 December 2007), para. 14.

496. The Prosecution led evidence from one primary witness concerning the functioning of the military justice system—Lakić Đorović, a former military prosecutor attached to the Belgrade Military District from 24 March to 20 May 1999, and from then until 5 June 1999 attached to the Priština Military District. After that time, he returned to the Supreme Military Court in Belgrade, where he had his pre-war position as an expert associate until 1 March 2000.<sup>1221</sup> Đorović's evidence about how the system was structured and was supposed to function was largely unchallenged by the Defence, and indeed confirmed by several witnesses led by the Defence.<sup>1222</sup> However, he made a number of claims about the manner in which the system was abused in 1999, which the Defence sought to counter by leading witnesses to refute specific aspects of his testimony, as well as generally challenging his credibility.

497. The Defence attempted to impeach Đorović's credibility by presenting official confidential reports relating to his conduct.<sup>1223</sup> These are largely conclusory in nature. The Chamber is not in a position to examine the material on the basis of which these anonymous reports have been compiled, but finds that their contents in no way undermine Đorović's credibility or reliability as a witness in these proceedings. The Chamber particularly notes that in two of three official VJ evaluations of Đorović's professional performance in various periods between 1995 and 2004 he was rated as "excellent", and in the third as "very good".<sup>1224</sup>

498. While there is evidence that Đorović had a somewhat unstable temperament, the Chamber does not consider that this necessarily undermines his credibility as a witness.<sup>1225</sup> His behaviour is consistent with an independent mind and nature, and his forthright expression of his views about certain personnel problems within the VJ seems to have led to his demotion from his subsequent position in the VJ legal service at the end of 2003.<sup>1226</sup>

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<sup>1221</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 3.

<sup>1222</sup> See, e.g., Stanimir Radosavljević, 4D502 (witness statement dated 29 September 2007), paras. 4–10; Radomir Mladenović, T. 21247–21248 (28 January 2008); Geza Farkaš, T. 16308–16309 (25 September 2006).

<sup>1223</sup> 3D1137 (Communication from Serbian National Council for Co-operation, 25 February 2008) (under seal); 3D1079 (Letter from Serbian Ministry of Defence, 6 February 2007) (under seal). See Decision on Ojdanić Motion for Admission of Documents from Bar Table, 25 October 2007; Decision on Ojdanić Renewed Motion for Admission of Documents 3D1080, 3D1081 and 3D1137 from Bar Table, 3 April 2008 (confidential).

<sup>1224</sup> P2771 (Personal Evaluation of Lakić Đorović, 24 November 1998), p. 4; P2773 (Personal Evaluation of Lakić Đorović, 1 March 2000), p. 3; P2774 (Personal Evaluation of Lakić Đorović, 1 March 2004), p. 2.

<sup>1225</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 31; Miloš Spasojević, 3D532 (witness statement dated 9 January 2007), para. 6; Stanimir Radosavljević, T. 17462–17464 (23 October 2007); Đura Blagojević, T. 21555 (1 February 2008).

<sup>1226</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), paras. 5–7, 9–20, 40–45; *but see* Branko Krga, T. 16838–16839 (4 October 2007).

499. In 2000 a disciplinary investigation was initiated against Đorović for refusing to execute orders.<sup>1227</sup> This investigation is thoroughly documented, from the initiation of the investigation through to the decision by Ojdanić to have Đorović brought before the Military Disciplinary Court.<sup>1228</sup> The evidence even includes an official note from Đorović, explaining why he had refused to follow the orders in question.<sup>1229</sup> Having examined the various documents in relation to this matter, the Chamber does not consider that they undermine his credibility as a witness. Rather, they provide further evidence of his independent mind and forthright manner.

500. The question whether the evidence of Đorović is reliable in relation to the manner in which the military justice system operated during the NATO campaign and the specific examples of abuse of the system that he cited, will be discussed where necessary below.

*i. Structure of the military justice system*

501. Article 138 of the FRY Constitution stipulated that “military tribunals and military prosecutors shall be established under federal statute”.<sup>1230</sup> The Constitution also provided that military tribunals “shall be independent and shall adjudicate on the basis of federal legislation”.<sup>1231</sup> The rules of organisation and procedure of the military courts were contained in the Decree on the Organisation and Work of the Military Prosecutor,<sup>1232</sup> the Law on Military Courts,<sup>1233</sup> the Decree on the Application of the Law of Criminal Procedure during a State of War,<sup>1234</sup> and the Law on the Military Prosecutor.<sup>1235</sup> The Chamber has analysed all of these legal provisions in reaching its conclusions concerning the functioning on the military justice system, but considers it unnecessary to set them out in detail.

502. The Law on Military Courts provided that military courts would try cases involving criminal acts committed by servicemen, specific criminal acts relating to the defence and security of the country committed by other persons, and disputes relating to service in the VJ.<sup>1236</sup> Military

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<sup>1227</sup> P2743 (Decision to Initiate Disciplinary Investigation against Lakić Đorović, 26 September 2000), p. 1.

<sup>1228</sup> P2743 (Decision to Initiate Disciplinary Investigation against Lakić Đorović, 26 September 2000); P2742 (Disciplinary Investigation Report regarding Lakić “Ćorović”, 9 October 2000); P2741 (Cover letter attached to disciplinary file of Lakić “Ćorović”, 11 October 2000).

<sup>1229</sup> P2745 (Typed copy of Lakić Đorović’s explanation for refusing to follow orders, 1 September 2000).

<sup>1230</sup> 1D139 (Constitution of the FRY, 1992), article 138.

<sup>1231</sup> 1D139 (Constitution of the FRY, 1992), article 138; Lakić Đorović, P2672 (witness statement dated 14 August 2006), p. 1.

<sup>1232</sup> 1D228 (Decree on the Organisation and Work of the Military Prosecutor during a State of War).

<sup>1233</sup> P1309 (Law on Military Courts).

<sup>1234</sup> 1D301 (Decree on Implementing the Law on Criminal Procedure during the State of War).

<sup>1235</sup> P1309 (Law on the Military Prosecutor); *see also* Radomir Gojović, T. 16657 (2 October 2007).

<sup>1236</sup> P1309 (Law on Military Courts), article 1; Stanimir Radosavljević, 4D502 (witness statement dated 20 September 2007), para. 9; Lakić Đorović, P2672 (witness statement dated 14 August 2006), pp. 14–19.

courts could try civilians for certain crimes set out in the Criminal Code of the Federal Republic of Yugoslavia, crimes against property if the subject of the crime was a piece of equipment used in the defence of the nation, and for crimes committed as accomplices to servicemen.<sup>1237</sup>

503. Military courts did not have jurisdiction over MUP officers.<sup>1238</sup> Civil defence and civil protection personnel were considered non-military personnel for purposes of military court jurisdiction.<sup>1239</sup> The president, judges of military courts, and judge-jurors of military courts of first instance, were to be appointed by the President of the FRY at the proposal of the Federal Minister of Defence.<sup>1240</sup>

504. The military prosecutor prosecuted perpetrators of crimes that fell under the jurisdiction of the military courts,<sup>1241</sup> and was an independent state organ.<sup>1242</sup> Military prosecutors of first instance were located at each of the military courts of first instance, and the supreme military prosecutor was located at the supreme military court.<sup>1243</sup>

505. Article 6 of the Law on the Military Prosecutor empowered prosecutors to: (a) take action to discover crimes and find the perpetrators thereof, (b) request investigations, (c) issue indictments or motions to indict, and represent them before the competent military court, and (d) have recourse to regular and extraordinary legal remedies against the decisions of military courts.<sup>1244</sup> Military prosecutors and their deputies were appointed or relieved of their duties by the FRY President at the proposal of the Federal Minister of Defence,<sup>1245</sup> and could be removed only for specific reasons.<sup>1246</sup>

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<sup>1237</sup> P1309 (Law on Military Courts), article 10; *see also* Stanimir Radosavljević, T. 17489–17490 (23 October 2007).

<sup>1238</sup> Stanimir Radosavljević, T. 17483 (23 October 2007); *see also* Aleksandar Vasiljević, T. 8745 (19 January 2007); Radomir Mladenović, T. 21295 (29 January 2008).

<sup>1239</sup> Radomir Mladenović, T. 21295 (29 January 2008).

<sup>1240</sup> P1309 (Law on Military Courts), article 26.

<sup>1241</sup> P1309 (Law on the Military Prosecutor), article 1; Stanimir Radosavljević, 4D502 (witness statement dated 29 September 2007), para. 3.

<sup>1242</sup> Stanimir Radosavljević, 4D502 (witness statement dated 29 September 2007), para. 3. The legal provisions pertaining to the military prosecutor were contained in the Law on the Military Prosecutor and the Decree on the Organisation and Work of the Military Prosecutor during the State of War; P1309 (Law on the Military Prosecutor); 1D228 (Decree on the Organisation and Work of the Military Prosecutor during a State of War, 13 February 1998); *see also* Stanimir Radosavljević, 4D502 (witness statement dated 29 September 2007), para. 7.

<sup>1243</sup> P1309 (Law on the Military Prosecutor), article 2.

<sup>1244</sup> P1309 (Law on the Military Prosecutor), article 6. A decree altering the Law on the Military Prosecutor in 1998, gave Federal State Prosecutors the ability to “prosecute or directly take over” cases involving crimes against humanity and international law during a state of war. 1D301 (Decree on Implementing the Law on Criminal Procedure during the State of War, 4 April 1999), article 3; Lakić Đorović, P2672 (witness statement dated 14 August 2006), pp. 36–37.

<sup>1245</sup> P1309 (Law on the Military Prosecutor), article 27.

<sup>1246</sup> P1309 (Law on the Military Prosecutor), articles 33–35.

506. In wartime, the peacetime military courts and military prosecutors of first instance ceased to work.<sup>1247</sup> In their place military courts and military prosecutors of first instance were to be established at the commands of the military districts, divisions, corps, armies, the Air Force and Defence Command, and the Naval Command. The supreme military court and the supreme military prosecutor would continue to work at the seat of the Supreme Command Staff, while departments of the supreme military prosecutor would be formed at the army commands.<sup>1248</sup> During wartime the President of the FRY authorised all appointments and dismissals of military prosecutors and their deputies, upon the recommendation of the Chief of the Supreme Command Staff.<sup>1249</sup> The wartime military courts of first instance had territorial jurisdiction over trials of persons in the units or command where they were established.<sup>1250</sup>

507. When Stanimir Radosavljević, the deputy military prosecutor at the supreme military prosecutor's office at the 3<sup>rd</sup> Army in Niš, was appointed at the end of March 1999, the military prosecutors at the five first instance military courts in his jurisdiction would submit their daily reports to him via telephone.<sup>1251</sup> From there reports would be forwarded to the supreme military prosecutor, and on to the Minister of Defence and to the President of the FRY.<sup>1252</sup> Radosavljević testified that he answered to the supreme military prosecutor attached to the Supreme Command Staff in Belgrade, General Svetomir Obrenčević, and that he also had a duty to report to the head of the legal department of the Supreme Command Staff, General Gojović.<sup>1253</sup>

*ii. Procedure for detecting, investigating, and prosecuting crime in the VJ*

508. The Law on Military Courts stated that the police functions in relation to crimes under the jurisdiction of the civilian courts were to be carried out by the military security organs and the military police in relation to crimes under the jurisdiction of the military courts, equivalent to the

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<sup>1247</sup> P1309 (Law on Military Courts), article 74; Lakić Đorović, T. 11430–11431 (12 March 2007).

<sup>1248</sup> P1309 (Law on Military Courts), article 74; 1D228 (Decree on the Organisation and Work of the Military Prosecutor during a State of War, 13 February 1998), article 1.

<sup>1249</sup> Stanimir Radosavljević, 4D502 (witness statement dated 29 September 2007), para. 6.

<sup>1250</sup> 1D228 (Decree on the Organisation and Work of the Military Prosecutor during a State of War, 13 February 1998), article 4.

<sup>1251</sup> Stanimir Radosavljević, 4D502 (witness statement dated 29 September 2007), para. 14.

<sup>1252</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 39.

<sup>1253</sup> Stanimir Radosavljević, T. 17455–17457 (23 October 2007).

duties and powers of the police in relation to crimes.<sup>1254</sup> Đorović testified that the function of the security organs was equivalent to that of the police in a civilian system.<sup>1255</sup>

509. Đorović testified that customarily it was the military security services that performed arrests because they were trained and equipped to do so.<sup>1256</sup> According to article 64 of the Law on Military Courts, an officer holding the post of company commander or higher, or an authorised official of the internal affairs organ, or a security organ of the VJ or MUP, could arrest a serviceman caught in the act of committing a crime *ex officio*, if there was risk of his escaping, or if that person posed a risk to life or important property.<sup>1257</sup>

510. If a security officer became aware of a serious crime having been committed within the unit to which he was attached, he was obligated to report it to the commander of that unit and to his superior security commander.<sup>1258</sup> If the unit commander was involved in the crime, then the security officer would report to the security organ attached to the corps, who would inform the corps commander of the crime. The corps commander would then call the particular unit commander to report to him and, if the crime was serious, alert the judicial bodies who would instigate a full investigation.<sup>1259</sup>

511. Vasiljević stated that the obligation to report alleged crimes fell not only on the VJ security service, but on every officer, especially those who were active in the field where these crimes occurred.<sup>1260</sup> Article 61 of the Law on Military Courts imposed an obligation on the part of every VJ officer to “take steps to prevent the perpetrator of the crime that is being prosecuted *ex officio* from going into hiding or escaping, to preserve the traces of the crime and objects that may be used in evidence, and to gather all information that may be useful for a successful conduct of proceedings.”<sup>1261</sup> Furthermore, it required that the officer inform the military prosecutor directly or through a superior of their actions.<sup>1262</sup> Radomir Mladenović, who was the President of the Priština Corps Military Court during the NATO bombing, testified that, once an officer reported a crime, he

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<sup>1254</sup> The powers and duties of the civilian police were set out in the Law on Criminal Procedure. Those same powers and duties could be exercised by military police in relation to crimes under the jurisdiction of the military courts; P1309 (Law on Military Courts), article 52; Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 9. *See also* P984 (FRY Law on the VJ), article 30.

<sup>1255</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 9.

<sup>1256</sup> Lakić Đorović, T. 11662 (14 March 2007).

<sup>1257</sup> P1309 (Law on Military Courts), article 64.

<sup>1258</sup> Aleksandar Vasiljević, T. 8665 (18 January 2007).

<sup>1259</sup> Aleksandar Vasiljević, T. 8666 (18 January 2007).

<sup>1260</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 51; *see also* Radomir Mladenović, T. 21274, 21300 (29 January 2008); Ljubiša Stojimirović, T. 17677–17678 (26 October 2007).

<sup>1261</sup> P1309 (Law on Military Courts), article 61; *see also* Radomir Gojović, T. 16706 (2 October 2007).

<sup>1262</sup> P1309 (Law on Military Courts), article 61.

had no further obligation in relation to the processing of that crime by the military justice system and that it would have been inappropriate for the officer to inquire any further about the processing of the report.<sup>1263</sup>

512. Vasiljević testified that the security organs of the Priština Corps in Kosovo were obliged to report information related to crimes to the Priština Corps Commander, who would then report this information up the chain of command, to the 3<sup>rd</sup> Army Commander, and from him to the Chief of the Supreme Command Staff.<sup>1264</sup> Similarly, Radojko Stefanović, who was the Chief of the Department for Operations and Training with the Command of the Priština Corps, testified that every VJ member had the duty to report to both their superior and to the relevant security organ if there was crime being committed.<sup>1265</sup> Vasiljević also testified that, in situations where the MUP had information suggesting the commission of a crime that would fall under military jurisdiction, they were obliged to inform the military authorities, just as the VJ was obliged to inform the MUP about incidents that occurred in their jurisdiction.<sup>1266</sup>

513. When a military prosecutor received a report of criminal activity, it was his decision whether to initiate criminal proceedings, request additional information from the military police, immediately indict the suspect, or dismiss the criminal report.<sup>1267</sup> During the state of war that began on 24 March 1999, in urgent cases the investigative judge was empowered to conduct an investigation and carry out investigative activities even without a request from the prosecutor.<sup>1268</sup>

514. The investigative judge could close a case only at the proposal of the military prosecutor. Radomir Gojović explained that it was the prosecutor who had the power not to issue an indictment and not to pursue the prosecution, and therefore only he had the power to close a case. He further testified that, if a case had been closed and the prosecutor later obtained new evidence, the prosecutor could always re-open the case.<sup>1269</sup>

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<sup>1263</sup> Radomir Mladenović, T. 21247 (28 January 2008).

<sup>1264</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 52. *See also* Ljubiša Stojimirović, T. 17681 (26 October 2007).

<sup>1265</sup> Radojko Stefanović, T. 21728 (6 February 2008). *See also* Miloš Mandić, T. 20924 (23 January 2008); Aleksandar Vasiljević, T. 8666 (18 January 2007), *cf.* Radomir Gojović, T. 16706 (2 October 2007).

<sup>1266</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 52. *Cf.* Stanimir Radosavljević, T. 17477–17478 (23 October 2007); Radomir Gojović, T. 16765 (3 October 2007).

<sup>1267</sup> Stanimir Radosavljević, 4D502 (witness statement dated 29 September 2007), para. 18.

<sup>1268</sup> 1D301 (Decree on Implementing the Law on Criminal Procedure during the State of War, 4 April 1999), article 6(2).

<sup>1269</sup> Radomir Gojović, T. 16760–16761 (3 October 2007).

515. At the cessation of a state of war, the various wartime military courts were disbanded.<sup>1270</sup> The wartime first instance military prosecutors transferred all unfinished criminal cases to the peacetime first instance military prosecutors and courts with territorial jurisdiction over the case.<sup>1271</sup> Thus, in late June 1999 the peacetime military court in Niš took over the cases from Kosovo that were to remain within the military justice system.<sup>1272</sup>

516. After the cessation of a state of war, the military courts continued to have jurisdiction over professional VJ soldiers or officers that remained in the VJ, or demobilised soldiers whose indictments had already been confirmed by a military court.<sup>1273</sup> However, reserve soldiers in the VJ were subject to military prosecuting authorities only as long as wartime lasted; after the state of war ended, if the cases were not finalised or the indictments were not confirmed, then these were transferred to the civilian justice system.<sup>1274</sup> According to Đura Blagojević, who was a Deputy Military Prosecutor with the Priština Military District command in June 1999, 300 to 400 cases involving reservists were referred to civilian courts at the end of the state of war.<sup>1275</sup> However, these cases were transferred to the civilian courts in other parts of Serbia, due to the fact that after the end of the state of war there were no functioning state institutions in Kosovo.<sup>1276</sup>

517. Radomir Mladenović testified that from 24 March to 14 June 1999 over 300 persons were detained by the court attached to the Priština Corps Command. After the war they were told to transfer such persons to the correctional facility in Niš. However, only those that they felt must be held in detention were transferred, numbering around 70 persons, and the remaining detainees were released.<sup>1277</sup>

### *iii. Applicable law*

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<sup>1270</sup> Uncompleted cases were handed over to the relevant regional military court. Lakić Đorović, P2672 (witness statement dated 14 August 2006), p. 27; *see also* Geza Farkaš, T. 16308–16309 (25 September 2007).

<sup>1271</sup> 1D228 (Decree on the Organisation and Work of the Military Prosecutor during a State of War, 13 February 1998), article 7; 1D228 (Rules of Procedure on the Work of Military Courts during a State of War, 13 February 1998), article 7.

<sup>1272</sup> Radomir Gojović, T. 16728–16730 (2 October 2007).

<sup>1273</sup> Aleksandar Vasiljević, T. 8747 (19 January 2007); Radomir Gojović, T. 16689 (2 October 2007) (testifying, in addition, that there were very few of those cases).

<sup>1274</sup> Stanimir Radosavljević, T. 17488 (23 October 2007), 4D502 (witness statement dated 29 September 2007), para. 21.

<sup>1275</sup> Đura Blagojević, T. 21560 (1 February 2008).

<sup>1276</sup> Radomir Gojović, T. 16728 (2 October 2007).

<sup>1277</sup> Radomir Mladenović, T. 21263 (29 January 2008).



518. There was no separate criminal code for the military justice system; the military courts applied the criminal codes of the FRY and its constituent republics to servicemen.<sup>1278</sup>

519. War crimes against the civilian population were proscribed by article 142 of the FRY Criminal Code. The minimum sentence for such crimes was five years in prison, and the maximum sentence was death.<sup>1279</sup> Article 38 of the FRY Criminal Code provided that a sentence of imprisonment may not exceed 15 years, but that 20 years' imprisonment might alternatively be imposed for criminal offences for which the death penalty was prescribed.<sup>1280</sup> Murder was covered by article 47 of the Criminal Code of Serbia, for which the minimum sentence was five years' imprisonment, and for aggravated murder ten years' imprisonment or the death penalty.<sup>1281</sup> The 1992 Constitution of the FRY abolished the death penalty for offences prohibited by the FRY Criminal Code. In the 1990s, the Constitutional Court of Serbia declared the death penalty unconstitutional, thus ruling it out in domestic criminal proceedings.<sup>1282</sup>

520. According to Gojović, murders were prosecuted as war crimes under article 142 when a superior officer ordered a subordinate to commit the crime. When there was no involvement of a superior, the prosecutor usually opted to prosecute under article 47—as murder or multiple murder—which carried a more severe sentence.<sup>1283</sup>

521. Robbery and aggravated robbery—defined as a robbery that resulted in the death of the victim—were covered by articles 168 and 169 of the Serbian Criminal Code. The maximum sentence for aggravated robbery was the death penalty, and the minimum sentence was ten years.<sup>1284</sup> Assault was covered by articles 53 and 54 of the Serbian Criminal Code under the headings “Grievous Bodily Injury” and “Slight Bodily Injury”. Where the victim died as the result of the injury, the penalty ranged from one to twelve years in prison.<sup>1285</sup>

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<sup>1278</sup> Lakić Đorović, P2672 (witness statement dated 14 August 2006), pp. 7–8, 15. Only evidence of application of the Criminal Code of the Republic of Serbia to servicemen has been heard by the Chamber, but in theory the Criminal Code of the Republic of Montenegro could also be applicable.

<sup>1279</sup> P1736, article 142(1) of the Criminal Code of the FRY; *see also* Radomir Gojović, T. 16651–16652 (2 October 2007).

<sup>1280</sup> P1736, articles 38(1)–(2) of the Criminal Code of the FRY.

<sup>1281</sup> P1020, article 47 of the Criminal Code of the Republic of Serbia; *see also* Radomir Gojović, T. 16651–16652 (2 October 2007).

<sup>1282</sup> Radomir Gojović, T. 16651–16652 (2 October 2007).

<sup>1283</sup> Radomir Gojović, T. 16651–16652, 16688, 16720–16723 (2 October 2007).

<sup>1284</sup> Radomir Gojović, T. 16704–16705 (2 October 2007).

<sup>1285</sup> P1020 (Serbian Criminal Code, 1994).

522. Terrorism and association for hostile purposes were violations of articles 125 and 136 of the FRY Criminal Code if such acts violated the defence capabilities and security of the country.<sup>1286</sup>

523. Military courts tried civilians for crimes against property and crimes of official misconduct if the subject of a crime was VJ combat equipment or weaponry.<sup>1287</sup> Military courts also tried civilians in the Armed Forces for crimes relating to official misconduct and for all other crimes they committed as accomplices to servicemen.

*iv. Military courts in practice*

524. In peacetime the Niš Military Court had territorial jurisdiction over the entire territory of Kosovo.<sup>1288</sup> On 25 March 1999 Ojdanić issued an order to all commands to mobilise the wartime military courts and wartime military prosecutors in the organisational structure of the commands and units, as well as the supreme military court and the supreme military prosecutor, and to begin work immediately.<sup>1289</sup> Thus, 24 military courts and 24 prosecutor's offices were set up at the military districts, corps commands, and the commands of strategic groups throughout Serbia.<sup>1290</sup>

525. Radomir Mladenović confirmed that there were two military courts in Kosovo during the conflict in 1999, one attached to the Priština Corps Command and one attached to the Priština Military District Command.<sup>1291</sup>

526. The Prosecution argues that the VJ military justice system was fully functional and capable of handling the prosecution of crimes committed by the VJ during the armed conflict in Kosovo. It contends, however, that in practice this did not happen, and that VJ members who committed serious crimes were not brought to justice, due to a failure to report or investigate such crimes,

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<sup>1286</sup> Stanimir Radosavljević, T. 17485–17486 (23 October 2007).

<sup>1287</sup> P1309 (Law on Military Courts), article 10; Radomir Gojović, T. 16735 (2 October 2007). These crimes were as follows: article 118 – Preventing the struggle against the enemy; article 119 – Service in the enemy armed forces; article 120 – Providing assistance to the enemy; article 121 – Weakening the military and defence strength; article 124 – Armed rebellion; article 125 – Terrorism (if directed at a VJ resource/personnel); article 126 – Diversion [destruction of infrastructure] (if directed at a VJ resource); article 127 – Sabotage (if directed at a VJ resource); article 128 – Espionage (if they relate to the defence of the FRY); article 129 – Disclosure of state secrets (if they relate to the defence of the FRY); article 135 – Violation of territorial sovereignty; article 136 – Creating a joint enterprise for the purpose of hostile activities (in conjunction with a violation of articles 118-121 or 125-127); article 201 – Failure or refusal to carry out an order; article 202 – Refusal to accept or use arms; article 203 – Insubordination; article 204 – Insubordination to a sentry, guard, patrol, duty officer or other member of the Armed Forces on a similar assignment; article 205 – Coercion of a member of the Armed Forces in the course of his duties; article 206 – Assault on a member of the Armed Forces in the course of his duties; *see* P1736 (Criminal Code of the SFRY).

<sup>1288</sup> Lakić Đorović, P2672 (witness statement dated 14 August 2006), p. 12.

<sup>1289</sup> 4D217 (General Staff/Ojdanić Order to Mobilise all Military Courts and Prosecutors, 25 March 1999).

<sup>1290</sup> P953 (Report on the work of military judicial organs, 21 June 1999), p. 2; Radomir Gojović, T. 16656 (2 October 2007); *see also* Ljubiša Stojimorović, 4D506 (witness statement dated 2 October 2007), paras. 40–42; 4D153 (Order to the 3<sup>rd</sup> Army Command re Transition to Wartime Courts, signed by Ljubiša Stojimorović, 28 March 1999).

<sup>1291</sup> Radomir Mladenović, T. 21241 (28 January 2008).

either through a deliberate policy within the VJ, or by negligence on the part of its commanders.<sup>1292</sup> In addition, the Prosecution argues, based largely on the evidence given by Đorović, that individuals within the VJ purposefully obstructed the functioning of the system.<sup>1293</sup>

527. In addition to challenging much of Đorović's evidence, the Ojdanić, Pavković, and Lazarević Defences contend that during the conflict in 1999 the military justice system generally dealt with crimes committed by VJ members, but various systematic difficulties which caused some deficiencies in punishing offenders were encountered.<sup>1294</sup> The Ojdanić and Pavković Defences argue that crimes committed by the VJ were being prosecuted; criminal reports were filed; crimes were investigated; suspects were arrested, indicted and punished, all to the degree possible throughout the war.<sup>1295</sup> If there were deficiencies, these could be attributed to two factors, both of which were outside the control of the Accused. First, the military courts operated under less than ideal conditions in a war zone, and, second, the "crime-base" period was very short, after which the VJ was afforded no access to Kosovo to investigate crimes and bring the perpetrators to justice.<sup>1296</sup> In addition, the Pavković Defence stresses that, as stated in the law, the military courts were independent, and therefore the Accused had no ability to influence their work.<sup>1297</sup>

#### (A) Functioning of the military justice system

528. As noted above, Lakić Đorović testified that the legal framework provided in the military judicial system was sufficient to allow for the efficient investigation and prosecution of crimes committed by servicemen in Kosovo in 1999.<sup>1298</sup> In addition, a report from the Supreme Command Staff Legal Affairs Department dated 7 May 1999 stated that the military judicial organs, after having overcome some initial difficulties, were fully functional and able to perform their tasks.<sup>1299</sup> However, it was the evidence of Đorović that the provisions of the law were not in fact implemented.<sup>1300</sup>

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<sup>1292</sup> Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 272–275.

<sup>1293</sup> Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 275, 278–290.

<sup>1294</sup> Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 284–288; Pavković Final Trial Brief, 28 July 2008 (public version), para. 322; Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 664, 695.

<sup>1295</sup> Pavković Final Trial Brief, 28 July 2008 (public version), paras. 328–333; Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 308–310.

<sup>1296</sup> Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 305–306.

<sup>1297</sup> Pavković Final Trial Brief, 28 July 2008 (public version), para. 321.

<sup>1298</sup> Lakić Đorović, T. 11452–11453 (12 March 2007); *see also* P2826 (Information about the Work of the Judicial Organs in the Time of War, 12 May 1999), p. 2. The Chamber notes that the date of this document is incorrect in e-court. Radomir Gojović, T. 16663 (2 October 2007); 5D1290 (Information on the Work of the Military Court and PrK Command, 14 May 1999), p. 1 (asserting that the judicial staff is "providing normal functioning and work of the judicial organs").

<sup>1299</sup> P1917 (Information on the Work of Military Judicial Organs in the State of War, 7 May 1999), p. 5.

<sup>1300</sup> *See below*, subsection (c) (1).

529. The Ojdanić, Pavković, and Lazarević Defences point to a number of documents which show that the system was functioning albeit hampered to some extent by the prevailing circumstances. These include statements that legal measures and actions were being taken against those who perpetrated crimes, and which report on numbers of criminal complaints filed. Among these are combat reports from the Priština Corps Command to the 3<sup>rd</sup> Army Command, dated 3 April, 13 April, and 25 April 1999, which note the number of criminal reports received in that period.<sup>1301</sup> Others are combat reports of the 3<sup>rd</sup> Army, dated 4 April, 20 April, 27 April, 29 April, and 20 May 1999, which report generally about the number of criminal reports, how many people were brought before first instance military courts, and investigations initiated.<sup>1302</sup>

530. Aleksandar Vasiljević testified that there was difficulty summoning witnesses and parties for criminal proceedings during wartime.<sup>1303</sup> This was supported by Stanimir Radosavljević, who stated that the working conditions of the military prosecutors and courts were very difficult. Several times a day warning sirens interrupted their work, and power failures often occurred. Hearings before investigative judges suffered from the same problems. Moreover, the location in Niš where the military court and prosecutors were situated changed several times during the war for security reasons.<sup>1304</sup>

531. During the NATO campaign Radomir Gojović toured all 24 wartime military courts and prosecutors' offices throughout the FRY. He confirmed the foregoing picture and mentioned also problems presented by KLA activity. In Priština/Prishtina work was disrupted by the circumstances then prevailing and it was difficult to fill vacancies because of intense fighting in the area.<sup>1305</sup> He himself had to relocate, along with his department and personnel, five or six times.<sup>1306</sup>

532. Gojović also testified about his report, entitled Information about the Work of the Judicial Organs in Times of War, dated 12 September 1999,<sup>1307</sup> which included information about the complex criminal cases (such as terrorism, murder, robbery, and theft) and which took longer to

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<sup>1301</sup> 5D84 (PrK Combat report to 3<sup>rd</sup> Army, 3 April 1999), p. 1; P2004 (PrK Combat report to 3<sup>rd</sup> Army and Supreme Command Staff, 13 April 1999), p. 3; P2016 (PrK Combat report to 3<sup>rd</sup> Army and Supreme Command Staff, 25 April 1999), p. 2.

<sup>1302</sup> P2617 (PrK Combat report to 3<sup>rd</sup> Army, 4 April 1999), p. 2; P1945 (Report by Nebojša Pavković, 20 April 1999), p. 3; P2005 (3<sup>rd</sup> Army Combat Report to VJ General Staff, 27 April 1999), p. 2; P2017 (3<sup>rd</sup> Army Combat Report to VJ General Staff, 29 April 1999), p. 2; P2008 (3<sup>rd</sup> Army Combat Report to VJ General Staff, 20 May 1999), p. 2.

<sup>1303</sup> Aleksandar Vasiljević, T. 8881–8882 (22 January 2007); *see also* 3D986 (Summary report about the work of the military legal department of VJ General Staff, 6 September 1999), pp. 10–11.

<sup>1304</sup> Stanimir Radosavljević, 4D502 (witness statement dated 29 September 2007), para. 12.

<sup>1305</sup> Radomir Gojović, T. 16660–16661 (2 October 2007).

<sup>1306</sup> Radomir Gojović, T. 16661 (2 October 2007).

<sup>1307</sup> P2826 (Information about the Work of the Judicial Organs in the Time of War, 12 May 1999), p. 2 (stating that military judicial organs attached to the PrK Command encountered in their work “very complex criminal cases that deal with serious crimes”).

adjudicate because of their complexity. Gojović further testified that the military judicial bodies within the 3<sup>rd</sup> Army encountered problems as well.<sup>1308</sup>

533. A report sent to the Priština Corps Command by the Department for Legal Affairs of the Supreme Command Staff Administration, dated 25 May 1999, recorded that the volume and complexity of the cases for this district were significant and that existing personnel were not sufficient.<sup>1309</sup> It noted that the judicial bodies were encountering difficulties because some commands did not provide accommodation, material security, and military-police services to them.<sup>1310</sup> It also stated that, while the military judicial bodies of the Priština Corps Command were “encountering” very complex cases involving serious crimes, the judicial bodies in the Priština Military District Command had comparatively less difficulty in operation because the majority of the crimes before them were for evasion of military service. Nonetheless, the latter bodies were not functioning efficiently either.<sup>1311</sup>

534. A report prepared by Radomir Gojović in September and October 2001, while working at the legal department of the Ministry of Defence, is a summary review of the criminal proceedings instituted against VJ personnel who committed crimes between 24 March and 10 June 1999 in Kosovo, and breaks down the information in terms of number of victims of each type of crime, individual accused, and investigations.<sup>1312</sup> It lists six people as being indicted for war crimes against civilians, one for voluntary manslaughter, eight for involuntary manslaughter, and seven for "grave incidents of robbery and violence to retain stolen goods with murder (article 169, para. 2)". The report records judgements issued for the commission of certain crimes during the NATO air campaign: three for involuntary manslaughter, one for attempted rape, five for grave incidents of robbery and violence to retain stolen goods, six for robberies, 59 for aggravated thefts, and a few others. The Chamber notes that the victims of the manslaughters for which judgements were entered were all VJ servicemen, and the victim of the attempted rape for which a judgement was entered had a Serbian name.<sup>1313</sup> Furthermore, the summary review of the report indicates that during the same period there were no indictments for war crimes (under article 142 of the Criminal

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<sup>1308</sup> Radomir Gojović, T. 16665–16666 (2 October 2007).

<sup>1309</sup> P2818 (Information on the Activities of the Military Judicial Bodies in the State of War, 25 May 1999), p. 3.

<sup>1310</sup> P2818 (Information on the Activities of the Military Judicial Bodies in the State of War, 25 May 1999), p. 5.

<sup>1311</sup> P2818 (Information on the Activities of the Military Judicial Bodies in the State of War, 25 May 1999), p. 4.

<sup>1312</sup> P955 (Summary review of reports on criminal cases, military prosecution, and courts), pp. 1–82; *see also* Radomir Gojović, T. 16682 (2 October 2007).

<sup>1313</sup> P955 (Summary review of reports on criminal cases, military prosecution, and courts), pp. 14, 15, 18.

Code of the FRY),<sup>1314</sup> any type of murder (under article 47 of the Criminal Code of Serbia) or rape (under article 103 of the Criminal Code of Serbia).<sup>1315</sup>

535. Gojović's interpretation of his 2001 Report on Criminal Proceedings was that 372 persons were prosecuted for classical war crimes against the population, ranging from murder to simple theft. He later stated that a total of 39 people were prosecuted for murder.<sup>1316</sup> However, at the time when the report was completed in 2001, none had been convicted.<sup>1317</sup> While the report does not contain information about any sentences that were ultimately imposed for murder, Gojović testified that he had subsequently heard of some of the sentences that were imposed for murders committed during the conflict which were included in his report, and that the highest sentence he knew of was 14 years imprisonment.<sup>1318</sup>

536. Gojović testified that during the short period of the state of war, when the wartime military courts were in operation, the courts did not manage to complete the cases referred to in this report. After the conflict was over, the prosecution of individuals who committed crimes as members of the VJ was difficult because the military courts only retained jurisdiction over those individuals who remained in the army and those were very few.<sup>1319</sup> In addition, after the end of combat operations the VJ had a problem finding those individuals wanted for crimes who were now demobilised, as many of them hid or fled abroad.<sup>1320</sup> Furthermore, after the conflict was over it was not possible to conduct investigations in Kosovo because VJ forces did not have access to the territory.<sup>1321</sup> Nonetheless, Branko Gajić, former Deputy Head of the VJ Security Administration, testified that after the cessation of hostilities the VJ continued to investigate war crimes perpetrated during those hostilities.<sup>1322</sup>

#### (B) The investigation and prosecution of crimes in the VJ

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<sup>1314</sup> See Radomir Gojović, T. 16651–16652, 16688, 16720–16723 (2 October 2007).

<sup>1315</sup> P955 (Summary review of reports on criminal cases, military prosecution, and courts), p. 2.

<sup>1316</sup> Radomir Gojović, T. 16719–16720 (2 October 2007). P954 (Report on criminal cases, military prosecution and courts, 21 August 2001), P955 (Summary review of reports on criminal cases, military prosecution, and courts).

<sup>1317</sup> Radomir Gojović, T. 16693 (2 October 2007).

<sup>1318</sup> Radomir Gojović, T. 16720 (2 October 2007).

<sup>1319</sup> Radomir Gojović, T. 16689 (2 October 2007); *see also* Geza Farkaš, T. 16308–16309 (25 September 2007).

<sup>1320</sup> Branko Gajić, T. 15303 (10 September 2007); *cf.* Radomir Mladenović, T. 21252 (28 January 2008).

<sup>1321</sup> Geza Farkaš, T. 16308, 16328 (25 September 2007); Stanimir Radosavljević, 4D502 (witness statement dated 29 September), para. 22.

<sup>1322</sup> Branko Gajić, T. 15301 (10 September 2007); *see also* 3D1056 (Report by the 3rd Army Command, 21 June 1999), 3D1057 (Report by the 3rd Army Command, 25 June 1999), 3D1058 (Amendment to the Report by the 3rd Army Command, 25 June 1999), 3D1059 (3<sup>rd</sup> Army Combat report to Supreme Command Staff, 25 June 1999), 3D1062 (Decision to investigate possible crimes against civilians by PrK members, 3 August 1999), 3D1061 (Cover letter regarding murder of 20 Kosovo Albanians, 14 July 1999).

537. K82, a VJ soldier in the Priština Corps, admitted in the course of the trial to having followed orders to kill 15 Kosovo Albanian civilians in the village of Trnje/Tërm (Suva Reka/Suhareka municipality). He testified, however, that he was never punished or disciplined for this or any of the other incidents mentioned in his evidence, and that in fact “if you followed these orders you were a hero”.<sup>1323</sup> The Chamber thus now turns to the question of whether such an omission represented an exception to the rule or rather a more pervasive practice in the FRY military justice system.

538. Đorović asserted that in a large number of cases during the conflict prosecutors were prevented from criminally prosecuting perpetrators of serious crimes and forced to prosecute innocent VJ members or other citizens of the FRY by inventing crimes and staging court proceedings.<sup>1324</sup> He also stated that, in practice, the military security organs decided who would and who would not be prosecuted in cases of the most serious crimes, rather than the military prosecutors themselves.<sup>1325</sup>

539. The Prosecution referred to reports on the work of the wartime military prosecutor’s offices and courts, prepared by the Legal Affairs Organ of the 3<sup>rd</sup> Army Command, to demonstrate that the few criminal cases which were prosecuted within the military justice system did not include serious crimes, with the exception of theft, and that the military courts focused their attention on prosecuting crimes committed *against* the VJ.<sup>1326</sup> These reports contain figures about the investigations, indictments, verdicts, current proceedings, sentences, and detentions of the 3<sup>rd</sup> Army judicial organs between 23 April and 30 May 1999.<sup>1327</sup> In the first of these reports, dated 23 April 1999, the cases discussed include the crimes of evasion of military service, stealing weapons from the VJ, refusing to implement orders, robbery, bribery, unauthorised entry into military premises and making drawings of military premises, and attacking a military officer.<sup>1328</sup> In similar reports dated 30 April and 1 May 1999, the majority of the crimes discussed involved evasion of military service and desertion; there are also references to the conviction of several individuals for robbery.<sup>1329</sup> Another report dated 30 May 1999 describes indictments and convictions for the

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<sup>1323</sup> K82, P2863 (witness statement dated 14 September 2006), paras. 17–19, 39.

<sup>1324</sup> Lakić Đorović, P2672 (witness statement dated 14 August 2006), p. 2.

<sup>1325</sup> Lakić Đorović, P2672 (witness statement dated 14 August 2006), p. 2.

<sup>1326</sup> Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 274, 833.

<sup>1327</sup> P1912 (Report on the Work of the War Military Prosecutor’s Offices and Courts, 1 May 1999); P1939 (Report on the Work of the War Military Prosecutor’s Offices and Courts, 23 April 1999); P1940 (Wartime Military Prosecutor’s Offices and Courts Progress Report, 30 April 1999); P1941 (Report about the Work of War Judicial Organs, 30 May 1999).

<sup>1328</sup> P1939 (Report on the Work of the War Military Prosecutor’s Offices and Courts, 23 April 1999), pp. 1–3.

<sup>1329</sup> P1940 (Wartime Military Prosecutor’s Offices and Courts Progress Report, 30 April 1999), pp. 1–2; P1912 (Report on the Work of the War Military Prosecutor’s Offices and Courts, 1 May 1999), pp. 1–3.

crimes of desertion, evasion of military service, and aggravated theft, as well as for crimes of lowering morale, unauthorized retention of official weapon, and refusal to obey orders.<sup>1330</sup>

540. A report on criminal offences and the work of judicial organs in the Priština Corps, that was sent by the Priština Corps Command to a number of its subordinate units active in Kosovo on 2 May 1999, noted that murder was one of the most reported offences.<sup>1331</sup> This report stated that the largest percentages of all the criminal offences committed and reported at the Priština Corps were for murder, aggravated theft, taking a motor vehicle, and wilful abandonment and desertion.<sup>1332</sup>

541. A meeting was held on 4 May in Belgrade to discuss events in Kosovo, including the crimes being committed there and the reaction of the military courts, as discussed in Section VIII pertaining to the individual criminal responsibility of Milutinović, Šainovic, Ojdanić, Pavković, and Lukić.<sup>1333</sup> According to a report of the content of the meeting, information was presented that the security forces of the VJ had dealt with numerous cases of violence, killings, pillage, and other crimes, and had arrested several hundred perpetrators whose crimes were a great danger to the civilian population.<sup>1334</sup> It was concluded at the meeting that the work of the military courts had made the future occurrences of such crime “impossible” as they had already processed many cases for crimes against the civilian population and handed down a “large number” of sentences between 5 and 20 years imprisonment for these crimes.<sup>1335</sup> However, this statement is inconsistent with official reports on the work of the military justice system. None of these reports indicate that any sentences between 5 and 20 years’ imprisonment had been imposed by the military courts for crimes against civilians by 4 May 1999, as noted herein.<sup>1336</sup>

542. Reports sent by Priština Corps subordinate units to the Priština Corps Command indicated that some criminal reports were being submitted to the competent organs at their level. On 18 April

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<sup>1330</sup> P1941 (Report about the Work of War Judicial Organs, 30 May 1999), pp. 1–2.

<sup>1331</sup> P2830 (Report on Criminal Offences and the Work of Judicial Organs in the PrK to Command, 2 May 1999), p. 1.

<sup>1332</sup> P2830 (Report on Criminal Offences and the Work of Judicial Organs in the PrK to Command, 2 May 1999), pp. 1–2.

<sup>1333</sup> P1696 (“Army, Police heads inform Milošević of Successful Defence”, Report of RTS, 5 May 1999), p. 1. 4D406 (“Security Situation in Kosovo”, Report of Politika, 6 May 1999). These document were challenged, T. 16105-16106 (21 September 2007); T. 22547 (15 February 2008). However, they are corroborated by 5D1289 (Sreten Lukić’s report regarding Politika News Article, 6 May 1999); Dušan Gavrančić, T. 22722 (19 February 2008); Miloš Vojnović, T. 24188 (12 March 2008).

<sup>1334</sup> P1696 (“Army, Police heads inform Milošević of Successful Defence”, Report of RTS, 5 May 1999), p. 1.

<sup>1335</sup> P1696 (“Army, Police heads inform Milošević of Successful Defence”, Report of RTS, 5 May 1999), pp. 1–2.

<sup>1336</sup> P1912 (Report on criminal cases, military prosecution and courts, 1 May 1999); P1940 (Report on criminal cases, military prosecution and courts, 30 April 1999), P1182 (Information sent by PrK to the 52<sup>nd</sup> Artillery Rocket Brigade, 15 May 1999), 3D986 (Summary report about the work of the military legal department of VJ General Staff, 6 September 1999), P962 (Report on criminal cases, military prosecution and courts, 549th Motorised Brigade), P830 (Report on criminal proceedings instituted by the military judicial organs, 9 April 2002), P954 (Report on criminal cases, military prosecution and courts, 21 August 2001), P955 (Summary review of reports on criminal cases, military prosecution, and courts), P845 (Report on criminal cases for sexual assault in military courts, 10 September 2002).



1999 a report from a Military Post in the area of Đakovica/Gjakova informed the Priština Corps Command that four soldiers had been arrested and handed over to the investigating officials of the Priština Military Court for raping a civilian.<sup>1337</sup> The 37<sup>th</sup> Motorised Brigade Command also reported to the Priština Corps Command on 25 April 1999 about a group of five members of the brigade who were suspected of having committed crimes against the civilian population in Glogovac/Gllogoc. The report indicated that they had been taken into custody at the command post and that their case was being processed.<sup>1338</sup> On 1 May 1999 the 354<sup>th</sup> Infantry Brigade Command reported to the Priština Corps Command about an act committed by a VJ conscript against a civilian. The report indicated that the conscript had been arrested and taken into custody in the military remand prison in Priština/Prishtina, and that charges had been brought against him.<sup>1339</sup> On 10 May 1999 Savić reported to the Priština Corps Command on the implementation of the second operation in the Bajgora area. In his report he stressed that two soldiers had been arrested after having been caught looting houses.<sup>1340</sup> In addition, in its regular combat report of 20 May 1999, the 37<sup>th</sup> Motorised Brigade Command informed the Priština Corps Command of the killing of two civilians in Kosovo Polje/Fushë Kosova by one of the members of its brigade, namely Nenad Bulatović.<sup>1341</sup> The report indicated that Bulatović was being held in prison and that a criminal report had been filed against him. Diković, the commander of the 37<sup>th</sup> Motorised Brigade, testified that Bulatović had been handed over to the military investigating court in Priština/Prishtina.<sup>1342</sup> A ruling to initiate proceedings was given on 21 May 1999, and the investigation was referred to the District Court in Kraljevo.<sup>1343</sup> However, nothing further is recorded relating to this individual.

543. The “List of filed criminal reports against perpetrators in the 549<sup>th</sup> Motorised Brigade between May 1998 and July 1999” also indicates that several members of the Priština Corps were prosecuted. Vujadin Šteković, a captain, was charged with murder; Zlatan Mančić and Rade Radojević, a major and a captain respectively, were imprisoned for several years for having committed “war crime against civilians”; and Željko Jokić was charged with rape.<sup>1344</sup> The document entitled “Information about some crimes and negative incidents” sent by the 549<sup>th</sup>

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<sup>1337</sup> Božidar Delić, T. 19410 (4 December 2007); 5D1148 (Report of the Military post 1936, 18 April 1999); 5D889 (Criminal report filed to the Military Prosecutor, 17 April 1999).

<sup>1338</sup> 5D1057 (37<sup>th</sup> Motorised Brigade Combat Report to PrK, 25 April 1999), p. 2.

<sup>1339</sup> 5D509 (354<sup>th</sup> Infantry Brigade Combat Report to PrK, 1 May 1999).

<sup>1340</sup> Ljubomir Savić, T. 20972–20973 (24 January 2008); 5D1132 (58<sup>th</sup> Light Infantry Brigade Combat Report to PrK, 10 May 1999), p. 2.

<sup>1341</sup> 5D1061 (37<sup>th</sup> Motorised Brigade Combat Report to PrK, 20 May 1999), p. 2.

<sup>1342</sup> Ljubiša Diković, T. 19916 (10 December 2007).

<sup>1343</sup> P955 (Summary review of reports on criminal cases, military prosecution, and courts), p. 7.

<sup>1344</sup> Božidar Delić, T. 19407 (4 December 2007); P962 (List of filed criminal reports against perpetrators in the 549<sup>th</sup> Motorised Brigade between May 1998 and July 1999), p. 24–28; Vlatko Vuković, 5D1401 (witness statement dated 5 January 2008), para. 77 (under seal).

Motorised Brigade Command to its subordinate units also shows that volunteers who were suspected of having committed the crime of rape on 26 May 1999 were arrested by the Military Police and handed over to the Military Court in Priština Corps.<sup>1345</sup> This case was later transferred to a municipal court but there is no evidence of a sentence being imposed for it.

544. A document sent by the Priština Corps Command to subordinate units on 15 May 1999 indicated that proceedings were then being conducted in the wartime military courts against 91 professional military personnel, but that none of these proceedings covered serious violations of international humanitarian law.<sup>1346</sup> Another report, concerning crimes committed in Kosovo and produced by the supreme military prosecutor in April 2002, and sent to the OSCE Mission in Serbia and Montenegro in June 2003,<sup>1347</sup> stated that in the period from 1 June 1998 to 27 June 1999 the military judicial organs instituted criminal proceedings against a total of 305 VJ members for acts violating norms of humanitarian law. All of these proceedings were instituted by the first instance military prosecutors. However, only one of these investigations—against Slobodan Stošić—dealt with repeated violations of international law, and it was discontinued for lack of evidence.<sup>1348</sup> The other cases involved isolated incidents perpetrated by individuals or very small groups of VJ personnel. In addition to the Stošić case, 11 investigations were started for war crimes against civilians, unlawful killing of the enemy, murder, and rape; of those, 10 were deferred to civilian courts or discontinued, and in the remaining case there is no indication of the outcome.<sup>1349</sup> Additionally, 10 separate indictments against other perpetrators were issued for murder, rape, or attempted rape; of those, seven were deferred or discontinued, and for the remaining three there is no notation of the outcome.<sup>1350</sup> There is no evidence presented in this report of conviction of a VJ member for any serious crime at any time.

545. This report also described proceedings for crimes against property which were conducted against 267 persons.<sup>1351</sup> Investigation against 45 persons was deferred to the civil judicial organs. Of the 222 cases that remained in the military courts, 18 people were charged with robbery, five were charged with grave incidents of robbery and violence to retain stolen goods, 124 were charged with aggravated theft, and 75 were charged with theft. The report indicates that 101 people were

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<sup>1345</sup> 5D1351 (Information about some crimes and negative incidents sent by the 549<sup>th</sup> Motorised Brigade Command, 27 May 1999), p. 2.

<sup>1346</sup> P1182 (Information sent by PrK to the 52<sup>nd</sup> Artillery Rocket Brigade, 15 May 1999), pp. 1–4.

<sup>1347</sup> P829 (Serbia and Montenegro Letter of Ministry of Defence to OSCE, 30 June 2003).

<sup>1348</sup> P830 (Report on criminal proceedings instituted by the military judicial organs, 9 April 2002), pp. 1–2. Stošić was suspected of ordering his subordinates, on three different occasions in April 1999, to kill approximately 28 Kosovo Albanian civilians.

<sup>1349</sup> P830 (Report on criminal proceedings instituted by the military judicial organs, 9 April 2002), pp. 1–4.

<sup>1350</sup> P830 (Report on criminal proceedings instituted by the military judicial organs, 9 April 2002), pp. 4–6.

<sup>1351</sup> P830 (Report on criminal proceedings instituted by the military judicial organs, 9 April 2002), pp. 6–7.

convicted, with a maximum sentence received of three years and six months in prison.<sup>1352</sup> The details of the cases are not included but the report does set out “one extreme example typical for its ruthlessness”: an investigation opened against seven soldiers for grave incidents of robbery and violence to retain stolen goods, including the killing of six Kosovo Albanians in Žegra/Zhegra, Gnjilane/Gjilan municipality.<sup>1353</sup> According to VJ reports, these incidents involved the murder of six Kosovo Albanians on the same day by VJ reservists acting according to a prior agreement. One VJ reservist was the physical perpetrator of the killings while the others accompanied him.<sup>1354</sup> The lead physical perpetrator received a sentence of 20 years and the others one year each “or more”.<sup>1355</sup>

546. According to another report on the work of the military judicial organs during the state of war, issued by the Supreme Command Staff Administration for Recruitment, Mobilisation, and System Issues on 21 June 1999, military prosecutors had received a total of 18,541 criminal reports, filed requests for the investigation of 5,370 persons, and indicted 6,708 persons. The report also stated that the military courts had completed 2,852 investigations and pronounced 2,811 judgements. Seventy percent of the cases involved failure to respond to a call-up and evasion of military service, 18 percent involved the crime of wilful abandonment and desertion of the VJ, and 12 percent were other crimes. However, it is unclear from the report whether these percentages apply to the criminal reports, investigations, indictments, or judgements.<sup>1356</sup>

547. Gojović testified that, after the war ended and all the data had been compiled, he prepared another summary report on the work of the military judicial organs during the war, dated 6 September 1999.<sup>1357</sup> This report records that 88 percent of the cases were for failure to respond to the mobilisation call up and going “AWOL” from one’s unit, and the remaining 12 percent encompassed criminal acts against the person, life or limb,<sup>1358</sup> and criminal acts against property.<sup>1359</sup> Again, the report does not make clear the stage of the proceedings to which these percentages apply—criminal reports, requests for investigations, indictments, or judgements.

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<sup>1352</sup> P830 (Report on criminal proceedings instituted by the military judicial organs, 9 April 2002), p. 6.

<sup>1353</sup> P830 (Report on criminal proceedings instituted by the military judicial organs, 9 April 2002), p. 7.

<sup>1354</sup> P954 (Report on criminal cases, military prosecution and courts, 21 August 2001), p. 57; P955 (Summary review of reports on criminal cases, military prosecution, and courts), p. 6.

<sup>1355</sup> Branko Gajić, T. 15332–15333 (11 September 2007).

<sup>1356</sup> P953 (Report on the work of military judicial organs, 21 June 1999), p. 2; *see also* Radomir Gojović, T. 16743–16745 (3 October 2007).

<sup>1357</sup> Radomir Gojović, T. 16677 (2 October 2007); *see also* 3D986 (Summary report about the work of the military legal department of VJ General Staff, 6 September 1999).

<sup>1358</sup> By “life and limb” he referred to all forms of bodily harm or abuse, including murder, rape and war crimes. Radomir Gojović, T. 16681 (2 October 2007).

<sup>1359</sup> 3D986 (Summary report about the work of the military legal department of VJ General Staff, 6 September 1999), pp. 16–17.

According to Đorović, who testified that there was no reason to doubt the numbers in the report, the numbers show that the majority of cases were related to acts committed against the VJ by its members, which indicates that crimes committed by member of the VJ against civilians were not sufficiently prosecuted.<sup>1360</sup>

548. Finally, a letter sent in May 2003 by the Serbian Ministry of Interior to the OSCE Mission to Serbia and Montenegro stated that several hundred crimes were committed in Kosovo in 1998 and 1999, and criminal reports were submitted for all registered crimes. It does not, however, provide any further detail about what happened with these cases.<sup>1361</sup>

(C) The system was interfered with or obstructed by members of the VJ

549. Đorović testified that, in practice, despite the language in the Constitution on independence and legality, military courts were neither independent nor did they adjudicate on the basis of law. In any more serious trial, military courts adjudicated and passed down sentences according to the directives of the executive.<sup>1362</sup> Drastic pressure was also put on the military prosecutors' offices by the VJ security organs. Although the security organs were supposed to act in accordance with his requests as a prosecutor, in practice they prevented Đorović from performing his duties properly.<sup>1363</sup> In particular, Đorović stated that the military security organs, under the direction of the state and military leadership, exercised total control of the entire organisation and personnel recruitment within the system, including selection, replacement, removal, and relieving of military judges and prosecutors of their duties, especially in management and leadership positions.<sup>1364</sup>

550. Đorović also testified that some grave criminal acts were not reported at all to the relevant military prosecutor.<sup>1365</sup> The military judicial organs were a screen for lawlessness and abuses by military security organs and the military leadership in the country. Although the military security organs had jurisdiction by law to uncover and report the perpetrators of crimes, they did not do this in practice and they would even cover crimes up and protect criminals from prosecution.<sup>1366</sup> Đorović testified more specifically that, as the military prosecutor in Priština/Prishtina, he was aware of many cases of murder and mass murder. However, 1,400 criminal reports, including statements made concerning those murders, disappeared from his office, according to him in an

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<sup>1360</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 52.

<sup>1361</sup> P831 (Letter on activities taken by the MUP of the Republic of Serbia to uncover war crimes, 12 May 2003), p. 2.

<sup>1362</sup> Lakić Đorović, P2672 (witness statement dated 14 August 2006), p. 2.

<sup>1363</sup> Lakić Đorović, T. 11454 (12 March 2007).

<sup>1364</sup> Lakić Đorović, P2672 (witness statement dated 14 August 2006), p. 2.

<sup>1365</sup> Lakić Đorović, T. 11452–11453 (12 March 2007).

<sup>1366</sup> Lakić Đorović, P2672 (witness statement dated 14 August 2006), p. 3.

effort by the VJ security services to cover up the crimes.<sup>1367</sup> Radomir Gojović testified, on the other hand, that he did not know of a single crime (including war crimes) that was reported and not investigated and processed.<sup>1368</sup>

551. Geza Farkaš, the former Head of the Security Administration, testified, however, that once a case went into the judicial system the Security Administration had no further control over it, unless the prosecutor's office and the investigative organs of the courts asked them for additional investigation or information.<sup>1369</sup> Stanimir Radosavljević also testified that, from his personal experience as the deputy military prosecutor at the supreme military prosecutor's office at the 3<sup>rd</sup> Army in Niš during the war, no one, including the security organs of the Priština Corps and the 3<sup>rd</sup> Army, exerted pressure on him to dismiss a criminal report or to discontinue criminal proceedings against a suspect. Radosavljević also testified that none of the prosecutors of the military courts of first instance informed him that they had been so pressured.<sup>1370</sup>

#### (1) Specific examples of corruption

552. Đorović provided various examples to support his position on how the military judicial system operated. In particular, he testified that, while he was the military prosecutor of the Priština Military District, a mass grave site was discovered near Orahovac/Rahovec, where approximately 47 bodies were exhumed. Đorović requested that this case be transferred to him; Miloš Spasojević, the wartime military prosecutor for the Priština Corps at the time, handed a file containing 150 documents over to him.<sup>1371</sup> Đorović then requested that the military security organs conduct on-site investigations and provide a report to him. This was the most serious case that he had in Kosovo.<sup>1372</sup> On 2 June 1999 the supreme military prosecutor, Svetomir Obrenčević, ordered that the file be returned to Spasojević, because he knew that Spasojević would not follow such cases up.<sup>1373</sup> However, in both his testimony and written statement Spasojević denied knowing about a case file regarding a mass grave at Orahovac/Rahovec, or ever giving to or receiving a file from Đorović.<sup>1374</sup> Spasojević went on to assert that the prosecutors of the Priština Corps Command and the Priština Military District did not co-operate because they had different powers.<sup>1375</sup> He also initially stated that, due to the particular case code that Đorović asserted was on the file, it could not

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<sup>1367</sup> Lakić Đorović, T. 11504–11505 (12 March 2007).

<sup>1368</sup> Radomir Gojović, T. 16686 (2 October 2007).

<sup>1369</sup> Geza Farkaš, T. 16374–16375 (25 September 2007); *see also* Aleksandar Dimitrijević, T. 26585 (8 July 2008).

<sup>1370</sup> Stanimir Radosavljević, 4D502 (witness statement dated 29 September 2007), para. 17.

<sup>1371</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 35.

<sup>1372</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), paras. 35–36.

<sup>1373</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 36.

<sup>1374</sup> Miloš Spasojević, T. 15994 (19 September 2007), 3D532 (witness statement dated 9 January 2007), para. 4.

have been with a military prosecutor.<sup>1376</sup> However, on cross-examination he said that this file “can certainly be in the prosecutor’s office during a certain stage of the proceedings once the criminal chamber [of the VJ] passes a decision with regard to a particular case.”<sup>1377</sup>

553. The Prosecution requested documentation from the Serbian Government regarding the Orahovac/Rahovec mass grave case.<sup>1378</sup> In response, the Serbian Ministry of Foreign Affairs confirmed that a court file, which was labelled with the case code specified by Đorović, was transferred from the Office of the Prosecutor of the Priština Military District to the Office of the Prosecutor of the Priština Corps Command.<sup>1379</sup> Since Spasojević was appointed military prosecutor for the Priština Corps Command in May 1999, he would have been the recipient of the file in question.<sup>1380</sup> However, without giving any further details, the Ministry of Foreign Affairs asserts that the case file in question “does not concern the launch of investigation on the events” of a mass grave in Orahovac/Rahovec.<sup>1381</sup>

554. The Trial Chamber finds that Spasojević’s broad denials of Đorović’s evidence concerning the Orahovac/Rahovec grave site and case file lack credibility, particularly in light of the fact that the Serbian Ministry of Foreign Affairs confirmed that a file with the number given by Đorović was passed between their two offices. He did not impress the Chamber as a reliable witness. On the other hand, Đorović did. The Chamber considers Đorović’s testimony about the case, which he remembered in detail due to its gravity, to be credible and convincing.<sup>1382</sup>

555. Đorović also testified that during his time in Priština/Prishtina he received incriminating information regarding VJ members Lieutenant Colonel Slobodan Stošić and Colonel Miodrag Đorđević. A lot of pressure was put on him to stop his investigation of Stošić for a number of serious crimes, ranging from looting to murder.<sup>1383</sup> During his investigations he saw statements by two VJ reservists that, along with Stošić and some of Frenki Simatović’s “men”, they were involved in the deportation and looting of Kosovo Albanians.<sup>1384</sup> An officer from the security organ of the Priština Corps visited Đorović with three heavily armed, masked soldiers, and

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<sup>1375</sup> Miloš Spasojević, T. 15994 (19 September 2007).

<sup>1376</sup> Miloš Spasojević, 3D532 (witness statement dated 9 January 2007), para. 5.

<sup>1377</sup> Miloš Spasojević, T. 15997 (19 September 2007).

<sup>1378</sup> P2761 (Attachment to Serbian response to RFA 1309, 8 December 2006).

<sup>1379</sup> P2761 (Serbian response to RFA 1309, 8 December 2006), p. 1.

<sup>1380</sup> Miloš Spasojević, T. 15987 (19 September 2007), 3D532 (witness statement dated 9 January 2007), para. 2.

<sup>1381</sup> P2761 (Serbian response to RFA 1309, 8 December 2006), p. 1.

<sup>1382</sup> Lakić Đorović, T. 11712 (14 March 2007).

<sup>1383</sup> Lakić Đorović, T. 11455–11457 (12 March 2007); *see also* Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 24.

<sup>1384</sup> Lakić Đorović, T. 11423 (12 March 2007), P2671 (witness statement dated 1 September 2006), para. 24.

demanded that he stop investigating Stošić.<sup>1385</sup> He was told that the case was also to be transferred to Spasojević.<sup>1386</sup> Some proceedings were instituted against Stošić in Belgrade but were terminated by 9 April 2002 due to lack of evidence.<sup>1387</sup> The Chamber notes that the investigation against Stošić, and the fact that it was discontinued due to lack of evidence, are recorded in the 2002 report on criminal proceedings prepared by the supreme military prosecutor, sent to the OSCE Mission in Serbia and Montenegro in 2003.<sup>1388</sup> Spasojević was not asked about the case during his evidence. However, in response to a request for the court file from the Prosecution, the Ministry of Defence of Serbia replied that it could not find any documents on an investigation into the actions of Stošić and Frenki Simatović's "men".<sup>1389</sup>

556. Đorović also described how he started an investigation against a reserve officer in the technical procurement department of the Priština Corps, Milovan Tijanić, and had him arrested for abusing his position and authority.<sup>1390</sup> Tijanić was involved in acquiring items from Kosovo illegally and setting up a network to sell them. Đorović further claimed that Tijanić was carrying out this operation on the orders of Pavković and Ojdanić.<sup>1391</sup> Once again, he was put under pressure by members of the Security Administration—Branko Žigić and FNU Đakonović—and Obrenčević, the supreme military prosecutor, to terminate the investigation. When he refused to do so, the case was taken from him and turned over to investigative judge Arsenije Katanić.<sup>1392</sup> Đorović claimed that Miloš Gojković, the President of the Supreme Military Court, then ordered Katanić to carry out the investigation in such a way as to terminate it.<sup>1393</sup>

557. Branko Žigić, the chief of the security organ for the Belgrade Military District during the period relevant to the Indictment, confirmed that Tijanić was a war profiteer and his arrest was ordered, but that he was never apprehended.<sup>1394</sup> The Prosecution confronted Žigić with documentation showing that Tijanić was the subject of an investigation conducted by the military

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<sup>1385</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 24.

<sup>1386</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 25.

<sup>1387</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 26; P830 (Report on criminal proceedings instituted by the military judicial organs, 9 April 2002), p. 2.

<sup>1388</sup> P830 (Report on criminal proceedings instituted by the military judicial organs, 9 April 2002), pp. 1–2. Stošić was suspected of ordering his subordinates, on three different occasions in April 1999, to kill approximately 28 Kosovo Albanian civilians. *See also* Stanimir Radosavljević, T. 17492 (23 October 2007); 4D171 (Report of Military Prosecutor, 6 April 2001), p. 1.

<sup>1389</sup> P2758 (response from Ministry of Foreign Affairs, Serbia), p. 1.

<sup>1390</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), paras. 17–20.

<sup>1391</sup> The Chamber notes that, although in his written statement Đorović stated that "Pavković and Lazarević gave ... Tijanić ... authority to collect goods ... that might be of use to the Priština Corps", he changed his position in court and testified that Pavković and Ojdanić were the ones who granted authority to Tijanić. Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 17; T. 11625–11628 (13 March 2007).

<sup>1392</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), paras. 19–20.

<sup>1393</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 20.

prosecutor's office starting on 25 April 1999, for the criminal offences of breach of duty and forgery. Žigić claimed that he was unaware of this investigation.<sup>1395</sup> Arsenije Katanić confirmed that he was involved in the Tijanić case, although he could not remember what Tijanić was accused of, or the details of the evidence against him; he could only remember that they were not significant or well founded. Moreover, Katanić stated that he worked on the case from the very beginning—it was not taken away from Đorović—and that he was not pressured by anyone to conduct the case improperly.<sup>1396</sup>

558. Once again, the Chamber considers that Đorović's account of the Tijanić investigation, including the fact that the case was taken away from him because he would not terminate it, is credible. Katanić's claim not to remember the details of the case, although he could remember that he worked on it from the beginning, rather than receiving it from Đorović, rang hollow. Žigić's claim that he was unaware of the arrest and investigation of Tijanić is likewise not credible. Đorović's evidence alone, however, does not establish beyond reasonable doubt that Pavković or Ojdanić were involved in the illegal acquisition and distribution of goods.

559. Đorović also claimed that in April or May 1999 two VJ colonels organised the blackmailing of ethnic Albanian soldiers who lived in Belgrade and elsewhere in Serbia. Colonel Đordije Strunjaš was at the head of this network, taking between 2,000 and 5,000 German Marks from these Albanian soldiers, under the threat of being sent to the war military units.<sup>1397</sup> Đorović said that he had a meeting with Colonel Branko Žigić, the chief of the security organ for the Belgrade Military District in 1999, about the blackmail allegations, and that Žigić knew of Strunjaš' involvement but did nothing. During their meeting Žigić said that he knew about the scheme, but it was organised by a colonel in the General Staff and they should not investigate it. Đorović was later visited by eight officers from the security organs, all of whom he named and including Žigić, who ordered him to stop any investigation of the scheme or they would "decapitate him". Đorović then went to Obrenčević, the supreme military prosecutor, to report the threats, and requested to be relieved of his duties as a military prosecutor in Belgrade.<sup>1398</sup>

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<sup>1394</sup> Branko Žigić, 3D528 (witness statement dated 5 January 2007), paras. 5–6, T. 15949–15952 (19 September 2007).

<sup>1395</sup> Branko Žigić, T. 15953–15954 (19 September 2007); *see also* P2864 (Request to Belgrade from the OTP for records on the Military Justice System, 30 January 2006), p. 5.

<sup>1396</sup> Arsenije Katanić, T. 15968–15969 (19 September 2007), 3D530 (witness statement dated 18 January 2007), paras. 3–4.

<sup>1397</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 10.

<sup>1398</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), paras. 11–12.



560. Đorđije Strunjaš, who was brought as a witness by the Ojdanić Defence, claimed to have no knowledge of these allegations and denied their veracity.<sup>1399</sup> He did confirm, however, that he worked in the General Staff in 1999, and that the military sectors where Đorović claimed that the extortion scheme operated were within the Belgrade District, where he worked.<sup>1400</sup> Žigić testified, however, that he was unaware of any allegations of such a scheme to extort money from ethnic Albanians.<sup>1401</sup> He also stated that one of the people Đorović named as among the officers from the security organs who came to threaten him was actually a civilian working for the “counter-intelligence group.”<sup>1402</sup>

561. The only evidence of the alleged extortion scheme comes from Đorović, and is lacking in specific detail. The Chamber is, therefore, unable to conclude that such a scheme indeed existed. However, it does not doubt that Đorović was threatened by individuals whom he believed to be from the military security organs in relation to his efforts to inquire into the existence of such a scheme.

562. Đorović also gave evidence that, when he arrived in Priština/Prishtina on 22 May 1999 to take up his new post there, he and Spasojević, who was also newly appointed as the prosecutor for the Priština Corps Command, were called by the MUP State Security Department (“RDB”). Đorović saw that the RDB had taken over an apartment belonging to expelled Kosovo Albanians, but he refused to stay there. He was instead taken to a house that he was told was a Serb house, and which was being used to store stolen goods.<sup>1403</sup>

563. Đorović provided specific evidence that members of his staff, as well as of the VJ in general, “confiscated” cars for the use of the VJ during the period relevant to the Indictment.<sup>1404</sup> Đorović was asked to attend a meeting to discuss the distribution of these vehicles to the VJ and MUP. Beforehand, he was given documents concerning two previous meetings on the subject. From these he concluded that a first meeting on how to divide seized goods between the VJ and the MUP and conceal the fact that they had been stolen was ordered by Pavković.<sup>1405</sup> The minutes of the second meeting showed that it was held in the office of the President of the Supreme Military

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<sup>1399</sup> Đorđije Strunjaš, T. 15978 (19 September 2007).

<sup>1400</sup> Đorđije Strunjaš, T. 15974, 15976 (19 September 2007).

<sup>1401</sup> Branko Žigić, 3D528 (witness statement dated 5 January 2007), para. 3.

<sup>1402</sup> Branko Žigić, T. 15948 (19 September 2007).

<sup>1403</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 32.

<sup>1404</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), paras. 40–41; Lakić Đorović, T. 11470–11474, 11479–11480 (12 March 2007). Cf. Milan Uzelac, T. 16158 (21 September 2007); Miloš Spasojević, 3D532 (witness statement dated 9 January 2007), para. 7.

<sup>1405</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 41. Cf. Milan Uzelac, T. 16162, 16172–16173 (21 September 2007).

Court at the end of the October or the beginning of November 1999, and attended by the same people.<sup>1406</sup> It was reported that Pavković was angry when he was informed about the content of the first meeting, because he thought that legal officers should not be asked their opinions on this issue, and that the seized vehicles should simply be distributed among the MUP, the VJ General Staff, and the Ministry of Defence.<sup>1407</sup> At the third meeting, which Đorović attended, at least 30 officers from the General Staff and the Ministry of Defence were present. Milan Uzelac, former Head of the Traffic Directorate of the VJ General Staff, and other officers present at the meeting spoke about Pavković and Ojdanić being angry that the vehicles had not yet been distributed.<sup>1408</sup>

564. After the meeting Đorović, together with Grigorije Spasojević from the General Staff, was directed to draft an order providing that all goods in the possession of the VJ after the withdrawal of the forces from Kosovo would be treated as war booty and remain in the possession of the VJ General Staff and the MUP. When Đorović did not draft the decision as asked, Gojović went “crazy”.<sup>1409</sup> Consequently, Pavković and Ojdanić then decided against issuing the order at all and to simply keep the vehicles and goods.<sup>1410</sup>

565. Spasojević denied that he and Đorović were called by state security organs upon their arrival, or that they were offered an apartment that used to belong to Kosovo Albanians.<sup>1411</sup> He also stated that when he was in Kosovo he never drove illegally seized cars but, rather, he and all other members of his office used vehicles that had been properly documented and registered to the VJ in peacetime.<sup>1412</sup>

566. Milan Uzelac testified that in the second half of 1999 efforts were made by the General Staff to resolve the issue of vehicles that were not part of the “establishment structure.” While their precise origin could not be determined, these vehicles generally had been seized by the customs agency and given temporarily to the VJ, had been seized by the judicial authorities during the commission of crimes, or had been requisitioned in areas where combat had been carried out.<sup>1413</sup> He also stated that the VJ legal organs were asked to assist in finding solutions for the issue. A first meeting was held in July or August of 1999, involving various officials, including from the legal

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<sup>1406</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 42.

<sup>1407</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 42. *Cf.* Milan Uzelac, T. 16164 (21 September 2007).

<sup>1408</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 43; T. 11476–11477 (12 March 2007). *see* P2752 (Table overview of temporarily seized cars, 23 November 1999). *Cf.* Milan Uzelac, T. 16164 (21 September 2007).

<sup>1409</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 45.

<sup>1410</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 45.

<sup>1411</sup> Miloš Spasojević, 3D532 (witness statement dated 9 January 2007), para. 3.

<sup>1412</sup> Miloš Spasojević, 3D532 (witness statement dated 9 January 2007), para. 7.

services and courts, to discuss the matter.<sup>1414</sup> A second meeting was held in November 1999 in the General Staff building, involving a broader group of people.<sup>1415</sup> Uzelac also testified that, while there were immediate efforts to return vehicles to their proper owners after the war, no public announcement was made by the VJ calling for these owners to come forward and claim their vehicles.<sup>1416</sup>

567. One case that Đorović dealt with on his arrival in Priština/Prishtina in May 1999 was a criminal report filed against two security officers from the Priština Corps, Zoran Ristevski and Aleksandar Stefanović, describing how they organised the theft of property belonging to Kosovo Albanians in Priština/Prishtina and its surroundings. The report stated that these officers had expelled Kosovo Albanians, beaten three Roma people, and had stolen goods like televisions and expensive cars and brought them to Čačak, a village in central Serbia.<sup>1417</sup> Major Nešić of the Priština Corps security department confirmed to Đorović that these individuals committed the acts that the report alleged, but demanded that he withdraw the indictments against them.<sup>1418</sup> According to Đorović, 17 case files later went missing from the court in Priština/Prishtina, including the file of the cases against Captain Zoran Ristevski and Sergeant Aleksander Stefanović.<sup>1419</sup> Momir Stojanović, the former head of the Priština Corps security department, insisted that neither he nor Nešić exerted pressure on the judicial organs, stating that it would be illogical to arrest these individuals and then exert pressure on the judicial organs to drop the charges.<sup>1420</sup>

568. During his time as military prosecutor in Priština/Prishtina, Đorović was also informed that Major Nešić had organised a network of people who were looting Kosovo Albanian shops and enterprises and transporting the criminal proceeds to Serbia. Three members of the MUP RDB in Priština/Prishtina, as well as members of the military security organs of the Priština Corps, were involved. Đorović ordered his deputy to prepare a request to initiate an investigation proposing the detention of Major Nešić and other suspects, and informed Obrenčević and Radosavljević. He also requested advice about his jurisdiction over the civilians involved. It does not appear that he ever received a response from his superiors. The case was subsequently transferred to the Military

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<sup>1413</sup> Milan Uzelac, T. 16158 (21 September 2007).

<sup>1414</sup> Milan Uzelac, T. 16162 (21 September 2007).

<sup>1415</sup> Milan Uzelac, T. 16172–16173 (21 September 2007).

<sup>1416</sup> Milan Uzelac, T. 16177–16178 (21 September 2007).

<sup>1417</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 29.

<sup>1418</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 30.

<sup>1419</sup> Lakić Đorović, T. 11605–11606 (13 March 2007); P2671 (witness statement dated 1 September 2006), para. 27.

<sup>1420</sup> Momir Stojanović, T. 19792 (7 December 2007).

Department at the Belgrade District Court. At the time Đorović gave his written statement, the case had not been concluded.<sup>1421</sup>

*v. Findings*

569. The Chamber is satisfied that there was a functioning military justice system in the VJ, which operated during the conflict in Kosovo that commenced on 24 March 1999. The wartime military prosecutors and courts were able to, and did, process a number of cases, mainly minor crimes, and those committed against the VJ itself, such as evasion of military service or desertion. The system was not, however, effective in investigating, prosecuting, and punishing those responsible for committing serious crimes against the civilian population. The system failed in this respect due to a combination of internal problems over which the VJ commanders may have had control, and external factors which were outside of their control. The internal problems included VJ members obstructing the process at various stages and preventing the prosecution of individuals who committed crimes. Furthermore, the contrast between the small number of serious crimes that were reported to the military justice organs, as shown by the survey of the various reports on the work of the military justice system, and the large number of crimes that were occurring, as discussed *inter alia* in Volume 2 of this Judgement, shows that criminal offending was significantly underreported to the military justice system. These internal problems were combined with external factors that made prosecution difficult, such as the short period for the operation of the wartime courts, the difficulties of functioning in a war zone, and limited access to Kosovo following the war.

2. VJ forces in Kosovo in 1998–1999

570. Having thus set out the structure of the VJ and its higher levels of command in 1998 and 1999, along with the system of military justice in operation, the Chamber now turns to consider what VJ forces were operating in Kosovo in that period.

571. The Prosecution has highlighted complaints expressed by Momčilo Perišić in 1998, when he was Chief of the General Staff, and by former Head of the Security Administration Aleksandar Dimitrijević, about the manner in which the VJ was being utilised in Kosovo, and their consistent requests that a state of emergency or the equivalent be declared so that it could be used legitimately.

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<sup>1421</sup> Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 34.

572. Perišić indicated repeatedly in different fora that without the declaration of a state of emergency the role of the VJ was restricted. At the fifth session of the SDC, held on 9 June 1998, he gave a presentation on the potential dangers to the country from the neighbouring territories, with reference mostly to Albania, as well as the positions of the VJ troops in Kosovo.<sup>1422</sup> While giving his presentation, he explained that the VJ was engaged only in the border belt, and this in its capacity as a “peacetime army”. He stated that the VJ could not get involved inside Kosovo, unless attacked; otherwise, the international community would have an excuse to intervene in the FRY. Following this presentation, the SDC unanimously accepted Perišić’s report and concluded that, if “terrorist activities” escalated, the VJ would “intervene adequately”.<sup>1423</sup> During a meeting of the VJ General Staff collegium on 20 July 1998, Perišić referred to an order he had issued explicitly prohibiting the use of the VJ except in the defence of the border area, to protect military facilities, and to defend army personnel, and stating that, in any other situation, a specific decision to use the VJ needed to be made.<sup>1424</sup> Subsequently, on 23 July 1998 Perišić sent a letter to FRY President Milošević complaining that, if the VJ was to be used within Kosovo and outside of the border belt, then a state of emergency should be declared. Perišić argued that, without a state of emergency, “any engagement of the VJ in combat operations outside the border zone and beyond [was] still illegal”<sup>1425</sup>

573. At the sixth session of the SDC, held on 4 October 1998, Perišić proposed, among other things, that the Federal Assembly should declare an imminent threat of war in light of the threat of NATO intervention at that time. Đukanović disagreed with this proposal on the basis that it might provoke a NATO attack. Milošević, however, stated that the Federal Assembly, which was scheduled to meet the following day, should be approached to decide whether to proclaim a state of imminent threat of war.<sup>1426</sup> The Chamber has heard no evidence concerning whether or not the matter was raised in the Federal Assembly, but no state of imminent threat of war was declared at that time.

574. At the eighth session of the SDC, on 25 December 1998, when Ojdanić’s proposal to appoint Pavković as Commander of the 3<sup>rd</sup> Army was presented, Montenegrin President Đukanović stated that there was conflicting information on the role of the Priština Corps in Kosovo, indicating that it was not always operating in accordance with the constitutional role of the VJ and SDC

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<sup>1422</sup> 1D760 (Shorthand notes of 5<sup>th</sup> SDC session, 9 June 1998), pp. 9–10.

<sup>1423</sup> 1D760 (Shorthand notes of 5<sup>th</sup> SDC session, 9 June 1998), pp. 9–10.

<sup>1424</sup> P922 (Minutes of the Collegium of the General Staff of the VJ, 20 July 1998), p. 3.

<sup>1425</sup> P717 (Letter from Momčilo Perišić to Slobodan Milošević, 23 July 1998), p. 2.

<sup>1426</sup> P1575 (Minutes of 6<sup>th</sup> SDC session, 4 October 1998), pp. 3–4, 10.

decisions.<sup>1427</sup> Aleksandar Dimitrijević also raised the problem of the use of the VJ in Kosovo at the meeting of the VJ General Staff collegium on 17 December 1998.<sup>1428</sup> At another meeting of the same group on 30 December 1998, Dimitrijević again listed the internal security problems facing the FRY, and then advised that the VJ should stick to its primary task of protecting the border.<sup>1429</sup> During his testimony, when shown the letter of 23 July 1998 from Perišić to Milošević concerning the use of the VJ outside of its duties and the necessity for the declaration of a state of war, Dimitrijević acknowledged that this was a position he agreed with, since he felt the state needed to use the VJ constitutionally.<sup>1430</sup>

575. John Crosland, who was the Defence Attaché at the U.K. Embassy in Belgrade, testified that the VJ Foreign Liaison Service had explained to him that the constitutional role of the VJ was international border security.<sup>1431</sup> Crosland also stated that Perišić and Dimitrijević “implied” to him that they disagreed with Pavković’s use of the VJ in operations against the KLA in the interior of Kosovo, outside of the constitutional constraints, in 1998.<sup>1432</sup>

576. The Pavković and Lazarević Defences argue, however, that the VJ was used lawfully in Kosovo to combat the KLA, when necessary.<sup>1433</sup> In particular, the Pavković Defence argues that the declaration of a state of emergency, or war, was not a necessary precondition for the use of the VJ inside Kosovo in operations against the KLA. In support of this position, the Pavković Defence refers to the VJ Rules of Service, which state that VJ units “may be used to fight outlaw, sabotage, terrorist, and other hostile armed groups or to prevent and eliminate a state of emergency in accordance with a decision of the President of the [FRY] or the Supreme Defence Council”, and that “[t]he order for the use of Army units to carry out [these] tasks ... shall be issued by the Chief of the General Staff”.<sup>1434</sup> The Defence interprets this provision to mean that the VJ could be legitimately used to combat the KLA on the instruction of the FRY President or the SDC. Ratko

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<sup>1427</sup> P1000 (Minutes of 8<sup>th</sup> SDC Session, 25 December 1998), p. 9.

<sup>1428</sup> 3D494 (Minutes of the Collegium of the General Staff of the VJ for 17 December 1998), p. 19. He stated that “I still firmly support the idea that we, and we have here the most recent reports, that we should deal with things that have been assigned to us by the Constitution, the protection of the border. Neither the Corps Commander not the [3rd] Army Commander can keep on telling us that they have undertaken everything, while at the same time the forces in the field are growing, we will again be blamed for that.” He continued, stating that the VJ should seal as much of the border off as possible to create the preconditions for the MUP to combat terrorism in the interior, as that was “not the Army’s task”.

<sup>1429</sup> P928 (Minutes of the Collegium of the General Staff of the VJ Army for 30 December 1998), p. 8.

<sup>1430</sup> Aleksandar Dimitrijević, T. 26686–26687 (9 July 2008); P717 (Letter from Momcilo Perišić to Slobodan Milošević, 23 July 1998), p. 1.

<sup>1431</sup> John Crosland, T. 9972 (8 February 2007).

<sup>1432</sup> John Crosland, P2645 (witness statement dated 31 October 2006), para. 48. *See also* Aleksandar Dimitrijević, T. 26670-26671 (9 July 2008); P684 (Confidential Sitrep from U.K. Military Representative, 6 November 1998), para. 5.

<sup>1433</sup> Pavković Final Trial Brief, 28 July 2008 (public version), para. 155; Lazarević Final Trial Brief, 29 July 2008 (public version), para. 549.

<sup>1434</sup> 4D532 (1996 VJ Rules of Service), rule 473.

Marković testified that, under article 133 of the Constitution, the VJ had a duty to protect the sovereignty, territory, independence, and constitution order of the FRY. He stated that the VJ could determine of its own accord when these values were threatened and engage in military operations to counter such threats.<sup>1435</sup>

577. The Prosecution's contention that the VJ could not be deployed within Kosovo in the absence of some kind of state of emergency is supported by the fact that in 1998 and early 1999 the depth of the border belt in Kosovo was extended several times. In the border belt, excluding populated areas and border crossing points, which were secured by the MUP, the VJ had police-like powers.<sup>1436</sup> Article 48 of the Law on Border Crossing and Movement in the Border Belt defined the duties of the VJ at the border in the following terms: "Military border units shall secure the state border and control movement and stay in the border area outside populated places and border crossing points in order to prevent unauthorized crossing of the state border and breaches of the border line".<sup>1437</sup>

578. According to Rade Čučak, who was the Chief of the Department for Border Affairs within the VJ General Staff, the border belt around the FRY was normally 100 metres wide,<sup>1438</sup> however, in Kosovo it was expanded three times in 1998 and 1999, on 23 April 1998,<sup>1439</sup> 21 July 1998,<sup>1440</sup> and 5 March 1999,<sup>1441</sup> reaching a maximum depth of ten<sup>1442</sup> kilometres.<sup>1443</sup> Čučak explained that the expansion in the border belt was not uniform across its entire length; rather, areas that were

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<sup>1435</sup> Ratko Marković, T. 13003-13010, 13013 (7 August 2007).

<sup>1436</sup> Rade Čučak, 3D1083 (witness statement dated 17 August 2007), paras. 5–6, T. 14831–14832 (31 August 2007), 14841 (4 September 2007); Miodrag Simić, T. 15503–15504 (12 September 2007); Branko Gajić, T. 15220 (7 September 2007); Momir Bulatović, T. 13925 (17 August 2007).

<sup>1437</sup> 3D1122 (Law of Crossing of State Border), article 48; *see also* Rade Čučak, 3D1083 (witness statement dated 17 August 2007), para. 5.

<sup>1438</sup> Rade Čučak, T. 14833 (31 August 2007).

<sup>1439</sup> Rade Čučak, T. 14877 (4 September 2007); *see also* 4D323 (PrK Order based on the Federal Decision to Expand Border Area, 7 May 1998), p. 1.

<sup>1440</sup> 1D230 (Decision on Establishing Border Areas Adjacent to Sections of the State Border of the FRY, 21 July 1998), also admitted as 3D740 (expanding the border belt further to a depth of approximately two kilometres).

<sup>1441</sup> On 5 March 1999 the border belt was expanded again, to a depth of approximately five kilometres, in response to "strong attacks in the border belt and in areas bordering on Albania and Macedonia ... both from Albania and from the territory of the border area". Rade Čučak, 3D1083 (witness statement dated 17 August 2007), pp. 6–7; 1D312 (Decision Amending the Decision Defining the Border Area in Certain Parts of the State Border of the FRY, 5 March 1999), also admitted as 3D406.

<sup>1442</sup> Karol John Drewienkiewicz, T. 7809–7812 (4 December 2006) (testifying that the "border zone" was expanded from 5 to 10 kilometres deep on 16 March 1999), P2508 (witness statement dated 23 June 2000), para. 188.

<sup>1443</sup> Momir Bulatović, T. 13823 (16 August 2007).

particularly rugged or inaccessible (e.g. mountainous regions), or areas with a high number of incidents were expanded to a greater degree than areas that were accessible and/or less active.<sup>1444</sup>

579. The Chamber is not in a position to determine the lawfulness, or otherwise, of the deployment of VJ forces in Kosovo outside the border area, prior to the declaration of some kind of state of emergency, nor need it do so. Whatever the legal position, there were powerful voices within the VJ expressing concerns about the propriety of using the VJ inside Kosovo in 1998 and early 1999 without a state of emergency.

a. General mobilisation within the VJ before the NATO bombing

580. After the declaration of a state of war in the FRY in March 1999, and upon the decision of the FRY President, the Chief of the General Staff decided to mobilise VJ commands, units, and institutions.<sup>1445</sup>

581. The plan for the defence of the FRY in case of a foreign attack in 1999 was known as the *Grom 3* plan, which was a directive for the defence of the state against the threat of a NATO attack and the KLA, issued on 15 January 1999.<sup>1446</sup> Lazarević testified that the basis for the involvement of the 3<sup>rd</sup> Army and the Priština Corps in Kosovo in 1999 was this plan.<sup>1447</sup> Milorad Obradović testified that this directive was designed to engage the VJ in defensive measures throughout Kosovo to counter the threat of foreign invasion from across the Macedonian border.<sup>1448</sup>

582. According to Slobodan Kosovac, around 300,000 conscripts within the VJ were called up before the beginning of the NATO bombing, and the response to the call-up was as high as 90 percent.<sup>1449</sup> 150,000 reservists were mobilised within the VJ by 20 April 1999.<sup>1450</sup> Of these approximately 35,000 were serving in the Priština Corps in Kosovo.

b. The 3<sup>rd</sup> Army

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<sup>1444</sup> Rade Čučak, T. 14853, 14877 (4 September 2007); *see also* 3D739 (Map of the Kosovo-Albania and Kosovo-Macedonia frontier) (showing that the 21 July 1998 expansion added noticeable depth to the belt, and the 5 March 1999 decision added considerable depth in certain places).

<sup>1445</sup> Slobodan Kosovac, T. 15797–15799, 15813 (17 September 2007); *see also* 3D1116 (Radovan Radinović's Expert Report), p. 64.

<sup>1446</sup> 3D690 (VJ General Staff Directive for the engagement of the VJ, *Grom 3* Directive, 16 January 1999), pp. 3–5.

<sup>1447</sup> Vladimir Lazarević, T. 17894 (8 November 2007).

<sup>1448</sup> Milorad Obradović, T. 15020 (5 September 2007); *see also* 3D704 (Briefing note for President of the FRY, 12 February 1999).

<sup>1449</sup> Slobodan Kosovac, T. 15800 (17 September 2007).

<sup>1450</sup> Slobodan Kosovac, T. 15808 (17 September 2007); *see also* Geza Farkaš, T. 16302 (25 September 2007).



583. The 3<sup>rd</sup> Army's zone of responsibility encompassed southern Serbia, including all of Kosovo.<sup>1451</sup> The population living within this zone of responsibility amounted to 3.7 million people, located over 70 municipalities.<sup>1452</sup> Dušan Samardžić was the 3<sup>rd</sup> Army Commander during 1998 and until 13 January 1999, when he was replaced by Pavković.<sup>1453</sup> Miodrag Simić was the Chief of Staff of the 3<sup>rd</sup> Army during 1998; in January 1999 he was replaced by Ljubiša Stojimirović.<sup>1454</sup>

584. Subordinate to the 3<sup>rd</sup> Army were the Priština Corps and the Niš Corps, as well as the Priština and Niš Military Districts and their Military Departments.<sup>1455</sup> The commands, units, and institutions of the 3<sup>rd</sup> Army were grouped in garrisons and garrison towns.<sup>1456</sup>

585. Specifically, about 40 units of the 3<sup>rd</sup> Army were fully mobilised and 36 units partially mobilised during the NATO bombing.<sup>1457</sup> A combat report from the 3<sup>rd</sup> Army Command to the VJ's General Staff listed the total strength of the 3<sup>rd</sup> Army at 67,225 men on 2 April 1999, 51 percent of its full strength during wartime of 130,771 men.<sup>1458</sup>

*i. Various command posts*

586. The 3<sup>rd</sup> Army was headquartered in the town of Niš, in southern Serbia.<sup>1459</sup> During the time relevant to the Indictment, it had a Command Post, a Forward Command Post, a Rear Command Post, and a War or Reserve Command Post.<sup>1460</sup> From 24 March until the beginning of July 1999, its Command Post was located in different facilities of the Niš garrison.<sup>1461</sup> The then Chief of the General Staff, Perišić, decided to establish a Forward Command Post for the 3<sup>rd</sup> Army in the

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<sup>1451</sup> Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 17, T. 17643 (26 October 2007); P950 (Vladimir Lazarević interview with the Prosecution), pp. 14–15; Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 12.

<sup>1452</sup> Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 17, T. 17643 (26 October 2007).

<sup>1453</sup> P800 (Report on the take-over of the duty of 3rd Army Commander by Nebojša Pavković, 13 January 1999), also admitted as 4D36; P802 (Report on the hand-over of the duty of 3rd Army Commander by Dušan Samardžić, 13 January 1999).

<sup>1454</sup> Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 8, T. 17642, 17658 (26 October 2007).

<sup>1455</sup> Ljubiša Stojimirović, T. 17646 (26 October 2007); Zlatomir Pešić, P2502 (witness statement dated 30 January 2004), paras. 6–9; *see also* 4D240 (Structure, Deployment and Manning level of the 3rd Army Military-Territorial Component, 14 January 1999), p. 1.

<sup>1456</sup> Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 14, T. 17645 (26 October 2007); *see also* 4D240 (Structure, Deployment and Manning level of the 3rd Army Military-Territorial Component), p. 5. Lazarević clarified that seven garrisons of the PrK were located in the territory of Kosovo and one was outside the territory. Vladimir Lazarević, T. 17776–17777 (6 November 2007).

<sup>1457</sup> Slobodan Kosovac, T. 15814 (17 September 2007); *see also* 5D261 (Order of the VJ General Staff, 13 March 1999), p. 1.

<sup>1458</sup> 4D275 (3<sup>rd</sup> Army Combat Report to the VJ General Staff, 2 April 1999), p. 2.

<sup>1459</sup> Velimir Obradović, 4D499 (witness statement dated 27 September 2007), para. 24.

<sup>1460</sup> Miodrag Janković, 4D504 (witness statement dated 1 October 2007), paras. 4, 6, 20.

*Kosovski Junaci* barracks, Priština/Prishtina, on 27 July 1998 in response to the escalation of KLA activities.<sup>1462</sup> The Forward Command Post was responsible for issuing orders by the 3<sup>rd</sup> Army Commander, approving decisions from subordinate units' commanders, preparing daily combat reports to be sent to the VJ General Staff and to the 3<sup>rd</sup> Army Command in Niš for its information, and drafting plans and analyses.<sup>1463</sup>

587. The 3<sup>rd</sup> Army Commander, Samardžić, was at the Forward Command Post from the end of July to the end of October 1998,<sup>1464</sup> leading a team of approximately ten officers from various branches. Miodrag Simić, the then Chief of Staff of the 3<sup>rd</sup> Army, was also working at the Forward Command Post at the time.<sup>1465</sup> According to Žarko Kostić, who was also stationed at the post from the end of July until the end of August 1998, Pavković, then Commander of the Priština Corps, and Milan Đaković, then Assistant Chief of Staff for Operations and Training in the Priština Corps Command,<sup>1466</sup> visited the Forward Command Post every day.<sup>1467</sup> Mladenović, who was also stationed at the Forward Command Post from 27 July 1998 until its abolition,<sup>1468</sup> explained that the Post was abolished at the end of October 1998 because the basic tasks of the 3<sup>rd</sup> Army had been carried out, and because there was no need for it to remain any longer.<sup>1469</sup>

588. Due to the growing complexity of the security situation in the 3<sup>rd</sup> Army's zone of responsibility during 1999, Pavković, by then 3<sup>rd</sup> Army Commander, decided to again establish a Forward Command Post in Priština/Prishtina on 1 February 1999.<sup>1470</sup> The Post was initially located at the *Kosovski Junaci* barracks and was staffed with 10 to 15 officers from the 3<sup>rd</sup> Army

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<sup>1461</sup> Ljubiša Stojimirović, T. 17667 (26 October 2007).

<sup>1462</sup> 3D697 (Document from the 3rd Army Forward Command Post-Analysis of the realisation of the tasks in Kosovo, 2 October 1998), p. 2; *see also* Žarko Kostić, T. 17524 (23 October 2007); P950 (Vladimir Lazarević interview with the Prosecution), pp. 104–105; Miodrag Janković, 4D504 (witness statement dated 1 October 2007), para. 16; Velimir Obradović, 4D499 (witness statement dated 27 September 2007), para. 24; Tomislav Mladenović, 4D505 (witness statement dated 27 September 2007), paras. 8–10, T. 17598 (25 October 2007).

<sup>1463</sup> Tomislav Mladenović, 4D505 (witness statement dated 27 September 2007), para. 13.

<sup>1464</sup> Velimir Obradović, 4D499 (witness statement dated 27 September 2007), para. 24.

<sup>1465</sup> Tomislav Mladenović, 4D505 (witness statement dated 27 September 2007), para. 9. According to Lazarević, the 3rd Army's Forward Command Post was composed of a very strong command group and sometimes the Chief of Staff and even the 3rd Army Commander were present there; P950 (Vladimir Lazarević interview with the Prosecution), pp. 104–105.

<sup>1466</sup> Zlatomir Pešić, T. 7203 (23 November 2006); Aleksandar Vasiljević, T. 8799 (22 January 2007); Momir Stojanović, T. 19761 (7 December 2007).

<sup>1467</sup> Žarko Kostić, 4D501 (witness statement dated 28 September 2007), para. 22; *see also* Žarko Kostić, T. 17502–17503, 17524 (23 October 2007).

<sup>1468</sup> Tomislav Mladenović, T. 17568, 17598 (25 October 2007). *See also* Velimir Obradović, 4D499 (witness statement dated 27 September 2007), para. 24; Ljubiša Stojimirović, T. 17661 (26 October 2007).

<sup>1469</sup> Tomislav Mladenović, T. 17598–17599 (25 October 2007).

<sup>1470</sup> Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 35; *see also* Miodrag Simić, T. 15527, 15553 (13 September 2007); Miodrag Janković, 4D504 (witness statement dated 1 October 2007), para. 6.

Command.<sup>1471</sup> The initial location of the Post was 100 to 200 metres from the Priština Corps Command.<sup>1472</sup> However, Mirko Starčević testified that this location changed several times during the NATO bombing. At some point, the Post was located in “Grmija, Kišnica” and, at another, in Gračanica/Gračanica.<sup>1473</sup> Pavković was regularly present in Priština/Prishtina during the NATO air strikes in 1999,<sup>1474</sup> as is addressed in more detail in section on his individual criminal responsibility below.

*ii. Structure*

589. The 3<sup>rd</sup> Army Command had specialised organs whose task was to plan and implement tasks pursuant to the 3<sup>rd</sup> Army Commander’s decisions. These organs were: the Section for Information and Moral Guidance, the Legal Affairs Section, the Personnel Section, the Security Department, the Logistics organ, and the Command’s Staff.<sup>1475</sup> The Chamber heard evidence relating to each of these organs, which it has taken into consideration in its examination of the functioning of the 3<sup>rd</sup> Army in 1998 and 1999.<sup>1476</sup>

590. The security department of the 3<sup>rd</sup> Army, headed by Colonel Antić at the relevant time, carried out measures to protect units from enemy activities and to implement self-protection measures, including dealing with information relating to crimes committed within the jurisdiction of the military courts.<sup>1477</sup> It could also use the units of the military police and was responsible for their combat readiness, their level of training, and their equipment. In addition, it would make proposals to the 3<sup>rd</sup> Army Commander as to the type of tasks which these units should be used for.<sup>1478</sup> The security department sent daily reports to the Security Administration of the VJ General Staff/Supreme Command Staff, but this practice was ended on 20 March 1999, when these reports were included in regular combat reports from the 3<sup>rd</sup> Army to the General Staff/Supreme Command

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<sup>1471</sup> Miodrag Janković, 4D504 (witness statement dated 1 October 2007), paras. 16, 20; Ljubiša Stojimirović, T. 17667 (26 October 2007); P950 (Vladimir Lazarević interview with the Prosecution), pp. 84–85, 214–215; *see also* Mirko Starčević, T. 17436 (22 October 2007).

<sup>1472</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 84–85, 214–215.

<sup>1473</sup> Mirko Starčević, 4D500 (witness statement dated 29 September 2007), para. 15. Starčević explained that the physical location of the 3rd Army Forward Command Post changed frequently given the risk of KLA and NATO attacks. He gave its locations as “Kišnica, Grmija, Gračanica sometimes only for one night”, and later on “Ajvalija” was added to the list. Mirko Starčević, T. 17436, 17438 (22 October 2007).

<sup>1474</sup> Vladimir Lazarević, T. 18080 (12 November 2007). *See also* Dušan Lončar, P2521 (witness statement dated 3–4 February, 3 March 2004), para. 21, T. 7578 (30 November 2006).

<sup>1475</sup> Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 10, T. 17658–17659 (26 October 2007).

<sup>1476</sup> *See, e.g.*, Mirko Starčević, 4D500 (witness statement dated 29 September 2007), paras. 2–4; Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), paras. 11–13; Tomislav Mladenović, 4D505 (witness statement dated 27 September 2007), para. 46; Novica Stamenković, T. 20097–20098 (12 December 2007).

<sup>1477</sup> Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 12, T. 17675 (26 October 2007).

<sup>1478</sup> Ljubiša Stojimirović, T. 17674 (26 October 2007). *See also* Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 13.

Staff.<sup>1479</sup> Additionally, security organs subordinated to the 3<sup>rd</sup> Army sent telegrams in which they reported on specific security problems.<sup>1480</sup>

591. The Operations Centre continuously collected information and monitored the position within the VJ units in Kosovo, their activities, the situation of targets under NATO attack, and activities of KLA forces.<sup>1481</sup> It was located at the premises of the 3<sup>rd</sup> Army Command Centre in Niš until 4 April 1999, when it was relocated to its war location which was very close to its original location, inside a building belonging to a construction company.<sup>1482</sup> Obradović testified that on 5 April 1999 NATO aircraft destroyed the premises of the Operations Centre and the nearby Military Court, thus destroying many of the remaining Operations Centre documents.<sup>1483</sup>

592. The 3<sup>rd</sup> Army's Operations Duty Team was the highest body of the 3<sup>rd</sup> Army operative duties system and was directly and constantly connected to the Operations Centre of the General Staff/Supreme Command Staff. One of the functions of the Operations Duty Team was to follow the situation inside units in the area of responsibility of the 3<sup>rd</sup> Army.<sup>1484</sup> The 3<sup>rd</sup> Army's Operations Duty Team was supported by the 3<sup>rd</sup> Army's Operations Centre and worked there.<sup>1485</sup> The 3<sup>rd</sup> Army's Operation Centre was located at the premises of the 3<sup>rd</sup> Army Command in Niš until 4 April 1999, when it was relocated to its war location in the area of Niš town.<sup>1486</sup> During the NATO bombing, exceptionally, and due to the urgency of some events, the 3<sup>rd</sup> Army Commander sent special combat reports personally to the Supreme Command Staff directly from the Forward Command Post.<sup>1487</sup>

### c. Priština Corps

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<sup>1479</sup> Branko Gajić, T. 15188–15189 (7 September 2007); Geza Farkaš, T. 16292 (25 September 2007).

<sup>1480</sup> Branko Gajić, 3D1084 (witness statement dated 8 August 2007), para. 11. *See also* Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), paras. 12–13, T. 17674–17676 (26 October 2007); Branko Gajić, 3D1084 (witness statement dated 8 August 2007), para. 11.

<sup>1481</sup> Velimir Obradović, 4D499 (witness statement dated 27 September 2007), paras. 3, 10, T. 17360 (22 October 2007).

<sup>1482</sup> Velimir Obradović, 4D499 (witness statement dated 27 September 2007), para. 13, T. 17392 (22 October 2007); Mirko Starčević, T. 17436 (22 October 2007).

<sup>1483</sup> Velimir Obradović, 4D499 (witness statement dated 27 September 2007), para. 13, T. 17363–17364 (22 October 2007).

<sup>1484</sup> Velimir Obradović, 4D499 (witness statement dated 27 September 2007), paras. 6–7.

<sup>1485</sup> Velimir Obradović, 4D499 (witness statement dated 27 September 2007), paras. 3, 7. During the NATO bombing, the main task of the Operations Centre was to collect information and monitor the situation within the VJ units in Kosovo, their activities, the situation of civil and military targets under NATO attack, and activities of KLA forces. Velimir Obradović, 4D499 (witness statement dated 27 September 2007), para. 10, T. 17360, 17401–17402 (22 October 2007).

<sup>1486</sup> Velimir Obradović, 4D499 (witness statement dated 27 September 2007), paras. 7, 13.

<sup>1487</sup> Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), paras. 48–49, T. 17669 (26 October 2007).

593. The Priština Corps comprised numerous subordinate brigades and independent battalions.<sup>1488</sup> From 5 January 1998 until 15 January 1999 it was commanded by Pavković, who was then succeeded by Lazarević.<sup>1489</sup> Lazarević remained Commander of the Priština Corps until 2000, when he was appointed 3<sup>rd</sup> Army Commander.<sup>1490</sup>

594. Lazarević explained that the expected full complement of the Priština Corps in peacetime was 12,000 to 15,000 men, and the official expected wartime complement was approximately 35,000 men.<sup>1491</sup> During 1998 and early 1999 the Priština Corps had approximately 9,000 men.<sup>1492</sup> Approximately 4,500 of the 15,000 posts in the Priština Corps peacetime establishment were to be filled by professional soldiers; however, a report on the manning levels of the Priština Corps units dated 28 February 1999 put the number of professional soldiers at 2,253.<sup>1493</sup> The Priština Corps forces in Kosovo were augmented by the resubordination of forces from the Niš Corps prior to the NATO campaign.<sup>1494</sup> Additionally, the Priština Corps was organised on the basis of what was referred to as the extra-territorial principle,<sup>1495</sup> and thus many men from outside Kosovo were mobilised into the various units subordinated to the Priština Corps.<sup>1496</sup> However, in his interview with the Prosecution Lazarević explained that at some point during the NATO bombing there were up to 15,000 soldiers who were not subordinated to the Priština Corps in Kosovo, plus 15,000 “police troops” and several thousand “Civil Defence members” under the Ministry of Defence. According to Lazarević, the number of troops not subordinated to the Priština Corps was as big as the number of troops subordinated, and this number did not include the potentially “armed Serb population” and “paramilitary formations”.<sup>1497</sup>

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<sup>1488</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 13. *See also* P2601 (Organisation of FRY Military Forces associated with Kosovo).

<sup>1489</sup> Vladimir Lazarević, T. 17744–17745 (6 November 2007); P801 (Report on the take-over of the duty of PrK Commander by Vladimir Lazarević, pursuant to a Decree issued by the FRY President, 28 December 1998); P950 (Vladimir Lazarević interview with the Prosecution), p. 14–15; *See also* Nike Peraj, P2248 (witness statement dated 18 April 2000), para. 6; P2253 (witness statement dated 8–9 August 2006), para. 6.

<sup>1490</sup> Vladimir Lazarević, T. 17740 (6 November 2007); P950 (Vladimir Lazarević interview with the Prosecution), pp. 14–15. *See also* P801 (Report on the take-over of the duty of PrK Commander by Vladimir Lazarević, 28 December 1998); 5D1324 (Order of the VJ General Staff appointing Lazarević as Chief of Staff of the PrK, 12 January 1998); Nike Peraj, P2253 (witness statement dated 8–9 August 2006), para. 6.

<sup>1491</sup> Vladimir Lazarević, T. 17777 (6 November 2007); P950 (Vladimir Lazarević interview with the Prosecution), pp. 37–38, 40–45.

<sup>1492</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 37–38. Radinović put the number of total peacetime strength to 10,000–12,000 men. 3D1116 (Radovan Radinović’s Expert Report), p. 26

<sup>1493</sup> Milutin Filipović, T. 19159 (27 November 2007); 5D690 (Report to 3<sup>rd</sup> Army on manning levels in PrK, 28 February 1999).

<sup>1494</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 44–45.

<sup>1495</sup> Vladimir Lazarević, T. 17894 (8 November 2007).

<sup>1496</sup> P950 (Vladimir Lazarević interview with the Prosecution), p. 324.

<sup>1497</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 425–427.

595. Immediately before the NATO bombing and during its course, the forces of the Priština Corps were increased, through mobilisation, to 35,000 men.<sup>1498</sup> A 3<sup>rd</sup> Army report to the Supreme Command Staff dated 31 March 1999 listed the total strength of the Priština Corps at 17,971 men; such number, according to the report, represented 52 percent of the Priština Corps's full strength.<sup>1499</sup> However, a combat report sent from the Priština Corps to the 3<sup>rd</sup> Army Command and to the Supreme Command Staff on 13 April 1999 detailed the manpower levels of the Priština Corps at 61,892 men.<sup>1500</sup> During his testimony, Filipović was questioned about this report and confirmed the report's information, namely that the Priština Corps had close to 62,000 men by that time. However, he testified that, although it was not clear from the report, this figure included resubordinated units and in terms of "war establishment" there were only 30,000 to 35,000 actual members of the Priština Corps in total.<sup>1501</sup> According to Radinović, by the end of May 1999 there were almost 70,000 soldiers subordinated to the Priština Corps.<sup>1502</sup>

*i. Command of the Priština Corps*

596. A corps commander had the duty to "command and control subordinate units and institutions within the scope of the responsibility received",<sup>1503</sup> and he could do so either directly or "through his Chief of Staff, his assistant or the head of branches". The corps commander had the duty to control the work of the corps command, to assign tasks to his subordinates, and to make sure the tasks were carried out.<sup>1504</sup>

(A) Command posts

597. The Priština Corps had its main Command Post in Priština/Prishtina during 1998;<sup>1505</sup> however, there is also evidence which indicates that it was located in the nearby village of Kišnica at some stage during that period.<sup>1506</sup> The Rear Command Post was located in the village of

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<sup>1498</sup> 3D1116 (Radovan Radinović's Expert Report), pp. 26; P950 (Vladimir Lazarević interview with the Prosecution), pp. 37–38, 40–45.

<sup>1499</sup> P1929 (3<sup>rd</sup> Army report, 31 March 1999), p. 3. Lazarević recalled that, after the number of the PrK was increased to its wartime size of 35,000 men, it was then expanded further. At some point towards the end of May 1999, there were almost 70,000 men. P950 (Vladimir Lazarević interview with the Prosecution), pp. 42–45.

<sup>1500</sup> P2004 (PrK Combat Report to the 3<sup>rd</sup> Army and the Supreme Command Staff, 13 April 1999); p. 2.

<sup>1501</sup> Milutin Filipović, T. 19221–19223 (28 November 2007).

<sup>1502</sup> 3D1116 (Radovan Radinović's Expert Report), p. 66; P950 (Vladimir Lazarević interview with the Prosecution), pp. 37–38, 40–45.

<sup>1503</sup> P987 (Regulations on the authority of the ground forces corps commander in peacetime, 1990), article 9.

<sup>1504</sup> P982 (Instructions to the 4<sup>th</sup> Corps Command, 1991), p. 14.

<sup>1505</sup> See Vladimir Lazarević, T. 17815–17816 (7 November 2007).

<sup>1506</sup> Vladimir Lazarević, T. 17959–17960 (8 November 2007); see 5D175 (Order of the PrK, 6 April 1998), p. 16.

Gračanica/Gračanica, also near Priština/Prishtina, and was headed by the assistant commander for logistics.<sup>1507</sup>

598. On 21 April 1998 a Priština Corps Forward Command Post was established in Đakovica/Gjakova town.<sup>1508</sup> The Forward Command Post consisted of a team of approximately ten people from the Priština Corps Command, directed by the then Chief of Staff, Lazarević. The main task of the Forward Command Post was to monitor the situation at the state border and to propose measures for securing the border and preventing the escalation of “terrorist activities” coming from Albania. Lazarević was present at the Forward Command Post constantly and remained there until October 1998.<sup>1509</sup> At the end of 1998 the Forward Command Post in Đakovica/Gjakova was renamed and became a “Command Group”, due to the reduced number of officers engaged there. This Command Group continued until early April 1999.<sup>1510</sup>

599. In 1999 the Priština Corps Command Post was located in Priština/Prishtina town, in a building about 500 metres from the MUP Staff Building.<sup>1511</sup> During peacetime it was composed of about 100 men.<sup>1512</sup> At the start of the NATO air campaign, Lazarević divided the Priština Corps Command into several Command Groups.<sup>1513</sup> From 29 March parts of the Priština Corps Command were relocated outside of its building and Lazarević formed a group of members of the Priština Corps Command who were to be located “in the general area of the Priština municipality, the Municipal Court and the premises of the Priština Corps Command, including the Grand Hotel.”<sup>1514</sup> The order issued by Lazarević provided the framework and composition of the group, but did not enumerate its tasks.<sup>1515</sup> Milutin Filipović was appointed the head of the group, and the commander of the Priština garrison—headquarters—and he therefore remained in Priština/Prishtina

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<sup>1507</sup> Vladimir Lazarević, T. 17960 (8 November 2007); 5D175 (Order of the PrK, 6 April 1998), p. 16; Zlatimir Pešić, T. 7201 (23 November 2006).

<sup>1508</sup> 4D380 (Order from the 3rd Army Command to the PrK to Occupy the Forward Command Post, 20 April 1998); *see also* Vladimir Lazarević, T. 17808 (6 November 2007); 3D697 (Document from the 3rd Army Forward Command Post-Analysis of the realisation of the tasks in Kosovo, 2 October 1998), p. 2; Goran Jevtović, 5D1385 (witness statement dated 24 December 2007), para. 4; P950 (Vladimir Lazarević interview with the Prosecution), p. 92.

<sup>1509</sup> P950 (Vladimir Lazarević interview with the Prosecution), p. 92; *see also* Vladimir Lazarević, T. 17809 (6 November 2007), 17823 (7 November 2007); Milorad Obradović, T. 15044 (5 September 2007); Dragan Živanović, T. 20617–20618 (18 January 2008); Milan Kotur, T. 20629 (18 January 2007); Goran Jevtović, 5D1385 (witness statement dated 24 December 2007), para. 4.

<sup>1510</sup> Goran Jevtović, 5D1385 (witness statement dated 24 December 2007), paras. 3, 19.

<sup>1511</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 210–212.

<sup>1512</sup> Milutin Filipović, T. 19204 (28 November 2007).

<sup>1513</sup> P950 (Vladimir Lazarević interview with the Prosecution), p. 202.

<sup>1514</sup> 5D348 (Order of the PrK Command to organise life and work in the PrK Command building and the Priština garrison, 30 March 1999).

<sup>1515</sup> Milutin Filipović, T. 19224–19225 (28 November 2007).

and its immediate vicinity during the period of the NATO bombing.<sup>1516</sup> According to Filipović, there were between 100 and 150 members of the group under his command, and they were there to provide security for facilities in Priština/Prishtina. However, he stated that no combat units remained at the Priština garrison, since all of them were relocated to pre-determined positions.<sup>1517</sup>

600. Filipović explained that any communications equipment that had been in the Priština Corps Command building prior to the NATO campaign was removed for the duration of the campaign, and added that the 52<sup>nd</sup> Centre for Communications was relocated from the original Priština Corps Command building. The 3<sup>rd</sup> Army and Priština Corps “information centre” was then located in the basement of the Grand Hotel, which was, among other things, where mail was received. However, according to Filipović, the Priština Corps Command itself was not relocated to the Grand Hotel.<sup>1518</sup> When asked about a Priština Corps Command order apparently referring to the Grand Hotel as part of the Priština Corps Command building, he maintained that the hotel was not used in such a way, although it was close to buildings where elements of the Priština Corps Command were located.<sup>1519</sup> Contrary to this evidence, K73 testified that the Priština Corps Command was located at the Grand Hotel at some point during April and May 1999, and that Lazarević and Momir Stojanović were present there almost every day.<sup>1520</sup> Furthermore, the war diary of the 52<sup>nd</sup> Military Police Battalion has an entry for 30 April 1999 stating that a lieutenant from the VJ “was transferred to the security detail at the Grand Hotel in Priština”, which suggests that there were other VJ forces at the Grand Hotel, in addition to the information centre.<sup>1521</sup> Adnan Merovci added that there were Arkan’s men present in the Grand Hotel at that time, and that “[t]he Grand Hotel was a forbidden place for Albanians. Indeed, people said that Albanians and dogs are not allowed to enter the Grand Hotel”.<sup>1522</sup>

601. Around 9 or 10 April 1999 a decision was made to re-establish a Forward Command Post in Đakovica/Gjakova.<sup>1523</sup> It did not have a fixed location, but rather moved locations several times

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<sup>1516</sup> 5D348 (Order of the PrK Command to organise life and work in the PrK Command building and the Priština garrison, 30 March 1999); Milutin Filipović, T. 19151 (27 November 2007), T. 19209 (28 November 2007).

<sup>1517</sup> Milutin Filipović, T. 19153–19154 (27 November 2007), T. 19211–19212, 19215–19218 (28 November 2007).

<sup>1518</sup> Milutin Filipović, T. 19205–19207 (28 November 2007). *See also* P950 (Vladimir Lazarević interview with the Prosecution), pp. 212–214.

<sup>1519</sup> Milutin Filipović, T. 19162 (27 November 2007); T. 19240–19242 (28 November 2007), referring to 5D348 (Order of the PrK Command to organise life and work in the PrK Command building and the Priština garrison, 30 March 1999).

<sup>1520</sup> K73, T. 3336 (13 September 2006) (closed session), P2440 (witness statement dated 2 December 2005), para. 50.

<sup>1521</sup> P2297 (War diary of the 52<sup>nd</sup> Military Police Battalion), p. 12.

<sup>1522</sup> Adnan Merovci, T. 8433–8434 (16 January 2007). *See also* SD3, T. 20827–20828, 20830–20831 (22 January 2008) (private session).

<sup>1523</sup> Goran Jevtović, 5D1385 (witness statement dated 24 December 2007), paras. 3, 19; *see also* P950 (Vladimir Lazarević interview with the Prosecution), pp. 204–205.



during the NATO air campaign.<sup>1524</sup> The then Chief of Staff of the Priština Corps, General Veroljub Živković, was at the Forward Command Post throughout the NATO bombing,<sup>1525</sup> and took over the command of the Priština Corps forces in the area.<sup>1526</sup> In addition, many other high ranking officers from the Priština Corps worked at the Forward Command Post during the NATO bombing.<sup>1527</sup>

602. As well as the Priština Corps main Command Post and its Rear Command Post, a Forward Command Post and several Command Groups were established in other locations in the central part of Kosovo.<sup>1528</sup> Lazarević and his team moved constantly between these locations, and exercised command and control over the Priština Corps units from wherever they were located.<sup>1529</sup>

#### (B) The Priština Corps Staff

603. The Staff of the Priština Corps was the “basic body of the corps command which link[ed] together and coordinate[d] the work of all command bodies”.<sup>1530</sup> It consisted of the Chief of Staff, and various specialised departments/sections, such as Intelligence, Operations and Training,<sup>1531</sup> Personnel and Housing,<sup>1532</sup> Logistics,<sup>1533</sup> Information and Morale,<sup>1534</sup> Security,<sup>1535</sup> and an Operations Centre.<sup>1536</sup> Some of these bodies are of particular relevance to VJ operations in Kosovo in the period relevant to the Indictment and will be analysed in the following paragraphs.

604. The Chief of Staff of the Priština Corps was subordinated to the Corps Commander, along with numerous assistants who specialised in different areas.<sup>1537</sup> He served as a link between the assistants and the Commander, and as the deputy commander.<sup>1538</sup>

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<sup>1524</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 202–203, 206–210.

<sup>1525</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 204–205; Goran Jevtović, T. 20355 (16 January 2008), 5D1385 (witness statement dated 24 December 2007), para. 19.

<sup>1526</sup> Goran Jevtović, T. 20360 (16 January 2008) (private session), 5D1385 (witness statement dated 24 December 2007), para. 19.

<sup>1527</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 204–205; Goran Jevtović, 5D1385 (witness statement dated 24 December 2007), para. 3.

<sup>1528</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 202–203, 458–459.

<sup>1529</sup> P950 (Vladimir Lazarević interview with the Prosecution), p. 203.

<sup>1530</sup> P982 (Instructions to the 4<sup>th</sup> Corps Command, 1991), p. 15.

<sup>1531</sup> Ljubomir Savić, T. 20963 (24 January 2008), 5D1392 (witness statement dated 27 December 2007), para. 3.

<sup>1532</sup> Milutin Filipović, T. 19151 (27 November 2007).

<sup>1533</sup> Milutin Filipović, T. 19230 (28 November 2007).

<sup>1534</sup> Milutin Filipović, T. 19231–19232 (28 November 2007); Dragiša Marinković, 5D1379 (witness statement dated 6 December 2007), para. 3; Mirko Starčević, 4D500 (witness statement dated 29 September 2007), para. 16.

<sup>1535</sup> Momir Stojanović, T. 19683 (6 December 2007). *See also* Milutin Filipović, T. 19231–19232 (28 November 2007); Vladimir Marinković, T. 20287–20288 (14 December 2007); Nike Peraj, P2253 (witness statement dated 8–9 August 2006), para. 57; Branko Gajić, 3D1084 (witness statement dated 8 August 2007), para. 7.

<sup>1536</sup> P982 (Instructions to the 4<sup>th</sup> Corps Command, 1991), p. 16.

<sup>1537</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 20–21.

<sup>1538</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 20–21; P982 (Instructions to the 4<sup>th</sup> Corps Command, 1991), p. 16.

605. The Priština Corps security department reported on a daily basis to the Priština Corps Commander, as well as to the 3<sup>rd</sup> Army security department, and to the Security Administration of the General Staff/Supreme Command Staff.<sup>1539</sup> However, when the NATO air campaign began, Stojanović, on orders from the Security Administration, became duty-bound to report only to the 3<sup>rd</sup> Army Command. Thus, telegrams sent to the 3<sup>rd</sup> Army security department by the Priština Corps security department during the NATO bombing were structured in three parts: (a) the security situation at the border; (b) the security situation in the territory; and (c) the security situation in the units and commands of the Priština Corps.<sup>1540</sup>

606. In 1998 and 1999 all of the organisational units of the Priština Corps, down to the level of the independent battalion, had their own security organs.<sup>1541</sup> The security organs within the subordinate units were usually composed of two people, particularly in the smaller units; however, because of the complex security situation in Kosovo, the Security Administration reinforced the Priština Corps security organs.<sup>1542</sup> As Chief of the Priština Corps security department, Stojanović was in charge of all the security organs of units subordinated to the Priština Corps.<sup>1543</sup> Vladimir Marinković, chief of security for the 15<sup>th</sup> Armoured Brigade, further explained that he reported to Stojanović “twice a day, and if there were any events that had taken place then more than that, depending on urgency, on a need-to-know basis”; these reports were both oral and in writing.<sup>1544</sup>

607. Military police units were attached to brigades subordinated to the Priština Corps and were also subordinated to the Priština Corps Command.<sup>1545</sup> The security department could propose to the commander of a unit how the military police units should be used and could suggest disciplinary measures and criminal prosecution.<sup>1546</sup>

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<sup>1539</sup> Momir Stojanović, T. 19688–19690 (6 December 2007).

<sup>1540</sup> Momir Stojanović, T. 19688 (6 December 2007). When asked why the reports included the security situation in Kosovo, Stojanović clarified that although the security organs were not in charge of the security situation in the territory of Kosovo—since it was responsibility of the MUP organs and the State Security Service organs—, it was mentioned in the telegrams because the escalation of terrorism in Kosovo was threatening commands, units, installations, and members of the VJ, and they were precisely those who were meant to be protected by the security organs. Momir Stojanović, T. 19689–19691 (6 December 2007).

<sup>1541</sup> Momir Stojanović, T. 19685 (6 December 2007); Miloš Mandić, 5D1391 (witness statement dated 8 January 2008), para. 49.

<sup>1542</sup> Momir Stojanović, T. 19685 (6 December 2007); Vladimir Marinković, T. 20289–20290 (14 December 2007).

<sup>1543</sup> Momir Stojanović, T. 19683–19684 (6 December 2007); Vladimir Marinković, T. 20287–20288 (14 December 2007).

<sup>1544</sup> Vladimir Marinković, T. 20288 (14 December 2007).

<sup>1545</sup> Miloš Mandić, 5D1391 (witness statement dated 8 January 2008), para. 49; *see also* Saša Antić, 5D1443 (witness statement dated 5 January 2008), para. 7.

<sup>1546</sup> Momir Stojanović, T. 19686–19687 (6 December 2007); Saša Antić, 5D1443 (witness statement dated 5 January 2008), para. 7. *See, for example*, the war diary of the 52<sup>nd</sup> Military Police Battalion, which records that on 13 April 1999 a specially formed company from this battalion was in fact “tasked” by the Chief of the PrK Security Department,

608. The Priština Corps Operations Centre was located at the Priština Corps Command. The Priština Corps had two Operations Centres during 1998 and 1999, one at its main Command Post, and another at its Forward Command Post, when that post was in operation.<sup>1547</sup> The Operations Centre consisted of a team of people who had access to documents, orders, and plans issued by the Priština Corps Commander; they monitored the situation in all units subordinated to the Priština Corps,<sup>1548</sup> and had the task of sending reports to the higher levels of command.<sup>1549</sup>

609. As with the highest organs of the VJ, key personnel in the Priština Corps Staff formed a body that was known as the collegium. Before the NATO bombing began, collegium meetings were held on a daily basis and were attended by officers from the Priština Corps and sometimes the 3<sup>rd</sup> Army commander, or other officers from the 3<sup>rd</sup> Army Command.<sup>1550</sup> When parts of the Priština Corps Command moved out from its peacetime command post, the meetings of the collegium were no longer held in full composition; rather, the Commander of the Priština Corps held one-on-one meetings with a narrow circle of members.<sup>1551</sup>

610. Filipović testified that he also met with Lazarević individually to brief him about the state of affairs in the command of the Priština garrison and within his group. Each person responsible for a department would brief Lazarević on the situation within the department and Lazarević, in turn, would brief the Corps Command Staff about latest developments.<sup>1552</sup> As the chief of the security department, Stojanović informed Lazarević regularly about all security issues in and affecting the units; he also informed him about the strength, the location, the plans, the intentions, the arming process, and the activities of the KLA, and about intelligence obtained which was of interest, from the security point of view, to the Priština Corps units.<sup>1553</sup>

## *ii. Structure of the Priština Corps*

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who at this time was Stojanović, to capture a border post in Kamenica. P2297 (War Diary of the 52<sup>nd</sup> Military Police Battalion), p. 6.

<sup>1547</sup> Milan Đaković, T. 26400 (19 May 2008).

<sup>1548</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 79–81.

<sup>1549</sup> Milan Đaković, T. 26400 (19 May 2008).

<sup>1550</sup> Momir Stojanović, T. 19733–19734 (6 December 2007); Dragiša Marinković, 5D1379 (witness statement dated 6 December 2007), para. 9.

<sup>1551</sup> Momir Stojanović, T. 19733–19734 (6 December 2007); Dragiša Marinković, 5D1379 (witness statement dated 6 December 2007), para. 9.

<sup>1552</sup> Milutin Filipović, T. 19232–19233 (28 November 2007). Dragiša Marinković also testified that he continued to hold frequent meetings, at which Lazarević would issue orders, during the NATO bombing. Dragiša Marinković, 5D1379 (witness statement dated 6 December 2007), para. 9.

<sup>1553</sup> Momir Stojanović, T. 19734 (6 December 2007).

611. The Priština Corps was composed of a variety of units in 1999.<sup>1554</sup>

(A) Units subordinate to the Priština Corps

612. The following units were subordinated to the Priština Corps in 1999, according to its peacetime establishment: the 549<sup>th</sup> Motorised Brigade (commanded by Colonel Božidar Delić); the 52<sup>nd</sup> Artillery-rocket Brigade for Anti-aircraft Defence (commanded by Colonel Miloš Došan); the 243<sup>rd</sup> Mechanised Brigade (commanded by Colonel Krsman Jelić); the 15<sup>th</sup> Armoured Brigade (commanded by Colonel Ćirković)<sup>1555</sup>; the 125<sup>th</sup> Motorised Brigade (commanded by Colonel Dragan Živanović)<sup>1556</sup>; the 58<sup>th</sup> Light Infantry Brigade (commanded by Dragutin Milentijević until 16 April 1999 when he was replaced by Ljubomir Savić)<sup>1557</sup>; and the 52<sup>nd</sup> Mixed Artillery Brigade (commanded by Colonel Stefanović who was later replaced by Colonel Milinović).<sup>1558</sup>

613. Two other units were also subordinated to the Priština Corps in peacetime: the 354<sup>th</sup> Infantry Brigade<sup>1559</sup> and the 192<sup>nd</sup> Engineering Regiment.<sup>1560</sup>

614. In addition, there were eight smaller units—the size of battalions or smaller— attached to the Priština Corps: the 53<sup>rd</sup> Border Battalion; the 55<sup>th</sup> Border Battalion; the 57<sup>th</sup> Border Battalion;

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<sup>1554</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 33–35; 5D1370 (PrK organigram: command and coordination in wartime); 4D240 (Structure, Deployment, and Manning level of 3rd Army Military-Territorial Component, 14 January 1999), p. 2.

<sup>1555</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 33–34. Vladimir Marinković, a member of the 15<sup>th</sup> Armoured Brigade during the time relevant to the Indictment, testified that the general area of responsibility of the 15<sup>th</sup> Armoured Brigade was in the north of Kosovo and covered the municipalities of Priština/Pristina, Vučitrn/Vushtrria, Kosovo Polje/Pushë Kosovo, parts of Lipljan/Lypjan, and parts of Glogovac/Gillogoc. Vladimir Marinković, T. 20252 (13 December 2007); T. 20302 (14 December 2007).

<sup>1556</sup> Dragan Živanović, T. 20439 (17 January 2008). Miloš Mandić testified that the Mechanised Battalion of the 252<sup>nd</sup> Armoured Brigade was present in Kosovo from 16 March 1999, including seven tanks, and that it was re-subordinated to the command of the 125<sup>th</sup> Motorised Brigade in Kosovska Mitrovica/Mitrovica. Miloš Mandić, T. 20909–20911 (23 January 2008). Ljubomir Savić added that the 2<sup>nd</sup> Light Infantry Battalion was resubordinated to the 125<sup>th</sup> Motorised Brigade, “which was located in the defence region in Rugovska canyon”. Ljubomir Savić, 5D1392 (witness statement dated 27 December 2007), para. 10. Saša Antić testified that around 12 or 13 April 1999, a company was formed from the 52<sup>nd</sup> Military Police Battalion and sent to the area of the Košare and Morina border posts, where it became resubordinated to the 125<sup>th</sup> Motorised Brigade. Antić was sent to the area on 21 April 1999, to become the commander of the company which had been resubordinated days before. Saša Antić, 5D1443 (witness statement dated 5 January 2008), paras. 15, 17, 19.

<sup>1557</sup> Savić testified that the 58<sup>th</sup> Light Infantry Brigade was “deployed in the wider region of Kosovska Mitrovica” and was a “tactical unit intended to execute combat actions in mountainous and manoeuvrable terrain”. Ljubomir Savić, 5D1392 (witness statement dated 27 December 2007), para. 7.

<sup>1558</sup> 3D1116 (Radovan Radinović’s Expert Report), p. 25; P950 (Vladimir Lazarević interview with the Prosecution), pp. 33–34, 57–60; *See also* Dragan Živanović, T. 20534 (18 January 2008); P1929 (3rd Army report, 31 March 1999), pp. 3–4.

<sup>1559</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 35–36; Mihajlo Gergar testified that the 354<sup>th</sup> Infantry Brigade was mainly formed by reservists; Mihajlo Gergar, T. 21510 (31 January 2008). He further added that the brigade was involved in the action in Palatna at the end of May 1999 and that he was in charge of planning and leading both the 211<sup>th</sup> Armoured Brigade and the 354<sup>th</sup> Infantry Brigade on that action; Mihajlo Gergar, T. 21492–21496 (31 January 2008); 6D709 (Order from the PrK, 22 May 1999), p. 3; *see also* 5D1070 (211<sup>th</sup> Armoured Brigade Combat Report to PrK, 25 May 1999) on the Palatna action.

the 52<sup>nd</sup> Military Police Battalion (commanded by Stevo Kopanja); the 52<sup>nd</sup> Communications Battalion; the 52<sup>nd</sup> Reconnaissance and sabotage Company; the 52<sup>nd</sup> Atomic-Biological-Chemical Defence Battalion; and the 52<sup>nd</sup> Centre for Electronic Intelligence and Jamming.<sup>1561</sup>

(1) The 549<sup>th</sup> Motorised Brigade

615. Božidar Delić testified at length about various actions involving the brigade in 1998 and 1999.<sup>1562</sup> The brigade's area of responsibility consisted of Prizren, Suva Reka/Suhareka, Orahovac/Rahovec, and Dragaš/Dragash municipalities, in the south of Kosovo.<sup>1563</sup> In 1980s Zlatomir Pešić was commander of the artillery battalion of the 549<sup>th</sup> Motorised Brigade.<sup>1564</sup> Witnesses K82, K54, Pavle Gavrilović, and Vlatko Vuković were also members of the 549<sup>th</sup> Motorised Brigade at various times.<sup>1565</sup> Franjo Glončak transferred, at his request, from the 175<sup>th</sup> Battalion in April 1999.<sup>1566</sup>

616. The testimony of these witnesses and several VJ documents in evidence indicate that the 549<sup>th</sup> Motorised Brigade was active across a relatively large area of the frontier of Kosovo from May 1998 onwards, providing "in depth" security along the border.<sup>1567</sup> Locations of operations included Junik,<sup>1568</sup> Orahovac/Rahovec,<sup>1569</sup> Gramočelj Village,<sup>1570</sup> Donje Retimlje/Retia e Ulët,<sup>1571</sup> Studenčane/Studenčan,<sup>1572</sup> Suva Reka/Suhareka,<sup>1573</sup> Ješkovo/Jeshkova, and Kabaš/Kabash.<sup>1574</sup>

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<sup>1560</sup> P950 (Vladimir Lazarević interview with the Prosecution), p. 35. *See also* P1929 (3rd Army report, 31 March 1999) pp. 3–4.

<sup>1561</sup> The 52<sup>nd</sup> Military Police Battalion was an independent unit directly subordinated and under the command of the PrK. 5D1370 (PrK organigram: command and coordination in wartime); 3D1116 (Radovan Radinović's Expert Report), pp. 25–26; Momir Stojanović, T. 20082 (12 December 2007); Saša Antić, 5D1443 (witness statement dated 5 January 2008), paras. 5, 7. *See also* P950 (Vladimir Lazarević interview with the Prosecution), p. 37.

<sup>1562</sup> Božidar Delić, T. 19269 (28 November 2007); *see also* K82, P2863 (witness statement), para. 2; K90, P2640 (witness statement dated 8 December 2002), para. 28.

<sup>1563</sup> K82, P2863 (witness statement), para. 2; *see also* K54, P2883 (witness statement dated 26 April 2002), p. 2.

<sup>1564</sup> Zlatomir Pešić, T. 7312 (24 November 2006).

<sup>1565</sup> K82, P2863 (witness statement), para. 1; Pavle Gavrilović, 5D1445 (witness statement dated 9 January 2008), paras. 3–4; Vlatko Vuković, 5D1442 (witness statement dated 5 January 2008), para. 2, *see* K54, P2883 (witness statement dated 26 April 2002), p. 2.

<sup>1566</sup> K90, P2391 (witness statement dated 8 December 2002), para. 28 (under seal); Franjo Glončak, 5D1395 (witness statement dated 26 December 2007), para. 5.

<sup>1567</sup> P1401 (Report from PrK to 3rd Army, 13 May 1998), p. 2.

<sup>1568</sup> 4D101 (PrK Plan for the engagement of units in Kosovo, 23 July 1998).

<sup>1569</sup> P1425 (Letter from 549<sup>th</sup> Motorised Brigade to PrK relating to MUP troop performance, 8 August 1998).

<sup>1570</sup> P1427 (PrK Decision, 10 August 1998).

<sup>1571</sup> P2015 (Joint Command Order, 23 March 1999).

<sup>1572</sup> P1613 (Order signed by Pavković, 27 August 1998).

<sup>1573</sup> Vladimir Lazarević, T. 17940 (8 November 2007).

<sup>1574</sup> Vladimir Lazarević, T. 18374 (15 November 2007).

During 1999 the 549<sup>th</sup> Motorised Brigade conducted operations in Suva Reka/Suhareka,<sup>1575</sup> Prizren,<sup>1576</sup> Đakovica/Gjakova,<sup>1577</sup> and Orahovac/Rahovec<sup>1578</sup> municipalities.

## (2) The 243<sup>rd</sup> Mechanised Brigade

617. There is evidence that the 243<sup>rd</sup> Mechanised Brigade, commanded by Krsman Jelić, was involved in various operations in Kosovo during 1998.<sup>1579</sup> According to a document from the Priština Corps, the 243<sup>rd</sup> Mechanised Brigade had the function to provide “in depth” security to the state border.<sup>1580</sup> Jelić testified that the brigade was on the Macedonian border from Vitina/Viti to the Jezerska Mountains.<sup>1581</sup> As of August 1998, it consisted of three Combat Groups, two of which were engaged in support of MUP operations in the Dulje Pass and Štimlje/Shtima area, while the third operated independently.<sup>1582</sup> On 8 January 1999 units of the brigade were observed by the OSCE mission using tank weapons against a village.<sup>1583</sup>

618. Jelić testified that the 243<sup>rd</sup> Mechanised Brigade left barracks on 24 March 1999, just before the NATO bombing started, and was deployed to defensive positions along the border.<sup>1584</sup> He explained that the towns and villages of Uroševac/Ferizaj, Biba, Muhadžer Prelez/Prelezi i Muhaxherëve, Raka/Rakaj, Staro Selo, Papaz, Varoš Selo/Varosh, and Miroslavlje/Mirosala were in the area of responsibility of his brigade.<sup>1585</sup> According to an order dated 28 March 1999, the 243<sup>rd</sup>

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<sup>1575</sup> P2000 (Order of the 549<sup>th</sup> Motorised Brigade, 29 March 1999), pp. 2, 4; P2002 (Analysis of operations of 549<sup>th</sup> Motorised Brigade, 30 March [sic] 1999); P1981 (Order of the 549<sup>th</sup> Motorised Brigade, 23 March 1999); P2575 (War Diary of the Light Air Defence Rocket Artillery Battalion of the 549<sup>th</sup> Motorised Brigade), p.2.

<sup>1576</sup> P2574 (War diary of armoured battalion from 549<sup>th</sup> Motorised Brigade), p. 1; P2575 (War Diary of the Light Air Defence Rocket Artillery Battalion of the 549<sup>th</sup> Motorised Brigade), p.2.

<sup>1577</sup> K90, T. 9297–9298 (29 January 2007), P2652 (witness statement dated 8 December 2002), paras. 43–44.

<sup>1578</sup> Božidar Delić, T. 19642–19643 (6 December 2007); P1981 (Order of the 549<sup>th</sup> Motorised Brigade, 23 March 1999); P1969 (Joint Command Order, 28 March 1999), pp. 7–8; P1995 (Analysis of the operation of the 549<sup>th</sup> Motorised Brigade, 30 March 1999); P2015 (Joint Command Order, 23 March 1999), p. 3; P2000 (Order of the 549<sup>th</sup> Motorised Brigade, 29 March 1999), pp. 1–2; P2002 (Analysis of operations of 549<sup>th</sup> Motorised Brigade, 30 March [sic] 1999).

<sup>1579</sup> P1424 (Report of the 243<sup>rd</sup> Mechanised Brigade, 8 August 1998); P1613 (Order signed by Pavković, 27 August 1998); P1101 (Order of the PrK, 5 September 1998), p. 3; P1429 (Order of the PrK, 9 September 1998), p. 2; P1441 (PrK Command Request to provide details on MUP forces in respective area of responsibility, 8 October 1998).

<sup>1580</sup> P1401 (Report from PrK to 3rd Army, 13 May 1998), pp. 2–3.

<sup>1581</sup> Krsman Jelić, T. 19125 (27 November 2007).

<sup>1582</sup> P1424 (Report of the 243<sup>rd</sup> Mechanised Brigade, 8 August 1998); *see also* P1613 (Order signed by Pavković, 27 August 1998).

<sup>1583</sup> 5D651 (Weekly report of the OSCE liaison committee, 25 February 1999) p. 7.

<sup>1584</sup> Krsman Jelić, T. 18846–18847 (22 November 2007). *See also* 5D1337 (Map of PrK units).

<sup>1585</sup> Krsman Jelić, T. 18966 (23 November 2007). *See also* 5D1337 (Map showing area of responsibility of the 243<sup>rd</sup> Brigade).

Mechanised Brigade's area of responsibility was Suva Reka/Suhareka municipality, in conjunction with the 549<sup>th</sup> Motorised Brigade.<sup>1586</sup>

### (3) The 52<sup>nd</sup> Artillery Rocket Brigade

619. Novica Stamenković testified that the 52<sup>nd</sup> Artillery Rocket Brigade was referred to in the alternative as the 52<sup>nd</sup> Anti-aircraft Defence Artillery Brigade.<sup>1587</sup> Colonel Miloš Došan was the Commander of the brigade when the crimes charged in the Indictment were allegedly committed, and the Chief of Staff was Lieutenant Colonel Stanković.<sup>1588</sup>

620. Sergej Perović, the chief of the security organ of the 52<sup>nd</sup> Artillery Rocket Brigade,<sup>1589</sup> testified that it was stationed in the Đakovica/Gjakova garrison.<sup>1590</sup> This was confirmed by Nike Peraj who was assigned there on 21 December 1998.<sup>1591</sup>

#### (B) Wartime forces attached to the Priština Corps

621. After the proclamation of a state of imminent threat of war and the subsequent declaration of a state of war by the FRY Government,<sup>1592</sup> the Priština Corps activated some of its wartime units, such as the 52<sup>nd</sup> Medical Battalion and the 52<sup>nd</sup> Artillery Battery.<sup>1593</sup> In addition, it was reinforced during the NATO campaign by resubordinated units and formations from other strategic groups and operative formations of the VJ, as discussed below.

622. Resubordinated units were in principle ranked one level below the unit they were resubordinated to, and were under an obligation to obey orders issued by the commanding officer to whom they were resubordinated. Thus, "the original parent unit had no right to interfere in commanding over" the resubordinated unit during the execution of combat tasks. Nevertheless,

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<sup>1586</sup> P1969 (Joint Command Order, 28 March 1999), pp. 6–8; *see also* P2000 (Order of the 549<sup>th</sup> Motorised Brigade, 29 March 1999), pp. 2–4.

<sup>1587</sup> Novica Stamenković, T. 20121–20122 (12 December 2007).

<sup>1588</sup> Nike Peraj, P2248 (witness statement dated 18 April 2000), para. 6, P2253 (witness statement dated 8–9 August 2006), para. 6; P950 (Vladimir Lazarević interview with the Prosecution), pp. 33–34; Milan Kotur, T. 20687 (21 January 2008).

<sup>1589</sup> Sergej Perović, 5D1396 (witness statement dated 8 January 2008), paras. 4–5.

<sup>1590</sup> Sergej Perović, 5D1396 (witness statement dated 8 January 2008), para. 4.

<sup>1591</sup> Nike Peraj, T. 1585 (14 August 2006), P2248 (witness statement dated 18 April 2000), para. 5, P2253 (witness statement dated 8–9 August 2006), para. 4.

<sup>1592</sup> P992 (Decision to proclaim a state of imminent threat of war, 23 March 1999); P991 (Decision to declare a state of war, 24 March 1999).

<sup>1593</sup> 5D1370 (PrK organigram: command and coordination in wartime).

resubordinated units were also obliged to report on their activities to both their new and old command.<sup>1594</sup>

623. According to Miodrag Simić, the reinforcement of units with other units or, in other words, the resubordination of units to lower commands, was “legitimately and exclusively the right of the commander in charge” of the units.<sup>1595</sup> Although it was up to the Chief of the General Staff/Supreme Command Staff to decide on the resubordination of units, the actual resubordination of a unit from one formation to another was carried out on the basis of an order issued by the higher level command, as explained by Mandić.<sup>1596</sup>

624. The 175<sup>th</sup> Infantry Brigade, the 7<sup>th</sup> Infantry Brigade,<sup>1597</sup> and the 211<sup>th</sup> Armoured Brigade (commanded by Mihajlo Gergar),<sup>1598</sup> all from the Niš Corps, the 37<sup>th</sup> Motorised Brigade from the 2<sup>nd</sup> Army Užice Corps (commanded by Ljubiša Diković),<sup>1599</sup> the 63<sup>rd</sup> Parachute Brigade,<sup>1600</sup> the 252<sup>nd</sup> Armoured Brigade and the 252<sup>nd</sup> Tactical Group from the 1<sup>st</sup> Army Kragujevac Corps,<sup>1601</sup> the 202<sup>nd</sup> Logistics Base from the 3<sup>rd</sup> Army,<sup>1602</sup> the Military Police Company of the 1<sup>st</sup> Army, and some Special Units from the General Staff (such as the 72<sup>nd</sup> Special Brigade from the VJ Special Units Corps),<sup>1603</sup> were all among the units resubordinated to the Priština Corps during the NATO campaign.

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<sup>1594</sup> Miloš Mandić, T. 20909–20911 (23 January 2008), 5D1391 (witness statement dated 8 January 2008), paras. 13, 15.

<sup>1595</sup> Miodrag Simić, 3D1089 (witness statement dated 15 August 2007), para. 20; *see also* Miloš Mandić, 5D1391 (witness statement dated 8 January 2008), para. 13.

<sup>1596</sup> Miloš Mandić, 5D1391 (witness statement dated 8 January 2008), para. 13; *see also* Miloš Mandić, 5D1391 (witness statement dated 8 January 2008), para. 14.

<sup>1597</sup> Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 54; 3D1116 (Radovan Radinović’s Expert Report), p. 65; P950 (Vladimir Lazarević interview with the Prosecution), pp. 42–45. *See also* 5D84 (PrK Combat Report to 3<sup>rd</sup> Army, 3 April 1999), p. 2.

<sup>1598</sup> Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 54; Milutin Filipović, T. 19266 (28 November 2007); 3D1116 (Radovan Radinović’s Expert Report), pp. 65–66; P950 (Vladimir Lazarević interview with the Prosecution), pp. 42–45. *See also* 5D84 (PrK Combat Report to 3<sup>rd</sup> Army, 3 April 1999), p. 2.

<sup>1599</sup> Ljubiša Diković, T. 19870 (10 December 2007); Ljubiša Stojimirović, T. 17700 (26 October 2007), 4D506 (witness statement dated 2 October 2007), para. 54; 3D1116 (Radovan Radinović’s Expert Report), pp. 65–66; P950 (Vladimir Lazarević interview with the Prosecution), pp. 42–45.

<sup>1600</sup> Nike Peraj testified that the 63<sup>rd</sup> Parachute Brigade participated in the Carragoj Valley operation on 27 and 28 April 1999. Nike Peraj, P2253 (witness statement dated 8–9 August 2006), para. 65. *See also* Ljubiša Stojimirović, T. 17656–17657 (26 October 2007), 4D506 (witness statement dated 2 October 2007), paras. 2, 4, 19, 28, 54; K73, T. 3327 (13 September 2006) (closed session).

<sup>1601</sup> Miloš Mandić, T. 20906, 20916–20917 (23 January 2008), 5D1391 (witness statement dated 8 January 2008), paras. 3, 7; Milutin Filipović, T. 19266 (28 November 2007); Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 54; 3D1116 (Radovan Radinović’s Expert Report), pp. 65–66; P950 (Vladimir Lazarević interview with the Prosecution), pp. 42–45.

<sup>1602</sup> Vladimir Lazarević, T. 17970 (9 November 2007); 5D180 (Order for resubordination of the part of the 3<sup>rd</sup> Army units to the PrK, 8 April 1999); 3D1116 (Radovan Radinović’s Expert Report), p. 31; P950 (Vladimir Lazarević interview with the Prosecution), p. 326.

<sup>1603</sup> Ljubiša Stojimirović, T. 17656–17657 (26 October 2007), 4D506 (witness statement dated 2 October 2007), paras. 4, 6, 54, 65.



625. Thus, at some point during the NATO bombing, more than 30 units were directly subordinated to the Priština Corps Commander, Lazarević.<sup>1604</sup>

*iii. Military Territorial Organs in Kosovo*

626. The purpose of the military territorial system was defined in terms of the administration of compulsory military service as provided by article 280 of the Law on the VJ: “the territorial military organs shall ensure the implementation of compulsory military service in the territory for which they were formed... [and] keep the record of military conscripts.”<sup>1605</sup> Thus, the military territorial organs were in charge of the maintenance of manpower levels in units and institutions of the VJ through conscription, and the peacetime function of the Military District and its subdivisions related mainly to the cycling of conscripts through their period of compulsory service and into the reserve forces, as described briefly above.<sup>1606</sup>

627. In early 1999 there existed three layers of organisation of the military territorial organs in Kosovo. The Military District (*Vojni Okrug*) was subdivided into a number of Military Departments (*Vojni Odsek*). These Departments controlled a number of Military Territorial Detachments activated during wartime, as well as one Military Territorial Artillery Battalion.<sup>1607</sup> Each Military Department had a platoon of military police, and the Military District had a company.<sup>1608</sup>

(A) The Priština Military District

628. The whole territory of Kosovo was under the control of the Priština Military District, which covered the territory of 29 municipalities.<sup>1609</sup> During peacetime the Priština Military District was answerable to the 3<sup>rd</sup> Army. However, it was resubordinated to the Priština Corps as of 7 April 1999, by order of the 3<sup>rd</sup> Army Command.<sup>1610</sup>

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<sup>1604</sup> 5D1370 (PrK organigram: command and coordination in wartime).

<sup>1605</sup> P984 (FRY Law on the VJ), article 280. *See also* 3D1116 (Radovan Radinović’s Expert Report), p. 28.

<sup>1606</sup> P984 (FRY Law on the VJ), article 16.

<sup>1607</sup> Zlatomir Pešić, P2502 (witness statement dated 30 January 2004), para. 6; P984 (FRY Law on the VJ), article 279. *See also* Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), paras. 22–23.

<sup>1608</sup> Zlatomir Pešić, P2502 (witness statement dated 30 January 2004), para. 17.

<sup>1609</sup> Tomislav Mitić, T. 20879–20880 (23 January 2008); 4D240 (Structure, deployment, and manning level of the 3rd Army military-territorial component), p. 1.

<sup>1610</sup> 5D180 (Order for resubordination of the part of the 3rd Army units to the PrK, 8 April 1999); Zlatomir Pešić, P2502 (witness statement dated 30 January 2004), para. 6; Miodrag Simić, T. 15591 (13 September 2007); 3D1116 (Radovan Radinović’s Expert Report), p. 30; Radojko Stefanović, T. 21729 (6 February 2008); P950 (Vladimir Lazarević interview with the Prosecution), pp. 326–329, 391–394. *See also* P991 (Decision to declare a state of war, 24 March 1999).

629. Colonel Zlatomir Pešić was the commander of the Priština Military District from January 1999, succeeding Vojkan Savić.<sup>1611</sup> Given that the Priština Military District was led by a colonel, it represented a military command equivalent in size to either a regiment or a brigade; it therefore required its own staff and headquarters.<sup>1612</sup>

630. A primary responsibility of the Priština Military District and its Military Departments in wartime was to oversee the mobilisation of reservists and conscripts to the Priština Corps.<sup>1613</sup> Both had roles in the planning, organising, and implementing of compulsory military service in the territory of Kosovo, as well as in the mobilisation of its units and the support of the general mobilisation that was being carried out in Kosovo.<sup>1614</sup>

631. The entire Priština Military District was resubordinated to the Priština Corps by 7 April 1999 at the latest.<sup>1615</sup>

#### (B) Military Departments

632. The Priština Military District had five Military Departments under its control: Priština/Prishtina, Prizren, Peć/Peja, Gnjilane/Gjilan, and Kosovska Mitrovica/Mitrovica.<sup>1616</sup> Each of the five Military Departments in Kosovo had a command, formed by the commander of the Department and other units directly subordinated to him, such as headquarters administration, communications platoon, military police platoon, and a reconnaissance and sabotage platoon.<sup>1617</sup>

633. Tomislav Mitić, who was the Commander of the Prizren Military Department, testified that, during peacetime Military Departments carried “out tasks related to compulsory military service, including military examinations, sending recruits to serve and later assigning them to VJ war units and keeping a central file for other liable for military service”.<sup>1618</sup> According to Mitić, Military

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<sup>1611</sup> Vojkan Savić then became Pavković’s Chef de Cabinet. Zlatomir Pešić, P2502 (witness statement dated 30 January 2004), para. 5.

<sup>1612</sup> Zlatomir Pešić, P2502 (witness statement dated 30 January 2004), para. 8.

<sup>1613</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 22; Zlatomir Pešić, P2502 (witness statement dated 30 January 2004), para. 9.

<sup>1614</sup> 3D1116 (Radovan Radinović’s Expert Report), p. 29.

<sup>1615</sup> 4D85 (order of 3<sup>rd</sup> Army to resubordinate Priština Military District to PrK, 7 April 1999).

<sup>1616</sup> 4D240 (Structure, deployment and manning level of the 3rd Army military-territorial component), p. 1; Zlatomir Pešić, P2502 (witness statement dated 30 January 2004), para. 6; Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 24; Tomislav Mitić, T. 20880 (23 January 2008). Slobodan Kosovac confirmed that one of the Departments was centred on Kosovska Mitrovica/Mitrovica. Slobodan Kosovac, T. 15831 (18 September 2007). Cf. P950 (Vladimir Lazarević interview with the Prosecution), pp. 46–47; 3D1116 (Radovan Radinović’s Expert Report), p. 28.

<sup>1617</sup> Tomislav Mitić, 5D1390 (witness statement dated 27 December 2007), paras. 3, 18–19; *see also* 5D1076 (Document of the Prizren Military Department, 15 May 1998), p. 2 (referring to “independent platoons” as part of the Military Departments and as “forces for the control of the territory”).

<sup>1618</sup> Tomislav Mitić, 5D1390 (witness statement dated 27 December 2007), para. 4.

Departments were not tasked with the defence of the population and the command of the Prizren Military Department did not engage forces in that task, even when the “terrorist operations escalated in 1998”.<sup>1619</sup> However, that flies in the face of a document from the Prizren Military Department, which states that some of the forces under the command of that Department were to be engaged in the “combat control of the territory, [and the] routing and destroying of the armed rebellion”, to “provide security” for VJ facilities, and to co-ordinate with other VJ units to rout and destroy “the forces of the armed rebellion”.<sup>1620</sup>

634. Zlatomir Pešić testified that the maximum strength of the Priština Military District “in the course of 1999” was about 12,000 men and included the forces working directly for the Military District, the Military Departments, the Military Territorial Detachments, and the forces of one artillery battalion of the anti-aircraft defence also subordinated to the Priština Military District.<sup>1621</sup>

### (C) Military Territorial Detachments

635. Military Territorial Detachments were subordinate units of the Military Departments,<sup>1622</sup> and as such they were subordinated to the VJ command.<sup>1623</sup> There were 24 Military Territorial Detachments subordinated to the Military Departments of the Priština Military District in early 1999.<sup>1624</sup> According to Pešić, each of the Military Territorial Detachments was composed of between 200 and 400 reservists.<sup>1625</sup> However, Miloš Mandić testified that the Military Territorial Detachment subordinated to his brigade during the NATO bombing was composed of around 100 men.<sup>1626</sup> Similarly, Savić testified that, of Military Territorial Detachments resubordinated to his brigade, two had between 200 and 300 men, and the other two had “100 to 120, maybe 150 men”.<sup>1627</sup>

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<sup>1619</sup> Tomislav Mitić, 5D1390 (witness statement dated 27 December 2007), paras. 10, 17; 5D1010 (Communication from the Prizren Military Department to the Priština Military District, 24 June 1998).

<sup>1620</sup> 5D1076 (Document of the Prizren Military Department dated 15 May 1998), pp. 2–3.

<sup>1621</sup> Zlatomir Pešić, T. 7287 (24 November 2006).

<sup>1622</sup> Zlatomir Pešić, T. 7161–7162 (22 November 2006); 3D1116 (Radovan Radinović’s Expert Report), p. 31; Vladimir Marinković, T. 20281 (14 December 2007).

<sup>1623</sup> Miodrag Simić, T. 15591 (13 September 2007).

<sup>1624</sup> 4D240 (Structure, Deployment and Manning level of the 3<sup>rd</sup> Army Military Territorial Component), p. 1, stating that, by 14 January 1999, the Priština Military Department had seven Military Territorial Detachments; the Prizren, Peć, and Gnjilane Military Departments had four Military Territorial Detachments each; and the Kosovska Mitrovica Military Department had five Military Territorial Detachments.

<sup>1625</sup> Zlatomir Pešić, T. 7159 (22 November 2006); P2502 (witness statement dated 30 January 2004), para. 10. *Cf.* Božidar Delić, T. 19466 (4 December 2007).

<sup>1626</sup> Miloš Mandić, T. 20945–20947 (24 January 2008).

<sup>1627</sup> Ljubomir Savić, T. 20982 (24 January 2008).

636. There is evidence to suggest that the Military Territorial Detachments were only activated during wartime;<sup>1628</sup> however, other evidence suggests that various Military Territorial Detachments were activated at some point during 1998, when a state of emergency or of war had not yet been declared. According to a document from the Prizren Military Department sent to the Priština Military District in May 1998, the Prizren Military Department Command was tasked with the mobilisation of part of the reserve forces of the 549<sup>th</sup> Motorised Brigade and the 55<sup>th</sup> Border Battalion, and with “ensuring the mobilisation of the 68<sup>th</sup>, 70<sup>th</sup>, 101<sup>st</sup> and 108<sup>th</sup> VtOd /Military Territorial Detachments/”; these tasks were to be carried out through the engagement of recruitment boards, and the recruitment and replenishment of the reserve units of the Military Department Command. However, this document states that the mobilisation was “suggested” and that it would take place in case of an “aggression”, and therefore it is not clear whether it in fact took place.<sup>1629</sup> However, by 18 July 1998 the position was clear. An operations report of that date establishes that one of the Department’s tasks for the following day was “providing help to the commands of the VToD /Military Territorial Detachments/ subordinated to the Department,”<sup>1630</sup> showing that the Military Territorial Detachments were already operating at that time. How many there were is unclear.

637. What is clear is that all 24 Military Territorial Detachments subordinated to the Priština Military District were activated early in 1999.<sup>1631</sup> They were manned with people from the territory of the specific Department to which the detachments belonged.<sup>1632</sup> Since Kosovo Albanians “avoided military service”, often war units could not be brought up to full strength.<sup>1633</sup> Pešić confirmed that none of the 24 Detachments was ever at full strength due to a “lack of non Albanians” to fill them, and because Kosovo Albanians were not included in these Detachments.<sup>1634</sup>

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<sup>1628</sup> Zlatomir Pešić, T. 7151–7152 (22 November 2006). See P1925 (Order of the VJ General Staff, 23 March 1999), by which the 3rd Army Commander was ordered to mobilise the following Military Territorial Detachments by 25 March 1999: the 64<sup>th</sup> and 174<sup>th</sup> Detachments from the Priština Military Department; the 54<sup>th</sup> Detachment from the Kosovska Mitrovica Military Department; the 113<sup>th</sup> Detachment from the Peć Military Department; and the 70<sup>th</sup> and 185<sup>th</sup> Detachments from the Prizren Military Department. Tomislav Mitić, 5D1390 (witness statement dated 27 December 2007), paras. 17, 23.

<sup>1629</sup> 5D1076 (Document of the Prizren Military Department 15 May 1998); pp. 1–2; Tomislav Mitić, 5D1390 (witness statement dated 27 December 2007), para. 17.

<sup>1630</sup> 5D1011 (Operation report of the Prizren Military Department, 18 July 1998), p. 2.

<sup>1631</sup> Zlatomir Pešić, T. 7287 (24 November 2006); 4D240 (Structure, Deployment and Manning level of the 3rd Army Military Territorial Component), p. 1.

<sup>1632</sup> Tomislav Mitić, 5D1390 (witness statement dated 27 December 2007), para. 21; see also Miloš Mandić, 5D1391 (witness statement dated 8 January 2008), para. 42.

<sup>1633</sup> Tomislav Mitić, 5D1390 (witness statement dated 27 December 2007), para. 21.

<sup>1634</sup> Zlatomir Pešić, T. 7159 (22 November 2006), P2502 (witness statement dated 30 January 2004), para. 10. There was discussion in the General Staff/Supreme Command Staff Collegium to create the 9<sup>th</sup> Military Territorial Detachment. It was a newly formed detachment of the army, based on a proposal from the 3<sup>rd</sup> Army Command; it was created with the purpose to establish a single unit where the officers (non-commissioned and commissioned) would be Kosovo Albanians. The purpose of such an initiative was to “increase the trust of the Albanian population in Kosovo”

Lazarević put the total number of men in the Military Territorial Detachments at 9,000 in wartime.<sup>1635</sup>

638. The wartime tasks of the Military Territorial Detachments were: the securing/protection of roads, passes, crossings, and facilities; the combat control of territory; and, on occasion, conducting small scale combat operations against the KLA.<sup>1636</sup> Miloš Mandić added that in order to be able to secure facilities, “they had their positions overlooking roads”.<sup>1637</sup>

639. Military Territorial Detachments were to remain under the command of their district; however, they could be resubordinated to a different Military Department within the Priština Military District, or to VJ units outside the Priština Military District, including battalions of the Priština Corps.<sup>1638</sup> There is a significant amount of evidence to the effect that most Military Territorial Detachments within the Priština Military District were resubordinated to various Priština Corps units at some point during the NATO bombing;<sup>1639</sup> however, some remained subordinated to their basic command throughout the NATO bombing.<sup>1640</sup>

640. According to Lazarević, Military Territorial Detachments which were not resubordinated to another unit and remained under their Military Department’s chain of command could be engaged for the control of territory and for the execution of small scale combat operations under special circumstances.<sup>1641</sup> Lazarević added that, in instances where Military Territorial Detachments were

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for VJ. The Chief of General Staff accepted this proposal; however, the establishment of this unit failed and all the relevant documents were scrapped. Slobodan Kosovac, T. 15815 (17 September 2007).

<sup>1635</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 45–46.

<sup>1636</sup> Miloš Mandić, T. 20945–20947 (24 January 2008); Zlatomir Pešić, P2515 (supplemental information sheet, 21 November 2006), para. 31; 3D1116 (Radovan Radinović’s Expert Report), p. 28; *see also* 5D1076 (Document of the Prizren Military Department 15 May 1998); p. 2; P950 (Vladimir Lazarević interview with the Prosecution), pp. 45–46.

<sup>1637</sup> Miloš Mandić, T. 20946 (24 January 2008).

<sup>1638</sup> Zlatomir Pešić, T. 7162–7163 (22 November 2006); P950 (Vladimir Lazarević interview with the Prosecution), pp. 45–46. *See also* 5D1076 (Document of the Prizren Military Department, 15 May 1998), p. 2, establishing that the 68<sup>th</sup> Military Territorial Detachment would be attached to the 549<sup>th</sup> Motorised Brigade and the 101<sup>st</sup> Military Territorial Detachment would be attached to the 354<sup>th</sup> Motorised Brigade in May 1998.

<sup>1639</sup> *See* Ljubiša Stojimirović, T. 17654–17655 (26 October 2007); Milutin Filipović, T. 19266 (28 November 2007); Krsman Jelić, T. 18973 (26 November 2007); Božidar Delić, T. 19466 (4 December 2007); Vladimir Marinković, T. 20273 (14 December 2007); Ljubomir Savić, T. 20980–20981 (24 January 2008); 4D198 (3<sup>rd</sup> Army Order with List of Instructions, 7 May 1999), para. 13; P1925 (Order of the VJ General Staff, 23 March 1999); Miloš Mandić, 5D1391 (witness statement dated 8 January 2008), para. 42; P2806 (Dispatch re subordination of military districts, 29 March 1999).

<sup>1640</sup> Vladimir Lazarević, T. 17828 (7 November 2007). Pešić’s opinion was that the Military Territorial Detachments were selectively and preferentially mobilised (rather than resubordinated) in areas in which “the VJ presence ... was not as strong as in other parts of Kosovo”; Zlatomir Pešić, P2502 (witness statement dated 30 January 2004), para. 23.

<sup>1641</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 45–47. This is supported by a document from the Prizren Military Department to the Priština Military District issued in May 1998 establishing that the 108<sup>th</sup> Military Territorial Detachment [would be involved] in the role of forces providing security for the territory”; 5D1076 (Document of the Prizren Military Department, 15 May 1998), p. 2.

conducting combat operations and were not resubordinated to Priština Corps units, there still had to be co-ordination with the Priština Corps.<sup>1642</sup>

641. The Chamber finds that the members of the military territorial detachments numbered between 9,000 and 12,000 during the NATO air campaign. While all of these detachments were subordinated to the 3<sup>rd</sup> Army throughout the conflict, some of these units were re-subordinated to the Priština Corps. The Chamber addresses the resubordination of specific territorial detachments to the Priština Corps, where it arises later.

*iv. Volunteers*<sup>1643</sup>

642. The VJ was authorised to be reinforced with volunteers during a state of war, imminent threat of war, or state of emergency.<sup>1644</sup> Once volunteers were entered in the VJ records and were assigned to a VJ unit, they became members of the VJ with all the rights and obligations stemming from that status.<sup>1645</sup>

643. People who did not have a wartime assignment in any of the structures of the defence and security system in the FRY, namely in the VJ, the MUP, or the civil defence and civil protection units, could become a volunteer.<sup>1646</sup> Importantly, foreign nationals could also acquire the status of volunteers in the VJ.<sup>1647</sup>

644. The Administration for Recruitment, Mobilisation, and System Issues of the VJ's General Staff was the office in charge of the organisation and mobilisation of volunteers.<sup>1648</sup> In 1999 three reception centres for volunteers were established within the FRY to receive and evaluate potential volunteers: one at the command of the 1<sup>st</sup> Army in the Belgrade Military District, a second one at the command of the 2<sup>nd</sup> Army in the Podgorica Military District, and a third at the command of the

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<sup>1642</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 46–48.

<sup>1643</sup> During the trial the word “volunteer” was used in numerous contexts to describe military reserve detachments, police reservists, and others. This section only deals with volunteers within the meaning of article 15 of the FRY Law on the VJ.

<sup>1644</sup> P984 (FRY Law on the VJ), article 15.

<sup>1645</sup> P984 (FRY Law on the VJ), article 15; 3D481 (Supreme Command order, 14 April 1999), p. 2. *See also* 3D1116 (Radovan Radinović's Expert Report), p. 166; Slobodan Kosovac, T. 15859 (18 September 2007); Vladimir Marinković, T. 20272 (14 December 2007); Đorđe Čurčin, 3D1121 (witness statement dated 24 August 2007), para. 30.

<sup>1646</sup> 3D1116 (Radovan Radinović's Expert Report), p. 163.

<sup>1647</sup> 3D1116 (Radovan Radinović's Expert Report), p. 164; P984 (FRY Law on the VJ), article 8. Pešić explained that at the time relevant to the Indictment, most eligible men in the FRY had already been assigned a reserve Military Territorial Detachment, after having completed their compulsory military service. Zlatimir Pešić, T. 7152 (22 November 2006). Thus, the only people able to volunteer were those who had not been assigned a reserve Military Territorial Detachment or who were assigned a reserve Military Territorial Detachment that had not been called into service. Aleksandar Vasiljević, T. 8860 (22 January 2007).

<sup>1648</sup> Slobodan Kosovac, T. 15802–15803 (17 September 2007), 3D481 (Order of Supreme Command, 14 April 1999)

3<sup>rd</sup> Army in the Niš Military District.<sup>1649</sup> According to an order from the Supreme Command Staff, dated 7 April 1999, reception centres were to pay special attention to volunteers wanting to go to Priština Corps units to ensure compliance with applicable legislation that required that individuals who already had wartime assignments could not volunteer.<sup>1650</sup> A further order stated that the reception centres were to carry out psychological processing of volunteers, register them in the records, provide them with weapons and equipment, and send them to training units.<sup>1651</sup>

645. However, Vasiljević testified that the 7 April order was not complied with uniformly.<sup>1652</sup> This is supported by a progress report on the topic of volunteers issued by the 3<sup>rd</sup> Army and sent to the Supreme Command Staff on 10 April 1999, which blamed the 1<sup>st</sup> Army for sending numerous, unscreened volunteers, many of whom were obviously medically unfit for service or were members of paramilitary groups.<sup>1653</sup> According to this document, of the 1,517 volunteers admitted, 849 were deployed; however, due to a shortage of personnel performing security checks, some volunteers with criminal backgrounds were among them.<sup>1654</sup> Furthermore, volunteers continued to be placed in groups in VJ units after these orders, as is discussed below in Section VIII.G on the individual criminal responsibility of Lazarević.

646. Kosovac testified that about 6,000 volunteers reported to the VJ during the NATO bombing: 20 percent of these did not make it past the reception centres and 20 percent were removed from the units to which they were sent; the rest of the volunteers remained in the VJ forces until the end of the war. About 150 foreigners from various countries arrived in the FRY to join as volunteers, and 140 of them were admitted.<sup>1655</sup>

(A) Admission of volunteers in the 3<sup>rd</sup> Army, Priština Corps, and subordinate units

647. At the start of the NATO bombing, “a few hundred” volunteers from all over the FRY arrived in Niš to register and join the VJ.<sup>1656</sup> Žarko Kostić and a number of officers were assigned by Pavković to create a reception centre in order to arrange the testing, acceptance, training, and

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<sup>1649</sup> P1479 (Supreme Command Staff order on volunteers, 7 April 1999), p. 1; Branko Gajić, T. 15310 (10 September 2007).

<sup>1650</sup> P1479 (Supreme Command Staff order on volunteers, 7 April 1999), p. 1.

<sup>1651</sup> 3D481 (Order of Supreme Command Staff, 14 April 1999), p. 1.

<sup>1652</sup> Aleksandar Vasiljević, T. 8855 (22 January 2007).

<sup>1653</sup> P1938 (3<sup>rd</sup> Army Report to Supreme Command Staff, 10 April 1999), pp. 1–2. Žarko Kostić, T. 17504–17505 (23 October 2007), 4D501 (witness statement dated 28 September 2007), paras. 35–36.

<sup>1654</sup> P1938 (3<sup>rd</sup> Army Report to Supreme Command Staff, 10 April 1999), pp. 1–2.

<sup>1655</sup> Slobodan Kosovac, T. 15810 (17 September 2007), T. 15858 (18 September 2007).

<sup>1656</sup> Žarko Kostić, 4D501 (witness statement dated 28 September 2007), para. 27.

arming of volunteers. After a few days training volunteers were transferred to war units of the Priština Corps and the Niš Corps according to their military or occupational speciality.<sup>1657</sup>

648. Slobodan Kosovac gave evidence that the first volunteers reported to the reception centres on the night of 23 March 1999.<sup>1658</sup> However, as soon as volunteers were admitted into the VJ, problems were noted. Between 24 March and 14 April three orders and one supplement were issued, ostensibly to regulate the intake of volunteers and to reduce problems.<sup>1659</sup> These orders established a system of screening for a number of factors, including citizenship, health condition, and fitness “from a security point of view”.<sup>1660</sup> Volunteers could be up to 40 years of age if they were assigned to “arms of service”, and up to 60 if they were assigned to any of the technical sectors of the VJ.<sup>1661</sup> It was forbidden for volunteers to be deployed to units in groups, due to “earlier negative experiences.”<sup>1662</sup> Branko Gajić and Žarko Kostić testified that no more than five volunteers should be assigned to a single unit to avoid problems.<sup>1663</sup>

649. Volunteers continued to be a problem. On 6 May 1999 the 3<sup>rd</sup> Army Command issued a directive forbidding wartime units to induct any volunteers who had not been sent via the 3<sup>rd</sup> Army’s reception centre.<sup>1664</sup> On 7 May the 3<sup>rd</sup> Army Commander issued another order requesting units to immediately remove from their forces volunteers not adhering to these orders, to organise their transportation back to Niš, and to make them return their weapons and personal equipment.<sup>1665</sup>

650. Kostić asserted that the 3<sup>rd</sup> Army did not need to accept volunteers during the NATO bombing because there were enough soldiers and because the losses sustained by its units were minimal. Nevertheless, volunteers were accepted because of the “Serbian war tradition”.<sup>1666</sup> He

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<sup>1657</sup> Žarko Kostić, 4D501 (witness statement dated 28 September 2007), paras. 28–33; *see also* Krsman Jelić, T. 18879 (23 November 2007); Božidar Delić, T. 19667 (6 December 2007); Franjo Glončak, 5D1395 (witness statement dated 26 December 2007), para. 4.

<sup>1658</sup> Slobodan Kosovac, T. 15802 (17 September 2007).

<sup>1659</sup> Slobodan Kosovac, T. 15803 (17 September 2007). *See* P1479 (Supreme Command order, 7 April 1999), p. 3. Radinović testified that the 7 April Order repealed an order issued on 24 March 1999 and its supplement issued on 29 March 1999. 3D1116 (Radovan Radinović’s Expert Report), p. 167; 3D490 (Telegram sent by Ojdanić, 4 May 1999), p. 1. *See also* Zlatoje Terzić, 3D1093 (witness statement dated 18 August 2007), para. 8.

<sup>1660</sup> “Security point of view” presumably refers to the presence or absence of a criminal history; P1479 (Supreme Command Staff order on volunteers, 7 April 1999), pp. 1–3.

<sup>1661</sup> Slobodan Kosovac, T. 15825, 15859 (18 September 2007).

<sup>1662</sup> P1479 (Supreme Command Staff order on volunteers, 7 April 1999), p. 3. *See also* Žarko Kostić, 4D501 (witness statement dated 28 September 2007), para. 33; Miodrag Simić, T. 15667 (14 September 2007); 3D481 (Order of Supreme Command, 14 April 1999); Aleksandar Vasiljević, T. 8854 (22 January 2007).

<sup>1663</sup> Branko Gajić, T. 15266–15267 (7 September 2007); Žarko Kostić, 4D501 (witness statement dated 28 September 2007), para. 33.

<sup>1664</sup> 4D353 (Order from the 3rd Army Command on the intake of volunteers, 6 May 1999). *See also* Žarko Kostić, 4D501 (witness statement dated 28 September 2007), para. 39; T. 17505 (23 October 2007); 5D936 (Order of the 15<sup>th</sup> Armoured Brigade Command on the intake of volunteers, 12 May 1999).

<sup>1665</sup> 4D198 (3<sup>rd</sup> Army Order with List of Instructions, 7 May 1999), para. 11.

<sup>1666</sup> Žarko Kostić, 4D501 (witness statement dated 28 September 2007), para. 40.



stated that approximately 2,500 volunteers passed through the 3<sup>rd</sup> Army receiving centre, and 1,800 were appointed to war units of the Priština and Niš Corps.<sup>1667</sup> Lazarević recalled that the Priština Corps admitted around 1,400 volunteers as soldiers, around 120 of whom were quickly dismissed because the Corps was not satisfied with their appearance and their conduct in the unit, despite the controls in place.<sup>1668</sup>

651. Delić testified that there were “quite a lot” of volunteers within the 549<sup>th</sup> Motorised Brigade;<sup>1669</sup> volunteers in the brigade were divided over the various units, and were of different nationalities, including Russian and Ukrainian.<sup>1670</sup> Delić clarified that, although foreign volunteers joined the 549<sup>th</sup> Motorised Brigade, they did it in an organised way, following the normal procedure for the admission of volunteers.<sup>1671</sup> He finally stated that he complied with an order forbidding “all-volunteer” units, due to bad experiences with looting and other crimes.<sup>1672</sup>

652. Vladimir Marinković testified that on a few occasions the 15<sup>th</sup> Armoured Brigade received groups of volunteers who had already been screened at the recruitment centre in Belgrade, who refused to join units subordinated to the Brigade in their individual capacity, and who wanted to set up their own “volunteers” unit. According to Marinković, since this type of unit was not permitted, these volunteers were sent back to the centres from which they had come.<sup>1673</sup> However, upon questioning about his inspection of the 175<sup>th</sup> Motorised Brigade in mid-April 1999, Dragiša Marinković, who was the Deputy Commander for Information and Morale in the Priština Corps Command, testified that he came across a group in the brigade which was entirely formed of volunteers. He described these volunteers as “not soldierly ... they weren’t well-kept, neat”, and added that they were wearing mismatched pieces of uniform, looking shabby and not adhering to protocol.

653. Branko Gajić testified that a group of 23 individuals who were members of Jugoslav Petrušić’s “Pauk” (Spider) group joined the 125<sup>th</sup> Motorised Brigade as volunteers, without following the procedure that had been set up by the Supreme Command Staff. According to Gajić, they were “side-stepping” the regular procedures for the reception of volunteers because they had accomplices within the VJ who provided false guarantees that these men had gone through the

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<sup>1667</sup> Žarko Kostić, 4D501 (witness statement dated 28 September 2007), para. 38.

<sup>1668</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 42–45.

<sup>1669</sup> Božidar Delić, T. 19582 (5 December 2007).

<sup>1670</sup> Božidar Delić, T. 19596–19597 (5 December 2007).

<sup>1671</sup> Božidar Delić, T. 19667 (6 December 2007).

<sup>1672</sup> Božidar Delić, T. 19600 (5 December 2007).

<sup>1673</sup> Vladimir Marinković, T. 20272–20273, 20327–20328 (14 December 2007).

formal procedure.<sup>1674</sup> However, this case was just a mistake at the reception centre part of the process,<sup>1675</sup> and these people were quickly discovered and sent back, before they could commit any crimes.<sup>1676</sup> Momir Stojanović added that these people arrived at the Priština Corps as a group, through the normal process for admission of volunteers, and that they were assigned to the 125<sup>th</sup> Motorised Brigade. It was only after they had been assigned that he became aware that they were referred to as Pauk.<sup>1677</sup>

d. Other units in Kosovo

654. During the time relevant to the Indictment there were also a number of units in Kosovo outside of the 3<sup>rd</sup> Army's chain of command, namely units of the Air Force and Anti-Aircraft Defence,<sup>1678</sup> which were subordinated to the command of the Air Force and the Air-Defence.<sup>1679</sup> Although the 3<sup>rd</sup> Army and Priština Corps Commanders were not in command of these units at any stage during the NATO bombing, they liaised with representatives of those forces at the Priština Corps Command.<sup>1680</sup>

655. The only evidence before the Chamber directly bearing on the questions whether and how long the VJ Air Force was active during the conflict is the testimony of Smiljanić that their "aviation" stopped flying in Kosovo on 4 April 1999, that there was one single flight on 4 May, "when a MiG-29 was scrambled to face a group of aeroplanes heading towards Serbia", and that by 4 April NATO had brought down a total of five or six VJ planes.<sup>1681</sup>

656. There are three documents which also have a bearing on the issue. However, one dated 15 May 1999 merely indicates that no VJ planes were flying at that time, and two combat reports from the 125<sup>th</sup> Motorised Brigade of 28 March 1999 and 1 April 1999 suggest that VJ aircraft were still flying as of these dates. While the author of these, the Brigade Commander Dragan Živanović, denied that VJ planes were still flying on these dates, the Chamber considers his evidence to

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<sup>1674</sup> Branko Gajić, T. 15308–15312 (10 September 2007).

<sup>1675</sup> Branko Gajić, T. 15325–15327 (10 September 2007).

<sup>1676</sup> Branko Gajić, T. 15311 (10 September 2007).

<sup>1677</sup> Momir Stojanović, T. 19778–19779 (7 December 2007).

<sup>1678</sup> 3D1116 (Radovan Radinović's Expert Report), p. 31; P950 (Vladimir Lazarević interview with the Prosecution), p. 45.

<sup>1679</sup> Spasoje Smiljanić, T. 15762 (17 September 2007); 3D1116 (Radovan Radinović's Expert Report), pp. 136–137; Ljubiša Stojimirović, T. 17645 (26 October 2007).

<sup>1680</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 230–231.

<sup>1681</sup> P2038 (125<sup>th</sup> Motorised Brigade Combat Report to PrK, 1 April 1999), p. 2; Spasoje Smiljanić, T. 15769, 15785 (17 September 2007).

amount to no more than a statement that VJ planes did not fly over his area of responsibility during the NATO bombing.<sup>1682</sup>

*i. Communication units*

657. In addition to the Air Force and the Anti-Aircraft Defence units in Kosovo, which retained their own chain of command, there were communication units subordinated directly to the VJ General Staff/Supreme Command Staff.<sup>1683</sup> These units, according to Radinović, were “stationary communications units [located] in each garrison and at communications facilities of battalion rank”, and amounted, during the time relevant to the Indictment, to approximately 600 men. These units were never subordinated either to the 3<sup>rd</sup> Army or to the Priština Corps, but retained their own chain of command and discharged tasks according to plans and orders of the Supreme Command.<sup>1684</sup>

3. Forces of the Serbian Ministry of Interior

658. The Ministry of Interior of Serbia or MUP was formed pursuant to the Law on Ministries in February 1991,<sup>1685</sup> with functions related to the security of the state and its citizens.<sup>1686</sup> The Serbian Minister of Interior was Vljako Stojiljković, who was appointed to this post as of 15 April 1997.<sup>1687</sup> The Lukić Defence called Branislav Simonović as an expert witness on the MUP and its structure. However, the Chamber finds that Simonović’s training and references did not qualify him to speak with authority as an expert on organisational structure of the MUP; his expertise was related to the field of crime and community policing, rather than in the structure of the MUP itself.

a. Organs of the MUP

659. The main organisational units of the MUP were the Public Security Department (*Resor Javne Bezbednosti*) (“RJB”) and the State Security Department (*Resor Državne Bezbednosti*) (“RDB”).<sup>1688</sup> Whereas the RJB was tasked with maintaining public order, the RDB was responsible for maintaining state security and responding to threats to the state as an entity,

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<sup>1682</sup> P2033 (125<sup>th</sup> Motorised Brigade Combat Report to PrK, 28 March 1999), p. 4; 5D424 (Document of the Supreme Command Staff, 15 May 1999). *See also* Dragan Živanović, T. 20576–20578 (18 January 2008).

<sup>1683</sup> P950 (Vladimir Lazarević interview with the Prosecution), p. 45.

<sup>1684</sup> 3D1116 (Radovan Radinović’s Expert Report), pp. 31, 136–137.

<sup>1685</sup> 1D456 (Law on Ministries), article 5.

<sup>1686</sup> 1D456 (Law on Ministries), article 7.

<sup>1687</sup> 1D413 (Decision on election on deputy PM and Minister of Interior in the Government of Republic of Serbia, 16 April 1997).

<sup>1688</sup> P2555 (Chart entitled “Command Structure of the Republic of Serbia Ministry of Internal Affairs”). According to Ljubinko Cvetić, P2555 was compiled by Philip Coe of the OTP Military Analyst Team, and Cvetić confirmed that P2555 was correct in relation to the RDB, subject to his view that the SAJ was incorrectly placed and the JSO was not

including through espionage.<sup>1689</sup> Organisational units of the RJB included the Police Administration, the Traffic Safety Administration, the Crime Police Administration, and the Border Police Administration for Foreigners and Administrative Affairs.<sup>1690</sup> At all times relevant to the Indictment the Head of the RJB was Lieutenant General Vlastimir Đorđević.<sup>1691</sup> During 1998 the Head of the RDB was Jovica Stanišić, who on 5 November 1998 was replaced by Radomir Marković.<sup>1692</sup>

*i. Public Security Department (RJB)*

(A) Secretariats of the Interior

660. The Republic of Serbia, including Kosovo, was divided into geographical areas, each with its own Secretariat of the Interior (“SUP”) managed by a “chief of secretariat”. Of the 33 SUPs established on the territory of Serbia, seven were located in Kosovo.<sup>1693</sup> According to article 4 of the Rules on Organisation of the MUP, the Kosovo SUPs were in the municipalities of Gnjilane/Gjilan, Đakovica/Gjakova, Kosovska Mitrovica/Mitrovica, Peć/Peja, Prizren, Priština/Prishtina, and Uroševac/Ferizaj.<sup>1694</sup>

(B) Sectors of the Interior and police stations

661. Each SUP contained several Sectors of the Interior (*Odeljenja Unutrašnjih Poslova*) (“OUPs”) and police stations.<sup>1695</sup> As an example Ljubinko Cvetić, former Head of the Kosovska Mitrovica SUP, explained that his SUP had under its jurisdiction the OUPs of Vučitrn/Vushtrria, Srbica/Skenderaj, and Leposavić/Leposaviq, as well as police stations in Zvečan/Zveçan and Zubin Potok.<sup>1696</sup> Petar Damjanac, the Head of the Glogovac OUP, testified that his OUP fell within the

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directly subordinated to the MUP Staff. Ljubinko Cvetić, T. 8034 (6 December 2006). The Chamber notes that RDB was alternatively referred to as DB, SDB, and RSDB. *See* Ratomir Tanić, T. 6279 (10 November 2006).

<sup>1689</sup> K84, T. 5207 (19 October 2006) (closed session). *See also* 6D1305 (Rules Establishing the Internal Organisation of the Ministry of Interior, 31 December 1997), articles 1–2.

<sup>1690</sup> 6D1305 (Rules Establishing the Internal Organisation of the Ministry of Interior, 31 December 1997), article 13.

<sup>1691</sup> 1D399 (Proclamation on appointment of generals in Ministry of Interior of Republic of Serbia, 28 March 1996); *see* P1251 (Decision the formation of a Staff of the Ministry in Priština), signed by Đorđević as Chief of RJB.

<sup>1692</sup> Ljubinko Cvetić, T. 8037 (6 December 2006); Zoran Mijatović, T. 14565 (29 August 2007); Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 33.

<sup>1693</sup> Ljubinko Cvetić, T. 8044 (7 December 2006); 6D1305 (Rules Establishing the Internal Organisation of the Ministry of Interior), article 3; 6D668 (Expert report of Branislav Simonović), p. 63.

<sup>1694</sup> 6D1305 (Rules Establishing the Internal Organisation of the Ministry of Interior), article 4.

<sup>1695</sup> 6D1305 (Rules Establishing the Internal Organisation of the Ministry of Interior, 31 December 1997), article 4; Ljubinko Cvetić, T. 8046 (7 December 2006).

<sup>1696</sup> Ljubinko Cvetić, T. 8046 (7 December 2006).

remit of the Priština SUP, and therefore reports addressing all the important events were sent to the Priština SUP daily.<sup>1697</sup>

(C) Reserve police or police reservists

662. In addition to the regular MUP personnel staffing the SUPs, OUPs, and police stations, the MUP could be supplemented by reservists.<sup>1698</sup> These reservists could be deployed in case of an imminent threat of war and could also be called on by decision of the Minister of Interior to perform certain peace-time duties.<sup>1699</sup>

663. K25, himself a police reservist until 1998, stated that, due to the low number of people in Kosovo willing to work for the MUP, all Kosovo Serb men were considered reservists, and standard background checks, which were done in relation to the rest of reservists in Serbia, were not made before these men were accepted as part of the reserve forces.<sup>1700</sup> These reservists in Kosovo kept their automatic weapons at home.<sup>1701</sup>

664. In addition to the regular police reservists, Reserve Police Detachments (*Rezervna Policijska Odeljenja*) (“RPOs”), also called “Reserve Police Squads”, were established in the territory of Kosovo in July 1998, in response to the increased “terrorist” activities of the KLA.<sup>1702</sup> These are discussed in more detail below.

(D) RJB special police units: the PJP and the SAJ

665. Pursuant to article 6 of the Rules on Organisation of the MUP, the Special Police Unit<sup>1703</sup> (*Posebne Jedinice Policije*) (“PJP”) and the Special Anti-Terrorist Unit (*Specijalna Antiteroristička Jedinica*) (“SAJ”) were established.

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<sup>1697</sup> Petar Damjanac, T. 23747–23748 (5 March 2008); T. 23789–23790 (6 March 2008).

<sup>1698</sup> Ljubinko Cvetić, T. 8047 (7 December 2006).

<sup>1699</sup> P1737 (Law on Internal Affairs), articles 27–28.

<sup>1700</sup> K25, T. 4678–4683 (11 October 2006); P2439 (witness statement dated 12 September 2001), p. 20.

<sup>1701</sup> K25, T. 4681–4683 (11 October 2006).

<sup>1702</sup> Božidar Filić, T. 24013 (10 March 2008); Ljubinko Cvetić, T. 8050-8055 (7 December 2006); see P2804 (Dispatch from the MUP Staff to the commanders of organisational units of the MUP in Kosovo, 10 July 1998).

<sup>1703</sup> The Chamber notes that the Lukić Defence contests the translation into English of “*Posebne Jedinica Policije*” as “Special Police Unit”, see T. 7339–7341 (24 November 2006) (closed session). According to the Lukić Defence, the word “*posebna*” means “separate” in BCS, whereas the word “special” in English means “*specijalna*” in BCS. Ljubinko Cvetić testified that only the SAJ and the JSO were “special” police units. Ljubinko Cvetić, T. 8039 (6 December 2006). Considering that the Lukić Defence does not contest the existence of a unit known as the “PJP”, the Chamber will not dwell on the exact designation of this unit and will simply refer to it as the “PJP” in this section of the Judgement.

### (1) The PJP

666. The PJP was entrusted with carrying out “special security tasks in the regular circumstances and in the case of a state of emergency”.<sup>1704</sup> It was initially named the PJM (“*Posebne Jedinice Milicije*”). However, in January 1997 the name was changed to PJP (“*Posebne Jedinice Policije*”).<sup>1705</sup> Lieutenant General Obrad Stevanović served as the overall head of the PJP.<sup>1706</sup> SUP chiefs were responsible for the PJP units in the area of their SUP.<sup>1707</sup> PJP commanders were members of the SUP collegia.<sup>1708</sup>

667. Former PJP members who testified in the present case explained that the PJP dealt with crowd and riot control and was deployed during mass demonstrations in Belgrade and Priština/Prishtina.<sup>1709</sup> K25 added that in extreme situations the PJP would also be called upon to deal with firearm incidents involving members of the public.<sup>1710</sup>

668. Except for the 21<sup>st</sup> PJP Detachment, PJP detachments did not have a permanent establishment composition.<sup>1711</sup> A PJP detachment generally consisted of the active and the reserve police forces from a SUP, who would sometimes be called upon to undertake specific tasks involving greater risk.<sup>1712</sup> When not deployed on their special tasks, PJP members would perform their regular duties. Their selection for the PJP was based on their physical fitness, age, the results of their work, and their years of service.<sup>1713</sup> K25 continued to serve as a regular policeman, and only on special occasions would he be assigned to his PJP detachment.<sup>1714</sup> He explained that his rank remained the same whether he was performing his regular duties or working as part of the

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<sup>1704</sup> On 31 December 1992 the MUP adopted the “Decision on Establishment of Special Police Units”, laying out the tasks, the training regime, and the structure of such units, P1507 (Decision on the Establishment of Special Police Units, 31 December 1992). On 1 August 1993, the Minister of Interior issued a document entitled “Basis for the Formation of Special Police Units of the Ministry of the Interior of the Republic of Serbia”, further clarifying the tasks, the strength, and structure of the units. P1508 (Formation of Special Police Units, 1 August 1993).

<sup>1705</sup> Dragan Paunović, T. 21845 (7 February 2008); 1D408 (Manual on change of badges and uniforms of Ministry of interior, 18 January).

<sup>1706</sup> 1D579 (Statement of Government of Serbia, Appointment of Rade Marković and others, 28 October 1988); Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 28; K25, T. 4732 (12 October 2006) (private session); Dragan Paunović, T. 21916 (8 February 2008); Dragan Živaljević, T. 24846–24847 (3 April 2008), 6D1606 (witness statement dated 31 March 2008), para. 7.

<sup>1707</sup> K25, P2439 (witness statement dated 12 September 2001), pp. 20–21.

<sup>1708</sup> See P3122 (Minutes of the MUP Staff meeting, 2 December 1998), p. 8.

<sup>1709</sup> K25, P2439 (witness statement dated 12 September 2001), p. 3; K79, T. 9578 (1 February 2007), 6D1327 (witness statement dated 7 May 2006), para. 3.

<sup>1710</sup> K25, P2439 (witness statement dated 12 September 2001), p. 3.

<sup>1711</sup> P1508 (Formation of Special Police Units, 1 August 1993), p. 1.

<sup>1712</sup> P1508 (Formation of Special Police Units, 1 August 1993), pp. 2–3; Ljubinko Cvetić, T. 8040 (6 December 2006); K86, T. 7345 (24 November 2006) (closed session).

<sup>1713</sup> K79, T. 9577–9578 (1 February 2007).

<sup>1714</sup> K25, P2439 (witness statement dated 12 September 2001), p. 2, T. 4723 (12 October 2006).

PJP.<sup>1715</sup> The difference in salary between regular policemen and members of the PJP was very minor.<sup>1716</sup> However, PJP members received special training.<sup>1717</sup>

669. The 21<sup>st</sup> PJP Detachment had a permanent establishment composition within the Police Brigade of the Belgrade SUP.<sup>1718</sup> In October 1998 the 21<sup>st</sup> and 22<sup>nd</sup> PJP Detachments were amalgated into the 122<sup>nd</sup> PJP Intervention Brigade.<sup>1719</sup> Within this brigade, Boško Buha was the commander of the 21<sup>st</sup> PJP Detachment, and his deputy was Vladimir Ilić. From approximately the end of 1998 Dragan Živaljević commanded the 22<sup>nd</sup> PJP Detachment.<sup>1720</sup> Živaljević was also named the overall commander of the 122<sup>nd</sup> Intervention Brigade.<sup>1721</sup>

670. Each PJP detachment was meant to consist of four to seven police companies, which in turn were divided into platoons and squads.<sup>1722</sup> There were also PJP reserve companies.<sup>1723</sup> Each detachment was between 450 and 600 men strong.<sup>1724</sup> Each company within the detachments was comprised of approximately 150–180 members.<sup>1725</sup> The squad was the smallest unit, made up of eight men, among whom there were a commander, a sniper, a machine-gunner, a grenade-launcher operator, and four riflemen.<sup>1726</sup>

671. PJP detachments consisted of two types of formations: formation “A”, or manoeuvre detachments, and formation “B” or territorial detachments.<sup>1727</sup> While manoeuvre detachments engaged in combat activities, the territorial detachments served as reserves and did not engage in such activities.<sup>1728</sup>

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<sup>1715</sup> K25, T. 4725–4726 (12 October 2006).

<sup>1716</sup> K25, T. 4730–4731 (12 October 2006), P2439 (witness statement dated 12 September 2001), p. 3.

<sup>1717</sup> K25, P2439 (witness statement dated 12 September 2001), pp. 2–3; K79, T. 9578 (1 February 2007). *See also* K25, T. 4755 (12 October 2006).

<sup>1718</sup> P1508 (Formation of Special Police Units, 1 August 1993), p. 1.

<sup>1719</sup> Vladimir Ilić, T. 24349 (17 March 2008); Dragan Živaljević, 6D1606 (witness statement dated 31 March 2008), para. 6.

<sup>1720</sup> Dragan Živaljević, T. 24895 (3 April 2008), 6D1606 (witness statement dated 31 March 2008), para. 6.

<sup>1721</sup> Dragan Živaljević, T. 24908–24909 (3 April 2008), 6D1606 (witness statement dated 31 March 2008), para. 6; Vladimir Ilić, T. 24349 (17 March 2008). Dragan Živaljević explained that, after the merger of 21<sup>st</sup> and 22<sup>nd</sup> Detachments into 122<sup>nd</sup> Intervention Brigade, they were often mistakenly referred to as 121<sup>st</sup> and 122<sup>nd</sup> Detachments. Dragan Živaljević, T. 24894 (3 April 2008).

<sup>1722</sup> P1508 (Formation of Special Police Units, 1 August 1993).

<sup>1723</sup> K79, 6D1327 (witness statement dated 7 May 2006), para. 5; Ljubinko Cvetić, T. 8039 (6 December 2006).

<sup>1724</sup> Ljubinko Cvetić, T. 8039 (6 December 2006).

<sup>1725</sup> K79, T. 9585 (1 February 2007); K25, P2439 (witness statement dated 12 September 2001), p. 7.

<sup>1726</sup> P1508 (Formation of Special Police Units, 1 August 1993). Some witnesses testified that the number of men in a squad in practice was somewhere between four and ten men. K79, T. 9586 (1 February 2007), T. 9717 (2 February 2007); K86, T. 7346–7348 (24 November 2006) (closed session).

<sup>1727</sup> Duško Adamović, 6D1613 (witness statement dated 30 March 2008), para. 52.

<sup>1728</sup> Dragan Milenković, T. 22988–22989 (21 February 2008); Duško Adamović, 6D1613 (witness statement dated 30 March 2008), para. 52.

672. PJP members carried side-arms and automatic rifles.<sup>1729</sup> According to K79, during operations in September and October 1998 each PJP company was assigned three Pragas (self propelled anti-aircraft guns) and three tanks.<sup>1730</sup> K25 testified that in March 1999 his PJP unit was armed with 80 millimetre and 60 millimetre mortars, hand grenades, zolja anti-tank weapons, zastava rifles, and semi-automatic CZ pistols. They also had one Russian UAZ vehicle which was armed with a 7.9 millimetre machine gun. In addition to these, they had three “110 trucks”, one Pinzgauer, three jeeps, and three civilian trucks, put at MUP’s disposal.<sup>1731</sup> According to Dragan Živaljević, the 122<sup>nd</sup> PJP Intervention Brigade used Landrover trucks, Lada Nivas, UAZs, and infantry armoured vehicles such as BOVs, Pragas, BVP, and M-90s.<sup>1732</sup>

673. The Chamber also heard that the PJP included Operational Pursuit Groups (*Operativne Poterne Grupe*) (“OPGs”).<sup>1733</sup> OPG members were trained to combat serious incidents of “urban terrorism with smaller but more effective and mobile forces”.<sup>1734</sup> Miroslav Mijatović, the Deputy Head of the MUP Staff, testified that Goran Radosavljević, also a member of the MUP Staff, was put in charge of this training.<sup>1735</sup> However, Cvetić testified that Radosavljević was actually the overall OPG commander.<sup>1736</sup>

674. The OPGs operated as a separate group within each SUP. Radojica Nikčević explained that OPG and PJP members wore the same uniforms, used the same equipment, and received the same pay.<sup>1737</sup> According to K86, OPG units had their own commanders, who were directly subordinated to the chiefs of the relevant SUPs.<sup>1738</sup> K86 maintained that OPGs were the first MUP units to be engaged in a particular action, as they were the best trained to apprehend criminals and murderers.<sup>1739</sup>

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<sup>1729</sup> K86, T. 7349 (24 November 2006) (closed session).

<sup>1730</sup> K79, 6D1327 (witness statement dated 7 May 2006), para. 30.

<sup>1731</sup> K25, P2439 (witness statement dated 12 September 2001), p. 13.

<sup>1732</sup> Dragan Živaljević, 6D1606 (witness statement dated 31 March 2008), para. 9; Vladimir Ilić, T. 24327 (17 March 2008).

<sup>1733</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 28.

<sup>1734</sup> Miroslav Mijatović, 6D1492 (witness statement dated 6 February 2008), para. 37. *See also* Radojica Nikčević, T. 23229 (26 February 2008); Ljubinko Cvetić, T. 8039 (6 December 2006); Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 31.

<sup>1735</sup> Miroslav Mijatović, 6D1492 (witness statement dated 6 February 2008), para. 37; Dragan Živaljević, T. 24941 (8 April 2008); Duško Adamović, 6D1613 (witness statement dated 30 March 2008), para. 11.

<sup>1736</sup> Ljubinko Cvetić, T. 8039 (6 December 2006);

<sup>1737</sup> Radojica Nikčević, T. 23261–23263 (26 February 2008). *See also* K86, T. 7352–7353 (24 November 2006) (closed session); Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 29.

<sup>1738</sup> K86, T. 7353 (24 November 2006) (closed session).

<sup>1739</sup> K86, T. 7345 (24 November 2006) (closed session).



## (2) Special Anti-Terrorist Units

675. The Special Anti-Terrorist Unit (“SAJ”) was an additional group within the RJB, established to fight terrorism, address hostage situations, and handle arrests of large criminal groups.<sup>1740</sup> During the time relevant to the Indictment the SAJ commander was Živko Trajković, and the deputy commander was Zoran Simatović (a.k.a. Tutinac).<sup>1741</sup>

676. The SAJ was divided into three units falling under the SUPs of Belgrade, Novi Sad, and Priština/Prishtina.<sup>1742</sup> The members of the SAJ were selected from the ranks of the regular police through a vetting process, which would normally focus on the mental and physical capacities of the candidate.<sup>1743</sup> There was an SAJ training centre at Batajnica, close to Belgrade.<sup>1744</sup> One of the three SAJ units was also based there,<sup>1745</sup> but shortly after the commencement of the NATO campaign it left Batajnica to be deployed in Kosovo.<sup>1746</sup>

677. Goran Stoparić testified that he was a member of a group known as the “Scorpions”, which had previously been associated with the RDB.<sup>1747</sup> In early 1999, shortly before the commencement of the NATO campaign, he was told by Slobodan Medić (a.k.a. Boca) that the Scorpions unit was being re-formed, but that it would be attached to the SAJ, rather than the RDB.<sup>1748</sup> Stoparić re-joined the unit at this time.<sup>1749</sup> That evidence was confirmed by Aleksandar Vasiljević.<sup>1750</sup>

678. Another distinct group that may have been associated with or attached to the SAJ is referred to in several documents in evidence as the “Brazil Group,” which was described by the former commander of the VJ’s 125<sup>th</sup> Motorised Brigade, Dragan Živanović, as one of the best trained units of the MUP, and part of the SAJ.<sup>1751</sup> A document in evidence entitled “Communications Station Workplan” indicates that the term “Brazil” was used as the code sign for the SAJ “F” forces.<sup>1752</sup>

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<sup>1740</sup> K88, P2800 (witness statement dated 21 January 2006), para. 4; 6D1355 (Decision on Establishing Special Antiterrorist Units, 5 April 1996).

<sup>1741</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 38; *see* Miroslav Mijatović, T. 22427 (14 February 2008).

<sup>1742</sup> Ljubinko Cvetić, T. 8038 (6 December 2006); 6D1355 (Decision on Establishing Special Antiterrorist Units, 5 April 1996), p. 1.

<sup>1743</sup> K86, T. 7346 (24 November 2006) (closed session).

<sup>1744</sup> K87, P2756 (witness statement dated 3 June 2005), para. 7 (under seal).

<sup>1745</sup> K87, P2756 (witness statement dated 3 June 2005), para. 5 (under seal).

<sup>1746</sup> K87, P2756 (witness statement dated 3 June 2005), para. 8 (under seal).

<sup>1747</sup> Goran Stoparić, P2224 (witness statement dated 6 July 2006), paras. 8–9.

<sup>1748</sup> Goran Stoparić, P2224 (witness statement dated 6 July 2006), paras. 34–35.

<sup>1749</sup> Goran Stoparić, P2224 (witness statement dated 6 July 2006), para. 41.

<sup>1750</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 38.

<sup>1751</sup> Dragan Živanović, T. 20541–20542, 20558 (18 January 2008).

<sup>1752</sup> P1052 (Communication Stations Workplan), p. 1.

679. However, in a report about the engagement of units in Kosovo, dated 8 August 1998, Živanović listed the Brazil Group as part of the special operations unit of the RDB, known as the JSO, discussed further below.<sup>1753</sup> Supporting this alignment, Miloš Deretić, a member of the MUP Staff for Kosovo responsible for communications, testified that the term “Brazil” was the code sign for Milorad Ulemek Luković (a.k.a. Legija) the commander of the JSO, and was used by the JSO.<sup>1754</sup>

*ii. State Security Department (RDB)*

680. The Rules of the Internal Organisation of the State Security Department (“Rules of the RDB”) set out the tasks and modalities of the RDB’s work and operations. Its primary mandate was to protect the security of the state by preventing activities intended to undermine the constitutional order. It therefore engaged in intelligence gathering and counter-intelligence.<sup>1755</sup>

681. The intelligence work of the RDB was described by Ratimir Tanić, a former “source” for the RDB, and Zoran Mijatović, the former Assistant Head for Counter-intelligence.<sup>1756</sup> It included negotiations between the RDB (then the SDB) and the Kosovo Albanians in 1995,<sup>1757</sup> and obtaining information on NATO plans from collaborators and sources in the West.<sup>1758</sup> The operational work of the RDB, particularly within Kosovo, is outlined in further detail below.

682. Ratimir Tanić and Aleksandar Vasiljević both testified that, although the Minister of Interior was formally in charge of the RDB, in practice it was Slobodan Milošević, the FRY President, who directed and controlled the operations of the department.<sup>1759</sup> However, Zoran Mijatović stated that, as an employee of the RDB, he never received any orders from politicians, including Milošević.<sup>1760</sup> The Chamber accepts the evidence of Tanić and Vasiljević as to Milošević’s role.

683. The RDB was made up of internal organisational units located both at the RDB headquarters and outside the RDB headquarters, and special organisational units. According to

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<sup>1753</sup> P1426 (Report of the engagement of brigade units), p. 2. (The text reads as follows: “Troops in PJP units, particularly the 3<sup>rd</sup> and 7<sup>th</sup> PJP Detachments, are not well trained, while JSO, particularly the Brazil Group are very well trained for conduct of all b/d, particularly to protect our b/v.”).

<sup>1754</sup> Miloš Deretić, T. 22616 (18 February 2008).

<sup>1755</sup> P1192 (Rules of the Internal Organisation of the RDB, April 1996), p. 1.

<sup>1756</sup> Zoran Mijatović, T. 14517-14518 (29 August 2007); Ratimir Tanić 1D44 (witness statement dated 19 July 2000).

<sup>1757</sup> Ratimir Tanić, 1D44 (witness statement dated 19 July 2000), para. 3. Zoran Mijatović disputed that representatives of the RDB would engage in such negotiations; Zoran Mijatović, T. 14519 (29 August 2007).

<sup>1758</sup> Zoran Mijatović, T. 14520 (29 August 2007).

<sup>1759</sup> Ratimir Tanić, T. 6406–6407 (13 November 2006); Aleksandar Vasiljević, T. 9001 (23 January 2007).

articles 26, 35 and 36 of the Rules of the RDB, there were three RDB centres in Kosovo: in Gnjilane/Gjilan, Priština/Prishtina, and Prizren. Each one of these centres had sections and local branches. For example, the Priština/Prishtina centre had offices in Lipljan/Lypjan, Obilić/Obiliq, and Podujevo/Podujeva, as well as a “forward operations team” in Kosovo Polje/Fushë Kosova.<sup>1761</sup>

684. In addition to the three RDB centres, there was a team of co-ordinators in Kosovo based in the same building as the Priština/Prishtina RDB centre.<sup>1762</sup> Throughout 1998 the team was headed by David Gajić; Ljubivoje Joksić served as the Assistant Co-ordinator in Kosovo. Gajić left Kosovo at the end of 1998, while Joksić remained until the end of the NATO campaign in 1999.<sup>1763</sup> From 1 January 1999 Gajić was replaced by Milosav (Mićo) Vilotić.<sup>1764</sup>

685. Following the start of the NATO bombing campaign the RDB moved out of their official premises in Priština/Prishtina to different concealed locations around the town. In addition, the NATO bombing affected communications between the three RDB centres in Kosovo. Joksić explained that communications between the centres almost ceased and were conducted mainly through visits and couriers.<sup>1765</sup>

686. The RDB’s Special Operations Unit (*Jedinica za Specijalne Operacije*) (“JSO”) was established in accordance with articles 5, 41, and 42 of the Rules of the RDB.<sup>1766</sup> It was an elite armed unit, which had a reputation for being highly capable and well-trained.<sup>1767</sup> Its Head was Franko Simatović, also known as “Frenki”, who was an Assistant Chief of the RDB.<sup>1768</sup> Milorad Ulemek Luković (a.k.a Legija) was the operational commander of the JSO, immediately subordinate to Simatović.<sup>1769</sup> Legija was a former member of the paramilitary group known as “Arkan’s Tigers” and had experience in the Bosnian and Croatian conflicts.<sup>1770</sup>

687. The JSO was predominantly manned by former members of a group known as the “Red Berets”, which had been formed in 1991. Its personnel had also been involved in fighting in other

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<sup>1760</sup> Zoran Mijatović, T. 14554–14555 (29 August 2007).

<sup>1761</sup> Ljubivoje Joksić, T. 21940–21941 (8 February 2008).

<sup>1762</sup> Ljubivoje Joksić, T. 21939 (8 February 2008).

<sup>1763</sup> Ljubivoje Joksić, T. 21944 (8 February 2008); 6D302 (employment dossier of David Gajić).

<sup>1764</sup> Ljubivoje Joksić, T. 21945 (8 February 2008); 6D303 (employment dossier of Milosav Vilotić).

<sup>1765</sup> Ljubivoje Joksić, T. 21955–21956 (8 February 2008).

<sup>1766</sup> P1192 (Rules of the Internal Organisation of the RDB, April 1996), articles 5, 41–42.

<sup>1767</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 28; Ljubinko Cvetić, T. 8034 (6 December 2006); K79, T. 9675–9676 (2 February 2007).

<sup>1768</sup> Zoran Mijatović, T. 14527–14528 (29 August 2007); K79, T. 9676 (2 February 2007), 6D1327 (witness statement dated 7 May 2006), para. 28; Dragan Živanović, T. 20542–20543 (18 January 2008).

<sup>1769</sup> Aleksandar Vasiljević, T. 8703 (19 January 2007), P2600 (witness statement dated 14 January 2007), para. 33; Zoran Mijatović, T. 14527–14528 (29 August 2007); K79, T. 9676 (2 February 2007).

<sup>1770</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 33.

theatres, particularly Bosnia and Herzegovina and Croatia.<sup>1771</sup> The JSO was nicknamed the “Red Berets”,<sup>1772</sup> and its members were also sometimes referred to as “Frenki’s” or “Frenki’s men”.<sup>1773</sup> Former “Scorpions” member Goran Stoparić explained that there were several “satellite” units attached to the JSO, and on the payroll of the RDB, in addition to the core members, such as the “Scorpions”, the “Grey Wolves”, and “Arkan’s Tigers.”<sup>1774</sup> Vasiljević added that members of the group known as “Arkan’s Tigers” carried official Serbian RDB identification cards, and it was well-known that they included men who had previously committed crimes. He further stated that these men were deployed in Kosovo Polje/Fushë Kosova,<sup>1775</sup> where the RDB “forward operations team” was located.<sup>1776</sup> The JSO also had a cadre of reservists, who could be called up to engage in operations.<sup>1777</sup>

688. Vasiljević testified that JSO members had “special state of the art equipment in every category”.<sup>1778</sup> British Defence Attaché John Crosland also stated that they could be recognised by the distinctive vehicles—such as Toyota Land Cruisers—that they used in Kosovo.<sup>1779</sup> According to Vasiljević, the JSO even had a MiG 124 helicopter, and their weaponry included anti-aircraft guns and automatic rifles.<sup>1780</sup> The modern vehicles used by the JSO often had 12.5 millimetre M2 Browning heavy machine guns mounted upon them.<sup>1781</sup> Along with the Yugoslav-produced weapons used by the regular VJ and MUP, the JSO used modern western weapons, such as Heckler and Koch 5.56 millimetre automatic carbines, and 9 millimetre MP5 submachine guns, as well as 12.5 millimetre M2 Browning heavy machine guns.<sup>1782</sup>

*iii. MUP Staff for Kosovo*

689. On 11 June 1997 the RJB Head Vlastimir Đorđević issued a “Decision on the Establishment of the Ministry of the Interior Staff KiM.” According to paragraph 8 of this decision it

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<sup>1771</sup> Aleksandar Vasiljević, T. 8701 (19 January 2007); Goran Stoparić, P2224 (witness statement dated 6 July 2006), para. 10.

<sup>1772</sup> Goran Stoparić, T. 701–702 (12 July 2006).

<sup>1773</sup> K25, T. 4666–4667 (11 October 2006); K90, T. 9314 (29 January 2007); Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 33.

<sup>1774</sup> Goran Stoparić, T. 694 (12 July 2006), P2224 (witness statement dated 6 July 2006), paras. 10–11.

<sup>1775</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), paras. 40–42.

<sup>1776</sup> Ljubivoje Joksić, T. 21941 (8 February 2008).

<sup>1777</sup> Goran Stoparić, T. 761–762 (13 July 2006); Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 33.

<sup>1778</sup> Aleksandar Vasiljević, T. 8702 (19 January 2007), P2600 (witness statement dated 14 January 2007), para. 32.

<sup>1779</sup> John Crosland, T. 9764–9765 (7 February 2007).

<sup>1780</sup> Aleksandar Vasiljević, T. 8702 (19 January 2007), P2600 (witness statement dated 14 January 2007), para. 32.

<sup>1781</sup> John Crosland, P2645 (witness statement dated 31 October 2006), para. 9.

<sup>1782</sup> John Crosland, T. 9764–9765 (7 February 2007), P2645 (witness statement dated 31 October 2006), para. 9.

“supersede[d]” a decision of 15 April 1994 to establish the MUP Staff.<sup>1783</sup> On 15 January 1998 Đorđević issued a “Decision to define the duties and tasks of the MUP Staff in Priština”.<sup>1784</sup>

690. On 15 May 1998 Đorđević issued another “Decision on the Formation of a Staff of the Ministry in Priština”, which by its own terms again superseded the decision of 15 April 1994 to establish the MUP Staff. According to paragraph 1 of this May 1998 decision, “[a] Staff of the Ministry is to be formed with its headquarters in Priština”. The decision specified that “[t]he composition of the Staff, the leader and members of the Staff will be laid down in a separate decision” and that “[t]he number and structure of the personnel and units that are sent to perform the work of the Staff, their equipment and resources, the duration of shifts and the conditions and the mode of their missions will be defined in a separate order”.<sup>1785</sup>

691. On 11 June 1998 Đorđević issued a “Decision on the Composition of the Staff, Leaders and Members of the Staff of the Ministry of the Interior for the Autonomous Province of Kosovo and Metohija”.<sup>1786</sup> This decision listed Lukić as “Staff leader”.<sup>1787</sup> According to this June 1998 decision, the MUP Staff was to “begin work on 1 June 1998”.<sup>1788</sup>

692. Five days later, on 16 June 1998, Vljako Stojiljković, the Minister of Interior of Serbia, issued a “Decision to Establish Ministerial Staff for the Suppression of Terrorism”. This decision clarified that “[w]ith the coming into force of this decision, [three decisions] shall cease to be valid”: the decision of 21 April 1998 to establish an Operational Staff; the Decision on the Formation of a Staff of the Ministry in Priština dated 15 May 1998; and the decision of 11 June 1998 on the appointment of the members of the MUP Staff. The new composition of the MUP Staff was set forth in paragraph 1 of the decision, and paragraph 4 indicated that the Staff was to “commence work on 16 June 1998”.<sup>1789</sup>

693. The following year, on 31 May 1999, Stojiljković issued the “Decision on the Establishment of the Ministry’s Staff for the Suppression of Terrorism”.<sup>1790</sup> This decision, which

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<sup>1783</sup> 6D1368 (Decision on the Establishment of MUP Staff in Kosovo, 11 June 1997).

<sup>1784</sup> 6D1370 (Decree to define the duties and tasks of the Ministry Staff in Priština, 15 January 1998).

<sup>1785</sup> P1251 (Decision the formation of a Staff of the Ministry in Priština, 15 May 1998).

<sup>1786</sup> P1252 (Decision on the composition of the MUP Staff for Kosovo), para. 1; Ljubinko Cvetić, T. 8030 (6 December 2006).

<sup>1787</sup> P1252 (Decision on the composition of the MUP Staff for Kosovo), para. 1. The Lukić Defence, while not disputing that Lukić indeed was the highest-ranked officer within the Staff, alleges that his position was not that of a Head or “*načelnik*”, but rather that of “*rukovodilac*”, i.e., “manager” or “administrator”. Lukić Final Trial Brief, 18 June 2008 (public version), para. 1432. The Chamber addresses this point further below in Section VIII.H, while discussing Lukić’s individual criminal responsibility.

<sup>1788</sup> P1252 (Decision on the composition of the MUP Staff for Kosovo), para. 3.

<sup>1789</sup> P1505 (Decision to establish a Ministerial Staff for the Suppression of Terrorism, 16 June 1998).

<sup>1790</sup> P1811 (Decision on Establishment of the Ministry’s Staff for the Suppression of Terrorism, 31 May 1999).

contained broadly the same language about the functions and composition of the MUP Staff, but made some personnel changes, indicated that it superseded the 16 June 1998 decision and was to enter into force on 1 June 1999.<sup>1791</sup>

694. The precise role, composition, and powers of the MUP Staff are among the most contested issues between the Prosecution and the Lukić Defence, and are discussed in greater detail in Section VIII.H pertaining to the individual criminal responsibility of Lukić below.

*iv. Border police stations*

695. The regime for the border crossings and the border belt area between Kosovo and Albania and Macedonia was divided between the VJ and the MUP. According to articles 4 and 48 of the Law on Crossing the State Border and Movement in the Border Area, the MUP had control over the border crossings and populated areas, whereas the VJ controlled the rest of the border belt territory.<sup>1792</sup> Rade Čučak, a senior VJ official responsible for the protection of the federal border, explained that when one entered the border belt, one could be subject to VJ search. However, it was only the MUP that maintained fixed checkpoints at border crossings.<sup>1793</sup> Radovan Vučurević, an assistant in the MUP Staff in Priština, confirmed that the MUP was responsible for movement within urban areas of the border belt, while the VJ was in charge of checking movements outside urban areas.<sup>1794</sup>

696. Petar Dujković, the Deputy Head and acting Head of the Border Police Administration until June or July 1999, testified that the MUP organisational unit responsible for the border crossings was called the “Administration of Border Police, Foreign Nationals, and Administrative Affairs”.<sup>1795</sup> It had a wide range of competencies, such as movements of foreigners, suppression of illegal migration, residence and travel documents of nationals, and weapons and ammunition in possession of citizens and entities.<sup>1796</sup> It was comprised of three departments, namely the Department for Border Affairs, the Department for Foreigners and Passports, and the Department for Administration Affairs.<sup>1797</sup>

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<sup>1791</sup> P1811 (Decision on Establishment of the Ministry’s Staff for the Suppression of Terrorism, 31 May 1999), paras. 4–6.

<sup>1792</sup> 3D1122 (Law on Crossing the State Border and Movement in the Border Area, 17 August 2007).

<sup>1793</sup> Rade Čučak, T. 14874–14876, 14884–14885 (4 September 2007).

<sup>1794</sup> Radovan Vučurević, T. 23122–23123 (25 February 2008).

<sup>1795</sup> Petar Dujković, T. 23304–23308 (27 February 2008); Radovan Vučurević, T. 23046–23050 (22 February 2008).

<sup>1796</sup> Petar Dujković, T. 23338 (27 February 2008).

<sup>1797</sup> 6D1305 (Rules Establishing the Internal Organisation of the MUP, 31 December 1997), article 18; Petar Dujković, T. 23314 (27 February 2008).

697. The Chamber further heard that during the relevant time period there were 35 border police stations in the FRY, five of which were in Kosovo.<sup>1798</sup> Two of these border police stations were on the border with Macedonia (Đeneral Janković/Hani i Elezit and Globočica/Gllobočica), another two on the border with Albania (Vrbnica/Vërbnica, and Ćafa Prušit/Qafa e Prushit), and an additional one at Priština/Prishtina airport. Đeneral Janković/Hani i Elezit covered two border crossings, while Globočica/Gllobočica, Vrbnica/Vërbnica, and Ćafa Prušit/Qafa e Prushit each had responsibility for only one.<sup>1799</sup>

698. Nebojša Ognjenović gave detailed evidence about the Vrbnica/Vërbnica border police station and events there during the NATO air campaign. He testified that the station had a commander, deputy commander, and assistant commander, four shift leaders, and 17 policemen.<sup>1800</sup> The duties of the staff were divided between duty service, securing the border crossing area, and checking passengers.<sup>1801</sup>

v. *Crime Police Administration*

699. According to article 14 of the Rules Establishing the Internal Organisation of the Ministry of Interior, the Crime Police Administration (*Uprava Kriminalističke Policije*, “UKP”) was responsible for organisation of tasks related to crime prevention, and directed and co-ordinated the work of the SUPs on crime prevention, providing them with specialist assistance and exceptionally taking direct part in solving the most difficult and complex crimes. In addition, in accordance with article 37 of the Rules, each SUP was to establish a Crime Police Department (*Odelenje Kriminalističke Policije*, “OKP”) to deal with the crime-prevention tasks in the area of their responsibility.<sup>1802</sup>

700. During the first half of 1999 the Head of the Crime Police Administration in Belgrade was Dragan Ilić, who is named in the Indictment as a participant in the alleged Joint Criminal Enterprise.<sup>1803</sup>

701. Branislav Debeljković, Head of the Uroševac OKP, testified that the heads of the OKPs were appointed by the Head of the RJB or the Minister of Interior, on the recommendation of the

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<sup>1798</sup> 6D269 (Dispatch from Vlastimir Đorđević, 18 February 1999); Nebojša Ognjenović, T. 22851–22852 (20 February 2008).

<sup>1799</sup> Petar Dujković, T. 23315–23316 (27 February 2008).

<sup>1800</sup> Nebojša Ognjenović, T. 22848 (20 February 2008).

<sup>1801</sup> Nebojša Ognjenović, T. 22861 (20 February 2008).

<sup>1802</sup> 6D1305 (Rules Establishing the Internal Organisation of the MUP, 31 December 1997), articles 14, 37.

<sup>1803</sup> P1996 (Minutes of the MUP Staff meeting, 7 May 1999).

head of the relevant SUP and the UKP. Alternatively, the head of an OKP could be appointed by the UKP in Belgrade.<sup>1804</sup>

702. The Chamber heard from witness 6D2 that the tasks of the OKPs were to prevent, curb, and uncover all types of crime, and to initiate criminal proceedings against the perpetrators. In relation to crimes of terrorism, on-site investigations were carried out pursuant to an order of an investigating judge.<sup>1805</sup>

703. The heads of OKPs were subordinated to the chiefs of SUPs.<sup>1806</sup> Vojnović and Debeljković explained that the heads of the OKPs were responsible to the UKP in Belgrade “according to their lines of work”. However, in terms of “professional and legal performance” they were responsible to the heads of their respective SUPs.<sup>1807</sup> According to 6D2 and Debeljković, the OKPs reported to the UKP in Belgrade about “incidents” and the subsequent actions taken. Reports were also sent to, among others, the MUP Staff and the head of the relevant SUP, for their information.<sup>1808</sup> On occasion the OKPs also provided the RDB with information related to threats to the state, such as terrorism.<sup>1809</sup>

704. The Chamber heard that during the NATO campaign the work of the OKPs became difficult due to restrictions on movement, KLA attacks on investigating teams, and the bombings.<sup>1810</sup> Despite all these difficulties, the OKPs continued to work in accordance with the same principles as before, the only difference being that the staff began working in shifts to ensure the manning of the unit 24 hours a day.<sup>1811</sup>

#### b. MUP uniforms

705. Article 2 of the Law on the Police Uniform and Insignia from March 1996 (“Law on the Uniform”) provided that the MUP had four different types of uniforms: (a) the regular uniform; (b) the dress, performance, and escort uniform; (3) the intervention uniform; and (4) the training

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<sup>1804</sup> Branislav Debeljković, 6D1533 (witness statement dated 7 March 2008), para. 25.

<sup>1805</sup> 6D2, 6D1631 (witness statement dated 12 April 2008), para. 9 (under seal).

<sup>1806</sup> 6D2, 6D1631 (witness statement dated 12 April 2008), paras. 10–11 (under seal); Branislav Debeljković, 6D1533 (witness statement dated 7 March 2008), para. 15.

<sup>1807</sup> Miloš Vojnović, 6D1532 (witness statement dated 5 March 2008), para. 9; Branislav Debeljković, 6D1533 (witness statement dated 7 March 2008), para. 3.

<sup>1808</sup> Branislav Debeljković, 6D1533 (witness statement dated 7 March 2008), para. 17; *see also* Branislav Debeljković, T. 24258–24262, 24266–24267 (13 March 2008); 6D2, 6D1632 (witness statement dated 12 April 2008), para. 20. *See also* Radovan Zlatković, 6D1627 (witness statement dated 13 April 2008), para. 3.

<sup>1809</sup> Branislav Debeljković, 6D1533 (witness statement dated 7 March 2008), para. 19; 6D2, 6D1631 (witness statement dated 12 April 2008), para. 21 (under seal).

<sup>1810</sup> 6D2, 6D1631 (witness statement dated 12 April 2008), paras. 39, 40–42 (under seal); Radovan Zlatković, 6D1627 (witness statement dated 13 April 2008), para. 4.

<sup>1811</sup> 6D2, 6D1631 (witness statement dated 12 April 2008), para. 42 (under seal).



uniform.<sup>1812</sup> The “regular”, “dress”, and “performance” winter uniforms were navy blue in colour. The Law on the Uniform also described “the intervention uniform for urban conditions” as being of a camouflage pattern combining navy blue, grey, black, and brown, while “the intervention uniform for field conditions” was a camouflage combination of black, brown, green, and yellow, with parts in black, grey, and white.<sup>1813</sup>

706. The Law on the Uniform further provided that MUP personnel was to wear an emblem on their caps and the left sleeve of their uniform, as well as special emblems related to their unit, duty, and rank.<sup>1814</sup> Police emblems were to indicate the word “*milicija*” in Cyrillic letters.<sup>1815</sup> On 18 January 1997, a manual on change of badges and uniforms of the Ministry of Interior was issued indicating that the forces of the MUP were to be referred from that date on as “*policija*” rather than “*milicija*” and the emblems were to be adjusted accordingly.<sup>1816</sup> The Chamber finds, however, that, based on analysis of photographic evidence, some members of the MUP continued to wear insignia that indicated “*milicija*” rather than “*policija*” in 1999.<sup>1817</sup>

707. Various witnesses gave evidence supporting the implementation of these provisions by members of the MUP, including PJP and SAJ units, as laid out below.

*i. Regular and reserve police uniforms*

708. Witness K86, who was a member of the PJP, testified that from 1991 until 1998 the standard working clothes for all police officers were camouflage blue.<sup>1818</sup> This was confirmed by Slađan Pantić, the Head of the Security Section of the Rudnik Police Station, who testified that he wore a blue camouflage uniform.<sup>1819</sup> Petar Damjanac, who was the Chief of Glogovac OUP, testified that in 1998 and 1999 all policemen who worked at the Glogovac OUP wore blue camouflage uniforms.<sup>1820</sup> In addition, Ljubinko Cvetić testified that while the working uniform for personnel of the SUPs was camouflage blue, each individual policeman had three types of uniform: “dress uniform, work uniform, and the intervention uniform”.<sup>1821</sup> K86 also stated that from late 1998 onwards all police officers were issued with “ceremonial” or “dress” dark blue uniforms and

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<sup>1812</sup> 1D401 (The Law on the Police Uniform and Insignia), article 2; 1D408 (Manual on change of manual on badges and uniforms of Ministry of interior, 18 January).

<sup>1813</sup> 1D401 (The Law on the Police Uniform and Insignia), articles 2, 26, 28.

<sup>1814</sup> 1D401 (The Law on the Police Uniform and Insignia), articles 41–50.

<sup>1815</sup> 1D401 (The Law on the Police Uniform and Insignia), article 43.

<sup>1816</sup> 1D408 (Manual on change of badges and uniforms of Ministry of interior, 18 January).

<sup>1817</sup> P2538 (Photographs depicting MUP members taken in December 1998 or January 1999). *See also* Karol John Drewienkiewicz, T. 7808–7809 (4 December 1998).

<sup>1818</sup> K86, T. 7351 (24 November 2006) (closed session).

<sup>1819</sup> Slađan Pantić, T. 23678 (5 March 2008).

<sup>1820</sup> Petar Damjanac, T. 23767 (6 March 2008).

caps called “šapka”.<sup>1822</sup> He added that he personally wore the dark blue uniform infrequently.<sup>1823</sup> Radojica Nikčević, who was a member of the PJP and OPG, testified that in 1998 and 1999 the members of the Peć SUP wore solid blue uniforms, comprised of light blue shirts, navy-blue trousers, and navy-blue jackets.<sup>1824</sup> Having examined the photographs of the navy-blue uniforms, the Chamber concludes that this uniform could be described as very dark blue, almost black in colour.<sup>1825</sup>

709. MUP reservists wore blue camouflage uniforms identical to those worn by the regular police.<sup>1826</sup> These reservists kept their uniforms at their homes even when they were not actively deployed.<sup>1827</sup>

*ii. PJP uniforms*

710. Until August or early September 1998 PJP members also wore blue camouflage uniforms. Then green camouflage uniforms were distributed to them.<sup>1828</sup> K79, a PJP member, explained that, although he only used the green camouflage uniform from 24 March 1999, these uniforms were issued around October 1998.<sup>1829</sup> The new uniforms were meant to be used with a black vest worn on top, which said “Policija” in white fluorescent letters on the back and on the front right vest pocket.<sup>1830</sup> Nikčević gave a similar description of the vests, stating, however, that they were in olive-green-grey colour.<sup>1831</sup> K73 explained that, due to shortages, not all PJP members would have a bullet-proof vests and would use the green “army” vests instead.<sup>1832</sup> Dragan Paunović, who participated in combat activities in Kosovo in 1998, also stated that members of the PJP would wear green vests on top of blue camouflage uniforms.<sup>1833</sup> Živaljević explained that only members

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<sup>1821</sup> Ljubinko Cvetić, T. 8104, 8108 (7 December 2006).

<sup>1822</sup> K86, T. 7351, 7354 (24 November 2006).

<sup>1823</sup> K86, T. 7351 (24 November 2006).

<sup>1824</sup> Radojica Nikčević, T. 23235 (26 February 2008).

<sup>1825</sup> See e.g. P2586 (Photographs depicting joint VJ and MUP operations in Kosovo), e-court pp. 1, 6, 8, 9, 10.

<sup>1826</sup> K25, T. 4664–4665, 4674 (11 October 2006); K83, T. 3927 (25 September 2006); K86, T. 7354 (24 November 2006) (closed session); K90, T. 9297 (29 January 2007).

<sup>1827</sup> K25, T. 4739 (12 October 2006).

<sup>1828</sup> Vladimir Ilić, T. 24323 (17 March 2008); K86, T. 7350–7351 (24 November 2006) (closed session); Radojica Nikčević, T. 23236 (26 February 2008); Dragan Živaljević, 6D1606 (witness statement dated 31 March 2008), para. 8.

<sup>1829</sup> K79, T. 9588–9590 (1 February 2007).

<sup>1830</sup> K79, T. 9588–9590 (1 February 2007); Dragan Živaljević, 6D1606 (witness statement dated 31 March 2008), para. 8.

<sup>1831</sup> Radojica Nikčević, T. 23236 (26 February 2008).

<sup>1832</sup> K73, T. 3306–3309 (13 September 2006); K25, T. 4664–4665 (11 October 2006); P1326 (description), picture 6 (PJP), picture 4 (regular police and reservists). See also P2538 (photo of Serb police officer in uniform), which shows policemen wearing either combat vests or bullet-proof vests. K86 was issued a bullet-proof vest in 1991 until the withdrawal from Kosovo. K86, T. 7349–7351 (24 November 2006) (closed session).

<sup>1833</sup> Dragan Paunović, T. 21859–21860 (7 February 2008), discussing P1596 (photograph depicting Serb forces).

of the PJP manoeuvre detachments had helmets and bullet-proof vests; members of the territorial detachments were not in possession of such equipment.<sup>1834</sup>

711. According to the Law on the Uniform, the PJP emblem featured a white sword piercing a red shield with four cyrillic letters “C” surrounded by two golden laurel twigs. On top of the emblem was a tricolour flag with the letters PJP in the centre.<sup>1835</sup> This Law also specified that the PJP insignia was to be worn on the right sleeve, which was confirmed by Nikčević and K73.<sup>1836</sup> Photographic evidence consistently shows the PJP patch worn on one sleeve of the green camouflage uniform and a MUP insignia worn on the other sleeve.<sup>1837</sup>

### *iii. SAJ uniforms*

712. The Chamber heard that SAJ members wore several types of uniforms. Non-operational support staff wore solid green uniforms, while members of the combat groups wore green camouflage uniforms.<sup>1838</sup> Stoparić, who joined the SAJ in late March 1999 and was deployed in Kosovo, testified that the uniforms he received “were of NATO colour and pattern”, *i.e.*, camouflage green.<sup>1839</sup> K86 stated that, although the SAJ had, among others, black and white uniforms, he had never seen them worn during the operations in Kosovo.<sup>1840</sup> SAJ members were also seen wearing the so-called “boonie” or “jungle” hats, described as being made out of the uniform fabric and having a brim all-round that could be fastened to the hat.<sup>1841</sup>

713. According to the Law on the Uniform, the SAJ emblem featured a two-headed white eagle, with golden tongues, beaks, and legs, holding a serpent in its talons. On the eagle’s chest was a red shield with four cyrillic letters “C”. Behind the eagle was a sword.<sup>1842</sup> The emblem also included the words “Serbian Police” and the acronym “SAJ”.<sup>1843</sup>

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<sup>1834</sup> Dragan Živaljević, 6D1606 (witness statement dated 31 March 2008), para. 8.

<sup>1835</sup> 1D401 (The Law on the Police Uniform and Insignia), article 47.

<sup>1836</sup> Radojica Nikčević, T. 23236–23238 (26 February 2008); K73, T. 3311 (13 September 2006), T. 3414 (14 September 2006) (closed session).

<sup>1837</sup> P1600; P1602; P1603 (photographs of the members of the MUP).

<sup>1838</sup> K87, P2756 (witness statement dated 3 June 2005), para. 5 (under seal).

<sup>1839</sup> Goran Stoparić, P2224 (witness statement dated 6 July 2006), para. 42.

<sup>1840</sup> K86, T. 7353 (24 November 2006) (closed session).

<sup>1841</sup> K86, T. 7353–7354 (24 November 2006) (closed session).

<sup>1842</sup> 1D401 (The Law on the Police Uniform and Insignia), article 48.

<sup>1843</sup> Identified by K25, K73, and K86 on P1323 (Samples of VJ/MUP insignia), p. 2, no. 12. K25, T. 4666 (11 October 2006); K73, T. 3304–3306 (13 September 2006); K86, T. 7359 (27 November 2006) (closed session). *See also* John Crosland, P2645 (witness statement dated 31 October 2006), para. 8.

*iv. JSO uniforms*

714. The Chamber heard some evidence that members of the JSO wore green camouflage uniforms, called “NATO” uniforms.<sup>1844</sup> The pattern of the camouflage was the so-called “Disruptive Pattern Material”, as used in the British and Dutch armies, but in a slightly lighter shade.<sup>1845</sup> Some members of the JSO also wore red berets.<sup>1846</sup> However, during operations JSO members would often wear the so-called “jungle” hats, combined with black facemasks.<sup>1847</sup>

*v. Ribbons*

715. The Lukić Defence submits that the KLA had access to MUP uniforms and used them for illicit activities.<sup>1848</sup> There is also some evidence that VJ uniforms were sometimes used by civilians and members of the KLA in order to engage in illegal activity.<sup>1849</sup> K25 testified that he heard of instances of the illegitimate use of MUP uniforms by criminals in Kosovo, as well as by the KLA.<sup>1850</sup> To minimize the illegitimate use of police uniforms ribbons were used on occasions as additional identifiers on top of uniforms. Two orders in evidence relate to this. In July 1998 both the MUP and VJ units in Kosovo were instructed to use white, yellow, and red coloured ribbons, or combinations thereof,<sup>1851</sup> in reaction to an incident when police uniforms were used illegitimately by the KLA in capturing a police officer.<sup>1852</sup> In the middle of April 1999 all uniformed members of the MUP were instructed to use different combinations of yellow, blue, and red ribbons on different dates, to distinguish themselves when moving in the open during their Kosovo deployment.<sup>1853</sup> In addition, eye-witnesses to various MUP operations in late March and early April 1999 testified to seeing MUP forces wearing different coloured ribbons on their uniforms.<sup>1854</sup>

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<sup>1844</sup> Aleksandar Vasiljević, T. 8702 (19 January 2007), P2600 (witness statement dated 14 January 2007), para. 32.

<sup>1845</sup> John Crosland, P2645 (witness statement dated 31 October 2006), paras. 9–10.

<sup>1846</sup> Goran Stoparić, P2224 (witness statement dated 6 July 2006), para. 11; K25, P2439 (witness statement dated 12 September 2001), p. 20; Aleksandar Vasiljević, T. 8702 (19 January 2007), P2600 (witness statement dated 14 January 2007), para. 32.

<sup>1847</sup> K25, P2439 (witness statement dated 12 September 2001), p. 19, p. 20, and T. 4665 (11 October 2006), referring to P1326, picture 8, in which the police member is shown to be wearing a “jungle” hat. K86, T. 7353 (24 November 2006); John Crosland, P2645 (witness statement dated 31 October 2006), paras. 9–10.

<sup>1848</sup> Lukić Final Trial Brief, 7 August 2008 (public version), para. 122.

<sup>1849</sup> Dušan Gavranović, T. 22730–22731 (19 February 2008); 5D549 (Report of the 175th Light Infantry Brigade, 27 April 1999); 4D248 (Dispatch of 3rd Army Command, 12 April 1999).

<sup>1850</sup> K25, T. 4747 (12 October 2006).

<sup>1851</sup> 6D667 (Plan for marking MUP and VJ units, 25–31 July 1998).

<sup>1852</sup> Radojica Nikčević, T. 23237–23238 (26 February 2008); Dragan Paunović, T. 21856–21857 (7 February 2008).

<sup>1853</sup> Vladimir Ilić, T. 24324–24325 (17 March 2008); Miroslav Mijatović, T. 22275–22279 (13 February 2008); Dragan Milenković, T. 22950 (21 February 2008); Radojica Nikčević, T. 23237–23238 (26 February 2008); Peter Damjanac, T. 23778 (6 March 2008); 6D579 (Instructions for police identification ribbons, May 1999); 6D237 (Chart of identifying ribbons worn by police units during mid 1999).

<sup>1854</sup> See, e.g., Isuf Zhuniqi, T. 4126 (27 September 2006); K14, T. 10981–10983 (closed session) (2 March 2007); Abdulhaqim Shaqiri, T. 2789 (5 September 2006).

*vi. Conclusion*

716. The Chamber concludes that, in general, the regular police forces, which were not engaged in combat activities, wore either navy-blue or camouflage blue uniforms before and right through the NATO campaign in Kosovo. From 24 March 1999 and until the end of the NATO campaign, members of the PJP, while engaged in Kosovo, wore green-camouflage uniforms. However, as all PJP members were simply regular MUP personnel with additional training and duties, they also owned the two regular types of uniforms: camouflage blue and navy-blue. Members of the SAJ and JSO, while engaged in Kosovo, wore green camouflage uniforms. On occasion, uniformed members of the MUP, while operating in the open, wore coloured ribbons or “armbands” in order to distinguish themselves.

*c. MUP discipline*

717. The disciplinary responsibility of members of the MUP was laid out in section 3 of the Law on Internal Affairs, as well as in the Decree on Disciplinary Responsibility in the Ministry of Internal Affairs (“Decree on Disciplinary Responsibility”).<sup>1855</sup> According to these instruments, infringements committed by members of the MUP could be of two kinds, namely minor breaches and serious breaches.<sup>1856</sup> Miloš Vojnović, who was the Chief of the Prizren SUP, explained that disciplinary proceedings were launched by the immediate supervisor of the relevant MUP officer, who filed a report with his superior and the disciplinary prosecutor.<sup>1857</sup> In order to initiate a disciplinary procedure, the relevant SUP was required to obtain authorisation from the MUP headquarters in Belgrade.<sup>1858</sup>

718. Dušan Gavrančić explained that, before the beginning of the NATO bombing, the head of the relevant SUP served as the first instance institution for minor breaches, and appeals in such cases were heard by the disciplinary court of the SUP, which was a panel comprised of officers from that SUP. Serious breaches were dealt with by the disciplinary court of the SUP at first instance, and appeals were heard by the disciplinary court at the level of the Belgrade SUP.<sup>1859</sup> According to the Law on Internal Affairs and the Decree on Disciplinary Responsibility, the penalty for minor breaches was a reprimand or a fine in the amount of 10 to 20 percent of the monthly salary, while

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<sup>1855</sup> P1737 (Law on Internal Affairs), articles 49–58; P1016 (Decree on Disciplinary Responsibility in the Ministry of Internal Affairs, 30 September 1992).

<sup>1856</sup> P1737 (Law on Internal Affairs), articles 49–50; P1016 (Decree on Disciplinary Responsibility in the Ministry of Internal Affairs, 30 September 1992), sections 2–3.

<sup>1857</sup> Miloš Vojnović, 6D1532 (witness statement dated 5 March 2008), para. 23.

<sup>1858</sup> Ljubinko Cvetić, T. 8152–8153 (8 December 2006); 6D1325 (Case file of member of the 36<sup>th</sup> PJP Detachment, 23 March 1999); 6D134 (Submission from Priština SUP, 1 March 1999).

<sup>1859</sup> Dušan Gavrančić, T. 22669–22670 (18 February 2008); *see also* Miloš Vojnović, 6D1532 (witness statement dated 5 March 2008), para. 23.

the penalty for serious breaches was a fine between 20 and 30 percent of monthly salary for the duration of two to six months, temporary transfer to another post, or dismissal from the MUP.<sup>1860</sup> The MUP disciplinary procedure could operate in parallel with regular criminal proceedings.<sup>1861</sup>

719. Gavranić and Vojnović explained that, after the beginning of the NATO campaign, a decree was issued by Vlastimir Đorđević changing the disciplinary regime of the RJB. According to the new regime, punishments for both minor and serious violations of work obligations were increased.<sup>1862</sup> In addition, the disciplinary procedure in cases of serious breaches was changed. Under the new regime, the immediate superior officer had to carry out the activities previously carried out by the chamber of the disciplinary court. He was to compile a record of breaches of duty and then submit an appropriate proposal to the head of the relevant organisational unit. His decision could be appealed to the disciplinary high court in Belgrade.<sup>1863</sup>

720. Petar Damjanac stated that every infraction and violation committed by a member of the MUP in his OUP was subject to punishment.<sup>1864</sup> Nebojša Bogunović, who was the Assistant Head of Kosovska Mitrovica SUP, stated that from November 1998, when he joined the SUP, every crime against life and limb was processed. He also stated that his SUP processed and filed criminal reports against all those suspected of having committed crimes regardless of whether they were civilians or policemen.<sup>1865</sup> Contrary to that, Cvetić, who was Bogunović's superior officer, stated he knew of no police officers being charged for murder, arson, or expulsion of Kosovo Albanians while he was the Head of Kosovska Mitrovica SUP.<sup>1866</sup> The Chamber notes that two witnesses called by the Lukić Defence, Bogunović and Miloš Vojnović, who was the Head of the Prizren SUP, testified that Cvetić was removed from his position on 16 April 1999, due to his inability to carry out his duties as the Head of Kosovska Mitrovica SUP.<sup>1867</sup> The Chamber does not consider

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<sup>1860</sup> P1737 (Law on Internal Affairs), articles 51–52.

<sup>1861</sup> Dušan Gavranić, T. 22671 (18 February 2008).

<sup>1862</sup> Dušan Gavranić, T. 22661–22663, 22668–22669 (18 February 2008), Miloš Vojnović, 6D1532 (witness statement dated 5 March 2008), para. 24.

<sup>1863</sup> 6D133 (Decree on Internal Affairs during a State of War, 9 April 1999); 6D1342 (Dispatch from Petar Zeković, 21 April 1999), also admitted as 6D873; *see also* Dušan Gavranić, T. 22661–22663, 22668–22669 (18 February 2008).

<sup>1864</sup> Petar Damjanac, T. 23768–23769 (6 March 2008).

<sup>1865</sup> Nebojša Bogunović, 6D1614 (witness statement dated 6 April 2008), para. 54; 6D614 (MUP Overview of recorded criminal offences, 1 July 1998 to 20 June 1999), p. 11 para. 26, p. 12, para. 31; 6D139 (Criminal Report, 19 May 1999).

<sup>1866</sup> Ljubinko Cvetić, T. 8112-8113 (7 December 2006).

<sup>1867</sup> Bogunović testified that “Cveti[ć] ... who was not in charge of the situation on the ground in the territory of the Kosovska Mitrovica SUP. He enclosed himself in the premises, in several rooms of the Kosovska Mitrovica SUP. He hid there from his officers, avoiding to carry out his duties.” Nebojša Bogunović, T. 25119–25120 (10 April 2008). Vojnović stated in relation to Cvetić that “there were certain problems. I think he was removed. Though I'm not sure”, and went on to state that when a meeting of all the Chiefs of SUPs and Heads of PJP, JSO, and SAJ was held on 4 April 1999, Cvetić was the only one who did not have anything to report about, which contributed to the decision to remove him from his post. Miloš Vojnović, T. 24155–24158 (12 March 2008).

that the circumstances of Cvetić's removal from his position undermine his testimony, which the Chamber regards as credible and reliable.

721. The same disciplinary procedure applied to members of the PJP as to the rest of the MUP personnel.<sup>1868</sup> The parent SUP to which the particular PJP member belonged was in charge of the disciplinary process.<sup>1869</sup>

722. Vladimir Ilić, Deputy Commander of the 21<sup>st</sup> PJP Detachment, testified that in his unit there were two types of measure taken in order to uphold discipline: preventive and punitive. In terms of preventive measures, each commander would warn the members of his unit of the importance of acting within the limits of the law. Punitive measures were taken against policemen who ignored that warning. Ilić explained that officers with the rank of assistant commander were attached to the 122<sup>nd</sup> Intervention Brigade by the Department for Control of Lawful Work Conduct in Belgrade, and were tasked with controlling the lawful conduct of the unit's members and taking measures in cases of violations of the laws of war. These officers operated independently and were not directly subordinated to the detachment commander, but rather to their home unit in Belgrade.<sup>1870</sup>

723. Ilić added that, in the course of 1998 and 1999, between 50 and 70 PJP members of the 122<sup>nd</sup> Intervention Brigade, which contained a total of 800 men, faced disciplinary and criminal proceedings, mainly related to the crime of theft. He further stated that to the best of his knowledge no disciplinary or criminal proceedings were brought against the brigade's members for maltreatment of civilians.<sup>1871</sup>

#### d. MUP forces engaged in operations in Kosovo

724. In 1998 and 1999 there was a heavy MUP presence in Kosovo, including regular policemen and reservists from Kosovo, and PJP forces from both Kosovo and Serbia, SAJ forces, and JSO forces.

#### e. PJP forces in Kosovo

725. The PJP formed the mainstay of MUP operations in Kosovo in 1998 and 1999, and was deployed in actions involving the VJ and other MUP forces. A document prepared at the 3<sup>rd</sup> Army Forward Command Post on 2 October 1998 indicates that a significant number of PJP formations

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<sup>1868</sup> Božidar Filić, T. 23942 (7 March 2008).

<sup>1869</sup> Nebojša Bogunović, 6D1614 (witness statement dated 6 April 2008), para. 54; *see, e.g.*, 6D1325 (Case file of member of the 36<sup>th</sup> PJP Detachment, 23 March 1999).

<sup>1870</sup> Vladimir Ilić, T. 24327–24329 (17 March 2008).

<sup>1871</sup> Vladimir Ilić, T. 24327–24329, 24390–24391 (17 March 2008).

were active in Kosovo at that time.<sup>1872</sup> Duško Adamović, a member of the MUP Staff in charge of duties related to the rotation of MUP units in Kosovo, testified that there were ten PJP detachments involved in anti-terrorist activities in Kosovo: five detachments of formation “A”, *i.e.* manoeuvre detachments; and five detachments of formation “B”, *i.e.* territorial detachments. In addition, eight PJP companies of the 124<sup>th</sup> Intervention Brigade were deployed in Kosovo. One of these companies was attached to each one of the Kosovo SUPs, with the exception of the Priština SUP, to which two companies were attached.<sup>1873</sup>

726. From July 1998 various PJP detachments from other parts of Serbia were sent to Kosovo “[i]n order to assist the [SUPs] in carrying out special tasks of interest to security.”<sup>1874</sup> Members of PJP detachments from Serbia were deployed in Kosovo for up to 40 days, depending on the assignment.<sup>1875</sup> Dispatches ordering the deployment of such detachments specified that the members of the PJP were to be sent off with their short and long-barrelled weapons, ammunition, flak jackets, and other gear required in combat operations.<sup>1876</sup>

727. However, following the signature on 25 October 1998 of the agreement between Generals Wesley Clark and Klaus Naumann representing NATO, and the Šainović and Vlastimir Đorđević, representing FRY/Serbian authorities, all the special police units deployed in Kosovo after February 1998 were to be withdrawn.<sup>1877</sup> The agreement required reduction of the number of MUP officers in Kosovo from 14,571 to 10,021, of which 8,000 were to be active-duty and reserve police from Kosovo and 2,021 from SUPs outside Kosovo.<sup>1878</sup>

728. According to Ljubinko Cvetić, in early 1999, when KLA activity was stepped up, another mobilisation was carried out, recruiting both active and reserve policemen. Some of the active policemen were members of the special police units previously withdrawn from Kosovo. After the

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<sup>1872</sup> 3D697 (Analysis of the Tasks Executed on the Territory of Kosovo, 2 October 1998), p. 10.

<sup>1873</sup> Duško Adamović, 6D1613 (witness statement dated 30 March 2008), para. 52

<sup>1874</sup> 6D287 (Dispatch from Vlastimir Đorđević in relation to deployment of PJP, 15 July 1998). *See also* 6D681 (Dispatch from Vlastimir Đorđević in relation to deployment of PJP, 28 July 1998); 6D683 (Dispatch from Vlastimir Đorđević in relation to deployment of PJP, 30 December 1998) The Chamber notes that the translation of this document erroneously indicates that it was issued on 18 March 1999. 6D684 (Dispatch from Vlastimir Đorđević in relation to deployment of PJP, 4 February 1999); 6D687 (Dispatch from Vlastimir Đorđević in relation to deployment of PJP, 16 February 1999); 6D685 (Dispatch from Vlastimir Đorđević in relation to deployment of PJP, 18 March 1999); 6D291 (Dispatch from Vlastimir Đorđević in relation to deployment of PJP, 21 March 1999).

<sup>1875</sup> Dragan Paunović, T. 21850 (7 February 2008); Miroslav Mijatović, T. 23374–23375 (14 February 2008).

<sup>1876</sup> 6D685 (Dispatch from Vlastimir Đorđević in relation to deployment of PJP, 18 March 1999); 6D683 (Dispatch from Vlastimir Đorđević in relation to deployment of PJP, 21 March 1999) The Chamber notes that the translation of this document erroneously indicates that it was issued on 18 March 1999.

<sup>1877</sup> P395 (Clark-Naumann Agreement), p. 2.

<sup>1878</sup> Ljubinko Cvetić, T. 8048 (7 December 2006); 6D800 (Conclusions of MUP Staff meeting, 26 October 1998), p. 1.



mobilisation order was issued on 17 March 1999, the number of policemen in Kosovo increased to 14,500–15,000. Mobilisation was supposed to be completed by 20 March 1999.<sup>1879</sup>

729. Whatever the precise numbers of PJP members operating in Kosovo prior to the NATO bombing, once the bombing started they once again took on a significant role on the ground. A document in evidence dated 17 April 1999 indicates that 11 PJP detachments and one intervention brigade were deployed in Kosovo at that time.<sup>1880</sup> In addition, several witnesses who were members of the PJP in 1998 and 1999 testified about their deployment to locations in Kosovo during the NATO bombing.<sup>1881</sup>

f. SAJ forces in Kosovo

730. The SAJ was also deployed in Kosovo in 1998 and 1999. The same document prepared at the 3<sup>rd</sup> Army Forward Command Post on 2 October 1998, that mentions the presence of PJP detachments in Kosovo, also describes the involvement of SAJ forces in various operations at that time.<sup>1882</sup> Moreover, Ljubivoje Joksić testified that in the course of 1998 and 1999 SAJ personnel were stationed in a privately owned company in Kosovo Polje/Fushë Kosova.<sup>1883</sup>

731. As discussed above, Goran Stoparić testified that the group known as the “Scorpions”, of which he was a member, was incorporated into SAJ in early 1999, and sent to Kosovo. Specifically, his unit was deployed in Podujevo/Podujeva,<sup>1884</sup> where some members of the unit executed a group of civilians, following which Živko Trajković, the Head of the SAJ, withdrew the unit from Kosovo.<sup>1885</sup> Approximately 15 days after this incident the majority of members of the unit were sent back to Kosovo. Stoparić testified that the three or four people whom he identified as being involved in the killings in Podujevo/Podujeva were also redeployed in Kosovo.<sup>1886</sup> He further stated that the task of his unit, when they were sent back to Kosovo, was “mopping-up”, which meant attacking the enemy forces as well as trying to seize control of their territory and facilities.<sup>1887</sup>

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<sup>1879</sup> Ljubinko Cvetić, T. 8048–8049 (7 December 2006); P1224 (Review of the number of police forces in Kosovo).

<sup>1880</sup> 5D1417 (Deployment of PJP in the area on 17 April 1999). The Chamber notes that this document bears no indication of its origin and its author is unknown, however its contents were confirmed by Duško Adamović.

<sup>1881</sup> K25, T. 4736–4737 (12 October 2006), P2439 (witness statement dated 12 September 2001), pp. 5–8; Dragan Paunović, T. 21875–21881 (7 February 2008). *See generally* the evidence of K86 and K79.

<sup>1882</sup> 3D697 (Analysis of the tasks executed in Kosovo, 2 October 1998), p. 10.

<sup>1883</sup> Ljubivoje Joksić, T. 21949–21950, 21954 (8 February 2008).

<sup>1884</sup> Goran Stoparić, P2224 (witness statement dated 6 July 2006), paras. 45–46.

<sup>1885</sup> Goran Stoparić, T. 724–725, (12 July 2006), T. 749–750 (13 July 2006), P2224 (witness statement dated 6 July 2006), paras. 45, 50–53. *See also* Branko Gajić, T. 15273–15274 (7 September 2007).

<sup>1886</sup> Goran Stoparić, T. 789 (13 July 2006).

<sup>1887</sup> Goran Stoparić, T. 725–726 (12 July 2006).

g. JSO forces in Kosovo

732. The JSO was also involved in operations in Kosovo in 1998 and 1999. UK Defence Attaché John Crosland recognised JSO forces in Kosovo on several of his tours of the province in 1998,<sup>1888</sup> and the document prepared at the 3<sup>rd</sup> Army Forward Command Post on 2 October 1998, mentioned above, lists JSO forces as involved in three separate operations at that time.<sup>1889</sup>

733. Specifically, the Assistant Co-ordinator of the RDB centres in Kosovo, Ljubivoje Joksić testified that JSO forces were stationed in the area of Kosovska Mitrovica/Mitrovica.<sup>1890</sup> Moreover, the notes of a Joint Command meeting held on 27 July 1998 suggest that the JSO was involved in operations conducted in Kotore, a village in Srbica/Skenderaj municipality, not far from Kosovska Mitrovica/Mitrovica.<sup>1891</sup> John Crosland stated that he saw JSO forces immediately before they assaulted KLA headquarters in Mališevo/Malisheva on 28-29 July 1998. Crosland also saw the JSO on protection duty in the Drenica and Jablanica/Jabllanica areas on 28 August 1998.<sup>1892</sup> Finally, according to K25, JSO forces were part of the operation on 25 March 1999 in the area of Mala Kruša/Krushë e Vogël in Orahovac/Rahovec municipality.<sup>1893</sup>

734. Crosland explained that JSO forces sometimes operated in Kosovo jointly with PJP forces: when PJP forces had to secure an area, the JSO would conduct the assault on the objectives, as they were better trained for this task.<sup>1894</sup> However, it is unclear from his testimony whether this strategy was standard operating procedure. K79 testified that, if PJP forces were unable to complete an operation, JSO forces would come and do so.<sup>1895</sup> Crosland also asserted that JSO forces would occasionally carry out operations dressed as PJP members.<sup>1896</sup>

735. K79 specifically testified that, in late 1998 in Donja and Gornja Lauša near Srbica/Skenderaj, the JSO “cleaned up” the area of KLA members, and the PJP arrived following this JSO offensive.<sup>1897</sup> In addition, K90 testified that in April 1999 in Đakovica/Gjakova municipality, following the ambush of five Serbian policemen, a large contingent of police arrived

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<sup>1888</sup> John Crosland, T. 9764 (7 February 2007); P683 (Confidential Sitrep from U.K. Military Representative, 3 October 1998); P685 (Confidential Sitrep from U.K. Military Representative, 30 July 1998); P687 (Confidential Sitrep from U.K. Military Representative, 28 May 1998); P688 Confidential Sitrep from U.K. Military Representative, 13 May 1998); P2553 (Confidential Sitrep from U.K. Military Representative, 2 October 1998).

<sup>1889</sup> 3D697 (Analysis of the Tasks Executed on the Territory of Kosovo, 2 October 1998), p. 10.

<sup>1890</sup> Ljubivoje Joksić, T. 21950 (8 February 2008).

<sup>1891</sup> P1468 (Notes of the Joint Command), p. 20.

<sup>1892</sup> John Crosland, T. 9762 (7 February 2007).

<sup>1893</sup> K25, T. 4676 (11 October 2006), P2439 (witness statement dated 12 September 2001), p. 19.

<sup>1894</sup> John Crosland, T. 9761–9762 (7 February 2007).

<sup>1895</sup> K79, T. 9676 (2 February 2007).

<sup>1896</sup> John Crosland, T. 9761 (7 February 2007).

<sup>1897</sup> K79, T. 9677 (2 February 2007), 6D180 (witness statement dated 7 May 2006), para. 28 (under seal).

in the area, accompanied by members of the PJP and two other persons in a car. K90 was told by one of the men in his unit, who used to be in the JSO, that these two persons were from the JSO. K90 recognised “the familiar Frenki hats” that they wore, as well as their uniforms.<sup>1898</sup>

736. There is also some limited evidence that JSO forces fought alongside the VJ in Kosovo. K54, a VJ member, stated that in August 1998 he saw VJ forces operating in co-ordination with the JSO in Orahovac/Rahovec.<sup>1899</sup> Moreover, the 2 October 1998 document indicates that the JSO took part in three operations, all of which also involved the VJ and PJP and two of which involved the SAJ.<sup>1900</sup>

#### h. Paramilitaries/volunteers

737. The Lukić Defence concedes that former members of the Scorpions, a unit that was supposed to no longer exist in 1998 and 1999, were incorporated into the SAJ; however, these ex-Scorpions, including Goran Stoparić himself, were reserve policemen, and it was in this capacity that they were integrated into the SAJ.<sup>1901</sup> With respect to Arkan’s Tigers (*Arkanovci*), the Lukić Defence argues that they did not relate to any of the MUP forces over which Lukić had any influence. It further argues that there is no credible evidence at all as to the presence of Arkan’s Tigers in Kosovo in 1999, let alone as members of the MUP forces or as perpetrators of crimes.<sup>1902</sup> With regard to the Wolves of the Drina, it maintains that not a single crime-base witness or any police insider mentioned the presence of members of this group in Kosovo, or their involvement in the commission of crimes.<sup>1903</sup>

738. Former Deputy Head of the VJ Security Administration, Branko Gajić, testified that there were paramilitary groups incorporated into the MUP and operating in Kosovo during the NATO bombing.<sup>1904</sup> This evidence may have referred to the “Scorpions” and other groups associated with the JSO or SAJ. In May 1999 Aleksandar Vasiljević toured the area of Kosovo, together with Gajić and the Head of the Security Administration, Geza Farkaš, trying to gather professional military information about the security situation there.<sup>1905</sup> During this tour he heard about a group named “Legija”, that was commanded by Colonel Kovačević of the MUP, operating in the

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<sup>1898</sup> K90, T. 9313-9314 (29 January 2007), P2652 (witness statement dated 31 January 2007), para. 47.

<sup>1899</sup> K54, T. 10502-10503 (26 February 2007).

<sup>1900</sup> 3D697 (Analysis of the Tasks Executed on the Territory of Kosovo, 2 October 1998), p. 10.

<sup>1901</sup> Lukić Final Trial Brief, 7 August 2008 (public version), paras. 316, 320–321, 327.

<sup>1902</sup> Lukić Final Trial Brief, 7 August 2008 (public version), paras. 334–335.

<sup>1903</sup> Lukić Final Trial Brief, 7 August 2008 (public version), para. 353.

<sup>1904</sup> Branko Gajić, T. 15341–15342 (11 September 2007).

<sup>1905</sup> Aleksandar Vasiljević, T. 8699–8670 (19 January 2007).

Đakovica/Gjakova area.<sup>1906</sup> This group was comprised of 15 men, and had reportedly committed a number of crimes including looting, kidnapping, rape, and murder.<sup>1907</sup> Based on the relatively small number of members in this group, Vasiljević got the impression that the Legija group was some sort of a paramilitary unit, rather than a part of the regular MUP forces.<sup>1908</sup>

739. Gajić testified that 30 members of the group known as Arkan's Tigers were sent to Kosovo on the authority of the then RDB Head Rade Marković.<sup>1909</sup> Stoparić and Vasiljević further testified that members of Arkan's Tigers were incorporated into the JSO;<sup>1910</sup> for example, the JSO commander, Milorad Ulemek Luković (a.k.a. Legija), was himself a former member of Arkan's Tigers.<sup>1911</sup> Gajić stated that, in the course of his investigations, it was established that there was a centre for the reception and training of Arkan's Tigers volunteers in Kosovo Polje/Fushë Kosova. According to Gajić, Arkan's Tigers killed two elderly people (a husband and wife) while in Kosovo. Vasiljević also stated that, following this murder, Arkan's Tigers were ordered out of Kosovo Polje/Fushë Kosova by Rade Marković sometime before 17 May 1999.<sup>1912</sup>

740. Gajić testified that the Wolves of the Drina came from Bosnia and Herzegovina and that they wore SAJ uniforms.<sup>1913</sup> The Chamber also heard that they were led by Nedeljko Karašek, a former commander of special anti-terrorist units from Bosnia and Herzegovina.<sup>1914</sup> According to Gajić, the VJ Security Administration established that the Wolves of the Drina were based in Kosovo Polje/Fushë Kosova, but was unable to establish what their activities were, and "whether they had caused any trouble."<sup>1915</sup>

741. Upon Farkaš's return from his tour of Kosovo with Vasiljević and Gajić, he reported that there were serious problems with paramilitaries in Kosovo, including rapes, looting, and theft.<sup>1916</sup> Consequently, Milošević called a meeting to be held on 17 May 1999 regarding these concerns.<sup>1917</sup>

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<sup>1906</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 30, T. 8698 (19 January 2007).

<sup>1907</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 30, T. 8698 (19 January 2007), T. 9032 (24 January 2007).

<sup>1908</sup> Aleksandar Vasiljević, T. 9035 (24 January 2007).

<sup>1909</sup> Branko Gajić, T. 15379 (11 September 2007).

<sup>1910</sup> Goran Stoparić, P2224 (witness statement dated 6 July 2006), para. 10; Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 42.

<sup>1911</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), paras. 33, 40–42.

<sup>1912</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), paras. 40–42.

<sup>1913</sup> Branko Gajić, T. 15274–15275 (7 September 2007); T. 15373 (11 September 2007).

<sup>1914</sup> Branko Gajić, T. 15274 (7 September 2007), T. 15364 (11 September 2007); Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 39; Branko Gajić, T. 15364, 15372, 15376–15377 (11 September 2008).

<sup>1915</sup> Branko Gajić, T. 15274 (7 September 2007), T. 15335–15336 (11 September 2007).

<sup>1916</sup> Geza Farkaš, T. 16294 (25 September 2007); Branko Gajić, T. 15282–15283 (7 September 2007).

<sup>1917</sup> Branko Gajić, T. 15283 (7 September 2007).

The meeting was attended by Milošević, Šainović, Ojdanić, and Pavković, as well as Marković, Farkaš, Gajić and Vasiljević.<sup>1918</sup> At the meeting Vasiljević presented the available information on the paramilitary groups in Kosovo, mentioning the Scorpions and their leader Slobodan Medić (a.k.a. Boca) and the Drina Wolves and their commander Nedeljko Karašek (a.k.a. Legenda).<sup>1919</sup> Marković then confirmed that there were 30 members of Arkan's Tigers deployed in Kosovo. Marković referred to volunteers as a "necessary evil", and said that Arkan's Tigers were under investigation in relation to their crimes in Kosovo Polje/Fushë Kosova, following the alleged murder of an elderly couple. He said that he had since ordered both the Scorpions and Arkan's Tigers to pull out of Kosovo.<sup>1920</sup> Farkaš testified that Milošević then ordered that paramilitary or para-police forces be removed from Kosovo and not be allowed to return, and that the perpetrators of the mentioned crimes be investigated and brought before a court.<sup>1921</sup>

742. Cvetić identified Lukić as opening a meeting, held on 17 February 1999, at which Minister Vlajko Stojiljković instructed those in attendance to approach and engage volunteers carefully, "linking their engagement through the reserve police force when assessed as necessary".<sup>1922</sup> On 18 February 1999 Stojiljković sent a dispatch to the heads of the Kosovo SUPs, MUP Staff, and other MUP organs, instructing them to carry out the "necessary checks, compile lists, and establish complete control over volunteer and paramilitary units and their members."<sup>1923</sup>

743. Cvetić also stated that, at another MUP Staff meeting held on 17 March 1999, "the head of the MUP staff in Pristina ... raised the issue of volunteers" and stated that "in case volunteers appeared in the area of Kosovo and Metohija, such men are to be retained in those locations. And once war operations begin, the volunteers were to be included in the MUP system." He added that this was illegal.<sup>1924</sup> When asked by the Chamber to clarify who made the statement, Cvetić identified Lukić as the Head of the MUP Staff who made the statement at the 17 March 1999 meeting.<sup>1925</sup> Cvetić then explained the illegal nature of the MUP's use of such volunteers: "Pursuant to the law on the Army of Yugoslavia, I believe in Article 15 it is envisaged that the Army of Yugoslavia, in case of an imminent threat of war and state of war, may be manned by

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<sup>1918</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 63.

<sup>1919</sup> Branko Gajić, T.15290–15291 (7 September 2007); Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), paras. 63–65.

<sup>1920</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 66.

<sup>1921</sup> Geza Farkaš, T. 16297–16298 (25 September 2007).

<sup>1922</sup> Ljubinko Cvetić, T. 8099–8100 (7 December 2006); P1990 (Minutes of the MUP Staff meeting, 17 February 1999).

<sup>1923</sup> 6D269 (Dispatch of the RJB, 18 February 1999).

<sup>1924</sup> Ljubinko Cvetić, T. 8100 (7 December 2006).

<sup>1925</sup> Ljubinko Cvetić, T. 8103 (7 December 2006).

volunteers. Therefore, the legislator did not allow for such a possibility to any other defence structures to be able to make use of volunteers, including the Ministry of the Interior.”<sup>1926</sup>

744. This evidence provided by Cvetić was called into question by the Lukić Defence through the questioning of Miloš Vojnović. Vojnović was asked by the Lukić Defence whether or not he recalled attending any meeting at which Lukić instructed those present to “[a]pproach with a degree of sensitivity and engage volunteers linking their engagement through the reserve police forces when we deem that to be necessary.”<sup>1927</sup> Vojnović stated that he did not recall any such meeting or statement.<sup>1928</sup> Dušan Gavranić also provided evidence that the Minister of Interior, Vlajko Stojiljković, spoke about volunteers at a meeting. However, he recalled that the meeting was held on 17 February 1999, rather than 17 March 1999. He did not recall hearing Lukić say anything about the use of volunteers. Instead, he remembered being told by the Minister of Interior that further instructions would follow, but he did not recall ever receiving any further instruction. He noted that the Gnjilane SUP never used a single volunteer; if any volunteers reported to the SUP, they were transferred to the VJ.<sup>1929</sup> Although the Lukić Defence used the statement regarding the use of volunteers to discredit Cvetić’s testimony, Cvetić actually acknowledged in cross-examination that this first statement was made by the Minister of Interior rather than the Head of the MUP Staff.<sup>1930</sup> He further testified that a similar statement was made by the Head of the MUP Staff, Lukić, at a subsequent meeting on 17 March 1999.<sup>1931</sup> The line of questioning employed by the Lukić Defence to contradict the statements made by Cvetić, therefore, confused these two statements, and the Chamber finds Cvetić reliable on this point. Moreover, the Chamber finds Vojnović and Gavranić not to be reliable in the face of Cvetić’s testimony and the documentary evidence.<sup>1932</sup>

745. On 24 March 1999 Stojiljković issued an additional dispatch to the heads of the Kosovo SUPs, MUP Staff, and other MUP organs, instructing them *inter alia* to “register all volunteers and paramilitary units and their members and keep them under control in case that you might need to

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<sup>1926</sup> Ljubinko Cvetić, T. 8100 (7 December 2006).

<sup>1927</sup> Miloš Vojnović, T. 24154–24155 (12 March 2008).

<sup>1928</sup> Miloš Vojnović, T. 24154–24155 (12 March 2008).

<sup>1929</sup> Dušan Gavranić, T. 22724–22725 (12 February 2008).

<sup>1930</sup> Ljubinko Cvetić, T. 8099–8100 (7 December 2006). See P1990 (Minutes of the MUP Staff meeting, 17 February 1999).

<sup>1931</sup> Ljubinko Cvetić, T. 8100 (7 December 2006).

<sup>1932</sup> Whether the meeting in which Lukić allegedly spoke about the use of volunteers by the MUP was held on 17 February 1999, as claimed by Gavranić, or on 17 March 1999, as claimed by Cvetić, does not undermine this finding of the Chamber. The minutes from 17 February 1999 (P1990) record Stojiljković as making the noted statement regarding the use of volunteers and does not record Lukić as stating anything about the use of volunteers. Nevertheless, Cvetić distinguished the two separate instances in which statements were made regarding the use of volunteers by the MUP: one by the Minister of the Interior and one by the Head of the MUP Staff.

engage them.”<sup>1933</sup> Another reference to paramilitaries was made by Lukić at a MUP Staff meeting on 4 April 1999, where he instructed those present to “take rigorous measures towards paramilitary units.”<sup>1934</sup>

#### 4. Other forces

746. Aside from the units of the VJ and MUP described thus far, other forces under the control of the state authorities also operated in Kosovo during the period relevant to the Indictment, which may properly be regarded as part of “forces of the FRY and Serbia”. These included the civil defence and civil protection units of the Federal Ministry of Defence. In addition, starting from July 1998 persons of non-Albanian ethnicity were armed and organised into local village defence units, which were called Reserve Police Detachments or Reserve Police Squads (RPOs). Most of the members of these units were called up into either the VJ or the MUP when mobilisation began in early 1999; nonetheless, a number of armed individuals without specific wartime assignments in the official forces were present in Kosovo during the conflict in 1999. The Chamber now turns to the assessment of these structures, analysing in particular their composition, numerical strength, and position in the chain of command vis-à-vis the VJ, the MUP, and the Ministry of Defence.

##### a. Civil Defence and Civil Protection Units

###### *i. Composition*

747. Civil defence and civil protection units fell under the jurisdiction and command of the Federal Ministry of Defence, and were regulated by the FRY Law on Defence and the Rules on Civilian Protection of the Federal Ministry of Defence.<sup>1935</sup>

748. The FRY Law on Defence prescribed that citizens aged between 15 and 60 years old (for men) or 55 years old (for women) should be subject to the obligation to participate in civilian defence and protection units. This general rule was not applicable to persons already serving in the VJ or in “organs of the Interior”. Membership in these units involved the obligation to participate in units and organs formed for the protection and rescue of the civilian population and material resources from wartime destruction and natural and other disasters and threats.<sup>1936</sup>

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<sup>1933</sup> 6D238 (Dispatch of Vlajko Stojiljković, 24 March 1999).

<sup>1934</sup> P1989 (Minutes of the MUP Staff meeting, 4 April 1999).

<sup>1935</sup> P985 (FRY Law on Defence), articles 54–63; *see also* Slobodan Kosovac, T. 15830 (18 September 2007); Vladimir Lazarević, T. 17962 (8 November 2007); Branko Gajić, T. 15462–15463 (12 September 2007); Miodrag Simić, T. 15612 (13 September 2007); Geza Farkaš, T. 16331 (25 September 2007); 3D1116 (Radovan Radinović’s Expert Report), p. 34; P950 (Vladimir Lazarević interview with the Prosecution), pp. 57–60.

<sup>1936</sup> P985 (FRY Law on Defence), article 22.

749. Expert witness Radovan Radinović testified that civilian defence and protection units were distinguished from other armed units by their special clothes and civilian markings.<sup>1937</sup> Lazarević specified that the members of civilian protection wore uniforms that were light blue in colour, with circle-inset yellow triangle insignia on their sleeves, a blue cap, and yellow fluorescent vests.<sup>1938</sup> Zlatomir Pešić similarly testified that civilian protection personnel had distinct clothes bearing no resemblance to any military uniform; however, he claimed that these uniforms were “usually dark blue”.<sup>1939</sup> Other witnesses also described the civilian protection uniforms in similar terms, as blue in colour with an attached yellow emblem.<sup>1940</sup> Notably, Veljko Odalović, who was Commander of the civilian protection staff in the Kosovo District during the NATO bombings, emphasised that in his position he never put on a uniform.<sup>1941</sup>

750. The Chamber has before it conflicting information about the numerical strength of the civilian defence and protection units. The Lukić Defence submission that they were approximately 40,000 strong<sup>1942</sup> does not seem to be accurate. The Lukić Defence supports this assertion by referring to the testimony of Branko Gajić. However, Gajić emphasised that the number he gave of 40,000 to 47,000 persons related to all *conscripts*,<sup>1943</sup> thus it included individuals who were excluded from serving in civilian defence and protection units by operation of article 22 of the FRY Law on Defence, which exempted all persons serving in the VJ and MUP from making themselves available for these units.<sup>1944</sup>

751. The remaining evidence places the number within the 6,000 to 10,000 range. Specifically, Lazarević recalled that there were approximately 10,000 members of these units in Kosovo during the time relevant to the Indictment.<sup>1945</sup> Geza Farkaš stated that, although there should have been 9,000 posts filled, there were not enough people and in the end a little over 6,500 weapons were issued “to the civilian structures of the society”, including the civilian protection and defence units.<sup>1946</sup> The latter number was supported by a communiqué from the Federal Ministry of

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<sup>1937</sup> 3D1116 (Radovan Radinović’s Expert Report), pp. 34–35.

<sup>1938</sup> Vladimir Lazarević, T. 18794 (22 November 2007); *see also* P950 (Vladimir Lazarević interview with the Prosecution), p. 65.

<sup>1939</sup> Zlatomir Pešić, T. 7185 (23 November 2006).

<sup>1940</sup> Dušan Lončar, T. 7662 (1 December 2006); Geza Farkaš, T. 16336–16337 (25 September 2007).

<sup>1941</sup> Veljko Odalović, T. 14473–14474 (27 August 2007).

<sup>1942</sup> Lukić Final Trial Brief, 7 August 2008 (public version), para. 469.

<sup>1943</sup> Branko Gajić, T. 15461 (12 September 2007). *See also* Radovan Radinović, T. 17275 (19 October 2007).

<sup>1944</sup> P985 (FRY Law on Defence), article 22.

<sup>1945</sup> Vladimir Lazarević, T. 18425 (16 November 2007); P950 (Vladimir Lazarević interview with the Prosecution), pp. 60–61, 391–393.

<sup>1946</sup> Geza Farkaš, T. 16379–16380 (25 September 2007).



Defence, written on 2 November 1998, which put the total number of civil defence and civil protection members at 6,632.<sup>1947</sup>

752. Civil protection units were commanded by the Federal Ministry of Defence.<sup>1948</sup> According to Lazarević and Radovan Radinović, during wartime these units were in particular engaged in tasks of protecting and saving people and material property and informing citizens about imminent danger.<sup>1949</sup> Miodrag Simić testified that civil protection units were in charge of protecting buildings.<sup>1950</sup> The evidence suggests that, on occasions, civil protection units were also used to “sanitise” terrain.<sup>1951</sup>

753. Radinović emphasised that civil protection units were not combat units and could not be used as such,<sup>1952</sup> but added that their members were issued light weapons for personal defence.<sup>1953</sup> This is supported by a letter from the Priština Defence Administration to the Ministry of Defence dated 2 November 1998, referring to a request made by the former to the 3<sup>rd</sup> Army Command “to secure ... arms and ammunition for ... civilian protection—3,365 members”.<sup>1954</sup> Similarly, an order of the Federal Ministry of Defence called for the distribution of weapons to Serbs and other “loyal” populations, but exempted members of the civil defence and civil protection on the basis that they would be armed by their “wartime units”.<sup>1955</sup>

754. Civil defence units were also commanded by the Federal Ministry of Defence.<sup>1956</sup> These units were armed with small arms and formed into detachments.<sup>1957</sup> Civil defence units had the

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<sup>1947</sup> P1060 (Letter from the Priština Defence Administration to the Sector for civilian defence, 2 November 1998). *See also* 3D1116 (Radovan Radinović’s Expert Report), p. 34 referring to P1061 (Letter from the Priština Defence Administration to the Sector for civilian defence, 2 November 1998), pp. 3–4.

<sup>1948</sup> Aleksandar Vasiljević, T. 8963 (23 January 2007). *See also* P950 (Vladimir Lazarević interview with the Prosecution), pp. 60–61; P1294 (Decision on the Appointment of Civil Protection Officers, 19 March 1999).

<sup>1949</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 60–61; 3D1116 (Radovan Radinović’s Expert Report), p. 28. According to Lazarević, Civil Protection units were divided in two types, both of which had special uniforms and international insignia, and were usually not armed: 1) the General Purpose Civilian Protection Unit, which were tasked with removing the population and goods and evacuating them; and 2) the Special or Specific Purpose Units, such as the Fire Units, Anti-Fire Units, Decontamination Units, Sanitation Units, etc.; P950 (Vladimir Lazarević interview with the Prosecution), pp. 57–61.

<sup>1950</sup> Miodrag Simić, T. 15679 (14 September 2007).

<sup>1951</sup> K83, T. 3957–3958 (26 September 2006). Stamenković explained that the term “sanitisation” or “*asanacija*” means to assist the wounded after a battle, recover and record corpses, weaponry, and anything else that might be potentially harmful. Novica Stamenković, T. 20118–20120 (12 December 2007).

<sup>1952</sup> 3D1116 (Radovan Radinović’s Expert Report), p. 34; *see also* Ljubinko Cvetić, T. 8171 (8 December 2006).

<sup>1953</sup> Radovan Radinović, T. 17278 (19 October 2007). Geza Farkaš also testified that weapons were provided to the civil protection units; T. 16379–16380 (25 September 2007). *Cf.* Ljubinko Cvetić, T. 8171 (8 December 2007).

<sup>1954</sup> P1060 (Letter from the Priština Defence Administration to the Sector for civilian defence, 2 November 1998).

<sup>1955</sup> P1259 (Order of the Priština Defence Administration on the implementation of measures for the security and protection of population, 21 May 1998).

<sup>1956</sup> P985 (FRY Law on Defence), articles 61–63; 3D1116 (Radovan Radinović’s Expert Report), p. 34; Slobodan Kosovac, T. 15829–15830 (18 September 2007).

task “to protect the civilian population and property from attack, secure public buildings (schools, hospitals, and others) and other civilian buildings and resources.”<sup>1958</sup> Lazarević added that, during a state of war, the civil defence took over the “material obligation” for the VJ and was thus in charge of providing motor vehicles, but its units were not involved in carrying out any kind of actions on behalf of the VJ.<sup>1959</sup> Radovan Radinović stated that, as with the civil protection units, civil defence units were not combat units and could not be used as such.<sup>1960</sup>

*ii. Command structure*

755. The Prosecution argues that the civilian defence and protection units were subordinated to the VJ by operation of a permissive clause in the FRY Law on Defence, and by way of direct resubordination orders.<sup>1961</sup>

756. Article 63 of the FRY Law on Defence established that “all units of civilian defence shall be commanded by the state organs responsible for civilian defence and protection”,<sup>1962</sup> but continued that:

An officer of the Army of Yugoslavia holding the position of battalion commander or higher may issue special tasks concerning the defence and protection of the civilian population and material resources to units [...] and control them in the area of his responsibility.<sup>1963</sup>

757. Despite the explicit wording of this provision, Miloš Mandić denied that brigade commanders had any authority over the civil defence and civil protection units.<sup>1964</sup> Radinović also testified that the relationship between army commanders and these units was one of co-operation and at most overseeing with regard to performance of their special tasks, but definitely not one of subordination.<sup>1965</sup> Later, when confronted with the text of the provision in question, Radinović qualified his testimony to argue that it did not mean that the civil defence and civil protection units could be used by a VJ commander outside their functions, but meant that they could be issued orders for engagement solely in tasks related to the protection of the population and material

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<sup>1957</sup> P985 (FRY Law on Defence), article 61; Ljubinko Cvetić, T. 8171 (8 December 2007); Vladimir Lazarević, T. 17966 (9 November 2007).

<sup>1958</sup> P985 (FRY Law on Defence), article 61; P950 (Vladimir Lazarević interview with the Prosecution), pp. 60–61, 63–65.

<sup>1959</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 392–393.

<sup>1960</sup> 3D1116 (Radovan Radinović’s Expert Report), pp. 34–35.

<sup>1961</sup> Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 106–107.

<sup>1962</sup> P985 (FRY Law on Defence), article 63; P950 (Vladimir Lazarević interview with the Prosecution), pp. 60–63.

<sup>1963</sup> P985 (FRY Law on Defence), article 63.

<sup>1964</sup> Miloš Mandić, 5D1391 (witness statement dated 8 January 2008), para. 19.

<sup>1965</sup> Radovan Radinović, T. 17286 (19 October 2007).

property for civilian use.<sup>1966</sup> Thus, in his view, there was no automatic subordination of the civil protection and defence units to the VJ command system, and they were not linked up into a unified decision-making system. However, there is evidence of close co-operation. According to Radinović, the VJ had the legal authority to utilise civil defence and civil protection units in a limited capacity; these forces were operating in the same areas as the VJ and thus the VJ command system in the field could have some influence on the conduct of these groups.<sup>1967</sup>

758. Lazarević testified that civil defence and civil protection units were subordinated to the Ministry of Defence, but recalled that the Priština Corps requested the help of both “in putting up the population and assisting in civilian issues” around the middle of the NATO bombing in 1999.<sup>1968</sup> With regard to these orders, several witnesses emphasised that a formal resubordination decision was never issued.<sup>1969</sup> On 26 March 1999 the 243<sup>rd</sup> Motorised Brigade Command ordered several of its units to co-ordinate action with civilian protection organs and units in the Brigade zone of responsibility in order to help each other and engage local capacities.<sup>1970</sup>

759. Radovan Radinović referred to an order dated 9 April 1999 which required all organisational units of the Federal Ministry of Defence in Serbia to receive orders relating to defence tasks and duties exclusively from the Serbian headquarters of the Ministry of Defence.<sup>1971</sup> The order specified that, even though the “[l]ocal self-government organs” in the territory of the defence administrations were co-operating with their “organisational units”, they were not allowed to give orders “in the areas of defence within [their] competence”. It added that the requests made by the local self-government organs that “were not within the competence” of the defence administration were to be rejected.<sup>1972</sup>

760. Furthermore, in the days immediately following the said Ministry of Defence order, two documents were issued by the VJ, which were designed to resubordinate civilian defence units to VJ command.<sup>1973</sup> The first was a 3<sup>rd</sup> Army Command order dated 10 April 1999 signed by Pavković, which stated that “[d]uring the operations the forces of the Interior Ministry and civilian

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<sup>1966</sup> Radovan Radinović, T. 17295 (19 October 2007). *See also* 3D1116 (Radovan Radinović’s Expert Report), p. 35.

<sup>1967</sup> 3D1116 (Radovan Radinović’s Expert Report), pp. 134–135.

<sup>1968</sup> P950 (Vladimir Lazarević interview with the Prosecution), pp. 61–63; Vladimir Lazarević, T. 17962 (8 November 2007).

<sup>1969</sup> *See e.g.* Božidar Delić, T. 19673 (6 December 2007), Radojko Stefanović, T. 21652 (5 February 2008), T. 21782 (6 February 2008), Vladimir Lazarević, T. 18730–18731 (21 November 2007).

<sup>1970</sup> 5D1284 (Order for defence of the 243<sup>rd</sup> Mechanised Brigade, 26 March 1999), p. 12.

<sup>1971</sup> 3D1116 (Radovan Radinović’s Expert Report), p. 135, referring to P1339 (Federal Ministry of Defence Order, 9 April 1999).

<sup>1972</sup> P1339 (Order of the Ministry of Defence to defence administrations, 9 April 1999).

<sup>1973</sup> 4D308 (3<sup>rd</sup> Army order on defence from NATO, 10 April 1999), p. 4; P1483 (Supplement to Directive of 9 April 1999, 12 April 1999), p. 2.

defence shall be placed under the 3<sup>rd</sup> Army Command”.<sup>1974</sup> The other document was issued by the Supreme Command Staff two days later as a supplement to an older directive, amending the latter to include a very similar clause: “Forces of the MUP and civilian defence shall be placed under the command of the Third Army during the operation and they shall be used exclusively by your decision.”<sup>1975</sup> Consequently, as of 12 April 1999 at the latest, attempts had been made to formally resubordinate civil defence and civil protection units to the VJ. The fact that in April 1999 the VJ was attempting to effectuate such resubordination indicates that this had not been done prior to that point. Furthermore, the Chamber is not satisfied that it has been proven that the civil defence and civil protection units were actually subordinated to the VJ in practice.<sup>1976</sup>

761. That leaves the broader question of the nature of the interplay or relationship between the chains of command of the VJ and the Ministry of Defence. On the one hand, Radinović claimed that each of the chains of command present in Kosovo in 1999 was in principle and practice autonomous and independent. Similarly, Jelić testified that there were two parallel chains of command without any interference. On the other hand, the evidence indicates that there existed a degree of overlap between the two chains of command. There was certainly close co-operation between them. According to Radinović the VJ had the legal authority to utilise civil defence and civil protection units in a limited capacity; these forces were operating in the same areas as the VJ and thus the VJ command system in the field could have some influence on the conduct of these groups.<sup>1977</sup> An example of this co-operation was mentioned by Božidar Delić, who acknowledged meeting the commander of a civil defence unit on a number of occasions, because they shared responsibility for the protection of certain facilities in Priština/Prishtina, in order to “avoid any misunderstandings or any accidents, friendly fire and the like”.<sup>1978</sup>

762. But other evidence shows a closer relationship. As described above, article 63 of the FRY Law on Defence gave VJ commanders the legal authority to utilise units of the Ministry of Defence in specific circumstances. VJ involvement in the Ministry of Defence chain of command seems to be supported by the documents referring to arming and training of the Serb populations by the VJ, such as the 3<sup>rd</sup> Army order regarding organisational-technical preparations for the issuance of weapons and ammunition to recruits, dated 26 June 1998. This order tasked VJ commanders to distribute weapons to village inhabitants and form and train units in settlements.<sup>1979</sup> However,

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<sup>1974</sup> 4D308 (3<sup>rd</sup> Army order on defence from NATO, 10 April 1999), p. 4.

<sup>1975</sup> P1483 (Supplement to Directive of 9 April 1999, 12 April 1999), p. 2.

<sup>1976</sup> Božidar Delić, T. 19292 (29 November 2007); Dragan Živanović, T. 20485 (17 January 2008).

<sup>1977</sup> 3D1116 (Radovan Radinović’s Expert Report), pp. 134–135.

<sup>1978</sup> Božidar Delić, T. 19292 (29 November 2007).

<sup>1979</sup> P1415 (Order re issuance of weapons and ammunition to recruits, 26 June 1998).

other witnesses testified that it related solely to military conscripts who fell under the jurisdiction of the VJ.<sup>1980</sup> This evidence does not, therefore, provide a basis for concluding that the VJ exercised authority over these units in practice.

763. The Chamber finds that the civil protection and defence units comprised 6,000 armed men at the relevant time. These units were tasked with protecting and defending the civilian population and material property from wartime destruction and deliberate attacks. They were subordinated to and formed part of the chain of command of the Federal Ministry of Defence. The VJ's role with regard to these units was limited to co-operation and oversight with regard to the fulfilment of their tasks. However, the Chamber is not satisfied either that resubordination of civil defence and protection units to the VJ was implemented in practice, or that the Ministry of Defence and VJ chains of command co-incided or merged during the conflict.

b. Armed non-Albanian population

i. *Composition*

764. The Chamber has heard evidence that by July 1998 over 54,000 citizens from local villages and towns in Kosovo had been armed by the VJ and MUP and that this number continued to grow until about 60,000 people had been issued with weapons.<sup>1981</sup> These weapons were distributed to persons of non-Albanian ethnicity ("armed Serbs")<sup>1982</sup> in various capacities.

765. The armed Serb population was organised into units, which were known as Reserve Police Detachments or Reserve Police Squads (RPOs), and included VJ and MUP reservists who were not actively engaged in wartime units.<sup>1983</sup> The main task of these units was the defence of their villages and towns.<sup>1984</sup> A set of directives called the Instructions for the Defence of Inhabited Places described these "police units" as primarily MUP units that unified all the forces in inhabited areas. The Instructions provided that the command staffs of these units comprised a representative of the local self-government, a representative from the VJ, and a representative from the MUP.<sup>1985</sup> The command staff was to be based in a command post. However, Božidar Filić testified that RPO

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<sup>1980</sup> Radovan Radinović, T. 17308 (19 October 2007); Momir Stojanović, T. 20076 (7 December 2007). *See also* Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 30; Lazarević Final Trial Brief, 29 July 2008 (public version), para. 518.

<sup>1981</sup> P3121 (Minutes of the MUP Staff meeting, 29 July 1998), p. 7; P2803 (MUP report re visit to regional RPOs), p. 6–7; P928 (Minutes of the Collegium of the VJ General Staff for 30 December 1998), p. 9.

<sup>1982</sup> *See e.g.* P931 (Minutes of the Collegium of the VJ General Staff for 2 February 1999), p. 23.

<sup>1983</sup> Miroslav Mijatović, T. 22343 (13 February 2008); Božidar Filić, T. 24013 (10 March 2008). *See also* P1114 (Report to the MUP Staff from the Kosovska Mitrovica SUP, 1 July 1998); P2804 (Dispatch from the MUP Staff to the commanders of organisational units of the MUP in Kosovo, 10 July 1998).

<sup>1984</sup> P3121 (Minutes of the MUP Staff meeting, 29 July 1998), p. 7.

<sup>1985</sup> P2086 (Instructions for the defence of populated areas, issued by the Joint Command, 1 July 1998), p. 7.

members stayed at home.<sup>1986</sup> The RPOs were to organise a defence and defend their homes in the event that their village was attacked by the KLA.<sup>1987</sup> Because RPOs were manned by *inter alios* VJ and MUP reservists, these individuals retained their primary obligation to respond to the call-up from the VJ and MUP.<sup>1988</sup> During the present proceedings, challenges were raised as to the binding nature of these Instructions and whether the MUP in fact received them.<sup>1989</sup> In light of further documents referring back to the Instructions, and MUP documents indicating its involvement with these local defence units, as discussed below, the Chamber is satisfied that the Instructions were official guidelines and were implemented in Kosovo.<sup>1990</sup>

766. VJ reservists were armed and organised into these village defence units or RPOs pursuant to a Priština Corps order dated 26 June 1998.<sup>1991</sup> In February 1999, at a collegium meeting of the VJ General Staff, Samardžić explained that these Serbs were armed and organised for the defence of local villages, that armed “commanders” had been sent out with ammunition to their villages, and that, aside from their primary task of defending their villages within these RPOs, they were to participate with VJ units in any operations in their immediate vicinity.<sup>1992</sup> Whilst individuals with wartime assignments in the VJ, MUP, and civil defence and civil protection units were issued weapons through their wartime units and then sent back to their villages when not on active duty, citizens without such wartime assignments were issued weapons on the basis of a Ministry of Defence order dated 21 May 1998.<sup>1993</sup> The combination of these efforts ensured that by the commencement of the NATO bombing in March 1999 virtually every able-bodied male of non-Albanian origin living in Kosovo was armed.<sup>1994</sup>

767. RPOs were organised upon the military principle, meaning that they had a commander or a squad leader, and the necessary number of members.<sup>1995</sup> According to the minutes of a MUP Staff meeting held in May 1999, members of the RPOs were not allowed to wear police or military

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<sup>1986</sup> P2086 (Instructions for the defence of populated areas, issued by the Joint Command, 1 July 1998), p. 7; Božidar Filić, T. 24014 (10 March 2008).

<sup>1987</sup> Božidar Filić, T. 24014 (10 March 2008).

<sup>1988</sup> Ljubinko Cvetić, T. 8051 (7 December 2006).

<sup>1989</sup> Milan Đaković, T. 26416 (19 May 2008), Duško Adamović, T. 25111 (10 April 2008).

<sup>1990</sup> P1063 (Extracts from instructions for the defence of populated areas, issued by Priština Defence Administration, 28 July 1998); P1064 (Cover letter for instructions for the defence of populated areas, issued by Joint Command, 28 July 1998); P1065 (Order/instructions re defence of populated areas, issued by Priština Defence Administration, 28 July 1998); P3121 (Minutes of the MUP Staff meeting, 29 July 1998), p. 7.

<sup>1991</sup> P1415 (Order re issuance of weapons and ammunition to recruits, 26 June 1998), pp. 1–2; Ljubinko Cvetić, T. 8055, 8091 (7 December 2006). *See also* P1114 (Report to the MUP Staff from the Kosovska Mitrovica SUP, 1 July 1998); P1115 (List of weapons issued by VJ to MUP reserve units by municipality, 30 July 1998).

<sup>1992</sup> P931 (Minutes of the Collegium of the VJ General Staff, 2 February 1999), p. 23.

<sup>1993</sup> P1259 (Order of the Priština Defence Administration, 21 May 1998), pp. 1–2; Božidar Filić, T. 24013 (10 March 2008); Aleksandar Dimitrijević, T. 26748–26749 (9 July 2008).

<sup>1994</sup> Ljubinko Cvetić, T. 8090 (7 December 2006); Adnan Merovci, T. 8439 (16 January 2007).

uniforms if they were not mobilised into a reserve MUP or VJ unit.<sup>1996</sup> Moreover, Cvetić testified that there was a general lack of uniforms at that time. However, RPO members did have the basic equipment of a soldier, such as a cap, a jacket, and a belt.<sup>1997</sup>

768. With the beginning of mobilisation in March 1999 most of the RPOs were disbanded because their members joined either the MUP or the VJ reserve forces, according to their wartime assignments.<sup>1998</sup> But there is also evidence that some of these units remained operational in the territory of Kosovo throughout the NATO bombing, manned by armed Serbs who were not called up to join wartime units.<sup>1999</sup> Additionally, from January right through to May 1999 a number of combat orders referred to the “armed non-Šiptar population”. The tasks assigned to this entity in these orders included reinforcing and assisting VJ and MUP forces and securing and defending civilian and military facilities.<sup>2000</sup>

769. Several VJ commanders who appeared as witnesses asserted that a “force” or “unit” entitled “armed non-Šiptar population” did not exist in their area of control. Some of them testified that, although there might have been operations involving the armed non-Albanian population,<sup>2001</sup> which were not officially part of any organised group, either they personally did not encounter such “forces”,<sup>2002</sup> or these forces were not present in their units.<sup>2003</sup> Other witnesses testified that they were not even familiar with this terminology or with plans involving the “armed non-Šiptar population.”<sup>2004</sup>

770. The Chamber rejects such denials. The Joint Command and other VJ orders contain clear references to this group, as do the FRY/Serbian documents and statements by military and police

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<sup>1995</sup> Ljubinko Cvetić, T. 8051 (7 December 2006).

<sup>1996</sup> P1993 (Minutes of the MUP Staff meeting, 11 May 1999), pp. 8–9; P1996 (Minutes of the MUP Staff meeting, 7 May 1999), p. 12.

<sup>1997</sup> Ljubinko Cvetić, T. 8051–8053 (7 December 2006).

<sup>1998</sup> Nebojša Bogunović, T. 25123–25124 (10 April 2008), 6D1614 (witness statement dated 6 April 2008), para. 21; Miroslav Mijatović, T. 22528 (15 February 2008); Božidar Filić, T. 24019–24021 (10 March 2008); Miloš Vojnović, T. 24162–24165 (12 March 2008).

<sup>1999</sup> Božidar Filić, T. 24019–24021 (10 March 2008); Miloš Vojnović, T. 24162–24163 (12 March 2008); 6D802 (Conclusions of the MUP Staff Meeting of 7 and 11 May 1999), para. 19.

<sup>2000</sup> See e.g. 5D245 (*Grom* 3 Order of the 3<sup>rd</sup> Army Command, 27 January 1999), p. 5; P1968 (Joint Command Order, 24 March 1999), p. 2; P2808 (Order of the PrK, 16 February 1999), p. 4; P1878 (Joint Command Order, 15 April 1999), p. 2; P1975 (Joint Command Order, 15 April 1999), p. 1; P1976 (Joint Command Order, 15 April 1999), p. 2; P2014 (Order of the PrK, 25 May 1999), p. 3; P2015 (Joint Command Order, 23 March 1999), p. 2; 4D332 (Order on preventing the forceful introduction of a NATO Brigade, 27 January 1999), p. 5; 5D175 (Order of the PrK, 6 April 1999), p. 3; 5D1284 (Order of the 243<sup>rd</sup> Mechanised Brigade, 26 March 1999), p. 2.

<sup>2001</sup> Đorđe Ćurčin, T. 17031–17032 (16 October 2007).

<sup>2002</sup> Ljubomir Savić, T. 21006 (24 January 2008); Božidar Delić, T. 19673 (6 December 2007).

<sup>2003</sup> Miloš Mandić, T. 20933–20935 (24 January 2008).

<sup>2004</sup> Zlatimir Pešić, T. 7190 (23 November 2006); Mihajlo Gergar, T. 21531 (1 February 2008); Duško Adamović, T. 25108 (10 April 2008).

leaders referred to above. The Chamber notes that, already in his graduation thesis written in 1997 on the topic of quelling insurgency in Kosovo, Božidar Delić, later commander of the 549<sup>th</sup> Motorised Brigade, had proposed that in case of an uprising the “armed Serbian and Montenegrin population” should closely collaborate with the other defence forces on the ground and even be under the direct command of the competent VJ unit.<sup>2005</sup> At several points of his testimony, Delić sought to distance himself from the arguments and data contained in the thesis and asserted that it did not reflect the reality in Kosovo in 1998 and 1999.<sup>2006</sup> However, the coincidence between the statements in Delić’s thesis and *inter alia* the instructions for the formation of these local defence units,<sup>2007</sup> the subsequent references to the formation of these units,<sup>2008</sup> and the orders for their engagement in operations,<sup>2009</sup> demonstrates that in this respect his thesis does provide a remarkably consistent reflection of the situation that eventuated. Indeed, his categorical dismissal of significant parts of his own academic paper, which was produced at a school with a highly competitive admission procedure,<sup>2010</sup> serves to undermine his credibility on this. Accordingly, the Chamber finds the argument that armed non-Albanian population was not part of any organised group unconvincing.

771. Alternatively, several witnesses led by the Defence suggested that the phrase “armed non-Šiptar population” was actually an unfortunate reference to civilian defence and protection units in the superior command orders, which was then thoughtlessly copied to individual orders.<sup>2011</sup>

772. This claim that the reference is a mere administrative error and actually meant civil defence and civil protection units must be dismissed. Various official documents show that, although members of civil defence and civil protection units played a role in the RPOs, these remained separate structures.<sup>2012</sup> Moreover, military expert Radovan Radinović expressly stated that these were distinct structures.<sup>2013</sup> Similarly, Delić’s thesis drew a clear distinction between the armed

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<sup>2005</sup> P1893 (Božidar Delić’s Degree Thesis, “Preparation and Engagement of FRY Defence forces for the Prevention and Suppression of the Armed Uprising in KiM”, 1997), p. 43–44.

<sup>2006</sup> Božidar Delić, T. 19536 (5 December 2007), T. 19654 (6 December 2007).

<sup>2007</sup> P2086 (Instructions for the defence of populated areas, issued by Joint Command, 1 July 1998), p. 7.

<sup>2008</sup> See e.g. P3121 (Minutes of the MUP Staff meeting, 29 July 1998), p. 7; P928 (Minutes of the Collegium of the VJ General Staff for 30 December 1998), p. 9; P2803 (MUP report re visit to regional RPOs), pp. 6–7; Božidar Filić, T. 24019–24021 (10 March 2008).

<sup>2009</sup> See, e.g., 5D245 (*Grom* 3 Order of the 3<sup>rd</sup> Army Command, 27 January 1999), p. 5; P1968 (Joint Command Order, 24 March 1999), p. 2.

<sup>2010</sup> See Božidar Delić, T. 19516 (5 December 2007).

<sup>2011</sup> See e.g. Branko Krga, T. 16875 (4 October 2007), Đorđe Ćurčin, T. 17034 (16 October 2007), Vladimir Lazarević, T. 18424 (16 November 2007); Krsman Jelić, T. 19070 (26 November 2007); Radojko Stefanović, T. 21783 (6 February 2008). See also Pavković Final Trial Brief, 28 July 2008 (public version), paras. 156–168.

<sup>2012</sup> P1259 (Order of the Priština Defence Administration, 21 May 1998); 5D1284 (Order of the 243<sup>rd</sup> Mechanised Brigade, 6 February 2008), pp. 1–2, 12.

<sup>2013</sup> Radovan Radinović, T. 17269–17270 (18 October 2007).



non-Albanian population and civilian defence and protection units, treating them under separate headings.<sup>2014</sup> Finally, the numbers of weapons distributed to members of the civil defence and civil protection units (around 6,000)<sup>2015</sup> are markedly lower than those distributed to the armed non-Albanian population as a whole (around 57,000),<sup>2016</sup> as discussed below.

773. As to the ethnic qualifier “non-Šiptar”, the only explanation was that offered by Krsman Jelić who stated it was necessary because Kosovo Albanians, unlike the other non-Albanian ethnic groups, did not respond to the mobilisation call “once terrorism cropped up in Kosovo”.<sup>2017</sup> The issue of the ethnic basis of arming the non-Albanian population is discussed below in Section VIII.B. Also addressed in that section are the efforts to establish local security units manned exclusively by Albanians in 1998. However, these Albanian security units, in so far as they came into existence, were distinct and separate from the armed non-Albanian population.<sup>2018</sup>

774. The Chamber finds that the “armed non-Šiptar population” was a residual category, meant to engage those armed individuals of non-Albanian ethnicity who were not organised into wartime units of the VJ or MUP.<sup>2019</sup> Throughout the conflict this armed non-Albanian population in Kosovo remained organised in RPOs, which were also sometimes termed local defence units. This is consonant with the repeated evidence given by a number of witnesses that the armed non-Albanians were not incorporated into the VJ or MUP official units as combat personnel, but that their only task was the defence of inhabited areas and the protection of facilities, or, in other words, to “protect themselves”.<sup>2020</sup> This is, of course, identical to the main task ascribed to the RPOs or local defence units.

775. The total number of the armed non-Albanian population was about 60,000. At a MUP Staff meeting on 28 July 1998, the MUP officer in charge of the organisation and functioning of the RPOs in Kosovo, Blagoje Pešić, reported that there had been 243 RPOs formed in Kosovo and that 54,683 citizens who were members of the RPOs had been issued with weapons. He added that it was expected that 60,000 people would be armed by the end of the process of weapons

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<sup>2014</sup> P1893 (Božidar Delić’s Degree Thesis, “Preparation and Engagement of FRY Defence forces for the Prevention and Suppression of the Armed Uprising in KiM”, 1997), pp. 20–21 and 41–44;

<sup>2015</sup> See, e.g., P1060 (Letter from the Priština Defence Administration to the Sector for civilian defence, 2 November 1998); Geza Farkaš, T. 16379–16380 (25 September 2007); 3D1116 (Radovan Radinović’s Expert Report), pp. 34–35.

<sup>2016</sup> See, e.g., P3121 (Minutes of the MUP Staff meeting, 29 July 1998), p. 7; P928 (Minutes of the Collegium of the VJ General Staff for 30 December 1998), p. 9; P2803 (MUP report re visit to regional RPOs), pp. 6–7.

<sup>2017</sup> Krsman Jelić, T. 19073–19074 (26 November 2007).

<sup>2018</sup> Zoran Anđelković, T. 14658–14659 (30 August 2007).

<sup>2019</sup> Ljubinko Cvetić, T. 8089–8090 (7 December 2006); Radovan Vučurević, T. 23184 (25 February 2008); P2803 (MUP report re visit to regional RPOs), pp. 5–6 (reporting of the civilians’ frequent failure to respond when called to RPO tasks).

distribution.<sup>2021</sup> Half a year later Aleksandar Dimitrijević suggested to Ojdanić that the number of armed Serbs that could be mobilised outside the control of official organs had reached 60,000.<sup>2022</sup> A few weeks later, on 16 February 1999, at a MUP Staff meeting it was reported that 64,080 weapons had been distributed to members of these RPOs.<sup>2023</sup> This estimate is also in line with Delić's appraisal that, including forces from other parts of the FRY, the defence forces in Kosovo would be able to field a total of 92,500 to 98,500 persons to fight the armed insurgency.<sup>2024</sup>

776. The evidence indicates that during the course of early 1999 most VJ and MUP reservists were called up to their respective wartime assignments.<sup>2025</sup> Thus, by March 1999 there were approximately 6,000 RPO members.<sup>2026</sup> This is consonant with expert witness Radovan Radinović's assessment that based on the demographic potential of Kosovo, the number of armed members of the population outside of the formal structures of the mobilised VJ, MUP, and civil defence and civil protection personnel could, at the maximum, have been between 4,000 and 6,000.<sup>2027</sup>

## *ii. Command structure*

777. The MUP nominated the commanders of the RPOs and maintained overall command authority over them.<sup>2028</sup> The commander of each RPO would submit reports to the commander of the police station which covered the village in question. The relevant police commander would then provide the RPO commanders with instructions for carrying out tasks. Decisions about the activities of RPOs were made, depending on the security situation, by either the MUP command in Belgrade, the MUP Staff in Priština/Prishtina, the SUPs, the OUPs, or police stations.<sup>2029</sup> Cvetić

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<sup>2020</sup> Radovan Radinović, T. 17288 (19 October 2007); Božidar Delić, T. 19531, 19535 (5 December 2007); Radomir Mladenović, T. 21295–21296 (29 January 2008); Dragan Živanović, T. 20560–20561 (18 January 2008).

<sup>2021</sup> P3121 (Minutes of the MUP Staff meeting, 29 July 1998), p. 7.

<sup>2022</sup> P928 (Minutes of the Collegium of the VJ General Staff for 30 December 1998), p. 9.

<sup>2023</sup> P2803 (MUP report re visit to regional RPOs), pp. 6–7; *see also* P931 (Minutes of the Collegium of the VJ General Staff for 2 February 1999), p. 23 (wherein Samardžić puts the number of people sent home to take part in the defence of their villages at 47,000); Momčilo Stojanović, T. 20073 (12 December 2007), (who puts the number of Serbs sent back from the VJ to defend their villages at around 40,000).

<sup>2024</sup> P1893 (Božidar Delić's Degree Thesis, "Preparation and Engagement of FRY Defence forces for the Prevention and Suppression of the Armed Uprising in KiM", 1997), p. 21.

<sup>2025</sup> Nebojša Bogunović, T. 25123–25124 (10 April 2008), 6D1614 (witness statement dated 6 April 2008), para. 21; Miroslav Mijatović, T. 22528 (15 February 2008); Božidar Filić, T. 24019–24021 (10 March 2008); Miloš Vojnović, T. 24162–24165 (12 March 2008).

<sup>2026</sup> Ljubinko Cvetić, T. 8050 (7 December 2006).

<sup>2027</sup> Radovan Radinović, T. 17270 (18 October 2007), T. 17275 (19 October 2007).

<sup>2028</sup> Ljubinko Cvetić, T. 8050–8053 (7 December 2006); Tomislav Mitić, 5D1390 (witness statement dated 27 December 2007), para. 32; P1114 (Report to the MUP Staff from the Kosovska Mitrovica SUP, 1 July 1998).

<sup>2029</sup> Ljubinko Cvetić, T. 8052–8053 (7 December 2006).

maintained that, in practice, when a task had to be undertaken, the regular police commander planned the mission and assigned certain tasks to the relevant RPO, with which he liaised.<sup>2030</sup>

778. While these units were primarily organised and directed by the MUP, the VJ also played a role in commanding them. Under the heading, “Commanding”, the Instructions for the Defence of Inhabited Places state that a representative of the VJ should be part of the staff that organises the local defence units.<sup>2031</sup> In Kosovska Mitrovica/Mitrovica a VJ reservist was named as Assistant Commander in virtually all RPOs established by the MUP.<sup>2032</sup> Furthermore, Momir Stojanović testified that the VJ retained control over those units which it had previously armed until April 1999.<sup>2033</sup> Similarly, Đorđe Ćurčin and Mihajlo Gergar testified that in certain situations army commanders could issue specific tasks to the “armed non-Šiptars”, but qualified that this was only in terms of carrying out a concrete operation within their capacity and role, such as to secure certain areas, facilities and/or roads.<sup>2034</sup>

779. In his thesis, which was published prior to the formation of these units, Delić had proposed that in the context of the “suppression of the insurgency”, the armed population would be under the direct command of the competent military territorial command or VJ unit in whose zone they are located.<sup>2035</sup> The VJ also influenced the setting up of armed non-Albanian population units, as confirmed by Samardžić’s statement in February 1999 that, with regard to arming of non-Albanians, “[i]t was my order and we organised the whole thing”.<sup>2036</sup> Prior to the commencement of the conflict, the VJ was also involved in assigning wartime posts to VJ and MUP reservists who were in these RPOs, through the Military Districts.<sup>2037</sup> In fact, Lukić was reprimanded in July 1998 by the commander of the Priština Military District for transgressing his powers by assigning RPO members to MUP units despite their previous assignment to other defence structures.<sup>2038</sup>

780. As stated above, numerous VJ combat orders mention that the “armed non-Šiptar population” was “to be engaged” by the Priština Corps in carrying out military operations on the ground. These orders assign certain specific tasks to this entity: primarily, reinforcing and

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<sup>2030</sup> Ljubinko Cvetić, T. 8090–8091 (7 December 2006).

<sup>2031</sup> P2086 (Instructions for the defence of populated areas, issued by the Joint Command, 1 July 1998), p. 7.

<sup>2032</sup> P1114 (Report to the MUP Staff from the Kosovska Mitrovica SUP, 1 July 1998).

<sup>2033</sup> Momir Stojanović, T. 20073–20076 (12 December 2007) (discussing P1415 (Order re issuance of weapons and ammunition to recruits, 26 June 1998)).

<sup>2034</sup> Đorđe Ćurčin, T. 17042 (16 October 2007); Mihajlo Gergar, T. 21532 (1 February 2008).

<sup>2035</sup> P1893 (Božidar Delić’s Degree Thesis, “Preparation and Engagement of FRY Defence forces for the Prevention and Suppression of the Armed Uprising in KiM”, 1997), p. 43.

<sup>2036</sup> P931 (Minutes of the Collegium of the VJ General Staff for 2 February 1999), p. 23.

<sup>2037</sup> K25, T. 4678–4679 (11 October 2006); Zlatimir Pešić, T. 7151, 7168 (22 November 2006)

<sup>2038</sup> 4D521 (Priština Military District Command, Col Savić to SUP Priština, Sreten Lukić, re warning on sending conscripts on wartime assignments with the MUP without consent of the VTO).

assisting VJ and MUP forces in “crushing and destroying terrorist forces”, securing military facilities and communication routes, and defending areas populated with non-Albanians.<sup>2039</sup>

781. An example of a VJ order mentioning the “armed non-Šiptar population” is that of the 243<sup>rd</sup> Mechanised Brigade commander dated 26 March 1999, which instructs the Brigade “to prevent raids of NATO forces” “in co-ordinated action with the 175<sup>th</sup> infantry brigade, 549<sup>th</sup> motorised brigade *and armed non-Šiptar population*”.<sup>2040</sup> The Chamber does not accept the argument that the many references should be attributed to administrative oversight or thoughtless copying.

782. Several witnesses led by the Defence pointed out that references to the “armed non-Šiptar population” in military orders always fell under the heading “Task”, and never under the heading “Unit tasks”. According to these witnesses, only the “Unit tasks” were given by the individual commanders issuing the orders, whereas the section headed “Task” was simply reproduced from the text of the orders received from their superior commands. Thus, as there were no references to the “armed non-Šiptar population” in the “Unit tasks”, this meant that the commanders on the ground gave no actual assignments to such a group.<sup>2041</sup>

783. Expert witness Radinović argued that the purpose of including reference to the “armed non-Šiptar population” under the “Task” heading was simply to indicate to VJ commanders that such armed individuals were in their areas of responsibility.<sup>2042</sup> Radinović also asserted that the Federal Ministry of Defence had command authority over the “armed non-Šiptar population”, unless there was an order resubordinating it to the VJ.<sup>2043</sup>

784. Unlike the civil defence and civil protection units discussed above,<sup>2044</sup> the evidence does not indicate the existence of any VJ resubordination orders pertaining to the “armed non-Šiptar population”.<sup>2045</sup> The Chamber considers that the VJ’s role in establishing and arming these units,

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<sup>2039</sup> See e.g. 5D245 (*Grom* 3 Order of the 3<sup>rd</sup> Army Command, 27 January 1999), p. 5; P1968 (Joint Command Order, 24 March 1999), p. 2; P2808 (Order of the PrK, 16 February 1999), p. 4; P1878 (Joint Command Order, 15 April 1999), p. 2; P1975 (Joint Command Order, 15 April 1999), p. 1; P1976 (Joint Command Order, 15 April 1999), p. 2; P2014 (Order of the PrK, 25 May 1999), p. 3; P2015 (Joint Command Order, 23 March 1999), p. 2; 4D332 (Order on preventing the forceful introduction of a NATO Brigade, 27 January 1999), p. 5; 5D175 (Order of the PrK, 6 April 1999), p. 3; 5D1284 (Order of the 243<sup>rd</sup> Mechanised Brigade, 26 March 1999), p. 2.

<sup>2040</sup> 5D1284 (Order of the 243<sup>rd</sup> Mechanised Brigade, 26 March 1999), pp. 1–2 (emphasis added).

<sup>2041</sup> Vladimir Lazarević, T. 17907–17908 (8 November 2007); Božidar Delić, T. 19535 (5 December 2007); Radojko Stefanović, T. 21778–21779 (6 February 2008); Ljubomir Savić, T. 21006–21007 (24 January 2008).

<sup>2042</sup> Radovan Radinović, T. 17282 (19 October 2007); 3D1116 (Radovan Radinović’s Expert Report), p. 36. See also Vladimir Lazarević, T. 18730–18731 (22 November 2007); Božidar Delić, T. 19653, 19673 (6 December 2007).

<sup>2043</sup> Radovan Radinović, T. 17282–17283 (19 October 2007); 3D1116 (Radovan Radinović’s Expert Report), para. 77.

<sup>2044</sup> 4D308 (3<sup>rd</sup> Army order on defence from NATO, 10 April 1999), p. 4; P1483 (Supplement to Directive of 9 April 1999, 12 April 1999), p. 2.

<sup>2045</sup> See Vladimir Lazarević, T. 18730 (21 November 2007); Radojko Stefanović, T. 21652 (5 February 2008), T. 21781 (6 February 2008), T. 21833 (7 February 2008); Miloš Mandić, T. 20931 (24 January 2008).

and its representation in their command structures, explains why such a resubordination order would not be issued by the VJ, while it would seek to resubordinate the civil defence and civil protection units.

785. The Prosecution argues that the absence of written orders suggests that field commanders issued verbal instructions to the “armed non-Šiptar population”.<sup>2046</sup> Although oral orders were legitimate within the VJ for the conduct of operations on the ground,<sup>2047</sup> specific evidence showing that oral orders were issued to the armed non-Albanian population, on the basis of the written Joint Command orders, was not provided in the present case. Nonetheless, the Joint Command orders do assign these units tasks, such as securing military facilities and roads, and defending places with a non-Albanian population.<sup>2048</sup> This is consistent with the aforementioned testimonies that the VJ could issue tasks to the armed non-Albanians within their capacity and role.<sup>2049</sup>

786. Halit Berisha, the former mayor of Suva Reka/Suhareka, opined that those members of the RPOs, who returned to their villages but wore uniforms from the VJ and MUP remained subject to those chains of command.<sup>2050</sup> Zlatomir Pešić testified that, if persons were found wearing parts of a military or police uniform while armed, measures could be taken by the police or army against them.<sup>2051</sup> Similarly, Nike Peraj acknowledged that the VJ imposed sanctions in certain cases where it found VJ reservists had committed serious crimes, even if they had been operating outside of the chain of command.<sup>2052</sup>

787. The Chamber finds that between July 1998 and March 1999 the non-Albanian population in Kosovo was armed and organised into so-called RPOs, or local defence units, numbering about 60,000 men. These units were under the general command and control of the MUP, which was also primarily responsible for their establishment and organisation. The MUP, the VJ, and the Ministry of Defence retained the ability to call up from the RPOs reservists who had wartime assignments in their respective units. In addition, the VJ’s role in commanding and controlling the RPOs entailed having representatives in the staff organising the RPOs.

788. The Chamber further finds that by March 1999 most of the RPO members responded to the mobilisation and joined either the MUP or the VJ, reducing the number of armed non-Albanians in

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<sup>2046</sup> Prosecution Final Trial Brief, 29 July 2008 (public version), para. 126.

<sup>2047</sup> Goran Jevtović, T. 20360 (16 January 2008); Vlatko Vuković, T. 21340 (29 January 2008).

<sup>2048</sup> See e.g., P2808 (Order of the PrK, 16 February 1999), p. 4; P1878 (Joint Command Order, 15 April 1999), p. 2; P1975 (Joint Command Order, 15 April 1999), p. 2.

<sup>2049</sup> Đorđe Ćurčin, T. 17942 (16 October 2007); Mihajlo Gergar, T. 21532 (1 February 2008).

<sup>2050</sup> Halit Berisha, T. 3653–3655 (20 September 2006).

<sup>2051</sup> Zlatomir Pešić, T. 7316 (24 November 2006).

<sup>2052</sup> Nike Peraj, P2253 (witness statement dated 8 and 9 August 2006), para. 15; T. 1665–1666 (15 August 2006).

Kosovo without wartime assignments to about 6,000. During the conflict the VJ's role in commanding and controlling these individuals then extended to their engagement in tasks, including military tasks, in the zone of responsibility of the relevant VJ commanders.

789. Having set out the various forces of the FRY and Serbia that were in Kosovo in 1998 and 1999, the Chamber now analyses the evidence pertaining to the situation on the ground in that time period.

#### B. EXISTENCE OF AN ARMED CONFLICT IN 1998–1999

790. The deterioration of the situation in Kosovo through the 1990s accelerated in 1998 and 1999. Before analysing the evidence and making findings in relation to the specific crimes alleged to have been committed by forces of the FRY and Serbia in Kosovo in the period March-June 1999, the Chamber first addresses the general allegations in the Indictment pertaining to 1998. In this section the Chamber considers whether the forces of the FRY and Serbia were already bound by the norms of international humanitarian law in 1998, and whether serious allegations of various violations of these norms were being made. The question of whether such allegations were known to each of the Accused, and how such knowledge might impact upon their responsibility for crimes committed in 1999, will be addressed in later sections dealing with the individual criminal responsibility of each Accused.

791. In deciding on determining the existence of an armed conflict, this Tribunal has consistently applied the definition formulated by the Appeals Chamber in the *Tadić* case that “an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.”<sup>2053</sup> The Appeals Chamber further articulated that,

[i]nternational humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.<sup>2054</sup>

Thus, for an internal conflict, it is the nature of the violence between state forces and a non-state armed group, or between such groups, and the level of organisation of that group, which is

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<sup>2053</sup> *Prosecutor v. Tadić*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para.70.

determinative. Once such an internal armed conflict is established, it continues until there has been a “peaceful settlement” achieved, which requires the termination of military operations.<sup>2055</sup>

792. In the present case the relevant “governmental authorities” are those of the FRY and Serbia, and the forces under their control described above were engaged in Kosovo primarily against the group known as the Kosovo Liberation Army (“KLA”). A significant amount of evidence was led by both the Prosecution and the Defence in relation to the organisation and activities of the KLA. The Chamber finds the witnesses referred to below to be reliable in their general description of the KLA, without accepting all of the details that they provided about its strength and activities, given the mystique and murkiness that surrounded it. Amongst those witnesses, the Chamber places particular reliance on the evidence provided by former KLA commander Bislim Zyrap, who had inside knowledge of the workings of the KLA, and by British Defence Attaché John Crosland, who was in Kosovo during 1998, had personal contact with KLA fighters, and observed what was happening on the ground at that time.

#### 1. The Kosovo Liberation Army

793. Although some witnesses led by the Defence traced its history to the early 1990s, the exact origins of the Kosovo Liberation Army (also known in Albanian as the *Ushtria Çlirimtare e Kosovës* – UÇK) have not been clearly presented during these proceedings.<sup>2056</sup> Branko Gajić, the former Deputy Head of the VJ Security Administration, testified that he first started receiving information about the existence of the KLA in late 1995 or early 1996.<sup>2057</sup> Whatever its origins, it is apparent that by late 1997 the KLA had achieved some level of organisation and was taking credit for attacks upon Serbian police and civilians in Kosovo.<sup>2058</sup> By November of that year, according to Gajić, the VJ Security Administration considered that the KLA “had all the attributes of a terrorist organisation.”<sup>2059</sup> At that time the Drenica region in central Kosovo was known among the Kosovo Albanian population as “liberated territory”, due to the strong presence of the KLA there.<sup>2060</sup>

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<sup>2054</sup> *Prosecutor v. Tadić*, Case No. IT-94-1-AR72, Appeals Chamber Decision on Jurisdiction, Oct. 2, 1995, paras. 67 and 70. See also, e.g., *Prosecutor v. Šešelj*, Case No. IT-03-67-AR72.1, Appeals Chamber Decision on Jurisdiction, 31 August, 2004, para. 8; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-T, Trial Judgement, para. 37.

<sup>2055</sup> *Prosecutor v. Tadić*, Case No. IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, paras. 67, 70.

<sup>2056</sup> Petar Damjanac, T. 23705 (5 March 2008); Shaban Fazliji, 6D1629 (witness statement dated 6 April 2008), para. 6.

<sup>2057</sup> Branko Gajić, T. 15178–15180 (6 September 2007).

<sup>2058</sup> Frederick Abrahams, P2228 (witness statement dated 24 January 2002), p. 9.

<sup>2059</sup> Branko Gajić, 3D1084 (witness statement dated 8 August 2007), para. 12.

<sup>2060</sup> Frederick Abrahams, P2228 (witness statement dated 24 January 2002), p. 9.

794. By 1998 the KLA had become a more established organisation, which was further developing in size and capacity.<sup>2061</sup> It appears that its evolution and growth in this period was linked to increasing perceptions within the Kosovo Albanian community that it needed to protect itself from increasing attacks by forces of the FRY and Serbia.<sup>2062</sup> However, the entire Kosovo Albanian population did not support the KLA, or the methods that it utilised.<sup>2063</sup>

795. The Accused have argued that many of the attacks described in the Indictment were legitimate operations against the KLA, which was considered by the FRY/Serbian authorities to be a “terrorist” organisation and was often referred to as being, or forming part of, the “ŠTS” (*Šiptarske Terorističke Snage* – “Šiptar” Terrorist Forces). For the purposes of the present case, it is immaterial whether or not the KLA was labelled as a “terrorist” group, and who did or did not use that terminology in reference to it. The Chamber is in no doubt that, by the period relevant to the Indictment, FRY and Serbian forces were being utilised to counter the KLA, and the fighting between them was protean in nature, extending to different parts of Kosovo and varying in intensity at different times. The general course of this fighting was marked by a gradual increase in clashes during the first half of 1998, and a more dramatic increase in KLA activity in May, June, and July, followed by the fairly successful execution of a plan by VJ and MUP forces to push the KLA out of entrenched positions in the late summer. Then, at the end of October 1998, the reorganisation and reconsolidation of KLA forces began. Sporadic fighting between KLA and VJ and MUP forces intensified in late 1998, and into early 1999, and continued into the NATO bombing campaign that began in late March.

796. With this introduction, the Chamber now considers whether the two-prong test for the existence of an internal armed conflict set out above was satisfied in 1998.

a. Protracted armed violence

*i. KLA actions*

797. The KLA began to claim responsibility for attacks on members of the military and security forces in Kosovo, as well as on civilians considered to represent, or be supportive of, the state

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<sup>2061</sup> John Crosland, T. 9778–9779 (7 February 2007).

<sup>2062</sup> Bedri Hyseni, T. 3095 (11 September 2006), Hyseni stated that the KLA was formed because there “was no way out for the Albanian people of Kosova”; Bedri Hyseni, P2270 (witness statement dated 8 May 2001) p. 2, (witness statement dated 1 September 2001), p. 2. *See also* Frederick Abrahams, P2228 (witness statement dated 24 January 2002), p. 8, (noting that as repression by the Serbian state continued in the mid-1990s, young Kosovo Albanian men began speaking about the necessity of an armed movement.).

<sup>2063</sup> John Crosland, T. 9776 (7 February 2007).



authorities, in late 1996 and 1997.<sup>2064</sup> Miroslav Mijatović, an officer in the Serbian MUP, noted that “incidents of terrorism” increased in 1997 and became a daily occurrence.<sup>2065</sup> Božidar Filić, also a MUP officer, stated that by February 1998 the KLA had already blocked off main roads and occupied the village of Likošane/Likoshan (Glogovac/Gllogoc municipality). It also abducted Serbs in Kosovo.<sup>2066</sup> Bislim Zyrapi, a former JNA officer who joined the KLA in early 1998, and became its Chief of General Staff in November of that year, testified that the attack by Serbian special police on the Jashari family compound in the village of Donje Prekaze/Prekaz i Poshtëm, discussed in more detail below, marked the beginning of the “conflict” between the forces of the FRY and Serbia and the KLA.<sup>2067</sup> Human Rights Watch reported that in this incident, which took place on 5 March 1998, Adem Jashari, a known KLA member, was killed along with an estimated 50 others, many of them members of his family and including several women and children.<sup>2068</sup> Thereafter the KLA commenced a gradually increasing series of attacks in Kosovo in the spring of 1998, including attacks on MUP patrols,<sup>2069</sup> an attack on a Priština/Prishtina police building,<sup>2070</sup> and attacks into Kosovo from across the Albanian border.<sup>2071</sup>

798. By May 1998 the strength of KLA forces in Kosovo had increased markedly. On 9 May 1998 the President of the Đakovica/Gjakova Municipal Assembly, Momčilo Stanojević, wrote to the President and Prime Minister of Serbia, complaining of stepped-up activity of “Šiptar terrorist gangs” and imploring the Serbian authorities to reinforce MUP units in Đakovica/Gjakova.<sup>2072</sup> Acknowledging the ongoing conflict with the KLA, on 18 May 1998 the VJ’s 125<sup>th</sup> Motorised Brigade Command advised its units to establish contact with local Kosovo Albanians in their respective zones of responsibility and “warn them that the VJ has not entered the area because of them, but to conduct regular combat exercises, and because of fighting with sabotage and terrorist groups.”<sup>2073</sup>

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<sup>2064</sup> Frederick Abrahams, P2228 (witness statement dated 24 January 2002), p. 8; 3D1116 (Radovan Radinović’s Expert Report), para. 5.

<sup>2065</sup> Miroslav Mijatović, T. 22163–22165 (12 February 2008).

<sup>2066</sup> Božidar Filić, T. 23930–23931 (7 March 2008).

<sup>2067</sup> Bislim Zyrapi, T. 5933 (6 November 2006).

<sup>2068</sup> P437 (Human Rights Watch Report entitled “Humanitarian Law Violations in Kosovo”, October 1998), e-court pp. 34–38. *See also* Sabit Kadriu, T. 5061–5064 (18 October 2006); 3D1116 (Radovan Radinović’s Expert Report), para. 7 (stating that terrorist activities by the KLA “particularly intensified after the liquidation of the so-called Drenica terrorist group of Adem Jašari.”); 1D553 (MUP Press Release, 11 March 1998).

<sup>2069</sup> 5D849 (Report of the 549<sup>th</sup> Motorised Brigade Command, 30 March 1998).

<sup>2070</sup> 6D1507 (On-site Investigation Report, 14 April 1998).

<sup>2071</sup> 5D849 (Report of the 549<sup>th</sup> Motorised Brigade, 30 March 1998), p. 2; 5D748 (Order of the 125<sup>th</sup> Motorised Brigade Command, 17 April 1998).

<sup>2072</sup> 1D483 (Report on the Political and Security Situation in Đakovica Municipality, 9 May 1998), p. 2.

<sup>2073</sup> 5D750 (Order of the 125<sup>th</sup> Motorised Brigade, 18 May 1998), p. 1.

799. Krsman Jelić, commander of the VJ's 243<sup>rd</sup> Mechanised Brigade in 1998, noted that there was a general increase in KLA activity from May through July 1998, mostly involving robberies and attacks on roads.<sup>2074</sup> A report from the Commander of the Priština Corps to the Commander of the 3<sup>rd</sup> Army, dated 13 May 1998, estimated that the KLA had at that time managed to gain control of about 30 percent of the territory of Kosovo, including the roads between Kosovska Mitrovica/Mitrovica and Peć/Peja, and between Priština/Prishtina and Peć/Peja.<sup>2075</sup> The report also described the operations conducted by units of the Priština Corps to counter the KLA, secure the border, and protect facilities, and made proposals for future force deployment. The KLA stepped up its attacks on military and security forces. On 23 May 1998 VJ units came under attack by KLA forces in both Dečani/Dečan and Đakovica/Gjakova municipalities in western Kosovo.<sup>2076</sup> Petar Damjanac, a police chief in Glogovac/Gllogoc in central Kosovo during the Indictment period, also discussed several KLA attacks on the police in Glogovac/Gllogoc by the KLA throughout 1998.<sup>2077</sup>

800. By June 1998 senior military figures in the FRY were voicing serious concerns about KLA activities. At the session of the Supreme Defence Council held on 9 June 1998, VJ Chief of the General Staff, Momčilo Perišić, reported that the VJ was engaged in Kosovo “in accordance with its peacetime purpose”. However, Perišić further stated that some VJ forces were operating further inside Kosovo, to protect the barracks. All of these forces had been engaged in “conflicts” with the “terrorists”, both in the border belt and in response to attacks on VJ facilities.<sup>2078</sup> Two days later, on 11 June 1998, the chief of the Priština Corps security department, Momir Stojanović, wrote to the General Staff, noting that “the security situation in the municipalities of Metohija is getting worse, and that Šiptar/Albanian terrorists are being mobilised, armed and prepared for an armed conflict with MUP/Ministry of the Interior and VJ/Yugoslav Army members.”<sup>2079</sup>

801. Božidar Delić testified that by June 1998 the territories near Đakovica/Gjakova, Orahovac/Rahovec, and Mališevo/Malisheva were under KLA control.<sup>2080</sup> On 24 July 1998 the Priština Corps Command sent a report to the General Staff Security Administration in which it explained that, according to the information available to it, there were 25,000 armed “terrorists” in Kosovo at that time. The “terrorist” group centres were located on the wider area of Drenica,

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<sup>2074</sup> Krsman Jelić, T. 18838–18839 (22 November 2007).

<sup>2075</sup> P1401 (Report from PrK to 3<sup>rd</sup> Army, 13 May 1998), p. 2.

<sup>2076</sup> P2822 (Report on the Activities of the VJ in Kosovo, 25 May 1998), pp. 3–4.

<sup>2077</sup> Petar Damjanac, T. 23718–23725 (5 March 2008).

<sup>2078</sup> P1574 (Minutes of 5<sup>th</sup> SDC Session, 9 June 1998), also admitted as 4D106.

<sup>2079</sup> 3D995 (PrK Command Security Section Report, 11 June 1998), p. 1. *See also* 3D997 (PrK Command Security Section Report, 13 June 1998), p. 1.

<sup>2080</sup> Božidar Delić, T.19275–19276 (28 November 2007).

Mališevo/Malisheva, Glođane/Gllogjan village, Jablanica/Jabllanica village and Junik village.<sup>2081</sup> A directive issued by the Chief of the General Staff on 28 July 1998 stated that the KLA had succeeded in taking control of about 30 percent of the territory of Kosovo; the general area of Drenica, Mališevo/Malisheva in central Kosovo; Studenčane/Studenčan and Blace/Bllace in Suva Reka/Suhareka municipality in south central Kosovo, Jasić/Jasiq in Đakovica/Gjakova municipality in the south west; Junik, Istinić/Isniq, and Glođane/Gllogjan in Dečani/Dečan municipality in the west; and Jablanica/Jabllanica in Klina municipality. It further stated that the KLA had spread its influence to about 40 percent of the territory.<sup>2082</sup> Human Rights Watch researcher Fredrick Abrahams also testified that the KLA had taken “loose” control of up to 40 percent of Kosovo by June 1998,<sup>2083</sup> and Bislim Zyrapi asserted that by mid July 1998 the KLA held “more or less” 50 percent of Kosovo, which included three of the four major access roads.<sup>2084</sup> According to John Crosland, in the summer of 1998 the KLA could launch attacks on VJ and MUP forces anywhere in Kosovo, and thus technically controlled as much as 70 percent of the area.<sup>2085</sup>

802. Several MUP documents from July 1998 give statistics on the victims of alleged killings and abductions by “Albanian terrorists” at that time.<sup>2086</sup> In addition, on 29 July, 3<sup>rd</sup> Army Commander Dušan Samardžić gave the following estimates of the KLA strength: 3,500 to 4,000 in the Drenica area (central Kosovo), 1,500 to 2,000 in Jablanica/Jabllanica (western Kosovo), 1,500 to 2,000 in Mališevo/Malisheva and surrounding areas, 500 to 1,000 in the Ratkovac/Ratkoc, Drenovac/Drenoc, and Orahovac/Rahovec areas, and 1,000 to 1,500 in the border area near Albania. He also estimated that an additional 2,000 to 3,000 “trained terrorists” were located in Albania. Samardžić also asserted that mercenaries could be found among the KLA ranks, most

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<sup>2081</sup> 5D1307 (PrK Report to General Staff Security Administration, 24 July 1998), p. 1.

<sup>2082</sup> 4D137 (General Staff Directive to Deploy VJ in Kosovo, 28 July 1998), p. 1.

<sup>2083</sup> Fredrick Abrahams, T. 875–876 (14 July 2006), Frederick Abrahams, P2228 (witness statement dated 24 January 2002) p. 10.

<sup>2084</sup> Bislim Zyrapi, T. 6017–6018 (7 November 2006).

<sup>2085</sup> John Crosland, T. 9910 (8 February 2007), 3D510 (witness statement dated 30 June 2006), para. 23.

<sup>2086</sup> 1D721 (Serbian MUP List of Citizens Killed in Albanian Separatist Terrorist Acts in Kosovo from 1 January to 8 July 1998, 9 July 1998) (asserting that in that period, a total of 52 civilians were killed by “Albanian separatist terrorist acts”, including 19 Serbian and Montenegrin citizens, 30 Kosovo Albanians, and 3 citizens of other nationalities), p. 9; 1D707 (Serbian MUP List of Civilians and MUP Members Abducted by Albanian Terrorists between 1 January and 7 July 1998, 8 July 1998) (asserting that “Albanian terrorists” were already widely employing abduction tactics throughout Kosovo against the Serbian authorities and civilians, and stating that 66 persons of Serbian and Montenegrin ethnicity, 27 Kosovo Albanians, and 7 of other ethnicities, and five MUP members, had been abducted), p. 14; 1D726 (Overview of Terrorist Actions by Albanian Separatists in the Territory of Kosovo in the Period January – 7 July 1998) (summarising “terrorist actions by Albanian separatists” during this time period, and claiming 387 actions, with activity increasing in April 1998, and particularly heavy in May and June of 1998, with the majority of the actions from the time period taking place in these two months).

notably from Islamic countries. Finally, he noted that they “continued to carry out both forced and voluntary mobilisation of the Šiptar population and deploy them in the military units.”<sup>2087</sup>

803. John Crosland testified that the villages of Rznić/Irznik and Prilep/Prejlep, in western Kosovo, were among the zones disputed between the KLA and the forces of the FRY and Serbia in 1998. On 32 occasions between 1 July and 11 August 1998 the police station in Prilep/Prejlep was attacked by KLA forces.<sup>2088</sup> There was also ongoing fighting in Junik, Prilep/Prejlep, and Rznić/Irznik (Dečani/Dečan municipality) and Ponoševac/Ponoshec (Đakovica/Gjakova municipality) in the west. This fighting started in May, and lasted for about three months, and was connected to the strategic importance of the area to the KLA as a route for supplying weapons and soldiers.<sup>2089</sup> This is discussed in greater detail in Section VI.C below. Bislim Zyrapi further testified that in June and July 1998 there was fighting in the Drenica and Dukagjin zones.<sup>2090</sup> Through July, August, and September, the fighting intensified and spread, due to an offensive undertaken by the FRY/Serbian forces against areas that were under KLA control at the time.<sup>2091</sup>

804. A key KLA offensive took place in Orahovac/Rahovec, in south central Kosovo, in July 1998. The KLA, which had a stronghold in the northern part of the municipality and around Mališevo/Malisheva, made an unsuccessful attempt to take control of the area, including parts of the town of Orahovac/Rahovec itself.<sup>2092</sup> Human Rights Watch researcher Frederick Abrahams stated that this action was the KLA’s “first major offensive”, starting on 19 July and lasting two days. The VJ recorded the attack as starting on 17 July and being a major event. Momir Stojanović, chief of the security department of the Priština Corps, noted on 18 July that the KLA had attacked on the previous day from the direction of Drenovac/Drenoc, Mališevo/Malisheva, and Opteruša/Opterusha, to the north and east of Orahovac/Rahovec town. According to his report, KLA forces “took control of most of the town, broke into the Health Centre and took a large quantity of medical material. They also took control of the transformer station that supplies electricity” and severed the Zrze-Orahovac main road.<sup>2093</sup> The RDB reported that, as a consequence, “Orahovac and its surroundings were without electricity and water until 23 July 1998,

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<sup>2087</sup> 4D140 (3<sup>rd</sup> Army Command Order, 29 July 1998), pp. 1–2.

<sup>2088</sup> John Crosland, T. 10017–10018 (9 February 2007).

<sup>2089</sup> John Crosland, T. 9918–9919 (8 February 2007).

<sup>2090</sup> Bislim Zyrapi, T. 5934, 5939–5940 (6 November 2006). Zyrapi explained that the KLA divided Kosovo into seven zones, including Drenica (in central Kosovo), and Dukagjin (in western Kosovo). *See also*, P2469 (Map of KLA operational zones); Sabit Kadriu, T. 5117–5118 (18 October 2006).

<sup>2091</sup> Bislim Zyrapi, T. 5940 (6 November 2006).

<sup>2092</sup> Jan Kickert, T. 11204 (7 March 2007); Frederick Abrahams, P2228 (witness statement dated 24 January 2002), p. 11. *See also*, K79, T. 9590–9591 (1 February 2007); Dragan Milenković, T. 22952–22953 (21 February 2008); Božidar Delić, T.19460–19461 (4 December 2007); P922 (Minutes of the Collegium of the General Staff of the VJ, 20 July 1998), pp. 12–13 (Dimitrijević commenting on the use of the VJ in the operation of liberating Orahovac/Rahovec).

<sup>2093</sup> 5D1305 (PrK Command Security Section Report, 18 July 1998).

56 persons were kidnapped, 5 persons were killed, 2 wounded, one woman was raped, one person was set on fire.”<sup>2094</sup> Details about the VJ and MUP response to and engagement with the KLA in Orahovac/Rahovec at this time were provided by witness K79, a PJP member. He testified that the fighting was ongoing in the town and the KLA was withdrawing in the face of a co-ordinated action involving the VJ and special police units.<sup>2095</sup> These forces pushed the KLA out of Orahovac/Rahovec shortly thereafter.<sup>2096</sup>

*ii. Plans to combat the KLA and the FRY/Serbian summer offensive*

805. As discussed in greater detail below, in mid-1998 a concerted effort was made to improve co-ordination and co-operation between the VJ and MUP forces in Kosovo in their activities to combat the KLA. This resulted in a “Plan for Combating Terrorism in Kosovo and Metohija”, which initially consisted of three stages and was later expanded to one of five stages in all, involving both VJ and MUP forces.<sup>2097</sup>

806. The evidence shows that the Plan was put into effect in mid-July, with several documents making reference to the implementation of its various stages. For example, the minutes of a meeting of the MUP Staff for Kosovo held on 28 July 1998 record that Lukić briefed those attending on measures and actions undertaken by police units in Kosovo from 25 July to 28 July, aimed at lifting the blockade of roads and certain towns according to the Plan. Lukić then said that “[t]he second phase of the Global Plan has been carried out, in accordance with the established schedule”.<sup>2098</sup> Notes taken by Milan Đaković at Joint Command meetings held between 22 July and 30 October 1998 contain several references to the Plan and the realisation of its stages, both in the agenda for individual meetings, and attributed to various speakers.<sup>2099</sup> The Plan and its implementation in phases are also referred to in a communication between the commanders of the Priština Corps (Pavković) and of the 3<sup>rd</sup> Army (Samardžić).<sup>2100</sup>

807. Đaković stated that, in furtherance of the Plan for Combating Terrorism, the VJ made its own plan for engagement, which corresponded to the first three stages of the Plan. This parallel plan was known as *Grom 98* (Thunder 98) and comprised two stages, only the first of which was

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<sup>2094</sup> 6D1015 (Prizren RDB Centre, Intelligence on KLA, 1 August 1998). See also P3120 (Minutes of MUP Staff meeting, 23 July 1998), p. 3 (reporting that a number of people were detained who had opened fire during the “liberation of Orahovac”, and that 57 people of Serb or Montenegrin ethnicity had been kidnapped from the town).

<sup>2095</sup> K79, T. 9591–9593, 9593–9594 (closed session), 9594–9606 (closed session) (1 February 2007).

<sup>2096</sup> Jan Kickert, T. 11204 (7 March 2007); Baton Haxhiu, T. 6116 (8 November 2006).

<sup>2097</sup> Milan Đaković, T. 26405–26408 (19 May 2008), T. 26536–26537 (21 May 2008).

<sup>2098</sup> P3121 (Minutes of the MUP Staff meeting, 29 July 1998), p. 3.

<sup>2099</sup> See also, P1468 (Notes of the Joint Command), pp. 10, 13, 15, 17, 24, 35, 41, 71, 130, 161.

<sup>2100</sup> P1418 (Request to the 3<sup>rd</sup> Army Command, 31 July 1998).

put into effect in 1998.<sup>2101</sup> Radovan Radinović confirmed that in July 1998 VJ Chief of the General Staff Perišić issued a directive containing the *Grom* 98 plan, pursuant to conclusions reached by the SDC at its meeting of 9 June 1998.<sup>2102</sup>

808. According to the *Grom* directive, the VJ had thus far undertaken measures such as securing the border, providing “in-depth security” in the area of operation of the Priština Corps, and offering direct assistance to the Serbian MUP. It proposed further deployment of the VJ in two stages. In the first stage, the VJ would *inter alia* “through quick actions co-ordinated with the forces of the MUP of the Republic of Serbia, overwhelm and destroy the sabotage and terrorist forces” in Kosovo. The second stage was envisaged to be put into effect “in case of an all-out rebellion”, and provided for a partial mobilisation of the VJ, and operations to break up the “forces of armed rebellion”, establish control of the territory, and prevent “spill-over” of the situation. In the first stage, forces already deployed in the Priština Corps zone were to be further deployed, and reinforced by other VJ units from the 1<sup>st</sup> and 2<sup>nd</sup> Armies, which would be resubordinated to the 3<sup>rd</sup> Army Command.

809. In furtherance of the directive issued by Perišić, Samardžić issued an order on 29 July 1998 to put the first stage of the *Grom* 98 plan into effect and prepare for the second stage.<sup>2103</sup> According to Radinović, as a result of the implementation of the *Grom* 98 plan, which lasted from the end of July to the end of August 1998, the main “terrorist strongholds” were broken up, and the KLA prevented from growing into, and assuming visible characteristics of, a legitimate armed force.<sup>2104</sup> This assessment is very similar to that given by Pavković at a meeting held on 29 October 1998, describing the success of the broader Plan.

810. It is clear that VJ and MUP forces were utilised in significant operations against the KLA conducted from July to October 1998. As noted above, several witnesses testified about a particular action against the KLA carried out in the town of Orahovac/Rahovec around 18–20 July 1998. The minutes of the meeting of the VJ collegium held on 20 July 1998 also refer to the Orahovac/Rahovec action, noting that the Commander of the 3<sup>rd</sup> Army had used a combat group to assist the MUP forces there.<sup>2105</sup> Vlatko Vuković, Commander of the 2<sup>nd</sup> Motorised Battalion of the 549<sup>th</sup> Motorised Brigade, testified that KLA forces were overcome in Smonica and Nec on 2

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<sup>2101</sup> Milan Đaković, T. 26408–26409 (19 May 2008).

<sup>2102</sup> 3D1116 (Radovan Radinović’s Expert Report), para. 96; 4D137 (General Staff Directive to Deploy VJ in Kosovo, 28 July 1998).

<sup>2103</sup> 4D140 (3<sup>rd</sup> Army Command Order, 29 July 1998), pp. 5–6.

<sup>2104</sup> 3D1116 (Radovan Radinović’s Expert Report), para. 92.

<sup>2105</sup> P922 (Minutes of the Collegium of the General Staff of the VJ, 20 July 1998), pp. 3, 12–13.

August 1998.<sup>2106</sup> Petar Damjanac noted that Drenica was “liberated” from the KLA by September 1998.<sup>2107</sup> By early September the KLA was weakened, but not destroyed, as a result of the offensive undertaken by the FRY/Serbian forces, and had lost much of the territory that it had previously held.<sup>2108</sup> Dragan Živanović, commander of the 125<sup>th</sup> Motorised Brigade, discussed joint VJ/MUP combat operations against the KLA in the region of Gornje Obrinje/Abria e Epërme and Donje Obrinje/Abria e Poshtme in late September.<sup>2109</sup> Lazarević himself testified that, by the end of September, “the backbone of terrorism in Kosovo and Metohija was indeed neutralised.”<sup>2110</sup>

811. Former KLA commander Bislim Zyrapi testified that, due to the weakening of the KLA and the summer hostilities, by the end of October 1998 the MUP and VJ had recaptured most of the territory previously controlled by the KLA.<sup>2111</sup> After several setbacks for the KLA, Zyrapi went to Albania from September to November 1998 to reorganise the formations of the KLA and recruit new soldiers to replace those who had left as a consequence of the summer fighting.<sup>2112</sup> However, although the VJ and MUP efforts in late summer and early autumn 1998 met with clear success, KLA activity still continued, albeit with diminished intensity.<sup>2113</sup> Frederick Abrahams confirmed that the KLA had retreated into the hills of the Drenica region and some areas in western and southern Kosovo.<sup>2114</sup> Zyrapi gave evidence that in August and September 1998 there was continued fighting in KLA controlled areas.<sup>2115</sup> On 27 September 1998 the Priština Corps Command sent a combat report to the 3<sup>rd</sup> Army, noting that the KLA had put up “fierce resistance” in several areas, including near Gornje Nerodimlje/Nerodime e Eperme, on the Suje village-

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<sup>2106</sup> Vlatko Vuković, 5D1401, (witness statement dated 5 January 2008), para. 8. (under seal)

<sup>2107</sup> Petar Damjanac, T. 23738–23739 (5 March 2008).

<sup>2108</sup> P561 (Austrian Embassy Dispatch, 8 September 1998), p.1; Bislim Zyrapi, T. 6020–6021 (7 November 2006); Frederick Abrahams, P2228 (witness statement dated 24 January 2002), p. 11.

<sup>2109</sup> Dragan Živanović, T. 20492–20494 (17 January 2008), referring to 6D755 (PrK Combat Report to 3<sup>rd</sup> Army, 26 September 1998) and 6D756 (PrK Command Combat Report to 3<sup>rd</sup> Army, 27 September 1998).

<sup>2110</sup> Vladimir Lazarević, T. 18561–18563 (19 November 2007).

<sup>2111</sup> Bislim Zyrapi, T. 6020–6021 (7 November 2006).

<sup>2112</sup> Bislim Zyrapi, T. 6178–6180 (9 November 2006).

<sup>2113</sup> 3D1008 (PrK Command Security Section Report, 15 October 1998), p. 1 (reporting that the KLA carried out eight attacks against the MUP in Suva Reka/Suhareka, Orahovac/Rahovec, Glogovac/Gllogoc, Štimlje/Shtima, Lipjan/Lipjan, and Kosovska Mitrovica/Mitrovica municipalities); 5D754 (125<sup>th</sup> Motorised Brigade Order for Engagement, 20 October 1998), p. 1 (noting that the KLA “in the general area of Drenica, Malo Kosovo and the Rugova Gorge are continuing their terrorist actions and attacks” on the MUP and VJ, and that there was a strong KLA presence near the Albanian border, with as many as 4,000–6,000 fighters positioned there.); 3D1013 (PrK Command Security Department Report, 28 October 1998), p. 1 (reporting nine more attacks on MUP forces in late October).

<sup>2114</sup> Frederick Abrahams, P2228 (witness statement dated 24 January 2002), p. 11.

<sup>2115</sup> Bislim Zyrapi, T. 5940–5941 (6 November 2006). Zyrapi stated that he was there until September but believes that the fighting continued until October. Additionally, he stated that there was “intense fighting” in the areas that the Serbs carried out an offensive, such as Drenica.

Germanska Baila axis, on the Reane-Budakovo axis, and on the Banjica-Burnk village axis.<sup>2116</sup> In addition, the MUP continued to record abductions carried out by KLA forces.<sup>2117</sup>

*iii. The period from the Holbrooke-Milošević Agreement to the NATO air campaign*

812. At the end of October 1998 VJ and MUP forces were supposed to pull back following the Holbrooke-Milošević Agreement and other associated Agreements (“October Agreements”), which are discussed in more detail in Section V above.<sup>2118</sup> The OSCE Kosovo Verification Mission then began to monitor compliance with the Agreement and the subsequent Clark-Naumann Agreement.<sup>2119</sup> The KLA took advantage of the restrictions placed on the FRY/Serbian forces and used October, November, and December 1998 to regroup.<sup>2120</sup> Richard Ciaglinski, a British military officer who participated in the KVM, testified that the KLA was bringing additional forces, equipment and ammunition into Kosovo.<sup>2121</sup> He stated that from late 1998 to early 1999 the KLA, as well as the VJ and MUP used the conditions following from the OSCE/KVM presence in Kosovo to rearm and reinforce their troops.<sup>2122</sup> According to John Crosland, during this period the KLA developed increased capacity in manpower, weapons and structure.<sup>2123</sup> Crosland and then-Chairman of the NATO Military Committee, General Klaus Naumann, both testified that the KLA took up positions that had been vacated by the FRY/Serbian forces, and that this resulted in a further escalation of violence.<sup>2124</sup> Branko Gajić provided similar testimony, noting that “this time vacuum between the moment when the agreement was reached and before the moment of arrival of the verification mission came was taken advantage of by the KLA. They took up their old positions, the positions they held before the anti-terrorist action had been launched.”<sup>2125</sup> He added that “from late November 1998, the terrorists started preparing for an armed rebellion in the spring

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<sup>2116</sup> 6D756 (PrK Combat Report to 3<sup>rd</sup> Army, 27 September 1998). pp. 1–2.

<sup>2117</sup> 6D1012 (Prizren State Security Department Centre, Report on abductions by KLA, 1 October 1998), p. 3. (reporting the abduction of 151 civilians from April to September of 1998, all from the Prizren State Security Department Centre, and stating that most of these were Serb and Montenegrin citizens (113), but included “Šiptars/Albanians (34) who have not displayed readiness for unconditional cooperation with OVK/KLA”).

<sup>2118</sup> Bislim Zyrapi, T. 6020–6022 (7 November 2006).

<sup>2119</sup> Klaus Naumann, T. 8379–8384 (14 December 2006).

<sup>2120</sup> Bislim Zyrapi, T. 6020–6021, 6033–6034 (7 November 2006); Shaun Byrnes, T. 12243 (17 April 2007); Sandra Mitchell, T. 618 (11 July 2006); Richard Ciaglinski, T. 6880 (20 November 2006); Branko Gajić, 3D1084 (witness statement dated 8 August 2007), para. 116; P2460 (KLA minutes of meeting between Chief Staff and Commanders of Operational Zones, 28 December 1998); Karol John Drewienkiewicz, P2508 (witness statement dated June 2000), para. 189; 3D573 (excerpt from notebook of Drewienkiewicz), p. 32; Michael Phillips, T. 12015–12016 (20 March 2007); 3D564 (Excerpt from Notebook of Michael Phillips); John Crosland, T. 9912, 9891–9893 (8 February 2007); 3D511 (Notes by Jovanović of meeting with Crosland, 25 June 1998), p. 2.

<sup>2121</sup> Richard Ciaglinski, T. 6823–6824 (17 November 2006).

<sup>2122</sup> Richard Ciaglinski, T. 7003 (21 November 2006).

<sup>2123</sup> John Crosland, T. 9897 (8 February 2007); 3D510 (witness statement dated 30 June 2006), para. 42.

<sup>2124</sup> John Crosland, 3D510 (witness statement dated 30 June 2006), para. 45; Klaus Naumann, T. 8277 (13 December 2006), 8383–8384 (14 December 2006).

<sup>2125</sup> Branko Gajić, T. 15206 (7 September 2007).



of 1999.”<sup>2126</sup> Evidence demonstrates that the Priština Corps Command received information as early as December 1998 about KLA members preparing for a large-scale operation that would take place in spring 1999 in Kosovo.<sup>2127</sup>

813. Shaun Byrnes, Head of the US KDOM stationed in Priština/Prishtina, testified that during this time he saw KLA training camps in the Pagarusha Valley, an area in central Kosovo between Mališevo/Malisheva and Suva Reka/Suhareka. According to Byrnes, the KLA initially respected the “October agreements” even though they were not a party to them. He further stated that the KLA recognised “that bad behaviour on their part and on the part of their soldiers would risk and put at risk their goal of getting full American and full NATO engagement on their side against the Serbs”. However, while there was a decrease in KLA activity at first, soon after everything went “downhill”. Byrnes opined that the reason for this was that the KLA did not trust the FRY/Serbian forces and believed that there would be more attacks by them in spring 1999.<sup>2128</sup>

814. The Trial Chamber is convinced that the KLA regenerated some of its lost capacity at the end of 1998, and was involved in a number of attacks and incidents during the winter. An incident which gained some notoriety occurred on 14 December, when an attack carried out on the Panda Café in Peć/Peja, which resulted in the killing of a number of Serb teenagers, was attributed to the KLA by the FRY/Serbian authorities.<sup>2129</sup> By the end of December the Priština Corps security department warned that “the situation in the territory of Glogovac municipality is deteriorating with a tendency among terrorist units of the so-called KLA to institutionalise its activities by taking over civilian authority and control of this place.”<sup>2130</sup>

815. The Chamber has heard various accounts of some of the actions carried out by the KLA in early 1999. According to Zyrapi, in January 1999 there were only minor hostilities between the KLA and the FRY/Serbian forces, and these were defensive actions on the part of the KLA. However, the KLA continued to launch attacks on VJ and MUP check-points in those areas that

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<sup>2126</sup> Branko Gajić, 3D1084 (witness statement dated 8 August 2007), para. 129.

<sup>2127</sup> 3D1035 (Report from the PrK Command to the 3<sup>rd</sup> Army and the Security Administration of the General Staff of the FRY, 24 December 1998); 3D1038 (Report from the PrK Command to the 3<sup>rd</sup> Army and the Security Administration of the General Staff of the FRY, 29 December 1998); 5D1241 (video clip by the BBC, 29 January 1999).

<sup>2128</sup> Shaun Byrnes, T. 12242–12243 (17 April 2007).

<sup>2129</sup> 3D1030 (PrK Command Security Department Report, 15 December 1998), p. 2; Branko Gajić, 3D1084 (witness statement of 8 August 2007), para. 50; Karol John Drewienkiewicz, P2508 (witness statement dated June 2000), para. 89; P407 (OSCE/KVM Bluebook), pp. 4, 7; *see also* P634 (Chronology of major events in Kosovo from 15 October to 18 April 1999), p. 3; Michael Phillips, T. 11902–11903 (19 March 2007) (closed session); Shaun Byrnes, T. 12241 (17 April 2007); Ljubivoje Joksić, T. 21983 (8 February 2008); Milivoje Mihajlović, 6D1530 (witness statement dated 6 March 2008), para. 29; Radojica Nikčević, T. 23243 (26 February 2008); Radovan Paponjak, T. 24549 (19 March 2008).

<sup>2130</sup> 3D1034 (PrK Command Security Department Report, 22 December 1998).

constituted an obstacle to their movement.<sup>2131</sup> During the period from January to March 1999 the KLA General Staff was conducting training in Albania, and this training “was focused on use of weapons, training commanders and officers from the lowest level to the battalion level, and also preparation for operations and combat actions at these levels.”<sup>2132</sup>

816. A 2 January 1999 KVM report records that there were indications that the KLA was then becoming more unified under a command structure.<sup>2133</sup> On 28 January 1999 the assistant chief of the RDB in Kosovo reported that the KLA had “stepped up their activities on the ground with the objective of increasing their level of organisation and strengthening morale, discipline and security in the conduct of KLA members during preparations for broader terrorist actions”.<sup>2134</sup> He also detailed several areas where the KLA had a significant presence as of January 1999, including the Orahovac/Rahovec area, Suva Reka/Suhareka, Peć/Peja, and Uroševac/Ferizaj.<sup>2135</sup>

817. John Crosland testified that in the first few months of 1999 the KLA had headquarters at 24 separate locations in Kosovo.<sup>2136</sup> In particular, in 1998 and early 1999 Mališevo/Malisheva was a major KLA headquarters and was known as the KLA “capital of the free territories”.<sup>2137</sup> Right before the NATO bombing started, the “hotspots” for KLA activity, and the areas that the FRY/Serbian forces considered important, were the Podujevo/Podujeva area, because it was on the main route connecting Niš to Priština/Prishtina, the Vučitrn/Vushtrria area, the area around Jablanica/Jabllanica in western Kosovo, and the Kačanik/Kaçanik area, close to the Macedonian border.<sup>2138</sup>

818. Frederick Abrahams confirmed that by February 1999 the KLA had become a more organised fighting force.<sup>2139</sup> The MUP also recorded heavy KLA activity in the period between 13

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<sup>2131</sup> Bislim Zyrapi, T. 5987–5990 (7 November 2006).

<sup>2132</sup> Bislim Zyrapi, T. 5982, 6030 (7 November 2006).

<sup>2133</sup> P407 (OSCE/KVM Bluebook), p. 100.

<sup>2134</sup> 6D1017 (Priština RDB Department, Information on KLA, 28 January 1999), p. 1.

<sup>2135</sup> 6D1017 (Priština RDB Department, Information on KLA, 28 January 1999).

<sup>2136</sup> John Crosland, T. 9898–9899 (8 February 2007), P2645 (witness statement dated October 31, 2006), para. 26. These locations were Dobrotin/Dobratin, Magura/Magure, and Sedlare/Sedllar in Lipljan/Lypjan municipality; Bradaš/Bradash in Podujevo/Podujeva municipality; Likovac/Likoc in Srbica/Skenderaj municipality; Gladne Selo/Gllanasella in Glogovac/Gllogoc municipality; Ledovoče; Vonajk; Dobra Voda/Ujmir, Dobri Do/Doberdöl, and Svrhe/Sverka in Klina municipality; Crnojlevo/Caraleva, and Račak/Rečak in Štimlje/Shtima municipality; Dulje/Duhël, and Budakovo/Budakova in Suva Reka/Suhareka municipality; Dragobilje/Dragobil and Mališevo/Malisheva in Orahovac/Rahovec municipality; Junik, and Drenovac/Drenoc in Dečani/Dečan municipality; Nerodimlje/Nerodime and Staro Selo in Uroševac/Ferizaj municipality; Bajgora in Kosovska Mitrovica/Mitrovica municipality; and west of Glogane/Gllogjan.

<sup>2137</sup> Jan Kickert, T. 11204 (7 March 2007).

<sup>2138</sup> John Crosland, 3D508 (witness statement dated 7 December 2000), para. 23.

<sup>2139</sup> Frederick Abrahams, T. 955 (7 August 2006). Abrahams stated that he would not call the KLA a “highly organized fighting force” during this time.

October 1998 and 9 February 1999.<sup>2140</sup> This is, however, contrary to Zyrapi's account of the KLA mainly engaging in defensive activity during this period.

819. A 12 March 1999 KVM report summarized the situation in Kosovo between 23 February and 11 March 1999, indicating that it remained tense, and that "unprovoked attacks by the KLA against the police have continued."<sup>2141</sup> The KVM also noted continued human rights violations by both the FRY/Serbian authorities and the KLA, including detentions, abductions, and killings.<sup>2142</sup> Maisonneuve testified that he recalled the KLA bombing a market place in Kosovska Mitrovica/Mitrovica in northern Kosovo on 13 March 1999, and wounding or killing several people.<sup>2143</sup> Also in March 1999 the VJ reported that the KLA was digging trenches, mobilising the local population, and creating a corridor to transport weapons, ammunition and other military equipment from Macedonia to Kosovo.<sup>2144</sup>

*iv. Conclusion on protracted armed violence*

820. The Chamber is, therefore, in no doubt that the armed violence occurring from mid-1998 in Kosovo and continuing through to the commencement of the NATO air campaign on 24 March 1999, involving VJ and MUP forces fighting the KLA, was of sufficient duration and intensity to amount to the "protracted armed violence" envisaged by the first prong of the test for an internal armed conflict. The fact that KLA forces carried out repeated attacks against MUP and VJ forces, that the FRY authorities adopted a plan involving the engagement of the VJ in combating the KLA, and that the VJ and MUP, including special police units, were engaged extensively in operations to combat the KLA,<sup>2145</sup> clearly demonstrates that the level of violence reached that of an internal

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<sup>2140</sup> 1D708 (Serbian MUP Report on Terrorist Actions and Provocations in Kosovo between 13 October 1998 and 10 February 1999) claiming that a total of 747 "attacks and provocations" were carried out during this period, including 259 against civilians and 488 against the MUP, and that the operations included attacks on villages, public enterprises, MUP installations, and policemen; abductions of civilians and MUP members; the stopping of cars at checkpoints and the forced expropriation of money and property.

<sup>2141</sup> 3D179 (KVM report on compliance by the parties in Kosovo, 12 March 1999), p. 1, also admitted as P444.

<sup>2142</sup> 3D179 (KVM report on compliance by the parties in Kosovo, 12 March 1999), p. 3-4, also admitted as P444.

<sup>2143</sup> Joseph Maisonneuve, T. 11142 (7 March 2007).

<sup>2144</sup> 3D1050 (Report from the 3<sup>rd</sup> Army Command to the Security Administration of the General Staff of the FRY, 5 March 1999); 3D1052 (Report from the 3<sup>rd</sup> Army Command to the Security Administration of the General Staff of the FRY, 13 March 1999); 3D1053 (Report from the 3<sup>rd</sup> Army Command to the Security Administration of the General Staff of the FRY, 16 March 1999); 3D1048 (Report from the 3<sup>rd</sup> Army Command to the Security Administration of the General Staff of the FRY, 2 March 1999).

<sup>2145</sup> The ICRC Commentary to common article 3 of the Geneva Conventions, which relates to non-international armed conflicts, lists as a possible indicator of such a conflict "[t]hat the legal Government is obliged to have recourse to the regular military forces against insurgents organized as military and in possession of part of the national territory." Jean Pictet – Commentary: Geneva Convention III Relative to the Treatment of Prisoners of War (International Committee of the Red Cross, 1960). The Defence military expert, Radovan Radinović asserted in his expert report that up until the middle of 1998, VJ support to MUP forces involved in fighting terrorism in Kosovo was sporadic and limited, but that from mid-1998 there was a more extensive engagement of the VJ in these operations. 3D1116 (Radovan Radinović's Expert Report), para. 8.

armed conflict, rather than “internal disturbances, characterised by isolated or sporadic acts of violence”,<sup>2146</sup> by the middle of 1998, and the evidence thereafter is of ongoing hostilities right up to and beyond 24 March 1999.

b. The KLA as an organised armed group

i. *Origins, structure, and strength*

821. Bedri Hyseni, a former member of the Council for the Defence of Human Rights and Freedom in Uroševac/Ferizaj municipality, testified that the KLA was formed as a result of increasing violence by the FRY/Serbian forces in Kosovo in the 1990s. This violence produced a growing feeling amongst the Kosovo Albanian people that they needed to take steps to protect themselves due to a perceived inability to escape attack.<sup>2147</sup> Bislim Zyrapi testified that the KLA’s main objective was to liberate the “territories inhabited by Albanian majority”, which included parts of Montenegro, Serbia and Macedonia.<sup>2148</sup>

822. The KLA developed in organisation and capacity from early 1998, such that John Crosland described it as “a fairly well-organised and supplied organisation” by the autumn of that year.<sup>2149</sup> The Chamber has heard conflicting testimony regarding the precise physical strength of the KLA, although several witnesses stated that it grew in size through 1998 and 1999. According to Crosland, there were about 400 hardcore KLA fighters in early 1998. This number increased in the early part of 1999, when it became “clear” that a NATO intervention was going to take place.<sup>2150</sup> Karol Drewienkiewicz also testified that in December 1998 and January 1999 there were several hundred KLA fighters. He further stated that there were also many more people who would defend their villages, but would not actively fight elsewhere.<sup>2151</sup>

823. Zyrapi stated that during the period in which he served as KLA Chief of Staff, between November 1998 and March 1999, membership was voluntary, but later there was a general mobilisation.<sup>2152</sup> While he was Chief of Staff, the number of KLA soldiers stood at 17,000 to

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<sup>2146</sup> The ICRC Commentary to Additional Protocol II of the Geneva Conventions states that “internal disturbances, characterized by isolated or sporadic acts of violence, do not ... constitute armed conflict in a legal sense.”

<sup>2147</sup> Bedri Hyseni, T. 3095 (11 September 2006), P2270 (witness statement dated 1 September 2001), p. 4.

<sup>2148</sup> Bislim Zyrapi, T. 6171–6172 (9 November 2006).

<sup>2149</sup> John Crosland, T. 9779 (7 February 2007).

<sup>2150</sup> John Crosland, T. 9777 (7 February 2007). The witness stated on cross examination that this number might have grown because of the possibility of the KLA success. He also accepted the suggestion that these “hangers-on” might have been as much as 3,000. John Crosland, T. 9896–9897 (8 February 2007).

<sup>2151</sup> Karol John Drewienkiewicz, T. 7790–7791 (4 December 2006).

<sup>2152</sup> Bislim Zyrapi, T. 6031 (7 November 2006), 6260–6261 (10 November 2006). Zyrapi stated on 10 November that there was not a general mobilization while he was in office, but there was one at a “later phase”.

18,000. He explained that not all were full-time soldiers, due to a lack of equipment. Many people were dealing with logistics issues and supplies.<sup>2153</sup> These figures are similar to the estimate given by former VJ Chief of Staff, Perišić, in the directive issued on 28 July 1998, setting out the *Grom* 98 plan, which stated that the KLA had “15,000 armed personnel, about 5,000 personnel for various forms of logistical support and approximately another 2,500 trained terrorists in the Republic of Albania”.<sup>2154</sup>

824. The structure of the KLA also developed over time. According to Ibrahim Rugova, the KLA was initially composed of unrelated groups, but these groups later united under a joint command.<sup>2155</sup> The training and organisation of the KLA increased further throughout 1998.<sup>2156</sup> For example, Zyrapi stated that, when he entered Kosovo on 28 May 1998, his assigned task consisted of continuing the training of KLA soldiers with regard to weapons for tactical operations, as well as assessing the capacities of “the then commanders of the local zone staff”.<sup>2157</sup> John Crosland gave evidence that by late autumn 1998 the KLA had become a fairly well-organised and supplied organisation.<sup>2158</sup> Conversely, Joseph Maisonneuve of the KVM testified that during the period that he was in Kosovo, from December 1998 to mid-March 1999, its chain of command was “not particularly well-organized”. He gave evidence that the KLA was lightly armed, lacked experience, and suffered from an inability to strategize and co-ordinate their actions.<sup>2159</sup>

825. Zyrapi described the development of a fairly sophisticated KLA military structure through 1998. He testified that “from the point of view of the KLA, [in June 1998] the KLA was not at the required level of development and organisation, both at the local staff level and the general level.”<sup>2160</sup> There was initially no single headquarters for the General Staff, as some people were located in Albania and some in Kosovo. In Kosovo the KLA was organised into local staffs on a village and neighbourhood level, and into zones.<sup>2161</sup> It was the zone commanders or zone staffs that generally issued orders for combat operations, because of difficulties in communicating with the General Staff.<sup>2162</sup> From the spring of 1998 to the end of the year, the role of the General Staff changed as combat with the FRY/Serbian forces intensified, such that it began to function as a

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<sup>2153</sup> Bislim Zyrapi, T. 5959 (6 November 2006).

<sup>2154</sup> 4D137 (General Staff Directive to Deploy VJ in Kosovo, 28 July 1998), p. 1.

<sup>2155</sup> Ibrahim Rugova, P2612 (transcript from *Prosecutor v Milošević*, Case No. IT-02-54-T), T. 4263–4264.

<sup>2156</sup> Bislim Zyrapi, T. 5932–5934 (6 November 2006).

<sup>2157</sup> Bislim Zyrapi, T. 5932–5934 (6 November 2006).

<sup>2158</sup> John Crosland, T. 9779 (7 February 2007).

<sup>2159</sup> Joseph Maisonneuve, T. 11044–11045 (6 March 2007), P2772 (witness statement dated 10 March 2000), para. 53.

<sup>2160</sup> Bislim Zyrapi, T. 5939 (6 November 2006).

<sup>2161</sup> Bislim Zyrapi, T. 5934 (6 November 2006).

<sup>2162</sup> Bislim Zyrapi, T. 5935 (6 November 2006).

proper General Staff in Kosovo.<sup>2163</sup> During the period he was Chief of Staff, from November 1998 to March 1999, the KLA General Staff was located in the Berisha Mountains, near Mališevo/Malisheva in central Kosovo.

826. By the end of 1998 the KLA had issued interim regulations on the organisation of its internal affairs, which were later updated. These were distributed to zone commanders and their subordinates.<sup>2164</sup> There was also a system for reporting from the zone commanders to the General Staff,<sup>2165</sup> for ensuring military discipline,<sup>2166</sup> and for appointing commanders at various levels.<sup>2167</sup> By this time the KLA zones had been organized into brigades, battalions, companies, platoons and squads.<sup>2168</sup>

827. Kosovo was divided into seven KLA operational zones with brigade divisions: the Drenica zone and brigades; the Paštrik/Pashtrik zone and brigades; the Dukagjin zones and brigades; the Šalja/Shala zones and brigades; the Lab/Llap zones and brigades; the Nerodimlje/Nerodime zones and brigades; the Karađak zones and brigades.<sup>2169</sup> Each zone had a number ranging from one to seven.<sup>2170</sup> Within each zone the territory actually controlled by the KLA varied at different times.<sup>2171</sup>

828. Zyrapi testified that KLA commanders communicated using Motorola radios, satellite telephones, and through couriers.<sup>2172</sup> Additionally, vehicles such as Nivas, Suzukis, and Land Rovers were confiscated from members of the civilian population in KLA controlled areas for use

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<sup>2163</sup> Bislim Zyrapi, T. 5941–5943 (6 November 2006).

<sup>2164</sup> Bislim Zyrapi, T. 5945–5946 (6 November 2006); P2449 (KLA Interim Regulations on the Organisation of Internal Affairs in the Army, 1998).

<sup>2165</sup> P2461 (KLA Order to Operative Zones requesting them to compile daily combat reports on extraordinary events, 12 January 1999), p. 1; P2460 (KLA Minutes of Meeting between Chief Staff and Commanders of Operational Zones, 28 December 1998).

<sup>2166</sup> P2448 (Order initiating the undertaking of measures necessary to improve combat discipline, 28 November 1998); P2463 (Order by Bislim Zyrapi, 13 February 1999); P2464 (KLA order on disciplinary measures, 1 February 1999).

<sup>2167</sup> P2465 (KLA proposal by Operational Zone commander for appointment of brigadier commander, 7 March 1999).

<sup>2168</sup> Bislim Zyrapi, T. 5960–5962 (6 November 2006).

<sup>2169</sup> Bislim Zyrapi, T. 6258–6260 (10 November 2006). According to Mr. Zyrapi, the 111<sup>th</sup>, 112<sup>th</sup>, 113<sup>th</sup> and 114<sup>th</sup> brigades were in the Drenica Zone. The 121<sup>st</sup>, 122<sup>nd</sup>, 123<sup>rd</sup>, 124<sup>th</sup> and 125<sup>th</sup> brigades were in the Paštrik/Pashtrik Zone. The 131<sup>st</sup>, 132<sup>nd</sup>, 133<sup>rd</sup>, 134<sup>th</sup>, 136<sup>th</sup>, 137<sup>th</sup> and 138<sup>th</sup> brigades were in the Dukagjin Zone. The 141<sup>st</sup>, and 142<sup>nd</sup> brigades were in the Šalja/Shala Zone, and were operating in the western part of Vučitrn/Vushtrria municipality in northern Kosovo. The 151<sup>st</sup>, 152<sup>nd</sup> and 153<sup>rd</sup> brigades were in the Lab/Llap Zone and were operating in the eastern part of Vučitrn/Vushtrria in northern Kosovo. The 161<sup>st</sup> and 162<sup>nd</sup> brigades were in the Nerodimlje/Nerodime Zone, and the 171<sup>st</sup> brigade was in the Karađak Zone. *See also* P2469 (Map showing KLA operational zones as indicated by Bislim Zyrapi).

<sup>2170</sup> Bislim Zyrapi, T. 5933–5934 (6 November 2006). *See also* P2469 (Map showing KLA operational zones as indicated by Bislim Zyrapi).

<sup>2171</sup> Bislim Zyrapi, T. 5967–5969 (6 November 2006).

<sup>2172</sup> Bislim Zyrapi, T. 5966 (6 November 2006), 5981–5982 (7 November 2006).

in KLA operations.<sup>2173</sup> Zyrapi added that the KLA had no barracks; instead, soldiers were stationed in schools, collective facilities and houses.<sup>2174</sup>

829. Zyrapi also gave evidence regarding the planning and implementation of combat operations. He stated that the KLA General Staff and the zone commanders of the relevant zones for which an operation was proposed would first discuss the operation. After this discussion the General Staff would give the particular zone commander approval to carry out the specific operation in the relevant zone. The zone commander would then act according to the instructions contained in the order pertaining to the operation. He was only authorized to give his own orders if there was a direct attack by the FRY/Serbian forces in the zone.<sup>2175</sup>

830. Zyrapi further stated that, when he joined the KLA, he was notified by the director of the Department of Military Affairs, Rexhep Selimi, that Red Cross booklets had been distributed to operational zones and to commanders in smaller zones. These booklets contained all the rules of warfare. Additionally, KLA soldiers had “short trainings” on the laws of war and the Geneva Conventions.<sup>2176</sup> Accordingly, each zone commander received a book of KLA rules and they were responsible for making its content known to lower units.<sup>2177</sup>

831. Zyrapi also testified that, when he was appointed Chief of General Staff in November 1998,<sup>2178</sup> the KLA was using prison sentences to discipline its members.<sup>2179</sup> They administered these sentences through a military court, which was run by a military judge who was appointed in December 1998.<sup>2180</sup> The seat of this court was primarily in the Berisha Mountains, but it would also sit in other places depending on the circumstances. The function of the court was to investigate serious breaches of law.<sup>2181</sup> Additionally, between December 1998 and March 1999 the KLA had two military hospitals in Paštrik/Pashtrik and Drenica, and each zone had an outpatient clinic.<sup>2182</sup>

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<sup>2173</sup> Bislim Zyrapi, T. 6190 (9 November 2006).

<sup>2174</sup> Bislim Zyrapi, T. 6181–6183 (9 November 2006).

<sup>2175</sup> Bislim Zyrapi, T. 5958–5959 (6 November 2006).

<sup>2176</sup> Bislim Zyrapi, T. 5955 (6 November 2006).

<sup>2177</sup> Bislim Zyrapi, T. 5945–5947 (6 November 2006).

<sup>2178</sup> Bislim Zyrapi, T. 5932 (6 November 2006), 6021, 6049 (7 November 2006), 6267–6268 (10 November 2006).

<sup>2179</sup> Bislim Zyrapi, T. 6260 (10 November 2006).

<sup>2180</sup> Bislim Zyrapi, T. 6060–6063 (7 November 2006).

<sup>2181</sup> Bislim Zyrapi, T. 5951–5952 (6 November 2006). Zyrapi never said what kind of law was investigated in this court.

<sup>2182</sup> Bislim Zyrapi, T. 5975 (6 November 2006).

*ii. Supplies and support from Albania*

832. It is uncontested that the KLA transported supplies into Kosovo from neighbouring Albania, and that Albania was used as a base for training KLA fighters.<sup>2183</sup> In addition, the VJ claimed a relationship of support between the Albanian state authorities and the KLA in 1998.<sup>2184</sup> The chief of the Department for Border Affairs within the VJ General Staff at the time, Rade Čučak, testified that the FRY authorities “determined that cadres were being trained in Albania and that they were being armed, and that a lot of the weapons that these people carried were the same as the weapons that the Albanian army had.”<sup>2185</sup> Božidar Delić also claimed that the Albanian government and Albanian army had direct knowledge of KLA training exercises carried out on Albanian territory.<sup>2186</sup> On 16 December 1998 Stojanović sent a cable to the VJ Security Administration, indicating that captured KLA fighters had confessed to the presence of four such camps in Albania.<sup>2187</sup> This cable reported that the KLA training included 10 to 15 days of physical training, weapons handling and target practice, tactical training, and political education.<sup>2188</sup> Stojanović also noted that there were regular intelligence reports about weapons being smuggled in from Albania.<sup>2189</sup> Ljubivoje Joksić, who was the Assistant Co-ordinator of the RDB for Kosovo, also claimed that there was intelligence indicating that the Albanian security services were training members of the KLA.<sup>2190</sup>

833. The proximity of the Albanian border was crucial to KLA supply routes. According to the 3<sup>rd</sup> Army Command Security Department, the smuggling of weapons from Albania was well underway in April 1998.<sup>2191</sup> Bislim Zyrapi confirmed that the KLA acquired supplies through routes from Albania to Kosovo, some of which passed through Đakovica/Gjakova and the Junik Mountains.<sup>2192</sup> Indeed, according to John Crosland, Junik was considered a strategic area for supplies due to its location, and it was controlled by the KLA in 1998.<sup>2193</sup> He added that the border

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<sup>2183</sup> Indictment, para. 93; Prosecution Final Trial Brief, 15 July 2008, para. 297 (public version); Ojdanić Final Trial Brief, 15 July 2008, paras. 25, 63, 90, 153; Pavković Final Trial Brief, 15 July 2008, para. 363 (public version); Milutinović Final Trial Brief, 15 July 2008, paras. 79, 162, 166, 230; Lukić Final Trial Brief, 15 July 2008, paras. 20, 25–26 (public version).

<sup>2184</sup> See also, 3D738 (Letter from the Chief of the General Staff to the Federal Ministry of Foreign Affairs, 16 July 1998).

<sup>2185</sup> Rade Čučak, T. 14824–14825 (31 August 2007).

<sup>2186</sup> Božidar Delić, T. 19434 (4 December 2007).

<sup>2187</sup> 5D1308 (PrK Command Security Department Reports, 16 December 1998), p. 1.

<sup>2188</sup> 5D1308 (PrK Command Security Department Reports, 16 December 1998), p. 2.

<sup>2189</sup> Momir Stojanović, T. 19693 (6 December 2007).

<sup>2190</sup> Ljubivoje Joksić, T.21982–21984 (11 February 2008).

<sup>2191</sup> 5D1304 (3<sup>rd</sup> Army Command Security Department Report, 18 April 1998), p. 1; 3D991 (PrK Combat Report to 3<sup>rd</sup> Army and VJ General Staff, 17 April 1998).

<sup>2192</sup> Bislim Zyrapi, T. 6226–6230 (9 November 2006).

<sup>2193</sup> John Crosland, T. 9917–9918 (8 February 2007).



with Albania was highly porous, and so the KLA supply routes were well established.<sup>2194</sup> Zyrapi also asserted that the KLA controlled routes from Macedonia to Kačanik/Kaçanik in south eastern Kosovo.<sup>2195</sup> Branko Gajić testified that the VJ identified “seven channels” through which weapons and equipment were brought to the KLA from Macedonia.<sup>2196</sup> By early 1999 the MUP was also asserting that weapons and supplies were being delivered via the Macedonian border.<sup>2197</sup>

834. Financial support for the KLA came from the significant number of Kosovo Albanians living abroad, many of whom were in Switzerland, Albania, Italy and the United Kingdom.<sup>2198</sup> A fund called *Vendluadja Therret* (the Fatherland Calling Fund) to provide general support for KLA activities “was based in the diaspora”. Voluntary donations were also received from inside Kosovo.<sup>2199</sup>

*iii. Weapons and supplies*

835. The KLA used the money it received largely to purchase weapons abroad.<sup>2200</sup> Frederick Abrahams testified that, after the fall of the communist regime in Albania in March 1997, large quantities of weapons were transferred to Kosovo.<sup>2201</sup> According to Crosland, by early 1998 the KLA had impressive weapons depots.<sup>2202</sup> Starting in late 1998 there was a “quantum increase” in supplies and weapons that enhanced the capability of the KLA to oppose or engage the VJ and MUP forces.<sup>2203</sup> Around October 1998 they were using up to date small arms weaponry which included new rifles, sub-machine guns, anti-armour vehicles, anti-armour grenades, and uniforms.<sup>2204</sup> Božidar Delić indicated that the KLA had the “most up-to-date sniper weapons”.<sup>2205</sup> In December 1998 his units came across two caches of weapons and military equipment after clashes with the KLA. These included hand grenades, grenades for a grenade launcher, several kalashnikov rifles, PAP semi-automatic rifles, hand-held rocket launchers, mortar shells, and

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<sup>2194</sup> John Crosland, T. 10037 (9 February 2007).

<sup>2195</sup> Bislim Zyrapi, T. 6226–6229 (9 November 2006).

<sup>2196</sup> Branko Gajić, T. 15204 (7 September 2007); *see also* 3D738 (Letter from the Chief of the General Staff of the VJ to the FRY Ministry of Foreign Affairs, 16 July 1998), p. 3.

<sup>2197</sup> 6D1018 (RDB Report on the Activities of Šiptar Terrorists to Establish Illegal Channels over the Yugoslav-Macedonian Border, 15 February 1999).

<sup>2198</sup> John Crosland, 3D510 (witness statement dated 30 June 2006), para. 29.

<sup>2199</sup> Bislim Zyrapi, T. 6016 (7 November 2006).

<sup>2200</sup> Michael Phillips, T. 11879–11883 (19 March 2007); 2D18 (Extract from Michael Phillips’s notebooks), p. 4; Klaus Naumann, T. 8364–8365 (14 December 2006); Bislim Zyrapi, T. 5920 (6 November 2006).

<sup>2201</sup> Frederick Abrahams, T. 954 (7 August 2006), P2228 (witness statement dated 24 January 2002), p. 9.

<sup>2202</sup> John Crosland, T. 9898 (8 February 2007).

<sup>2203</sup> John Crosland, T. 10005 (9 February 2007).

<sup>2204</sup> John Crosland, 3D505 (witness statement dated 15 July 2002), p. 72.

<sup>2205</sup> Božidar Delić, T.19425 (4 December 2007).

TNT.<sup>2206</sup> However, Karol Drewienkiewicz testified that the KLA did not have heavy weaponry, such as tanks, in December 1998, and this was supported by Maisonneuve, who stated that the KLA was very lightly armed, with no heavy vehicles, from December 1998 to mid-March 1999.<sup>2207</sup>

836. Zyrapi, Ciaglinski, and Crosland described the various types of weapons used by the KLA, which were largely pistols, Kalashnikovs, and semi-automatic rifles. They testified that it also had some light and heavy machine guns, a few recoilless guns and cannons, anti-tank mines, two to three grenades per soldier, RPGs (rocket propelled grenades) with a range of 150 to 500 metres, a few zoljas (a hand held mortar), sniper rifles, and 82 and 120 millimetre mortars.<sup>2208</sup>

#### *iv. Uniforms*

837. The Chamber heard various accounts from witnesses concerning the style of KLA uniforms and the frequency of their use. According to Zyrapi, by March 1999 85-90 percent of KLA soldiers had a military uniform and the remainder wore improvised uniforms with KLA emblems.<sup>2209</sup> These uniforms were of various colours, but everybody had the same KLA emblem on the left arm, which was red with a black eagle in the centre and read “KLA, Kosovo Liberation Army”,<sup>2210</sup> and that applied “regardless of whether it was a standard uniform or improvised one”.<sup>2211</sup> K14 testified that some KLA members who wore civilian clothes also wore “head gear”.<sup>2212</sup> According to Zyrapi, the same KLA emblem was also on the head gear. He confirmed that the KLA lacked sufficient uniforms due to a limit on the supplies available.<sup>2213</sup>

838. Some witnesses observed that not all KLA members wore uniforms.<sup>2214</sup> For example, KLA doctor Liri Loshi testified that wounded KLA fighters whom he treated were often wearing a uniform, although some KLA members, such as himself, wore civilian clothes.<sup>2215</sup>

839. Zyrapi testified that the KLA had both camouflage and non-camouflage uniforms. These uniforms were of a variety of colours, since they were received from various countries and various

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<sup>2206</sup> 5D876 (Command of the 549<sup>th</sup> Motorised Brigade Analysis of Conducted Combat Operations, 17 December 1998), pp. 1–3.

<sup>2207</sup> Karol John Drewienkiewicz, T. 7901 (5 December 2006); Joseph Maisonneuve, T. 11044–11045 (6 March 2007).

<sup>2208</sup> Bislim Zyrapi, T. 5979–5981 (7 November 2006); Richard Ciaglinski, T. 6923 (20 November 2006); John Crosland, T. 9863 (8 February 2007).

<sup>2209</sup> Bislim Zyrapi, T. 6269–6270 (10 November 2006).

<sup>2210</sup> Bislim Zyrapi, T. 5975–5976 (6 November 2006).

<sup>2211</sup> Bislim Zyrapi, T. 6270 (10 November 2006).

<sup>2212</sup> K14, T. 10969 (2 March 2007) (closed session); Bislim Zyrapi, T. 5975–5976 (6 November 2006).

<sup>2213</sup> Bislim Zyrapi, T. 5975–5977 (6 November 2006).

<sup>2214</sup> Fredrick Abrahams, T. 952 (7 August 2006); K73, T. 3366–3367 (14 September 2006) (closed session); Liri Loshi, T. 5374 (26 October 2006).

armies.<sup>2216</sup> Witness K73, a member of the VJ who was deployed in Kosovo, testified that, when he encountered the KLA, they were wearing German uniforms with an “UÇK” emblem on them.<sup>2217</sup> According to K79, a member of the PJP in 1998 and 1999, KLA members either wore blue work uniforms or green or brown camouflage uniforms.<sup>2218</sup> Evidence led by the Defence also supports the notion that the nature of KLA uniforms varied. Shaban Fazliji testified that the KLA wore three different types of uniform – initially black with a black balaclava, then Serbian police uniforms, and then “all kinds of uniforms.”<sup>2219</sup> Other witnesses also testified that the KLA used police uniforms.<sup>2220</sup> Vladimir Marinković, Head of intelligence for the 15<sup>th</sup> Armoured Brigade, testified that the KLA wore olive-green M-77 uniforms, of the type worn and previously discarded by the old Yugoslav Army (JNA) and the Territorial Defence.<sup>2221</sup> Dragan Milenković, a member of the PJP in Peć/Peja, indicated that they came across both Chinese and German-made uniforms discarded by the KLA.<sup>2222</sup>

*v. Conclusion on the KLA as an organised armed group*

840. All of this evidence concerning the KLA’s structure and activities, starting from at least mid-1998, illustrates that it was an “organised armed group”, in the sense of the test set out above, during this time period. While different aspects of the KLA’s organisation and activities developed at different paces during the period, the evidence reveals a gradual progression towards centralization of authority and co-ordination of efforts against the FRY/Serbian forces. During 1998 the KLA established a General Staff and subordinated seven zone headquarters under it, established regulations governing troop structure and military discipline, carried out co-ordinated attacks on FRY/Serbian forces, established a financial operation, smuggled and/or purchased significant weapons stocks, instituted the use of a distinctive KLA emblem, and implemented strategic policies to further their aims.

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<sup>2215</sup> Liri Loshi, T. 5374 (26 October 2006). Loshi stated that he wore civilian clothes when he worked but after work he sometimes would “wear a uniform as well.”

<sup>2216</sup> Bislim Zyrapi, T. 5975–5977 (6 November 2006). Bislim Zyrapi, T. 6215 (9 November 2006); According to Bislim Zyrapi, the Black Eagles, which were led by Idriz Balaj wore black uniforms. The Black Eagles were not discussed in the transcripts.

<sup>2217</sup> K73, T. 3366–3367 (14 September 2006) (closed session).

<sup>2218</sup> K79, T. 9588, 9604 (1 February 2007).

<sup>2219</sup> Shaban Fazliji, T. 25204–25205 (11 April 2008).

<sup>2220</sup> Radojica Nikčević, T. 23239–23241 (26 February 2008).

<sup>2221</sup> Vladimir Marinković, T. 20265 (14 December 2007); 5D947 (15<sup>th</sup> Armoured Brigade Combat Report to PrK, 2 May 1999).

<sup>2222</sup> Dragan Milenković, T. 22959 (21 February 2008).

c. Findings

841. Based on the above evidence, the Chamber finds that, starting in 1998 and no later than summer of that year, VJ and MUP forces, and the KLA as an organised armed group, engaged in protracted armed violence throughout Kosovo, continuing through to and into the NATO air campaign that began on 24 March 1999.<sup>2223</sup> As discussed in greater detail below, despite the conclusion of the October Agreements, there was no “peaceful settlement” between the two sides, and the armed violence continued into 1999. Thus, there was an armed conflict between the FRY and the KLA leading up to and into the period of the NATO air campaign. The Chamber now turns to the evidence pertaining to the actions of the FRY/Serbian forces during that armed conflict, in light of the allegations contained in paragraphs 94 to 96 of the Indictment.

C. USE OF FORCE BY THE FRY/SERBIAN FORCES IN 1998

1. Allegations of excessive and indiscriminate use of force by the FRY/Serbian forces

842. The Indictment alleges in general that all the Accused were aware of, and most of them facilitated or condoned, criminal activity by forces of the FRY and Serbia in Kosovo in 1998, as described in paragraphs 94 to 95 of the Indictment. These paragraphs span a fairly sizeable expanse of geography and time, identifying a number of different locations where incidents are said to have occurred between February and September 1998.

843. Paragraph 96 of the Indictment alleges that these incidents, and the operations in which they occurred, involved the excessive and indiscriminate use of force against the Kosovo Albanian civilian population, such that as many as 349,000 Kosovo Albanians were displaced by the end of 1998. Paragraph 97 alleges that the United Nations, human rights organisations, foreign diplomats, the OSCE, domestic and international media, and Kosovo Albanian leaders complained of this excessive and indiscriminate use of force during meetings with the civilian and military leadership of the FRY and Serbia.

844. As a preliminary matter, the Chamber notes that none of the Accused is charged with responsibility for crimes committed in 1998. The Prosecution instead asserts the commission of

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<sup>2223</sup> Radovan Radinović, T. 17279 (19 October 2007). Radinović referred to the conflict as “an internal ethnic war at every moment”. In 2001, a VJ report and compilation of documents acknowledged that in 1998, the struggle between the FRY and the KLA had escalated from “an open armed insurgence which developed into an internal armed conflict.” See P1011 (Ivan Marković, ed., *The Application of Rules of the International Law of Armed Conflicts* (2001)), pp. 15, 41–73. The report also contains a lengthy discussion of the use of international law and standards by FRY/Serbian forces during the conflict, highlighting in particular the Accused Pavković’s emphasis on the need to comply with the international laws of war.

criminal acts by forces of the FRY and Serbia in 1998 as proof that the Accused were members of the alleged joint criminal enterprise, and that they had the requisite *mens rea* to commit the charged crimes and “for other purposes as well, such as to show knowledge, intent, command ability, or just as part of the story that unfolded in Kosovo leading up to the crimes of the indictment period.”<sup>2224</sup> The specific incidents described in paragraphs 94 and 95 of the Indictment were fleshed out by the Prosecution on the order of the Trial Chamber in the pre-trial phase, which considered them to be “material facts that must be pleaded sufficiently.”<sup>2225</sup> The Trial Chamber also found that, for the Prosecution to rely on possible crimes committed in 1998, it had to prove that these crimes were committed.<sup>2226</sup>

## 2. Arguments of parties

845. It is undisputed that forces of the FRY and Serbia conducted military operations throughout Kosovo in 1998. However, the parties dispute the nature of those operations, the resulting damage and destruction to civilian areas, and who was responsible for specific incidents.

846. The Prosecution argues that the VJ and the MUP conducted large-scale operations in Kosovo in 1998 against the civilian population aimed at forcing Kosovo Albanians from their homes. The international community condemned these actions (as well as KLA crimes), and the United Nations High Commissioner for Refugees estimated that from March to October 1998, approximately 285,000 persons—roughly 15 percent of the population of Kosovo—had been internally displaced within Kosovo or had left the province.<sup>2227</sup>

847. The Milutinović Defence emphasises, on the other hand, that during the spring and summer of 1998 almost a third of Kosovo was under the control of the KLA, as has been discussed above. More than 4,500 persons were displaced from their homes by the KLA, and more than 80 villages inhabited by Serbs, Montenegrins, and other non-Albanians were ethnically cleansed. There were appeals to state bodies “to protect the people ... because operations conducted by these terrorist gangs were putting everything at risk.”<sup>2228</sup> The Pavković Defence asserts that all actions taken by the VJ in 1998 were lawful, legitimate actions in full compliance with international humanitarian

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<sup>2224</sup> Prosecution’s Response to Milutinović’s Response to Prosecution Motion to Amend Indictment and Challenge to Amended Joinder Indictment, 17 October 2005, para. 5, note 10.

<sup>2225</sup> Decision on Defence Motions Alleging Defects in the Form of the Proposed Amended Jointer Indictment, 22 March 2006, para. 15.

<sup>2226</sup> Decision on Defence Motions Alleging Defects in the Form of the Proposed Amended Jointer Indictment, 22 March 2006, para. 17.

<sup>2227</sup> Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 51–69.

<sup>2228</sup> Milutinović Final Trial Brief, 15 July 2008, para. 164.

law.<sup>2229</sup> The Lazarević Defence argues that evidence of witnesses called by the Prosecution itself indicates that there were no complaints regarding the VJ in general, they conducted themselves without using excessive force, and the VJ was not involved in torching villages, destruction of crops, killing farm animals, and other crimes during August–September 1998.<sup>2230</sup> Indeed, it is submitted that the evidence shows that Lazarević replaced commanders of units in which there was a degradation of discipline.<sup>2231</sup> The Lukić Defence asserts that from the beginning of 1998 the KLA increased the intensity and number of its attacks in Kosovo, and that it controlled large areas of territory. Thus the FRY and Serbian authorities had legitimate reasons to conduct anti-terrorist actions against it.<sup>2232</sup>

### 3. Specific incidents alleged

848. The Prosecution has placed a great deal of reliance upon the evidence of British Defence Attaché John Crosland in relation to the situation in Kosovo in 1998, and the actions of the VJ and MUP at that time. Crosland toured Kosovo a number of times in 1998, with other defence attachés and various groups of foreign diplomats and political leaders. He prepared contemporaneous reports of his observations during these trips for the British Government. Several of these have been entered into evidence. The Trial Chamber found Crosland to be highly professional, with a great deal of experience and knowledge, which equipped him well to make detailed and informed reports of the situation in Kosovo in 1998. His oral testimony and written statements were detailed, impartial, and convincing. The Chamber finds his evidence on things that he personally saw to be reliable, despite challenges made by the Defence to his use of the term “razed” to describe the condition of certain villages.

849. However, having made serious allegations about events in 1998, some of which might amount to criminal activity by forces of the FRY and Serbia, the Prosecution brought very little additional evidence in relation to some of those “crimes”. Thus, while the Chamber is left with a general impression of significant violence and destruction in 1998, the Prosecution has failed to prove beyond reasonable doubt that specific crimes were committed by the VJ or MUP in most of the locations mentioned in paragraphs 94 and 95 of the Indictment.

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<sup>2229</sup> Pavković Final Trial Brief, 28 July 2008 (public version), para. 124.

<sup>2230</sup> Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 571–575.

<sup>2231</sup> Lazarević Final Trial Brief, 29 July 2008 (public version), para. 644.

<sup>2232</sup> Lukić Final Trial Brief, 7 August 2008 (public version), paras. 17–38.

a. Drenica – February and March

850. According to paragraph 94 of the Indictment, in February and March 1998 forces of the FRY and Serbia engaged in clashes with the KLA in the Drenica area, during which they shelled predominantly Kosovo Albanian towns and villages and expelled residents from their homes. This area encompasses the municipalities of Srbica/Skenderaj, Glogovac/Gllogoc, and Klina.

851. Sabit Kadriu, former President of the Council for the Defence of Human Rights and Freedoms (an organisation that documented human rights violations in Kosovo) stated that on 28 February 1998 he heard artillery fire in Ćirez/Qirez and Likošane/Likoshan from his home in Brusnik village in Vučitrn/Vushtrria municipality. Thereafter he and his brother spoke to a group of people on the outskirts of Dubovac/Dubofc village, who told him that the “Serb forces” had surrounded the villages of Likošane/Likoshan, Ćirez/Qirez, Baks, and Gradica. “Serb forces” had been in conflict with the KLA, and two policemen had been killed in Ćirez/Qirez the day before.<sup>2233</sup> Kadriu reached Ćirez/Qirez on 1 March 1998, and near the entrance to the village met a group of people who informed him of killings there.<sup>2234</sup> He later met with relatives of the Sejdiu family, who informed him that police and army units had surrounded the village. They told him that four brothers of their family were killed by “Serb forces”, a woman was killed in her home,<sup>2235</sup> and two people had been killed in the street. Further, Kadriu learned that 11 members of the Ahmeti family, including children, were killed by “Serb forces”, while the women were thought to have been raped.<sup>2236</sup> The following day he saw the mutilated bodies of 24 persons who had been killed in the attack on 28 February.<sup>2237</sup> He testified that neither the Sejdius nor the Ahmetis were part of the KLA. One couple from Ćirez/Qirez who had been killed were armed to protect their home, but also were not associated with the KLA.<sup>2238</sup>

852. Human Rights Watch researcher Frederick Abrahams, who took approximately five trips to Kosovo between February 1998 and March 1999, stated that special police forces had attacked Ćirez/Qirez on 28 February and Likošane/Likoshan on 1 March 1998. He asserted that, while the KLA were engaged in fighting, police forces had fired indiscriminately at women, children, and other non-combatants. He stated that 83 people, including 24 women and children, were killed in

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<sup>2233</sup> Sabit Kadriu, T. 5106–5108 (18 October 2006). Kadriu testified that he did not verify the death of the policemen himself, but that this was something he had been told at a later date; Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 5.

<sup>2234</sup> Sabit Kadriu, P2377 (witness statement dated 10 December 2000), pp. 5–6.

<sup>2235</sup> Sabit Kadriu, T. 5107–5109 (18 October 2006).

<sup>2236</sup> Sabit Kadriu, T. 5110–5111 (18 October 2006), P2377 (witness statement dated 10 December 2000), p. 6. However, the women were never interviewed regarding this rumour.

<sup>2237</sup> Sabit Kadriu, P2377 (witness statement dated 10 December 2000), p. 6.

<sup>2238</sup> Sabit Kadriu, T. 5108–5109 (19 October 2006).

these attacks, combined with the attack on the Jashari household, discussed below.<sup>2239</sup> However, his first visit to the Drenica area to investigate these incidents was on 24 May 1998, two months later.<sup>2240</sup> In the course of his investigations he spoke to eye-witnesses, including a man who claimed to have seen his son-in-law being shot in the face by the police, and Abida Sejdiu, whose sons were executed.<sup>2241</sup>

853. The Chamber has not received any further evidence about the killings that occurred during the operation in Ćirez/Qirez and Likošane/Likoshan on 28 February and 1 March 1998, or the shelling of, and expulsion of Kosovo Albanians from, towns and villages in the wider Drenica area during these months. Without further direct evidence concerning the activities of the KLA in the area, what triggered the particular actions of the FRY/Serbian forces at that time, or the details of what occurred, the Chamber is unable to conclude beyond reasonable doubt that the force used was excessive or indiscriminate, although the killing of women and children would suggest that this was the case.

b. Donje Prekaze/Prekaz i Poshtëm – early March

854. The Indictment further asserts that in early March 1998 forces of the FRY and Serbia launched an attack on the village of Donje Prekaze/Prekaz i Poshtëm (Srbica/Skenderaj municipality) during which approximately 50 people were killed, including most of the members of Adem Jashari's family.

855. Sabit Kadriu again heard gun and artillery fire, this time from Donje Prekaze/Prekaz i Poshtëm village, on 3 March 1998. He spoke to villagers from Dubovac/Dubofc, which is a short distance from Donje Prekaze/Prekaz i Poshtëm,<sup>2242</sup> who told him that Adem Jashari's house had been surrounded and that it was a combined VJ and MUP operation.<sup>2243</sup> He asserted that these forces continued to shell the house with the family inside for three days.<sup>2244</sup>

856. Frederick Abrahams stated that the special police forces attacked the home of Adem Jashari on 5 March 1998. He considered it to be an indiscriminate attack, although he was not present at

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<sup>2239</sup> Frederick Abrahams, P2228 (witness statement dated 24 January 2002), p. 10.

<sup>2240</sup> Frederick Abrahams, T. 919 (14 July 2006).

<sup>2241</sup> Frederick Abrahams, P2228 (witness statement dated 11 March 1999), p. 3; P437 (Human Rights Watch Report entitled Humanitarian Law Violations in Kosovo).

<sup>2242</sup> Sabit Kadriu, T. 5059–5061 (18 October 2006). Kadriu met the villagers from Dubovac/Dubofc (Srbica/Skenderaj) in Brusnik village (Vuçitrm/Vushtrria).

<sup>2243</sup> Sabit Kadriu, T. 5061 (18 October 2006).

<sup>2244</sup> Sabit Kadriu, T. 5113–5114 (18 October 2006). However, Kadriu conceded that he was not there at the time.



the time to witness the incident, nor visited the area afterwards.<sup>2245</sup> John Crosland was, however, in Kosovo on 5 March 1998, and saw a 200-person MUP force at Komorane/Kamaran checkpoint (Glogovac/Glllogoc municipality), which he believed to be associated with the assault on the Jashari compound.<sup>2246</sup>

857. Veljko Odalović, who was Head of the Kosovo District, one of the five administrative districts in Kosovo at the time, testified that he was aware of the MUP operation against Jashari.<sup>2247</sup> He stated that “security organs” tried to arrest Jashari, who was a well-known KLA leader, and civilians were killed in the process.<sup>2248</sup> MUP press releases reported that “terrorists” had engaged in combat with the police, using machine guns, portable launchers, automatic rifles, and hand grenades.<sup>2249</sup> Another MUP press release stated that “terrorists” opened fire on the police, who then returned fire, and that the police gave members of the family two hours to leave their compound before firing. Combat lasted 72 hours, resulting in 51 deaths. Jashari was deemed responsible for these casualties.<sup>2250</sup>

858. Human Rights Watch reported that Adem Jashari was killed along with a large number of members of his family, including many women and children.<sup>2251</sup> In the days following the killings, Sabit Kadriu travelled to a warehouse on the outskirts of Srbica/Skenderaj town and saw 50 bodies of Jashari family members, and another 11 bodies of villagers, including women and children, which he was told had been brought there by the MUP.<sup>2252</sup> Crosland claimed that 54 persons were killed in Donje Prekaze/Prekaz i Poshtëm at this time, including 19 members of the Jashari family, whose bodies he photographed.<sup>2253</sup>

859. While it is uncontested that an operation against Adem Jashari was launched by the MUP in early March 1998, the circumstances in which he and a significant number of his family members were killed remains a matter of some dispute. The Trial Chamber notes that prominent Kosovo Albanian journalist Veton Surroi recalled a meeting that he attended between FRY President Milošević and LDK leader Ibrahim Rugova on 15 May 1998, in which he told Milošević that the Jashari incident was a clear case of police brutality and excessive violence against civilians.

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<sup>2245</sup> Frederick Abrahams, P2228 (witness statement dated 24 January 2002), p. 10; P437 (Human Rights Watch report entitled *Humanitarian Law Violations in Kosovo*), p. 26–31.

<sup>2246</sup> John Crosland, P2645 (witness statement dated 31 October 2006), para. 28.

<sup>2247</sup> Veljko Odalović, T. 14397–14398 (24 August 2007).

<sup>2248</sup> Veljko Odalović, T. 14397 (24 August 2007).

<sup>2249</sup> 1D551 (MUP Press Release, 5 March 1998), p. 1; 1D552 (MUP Press Release, 6 March 1998), p. 1.

<sup>2250</sup> 1D553 (MUP Press Release, 11 March 1998), p. 1.

<sup>2251</sup> P437 (Human Rights Watch Report entitled “*Humanitarian Law Violations in Kosovo*,” 1 October 1998), pp. 26–34.

<sup>2252</sup> Sabit Kadriu, T. 5061–5062 (18 October 2006), P2377 (witness statement dated 10 December 2000), pp. 6–7.

Milošević responded that the police had given the family hours to surrender, but that Jashari had kept them inside and “killed them himself”. Milošević also claimed that the police were under strict orders to use proportionate force.<sup>2254</sup>

860. Without further direct evidence concerning the manner in which the MUP operation was carried out, and who was responsible for the killings of women and children in the compound, the Chamber cannot find beyond reasonable doubt that this incident amounted to an excessive or indiscriminate use of force by Serbian forces.

c. Dečani/Deçan town – April

861. The Indictment alleges that part of Dečani/Deçan town was destroyed by forces of the FRY and Serbia around Easter of 1998.

862. As noted in Section VI.B above, the border area between Albania and Kosovo, particularly around Junik in Dečani/Deçan municipality, was the site of significant KLA activity in 1998. Consequently, numerous operations were conducted by forces of the FRY and Serbia in the Dečani/Deçan area in that period. John Crosland testified that “[t]here was an ongoing battle raging across the Junik, Ponoševac, Prilep [and] Rznić area for about three months [from April to July], and there was extremely intense activity by both sides.”<sup>2255</sup> He stated that, as a consequence, the majority of villages in the region, including Junik, were “razed” in the spring of 1998.<sup>2256</sup> The Lazarević Defence challenged him on this assertion, specifically in relation to Junik, noting that a video of a visit to Junik by U.S. Ambassador Richard Holbrooke in late June 1998 shows little or no damage to the village, although not putting the video-footage itself to Crosland.<sup>2257</sup> Crosland maintained his position. The Chamber has analysed this video-footage but, without further evidence about the parts of Junik shown in it, is unable to draw any conclusions based upon it.

863. Crosland testified that the area of Dečani/Deçan was of strategic importance to the KLA, and that Junik and Glođane/Gllogjan were KLA strongholds throughout 1998.<sup>2258</sup> Dragan Živanović, who was then Chief of Staff in the Command of the 125<sup>th</sup> Motorised Brigade, further

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<sup>2253</sup> John Crosland, P2645 (witness statement dated 31 October 2006), para. 28.

<sup>2254</sup> Veton Surroi, P2361 (witness statement dated 27 August 2001), p. 5.

<sup>2255</sup> John Crosland, T. 9918–9919 (8 February 2007).

<sup>2256</sup> John Crosland, P2645 (witness statement dated 31 October 2006), para. 12.

<sup>2257</sup> John Crosland, T. 9918–9921 (8 February 2007); 5D1240 (video).

<sup>2258</sup> John Crosland, T. 9917–9919 (8 February 2007).

asserted that at the time several villages in the area were “completely armed” by the KLA, while others were “partly armed”.<sup>2259</sup>

864. Crosland stated that on 24 March 1998 he observed preparations being made by “Serb forces” for carrying out a “joint strike” on Dečani/Dečan.<sup>2260</sup> In particular, he witnessed a build-up of VJ forces in the area and noted that the VJ had begun to provide fire support for operations, with artillery positions occupied jointly with the JSO.<sup>2261</sup> In his written witness statement, Živanović described the deployment of the 125<sup>th</sup> Motorised Brigade in Dečani/Dečan from April 1998. He stated that a forward command post for the brigade was set-up in Peć/Peja,<sup>2262</sup> while its Combat Group 2, which was established “to assist the MUP in maintaining control of the Peć–Dečani–Đakovica road,” was deployed with ten tanks.<sup>2263</sup> Živanović recounted ordering, on 27 April 1998, Combat Groups 2 and 3, and the 2<sup>nd</sup> Howitzer Battalion, to close off the axis leading from the border towards Peć/Peja and Dečani/Dečan in “co-ordination with [the] MUP and adjacent units.”<sup>2264</sup> He further noted that the JSO was active in the Dečani/Dečan area, and that his units provided support for the JSO there on two occasions.<sup>2265</sup>

865. In a situation report dated 13 May 1998, Crosland reported that the PJP and JSO were patrolling western Kosovo, including Dečani/Dečan, “in a very heavy handed way”.<sup>2266</sup> Two weeks later, colleagues of Crosland toured western Kosovo to observe the situation, and reported that they were denied access to Đakovica/Gjakova and Dečani/Dečan by the MUP.<sup>2267</sup> On 26 May the group saw a convoy of VJ military police moving towards Dečani/Dečan, but at Zrze/Xërxa they were prevented from following the convoy further north-west. After taking a roundabout route to Peć/Peja and spending the night there, the group again attempted to reach Dečani/Dečan from the north. On the main road from Peć/Peja to Dečani/Dečan they observed spent bullet and shell cases, and saw burned out houses in Gornji Streoc/Strellci i Epërm and nearby villages, which appeared deserted. Local Kosovo Albanian men whom they met told them that the villages had been

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<sup>2259</sup> Dragan Živanović, P3062 (witness statement in *Prosecutor v Haradinaj, Balaj and Brahimijaj*, IT-04-84-T, 9 August 2007), para. 66.

<sup>2260</sup> John Crosland, P2645 (witness statement dated 31 October 2006), para. 29.

<sup>2261</sup> John Crosland, P2645 (witness statement dated 31 October 2006), para. 30.

<sup>2262</sup> Dragan Živanović, P3062 (witness statement in *Prosecutor v Haradinaj, Balaj and Brahimijaj*, IT-04-84-T, 9 August 2007), para. 18.

<sup>2263</sup> Dragan Živanović, P3062 (witness statement in *Prosecutor v Haradinaj, Balaj and Brahimijaj*, IT-04-84-T, 9 August 2007), para. 16.

<sup>2264</sup> Dragan Živanović, P3062 (witness statement in *Prosecutor v Haradinaj, Balaj and Brahimijaj*, IT-04-84-T, 9 August 2007), para. 65.

<sup>2265</sup> Dragan Živanović, T.20543 (18 January 2008).

<sup>2266</sup> P688 (Confidential Sitrep. from U.K. Military Representative, 13 May 1998), p. 1.

<sup>2267</sup> P687 (Confidential Sitrep. from U.K. Military Representative, 28 May 1998), p. 1.

attacked on 25 May and 11 people killed.<sup>2268</sup> The group was once again denied access to Dečani/Deçan by the MUP.

866. PJP member K25 testified that in May 1998 his PJP detachment was tasked with liberating the road between Peć/Peja and Dečani/Deçan,<sup>2269</sup> and manning checkpoints in the villages of Gornji Streoc/Strelc i Epërm and Donji Streoc/Strelc i Poshtëm in order to maintain the lines of communication.<sup>2270</sup> On cross-examination, he stated that this operation was necessary because the KLA were in control of the road and conducting searches at road-blocks, opening fire on civilians, and looting property.<sup>2271</sup>

867. Mehmet Mazrekaj, a Kosovo Albanian man from Drenovac/Drenoc, a village close to Dečani/Deçan town, described an offensive which began in the area on 29 May 1998.<sup>2272</sup> He stated that “Serb forces” shelled villages using cannons that were positioned on a hill known as “Te Podi i Geshtenjave”,<sup>2273</sup> causing the local inhabitants to flee to Rznić/Irzniq or Albania.<sup>2274</sup> During cross-examination, however, Mazrekaj conceded that, prior to the offensive, the KLA had launched attacks against FRY/Serbian forces in the municipality.<sup>2275</sup> Fuat Haxhibeqiri, a Kosovo Albanian resident of Đakovica/Gjakova and member of the Council for the Defence of Human Rights and Freedoms, also testified that the “Serbian forces” had large cannons in Dečani/Deçan municipality.<sup>2276</sup>

868. The only specific evidence led by the Prosecution concerning the destruction of parts of Dečani/Deçan town at this time was from Austrian diplomat Jan Kickert, who participated in a diplomatic visit to Dečani/Deçan in early June 1998.<sup>2277</sup> He testified that on 7 June the town was “pretty empty” of civilians.<sup>2278</sup> Kickert observed a “strong police presence and fortifications in the town”, while armoured tanks were deployed in the surrounding area.<sup>2279</sup> He stated that many

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<sup>2268</sup> P687 (Confidential Sitrep. from U.K. Military Representative, 28 May 1998), pp. 2–3.

<sup>2269</sup> K25, T. 4734 (12 October 2006), P2439 (witness statement dated 12 September 2001), p. 5. However, *see also*, K25, P2439 (witness statement dated 6 September 2001), para. 15.

<sup>2270</sup> K25, P2439 (witness statement dated 6 September 2001), p. 5.

<sup>2271</sup> K25, T. 4734 (12 October 2006).

<sup>2272</sup> Mehmet Mazrekaj, T. 5795 (2 November 2006).

<sup>2273</sup> Mehmet Mazrekaj, P2374 (witness statement dated 4 February 2000), pp. 2–3. Mazrekaj referred to the area as “Podi I Geshtenjane” during testimony. Mehmet Mazrekaj T. 5816 (3 November 2006).

<sup>2274</sup> Mehmet Mazrekaj, P2374 (witness statement dated 4 February 2000), p. 3.

<sup>2275</sup> Mehmet Mazrekaj, T. 5816 (3 November 2006).

<sup>2276</sup> Fuat Haxhibeqiri, P2308 (witness statement dated 28 August 2001), p. 4.

<sup>2277</sup> Jan Kickert, 5D123 (witness statement dated 14 May 1999), p. 2.

<sup>2278</sup> Jan Kickert, T. 11195 (7 March 2007).

<sup>2279</sup> P2666 (Austrian Embassy Dispatch, 8 June 1998), p.2.

houses had been burned and destroyed, demonstrating that there had been fighting in the town.<sup>2280</sup> A report written by Kickert on 8 June 1998 records that, while there was “considerable” damage in Dečani/Deçan town, it was not as drastic as had been suggested by the LDK.<sup>2281</sup> Nevertheless, Kickert asserted that evidence of “direct impact” was visible and that his military advisors considered that rounds of heavy ammunition had been used, but that in large part the damage had been caused by machine gun fire. He further commented that there was significant fire damage, which the military attachés present assessed was due to arson.<sup>2282</sup> Kickert reported similar destruction in the village of Prilep/Prejlep, which was also largely empty of its inhabitants.<sup>2283</sup>

869. The Chamber is convinced that operations involving both the VJ and MUP forces were launched in western Kosovo, including Dečani/Deçan municipality, from early April to early June 1998. As a consequence, houses in villages to the north of Dečani/Deçan town, and in the town itself, were damaged or destroyed by both weapons-fire and burning. The Chamber notes that these operations by the FRY/Serbian forces may well have been legitimate responses to KLA attacks and activities, although if houses were burned deliberately this would suggest retaliatory action against local Kosovo Albanian residents, either by the VJ or MUP forces, outwith the range of permissible conduct in response. However, the only evidence of such arson attacks was Kickert’s hearsay account of a view expressed by military attachés with whom he was travelling, which the Trial Chamber does not find to be, in all the circumstances, a satisfactory basis for a finding beyond reasonable doubt.

d. The summer offensive

870. In paragraph 95 of the Indictment the Prosecution alleges that a large-scale offensive operation by forces of the FRY and Serbia was launched in mid-July 1998 throughout Kosovo. The Chamber has discussed in Section VI.B.1 above the formulation and execution of the Plan for Combating Terrorism in Kosovo, as well as the *Grom* plan, which involved both VJ and MUP units. While the conceptualisation and implementation of such plans were not inherently unlawful, the manner in which they were implemented *would* have been unlawful if it involved conduct violating norms of international humanitarian law. The remainder of this sub-section therefore addresses the specific allegations contained in paragraph 95 of the Indictment in relation to the execution of the summer offensive.

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<sup>2280</sup> Jan Kickert, 5D123 (witness statement dated 14 May 1999), p. 2, para. 4; P2666 (Austrian Embassy Dispatch, 8 June 1998), p. 2.

<sup>2281</sup> P2666 (Austrian Embassy Dispatch, 8 June 1998), p. 2.

<sup>2282</sup> Jan Kickert, T. 11196 (7 March 2007); P2666 (Austrian Embassy Dispatch, 8 June 1998), p. 2.

<sup>2283</sup> P2666 (Austrian Embassy Dispatch, 8 June 1998), p. 2.

*i. Dulje/Duhë and Blace/Bllaca – late July*

871. Dulje/Duhël and Blace/Bllaca are villages in Suva Reka/Suhareka municipality, located close to the main Prizren-Priština/Prishtina road in an area of strategic importance, with mountains on either side and a pass known as the Dulje/Duhël pass. The Prosecution alleges that at the end of July 1998 heavy shelling caused “wanton destruction” in this area.

872. The Trial Chamber has reviewed several documents indicating that operations were conducted by the MUP and VJ in the Dulje/Duhël and Blace/Bllaca area, in accordance with the Plan for Combating Terrorism, in July 1998.<sup>2284</sup> Several of these documents suggest that the operations were necessary in order to prevent the KLA from gaining or maintaining control of the road between Suva Reka/Suhareka and Štimlje/Shtima.<sup>2285</sup> In addition, John Crosland visited various parts of Kosovo during July 1998, and wrote reports on the movements and actions of KLA and VJ and MUP forces that he observed. On a tour he made on 28 and 29 July 1998, Crosland noted that he could hear ongoing artillery fire in the Dulje/Duhël and Blace/Bllaca area, and saw smoke rising there.<sup>2286</sup>

873. The evidence concerning the execution of operations by the VJ and MUP in the general Suva Reka/Suhareka area, and Dulje/Duhël and Blace/Bllaca in particular, does not prove that these forces inflicted “wanton destruction” by heavy shelling of the area.

*ii. Villages in western Kosovo, including Junik, Jablanica/Jabllanica, and Prilep/Prejlep*

874. The Chamber is in receipt of a significant quantity of evidence concerning MUP and VJ operations conducted in western Kosovo in July, August, and into September 1998, in implementation of the Plan for Combating Terrorism, focused particularly on Junik, Glodane/Gllogjan, and Jablanica/Jabllanica, which were KLA strongholds. It is unnecessary to reproduce here all of the evidence pertaining to these operations. Suffice it to say that it comprises military orders and combat reports, observations made by Crosland, contemporaneously recorded

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<sup>2284</sup> 4D129 (Report of the 3<sup>rd</sup> Army to the General Staff, 20 June 1998); 3D999 (Report of the PrK to the Security Administration of the General Staff, 17 July 1998), pp. 1–2; 4D100 (PrK Report to 3<sup>rd</sup> Army re engagement of units, 22 July 1998); 4D101(PrK Plan for the engagement of units in Kosovo, 23 July 1998); 4D102 (Response to PrK Plan for the engagement of units, 23 July 1998); P1418 (Request from the PrK to the 3<sup>rd</sup> Army, 31 July 1998); P1537 (Dispatch from the PrK to the Commander of the General Staff of the VJ, 7 August 1998); P1424 (Dispatch from the Command of 243<sup>rd</sup> Brigade to the PrK, 8 August 1998).

<sup>2285</sup> 4D129 (Report of the 3<sup>rd</sup> Army to the General Staff, 20 June 1998), p. 2; 4D100 (PrK Report to 3<sup>rd</sup> Army re engagement of units, 22 July 1998); 4D101(PrK Plan for the engagement of units in Kosovo, 23 July 1998).

<sup>2286</sup> P685 (Confidential Sitrep from U.K. Military Representative, 30 July 1998), pp. 1–2.

statements made during meetings of the Joint Command, and evidence from military and police officers who participated in the operations.<sup>2287</sup>

875. With specific regard to the allegation in paragraph 95 that by September 1998 the village of Prilep/Prejlep had been “razed”, and about half of the villages in Dečani/Dečan municipality had been shelled and burned down, Dragan Živanović stated that his units supported the MUP in a joint operation conducted on the Dečani/Dečan-Đakovica/Gjakova road in early August 1998, which resulted in the taking of Prilep/Prejlep and Rznić/Irznik, to the north-east of Junik. Combat Group 3 of the 125<sup>th</sup> Motorised Brigade “first blocked the road between Drenovac and Rastavica to allow the MUP units to enter Prilep and then Rznić”. Thereafter the same combat group “assisted the MUP in taking Prilep”.<sup>2288</sup> The joint forces met “very strong resistance from the KLA.”<sup>2289</sup>

876. Živanović asserted that there were no civilians left in Prilep/Prejlep at the time the MUP and VJ engaged in combat with the KLA there. He attributed a lot of the resulting damage in the village to the KLA. He observed that ten houses were set on fire due to the KLA’s use of hand-held rocket launchers and incendiary ammunition. He also asserted that the KLA mined houses, other buildings and parts of courtyards with anti-personnel mines and improvised explosive devices.<sup>2290</sup>

877. A video-clip of Junik was shown to Veljko Odalović, which he stated was filmed on 16 August 1998 when he visited the town with a group of journalists and foreign diplomats.<sup>2291</sup> Odalović noted that, although there was clearly damage to buildings, Junik had not been “razed to the ground”.<sup>2292</sup> Božidar Filić testified in relation to the same footage that, when he took the journalists to Junik, there was only “minor damage on the facades of buildings”. He also denied

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<sup>2287</sup> See also, 4D102 (Response to PrK Plan for the engagement of units, 23 July 1998), p. 1; Žarko Kostić, T. 17518–17519 (23 October 2007), 4D501 (witness statement dated 28 September 2001), para. 25; 6D1318 (Order from PrK Command, Forward Command Post, 24 July 1998), p. 1; P685 (Confidential Sitrep. from U.K. Military Representative, 30 July 1998), p. 2; P1146 (Daily Report from Peć VO to Priština Military District, 30 July 1998), para. 1; K25, P2439 (witness statement dated 6 September 2001), pp. 5–6, T. 4662–4663 (11 October 2006), T. 4751–4752 (12 October 2006); IC79 (Marking on P615 Kosovo atlas by witness K25, 11 October 2006); P1419 (PrK Command Request for Approval to 3<sup>rd</sup> Army Commander, 1 August 1998); 4D311 (3<sup>rd</sup> Army Commander Order to PrK Command, 3 August 1998); 4D97 (Minutes from the briefing of the commanders of the PrK and 3<sup>rd</sup> Army, 7 August 1998); 6D692 (Warning Order to support MUP forces, 7 August 1998); P1427 (PrK decision, 10 August 1998); P1468 (Notes of the Joint Command), p. 49; 4D433 (3<sup>rd</sup> Army Combat Report to VJ General Staff of VJ, 14 August 1998); P1428 (PrK decision, 14 August 1998); 5D99 (Minutes of meeting between Army Command organs and Commanders of subordinate units, 17 August 1998); John Crosland, T. 9928–9931 (8 February 2007); Dragan Živanović, P3062 (witness statement dated 9 August 2007), paras. 98–138; P1101 (Order of the PrK, 5 September 1998), also admitted as 6D698; Tomislav Mladinović, T. 17589–17590 (25 October 2007); 4D495 (Map of Ratiš – Samardžić); P1429 (Order of the PrK, 9 September 1998).

<sup>2288</sup> Dragan Živanović, P3062 (witness statement dated 9 August 2007), paras. 99–102.

<sup>2289</sup> Dragan Živanović, P3062 (witness statement dated 9 August 2007), para. 102–103.

<sup>2290</sup> Dragan Živanović, P3062 (witness statement dated 9 August 2007), paras. 103–104.

<sup>2291</sup> Veljko Odalović, T. 14431 (27 August 2007); 5D1239 (Video of Junik).

<sup>2292</sup> Veljko Odalović, T. 14430–14433; John Crosland, T. 9920 (8 February 2007).

that Junik had been “razed to the ground”. Moreover, he testified that the group observed trenches, bunkers, and obstacles left by the KLA.<sup>2293</sup>

878. Crosland testified that he saw troops burning and looting villages *en route* to Glodane/Gllogjan on 28 August 1998.<sup>2294</sup> He passed VJ, SAJ, JSO, and PJP forces conducting operations and “torching, burning, and firing into various houses”.<sup>2295</sup> In particular, he asserted that the village of Prilep/Prejlep had been “bulldozed flat”.<sup>2296</sup> That day Crosland was escorted by the MUP to Glodane/Gllogjan, where he saw the aftermath of an attack and found six to eight bodies in a drain. The MUP told him that these were dead Serbs, victims of the KLA.<sup>2297</sup>

879. Jan Kickert described a trip he took with another diplomat in early September 1998, travelling from Priština/Prishtina to Peć/Peja, Dečani/Deçan, and Junik. He compiled a report immediately following the trip for the Austrian Ministry of Foreign Affairs, stating that “villages along the Priština-Peć road are, with the exception of Serbian villages, no longer inhabited”.<sup>2298</sup> He also noted that the Kosovo Albanian population had not returned to Dečani/Deçan town.<sup>2299</sup> During his oral testimony Kickert stated that in Dečani/Deçan at that time there were a number of displaced persons who continually shifted from place to place to avoid the fighting.<sup>2300</sup>

880. On 21 October 1998 Karol John Drewienkiewicz observed villages to the east of Dečani/Deçan town in which there were signs of ransacking and intentionally burned houses. In villages to the south of Peć/Peja he noted that “doors had been kicked in, windows were broken, walls had been knocked down, ... as though a riot had gone through the place”.<sup>2301</sup> He reported that “houses in the village[s] also appeared to display signs of having been looted. ... Many houses had signs of burning”.<sup>2302</sup> Drewienkiewicz stated that he considered that the houses had been intentionally fired at rather than incidentally damaged from combat activity.<sup>2303</sup> The Trial Chamber notes that Drewienkiewicz is a senior officer in the British armed forces, well-placed to make such assessments.

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<sup>2293</sup> Božidar Filić, T. 23906–23907 (7 March 2008).

<sup>2294</sup> John Crosland, T. 9811–9812 (7 February 2007).

<sup>2295</sup> John Crosland, T. 9811-9812 (7 February 2007); John Crosland, P2645 (witness statement dated 31 October 2006), para.41.

<sup>2296</sup> John Crosland, P2645 (witness statement dated 31 October 2006), para.42.

<sup>2297</sup> John Crosland, T. 9811–9814 (7 February 2007).

<sup>2298</sup> Jan Kickert, T. 11211 (7 March 2007); P564 (Austrian Embassy Dispatch, 11 September 1998), p. 1.

<sup>2299</sup> Jan Kickert, T. 11283 (8 March 2007); P564 (Austrian Embassy Dispatch, 11 September 1998), p. 1.

<sup>2300</sup> Jan Kickert, T. 11284 (8 March 2007).

<sup>2301</sup> Karol John Drewienkiewicz, T. 7732–7733 (4 December 2006).

<sup>2302</sup> Karol John Drewienkiewicz, P2508 (witness statement dated June 2000), para. 28.

<sup>2303</sup> Karol John Drewienkiewicz, T. 7733 (4 December 2006).



881. The Chamber is convinced that the area between Peć/Peja town and Đakovica/Gjakova town in western Kosovo, covering villages in Dečani/Dečan municipality and further east to Jablanica/Jabllanica and Glođane/Gllogjan, was the site of significant combat operations between the VJ and MUP, on the one side, and the KLA, on the other, between July and September 1998. The situation in specific locations was a shifting one, with the FRY and Serbian forces making advances against the KLA in some places and then the KLA retaking that territory shortly afterwards. The Chamber is unconvinced by the use of the term “razed” to describe any particular village at this time, as no detailed evidence was brought demonstrating the complete destruction or effacing of buildings. Nonetheless, both Crosland and Drewienkiewicz are military officers experienced in observing the destructive results of combat activities and the former’s eye-witness account of VJ and MUP forces deliberately setting fire to houses in villages near Glođane/Gllogjan in late August 1998, as well as the latter’s observations in the same area from October 1998, satisfy the Chamber that MUP and VJ forces engaged in conduct during their operations against the KLA that violated international humanitarian law.

*iii. Mališevo/Malisheva – late July*

882. A joint MUP and VJ action took place in the area of Mališevo/Malisheva on 28 July 1998.<sup>2304</sup> In the report of his tour conducted on 28 and 29 July 1998, John Crosland described how he entered the town of Mališevo/Malisheva, where life appeared “normal”, and saw only about 30 members of the KLA. As he and his colleagues left the town and travelled north, they observed six VJ tanks facing towards the town and a “strike force” of approximately 150 SAJ, PJP, and VJ forces, ready to launch an assault. When they reached Kijevo, they encountered a second “strike group” of approximately 300 JSO, VJ, and other MUP forces, with APCs, tanks, and cargo lorries, all ready to move in to Mališevo/Malisheva. The next day Crosland returned to Mališevo/Malisheva and reported: “[w]anton damage. Every village adjacent to both avenues into Mališevo had suffered severe damage. Houses [were] still burning, [while] businesses and garages [had been] deliberately vandalised”. He also observed destroyed crops and some animals that had been killed, and stated that, while the outskirts of the town were heavily damaged, the centre and south end were untouched. The civilian population was missing and unaccounted for by the members of the MUP who were present on the scene.<sup>2305</sup> Crosland estimated that approximately

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<sup>2304</sup> Radojica Nikčević, T. 23282–23283 (27 February 2008); P1423 (15<sup>th</sup> Armoured Brigade Combat Report to PrK, 7 August 1998); P685 (Confidential Kosovo sit. Rep from UK Military Representative, 30 July 1998), p. 2; John Crosland, P2645 (witness statement dated 31 October 2006), paras. 37–38; P1425 (Analysis of Combat Operations of 549<sup>th</sup> Motorised Brigade, 8 August 1998); P1426 (125<sup>th</sup> Motorised Brigade, Engagement of Brigade Units Report, 8 August 1998), p. 2; *See also* 4D101 (PrK Plan for the engagement of units in Kosovo, 23 July 1998), para. 2; 4D102 (Response to PrK Plan for the engagement of units, 23 July 1998), p. 1.

<sup>2305</sup> P685 (Confidential Sitrep from U.K. Military Representative, 30 July 1998), pp. 2–3.

30,000 people were missing from Mališevo/Malisheva, and testified that he later discovered that they were sheltering in the Pagaruša/Pagarusha valley.<sup>2306</sup> In a report of his later observations on 5 and 6 August, Crosland noted that Mališevo/Malisheva had been “gutted” by fire and looting at that time.<sup>2307</sup>

883. However, when asked during his oral testimony about the difference between damage caused by “direct or indirect fire”, Crosland referred by way of example to Mališevo/Malisheva, stating that it had been “completely razed to the ground by a joint VJ/MUP force”. He stated his view that, while it might be legitimate to destroy a KLA headquarters, in this case the force used was very “heavy handed”.<sup>2308</sup> On cross-examination, he noted that “the area of the marketplace, and most of the housing had been completely destroyed”.<sup>2309</sup>

884. Two witnesses were led by the Defence to refute Crosland’s description of the situation in Mališevo/Malisheva at the end of July 1998. Andreja Milosavljević, then co-ordinator of the activities of the state organs of the Republic of Serbia in Kosovo, testified about a video clip of Mališevo/Malisheva that was entered into evidence.<sup>2310</sup> He asserted that the excerpt was a recording of his trip to Mališevo/Malisheva with a group to assess the state of humanitarian assistance in the town in mid-August 1998. While he conceded that “minor damage” had occurred, he asserted that it was not on such a scale that it could be accurately described as having been “razed to the ground.”<sup>2311</sup> Božidar Filić, then Deputy Chief of the Priština SUP, testified about the same video footage. He stated that it related to an anti-terrorist action that took place on the road leading to Mališevo/Malisheva on 28 or 29 July 1998. He had subsequently escorted local politicians and foreign journalists to the area. He also denied that the town had been “razed”.<sup>2312</sup> The Chamber notes that the video-footage in question does indeed show that many buildings in Mališevo/Malisheva remained standing and were undamaged at the time it was filmed. However, Crosland’s report described the outskirts of the village as worst hit, and the centre and south as largely untouched, which is not inconsistent with the video, which shows an unidentified area of the town, including some kind of medical centre.

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<sup>2306</sup> John Crosland, P2645 (witness statement dated 31 October 2006), para. 37.

<sup>2307</sup> P686 (Confidential Sitrep. from U.K. Military Representative, 7 August 1998).

<sup>2308</sup> John Crosland, T. 9807–9809 (7 February 2007).

<sup>2309</sup> John Crosland, T. 9926–9927 (8 February 2007).

<sup>2310</sup> 5D1239 (video-clip of Mališevo).

<sup>2311</sup> Andreja Milosavljević, T. 14313–14315 (23 August 2007).

<sup>2312</sup> Božidar Filić, T. 23903–23904 (7 March 2008).

885. It is undisputed that Mališevo/Malisheva served as a KLA headquarters in 1998.<sup>2313</sup> Filić asserted that only members of the KLA were targeted during the action, and that “without any serious anti-terrorist action there was no chance of normalising the situation.”<sup>2314</sup> As previously noted, on 7 August Pavković ordered all units of the Priština Corps to report on operations conducted between 25 July and 6 August 1998, including that in Mališevo/Malisheva.<sup>2315</sup> He was told by his commanders that no excessive force was used by the MUP or VJ.<sup>2316</sup>

886. Despite the controversy over Crosland’s use in court of the word “razed” to describe Mališevo/Malisheva following the action there at the end of July 1998, and the evidence that the entire town was not totally destroyed, the Trial Chamber is satisfied by the evidence of Crosland and by his contemporaneous report that VJ and MUP forces used excessive force to combat the KLA there at that time, which resulted in destruction to civilian property and the displacement of a significant number of Kosovo Albanians from the town. Indeed, Crosland’s assessment that parts of the town were badly damaged in July 1998, but not completely destroyed, as suggested by the word “razed”, is consistent with his later description of it being “gutted” by fire and looting.

*iv. Drenica – early August*

887. In addition to western Kosovo, the Indictment avers that operations were carried out by forces of the FRY and Serbia in Drenica, in central Kosovo, on 5 and 6 August 1998. It alleges that, as a consequence, most villages along the Peć/Peja–Priština/Prishtina road and along the Gornja Klina/Klina e Epërme-Rudnik-Rakoš/Rakosh road were “wantonly destroyed”.

888. The second stage of the Plan for Combating Terrorism included the engagement of VJ units in unblocking sections of the Priština/Prishtina–Peć/Peja road.<sup>2317</sup> However, the Commander of the 3<sup>rd</sup> Army, Samardžić, denied permission for Priština Corps units to be used in this operation.<sup>2318</sup>

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<sup>2313</sup> John Crosland, T. 9926–9928 (8 February 2007); Jan Kickert, T. 11201–11205 (7 March 2007).

<sup>2314</sup> Božidar Filić, T. 23930–23933 (7 March 2008).

<sup>2315</sup> P1537 (PrK Command, Pavković, Order to Chiefs of Staff of the 243<sup>rd</sup>, 125<sup>th</sup>, and 549<sup>th</sup> brigades, the 52<sup>nd</sup> military police and the 15<sup>th</sup> armoured brigade, 7 August 1998), p. 2, paras. 2–3.

<sup>2316</sup> The Commander of the 15<sup>th</sup> Armoured Brigade, Mladen Čirković, stated there was no use of excessive force by either the VJ or the MUP during the operation. P1423 (15<sup>th</sup> Armoured Brigade Combat Report to PrK, 7 August 1998), p. 1, para. 2. Similarly, the Commander of the 549<sup>th</sup> Motorised Brigade, Božidar Delić, reported that the units encountered a “very small number of civilians” during operations, who were treated fairly. Nevertheless, “there were incidents of theft and unnecessary destruction of property by MUP forces holding positions, who were securing the liberated territory, and by civilians from these areas (out of revenge).” P1425 (549<sup>th</sup> Motorised Brigade Analysis of Combat Operations, 8 August 1998), p. 2, para. 3. The commander of the 125<sup>th</sup> Motorised Brigade, Dragan Živanović, stated that there was no use of excessive force, but conceded that during combat operations, “haystacks, wheat and wooden ancillary buildings caught fire.” P1426 (125<sup>th</sup> Motorised Brigade Engagement of Brigade Units Report, 8 August 1998), p. 2, para. 2.

<sup>2317</sup> 4D100 (PrK Report to 3<sup>rd</sup> Army re engagement of units, 22 July 1998), p. 1; 4D101 (PrK Plan for the engagement of units in Kosovo, 23 July 1998), p. 1.

<sup>2318</sup> 4D102 (Response to PrK Plan for the engagement of units, 23 July 1998)

Dragan Živanović testified that, nevertheless, the 125<sup>th</sup> Motorised Brigade rendered assistance to the MUP in late July to early August 1998 in “an operation to clear” the road.<sup>2319</sup>

889. On 28 July David Gajić of the RDB informed the Joint Command that “special purpose units cleaned the area along the Rudnik communication [line] today”.<sup>2320</sup> The next day Pavković reported to the Joint Command that “[t]he unblocking of Gornja Klina-Rudnik is finished”.<sup>2321</sup> At the same meeting, a representative of the RDB indicated that “cleaning of the village of Kotore was completed today, and we reached Rudnik”.<sup>2322</sup> On 30 July Lukić informed the Joint Command that “conditions were created for a more effective movement toward Rudnik”.<sup>2323</sup>

890. Jan Kickert recalled that in late July 1998 he was part of a diplomatic convoy stopped at a police check point along the Priština/Prishtina-Peć/Peja road, and temporarily prevented from going any further.<sup>2324</sup> Without giving specific locations, Kickert stated that he observed houses and unharvested fields burning.<sup>2325</sup>

891. On 1 August 1998 Pavković informed Samardžić that it had been decided at a Joint Command meeting on 31 July to launch the third phase of the Plan for Combating Terrorism on 2 August.<sup>2326</sup> Pavković specified that it had been decided to *inter alia* to mount synchronised operations in the Drenica and Jablanica/Jabllanica areas.<sup>2327</sup>

892. Between 25 July and 6 August 1998 a number of MUP units, including the JSO, SAJ, and PJP, along with Priština Corps combat groups, were engaged in the Drenica area along several axes.<sup>2328</sup> In the same period Crosland recalled observing the PJP, SAJ, and JSO “on protection duties, particularly around the Drenica and Jablanica areas”. He noted that the role of the PJP was to “secure the area and initiate the initial contact, and then the specialist forces would move in” to carry out assaults. The initial contact “varied considerably from ... surrounding [an] area and ... intimidating the inhabitants to move out, to artillery firing shells into the area as a warning to move

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<sup>2319</sup> Dragan Živanović, P3062 (witness statement dated 9 August 2007), para. 96.

<sup>2320</sup> P1468 (Notes of the Joint Command), p. 21; *See also* Milan Đaković, T. 26370 (19 May 2008).

<sup>2321</sup> P1468 (Notes of the Joint Command), p. 25.

<sup>2322</sup> P1468 (Notes of the Joint Command), p. 26.

<sup>2323</sup> P1468 (Notes of the Joint Command), p. 30.

<sup>2324</sup> Jan Kickert, T. 11269 (7 March 2007).

<sup>2325</sup> Jan Kickert, T. 11202 (7 March 2007).

<sup>2326</sup> P1419 (Request sent by PrK to 3<sup>rd</sup> Army, 1 August 1998).

<sup>2327</sup> P1419 (Request sent by PrK to 3<sup>rd</sup> Army, 1 August 1998).

<sup>2328</sup> Dragan Živanović, T.20499–20501 (17 January 2008); Radojica Nikčević, T. 23282–23283 (27 February 2008); P1423 (15<sup>th</sup> Armoured Brigade Report on Combat Tasks, 7 August 1998); P1425 (549<sup>th</sup> Motorised Brigade Analysis of Combat Operations, 7 August 1998), pp. 1–2; P1426 (125<sup>th</sup> Motorised Brigade Combat Report to PrK, 8 August 1998), p. 1. *See also*, P686 (Confidential Sitrep. from U.K. Military Representative, 7 August 1998), p. 1.

out prior to a more major operation”.<sup>2329</sup> His report of 30 July 1998 stated that “every village from Lapušnik/Llapushnik westwards had suffered deliberate damage by cannon and HMG [heavy machine gun] fire”. In particular, he saw burned out houses and damaged businesses.<sup>2330</sup> In his report on the situation in Kosovo on 5 and 6 August 1998, Crosland noted that “most villages north/south [of the] Peć-Priština road and Gornja Klina-Rudnik-Rakoš road [had been] wantonly destroyed. [There was] [i]ncreasing damage to infrastructure, crops and businesses”. Crosland also described how he encountered a large MUP convoy returning to Priština/Prishtina at that time, carrying Serbian flags and apparently celebrating some kind of “glorious victory”.<sup>2331</sup>

893. Following these operations, the Commander of the 15<sup>th</sup> Armoured Brigade reported that no excessive force was used by the VJ or MUP forces, and that they desisted from firing at terrorists when civilians, diplomatic representatives, or humanitarian workers were present in the deployment area. KLA forces reportedly used infantry weapons, mortars, and hand-held rocket launchers.<sup>2332</sup> The Commander of the 125<sup>th</sup> Motorised Brigade reported that the JSO used multiple-rocket launchers, and the VJ units had tanks, self-propelled guns, self-propelled anti-aircraft guns, and 122 millimetre howitzers. He further reported that no excessive force was used, no looting occurred, and no civilians were detained. However, haystacks, wheat, and wooden ancillary buildings caught fire during the operations.<sup>2333</sup>

894. It is clear that significant VJ and MUP operations were being carried out in late July and early August 1998 in the Drenica area, including in villages along the Peć/Peja–Priština/Prishtina and the Gornja Klina/Klina e Epërme–Rudnik–Rakoš/Rakosh roads. Crosland’s account of the resultant damage to civilian property is not adequately explained by the report of the commander of the 125<sup>th</sup> Motorised Brigade, and the Chamber rejects the latter’s explanation. It finds, therefore, that excessive and indiscriminate force was used by the FRY and Serbian forces against villages in this area during these operations.

*v. Suva Reka/Suhareka valley – September*

895. Paragraph 95 of the Indictment alleges that ongoing shelling and burning of villages by forces of the FRY and Serbia occurred in the Suva Reka/Suhareka valley around September 1998. The Trial Chamber is satisfied that there were VJ and MUP operations in this area in late August

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<sup>2329</sup> John Crosland, T. 9761–9763 (7 February 2007).

<sup>2330</sup> P685 (Confidential Sitrep. from U.K. Military Representative, 30 July 1998), p. 2.

<sup>2331</sup> P686 (Confidential Sitrep. from U.K. Military Representative, 7 August 1998), p. 1–2.

<sup>2332</sup> P1423 (15<sup>th</sup> OKBR Combat Report to PrK, 7 August 1998), p. 2.

<sup>2333</sup> P1426 (125<sup>th</sup> Motorised Brigade Combat Report to PrK, 8 August 1998), p. 2.

1998.<sup>2334</sup> The allegation that these operations included the shelling and burning of villages is primarily supported by John Crosland, who testified about seeing shelling in the area around Suva Reka/Suhareka, Dulje/Duhël, and Blace/Blaca on at least two occasions in 1998. Crosland asserted that the KLA had no equipment to respond to the heavy weapons, such as tanks, multi-rocket launcher systems, and artillery that were used against villages in this area.<sup>2335</sup> He further claimed that video-footage of this shelling, along with shelling in various other areas, was given to Ojdanić on 28 August 1998, but was challenged by the Ojdanić Defence on this.<sup>2336</sup> The footage was not, however, entered into evidence.

896. Crosland testified that he accompanied former British politician Paddy Ashdown on a trip to Kosovo at the end of September 1998, when they travelled all over the Suva Reka/Suhareka area, accompanied by a BBC crew who filmed shelling there.<sup>2337</sup> Two video-clips filmed at this time were entered into evidence.<sup>2338</sup> The first of these clips shows Ashdown looking through binoculars from a position near Studenčane/Studenčan, to the west of Suva Reka/Suhareka town, towards villages to the north and east.<sup>2339</sup> Crosland stated that they could hear gun and shell-fire from VJ artillery positions in Blace/Blaca and Dulje/Duhël, and the shells landing in a village, and then saw houses in the village alight.<sup>2340</sup> The smoke in the village and one house on fire are plainly visible in the video. Crosland noted that there was a heavy MUP and VJ presence in Suva Reka/Suhareka town at this time.<sup>2341</sup> However, on cross-examination, Crosland conceded that he could not be sure whether the video was taken in September or December 1998.

897. Supporting the engagement of forces in operations in the Suva Reka/Suhareka area in late September 1998, Frederick Abrahams stated that on 28 September he and other Human Rights Watch personnel tried to enter the area from three different directions, but were blocked by the police. Abrahams stated that “[w]e later found out there were offensives in that area”.<sup>2342</sup>

898. Despite Crosland’s general testimony about the excessive use of force by VJ and MUP forces in the summer of 1998, including in the Suva Reka/Suhareka area, and the video showing

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<sup>2334</sup> See also, Vladimir Ilić, T. 24343–24345 (17 March 2008), Ilić stated that the action was executed with the involvement of both the PJP, and the special anti-terrorist unit of the MUP, and “some army forces,” including “armoured mechanised units.” However, Ilić asserted that the army “moved along a different axis and we were independent, on our own”. P1468 (Notes of the Joint Command), pp. 77–78.

<sup>2335</sup> John Crosland, T. 9790 (7 February 2007).

<sup>2336</sup> John Crosland, T. 9801–9802 (7 February 2007), T. 9889–9893 (8 February 2007).

<sup>2337</sup> John Crosland, T. 9796–9799 (7 February 2007), T. 9942–9943 (8 February 2007).

<sup>2338</sup> P611 (video taken by Paddy Ashdown, 27 September 1998)

<sup>2339</sup> John Crosland, T. 10047–10049 (9 February 2007).

<sup>2340</sup> John Crosland, T. 10049 (9 February 2007).

<sup>2341</sup> John Crosland, T. 10050–10051 (9 February 2007).

<sup>2342</sup> Frederick Abrahams, P2228 (witness statement dated 11 March 1999), p. 7.

shelling and a house burning, the confusion surrounding the dates of Crosland's observations and visits to Suva Reka/Suhareka with Ashdown, and the uncertainty about delivery of the video, is such that the Chamber is not in a position to make a finding beyond reasonable doubt that villages were shelled and burned in the area in September 1998, as alleged in the Indictment.

*vi. Gornje Obrinje/Abria e Epërme – September*

899. Paragraph 95 of the Indictment alleges that, in the course of an anti-terrorist operation in Gornje Obrinje/Abria e Epërme (Glogovac/Gllogoc municipality) on 26 September 1998, forces of the FRY and Serbia killed 21 members of the Delijaj family, including women and children.

900. In February 1999 Human Rights Watch published a detailed report of its findings in relation to events in Drenica in the last week of September 1998, which was widely disseminated to the media and government organisations.<sup>2343</sup> Frederick Abrahams stated that this report was sent to the Presidency of Serbia, the Federal Presidency of Yugoslavia, the Republican and Federal Ministries of Justice and the Interior, as well as the Yugoslav Army. It was also distributed to the Serbian-language and Albanian-language media in Kosovo.<sup>2344</sup>

901. Abrahams, who co-authored the report,<sup>2345</sup> asserted that he heard shelling and saw fires burning in the Gornje Obrinje/Abria e Epërme area from Pločica/Ploquice on 26 September 1998. The shelling was coming from a location where he saw a helicopter marked with a red cross.<sup>2346</sup> Witnesses to whom he spoke stated that a Kosovo Albanian family had been killed by the "Serbian security forces" near their home in the village of Gornje Obrinje/Abria e Epërme.<sup>2347</sup> On 29 September he received confirmation that an operation had occurred there from the US-KDOM, which had been in Gornje Obrinje/Abria e Epërme the day before.<sup>2348</sup> That day he visited the Hysenaj family compound in Gornje Obrinje/Abria e Epërme, where three elderly persons had been killed.<sup>2349</sup>

902. Thereafter, accompanied by two journalists and a colleague from Human Rights Watch, Abrahams visited a site located in the forest in Gornje Obrinje/Abria e Epërme, where a number of

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<sup>2343</sup> Frederick Abrahams, T. 811, T. 818 (13 July 2006); P441 (Human Rights Watch Report, "A week of terror in Drenica – Humanitarian Law Violations in Kosovo," 1 February 1999).

<sup>2344</sup> Frederick Abrahams, T. 818 (13 July 2006)

<sup>2345</sup> Frederick Abrahams, P2227 (witness statement dated 11 July 2006), para. 19.

<sup>2346</sup> Frederick Abrahams, P2228 (witness statement dated 11 March 1999), p. 7.

<sup>2347</sup> Frederick Abrahams, T. 805–807, 811 (13 July 2006).

<sup>2348</sup> Frederick Abrahams, P2228 (witness statement dated 11 March 1999), p. 7.

<sup>2349</sup> Frederick Abrahams, P2228 (witness statement dated 11 March 1999), p. 7; P441 (Human Rights Watch Report, "A Week of Terror in Drenica – Humanitarian Law Violations in Kosovo," 1 February 1999), pp. 35–39. These were

members of the Delijaj family, including women and young children, had been found dead.<sup>2350</sup> Five male members of the family were found elsewhere in the village,<sup>2351</sup> and the elderly family patriarch had been burned in the house, while one of the other men had been killed and his body found in the village well.<sup>2352</sup> Two girls were missing, but were later found dead.<sup>2353</sup> Abrahams first learned of these bodies as he arrived in the village. The villagers he encountered there had been burying the dead, and were in the process of bringing the remains of three children from a nearby wood to a local field. Seven more unburied bodies remained in the wood, predominantly women and children, the youngest being only 18 months old.<sup>2354</sup> Abrahams interviewed surviving members of the Delijaj family and other villagers who had fled Gornje Obrinje/Abria e Epërme when the police arrived, and was told what they believed had happened.<sup>2355</sup> The women and children found in the woods had fled to the forest due to ongoing fighting in the village between the KLA and “Serbian security forces” and, according to the villagers who had first found their bodies, had been killed while hiding there.<sup>2356</sup> All the bodies found in the woods were dressed in civilian clothes, and exhibited “gunshot wounds, knife cuts, and mutilations”.<sup>2357</sup>

903. From the interviews conducted by Abrahams regarding this incident, the Human Rights Watch was able to confirm that there had been fighting between “Serbian security forces” and the KLA.<sup>2358</sup> Abrahams’s conclusion was that civilians had been hiding in the forest due to ongoing fighting in the village between the KLA and Serbian forces.<sup>2359</sup> He asserted that there had been extensive looting, and that only ten percent of the village was still standing on 29 September

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Rrustem Hysenaj, of Gornje Obrinje/Obri e Epërm; and Ali Koloudra and Hyrda Koludra, displaced couple from Gremnik village.

<sup>2350</sup> Frederick Abrahams, T. 805–809 (13 July 2006), Frederick Abrahams, P2228 (witness statement dated 11 March 1999), p. 8; P441 (Human Rights Watch Report, “A Week of Terror in Drenica – Humanitarian Law Violations in Kosovo,” 1 February 1999), pp. 16–47; P679 (Photograph by Peter Bouckaert, Human Rights Watch, of Delijaj victims in Gornje Obrinje/Obri e Epërm, 29 September 1998); P653 (Photograph by Peter Bouckaert, Human Rights Watch, of Delijaj victims in Gornje Obrinje/Obri e Epërm, 29 September 1998); P642 (Photograph by Peter Bouckaert, Human Rights Watch, of Delijaj victims, Gentiona and Donietta Delijaj, in Gornje Obrinje/Obri e Epërm, 29 September 1998).

<sup>2351</sup> P441 (Human Rights Watch Report, “A Week of Terror in Drenica – Humanitarian Law Violations in Kosovo,” 1 February 1999), pp. 22–24, 30–33.

<sup>2352</sup> P441 (Human Rights Watch Report, “A Week of Terror in Drenica – Humanitarian Law Violations in Kosovo,” 1 February 1999), pp. 22–24, 30–33.

<sup>2353</sup> Frederick Abrahams, P2228 (witness statement dated 11 March 1999), p. 8; P441 (Human Rights Watch Report, “A Week of Terror in Drenica – Humanitarian Law Violations in Kosovo,” 1 February 1999), p. 35. In addition, the Human Rights Watch publication recorded that Sherif Delijaj was still missing in 1999. *See also*, P441 (Human Rights Watch Report, “A Week of Terror in Drenica – Humanitarian Law Violations in Kosovo,” 1 February 1999), pp. 28–29, 31, A baby, Diturije Delijaj was found alive in the forest under her mother’s body, but died later.

<sup>2354</sup> Frederick Abrahams, T. 806 (13 July 2006).

<sup>2355</sup> Frederick Abrahams, P2228 (witness statement dated 11 March 1999), p. 8.

<sup>2356</sup> Frederick Abrahams, T. 807, 811 (13 July 2006).

<sup>2357</sup> P441 (Human Rights Watch Report, “A Week of Terror in Drenica – Humanitarian Law Violations in Kosovo,” 1 February 1999), p. 24.

<sup>2358</sup> Frederick Abrahams, T. 810–811 (13 July 2006).

<sup>2359</sup> Frederick Abrahams, T. 807 (13 July 2006).



1998.<sup>2360</sup> While acknowledging that there had been KLA activity in the area of Gornje Obrinje/Abria e Epërme in September 1998, he refuted the possibility that the KLA was responsible for the killings there.<sup>2361</sup> Austrian diplomat Jan Kickert testified that this incident at Gornje Obrinje/Abria e Epërme occurred after several MUP officers were killed by a landmine, and suggested that this may have triggered their colleagues to go on a “rampage”.<sup>2362</sup>

904. A Priština Corps combat report, dated 26 September 1998, recorded fierce KLA resistance in the area of Gornje Obrinje/Abria e Epërme and Donje Obrinje/Abria e Poshtme. It stated that the KLA had used infantry weapons, hand-held grenade launchers, recoilless guns, and mortars to return fire, while the approach to the villages was mined.<sup>2363</sup> However, the report noted that, due to their losses, the KLA had been “crushed”, with several hundred “terrorists” being captured and an estimated 80–100 dead. It also reported a number of MUP casualties.<sup>2364</sup> The Priština Corps “continued to support the MUP forces in crushing and destroying” the KLA in this area.<sup>2365</sup> Another Priština Corps combat report confirms that on 26 September 1998 the KLA had been completely surrounded in the “sector east of Gornje Obrinje”, and that on 27 September they had been “completely crushed”. The same report noted that three policemen had been killed by KLA attacks on 26 September close to Gornje Obrinje/Abria e Epërme.<sup>2366</sup>

905. On 26 September 1998 Pavković reported at a Joint Command meeting that “the operation in the area of D. Obrinje and G. Obrinje is finished. The resistance was strong, but this group was squeezed into a smaller area.”<sup>2367</sup> He asserted that 200 “enemy losses” were incurred and “refugees” were spotted near Trđevac/Tërdec village; moreover, “clearing” was to continue on 27 September. In relation to the MUP, Lukić stated that an operation in Donje Obrinje/Abria e Poshtme had been completed and that “the units had merged”.<sup>2368</sup>

906. Dragan Živanović asserted that Gornje Obrinje/Abria e Epërme and Donje Obrinje/Abria e Poshtme were fierce bases for “terrorist” forces in 1998. He also testified about joint combat

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<sup>2360</sup> Frederick Abrahams, P2228 (witness statement dated 11 March 1999), p. 7.

<sup>2361</sup> Frederick Abrahams, T. 997–998 (7 August 2006).

<sup>2362</sup> Jan Kickert, T. 11281 (8 March 2007).

<sup>2363</sup> 6D755 (PrK Combat Report to 3<sup>rd</sup> Army, 26 September 1998), p. 1.

<sup>2364</sup> 6D755 (PrK Combat Report to 3<sup>rd</sup> Army, 26 September 1998), p. 2.

<sup>2365</sup> 6D755 (PrK Combat Report to 3<sup>rd</sup> Army, 26 September 1998), p. 3.

<sup>2366</sup> 6D756 (PrK Combat Report to 3<sup>rd</sup> Army, 27 September 1998).

<sup>2367</sup> P1468 (Notes of the Joint Command), pp. 128–129.

<sup>2368</sup> P1468 (Notes of the Joint Command), p. 129.

operations with the MUP and VJ against these “terrorist forces” in the greater region surrounding the villages from 26 September to 29 or 30 September 1998.<sup>2369</sup>

907. On 2 October 1998 the VJ General Staff requested information about the Gornje Obrinje/Abria e Epërme “massacre”.<sup>2370</sup> On 3 October the Priština Corps followed up and also requested further information.<sup>2371</sup> Thereafter Lazarević reported to Pavković that units of the Priština Corps did not commit a massacre, but that they had no reliable information about the MUP.<sup>2372</sup> A 5 October 1998 report from Pavković to the Commander of the 3<sup>rd</sup> Army stated that the Priština Corps did not have any information on the alleged Gornje Obrinje/Abria e Epërme “massacre”, nor on any such incidents in the period in which the Plan for Combating Terrorism was being implemented.<sup>2373</sup> However, the same document stated that Pavković had been informed about information sent from the Priština Corps security department to the VJ Security Administration, which stated that unidentified members of MUP units had carried out an operation in Gornje Obrinje/Abria e Epërme and had executed civilians taken into custody.<sup>2374</sup>

908. Petar Damjanac, then Chief of OUP Glogovac/Gllogoc, denied having knowledge of a MUP operation in Gornje Obrinje/Abria e Epërme in September 1998, in which persons taken into custody were executed.<sup>2375</sup> He asserted that he was first apprised of the incident when a group of Finnish pathologists and the Priština SUP told him that an investigating judge should be sent to Gornje Obrinje/Abria e Epërme. He also claimed that the police did not enter the area from July to September 1998, because it was under the control of the KLA and they could have ended up in cross-fire between the MUP and the KLA.<sup>2376</sup>

909. The notes of the 4 October 1998 meeting of the Supreme Defence Council record Montenegrin President Đukanović asserting that “there is serious suspicion that Obrinje could reoccur and will reoccur day in, day out”, and stating that it should be addressed.<sup>2377</sup> In this regard,

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<sup>2369</sup> Dragan Živanović, T. 20492–T. 20495 (17 January 2008).

<sup>2370</sup> 4D403 (General Staff Request for written statement, 2 October 1998).

<sup>2371</sup> 4D199 (PrK inquiry regarding adherence to orders, 3 October 1998). In response to these requests, the 57<sup>th</sup> Border Guard Battalion replied saying that they had no information. 4D387 (57<sup>th</sup> GB to PrK: Conduct of Combat Operations, 4 October 1998). The 243<sup>rd</sup> Motorised Brigade reported that they were involved as per PrK orders, but that no massacre took place. 4D389 (243<sup>rd</sup> MBR to PrK: Report on Conduct of Combat Operations, 4 October 1998). *See also* 4D390 (52<sup>nd</sup> ARBR to PrK: Report on Conduct of Combat Operations, 4 October 1998); 4D391 (15<sup>th</sup> OKBR to PrK: Report on Conduct of Combat Operations, 5 October 1998); 4D407 (549<sup>th</sup> MTBR Report to the 3<sup>rd</sup> Army, re: the Activities of the Brigade, 5 October 1998).

<sup>2372</sup> 4D401 (Report on Combat Operations to PrK Command, 5 October 1998).

<sup>2373</sup> P1440 (PrK Report on incidents resulting in death, 5 October 1998), p. 4.

<sup>2374</sup> P1440 (PrK Report on incidents resulting in death, 5 October 1998), p. 4.

<sup>2375</sup> Petar Damjanac, T. 23813 (6 March 2008).

<sup>2376</sup> Petar Damjanac, T. 23813–23814 (6 March 2008).

<sup>2377</sup> P2831 (Shorthand notes of 6<sup>th</sup> SDC session, 4 October 1998), p. 30.

Momir Bulatović asserted that Đukanović had been referring to international suspicion about Gornje Obrinje/Abria e Epërme, and not to an incident which had in fact taken place.<sup>2378</sup> On 1 October 1998 a newspaper article on Gornje Obrinje/Abria e Epërme was brought to the attention of the Joint Command.<sup>2379</sup>

910. The international community urged the FRY to allow a Finnish forensic team to investigate Gornje Obrinje/Abria e Epërme. Around 20 to 25 October 1998 the Finnish team was permitted to go to Kosovo, as an alternative to the diplomatic community insisting on investigators from this Tribunal.<sup>2380</sup> Kickert asserted that the team was given a “free-hand” to conduct investigations.<sup>2381</sup> However, they were “not able to do their work in the way it was intended”, and Kickert provided examples of access and security problems associated with exhumations at Gornje Obrinje/Abria e Epërme. In December 1998 the Finnish team travelled to the area in a convoy, which included Kickert, Investigating Judge Danica Marinković, and a large MUP escort, in order to conduct exhumations.<sup>2382</sup> He stated that he would not have agreed to go to Gornje Obrinje/Abria e Epërme with Marinković and the team to undertake the exhumation had he known that “twenty armoured vehicles, APCs and police cars” would be accompanying them, because the area was held at that time by the KLA.<sup>2383</sup>

911. Danica Marinković confirmed that she conducted an on-site investigation into the alleged killing of civilians in Gornje Obrinje/Abria e Epërme.<sup>2384</sup> She asserted that, at the time of the on-site investigation, the area was under the control of the KLA.<sup>2385</sup> An agreement was made between the President of the Priština District Court and the District Public Attorney, the Institute for Forensic Medicine, and the OSCE mission to conduct an investigation on 10 December 1998, as recorded in a dispatch from the Priština SUP.<sup>2386</sup> They were joined by pathology experts from Finland headed by Helena Ranta, and a number of uniformed police.<sup>2387</sup> En route in convoy to Gornje Obrinje/Abria e Epërme they stopped outside the village, before reaching a KLA check point, and went no further because the head of the Finnish team did not want to go further with the

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<sup>2378</sup> Momir Bulatović, T. 13939–13943 (17 August 2007).

<sup>2379</sup> P1468 (Notes of the Joint Command), p. 134.

<sup>2380</sup> Jan Kickert, T. 11223–11225 (7 March 2007).

<sup>2381</sup> Jan Kickert, T. 11225 (7 March 2007).

<sup>2382</sup> Jan Kickert, T. 11226–11227 (7 March 2007).

<sup>2383</sup> Jan Kickert, T. 11278 (8 March 2007).

<sup>2384</sup> Danica Marinković, T. 23523–23525 (29 February 2008); 6D1506 (On-site investigation report of Priština District Court on the incident in Gornje Obrinje, 13 February 1998).

<sup>2385</sup> Danica Marinković, T. 23523 (29 February 2008).

<sup>2386</sup> Danica Marinković, T. 23526 (29 February 2008); 6D197 (SUP Priština, request for assistance of the MUP by Priština District Court, 10 December 1998).

<sup>2387</sup> Danica Marinković, T. 23525–23526 (29 February 2008).

police escort.<sup>2388</sup> Marinković asserted that because no-one, including the family of the injured parties, the OSCE, and the pathology team, followed up on the case, an exhumation was never conducted.<sup>2389</sup>

912. The Trial Chamber is satisfied that during VJ and MUP operations in and around Gornje Obrinje/Abria e Epërme at the end of September 1998 a number of civilians were killed, including women and children. The fact that the VJ General Staff requested information about an alleged “massacre” there demonstrates that there was, at least initially, some concern that VJ forces might have been involved. However, following internal investigations it was reported that no “massacre” had been committed by members of the VJ, and the Priština Corps security department reported that members of the MUP were responsible. Without being able to determine whether it was the VJ or MUP that was involved, the Chamber thus finds that the killings were committed by forces of the FRY and Serbia.

e. Displaced persons

913. Paragraph 96 of the Indictment alleges that, as a result of excessive and indiscriminate force used by the forces of the FRY and Serbia in 1998, many Kosovo Albanians were displaced inside Kosovo or fled the province. It asserts that the United Nations estimated that 285,000 people had been internally displaced by mid-October.

914. Kosovo Albanian journalist Veton Surroi testified that, after the MUP and VJ offensive in Dečani/Deçan in spring 1998, there were 5,000 displaced persons in the mountains in that municipality by the end of May.<sup>2390</sup> There were conflicting reports on displaced persons in Junik, but Andreja Milosavljević, the Minister for Local Self-Administration and the Co-ordinator of State Bodies for Kosovo for the Republic of Serbia, testified that the group of displaced persons in the mountains above Junik in June 1998 comprised around 300 persons.<sup>2391</sup>

915. The Chamber also heard evidence regarding displaced civilians after the operation in Orahovac/Rahovec in July 1998, although the exact number is unclear.<sup>2392</sup> John Crosland provided evidence as to the abandonment of Mališevo/Malisheva by the civilian population of 30,000 after

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<sup>2388</sup> Danica Marinković, T. 23527 (29 February 2008).

<sup>2389</sup> Danica Marinković, T. 23528–23529 (29 February 2008).

<sup>2390</sup> Veton Surroi, T. 4583 (10 October 2006).

<sup>2391</sup> Andreja Milosavljević, T. 14283 (23 August 2007).

<sup>2392</sup> Baton Haxhiu, T. 6083 (8 November 2006). In this regard, Baton Haxhiu testified that, subsequent to the offensive, he visited the Berisha mountains area together with two diplomats David Slinn and Jan Kickert, where approximately 100,000 refugees moved. However, while there is circumstantial evidence that civilians were displaced, there is a lack of corroborating information to support such a high figure in this early period of 1998.

the joint MUP and VJ operation there that same month.<sup>2393</sup> There was also evidence that FRY/Serbian operations caused the displacement of a significant number of civilians in the Drenica area. As already mentioned, a report prepared by John Crosland in early August noted that there were no signs of the civilian population in most villages north and south of the Peć/Peja-Priština/Prishtina road and Gornje-Klina-Rudnik/Runik-Rakos/Rakoš road.<sup>2394</sup> In late August Jan Kickert accompanied Ambassador Wolfgang Petritsch and Emma Bonino, the European Commissioner for Humanitarian Aid, to Ćirez/Qirez. They saw a large number of internally displaced persons.<sup>2395</sup>

916. By September the displaced population in Kosovo had noticeably increased. On 23 September 1998 the UN Security Council noted that it was “gravely concerned” about “the excessive and indiscriminate use of force by Serbian security forces and the Yugoslav army,” which according to the Secretary-General’s estimates had resulted in “the displacement of over 230,000 persons from their homes.”<sup>2396</sup>

917. Abdullah Salihu, a Kosovo Albanian man from the village of Baks, in Srbica/Skenderaj municipality, testified that an offensive took place there in September 1998, causing the displacement of 20,000 people.<sup>2397</sup> Jan Kickert reckoned that there were 1,000 internally displaced persons “[a]ll through summer” in a camp in Kišna Reka/Kërzhareka (Glogovac/Gllogoc municipality), which he visited on 29 September 1998.<sup>2398</sup>

918. Finally, according to the UN High Commissioner for Refugees, the number of displaced persons from Kosovo had reached 285,500 by the end of October 1998.<sup>2399</sup>

919. The Chamber, therefore, finds that a significant number of people from Kosovo had been displaced from their homes by the end of October 1998. While the specific reasons for their movement may have been varied, the excessive use of force by the MUP and VJ in some areas, along with the continuing combat operations between the KLA and the forces of the FRY and Serbia were a significant contributing factor.

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<sup>2393</sup> P685 (Confidential Kosovo sit. Rep from UK Military Representative, 30 July 1998), p. 3.

<sup>2394</sup> P686 (Confidential Sitrep. from U.K. Military Representative, 7 August 1998), p. 1.

<sup>2395</sup> Jan Kickert, T. 11210 (7 March 2007); Jan Kickert, 5D123 (witness statement dated 14 May 1999), p. 4.

<sup>2396</sup> P456 (UNSC Resolution 1199, 23 September 1998), p. 1.

<sup>2397</sup> Abdullah Salihu, T. 1985 (21 August 2006), P2255 (witness statement dated 12 March 2002), p. 2.

<sup>2398</sup> Jan Kickert, T. 11222 (7 March 2007); *see also* P557 (Austrian Embassy Dispatch, 30 September 1998), p. 2.

<sup>2399</sup> P736 (UNHCR statistical overview of Kosovar refugees and asylum seekers, as of the end of October 1998 to 24th March 1999).

#### 4. Findings

920. With a few exceptions, the evidence led by the Prosecution in relation to paragraphs 94 and 95 of the Indictment has generally not been such as to prove specific criminal acts committed by particular groups of VJ and/or MUP forces in 1998. The evidence presented does show that the VJ and MUP were engaged in operations against the KLA from the spring of 1998 and increasing in intensity in the summer through to October, particularly near the Albanian border and in central Kosovo. In some cases excessive and indiscriminate force was used during these operations, evinced by the deliberate damage and destruction of houses and the killing of women and children. Concerns were expressed by international observers and organisations about the situation, and in particular about the number of displaced civilians and allegations of excessive and disproportionate force. The extent to which each of the Accused was aware of the situation and these allegations will be addressed in Section VIII below.

#### D. BREACHES OF THE OCTOBER AGREEMENTS

921. Agreements brokered in October 1998 included the Holbrooke-Milošević Agreement, the KVM Agreement (Jovanović-Geremek), the NATO-FRY Agreement (Clark-Perišić), and the Clark-Naumann Agreement, discussed in detail in the Section V above. The principal matters agreed were detailed adherence to UN Security Council Resolution 1199, reduction of the number of VJ and MUP forces in Kosovo, the introduction of a verification mission into Kosovo, and of air surveillance to aid the verification mission. The Federal Commission for Co-operation was then established to aid the implementation of the agreements.

##### 1. Federal Commission for Co-operation

922. On 19 October 1998 the FRY Government established a “Commission of the Federal Government for the Co-operation with the OSCE Mission for Verification in Kosovo and Metohija”, headed by FRY Deputy Prime Minister, Nikola Šainović.<sup>2400</sup> The other members included Živadin Jovanović, Pavle Bulatović, Momčilo Perišić, Mihalj Kertes, Zoran Anđelković,

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<sup>2400</sup> Živadin Jovanović, T. 14026–14029 (20 August 2007); 2D8 (FRY Government decision establishing Federal Commission for Co-operation with KVM, 19 October 1998); 2D9 (FRY Government supplement to decision establishing Federal Commission for Co-operation with KVM, 29 October 1998); 2D81 (FRY Government Correspondence regarding text of agreement between FRY and OSCE). *See also* Veljko Odalović, T. 14423–14424 (27 August 2007); Milomir Minić, T. 14757 (31 August 2007).

Vlajko Stojiljković, and Dušan Lončar.<sup>2401</sup> The official task of the Commission was “to consider and co-ordinate the political, security and logistical aspect of the functioning of the OSCE Mission for verification in Kosovo and Metohija”.<sup>2402</sup>

923. On 5 November 1998 Serbian President Milutinović made a public statement affirming Serbia’s commitment to a solution to the Kosovo conflict by political means, and its support of the OSCE mission. Milutinović stated that the OSCE mission was agreed to in order to verify the truth, and eliminate rumours, speculation, and organised media incitement.<sup>2403</sup> Živadin Jovanović, Ratko Marković, Momir Bulatović, and Milan Jovanović all testified that the OSCE mission was meant to show to the world “the truth” about what was happening in Kosovo.<sup>2404</sup> According to Bulatović, the FRY/Serbian authorities supported this effort through a great investment in staff and resources during the KVM mandate, in order to help the verifiers.<sup>2405</sup>

924. A field office of the Federal Commission was established in Priština/Prishtina to oversee local interactions with the OSCE mission. This was headed by Dušan Lončar, who was a retired VJ Lieutenant-General. Its members also included Milan Kotur, representing the VJ, and Miroslav Mijatović, representing the MUP.<sup>2406</sup> It met with representatives of the KVM almost every day from December 1998 to March 1999.<sup>2407</sup> At these meetings, information concerning VJ and KLA activities within Kosovo and the reactions of those present in the field were exchanged.<sup>2408</sup> In October 1998 Perišić had established a “Team for Relations with OSCE and NATO Missions” within the VJ General Staff, which was headed by Obradović.<sup>2409</sup> Within the VJ certain officers had been designated as liaison points with the KVM mission, and tasked with monitoring their activities and interactions with the VJ.<sup>2410</sup>

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<sup>2401</sup> 2D8 (FRY Government decision establishing Federal Commission for Co-operation with KVM, 19 October 1998), para. 3; 2D9 (FRY Government Supplement to decision establishing Federal Commission for Co-operation with KVM, 29 October 1998), para. 1.

<sup>2402</sup> 2D8 (FRY Government decision establishing Federal Commission for Co-operation with KVM, 19 October 1998), para. 2.

<sup>2403</sup> Ratko Marković, T. 13171–13172 (8 August 2007); 1D45 (Statement Made by Milutinović, 5 November 1998).

<sup>2404</sup> Živadin Jovanović, T. 14008 (20 August 2007); Ratko Marković, T. 13171 (8 August 2007); Momir Bulatović, T. 13816–13817, 13834 (16 August 2007). *See also* 2D67 (Conclusions of the FRY Federal Assembly), para. 11; Milan Jovanović, T. 14168 (22 August 2007); 2D77 (Minutes of the 90<sup>th</sup> Session of the Executive Board of the SPS).

<sup>2405</sup> Momir Bulatović, T. 13816–13819 (16 August 2007).

<sup>2406</sup> Richard Ciaglinski, P2488 (witness statement dated 1 November 2006), p. 6.

<sup>2407</sup> Richard Ciaglinski, T. 6816, 6859 (17 November 2006).

<sup>2408</sup> Richard Ciaglinski, T. 6860–6861 (17 November 2006). *See* P635 (Key Points From KVM/MUP Meeting, 29 December 1998); P647 (Key Points From KVM/MUP/VJ Meeting, 19 February 1999); Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 24.

<sup>2409</sup> 3D409 (Order to the VJ General Staff Team for Liaison with the OSCE and NATO Missions dated 22 October 1998).

<sup>2410</sup> Dušan Lončar, T. 7675–7677 (1 December 2006).

925. When Lončar received requests from the KVM to set up a meeting with various organisations, he would call Mijatović and Kotur. Veljo Slana, representative of the FRY Ministry of Foreign Affairs, would then inform them of what was on the agenda to allow them time to prepare before the meeting with KVM representatives. Lončar's function was to co-ordinate the meeting; if there were issues regarding the VJ, Kotur would address them, while Mijatović would do the same with respect to the MUP. At the end, Lončar would summarise what both had said emphasising the main points.<sup>2411</sup> Before the KVM arrived and while KDOM was still in Kosovo, Šainović used to meet with Shaun Byrnes every two to three days.<sup>2412</sup> Following the establishment of the Commission and its office in Priština/Prishtina, it was Lončar's duty to set up Šainović's meetings with the KVM.<sup>2413</sup>

926. According to Lončar, the Commission did not have any command authority over the VJ or the MUP.<sup>2414</sup> Thus he did not have authority to issue orders to Kotur or Mijatović. It was their temporary function to be in Lončar's team, but their superiors were officers in the VJ and the MUP, where their regular assignments were.<sup>2415</sup> Richard Ciaglinski, Head of the KVM's Regional Centre in Prizren with whom Lončar dealt extensively, had the impression that Mijatović, Lukić's deputy, was in the chain of command of the MUP, but that Lončar and Kotur were not part of any chain of command.<sup>2416</sup> The fact that Lončar did not have any command authority over the VJ is also confirmed by Milorad Obradović, as well as the VJ Collegium minutes of 27 November 1998 in which Obradović briefed the other members of the Collegium, including Ojdanić, on the fact that any requests relating to the army would have to be decided by the General Staff in accordance with the regular chain of command.<sup>2417</sup>

927. Lončar's office in Priština/Prishtina was situated in the TEC building, where Anđelković and the provincial ministers of the TEC also had their offices. All meetings with the OSCE/KVM

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<sup>2411</sup> Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 22.

<sup>2412</sup> Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 25, P2530 (supplemental information sheet dated 28 November 2006), para. 6.

<sup>2413</sup> Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 25.

<sup>2414</sup> Dušan Lončar, T. 7604 (30 November 2006).

<sup>2415</sup> Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 32. *See also* Richard Ciaglinski, T. 6815–6816 (17 November 2006).

<sup>2416</sup> Ciaglinski, however, was not able to say whether the new members of the Commission, namely General Branković and others, were in a chain of command. Richard Ciaglinski, T. 6815, 6862–6864 (17 November 2006); *see also* P489 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 3271.

<sup>2417</sup> Milorad Obradović, T. 15036 (5 September 2007); P925 (Minutes of the Collegium of the Chief of General Staff, 27 November 1998), p. 17.



were held in these offices, except meetings William Walker, the Head of the mission, had with Šainović which were held on the top floor conference room.<sup>2418</sup>

928. In the beginning Lončar and his colleagues met with KVM representatives almost every day to establish channels and modes of communication with them, and to discuss issues of accommodation, movement, documentation, and the diplomatic status of the observers. Later on they would meet three to four times a week, although there were times where they would meet once or even twice a day.<sup>2419</sup> Kotur, Mijatović, Slana, and Rapajić (Lončar's secretary and the person in charge of keeping the minutes) would always be present at these meetings representing the FRY/Serbian authorities.<sup>2420</sup> Walker would only attend on behalf of the KVM if there were matters that concerned him. Drewienkiewicz and Ciaglinski were always present, with any others who may have been needed on a particular day. Lončar always chaired the meetings.<sup>2421</sup> Following each meeting Slana would make five copies of the minutes, which were signed by those attending. Copies were then sent to the FRY Government, the Serbian Government, the Ministry of Foreign Affairs, the archives, and to Šainović. The minutes would also be stamped and registered in a log-book kept in the Ministry of Foreign Affairs archives.<sup>2422</sup>

929. Drewienkiewicz testified that in the very early stages of the mission the KVM did not receive much assistance from the TEC because Zoran Anđelković did not exercise any real authority in Kosovo. Drewienkiewicz explained that a smoother flow of information was facilitated when, in November 1998, Lončar replaced Anđelković as the FRY Government liaison co-ordinator for the Commission.<sup>2423</sup> It was once Lončar came to Kosovo that decisions were made more readily and that there was a smoother exchange of information;<sup>2424</sup> however, Ciaglinski testified that Lončar's authority diminished over time.<sup>2425</sup>

930. The Chamber therefore concludes that the Commission did not have command authority over either the VJ or the MUP, but was a conduit for the transfer of information between the FRY and Serbian authorities and the KVM, at least in the beginning.

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<sup>2418</sup> Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 44.

<sup>2419</sup> Dušan Lončar, T. 7578–7579 (30 November 2006).

<sup>2420</sup> According to Lončar, Anđelković, who was the president of the TEC and a member of the Commission, never attended these meetings nor dealt with issues Lončar was responsible for, even though he was present in Kosovo and was stationed in the same building. Dušan Lončar, T. 7580 (30 November 2006).

<sup>2421</sup> Dušan Lončar, T. 7579–7580 (30 November 2006).

<sup>2422</sup> Dušan Lončar, T. 7593–7596 (30 November 2006); P2521 (witness statement dated 3 March 2004), para. 26; P2530 (supplemental information sheet dated 28 November 2006), para. 7.

<sup>2423</sup> Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), paras. 20–22, 59; Dušan Lončar, P2521 (witness statement dated 3 March 2004), paras. 12–15.

## 2. Alleged breaches

### a. The “Podujevo Incident”

#### *i. Background*

931. Podujevo/Podujeva municipality is located just north of Priština/Prishtina and was of great strategic importance because the most significant supply route connecting Priština/Prishtina to Niš bisects it. However, the Priština/Prishtina-Podujevo/Podujeva-Niš route was not one of the three strategic supply routes included in the Clark-Naumann Agreement which could be patrolled by the VJ.<sup>2426</sup> When this Agreement was signed, the VJ had to remove the company stationed near Batlava/Batllava, six kilometres southwest of the town of Podujevo/Podujeva,<sup>2427</sup> and the KLA took advantage of this withdrawal by moving into the positions abandoned by the VJ and fortifying them. By December 1998 the KLA had as many as 2,000 fighters in the area.<sup>2428</sup>

932. As the KLA presence in the municipality increased, the situation of the Serb residents of Podujevo/Podujeva deteriorated and many civilians left or were driven from their villages in the western half of the municipality. The Podujevo/Podujeva Serbs protested, and on 11 December 1998 wrote a letter to the authorities of the FRY and Serbia describing their plight and asking for help.<sup>2429</sup> In mid-December a MUP officer was kidnapped and KDOM negotiated his release.<sup>2430</sup>

933. Some of the events in the municipality in this period are discussed in more detail below in the section devoted to the responsibility of Šainović.

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<sup>2424</sup> Karol John Drewienkiewicz, T. 7731 (4 December 2006); P2508 (witness statement dated 23 June 2000), para. 59; *see also* Richard Ciaglinski, T. 6816 (17 November 2006); Dušan Lončar, T. 7578–7579 (30 November 2006).

<sup>2425</sup> Richard Ciaglinski, T. 6821 (17 November 2006).

<sup>2426</sup> Shaun Byrnes, T. 12164 (16 April 2007); Richard Ciaglinski, T. 6823 (17 November 2006); Milan Kotur, T. 20636 (18 January 2008); Michael Phillips, T. 11904 (19 March 2007); 3D645 (Minutes of the Collegium of the General Staff of the VJ, 23 October 1998), e-court p. 2; P395 (Record of Meeting in Belgrade 25 October 1998), para. II. *But see* Milorad Obradović, T. 14933 (4 September 2007), T. 14958–14960 (5 September 2007); 3D645 (Minutes of the Collegium of the General Staff of the VJ, 23 October 1998), e-court p. 2; P928 (Minutes of the Collegium of the General Staff of the VJ, 30 December 1998), pp. 13, 17.

<sup>2427</sup> 3D646 (Minutes of the Collegium of the General Staff of the VJ, 26 October 1998), e-court p. 6.

<sup>2428</sup> Shaun Byrnes, T. 12193–12194, 12238 (16 April 2007); Richard Ciaglinski, T. 6823, 6911, 6925 (20 November 2006); Karol John Drewienkiewicz, T. 7915–7916, 7866–7867 (5 December 2006); Božidar Filić, T. 23936 (7 March 2008); Branko Gajić, T. 15206–15208 (7 September 2007); Milan Kotur, T. 20776 (22 January 2008); Vladimir Marinković, T. 20252 (13 December 2007); Milorad Obradović, T. 14948 (4 September 2007); Michael Phillips, T. 11904 (19 March 2007); 3D1025 (3<sup>rd</sup> Army Command communication with VJ General Staff, 6 December 1998), p. 1; P414 (Letter from the Podujevo Municipal Assembly to Slobodan Milošević and others, 11 December 1998), p. 2.

<sup>2429</sup> Karol John Drewienkiewicz, T. 7938 (5 December 2006); Richard Ciaglinski, T. 6911 (20 November 2006); Božidar Filić, T. 23935–23936 (7 March 2008); Ljubivoje Joksić, T. 21984 (8 February 2008); Vladimir Marinković, T. 20252 (13 December 2007); Michael Phillips, T. 11904 (19 March 2007) (noting also that the Albanian population was being driven out); P414 (Letter from the Podujevo Municipal Assembly to Slobodan Milošević and others, 11 December 1998), pp. 1, 3–6.

<sup>2430</sup> *See* Shaun Byrnes, T. 12232 (17 April 2007).

ii. *“Training exercise” led to a breakdown in the ceasefire and became a deployment*

934. Between 18 and 19 December 1998 the VJ returned the company that had been removed from the airfield near Batlava/Batllava. This troop movement took KVM verifiers by surprise. They became aware of it only after seeing a column of soldiers and military vehicles leaving the VJ barracks. When they asked about it, the response came that it was a routine “training exercise”. Drewienkiewicz urged the VJ to train elsewhere, noting that the large VJ presence in Podujevo/Podujeva was likely to provoke a reaction from the KLA. The VJ ignored these protests. The KLA responded by reinforcing positions along the Podujevo/Podujeva-Priština/Prishtina road.<sup>2431</sup>

935. While the training exercise was scheduled to end on 22 December, the company did not leave at that time; instead, the VJ forces at Batlava/Batllava were reinforced that day. Milorad Obradović gave evidence that the transition from training exercise to deployment was prompted by persistent KLA attacks in the municipality. One report indicated that Ojdanić approved the decision to keep forces at Batlava/Batllava.<sup>2432</sup>

936. The redeployment caused a breakdown of the ceasefire. On 21 December a platoon sent from Batlava/Batllava airfield to Bajčina/Bajçina village encountered a KLA check-point and came under fire. The VJ returned fire and eventually both sides withdrew. Sporadic fighting broke out as the platoon returned to Batlava/Batllava.<sup>2433</sup> The next day saw fierce fighting at Tank Hill, a fortified KLA position overlooking the Podujevo/Podujeva-Priština/Prishtina road.<sup>2434</sup> The heaviest fighting took place two days later, on 24 December 1998, beginning near the village of

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<sup>2431</sup> Shaun Byrnes, T. 12165–12166 (16 April 2007), 12233 (17 April 2007); Richard Ciaglinski, T. 6822, 6842 (17 November 2006); Karol John Drewienkiewicz, T. 7782–7783 (4 December 2006), P2508 (witness statement dated 23 June 2000), para. 96; Milan Kotur, T. 20636 (18 January 2008); Dušan Lončar, T. 7623 (1 December 2006); Vladimir Marinković, T. 20253 (13 December 2007); Milorad Obradović, T. 14944–14945, 15053–15055 (4 September 2007); Michael Phillips, T. 11847 (19 March 2007); P506 (Report of FRY Foreign Ministry Office in Priština/Prishtina, 20 December 1998), pp. 1–2; 3D785 (3<sup>rd</sup> Army Team for Relation with OSCE and NATO, Mission Report, 18–24 December 1998), e-court p. 1; 3D1033 (PrK Command, Security Department Report, 19 December 1998), p. 2–3; P924 (Minutes of the Collegium of the General Staff of the VJ, 24 December 1998), p. 14. *But cf.* 4D423 (3<sup>rd</sup> Army Report sent to General Staff, 21 December 1998), p. 4 (“[T]he adaptation period of the December generation of recruits ... has started and will last till 23 December 1998.”).

<sup>2432</sup> Milorad Obradović, T. 14948 (4 September 2007); 3D785 (3<sup>rd</sup> Army Team for Relation with OSCE and NATO, Mission Report, 18–24 December 1998), e-court p. 1; 4D423 (Report: 3<sup>rd</sup> Army to Gen Staff, Operations Centre, 21 December 1998), p. 3; P924 (Minutes of the Collegium of the VJ General Staff, 24 December 1998), p. 14. While exhibit 4D423 makes reference to the “Malo Kosovo” area, this term is another name for the Podujevo/Podujeva region. *See* Stefanović, T. 21654 (5 February 2008).

<sup>2433</sup> 3D785 (3<sup>rd</sup> Army Team for Relation with OSCE and NATO, Mission Report, 18–24 December 1998), e-court pp. 1–2; 3D1035 (PrK Command, Security Department Report, 24 December 1998), p. 2; 4D423 (Report: 3<sup>rd</sup> Army to Gen Staff, Operations Centre, 21 December 1998), p. 2; *see also* Milorad Obradović, T. 14945 (4 September 2007).

<sup>2434</sup> Karol John Drewienkiewicz, T. 7783 (4 December 2006); Dušan Lončar, T. 7625–7627 (1 December 2006); *see also* Shaun Byrnes, T. 12238 (16 April 2007); Michael Phillips, T. 11851–11852 (19 March 2007); P2586 (Photographs depicting joint VJ and MUP operations in Kosovo), e-court p. 6.

Obrandža/Obranča, just west of the town of Podujevo/Podujeva. At least two VJ soldiers were severely wounded, and as many as several dozen KLA members were killed. KVM verifiers met with both sides to try to restore the ceasefire, but were unsuccessful.<sup>2435</sup> The next three days saw heavy fighting as the KLA retaliated by targeting Serb civilians in the area.<sup>2436</sup> The ceasefire was finally restored on 28 December, and the KVM was given the opportunity to evacuate the wounded.<sup>2437</sup>

*iii. Fallout from the exercise at the 30 December 1998 meeting of the VJ Collegium*

937. There was extensive discussion of the situation in Podujevo/Podujeva at the 30 December 1998 meeting of the VJ Collegium. General Slobodan Kovačević's status report mentioned the two soldiers wounded in the 24 December fighting in Obrandža/Obranča, the dire situation of Podujevo/Podujeva's Serb population, and the KVM pressure to remove VJ forces from Batlava/Batlava airfield.<sup>2438</sup> Aleksandar Dimitrijević questioned the wisdom of holding training exercises in the municipality, but conceded that only the presence of the company at Batlava/Batlava airfield prevented the state from losing control of the municipality.<sup>2439</sup>

938. General Milan Bojović complained that the October Agreements limited the ability of the army to act. Dimitrijević responded that this was not the case, and that the army was allowed to intervene; however, Dimitrijević went on to complain that the "the so-called pretend or real exercises" in the field were leading to disastrous results, that "the explanation that this was a planned exercise [was] not true", and that it was instead "planned that the unit would provoke the terrorists so that the MUP would then have to do whatever it had to do". He was not pleased that

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<sup>2435</sup> 3D785 (3<sup>rd</sup> Army Team for Relation with OSCE and NATO, Mission Report, 18–24 December 1998), e-court p. 2; 3D1035 (PrK Command, Security Department Report, 24 December 1998), p. 5; 3D1036 (PrK Command, Security Department Report, 26 December 1998), p. 1; P634 (Chronology of major events in Kosovo from 15 October to 18 April 1999), e-court p. 4; P928 (Minutes of the Collegium of the General Staff of the VJ, 30 December 1998), p. 3; P2544 (Main Points of the Meeting between Lukić and Drewienkiewicz, 24 December 1998), p. 1.

<sup>2436</sup> Vladimir Marinković, a VJ captain driving in a civilian vehicle and in civilian clothing was shot at by KLA forces. Vladimir Marinković, T. 20254 (13 December 2007); 3D785 (3<sup>rd</sup> Army Team for Relation with OSCE and NATO, Mission Report, 18–24 December 1998), e-court p. 2; 3D1035 (PrK Command, Security Department Report, 24 December 1998), p. 2, 4; P928 (Minutes of the Collegium of the General Staff of the VJ, 30 December 1998), p. 3 Milan Radojević, the head of the last Serb family in Obrandža was murdered on his doorstep. Richard Ciaglinski, T. 6893–6894 (20 November 2006); Ljubivoje Joksić, T. 21984 (8 February 2008); Dušan Lončar, T. 7618–7619 (30 November 2006); 3D1036 (PrK Command, Security Department Report, 26 December 1998), p. 1; *see also* 6D1016 (MUP Prizren, Information on the current situation in the area of Podujevo, 28 December 1998), e-court p. 1; P2586 (Photographs depicting joint VJ and MUP operations in Kosovo), e-court pp. 3–4. The KLA kidnapped a Serb farmer, who was released after an initial rescue attempted by the MUP failed and prompted the KVM to intervene and negotiate a resolution. Richard Ciaglinski, T. 6822–6826 (17 November 2006).

<sup>2437</sup> P634 (Chronology of major events in Kosovo from 15 October to 18 April 1999), p. B-3; *see* 3D1037 (PrK Command, Security Department Report, 28 December 1998), p. 1 (reporting the fighting between the MUP and the KLA on 27 December 1998).

<sup>2438</sup> P928 (Minutes of the Collegium of the VJ General Staff, 30 December 1998), pp. 3–4.

<sup>2439</sup> P928 (Minutes of the Collegium of the VJ General Staff, 30 December 1998), pp. 7, 10.

“the MUP did not do what it had to do afterwards”.<sup>2440</sup> In court, Milan Kotur stated that he did not agree with Dimitrijević’s assertion, and speculated that Dimitrijević’s comment was prompted by political infighting in the VJ.<sup>2441</sup>

939. A number of other statements at the Collegium meeting lend support to the inference that the “training exercise” label was a ruse. Obradović commented on how the VJ had “managed to avoid registering it as a combat group” by calling it a training exercise.<sup>2442</sup> While Ojdanić questioned whether “the marching route and the location of the camp were selected correctly”, he also cast doubt upon the training motive by implying that the presence of the company in Podujevo/Podujeva was justified by the KLA activity in the area.<sup>2443</sup>

*iv. Retrenchment and continuing tension in Podujevo/Podujeva*

940. The period following this incident was marked with increased tension and occasional resurgences of violence in the municipality.<sup>2444</sup> The villages in Podujevo/Podujeva were divided largely along ethnic lines, especially in the areas controlled by the KLA.<sup>2445</sup> The armed forces on both sides of the conflict took advantage of the cease-fire to bring in reinforcements and to strengthen their fortifications along the Podujevo/Podujeva-Lužane/Lluzhan section of the roadway, which formed the effective line of control between KLA and FRY/Serbian held territory.<sup>2446</sup> The period between 28 December 1998 and 20 March 1999 was marked by repeated demands by the KVM that the VJ withdraw its forces from the municipality. The representatives of the forces of the FRY and Serbia, in turn, claimed time and again that the forces at the Batlava/Batlava airfield were being withdrawn, even though the company never left.<sup>2447</sup>

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<sup>2440</sup> P928 (Minutes of the Collegium of the VJ General Staff, 30 December 1998), pp. 12, 14.

<sup>2441</sup> Milan Kotur, T. 20776 (22 January 2008).

<sup>2442</sup> P928 (Minutes of the Collegium of the VJ General Staff, 30 December 1998), pp. 14–15.

<sup>2443</sup> P928 (Minutes of the Collegium of the VJ General Staff, 30 December 1998), p. 17.

<sup>2444</sup> 3D359 (KVM Fusion Center, 2 January 1999), p. 4; 3D363 (KVM Fusion Center, 8 January 1999), p. 5; 3D1039 (PrK Command, Security Department Report, 9 January 1999), p. 2; 3D1041 (PrK Command, Security Department Report, 19 January 1999), p. 4; 3D1050 (3<sup>rd</sup> Army Command, Security Department Report, 5 March 1999), pp. 1–2.

<sup>2445</sup> Karol John Drewienkiewicz, T. 7797 (4 December 2006); 3D359 (KVM Fusion Center, 2 January 1999), pp. 5–6; 3D1037 (PrK Command, Security Department Report, 28 December 1998), p. 1; P1228 (MUP Staff Sitrep, 3 January 1999), p. 4.

<sup>2446</sup> 3D174 (OSCE/KVM Daily Report, 12 January 1999), p. 3; 3D1038 (PrK Command, Security Department Report, 29 December 1998), p. 1; 6D1016 (MUP Prizren, Information on the current situation in the area of Podujevo, 28 December 1998), e-court p. 2; P662 (OSCE/KVM Interim Report, 10 January 1999), p. 1.

<sup>2447</sup> 2D20 (Extract from Michael Phillips’s notebooks, 14 January 1999); P651 (Annex DZ-18, Record of a Meeting Between KVM and Dušan Lončar, 16 January 1998), p. 1. The Chamber notes that P651 records “1998” as the date of the document in multiple places, but considers that this must be a mistake because KVM was not established by January 1998. See Klaus Naumann, T. 8269–82670 (13 December 2006).

941. On 27 January 1999 the VJ company at Batlava/Batllava sparked another round of fighting when it carried out another “exercise” entitled “Securing Roads and Capturing Assigned Facilities”. Fighting took place throughout the day in villages along the line of control.<sup>2448</sup>

942. This VJ company remained at Batlava/Batllava until the start of the NATO campaign.<sup>2449</sup> In fact, it figured prominently in an order to crush and destroy the KLA in Podujevo/Podujeva just prior to the start of the NATO bombing campaign.<sup>2450</sup> The MUP reported heavy fighting in a dozen locations throughout the municipality on the day the action was scheduled.<sup>2451</sup>

#### *v. Findings*

943. Based upon all the evidence adduced on this matter, the Chamber finds that the deployment of a VJ company to Batlava/Batllava airfield in December 1998 was a breach of the October Agreements. The Chamber is not persuaded by the explanation that the deployment was a training exercise, and finds that it was a planned provocation. The VJ maintained the position that the deployment was a training exercise because it knew the presence of a VJ company in Batlava/Batllava was a breach and a provocation. If it had been otherwise, reliance would have been placed upon the right stipulated in the Clark-Naumann Agreement as follows: “as a last resort and consistent with the right of self-defence, the State authorities retain the right to respond adequately and proportionately to any form of terrorist activity or violation of the law which could jeopardise the lives and safety of citizens and representatives of the State authorities”.<sup>2452</sup> The Chamber further finds that the deployment and exercise were intended to draw KLA fire and provide an excuse to introduce more forces into Kosovo. These forces were introduced to retain control over the Priština/Prishtina-Podujevo/Podujeva-Niš road, which made possible other unlawful deployments into Kosovo in 1999.

#### *b. Weekly meetings and breakdown in communication*

944. Michael Phillips, who worked as the Chief of Staff of the Head of the KVM, and William Walker brought to the attention of Milošević and Šainović complaints relating to the heavy-handed use of FRY/Serbian forces in Kosovo in late 1998 and early 1999. Šainović was told about these

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<sup>2448</sup> 5D648 (3<sup>rd</sup> Army Report sent to VJ General Staff, 28 January 1999), p. 1; 5D978 (Regular Operative Report of the Military District Command, 28 January 1999), p. 1.

<sup>2449</sup> P932 (Minutes of the Collegium of the General Staff of the VJ, 4 February 1999), p. 7; *see* 6D1416 (PrK plan of action, 18 March 1999), p. 1; P3049 (Joint Command Order, 19 March 1999), pp. 2–4.

<sup>2450</sup> 6D1416 (PrK plan of action, 18 March 1999), pp. 1–2; P3049 (Joint Command Order, 19 March 1999), pp. 1–4.

<sup>2451</sup> 6D1229 (Overview of Security Events, 21 March 1999), pp. 1–4.

<sup>2452</sup> P395 (Clark-Naumann Agreement, 25 October 1998), e-court p. 4.

concerns during the weekly meetings with the KVM and in the presence of Lukić.<sup>2453</sup> According to Phillips, when faced with the complaints, both men would react defensively, always pleading that they had to protect the Serbian people, as KVM failed to do so, and that they were doing something that was perfectly logical, responding to KLA activity.<sup>2454</sup>

945. Phillips also testified about a meeting with Milošević held around 24 November 1998, the purpose of which was to address co-operation problems between the KVM and the FRY/Serbian authorities. This meeting was attended by Šainović, among others. According to Phillips, Walker felt it was necessary to deliver to Milošević at this time a letter which outlined the co-operation the mission was expecting from the FRY/Serbian authorities and listed various problems they had experienced in Kosovo.<sup>2455</sup> Phillips explained that this was done because they were not getting results from Šainović.<sup>2456</sup> When Milošević heard about the problems, he became upset as he felt that he was providing a high degree of co-operation. The issue primarily related to the security required by the KVM. According to Phillips, Milošević felt that any such security concerns would be provided for by the MUP or the Serbian security forces.<sup>2457</sup> Phillips's impression during this meeting was that Milošević was responsible for security force decisions, which Šainović was then to implement in Kosovo.<sup>2458</sup>

946. Phillips testified that the nature of the meetings with the FRY/Serbian authorities changed in the period from 25 December 1998 up to the Račak/Rečak incident in January 1999. Leading up to that incident the meetings were hostile in nature, and afterwards they ceased completely. Šainović was present at each and every weekly meeting with the exception of the final one just after the Račak/Rečak incident, to which they sought to invite him, but he could not be contacted.<sup>2459</sup> Instead, Lončar attended that meeting on the evening of 15 January 1999.<sup>2460</sup> Lukić was also present at all the meetings bar the one on 15 January 1999.<sup>2461</sup>

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<sup>2453</sup> Michael Phillips, T. 11845 (19 March 2007).

<sup>2454</sup> Michael Phillips, T. 11845–11846 (19 March 2007).

<sup>2455</sup> Michael Phillips, T. 11841–11842, 11944–11945 (19 March 2007); P396 (Letter from William Walker to Slobodan Milošević, 23 November 1998).

<sup>2456</sup> Michael Phillips, T. 11872–11873 (19 March 2007).

<sup>2457</sup> Michael Phillips, T. 11842–11843 (19 March 2007).

<sup>2458</sup> Michael Phillips, T. 11843–11844 (19 March 2007).

<sup>2459</sup> Michael Phillips, T. 11830–11831 (19 March 2007).

<sup>2460</sup> Phillips confirmed that Lončar and Walker worked together in Eastern Slavonia in 1991 and, initially, Walker was happy that he would work with an old friend again. However, according to Phillips, the nature of their relationship changed during the Kosovo mission and became unco-operative. Michael Phillips, T. 11831–11833 (19 March 2007).

<sup>2461</sup> Michael Phillips, T. 11830–11831 (19 March 2007).

947. The Trial Chamber heard that on 27 November 1998 Drewienkiewicz met with Ojdanić, immediately after the latter's appointment.<sup>2462</sup> According to Drewienkiewicz, Ojdanić promised that the VJ would meet its obligations under the Jovanović-Geremek Agreement and that he would be transparent about troop rotations in Kosovo.<sup>2463</sup> Ojdanić also stated that the VJ would be undertaking training exercises outside of barracks; but, when asked to provide the details of the training locations, he did not provide them.<sup>2464</sup> Shortly after the meeting Drewienkiewicz received information regarding the number of VJ forces in Kosovo.<sup>2465</sup> Since these figures did not include all the information requested, on 2 December Drewienkiewicz wrote to Ojdanić requesting the missing details.<sup>2466</sup> Drewienkiewicz also sought to arrange a follow-up meeting with the Commander of the Priština Corps, Pavković, in order to discuss troop rotations in Kosovo, but was unable to do so.<sup>2467</sup> The Ojdanić Defence argues that the VJ was not free to interpret the obligations under the October Agreements, but rather that this was a political prerogative.<sup>2468</sup> However, the Ojdanić Defence does not elaborate upon this argument and does not refer to any source restricting Ojdanić from providing the information that was requested.

948. Phillips testified that the FRY/Serbian authorities failed to live up to their undertakings. They failed to establish a "consulate office" in Priština/Prishtina, which slowed down the arrival of the verifiers to Kosovo; they failed to provide information on minefields in order to facilitate the movement of the KVM and bring the displaced people back to their homes; and they failed to provide baseline information regarding the numbers of troops and numbers of weapons.<sup>2469</sup> Phillips thought that these failures were the result of an absence of will rather than a material inability to effect those undertakings, the purpose being the slowing down of the KVM mission.<sup>2470</sup>

949. Phillips also testified that Šainović failed to provide the information on minefields necessary to facilitate the movement of the KVM and bring displaced people back to their homes,

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<sup>2462</sup> Karol John Drewienkiewicz, T. 7918 (5 December 2006); P2535 (Notes of Meeting with Ojdanić 27 November 1998); Karol John Drewienkiewicz, P2508 (witness statement dated June 2000), para. 66.

<sup>2463</sup> Karol John Drewienkiewicz, T. 7918 (5 December 2006); P2535 (Notes of Meeting with Ojdanić 27 November 1998).

<sup>2464</sup> Karol John Drewienkiewicz, P2508 (witness statement dated June 2000), para. 64.

<sup>2465</sup> P2543 (Letter from Drewienkiewicz to Ojdanić, 2 December 1998); Karol John Drewienkiewicz, T. 7919–7926 (5 December 2006).

<sup>2466</sup> P2543 (Letter from Drewienkiewicz to Ojdanić 2 December 1998); Karol John Drewienkiewicz, T. 7768–7769 (4 December 2006).

<sup>2467</sup> Karol John Drewienkiewicz, T. 7768–7769 (4 December 2006); P418 (Message from Dušan Lončar to Karol John Drewienkiewicz, 7 December 1998).

<sup>2468</sup> Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 175.

<sup>2469</sup> Michael Phillips, T. 11833–11835 (19 March 2007).

<sup>2470</sup> Michael Phillips, T. 11835 (19 March 2007). *But see* P1468 (Notes of the Joint Command), p. 156 (wherein Šainović states that "heavy artillery should not be used during MUP operations. Data on the position of mines in the field should be prepared. It is our stand, that we have not laid mines towards the depth of the field. If we knew where the mines were, we would definitely have reported it").



despite his promises that he would look into the issue to see about getting the minefields located and/or cleared.<sup>2471</sup> However, soon after the KVM agreement had been concluded, Šainović stated at a Joint Command meeting on 22 October 1998 that “[d]ata on the position of mines in the field should be prepared”, which indicates that at least preliminary steps to gather this information had been taken.<sup>2472</sup>

950. Ciaglinski recounted how Šainović’s authority over events in Kosovo was demonstrated during two meetings he had with Lončar on 24 December 1998 where troop movements were discussed. At the first of these Ciaglinski complained about the lack of information being passed to the KVM regarding troop movements. At the second meeting, which took place about two hours later, Lončar stated that he had spoken to Pavković and that the passage of information would now be fixed. However, Lončar stated that this still had to be confirmed at a meeting later that evening with William Walker and Šainović and the MUP Commander. According to Ciaglinski, this episode demonstrated that Lončar could only affect local matters, but that Šainović could speak on behalf of “Belgrade”, and that anything to do with policy had to go via Šainović.<sup>2473</sup>

951. Phillips stated that he could not say for sure whether the levels of the MUP and VJ were reduced as required, because the KVM never had the baseline figure of actual troop numbers.<sup>2474</sup> However Maisonneuve testified that, although he did not know the number of VJ and MUP personnel permitted under the Agreements, he believed that there was a fixed number negotiated and agreed upon and that “it would make sense” that this number was communicated from KDOM to KVM.<sup>2475</sup> The Šainović Defence cross-examined Drewienkiewicz on the basis that the baseline numbers of troops was actually given to KDOM but never passed on from them to the KVM. When asked by the Chamber for the basis of the assertion that the baseline numbers had been passed on to the KDOM, the Šainović Defence was unable to identify evidence (aside from the inference that, because the KVM said that police and army forces were generally complying, they must have known the numbers). The Chamber thus held the line of cross-examination to be without foundation.<sup>2476</sup> Interestingly, Shaun Byrnes, the US KDOM representative, was never asked by the Defence whether the baseline numbers were provided to KDOM. The Chamber finds Maisonneuve’s testimony to be reliable on this point, namely that “it would make sense” for there

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<sup>2471</sup> Michael Phillips, T. 11833–11835 (19 March 2007).

<sup>2472</sup> P1468 (Notes of the Joint Command), p. 156.

<sup>2473</sup> Richard Ciaglinski, P2488 (witness statement dated 23 March 2000), pp. 5–6.

<sup>2474</sup> Michael Phillips, T. 11896–11898 (19 March 2007); P395 (Clark-Naumann Agreement).

<sup>2475</sup> Joseph Maisonneuve, T. 11166–11167 (7 March 2007).

<sup>2476</sup> Karol John Drewienkiewicz, T. 7886–7894 (5 December 2006).

to have been fixed numbers and for KDOM to have passed those numbers on to KVM.<sup>2477</sup> Additionally, between 24 and 25 October 1998 technical meetings were held in Belgrade; participants included Šainović, Milutinović, Đorđević, various military and police officers, Naumann, Clark, and Byrnes. Naumann stated that at these meetings the figure of 10,000 MUP personnel in Kosovo was accepted as the peacetime figure, and the accepted number of MUP personnel currently in Kosovo at that time was 14,000–15,000.<sup>2478</sup>

c. Inspection of barracks and freedom of movement throughout Kosovo

952. According to the terms of the KVM Agreement, the FRY Government was to accept the OSCE Verification Mission as a diplomatic entity which was to enjoy the privileges and immunities of such status; the Agreement further provided specifically that “mission personnel will have full freedom of movement and access throughout Kosovo at all times”.<sup>2479</sup> Michael Phillips testified that, when the KVM first arrived in Kosovo following the KVM Agreement, the mission generally had freedom to move throughout Kosovo with little restriction. As the mission progressed into December 1998 and January 1999, the access became more hindered by roadblocks: the police would explain that they could not guarantee the safety of the KVM staff and would refuse to let them pass.<sup>2480</sup> In order to resolve the movement problems, the KVM would usually hold weekly meetings with representatives of the FRY/Serbia at the government building in Priština/Prishtina. They would meet with Šainović, Lončar, Lukić, and some interpreters and discuss problems that KVM was facing in relation to being able to execute its mission in Kosovo. According to Phillips, these problems included restricted movement in the region, difficulties with vehicle registration for verifiers, and delaying the clearing of minefields in order to allow verifiers into “various locations in and around Kosovo”.<sup>2481</sup>

953. Lončar testified that Šainović was the only person who could authorise or allow KVM inspections of facilities. Lončar would forward Drewienkiewicz’s inspection requests to Šainović, who always refused the requests, stating that such inspection was not part of the October Agreements.<sup>2482</sup> Lončar clarified, however, that he heard from other members of the Commission

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<sup>2477</sup> Joseph Maisonneuve, T. 11166–11167 (7 March 2007).

<sup>2478</sup> Klaus Naumann P1767 (notes of OTP interviews), para. 16.

<sup>2479</sup> P658 (KVM Agreement dated 16 October 1998), e-court pp. 2–3.

<sup>2480</sup> Michael Phillips, T. 11829 (19 March 2007). *See also* 2D19 (Extract from Michael Phillips’s notebooks re: Meeting with Šainović, 18 December 1998), referring to a meeting where Shaun Byrnes expressed satisfaction about information relating to MUP but also inquired about access being denied to Drewienkiewicz.

<sup>2481</sup> Michael Phillips, T. 11829–11835 (19 March 2007).

<sup>2482</sup> Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 33; 3D438 (Notes re meeting between Drewienkiewicz and Ojdanić, 15 December 1998), p. 2. Milorad Obradović, who was Assistant Chief of General Staff for Operations and Staff Sector at the time, testified that Šainović, in his capacity as the Head of the Commission, informed him that the KVM verifiers should not be allowed to inspect barracks. Milorad Obradović, T. 14986–14987

that “a decision [to this effect had been taken] by the federal cabinet because no one, including Šainović, had the right to go beyond the terms of the agreement”.<sup>2483</sup> Šainović’s failure to allow these inspections was also confirmed by Milorad Obradović.<sup>2484</sup>

954. One of the signatories of the KVM Agreement, Živadin Jovanović, explained that it never envisaged such inspections: it merely allowed the KVM freedom of movement and access to territory, not arms control. Jovanović stated that arms control is regulated by more specific international agreements and procedures, and does not fall with the general concept of “freedom of movement”.<sup>2485</sup> Jovanović added that he and co-signatory Bronislaw Geremek<sup>2486</sup> never discussed arms control or inspection of barracks; “freedom of movement” in the Agreement instead related to the KVM verifying the terms of the ceasefire.<sup>2487</sup> Obradović testified that, under the KVM Agreement and article 4 of the Vienna Agreement on Sub-Regional Arms Control, the KVM was entitled to inspect VJ equipment, but not to enter its barracks.<sup>2488</sup> He explained that the numerical strength of the VJ, and all the information about the size of each unit, weapons, and equipment was already supplied to the KVM; there was no need for anyone to enter the barracks.<sup>2489</sup> Obradović also stated that, pursuant to an order issued by Perišić on 16 November 1998, inspections of VJ barracks were not permitted.<sup>2490</sup> The Chamber notes, however, that the text of this order did not prohibit inspection of VJ barracks, but rather required that inspections be refused unless prior approval had been acquired. In contrast to Obradović, Ciaglinski gave evidence that it was the KVM’s understanding that its mandate under the KVM Agreement was to conduct inspections

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(5 September 2007). *See also* 3D787 (Report of the VJ General Staff Work Group, no date), para. 2 in which the members of the VJ Working Group report that there had been attempts on behalf of the verifiers to inspect equipment and VJ troops, without prior notice, but that these inspections were rejected because they did not comply with the General Staff instructions. According to Spasoje Smiljanić, who was the Chief of the First Administration in the General Staff at the time, as a result of these complaints, Šainović convened an extraordinary meeting with the western European Ambassadors accredited in Belgrade, the topic of which was the behaviour of the verifiers and the conduct of the KLA. Spasoje Smiljanić, T. 15740 (17 September 2007).

<sup>2483</sup> Dušan Lončar, T. 7601 (30 November 2006). *See also* P1468 (Notes of the Joint Command), p. 161.

<sup>2484</sup> Milorad Obradović, who was Assistant Chief of General Staff for Operations and Staff Sector at the time, testified that Šainović, in his capacity as the Head of the Commission, informed him that the KVM verifiers should not be allowed to inspect barracks. Milorad Obradović, T. 14986–14987 (5 September 2007). *See also* 3D787 (Report of the VJ General Staff Work Group, no date), para. 2, in which the members of the VJ Working Group report that there had been attempts on behalf of the verifiers to inspect equipment and VJ troops, without prior notice, but that these inspections were rejected because they did not comply with the General Staff instructions.

<sup>2485</sup> Živadin Jovanović, T. 14012–14013 (20 August 2007). *See also* P685 (KVM Agreement), Section III, para. 1; 2D11 (OSCE Agreement on Sub-Regional Arms Control in Bosnia and Herzegovina), article IV pp. 5–6.

<sup>2486</sup> Živadin Jovanović, T. 14014 (20 August 2007).

<sup>2487</sup> Živadin Jovanović, T. 14019 (20 August 2007).

<sup>2488</sup> Milorad Obradović, T. 15116–15118 (6 September 2007).

<sup>2489</sup> Milorad Obradović, T. 15032 (5 September 2007).

<sup>2490</sup> Milorad Obradović, T. 14982 (5 September 2007); 3D458 (VJ General Staff Order, 16 November 1998).

throughout the territory of Kosovo, including within the VJ barracks. Ciaglinski acknowledged that the “government” disputed KVM’s authority to enter the barracks.<sup>2491</sup>

955. Drewienkiewicz testified that on 9 December 1998 he intended to make his first inspection of the “Priština Brigade Barracks” but was refused entry.<sup>2492</sup> That evening there was a meeting at the KVM headquarters building in Priština/Prishtina, attended by Walker, Drewienkiewicz, Šainović, Lončar, Ojdanić, and Pavković. Šainović came to Priština/Prishtina especially for this meeting. Šainović first complained that the KVM was supporting the KLA and that the international community was providing the KLA with monetary support. He then rejected all KVM requests, in particular, he refused to allow the KVM medevac helicopter entry to Kosovo, stated that there were to be no intrusive inspections, announced that there would be no decrease in the police presence in Mališevo/Malisheva,<sup>2493</sup> and advised that there would be no office in Priština/Prishtina to expedite the issuance of visas.<sup>2494</sup> He asked the KVM to stop supporting the KLA, and stated the need for the international community to cut off monetary support for the KLA from western banking systems. Drewienkiewicz observed that Lončar seemed surprised at Šainović’s refusal to allow inspections.<sup>2495</sup> According to Drewienkiewicz, these inspections were important to the mission as it sought to establish the base-line numbers of VJ forces and equipment in Kosovo.<sup>2496</sup> On 11 December Drewienkiewicz went to Prizren to inspect barracks but was denied entry. After persistence, he was given the “opportunity to inspect one of the three VJ company positions out of barracks”.<sup>2497</sup>

956. On the issue of the helicopter, Lončar testified that Šainović made an alternative proposal offering the use of a VJ helicopter, which could be painted to suit KVM needs. Walker rejected this.<sup>2498</sup> This was confirmed by Michael Phillips who thought that Šainović’s offer was

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<sup>2491</sup> Richard Ciaglinski, T. 6922–6923 (20 November 2006).

<sup>2492</sup> Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), para. 80.

<sup>2493</sup> According to Drewienkiewicz, this western Kosovo town was experiencing heavy fighting at this time. The entire town was Albanian, and the KLA was active in the region. In particular, there was a problem with the police harassing and abusing the population. The witness attempted to ease tensions in the area by offering to put in an international team to police the area if Serb police numbers decreased in the region. Karol John Drewienkiewicz, T. 7779–7781 (4 December 2006).

<sup>2494</sup> Karol John Drewienkiewicz, T. 7779–7782 (4 December 2006); P2508 (witness statement dated 23 June 2000), para. 81; P634 (Chronology of major events in Kosovo from 15 October to 18 April 1999), e-court p. 3 (entry 39). Another KVM official, Richard Ciaglinski, testified about the meeting as well. According to Ciaglinski, during the meeting, Šainović accused the KVM of unfair reporting. Richard Ciaglinski, T. 6829–6830, 6862 (17 November 2006), T. 6890 (20 November 2006); P2488 (witness statement dated 23 March 2000), p. 5.

<sup>2495</sup> Karol John Drewienkiewicz, T. 8008 (6 December 2006); P2508 (witness statement dated 23 June 2000), para. 81.

<sup>2496</sup> Karol John Drewienkiewicz, P2508 (witness statement dated June 2000), para. 63. Drewienkiewicz testified that he recalled being told by Dušan Lončar that the refusal of inspections had come from the General Staff, but he had no direct evidence of Ojdanić or Pavković’s attitudes towards the inspections. Karol John Drewienkiewicz, T. 8008 (6 December 2006).

<sup>2497</sup> Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), para. 84.

<sup>2498</sup> Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 25.

genuine.<sup>2499</sup> Furthermore, according to Lončar there was no need for the helicopter request, since the Serbian Government was willing to provide the KVM with one of its own helicopters that would perform the same tasks as the one requested.<sup>2500</sup> On re-examination, Lončar reiterated that the decision on the helicopter had come from a higher level and, when asked specifically who would have been the proper authority to make a decision on that matter, he answered that it was the FRY Government, headed by Prime Minister Bulatović.<sup>2501</sup> Milorad Obradović testified that the VJ did not have sufficient helicopters at its disposal and was against providing one for the KVM.<sup>2502</sup> The Chamber does not consider the decision on the helicopter to constitute a breach of the obligation to allow the KVM freedom of movement throughout Kosovo.

957. The Chamber heard that there was dissatisfaction in VJ circles about the activities of the KVM. For example, Obradović testified that as early as 30 October 1998 Perišić raised concerns about the KVM's attempts to inspect barracks and opposed this course of action, arguing that KVM had no authority under the Agreements.<sup>2503</sup> As a result, he issued an order to VJ units instructing them that "relations with the [KVM] shall be pursued through appropriate state organs solely upon 'prior notification.'"<sup>2504</sup> In addition, at the meeting of the Collegium of the VJ Chief of Staff, which took place on 25 February 1999, Aleksandar Dimitrijević complained of KVM's continuous attempts to have access to VJ-related information that was outside its mandate. He then requested that the Commission pass on the message to the KVM that the VJ would no longer tolerate this conduct, and also to caution the KVM to adhere exclusively to its mandate.<sup>2505</sup>

958. Nevertheless, the verifiers persisted in their attempts to enter the barracks and count the troops and weapons of the VJ.<sup>2506</sup> However, the Priština/Prishtina barracks were never

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<sup>2499</sup> Michael Phillips, who worked directly for Walker, also testified that on 9 December 1998 he had a meeting with Šainović where they discussed the issue of the medevac helicopter to be used by the OSCE while in Kosovo. Phillips confirmed, however, that Šainović offered the use of Serbian helicopters for the purpose of medical assistance to the members of the OSCE, and that he also offered them escorts by the Serbian MUP. Phillips also agreed with the Defence that Šainović's offer regarding medical care and security was sincere and genuine. Michael Phillips, T. 11868–11872, 11879–11880 (19 March 2007); 2D18 (Extract from Michael Phillips's notebooks).

<sup>2500</sup> Dušan Lončar, T. 7597–7598, 7600 (30 November 2006); P2521 (witness statement dated 3 March 2004), para. 25.

<sup>2501</sup> Dušan Lončar, T. 7692, 7693 (1 December 2006).

<sup>2502</sup> Milorad Obradović, T. 15036–15038 (5 September 2007).

<sup>2503</sup> Milorad Obradović, T. 15033–15034 (5 September 2007). *See also* 2D389 (Minutes of the Collegium of the General Staff of the VJ, 30 October 1998), p. 2.

<sup>2504</sup> 3D458 (General Staff order, 16 November 1998).

<sup>2505</sup> P941 (Minutes of the Collegium of the General Staff of the VJ, 25 February 1999), p. 9; *see also* Šainović Final Trial Brief, 29 July 2008 (public version), paras. 331–343 (confusing the Perišić-Clark Agreement with the Clark-Naumann Agreement); 6D1669 (Report of U.S. Embassy in Belgrade re compliance of FRY/Serbia with October Agreements, 1 November 1998), p. 2.

<sup>2506</sup> Milorad Obradović, T. 14982 (5 September 2007).

inspected.<sup>2507</sup> Ciaglinski provided testimony that supported this account, stating in relation to the inspections of the barracks:

We did try to carry out on-the-spot, no-notice inspections, but that met with zero -- well, zero possibility. We were not allowed to carry out inspection. We were held outside barracks, not allowed in; and in fact threatened if we -- told if we didn't remove our vehicles as well as ourselves, it would cause an incident of some sort of some severity.<sup>2508</sup>

959. The Ojdanić Defence argues that, whether or not the FRY interpretation of the agreements was correct, Ojdanić was obliged to accept this interpretation and implement it.<sup>2509</sup> At the meeting of the Collegium of 10 December 1998 Ojdanić made a statement to this effect, informing the General Staff that their job was simply to implement the interpretation of the agreements that was provided by the Federal Commission for Co-operation.<sup>2510</sup> To demonstrate Ojdanić's efforts to co-operate with the KVM, Obradović gave evidence that the KVM was informed of a new rotation of soldiers going into Kosovo in December 1998, when new soldiers were drafted while others left the ranks of the army, including the Priština Corps.<sup>2511</sup> Moreover, he testified that Ojdanić sent a working group from the General Staff to tour the 3<sup>rd</sup> Army and the Priština Corps from 13 to 16 December 1998, to analyse the overall situation with respect to co-operation with the KVM, and to render assistance to the subordinate commands in their interactions with the KVM.<sup>2512</sup> The working group submitted a report to Obradović, indicating that it oversaw the interactions between VJ liaison officers and KVM verifiers.<sup>2513</sup> The VJ, however, continued to bar KVM access to the barracks.<sup>2514</sup>

960. The Ojdanić Defence further argues that the minutes of the VJ General Staff collegium meetings support the contention that Ojdanić took measures to ensure co-operation by the General Staff with the KVM. For example, at the 27 November 1998 collegium meeting, upon taking up the post of Chief of the General Staff, Ojdanić stated:

I personally think that every unit, every troop rotation, we can and should report to the verifiers, and this will not cause any problems. This goes out, this comes in, rather than

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<sup>2507</sup> Karol John Drewienkiewicz, T. 7948 (6 December 2006). Drewienkiewicz was able to visit the barracks in mid-March 1999, but not with any verifiers.

<sup>2508</sup> Richard Ciaglinski, T. 6819 (17 November 2006).

<sup>2509</sup> Ojdanić Final Trial Brief, 30 July 2008 (public version), para. 183.

<sup>2510</sup> 3D484 (Meeting of the Collegium of the VJ, 10 December 1998), p. 16.

<sup>2511</sup> Milorad Obradović, T. 14973 (5 September 2007).

<sup>2512</sup> Milorad Obradović, T. 14979 (5 September 2007).

<sup>2513</sup> Milorad Obradović, T. 14979 (5 September 2007); 3D787 (Colonel Kosta Novaković Report, Work Group of the VJ General Staff, 11 December 1998).

<sup>2514</sup> 3D787 (Colonel Kosta Novaković Report, Work Group of the VJ General Staff, 11 December 1998), p. 2.

having them accusing us of bringing in reinforcements, given the situation we've been put in.<sup>2515</sup>

Ojdanić also encouraged his colleagues to study the Clark-Naumann Agreement and comply with it. At the collegium meeting of 17 December 1998 Ojdanić said that the members of KVM all had diplomatic status, and that is how they should be approached; that there should be no forms of “crudeness”; that the “most painless” form of intrusion was adopted; and “we” should not give them a reason to withdraw.<sup>2516</sup> At the collegium meeting of 24 December 1998 Ojdanić also exhorted his colleagues to strictly abide by their obligations under international agreements.<sup>2517</sup>

961. In addition, on 23 December 1998 Ojdanić signed an order for the implementation of obligations under the Clark-Naumann Agreement, which stated that, in order to enhance VJ co-operation with the KVM, VJ liaison officers, on a daily basis, should exchange reports with the verifiers concerning VJ activities in Kosovo. According to the order, inspections of VJ troops and activities by the verifiers were allowed, but only outside of barracks, subject to limitations that had been put in place under Perišić.<sup>2518</sup> This order was additional to those orders and regulations for interacting with the KVM that pre-existed Ojdanić's appointment as Chief of the General Staff.<sup>2519</sup> Pursuant to the order, VJ liaison officers were to report to the General Staff “Team for Relations with OSCE and NATO Missions” about the activities and communications concerning the verifiers.<sup>2520</sup>

#### d. Increase of VJ presence in Kosovo

962. The Prosecution submits that from November 1998 to March 1999 the levels of VJ troops and equipment in Kosovo increased, in breach of the Clark-Naumann Agreement.<sup>2521</sup> The Ojdanić Defence disputes that the Agreement was violated in such a manner, and urges the

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<sup>2515</sup> P925 (Minutes of the Collegium of the General Staff of the VJ for 27 November 1998), pp. 8–9, 16.

<sup>2516</sup> 3D494 (Minutes of the Collegium of the General Staff of the VJ for 17 December 1998), p. 21.

<sup>2517</sup> P924 (Minutes of the Collegium of the General Staff of the VJ for 24 December 1998), p. 27. *See also*, P936 (Minutes of the Collegium of the General Staff of the VJ for 14 January 1999), pp. 6–9; P934 (Minutes of the Collegium of the General Staff of the VJ for 14 January 1999), pp. 24–25.

<sup>2518</sup> 3D408 (GS VJ-Supplementary Order on Implementation of Obligations of the VJ, 23 December 1998); Dušan Lončar, T. 7676–7677 (1 December 2006).

<sup>2519</sup> 3D409 (Order to the VJ General Staff Team for Liaison with the OSCE and NATO Missions, 22 October 1998); 3D405 (Summary of Obligations, Tasks, Implementation and Methodology of Work with OSCE, 16 October 1998); 3D411 (Instructions on Relations of the VJ with the OSCE, October 1998). The exhibit is an outline of procedure for relations with the missions. The document defines liaising bodies at various levels of the VJ, the methods of liaising, the responsibilities of the VJ to members of the mission in the territory, and the co-operation of the VJ with state organs for purposes of fulfilling the obligations of the mission.

<sup>2520</sup> 3D408 (GS VJ-Supplementary Order on Implementation of Obligations of the VJ, 23 December 1998). One such report in evidence, 1 January 1999, from the liaison team of the 3<sup>rd</sup> Army command, sent to the VJ General Staff, detailed activities of the PrK, activities of the verifiers, and described a meeting with Richard Ciagliniski; 3D459 (3<sup>rd</sup> Army Command Daily Report, 1 January 1999).

<sup>2521</sup> Prosecution Final Trial Brief, 29 July 2008, para. 776.

Trial Chamber to bear in mind the threat faced by Ojdanić in the form of a “large-scale domestic insurgency” and an intensive bombing campaign by NATO.<sup>2522</sup> The Šainović Defence points out that the conditions of the October Agreements were initially upheld,<sup>2523</sup> citing testimony from John Crosland where he reported to the Ministry of Defence and Supreme Allied Commander in Europe that the “three battle groups concerned moved back to barracks”.<sup>2524</sup>

963. As discussed above, according to Naumann the FRY complied with the Holbrooke-Milošević Agreement until about mid-November 1998. However, in the second half of November and in December 1998, NATO observed an increasing number of incidents in Kosovo, most of them instigated by the KLA. Indeed, Naumann conceded that the lack of any agreement with the KLA was NATO’s biggest mistake. Soon NATO began to receive reports about a deteriorating situation in Kosovo, including redeployment of FRY troops, additional check-points, and use of disproportionate force.<sup>2525</sup> The events in Podujevo/Podujeva recounted above are a good example.

964. Drewienkiewicz testified that he understood that the VJ units from outside of Kosovo had been withdrawn, that the units within Kosovo were in their barracks, and that the additional police had withdrawn, but that, without the requested baseline figures and information, there was no way of verifying whether this was the case.<sup>2526</sup> In January and February 1999 the VJ adopted a policy of leaving a platoon-size group of soldiers, or a “foot on the ground”, in Kosovo after each military operation.<sup>2527</sup> The KVM observed between 1,500 and 2,000 VJ soldiers out of barracks, although there were supposed to be only three companies,<sup>2528</sup> or approximately 400 men altogether, deployed outside of barracks in Kosovo. Drewienkiewicz stated that by 3 March 1999 this had the effect of increasing the VJ presence in Kosovo to around 15 companies of soldiers, well in excess of the three companies permitted under the Clark-Naumann Agreement.<sup>2529</sup> In a report written in March 1999, a British intelligence officer operating with KVM reported that 15 VJ companies were out of barracks in Kosovo.<sup>2530</sup>

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<sup>2522</sup> Ojdanić Final Trial Brief, 30 July 2008 (public version), paras. 7, 85.

<sup>2523</sup> Šainović Final Trial Brief, 29 July 2008, para. 313.

<sup>2524</sup> John Crosland, T. 9868 (8 February 2007). Crosland could not remember the particular date.

<sup>2525</sup> Klaus Naumann, T. 8263–8266, 8277–8280 (13 December 2006), P1767 (notes of OTP interviews), para. 28.

<sup>2526</sup> Karol John Drewienkiewicz, T. 7885 (5 December 2006).

<sup>2527</sup> Karol John Drewienkiewicz, P2508 (witness statement dated June 2000), para. 187.

<sup>2528</sup> The terms “companies”, “combat groups”, and “combat teams” are all used interchangeably by the witnesses speaking to this issue: P680 (OSCE/KVM Fusion Working Papers); Dušan Lončar, T. 7686–7687 (1 December 2006); Karol John Drewienkiewicz P2508 (witness statement dated June 2000), para. 187. Shaun Byrnes testified that battle groups, rather than pre-established companies were used in Kosovo, and that they were the same size. Shaun Byrnes T. 12163, 12168 (16 April 2007).

<sup>2529</sup> Karol John Drewienkiewicz, T. 7944 (6 December 2006); P2508 (witness statement dated June 2000), para. 187.

<sup>2530</sup> P641 (Assessment of KLA Attitudes, 15 March 1999), p. 3.



965. The Ojdanić Defence argues that Drewienkiewicz failed to take into account the VJ units that were allowed to remain at the border and at training areas. It also argues that VJ units, in excess of the three deployed companies and the border units, were permitted to be at training sites in Kosovo, outside of barracks,<sup>2531</sup> relying upon a letter to Milošević from William Walker, which made reference to information being provided about training areas at which no VJ units were located.<sup>2532</sup> The Chamber notes, however, that the cited sentence from Walker in fact indicates the opposite: that no VJ units were to be at these sites and that the information was to be provided as a verification. Furthermore, the terms of the agreement expressly referred to the three companies and the border units, without leaving open the possibility of additional units being deployed in Kosovo.<sup>2533</sup>

966. Other witnesses also testified that the VJ did not breach the October Agreements by having more than its allotted companies in Kosovo. Milan Kotur initially testified that the VJ never deployed companies in Kosovo beyond the scope of the Agreement.<sup>2534</sup> However, he subsequently stated that more units were deployed in Kosovo than explicitly envisaged under the Clark-Naumann Agreement, but maintained that the extra units were undertaking defensive operations and thus were not in breach of the Agreement.<sup>2535</sup> Dušan Lončar explained that the Clark-Naumann Agreement provided for the deployment of four combat groups and that there were never supposed to be more than those four combat groups (four reinforced companies) outside the barracks facilities.<sup>2536</sup> At the VJ Collegium meeting on 2 February 1999, Ojdanić pointed out that “one group” of the VJ forces in Kosovo was in contravention of the Clark-Naumann Agreement, although it was not specified in what way.<sup>2537</sup>

967. Drewienkiewicz testified that on 16 March 1999 a new VJ unit was brought into Kosovo, accompanied by T-72 tanks, but he did not specify which unit this was. All units in Kosovo up to that point only had T-55 tanks, which required different personnel and training.<sup>2538</sup> In his view, under the Clark-Naumann Agreement, VJ troops and equipment had to be reduced to the levels of

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<sup>2531</sup> Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 72, 94.

<sup>2532</sup> P396 (Letter William Walker to Slobodan Milošević, 23 October 1998), p. 1.

<sup>2533</sup> P395 (Clark-Naumann-Agreement, 25 October 1998), p. 3.

<sup>2534</sup> Milan Kotur, T. 20635 (18 January 2008). He used the term “teams” in place of combat groups.

<sup>2535</sup> Milan Kotur, T. 20636 (18 January 2008).

<sup>2536</sup> When confronted by the Lazarević Defence with the proposition that there were only three companies deployed in Dulje, Lapušnik, and Volujak, Lončar conceded that he did not remember the exact number, and agreed that, apart from those three or four companies, there were nine other companies in specific locations, which would only be engaged if necessary, as decided by the Commander of the PrK. Dušan Lončar, T. 7684–7687 (1 December 2006). Milan Kotur confirmed that these were the three locations where VJ units were allowed to remain under the Clark-Naumann Agreement. Milan Kotur, T. 20636 (18 January 2008).

<sup>2537</sup> P931 (Minutes of the Collegium of the General Staff of the VJ for 2 February 1999), p. 20–21.

spring 1998; and, due to the fact that T-72 tanks were not declared under the prior arms control documents, this was a breach of this requirement.<sup>2539</sup>

968. Branko Krga testified that NATO had increased the strength of its ground forces in Macedonia from 1,850 at the start of 1999 to 12,500 in March 1999.<sup>2540</sup> As the threats and military preparations from NATO intensified during February and March 1999, Ojdanić and the General Staff became increasingly concerned about a possible ground invasion.<sup>2541</sup> On 18 February 1999, Colonel Antić from the Intelligence Administration reported that the number of NATO forces in Macedonia was expected to rise to 8,000 at the end of the month. Ojdanić stated that troops should be deployed to areas near the border with Kosovo, so that they could intervene rapidly in that area.<sup>2542</sup> Justifying the decision to call up more troops to Kosovo, Ojdanić indicated that this was a response to the expected NATO attack, stating expressly “[w]e must defend the country if we are attacked. Politics and diplomacy will do everything to resolve this by peaceful means if possible.”<sup>2543</sup>

969. Increases in the number of VJ units devoted to the Priština Corps were reported by Đorđe Ćurčin, who was the Chief of the First Administration of the Section for Operations and Staff Affairs, at meetings of the Collegium of the VJ General Staff on 25 February 1999 and 11 March 1999.<sup>2544</sup> These redeployments were explained by Branko Krga, the Head of the Intelligence Administration, as a response to provocations from the KLA,<sup>2545</sup> implying that the increases were legitimate actions under the self-defence exception in the final clause of the Clark-Naumann Agreement. However, at the 11 March 1999 meeting Ojdanić indicated that the introduction of new troops was a violation of the Agreement, stating that those present at the meeting knew “quite

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<sup>2538</sup> Karol John Drewienkiewicz, T. 7809–7812 (4 December 2006), P2508 (witness statement dated June 2000), para. 188.

<sup>2539</sup> Karol John Drewienkiewicz, T. 7809–7812 (4 December 2006), P2508 (witness statement dated June 2000), para. 188.

<sup>2540</sup> Branko Krga, T. 16921 (4 October 1999).

<sup>2541</sup> P932 (Minutes of the Collegium of the General Staff of the VJ for 4 February 1999), pp. 10–11.

<sup>2542</sup> P937 (Minutes of the Collegium of the General Staff of the VJ for 18 February 1999), pp. 4, 16.

<sup>2543</sup> P937 (Minutes of the Collegium of the General Staff of the VJ for 18 February 1999), p. 18; P938 (Minutes of the Collegium of the General Staff of the VJ for 18 March 1999), p. 7.

<sup>2544</sup> Reinforcements to the Priština Corps referred to at this meeting included the 2<sup>nd</sup> Special Brigade and an anti-terrorist battalion of the Military Police Battalion to the 52<sup>nd</sup> Military Police Battalion of the PrK, and another group from the Military Police Battalion to the 243<sup>rd</sup> Mechanised Brigade of the PrK. P941 (Minutes of the Collegium of the General Staff of the VJ for 25 February 1999), p. 12; P935 (Minutes of the Collegium of the General Staff of the VJ for 11 March 1999), p. 11. These included 637 new troops in Kosovo units, the resubordination of the 37<sup>th</sup> Motorised Brigade to the PrK; and the resubordination of the 21<sup>st</sup> Niš Corps to the PrK; this action was carried out pursuant to 3D680 (Order of the General Staff for Resubordination of 37<sup>th</sup> Mtbr/2<sup>nd</sup> Army, 6 March 1999) and P1473 (Resubordination of 37<sup>th</sup> Motorised Brigade to PrK dated 1 April 1999); Ljubiša Diković, T. 19873 (10 December 2007); Ljubiša Stojimirović, T. 17702 (26 October 2007). It also included the resubordination of the 252<sup>nd</sup> Armoured Brigade to the 3<sup>rd</sup> Army, and the addition of the 211<sup>th</sup> Armoured Brigade. 5D261 (Order of the VJ General Staff, 13 March 1999).

well why we had to violate”.<sup>2546</sup> He recounted his conversation with General Clark, during which he accepted that the reinforcements were a violation of the agreement; when Clark asked him why there were 25,000 troops on the border, he did not dispute the number but rather said that this was a necessary response to the build up of NATO forces.<sup>2547</sup>

970. At the collegium meeting of 25 February 1999, Dimitrijević expressed his disapproval of the sending of a military police unit from the 72<sup>nd</sup> Special Brigade to Kosovo.<sup>2548</sup> He objected to the unit being sent there, because the 72<sup>nd</sup> Special Brigade was a powerful military police unit, which he feared would not be used properly, and which would be divided into sub-units.<sup>2549</sup> Ojdanić’s comment at the Collegium indicates that he was unaware that this unit had been moved into Kosovo, as he had only ordered that it be moved to the edge of Kosovo.<sup>2550</sup>

971. At the same meeting a proposal to prolong the period of service of VJ conscripts in Kosovo, who had begun their service in March 1998, beyond the usual 12 months was discussed. Samardžić, who was by then with the VJ Inspectorate, proposed that, in light of the possibility of an attack by NATO, the VJ forces in Kosovo should not be allowed to go on leave, and the Supreme Commander and Assembly of the FRY should be asked to make a decision to prolong for 40 additional days the service of VJ conscripts who were at that time in Kosovo. The Head of the Section for Mobilisation, Recruitment, and Staff Issues, Risto Matović, saw no legal basis for this move.<sup>2551</sup> The Head of the Section for Operations and Staff Affairs, Milorad Obradović, expressed his concern that sending extra soldiers to Kosovo might be perceived as a breach of the Agreement. Ojdanić preferred the option of calling up those conscripts who had been discharged after completing their service and had thus become reservists, because he accepted that there was no legal basis to extend the period of service of conscripts.<sup>2552</sup> However, he requested that the extension of conscripts’ service be retained as an alternative option and noted that a document had

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<sup>2545</sup> Branko Krga, T. 16852 (4 October 1999).

<sup>2546</sup> P935 (Minutes of the Collegium of the VJ General Staff VJ for 11 March 1999), p. 21.

<sup>2547</sup> P935 (Minutes of the Collegium of the VJ General Staff for 11 March 1999), p. 21. Ćurčin testified that Ojdanić was not acknowledging a violation, as the reinforcing of the VJ was an action of anticipatory self-defence due to the build up of NATO forces on the border. Ćurčin also testified that Ojdanić was not accepting that there were 25,000 VJ troops on the border; according to Ćurčin, there were not even 25,000 troops in the whole of Kosovo. Đorđe Ćurčin, T. 17009–17012 (5 October 2007).

<sup>2548</sup> P941 (Minutes of the Collegium of the VJ General Staff for 25 February 1999), p. 24.

<sup>2549</sup> Aleksandar Dimitrijević, T. 26648–26649 (8 July 2008).

<sup>2550</sup> P941 (Minutes of the Collegium of the VJ General Staff for 25 February 1999), pp. 16–17.

<sup>2551</sup> P941 (Minutes of the Collegium of the VJ General Staff for 25 February 1999), pp. 17–19.

<sup>2552</sup> P984 (FRY Law on the VJ), article 315.

been prepared on this issue. He observed that, in that case, the President would order that the soldiers be retained as conscripts in their original units.<sup>2553</sup>

972. This alternative option of prolonging periods of service was subsequently implemented on 15 March 1999, following a decision of the FRY President, and resulted in an additional 2,500 to 2,800 soldiers being retained in the ranks of the Priština Corps.<sup>2554</sup> Ojdanić issued the order for this measure to be implemented, stating that it was necessary as a defensive measure due to “increased external pressure on our country and the build-up of foreign troops on our borders”.<sup>2555</sup>

973. In support of the contention that the KLA presence and activity in Kosovo escalated in the months following the signing of the Clark-Naumann Agreement, the Ojdanić Defence points to a number of pieces of evidence, including, *inter alia*, the statement of KLA Chief of Staff Bislim Zyrapri that “[f]ollowing the enemy offensive, the repositioning of forces has been carried out in all operating zones and we can freely say that the territory controlled by our units is now a greater percentage than prior to the enemy offensive”,<sup>2556</sup> and the evidence of Klaus Naumann that the KLA escalated its activities after the October Agreements, and that neither NATO nor the OSCE were able to control the KLA in late 1998.<sup>2557</sup> The Ojdanić Defence also refers to the KVM reports of increased KLA activity at that time.<sup>2558</sup> Michael Phillips testified that attacks by the KLA endangered the lives of Serb citizens and that the KLA had bases in civilian settled areas.<sup>2559</sup> A security report from the Priština Corps sent to the General Staff on 18 November 1998 noted that the KLA were extremely active in the Dečani/Dečan municipality, particularly in the village of Glodane/Gllogjan, and that they were planning a major offensive in the spring of 1999.<sup>2560</sup>

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<sup>2553</sup> P941 (Minutes of the Collegium of the General Staff of the VJ for 25 February 1999), p. 24.

<sup>2554</sup> Vladimir Lazarević, T. 17877–17880 (7 November 2007); 3D750 (Chief of Army General Staff Ojdanić Order-Retention of VJ Members After Overdue of Regular Army Serving, 15 March 1999). The decision of the President on which this order was based is not in evidence in this case. Lazarević explained that this order followed a decision of the President of the FRY who was the one authorised by law to make such a determination. Vladimir Lazarević, T. 17878 (7 November 2007). Radinović confirmed this statement and explained that the order was legally issued in accordance with articles 316(4) and 318(2) of the Law on the VJ. 3D1116 (Radovan Radinović’s Expert Report), p. 64; *see also* P984 (FRY Law on the VJ), articles 316(4) and 318(3).

<sup>2555</sup> 3D750 (Order Retention of VJ Members After Overdue of Regular Army Serving, 15 March 1999), p. 1.

<sup>2556</sup> P2460 (KLA Minutes of Meeting Between Chief Staff and Commanders of Operational Zones, 28 December 1998), p. 3.

<sup>2557</sup> Klaus Naumann, T. 8277–8284 (13 December 2006), T. 8383–8384 (14 December 2006). The Defence additionally points to other sources to support this assertion: 3D564 (Excerpt from Notebook of Phillips, Michael), p. 2932; Karol John Drewienkiewicz, P2508 (witness statement dated June 2000), para. 189; 3D573 (Excerpt from Notebook of Drewienkiewicz), p. 32.

<sup>2558</sup> *See, e.g.*, 3D179 (KVM report on compliance by the parties in Kosovo, 12 March 1999), also admitted as P444.

<sup>2559</sup> Michael Phillips, T. 12015–12016 (20 March 2007); John Crosland, T. 9912 (8 February 2007); 3D511 (Notes of Meeting with Crosland, 25 June 1998), p. 2.

<sup>2560</sup> 3D1021 (PrK Command-Security Department Report, 18 November 1998), p. 1; 3D1037 (PrK Command-Security Department Report, 28 December 1998).

974. On 9 January 1999 the General Staff was informed in a report from the Priština Corps security department that the KLA intended to launch attacks throughout the whole territory of Kosovo.<sup>2561</sup> Around the same time, the growth in the strength of the KLA in Kosovo was recorded in *inter alia* a report from the security department of the Priština Corps of 13 January 1999.<sup>2562</sup> During the meeting of the Collegium of the General Staff on 18 February 1999, Dimitrijević reported that the KLA continued to expand the territory under its control and that it intended to cut off roads and conduct raids throughout Kosovo.<sup>2563</sup> A report from the Section for Operations and Staff Affairs in February 1999 indicated that the KLA had 12,000 to 15,000 armed members and another 5,000 to 6,000 ready in Albania.<sup>2564</sup> Subsequently, in March 1999, further reports from the 3<sup>rd</sup> Army security department to the General Staff indicated that the KLA was increasing its strength, and at the meeting of the Collegium of the General Staff of 18 March it was reported that the number of KLA attacks against the VJ had increased markedly.<sup>2565</sup>

975. The Ojdanić Defence points out that, in the lead-up to the conflict in March 1999, a British Army intelligence officer provided a report to the KVM noting that the number of incidents provoked by the KLA during the second round of Paris talks had been disturbing. According to his report, these incidents included the use of civilians as human shields, the capturing of VJ soldiers as hostages, and ambushes against VJ vehicles. It should also be noted that the incident involving human shields was reported as a response to increased VJ activity in the region, that one VJ soldier taken hostage was reportedly drunk when he stumbled into the KLA-held territory, that one of the two ambushes was reported as the first in the area for over a month, and that the other ambush reportedly resulted in an “extremely forceful” security response.<sup>2566</sup> On the eve of the NATO air campaign, KVM reports noted that the KLA had launched an ambush in Priština/Prishtina, and that KLA attacks were beginning to include urban areas.<sup>2567</sup>

976. During the week of 26 February to 4 March 1999, the KVM monitors in the Kačanik/Kaçanik area reported that “Serb authorities” had conducted exercises in places that might have sparked conflict, had increased their patrols in areas of strong KLA influence, and had started “projecting their authority on members of the KVM”. They also noted that the KLA appeared to

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<sup>2561</sup> 3D1039 (PrK Command-Security Department Report, 9 January 1999), p. 3.

<sup>2562</sup> 3D1040 (PrK Command-Security Department Report, 13 January 1999).

<sup>2563</sup> P937 (Minutes of the Collegium of the General Staff of the VJ for 18 February 1999), p. 8.

<sup>2564</sup> 3D685 (VJ General Staff Evaluation of Security-Information and Security Threat to the FRY with Annexes, February 1999), p. 14.

<sup>2565</sup> 3D1052 (3<sup>rd</sup> Army Command, Security Department Report, 13 March 1999), para. 2.2; 3D1053 (3<sup>rd</sup> Army Command, Security Department Report, 16 March 1999), para. 2.1; P938 (Minutes of the Collegium of the General Staff of the VJ for 18 March 1999), p. 11.

<sup>2566</sup> P641 (Assessment of Kosovo Liberation Army Attitudes, 15 March 1999), pp. 3–4.

<sup>2567</sup> P407 (OSCE/KVM Bluebook), p. 820.

have “taken the fight to the Serbs” in a number of ambushes and attacks, notably in the Đeneral Janković/Hani i Elezit, an area previously quiet. Prior to this fighting, the KLA presence there had been limited to a small and inactive “militia”, although support could always be found from across the border in Tetovo. The report noted that KLA members had again crossed the border and combined with this militia, while encouraging the locals to leave.<sup>2568</sup> At the collegium of 4 March 1999 Dimitrijević reported these incidents to the General Staff, stating that the 3<sup>rd</sup> Army was lying to the General Staff about its activities in Kosovo and that these were planned activities rather than defensive reactions to attacks.<sup>2569</sup>

977. The Ojdanić Defence argues that, from the perspective of the General Staff/Supreme Command Staff, the threats posed by the KLA and NATO were intertwined. On 24 December 1998 the General Staff received a report from the Priština Corps, indicating that the KLA wanted to secure areas of Kosovo in order to facilitate the supply of weapons from NATO.<sup>2570</sup> Then, on 26 January 1999, the Priština Corps security department sent a report to the General Staff indicating that there was a NATO rapid intervention force stationed in Macedonia.<sup>2571</sup> Other reports indicated that NATO and KLA forces were fighting and training together, although these were received after the commencement of the NATO campaign and so do not pertain to the period leading up to it.<sup>2572</sup>

978. A number of witnesses from the VJ General Staff testified that they anticipated a combined NATO/KLA strike in the spring of 1999.<sup>2573</sup> Dimitrijević testified that the Security Administration of the VJ had information that a decision had been made in the NATO/OSCE headquarters in Switzerland to wait for spring 1999 to create a general uprising in Kosovo. He also said that all the signs in the period between the October Agreements and commencement of the NATO air campaign, including the training and supplying of weapons to the KLA, supported this.<sup>2574</sup> At the 11 March 1999 Collegium of the General Staff, Ojdanić repeated a conversation he had with Clark where Clark stated that “NATO would not attack Yugoslavia” but that he could not guarantee that

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<sup>2568</sup> P680 (OSCE/KVM Fusion Working Papers), pp. 1, 5; *see also* Karol John Drewienkiewicz, T. 7932–7933 (5 December 2006).

<sup>2569</sup> P933 (Minutes of the Collegium of the General Staff of the VJ, 4 March 1999), pp. 9, 15; Aleksandar Dimitrijević, T. 26627 (8 July 2008), T. 26653–26654 (8 July 2008); *see also* P938 (Minutes of the Collegium of the General Staff of the VJ for 18 March 1999), p. 21.

<sup>2570</sup> 3D1035 (PrK Command-Security Department Report, 24 December 1998).

<sup>2571</sup> 3D1044 (PrK Command-Security Department Report, 26 January 1999), p. 1.

<sup>2572</sup> 3D783 (Intelligence Department Information, 29 March 1999); 3D584 (Briefing of the Chief of the Supreme Command Staff, 31 March 1999).

<sup>2573</sup> Branko Krga, T. 16786 (3 October 2007); Aleksandar Dimitrijević, T. 26606 (8 July 2008).

<sup>2574</sup> Aleksandar Dimitrijević, T. 26606 (8 July 2008).

KLA would stop “massive attacks on the Yugoslav Army, the MUP, the Serbian population and loyal Albanian citizens”.<sup>2575</sup>

e. Increase of MUP presence in Kosovo and non-return of weapons

979. As discussed above, after the signing of Clark-Naumann Agreement the MUP was under an obligation to decrease the number of its personnel on the ground in Kosovo. The Prosecution alleges that the MUP violated this agreement by its failure to reduce its numbers in Kosovo and by its continued use of heavy weaponry.<sup>2576</sup> The Lukić Defence argues that the MUP complied with its obligations under the agreement and scaled down its forces in Kosovo.<sup>2577</sup>

980. At a VJ Collegium meeting on 28 October, Perišić reported that the MUP had cut back to the level of March or the end of February 1998, as it had been required to do.<sup>2578</sup> Miroslav Mijatović and Ljubinko Cvetić stated that, following the agreement, the MUP scaled down the total number of police present in Kosovo to 10,021.<sup>2579</sup> Naumann confirmed this, asserting that, following the October Agreements, the MUP withdrew 5,000 to 6,000 police forces.<sup>2580</sup> In his view, Milošević initially honoured his commitment by withdrawing all but 10,000 MUP officers from Kosovo.<sup>2581</sup>

981. However, Naumann added that later intelligence from the KVM and KDOM indicated that there were about 500 more police in the region than there were supposed to be.<sup>2582</sup> In November 1998 reports surfaced of disproportionate use of force, additional check points being created, and redeployments of police.<sup>2583</sup> Between December 1998 and January 1999 there were about ten incidents, which were examples, in Naumann’s view, of clear-cut violations of the October Agreements.<sup>2584</sup> Naumann reported that on 19 January 1999 he held a seven-hour meeting with Milošević, Milutinović, Šainović, and two others. Naumann noted during this meeting that, based upon the observations of the KVM and KDOM, not one incident had been triggered by the MUP or

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<sup>2575</sup> P935 (Minutes of the Collegium of the General Staff of the VJ for 11 March 1999), p. 21.

<sup>2576</sup> Prosecution Final Trial Brief, 15 July 2008 (confidential version), pp. 18, 252.

<sup>2577</sup> Lukić Final Trial Brief, 7 August 2008 (public version), pp. 16–18.

<sup>2578</sup> P926 (Minutes of the Collegium of the General Staff of the VJ for 28 October 1998), p. 12.

<sup>2579</sup> Miroslav Mijatović, T. 22278 (13 February 2008); Ljubinko Cvetić, T. 8198 (8 December 2006).

<sup>2580</sup> Klaus Naumann, T. 8263-8264 (13 December 2006), P2512 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6994, 6969–6970, 7056–7059.

<sup>2581</sup> Klaus Naumann, T. 8277 (13 December 2006; T. 8376–8378 (14 December 2006); 3D377 (Article by David Morrison citing Naumann).

<sup>2582</sup> Klaus Naumann, T. 8380–8382 (14 December 2006).

<sup>2583</sup> Klaus Naumann, T. 8263–8264 (13 December 2006).

<sup>2584</sup> Klaus Naumann, T. 8269–8270 (13 December 2006).

the VJ since 25 October 1998.<sup>2585</sup> Naumann's notes taken during the meeting indicated that the MUP and VJ were not in compliance with the October Agreements in terms of numbers of the forces on the ground, but that there was an expressed desire to gradually return to it.<sup>2586</sup> However, the notes of a Joint Command meeting on 26 October 1998 record Šainović as suggesting that the numbers of policemen in Serb settlements should increase concurrently with the withdrawal of the police and that policemen should take observation posts instead of guarding roads.<sup>2587</sup>

982. The Prosecution also argues that, by arming the local non-Albanian population and the members of RPOs in particular, the MUP circumvented the restrictions imposed by the agreement. It is also alleged that Lukić thus sought to mislead the KVM about the real strength of the police.<sup>2588</sup> The Prosecution supports its assertion by referring to the minutes of the meeting held at the MUP Staff on 2 November 1998, attended by the heads of Kosovo SUPs and the commanders of the PJP units. At this meeting, which was chaired by Lukić, the following conclusion was adopted:

Make sure that Serbs and members of RPO do not misuse weapons, let off guns at weddings, celebrations of *slava*, farewell parties and so on, do not carry weapons or show them in public in the presence of members of the Mission. When on guard duty, use one weapon and prevent individuals from bringing in the weapon they have been issued. Tell them not to state the fact that Serbs are armed and to explain this fact, if they must, using the excuse that it is only members of the guard who are armed.<sup>2589</sup>

983. At a VJ Collegium meeting held on 3 December 1998, General Obradović reported that, despite a written request by the VJ and contrary to their obligations under the October Agreements, the MUP refused to return 20 personnel carriers and 23 mortars to the VJ.<sup>2590</sup>

### 3. KVM Contacts with NATO and KLA

984. In addition to pointing out that VJ personnel in general were unhappy about the KVM's activities, the Šainović Defence also argues that apparent close co-operation between NATO and the KVM made the FRY authorities doubt the civilian status and the impartiality of the KVM.<sup>2591</sup> The Defence points to a document dated 7 November 1998 from the FRY Embassy in Vienna, which was delivered to *inter alia* Šainović, containing correspondence between Javier Solana,

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<sup>2585</sup> Klaus Naumann, T. 8270–8274 (13 December 2006), P1767 (notes of OTP interviews), p. 9.

<sup>2586</sup> Klaus Naumann, T. 8269–8274 (13 December 2006), P1767 (notes of OTP interviews), p. 9.

<sup>2587</sup> P1468 (Notes of the Joint Command), p. 158.

<sup>2588</sup> Prosecution Final Trial Brief, 29 July 2008 (public version), para. 1022. Lukić does not specifically address the Prosecution's argument on this point.

<sup>2589</sup> P3130 (Minutes of the MUP Staff meeting, 3 November 1998), para. 8.

<sup>2590</sup> 3D557 (Minutes of the Collegium of the General Staff of the VJ, 3 December 1998), p. 19.

<sup>2591</sup> Šainović Final Trial Brief, 29 July 2008 (public version), paras. 394–398.



Secretary-General of NATO, and Giancarlo Aragona, Secretary-General of the OSCE. This correspondence shows that an agreement between the two organisations existed, pursuant to which they were to share data, co-operate, and co-ordinate in relation to verification activities. According to this agreement the OSCE was to support the NATO Mission by advising on “priorities for air verification activities,” in light of the information gathered through its ground verification activities.<sup>2592</sup> However, this is consistent with the provisions of the Clark-Perišić Agreement relating to air surveillance. Šainović had also, prior to a meeting with Drewienkiewicz on 9 December 1998, complained several times to foreign representatives that the KLA had increased its activity since the withdrawal of the FRY/Serbian forces, and that the KVM and NATO showed tolerance towards these actions, thus encouraging the KLA to continue with its activities.<sup>2593</sup>

985. The Ojdanić Defence led evidence indicating that the relationship between the VJ and the KVM changed between December 1998 and January 1999, largely the result of the VJ’s perception of actions undertaken by the KVM.<sup>2594</sup> Milorad Obradović referred to occasions when the observers sought additional information, or visited VJ units unannounced. The General Staff had information that the local staff hired by the KVM were predominantly Kosovo Albanians and had frequent contact with the “terrorist forces”. Obradović stated that it had been reported that members of the verification mission were submitting information to “the other side” about the movements of the VJ.<sup>2595</sup> At the meeting of the Collegium of the VJ General Staff on 14 January 1999, Dimitrijević stated that the acts of the verifiers were favouring the KLA, including by providing food and weapons to “KLA gangs”, and planning to demilitarise the municipality of Mališevo/Malisheva.<sup>2596</sup> Richard Ciagliniski gave evidence that maps obtained by the KVM were used by NATO,<sup>2597</sup> but insisted that the allegation of collaboration between the KLA and NATO,

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<sup>2592</sup> 2D392 (FRY Embassy Correspondence, 7 November 1998), e-court p. 6. The Chamber has also taken the following exhibits into account: 6D1635, 6D1637, 6D1638, 6D1639, 6D1640, 6D1668, 6D1669, 6D1671 (under seal). *See also* 6D1617.

<sup>2593</sup> Živadin Jovanović, T. 14034–14036 (20 August 2007); 2D363 (Tanjug Report on Meeting between Šainović and Hill, 27 November 1999); 2D323 (FRY Ministry of Foreign Affairs’ report on meeting between Šainović and Bo Pellnas, 20 November 1998); 2D16 (FRY Ministry of Foreign Affairs memo on talks between Wolfgang Petritsch and Šainović, 7 October 1998); 2D15 (FRY Ministry of Foreign Affairs memo on talks between Šainović and Austrian representatives, 15 January 1999). The same message was passed on to Knut Vollebaek by Živadin Jovanović; 2D181 (FRY Ministry of Foreign Affairs correspondence re talks between Živadin Jovanović and Knut Vollebaek, 13 January 1999).

<sup>2594</sup> Ojdanić Final Trial Brief, 30 July 2008 (public version), para. 184.

<sup>2595</sup> Milorad Obradović, T. 15001 (5 September 2007). He did not specify which sites KVM sought to visit.

<sup>2596</sup> P936 (Minutes of the Collegium of the General Staff of VJ for 14 January 1999), pp. 9–10.

<sup>2597</sup> Richard Ciagliniski, T. 6992–6992 (21 November 2006). *See also* 2D392, a series of letters between Giancarla Aragona, the Head of OSCE, and Javier Solano, the Head of NATO, which describes an information sharing agreement between the KVM and NATO; and P440, KVM Agreement between NATO and FRY (Clark-Perišić-Agreement) signed by Wesley Clark and Momčilo Perišić, 23 October 1998, which is the agreement between the VJ and NATO allowing NATO to organise the KVM monitoring operation and to share information in implementing it.

and the suggestion of direct involvement on his part in the sharing of information between OSCE/NATO and the KLA, were not true.<sup>2598</sup>

986. In relation to the accusation of supplying weapons to the KLA, Obradović explained that this did not mean that KVM members were actively supplying the KLA with weapons, but rather that they were taking a passive attitude towards the introduction of weapons from Albania, and thus making it possible for the KLA to import weapons. The VJ General Staff considered that this was unacceptable under the Clark-Naumann Agreement and showed bias on the part of the KVM in favour of the KLA.<sup>2599</sup> At the Collegium meeting of 25 February 1999 Dimitrijević warned of the bias of the KVM, stating that it would focus on the activities of the “our security forces” in order to gather data to show excessive uses of force, and that some of this information could be fed to the KLA. He suggested that a warning should be sent to the KVM, through the Commission for Co-operation, telling them to adhere to their mandate and not to focus solely on the VJ and MUP.<sup>2600</sup>

987. In spite of these concerns about the KVM within the VJ General Staff, Ojdanić continued to issue orders encouraging co-operation with the verifiers. For example, an order of 8 March 1999 sought to adapt the co-operation system previously put in place by Perišić by *inter alia* placing liaison officers in the various units in barracks within Kosovo, and further encouraging implementation of the obligations under the October Agreements and subsidiary agreements.<sup>2601</sup> These obligations included those placed upon the VJ to respect the immunity conferred to KVM members and to set-up additional liaison teams within the airforce (RV), the anti-aircraft defence (PVO), and 3<sup>rd</sup> Army. Prior to this period, there had been only two teams, one in the Priština Corps and one in the 3<sup>rd</sup> Army.<sup>2602</sup>

#### 4. Conclusion

988. Slobodan Milošević and the FRY and Serbian military and political leadership were understandably reluctant to agree to an international presence in Kosovo, and this was reflected in the difficulties encountered in reaching agreement and the initial reluctance to withdraw forces.

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<sup>2598</sup> Richard Ciaglinski, T. 6993–7000 (21 November 2006).

<sup>2599</sup> Milorad Obradović, T. 15001 (5 September 2007), T. 15114–15116 (6 September 2007).

<sup>2600</sup> P941 (Minutes of the Collegium of the General Staff of the VJ for 25 February 1999), pp. 7, 9.

<sup>2601</sup> 3D407 (General Staff of the VJ- Order on Organization of Work and Relations VJ-OSCE, 8 March 1999); *see also* Dušan Lončar, T. 7677–7680 (1 December 2006). This order superseded that of 22 October 1998. 3D409 (Order to the VJ General Staff Team for Liaison with the OSCE and NATO Missions, 22 October 1998).

<sup>2602</sup> Radomir Čučak, T. 14951–14952 (4 September 2007). The order also made personnel changes by appointing Milovan Bojović, who was an advisor to the Chief of the General Staff, to the post of co-ordinator of the VJ General Staff work team for liaison with KVM and making him a member of the Federal Commission for Co-operation with the KVM, and by amalgamating the General Staff work team into one team of 10 people based at the PrK command

However, by 16 October 1998 the KVM Agreement was signed, by 19 October the Federal Commission for Co-operation was established, and there was then general compliance with the Agreements until mid-November 1998, when increase in KLA activity and the use of excessive force by the forces of the FRY and Serbia were reported.

989. The “Podujevo Incident” was a clear and intentional breach of the October Agreements. However, the evidence does not show that the failure of the VJ to allow inspection of barracks was in contravention of obligations under the Jovanović-Geremek Agreement. Despite the reluctance of the FRY/Serbian side to reduce its forces in Kosovo due to KLA and NATO activity, it nevertheless has been shown that there was an increase in VJ and MUP personnel that was in contravention of the October Agreements. Moreover, the MUP retained heavy weaponry and equipment that it was obliged to return to the VJ. Additional VJ and MUP personnel were brought into Kosovo in a variety of ways, including delaying the departure of some units and ordering the deployment of others, sometimes using the pretext of self-defence. While the perception of co-operation between the KVM, NATO, and the KLA was no more than that and did not in fact excuse the FRY/Serbian authorities from honouring their obligations under the October Agreements, their concern that there might be a ground invasion by NATO troops and that that might give added impetus to the violent activities of the KLA was well-founded and does explain the steps taken in mid-March at least to strengthen the capacity of the VJ to respond. On the other hand, there does not appear to be a satisfactory explanation for earlier increases in troop numbers and the concealment by the MUP of the real strength of the police and the retention by the MUP of equipment that ought to have been returned to the VJ.

990. The acts and conduct of Šainović, Ojdanić, Pavković, and Lukić will be examined more closely in the sections devoted to their individual criminal responsibility. As will be seen, the evidence discussed there tends to support the Trial Chamber’s finding that the political and military leadership of the FRY and Serbia intentionally breached the October Agreements.

#### E. CONTROL OF VJ AND MUP OPERATIONS IN KOSOVO

991. Having described the various forces involved in the armed conflict in Kosovo in 1998 and continuing into 1999, and some of their activities in the period leading up to the NATO air campaign, the Trial Chamber now turns to the manner in which operations involving forces of the VJ and the MUP were planned, controlled, and executed. In order to do so, the Chamber has

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building in Priština/Prishtina. Vladimir Lazarević, T. 17838 (7 November 2007); Milan Kotur, T. 20707–20708 (21 January 2008).

examined a copious amount of evidence pertaining to military operations without the benefit of comprehensive analysis by the parties of the orders, reports, and testimony adduced at trial.

1. Meetings in Belgrade

a. Meetings in 1998

*i. The Plan for Combating Terrorism in Kosovo*

992. On 13 May 1998 Momir Stojanović, Head of the Priština Corps security department, at the request of “the army commander”, *i.e.*, the 3<sup>rd</sup> Army Commander, wrote an evaluation of the security situation in Kosovo detailing the strength of forces at the border and their groupings. The report came to the conclusion that there was an unsatisfactory level of co-ordination and asked the army commander to respond accordingly. As part of his response to Stojanović’s request, 3<sup>rd</sup> Army Commander Samardžić authorised Pavković to co-ordinate activities with the MUP in the Kosovo area.<sup>2603</sup>

993. At the end of May 1998 Pavković and Samardžić went to Belgrade with a plan for the “deblockade” of roads and showed it to Perišić, then Chief of the General Staff, who made some corrections to it. Pavković, Samardžić, and Perišić then visited Milošević to submit the plan to him.<sup>2604</sup> In his account of these events, Milan Đaković referred to a meeting held on 30 May 1998 in Belgrade involving Pavković, Perišić, Aleksandar Dimitrijević, Samardžić, Stojanović, Jovica Stanišić, and Lukić.<sup>2605</sup> Đaković did not specify whether Milošević also attended this meeting. Therefore, it is unclear whether the meeting held on 30 May 1998 was the meeting during which Pavković and Samardžić presented their plan to Milošević. However, it is clear from Đaković’s testimony that Pavković and Samardžić were ordered to “work out the basic postulates” of the plan while they were in Belgrade. This plan was ultimately composed of five stages.<sup>2606</sup> Despite the lack of certainty as to the date of this meeting, the Chamber finds that, at least, Pavković, Samardžić, Stojanović, Perišić, Đaković, and Lukić knew of the plan for the “deblockade” of roads.

994. When Pavković returned from Belgrade, he asked Đaković to start preparing the “idea-based solution of that plan”. Đaković also heard from Pavković that the Supreme Defence Council had decided on the policy that this plan would implement.<sup>2607</sup> According to the minutes of the

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<sup>2603</sup> Milan Đaković, T. 26387, 26411 (19 May 2008).

<sup>2604</sup> Milan Đaković, T. 26411 (19 May 2008).

<sup>2605</sup> Milan Đaković, T. 26410 (19 May 2008).

<sup>2606</sup> Milan Đaković, T. 26409 (19 May 2008).

<sup>2607</sup> Milan Đaković, T. 26409 (19 May 2008).

meeting of the “Operations Inter-Departmental Staff for the Suppression of Terrorism in Kosovo and Metohija” held on 29 October 1998, the decision to draw up a Plan for Combating Terrorism in Kosovo was adopted at the 5<sup>th</sup> session of the Supreme Defence Council on 9 June 1998.<sup>2608</sup> The minutes of the 5<sup>th</sup> session of the SDC do not mention such a plan. However, one of the conclusions proposed and adopted by Milošević during this session was that, “if the terrorist activities of the Albanian separatist movement escalate, the VJ will intervene adequately”.<sup>2609</sup> It was also concluded that “the VJ will be ready to oppose any kind of foreign intervention that could endanger the sovereignty and the territorial integrity of the FRY”.<sup>2610</sup> Đaković further explained that, once a draft plan had been completed, it was verified by the 3<sup>rd</sup> Army Commander, and around 15 July 1998 it was submitted to the General Staff.<sup>2611</sup> A report sent by the Priština Corps Command to the 3<sup>rd</sup> Army Command on 23 July 1998 confirms that on 15 July 1998 “one copy of the plan (the directive and four maps)” was delivered to Spasoje Smiljanić, the Chief of the First Administration of the General Staff of the VJ.<sup>2612</sup>

995. On 21 July 1998 another meeting called by Milošević was held in his office in Belgrade and was attended by Milutinović, Šainović, Dimitrijević, Matković, Samardžić, Perišić, Pavković, Stojiljković, Đorđević, and Lukić.<sup>2613</sup> During the meeting, Milošević stated that plans for “anti-terrorism” were going to be adopted and that the police, the army, and politicians each had a part to play.<sup>2614</sup> Pavković then presented a plan for the fight against “terrorism” in several stages, which involved the introduction of additional military and police forces into Kosovo.<sup>2615</sup> Certain actions had already been undertaken in furtherance of this plan.<sup>2616</sup> Matković explained that during the meeting Milošević stated that the plan (“Plan”) was adopted and did not ask the participants to vote against or in favour of it. The objective of the meeting was in fact to inform them about the Plan.<sup>2617</sup> However, the report sent by the Priština Corps Command to the 3<sup>rd</sup> Army Command on

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<sup>2608</sup> P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), pp. 2–4.

<sup>2609</sup> P1574 (Minutes of 5<sup>th</sup> SDC session, 9 June 1998); 1D760 (Shorthand notes of 5<sup>th</sup> SDC session, 9 June 1998), p. 10.

<sup>2610</sup> 1D760 (Shorthand notes of 5<sup>th</sup> SDC session, 9 June 1998), p. 10.

<sup>2611</sup> Milan Đaković, T. 26409 (19 May 2008).

<sup>2612</sup> 4D101 (PrK Plan for the engagement of units in Kosovo, 23 July 1998), p. 1.

<sup>2613</sup> Duško Matković, T. 14634–14635 (30 August 2007), P2913 (witness statement dated 10 February 2003), p. 9. Duško Matković stated that a meeting was called by Milošević “around the 20<sup>th</sup> of July 1998”. The report sent by the PrK Command to the 3<sup>rd</sup> Army on 22 July 1998 refers to a “meeting with the President of the FRY held in his office on 21 July 1998”. 4D100 (PrK Report to 3<sup>rd</sup> Army re engagement of units, 22 July 1998). Finally, the report sent by the PrK Command to the 3<sup>rd</sup> Army Command on 23 July 1998 mentions a “briefing with the President of the FRY on 21 July 1998”. 4D101 (PrK Plan for the engagement of units in Kosovo, 23 July 1998), p. 1. The Chamber is, therefore, of the view that the meeting during which Milošević adopted the plan presented by Pavković was held on 21 July 1998.

<sup>2614</sup> Duško Matković, T. 14636 (30 August 2007), P2913 (witness statement dated 10 February 2003), p. 9.

<sup>2615</sup> Duško Matković, P2913 (witness statement dated 10 February 2003), p. 9.

<sup>2616</sup> Duško Matković, T. 14636–14637 (30 August 2007), P2913 (witness statement dated 10 February 2003), p. 9.

<sup>2617</sup> Duško Matković, T. 14637 (30 August 2007).

23 July 1998 states that it was during this meeting that the “order was given to commence implementation of the plan”.<sup>2618</sup>

996. A document of the 3<sup>rd</sup> Army Command dated 22 July 1998 indicates that the Priština Corps Command was then put in charge of preparing a proposal for indirect and direct engagement of the Priština Corps units in furtherance of the Plan.<sup>2619</sup> On 23 July 1998 the Priština Corps Command requested the 3<sup>rd</sup> Army Command to approve the use of units according to the Plan “in the spirit of the order of the President of the Federal Republic of Yugoslavia”.<sup>2620</sup> That same day, Samardžić refused to approve some of the actions provided for in the Plan, as he considered that Milošević had not been informed about them. In particular, he noted that Pavković had “failed to inform [Milošević] orally ... that the Corps forces would be engaged in unblocking roads” and therefore did not authorise the engagement of the Corps units in unblocking certain roads.<sup>2621</sup>

997. According to the minutes of a meeting on 29 October 1998, the Plan for “suppressing and combating terrorism in Kosovo” adopted on 20 July 1998 included the following tasks: (a) taking measures to reinforce the security of the state border in the border belt and in depth; (b) organising, equipping and co-ordinating the operations of the MUP and VJ forces in order to oppose “terrorist” forces more successfully; (c) taking control of territory in Kosovo by MUP and VJ forces and the establishment of conditions to unblock roads and occupied territory; (d) arming the Serbian and Montenegrin people and establishing reserve police units to defend Serbian villages; (e) providing shelter and care for the temporarily displaced Albanian population; (f) maintaining control of and defending liberated territory and roads; and (g) disarming all Albanian villages which were known to be armed.<sup>2622</sup> The reliability of these minutes was called into question during the trial, and this issue is discussed in further detail below. It is clear, nonetheless, that the Plan envisaged the participation of both MUP and VJ units.<sup>2623</sup> The evidence indicates that the MUP was to be the mainstay of combat operations and the VJ was to provide support to the MUP.<sup>2624</sup>

998. At a meeting of senior MUP personnel at the MUP Staff in Priština/Prishtina on 22 July 1998, it was explained that, due to the very difficult situation in Kosovo, the “State Leadership” had

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<sup>2618</sup> 4D101 (PrK Plan for the engagement of units in Kosovo, 23 July 1998), p. 1; 4D100 (PrK Report to 3<sup>rd</sup> Army re engagement of units, 22 July 1998).

<sup>2619</sup> 4D119 (3<sup>rd</sup> Army Request to PrK, 22 July 1998).

<sup>2620</sup> 4D101 (PrK Plan for the engagement of units in Kosovo, 23 July 1998), p. 1.

<sup>2621</sup> 4D102 (Response to PrK Plan for the engagement of units, 23 July 1998).

<sup>2622</sup> P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), pp. 2–4.

<sup>2623</sup> See, e.g., 4D100 (PrK Report to 3<sup>rd</sup> Army re engagement of units, 22 July 1998).

<sup>2624</sup> 4D119 (3<sup>rd</sup> Army Request to PrK, 22 July 1998); Milan Đaković, T. 26409–26410 (19 May 2008).

adopted a plan to prevent “terrorism”.<sup>2625</sup> Duško Adamović, who attended the meeting, confirmed that the plan discussed during this meeting had been previously adopted “at the level of the President of the country” and that it was to be implemented by the MUP and the VJ.<sup>2626</sup> One of the items on the agenda was the definition of “tasks in the implementation” of the Plan.<sup>2627</sup> In the minutes of a meeting on 28 July 1998 at the MUP Staff, after Lukić explained that the second phase of the Plan had been carried out, the Minister of Interior Vljako Stojiljković instructed those present to “plan activities of the PJP in advance with chiefs of SUPs and [to] hold a meeting on this”.<sup>2628</sup> This meeting was attended by *inter alios* Stojiljković, Lukić, Marković, and the heads of the Kosovo SUPs.<sup>2629</sup>

999. According to the minutes of the meeting held on 29 October 1998, the implementation of the Plan commenced on 25 July 1998.<sup>2630</sup> On 28 July the VJ General Staff issued the *Grom* 98 directive for the deployment of the VJ to secure the state border with Albania and eliminate the Albanian “terrorist” forces, as discussed above. The engagement of the VJ was to be effected in two stages and these actions were to be co-ordinated with the forces of the MUP.<sup>2631</sup> Đaković testified that the plan established in the *Grom* 98 directive “completely fit[]” into the first three stages of the Plan.<sup>2632</sup>

1000. An order from the 3<sup>rd</sup> Army Command to the Priština Corps Command dated 1 August 1998 indicated that a meeting was to be held in the office of the FRY President on 3 August 1998 to discuss the plan for the execution of the third phase of the Plan.<sup>2633</sup>

1001. According to Matković, a meeting was held on 5 August 1998 with Milošević, Minić, Anđelković, Šainović, Perišić, Pavković, Dimitrijević, Samardžić, Lukić, Đorđević, Stevanović, and himself. During this meeting reports were submitted on events occurring in Kosovo. Another

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<sup>2625</sup> Radovan Vučurević, T. 23061–23063 (22 February 2008); 6D798 (Minutes of the MUP Staff meeting, 22 July 1998). Vučurević testified that the “the Global Plan” referred to in the record of the meeting held at the MUP Staff on 22 July 1998 was the plan that the “State Leadership” had adopted to prevent “terrorism”.

<sup>2626</sup> Duško Adamović, T. 25059–25060 (9 April 2008).

<sup>2627</sup> 6D798 (Minutes of the MUP Staff meeting, 22 July 1998), p. 1.

<sup>2628</sup> P3121 (Minutes of the MUP Staff meeting, 29 July 1998), p. 8.

<sup>2629</sup> P3121 (Minutes of the MUP Staff meeting, 29 July 1998). The minutes refer to “the second phase of the Global Plan”. In light of Vučurević’s evidence, the Trial Chamber considers that the “Global Plan” was the Plan adopted by Milošević on 21 July 1998. Radovan Vučurević, T. 23061–23063 (22 February 2008).

<sup>2630</sup> P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), p. 2.

<sup>2631</sup> 4D137 (General Staff Directive to Deploy VJ in Kosovo, 28 July 1998).

<sup>2632</sup> Milan Đaković, T. 26408–26409 (19 May 2008). He added that the second stage of the *Grom* 98 plan was not carried out.

<sup>2633</sup> 4D125 (3<sup>rd</sup> Army Order to Forbid Use of PrK Units, 1 August 1998).

meeting of the same composition was held at the end of August 1998, during which the participants reported on “the realisation of the original plan”.<sup>2634</sup>

1002. At a meeting in Belgrade on 31 August 1998 presided over by Milošević, which could be one of the meetings referred to by Matković, a “plan for implementing stage five of the fight against terrorism in Kosovo and Metohija” was agreed upon.<sup>2635</sup> A document from the Priština Corps Command to the 3<sup>rd</sup> Army Command dated 22 September 1998 shows that several requests were made by the Priština Corps Command to have this stage implemented. However, as of 22 September 1998 it had not been carried out.<sup>2636</sup>

1003. The implementation of the Plan was reviewed at the meeting on 29 October 1998 referred to above.<sup>2637</sup> Pavković reported on behalf of the “Joint Command for Kosovo and Metohija”. This issue will be examined more in detail in Section VI.E.2.b below. In attendance at this meeting were Milošević, Milutinović, Minić, Šainović, Matković, Stojiljković, Anđelković, Perišić, Dimitrijević, Samardžić, Pavković, Đorđević, Marković, Stevanović, Lukić, and Šušić.<sup>2638</sup> Pavković enumerated a certain number of results achieved through the implementation of the Plan: (a) the escalation of “terrorism” in Kosovo and Metohija had been stopped; (b) control had been reinstated over all roads; (c) the “moving out of non-Albanians” had been prevented and towns and important economic facilities had been protected; and (d) the “return ... of temporarily displaced Albanians who had fled their villages because of combat operations by terrorist forces” had been organised.<sup>2639</sup> Pavković also listed several tasks to be performed in the forthcoming period in order to completely eliminate the “terrorist” forces.<sup>2640</sup> Perišić stated that the situation in Kosovo depicted by Pavković did not correspond to the situation in reality: he stressed that they should not let events control them and that they should rather be in control of the situation.<sup>2641</sup>

1004. As discussed in Section VI.C above, during the period between around 25 July and 29 October 1998, joint operations were conducted in Kosovo pursuant to the Plan. For instance, a joint operation in the sector of the Slup/Sllup and Vokša/Voksh villages was conducted in mid-August 1998, and the Chamber will discuss below the way this particular joint operation was

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<sup>2634</sup> Duško Matković, P2913 (witness statement dated 10 February 2003), p. 13.

<sup>2635</sup> P1435 (Report of Realization of 5<sup>th</sup> Phase of Plan of Fight Against Terrorism, 22 September 1998), p. 1.

<sup>2636</sup> P1435 (Report of Realization of 5<sup>th</sup> Phase of Plan of Fight Against Terrorism, 22 September 1998), pp. 1–2.

<sup>2637</sup> P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), pp. 2–4.

<sup>2638</sup> P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), p. 1.

<sup>2639</sup> P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), p. 4.

<sup>2640</sup> P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), pp. 9–10.

<sup>2641</sup> P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), p. 12.



planned and executed. The orders for the joint operations conducted during this period contained references to the “Joint Command”, and will also be examined below.<sup>2642</sup>

*ii. Genesis of the Joint Command*

1005. In May or June 1998, around the time when the Plan was evolving and when efforts were being made to improve the co-ordination system between the MUP and the VJ, the then Head of the VJ Security Administration Aleksandar Dimitrijević attended a meeting with Milošević and Perišić. At the meeting Milošević proposed to appoint Pavković, then the commander of the Priština Corps, as “the commander of all the forces in Kosovo and Metohija”.<sup>2643</sup> Dimitrijević and Perišić opposed the idea, ostensibly because they doubted that the MUP would subordinate its units to Pavković.<sup>2644</sup> During his testimony Dimitrijević stated that he had been under the impression that the term “Joint Command” was created at a later stage to serve Pavković’s purposes by providing “cover [for] some of his activities so that he could say, ‘I have the Joint Command behind me.’”<sup>2645</sup> When cross-examined by the Prosecution on the second day of his testimony, he explained that Pavković may have used the term to respond to enquiries

down the chain of command [regarding] why a unit was used or why an element of a unit was used by the army commander, the Chief of General Staff, well, probably it was easier to say, Somebody told me that, or any other kind of excuse along those lines, but not to specify who said that.<sup>2646</sup>

The Chamber understood that to include securing co-ordination between VJ and MUP forces. Dimitrijević admitted, however, that this was speculation on his part.<sup>2647</sup> The Pavković Defence points out in its final brief that there is no other evidence in the case to show this and emphasises the speculative nature of Dimitrijević’s testimony on this point.<sup>2648</sup> The Chamber notes that, while Dimitrijević seemed to have difficulty fully explaining the reasons why Pavković would need “cover”, he did testify that such “cover” would clearly facilitate Pavković’s control of the VJ in Kosovo. Dimitrijević was not sure that there was a link between the meeting he attended and the subsequent meetings of a larger group to address the situation in Kosovo that have been described above. He assumed that the later meetings were commenced to encourage co-ordination between the VJ and the MUP chains of command in Kosovo in 1998 because “it was a fact at that time that it would be very difficult for anyone [other than the Minister of Interior] to issue any tasks to the

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<sup>2642</sup> See Section VI.E.2.b.i.

<sup>2643</sup> Aleksandar Dimitrijević, T. 26592–26594 (8 July 2008).

<sup>2644</sup> Aleksandar Dimitrijević, T. 26593–26594 (8 July 2008).

<sup>2645</sup> Aleksandar Dimitrijević, T. 26595 (8 July 2008).

<sup>2646</sup> Aleksandar Dimitrijević, T. 26713 (9 July 2008).

<sup>2647</sup> Aleksandar Dimitrijević, T. 26712–26713 (9 July 2008).

MUP.”<sup>2649</sup> Momir Stojanović also testified in this vein, saying that there were “certain problems concerning co-ordination, co-operation, and co-ordinated actions between MUP and army at lower levels”.<sup>2650</sup> Dimitrijević nevertheless attempted to pull back from his direct testimony when cross-examined on the following day by the Šainović Defence. At that time he stressed that he did not know what went on at the meetings in Priština/Prishtina because, when he asked Stojanović, he was told that it was “nothing”.<sup>2651</sup>

1006. The Chamber accepts Dimitrijević’s evidence as a clear rationale for the need for the development of a Joint Command, namely the need to find effective mechanisms for ensuring the better co-ordination of the activities of the state forces involved in Kosovo. The Chamber is inclined to reject Dimitrijević’s attempted retraction on cross-examination; he provided a compelling explanation for why a Joint Command was needed, in spite of the fact that he later qualified it.

1007. As noted in Section IV above, on 10 June 1998, at a separate meeting of the Socialist Party of Serbia, a decision was made to send a team to Priština/Prishtina to assist the state organs there and co-ordinate political activities in an attempt to stabilise the situation in Kosovo.<sup>2652</sup> This team, known as the “Working Group”, was proposed by Milošević and consisted of Milomir Minić, Dušan Matković, and Zoran Anđelković.<sup>2653</sup> Upon its arrival in Kosovo, the Working Group conducted meetings with representatives from various state bodies, including those from the civilian sector, and the military and police, to inform its members about the situation, as well as to initiate a certain level of information exchange and co-ordination.<sup>2654</sup>

1008. At the same time, Šainović was sent to Kosovo as a representative of the federal government, to advocate its political positions and pursue diplomatic activities.<sup>2655</sup> This issue is examined in detail in Section VIII.D below.

1009. On 25 June 1998 a meeting was held at the Beli Dvor in Belgrade involving *inter alios* Milošević, Anđelković, Minić, Matković, Milutinović, and Šainović. The Working Group

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<sup>2648</sup> Pavković Final Trial Brief, 28 July 2008 (public version), para. 244.

<sup>2649</sup> Aleksandar Dimitrijević, T. 26596, 26619–26621 (8 July 2008).

<sup>2650</sup> Momir Stojanović, T. 19765 (7 December 2007).

<sup>2651</sup> Aleksandar Dimitrijević, T. 26720–26721 (9 July 2008).

<sup>2652</sup> P1012 (Minutes of the 16<sup>th</sup> Session of SPS Main Board, 10 June 1998), pp. 6–8.

<sup>2653</sup> P1012 (Minutes of the 16<sup>th</sup> Session of SPS Main Board, 10 June 1998), pp. 6–8; Duško Matković, P2913 (witness statement dated 10 February 2003), p. 6.

<sup>2654</sup> Duško Matković, T. 14591–14594 (29 August 2007); Zoran Anđelković, T. 14653–14654 (30 August 2007); Milomir Minić, T. 14744–14748 (31 August 2007).

<sup>2655</sup> Momir Bulatović, T. 13819–13821 (16 August 2007); *see also* Duško Matković, T. 14589 (29 August 2007); Zoran Anđelković, T. 14652 (30 August 2007); Milomir Minić, T. 14743–14744 (31 August 2007).

submitted an oral report to Milošević on what they had heard and seen during their recent visit to Kosovo.<sup>2656</sup> According to Matković, the fact that Šainović had been invited to this meeting demonstrated that “he was going to be involved in the issue in some way, although it was not made clear to [him] at that meeting”.<sup>2657</sup>

1010. Matković referred to a meeting held around 10 September 1998 during which it was proposed to Milošević to establish a temporary executive council in Kosovo.<sup>2658</sup> Milošević accepted the proposal.<sup>2659</sup> As explained above, on 22 September 1998 the Executive Board of the SPS met in Belgrade, including Milutinović in his capacity as the Serbian President, and concluded that the situation in Kosovo was getting back to normal.<sup>2660</sup> This session was a review of what had been done pursuant to the conclusions reached by the Main Board on 10 June 1998. The Working Group’s activities in Kosovo diminished thereafter.<sup>2661</sup> On 29 October 1998, following its meeting with the SPS provincial board in Kosovo and another meeting with Milošević, the Working Group’s activities ceased altogether.<sup>2662</sup> Anđelković remained in Kosovo in his new capacity as the President of the Temporary Executive Council.<sup>2663</sup> The Chamber does not consider, however, that the work of the Joint Command or its influence over the actions of the MUP and the VJ in Kosovo ceased, as is indicated by the evidence discussed later in this section, e.g., references to the Joint Command by high-level officials, Joint Command orders, and at least one meeting of the Joint Command in 1999.

1011. The FRY Ministry of Justice acknowledged that a body known as the “Joint Command” was formed in June 1998. In a letter responding to the Prosecution’s request for all documentation in relation to the formation, mandate, composition, and meeting minutes of the Joint Command, the FRY Ministry of Justice indicated that the “Joint Command for Kosovo and Metohija” was formed on the oral order of the FRY President in 1998 without any specific documentation, that it operated until October of that year, and that the documentation in relation thereto was archived and

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<sup>2656</sup> Duško Matković, P2913 (witness statement dated 10 February 2003), p. 7.

<sup>2657</sup> Duško Matković, P2913 (witness statement dated 10 February 2003), p. 8.

<sup>2658</sup> Duško Matković, P2913 (witness statement dated 10 February 2003), p. 13.

<sup>2659</sup> Duško Matković, T. 14638–14639 (30 August 2007).

<sup>2660</sup> Milan Jovanović, T. 14163–16165 (22 August 2007); 2D56 (Minutes of 88<sup>th</sup> Session of SPS Executive Board, 22 September 1998).

<sup>2661</sup> Milan Jovanović, T. 14166–14167 (22 August 2007).

<sup>2662</sup> Milomir Minić, T. 14787–14794 (31 August 2007); Milan Jovanović, T. 14152 (21 August 2007), T. 14219–14221 (22 August 2007). On 14 October 1998, the Executive Board met and concluded that the working group would continue its work with the SPS provincial board in order to explain to the latter the terms of the Milošević-Holbrook Agreement. This meeting was held at the end of the month of October and was the last time the three men operated as a team. Milan Jovanović, T. 14168–14169 (22 August 2007); 2D77 (Minutes of 89<sup>th</sup> Session of SPS Executive Board, 14 October 1998), p. 3.

<sup>2663</sup> Milan Jovanović, T. 14152 (21 August 2007).

subsequently destroyed by NATO bombing.<sup>2664</sup> Dimitrijević questioned the reliability of this document<sup>2665</sup> and the Chamber is of the view that it is unsatisfactory evidence upon which to base findings: the Government does not give reasons for the conclusions therein, and the information in the document is inconsistent with a myriad of other evidence in the case, from which the Chamber's ultimate conclusions below in regard to the Joint Command in 1998 and 1999 have been drawn.

b. Meetings in 1999 and the elaboration of large-scale plans

1012. There is little evidence of meetings in Belgrade in 1999 to discuss plans for the suppression of "terrorism". Two large-scale plans—the *Grom 3* and *Grom 4* plans—were prepared within the VJ at the beginning of the year and in April 1999. However, it appears from these plans that the VJ's "enemy" at that time was NATO rather than the "terrorist" forces.

1013. On 16 January 1999 Ojdanić issued the *Grom 3* directive for "the engagement of the VJ to prevent the introduction by force of a multinational NATO brigade to Kosovo and Metohija". The first paragraph of the directive reads as follows: "Deterioration of the military and political situation in Kosovo, accusations against the FRY that it is not fulfilling its obligations in accordance with the agreements reached, fabricated claims of the danger posed to the verifiers, and simultaneous intensified attacks by terrorist forces in Kosovo on the VJ and MUP units may be a motive for NATO to introduce a multinational brigade by force from Macedonia into Kosovo". The directive set forth tasks to be implemented in two stages: the objective of the first stage was to prevent NATO from entering Kosovo, and the objective of the second stage was the elimination of NATO as well as "terrorist" forces. The forces of the VJ were to work in co-operation with MUP forces during the implementation of these tasks.<sup>2666</sup>

1014. On 27 January 1999 Pavković issued the 3<sup>rd</sup> Army's *Grom 3* order for the use of the 3<sup>rd</sup> Army in preventing the introduction of a NATO brigade from Macedonia into Kosovo in the sectors of Dulje/Duhël, Drenica, and Lab/Llap. The two stages mentioned in Ojdanić's directive were specified.<sup>2667</sup> On 1 February 1999 Pavković issued an order containing "measures to prevent surprise attacks and maintain the ordered level of combat readiness". For instance, the Priština

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<sup>2664</sup> P1317 (FRY Ministry of Justice Response to OTP Request (RFA) no. FRY-174, 12 July 2002).

<sup>2665</sup> Aleksandar Dimitrijević, T. 26618–26619 (8 July 2008).

<sup>2666</sup> 3D690 (VJ General Staff Directive for the engagement of the VJ, *Grom 3* Directive, 16 January 1999).

<sup>2667</sup> 5D245 (*Grom 3* Order of the 3<sup>rd</sup> Army Command, 27 January 1999), pp. 3, 5–7. The order included tasks for the PrK, specifying, *inter alia*, that, in a first phase, the PrK was to "continue strengthening the depth security of the state border towards the Republics of Albania and Macedonia, prevent landings, force introduction of the NATO brigade from the Skoplje, Kumanovo and Tetovo sectors into the Dulje, Drenica and Lab sectors", and in a second phase, it was

Corps Commands were instructed to prepare plans for the closing of routes leading to Kosovo from Albania, “by which sabotage and terrorist forces might be inserted”. One of the specific measures that was to be undertaken by the Corps Command was to “draft a plan for blocking and destroying Albanian terrorist forces in the Drenica, Lab and Mališevo sectors”.<sup>2668</sup> The plan was “to ensure complete co-ordination with [MUP] units”.<sup>2669</sup> The deadline for the implementation of this order was 15 February 1999.<sup>2670</sup>

1015. On 7 February 1999 the Priština Corps Command issued its own *Grom 3* order for all the Corps units.<sup>2671</sup> Lazarević explained that the *Grom 3* plan was a “plan for the defence of the integrity of the country”.<sup>2672</sup> On 16 February 1999 the Priština Corps Command issued an order for the elimination of Albanian “terrorist” forces in the sectors of Malo Kosovo, Drenica, and Mališevo.<sup>2673</sup> The order listed tasks that were to be carried out by Priština Corps units in co-ordination with MUP forces.<sup>2674</sup> It did not determine the “readiness” for the operations.<sup>2675</sup> Lazarević testified that, when the 16 February order was prepared within the Priština Corps Command, “the operative organs of the Corps Command achieved co-ordination with the people dealing with planning in the MUP in order to have co-ordination and co-ordinated action”.<sup>2676</sup> The Trial Chamber notes in this regard that on 17 February 1999, the day after the Priština Corps Command issued the *Grom 3* order, Lukić announced during a meeting at the MUP Staff that the MUP Staff “plan[ned] ... to carry out three mopping up operations in the Podujevo, Dragobilja and Drenica areas”, but was waiting for an order to do so.<sup>2677</sup> The three areas mentioned by Lukić were essentially the same ones as those referred to in the Priština Corps *Grom 3* order. Moreover, the

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to “prevent infiltration of sabotage and terrorist forces from the Republic of Albania, break up and destroy the NATO brigade and Albanian terrorist forces in Kosovo” in co-operation with the MUP forces.

<sup>2668</sup> 5D249 (Order of the 3<sup>rd</sup> Army, 1 February 1999), pp. 1–2. *See also* Vladimir Lazarević, T. 17901–17902, 17905–17906 (8 November 2007).

<sup>2669</sup> 5D249 (Order of the 3<sup>rd</sup> Army, 1 February 1999), p. 2.

<sup>2670</sup> 5D249 (Order of the 3<sup>rd</sup> Army, 1 February 1999), p. 2. Lazarević testified that the Corps Command was in fact ordered to “perform general planning without indicating the dates when these actions would be carried out”. Vladimir Lazarević, T. 18200 (13 November 2007).

<sup>2671</sup> Vladimir Lazarević, T. 17905 (8 November 2007).

<sup>2672</sup> Vladimir Lazarević, T. 17896 (8 November 2007).

<sup>2673</sup> P2808 (Order of the PrK, 16 February 1999).

<sup>2674</sup> P2808 (Order of the PrK, 16 February 1999), p. 4; Vladimir Lazarević, T. 17907 (8 November 2007).

<sup>2675</sup> P2808 (Order of the PrK, 16 February 1999), p. 6. Lazarević confirmed that, in this order of 16 February 1999, the PrK Command ordered to crush and destroy Albanian terrorist forces in specified locations but “without specifying the time when the plan would be activated”. According to Lazarević, the plan “was to be activated upon receipt of a special signal and order”. Vladimir Lazarević, T. 18558 (19 November 2007); T. 17908–17909 (8 November 2007).

<sup>2676</sup> Vladimir Lazarević, T. 17917 (8 November 2007). According to Lazarević, there had been “co-ordination in preparation for the carrying out of [the task of destroying the armed rebellion forces in the three locations mentioned in the *Grom 3* order]”, T. 17918–17919.

<sup>2677</sup> P1990 (Minutes of the MUP Staff meeting, 17 February 1999), p. 1. This meeting was attended by *inter alia* Lukić, Vljako Stojiljković, Vlastimir Đorđević, Rade Marković, Obrad Stevanović, members of the Priština MUP Staff, Milosav Vilotić, all the SUP chiefs, as well as PJP and SAJ commanders.

Chamber observes that in the *Grom 3* order the Priština Corps instructed its subordinate units to act in co-ordination with specific MUP units, namely the 22<sup>nd</sup> PJP, 35<sup>th</sup> PJP, 37<sup>th</sup> PJP, the SAJ, and the JSO.<sup>2678</sup> The Trial Chamber considers that this evidence shows that the VJ and the MUP communicated and exchanged information during the elaboration of the plan pursuant to which three major operations were to be carried out in the areas of Malo Kosovo, Drenica, and Mališevo/Malisheva.

1016. In addition, the evidence shows that the MUP also prepared plans for “anti-terrorist” actions at the beginning of the year 1999. On 21 December 1998, at a MUP Staff meeting, Obrad Stevanović stated that “[b]roader actions towards terrorist bases” should be planned by the MUP Staff.<sup>2679</sup> He stressed, however, that the initiative was to be with the SUPs, who were to “make preparations and compile recommendations of the Activity Plan”.<sup>2680</sup> The minutes of a MUP Staff meeting held on 17 February 1999 in Priština/Prishtina show that “tasks and activities” relating to anti-terrorist actions had been determined at the “annual meetings”.<sup>2681</sup>

1017. The period between January and the beginning of March 1999 was therefore devoted to planning the major joint VJ/MUP operations that were conducted from the latter part of March 1999.<sup>2682</sup> The major joint operations that were then conducted were in the areas of Podujevo/Podujeva,<sup>2683</sup> Malo Kosovo,<sup>2684</sup> Donja Drenica,<sup>2685</sup> Orahovac/Rahovec, Suva Reka/Suhareka, and Velika Kruša/Krusha e Madhe,<sup>2686</sup> Drenica,<sup>2687</sup> and in the general area of

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<sup>2678</sup> P2808 (Order of the PrK, 16 February 1999).

<sup>2679</sup> P1991 (Minutes of the MUP Staff meeting, 21 December 1998), p. 10.

<sup>2680</sup> P1991 (Minutes of the MUP Staff meeting, 21 December 1998), p. 10.

<sup>2681</sup> P1990 (Minutes of the MUP Staff meeting, 17 February 1999), p. 1.

<sup>2682</sup> P2067 (Order of the 549<sup>th</sup> Motorised Brigade, 9 March 1999); P2072 (Order of the 549<sup>th</sup> Motorised Brigade, 16 March 1999); 6D1465 (Order of the 243<sup>rd</sup> Motorised Brigaded, 21 March 1999); 6D1466 (243<sup>rd</sup> Mechanised Brigade Combat Report to PrK, 24 March 1999). As regard the Ješkovo/Jeshkova operation, Delić testified that he issued the order of 9 March 1999 based on an order he had received from Lazarević on that day. Božidar Delić, T. 19541–2, 19550 (5 December 2007). *See also* K54, P2676 (witness statement dated 26 April 2002) p. 5 (under seal), T. 10504–10505 (private session) (26 February 2007); K82, P2315 (witness statement dated 14 September 2006), para. 6 (under seal), T. 11747 (15 March 2007).

<sup>2683</sup> P3049 (Joint Command Order, 19 March 1999); 5D1357 (PrK Combat Report to 3<sup>rd</sup> Army, 25 March 1999).

<sup>2684</sup> P1966 (Joint Command Order, 22 March 1999).

<sup>2685</sup> P2031 (Joint Command Decision, 22 March 1999); P2042 (Operational Report of the 37<sup>th</sup> Motorised Brigade to PrK, 23 March 1999), p. 1.

<sup>2686</sup> P2015 (Joint Command Order, 23 March 1999); P1981 (Order of the 549<sup>th</sup> Motorised Brigade, 23 March 1999); P1995 (Analysis of the operation of the 549<sup>th</sup> Motorised Brigade, 30 March 1999); 5D1357 (PrK Combat Report to 3<sup>rd</sup> Army, 25 March 1999).

<sup>2687</sup> P1968 (Joint Command Order, 24 March 1999); P2043 (37<sup>th</sup> Motorised Brigade Combat Report to PrK, 25 March 1999). *See also* P2045 (37<sup>th</sup> Motorised Brigade Combat Report to PrK, 27 March 1999); P2046 (37<sup>th</sup> Motorised Brigade Combat Report to PrK, 28 March 1999); P2616 (War Diary of the 125<sup>th</sup> Motorised Brigade), pp. 1–9; P2042 (37<sup>th</sup> Motorised Brigade Operational Report to PrK, 23 March 1999); 5D343 (Order of the PrK requesting combat reports from VJ units, 29 March 1999), p. 1; 5D1357 (PrK Combat Report to 3<sup>rd</sup> Army, 25 March 1999); 5D1358 (PrK Combat Report to 3<sup>rd</sup> Army, 26 March 1999).

Mališevo/Malisheva.<sup>2688</sup> On 2 April 1999 Priština Corps units were also ordered to provide support to MUP forces in smashing and destroying Albanian “terrorist” forces in the Jablanica/Jabllanica sector.<sup>2689</sup> These areas correspond to the three larger sectors referred to in the Priština Corps Command order of 16 February 1999 as well as those referred to by Lukić during the meeting of 17 February 1999. The orders for these joint operations had Joint Command headings and were unsigned. The planning of some of these orders as well as the issue of the Joint Command will be discussed later.<sup>2690</sup>

1018. In April 1999 another large-scale plan was devised. The Supreme Command Staff issued a directive “for the engagement of the VJ in defence against the NATO aggression” on 9 April 1999.<sup>2691</sup> On 10 April 1999 the 3<sup>rd</sup> Army Command issued the *Grom 4* order.<sup>2692</sup> It appears that the directive issued by Ojdanić on 9 April 1999 was the *Grom 4* directive, as the 3<sup>rd</sup> Army Command order of 10 April 1999 echoed its language. The Supreme Command Staff amended the *Grom 4* directive on 12 April 1999. One of the amendments made was the inclusion of a paragraph stipulating that the forces of the MUP and the civilian defence were to be placed under the Command of the 3<sup>rd</sup> Army.<sup>2693</sup> The issue of resubordination will be examined in more detail in Section VI.E.3 below.

1019. However, the Priština Corps Command issued its *Grom 4* order three days before Ojdanić’s *Grom 4* directive.<sup>2694</sup> On 3 April the 3<sup>rd</sup> Army Command had ordered the Corps Commanders and certain other commanders to draft and issue a decision “for the engagement of establishment and attached forces for defence against aggression against the FRY in [their] zone of responsibility”.<sup>2695</sup> The objective of this order was that measures “be taken promptly to organise a defence” in light of “the imminent risk of aggression against the FRY by NATO ground forces”.<sup>2696</sup> Pavković explained that he would approve the decisions of the commanders on 5 April “after being briefed on them”.<sup>2697</sup> The Priština Corps Command prepared its decision and briefed the 3<sup>rd</sup> Army

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<sup>2688</sup> P1969 (Joint Command Order, 28 March 1999). See P1446 (Document sent by 3<sup>rd</sup> Army to Supreme Command Staff, 30 March 1999); P2000 (Order of the 549<sup>th</sup> Motorised Brigade, 29 March 1999); P2035 (125<sup>th</sup> Motorised Brigade Combat Report to PrK, 30 March 1999); 4D371 (PrK Combat Report to 3<sup>rd</sup> Army, 1 April 1999); P2002 (Analysis of operations of 549<sup>th</sup> Motorised Brigade, 30 March [sic] 1999).

<sup>2689</sup> P2003 (Joint Command Order, 2 April 1999), p. 1; 5D84 (PrK Combat Report to 3<sup>rd</sup> Army, 3 April 1999); 5D85 (PrK Combat Report to 3<sup>rd</sup> Army, 4 April 1999).

<sup>2690</sup> See Section VI.E.2.

<sup>2691</sup> P1481 (Supreme Command Staff directive for engagement of VJ in defence against NATO, 9 April 1999).

<sup>2692</sup> 4D308 (3<sup>rd</sup> Army order on defence from NATO, 10 April 1999).

<sup>2693</sup> P1483 (Supplement to directive of 9 April 1999, 12 April 1999), p. 1.

<sup>2694</sup> 5D175 (Order of the PrK, 6 April 1999).

<sup>2695</sup> 4D360 (Order of the 3<sup>rd</sup> Army Forward Command Post, 3 April 1999), p. 1, also admitted as 5D361.

<sup>2696</sup> 4D360 (Order of the 3<sup>rd</sup> Army Forward Command Post, 3 April 1999), p. 1, also admitted as 5D361.

<sup>2697</sup> 4D360 (Order of the 3<sup>rd</sup> Army Forward Command Post, 3 April 1999), p. 1, also admitted as 5D361. Pavković specified that the briefing would commence in the morning but the location for the meeting was not yet determined.

Commander during a meeting held on 5 April.<sup>2698</sup> During the meeting several tasks were assigned.<sup>2699</sup> Based upon what had been decided during the meeting, the next day the Priština Corps Command issued the *Grom 4* order.<sup>2700</sup> It appears that the Priština Corps issued its order before receiving the order from the 3<sup>rd</sup> Army Command because during the 5 April meeting it was explained that the execution of the tasks was “to begin immediately”.<sup>2701</sup> According to the *Grom 4* order of the Priština Corps Command, the VJ units, in co-operation with MUP units, were to “inflict losses on the [the NATO alliance aggressor forces]”, “prevent their fast penetration deep into [Kosovo]”, “go into counter-attack”, and “expel [them] from the KiM territory”.<sup>2702</sup> Lazarević explained that the *Grom 4* plan was “another complex plan for the defensive operation carried out by the Corps”,<sup>2703</sup> or in other words, “the Pristina Corps in wartime found itself at the strategic focus of the defence of the country”.<sup>2704</sup>

1020. Several hours prior to the issuance of the 9 April directive, Ojdanić instructed the 3<sup>rd</sup> Army Command to prepare a proposal for a decision on preventing aggression with two specific “variations”, and to submit this proposal to the Supreme Command Staff by 10 April 1999.<sup>2705</sup> The 3<sup>rd</sup> Army Command was to make a proposal for a decision that would address two situations: (a) the “aggression by *Šiptar* terrorist forces who [were] currently in neighbouring countries, taking advantage of refugees and the support of NATO forces, in collaboration with terrorist forces within Kosovo”; and (b) the “aggression by NATO with the activation of an armed uprising by remaining and infiltrated *Šiptar* terrorist forces, also taking advantage of refugees”. Ojdanić’s order indicated that the report on the proposal would be submitted on 11 April 1999 at the Supreme Command Staff, in the presence of the Supreme Commander.<sup>2706</sup> Ojdanić stated that, after having studied the proposal, the Supreme Command Staff had noticed several shortcomings to it. The 3<sup>rd</sup> Army Command was therefore instructed to amend the proposal in line with the recommendations given and to submit “the draft plan for study” the next day. Ojdanić added that a briefing would be held

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The commanders were to draw up a decision as well as a map and give a copy of both documents to the Army Forward Command Post after the briefing.

<sup>2698</sup> 5D366 (Order of the PrK regarding tasks in organising defence, 5 April 1999); 4D254 (Order of the PrK on taking measures to defend the FRY against aggression, 10 April 1999). The order of 5 April 1999 explicitly referred to “the briefing to the 3<sup>rd</sup> Army Commander on organising defence”.

<sup>2699</sup> 5D366 (Order of the PrK regarding tasks in organising defence, 5 April 1999).

<sup>2700</sup> 5D175 (Order of the PrK, 6 April 1999).

<sup>2701</sup> 5D366 (Order of the PrK regarding tasks in organising defence, 5 April 1999); Vladimir Lazarević, T. 17986–17987 (9 November 2007).

<sup>2702</sup> 5D175 (Order of the PrK, 6 April 1999), p. 4.

<sup>2703</sup> Vladimir Lazarević, T. 17957 (8 November 2007).

<sup>2704</sup> Vladimir Lazarević, T. 17957 (8 November 2007).

<sup>2705</sup> P1480 (Order to prepare plans to defend against terrorist aggression, 9 April 1999).

<sup>2706</sup> P1480 (Order to prepare plans to defend against terrorist aggression, 9 April 1999).



at 9:00 a.m. with the “Supreme Command”.<sup>2707</sup> On 12 April, at a Supreme Command Staff meeting, Milošević issued “a precise task with regard to breaking up the remaining groups of ŠTS” and instructed that “in the next seven days, only the JSO and the SAJ were to be engaged in the execution of these tasks”.<sup>2708</sup>

1021. The evidence shows that the MUP also devised plans for actions at the beginning of April 1999. On 4 April 1999 a meeting was held involving Obrad Stevanović, Lukić, all the Kosovo SUP chiefs, PJP commanders, and SAJ and JSO commanders. Stevanović ordered that “plans on how to control the territory” be prepared. He also instructed that “co-operation with the VJ through the commander on the ground” be conducted.<sup>2709</sup> Moreover, according to a document issued by the Priština Corps Command on 9 April 1999, the MUP Staff “issued an order to all Secretariats of the Interior to commence planning actions to crush the terrorist groups that remain in their respective zones of responsibility”.<sup>2710</sup>

1022. Several joint operations were carried out in mid-April 1999 in the area of Kosmač,<sup>2711</sup> the sector of Žegovac,<sup>2712</sup> Drenica,<sup>2713</sup> Orlane-Zlas,<sup>2714</sup> Čičavica,<sup>2715</sup> Jezerce,<sup>2716</sup> Rugovo,<sup>2717</sup> the Bajgora–Bare area,<sup>2718</sup> and the Zastrić sector.<sup>2719</sup> These joint operations appear to have been conducted in furtherance of the plans elaborated by the MUP and the VJ at the beginning of April 1999. The orders for these joint operations had Joint Command headings and were unsigned.

1023. The next section demonstrates that a high level of co-ordination and co-operation between the VJ and the MUP existed during the planning and execution of the joint operations conducted at the end of March and the beginning of April 1999.

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<sup>2707</sup> 3D728 (Briefing of the Supreme Command Staff, 11 April 1999), p. 3.

<sup>2708</sup> 4D420 (Report from Pavković to the Supreme Command Staff re Resubordination of the MUP, 20 April 1999), p. 1.

<sup>2709</sup> P1989 (Minutes of the MUP Staff meeting, 4 April 1999), p. 4.

<sup>2710</sup> 5D476 (Order of the PrK Command, 9 April 1999), p. 1. See Vladimir Lazarević, T. 18007 (9 November 2007); Radojko Stefanović, T. 21702–21771 (5 February 2008).

<sup>2711</sup> P1970 (Joint Command Order, 9 April 1999).

<sup>2712</sup> P1971 (Joint Command Order, 13 April 1999).

<sup>2713</sup> P1972 (Joint Command Order, 14 April 1999).

<sup>2714</sup> P1973 (Joint Command Order, 14 April 1999).

<sup>2715</sup> P1974 (Joint Command Order, 15 April 1999); 5D1023 (37<sup>th</sup> Motorised Brigade Combat Report to PrK, 19 April 1999).

<sup>2716</sup> P1976 (Joint Command Order, 15 April 1999).

<sup>2717</sup> P1878 (Joint Command Order, 15 April 1999); 5D194 (Information of the PrK Command to the 3<sup>rd</sup> Army Command, 15 April 1999); 5D1411 (PrK Combat Report to 3<sup>rd</sup> Army and to Supreme Command Staff, 19 April 1999); P2016 (PrK Combat Report to 3<sup>rd</sup> Army and Supreme Command Staff, 25 April 1999).

<sup>2718</sup> P1975 (Joint Command Order, 15 April 1999); P2619 (Extract from the War Diary of the 15<sup>th</sup> Armoured Brigade), pp. 10, 13–15; P2572 (War Diary of the 15<sup>th</sup> Armoured Brigade), pp. 57, 61–62; 5D220 (PrK Combat Report to 3<sup>rd</sup> Army and Supreme Command Staff, 1 May 1999); P1977 (Joint Command Order, 16 April 1999).

<sup>2719</sup> P1977 (Joint Command Order, 16 April 1999).

## 2. Co-ordination between the VJ and the MUP regarding combat operations

### a. Co-ordination system in general

1024. Several witnesses testified at trial to a system of co-ordination and co-operation between the VJ and MUP, which was elaborated for the planning and execution of joint operations in 1998. This system of co-ordination and co-operation continued to function in 1999.

#### *i. Co-ordination in planning joint VJ/MUP operations*

##### (A) Co-ordination in 1998

1025. Co-ordination and co-operation between the VJ and the MUP started as early as April and May 1998.<sup>2720</sup> However, it did not function very well: as explained above, on 13 May 1998 Samardžić was informed of problems during combat activities due to the lack of co-ordination and co-operation between the VJ and the MUP. After having received this information, Samardžić “authorised General Simić and General Pavković as the protagonists of co-operation and co-ordination in Kosovo and Metohija”.<sup>2721</sup> Following that, efforts were made to improve the system of co-ordination during the planning and execution of joint operations.<sup>2722</sup>

1026. Đaković was the person within the Priština Corps Command who was responsible for ensuring co-ordination between the VJ and MUP during combat operations. On 20 January 1999 he was replaced by Radojko Stefanović.<sup>2723</sup> Đaković attended co-ordination meetings with MUP organs in 1998, held at the building of the Corps Command and at the “MUP building”.<sup>2724</sup> Đaković most often met with Duško Adamović, a MUP Staff officer who worked from July 1998 to 29 March 1999 as an assistant to Lukić.<sup>2725</sup> Đaković testified that, during the co-ordination meetings, Adamović and Obrad Stevanović took part in the drafting of plans for joint operations by indicating, *inter alia*, what units would be used during the operations.<sup>2726</sup> Not only did Adamović provide Đaković with information about the strength and location of MUP forces, but his role and

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<sup>2720</sup> Milan Đaković, T. 26373 (19 May 2008).

<sup>2721</sup> Milan Đaković, T. 26411 (19 May 2008).

<sup>2722</sup> Milan Đaković, T. 26388 (19 May 2008).

<sup>2723</sup> Milan Đaković, T. 26388 (19 May 2008).

<sup>2724</sup> Milan Đaković, T. 26383; T. 26394 (19 May 2008). During his testimony in court, Đaković distinguished these co-ordination meetings from the meetings that he called “Meetings of the Joint Command for Kosovo”, held between 22 July and 30 October 1999. Milan Đaković, T. 26383 (19 May 2008).

<sup>2725</sup> Duško Adamović, T. 24967–24968 (8 April 2008). Adamović testified that he left his position within the MUP Staff because he was wounded.

<sup>2726</sup> Milan Đaković, T. 26397 (19 May 2008). The Chamber considers that, although Đaković referred to “Obrad Stojanović” at this moment in his testimony (T. 26397), he meant “Obrad Stevanović”, as he referred to Obrad Stevanović later in his testimony when he was talking about this same issue (T. 26394). Moreover, Stefanović, who replaced Đaković in January 1999, testified that one of the persons he co-worked with in 1999 was Obrad Stevanović, Radojko Stefanović. T. 21684–T. 21689 (5 February 2008).

that of other MUP organs was also essential to the process of planning and co-ordinating operations.<sup>2727</sup>

1027. Adamović confirmed Đaković's testimony by explaining that he played a role in facilitating communication between the MUP and the VJ when he worked within the MUP Staff.<sup>2728</sup> In particular, he testified that he gave information to the VJ about the units that were to participate in the operations; however, he considered his role in the implementation of the tasks to be "an auxiliary one".<sup>2729</sup> He also stressed that the MUP Staff did not participate in the planning of the execution of anti-terrorist actions. In his view, this was done by the Priština Corps.<sup>2730</sup> The Trial Chamber does not accept this and considers that, by providing the Priština Corps Command with information about the MUP units that were to participate in the joint operations, the MUP Staff participated in the planning of these operations. Moreover, the Trial Chamber notes Adamović's testimony that, before operations were conducted, meetings were held at the MUP Staff during which the VJ and the MUP discussed the plan for carrying out "anti-terrorist" actions. He added that this was "the basis for further action on the part of all officers who were already out in the field and who had been engaged for that".<sup>2731</sup> Therefore, Adamović's evidence demonstrates that the MUP Staff was involved in the planning of joint operations. Furthermore, while Adamović insisted upon the fact that the MUP Staff did not participate in the planning of joint operations, he did not address the question of whether other MUP organs were involved in this planning process. In this regard, the Trial Chamber takes into consideration Đaković's testimony that he not only worked with Adamović, but that he also worked with Stevanović during the preparation of plans.

1028. Đaković explained that in July 1998, after having attended a co-ordination meeting with MUP representatives, he was tasked with drafting an order in which he had to regulate the question of relations between the MUP and the VJ. As it was unclear to him how he was supposed to undertake this task, he asked Pavković, who told him to include the term "Joint Command" in the order.<sup>2732</sup> This order was issued on 6 July 1998 and had a Joint Command heading.<sup>2733</sup> Đaković

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<sup>2727</sup> Milan Đaković, T. 26397 (19 May 2008).

<sup>2728</sup> Duško Adamović, T. 24978 (8 April 2008). He recalled having been "appointed on behalf of the Staff before the actions commenced to have contacts with the Priština Corps". In particular, he testified that the instructions Lukić gave him was to "go from time to time to Colonel Đaković and to submit information about the units that were in the territory of Kosovo, all with a view to planning the implementation of anti-terrorist actions". T. 25065 (9 April 2008).

<sup>2729</sup> Duško Adamović, T. 25063, T. 25067, T. 25071, T. 25077, T. 25087 (9 April 2008), T. 25097 (10 April 2008), T. 24979–24980 (8 April 2008). Mijatović described Adamović's duties as simply providing information about the location of certain units according to dispatches that were issued after every mobilisation. Miroslav Mijatović, T. 22326–22330 (13 February 2008), T. 22439–22442; T. 22446 (14 February 2008).

<sup>2730</sup> Duško Adamović, T. 24981 (8 April 2008), 6D1613 (witness statement dated 30 March 2008), paras. 17, 31.

<sup>2731</sup> Duško Adamović, T. 24974–24975 (8 April 2008).

<sup>2732</sup> Milan Đaković, T. 26381 (19 May 2008).

stated that the reference to the Joint Command in the 6 July 1998 order was to be understood as “an authorisation for [the VJ subordinate units] to co-ordinate some actions with the MUP”.<sup>2734</sup> Đaković further testified that the 6 July order was not sent to the MUP, but he assumed that “[Lukić] should have regulated in some way how his organs would learn that [the plans for joint operation] ... had been co-ordinated by his assistants”.<sup>2735</sup> The MUP and VJ subordinate units needed to be informed that “both commands [had] agreed about the duties of the two segments” before starting to implement the joint operations.<sup>2736</sup> According to Đaković the term “Joint Command” was “an internal fictitious name” used by Pavković and himself to “create co-ordination documents with the MUP because the MUP could not and would not accept a single document where it said ‘Command of the Priština Corps’”.<sup>2737</sup> He explained that these documents with references to the Joint Command were used in lieu of the co-ordination plans.<sup>2738</sup> Lazarević testified that the Joint Command was in fact a term devised by the Priština Corps and used as a drafting technique to ensure co-operation between the VJ and the MUP.<sup>2739</sup>

1029. While Đaković testified that the Joint Command order of 6 July 1998 was not sent to the MUP units, he explained that excerpts from other Joint Command orders were provided to the MUP, through Adamović, “in order for them to be able to do their own documents”.<sup>2740</sup> These excerpts were used within the MUP “as a basis for co-ordination”.<sup>2741</sup> they were used by the PJP commanders to “do their own assessments and to make their own decisions in accordance with the

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<sup>2733</sup> See P2113 (Order of the 125<sup>th</sup> Motorised Brigade Regarding a Ban on Operations Without the Knowledge and Approval of the Joint Command for Kosovo, 7 July 1998) (refers to the “Order of the Joint Command for Kosovo” of 6 July 1998).

<sup>2734</sup> Milan Đaković, T. 26434 (19 May 2008). He added that “[w]ithout this order on co-ordination, [the VJ subordinate units] could not carry out any combat actions in such a way.” Đaković also explained to the commanders in the VJ subordinate units that documents containing such references were used in lieu of co-ordination plans. T. 26435 (19 May 2008).

<sup>2735</sup> Milan Đaković, T. 26435, 26380 (19 May 2008); Božidar Delić, T. 19499 (4 December 2007). Delić testified that he knew that his counterpart in the MUP joint operations received the same document that he did. However, later in his testimony, he stated that, although they received the same section of map, he did not “know what kind of document” the MUP had. Božidar Delić, T. 19659–19660 (6 December 2007).

<sup>2736</sup> Milan Đaković, T. 26436 (19 May 2008).

<sup>2737</sup> Milan Đaković, T. 26444–26445 (20 May 2008). Božidar Delić, T. 19422–19423, 19495 (4 December 2007). According to Delić, the term “Joint Command” was used to make the document acceptable to both recipients.

<sup>2738</sup> Milan Đaković, T. 26435 (19 May 2008).

<sup>2739</sup> Vladimir Lazarević, T. 17795 (6 November 2007). See also Milan Kotur, T. 20675, 20724–20725 (21 January 2008); Mihajlo Gergar, T. 21528 (1 February 2008); Miloš Mandić, T. 20925–20926 (23 January 2008); Ljubiša Diković, T. 19881 (10 December 2007); Milan Đaković, T. 26453 (20 May 2008). Milan Kotur stated that it was always included where “the MUP and VJ forces acted together co-ordinating their actions and supporting each other. In such cases it always said Joint Command in the documents. This would mean both the army and the MUP were participating and their activities were co-ordinated and were to be carried out together.” Mihajlo Gergar said, albeit in relation to an order from 1999, that Lazarević explained to him that “Joint Command” was a term “used from 1998 onwards and that it referred to the [co-ordinated] actions ... that were carried out by the Yugoslav army units and MUP”. Miloš Mandić testified that Stefanović told him that Joint Command was a term used whenever the VJ supported the MUP: it was simply a phrase, and an actual Joint Command did not exist.

<sup>2740</sup> Milan Đaković, T. 26393–26394 (19 May 2008).

<sup>2741</sup> Milan Đaković, T. 26505 (20 May 2008).

actual situation”.<sup>2742</sup> One of Adamović’s responsibilities was to “distribute [the map excerpts] further on in the field”.<sup>2743</sup> Adamović claimed that he did not receive from Đaković the textual part of the orders that went with the maps.<sup>2744</sup> Moreover, the MUP units were only provided with excerpts for their own area.<sup>2745</sup> When asked who issued the orders to the PJP or other MUP units for them to know exactly what they were supposed to do during the joint operations after they were provided with the maps, Adamović answered that “[n]o special orders were issued; only excerpts from maps were provided that had been drawn by the Priština Corps”.<sup>2746</sup> However, he subsequently explained that he did not know whether or not orders were prepared by other organs in the MUP, as his role was simply to provide the map excerpts to the MUP units.<sup>2747</sup> The Chamber also notes that, according to Miroslav Mijatović, the MUP Staff did not issue any decisions “because the detachments ... were involved based on map extracts obtained from the Priština Corps”. However, he stated that PJP detachment commanders did issue orders to their subordinates.<sup>2748</sup> While little documentary evidence has been presented showing that the MUP issued orders for the execution of the various actions to be implemented by it during joint operations, the Chamber considers that the MUP did issue such orders, as the map extracts provided by the VJ did not contain specific instructions as to how the various actions or attacks were to be carried out in practice.

1030. Momir Stojanović testified that he was “well familiar with the methodology of the [Priština Corps] Command’s work”. He explained that during the war the Priština Corps Command met in small groups on a daily basis.<sup>2749</sup> During these meetings, briefings were presented by the organs of the Command. After the meetings—which usually finished at 6:00 p.m—the Priština Corps Commander visited the 3<sup>rd</sup> Army Commander to inform him about what had been discussed: he would present him with specific proposals on how to use certain units, report to him on problems

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<sup>2742</sup> Milan Đaković, T. 26398 (19 May 2008).

<sup>2743</sup> Duško Adamović, T. 24978 (8 April 2008), 6D1613 (witness statement dated 30 March 2008), para. 25. According to Mijatović, the PrK submitted excerpts of maps. These maps were the basis for action on the part of PJP detachments. Miroslav Mijatović, T. 22309 (13 February 2008), T. 22443–22444 (14 February 2008). Živaljević, the Commander of the PJP 122<sup>nd</sup> Intervention Brigade, also testified that Adamović was the liaison between the MUP and VJ, and was the person at the MUP Staff who handed him envelopes containing excerpts of maps or textual orders drafted by the VJ. Dragan Živaljević, T. 24903–24905 (3 April 2008).

<sup>2744</sup> Duško Adamović, T. 25063 (9 April 2008).

<sup>2745</sup> Duško Adamović, T. 25068 (9 April 2008).

<sup>2746</sup> Duško Adamović, T. 24970–24971 (9 April 2008).

<sup>2747</sup> Duško Adamović, T. 25066 (9 April 2008). The Trial Chamber further notes that Adamović did not know why Đorđević and Stevanović were “in the field” at the time when the “anti-terrorist” actions were being implemented. Duško Adamović, T. 25069, 25081–25082 (9 April 2008).

<sup>2748</sup> Miroslav Mijatović, T. 22335 (13 February 2008).

<sup>2749</sup> Momir Stojanović, T. 20047 (11 December 2007).

that certain units were encountering, and propose decisions to be taken.<sup>2750</sup> Once the 3<sup>rd</sup> Army Commander had given his approval, the Priština Corps Commander visited the MUP organs “in order to have co-ordination for this decision that had been obtained”. It was later verified by the 3<sup>rd</sup> Army Commander.<sup>2751</sup> Stojanović also testified that during daily meetings with Đaković, at which he reported on the security situation, he heard of the term “Joint Command”. Đaković told him that this term referred to the “joint meetings of representatives of the Priština Corps Command and the Ministry of the Interior to exchange information and to co-ordinate co-operation and co-ordinated actions between the army and the MUP behind the lines.”<sup>2752</sup> However, according to Stojanović, Đaković often stressed that it was a problem that the orders received by the Priština Corps Command down the vertical chain of command, as well as the orders received by the MUP down their own chain of command, “consistently failed to deal with the problem on the ground of properly co-ordinating the actions for the army, on one side, and the MUP, on the other side in a specific operation”.<sup>2753</sup> Stojanović claimed that it was “quite clear ... that [the Joint Command] did not have any prerogatives of a proper command, in terms of decision-making or issuing orders”. He added that “in practice, that [was] not the way it worked”.<sup>2754</sup>

1031. The Chamber has analysed two decisions pertaining to joint operations conducted in 1998. The first one, dated 10 August 1998, is entitled “Decision on the joint engagement of MUP and VJ forces”.<sup>2755</sup> The second one, dated 14 August 1998, concerned a joint operation in the sector of the Slup and Vokša villages.<sup>2756</sup> The headings of both decisions show that they were issued by the Priština Corps Command. In both decisions VJ units were instructed to support MUP units or to act in co-ordinated action with them in the implementation of several attacks. However, the detail of how the attacks were to be conducted remained to be determined. For instance, in the 14 August decision the Priština Corps Combat Group 15/3 was ordered to support the attack of the 8<sup>th</sup> MUP Detachment and the Đakovica PJP Company along a specific axis, but there was no indication how the attack had to be carried out.<sup>2757</sup> It is clear from both decisions that further planning for these operations was needed. According to the last sentence of the 10 August 1998 decision, the Priština Corps subordinate units were to “[o]rganise co-ordinated action with MUP forces during

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<sup>2750</sup> The Chamber notes that, while the PrK Command meetings appear to have been completed by 6:00 p.m., the evidence shows that the Joint Command meetings started at 7:30 p.m. Milomir Minić, T. 14748 (31 August 2007); Zoran Anđelković, T. 14656 (30 August 2007).

<sup>2751</sup> Momir Stojanović, T. 20047–20048 (11 December 2007).

<sup>2752</sup> Momir Stojanović, T. 19761–19762 (7 December 2007). Stojanović testified that he heard the term first from Đaković, T. 19761 (7 December 2007), but later said that it was from Pavković. T. 20033 (11 December 2007).

<sup>2753</sup> Momir Stojanović, T. 19762 (7 December 2007).

<sup>2754</sup> Momir Stojanović, T. 19765 (7 December 2007).

<sup>2755</sup> P1427 (PrK decision, 10 August 1998).

<sup>2756</sup> P1428 (PrK decision, 14 August 1998).

<sup>2757</sup> P1428 (PrK decision, 14 August 1998), p. 1.

preparations and combat operations”.<sup>2758</sup> With respect to the Slup/Sllup and Vokša/Voksh operation, the Commander of the 15<sup>th</sup> Armoured Brigade issued an order on 14 August 1998 instructing the Commander of Combat Group 15/3 to organise a “co-ordinated action with organs of the 8<sup>th</sup> MUP [detachment] in preparation and implementation of [combat operations] ... before and during [combat operations]”.<sup>2759</sup> The Priština Corps decisions of 10 and 14 August 1998 appear to have been sent to the VJ units as co-ordination plans, based upon which they had to plan the various attacks or actions. The fact that these decisions referred to specific MUP units with which the Priština Corps units were to act in co-ordination during certain actions shows that some co-ordination or exchange of information had occurred between the MUP and the VJ before these decisions were issued.

1032. The Chamber notes that the 10 August decision was sent to *inter alia* the “Republic of Serbia MUP PJP Command”, which usually planned the actions of the PJP units.<sup>2760</sup> Both decisions contained a clause at the end stipulating that the combat operations were to be “commanded by the Joint Command for Kosovo and Metohija”.<sup>2761</sup> According to Đaković, this clause meant that both the VJ and MUP command had agreed upon the tasks that were to be carried out by the VJ and MUP units during the joint operation. Thus, before these Priština Corps Command decisions were issued, the MUP had agreed to carry out the various attacks referred to in them.

#### (B) Co-ordination in 1999

1033. Radojko Stefanović, Đaković’s successor as of January 1999, testified that not a single joint operation in 1999 was carried out without co-ordination meetings being organised beforehand. The forces that were to be involved in the operations, as well as the time of their realisation, had to be discussed between the VJ and the MUP.<sup>2762</sup> Lazarević testified that in 1999 co-ordination was done at the Priština Corps Command level between “the operations officers in the Corps Command and their opposite numbers in the MUP”.<sup>2763</sup> The group of operations officers in the Corps Command

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<sup>2758</sup> P1427 (PrK decision, 10 August 1998), p. 4.

<sup>2759</sup> 6D731 (15<sup>th</sup> Armoured Brigade order to the Commander of combat group 15/3, 14 August 1998), p. 5; Vladimir Lazarević, T. 17804 (6 November 2007). *See also* P2113 (Order of the 125<sup>th</sup> Motorised Brigade Regarding a Ban on Operations Without the Knowledge and Approval of the Joint Command for Kosovo, 7 July 1998). The Chamber also notes that, in the order of the 125<sup>th</sup> Motorised Brigade dated 7 July 1998, the Command of the brigade instructs the Command of the Combat Group 4 to “[p]repare and plan every operation ..., clearly defining the objective, tasks and duration of the operation”.

<sup>2760</sup> P1427 (PrK decision, 10 August 1998), p. 4.

<sup>2761</sup> P1427 (PrK decision, 10 August 1998), p. 3; P1428 (PrK decision, 14 August 1998), p. 3.

<sup>2762</sup> Radojko Stefanović, T. 21684–T. 21689 (5 February 2008).

<sup>2763</sup> Vladimir Lazarević, T. 17926–17927 (8 November 2007). Lazarević stressed that the VJ officers did not co-ordinate with the MUP Staff only: some deputies or assistants to the Minister of Interior “also participated in that”. Vladimir Lazarević, T. 17926 (8 November 2007).

consisted of Stefanović, Tešević, and sometimes a Colonel Paprika.<sup>2764</sup> Stefanović and his deputy, Tešević, had personal contact with individuals from the MUP, co-operating and co-ordinating with persons including Adamović's successor at the MUP Staff, Colonel Arsenijević, who was in charge of planning, as well as Obrad Stevanović, and later Colonel Braković, Commander of the PJP 124<sup>th</sup> Intervention Brigade.<sup>2765</sup> It appears from the evidence that, although Đaković was no longer working within the Priština Corps Command in 1999, he participated in the planning of operations together with the operations organ of the Priština Corps Command.<sup>2766</sup>

1034. Stefanović testified that, in order to plan joint operations, the VJ officers would call the "MUP representatives tasked with planning" or would visit them to exchange "data and information in order to co-ordinate joint actions".<sup>2767</sup> He further explained that, during these "working meetings" or "work discussions", the VJ and MUP representatives decided upon the time of realisation of these actions, their various tasks, and the forces that would be involved.<sup>2768</sup> They would also reach agreements upon the tasks that the MUP and VJ units would carry out during the joint operations. Stefanović added that, "on the basis of that", the Corps Command created the decisions and the maps. He assumed that, following these co-ordination meetings, the MUP created its decisions too.<sup>2769</sup> In other words, after the co-ordination meetings the VJ and MUP representatives returned to their respective command and reported upon what had been agreed.<sup>2770</sup> Stefanović specifically insisted on the distinction to be made between "co-ordination" and "planning": "co-ordination" was the phase during which the "agreements on the engagement of the police forces on the one hand and the units of the army on the other hand" were reached, whereas "planning" was the phase during which "everyone plan[ned] at his own level", following the co-ordination phase.<sup>2771</sup> According to him, at the tactical level, "detailed co-ordination and development ... of the way the action would be executed" would continue.<sup>2772</sup>

1035. When Stefanović took over Đaković's position within the Priština Corps Command, Đaković told him that in 1998 the combat documents prepared for joint operations contained a Joint Command heading as well as a clause stipulating that all the forces would be commanded by the

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<sup>2764</sup> Vladimir Lazarević, T. 18371–18372 (15 November 2007).

<sup>2765</sup> Radojko Stefanović, T. 21684–21689 (5 February 2008).

<sup>2766</sup> Milan Đaković, T. 26390 (19 May 2008). Đaković testified that he gave a "template" for an order to Adamović in February 1999. Stefanović also explained that "Đaković and the operatives from the 3<sup>rd</sup> Army Command were there all the time and we planned those actions together". T. 21796 (6 February 2008).

<sup>2767</sup> Radojko Stefanović, T. 21685 (5 February 2008).

<sup>2768</sup> Radojko Stefanović, T. 21751–21752 (6 February 2008).

<sup>2769</sup> Radojko Stefanović, T. 21752 (6 February 2008).

<sup>2770</sup> Radojko Stefanović, T. 21685 (5 February 2008).

<sup>2771</sup> Radojko Stefanović, T. 21751 (6 February 2008).

<sup>2772</sup> Radojko Stefanović, T. 21685 (5 February 2008).



Joint Command.<sup>2773</sup> Stefanović was also informed that these documents with a Joint Command heading were issued in 1998 by Pavković.<sup>2774</sup> He saw several orders with a Joint Command heading in 1999.<sup>2775</sup> When asked whether it was the regular practice in 1999 that excerpts of maps prepared by the VJ would be provided to the MUP by the Priština Corps, Stefanović explained that this was decided on a case by case basis. For instance, the Priština Corps provided excerpts to the MUP for actions which were of significant importance. He stressed that, when excerpts were provided to the MUP, they were not to be used as anything else but as co-ordination plans or a basis upon which the MUP was able to prepare its own plans, decisions, and orders.<sup>2776</sup>

1036. Dragan Živaljević, the Commander of the PJP 122<sup>nd</sup> Intervention Brigade, testified that before every anti-terrorist action he would receive a document containing the plan, drafted by the VJ, and he and the VJ commanders would meet and agree on how to proceed. There were occasions where minor amendments would need to be made to the plan.<sup>2777</sup> Živanović, the Commander of the 125<sup>th</sup> Motorised Brigade, also provided details on how co-ordination with the MUP was executed within the 125<sup>th</sup> Motorised Brigade. Once he received an order to support the MUP forces in his area, he would meet either with the chief of the SUP or the commander of the combat group and subordinate detachment, and they would arrange the details of co-ordination.<sup>2778</sup>

1037. The Chamber received into evidence 16 orders headed “Joint Command”. One of these orders, dated 19 March 1999, concerns a joint operation to be conducted in the Podujevo/Podujeva area.<sup>2779</sup> A document issued by the Priština Corps Command on 18 March 1999 shows that this operation was planned by the Priština Corps Command in accordance with orders from the 3<sup>rd</sup> Army Command. It also demonstrates that the planning process of this operation included co-ordination with the MUP. On 18 March 1999 the Priština Corps Command suggested to the 3<sup>rd</sup> Army Commander its “idea for conducting an operation to defeat the ŠTS in the sector of northern Drenica and Podujevo”.<sup>2780</sup> It explained that the planning process had been conducted “in accordance with [the 3<sup>rd</sup> Army Command’s] general idea and particular plans” and indicated that

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<sup>2773</sup> Radojko Stefanović, T. 21661–21662, 21793–21794 (6 February 2008).

<sup>2774</sup> Radojko Stefanović, T. 21795 (6 February 2008).

<sup>2775</sup> Radojko Stefanović, T. 21794 (6 February 2008).

<sup>2776</sup> Radojko Stefanović, T. 21759–21760 (6 February 2008).

<sup>2777</sup> Dragan Živaljević, T. 24820–24821 (3 April 2008).

<sup>2778</sup> Dragan Živanović, T. 20524 (17 January 2008).

<sup>2779</sup> See P3049 (Joint Command Order, 19 March 1999).

<sup>2780</sup> 6D1416 (PrK plan of action, 18 March 1999).

the Priština Corps Command had organised a “specific co-ordinated action” with the MUP for this joint operation.<sup>2781</sup> The 3<sup>rd</sup> Army Commander approved Lazarević’s “idea” on 19 March 1999.<sup>2782</sup>

1038. Similarly, joint operations conducted in the Malo Kosovo area and the sector of Donja Drenica—for which Joint Command orders were issued on 22 March 1999—were planned by the Priština Corps Command in accordance with orders from the 3<sup>rd</sup> Army Command.<sup>2783</sup> A document issued by the Priština Corps Command on 22 March 1999 also demonstrates that the planning process of this operation included co-ordination with the MUP. On 22 March the Priština Corps suggested its “plan for execution of operation to rout ŠTS in the sector of Donja Drenica and Gornji Lab” to the 3<sup>rd</sup> Army Commander. It explained that the planning process had been conducted “pursuant to [the 3<sup>rd</sup> Army Command’s] generalised proposal and specific plans” and that “a co-ordinated action ha[d] been organised with [the MUP]” by the Priština Corps Command for this joint operation.<sup>2784</sup> Lazarević explained in court that Pavković was at the command post of the Priština Corps Command at the time when this document was prepared. Pavković was presented with the plan and approved it.<sup>2785</sup>

1039. According to Lazarević, these documents of the Priština Corps Command of 18 and 19 March 1999 indicate that the MUP conducted its own planning for the operations that were to be conducted at the end of March 1999 and that, before orders for the execution of these operations were issued, the VJ and the MUP conducted “specific co-ordination”.<sup>2786</sup> The minutes of a MUP Staff meeting held on 17 February 1999 show that the MUP Staff “plan[ned] ... to carry out three mopping up operations in the Podujevo, Dragobilja and Drenica areas”, but was waiting for an order to do so. In the meantime, it wished to meet with all PJP commanders “for further consultations about their engagement”.<sup>2787</sup> According to Lazarević, these minutes show that “the MUP planned [actions] in parallel [and] independently from the 3<sup>rd</sup> Army Command and the Corps Command”.<sup>2788</sup> The Chamber also notes that a template order “to break up and destroy ŠTS in the sector of Malo Kosovo, Drenica, and Mališevo” was prepared by the Priština Corps Command to

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<sup>2781</sup> 6D1416 (PrK plan of action, 18 March 1999), pp. 1–2.

<sup>2782</sup> 5D273 (3<sup>rd</sup> Army Command’s approval of the plan, 19 March 1999). Stefanović confirmed that this document was given to the 3<sup>rd</sup> Army Commander for approval and verification. Radojko Stefanović, T. 21657 (5 February 2008).

<sup>2783</sup> P1966 (Joint Command Order, 22 March 1999); P2031 (Joint Command Decision, 22 March 1999).

<sup>2784</sup> 5D276 (Communication of the PrK Command to the 3<sup>rd</sup> Army Command, 22 March 1999). According to Lazarević, the MUP had their own plans in which they envisaged the neutralisation of “terrorists” in various locations. In the “plan for execution” issued on 22 March 1999, he notified the 3<sup>rd</sup> Army Commander that co-ordination between the VJ plans and the MUP plans had been achieved. Vladimir Lazarević, T. 17923 (8 November 2007).

<sup>2785</sup> Vladimir Lazarević, T. 17923, 17924 (8 November 2007).

<sup>2786</sup> Vladimir Lazarević, T. 18200 (13 November 2007).

<sup>2787</sup> P1990 (Minutes of the MUP Staff meeting, 17 February 1999), p. 1. This meeting was attended by *inter alia* Lukić, Vlajko Stojiljković, Vlastimir Đorđević, Rade Marković, Obrad Stevanović, members of the Priština MUP Staff, Milosav Vilotić, all the SUP chiefs, as well as PJP and SAJ commanders.

assist MUP personnel in “produc[ing] documents that would more or less correspond to the documents produced by the military”.<sup>2789</sup> Đaković gave this document to Adamović.<sup>2790</sup> This “template” had a MUP Staff heading and was dated 19 February 1999. This evidence suggests that plans for actions involving VJ and MUP units were prepared within the VJ and the MUP before the major joint operations were conducted at the end of March 1999. Before specific joint operations were carried out, the VJ and the MUP met during co-ordination meetings to ensure co-ordination between their respective plans.

1040. The MUP and the VJ also co-ordinated their plans before joint operations conducted in mid-April 1999. On 9 April the Priština Corps Command instructed its subordinate units to “co-ordinate actions with MUP units in crushing Albanian terrorist forces”, and to “immediately establish contact with SUP chiefs” concerning several specific actions.<sup>2791</sup> The Priština Corps instructed that the unit commanders “plan the actions” after having established contact. For instance, the Priština Corps unit commanders were to co-ordinate the *Bajgora* action with the Kosovska Mitrovica SUP.<sup>2792</sup> The Chamber notes that a joint operation was conducted in the Bajgora sector around 25 April 1999 pursuant to a Joint Command order issued on 15 April 1999.<sup>2793</sup> That evidence demonstrates that, before the Joint Command orders were issued in mid-April 1999, the VJ and the MUP co-ordinated the actions that were to be carried out by their units during the joint operation.

1041. The Chamber therefore finds that, before the major joint VJ/MUP operations were conducted at the end of March and to mid-April 1999, the two bodies co-ordinated their respective plans and activities. Depending upon the operation, either the MUP plan or the VJ plan prevailed. Once the co-ordination phase was completed, the actions remained to be planned at the tactical level. The Chamber notes that the 16 Joint Command orders issued in 1999 contained a clause stipulating that the Priština Corps units were to “[o]rganise co-ordinated action with MUP forces as regards the preparation and execution of combat operations before and during the combat operations”.<sup>2794</sup> A document issued by the 549<sup>th</sup> Motorised Brigade Command on 29 March 1999

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<sup>2788</sup> Vladimir Lazarević, T. 17923 (8 November 2007).

<sup>2789</sup> Milan Đaković, T. 26390 (19 May 2008); 6D716 (Order prepared by Milan Đaković, 19 February 1999). Đaković pointed out that this document had not been logged. He also stressed that the MUP personnel could refuse some of the information provided in this document.

<sup>2790</sup> Milan Đaković, T. 26390 (19 May 2008).

<sup>2791</sup> 5D476 (Order of the PrK Command, 9 April 1999), p. 1. Radojko Stefanović confirmed that the order in question instructed the brigade commanders to get in touch with the heads of the relevant SUPs in their respective territories, and to commence planning actions as stated in the order. Radojko Stefanović, T. 21702–21771 (5 February 2008).

<sup>2792</sup> 5D476 (Order of the PrK Command, 9 April 1999), p. 2; Vladimir Lazarević, T. 18007 (9 November 2007).

<sup>2793</sup> P1975 (Joint Command Order, 15 April 1999).

<sup>2794</sup> See e.g. P1975 (Joint Command Order, 15 April 1999), p. 5; P1966 (Joint Command Order, 22 March 1999), p. 8; P1969 (Joint Command Order, 28 March 1999), p. 12; P2003 (Joint Command Order, 2 April 1999), p. 6.

also demonstrates that the planning and co-ordination of actions continued at the tactical level.<sup>2795</sup> In addition, the commander of the 243<sup>rd</sup> Mechanised Brigade, Krsman Jelić explained that, after he received a task, he would meet with the Chief of the SUP in Uroševac/Ferizaj to “exchange opinions” and “agree in principle [upon] how this task should be carried out”.<sup>2796</sup> In particular, he explained that at the end of March 1999 an anti-terrorist operation was planned “in a concerted action with the MUP”.<sup>2797</sup> He planned tasks for his units and gave them “excerpts from the order and the map, based on which they did their own planning”.<sup>2798</sup> He also specified that “the plans for the MUP were made by their superiors”, which he supposed were the SUPs in that area.<sup>2799</sup> The decisions he issued to his subordinate units were “the initial document[s] for the performance of a combat action”, and “in the course of the actual engagement” the commander carrying out a specific part of the combat action was entitled to amend the decisions “depending on the actual developments on the ground”.<sup>2800</sup> More generally, Lazarević testified that co-ordination at the level of the brigade commanders entailed “the exchange of information about the engagement [of units], the execution of the task, the communications, agreements about liaison officers to be posted, and planning that at a certain place and at a certain time the representatives of the police and the army would come together to the ... combined command post”.<sup>2801</sup>

1042. While little documentary evidence has been presented at trial showing that MUP organs issued orders for the execution of the various actions to be implemented during joint operations, the Chamber considers that, as in 1998, the MUP also issued orders in some form, as the Joint Command orders did not contain specific instructions regarding how the various actions or attacks were, in practice, to be carried out.<sup>2802</sup>

1043. Having considered in general terms how the system for co-ordination and co-operation between the VJ and MUP operated in 1998 and 1999, the Trial Chamber will now consider the contentious issue of how the body referred to as the Joint Command fitted into that system.

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<sup>2795</sup> P2000 (Order of the 549<sup>th</sup> Motorised Brigade, 29 March 1999), p. 8. The last section of this order dealt with “co-ordinated action and co-operation”. In this section, Delić, the commander of the 549<sup>th</sup> Motorised Brigade, ordered that his subordinate “[o]rganise preparations for combat operations with MUP forces before of and during combat operations”.

<sup>2796</sup> Krsman Jelić, T. 19081–19082 (26 November 2007) (they tried to “find out how [they] could best carry out the tasks that [they] had received”). Jelić testified that his co-operation with the Chief of the SUP in Uroševac/Ferizaj was “extremely correct and professional”. Krsman Jelić, T. 19037.

<sup>2797</sup> Krsman Jelić, T. 18989 (26 November 2007).

<sup>2798</sup> Krsman Jelić, T. 18991 (26 November 2007).

<sup>2799</sup> Krsman Jelić, T. 18991 (26 November 2007).

<sup>2800</sup> Krsman Jelić, T. 19008–19009 (26 November 2007).

<sup>2801</sup> Vladimir Lazarević, T. 17926 (8 November 2007). *See also* T. 17794–17795 (6 November 2007).

<sup>2802</sup> *See also* 5D1418 (Dispatch from the MUP Staff, 26 May 1999).

b. Joint Command

1044. Paragraph 24 of the Indictment alleges as follows:

Slobodan Milošević, MILAN MILUTINOVIĆ and NIKOLA ŠAINOVIĆ, also exercised command over the forces of the FRY and Serbia through other bodies including the Joint Command, headed by NIKOLA ŠAINOVIĆ, which was mandated to co-ordinate the work of civil affairs organs with the activities of the organisations that constituted the forces of the FRY and Serbia in Kosovo and to ensure that they conducted operations in accordance with political objectives. The Joint Command also exercised *de facto* command authority over these bodies. This command authority complemented the VJ and the MUP internal chains of command to ensure co-operation and co-ordination. The Joint Command included senior members of the civilian, political and military leadership including NEBOJŠA PAVKOVIĆ, the commander of the Third Army, VLADIMIR LAZAREVIĆ, the commander of Priština Corps, SRETEN LUKIĆ, the Head of the MUP Staff, the Head of the Temporary Executive Committee (“TEC”), and other leaders from the VJ and MUP.

1045. The Prosecution argues in its final brief that the Joint Command was a co-ordinating body with authority derived from the FRY President in order to control the civilian, military, and police organisations operating in Kosovo. It was established in June 1998, and operated until June 1999. Its membership consisted of civilian politicians and the leadership of the VJ and MUP in Kosovo, with Šainović serving as its Head. The MUP and VJ chains of command remained intact, but the Joint Command brought them together through meetings in Priština/Prishtina and ensured that they operated in a co-ordinated manner and consistent with the political goals of Milošević and his inner circle in Belgrade.<sup>2803</sup> The Prosecution further asserts that the importance of the Joint Command increased as joint operations between the MUP and VJ became more common and complex in the summer of 1998, and following resubordination of the MUP to the VJ during the state of war in the summer of 1999.<sup>2804</sup> The Prosecution also argues that, despite the absence of a formal legal basis for the body, the members of the joint criminal enterprise accepted the Joint Command as part of a system by which the forces of the FRY and Serbia could be tasked with operations in Kosovo, and the enterprise’s members used the Joint Command to implement their goals.<sup>2805</sup>

1046. The Šainović Defence argues that the meetings referred to by the Prosecution as those of the “Joint Command” were not “Joint Command” meetings at all, but instead informal “sessions” of the political leadership with the MUP and VJ, as well as representatives of other state authorities. The term “Joint Command” was created by Pavković and Milan Đaković prior to the arrival of Šainović and Minić in Kosovo. The Defence argues that the sessions had nothing to do with the participation of Šainović or Minić, but rather dealt with co-ordinating the actions of the MUP and

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<sup>2803</sup> Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 154–155.

<sup>2804</sup> Prosecution Final Trial Brief, 29 July 2008 (public version), para. 206.

<sup>2805</sup> Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 165, 205.

the VJ.<sup>2806</sup> Šainović, as a representative of the Socialist Party of Serbia (SPS) and Deputy Prime Minister of the FRY, was expected to provide answers to his superiors in Belgrade and to negotiate with foreign interlocutors. As such, he needed accurate and up to date information on events on the ground in Kosovo; and, due to the security situation there, it was only natural that he would turn to the VJ and the MUP for this information.<sup>2807</sup> These *ad hoc* meetings were attended by different people, were primarily for the exchange of information, and did not influence the actions of the MUP and VJ. Even if some called them “Joint Command” meetings, members of the SPS did not: the VJ and MUP chains of command remained intact.<sup>2808</sup> No decisions were made at these meetings, and Šainović did not—and could not—command the VJ or the MUP.<sup>2809</sup>

1047. The Šainović Defence further argues that, in any case, following the Holbrooke-Milošević Agreement the entity known as the “Joint Command” ceased to exist, and the civilian leaders were reassigned to other entities such as the Temporary Executive Council and the Commission of the Federal Government for Co-operation with the KVM.<sup>2810</sup> It is argued that after October 1998 no members of the civilian leadership attended any meeting involving the co-ordination of the MUP and the VJ, and Šainović was not consulted during this period about such matters.<sup>2811</sup> In sum, the Šainović Defence argues that he was not the Head of any Joint Command and did not, either through the Joint Command or directly, command, control, or in any other way exercise control over the VJ and the MUP, and other forces of the FRY and Serbia in Kosovo.<sup>2812</sup>

1048. The Ojdanić Defence argues that there is no evidence that the Joint Command existed to implement a plan to expel Kosovo Albanians from Kosovo, and that at most the evidence only shows that the Joint Command existed to co-ordinate legitimate VJ and MUP actions against the KLA. The VJ chain of command remained intact.<sup>2813</sup> The Ojdanić Defence points out that the Prosecution does not allege that he was a member of the Joint Command or ever participated in its meetings, if any even took place in 1999. Moreover, the Prosecution’s allegation that a Joint Command was needed to commit crimes indicates that Ojdanić would not permit the regular chains of command to be used for such purposes.<sup>2814</sup>

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<sup>2806</sup> Šainović Final Trial Brief, 29 July 2008 (public version), paras. 69, 175–187, 216–244.

<sup>2807</sup> Šainović Final Trial Brief, 29 July 2008 (public version), paras. 68–85.

<sup>2808</sup> Šainović Final Trial Brief, 29 July 2008 (public version), paras. 75, 79, 85, 87–93, 570–594, 655–665, 713–722, 732, 743–755, 757–760, 765, 905.

<sup>2809</sup> Šainović Final Trial Brief, 29 July 2008 (public version), paras. 91, 220, 237, 147–174, 907.

<sup>2810</sup> Šainović Final Trial Brief, 29 July 2008 (public version), paras. 94–102.

<sup>2811</sup> Šainović Final Trial Brief, 29 July 2008 (public version), paras. 648–654.

<sup>2812</sup> Šainović Final Trial Brief, 29 July 2008 (public version), paras. 147–174, 907.

<sup>2813</sup> Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 55–60.

<sup>2814</sup> Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 208–214.

1049. The Pavković Defence does not contest the existence of an entity known as the “Joint Command”, but argues that the body did not command the VJ or MUP forces. Rather, Joint Command meetings served as a means of co-ordinating the actions of these entities.<sup>2815</sup> After the beginning of the Joint Command meetings, the VJ chain of command remained intact, and the General Staff and 3<sup>rd</sup> Army had complete control of the actions of the VJ in Kosovo.<sup>2816</sup> The Pavković Defence points to the absence of evidence that normally would have been generated (*e.g.*, no Joint Command stamp or seal, no order creating the Joint Command or its structure, no order appointing a commander of the Joint Command) in support of this position.<sup>2817</sup> Finally, the Pavković Defence points to certain unusual features of the Joint Command orders and decisions issued in 1999.<sup>2818</sup>

1050. The Lazarević Defence argues that co-operation between the MUP and VJ existed even before political representatives from Serbia and the FRY arrived in Kosovo and started to attend the meetings of the Joint Command, which was not a decision-making body but rather a forum for the exchange of information on the current security situation. The “decisions” mentioned at Joint Command meetings were those already made by the superiors of Pavković and Lukić. No decisions were made at the meetings or by the Joint Command, and the chains of command of the MUP and VJ remained intact. Lazarević only attended five of the 70 meetings of the Joint Command, and played no role in it; he spent most of his time in 1998 at the Forward Command Post in Đakovica/Gjakova, rather than Priština/Prishtina where the Joint Command meetings were held. The Joint Command had neither a command post nor a regular information system through operational and combat reports.<sup>2819</sup>

1051. The Lazarević Defence also argues that in 1999 the Joint Command did not exist and, even if it did, it neither had command authority nor issued orders to the MUP and VJ resulting in the crimes alleged in the Indictment. The presence of the phrase “Joint Command for Kosovo and Metohija” on VJ orders in 1999 was nothing more than an indication that the operation was to be one jointly carried out by the MUP and VJ: it did not literally mean that there was a Joint Command ordering anyone to do anything.<sup>2820</sup> Finally, the Lazarević Defence argues that Lazarević’s request to be relieved of duty in 2001, based upon the unprecedented subordination of

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<sup>2815</sup> Pavković Final Trial Brief, 28 July 2008 (public version), paras. 242–243, 257–261.

<sup>2816</sup> Pavković Final Trial Brief, 28 July 2008 (public version), paras. 247–256.

<sup>2817</sup> Pavković Final Trial Brief, 28 July 2008 (public version), para. 262.

<sup>2818</sup> Pavković Final Trial Brief, 28 July 2008 (public version), para. 263.

<sup>2819</sup> Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 522–541.

<sup>2820</sup> Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 808–842.

the 3<sup>rd</sup> Army to the “Temporary Joint Command”, goes to show that a Joint Command had never previously existed.<sup>2821</sup>

1052. The Lukić Defence argues in turn that the Joint Command was a legitimate effort by the MUP and the VJ to exchange information, rather than a command derogating authority from existing structures within the MUP and the VJ. The term “Joint Command” was VJ shorthand to describe army-police co-ordination prior to resubordination. No orders or communications from the Joint Command to the MUP exist, and the entity ceased to exist after 1998. Lukić’s role in the MUP vis-à-vis the Joint Command was no more authoritative than his role as “MUP staff manager,” a messenger relaying information.<sup>2822</sup>

1053. Given these various explanations put forward by the parties, and the importance of this contentious issue, the Chamber must determine whether a body known as the Joint Command existed, and whether it exercised *de facto* command authority over units of the VJ and MUP, and other armed forces operating in Kosovo, in both 1998 and 1999.

1054. As a preliminary matter, the Chamber recognises that civilian involvement in meetings with military and police leaders during a time of war or emergency is a generally appropriate activity and that there is not necessarily anything inherently suspicious about the nature of the meetings referred to as the Joint Command. On the other hand, there was a remarkable degree of hypersensitivity by many witnesses called during the case to the suggestion that Joint Command meetings took place or that meetings that did take place were those of an entity designated as “Joint Command”. The Chamber will endeavour to lift the shroud of mystery that some have tried to cast upon the Joint Command during this trial.

*i. Joint Command in 1998*

(A) Joint Command meetings

1055. From July 1998 Šainović and the members of the SPS Working Group—Minić, Matković, and Anđelković—met almost daily in Priština/Prishtina with representatives from various organs,

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<sup>2821</sup> Lazarević Final Trial Brief, 29 July 2008 (public version), para. 843; 5D475 (Request to relieve 3<sup>rd</sup> Army Commander of his duty, 12 March 2001).

<sup>2822</sup> Lukić Final Trial Brief, 7 August 2008 (public version), paras. 786–799.



including joint meetings with the VJ and the MUP.<sup>2823</sup> The daily meetings with VJ and MUP representatives were referred to as meetings of the “Joint Command”.<sup>2824</sup>

1056. The members of the Working Group testified that, before deciding to have daily meetings at the Temporary Executive Council, they had been speaking to each other over the phone and holding sporadic meetings, but as KLA attacks intensified the need for communication and exchange of information also increased.<sup>2825</sup> Matković testified that, when they arrived in Kosovo, they realised that the situation was “exceptionally serious”: they were receiving information every day about roads being blocked, houses being attacked, rapes and murders being committed, and factories being put out of operation.<sup>2826</sup> Matković and Minić explained that one of the first problems they faced was linked to the Belačevac mine: it had been attacked by the KLA and some of the workers had been abducted. They asked Generals Đorđević and Lukić of the MUP and Pavković of the VJ for their assistance to solve this problem.<sup>2827</sup> Minić further stated that there was “a need for [the members of the Working Group] to meet more frequently with the representatives of the army and police, to exchange information”, as the army and the police “had a lot of understanding” for the problems the Working Group faced.<sup>2828</sup> The meetings therefore became daily meetings and were held in the building that had housed the Kosovo Assembly, and would later house the Temporary Executive Council. It became established practice for the participants to gather around 7.30 p.m. to watch the Serbian TV evening news and then exchange information.<sup>2829</sup> At one point in his testimony Anđelković suggested that Minić initiated some of these meetings, but later insisted that neither Minić nor any one person organised the co-ordination meetings, which took place only as the situation required.<sup>2830</sup> The Chamber, however, finds it difficult to accept Matković, Minić, and Anđelković’s claims not to know or to be able to explain exactly how these meetings came about.

1057. The members of the Working Group referred to these meetings as “meeting with the army and police”, or “meetings with security forces”, insisting that no formal name was attached to them

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<sup>2823</sup> Duško Matković, T. 14644–14645 (30 August 2007), P2913 (witness statement dated 10 February 2003), p. 9.

<sup>2824</sup> P1468 (Notes of the Joint Command). *See generally* Second Order re Exhibits P1468 and IC199, 13 June 2008 (admitting exhibit IC199 as a supplement to the illegible portions of exhibit P1468).

<sup>2825</sup> Duško Matković, T. 14644–14645 (30 August 2007); Milomir Minić, T. 14748 (31 August 2007).

<sup>2826</sup> Duško Matković, T. 14644 (30 August 2007), P2913 (witness statement dated 10 February 2003), p. 9.

<sup>2827</sup> Duško Matković, T. 14643 (30 August 2007), P2913 (witness statement dated 10 February 2003), p. 8 (Matković explained that “[t]he villagers were frightened and they requested the action of the Army and the Police to protect them”); Milomir Minić, T. 14747–14748 (31 August 2007).

<sup>2828</sup> Milomir Minić, T. 14748 (31 August 2007).

<sup>2829</sup> Duško Matković, T. 14644 (30 August 2007); Zoran Anđelković, T. 14656 (30 August 2007); Milomir Minić, T. 14748 (31 August 2007).

<sup>2830</sup> Zoran Anđelković, T. 14686 (30 August 2007).

or to the body of representatives who attended.<sup>2831</sup> While Matković and Minić conceded that they had heard the term “Joint Command” being used to describe the daily meetings in Priština/Prishtina, they maintained that it was used very rarely and only by military and police personnel.<sup>2832</sup> Whereas Matković and Anđelković categorically denied that a body known as the “Joint Command” existed,<sup>2833</sup> Minić did not reject its existence outright, but testified that the members of the Working Group, as well as Šainović, were never part of any Joint Command in Kosovo in 1998.<sup>2834</sup> Đaković also testified that Minić, Šainović, Lukić, and Pavković never referred to the group who attended the meetings as the “Joint Command”.<sup>2835</sup> However, his handwritten notes of the meetings held in Priština/Prishtina between 22 July and 30 October 1998 (“Notes”) demonstrate that these daily meetings were referred to as “meetings of the Joint Command”.<sup>2836</sup>

1058. Đaković testified that the Notes were “a copy of a notebook that [he] kept when [he] went to attend meetings with the MUP organs”.<sup>2837</sup> The Notes are entitled “Meetings of the Joint Command for Kosovo and Metohija”. On 22 July 1998, the day after Pavković had returned from a visit to Belgrade, Pavković came to him and invited him to “this meeting in the MUP”. Đaković asked what he was to do at the meeting, and Pavković responded that he did not want to “be there alone” and told him to bring a notebook and write down everything he might need.<sup>2838</sup> Đaković testified that the Notes were taken exclusively by him until 21 October 1998, when he gave his notebook to his assistant, Ratko Tešević, who continued taking notes thereafter.<sup>2839</sup>

1059. According to the Notes, those that regularly attended meetings from July to October 1998 were Đaković; Minić; Šainović; Anđelković; Matković; Pavković; Lukić; Deputy Minister of

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<sup>2831</sup> Duško Matković, T. 14614–14615 (29 August 2007); Zoran Anđelković, T. 14684 (30 August 2007); Milomir Minić, T. 14756 (31 August 2007).

<sup>2832</sup> Duško Matković, T. 14628–14632 (30 August 2007); Milomir Minić, T. 14755 (31 August 2007). Later in his testimony, Minić contradicted his earlier assertion that he heard Pavković and Lukić use the term “Joint Command” in 1998. He instead maintained that he might have seen it written, but had never heard the term used. Milomir Minić, T. 14774–14778 (31 August 2007). *See also* Velimir Obradović, T. 17414–17417 (22 October 2007) (stating that the term was used colloquially, but that it had a somewhat pejorative connotation among military personnel).

<sup>2833</sup> Duško Matković, T. 14614–14615 (29 August 2007), P2913 (witness statement dated 10 February 2003), p. 10; Zoran Anđelković, T. 14662–14663 (30 August 2007).

<sup>2834</sup> Milomir Minić, T. 14780 (31 August 2007).

<sup>2835</sup> Milan Đaković, T. 26445 (20 May 2008).

<sup>2836</sup> P1468 (Notes of the Joint Command); *see* Second Order re Exhibits P1468 and IC199, 13 June 2008.

<sup>2837</sup> Milan Đaković, T. 26366 (19 May 2008); *see* Second Order re Exhibits P1468 and IC199, 13 June 2008, para. 2 (stating that “the parties jointly submit (a) that exhibit P1468 is a copy of a notebook containing handwritten notes written by Milan Đaković during meetings he attended between July and October 1998 and (b) that Đaković confirmed that he was the author of the entries in P1468 up until 21 October 1998”).

<sup>2838</sup> Milan Đaković, T. 26373 (19 May 2008).

<sup>2839</sup> Milan Đaković, T. 26366 (19 May 2008).

Interior, Vlastimir Đorđević; and Assistant Chief of State Security (RDB), David Gajić.<sup>2840</sup> Occasional appearances were also made by Samardžić, Stevanović, Stanišić, and Lazarević, among others.<sup>2841</sup> The Notes suggest that Minić and Šainović played a leadership role, overseeing the meetings and frequently directing the group.<sup>2842</sup> Đaković testified about why he titled the Notes “Joint Command” and what that term signified. He was not explicitly told at the time of the first meeting that it was a meeting of the Joint Command. However, he entered the title for the first meeting the day after he attended, after asking Pavković how to refer to it. He was told to do it in the same way as he had done until then. Because he had already been using the term Joint Command in relation to co-operation between the army and the MUP, he used it again. Indeed, as explained above, the first time Đaković used the term Joint Command was for the order issued on 6 July 1998, which regulated the relationship between the MUP and the VJ during a combat operation. He also stated that the term “Joint Command” was used before any of the political organs came to Kosovo and began to be involved.<sup>2843</sup>

1060. At the meetings he attended, Đaković noted down “things that [he] thought would provide [him] with some information and data that would assist [him] in the performance of [his] duty at [his] post since in the command [he] was in charge of implementing the coordination with the ... various entities in the field.” He recorded mostly “questions or issues that related to the security, brief reports by Generals Pavković and Lukić regarding the situation in the units of the Priština Corps and the units of the Ministry of the Interior, and comments made by other participants in the meeting[s]”. He stated that he was rather selective in what he wrote down, except when it came to data obtained from the RDB.<sup>2844</sup> On cross-examination by the Prosecution, Đaković stated that he never reviewed the Notes and never asked speakers to clarify anything, although sometimes he asked a speaker to repeat something when he was not sure whether he had heard it correctly.<sup>2845</sup> In response to questioning by the Chamber, Đaković testified that “there [was not] half as much written down as was actually said on [the] political topics.”<sup>2846</sup> Shortly after Đaković gave the notebook to Tešević to continue taking notes at the meetings, an order was issued to set up archives

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<sup>2840</sup> P1468 (Notes of the Joint Command). It is noted in the Minutes if any one of these attendees was absent, and in one case on 23 July 1998 states “all members present”, suggesting a core membership consisting of those listed. *See also* Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 532–533; Ljubinko Cvetić, T. 8077 (7 December 2006); Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 78; Velimir Obradović, T. 17403 (22 October 2007) (testifying that Minić, Šainović, a representative of the MUP, and an operations man from the PrK were all present).

<sup>2841</sup> P1468 (Notes of the Joint Command); *see* Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 532–533.

<sup>2842</sup> *See* P1468 (Notes of the Joint Command).

<sup>2843</sup> Milan Đaković, T. 26378–26381 (19 May 2008), 26443–26444 (20 May 2008).

<sup>2844</sup> Milan Đaković, T. 26372–26375 (19 May 2008).

<sup>2845</sup> Milan Đaković, T. 26425–26426 (19 May 2008).

<sup>2846</sup> Milan Đaković, T. 26483–26484 (20 May 2008).

containing all the documents related to combat operations in 1998. Đaković therefore ordered Tešević to put the notebook in the archives, and never saw the original notebook again.<sup>2847</sup>

1061. Although the parties have stipulated (a) that exhibit P1468 is a copy of a notebook containing handwritten notes written by Milan Đaković during meetings he attended between July and October 1998 and (b) that Đaković confirmed that he was the author of the entries in P1468 up until 21 October 1998,<sup>2848</sup> the Šainović Defence argues in its final brief that the Notes are an unreliable source of information for what was said at the meetings.<sup>2849</sup> There was significant litigation over the admission of the Notes into evidence, and the Chamber had already found that they bore sufficient indicia of reliability for admission, even before Đaković appeared to give evidence about how they were generated.<sup>2850</sup> Therefore, the question is how much weight the Chamber should ascribe to them.

1062. Because the Notes are not official minutes of Joint Command meetings, but rather notes of one of the attendees, they are not a comprehensive record of everything the participants discussed, and do not represent a complete picture of that body. Đaković testified that he recorded as much as possible on security issues and that he mainly took notes of things that were likely to be of relevance to his work. He therefore did not often include the political comments: he described himself as being selective in what he wrote down and said that, as he was not familiar with the political terminology, he may have tried to “translate it into military-speak.”<sup>2851</sup> The Notes include updates on political negotiations and other developments, but the main focus was upon the military and police operations involving the implementation of the Plan. The Chamber finds that the Notes—although not a *verbatim*, comprehensive record—may be regarded as a fairly reliable record of parts of the meetings of the Joint Command, particularly for the activities of the MUP and VJ and comments made upon the VJ and MUP’s activities, including by the non-VJ and MUP personnel attending.

1063. The content of the Notes has been corroborated through other documents in evidence. For example, it appears from the Notes that the engagement of VJ units in support of MUP forces near the villages of Slup/Sllup and Vokša/Voksh was discussed during a Joint Command meeting held on 13 August 1998. This is confirmed by the fact that on 14 August 1998 the Priština Corps

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<sup>2847</sup> Milan Đaković, T. 26366–26368 (19 May 2008).

<sup>2848</sup> Second Order re Exhibits P1468 and IC199, 13 June 2008, para. 2.

<sup>2849</sup> Šainović Final Trial Brief, 29 July 2008 (public version), paras. 189–204.

<sup>2850</sup> Decision on Admission of Exhibits P1000, P1249, P1418, P1460, P1468, P1503, P1898, P1966, P1967, P2031, P2113, and P2166, 15 February 2007; Decision on Šainović Motions re Exhibit P1468, 21 November 2007; Decision on Šainović Second Motion for Admission of Documentary Evidence from Bar Table, 28 November 2007.

<sup>2851</sup> Milan Đaković, T. 26375 (19 May 2008).

Command issued a decision in which it instructed its subordinate units to engage in a joint operation in the sector of the Slup and Vokša villages as discussed above.<sup>2852</sup> Another example is a report dated 22 September 1998, from the Priština Corps Command to the 3<sup>rd</sup> Army Commander, stating that at a meeting in Belgrade on 31 August 1998, presided over by the FRY President, a plan for implementing stage five of the fight against terrorism in Kosovo was agreed upon. In the report Pavković conveyed that, subsequent to a discussion at the 10 September 1998 meeting of the Joint Command, where it was reported that certain tasks pursuant to phase five of the Plan had not been completed, a decision was taken by the Joint Command to submit a request for these tasks to be carried out, namely the formation of rapid intervention helicopter units and the mobilisation of two battle groups to Kosovo.<sup>2853</sup> In the Notes, albeit on 11 September 1998, not 10 September, Pavković reported that “we shall renew our request for ‘BG’ and ‘units’” again appearing to corroborate the contents of the notebook.<sup>2854</sup> There are other similar instances.<sup>2855</sup>

1064. During Đaković’s oral testimony, the Prosecution proposed that he be asked to clarify certain illegible portions of the Notes. The Chamber heard from the parties upon the most efficient manner for this to be done, due to the large number of illegible portions that had been raised by the Šainović Defence. The solution devised was for Đaković, overnight, to examine several illegible portions specifically identified by the parties, and write clearly in a new document what he had written in the Notes. The Chamber made it clear that it was interested in getting as much clarification as possible, but that it was simply not practical to have all the portions identified by the Šainović Defence addressed individually.<sup>2856</sup> After this solution had been fashioned in consultation with the parties, Counsel for Šainović stated as follows:

As you know, there are over 1,600 mistakes in the document that we wrote in translation, should it remain in with that many—that many translations in the document or not. I really don’t have a problem with that, but they are mistakes, so it’s up to you whether that will be corrected. I mean, I don’t want to insist. I don’t want to extend the trial. This was written in November, and now it’s already May, but you are going to have of an incomplete document, and that worries me because really, every one of the mistakes I pointed out is really there, and it is for you to decide now, and I won’t object.<sup>2857</sup>

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<sup>2852</sup> Compare P1428 (PrK decision, 14 August 1998), with P1468 (Notes of the Joint Command), pp. 52, 54. With respect to the villages named in the action, the English translation of the Notes reads “Vonsa and Stanpo”; however, Lazarević read the relevant excerpt from the BCS version as “Vokša and Slup”. Vladimir Lazarević, T. 18298 (14 November 2007).

<sup>2853</sup> P1435 (Report of realization of 5<sup>th</sup> phase of plan of fight against terrorism, 22 September 1998), p. 2.

<sup>2854</sup> P1468 (Notes of the Joint Command), pp. 102–104.

<sup>2855</sup> Compare P1468 (Notes of the Joint Command), p. 94, with 4D230 (3<sup>rd</sup> Army to PrK, Denial of request for use of helicopters, 12 September 1998). Compare P1468 (Notes of the Joint Command), p. 124, with P1439 (Reply from the PrK Command to the 3<sup>rd</sup> Army Command, 5 October 1998).

<sup>2856</sup> T. 26476–26477, 26511–26512 (20 May 2008), T. 26531 (21 May 2008).

<sup>2857</sup> T. 26511 (20 May 2008).

Following this, the Šainović Defence did not insist upon its objections to the illegible portions of the Notes and even agreed for the corrections to be admitted into evidence and to form an integral part of the exhibit.<sup>2858</sup> Despite this position, the Šainović Defence, in its final brief, resurrects its 1,572 objections to the exhibit and complains that the Chamber did not demand from Đaković that he clarify all these portions.<sup>2859</sup> Based on the foregoing, the Chamber considers that any further objections in respect of this matter have thus been waived because it was open to the Šainović Defence during Đaković's evidence to clarify any portions of particular concern, and no particular entry relied upon by the Prosecution has been identified by the Šainović Defence. Nevertheless, the Chamber has taken into account in its deliberations the fact that portions of the Notes are illegible, and has weighed the evidence as a whole in this matter in drawing conclusions from the Notes. Even if the Chamber had considered the objections to be valid, it would have proceeded in the same manner and reached the same result.

#### (B) Nature of the Joint Command

1065. All the members of the Working Group maintained that their daily meetings in Priština/Prishtina were of an informal nature: no minutes were kept, no decisions were made, the participants were often different, and no subordinate relationship existed either among the participants or in relation to other state organs.<sup>2860</sup> Matković testified that the Joint Command meetings were “devoted to information and co-ordination of activities to bring life back to normal”.<sup>2861</sup> Anđelković also explained that the members of the Working Group had been appointed and dispatched to Kosovo “to help stabilise the political situation in Kosovo above all”.<sup>2862</sup> According to Matković, the meetings were “simply daily political meetings with Šainović, the Police and the Army”. They were “more of an informative character”. He added that these meetings were “an excellent opportunity to inform the Army and the Police ...[of] what [he] had seen and heard” from the civilian population. Moreover, Matković was interested in receiving information from the police and the army on the matters and security issues that affected “the factories and the things that [he] had responsibility for”.<sup>2863</sup> Minić corroborated Matković's

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<sup>2858</sup> Second Order re Exhibits P1468 and IC199, 13 June 2008, para. 2 (stating that “the parties jointly submit (a) that exhibit P1468 is a copy of a notebook containing handwritten notes written by Milan Đaković during meetings he attended between July and October 1998 and (b) that Đaković confirmed that he was the author of the entries in P1468 up until 21 October 1998”).

<sup>2859</sup> Šainović Final Trial Brief, 29 July 2008 (public version), para. 204.

<sup>2860</sup> Duško Matković, T. 14588 (29 August 2007), P2913 (witness statement dated 10 February 2003), p. 10; Zoran Anđelković, T. 14687–14690 (30 August 2007); Milomir Minić, T. 14749–14752 (31 August 2007).

<sup>2861</sup> Duško Matković, T. 14588, T. 14644–14645 (30 August 2007) (according to Matković, the goal of the Working Group was “to bring life back to normal”), P2913 (witness statement dated 10 February 2003), p. 9 (the members of the Working Group met “to exchange information between the relevant participants”).

<sup>2862</sup> Zoran Anđelković, T. 14687 (30 August 2007).

<sup>2863</sup> P2913 (witness statement dated 10 February 2003), pp. 10–12.

testimony by stating that the Joint Command meetings were “informational”: these meetings were useful, as on the one hand the members of the Working Group received information from the MUP and the VJ, and on the other hand members of the VJ and the MUP received information from the members of the Working Group “about how the people felt”.<sup>2864</sup> Matković also stressed that the Joint Command meetings “did not have the power of final decision, which would be mandatory for someone to act upon”.<sup>2865</sup>

1066. Matković explained that after the daily meetings he did not send any reports to Belgrade. Nor was he in contact with any of the political leadership whilst in Kosovo. The Working Group did not send any written reports to Belgrade either. He remembered that the members of the Working Group contacted Milošević two or three times, but only when the situation was very important. In his view, the meetings “had a positive role in getting actions done”.<sup>2866</sup>

1067. Đaković testified that the Joint Command meetings were usually held at the Temporary Executive Council buildings, but that the first one he attended was at the MUP building. About 35 to 60 percent of the time at the meetings was devoted to security issues and the remainder to briefings by Pavković and Lukić on what VJ and MUP units had done that day. The political participants would then speak about different aspects within their remit: Šainović discussed foreign policy, Minić local authorities, Anđelković civilian protection units, and Matković the economy. Đaković’s explanation of these meetings was that they were primarily for the exchange of information, with a view to co-ordinating activities of the MUP and the VJ.<sup>2867</sup> The meetings also allowed him to obtain information from the RDB, which had been difficult to do before the meetings were held.<sup>2868</sup> Đaković stressed during his testimony in court that he had gone through the Notes again and found that they did not contain any references to any decisions or orders adopted by the Joint Command. He explained that the only orders mentioned in the Notes were orders referred to by Lukić and Pavković: these orders, according to him, had already been approved by their superiors.<sup>2869</sup>

1068. The former Head of the Priština Corps security department, Momir Stojanović, confirmed that daily meetings of the Joint Command were occurring in 1998, but stated that he personally never attended any of them. He admitted to having been given information on these meetings by

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<sup>2864</sup> Milomir Minić, T. 14749 (31 August 2007). Minić also said that, during the meetings, they “only exchanged information”.

<sup>2865</sup> P2913 (witness statement dated 10 February 2003), p. 10.

<sup>2866</sup> P2913 (witness statement dated 10 February 2003), pp. 10–11.

<sup>2867</sup> Milan Đaković, T. 26380, 26383 (19 May 2008).

<sup>2868</sup> Milan Đaković, T. 26375 (19 May 2008); Milomir Minić, T. 14750–14751 (31 August 2007).

<sup>2869</sup> Milan Đaković, T. 26379–26380 (19 May 2008).

Đaković. However, despite Aleksandar Vasiljević's testimony to the contrary, Stojanović denied having reported on Joint Command meetings to Aleksandar Dimitrijević.<sup>2870</sup> Dimitrijević testified that Stojanović told him that informal evening meetings took place in Priština/Prishtina between the Priština Corp Command and certain civilians during the evening news. Stojanović, who did not attend the meetings, also told him that those attending included Šainović, Matković, Anđelković, Minić, and Pavković.<sup>2871</sup> Dimitrijević got the impression that the meetings were about "some kind of a coordination", and he assumed this would be between the MUP and the military.<sup>2872</sup> No reports of these meetings were ever submitted to the VJ Security Administration.<sup>2873</sup>

1069. Branko Gajić testified that Dimitrijević conveyed to him, around the end of June or beginning of July 1998, that the Joint Command was a type of co-ordinating body. Gajić further testified that Šainović and Minić had been specifically sent to Kosovo to co-ordinate certain political and economic activities and to co-ordinate activities between the VJ and the MUP in the struggle against terrorism.<sup>2874</sup> This testimony fits with Dimitrijević's assertion that he was originally told by Stojanović that co-ordination meetings were taking place in Priština/Prishtina.<sup>2875</sup> However, on cross-examination by the Šainović Defence, Gajić shifted his position on the Joint Command, stating that that Dimitrijević had never used the words "Joint Command" and that, prior to his preparations to testify, he had never heard the term. He also concurred with the Šainović Defence that there was no interference with the command of the MUP or VJ in the meetings at issue.<sup>2876</sup>

1070. Velimir Obradović, former Head of the Cabinet of the 3<sup>rd</sup> Army Command, also testified that he attended one of the Joint Command meetings in July 1998, and that Minić opened and closed the meeting and took requests, including one from Pavković insisting on special equipment and bullet-proof vests. This gave the appearance of a civilian role in the administration of army resources.<sup>2877</sup> Obradović also maintained that all Šainović did at the meeting was listen so that he could pass information on to other people.<sup>2878</sup>

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<sup>2870</sup> Momir Stojanović, T. 20047–20048, 20053, 20055 (11 December 2007).

<sup>2871</sup> Aleksandar Dimitrijević, T. 26619–26620 (8 July 2008).

<sup>2872</sup> Aleksandar Dimitrijević, T. 26620 (8 July 2008). The Chamber clarified with the witness that he meant to say both that he assumed the purpose of the meetings was coordination with the MUP, and that the MUP was not regularly represented.

<sup>2873</sup> Aleksandar Dimitrijević, T. 26621 (8 July 2008).

<sup>2874</sup> Branko Gajić, T. 15412 (11 September 2007).

<sup>2875</sup> Aleksandar Dimitrijević, T. 26619–26620 (8 July 2008).

<sup>2876</sup> Branko Gajić, T. 15439–15446 (12 September 2007).

<sup>2877</sup> Velimir Obradović, T. 17403 (22 October 2007).

<sup>2878</sup> Velimir Obradović, T. 17420–17421 (22 October 2007).



1071. There is evidence that a body known as the Joint Command was established rather than materialising spontaneously. Ljubinko Cvetić, formerly Head of the Kosovska Mitrovica SUP, testified that, at a meeting of the MUP Staff in Priština/Prishtina on 10 July 1998, all the heads of SUPs from Kosovo were informed that a command had been set up at the highest level with a mandate to integrate the activities of the army and police in the implementation of anti-terrorist operations.<sup>2879</sup> Cvetić further testified that, in a meeting held at the Priština MUP conference hall on 22 July 1998, Đorđević reiterated that the establishment of the “Joint Command” comprised Šainović, Matković, Minić, Lukić, Pavković, Anđelković, and Gajić.<sup>2880</sup> As for the various roles of the participants, he gave as an example that Matković was entrusted with economic activities, whereas Šainović was entrusted with the co-ordination of the military and the police.<sup>2881</sup> However, Miroslav Mijatović, Deputy Head of the MUP Staff; Radovan Vučurević, a member of the MUP Staff; and Duško Adamović, Lukić’s assistant, all rejected Cvetić’s testimony and stated that the prospect of establishing a Joint Command was not discussed at the 22 July meeting, nor was Šainović the head of any such body.<sup>2882</sup> The minutes of a meeting of senior MUP personnel held at the MUP Staff in Priština/Prishtina on that date were presented at trial.<sup>2883</sup> This document is incomplete and therefore does not enable the Chamber to resolve the dispute. However, it is particularly significant that the very first meeting recorded in the Notes is a meeting of the Joint Command on 22 July 1998.<sup>2884</sup> Although Đaković was adamant that, if a command had been created at the meeting, he would have made a note of it,<sup>2885</sup> that seems to the Chamber to be beside the point since the evidence of Cvetić is of the earlier creation of the body and confirmation thereof at the MUP meeting of 22 July.

1072. Zlatomir Pešić, commander of the Priština Military District, stated that he knew that the Joint Command was set up in 1998 to co-ordinate the VJ and the MUP. Pešić was aware of Pavković, Lazarević, and Stojanović attending such meetings.<sup>2886</sup> The Trial Chamber observes, however, that the Notes do not indicate the presence of Momir Stojanović at any of the meetings from July to October 1998. In fact, it is unclear from Pešić’s evidence whether the meetings in which Pavković, Lazarević, and Momir Stojanović participated were the Joint Command meetings held at the Temporary Executive Council or the co-ordination meetings held between

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<sup>2879</sup> Ljubinko Cvetić, T. 8051–8052 (7 December 2006).

<sup>2880</sup> Ljubinko Cvetić, T. 8077 (7 December 2006), 8123 (8 December 2006).

<sup>2881</sup> Ljubinko Cvetić, T. 8124 (8 December 2006).

<sup>2882</sup> Miroslav Mijatović, T. 22284 (13 February 2008); Radovan Vučurević, T. 23130–23131 (25 February 2008); Duško Adamović, T. 24967–24968 (8 April 2008).

<sup>2883</sup> 6D798 (Minutes of the MUP Staff meeting, 22 July 1998).

<sup>2884</sup> P1468 (Notes of the Joint Command), p. 2.

<sup>2885</sup> Milan Đaković, T. 26413 (19 May 2008), T. 26539 (21 May 2008).

<sup>2886</sup> Zlatomir Pešić, P2502 (witness statement dated 30 January 2004), para. 32.

representatives of the VJ and the MUP to co-ordinate VJ and MUP activities during joint operations. Miodrag Simić testified that he first heard of the Joint Command when General Samardžić issued an order that Pavković attend the meetings and report back to Simić.<sup>2887</sup>

1073. A number of witnesses categorically denied that a body known as the Joint Command existed. Several Serbian and FRY politicians who gave evidence asserted not only that they were not aware of such a body, but also that there was no constitutional provision for its existence.<sup>2888</sup> In addition, many of the military personnel who testified asserted that there was no such institution in the organisational scheme of the VJ.<sup>2889</sup> The Chamber is not impressed by such reliance upon technical legality. This was not the only subject in the trial upon which such a stance was taken. The Chamber regards it as its duty to establish what happened in fact, having regard to all the relevant evidence bearing upon the realities of events on the ground and any applicable legal provisions. In this vein, it should be observed that Andreja Milosavljević testified that, although he had never heard of a body called the Joint Command, he did know about joint meetings with various state and political structure in the summer of 1998 in Kosovo.<sup>2890</sup> Lazarević also conceded that he attended at least four 1998 meetings in Priština/Prishtina with Pavković where members of the VJ and MUP, as well as some politicians and state officials, were present.<sup>2891</sup> According to Božidar Delić, members of the military and civilian leadership were in Kosovo, but not to co-ordinate joint actions between the MUP and the VJ; instead they were liaising, as government representatives, with international organisations and Kosovo self-government representatives.<sup>2892</sup> He also stated that he was in contact with Pavković on an almost daily basis in 1998, and that Pavković never mentioned a Joint Command.<sup>2893</sup> Some other VJ personnel did testify to having

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<sup>2887</sup> Miodrag Simić, T. 15683–15684 (14 September 2007); *see also* 4D91 (Dušan Samardžić's Order re Organisation of the work of the Army, 30 July 1998).

<sup>2888</sup> Momir Bulatović, T. 13856 (17 August 2007); Ratko Marković, T. 13424 (13 August 2007); Živadin Jovanović, T. 14069–14070 (20 August 2007); Veljko Odalović, T. 14417 (27 August 2007); Zoran Mijatović, T. 14569–14570 (29 August 2007).

<sup>2889</sup> Milorad Obradović, T. 15091, 15095–15096 (6 September 2007); Zlatoje Terzić, T. 15921 (19 September 2007); Milovan Vlajković, T. 16100–16101 (20 September 2007); Staniša Ivković, T. 16532, 16540–16542 (27 September 2007); Spasoje Smiljanić, T. 15782 (17 September 2007); Ljubomir Anđelković, T. 16431 (26 September 2007) (testifying that he heard the Joint Command being talked about, but later also stated that, if such a command had existed, he would have noticed it); Ljubiša Stojimirović, T. 17708–17710 (26 October 2007); Miloš Mandić, T. 20926–20929 (23 January 2008); Vladimir Marinković, T. 20298 (13 December 2007); Goran Jevtović, T. 20395 (16 January 2007); *cf.* Dragan Živanović, T. 20508 (17 January 2008) (seeking an explanation for the phrase when he first heard it because it was “illogical”); Božidar Delić, T. 19490 (4 December 2007) (testifying that, although he wrote orders for his subordinates based on those he had received from his commander, he “usually did not allow” the heading Joint Command to be used as it would be confusing for his officers); Milan Kotur, T. 20715 (21 January 2008); Radojko Stefanović, T. 21795–21796 (6 February 2008); Branko Krga, T. 16858 (4 October 1998). *See also* Andreja Milosavljević, T. 14377–14378 (24 August 2007).

<sup>2890</sup> Andreja Milosavljević, T. 14306–14307 (23 August 2007).

<sup>2891</sup> Vladimir Lazarević, T. 18139–18141 (12 November 2007), 18459–18464 (16 November 2007).

<sup>2892</sup> Božidar Delić, T. 19576–19577 (5 December 2007).

<sup>2893</sup> Božidar Delić, T. 19494 (4 December 2007).

heard about the Joint Command. However, due to the fact that it was not an established part of the chain of command, they expressed little concern regarding its implied command authority or its effect upon the singleness of command within the VJ.<sup>2894</sup> The Chamber, however, is unconvinced by this position among seasoned VJ officers and considers that they were being less than candid on this particular point.

1074. Miroslav Mijatović testified that he had heard the term “Joint Command” in 1998, and knew that Lukić was attending some kind of meetings in the evening. However, he never knew exactly what “Joint Command” meant and never encountered such a body himself, which is why he never interpreted those evening meetings as meetings of the Joint Command.<sup>2895</sup> He attended one of the meetings on 22 October 1998, but did not consider at the time that he was attending a meeting of the Joint Command.<sup>2896</sup>

1075. Several other MUP personnel, who were led by the Lukić Defence, stated that they did not hear of, or know anything about, the existence of a body called the Joint Command in 1998. Ljubivoje Joksić, Assistant Co-ordinator of the RDB in Kosovo during 1998, testified that meetings were occurring in 1998 between members of the MUP and the VJ, but these were no different from the regular co-operation and exchange of information between the army and public security that had always taken place. He attended some co-ordination meetings held at the Priština Corps

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<sup>2894</sup> Đorđe Ćurčin, T. 16972 (5 October 2007), 17043–17046 (16 October 2007); Slobodan Kosovac, T. 15870–15873 (18 September 2007); Tomislav Mladenović, T. 17600, 17603–17604 (25 October 2007); Momir Stojanović, T. 19765 (7 December 2007). Radovan Radinović conceded that it would not make sense for a senior VJ officer not to inquire into the meaning of the term unless they already knew what it signified. Radovan Radinović, T. 17332–17333 (19 October 2007). However, Dragan Živanović and Radojko Stefanović testified that they did, in fact, seek an explanation for the term Joint Command from the Corps Command the first time they heard it, and were told that it merely referred to co-ordination between the MUP and the VJ. Dragan Živanović, T. 20508 (17 January 2008); Radojko Stefanović, T. 21793–21794 (6 February 2008). Some VJ witnesses acknowledged having heard of a co-ordinating body in Kosovo, but emphasised the point that it was without any command authority over the VJ or MUP. Velimir Obradović stated that the Joint Command was a group of civilians who had arrived to ensure better co-operation between commands of the army and the command staff of the MUP, but that they did not have the competency of a command, nor any effective command powers. Velimir Obradović, T. 17417–17418 (22 October 2007). Momir Stojanović testified that the Joint Command was a co-ordinating body but did not take any decisions on the use of units of the PrK. Momir Stojanović, T. 19763 (7 December 2007). Tomislav Mladenović testified that, while it would have been far simpler to have a single command for the VJ and the MUP in Kosovo, co-ordination “on an equal footing” was what happened in practice. Tomislav Mladenović, T. 17616 (25 October 2007). He further stated that co-ordination took place at the operations level—primarily an information exchange—and that there was no need for a third party to supervise the process or co-ordinate actions for the VJ and the MUP. Tomislav Mladenović, T. 17603, 17621–17622 (25 October 2007). Božidar Delić likewise testified that, in his understanding, co-ordination occurred at the level of the PrK. Božidar Delić, T. 19496–19497 (4 December 2007). In contrast, Živanović testified that Đaković told him that co-ordination between the MUP and the VJ was “done at the highest level”, a phrase Živanović took to mean either that a body further up the hierarchy, or the Minister of the Interior and the Chief of the General Staff, were issuing orders to the MUP and the VJ. Dragan Živanović, T. 20513–20514 (17 January 2008). Đaković did not dispute that he may have used the phrase “at the highest level”, but maintained his position that the Joint Command was only the MUP Staff and the PrK Command. Milan Đaković, T. 26434–26435 (19 May 2008).

<sup>2895</sup> Miroslav Mijatović, T. 22408 (14 February 2008).

<sup>2896</sup> Miroslav Mijatović, T. 22232 (12 February 2008).

Command or the Priština SUP building,<sup>2897</sup> but the Notes of the Joint Command meetings in evidence do not indicate his presence at any of the meetings recorded there from July to October 1998. It appears that the meetings referred to by Joksić during his testimony were not the Joint Command meetings held at the Temporary Executive Council, but the co-ordination meetings held between representatives of the VJ and the MUP to co-ordinate VJ and MUP activities during joint operations.

1076. Also in evidence is an interview of Momir Stojanović in *Nedeljnji Telegraf* which reproduces an intelligence report addressed to the Joint Command. This report was dated 11 November 1998 and was signed by Stojanović. It contained a collection of information on the contemporaneous activities and strength of the KLA.<sup>2898</sup> Stojanović testified that, because the heading “To the Joint Command for Kosovo and Metohija” was in the centre of the page, it could be seen that the document was not sent to anyone: pursuant to rules for official army correspondence, the addressee had to be listed in the corner of the page.<sup>2899</sup> He stated that this was merely a collection of information given to an operations officer.<sup>2900</sup> Milan Đaković testified that all reports concerning the functioning of co-ordination would have gone through him. However, he did not address the issue of the recipient or purpose of this particular report.<sup>2901</sup> Nor did either explain why the heading referring to the Joint Command had been chosen.

1077. Other documents in evidence referring to the Joint Command include an issue of *Vojska* from 2001. The *Vojska* publication indicated that at the beginning of 1998 a “Handbook for the members of forces deployed in the area affected by sabotage-terrorist activities” had been published at the initiative of the General Staff. According to *Vojska*, this handbook was printed and distributed to the members of the VJ in July 1998 by “the Joint Command for Kosovo and Metohija”. The *Vojska* publication specifically indicated that the Joint Command filed the handbook as “document no. 1104-5” on 2 July 1998.<sup>2902</sup> The Chamber notes that the number 1104 was the log number of the Priština Corps Command in 1998.<sup>2903</sup> For instance, the 6 July 1998 order with a Joint Command heading issued by the Priština Corps Command bore the number

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<sup>2897</sup> Ljubivoje Joksić, T. 22007–22008 (8 February 2008).

<sup>2898</sup> P2945 (interview of Momir Stojanović in *Nedeljnji Telegraf*, 22 November 2000), pp. 10–11.

<sup>2899</sup> The term “Priština Corps Command” was indicated in the corner or the page.

<sup>2900</sup> Momir Stojanović, T. 20094 (12 December 2007).

<sup>2901</sup> Milan Đaković, T. 26428 (19 May 2008).

<sup>2902</sup> P1011 (Ivan Marković, ed., *The Application of Rules of the International Law of Armed Conflicts* (2001)), p. 49.

<sup>2903</sup> Vladimir Lazarević, T. 18638 (20 November 2007); Dragan Živanović, T. 20506 (17 January 2008); Božidar Delić, T. 19489 (4 December 2007).

1104-6.<sup>2904</sup> The minutes from a briefing on 7 August 1998, conducted by the commanders of the Priština Corps and the Priština Military District, also referred to the Joint Command.<sup>2905</sup> During the briefing, Đaković explained that the decision on eliminating the “terrorist” forces in the Glođane/Gllogjan village area was finalised. After Samardžić agreed that measures be taken to clear up the battlefield, Đaković explained that the Joint Command was reviewing the issue of “terrain clearing” with municipal organs.<sup>2906</sup>

(C) Authority of Joint Command over the MUP and VJ

1078. While it is clear from the evidence that meetings were held between members of the SPS Working Group, Šainović, and MUP and VJ officers between 22 July and 30 October 1998, and that these meetings were referred to as Joint Command meetings, the authority of the Joint Command over the MUP and VJ—in particular over the MUP and VJ units during combat operations—remains to be determined.

1079. The Notes indicate that at the meetings in 1998 updates and discussions on the Kosovo situation were held; specifically, oral reports were made on the status of KLA attacks and mobilisations, combat operations carried out by VJ and MUP units, and security and intelligence related issues.<sup>2907</sup> References to the Plan, in particular the development and implementation of each phase, were common to most meetings. The Notes show that early meeting agenda items contained references to the second phase of the Plan, such as developing the priorities of the second phase,<sup>2908</sup> planning for the realisation of the second phase,<sup>2909</sup> and an assessment of the Plan in its second phase.<sup>2910</sup> The planning and implementation of the third phase were likewise discussed between 29 July and 3 August 1998, involving detailed accounts of VJ and MUP engagements and locations.<sup>2911</sup> The Notes record that on 5 September 1998 Minić reported extensively on the fourth phase, stating that one by one the “terrorist” strongholds were to be taken, although this phase was to be further elaborated.<sup>2912</sup> On 21 October 1998 Šainović reported that, following a meeting with Wesley Clark of NATO, a plan was to be implemented for the withdrawal of VJ troops from the territory of Podujevo/Podujeva and withdrawal of police from the territory between

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<sup>2904</sup> See P2113 (Order of the 125<sup>th</sup> Motorised Brigade regarding a ban on operations without the knowledge and approval of the Joint Command, 7 July 1998), referring to the Order of the Joint Command of 6 July 1998. See also Milan Đaković, T. 26381 (19 May 2008).

<sup>2905</sup> 4D97 (Minutes of the briefing of the commanders of the PrK and 3<sup>rd</sup> Army, 7 August 1998).

<sup>2906</sup> 4D97 (Minutes of the briefing of the commanders of the PrK and 3<sup>rd</sup> Army, 7 August 1998).

<sup>2907</sup> See P1468 (Notes of the Joint Command).

<sup>2908</sup> P1468 (Notes of the Joint Command), p. 2.

<sup>2909</sup> P1468 (Notes of the Joint Command), p. 6.

<sup>2910</sup> P1468 (Notes of the Joint Command), p. 24.

<sup>2911</sup> P1468 (Notes of the Joint Command), pp. 24–41.

Mališevo/Malisheva and Suva Reka/Suhareka, signifying not a leaving of territory but a shift into peacetime conditions.<sup>2913</sup> On 26 October 1998 Šainović informed those present at the meeting that this stage of the operations was to be closed.<sup>2914</sup> Based on the whole content of the Notes, the Chamber is of the view that the Joint Command meetings were more than a daily flow of information, as there is no doubt that on occasions participating politicians stated what was to be done by the VJ and MUP.

1080. However, some evidence indicates that the proposals discussed at Joint Command meetings were contingent upon prior approval from VJ organs, and that requests made during Joint Command meetings were to be authorised by the VJ afterwards. The relevant part of an order sent by the 3<sup>rd</sup> Army on 31 July 1998 reads as follows:

The Commander of the Priština Corps, as a member of the Joint Command for Kosovo and Metohija shall attend all meetings; prior to going to meetings he shall acquaint the Army Chief of Staff with any possible requests, and he shall explain to him the proposals for the engagement of forces with reinforcements, and, following his consent, he shall go to the meeting.

After the meeting, the Commander of the Priština Corps shall report to the Army Chief of Staff on the proposals which have been accepted or any other subsequent requests which diverge from the proposal and he shall ask for permission relating to those requests. He shall also inform the Joint Command for Kosovo and Metohija of any decisions concerning these requests.<sup>2915</sup>

1081. Several witnesses testified to the relationship between the Joint Command, on the one hand, and the Priština Corps Command, the 3<sup>rd</sup> Army Command, and the other VJ organs, including the FRY President, on the other. Tomislav Mladenović confirmed that Pavković would attend Joint Command meetings after he had received approval from either Samardžić or Simić for a decision to lend support to MUP forces to co-ordinate with the MUP. If there was a need expressed by the MUP for further support, Pavković would go back to his commander with additional requests.<sup>2916</sup> Simić observed that the Corps Commander was duty-bound to report his ideas for unit engagements to the Forward Command Post in order to receive an approval, amendment, or denial, and that it was only with such an approved, amended, or denied decision that the Corps Commander could go to the Joint Command meetings.<sup>2917</sup> Simić explained that, if the Joint Command had any requests which were considerably different from the decision he initially approved, the Corps Commander would have to seek further approval. Thus, if Pavković asked for an amendment to an approved

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<sup>2912</sup> P1468 (Notes of the Joint Command), pp. 44–45.

<sup>2913</sup> P1468 (Notes of the Joint Command), pp. 151–153.

<sup>2914</sup> P1468 (Notes of the Joint Command), p. 161.

<sup>2915</sup> 4D91 (Dušan Samardžić's Order re Organisation of the Work of the Army, 30 July 1998).

<sup>2916</sup> Tomislav Mladenović, T. 17602, 17606, 17620 (25 October 2007).

<sup>2917</sup> Miodrag Simić, T. 15531–15532 (13 September 2007).

decision, it was up to Simić to say either yes or no, at which point Pavković would refer back to the Joint Command and inform it of the final decision.<sup>2918</sup> Đaković testified that approval was required if the MUP requested assistance from the VJ. As an example, he described an incident in which Lukić requested the use of a helicopter from Pavković in July 1998 to evacuate a pregnant woman and an injured police officer from Kosovo. Pavković had to consult the 3<sup>rd</sup> Army Commander. The request was turned down, which was accepted by Lukić, and Šainović made no comment or contribution to the exchange between Lukić and Pavković.<sup>2919</sup> Additionally, military expert Radovan Radinović testified that the VJ chain of command functioned as prescribed.<sup>2920</sup> Radomir Lukić, the constitutional law expert led by the Šainović Defence, responded to a question from the Chamber about the formation of the Joint Command by stating that, if it issued legally binding documents, then it would have needed a legal basis, but that even if it did not have a legal basis, it would have been an acceptable forum for meetings, consultations, and exchange of information among various organs of the government.<sup>2921</sup> Miroslav Mijatović confirmed that it was not possible for a body outside the structure of the MUP or the VJ to issue orders to units within those entities.<sup>2922</sup> In fact, a significant amount of evidence suggests that the formal command structures, as well as the reporting systems, of the VJ and MUP remained intact during the period of operation of the Joint Command.<sup>2923</sup>

1082. Several documents provide examples of requests being submitted by the Priština Corps Command to the 3<sup>rd</sup> Army Command following discussions held during Joint Command meetings. For example, on 6 September 1998 Šainović reported that an Mi-8—a type of helicopter—was to be painted in white with the red cross and used for access to civilians, and that a request was to be sent to the Command of the Air Force and Anti-Aircraft Defence.<sup>2924</sup> Pavković then sent a request to the 3<sup>rd</sup> Army Command to forward a request for a helicopter unit to the Air Force Command.<sup>2925</sup> On 12 September the 3<sup>rd</sup> Army Command responded, saying that the request had been forwarded to the General Staff, and that it had not been approved. In his response the 3<sup>rd</sup> Army Commander

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<sup>2918</sup> Miodrag Simić, T. 15532 (13 September 2007).

<sup>2919</sup> Milan Đaković, T. 26413–26414 (19 May 2008).

<sup>2920</sup> See Radovan Radinović, T. 17340 (19 October 2007) (alluding to “hundreds of documents” relating to the activities of the commanders of the 3<sup>rd</sup> Army and the PrK).

<sup>2921</sup> Radomir Lukić, T. 26277–26278 (15 May 2008); see also Michael Phillips, T. 11841 (19 March 2007); John Crosland, P2645 (witness statement dated 31 October 2006), para. 73, stating that it “made great sense to have such a body without which the coordination of joint operations would have been extremely problematic”.

<sup>2922</sup> Miroslav Mijatović, T. 22235 (12 February 2008).

<sup>2923</sup> 4D91 (Dušan Samardžić’s Order re Organisation of the Work of the Army, 30 July 1998); P1419 (Request from Pavković to the 3<sup>rd</sup> Army Command, 1 August 1998); Ljubinko Cvetić, T. 8123 (8 December 2006); Miodrag Simić, T. 15687 (14 September 2007).

<sup>2924</sup> P1468 (Notes of the Joint Command), p. 94.

explained that requests for the use of helicopters had to correctly specify several elements, such as “the mission to be carried out, the mission sector, the objective, for whose needs, the time and total number of sorties required”.<sup>2926</sup> At a meeting of the Joint Command on 13 September 1998 Pavković reported that the request for the helicopters had not been approved by either the 3<sup>rd</sup> Army or the General Staff.<sup>2927</sup> On 14 September Pavković issued another request, based on a second request made by the Joint Command during the meeting of 13 September. This time Pavković specified the various elements referred to in the 3<sup>rd</sup> Army response of 12 September. This demonstrates the effect of the requests made during the meetings of the Joint Command upon the decision adopted within the VJ. However, the Chamber notes that the request made during the Joint Command meetings of 6 and 13 September 1998 did not pertain to the engagement of VJ or MUP forces in combat operations; rather, it concerned the use of helicopters for humanitarian interventions.<sup>2928</sup>

1083. The Notes indicate that a specific joint operation was discussed during a Joint Command meeting on 13 August 1998. This operation was to be conducted in the sector of the Slup/Sllup and Vokša/Voksh villages.<sup>2929</sup> The Chamber notes that the plan for this operation was prepared by the Priština Corps Command as discussed above in Section VI.E.2: according to Đaković, Pavković informed Samardžić that a plan for the Slup/Sllup and Vokša/Voksh action had been prepared, but that he would not be able to come and explain it to him. Pavković then asked Đaković to bring the map containing the plan for this action to Samardžić to explain it to him. Đaković specified that he spent “an hour and a half explaining to [Samardžić] each element from the first paragraph to the last”. Samardžić was satisfied with the decision and approved it by signing it.<sup>2930</sup> During the 13 August 1998 Joint Command meeting, Pavković stated that the Chief of Staff (Lazarević) would command the action around Slup/Sllup and Vokša/Voksh, which could “commence almost

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<sup>2925</sup> See 4D230 (3<sup>rd</sup> Army to PrK, Denial of request for use of helicopters, 12 September 1998) (indicating that, on 6 September 1998, Pavković sent a request to the 3<sup>rd</sup> Army for the use of helicopters in combat operations, support missions, and humanitarian interventions).

<sup>2926</sup> 4D230 (3<sup>rd</sup> Army to PrK, Denial of request for use of helicopters, 12 September 1998).

<sup>2927</sup> P1468 (Notes of the Joint Command), pp. 108–109.

<sup>2928</sup> P1011 (Ivan Marković, ed., *The Application of Rules of the International Law of Armed Conflicts* (2001)), pp. 64–65. This request was reproduced and included in its entirety in this publication.

<sup>2929</sup> Compare P1428 (PrK decision, 14 August 1998), with P1468 (Notes of the Joint Command), pp. 52, 54. With respect to the villages named in the action, the English translation of the Notes reads “Vonsa and Stanpo”; however, Lazarević read the relevant excerpt from the BCS version as “Vokša and Slup”. Vladimir Lazarević, T. 18298 (14 November 2007).

<sup>2930</sup> Milan Đaković, T. 26458–26459 (20 May 2008). Lazarević testified that, before the PrK Command issued the decision of 14 August 1998, Samardžić approved the Slup and Vokša action. Vladimir Lazarević, T. 17796 (6 November 2007); T. 18331–18332 (15 November 2007). The regular report sent by the 3<sup>rd</sup> Army Command to the General Staff on 14 August 1998 also confirms that Samardžić approved the action. 5D1174 (3<sup>rd</sup> Army Combat Report to VJ General Staff, 14 August 1998).



immediately”.<sup>2931</sup> This statement suggests that the action was planned prior to the meeting of the Joint Command held on 13 August 1998. In fact, it appears that Pavković wished to inform the Joint Command of the joint operation during this meeting.

1084. A document from the Priština Corps Command to the 3<sup>rd</sup> Army Command dated 22 September 1998 demonstrates the link between a discussion held during a Joint Command meeting and a subsequent request submitted within the VJ.<sup>2932</sup> In this document Pavković informed the 3<sup>rd</sup> Army Commander that on 1 and 7 September 1998 he had already requested that the fifth stage of the Plan be implemented. He also noted that, at a meeting of the Joint Command on 10 September 1998, “other Command organs pointed out that the VJ had not carried out two of its duties under the Plan.”<sup>2933</sup> Consequently, the decision was taken to submit a request for stage five to be carried out. Pavković thus sent a written request to the 3<sup>rd</sup> Army Commander on 11 September 1998. Pavković also gave the 3<sup>rd</sup> Army Commander verbal notice of this decision immediately after the meeting and made suggestions as to how stage five should be implemented. The 3<sup>rd</sup> Army Commander responded to Pavković’s request by issuing three orders on 12, 15, and 18 September 1998. The 3<sup>rd</sup> Army Commander approved one of the suggested plans and made some modifications to the others.<sup>2934</sup> In the document of 22 September 1998 Pavković expressed his concerns regarding one of the plans: according to him, it was in jeopardy because of the changes made by the 3<sup>rd</sup> Army Command. He therefore submitted two suggestions in order to solve the issue. At the end of the document Pavković also stated that members of the Joint Command had been given the opportunity to report to Milošević that the VJ had not carried out its duties under the Plan.

1085. In a 5 October 1998 document sent to the 3<sup>rd</sup> Army Commander, Pavković explained that, during meetings of the Joint Command held on 19 and 20 September 1998,<sup>2935</sup> it had been decided to form rapid-intervention forces. He also stressed that the plan previously approved by the

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<sup>2931</sup> Compare P1428 (PrK decision, 14 August 1998), with P1468 (Notes of the Joint Command), pp. 52, 54. With respect to the villages named in the action, the English translation of the Notes reads “Vonsa and Stanpo”; however, Lazarević read the relevant excerpt from the BCS version as “Vokša and Slup”. Vladimir Lazarević, T. 18298 (14 November 2007).

<sup>2932</sup> P1435 (Report of realization of 5<sup>th</sup> phase of plan of fight against terrorism, 22 September 1998).

<sup>2933</sup> P1439 (Reply from the PrK Command to the 3<sup>rd</sup> Army Command, 5 October 1998), p. 2.

<sup>2934</sup> P1439 (Reply from the PrK Command to the 3<sup>rd</sup> Army Command, 5 October 1998). The 3<sup>rd</sup> Army Commander ordered the PrK Command to “review the effective strength of its formation and how they were engaged in Kosovo and Metohija and to explain the engagement of the two Combat Groups”.

<sup>2935</sup> P1439 (Reply from the PrK Command to the 3<sup>rd</sup> Army Command, 5 October 1998). The term “Joint Commission”, which appears in the English translation of the document, is the translator’s suggested expansion for the abbreviation, “ZK”. Radovan Radinović read the relevant passage aloud in court and translated the body as the “Joint Command.” Radovan Radinović, T. 17340–17342 (19 October 2007). The report states that, as stipulated by the “plan to smash the DTS on the territory of KiM”, when the DTS was smashed by MUP and VJ, rapid intervention forces were to be formed as ordered by the President.

President of the FRY envisaged the formation of such forces to be at full readiness. Pavković recalled that, on his return from the Joint Command meetings, he had informed the 3<sup>rd</sup> Army Commander personally by telephone about this decision. However, the 3<sup>rd</sup> Army Commander forbade the formation of rapid-intervention forces on 3 October 1998.<sup>2936</sup> It appears that the 3<sup>rd</sup> Army Commander instead ordered that new combat groups be formed. In his communication of 5 October 1998 Pavković specifically informed the 3<sup>rd</sup> Army Commander that, contrary to his order of 3 October 1998, the Priština Corps Command had not formed new combat groups and requested that Samardžić determine the composition of the intervention forces. The Notes record that at the 20 September meeting Šainović gave the instruction “to prepare units for faster interventions”, further establishing the reliability of the Notes.<sup>2937</sup> According to Radinović, Pavković did not necessarily overrule Samardžić’s order to create combat groups, but rather elaborated on the situation and raised the question again for Samardžić’s consideration.<sup>2938</sup> Vasiljević explained that, in light of this document, it appeared that “the Priština Corps had not formed these new combat groups yet”.<sup>2939</sup> It is unclear from the evidence what the response of the 3<sup>rd</sup> Army Command was to Pavković’s second request to have the rapid-intervention forces formed.

1086. Another instance of the tension between the Joint Command and the 3<sup>rd</sup> Army Command appears in a 1 August 1998 request sent by Pavković to the 3<sup>rd</sup> Army Forward Command Post for permission to launch the third phase of the Plan. He specified in his request that it had been decided at a meeting of the Joint Command held on 31 July 1998 to launch the third stage of the Plan on 2 August 1998.<sup>2940</sup> While the Notes do not clearly indicate whether such a decision had in fact been made on 31 July, the 30 July meeting indicated that the third stage of the plan would be realised through actions in Drenica and Jablanica. The Notes also reflect that, on 2 August 1998, Pavković reported that units had begun combat operations in those locations.<sup>2941</sup> However, Pavković’s request to the 3<sup>rd</sup> Army Command Post had in fact been denied by Samardžić, who issued an order on the same day forbidding the engagement of Priština Corps units pending the approval of the plan for the execution of the third phase of the Plan by himself and by the FRY President at a meeting scheduled for 3 August 1998.<sup>2942</sup> In apparent response to this insubordination, Samardžić issued an order on 3 August 1998 that banned unauthorised use of VJ units and instructed units engaged in supporting the MUP to be sent back to their redeployment

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<sup>2936</sup> See P1439 (Reply from the PrK Command to the 3<sup>rd</sup> Army Command, 5 October 1998).

<sup>2937</sup> P1468 (Notes of the Joint Command), p. 124.

<sup>2938</sup> Radovan Radinović, T. 17340–17342 (19 October 2007).

<sup>2939</sup> Aleksandar Vasiljević, T. 9094 (24 January 2007).

<sup>2940</sup> P1419 (Request from Pavković to the 3<sup>rd</sup> Army Command, 1 August 1998).

<sup>2941</sup> P1468 (Notes of the Joint Command), pp. 33, 36.

<sup>2942</sup> 4D125 (3<sup>rd</sup> Army order to Forbid use of PrK units, 1 August 1998).

areas.<sup>2943</sup> The Chamber considers that these two instances indicate that the regular VJ chain of command was sometimes circumvented or ignored by Pavković and the Joint Command.

1087. Đaković testified that no decisions were taken regarding the use of forces during combat operations at the Joint Command meetings. According to him, the decisions referred to during these meetings “had already been made at General Samardžić’s [level]”.<sup>2944</sup> What was decided during the meetings of the Joint Command would have an influence on an order issued by the VJ “only in one case”: the members of the Joint Command would have to make a request to Pavković, and Pavković would forward it to the 3<sup>rd</sup> Army Commander. The 3<sup>rd</sup> Army Commander would then decide whether or not to correct the order.<sup>2945</sup> Đaković concluded that the influence of the members of the Joint Command “was not really that significant”.<sup>2946</sup> Furthermore, none of the decisions reported by the commanders at meetings was ever questioned by any of the participants.<sup>2947</sup> He also emphasised that Šainović and Minić were present in their political roles, and that he never saw them ask for any document to be prepared for them “to sign and to send to any level of command.”<sup>2948</sup> However, he conceded that in a report from the Priština Corps Command to the 3<sup>rd</sup> Army Command on the implementation of the fifth stage of the Plan, dated 22 September 1998, the reference to the “other Command organs” at a Joint Command meeting was probably a reference to the civilian members.<sup>2949</sup> The Chamber considers Đaković’s minimisation of the influence of the Joint Command on decisions taken within the VJ to be overstated.

1088. In this regard, the Chamber notes that in a letter to FRY President Milošević dated 23 July 1998 Perišić expressed concern regarding the use of VJ units outside the regular institutions of the system, the attempted command by unauthorised persons, and the by-passing of levels of command.<sup>2950</sup> Perišić was specifically concerned about the fact that the Commander of the Priština Corps planned operations “at the request of Šainović and Minić and the MUP”, thereby turning the VJ into “a service of theirs, for planning and execution”.<sup>2951</sup> John Crosland also testified to the fact that Pavković worked “outside the loop of command” in 1998.<sup>2952</sup> He was told by Dimitrijević on 5 October 1998 that Perišić and Dimitrijević “were not fully informed as to what was going on the

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<sup>2943</sup> 4D458 (Order from the 3<sup>rd</sup> Army Command to the 3<sup>rd</sup> Army Forward Command Post, 3 August 1998).

<sup>2944</sup> Milan Đaković, T. 26380 (19 May 2008).

<sup>2945</sup> Milan Đaković, T. 26485 (20 May 2008).

<sup>2946</sup> Milan Đaković, T. 26486 (20 May 2008).

<sup>2947</sup> Milan Đaković, T. 26479 (20 May 2008).

<sup>2948</sup> Milan Đaković, T. 26443–26444 (20 May 2008).

<sup>2949</sup> Milan Đaković, T. 26542 (21 May 2008).

<sup>2950</sup> P717 (Letter from Momčilo Perišić to Slobodan Milošević, 23 July 1998).

<sup>2951</sup> P717 (Letter from Momčilo Perišić to Slobodan Milošević, 23 July 1998), pp. 2–3; Šainović Final Trial Brief, 29 July 2008 (public version), paras. 170–171.

ground in Kosovo”. According to Dimitrijević, “[t]hey were being excluded from the operational chain of command which went direct from General Pavković back to Mr. Milošević and Šainović who was his day-to-day operational man.”<sup>2953</sup> On 6 November 1998 Dimitrijević again told Crosland that Pavković “might ... react without permission from the General Staff and outside the military chain of command”. Dimitrijević alluded to Pavković “being determined to carry out the orders of Milošević, which would be given through Šainović to deal with the situation firmly”.<sup>2954</sup> Crosland also stated that it was “a known fact amongst the Foreign Attachés that Šainović was the man directly responsible for events in Kosovo”.<sup>2955</sup>

1089. Also in evidence are some Instructions issued by the Joint Command in July 1998 on the Defence of Populated Areas.<sup>2956</sup> Đaković testified that these did not have the force of an order and were in reality a generic training or reference document that would already have been in existence prior to 1998.<sup>2957</sup> He suggested that “Joint Command” may have been added to invoke some kind of “fictitious authority” and to ensure that the task of defending towns was taken seriously.<sup>2958</sup> A cover letter sent by Petar Ilić to various defence departments on 28 July 1998 appears to have been attached to these instructions. The letter states that the Joint Command issued the instructions, and also that it “has determined a new composition of municipal defence staffs”.<sup>2959</sup> In addition, the Notes record that the defence of towns was an item on the agenda for the first meeting on 22 July 1998, and was discussed by Minić and Gajić, with Minić recorded as saying that Pavković was to give directions. However, Đaković denied that these instructions emerged from a meeting of the Joint Command. According to him, they had been prepared by the operations organ of the Priština Corps. He explained that the instructions were only supposed to provide some assistance to the persons who would receive them.<sup>2960</sup>

1090. There are also six Joint Command Operative Reports in evidence, dated from 15 October to 23 November 1998, that report on various intelligence and security issues for Kosovo, engagement of both MUP and VJ forces, proposals for further engagements, and political negotiations.<sup>2961</sup>

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<sup>2952</sup> John Crosland, P2645 (witness statement dated 31 October 2006), paras. 54, 56. The Chamber notes that Crosland referred to Pavković as the 3<sup>rd</sup> Army Commander in 1998, although Pavković was the PrK Commander at that time.

<sup>2953</sup> John Crosland, P2645 (witness statement dated 31 October 2006), para. 54.

<sup>2954</sup> John Crosland, P2645 (witness statement dated 31 October 2006), para. 56.

<sup>2955</sup> John Crosland, P2645 (witness statement dated 31 October 2006), para. 58.

<sup>2956</sup> P2086 (Instructions for the defence of populated areas, issued by the Joint Command dated July 1998).

<sup>2957</sup> Milan Đaković, T. 26416 (19 May 2008).

<sup>2958</sup> Milan Đaković, T. 26417 (19 May 2008).

<sup>2959</sup> P1064 (Instructions for the Defence of Inhabited Areas, 28 July 1998).

<sup>2960</sup> Milan Đaković, T. 26414 (19 May 2008).

<sup>2961</sup> Joint Command Operative Reports 15 October–23 November 1998: P1203 (Operational report of the Joint Command regarding the security situation in Kosovo, 15 October 1998); P1204 (Operational report of the Joint Command regarding the security situation in Kosovo, 28 October 1998); P1206 (Joint Command Operative Report on the security situation in Kosovo, including attacks by KLA on VJ and MUP and their counter measures, 17 October 1998).

These reports also contain references to the Plan for the Defence of Towns in Kosovo, and the term “Joint Command for Kosovo and Metohija” appears typed at the end of each document in place of the signature line.<sup>2962</sup> Notably, two of these reports, dated 20 November and 23 November 1998, were admitted with a cover page of a handwritten note, “To Milomir Minić, personally”.<sup>2963</sup> When faced in court with the 20 November Operative Report, Minić testified that he occasionally received that kind of document from the VJ, although not this particular one.<sup>2964</sup> Although this might suggest that these documents emanated from the VJ, their content—which included detailed political analysis, as well as detailed reviews and proposals of past and future MUP engagements—indicates the involvement of personnel outside the military in producing them, as well as the role of this body in co-ordinating VJ and MUP joint action. However, Đaković testified that these were reports written in the Command of the Priština Corps, on the basis of information gleaned by Pavković from Lukić and David Gajić, which he subsequently gave to Đaković. In exchange, Đaković provided the RDB with information from the VJ.<sup>2965</sup> Đaković testified that the reports were simply verbatim copies of MUP, RJB, and RDB reports, with a military report added at the end.<sup>2966</sup> They would be transmitted to the RJB, the RDB, and the VJ. Those attending meetings, such as Šainović and Anđelković, did not receive them because they were generally present and already aware of the problems described in the reports. However, Đaković was later told by Tešević, his replacement, that Minić was sent a copy of some of these reports due to a prolonged absence from Kosovo.<sup>2967</sup> Đaković said that it was his idea to head the operations report “Joint Command” as it was analogous to the previous documents he had drafted on co-ordination activity, such as the order of 6 July prohibiting actions without the approval of the Joint Command.<sup>2968</sup>

1091. Some evidence suggests a significant role for the Joint Command during the implementation of joint operations on the ground. As explained above in Section VI.E.2, on 10 August 1998 the Priština Corps issued a decision on the joint engagement of MUP and VJ forces

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1998); P1197 (Joint Command Operation Report with an accompanying envelope for Milomir Minić, 20 November 1998); P1198 (Joint Command Operation Report with KLA names and positions, 23 November 1998); P2623 (Joint Command Operation Report, 23 November 1998).

<sup>2962</sup> See, e.g., P1197 (Joint Command Operation Report, 20 November 1998), p. 7; P1198 (Joint Command Operation Report, 23 November 1998); P2623 (Joint Command Operation Report, 23 November 1998), p. 14.

<sup>2963</sup> Although Minić agreed that he had received documents such as this one from the VJ (but not this one in particular), he insisted that he did not know what the Joint Command was and assumed it was a military reference. Milomir Minić, T. 14787–14888 (31 August 2007).

<sup>2964</sup> Milomir Minić, T. 14787–14788 (31 August 2007); see P1197 (Joint Command Operation Report, 20 November 1998).

<sup>2965</sup> Milan Đaković, T. 26428–26429 (19 May 2008).

<sup>2966</sup> Milan Đaković, T. 26429–26430 (19 May 2008).

<sup>2967</sup> Milan Đaković, T. 26431 (19 May 2008).

<sup>2968</sup> Milan Đaković, T. 26432 (19 May 2008).

over several general areas of Kosovo to take place on 11 August 1998.<sup>2969</sup> In addition, on 14 August 1998 the Priština Corps issued a decision ordering VJ units to support MUP units in a particular operation in the sector of the Slup/Sllup and Vokša/Voksh villages.<sup>2970</sup> Both decisions explicitly stated that these combat operations were to be “commanded by the Joint Command for Kosovo and Metohija”.<sup>2971</sup> Đaković testified that this reference to “Joint Command” was a reference to “the MUP Staff and the army command”, and could not have incorporated anyone else, such as Šainović or Minić, because they were not at the Forward Command Post in Đakovica/Gjakova.<sup>2972</sup> According to him, it was “an unfortunate matter” that the term used was “Joint Command”.<sup>2973</sup> Đaković reiterated that the Joint Command meant simply the Priština Corps Command and the MUP Staff, not any separate entity.<sup>2974</sup>

1092. Lazarević denied that a body called “Joint Command” commanded the Slup/Sllup and Vokša/Voksh operation, despite the terms of the 14 August order.<sup>2975</sup> According to him, the “mainstay of command [was] the Forward Command Post of the Priština Corps”.<sup>2976</sup> The Combat Group 15/3, which was according to Lazarević “the mainstay of active actions” during the operation,<sup>2977</sup> received an order from Mladen Cirković, the commander of the 15<sup>th</sup> Armoured Brigade, on 14 August 1998. The order indicated that the forces engaged in the combat activities were to “be under the command and control of the Forward Command Post Priština Corps Command”.<sup>2978</sup> According to Lazarević, this indicated that the person who had prepared the order “copied [the] sentence from the decision issued by the Corps Command and “translated it ... into his own word”: for this person, the Joint Command was “the command of the Priština Corps which

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<sup>2969</sup> P1427 (PrK decision, 10 August 1998). Deputy Head of the Security Administration, Aleksandar Vasiljević, testified that this document orders a VJ combat group of the 15<sup>th</sup> Armoured Brigade to attack along with the 7<sup>th</sup> MUP detachment, and that VJ tanks were likely used. Aleksandar Vasiljević, T. 8681–8682 (18 January 2007).

<sup>2970</sup> P1428 (PrK decision, 14 August 1998).

<sup>2971</sup> The Chamber requested verification of the translation with regard to the final sentence of a Priština Corps Command decision: P1428 (PrK decision, 14 August 1998). CLSS stated that it could mean either “Combat Operations will be commanded for KiM *with* the PrK IKM in Djakovica”, or “Combat operations will be commanded by the Joint Command for KiM *from* the PrK IKM in Djakovica”. CLSS stated that, in this context, the second translation was more accurate. P1427 uses the phrase “commanded by the Joint Command”.

<sup>2972</sup> Milan Đaković, T. 26455–26456 (20 May 2008).

<sup>2973</sup> Milan Đaković, T. 26455 (20 May 2008).

<sup>2974</sup> Milan Đaković, T. 26382, T. 26379–26382 (19 May 2008).

<sup>2975</sup> P1428 (PrK decision, 14 August 1998), p. 3. The original translation of the document states that: “Combat Operations will be commanded for KiM /Kosovo and Metohija/ with the PrK IKM /Forward Command Post/ in Đakovica.” However, upon a query from the Chamber, CLSS stated that the term in bold could mean either “from” or “with”, but that in terms of the context of the phrase, the more accurate translation of the term was “from”.

<sup>2976</sup> Vladimir Lazarević, T. 18308 (14 November 2007).

<sup>2977</sup> Vladimir Lazarević, T. 18309 (14 November 2007). *See also* P1428 (PrK decision, 14 August 1998) (indicating that the Combat Group 15/3 was to support the MUP forces during the attack, whereas the Combat Group 125/2 was to carry out a diversionary attack on a separate axis).

<sup>2978</sup> 6D731 (15<sup>th</sup> Armoured Brigade order to the Commander of combat group 15/3, 14 August 1998), p. 5.

will be at the Forward Command Post”.<sup>2979</sup> Savić stated that “the commanding of the forces” was executed by the Command of the Priština Corps from the Forward Command Post in Đakovica/Gjakova “due to the fact that there were several other VJ combat groups in that area, whose task was to secure the state border”.<sup>2980</sup> He explained that there was “a single chain of command”: he was subordinated to Mladen Cirković, and Mladen Cirković was subordinated to the Corps Commander.<sup>2981</sup> The Chamber therefore considers that the Slup/Sllup and Vokša/Voksh operation was under the control of the Priština Corps Command from the Forward Command Post and that the function of the Joint Command order in relation to the operation was that of co-ordination.

1093. The VJ officers who testified before the Chamber were uniformly emphatic that their normal chains of command remained unchanged. Reports were always submitted to the Priština Corps, rather than the Joint Command, and they were all confident that their orders were being given by the Priština Corps.<sup>2982</sup> Milan Kotur stated that his “understanding [was] that the Priština Corps command was in command of its own forces, as always”.<sup>2983</sup> VJ Colonel Rade Čučak, Chief of Service for the State Border, also testified that the chain of command within the VJ was preserved at all times throughout 1998 and 1999.<sup>2984</sup> Ljubiša Stojimirović, from the Special Units Corps of the VJ, asserted that there was no disruption or interference in the chain of command, nor a parallel chain of command involving any officers of the VJ.<sup>2985</sup>

1094. During his interview with the Prosecution, Lazarević stressed that the MUP and VJ chains of command were separate.<sup>2986</sup> Lazarević explained that, during combat operations, some “communications or liaison officers” were present at the VJ command posts in the ground. They were in communication with their MUP units and were able to convey the information from the MUP to the VJ.<sup>2987</sup> The information from the VJ to the MUP was conveyed the same way. Lazarević reiterated in court that the VJ and the MUP exchanged “information on communications

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<sup>2979</sup> Vladimir Lazarević, T. 18312–18313 (14 November 2007). *See also* T. 17803–17804 (6 November 2007).

<sup>2980</sup> Ljubomir Savić, 5D1392 (witness statement dated 27 December 2007), para. 4.

<sup>2981</sup> Ljubomir Savić, T. 20962 (24 January 2008). *See also* Vladimir Lazarević, T. 18329 (15 November 2007).

<sup>2982</sup> Miloš Mandić, 5D1391 (witness statement dated 20 January 2008), para. 27; Ljubiša Diković, T. 19882, 19941 (10 December 2007); Krsman Jelić, T. 18877 (23 November 2007); Ljubomir Savić, T. 21017 (24 January 2008). However, Savić did concede in cross-examination that it was possible that the Joint Command may have planned and ordered the operations which were then passed down through the VJ chain of command. Ljubomir Savić, T. 21017 (24 January 2008).

<sup>2983</sup> Milan Kotur, T. 20745 (21 January 2008).

<sup>2984</sup> Rade Čučak, T. 14867 (4 September 2007).

<sup>2985</sup> Ljubiša Stojimirović, T. 17656–17662 (26 October 2007).

<sup>2986</sup> P950 (Vladimir Lazarević interview with the Prosecution), p. 230; *see also* Vladimir Lazarević, T. 18154 (13 November 2007) (maintaining that the Joint Command, conceived of as a command entity, never existed).

<sup>2987</sup> P950 (Vladimir Lazarević interview with the Prosecution), p. 230.

and communications equipment in order to be compatible”.<sup>2988</sup> Moreover, liaison officers were designated.<sup>2989</sup> Stefanović and Delić also testified to the existence of “combined command posts”.<sup>2990</sup> Stefanović explained that, from the combined command posts, the VJ and the MUP “autonomously command[ed] [their] own forces”.<sup>2991</sup> He explained that if a MUP unit was attacked, its commander would send a request for support to the commander of a VJ unit and they would deal with this specific problem that had occurred during the action.<sup>2992</sup>

1095. The Chamber accepts that the VJ command structure continued to operate during the operations conducted in 1998 and that regular combat reports were sent from subordinate units to the Priština Corps, and not the Joint Command.

1096. Some evidence might suggest that the Joint Command played some role in approving combat actions. Pursuant to the Joint Command order dated 6 July 1998, the 125<sup>th</sup> Motorised Brigade Commander, Dragan Živanović, prohibited its subordinate units from executing any actions without “the approval of the Joint Command” and his own approval.<sup>2993</sup> Živanović, however, specified in the order that the operations performed by the units of the MUP and the VJ were to be “approved by the Command of the MUP and the VJ, which are responsible for the safe execution of tasks”.<sup>2994</sup> He added that the documents for engagement of Combat Groups 1 and 4 would be approved by himself, whereas the documents for engagement of Combat Groups 2 and 3 would be approved by the Priština Corps Command. Božidar Delić issued an order pursuant to the same Joint Command order. However, his order differed from that of the 125<sup>th</sup> Motorised Brigade Commander in that, while referring to the Joint Command order, it prohibited actions without the

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<sup>2988</sup> Vladimir Lazarević, T. 17795 (6 November 2007). *See also* P2113 (Order of the 125<sup>th</sup> Motorised Brigade regarding a ban on operations without the knowledge and approval of the Joint Command, 7 July 1998). The Trial Chamber also notes that, in the order of the 125<sup>th</sup> Motorised Brigade dated 7 July 1998, the Command of the brigade instruct the Command of the Combat Group 4 to “take measures to organise secure and uninterrupted communications within the framework of the units and with neighbours.

<sup>2989</sup> Vladimir Lazarević, T. 17795 (6 November 2007).

<sup>2990</sup> Radojko Stefanović, T. 21664, 21666 (5 February 2008), T. 21813 (6 February 2008). Božidar Delić, T. 19342–T. 19344 (29 November 2007). In the territory of Prizren, Delić confirmed that his counterpart in the MUP was the chief of the SUP in Prizren, Miloš Vojinović in 1999. Delić also generalized that in almost all actions where he co-operated with the MUP, he and the MUP command would be together in one location, and that when this was not possible, that they would utilise a “combined command post.” That is, he would be with the MUP deputy commander at one point, while his deputy would be at another point with the MUP commander.

<sup>2991</sup> Radojko Stefanović, T. 21664, 21666 (5 February 2008), T. 21813 (6 February 2008).

<sup>2992</sup> Radojko Stefanović, T. 21811 (6 February 2008).

<sup>2993</sup> P2113 (Order from the 125<sup>th</sup> Motorised Brigade on the procedures for undertaking combat operations, 7 July 1998). Živanović was not asked about this apparent ban on actions without the Joint Command’s approval, but he did say that he was obliged to use the phrase “Pursuant to the Order of the Joint Command” because he was not permitted to change the heading on an order from a superior command. Dragan Živanović, T. 20507 (17 January 2008). *See also* P1423 (Battle report re locations in which MUP units were engaged, 7 August 1998).

<sup>2994</sup> P2113 (Order from the 125<sup>th</sup> Motorised Brigade on the procedures for undertaking combat operations, 7 July 1998). Živanović was not asked about this apparent ban on actions without the Joint Command’s approval, but he did say that



“knowledge and authorisation of the 549<sup>th</sup> Motorised Brigade Command.” As in the order of the 125<sup>th</sup> Motorised Brigade Command, Delić specified that “[a]ll operations carried out by units of the MUP and VJ shall be authorised by the MUP and VJ commands that are also responsible for the secure execution of the task.”<sup>2995</sup> In light of the content of the order of the 125<sup>th</sup> Motorised Brigade Commander as well as the lack of reference to “the approval of the Joint Command” in the order of the 549<sup>th</sup> Motorised Brigade Commander, the Trial Chamber considers that, although the order of the 125<sup>th</sup> Motorised Brigade Commander referred to “the approval of the Joint Command”, in reality it required that the Priština Corps and MUP Commands approve the operations, not the Joint Command.

1097. Finally, on 29 October 1998, at a meeting held at Beli Dvor Palace in Belgrade, one of the issues discussed was the issue of whether the Joint Command should continue to exist. In attendance at this meeting were Milošević, Milutinović, Minić, Šainović, Matković, Stojiljković, Anđelković, Perišić, Dimitrijević, Samardžić, Pavković, Đorđević, Marković, Stevanović, Lukić, and Šušić.<sup>2996</sup> As explained above, the reliability of the 16-page document bearing the heading “Minutes of the Meeting of the Operations Inter-Departmental Staff for the Suppression of Terrorism in Kosovo and Metohija” (exhibit P2166) was contested during the trial, and the Chamber finds it appropriate to discuss what weight it has ascribed to the document and the reasons therefor.<sup>2997</sup> The Prosecution relies upon P2166 for a variety of issues.<sup>2998</sup> The Milutinović and Šainović Defences mount the primary attack upon the document and urge the Chamber not rely upon it as accurate.<sup>2999</sup>

1098. Pavković is reported to have given a brief report “on behalf of the Joint Command” on the “implementation of the Plan for suppressing terrorism in Kosovo and Metohija” and describing the tasks set out in the initial plan and the details of the results.<sup>3000</sup> Lukić is reported to have submitted a report on the work of the Joint Command and to have “informed the Staff members” on the

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he was obliged to use the phrase “Pursuant to the Order of the Joint Command” because he was not permitted to change the heading on an order from a superior command. Dragan Živanović, T. 20507 (17 January 2008).

<sup>2995</sup> 5D841 (Order from the 549<sup>th</sup> Motorised Brigade Command, 7 July 1998).

<sup>2996</sup> P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), p. 1; *see also* P1468 (Notes of the Joint Command), p. 161. The exhibit itself is dated 2 November 1998 and is signed by Šušić and FRY President Milošević.

<sup>2997</sup> After having heard from the parties, the Chamber admitted it into evidence, finding that it bore sufficient indicia of reliability for admission into evidence and stating that it would decide what weight to ascribe to it later. T. 8611 (18 January 2007), 8731 (19 January 2007). On 14 January 2008, the Chamber admitted a revised translation of the document into evidence. Order re Exhibits P2166 and P1506, 14 January 2008.

<sup>2998</sup> Prosecution Final Trial Brief, 28 July 2008 (public version) paras. 49, 63, 101, 134, 156–157, 171, 181–184, 570, 582, 660, 858, 863, 872, 1019–1020, 1026.

<sup>2999</sup> Milutinović Final Trial Brief, 15 July 2008, paras. 177–178; Šainović Final Trial Brief, 29 July 2008 (public version), paras. 218–221, 224–244; *see also* Pavković Final Trial Brief, 28 July 2008 (public version) paras. 135, 258.

<sup>3000</sup> P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), pp. 2–7.

implementation of the Holbrooke-Milošević agreement.<sup>3001</sup> In his report Lukić devoted special attention to the highly successful and professional co-operation between the MUP and VJ. Milimir Minić, presented as the “President of the Chambers of Citizens of the Federal Assembly”, is reported to have “provided a comprehensive review of the implementation of the Plan for Suppressing Terrorism in KiM”, and requested that the “Operations Staff” provide an assessment of how successfully the Joint Command “fulfilled the authorisations conferred upon it.”<sup>3002</sup> Perišić also presented his views on the implementation of the Plan. In his view, the picture of the situation that had been depicted by certain members of the Joint Command did not correspond to the reality. These assessments were followed by a discussion among the participants, covering subjects such as the extension of the border belt, co-operation with the KVM, and the issue of whether the Joint Command should continue to exist.<sup>3003</sup>

1099. Regarding this issue, Milutinović is reported to have said that “the Joint Command should continue functioning for a while, although thought should be given to whether it should continue in its present membership or whether some changes should be made”.<sup>3004</sup> Šainović “agreed with the opinion that the viability of the continued activity of the Joint Command for KiM in its present composition should be re-evaluated” and “said that the number of people thus engaged should be reduced and better prepare them [sic] for more effective action in new conditions”.<sup>3005</sup> Milošević pointed to “the need for the continued functioning of the Joint Command for Kosovo and Metohija and the Co-ordination Staff”.<sup>3006</sup>

1100. A number of witnesses commented upon the document’s authenticity and accuracy. Aleksandar Vasiljević recognised the seal on it as corresponding to the Military Office of the FRY President and confirmed that Šušić was the Head of the Military Office of the President.<sup>3007</sup> It was subsequent to this that the Chamber admitted the document into evidence.

1101. John Crosland was of the view that the document demonstrated Pavković’s level of involvement in the Plan for Combating Terrorism in Kosovo, but disagreed with the accuracy of the document in respect of the number of Albanians that were killed, the total number of KLA fighters

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<sup>3001</sup> P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), p. 7.

<sup>3002</sup> P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), pp. 8–9. When asked about this statement on cross-examination, Minić testified that he did make a similar proposal, but that he did not know an “operations staff” existed and that he did not use the terms “Joint Command” or “operations staff” when he spoke at this meeting. Milimir Minić, T. 14767 (31 August 2007). P1468 (Notes of the Joint Command), p. 161.

<sup>3003</sup> P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), pp. 9–16.

<sup>3004</sup> P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), p. 12.

<sup>3005</sup> P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), p. 13.

<sup>3006</sup> P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), p. 15.

<sup>3007</sup> Aleksandar Vasiljević, T. 8729–8731 (19 January 2007).

reported to be operating in Kosovo, and the provision of shelter and care for temporarily displaced Kosovo Albanians.<sup>3008</sup>

1102. Milomir Minić, who is recorded as having provided a comprehensive review of the implementation of the Plan for Combating Terrorism in Kosovo, testified that he had never seen the document before he came to The Hague and that he did not know what the “Operations Inter-Departmental Staff” was, who its members were, and what its role was. He disagreed with the minutes’ record of what Lukić said, and testified that he was unaware of the existence of an “Operations Staff” and never used the term “Joint Command for KiM”.<sup>3009</sup>

1103. Dušan Matković testified that he remembered the meeting taking place, and that there were three more such meetings “at this level at Milošević’s place”; however, the fact that the document identified Pavković as speaking on behalf of the Joint Command was inaccurate and “nonsensical”, because Pavković always spoke on behalf of the Priština Corps.<sup>3010</sup> Zoran Anđelković confirmed that the document reflected what was said about the need for co-operation between the VJ and the MUP.<sup>3011</sup> Lazarević testified that the document was authentic, but that he did not have any knowledge of the existence of a body called “Operations Inter-Departmental Staff” at the high state level.<sup>3012</sup> Božidar Delić criticised the accuracy of some of the data recorded to have been given by Pavković at the meeting.<sup>3013</sup> The expert witness brought by the Šainović Defence, Radomir Lukić, could not confirm the existence of an entity called the “Operations Inter-Departmental Staff”, and, after some confusion, explained that the minutes reflected only a meeting at which an exchange of information and consultations took place, as opposed to a meeting where orders were given.<sup>3014</sup>

1104. Milan Đaković (a) was aware of the content of the document, as he “prepared some of this information with the operative organ, what had to do with the combat operations”; (b) knew that the meeting took place in Belgrade at President Milošević’s place; and (c) had not seen the document itself before.<sup>3015</sup> Finally, Aleksandar Dimitrijević (a) testified that he had never heard about an “Operative Inter-Departmental Staff for the Suppression of Terrorism”; (b) challenged the accuracy of the minutes in reporting that Milošević “proposed and the Staff unanimously accepted the

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<sup>3008</sup> John Crosland, T. 9834, 9837 (7 February 2007), T. 10034 (9 February 2007).

<sup>3009</sup> Milomir Minić, T. 14764, 14766 (31 August 2007).

<sup>3010</sup> Dušan Matković, T. 14609–14611, 14612–14615 (29 August 2007), T. 14627 (30 August 2007).

<sup>3011</sup> Zoran Anđelković, T. 14713–14715 (30 August 2007).

<sup>3012</sup> Vladimir Lazarević, T. 18691 (21 November 2007).

<sup>3013</sup> Božidar Delić, T. 19587–19590 (5 December 2007).

<sup>3014</sup> Radomir Lukić, T. 26271–26274 (15 May 2008), T. 26338–26339 (16 May 2008); *see also* Momir Bulatović, T. 13916 (17 August 2007); Ljubivoje Joksić, T. 22038 (11 February 2008); Miroslav Mijatović, T. 22386 (14 February 2008).

<sup>3015</sup> Milan Đaković, T. 26446–26448 (20 May 2008).

following conclusions”; (c) confirmed the authenticity of the document, but observed that the document itself indicated that no shorthand notes had been kept at the meeting and challenged the accuracy of its contents by questioning how Šušić was able to memorise all the details included in the document without taking contemporaneous notes; (d) questioned the attribution to Pavković of the statement that “our plan is not to kill all the Šiptars”; and (e) commented that it never happened that people talked about “villages that were disarmed, the consumption of ammunition and all those other details” in front of Milošević.<sup>3016</sup> Dimitrijević also observed that the document looked to him “like a document that was made in accordance with some plan that was to be used to cover some things”, and that he thought that the document “was simply drafted at a later stage for whatever reason”.<sup>3017</sup>

1105. On 5 November 1998, a meeting in the MUP building in Priština/Prishtina was held with political and business figures in Kosovo, Šainović, Lukić, Pavković, Stojiljković, Đorđević, Rade Marković, Miroslav Mijatović, the members of the Working Group on Kosovo, SUP and OUP Chiefs, and PJP commanders. During this meeting, Milutinović referred to the meeting held on 29 October 1998: he explained that the situation in the Army and the Police was discussed. In particular, Milutinović stated the following: “With regard to the Yugoslav army and police, everything will stay the same as it has been up to now (a joint command, VJ units will not withdraw, and police forces have only been reduced by the number that has already been withdrawn).”<sup>3018</sup> The Chamber considers that this evidence corroborates that in the foregoing paragraphs.

1106. The Chamber notes that comments attributed to Pavković on pages 5–6 of the minutes—giving the numbers of Kosovo Albanians afforded shelter during the execution of the Plan—are very similar to a document extracted in the 2001 *Vojska* publication entitled “The Application of Rules of International Law of Armed Conflicts”.<sup>3019</sup> The extract in *Vojska* is described as a “Report and Conclusions on the Implementation of the Plan on Stamping Out Terrorism in Kosovo and Metohija”, which was signed by the Joint Command and was written in October 1998; the numbers given in the extract from that report are identical to the numbers that the minutes (P2166) report Pavković as giving at the 29 October 1998 meeting, where he is recorded as speaking on behalf of the Joint Command. This fact, along with comments made by Minić in the Joint Command

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<sup>3016</sup> Aleksandar Dimitrijević, T. 26598, 26610–26612 (8 July 2008).

<sup>3017</sup> Aleksandar Dimitrijević, T. 26612–26615 (8 July 2008).

<sup>3018</sup> P2805 (Minutes of meeting at MUP Staff in Priština, 5 November 1998), p. 4.

<sup>3019</sup> Compare P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), pp. 5–6, with P1011 (Ivan Marković, ed., *The Application of Rules of the International Law of Armed Conflicts* (2001)), p. 72.

meetings,<sup>3020</sup> suggests that a report upon the implementation of the Plan for Combating Terrorism in Kosovo was prepared for adoption by the Joint Command, and that Pavković was reading from that report when he gave his comments at the 29 October 1998 meeting.

1107. Taking into account all the evidence regarding the document, the Chamber confirms its finding during trial that the document is an authentic record of the meeting that took place on 29 October 1998 at the Beli Dvor with the people listed therein in attendance.<sup>3021</sup> There is no reason to doubt that the general topics that appear in the document as having been discussed were indeed discussed at the meeting. The meeting was plainly called to review the actions taken in terms of the Plan and in the name of the Joint Command and to appraise the situation generally in light of the outcome of the Plan and the October Agreements. The Chamber considers that, although the document is a summary and not a verbatim record, significant weight can be given to this record of the meeting in light of its plain authenticity, the fact that the meeting undoubtedly took place, and the consistency of the record with other material. The Chamber therefore relies upon the document, if corroborated, and also uses it to corroborate other testimonial and documentary evidence of the meeting.

#### (D) Conclusions about the Joint Command in 1998

1108. Evidence from several witnesses that the Joint Command did not exist, or exercised no influence over anything, must be weighed against the significant body of evidence showing that meetings were regularly held by such a body in 1998, and that important members of the VJ, MUP, and civilian leadership attended these meetings, at which issues regarding the combat operations conducted in Kosovo at that time were discussed and information exchanged.

1109. The Chamber is satisfied that an entity known as the “Joint Command for Kosovo and Metohija” existed in 1998. It was created by means of the *de facto* power of the FRY President Slobodan Milošević around June 1998 and in response to the need for greater co-ordination between the MUP and VJ forces in Kosovo. Its membership consisted of individuals from the

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<sup>3020</sup> P1468 (Notes of the Joint Command), pp. 130, 161.

<sup>3021</sup> The Chamber’s ruling that the document bore sufficient indicia of reliability to be considered authentic is supported by the evidence of Vasiljević, Bulatović, Đaković, Lazarević, and—to some extent—Matković. As far as the reliability of the contents of the document, Minić, Matković, Anđelković, and Dimitrijević are witnesses who were present at the meeting. Minić claimed that the exhibit is inaccurate insofar as it mentions the Joint Command and Lukić being scheduled to report on the Joint Command and the Interdepartmental Staff for the Suppression of Terrorism in Kosovo; he was certain these terms were not used by him, even though the exhibit states that they were. Matković agreed with Minić that the term “Joint Command” was not used at the meeting. Anđelković was not sure whether the term “Joint Command” was used, but he did confirm that what the exhibit states about co-operation between the MUP and the VJ was accurate. The main challenge to the accuracy of the document comes from Dimitrijević’s testimony, whereas Đaković had fewer doubts about its content: although he had knowledge about the existence of the document, he had

political structures of the FRY and Serbia, the military, and the police. Membership was an informal affair, without technical requirements, and the composition of the Joint Command was different at various times.

1110. The entity referred to as the Joint Command played a role in the co-ordination and exchange of information and intelligence between the MUP and the VJ in the latter half of 1998. Decisions and orders for joint operations were implemented through the existing chains of command; and, both directly or indirectly, the Joint Command had influence over the MUP and VJ in respect of the implementation of the various stages of the Plan for Combating Terrorism. Even if some members of the Joint Command may not have had the *de jure* authority to issue orders directly to either MUP or VJ units, *the individual members of the Joint Command* brought their influence to bear on how the Plan was put into effect, utilising the established systems of command and control within the VJ and MUP. For instance, the evidence shows that Pavković several times submitted requests to the 3<sup>rd</sup> Army Commander based on discussions that had been held during Joint Command meetings. Furthermore, the Notes demonstrate that decisions regarding how and when the Plan was to be implemented were discussed at the Joint Command meetings, and that, at times, Minić and Šainović played leading roles in these discussions and actually stipulated that certain things be done.<sup>3022</sup>

1111. The Joint Command was part of a co-ordination system put in place as early as May 1998 by which the VJ and the MUP were able to work together in Kosovo. It allowed the commanders of the MUP to “save face” by not having to be commanded by the VJ both before and during the state of emergency. It also allowed Slobodan Milošević, through Pavković, to direct the actions of the MUP in Kosovo in a situation of questionable legality, and for these actions of the MUP to enjoy the support of the VJ. This was important to Milošević because certain members of the VJ disagreed with the deployment of the army within Kosovo, save to guard the border, and complained of the behaviour of the MUP in Kosovo and its failure to co-ordinate with and resubordinate itself to the VJ.

## *ii. Joint Command in 1999*

### (A) Existence and authority of the Joint Command in 1999

1112. The existence of the Joint Command as an entity during 1999 is less apparent than in 1998. The evidence is more nebulous, and there is no record of its meetings; or, if such a record was kept,

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never seen it prior his testimony before the Chamber. Delić, even though he was not present at the meeting, considered portions of it to be inaccurate, as far as combat operations implemented on the basis of the Plan were concerned.

it is not available to the Chamber. There is, however, significant evidence regarding co-ordinated efforts between the VJ and the MUP to address the “terrorist situation” in Kosovo, as well as the threat of a NATO ground invasion in 1999; but there is scant evidence specifically indicating a Joint Command through 1999. There is also no evidence of a clear mandate for the Joint Command in 1999, although the participants at the 29 October 1998 meeting agreed that the Joint Command should continue to function—albeit with a different composition.<sup>3023</sup>

1113. According to Milan Đaković, there were no Joint Command meetings after October 1998. He also testified that he did not know whether there were meetings of the Joint Command in 1999, as he took up a new post in Niš in January of that year. However, he heard from members of the operations organs in the Priština Corps Command, who were in fact subordinated to him as he was the Chief of the Department for Operations and Training in the 3<sup>rd</sup> Army Command, that they continued to attend meetings with the MUP.<sup>3024</sup>

1114. There is varying witness testimony as to whether the Joint Command persisted through 1999. Slobodan Kosovac, Chief of the VJ’s Organisation Department, testified that during the course of “the war” he heard the term “Joint Command” mentioned in informal talks, but stated that, because he knew it was not organised in accordance with the rules of organisation of the VJ, he did not inquire about it.<sup>3025</sup> Kosovac also noted that the task of the body was dictated by the fact that there was no system enabling all participants in the war to organise themselves under a unified control or management, and that a co-ordinating body was created in order to fill this void.<sup>3026</sup> Đorđe Ćurčin also stated that he had heard of the Joint Command once during a Collegium meeting at the beginning of 1999.<sup>3027</sup> Vasiljević portrayed the Joint Command of 1999 as having the force of a “mini-Supreme Command”, describing the function of the body as in-charge of joint operations between the MUP and VJ forces in the absence of official MUP subordination to the VJ.<sup>3028</sup>

1115. Other witnesses testified that the Joint Command did not function in 1999. Branko Gajić testified that the Joint Command ceased to exist after the Holbrooke-Milošević Agreement. Tomislav Mladenović said that the meetings between the VJ and the MUP ended when the last

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<sup>3022</sup> See generally P1468 (Notes of the Joint Command).

<sup>3023</sup> P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998); P1468 (Notes of the Joint Command), p. 163. See also P2805 (Minutes of the MUP Staff Kosovo meeting in Priština, 5 November 1998), p. 4.

<sup>3024</sup> Milan Đaković, T. 26388–26389 (19 May 2008).

<sup>3025</sup> Slobodan Kosovac, T. 15870–15871 (18 September 2007).

<sup>3026</sup> Slobodan Kosovac, T. 15883 (18 September 2007).

<sup>3027</sup> Đorđe Ćurčin, T. 16972 (5 October 2007). Notably, Ćurčin was in attendance at the 21 January 1999 VJ Collegium meeting where Ojdanić reportedly makes several references to the Joint Command. See P939 (Minutes of the Collegium of the General Staff of the VJ, 21 January 1999).

<sup>3028</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 46.

action was completed in October of 1998. Velimir Obradović testified that Joint Command meetings were held from July to the end of October 1998, but that he did not hear about them in 1999.<sup>3029</sup> Momir Stojanović did not hear the term Joint Command used in 1999, except for the few documents he saw at the Priština Corps Command with that heading.<sup>3030</sup> In addition, he claimed that he did not know of any meetings of the Joint Command taking place in 1999; and, in view of his position and duties, especially his daily briefings on security for the Priština Corps commander, he was confident that he would have been aware had any taken place.<sup>3031</sup> Likewise, RDB officer Ljubivoje Joksić did not hear the term “Joint Command” until after the war and was particularly surprised to hear of it in relation to 1999; he claimed to have spent “virtually the entire war” with Lukić, and categorically denied the existence of the Joint Command.<sup>3032</sup> Miroslav Mijatović, Deputy Head of the MUP Staff for Kosovo, said that he was convinced the Joint Command did not exist.<sup>3033</sup> Other MUP personnel also denied hearing of or being aware of any Joint Command in 1999, as well as 1998.<sup>3034</sup>

1116. However, there are official military documents from 1999 that refer to the “Joint Command for KiM”.<sup>3035</sup> For instance, in describing the activities of VJ units, a combat report from the 3<sup>rd</sup> Army Command to the VJ General Staff Operations Centre, dated 29 April 1999, specifies that measures were undertaken to block certain sectors and carry out tasks in line with the “joint KiM command decision”.<sup>3036</sup> In addition, a combat report from the Priština Corps Command reports that operations were continuing in line with the decision of the Joint Command.<sup>3037</sup>

1117. Another example is a public announcement by Pavković on the VJ website from June 2001 regarding the refrigerated lorry found in the Danube river in 1999, which is discussed further in Section VII.P below. Pavković stated, in relation to the police, that:

[C]ooperation with the Army was coordinated through political actors in joint command, formed for the purpose. Therefore, the information to what the police force units were

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<sup>3029</sup> Branko Gajić, T. 15413 (11 September 2007); Tomislav Mladenović, T. 17619 (25 October 2007); Velimir Obradović, T. 17419 (22 October 2007).

<sup>3030</sup> Momir Stojanović, T. 20058 (11 December 2007).

<sup>3031</sup> Momir Stojanović, T. 19766 (7 December 2007).

<sup>3032</sup> Ljubivoje Joksić, T. 22005–22006 (8 February 2008).

<sup>3033</sup> Miroslav Mijatović, T. 22412–22413 (14 February 2008).

<sup>3034</sup> Miloš Deretić, T. 22589 (18 February 2008); Dušan Gavrančić, T. 22723 (19 February 2008); Radovan Vučurević, T. 23131 (25 February 2008); Božidar Filić, T. 24008, 24010 (10 March 2008); Miloš Vojnović, T. 24190 (12 March 2008); Vladimir Ilić, T. 24345 (17 March 2008).

<sup>3035</sup> P1487 (Suggestions to the 3<sup>rd</sup> Army Command by Ojdanić, 17 April 1999), p. 1; P2016 (PrK Combat Report to 3<sup>rd</sup> Army and Supreme Command Staff, 25 April 1999), p. 2; P1459 (3<sup>rd</sup> Army Report on the non-compliance of MUP organs, 25 May 1999), p. 2.

<sup>3036</sup> P2017 (3<sup>rd</sup> Army Combat Report to VJ General Staff, 29 April 1999), p. 2.

<sup>3037</sup> P2016 (PrK Combat report to 3<sup>rd</sup> Army and Supreme Command Staff, 25 April 1999), p. 2.



doing can best be provided by the police commanders and the members of the Joint Command in charge of them.<sup>3038</sup>

Milan Đaković commented on this announcement, and said he only agreed in part with this description, in as much as the Joint Command represented a joint command that co-ordinated activities between the VJ and MUP Staff and specifically that it represented co-operation between Pavković and Lukić.<sup>3039</sup>

1118. Moreover, on 17 April 1999 Ojdanić sent a document to the 3<sup>rd</sup> Army Command in which he “suggested” that a specific Joint Command order issued on 15 April 1999 be modified.<sup>3040</sup> Given that it was within the competence of Ojdanić to issue orders to the 3<sup>rd</sup> Army Command, his “suggestions”, where he tells the command to “[c]onsider the possibility for the forces to ...”, appear to be an anomaly. As Simić testified, suggestions normally come from a lower-ranking level to a higher-ranking level, and not the other way.<sup>3041</sup> VJ Head of Communications, General Ljubomir Anđelković, explained that the suggestions from Ojdanić, as the highest-ranking officer in the VJ, in relation to an order issued by some other body called the Joint Command, indicate that this body was not superior or subordinate to Ojdanić and therefore could not have been in the command of the VJ.<sup>3042</sup> Radinović testified to the fact that, although “suggestions” were not a common form of military communication, they were not unheard of, and that perhaps the suggestions were made to a type of co-ordination body, which he described as co-ordinating MUP and VJ activities through agreement. Nonetheless, it is plain that he thought “suggestions” to be an anomaly in a command structure.<sup>3043</sup> The Chamber takes note of the last sentence of the document addressed to Pavković, which reads as follows: “It is our opinion that it would be useful for you to consider our suggestions thoroughly and correct *your* decision and deployment of forces in order to prevent a new spill out, and thus achieve your fundamental objective—destruction.”<sup>3044</sup>

1119. The circumstances surrounding the issuance of the “suggestions” by Ojdanić demonstrate that the VJ chain of command functioned with a degree of flexibility in 1999. According to Ćurčin,

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<sup>3038</sup> P1281 (Public Announcement of Pavković from VJ website, 14 June 2001), p. 2.

<sup>3039</sup> Milan Đaković, T. 26473–26474 (20 May 2008).

<sup>3040</sup> P1487 (Suggestions to 3<sup>rd</sup> Army from Supreme Command Staff, 17 April 1999). Although testifying that he had never heard of the Joint Command, VJ Colonel-General Spasoje Smiljanić, Chief of First Administration, was able to authenticate this documents after verifying Ojdanić’s signature. Spasoje Smiljanić, T. 15781 (17 September 2007); *see also* Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 210–214.

<sup>3041</sup> Miodrag Simić, T. 15691 (14 September 2007).

<sup>3042</sup> Ljubomir Anđelković, T. 16432 (26 September 2007). This witness further testified that he could allow for the possibility that Milošević could have formed such a body and conferred powers on that body. Ljubomir Anđelković, T. 16433 (26 September 2007).

<sup>3043</sup> Radovan Radinović, T. 17328–17336 (19 October 2007); *see also* Đorđe Ćurčin, T. 16970–16974 (5 October 2007) (testifying that the term “suggestion” was used in other documents being produced by Ojdanić).

<sup>3044</sup> P1487 (Suggestions to 3<sup>rd</sup> Army from Supreme Command Staff, 17 April 1999) (emphasis added).

before Ojdanić issued his “suggestions”, he met with Pavković, and later with him. During the meeting between Pavković and Ojdanić, Pavković told Ojdanić that he had come from Milošević’s office. Pavković also showed Ojdanić a map that bore the number 455-148 and had been issued on 15 April 1999.<sup>3045</sup> Ojdanić kept the map and showed it to Ćurčin in order to obtain his views on the operation outlined on the map. In light of the concerns expressed by Ćurčin regarding the way the joint operations were planned on this map, Ojdanić drafted his “suggestions” to the 3<sup>rd</sup> Army. Ćurčin testified that Ojdanić drafted these suggestions only on the basis of the map he had from Pavković and without having seen the Joint Command order to which the document was ultimately linked.<sup>3046</sup> Ćurčin’s testimony does not provide an explanation as to why Pavković visited Milošević in the first place. However, it demonstrates that there existed a direct line from Pavković to Milošević. Although this did not, strictly speaking, constitute a breach of subordination, he essentially by-passed his immediate superior when he met with Milošević.<sup>3047</sup> Pavković’s direct link to Milošević is discussed further in the section devoted to Pavković’s individual criminal responsibility.

1120. The Joint Command was also referred to during a VJ General Staff Collegium meeting held on 21 January 1999. Concern was expressed, primarily by Dimitrijević, regarding the fact that, despite widespread reports that both the MUP and the VJ had participated in the Račak/Rečak action, no one at the Collegium meeting could confirm that this had occurred.<sup>3048</sup> Ojdanić’s response at this meeting was to placate the concern expressed by reminding the staff of “a well coordinated methodology of the use of forces and decision-making”.<sup>3049</sup> Notably, he characterised the methodology as “quite risky and not really quite justifiable from a military point of view.”<sup>3050</sup> Dimitrijević recalled that, while at the meeting, he pressed the issue further, suggesting that Ojdanić request that Pavković make a specific statement as to whether the VJ was involved or not. The eventual response was that the army had not participated in Račak/Rečak.<sup>3051</sup> On 21 January 1999 Pavković sent a report to the VJ General Staff stating that, although the VJ was engaged in fighting around Račak/Rečak, it did not enter the village.<sup>3052</sup> Ojdanić also made a vague comment that, if

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<sup>3045</sup> Đorđe Ćurčin, T. 16966–16968 (5 October 2007).

<sup>3046</sup> Đorđe Ćurčin, T. 16976–16977 (5 October 2007).

<sup>3047</sup> Ćurčin explained that the supreme commander could meet with whomever he wanted, but that it was custom after such a meeting for the subordinate to report to his superior that such a meeting had taken place. Đorđe Ćurčin, T. 17025 (16 October 2007).

<sup>3048</sup> P939 (Minutes of the Collegium of the General Staff of the VJ, 21 January 1999), p. 9; Aleksandar Dimitrijević, T. 26636–26637 (8 July 2008).

<sup>3049</sup> P939 (Minutes of the Collegium of the General Staff of the VJ, 21 January 1999), p. 11.

<sup>3050</sup> P939 (Minutes of the Collegium of the General Staff of the VJ, 21 January 1999), p. 11.

<sup>3051</sup> Aleksandar Dimitrijević, T. 26636–26637 (8 July 2008).

<sup>3052</sup> 3D672 (Report from Pavković to VJ General Staff, 21 January 1995). The report is obviously misdated, and must have been sent in 1999, rather than 1995. The document is stamped as being received on 22 January 1999. This is

the “joint staff, command, or whatever” decided that an operation in the Račak/Rečak village could not be carried out without the assistance of the VJ, they would have to seek approval from the FRY President.<sup>3053</sup> In the alternative, Ojdanić seemed to suggest that the “joint command down there” might receive orders directly from the FRY president which it would then pass on to him indicating that they were “by order of the President of the FRY”.<sup>3054</sup> However, Krga’s interpretation of these minutes was that there may not yet have been a joint command in place, and that Ojdanić was presenting an option for forming a Joint Command.<sup>3055</sup>

1121. Steps taken in April to try to resubordinate the MUP to the VJ are discussed further below. In the context of these efforts, Pavković sent a report dated 25 May 1999 to the Supreme Command Staff requesting that the order on the resubordination of the MUP to the VJ issued in April 1999 be reinforced or otherwise annulled, returning the command of the MUP to “the hands of the Ministry of the Interior – Staff of the MUP of the republic of Serbia for Kosovo and Metohija through the Joint Command as has so far been the case”.<sup>3056</sup> Lazarević testified that the last “Joint Command” order from 1999 was issued on 16 April 1999, coinciding with the call for resubordination.<sup>3057</sup> All subsequent orders and instructions issued by the VJ did not include the title “Joint Command.”

1122. Also in evidence are 16 orders bearing the heading Joint Command, issued between March and April 1999,<sup>3058</sup> wherein VJ units were ordered to conduct several actions in co-ordination with MUP units. Each order contained some variant of the following phrase: “The Joint Command for Kosovo and Metohija in the Priština Sector shall command and control all forces during the combat operations.” Radojko Stefanović testified that in 1999 orders bearing the heading “Joint Command” were more common than Priština Corps orders, which was the opposite of the situation in 1998.<sup>3059</sup> However, none of these documents contain any names indicating membership of the

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further reinforced by the fact that Pavković’s report is apparently in response to a request from Deputy Chief of the General Staff, Lieutenant General Svetozar Marjanović, 21 January 1999. 3D671 (Request for Interim report on the Engagement of forces in Račak).

<sup>3053</sup> P939 (Minutes of the Collegium of the General Staff of the VJ, 21 January 1999), p. 11.

<sup>3054</sup> P939 (Minutes of the Collegium of the General Staff of the VJ, 21 January 1999), p. 12.

<sup>3055</sup> Branko Krga, T. 16858–16860 (4 October 2007).

<sup>3056</sup> P1459 (3<sup>rd</sup> Army report on the non-compliance of MUP organs, 25 May 1999), p. 2.

<sup>3057</sup> Vladimir Lazarević, T. 18018–18020 (9 November 2007).

<sup>3058</sup> Joint Command Orders 19 March–6 April 1999: P3049 (Joint Command Order, 19 March 1998); P1966 (Joint Command Order, 22 March 1999); P2031 (Joint Command Decision, 22 March 1999); P2015 (Joint Command Order, 23 March 1999); P1968 (Joint Command Order, 24 March 1999); P1969 (Joint Command Order, 28 March 1999); P2003 (Joint Command Order, 2 April 1999); P1970 (Joint Command Order, 9 April 1999); P1971 (Joint Command Order, 13 April 1999); P1972 (Joint Command Order, 14 April 1999); P1973 (Joint Command Order, 14 April 1999); P1974 (Joint Command Order, 15 April 1999); P1975 (Joint Command Order, 15 April 1999); P1976 (Joint Command Order, 15 April 1999); P1878 (Joint Command Order, 15 April 1999); P1977 (Joint Command Order, 16 April 1999).

<sup>3059</sup> Radojko Stefanović, T. 21661–21662 (5 February 2008).

Joint Command in 1999. Likewise, official VJ documents signed by commanders and referring to the Joint Command give no information regarding its membership.

1123. Several of these orders identify forces engaging in combat operations in areas and on certain dates that correspond to crime sites in the Indictment. For example, the Indictment alleges that between 25 March and 2 April 1999, FRY and Serbian forces shelled and attacked villages, destroyed houses, shops, and cultural monuments, and forcibly expelled large numbers of Kosovo Albanians across the Albanian border, including in the villages of Bela Crkva/Bellacërkva, Mala Kruša/Krushë e Vogël, Velika Kruša/Krushë e Madhe, Celina, Pirane/Pirana, and Landovica. In connection to these actions, there is a 23 March 1999 Joint Command order to “support MUP forces in blocking, crushing and destroying ŠTS in the general area of Orahovac, Suva Reka and Velika Kruša.”<sup>3060</sup> This order stated that the most immediate task was for the 549<sup>th</sup> Motorised Brigade to “break up and destroy the ŠTS” in certain villages, including Celina, Velika Kruša/Krushë e Madhe, Mala Kruša/Krushë e Vogël, and Pirane/Pirana. The order also tasked the brigade to blockade along the line of villages, including Bela Crkva/Bellacërkva, as well as to support the MUP in a joint action to carry out an attack on the axis of villages, including Bela Crkva/Bellacërkva and Velika Kruša/Krushë e Madhe. A 549<sup>th</sup> Motorised Brigade order reflected the same location and general tasks as the Joint Command order, but further specified co-ordination with the 37<sup>th</sup> PJP detachment and two MUP platoons.<sup>3061</sup> An after-action report from the 549<sup>th</sup> Motorised Brigade detailed the execution of the operation between 25 and 29 March 1999. The report further stated that co-ordination between the VJ and the MUP functioned well and that the command of the forces was “under the joint command of the VJ and MUP”.<sup>3062</sup> K25, a PJP officer, confirmed that this report listed his unit as participating in the operation, that it accurately described the operation in which he took part, and that both regular MUP and PJP forces were involved.<sup>3063</sup> The connection between this particular order and the evidence concerning the events alleged in the Indictment shows that the Joint Command orders were indeed put into effect by both MUP and VJ forces.

1124. On 28 March 1999 Priština Corps units were ordered to support MUP forces in “destroying the ŠTS in the general area of Mališevo.”<sup>3064</sup> This order bore a heading “Joint Command” and required the 125<sup>th</sup> Motorised Brigade, the 243<sup>rd</sup> Mechanised Brigade, and the 549<sup>th</sup> Motorised

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<sup>3060</sup> P2015 (Joint Command Order, 23 March 1999). The Joint Command order issued on 23 March 1999 bore the log number 455-63.

<sup>3061</sup> P1981 (Order of the 549<sup>th</sup> Motorised Brigade, 23 March 1999).

<sup>3062</sup> P1995 (Analysis of the operation of the 549<sup>th</sup> Motorised Brigade, 30 March 1999).

<sup>3063</sup> K25, T. 4706–4708 (12 October 2006).

<sup>3064</sup> P1969 (Joint Command Order, 28 March 1999), p. 3.

Brigade to form a blockade along a specific axis. On 29 March Delić, the Commander of the 549<sup>th</sup> Motorised Brigade, ordered his units to crush the “terrorist” forces along the axis referred to in the Joint Command order.<sup>3065</sup> Delić’s combat report asserted that the 549<sup>th</sup> Motorised Brigade had successfully completed the operation in Mališevo/Malisheva, pursuant to the Priština Corps’s order of 28 March 1999.<sup>3066</sup> He reported that the operation lasted from 30 March until 3 April. On 30 March the 125<sup>th</sup> Motorised Brigade’s combat report stated that Battle Groups 5 and 6 were deployed “according to the decision of the PrK Commander to destroy the ŠTS in the sector of Mališevo.”<sup>3067</sup> On 28 March 1999 the Priština Corps had issued a “warning order” to the units to prepare “for the next task in the general area of Mališevo”.<sup>3068</sup> This warning order directed the 125<sup>th</sup> Motorised Brigade, the 243<sup>rd</sup> Mechanised Brigade, and the 549<sup>th</sup> Motorised Brigade to carry out the same tasks along the same axes contained in the Joint Command order of the same day. Lazarević testified that this warning order was a “preparatory order”.<sup>3069</sup> The Chamber notes that a similar “preparatory order” was issued by the Priština Corps for a joint operation conducted in the Jablanica/Jabllanica sector on 1 April 1999 before the Joint Command order for that operation was issued on 2 April 1999.<sup>3070</sup>

1125. Instructions that the Priština Corps support the MUP in the Drenica sector, issued in a 24 March 1999 Joint Command order, provide another example of the Joint Command’s authority over the operations carried out down the VJ chain of command.<sup>3071</sup> The order tasks the 37<sup>th</sup> Motorised Brigade with assisting the MUP along the axis of the villages of Rudnik-Vitak-Kladernica-Voćnjak-Bročna, and instructs them to “defeat and destroy the ŠTS” in the sector of the villages of Leočina-Kostrc-Kladernica. The 125<sup>th</sup> Motorised Brigade was to support the MUP from the axis of the villages of Gornja Klina-Lauša-Turićevac-Kruševac-Rezala. The next day, 25 March, the 37<sup>th</sup> Motorised Brigade, “pursuant to the order” no. 455-73 of the Joint Command, reported that its unit had entered the axes along the villages of Pantina-Gornja Klina-Rudnik and Pantina-Zubin Potok-Rudnik.<sup>3072</sup> On 27 March the Priština Corps Command sent a combat report to the 3<sup>rd</sup> Army, reporting that forces had destroyed “terrorists” in the direction of the villages of

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<sup>3065</sup> P2000 (Order of the 549<sup>th</sup> Motorised Brigade, 29 March 1999), p. 2.

<sup>3066</sup> P2002 (Analysis of operations of 549<sup>th</sup> Motorised Brigade, 30 March [*sic*] 1999), p. 1.

<sup>3067</sup> P2035 (125<sup>th</sup> Motorised Brigade Combat Report to PrK, 30 March 1999), p. 2.

<sup>3068</sup> 5D339 (PrK Command order, 28 March 1999).

<sup>3069</sup> Vladimir Lazarević, T. 17988 (9 November 2007).

<sup>3070</sup> P2029 (Order of the PrK, 1 April 1999); P2003 (Joint Command Order, 2 April 1999), p. 1; Vladimir Lazarević, T. 18000 (9 November 2007).

<sup>3071</sup> P1968 (Joint Command Order, 24 March 1999).

<sup>3072</sup> P2043 (37<sup>th</sup> Motorised Brigade Operations Report to PrK, 25 March 1999).

Vilak-Bročna-Gornja Klina-Turićevac.<sup>3073</sup> Another combat report from the Priština Corps to the 3<sup>rd</sup> Army, dated 30 March, reported that the Corps was still engaged in the operations in Drenica.<sup>3074</sup>

1126. There is a link between a 37<sup>th</sup> Motorised Brigade combat report from 3 April 1999, and a Joint Command order of 28 March 1999.<sup>3075</sup> The last section of the combat report sets out the main tasks for the next day, namely to secure roads as set out “in the decision of the Joint Command for KiM.” This corresponds to the Joint Command order, which describes specific tasks for particular units, including for the 37<sup>th</sup> Brigade to secure certain roads and establish full combat control of the same territory. According to Živanović and Kotur, the subordinate commanders did not have the right to change headings on documents received from a superior command, so that, when issuing orders or reports based on a Joint Command document, they were bound to use the phrase “decision of the Joint Command”.<sup>3076</sup>

1127. The VJ witnesses called by Lazarević claimed that the Joint Command orders were issued by the Priština Corps, rather than a “Joint Command”. Lazarević himself explained that the subordinates receiving the Joint Command orders were well aware that the command authority for any ordered action was the Priština Corps at the specified command post.<sup>3077</sup> Lazarević testified that the orders were created by, and filed in the log of, the Priština Corps. He also explained that the orders would be delivered by official mail, and that the envelope would indicate that they had come from the Priština Corps.<sup>3078</sup> Lazarević maintained that the Joint Command orders were served only to subordinate brigades as guidance documents and that brigade commanders would also receive a “decision map” from the Priština Corps, signed by the Corps Commander.<sup>3079</sup> Military expert, Radovan Radinović, and Branko Krga both stated that the contents and format of the documents were consistent with other documents produced by the VJ at that time.<sup>3080</sup>

1128. Radojko Stefanović, who in 1999 replaced Đaković as the Head of the Operations and Training sector with the Command of the Priština Corps, gave evidence that a standard template for Joint Command orders had been in the Priština Corps’s computer system beginning in 1998.<sup>3081</sup> He described a system in which there were two forms of documents used within the Corps, one headed

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<sup>3073</sup> P2810 (PrK Combat Report to 3<sup>rd</sup> Army, 26/27 March 1999), p. 2.

<sup>3074</sup> P2811 (PrK Combat Report to 3<sup>rd</sup> Army, 30 March 1999), p. 2.

<sup>3075</sup> P2807 (37<sup>th</sup> Motorised Brigade Combat Report to PrK, 3 April 1999); P1969 (Joint Command Order, 28 March 1999).

<sup>3076</sup> Dragan Živanović, T. 20506 (17 January 2008); Milan Kotur, T. 20753 (21 January 2008).

<sup>3077</sup> Vladimir Lazarević, T. 18149–18150 (13 November 2007).

<sup>3078</sup> Vladimir Lazarević, T. 17934 (8 November 2007).

<sup>3079</sup> Vladimir Lazarević, T. 17932, 17934 (8 November 2007).

<sup>3080</sup> Vladimir Lazarević, T. 17935 (8 November 2007); Branko Krga, T. 16873 (4 October 2007); Radovan Radinović, T. 17338–17339 (19 October 2007).

“Priština Corps” and signed by the commander, and one headed “Joint Command” without a signature, which was the more common form. The latter form of document, introduced in 1998, was only used where the forces of the MUP and the VJ worked together.<sup>3082</sup> Krsman Jelić, the commander of the 243<sup>rd</sup> Mechanised Brigade, testified that he would receive two documents relating to a planned operation, one being the order headed “Joint Command”, the other being the excerpt of a map on which the Priština Corps commander’s decision was written. He testified that the “basic document” was the decision of the Priština Corps.<sup>3083</sup> Miloš Mandić was told outright that documents headed “Joint Command” were actually documents of the Priština Corps.<sup>3084</sup> Momir Stojanović testified that all orders during 1999 were issued by the Priština Corps Commander.<sup>3085</sup> Delić testified that he was usually told in advance when he could expect to receive a written order such as those with the title “Joint Command”, and one reason why he never questioned orders headed “Joint Command”, was that he knew that they were issued by his commander.<sup>3086</sup>

1129. Witnesses from the VJ also testified that Joint Command orders were received in the same manner as Priština Corps documents and, apart from their heading, were otherwise indistinguishable from standard military documents.<sup>3087</sup> Further, Delić stated that the identical strictly confidential numbers on both the order and an envelope marked with the seal of the Priština Corps demonstrated that the order had been delivered in that envelope, and had thus originated from the Priština Corps.<sup>3088</sup>

1130. Aleksandar Vasiljević established a link between a Joint Command order shown to him in the course of his testimony and a Priština Corps order, based upon the reference number “455”, common to both documents, and concluded that this number was probably registered in the protocol of the Priština Corps as referring to “Šiptar terrorism” in Kosovo.<sup>3089</sup> Military expert Radovan Radinović testified that the reference number “455” indicated that the order emanated

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<sup>3081</sup> Radojko Stefanović, T. 21662 (5 February 2008).

<sup>3082</sup> Radojko Stefanović, T. 21661 (5 February 2008).

<sup>3083</sup> Krsman Jelić, T. 18864–18865 (23 November 2007).

<sup>3084</sup> Miloš Mandić, 5D1391 (witness statement dated 20 January 2008), para. 27.

<sup>3085</sup> Momir Stojanović, T. 20055 (11 December 2007).

<sup>3086</sup> Božidar Delić, T. 19353 (29 November 2007), 19571 (5 December 2007).

<sup>3087</sup> Aleksandar Vasiljević stated that the Joint Command orders were drawn up in the same manner as official VJ documents. Aleksandar Vasiljević, T. 8733–8734 (19 January 2007). *See also* Božidar Delić, T. 19416 (4 December 2007). Delić also testified that he received Joint Command orders by sending a courier to the Priština Corps which would return with documents. Božidar Delić, T. 19349 (29 November 2007). Krsman Jelić stated that all documents were received in a Priština Corps envelope, and orders of the Joint Command were always accompanied by an extract from a Priština Corps order. Krsman Jelić, T. 18869–18870 (23 November 2007).

<sup>3088</sup> Božidar Delić, T. 19350–19351 (29 November 2007).

<sup>3089</sup> Aleksandar Vasiljević, T. 8738, 8741–8742 (19 January 2007).

from the Priština Corps.<sup>3090</sup> Accordingly, the orders all share the basic goal of “routing out, crushing and destroying ŠTS forces,” demonstrate detailed knowledge of MUP deployments throughout Kosovo, and use that information to provide specific orders to VJ units tasked with supporting the MUP.

1131. Supporting the contention that these were orders of the Priština Corps commander is a series of Priština Corps Command reports making reference to decisions of the Priština Corps Commander, in cases where the original decisions were in fact Joint Command orders. For example, a Priština Corps Command combat report to the 3<sup>rd</sup> Army Command dated 3 April 1999 contains the phrase “pursuant to the decision of the Priština Corps commander”, although the order for the joint operation in the Jablanica sector was an order with a heading “Joint Command”.<sup>3091</sup> In addition, Stefanović testified that a Priština Corps Command report to the 3<sup>rd</sup> Army Command dated 4 April 1999, which contains the phrase “following the decision of the Priština Corps commander”, was written in response to the same Joint Command order. A Priština Corps Command combat report dated 1 April 1999, which contains the phrase “in accordance with the general idea and decision by the commander of the Priština Corps”, was in response to an order of the Joint Command to support MUP forces in destroying terrorists in the Mališevo sector dated 28 March 1999.<sup>3092</sup>

1132. The Chamber notes that each of the 16 Joint Command orders in evidence, in setting out the assigned tasks of the relevant unit, uses the phrase “I have decided as follows”, rather than a reference to a joint decision.

1133. Also pointing to the Priština Corps as the source of the Joint Command orders is a 22 March 1999 amendment to a Joint Command order that, although signed by Lazarević, purported to come from the Priština Corps.<sup>3093</sup> Krga testified that an amendment to a decision could only have been drafted by the same command which drafted the original, and that a Corps Commander could implement, but not amend, a decision of a superior command.<sup>3094</sup> As Lazarević was the Priština

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<sup>3090</sup> Radovan Radinović, T. 17333–17334 (19 October 2007).

<sup>3091</sup> 5D84 (PrK Combat Report to 3<sup>rd</sup> Army, 3 April 1999); P2003 (Joint Command Order, 2 April 1999). Radojko Stefanović testified that this report was issued in response to an order of the Joint Command to destroy terrorists in the Jablanica sector, 2 April 1999. Radojko Stefanović, T. 21669 (5 February 2008).

<sup>3092</sup> 5D85 (PrK Combat Report to 3<sup>rd</sup> Army, 4 April 1999); 4D371 (PrK Combat Report to 3<sup>rd</sup> Army, 1 April 1999); P1969 (Joint Command Order, 28 March 1999); Radojko Stefanović, T. 21669–21671 (5 February 2008).

<sup>3093</sup> P1967 (Amendment to the decision on supporting the MUP in Breaking up and Destroying in the area of Malo Kosovo, 22 March 1999); *see also* P1966 (Joint Command Order, 22 March 1999). There was some debate as to whether this document was an amendment to a Joint Command decision, or merely an implementation order. Krga testified that the document was indeed an amendment as it does not contain repeat provisions of the original order; for example, the amendment sets up a command post in the village of Lauša. Branko Krga, T. 16880 (4 October 2007). Gergar also gave evidence to that effect. Mihajlo Gergar, T. 21528 (1 February 2008).

<sup>3094</sup> Branko Krga, T. 16918–16919 (4 October 2007).



Corps Commander at that time, and because the two documents share the same character and reference number, Krga concluded that both documents, the original order and the amendment, came from the Priština Corps Command.<sup>3095</sup> Gergar testified that he personally spoke to Lazarević upon receiving the initial order, and it was then that Lazarević explained to him that such orders were in fact issued by the Priština Corps.<sup>3096</sup>

1134. Finally, the Chamber notes, as explained above,<sup>3097</sup> that the joint operation conducted in the Podujevo/Podujeva area, as well as the joint operation conducted in the Malo Kosovo area and the sector of Donja Drenica—for which Joint Command orders were issued on 19 March 1999 and on 22 March 1999 respectively—were planned by the Priština Corps Command in accordance with orders from the 3<sup>rd</sup> Army Command.<sup>3098</sup> In particular, the Chamber notes that the Priština Corps Command’s “idea for conducting an operation to defeat the ŠTS in the sector of northern Drenica and Podujevo” bore the log number 455-43, while the Joint Command order of 19 March 1999 bore the subsequent number, 455-44.<sup>3099</sup> Lazarević testified that the Joint Command order for the operation in the Malo Kosovo area was “a document from the Priština Corps Command for the combined execution of the tasks with the MUP forces”.<sup>3100</sup>

1135. In light of the foregoing analysis, the Chamber accepts that the log number 455 related to the Priština Corps and concludes that the Priština Corps was the source of these 16 orders.

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<sup>3095</sup> Branko Krga, T. 16877, 16918–16919 (4 October 2007).

<sup>3096</sup> Mihajlo Gergar, T. 21528 (1 February 2008).

<sup>3097</sup> See above Section VI.E.2.

<sup>3098</sup> P3049 (Joint Command Order, 19 March 1999); P1966 (Joint Command Order, 22 March 1999). P2031 (Joint Command Decision, 22 March 1999). On 18 March 1999, the PrK Command suggested to the 3<sup>rd</sup> Army Commander its “idea for conducting an operation to defeat the ŠTS in the sector of northern Drenica and Podujevo”, 6D1416 (PrK plan of action, 18 March 1999). On 22 March 1999, the PrK suggested to the 3<sup>rd</sup> Army Command its “plan for execution of operation to rout ŠTS in the sector of Donja Drenica and Gornji Lab” to the 3<sup>rd</sup> Army Commander, 5D276 (Communication of the PrK Command to the 3<sup>rd</sup> Army Command, 22 March 1999).

<sup>3099</sup> 6D1416 (PrK plan of action, 18 March 1999); P3049 (Joint Command Order, 19 March 1999). Similarly, the Chamber notes that, while the PrK Command’s “plan for execution of operation to rout ŠTS in the sector of Donja Drenica and Gornji Lab” submitted to the 3<sup>rd</sup> Army Commander on 22 March 1999 bore the log number 455-55, the Joint Command order to rout and destroy Albanian “terrorist” forces in the Malo Kosovo area bore the subsequent number, namely 455-56, 5D276 (Communication of the PrK Command to the 3<sup>rd</sup> Army Command, 22 March 1999); P1966 (Joint Command Order, 22 March 1999). The Joint Command order “to crush and destroy the ŠTS in the sector of Donja Drenica” bore the log number 455-54. Lazarević was asked why the Joint Command order bore a number inferior to the number of the plan for execution. He explained that both documents had been created the same day. Moreover, he stated that these two documents as well as the order to rout and destroy Albanian “terrorist” forces in the Malo Kosovo area “were on the desk of the Army Commander when [he] was explaining to him, together with the operations officer, the concept, the idea, for performing that task”. Finally, he said that it was very likely that the person from the registry logged the order “to crush and destroy the ŠTS in the sector of Donja Drenica” before logging the plan for execution. Vladimir Lazarević, T. 18622 (20 November 2007).

<sup>3100</sup> Vladimir Lazarević, T. 17928 (8 November 2007).

1136. In addition to being headed “Joint Command”, these 16 orders contained a clause stipulating that the operations were to be “commanded by the Joint Command”.<sup>3101</sup> A number of VJ commanders testified that they sought an explanation from Lazarević when they first received these orders. It was explained to them that Lazarević remained their commander and the Priština Corps their superior unit.<sup>3102</sup> Several VJ officers called as witnesses by the Defence suggested that many of the references in orders to actions being “commanded by the Joint Command” indicated simply that there was a combined command post at which both the relevant VJ and MUP commanders would be stationed, and from there command their own forces down regular chains of command. Simić stated that this phrase meant that the different structures involved in an action—the VJ and the MUP—were to be commanded by their own chains of command, but that the various commands were to be harmonised.<sup>3103</sup> Živanović testified that Đaković and Pavković explained the Joint Command to him as support for the MUP in situations where both VJ and MUP commanders would be in one post. Everyone would command their own units and “we would call that a combined command post and the action performed from that combined command post is called a joint exercise of command”.<sup>3104</sup> The Joint Command was in fact not a commanding body but “some sort of a co-ordination plan”.<sup>3105</sup> Stefanović also testified that the phrase “the Joint Command for Kosovo and Metohija shall command and direct all forces during combat operations from the Priština area” in one order referred to the existence of a “combined command post from which everyone autonomously commands his own forces”.<sup>3106</sup> Vladimir Marinković explained that joint command posts were set up during joint anti-terrorist activities, whence the MUP and VJ commanders would command the action.<sup>3107</sup> Savić also interpreted the heading “Joint Command” as indicating “combined or joint commanding of units” in actions in which both the MUP and the VJ were involved.<sup>3108</sup>

1137. As explained in paragraph 1029 above, Đaković testified that, in an action where there was joint activity by the MUP and VJ, orders would be in the form of these Joint Command orders, with the phrase “Joint Command” in the header and signature block; they did not constitute orders to the

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<sup>3101</sup> See also P2002 (Analysis of operations of 549<sup>th</sup> Motorised Brigade, 30 March [sic] 1999); P1969 (Joint Command Order, 28 March 1999). The analysis of operations relating to the “warning order” of the PrK Command includes the following statement: “The command of the envisaged forces united the joint command of the MUP and VJ.”

<sup>3102</sup> Ljubiša Diković, T. 19880–19881 (10 December 2007); Miloš Mandić, 5D1391 (witness statement dated 20 January 2008), para. 27; Mihajlo Gergar, T. 21528 (1 February 2008).

<sup>3103</sup> Miodrag Simić, T. 15572 (13 September 2007).

<sup>3104</sup> Dragan Živanović, T. 20509 (17 January 2008).

<sup>3105</sup> Dragan Živanović, T. 20464 (17 January 2008).

<sup>3106</sup> Radojko Stefanović, T. 21663–21664 (5 February 2008); P1966 (Joint Command Order, 22 March 1999).

<sup>3107</sup> Vladimir Marinković, T. 20257–20258 (13 December 2007).

<sup>3108</sup> Ljubomir Savić, T. 20996 (24 January 2008).

MUP, but were the basis for MUP commanders to be able to write their own orders.<sup>3109</sup> For any actions that did not involve joint action or support the MUP, an ordinary Priština Corps order would be used, signed by the commander.<sup>3110</sup> Đaković also testified that his replacement in 1999 probably used the title to have the documents show that co-ordination between the MUP and the military was to be carried out.<sup>3111</sup> Although Đaković was no longer in his position as Chief of Operations at the Priština Corps in 1999, he commented on the orders upon the basis of his knowledge of the practice in 1998. He reviewed one of the orders, and testified that it would have been sent to the relevant VJ unit and the Ministry of Interior as an element of co-ordination with the MUP forces designated to carry out action there.<sup>3112</sup> The excerpts which related to the MUP organs were then sent to the respective MUP units for the purposes of arranging co-ordination.<sup>3113</sup>

1138. In line with this explanation, Lazarević testified that the references to the Joint Command were used “[i]n light of the previous experience from 1998 in the planning of the coordinated actions with the MUP forces or support to the MUP forces”.<sup>3114</sup> Thus, the term was only used by the operations officers to indicate where co-ordinated action and co-operation were essential. Lazarević maintained that the terms found at the end of each of the Joint Command orders—“[the] Joint Command for Kosovo shall command and direct all forces”—actually indicated that the MUP was to command its own forces and the VJ was to command its own forces, as a “combined” command.<sup>3115</sup>

1139. Krga testified that, while it was likely that some kind of co-operation between the army and the police took place, no outside entity had a right to issue orders to those units, and orders had to be communicated through the established chains of command. He argued that a command generally assigned tasks to the units to which it was superior, and that because the Joint Command orders did not specifically assign tasks to the MUP units mentioned in them, the Joint Command was not a body with command authority over the MUP.<sup>3116</sup> However, Krga did not explicitly reject the idea that these orders were issued in the first instance at an executive level so that they might be matched by similar documents through the normal chains of command of the MUP.<sup>3117</sup>

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<sup>3109</sup> Milan Đaković, T. 26393–26398 (19 May 2008).

<sup>3110</sup> Milan Đaković, T. 26452–26453 (20 May 2008).

<sup>3111</sup> Milan Đaković, T. 26389 (19 May 2008).

<sup>3112</sup> Milan Đaković, T. 26395 (19 May 2008).

<sup>3113</sup> Milan Đaković, T. 26393–26394 (19 May 2008).

<sup>3114</sup> Vladimir Lazarević, T. 17924–17925 (8 November 2007).

<sup>3115</sup> Vladimir Lazarević, T. 17929–17930 (8 November 2007).

<sup>3116</sup> Branko Krga, T. 16862–16863, 16873–16875 (4 October 2007).

<sup>3117</sup> See Branko Krga, T. 16871–16873 (4 October 2007) (testifying that, if there had been a Joint Command, it would have issued “joint tasks” to all its subordinate forces).

1140. Đorđe Ćurčin testified that separate chains of command for the VJ and the MUP persisted and that, when carrying out “joint operations”, they adhered to their respective chains of command.<sup>3118</sup> Tomislav Mladenović similarly agreed that it was logical that the MUP would have mirror documents and maps to the VJ, which were issued through their own chain of command.<sup>3119</sup>

1141. Krsman Jelić testified that, during a joint operation conducted in Kotlina/Kotllina at the end of March 1999, the tasks that were carried out by the MUP forces were issued by the Chief of the relevant SUP.<sup>3120</sup> He also explained that, during an operation, the MUP and the VJ exchanged any information they obtained.<sup>3121</sup> For instance, the MUP always informed the VJ of the equipment and weapons found and *vice versa*.<sup>3122</sup> Although communications were sometimes difficult during the NATO campaign, “most of the time, communications at short distance worked fine, especially between [him] and the Chief of SUP”.<sup>3123</sup> He specified that they had a constant exchange through Motorola devices, had exchanged frequencies, and communicated several times a day whenever a problem arose on the ground. Jelić sometimes asked the Chief of SUP for assistance and at other times the Chief of SUP would request support.<sup>3124</sup>

1142. Several other witnesses testified that the VJ and the MUP commands were separate during the execution of joint operations.<sup>3125</sup> Gergar stated that, on the basis of the Joint Command order of 15 April 1999 regarding the operation in the Bajgora area, and the map attached to this order, he drafted a decision in which he “assigned tasks only to the forces in [his] Brigade”, “[a]s was the case throughout the war”.<sup>3126</sup> According to him, the “Command was separate”.<sup>3127</sup> Gergar further testified that, in a specific action that was part of the broader operation conducted in the Malo Kosovo sector at the end of March 1999, there was “a group of officers from the Priština Corps” exercising “control over this action from [the Lauša sector]”.<sup>3128</sup> The command post “consisted of Colonel Nikolić, Major Đorđević and another two officers whose names [he] could not

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<sup>3118</sup> Đorđe Ćurčin, T. 17036–17037 (16 October 2007).

<sup>3119</sup> Tomislav Mladenović, T. 17613–17617 (25 October 2007).

<sup>3120</sup> Krsman Jelić, T. 18996–18997, 19009 (26 November 2007).

<sup>3121</sup> Krsman Jelić, T. 19011 (26 November 2007).

<sup>3122</sup> Krsman Jelić, T. 18998 (26 November 2007).

<sup>3123</sup> Krsman Jelić, T. 19018 (26 November 2007).

<sup>3124</sup> Krsman Jelić, T. 19018 (26 November 2007).

<sup>3125</sup> Božidar Delić, T. 19293, T. 19338–19339 (29 November 2007); T. 19403 (4 December 2007); T. 19546 (5 December 2007), T. 19680 (6 December 2007).

<sup>3126</sup> Mihajlo Gergar, 5D1400 (witness statement dated 27 December 2007), para. 31; *see also* 5D1329 (Map–decision of the 21<sup>st</sup> Armoured Brigade).

<sup>3127</sup> Mihajlo Gergar, 5D1400 (witness statement dated 27 December 2007), para. 29.

<sup>3128</sup> Mihajlo Gergar, T. 21530 (1 February 2008); Mihajlo Gergar, 5D1400 (witness statement dated 27 December 2007) (In his written statement, he stated that “[d]uring the action, a group of officers from the Command of the PrK commanded the action from the Lauš[a] feature, where their command post was located, which was the post of the 354<sup>th</sup> Brigade”).

remember”.<sup>3129</sup> These people “commanded the VJ forces, while MUP officers commanded their contingents”.<sup>3130</sup> According to Mijatović, although the police and VJ co-ordinated, the police commanders would command their units and the army commanders their units.<sup>3131</sup>

1143. Contrary to the position taken by Đaković and Delić that “Joint Command” was put as a heading on Priština Corps orders to make them more acceptable to the MUP,<sup>3132</sup> MUP officers testified that they did not receive any orders or documents headed “Joint Command” in 1999. Miloš Vojnović, Chief of the Prizren SUP, said that the map excerpts he received during actions from the PJP company commander from Prizren, or from Colonel Mitrović, the commander of the PJP detachment, were not marked “Joint Command”.<sup>3133</sup> Dušan Gavranić, Chief of the Gnjilane SUP, likewise testified that he never received any orders of the Joint Command through the MUP in 1999.<sup>3134</sup> Vladimir Ilić, assistant commander of the 22<sup>nd</sup> PJP Detachment, said that during his time in Kosovo he never undertook any action based upon a written order or map entitled “Joint Command for Kosovo and Metohija”.<sup>3135</sup> Miroslav Mijatović suggested that “Joint Command” was a uniquely military term, because in the military “they call everything a command.”<sup>3136</sup> Mijatović testified that the MUP Staff never received any orders from the Joint Command, nor did it have any obligations or tasks in relation to the Joint Command.<sup>3137</sup>

1144. In light of this evidence as a whole, the Chamber finds that, although the 16 orders contained a clause stipulating that the combat operations were to “be commanded by the Joint Command”, the VJ and MUP chains of command remained separate and intact and the VJ and MUP units were commanded by their respective commands. At most their separate commands might have been based in a common command post.

#### (B) Meeting held on 1 June 1999

1145. On 1 June 1999, while on a visit to Kosovo, Vasiljević was called by Pavković to a meeting attended by Stojanović, Anđelković, Đorđević, Stevanović, Lukić, Pavković, Lazarević, and Šainović, which was later described to him by Pavković as a meeting of the Joint Command.<sup>3138</sup>

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<sup>3129</sup> Mihajlo Gergar, 5D1400 (witness statement dated 27 December 2007), para. 32.

<sup>3130</sup> Mihajlo Gergar, 5D1400 (witness statement dated 27 December 2007), para. 32.

<sup>3131</sup> Miroslav Mijatović, T. 22309–22310 (13 February 2008).

<sup>3132</sup> See Milan Đaković, T. 26444–26445 (20 May 2008); Božidar Delić, T. 19422–19423, 19495 (4 December 2007).

<sup>3133</sup> Miloš Vojnović, T. 24204 (12 March 2008).

<sup>3134</sup> Dušan Gavranić, T. 22723 (19 February 2008).

<sup>3135</sup> Vladimir Ilić, T. 24345 (17 March 2008).

<sup>3136</sup> Miroslav Mijatović, T. 22412 (14 February 2008).

<sup>3137</sup> Miroslav Mijatović, T. 22234–22235 (12 February 2008).

<sup>3138</sup> Vasiljević confirmed that the expression “Joint Command” was used, but expressed his belief that there was no difference in describing the meeting as one between the “Joint Staff” or the “Joint Command” and that it was merely a

According to Vasiljević, this meeting was held in the basement of the Grand Hotel in Priština/Prishtina, in a room full of work spaces of the 3<sup>rd</sup> Army and Priština Corps, complete with working maps, such that it appeared to be an operations centre. Presentations given by Lukić, Lazarević, and Pavković included very technical details about VJ and MUP activities. Their reports focused only on that day's activities, giving Vasiljević the impression that the meetings were a daily occurrence.<sup>3139</sup> Šainović addressed the meeting, agreeing that things should be done as planned by the Generals of the VJ and the MUP.<sup>3140</sup> Vasiljević clarified this last assertion by stating that Šainović had not issued orders, but had said that work in clearing away the terrain should be carried out as planned.<sup>3141</sup> Everyone rose when Šainović entered the room and treated him deferentially throughout, giving Vasiljević the impression that he was the Head of the Joint Command;<sup>3142</sup> however, he later qualified and said that he did not know what the official function of Šainović was and that he did not have the impression that he was the commander of some joint command.<sup>3143</sup>

1146. The Lazarević Defence challenges the accuracy of Vasiljević's version of these events,<sup>3144</sup> but the Chamber finds that other witnesses' accounts of the meeting were similar in most material respects. Anđelković testified that he was at this same meeting on 1 June 1999. He claimed that Šainović visited him at the Temporary Executive Council building and invited him to attend a meeting that evening with representatives from the Army.<sup>3145</sup> At the meeting representatives from the VJ, including Lazarević, described what was happening in the field, and Šainović spoke about talks in Belgrade between Ahtisaari, Chernomyrdin, and Milošević.<sup>3146</sup> Anđelković noted, however, that these presentations were not formal briefings or reports, but rather informal exchanges of information.<sup>3147</sup>

1147. Momir Stojanović gave evidence about a meeting he attended at the Grand Hotel at the beginning of June 1999 with many of the same participants. However, it was never referred to by

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linguistic finesse. Aleksandar Vasiljević, T. 14504–14505 (29 August 2007). *See* Lazarević Final Trial Brief, 29 July 2008 (public version), para. 813. Cvetić testified that Šainović was also present in the basement of the Grand Hotel in Priština/Prishtina on 29 March 1999 where he watched news reports about NATO bombing. Ljubinko Cvetić, T. 8086–8087 (7 December 2006), T. 8135 (8 December 2006).

<sup>3139</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), paras. 79, 81–82.

<sup>3140</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 81, 2D387 (witness statement dated 25 July 2007), para. 4.

<sup>3141</sup> Aleksandar Vasiljević, T. 14509 (29 August 2007).

<sup>3142</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 80.

<sup>3143</sup> Aleksandar Vasiljević, 2D387 (witness statement dated 25 July 2007), para. 4, T. 14506 (29 August 2007).

<sup>3144</sup> Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 811–824.

<sup>3145</sup> Zoran Anđelković, T. 14663 (30 August 2007). Vasiljević noted that Anđelković seemed to be tagging along with Šainović. Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 80.

<sup>3146</sup> Zoran Anđelković, T. 14663, 14715–14716 (30 August 2007).

<sup>3147</sup> Zoran Anđelković, T. 14664 (30 August 2007).

anyone there as a meeting of the Joint Command, either before or after the meeting. Furthermore, because no reports were tabled or orders issued, he did not believe it was the meeting of a Joint Command body. Stojanović was invited by Pavković. Members of the MUP and the VJ were present. General Vasiljević was visiting at the time and was also invited. The others there were Pavković, Lazarević, Miša Vilotić, who was the chief of the RDB for Kosovo, Lukić, General Kovačević, who was the chief of the armoured mechanised units in the Supreme Command Staff, Šainović, and Anđelković. The meeting took place in the Information Centre of the Priština Corps, which was the only section of the Corps Command stationed at the Grand Hotel. All sat at a round table, with no indication of precedence. The meeting was short, lasting only ten to fifteen minutes. Stojanović testified that he gained the general impression of a troubled and unpleasant atmosphere. Pavković addressed the group and said that Šainović had arrived from Belgrade and wished to inform them about the ongoing negotiations in which Milošević was involved.<sup>3148</sup>

1148. Stojanović confirmed that Šainović then addressed the meeting, saying that an agreement between the FRY and the international community was going to be signed imminently. The agreement would provide for a ceasefire and the immediate withdrawal of the VJ and the MUP from Kosovo. They were told that withdrawal would begin very soon, and that all activities were to be terminated as soon as possible. Stojanović testified that everyone was surprised by this. He recalled Lazarević asking what he was supposed to do, since he had already commenced anti-terrorist activities in some sectors. Lukić also said that he had ongoing activities. Šainović said that he did not know what was to happen with current actions, but that everything had to be finalised as the agreement was going to be signed immediately. Stojanović understood Šainović's comment to be merely a statement of fact rather than an order.<sup>3149</sup> He understood Šainović's presence to be in his capacity as a high ranking state official who could inform them of the results of the negotiations.<sup>3150</sup>

1149. The Chamber finds that this meeting held on 1 June 1999 attended by, *inter alios*, Stojanović, Anđelković, Đorđević, Stevanović, Lukić, Pavković, Lazarević, and Šainović was a meeting similar to the Joint Command meetings held in 1998.

### (C) Conclusions about the Joint Command in 1999

1150. There is less evidence of the existence of the Joint Command as an entity in 1999. The Trial Chamber notes the absence of evidence that daily meetings were organised at the Temporary

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<sup>3148</sup> Momir Stojanović, T. 19773–19775, 19777 (7 December 2007).

<sup>3149</sup> Momir Stojanović, T. 19773–19776 (7 December 2007).

<sup>3150</sup> Momir Stojanović, T. 19802–19803 (7 December 2007).

Executive Council buildings in Priština/Prishtina as they were in 1998. There is evidence of only one meeting held on 1 June 1999.

1151. Nonetheless, the Chamber finds that important actors, including some of the Accused, referred to the “Joint Command” in 1999, which they had to take into account in their duties. When referring to the “Joint Command” in 1999, they adverted to the whole co-ordination system established in 1998 between the VJ and the MUP. As explained above, in 1998 an entity known as the Joint Command was part of this system. In 1999 the co-ordination system continued to function. It had become standard practice for MUP and VJ representatives to hold co-ordination meetings before finalising plans for and conducting joint operations. The Chamber further finds that, even though the Priština Corps Command was the source of the 16 orders issued in 1999, a heading “Joint Command” was added to them to ensure that they would be accepted into the MUP chain of command, as suggested by Đaković; to inform VJ units that an operation would involve the MUP; and to lend them an air of greater authority. In the view of the Chamber, the references to the “Joint Command” constituted an important factor during the planning and implementation of joint operations between the VJ and the MUP, as they evoked the authority of the entity referred to in 1998 as the “Joint Command”.<sup>3151</sup>

1152. Despite the close co-operation and co-ordination between the VJ and MUP in the planning and execution of combat activities in Kosovo in 1998 and early 1999, there were limits to this co-operation and in some instances it failed.<sup>3152</sup> The next section will examine the issue of the resubordination of MUP units to the VJ as of mid-April 1999.

### 3. Resubordination of MUP units and organs to the VJ as of April 1999

#### a. Arguments of parties

1153. In the Indictment the Prosecution asserts that after 23 March 1999, by virtue of the FRY Law on Defence, the MUP was resubordinated to the VJ. The Prosecution alleges that Ojdanić as Chief of the Supreme Command Staff “exercised command authority over MUP units as well as over military-territorial units, civil defence units and other armed groups subordinated to the VJ during a state of imminent threat of war or a state of war”.<sup>3153</sup> In addition, the Prosecution argues that Pavković, as Commander of the 3<sup>rd</sup> Army, and Lazarević, as Commander of the Priština Corps,

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<sup>3151</sup> The Chamber does not accept the Lazarević Defence’s argument in paragraph 1051 above because Lazarević’s actions in 2001 do not overcome the overwhelming body of evidence showing the existence of the Joint Command and its influence over the actions of the VJ and the MUP.

<sup>3152</sup> See, e.g., P1993 (Minutes of the MUP Staff meeting, 11 May 1999); Vladimir Lazarević, T. 18017 (9 November 2007); 5D376 (Letter signed by Sreten Lukić, 13 May 1999); Radojko Stefanović, T. 21687 (5 February 2008).



“exercised command authority or control over MUP units subordinated to, or operating in co-operation or co-ordination with, [the VJ 3<sup>rd</sup> Army or the Priština Corps of the VJ 3<sup>rd</sup> Army] as well as over military-territorial units, civil defence units and other armed groups, under the FRY Law on Defense, and through joint command and co-ordination structures and mechanisms”.<sup>3154</sup>

1154. The Ojdanić, Pavković, and Lazarević Defences maintain that the position of the Prosecution is a consequence of an erroneous linguistic interpretation of article 17 of the FRY Law on Defence.

1155. The language of article 17, as translated by CLSS into English was as follows:

In case of an imminent threat of war, a state of war or a state of emergency, units and organs of Internal Affairs can be used to carry out combat assignments, i.e., engage in combat or offer armed resistance. In carrying out their combat assignments, these units and organs *shall* be subordinate to the officer of the Armed Forces of Yugoslavia who is commanding combat operations.<sup>3155</sup>

1156. According to these three Accused, the original text provides that units and organs of the Ministry of Interior *may* be used to carry out combat tasks or to engage in combat or to offer armed resistance, and thus it is permissive rather than mandatory.<sup>3156</sup> On 8 July 2008 the Chamber ordered CLSS to re-translate article 17 into English, and the new translation that was produced contained identical language to the original translation—“shall”, rather than “may”.<sup>3157</sup>

1157. In its final brief, the Ojdanić Defence maintains that the meaning of “*shall* be subordinate” did not provide Ojdanić with *de jure* control over the MUP. It could only provide an army commander with the means of limited supervision over MUP units during a combat operation.<sup>3158</sup> The Pavković and Lazarević Defences, however, still maintain that the law should be translated as “*can*” resubordinate. Thus, VJ commanders did not have automatic *de jure* control over the MUP; resubordination needed to have been activated to have any effect.<sup>3159</sup> The Lazarević Defence further argues that the fact that FRY President Milošević issued an order for resubordination, separate from the declaration of war, proves that article 17 was not self-executing.<sup>3160</sup>

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<sup>3153</sup> Indictment, paras. 11(vi), 41(b); Prosecution opening statement, T. 436 (10 July 2006).

<sup>3154</sup> Indictment, paras. 12(ii), 53, 13(ii), 58.

<sup>3155</sup> P985 (FRY Law on Defence), article 17 (emphasis added).

<sup>3156</sup> Rule 98 *bis* Hearing, T. 12516–12517 (3 May 2007).

<sup>3157</sup> Order re Exhibits P985 and 3D670, 8 July 2008.

<sup>3158</sup> Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 457.

<sup>3159</sup> Pavković Final Trial Brief, 28 July 2008 (public version), para. 184; Lazarević Final Trial Brief, 29 July 2008 (public version), para. 807.

<sup>3160</sup> Lazarević Final Trial Brief, 29 July 2008 (public version), para. 807.

1158. The Ojdanić, Pavković, and Lazarević Defences also take the position that, in any event, formal resubordination never occurred in early 1999, and that evidence of any co-operation and co-ordination between the VJ and MUP during some operations in Kosovo is not evidence of subordination of the MUP to the VJ.<sup>3161</sup> They maintain that both the VJ and the MUP retained their chains of command and their chains of planning.<sup>3162</sup> In particular, the Pavković Defence asserts that there was co-ordination between the two bodies, but that this happened only at the level at which the combat activity was carried out, not at the highest level of the state.<sup>3163</sup>

1159. Additionally, the Lazarević Defence does not deny that there were certain operations and actions on the ground where co-operation and co-ordination existed between the MUP and the VJ, but maintains that there was no resubordination within the scope of these operations.<sup>3164</sup>

1160. In relation to the Prosecution allegation that Šainović, as the Head of the Joint Command, commanded, controlled, or exercised effective control over the forces of the FRY and Serbia in Kosovo,<sup>3165</sup> the Šainović Defence argues that Milošević's issuance of resubordination orders shows that there was no unitary command over these two forces at that time. Furthermore, the repeated attempts of the VJ to subordinate MUP units consistent with article 17 and reports of the continual failure of the MUP to subordinate to the VJ, prove that Šainović did not have effective control over the co-ordination of the MUP and the VJ in 1999, according to the Šainović Defence.<sup>3166</sup>

b. Resubordination process

1161. The Trial Chamber has been presented with a significant quantity of evidence regarding the manner in which resubordination was to function pursuant to the FRY Law on Defence.

1162. According to military expert Radovan Radinović, although articles 16 and 17 of the Law on Defence applied automatically when a state of war was declared, an implementing order was necessary for actual resubordination to occur, and MUP units needed to receive such an order through their own chain of command. Radinović explained that the typical procedure for resubordination would be for the Minister of Interior to issue a written order to the MUP Staff, or

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<sup>3161</sup> Pavković Final Trial Brief, 28 July 2008 (public version), para. 177; Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 462; Lazarević Final Trial Brief, 29 July 2008 (public version), para. 76. The Lazarević Defence used P1981 (Order of the 549<sup>th</sup> Motorised Brigade, 23 March 1999) to show that “tasks were given only to the units of the VJ and such tasks were to be accomplished with support of the units of the PJP”.

<sup>3162</sup> Pavković Final Trial Brief, 28 July 2008 (public version), para. 195; Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 77, 782.

<sup>3163</sup> Pavković Final Trial Brief, 28 July 2008 (public version), para. 197.

<sup>3164</sup> Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 76, 780.

<sup>3165</sup> Indictment, para. 46(c).

<sup>3166</sup> Šainović Final Trial Brief, 29 July 2008 (public version), paras. 612, 617.

its superior body, to resubordinate local forces to the relevant army commanders.<sup>3167</sup> Radinović's testimony was supported by that of Radomir Mladenović, a judge in the Niš Military Court, who stated that it was not sufficient for the Supreme Defence Council to make a decision regarding resubordination on its own. He explained that there were republican and federal institutions involved and that "if they fail to agree among themselves then there can be no discussion of any resubordination there."<sup>3168</sup>

1163. Aleksandar Dimitrijević gave a different interpretation, stating that:

... in case a state of emergency is declared, the army is issued with a task. It is the organizer and protagonist of all activities in the territory where the state of emergency is declared, starting with an imposition of a curfew and including all other activities in which the MUP takes part, as well, but all of it is under the army, that is to say that then the civilians, the state authority – carries out tasks.<sup>3169</sup>

1164. Radojko Stefanović maintained that resubordination was a complex activity.<sup>3170</sup> Lazarević similarly testified extensively about the details of the resubordination process, which he described as extremely complex and a "mission impossible".<sup>3171</sup> Upon further questioning by the Chamber, Stefanović clarified that, overall, it was "simply impossible" for all of the organs and services of the police to be resubordinated to the VJ and that he was not aware of whether the impossible nature of the order was discussed at any level above the MUP unit commanders.<sup>3172</sup>

1165. According to Slobodan Kosovac, article 17 only applied to actual individual combat operations when they were ordered or undertaken; once this was done, there was "co-operation or concerted action" between the MUP and VJ.<sup>3173</sup> This was supported by the testimony of Lazarević, who stated that the resubordination process required extremely detailed written orders regulating matters, including the manner in which a unit was to be resubordinated, as well as the command and the use of that unit. He explained that resubordination could not be done on an *ad hoc* basis; even when there was a previous plan in place, resubordination was not automatic as there had to be formal resubordination of a unit for a certain task, and specific orders issued for resubordination to occur.<sup>3174</sup> Lazarević described the process of resubordination as follows:

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<sup>3167</sup> Radovan Radinović, T. 17174–17175 (17 October 2007).

<sup>3168</sup> Radomir Mladenović, T. 21298 (29 January 2008).

<sup>3169</sup> Aleksandar Dimitrijević, T. 26651 (8 July 2008).

<sup>3170</sup> Radojko Stefanović, T. 21821–21824 (7 February 2008).

<sup>3171</sup> Vladimir Lazarević, T. 18024, T. 18037–18040 (9 November 2007).

<sup>3172</sup> Radojko Stefanović, T. 21684–21688 (5 February 2008); T. 21826–21828 (7 February 2008).

<sup>3173</sup> Slobodan Kosovac, T. 15841–15842 (18 September 2007).

<sup>3174</sup> Vladimir Lazarević, T. 17826 (7 November 2007).

[A] unit temporarily, for a briefer or longer period of time, leaves its organisational units and becomes part of a new unit. It is resubordinated to that unit, in the sense of the Command, and ... it's further use for the execution of tasks. It has nothing to do with its original unit, and the original unit has no way of commanding or controlling that unit. Some powers may be retained in personnel, logistics aspects, but as for the use of that unit, any ties between this unit that has been resubordinated and the original unit are severed.<sup>3175</sup>

Stefanović explained that, when resubordination took effect, there was “singleness of command” in the execution of combat missions.<sup>3176</sup> To that end, Radomir Mladenović explained that, if resubordination had been effectuated, the Law on Military Courts at the time would have applied to police officers in the MUP units as they would have been performing military duties under resubordination.<sup>3177</sup>

1166. Miroslav Mijatović testified that there were disputes over the legal interpretation of the resubordination provision.<sup>3178</sup> The police maintained the position that only the units involved in combat activity were to be resubordinated and that everyone else in the MUP was supposed to continue with their normal activities. However, “certain VJ officers” believed that the entire MUP should be resubordinated to the VJ. According to Mijatović, this issue “was dealt with eventually and this did not affect anti-terrorist activities in any way or the defence of the country.” Despite extensive questioning by the Chamber, Mijatović was not able to say who from the VJ put forward the alternative interpretation, nor was he able to suggest a reason why the VJ would want the entire MUP to be resubordinated, but instead stated, “I’m not saying that they wanted that necessarily ... it’s just this was their interpretation” of the provision on resubordination. Mijatović was also unable to say whether or not meetings between the MUP and the VJ regarding the interpretation issue took place.<sup>3179</sup>

### c. Resubordination orders

1167. On 23 March 1999 a state of imminent threat of war was officially proclaimed in the FRY, and the following day a state of war was declared, triggering the application of article 17 of the

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<sup>3175</sup> Vladimir Lazarević, T. 17826 (7 November 2007).

<sup>3176</sup> Radojko Stefanović, T. 21821–21824 (7 February 2008).

<sup>3177</sup> Radomir Mladenović, T. 21320–21321 (29 January 2008). Mladenović also confirmed that he never received any information indicating that MUP units had been resubordinated to the army, thereby extending the jurisdiction of the military courts.

<sup>3178</sup> Miroslav Mijatović, T. 22265–6 (13 February 2008).

<sup>3179</sup> Miroslav Mijatović, T. 22265–22267, 22272–22274 (13 February 2008).

FRY Law on Defence.<sup>3180</sup> On 18 April, the then FRY President Milošević issued a written order for the resubordination of the MUP to the VJ in Kosovo.<sup>3181</sup>

1168. Notably, Đorđe Ćurčin testified that a scenario wherein the MUP and civilian defence forces would be under the command of the 3<sup>rd</sup> Army had been contemplated as early as 12 April 1999,<sup>3182</sup> six days before Milošević's order was issued. The possibility of resubordination had also been examined earlier by the Chief of the Supreme Command Staff, a few days before the 12 April VJ collegium meeting.<sup>3183</sup> Ćurčin explained that, although these discussions did not include the Ministry of Interior, a memo from the Federal Defence Ministry was subsequently sent to the Ministry of Justice, seeking an opinion on the legality of resubordination of the MUP. However, the Ministry would not provide the advice sought, believing that it lacked jurisdiction over the issue.<sup>3184</sup> The Trial Chamber also notes that as early as 10 April 1999 the 3<sup>rd</sup> Army Command instructed, in the *Grom 4* order, that “the forces of the Interior Ministry” be “placed under the 3<sup>rd</sup> Army Command and used exclusively according to the decisions of the Commander of the Army”.<sup>3185</sup>

1169. On 18 April, following the Milošević order, Ojdanić, in his capacity as VJ Chief of the Supreme Command Staff, issued a corresponding resubordination order to the Commands of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Armies, as well as the Navy.<sup>3186</sup> Two days later, on 20 April 1999, 3<sup>rd</sup> Army Commander Pavković ordered the resubordination of all MUP units and agencies to the Priština Corps and the Niš Corps in furtherance of the execution of combat missions.<sup>3187</sup> The Commander of the Priština Corps, Lazarević, simultaneously sent an order to several army detachments and the MUP Staff in Priština, ordering all units and organs of the MUP to be resubordinated to the Priština Corps brigade commands for the purpose of carrying out combat operations; he imposed a deadline

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<sup>3180</sup> P992 (Decision to Proclaim a State of Imminent Threat of War, 23 March 1999); P991 (Decision on the Proclamation of the State of War, 25 March 1999).

<sup>3181</sup> 3D670 (Order of Slobodan Milošević for resubordination of MUP forces to VJ, 18 April 1999).

<sup>3182</sup> Đorđe Ćurčin, T. 17017–17018 (16 October 2007). See P1483 (Supplement to Directive of 9 April 1999 From the Supreme Command Staff, 12 April 1999), para. 6, supplementing the original directive, 4D107 (Supreme Command Staff Directive for Engagement of VJ Against NATO Aggression).

<sup>3183</sup> Đorđe Ćurčin, T. 17018–17019 (16 October 2007). It is unclear whether Ćurčin is referring to the evening collegium meeting on 9 April 1999. However, the minutes from this meeting reflect that he was present at this meeting. P929 (Minutes of the Collegium of the Chief of Staff of the Supreme Command, 9 April 1999), p. 11.

<sup>3184</sup> Đorđe Ćurčin, T. 17019 (16 October 2007).

<sup>3185</sup> 4D308 (3<sup>rd</sup> Army order on defence from NATO, 10 April 1999), p. 4.

<sup>3186</sup> P1488 (Order to resubordinate MUP forces to the army and navy commanders, 18 April 1999). Exhibit P1460 is a copy of the same order and is stamped “3<sup>rd</sup> Army Command”, appearing to have come from the archives of the 3<sup>rd</sup> Army.

<sup>3187</sup> P1457 (Order on resubordination of MUP units to the VJ, 20 April 1999); P1722 (Order on resubordination of MUP units to PrK and NK, 20 April 1999).

of 25 April 1999 for resubordination to be effected.<sup>3188</sup> According to this order, all MUP units carrying out combat operations, and only while carrying out such operations, would be resubordinated. All other police compositions were to remain subordinate to the MUP.<sup>3189</sup>

1170. Lazarević testified about the meetings and procedure that culminated in his 20 April 1999 order.<sup>3190</sup> Because he felt that it was simply impossible to carry out the resubordination order, it took him a long time to draft this order. Further, he stated that he wrote several draft orders and tore them up, attempting to avoid enumerating the units that should continue their regular tasks and which should be resubordinated to the brigades. He set the 25 April deadline because he did not think it would be an easy task to accomplish due to the complex nature of the resubordination process.<sup>3191</sup> On cross-examination Lazarević testified that on or around 19 April he had been ordered by Pavković to attend a meeting where he, Pavković, and Obrad Stevanović discussed the practicalities of MUP resubordination in a “true combat sense”—that is, which units to include in combat and which to exclude, according to the rules of combat of the army—as opposed to the legalities stipulated in the Law of Defence.<sup>3192</sup> Lazarević was unclear as to whether Vlastimir Đorđević and Đaković had been in attendance, nor could he recall whether any notes were taken at the meeting. He summarised the ultimate conclusion reached by “one of these two Assistant Ministers of the Interior, who said, ‘We cannot implement this because we do not have an order from our minister.’” Lazarević recalled that it was Pavković’s duty to report to the Supreme Command Staff that the police units in Kosovo had not received resubordination orders from the MUP, and that this report was sent the next day, on 20 April.<sup>3193</sup> Ljubiša Stojimirović, former Chief of Staff of the 3<sup>rd</sup> Army, was aware of a request by the 3<sup>rd</sup> Army Commander to the Supreme Command Staff to send the resubordination order on to the Minister of Interior of Serbia, so that the decision would be passed on to lower formations in the Serbian MUP.<sup>3194</sup>

1171. Despite the fact that resubordination had not been effected by the 25 April deadline, Lazarević then sent another order to the MUP Staff and all subordinate commands of the Priština Corps, ordering all subordinate commands to engage the Serbian MUP, including PJP manoeuvre detachments and MUP territorial units, in order to carry out combat tasks in the Priština Corps zone. Lazarević also ordered his subordinate units to “[i]nclude the new military territorial

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<sup>3188</sup> P1267 (Order of the PrK regarding single command in combat operations, 20 April 1999). This order was sent by Lazarević to subordinate units of the PrK and to the Priština MUP Staff.

<sup>3189</sup> P950 (Vladimir Lazarević interview with the Prosecution), p. 235.

<sup>3190</sup> P1267 (Order of the PrK regarding single command in combat operations, 20 April 1999).

<sup>3191</sup> Vladimir Lazarević, T. 18037–18038 (9 November 2007).

<sup>3192</sup> Vladimir Lazarević, T. 18277–18278 (14 November 2007).

<sup>3193</sup> Vladimir Lazarević, T. 18260–18263, T. 18274–18278 (14 November 2007).

<sup>3194</sup> Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 66.

detachments and armed civilians in the zone into the system of defence and control of the territory in the zone of responsibility in addition to the establishment units, attached units and MUP forces,” stating that “brigade commanders may move individual companies of MUP detachments.” He further directed all brigade commanders to answer to him regarding the implementation of the order, and to send detailed plans of engagement of both the MUP units and military territorial detachments to the Priština Corps Command for review and approval by 30 April 1999.<sup>3195</sup>

1172. Lazarević testified about this second order, expressing his belief that in issuing it his serious effort to implement the resubordination order was adequately demonstrated. He affirmed that, by referring to the engagement of the PJP and MUP territorial units as well as other VJ detachments, he had envisaged that his subordinate units would take command of the PJP and MUP territorial units.<sup>3196</sup> Lazarević was not clear as to why he did not attempt to liaise with a counterpart at his level in the MUP about effectuating resubordination, but repeated that the 20 April 1999 resubordination order from the 3<sup>rd</sup> Army commander was unclear on many levels, including to whom it was directed and by whom it should be carried out.<sup>3197</sup> This was supported by the testimony of Stefanović.<sup>3198</sup>

1173. Further to this, on 8 May 1999 Pavković issued an order instructing that MUP units be resubordinated to the VJ:

[t]he Priština Corps commander shall re-subordinate all military-territorial units and MUP combined tactical units (to brigades) according to the disposition of the MUP units ... so that a MUP company or a military territorial detachment comprises a whole and so that the execution of their combat tasks can be controlled.<sup>3199</sup>

Đaković testified that Pavković had directed him in drafting this document, following a conversation between Pavković and Lukić on this very topic. A copy was then sent to Lukić.<sup>3200</sup>

1174. There remain areas where the Chamber has not been presented with sufficient evidence surrounding the resubordination process. What happened in April 1999 between the MUP and the VJ remains unclear, and the Chamber has not heard evidence explaining why Milošević did not take steps to ensure the Serbian Minister of Interior’s compliance with his resubordination order. Further, although the evidence shows that resubordination under Milošević’s order was resisted by

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<sup>3195</sup> P2809 (Order of the PrK engaging MUP forces in the PrK zone, 25 April 1999), paras. 3, 7, 10.

<sup>3196</sup> Vladimir Lazarević, T. 18735–18744 (21 November 2007). Lazarević also confirmed that this order was sent by couriers, and thus, there was no delivery information stamped on the document, as on other orders.

<sup>3197</sup> Vladimir Lazarević, T. 18269–18274 (14 November 2007).

<sup>3198</sup> Radojko Stefanović, T. 21684–21688 (5 February 2008); T. 21826–21828 (7 February 2008).

<sup>3199</sup> P1269 (Order of the 3<sup>rd</sup> Army, 8 May 1999).

<sup>3200</sup> Milan Đaković, T. 26417–T. 26418 (19 May 2008).

the MUP, the Chamber has not been presented with evidence that Stojiljković did in fact receive instructions from either Milošević or later from Ojdanić regarding the resubordination of the MUP to the VJ. Nonetheless, the evidence supports the conclusion that the resubordination of the MUP to the VJ was ordered. The Chamber will now turn to the question of whether these orders were complied with.

d. Compliance with resubordination orders

*i. General non-compliance with resubordination orders*

1175. According to a number of witnesses who were active VJ officers in 1999, resubordination of the MUP to the VJ never occurred.<sup>3201</sup> For example, Ćurčin testified that, although the initial resubordination order sent by Milošević incited days of debate, it was ultimately never carried out.<sup>3202</sup> Lazarević stated that the primary reason why resubordination never occurred was that the MUP leadership claimed that they did not have a corresponding order from the Ministry of Interior to resubordinate to the VJ in Kosovo. The MUP could not simply act upon VJ orders, because according to the Law on Internal Affairs only the Minister of Interior was authorised to regulate the use of its forces.<sup>3203</sup> Indeed, failure to go through the appropriate official channels was cited by various witnesses as the most common obstacle.<sup>3204</sup>

1176. Mijatović testified that he never received any order from the MUP on resubordination to the VJ.<sup>3205</sup> He confirmed that the MUP Staff did not issue any type of order on resubordination and could not have done so without bypassing the Minister of Interior; he also maintained that he had not seen the relevant resubordination orders from the VJ until shortly before his testimony.<sup>3206</sup> Chief of the Prizren SUP, Miloš Vojnović, also testified that he never saw any of the resubordination orders, but he had heard of them.<sup>3207</sup>

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<sup>3201</sup> Đorđe Ćurčin, T. 16974–16975 (5 October 2007); Krsman Jelić, T. 18850 (22 November 2007); Momir Stojanović, T. 19755 (7 December 2007); Ljubiša Diković, T. 19894 (10 December 2007); Mihajlo Gergar, T. 21484 (31 January 2008); Dragan Živanović, T. 20485 (17 January 2008), T. 20583 (18 January 2008); Nebojša Bogunović, T. 25133 (10 April 2008); Radojko Stefanović, T. 21682–21686 (5 February 2008); Aleksandar Vasiljević, P2600 (witness statement dated 26 October 2006), para. 45; Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 66.

<sup>3202</sup> 3D670 (Order of Slobodan Milošević for resubordination of MUP forces to VJ, 18 April 1999)

<sup>3203</sup> Vladimir Lazarević, T. 18020–18022 (9 November 2007); P950 (Lazarević interview with the Prosecution), pp. 238–239, 242.

<sup>3204</sup> Radovan Radinović, T. 17134 (17 October 2007); Mihajlo Gergar, T. 21484 (31 January 2008); Krsman Jelić, T. 18850 (22 November 2007); T. 19034–19036 (26 November 2007); Radojko Stefanović, T. 21684–21688 (5 February 2008), T. 21690 (5 February 2008); Milorad Obradović, T. 15026–15027 (5 September 2007); Dragan Živanović, T. 20583–20584 (18 January 2008); Petar Damjanac, T. 23763–23764; T. 23780–23781 (6 March 2008); P1458 (PrK Report on non-compliance with Resubordination Order, 24 May 1999).

<sup>3205</sup> Miroslav Mijatović, T. 22339–22340 (13 February 2008).

<sup>3206</sup> Miroslav Mijatović, T. 22364 (14 February 2008).

<sup>3207</sup> Miloš Vojnović, T. 24235–24236 (13 March 2008).



1177. Commander of the 243<sup>rd</sup> Mechanised Brigade, Krsman Jelić, attempted to work out the problems surrounding resubordination with his equivalent at the MUP, the Chief of the Uroševac SUP, Bogoljub Janićijević. However, because he lacked a corresponding order from his superiors, Janićijević informed him that he could not abide by the VJ's orders.<sup>3208</sup> Similarly, General Radojko Stefanović attempted to resolve resubordination issues in a meeting in Đakovića/Gjakova attended by Colonel Novak Paprika of the Priština Corps Command and the Commander of the 37<sup>th</sup> Motorised Brigade, Ljubiša Diković; however, he admitted that they ultimately did not succeed.<sup>3209</sup> Dragan Živanović, then Commander of the 125<sup>th</sup> Motorised Brigade, testified that, after receiving the order on resubordination, he called the MUP chiefs and detachment commanders and informed them of his expectations.<sup>3210</sup>

1178. The Pavković Defence argues that there was never any talk of the resubordination of the MUP to the VJ. At meetings between MUP Staff and PJP commanders and between SUP chiefs and the VJ, the only talk was of “co-operation and non-co-operation with the VJ. No one talked about being resubordinated to the VJ”.<sup>3211</sup> The Chamber dismisses this argument because it is inconsistent with the evidence. The Lazarević Defence also emphasises the extent of co-operation, rather than resubordination, between the MUP and the VJ.<sup>3212</sup> Under reference to the 11 May 1999 MUP Staff meeting, the Lazarević Defence points out that it was “noticeable that all commanders of the PJP squad practically talk about having the co-operation with the VJ ... but that they are not resubordinated anywhere to the VJ”.<sup>3213</sup>

1179. Many witnesses testified about, and also filed reports pertaining to, the MUP's failure to resubordinate.<sup>3214</sup> At Lazarević's request, Stefanović formed a number of teams in an effort to

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<sup>3208</sup> Krsman Jelić, T. 18850 (22 November 2007); T. 19034–19036 (26 November 2007). When questioned about what Jelić had expected as a result of resubordination, he stated: “What I needed was a squad that could carry out action on the ground. I didn't need office clerks.” He explained later this statement meant that the intention was to resubordinate combat units, not office staff.

<sup>3209</sup> Radojko Stefanović, T. 21690 (5 February 2008).

<sup>3210</sup> Dragan Živanović, T. 20583–20584 (18 January 2008).

<sup>3211</sup> Pavković Final Trial Brief, 28 July 2008 (public version) para. 202. See P1993 (Minutes of the MUP Staff meeting, 11 May 1999); P1996 (Minutes of the MUP Staff meeting, 7 May 1999).

<sup>3212</sup> Lazarević Final Trial Brief, 29 July 2008 (public version), para. 798.

<sup>3213</sup> Lazarević Final Trial Brief, 29 July 2008 (public version), para. 801.

<sup>3214</sup> Krsman Jelić, T. 18850 (22 November 2007), T. 19034–19036 (26 November 2007). On 21 April 1999, Živanović issued a combat report to the PrK Command, requesting that the MUP Staff be asked to send a corresponding resubordination order. P2023 (125<sup>th</sup> Motorised Brigade Combat Report to PrK, 25 April 1999), p. 3. Živanović testified that the PrK Commander told him that he had forwarded the request on to the commander of the 3<sup>rd</sup> Army, and the issue was thereafter outside of Živanović's purview. Dragan Živanović, T. 20583–20584 (18 January 2008). On 25 April, the Commander of the 7<sup>th</sup> Infantry Brigade also reported to the PrK Command that, pursuant to Lazarević's 20 April order, MUP units from Klina and Istok should have been resubordinated to him, and that on 21 April he had issued an order directing these MUP units to report to him on “available forces and means”. However, by 25 April the relevant MUP units had not done as instructed, and were avoiding co-operation, on the basis that they had not received an order from their superior organs. 4D252 (7<sup>th</sup> Infantry Brigade Combat Report to PrK, 25 April 1999), p. 3. The then Commander of the 211<sup>th</sup> Armoured Brigade, Mihajlo Gergar, further explained that after the resubordination order had

resolve these issues, but this proved to be fruitless.<sup>3215</sup> Stefanović concluded that the “functional relationship between the Army and the MUP was [the same as] before the resubordination order was issued”, namely, “at the level of co-ordinated action, joint action, support, and co-operation”.<sup>3216</sup> Stefanović received several reports from his subordinate brigades to the effect that the MUP units did not want to be resubordinated at these lower ranking levels.<sup>3217</sup> Milomir Pantić confirmed that, as Head of the OUP in Istok/Istog throughout the Indictment period, he refused to be resubordinated to the command of Princip Milosavljević of the VJ’s 69<sup>th</sup> Military Territorial Detachment, despite Milosavljević’s persistent efforts and orders to this effect.<sup>3218</sup> Pantić detailed how he and Princip had strong disagreements about the VJ’s presence in matters that could have been dealt with by the police, and mentioned a specific instance where a joint military patrol was set up. Pantić complained that the personnel provided by Princip in one such joint military patrol had criminal records and could not be trusted to act in accordance with the law.<sup>3219</sup> Furthermore, the former Head of the OUP in Glogovac, Petar Damjanac, testified that, because he never received any orders from his superiors in the MUP, when he was issued an order by a military patrol sometime in the spring of 1999 to go to the Trstenik command post and report to Ljubiša Diković, commander of the 37<sup>th</sup> Motorised Brigade, he ultimately had to tell Diković and his colleagues that he could not make any decisions about resubordination independently, and that it had to be done at a higher level.<sup>3220</sup>

1180. On 7 May 1999, during a meeting held at the MUP Staff, Šainović stated that, “[a]fter Operation *Jezerce*”, all PJP detachments would have to work on destroying the remaining “terrorist” groups “in co-operation with the VJ”. He added that “[t]he relationship of the VJ and the police has been defined and settled and this is functioning well”.<sup>3221</sup> Moreover, at the same 11 May meeting cited by both the Pavković and Lazarević Defences to show that the MUP merely co-

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failed to be implemented, he felt it was necessary to inform the commander of the PrK, which he subsequently did in a combat report on 26 April 1999 which stated: “[t]here has been a lot of disobedience and it is not clear to them that they are subordinated to the Commander of the Brigade”. 5D615 (211<sup>th</sup> Armoured Brigade Combat Report to PrK, 26 April 1999), para. 5.2(B). Kosovac testified that not a single unit of the MUP was ever part of the establishment of the VJ, and that the MUP and VJ were two entirely different systems with differing recruitment systems, purposes, goals, logistics, and deployment conditions, which could never be unified under a single banner. Radovan Radinović, T. 17168–17171 (17 October 2007); Slobodan Kosovac, T. 15816–15817 (17 September 2007). VJ officer Dušan Lončar also testified that the MUP never commanded the army and that the army never commanded the MUP, and that each structure had its own clear chain of command. Dušan Lončar, T. 7609–7611 (30 November 2006).

<sup>3215</sup> Radojko Stefanović, T. 21684 (5 February 2008).

<sup>3216</sup> Radojko Stefanović, T. 21685–21686 (5 February 2008). Stefanović added that the co-ordination process in place prior to the resubordination orders was applied “throughout the whole war, until the end, regardless of the order on resubordination, because [this order] was not implemented”.

<sup>3217</sup> Radojko Stefanović, T. 21688 (5 February 2008).

<sup>3218</sup> Momir Pantić, T. 24774–24775 (2 April 2008).

<sup>3219</sup> Momir Pantić, 6D1604 (witness statement dated 26 March 2008), paras. 51–53.

<sup>3220</sup> Petar Damjanac, T. 23763–23764; T. 23780–23781 (6 March 2008).

<sup>3221</sup> P1996 (Minutes of the MUP Staff meeting, 7 May 1999), pp. 2–3.

operated with the VJ rather than being resubordinated to it, a PJP commander is recorded as stating that “co-operation with the VJ is quite good although they requested subordination and the way they are proceeding shows that they wish to burden our forces to the maximum”. Another PJP commander asserted that:

Resubordination to the VJ should be part of co-operation and a good exchange of information in the interest of the defence of the country and antiterrorist struggle with the proviso that we know who is cooperating with whom in the SUP and the [PJP] territories because one VJ brigade can cover the territory of three SUP.<sup>3222</sup>

These comments suggest that the issue of resubordination was in fact a matter of discussion within the MUP and that the VJ had actively been seeking to resubordinate MUP units at the ground level in Kosovo. They also illustrate, along with comments at other meetings referenced by the Pavković and Lazarević Defences, the extent of co-operation and co-ordination between the MUP and the VJ.

1181. Milorad Obradović conceded that, had the resubordination order been complied with, he, as the Commander of the 2<sup>nd</sup> Army, would have been the one to issue orders to the MUP for combat operations, but emphasised that resubordination did not occur.<sup>3223</sup> In addition, K25, who served in the PJP in Kosovo in 1998 and 1999, stated that:

there was never any occasion in my experience where the VJ gave orders to the MUP, and although I’m aware that during a state of war under our laws the MUP could be subordinated to the VJ, this did not happen as far as I’m concerned...there was too much inter-organisational rivalry and mistrust to allow it.<sup>3224</sup>

Commander of the 37<sup>th</sup> Motorised Brigade, Ljubiša Diković, frequently requested that the MUP be resubordinated to the VJ so that they could aid in the protection of his units, but testified that this never occurred. As a result, his unit suffered heavier losses than it would have, had he been able to command the MUP.<sup>3225</sup>

1182. Most notably, Lazarević’s 24 May 1999 report to the 3<sup>rd</sup> Army Commander detailed the failed attachment of the MUP forces to the Priština Corps Command, despite the orders issued by Ojdanić on 18 April 1999 and by Pavković on 20 April 1999.<sup>3226</sup> Additionally, Lazarević reported that, although several working meetings were held, the commanders and leaders of the MUP units were “resisting and openly opposing resubordination” because they lacked a corresponding order

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<sup>3222</sup> P1993 (Minutes of the MUP Staff meeting, 11 May 1999), pp. 6–8.

<sup>3223</sup> Milorad Obradović, T. 15026–15027 (5 September 2007).

<sup>3224</sup> K25, P2365 (witness statement dated 6 September 2001), p. 21 (under seal).

<sup>3225</sup> Ljubiša Diković, T. 19895–19896 (10 December 2007).

<sup>3226</sup> P1458 (PrK Report on non-compliance with Resubordination Order, 24 May 1999), also admitted as 4D192 and P1723. This report is the basis for the 3<sup>rd</sup> Army report to the Supreme Command Staff (P1459). P950 (Lazarević interview with the Prosecution), pp. 238–239, 242.

from their own command. Lazarević stated that a consequence of this would be a lower level of coordination in joint VJ/MUP anti-terrorist actions, which he opined would result in threats to the combat order, unnecessary casualties, losses of material, and prolonging of missions. Moreover, Lazarević commented that “the work of mixed checkpoints of the MUP and the Military Police units is fraught with problems [as] the control of the territory and communications, matters concerning refugee shelters and other activities are not performed by the MUP units and organs precisely for the above mentioned reason—they have not resubordinated”.<sup>3227</sup> Finally, Lazarević requested that vigorous and concrete measures be taken to attach the units and organs of the Serbian MUP to the Priština Corps Command so as not to be “held responsible for the consequences which have already taken place and could take place in the future due to their unconstitutional and unlawful engagement”.<sup>3228</sup>

1183. In response to this report, 3<sup>rd</sup> Army Commander Pavković reported to the Supreme Command Staff the following day that resubordination of the MUP forces to the VJ had not been carried out pursuant to the Ojdanić or Pavković orders, and that efforts to resolve this issue had not produced any tangible results. In this report he elaborated on the consequent problems concerning joint operations of the VJ and MUP in combat, and described frequent altercations between the entities, due in part to the fact that MUP members were condoning or openly permitting criminal activities by civilians and by fellow MUP members. Pavković also proposed that the Supreme Command Staff either take urgent measures to resubordinate the Serbian MUP in accordance with the proclaimed state of war, or annul the original order and leave the command of the MUP units in the hands of the MUP Staff for Kosovo “through the Joint Command as has so far been the case”.<sup>3229</sup>

1184. On 2 June 1999 Ljubiša Veličković noted in a report to the Supreme Command Staff that there was “no unity of command over all forces” and that the relations with MUP units had been “maintained through agreements which ha[d] frequently not been respected, particularly at lower levels”.<sup>3230</sup> Čurčin testified that two days later Pavković sent another report to the Supreme Command Staff, explaining problems encountered in working with the MUP.<sup>3231</sup> In this report Pavković requested that a number of problems he had noted while visiting some of the units

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<sup>3227</sup> P1458 (PrK Report on non-compliance with Resubordination Order, 24 May 1999).

<sup>3228</sup> P1458 (PrK Report on non-compliance with Resubordination Order, 24 May 1999).

<sup>3229</sup> P1459 (3<sup>rd</sup> Army report on the non-compliance of MUP organs, 25 May 1999), p. 2. Additionally, P1724 and 3D1106 are separate copies of the same report. The Ojdanić Defence challenges the receipt of Pavković’s report of 25 May, asserting that it “was never received by the Supreme Command Staff”. Ojdanić Final Brief, 29 July 2008 (public version), para. 246(f). Ultimately, the document is authentic and reliable, as is discussed below in Section VIII.E.

<sup>3230</sup> 5D434 (Report of the Supreme Command Staff, 2 June 1999), p. 4.

<sup>3231</sup> P1725 (3<sup>rd</sup> Army Request to Supreme Command Staff, 4 June 1999).

between 23 and 26 May 1999 be resolved, one of these problems being the lack of a corresponding MUP-issued resubordination order. Additionally, Pavković complained about the “privileged” position of MUP members in comparison with VJ members with respect to the payment of daily allowances and salaries, the supply of uniforms and communications equipment, and the incomplete communications systems, particularly in lower-level units.<sup>3232</sup> When asked whether he knew if anything was done to remedy the problems set out in Pavković’s report, Ćurčin responded that Milošević and Ojdanić met to discuss the issue, but that the MUP was ultimately never effectively resubordinated to the VJ and that these concerns could thus not be remedied.<sup>3233</sup>

1185. Milan Đaković testified about a meeting on 19 April 1999 attended by officers of the MUP: RJB Head Vlastimir Đorđević; PJP Commander Obrad Stevanović; Head of the MUP Staff Lukić; officers of the VJ; Lazarević; and Pavković. Đorđević questioned the contents of a telegram handed to him by Pavković ordering the MUP to resubordinate, which Đaković maintained was consistent with the general resistance of the MUP at the time to accept VJ command of the entire area of Kosovo.<sup>3234</sup>

1186. Former Chief of the VJ’s Department for Organisation, Mobilisation, and Conscription, Slobodan Kosovac, testified that his understanding of resubordination was that the Minister of Interior would never be directly resubordinated to the General Staff or to the Supreme Command Staff.<sup>3235</sup> This was confirmed by Ćurčin’s testimony that Milošević’s order to resubordinate the MUP related only to subordination for combat activities and did not have the effect of resubordinating the Serbian Minister of Interior, Vlajko Stojiljković, to the VJ, nor the remainder of the MUP to the Supreme Command Staff.<sup>3236</sup> Ćurčin stated that, despite Milošević’s 18 April 1999 order, and the fact that it directed Ojdanić to “send [requests] to the civilian government organs and other participants in defence” following the triggering of article 17, the Supreme Command Staff and Ojdanić did not communicate with Stojiljković on this matter.<sup>3237</sup> Ćurčin was not aware whether Ojdanić and Stojiljković had discussed resubordination, or whether any document ordering resubordination had been sent to the Serbian Ministry of Interior or the Federal Ministry of Interior, but stated that, in his personal opinion, Ojdanić and Stojiljković had not corresponded about resubordination because, if they had, Ojdanić would have reported this in a briefing. When asked

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<sup>3232</sup> P1725 (3<sup>rd</sup> Army Request to Supreme Command Staff, 4 June 1999).

<sup>3233</sup> Đorđe Ćurčin, T. 16990 (16 October 2007).

<sup>3234</sup> Milan Đaković, T. 26495–26496 (20 May 2008).

<sup>3235</sup> Slobodan Kosovac, T. 15846 (18 September 2007).

<sup>3236</sup> Đorđe Ćurčin, T. 16984–16990 (5 October 2007).

<sup>3237</sup> Đorđe Ćurčin, T. 17063 (16 October 2007); Slobodan Kosovac, T. 15876 (18 September 2007); Miodrag Simić, T. 15582–15583 (13 September 2007); *see* 3D670 (Order of Slobodan Milošević for resubordination of MUP forces to VJ, 18 April 1999).

why the resubordination order was not sent to the most important civilian government organ, *i.e.*, the MUP itself, Ćurčin responded that it would not have been proper for the Chief of the Supreme Command Staff to inform the Ministry of Interior of an order given by Milošević.<sup>3238</sup> Ojdanić could not send an order, or even a request, to the MUP to resubordinate to the VJ as this would have exceeded his authority as Chief of the General Staff since it fell outside his chain of command.<sup>3239</sup> Ćurčin stated that, as a group, the Supreme Command Staff did not receive any special information regarding resubordination, or the failure thereof.<sup>3240</sup>

1187. Ćurčin did not explain why Milošević did not send an order directly to the Minister of Interior. He recalled that Ojdanić informed Milošević on at least one occasion about the failure to resubordinate the MUP to the VJ in early May 1999, but he did not know what occurred subsequently.<sup>3241</sup> However, Vasiljević claimed that he was told by Ojdanić that Milošević had said that “he should not be too concerned as the subordination order had not been issued as a result of problems in co-operation between the MUP and the Army in Kosovo, but rather, because of problems with the MUP in Montenegro.”<sup>3242</sup>

1188. There was no evidence of any reports being sent to the Supreme Command Staff from Stojiljković or the Ministry of Interior refusing to implement resubordination.<sup>3243</sup> Furthermore, there was not clear evidence indicating why Stojiljković would have chosen not to adhere to the 18 April resubordination order from Milošević, if indeed it was received by him. Simić testified that Ojdanić’s resubordination order was not followed due to an obstruction on the part of the highest-ranking command organs of the Serbian MUP and the Montenegrin MUP.<sup>3244</sup> However, he later attempted to retract this statement and then testified that he did not know the reason why ultimately there was not compliance with the resubordination order.<sup>3245</sup> Ćurčin testified that he was not aware of any combat reports from VJ units reporting problems arising out of the MUP’s refusal to obey *or* undertake orders to resubordinate.<sup>3246</sup>

1189. The Chamber therefore finds that it has not been established beyond reasonable doubt that the resubordination orders issued in mid-April 1999 by Milošević, Ojdanić, Pavković and

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<sup>3238</sup> Đorđe Ćurčin, T. 16985 (5 October 2007), T. 17061–17062 (16 October 2007).

<sup>3239</sup> Đorđe Ćurčin, T. 17059–17062 (16 October 2007); Miodrag Simić, T. 15582–15583 (13 September 2007).

<sup>3240</sup> Đorđe Ćurčin, T.17059–17060 (16 October 2007).

<sup>3241</sup> Đorđe Ćurčin, T. 17059–17060 (16 October 2007).

<sup>3242</sup> Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 45.

<sup>3243</sup> Slobodan Kosovac, T. 15845 (18 September 2007); Đorđe Ćurčin, T. 17059–17062 (16 October 2007); Miodrag Simić, T. 15583 (13 September 2007).

<sup>3244</sup> Miodrag Simić, T. 15577 (13 September 2007).

<sup>3245</sup> Miodrag Simić, T. 15584 (13 September 2007). The Chamber responded that it would not delete any statement from the record and would review all of the evidence presented in the case to draw its conclusions.

Lazarević were put into effect. In fact, a significant amount of evidence shows that the resubordination of the MUP to the VJ did not in fact occur.

*ii. Instances where the VJ directed MUP forces*

1190. Despite the absence of convincing evidence concerning resubordination of MUP forces to the VJ in Kosovo, the Chamber has been presented with evidence suggesting that even before the resubordination orders, the VJ directed MUP forces in some combat operations.<sup>3247</sup>

1191. Vladimir Ilić, Assistant Commander of the 121<sup>st</sup> PJP Detachment,<sup>3248</sup> testified that in August 1998 the commander had ordered his unit to be resubordinated to VJ officer Milan Kotur in the area of Prizren. Ilić explained that he met with Kotur one day before the action and that Kotur issued tasks orally, supplementing these tasks with an excerpt of a map decision for action in the area of Dulje/Duhël. Ilić confirmed that he received his orders directly from Kotur and that the action was executed by his unit, some VJ forces, and the SAJ.<sup>3249</sup> On cross-examination by the Pavković and Lazarević Defences, Ilić repeated that his unit was resubordinated to the VJ, and that this was done through an order issued by Dragan Živaljević, or his predecessor.<sup>3250</sup> He again stated that he received oral orders from Kotur effectuating resubordination, but no written order.<sup>3251</sup> Ilić explained that he had direct communication with Kotur on the implementation of the task, including radio communication during the action. However, he clarified that “[i]n this process of resubordination absolutely all responsibility for the behaviour of my policemen was borne by me personally, that is to say Colonel Kotur had nothing to do with it whatsoever.” Ilić provided vague answers to questions about the chain of command between the VJ and the police, but confirmed that he would have clarified with his superior in the MUP about whether the resubordination order he received from Živaljević was in force, before following any orders from either body. If it had been in force, he would have carried out orders issued by Kotur; if not, he would have adhered to the police orders. Yet, he maintained that he received orders from Kotur and communicated with him throughout the action.<sup>3252</sup>

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<sup>3246</sup> Đorđe Ćurčin, T. 17059–17060 (16 October 2007).

<sup>3247</sup> See also Section VI.E.2.

<sup>3248</sup> In October 1998, the 21<sup>st</sup> and the 22<sup>nd</sup> PJP Detachments were merged into 122<sup>nd</sup> Intervention Brigade. Vladimir Ilić, T. 24347–24349 (17 March 2008); Dragan Živaljević, 6D1606 (witness statement dated 31 March 2008), para. 6. Ilić clarified that the term “122<sup>nd</sup> Detachment” was often used instead of “122<sup>nd</sup> Intervention Brigade” and that the two descriptions are synonymous. When the 122<sup>nd</sup> Intervention Brigade was established, Dragan Živaljević was appointed commander. Ivan Maksimović was the commander of the unit before September 1998. Vladimir Ilić, T. 24347–24349 (17 March 2008).

<sup>3249</sup> Vladimir Ilić, T. 24343–24344 (17 March 2008).

<sup>3250</sup> Dragan Živaljević, T. 20439 (17 January 2008).

<sup>3251</sup> Vladimir Ilić, T. 24350–24353 (17 March 2008).

<sup>3252</sup> Vladimir Ilić, T. 24350–24352 (17 March 2008).

1192. Živaljević, the Commander of the PJP 122<sup>nd</sup> Intervention Brigade, was questioned on various matters relating to the 122<sup>nd</sup> PJP Detachment, and also on resubordination.<sup>3253</sup> He testified to having co-operated with the VJ in joint VJ/MUP anti-terrorist actions, but was not asked about the particular instance in August 1998 described by Ilić. Kotur was not questioned about this matter either. Živaljević, however, did give testimony to the effect that he had been resubordinated to the VJ at one point around mid-April 1999, and that “[e]verything the army ordered I implemented directly.”<sup>3254</sup> When questioned on this last statement, and whether the reason behind this was because he had received a resubordination order, Živaljević explained that he had been sent to Podujevo/Podujeva to implement the tasks envisaged in the map excerpts that had been drawn up by the VJ.<sup>3255</sup>

1193. While some documents in evidence demonstrate that some VJ commanders issued orders to MUP units during certain operations, it is unclear whether the relevant MUP units complied in practice with these orders. A combat report dated 25 April 1999, sent by Živanović, suggests that the 73<sup>rd</sup> MUP Territorial Detachment of the PJP was under the command of the 125<sup>th</sup> Motorised Brigade in an action in the area of the Rugova Gorge. Specifically, the report stated that “[f]ive companies of the 73<sup>rd</sup> MUP Territorial Detachment have been attached to the brigade” and listed how these five companies were deployed.<sup>3256</sup> When asked if this unit was resubordinated to his brigade, Živanović testified, “This is a document that is a result of inertia, if you like. It was drafted by default and based on a Priština Corps command on the resubordination of MUP units to a combined arms tactical unit. These forces were not in actual fact resubordinated to me”.<sup>3257</sup>

1194. Deputy Chief of the Kosovska Mitrovica SUP, Nebojša Bogunović, also stated that he received an order for an action from a military department on 8 May 1999.<sup>3258</sup> He carried out the actions in this order, but testified that he had proceeded as stated in the order only because the activities listed would have been part of his unit’s regular activities anyway. He saw it as an “initiative to strengthen the legality of the behaviour of both the VJ and the police.”<sup>3259</sup>

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<sup>3253</sup> Dragan Živaljević, T. 24894 (3 April 2008).

<sup>3254</sup> Dragan Živaljević, T. 24919–24920 (8 April 2008).

<sup>3255</sup> Dragan Živaljević, T. 24921 (8 April 2008).

<sup>3256</sup> P2023 (125th Motorised Brigade Combat Report to PrK, 25 April 1999), para. 2.

<sup>3257</sup> Dragan Živanović, T. 20621 (18 January 2008).

<sup>3258</sup> 6D1098 (Order of the Garrison Command in Kosovska Mitrovica re compliance with rules of order and discipline by VJ and MUP members, 8 May 1999).

<sup>3259</sup> Nebojša Bogunović, 6D1614 (witness statement dated 2 April 2008), para. 92.



*iii. Operations conducted after the resubordination orders*

1195. The evidence shows that the 211<sup>th</sup> Armoured Brigade was giving support to the MUP to blockade the Albanian “terrorist” forces on the Velika Reka-Lužane axis on 2 May 1999.<sup>3260</sup> Živaljević insisted that during this operation he was not resubordinated to the VJ. Rather, he worked in co-ordination with Colonel Gergar, and was able to request artillery support or some other weapons support from him.<sup>3261</sup>

1196. On 4 May 1999 a second operation in the Bajgora area was ordered. This order was signed by Lazarević and it did not include a “Joint Command” heading.<sup>3262</sup> One of the units to which tasks were given was the 35<sup>th</sup> PJP Detachment. The order indicated that, before and during combat operations, “co-ordinated action between elements of the combat disposition concerning preparing and conducting combat operations” had to be organised. Savić stated that, during this action, “every structure had executed its tasks independently in its respective directions” and pointed out that they had “the co-operation of the 35<sup>th</sup> PJP Detachment with whom [they] had established good co-operation”. Moreover, he stressed that, “[a]s was the case in all other actions, every one had received his task from his own command in the said actions, and there was no resubordination”.<sup>3263</sup> Savić’s report of 10 May 1999 to the Priština Corps Command, as well as the Priština Corps Command’s combat report to the 3<sup>rd</sup> Army Command and the Supreme Command Staff sent on 12 May 1999, show that the second operation in the Bajgora area was implemented down the chain of command.<sup>3264</sup> Lazarević testified that during this operation the relationship between the MUP and the VJ “remained at the level of co-ordination [and] co-operation”. He stressed that the MUP chain of command was independent from the VJ one.<sup>3265</sup>

1197. On 20 May 1999 the Priština Corps Command issued an order for a joint VJ/MUP action in the Radonjić Lake sector, otherwise known as “Operation *Sekač*”.<sup>3266</sup> This order was signed by Milan Kotur, on the authorisation of the Chief of Staff of the Priština Corps, and did not have a “Joint Command” heading. It contained tasks for VJ units as well as tasks for the 3<sup>rd</sup>, 73<sup>rd</sup>, and 122<sup>nd</sup> PJP Detachments, and the 4<sup>th</sup> Company of the 124<sup>th</sup> MUP Brigade. Kotur testified about the MUP’s role in this action; in particular, he stated that, despite the fact that several MUP units were allocated tasks, they were not subordinated to the VJ. He maintained that the MUP and VJ forces

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<sup>3260</sup> 5D618 (211<sup>th</sup> Armoured Brigade Combat Report to PrK, 2 May 1999), p. 2.

<sup>3261</sup> Dragan Živaljević, T.24855 ; T.24910-T.24911 (3 April 2008).

<sup>3262</sup> 6D704 (Order of the PrK, 4 May 1999), pp. 1, 6.

<sup>3263</sup> Ljubomir Savić, 5D1392 (witness statement dated 27 December 2007), para. 19.

<sup>3264</sup> 5D1132 (Report from the 58<sup>th</sup> Light Infantry Brigade Command to the PrK Command, 10 May 1999); P2007 (PrK Combat Report to 3<sup>rd</sup> Army and Supreme Command Staff, 12 May 1999).

<sup>3265</sup> Vladimir Lazarević, T. 18218 (13 November 2007).

<sup>3266</sup> P2011 (Order of the PrK, “Operation *Sekač*,” 20 May 1999).

were to co-ordinate during this action. Kotur also confirmed that a co-ordination meeting between the VJ and the MUP was held on 19 May 1999 at the Forward Command Post of the Priština Corps to plan the action.<sup>3267</sup> He stressed that during this action he commanded the units of the VJ, whereas Colonel Kovačević, the Chief of the Đakovica SUP, commanded the MUP units.<sup>3268</sup> Although Ilić was unable to state with certainty whether he was resubordinated to Kotur, he maintained that he was exclusively carrying out orders from his commander, Boško Buha. When Buha was wounded, Ilić took over his position and subsequently received orders from the commander of the 23<sup>rd</sup> PJP Detachment, Boris Josipović.<sup>3269</sup> Moreover, Ilić never saw the order issued by Kotur regarding the *Sekač* operation; he issued orders to his subordinate companies for this action based on several excerpts of map decisions he received from Buha.<sup>3270</sup>

1198. On 22 May 1999 the Priština Corps Command ordered a joint operation in the Palatna sector. This order did not have a “Joint Command” heading. The 211<sup>th</sup> Armoured Brigade was ordered to act with other units such as the 122<sup>nd</sup> MUP Intervention Brigade and the JSO. The order indicated at the end that “[t]he 211<sup>th</sup> Armoured Brigade command, which [was] responsible for planning, organising and conducting the combat activities, [was to] organise combined action between the elements of combat disposition during the planning, organisation, preparation and conduct of combat operations in the Palatna village sector”.<sup>3271</sup> With respect to this joint operation, Dragan Živaljević clarified that he did not report to the VJ on his work, as they had their own chain of command.<sup>3272</sup>

1199. Another joint operation was ordered on 25 May 1999 “in the Mt. Drenica sector”. The Priština Corps Command instructed its subordinate units to conduct an attack “with the PJP Detachment and the JSO”.<sup>3273</sup> This order was also sent to the “Command of the MUP”. Lazarević testified that, even though the term “MUP” was the acronym for the Ministry of Interior, the order was “certainly not” sent to the MUP in Belgrade. According to Lazarević, the order was “very likely” sent “either to one of the detachments involved in this action or perhaps the Staff of the MUP in Priština”.<sup>3274</sup> He further explained that, after the resubordination orders were issued, the orders for joint operations did not stipulate that the VJ was to “support” the MUP and did not

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<sup>3267</sup> Milan Kotur, T. 20691–20695 (21 January 2008). See 5D227 (PrK Combat Report to 3<sup>rd</sup> Army and Supreme Command Staff, 20 May 1999).

<sup>3268</sup> Milan Kotur, T. 20695 (21 January 2008). See 5D1382 (PrK IKM Combat Report to PrK, 22 May 1999).

<sup>3269</sup> Vladimir Ilić, T. 24353–24356 (17 March 2008).

<sup>3270</sup> Vladimir Ilić, T. 24358–24359 (17 March 2008).

<sup>3271</sup> 6D709 (PrK Order regarding action in Palatna, 22 May 1999), p. 6.

<sup>3272</sup> Dragan Živaljević, T. 24877–24878 (3 April 2008).

<sup>3273</sup> P2014 (Order of the PrK, 25 May 1999).

<sup>3274</sup> Vladimir Lazarević, T. 18414 (16 November 2007).

mention the term “Joint Command”. Instead, the orders were issued for the VJ to carry out the tasks “together with” the police units.<sup>3275</sup> This particular order indicated that “[c]o-ordination between the elements of combat disposition during the planning, organisation and conduct of combat operations in the Drenica sector [was to] be carried out by the Command of the 252<sup>nd</sup> Armoured Brigade, which [was to] be in charge of the planning, organising and conducting combat operations”.<sup>3276</sup> With respect to this operation, Stefanović testified that the Command of the 252<sup>nd</sup> Armoured Brigade was to take the lead. He explained that at that time the resubordination was still in force. It was on the basis of the resubordination order that this action had been planned. However, during the operation the MUP units did not resubordinate to the Command of the 252<sup>nd</sup> Armoured Brigade.<sup>3277</sup> In fact, the MUP units did not even turn up. Therefore, a new action in this area was to be planned, namely the Drenica–1 action.

1200. The Drenica–1 action was conducted pursuant to a Priština Corps Command order of 28 May 1999 to destroy Albanian “terrorist” forces in “the Mt Drenica–1 sector”, in which the Corps Command instructed its subordinate units and several MUP units, including the 36<sup>th</sup> PJP Detachment, the 6<sup>th</sup> Battalion of the 124<sup>th</sup> Quartermaster Brigade of the MUP, and the 1<sup>st</sup> and 2<sup>nd</sup> Battalions of the 122<sup>nd</sup> Quartermaster Brigade of the MUP, to conduct several attacks. The order was sent to “the Command of the MUP (for all units)”. It indicated that the “team of the Priština Corps Command led by the Chief of the Operational Affairs and Training Organ, responsible for planning, organising and conducting combat operations [was to] organise combined action between the elements of combat disposition during the planning, organisation, preparation and conduct of combat operations in the Drenica sector”.<sup>3278</sup> Stefanović confirmed having been involved in drafting this order and that the intended recipients were Lukić or other members of the MUP Staff.<sup>3279</sup> When questioned by the Chamber about the seemingly contradictory nature of ordering MUP units to resubordinate when he knew the orders would not be followed, Stefanović responded that, even though the order for resubordination had not been implemented, it was never withdrawn either.<sup>3280</sup> Lazarević confirmed that the resubordination order remained in force and that he did not receive an “annulled order” from his superior.<sup>3281</sup> In this respect, the Chamber recalls that on 8 May 1999 the 3<sup>rd</sup> Army Command had again issued an order instructing that the MUP units be

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<sup>3275</sup> Vladimir Lazarević, T. 18437 (16 November 2007).

<sup>3276</sup> P2014 (Order of the PrK, 25 May 1999), p. 13.

<sup>3277</sup> Radojko Stefanović, T. 21755 (6 February 2008).

<sup>3278</sup> 6D712 (Order of the PrK, 28 May 1999), p. 8.

<sup>3279</sup> Radojko Stefanović, T. 21809–21810 (7 February 2008).

<sup>3280</sup> Radojko Stefanović, T. 21696–21698 (5 February 2008).

<sup>3281</sup> Vladimir Lazarević, T. 18416 (16 November 2007).

resubordinated to the VJ.<sup>3282</sup> Stefanović explained that, during the execution of the operation, the MUP units did not resubordinate to the VJ but rather fought on a separate axis from the VJ.<sup>3283</sup>

1201. Another order by the Priština Corps Command to the MUP was issued on 27 May 1999. The objective of this order was to crush and destroy the Albanian “terrorist” forces in the Prekaze area. It listed tasks for three Priština Corps brigades and specified that they were to act together with companies of the 35<sup>th</sup> and 36<sup>th</sup> PJP. The order indicated that the command of the 37<sup>th</sup> Motorised Brigade was to be responsible “for co-operation between elements of the combat disposition during the planning, organising, preparation and execution of combat operations in the Prekaze” as well as “for planning, organising and carrying out combat operations”.<sup>3284</sup> When commander of the 37<sup>th</sup> Motorised Brigade, Diković, was questioned about the results of this action, he explained that his brigade ultimately did not perform the action together with the MUP, because the MUP “just didn’t show up where they were supposed to show up.”<sup>3285</sup>

1202. More generally, several witnesses testified that, since resubordination never effectively occurred, the relationship between the MUP and the VJ remained one of co-ordination and co-operation during the operations conducted after mid-April 1999.<sup>3286</sup> For example, Đaković stated that the relationship between the MUP and the VJ remained the same relationship of co-ordination “as before”: “everyone carried out their own activities independently in a way.”<sup>3287</sup> Furthermore, Lazarević explained that, after he attended the 19 April 1999 meeting where he, Pavković, and Stevanović discussed the practicalities of MUP resubordination with Vlastimir Đorđević, Obrad Stevanović, and Lukić,<sup>3288</sup> he then “sent [his] own teams at the level of the Secretariat of the Interior and at the level of police detachments in the field to see whether there could be some kind of co-operation if resubordination was impossible.”<sup>3289</sup> Moreover, Lazarević was aware that Stefanović went to Đakovica/Gjakova with the Chief of the SUP on a number of occasions in response to the order that was issued after this meeting, to attempt to “solve the problem of resubordination and to maintain co-ordination and co-operation.”<sup>3290</sup> Finally, Lazarević explained that, throughout the war, “regardless of what was written somewhere, [the relationship between the

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<sup>3282</sup> P1269 (Order of the 3<sup>rd</sup> Army, 8 May 1999).

<sup>3283</sup> Radojko Stefanović, T. 21700 (6 February 2008).

<sup>3284</sup> P1503 (Order of the PrK, 27 May 1999), pp. 1, 4–5, 9–10.

<sup>3285</sup> Ljubiša Diković, T. 19893–19894 (10 December 2007).

<sup>3286</sup> Milorad Obradović, T. 15026–15027 (5 September 2007); Momir Pantić, T. 24774–24775 (3 April 2008).

<sup>3287</sup> Milan Đaković, T. 26496 (20 May 2008).

<sup>3288</sup> Vladimir Lazarević, T. 18207–18208 (13 November 2007), T. 18260 (14 November 2007).

<sup>3289</sup> Vladimir Lazarević, T. 18269–18274 (14 November 2007).

<sup>3290</sup> Vladimir Lazarević, T. 18450 (16 November 2007).

MUP and the VJ] was only at the level of co-ordination and co-operation with fully-separated chains of command".<sup>3291</sup>

e. Conclusion

1203. The evidence demonstrates that, after the issuance of the resubordination orders of April 1999, the relationship between the VJ and the MUP did not evolve into a relationship of subordination of one by the other, but remained a relationship of co-operation and co-ordination. Although MUP units were not resubordinated to the VJ, there was still a high level of co-operation or co-ordination between the forces of the FRY and Serbia, in the conduct of joint operations in Kosovo during the Indictment period.

1204. Having set out the manner in which the various forces of the FRY and Serbia worked with one another in 1998 and 1999, the Chamber outlines the commencement and conduct of the NATO air campaign that began on 24 March 1999, before addressing the evidence pertaining to the crimes alleged to have been committed by the forces of the FRY and Serbia in Kosovo during that campaign.

F. THE NATO BOMBING CAMPAIGN

1. The lead-up to the NATO bombing

1205. On 31 March and 23 September 1998 the UN Security Council adopted resolutions concerning the situation in Kosovo, the second of which threatened further action if their terms were not met.<sup>3292</sup> U.S. Ambassador Richard Holbrooke was sent to Belgrade to ensure compliance by the FRY and Serbian authorities with the two resolutions. Holbrooke later reported to the NATO Council that he thought an agreement could be reached if he threatened NATO military action.<sup>3293</sup> Thus, on 12–13 October 1998, the NATO Council issued an activation order (ACTORD). Equipped with the threat of the ACTORD, Holbrooke was able to negotiate the Holbrooke-Milošević Agreement, as discussed above.<sup>3294</sup> Following the subsequent signing of the Clark-Naumann Agreement, NATO commander Wesley Clark and chairman of the NATO military committee Klaus Naumann reported back to the NATO Council, which concluded that, if

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<sup>3291</sup> Vladimir Lazarević, T. 18223 (13 November 2007).

<sup>3292</sup> P455 (UNSC Resolution 1160, 31 March 1998); P456 (UNSC Resolution 1199, 23 September 1998).

<sup>3293</sup> Klaus Naumann, P2512 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6968.

<sup>3294</sup> Klaus Naumann, T. 8246–8247 (2 March 2007), P1767 (notes of OTP interviews), paras. 9–10.

the agreed withdrawal of FRY/Serbian security forces was carried out and confirmed by international observers in Kosovo, the ACTORD would not be implemented.<sup>3295</sup>

1206. Although some police forces were initially withdrawn from Kosovo, in November 1998, reports of violations of the Agreement surfaced, pertaining to the numbers of FRY/Serbian forces in Kosovo and the disproportionate force being used by them, as discussed in Section VI.D above.<sup>3296</sup> During his testimony, however, Naumann emphasised that many incidents, such as the torture and killing of young Serb police officers, were triggered by the KLA, which sought to capitalise on the FRY/Serbian withdrawal. NATO was nonetheless alarmed by the state's "heavy-handed approach" to resolving the situation.<sup>3297</sup> At the end of a meeting with Milošević on 19 January 1999, Clark and Naumann delivered an ultimatum, stating that if things did not change NATO would be required to act.<sup>3298</sup>

1207. Following the subsequent collapse of the Rambouillet and Paris talks, the OSCE chairman in office Knut Vollebaek ordered the immediate withdrawal of the OSCE verification mission (KVM) from Kosovo, which was completed by 20 March 1999.<sup>3299</sup> Naumann testified that the final failure in negotiations occurred on 23 March 1999, when Holbrooke again met with Milošević and reported his intransigence back to the NATO Secretary-General. The Secretary-General, upon a request by Naumann, then gave a written order to Clark to start the air campaign.<sup>3300</sup>

1208. On the same day the FRY Government proclaimed a state of immediate threat of war due to "a threat of aggression."<sup>3301</sup> On 24 March Federal Prime Minister Momir Bulatović officially declared a state of war in the FRY.<sup>3302</sup> Branko Krga confirmed that the last meeting between Ojdanić and Clark occurred that same day.<sup>3303</sup> He also stated that NATO gave two main reasons for justifying its air campaign: to prevent a humanitarian catastrophe and to force the FRY to accept the conditions laid out earlier.<sup>3304</sup>

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<sup>3295</sup> Klaus Naumann, P1767 (notes of OTP interviews), para. 27, P2512 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6994.

<sup>3296</sup> Klaus Naumann, P1767 (notes of OTP interviews), para. 28, P2512 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6994-6995.

<sup>3297</sup> Klaus Naumann T. 8263-8264 (13 December 2006), P1767 (notes of OTP interviews), para. 28.

<sup>3298</sup> Klaus Naumann, P1767 (notes of OTP interviews), para. 38.

<sup>3299</sup> P635 (Key points from KVM/MUP meeting, 29 December 1998), p. 7.

<sup>3300</sup> Klaus Naumann, T. 8274 (13 December 2006), P1767 (notes of OTP interviews), para. 47.

<sup>3301</sup> P992 (Decision on proclamation of imminent threat of war, 23 March 1999).

<sup>3302</sup> 2D294 (FRY Secretariat for Information Report, 24 March 1999).

<sup>3303</sup> Branko Krga, T. 16798-16799 (3 October 2007).

<sup>3304</sup> Branko Krga, 3D1120 (witness statement dated 13 August 2007), para. 18.

## 2. Overview of the NATO campaign

1209. The NATO campaign was an aerial operation lasting from the evening of 24 March to 10 June 1999. Over the course of the campaign NATO aircraft flew sorties from various airbases in Europe and bombed targets across the FRY. While the Chamber was not presented with any evidence from official NATO sources in relation to the campaign and the targets attacked, it has heard from witnesses and received documents that provide a broad picture of its course.

1210. Spasoje Smiljanić, Chief of the VJ First Administration and Commander of the Air Force and Air Defence during the period of the Indictment, gave detailed evidence pertaining to the scale of the NATO campaign including the presence of 2,030 NATO aircraft daily in FRY airspace and 26,000 NATO flights over the course of the campaign. While he provided detailed quantitative evidence, Smiljanić did not explain the sources for his figures and the Chamber is unable to draw any conclusions about their accuracy. Indeed, it is unnecessary for the Chamber to reach any conclusions about the precise numbers of sorties or bombs dropped during the campaign. The Chamber is in no doubt and it is not contested by the parties, that the NATO campaign was a significant military operation, which resulted in the damage to and destruction of numerous targets in the FRY.

1211. A report produced for the Prosecution by a committee established on 14 May 1999 to review NATO's actions has been admitted into evidence pursuant to a written decision.<sup>3305</sup> This committee was tasked with reviewing allegations and evidence pertaining to NATO's actions, in order to advise the Prosecution whether a full investigation of any particular incident or incidents involving serious violations of international humanitarian law should be conducted.<sup>3306</sup> While the report does not disclose the members of the committee, it lists the documents that it reviewed, emphasising that most of this material was in the public domain. These documents include a Human Rights Watch report entitled "Civilian Deaths in the NATO Air Campaign"; public documents made available by NATO, the U.S. Department of Defence, and the British Ministry of Defence; documents filed by the FRY before the International Court of Justice; and other FRY documents, including the FRY Ministry of Foreign Affairs report entitled "NATO Crimes in

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<sup>3305</sup> 4D90 (Final Report to the Prosecutor by the Committee reviewing the NATO campaign, 13 June 2000); Decision on Pavković Renewed Motion for Admission of Documents from the Bar Table, 27 September 2007.

<sup>3306</sup> 4D90 (Final Report to the Prosecutor by the Committee reviewing the NATO campaign, 13 June 2000), paras. 2–3.

Yugoslavia (White Book).”<sup>3307</sup> Ultimately the committee concluded that there were no incidents requiring official investigation by the Prosecution.<sup>3308</sup>

1212. An analysis of 75 combat reports prepared at the level of the VJ General Staff/Supreme Command Staff on the basis of reports received from subordinate units, spanning the period from 26 March to 9 June 1999, indicates that, as well as Kosovo, large areas of Serbia, including Belgrade and Novi Sad, were targeted over the course of the NATO bombings.<sup>3309</sup> In addition, targets in Podgorica, Montenegro, were struck at the end of April 1999.<sup>3310</sup> The reports indicate that parts of Belgrade in particular were targeted many times. This is consistent with the testimony of Spasoje Smiljanić, who stated that the wider Belgrade region was the area where the greatest intensity of fire-power was used.<sup>3311</sup>

1213. Lazarević testified that 2,000 NATO strikes hit the territory of Kosovo, with 37 percent of these strikes targeting civilian facilities.<sup>3312</sup> He stated that NATO’s primary targets were in the border area towards Macedonia and Albania, which spanned over 250 kilometres and was 20–25 kilometres deep.<sup>3313</sup> Smiljanić confirmed Lazarević’s assertion that most strikes occurred in this border area. He also said that a significant number of strikes occurred along the Đeneral Janković-Kaćanik-Uroševac-Priština Axis. About 80 percent of all attacks in Kosovo occurred there, and 75 percent of the facilities destroyed in Kosovo were in this area.<sup>3314</sup>

1214. The Chamber has heard evidence suggesting that buildings and objects forming part of the Serbian civilian infrastructure were hit by NATO during its air campaign, including the bombing of: the Chinese Embassy in Belgrade on 7 May,<sup>3315</sup> a civilian passenger train at Grdelica Gorge in eastern Serbia on 12 April 1999,<sup>3316</sup> a civilian convoy near Đakovica/Gjakova on 14 April 1999,<sup>3317</sup>

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<sup>3307</sup> Of these, the Human Rights Watch report is admitted into evidence in the present proceedings as exhibit P703.

<sup>3308</sup> 4D90 (Final Report to the Prosecutor by the Committee reviewing the NATO campaign, 13 June 2000), paras. 3, 91.

<sup>3309</sup> See 3D800–3D875 (Combat Reports of the VJ General Staff, 26 March 1999–9 June 1999).

<sup>3310</sup> See 3D834–3D835 (Combat Reports of the VJ General Staff, 29 April 1999–30 April 1999).

<sup>3311</sup> Spasoje Smiljanić, T. 15750 (17 September 2007).

<sup>3312</sup> Vladimir Lazarević, T. 17949 (8 November 2007).

<sup>3313</sup> Vladimir Lazarević, T. 17948 (8 November 2007).

<sup>3314</sup> Spasoje Smiljanić, T. 15750–15751 (17 September 2007).

<sup>3315</sup> 4D90 (Final Report to the Prosecutor by the Committee reviewing the NATO campaign, 13 June 2000), paras. 80–85; 3D844 (VJ General Staff Combat Report, 9 May 1999), p. 1.

<sup>3316</sup> Klaus Naumann, T. 8331–8332 (14 December 2006); 4D90 (Final Report to the Prosecutor by the Committee reviewing the NATO campaign, 13 June 2000), paras. 58–62.

<sup>3317</sup> 4D90 (Final Report to the Prosecutor by the Committee reviewing the NATO campaign, 13 June 2000), para. 65; Sadik Januzi, P2524 (witness statement dated 21 October 2001), p. 3; Božidar Delić, T. 19314 (29 November 2007); 5D1158 (52<sup>nd</sup> Armoured Brigade Combat Report to PrK, 14 April 1999); Zdravko Vintar, T. 21042–21043 (24 January 2008).



the village of Koriša/Korisha (Đakovica/Gjakova municipality) on 14 May 1999,<sup>3318</sup> and a bus travelling from Niš to Priština/Prishtina, near Lužane/Lluzhana village (Podujevo/Podujeva municipality) on 1 May 1999.<sup>3319</sup> These are tragic events. The Chamber is not charged with reaching conclusions about the responsibility of NATO for these matters, and the parties have quite properly not invited it to do so. It is the duty of the Chamber to have regard to these events to the extent that they are relevant to issues focused in the Indictment. They are thus relevant to the Defence argument that the large-scale movement of the civilian population in Kosovo was caused by NATO bombing. That issue is dealt with below in relation to the individual municipalities where deportation and forcible transfer are alleged to have occurred.

### 3. The Kumanovo Agreement

1215. During the NATO air campaign diplomatic efforts continued to persuade FRY President Milošević to bring an end to the crisis and accept an international military presence in Kosovo. The former Russian Prime Minister Viktor Chernomyrdin and Finnish President Martti Ahtisaari became key interlocutors in this process.<sup>3320</sup> On 3 June 1999 the FRY Government and National Assembly and the Serbian National Assembly approved the acceptance of a peace proposal put forward by Chernomyrdin and Ahtisaari, following which the Chief of the Supreme Command Staff, Ojdanić, authorised a team of senior VJ officers to conduct negotiations with representatives of NATO and the Russian armed forces in relation to the implementation of the peace plan and the withdrawal of forces from Kosovo.<sup>3321</sup> Krga, who was a member of the team, stated that the aim of the negotiations was “to arrive at a Military Technical Agreement with NATO representatives based on the Ahtisaari-Chernomyrdin document which had been accepted, and thereby to create the conditions for the Security Council resolution.”<sup>3322</sup> As a result, a Military Technical Agreement between the International Security Force (“KFOR”) and the Governments of the FRY and Serbia was signed and entered into force on 9 June 1999.<sup>3323</sup> The agreement provided that the FRY and Serbian authorities would allow the deployment of KFOR following the adoption of a UN Security Council resolution and, further, that they would allow KFOR to operate without interference.

1216. On 10 June 1999 the Security Council adopted Resolution 1244, which stated that the responsibilities of the international security presence should include ensuring the military

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<sup>3318</sup> 4D90 (Final Report to the Prosecutor by the Committee reviewing the NATO campaign, 13 June 2000), para. 86; Božidar Delić, T.19316 (29 November 2007); 5D914 (549<sup>th</sup> Motorised Brigade Combat Report to PrK, 14 May 1999).

<sup>3319</sup> Miloš Deretić, T.22586–22587 (18 February 2008); 6D998 (Case file A/I-181), p. 7; 5D617 (211<sup>th</sup> Armoured Brigade Combat Report to PrK, 1 May 1999).

<sup>3320</sup> P472 (Ahtisaari-Chernomyrdin Agreement, 4 June 1999).

<sup>3321</sup> 2D313 (FRY Secretariat for Information Report); 1D170 (Decision of the National Assembly of the Republic of Serbia, 3 June 1999); P1748 (Decision by Ojdanić establishing VJ negotiating team, 4 June 1999).

<sup>3322</sup> Branko Krga, T. 16817 (3 October 2007).

<sup>3323</sup> 6D611 (Military Technical Agreement in Kumanovo, 9 June 1999).

withdrawal, demilitarising the KLA, and creating a secure environment for the return of refugees and displaced persons.<sup>3324</sup> The resolution also authorised the creation of an international civil presence, the purpose of which was to provide an interim administration for Kosovo.<sup>3325</sup> A report signed by the VJ 3<sup>rd</sup> Army Commander, Pavković, the Commander of the VJ's Air Force, Smiljanić, and Obrad Stevanović for the Serbian MUP, was sent on 20 June 1999 to the KFOR commander, Lieutenant General Michael Jackson, confirming the withdrawal of forces from Kosovo and promising co-operation through the newly established Commission for Co-operation with the United Nations Mission and the Joint Implementation Commission.<sup>3326</sup>

#### G. FINDINGS

1217. The Chamber has made findings in this section about the roles of and relationships between the complex web of actors during the events of 1998 and 1999 alleged in the Indictment, namely the political and military leadership of the FRY and Serbia, the VJ, the MUP, the Joint Command, the KLA, and NATO. These roles and relationships bear directly on the crimes alleged in the Indictment and the alleged criminal responsibility of each of the Accused. Importantly, it has been established beyond reasonable doubt that an armed conflict existed on the territory of Kosovo at all times relevant to the Indictment period, starting in 1998 and continuing into 1999 and ending with the cessation of the NATO bombing campaign.<sup>3327</sup>

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<sup>3324</sup> P433 (UNSC Resolution 1244, 10 June 1999), pp. 2–3.

<sup>3325</sup> P433 (UNSC Resolution 1244, 10 June 1999), p. 3.

<sup>3326</sup> 4D225 (3<sup>rd</sup> Army Report to Lieutenant General Michael Jackson, 20 June 1999).

<sup>3327</sup> Because grave breaches of the Geneva Conventions are not charged in the Indictment, the Chamber need not determine whether the armed conflict was internal or international in nature.