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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
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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

JUDGEMENT

Volume 3 of 4

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VIII. INDIVIDUAL CRIMINAL RESPONSIBILITY

A. CHARGED FORMS OF RESPONSIBILITY

1. The Accused are charged under Articles 7(1) and 7(3) of the Statute for their alleged role in crimes said to have been committed between March and June 1999 in Kosovo by forces of the FRY and 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 3–4); and persecutions, a crime against humanity (count 5).

2. According to the Indictment, the target of these alleged crimes was the Kosovo Albanian population, and 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. The Prosecution avers that each of the Accused is charged with the crimes alleged in the Indictment for planning, instigating, ordering, committing, or otherwise aiding and abetting in the commission of those crimes. It is not alleged that any of the Accused was the physical perpetrator of the crimes, but rather that “commission” refers to their participation in a joint criminal enterprise.

3. The Chamber will now turn to its assessment of the individual criminal responsibility of each the six Accused, beginning with whether there was a common plan, design, or purpose—the second physical element of joint criminal enterprise—as alleged in the Indictment by the Prosecution.

B. COMMITTING THROUGH JOINT CRIMINAL ENTERPRISE

1. Charges in Indictment relating to joint criminal enterprise

4. The Trial Chamber considers it important to recall the exact wording of certain portions of the Indictment alleging the existence of a joint criminal enterprise:

18. By using the word “committed” in this indictment, the Prosecutor does not intend to suggest that any of the accused physically perpetrated any of the crimes charged, personally. “Committing” in this indictment, when used in relation to the accused, refers to participation in a joint criminal enterprise as a co-perpetrator, either directly or indirectly.

19. The purpose of this joint criminal enterprise was, inter alia, the modification of the ethnic balance in Kosovo in order to ensure continued Serbian control over the province.¹ This purpose was to be achieved by criminal means consisting of a widespread or systematic campaign of terror and violence that included deportations, murders, forcible transfers and persecutions directed at the Kosovo Albanian population during the Indictment period. To fulfil this purpose, each of the accused, acting individually and/or in concert with each other and others, contributed to the joint criminal enterprise using the de jure and de facto powers available to him.

20. This joint criminal enterprise came into existence no later than October 1998 and continued throughout the time period when the crimes alleged in Counts 1 to 5 of this indictment occurred: beginning on or about 1 January 1999 and continuing until 20 June 1999. A number of individuals participated in this joint criminal enterprise during the entire duration of its existence, or, alternatively, at different times during the duration of its existence, including MILAN MILUTINOVIĆ, NIKOLA ŠAINOVIĆ, DRAGOLJUB OJDANIĆ, NEBOJŠA PAVKOVIĆ, VLADIMIR LAZAREVIĆ, Vlastimir Đorđević, SRETEN LUKIĆ, Slobodan Milošević and Vlajko Stojiljković. Other members included Radomir Marković, Obrad Stevanović, Dragan Ilić and unidentified persons who were members of command and coordinating bodies and members of the forces of the FRY and Serbia who shared the intent to effect the purpose of the joint criminal enterprise. In addition, and/or in the alternative, MILAN MILUTINOVIĆ, NIKOLA ŠAINOVIĆ, DRAGOLJUB OJDANIĆ, NEBOJŠA PAVKOVIĆ, VLADIMIR LAZAREVIĆ, Vlastimir Đorđević, SRETEN LUKIĆ, Slobodan Milošević, Vlajko Stojiljković, Radomir Marković, Obrad Stevanović, and Dragan Ilić implemented the objectives of the joint criminal enterprise through members of the forces of the FRY and Serbia, whom they controlled, to carry out the crimes charged in this indictment.

21. The crimes enumerated in Counts 1 to 5 of this Indictment were within the object of the joint criminal enterprise and the accused shared the intent with the other co-perpetrators that these crimes be perpetrated. Alternatively, the crimes enumerated in Counts 3 to 5 were natural and foreseeable consequences of the joint criminal enterprise and the accused were aware that such crimes were the possible consequence of the execution of that enterprise. Despite their awareness of the foreseeable consequences, MILAN MILUTINOVIĆ, NIKOLA ŠAINOVIĆ, DRAGOLJUB OJDANIĆ, NEBOJŠA PAVKOVIĆ, VLADIMIR LAZAREVIĆ, Vlastimir Đorđević and SRETEN LUKIĆ, decided to participate in the joint criminal enterprise. Each of the accused and other participants in the joint criminal enterprise further shared the intent and state of mind required for the commission of each of the crimes charged in counts 1 to 5. On this basis, under Article 7(1) of the Statute, each of the accused bears individual criminal responsibility for the crimes alleged in Counts 1 to 5.

5. Paragraph 21 of the Indictment, therefore, alleges that the Accused “committed” the crimes charged under joint criminal enterprise forms 1 and 3.² Counts 1 to 5 are charged under joint

¹ See Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 27, 249; Prosecution closing arguments, T. 26770, 26776 (19 August 2008).

² See Rule 98 *bis* Decision, T. 12787 (18 May 2007) (“The Chamber considers that the Prosecution has charged the accused with responsibility for the crimes alleged under the first and third categories of JCE, as articulated in the jurisprudence of the Tribunal. In particular, the Chamber recognises that the accused are alleged to be responsible for the forcible displacement of the Kosovo Albanian population, or the common plan, and that the murders committed in conjunction with the main aim of the JCE were natural and foreseeable consequences under the third category of JCE.”).

criminal enterprise form 1; and, alternatively, the Prosecution has charged Counts 3 to 5 (murder and persecution) as joint criminal enterprise form 3.³

6. The Indictment lays out in overview the alleged joint criminal enterprise in paragraphs 23 to 33. Paragraph 23 alleges that a functioning chain of command existed between “the highest levels in Belgrade to the forces of the FRY and Serbia in the field”, and that the sophistication of the command and control structures ensured a constant monitoring of the situation on the ground. Moreover, the Constitution and applicable laws and regulations of the FRY allowed Milošević, Milutinović, and Ojdanić to exercise control over both the VJ and the MUP through the SDC and the Supreme Command. Paragraph 24 alleges that Milošević, Milutinović, Šainović, Pavković, Lazarević, and Lukić exercised command and control over forces of the FRY and Serbia in Kosovo through the Joint Command.⁴

7. Paragraphs 25 to 31 of the Indictment allege that the forces of the FRY and Serbia engaged in a deliberate and widespread or systematic campaign in order to forcibly expel from, and internally displace within, Kosovo the Kosovo Albanian civilian population through the creation of an atmosphere of fear and oppression, the destruction of property, and acts of brutality and violence. Once the members of the Kosovo Albanian population were forced from their homes and formed convoys on their way to the borders with Albania and Macedonia, the forces of the FRY and Serbia controlled the routes to the border crossings, subjected members of the Kosovo Albanian population to further assaults, and systematically seized and destroyed their personal identity documents.

2. Procedural history of joint criminal enterprise in this case

8. The alleged joint criminal enterprise in this case does not exist in a procedural vacuum, but rather has been the subject of substantial litigation for *many* years. The Chamber will briefly recount some aspects of the decisions that have been taken in respect of the alleged joint criminal enterprise in this case.

9. *Existence of joint criminal enterprise as a form of responsibility.* On 13 February 2003, the Chamber denied Ojdanić’s motion challenging the Tribunal’s jurisdiction under Article 7 of the Statute over persons alleged to be members of a joint criminal enterprise. In doing so, the Chamber noted the existence of joint criminal enterprise as a form of responsibility, citing jurisprudence from

³ Indictment, para. 21.

⁴ *See also* Indictment, para. 97 (“At least between the end of July and the end of October 1998, Joint Command meetings dealing with the situation in Kosovo were held in Priština/Prishtina on an almost daily basis.”).

the Appeals Chamber, customary international law, general international criminal law, national legislation, and case law arising out of post-World War II prosecutions.⁵ The Appeals Chamber upheld the Chamber's decision.⁶

10. *Membership in joint criminal enterprise.* On 22 March 2006, the Chamber denied Ojdanić's further motion challenging jurisdiction in which he argued that neither the Statute nor customary international law recognises the proposition that an accused may be held responsible for his participation in a joint criminal enterprise where one or more of the joint criminal enterprise participants use persons outside the joint criminal enterprise to physically perpetrate the crimes constituting the joint criminal enterprise's common purpose. The Chamber found that the question whether members of a joint criminal enterprise could commit crimes through the hands of people who were not joint criminal enterprise members did not relate to the Tribunal's jurisdiction, but rather related to "the contours of [joint criminal enterprise] responsibility," which could only be adequately dealt with in light of the facts. This was a matter to be addressed at trial, and the Chamber therefore dismissed Ojdanić's challenge in this respect.⁷ However, subsequent Appeals Chamber jurisprudence led the Prosecution to partially withdraw paragraph 20 of the Indictment, as described below, thus resolving this issue in advance of the final Judgement in this case.

11. The Indictment alleges that the participants in the joint criminal enterprise included all of the Accused, as well as Vlastimir Đorđević, Slobodan Milošević, Vljako Stojiljković, Radomir Marković, Obrad Stevanović, and Dragan Ilić. All of the foregoing individuals are therefore named members of the joint criminal enterprise. However, in paragraph 20, the Prosecution also alleged that the following un-named persons were members of the joint criminal enterprise: "unidentified persons who were members of command and coordinating bodies and members of the forces of the FRY and Serbia who shared the intent to effect the purpose of the joint criminal enterprise."⁸ The Indictment goes on to then allege, in the alternative, that the named members of the joint criminal enterprise "implemented the objectives of the joint criminal enterprise through members of the forces of the FRY and Serbia, whom they controlled, to carry out the crimes charged in this indictment."⁹ However, 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

⁵ *Prosecutor v. Milutinović et al.*, Case No. IT-99-37-PT, Decision on Dragoljub Ojdanić's Preliminary Motion to Dismiss for Lack of Jurisdiction: Joint Criminal Enterprise, 13 February 2003, pp. 6–7.

⁶ *Prosecutor v. Milutinović et al.*, Case No. IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction – *Joint Criminal Enterprise*, 21 May 2003, paras. 30, 33, 44.

⁷ Decision on Ojdanić's Motion Challenging Jurisdiction: Indirect Co-Perpetration, 22 March 2006, paras. 23–24.

⁸ Indictment, para. 20.

[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.”¹⁰ The Prosecution reiterates this position in its final trial brief.¹¹ The Chamber will thus proceed on this basis in making its findings in respect of the responsibility of the Accused.

12. *Alleged crimes in 1998 going to mental element of joint criminal enterprise.* Also on 22 March 2006, the Chamber granted a Defence challenge in relation to the Indictment’s reference to crimes in 1998, which the Prosecution intended to rely upon to prove that the Accused were members of the joint criminal enterprise and had the requisite state of mind to commit the charged crimes. The Chamber held that these crimes were material facts that had to be pleaded sufficiently and therefore ordered the Prosecution, if it intended to rely at trial upon the alleged crimes in 1998, to amend the Indictment in order to identify, at a minimum, the dates and locations of the crimes and the alleged connection to each Accused, and to name the victims if the Prosecution were in a position to do so.¹² On 11 May 2006, the Chamber approved of the Prosecution’s amendments to the Indictment (paragraphs 94–97), considering that

the information provided in the Proposed Indictment about the alleged crimes of 1998 is sufficient “to enable [the Accused] to prepare a defence effectively and efficiently”, particularly since the allegations in question do not give rise to separate charges against any of the Accused, but instead are relied upon for purposes of establishing certain elements of the crimes and forms of responsibility that are charged in the indictment.¹³

13. The 1998 crimes are discussed in Section VI.C and are also dealt with in the Accused’s responsibility sections, where appropriate.

14. *Joint criminal enterprise by omission.* In its decision refusing the Accused’s motions for acquittal, the Chamber held as follows in relation to joint criminal enterprise by omission:

[I]n the present case, where the evidence points to a legal duty and failure to act on the part of one or some of the accused, this may be considered sufficient evidence of participation in a joint criminal enterprise for liability under Article 7(1) if, by such omission, a significant contribution to the joint criminal enterprise is made.¹⁴

15. Some of the Accused subsequently sought certification of this portion of the decision. On 14 June 2007, the Chamber denied this application for certification, holding that (a) the charges in

⁹ Indictment, para. 20.

¹⁰ Rule 98 *bis* hearing, T. 12577 (3 May 2007) (emphasis added). During the rendering of the Rule 98 *bis* Decision, the Chamber admonished, “This is an important representation of the Prosecution that the parties should keep in mind.” Rule 98 *bis* hearing, T. 12787 (18 May 2007).

¹¹ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 10.

¹² Decision on Defence Motions Alleging Defects in the Form of the Proposed Amended Joinder Indictment, 22 March 2006, paras. 11–17, 33(3)(b).

¹³ Decision on Motion to Amend the Indictment, 11 May 2006, para. 11 (footnotes omitted).

the Indictment were sufficient to inform the Accused of the forms of responsibility by which they were said to be responsible for the underlying offences in the Indictment; (b) the decision did not involve an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial; and (c) resolution of the issue by the Appeals Chamber at that stage would not materially advance the proceedings.¹⁵

3. Physical elements

a. Common plan, design, or purpose—Second element

16. At the heart of the Prosecution case that each of the Accused committed various crimes by participation in a joint criminal enterprise is the claim that there was such an enterprise comprising various senior and powerful officials of the governments of both the FRY and Serbia and senior VJ and MUP officers who directed the VJ and MUP forces of the Federal Republic and the Republic in a campaign of terror and violence designed to forcibly displace members of the Albanian population of Kosovo with the aim of modifying the ethnic balance of the population in Kosovo to secure control of the province in the hands of ethnic Serbs. Before looking at the question whether any of the Accused actually participated in such an enterprise, it is necessary to determine whether such an enterprise existed: in other words, whether there was concerted action by such senior officials and officers to engage the might of the state against a section of its own citizens to achieve that end. The Chamber now turns to the evidence relating to this issue. In doing so, the Chamber wishes to emphasise that it considered all the relevant evidence in the case, including the acts and conduct of the Accused but excluding the interviews of four of the Accused, which it has said previously will only be used in relation to the individual Accused who gave the interview to the Prosecution. After making its finding on the second physical element, the Chamber will then turn to the other physical and mental elements of joint criminal enterprise in relation to each of the six Accused in their individual sections.

17. The Prosecution has presented a great deal of evidence in order to try to prove the existence of a common plan, design, or purpose. In the Chamber's view, the most compelling evidence of a common plan, design, or purpose is that which pertains to the pattern of crimes in 1999. The

¹⁴ Rule 98 *bis* hearing, T. 12776–12777 (18 May 2007).

¹⁵ Decision on Defence Application for Certification of Interlocutory Appeal of Rule 98 *bis* Decision, 14 June 2007, paras. 14–18 (“It is frequently difficult to categorise conduct or behaviour as entirely positive action or entirely passive failure to act. Both elements may be present in the conduct to be considered. The question whether the evidence demonstrates that an accused ‘committed’ a crime cannot be decided on the basis of a theoretical debate that seeks to determine the relevancy of evidence by classifying it as positive conduct or passive failure to act. The issue of whether the Accused could be held liable for their alleged participation in the JCE by conduct that could be viewed as

Chamber therefore will deal with this evidence first in its discussion. After that, the Chamber will also deal with other evidence relevant to the second element.

i. Pattern of crimes in spring of 1999

18. The Prosecution argues that evidence of the scale of destruction of Kosovo Albanian villages, the general pattern of violence, killings, and displacements observed throughout Kosovo, the military-style methods used, the concerted and organised way in which refugee columns were directed through and out of Kosovo, and the routine removal of identification documents leads to the conclusion that the forces of the FRY and Serbia were implementing their actions according to a common plan, and that these events could not have been the result of individual acts of violence committed randomly by individual members of the army and police.¹⁶

19. The Milutinović Defence argues that NATO and the international media misrepresented events in Kosovo to bolster public support for the air campaign against the FRY. It also submits that there was never any mention by any authorised organ of the state (in either a public or private capacity) of a plan to expel or harm the Kosovo Albanian population before or during the war.¹⁷ Both the Milutinović and Pavković Defences argue that there is evidence of civilians being told to return home, and that there was an atmosphere of utter confusion in the forces of the FRY and Serbia in Kosovo amidst the bombing.¹⁸

20. The Chamber will first turn to two aspects of the evidence on this issue: the demographic evidence adduced in the trial and the seizure of identity documents.

(A) Demographic evidence

21. The Prosecution, relying upon the statistical analysis of Patrick Ball, asserts that there was a pattern of killing and refugee migration that indicates a common cause.¹⁹ According to Ball's analysis, the observed patterns were not consistent with the hypotheses that the migration flow and killings had been caused by NATO bombing or KLA activity ("first hypothesis" and "second

'omission' is one that is better determined in the context of the specific evidence of this case, both the evidence adduced by the Prosecution and that of the Defence.").

¹⁶ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 268–269.

¹⁷ Milutinović Final Trial Brief, 15 July 2008, paras. 264–266.

¹⁸ Milutinović Final Trial Brief, 15 July 2008, para. 303, pp. 164–165; Pavković Final Trial Brief, 28 July 2008 (public version), para. 359; *see also* Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 629–630.

¹⁹ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 314; Prosecution closing arguments, T. 26805 (19 August 2008).

hypothesis”, respectively), but were consistent with the hypothesis that the cause of these events had been the action of the Yugoslav forces (“third hypothesis”).²⁰

22. Eric Fruits was called jointly by the Defence to review Ball’s reports and testimony. Based upon Fruits’s expert report and testimony, the Ojdanić Defence disputed the accuracy and comprehensiveness of Ball’s underlying data, alleged flaws in his methodology, and rejected his conclusion.²¹ Moreover, the Ojdanić Defence claimed that Ball may have been inherently biased against Slobodan Milošević, as demonstrated by comments he made at a conference.²² In turn, the Prosecution challenged Fruits’s qualification in the field of statistical demographics.²³

23. The Chamber observes that five key issues have been raised during the experts’ exchange regarding the patterns of killing and migration: Ball’s potential bias; Fruits’s alleged lack of qualification; the integrity and completeness of the underlying data; the soundness of the applied methodology; and, most importantly, the persuasiveness of the conclusion reached. Each of these issues will be examined in turn.

24. Firstly, with regard to the alleged bias of Ball, the Chamber heard evidence that he called for a collective round of applause to celebrate Slobodan Milošević’s extradition to The Hague at a conference he attended on 14 July 2001. Moreover, Ball admitted to having said there later on that “[w]e’ve got one of the worst bad guys ever in jail, at least in my lifetime”. When this quote was put to the witness during his cross-examination, he initially testified that he could not recall if he was referring to Milošević and that he may have been referring to Pinochet.²⁴ When questioned by the Presiding Judge when Pinochet was in jail, if at all, Ball corrected himself by saying that he was willing to testify for the record that he was referring to Milošević.²⁵ The Chamber considers that the evasive nature of the witness’s responses casts doubt upon his objectivity as an expert witness. However, Ball’s expert reports do not, on their face, display any signs of bias in respect of their preparation and contents. Moreover, Ball displayed no bias during his oral testimony before the Chamber. His evidence will therefore be examined below on a substantive basis.

25. Secondly, the Prosecution questions Fruits’s qualification in the field of statistical demographics, claiming that he only published one relevant article and was not familiar with basic

²⁰ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 314; Prosecution closing arguments, T. 26809 (19 August 2008). *See also* P1506 (Patrick Ball’s Expert Report, 3 January 2002), e-court p. 9.

²¹ Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 126–151.

²² Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 128; Ojdanić closing arguments, T. 27146 (22 August 2008).

²³ Prosecution closing arguments, T. 26806–26808 (19 August 2008).

²⁴ Patrick Ball, T. 10273–10277 (20 February 2007).

²⁵ Patrick Ball, T. 10274–10275 (20 February 2007).

terminology used in the field.²⁶ However, the Chamber is satisfied that Fruits's expertise in statistics was sufficient to offer a valid critique of Ball's report. This is demonstrated by his credentials, which include having taught a higher education course concerning the problems associated with linear regression analysis, having consulted on projects involving statistical analyses of demographic data, and having been admitted as a statistical expert in courts in the U.S.²⁷ The Chamber finds Fruits's responses in court satisfactory for an expert in his field and considers the challenge to his qualification unfounded.

26. Thirdly, Fruits lists an array of irregularities concerning the underlying data used by Ball.²⁸ In particular, Fruits claims that Ball's critical omission is the fact that, while his principal study considered data on KLA activity and NATO air-strikes, it did not include any data on the Yugoslav forces or their movements.²⁹ When this was put to Ball during his cross-examination, he testified that he and his team had some data in relation to Yugoslav force activity at their disposal but that it was too scarce to be of sufficient use in the research.³⁰ Fruits argued that such a mistake constitutes an omitted variable error, which not only introduces bias in the data that is missing, but also causes the estimates of the impacts of the KLA and the NATO activities upon the situation on the ground to be unreliable.³¹ While the Chamber understands the difficulty involved in gathering data on the activity of the forces of the FRY and Serbia, it considers Fruits's testimony in this respect to be relevant to the Prosecution attempts to use Ball's observations as evidence corroborating the existence of a widespread or systematic campaign of killings and expulsions conducted by the Yugoslav forces.³²

27. Fourthly, the Ojdanić Defence argues that Ball's methodology was flawed.³³ The first of Ball's findings was that killings and refugee flow occurred in a regular pattern, with the peaks coinciding.³⁴ Fruits, however, pointed out that the existence and similarity of the patterns of deaths and migrations were not demonstrated statistically and that close scrutiny reveals that there are substantial differences between the two.³⁵ Fruits demonstrated to the Chamber that the graphs of

²⁶ Prosecution closing arguments, T. 26806–26807 (19 August 2008).

²⁷ Eric Fruits, T. 25953–25955 (23 April 2008).

²⁸ 3D893 (Eric Fruits's Expert Report, 3 February 2008), pp. 13–23.

²⁹ Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 127, 150; *see also* 3D893 (Eric Fruits's Expert Report, 3 February 2008), pp. 23–24.

³⁰ Patrick Ball, T. 10290 (20 February 2007).

³¹ Eric Fruits, T. 25956 (23 April 2008).

³² Prosecution Final Trial Brief, 29 July 2008 (public version), para. 314; Prosecution closing arguments, T. 26805 (19 August 2008).

³³ Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 134–136.

³⁴ P1506 (Patrick Ball's Expert Report, 3 January 2002), p. 15.

³⁵ Eric Fruits, T. 25964–25967 (23 April 2008); 3D893 (Eric Fruits's Expert Report, 3 February 2008), pp. 24–26.

killings and refugee migration did not coincide during, at least, three points of time.³⁶ The Chamber finds that Ball's correlation of these two patterns as being consistent with the activities of the Yugoslav forces has been undermined by the critique of Fruits.³⁷

28. Lastly, the Chamber proceeds to examine, in light of the preceding remarks, Ball's conclusion (and the Prosecution argument) that his statistical analysis is consistent with the third hypothesis, namely that Yugoslav forces conducted a campaign of mass killings and expulsions.³⁸ It must be noted at the outset that Ball himself admitted that "observational statistics do not permit an affirmation of cause"³⁹ and thus his expertise may, at most, serve to reject other hypotheses. However, Ball's principal study only states with regard to the construction of the hypotheses that, "[a]lthough there may be other explanations for regular patterns in killings and refugee movement, we consider these three to be the most likely",⁴⁰ without elaborating the reasons that informed this consideration of likelihood. The Ojdanić Defence submits four additional explanations: movement may have resulted from KLA-issued orders for Kosovo Albanian civilians to leave their villages; refugees may have fled the areas of combat between the KLA and the Yugoslav forces; people may have moved in anticipation of NATO bombing; and the patterns may have resulted from NATO and KLA working together in Kosovo.⁴¹ The Chamber notes that the exclusion of the first two hypotheses by Ball—even if based upon correct data and methodology—is of little value because it still leaves a number of potentially plausible options unexplored. In other words, reduction of the number of hypotheses by two is still insufficient, as the evidence before the Chamber does not indicate that the pool of potential *hypotheses* is limited to three. In addition, the Chamber recalls that the deficiencies in the underlying data and methodology and the defects in the statistical test supporting the existence of patterns, *i.e.*, the fact that substantial differences existed between the patterns of deaths and migrations, cast further doubt upon the value of Ball's conclusions.

29. The Chamber observes that the main intent of Ball and his co-authors—to provide an alternative, innovative way of thinking about political violence⁴²—is a potentially commendable one. Likewise, the Chamber does not intend to repudiate the theoretical scientific value of the study and its methodology, which is rather the province of the academic community. However, the

³⁶ Eric Fruits, T. 25966 (23 April 2008); *see also* 3D1144 (Eric Fruits Graph regarding "Eyeballing" – Exhibit P1394, p. 3, with overlay).

³⁷ P1506 (Patrick Ball's Expert Report, 3 January 2002), p. 4.

³⁸ P1506 (Patrick Ball's Expert Report, 3 January 2002), p. 4; Prosecution Final Trial Brief, 29 July 2008 (public version), para. 314; Prosecution closing arguments, T. 26809 (19 August 2008).

³⁹ Patrick Ball, T. 10256 (20 February 2007).

⁴⁰ P1506 (Patrick Ball's Expert Report, 3 January 2002), p. 3.

⁴¹ Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 146.

⁴² Patrick Ball, T. 10222–10223 (20 February 2007).

Chamber is of the view that such doubt has been cast upon the study's conclusions that reliance upon them would not be appropriate.

(B) Seizure of identity documents

30. The Prosecution argues that the removal of identification documents from Kosovo Albanians demonstrates that the forces of the FRY and Serbia were implementing their actions following a common plan, design, or purpose.⁴³ The Pavković Defence gainsays this averment, arguing that evidence regarding identity documents does not fit the Prosecution's theory of the existence of a plan because not all witnesses who testified had their identification cards taken or saw those of others being taken.⁴⁴ The Lukić Defence asserts that the evidence shows that the Prosecution's allegations regarding the destruction of personal identification documents and vehicle licences are untrue. It also argues that, in addition to witnesses stating that their personal documents were not confiscated, testimony from MUP personnel dealing with border crossings shows that they never received orders to destroy identification documents. Finally, the Lukić Defence argues that the evidence reveals that, after the identification cards were discarded by their owners, efforts were made to return them to the issuing SUP.⁴⁵

31. The Chamber has already discussed the evidence in relation to the confiscation of the identity documentation of Kosovo Albanians in the foregoing sections, but will extract and summarise the evidence again below.

32. Many Kosovo Albanians who gave evidence before the Chamber testified that forces of the FRY and Serbia were confiscating identity documents, specifically from Kosovo Albanians. There were also witnesses from the forces of FRY and Serbia who described the confiscation and destruction of Kosovo Albanians' identity documents.⁴⁶ The majority of identification confiscations took place along the Kosovo-Albania border or *en route* to the border and were not limited to one checkpoint, but rather occurred in different municipalities. Twenty-six Kosovo Albanian witnesses gave evidence of identity document confiscation along the Kosovo-Albanian border or as part of a convoy to the border.⁴⁷ One convoy approaching the Vrbnica/Vërbnica

⁴³ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 268.

⁴⁴ Pavković Final Trial Brief, 28 July 2008 (public version), para. 359.

⁴⁵ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 195–204.

⁴⁶ See, e.g., K89, T. 9124 (24 January 2007); Nike Peraj, P2248 (witness statement dated 15 February 2001), p. 9.

⁴⁷ See, e.g., Sabit Kadriu, P2377 (witness statement dated 10 December 2000) ("The Serb took it [my identification papers] and cursed us and told us to go to the Albanian side of the border. The identification papers of all my companions were also confiscated."); p. 20; Rahim Latifi, P2381 (witness statement dated 28 April 1999), p. 3 ("At the border crossing at Morina we were taken away our personal documents."); Martin Pnishi, P2236 (witness statement dated 4 April 2000), p. 4 ("I saw that civilians were forced to drop their ID cards on the ground."); Mehmet Mazrekaj,

(Morina) border crossing on 3 April 1999 was described as being 25 kilometres long;⁴⁸ another convoy on 3 April 1999 from Prizren to the border had 20,000 people in it.⁴⁹ Yet another group going by train through Đeneral Janković/Hani i Elezit in Kačanik/Kaçanik municipality on 29 March 1999 carried thousands of refugees to Macedonia.⁵⁰ A few of these witnesses were not subject to confiscation of their identification,⁵¹ but the majority testified to identity document confiscation at the border by the forces of the FRY and Serbia.⁵²

33. Witnesses also testified to seeing large boxes or baskets into which the forces of the FRY and Serbia were dumping Kosovo Albanian identity cards. At the Vrbnica/Vërbnica (Morina) border crossing, four witnesses reported that the confiscated identity documents were thrown into a box or basket, and described the quantity of documents there as “a heap”, “a hill”, or “a pile”.⁵³ Two witnesses who went through the Ćafa Prushit/Qafa e Prushit border crossing on 2 April 1999 with thousands of other people testified that there was a box where the MUP threw the identification documents;⁵⁴ one of these witnesses stated that, at the time he passed through, the box he saw contained 300 to 400 documents.⁵⁵ Although the Lukić Defence claims that the Kosovo Albanians gave their identity documents willingly to the border guards so that they could be preserved,⁵⁶ and presented a witness to testify to this,⁵⁷ the Chamber rejects this argument and evidence in the face of contrary testimony from so many witnesses whom the Chamber finds credible on these points.

T. 5813, 5838 (3 November 2006) (“They took documents from other people who were with me on the same tractor. The documents were given to a police person.”).

⁴⁸ Halil Morina, P2522 (witness statement dated 5 October 2001), p. 5, P2523 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 903–904.

⁴⁹ Ali Hoti, T. 4156 (27 September 2006).

⁵⁰ Nazlie Bala, P2262 (witness statement dated 30 June 2001), e-court pp. 7–8.

⁵¹ *See, e.g.*, Hamide Fondaj, P2283 (witness statement dated 9 June 2001), p. 5 (“The police asked ... if we all had our identity cards with us.”).

⁵² *See, e.g.*, Halit Berisha, P2326 (witness statement dated 17 August 2001), p. 4 (“When we reached Morina at the border, the police took everyone identification, licenses, registration plates from the vehicles. When we reached Kukes we realized that there would have been about 5.000 people in the convoy.”); Nazlie Bala, P2262 (witness statement dated 16 August 2006), e-court p. 8; Shyrete Berisha, T. 3910 (25 September 2006); Fuat Haxhibeqiri, T. 1103 (8 August 2006); K58, P2550 (witness statement dated 2 February 2000), e-court p. 17; K81, P2526 (witness statement dated 30 May 1999), e-court p. 9.

⁵³ Mahmut Halimi, T. 4458–4459 (9 October 2006); Sadik Januzi, P2525 (witness statement dated 23 April 1999), e-court p. 8; Ndrec Konaj, P2372 (witness statement dated 12 June 2001), p. 5; Halil Morina, P2522 (witness statement dated 5 October 2001), p. 5; P2523 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 905.

⁵⁴ Hani Hoxha, T. 1546–1550 (11 August 2006), P2267 (witness statement dated 22 April 1999), p. 5, P2231 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 7355; Luzlim Vejsa, P2350 (witness statement dated 16 April 1999), p. 3.

⁵⁵ Hani Hoxha, T. 1549 (11 August 2006).

⁵⁶ Lukić closing arguments, T. 27344–27345 (26 August 2008).

⁵⁷ Nebojša Ognjenović, T. 22885–22886 (20 February 2008).

34. The Pavković Defence admitted that identity document confiscation happened, but argued that it was not part of a plan.⁵⁸ This assertion rings hollow in the face of the evidence of K89, a soldier with the VJ in Đakovica/Gjakova, and Nike Peraj, also a former VJ officer. K89 testified that his commanding officer told them that “not a single Albanian ear was to remain in Kosovo and that their identification papers were to be torn, so as to prevent them from coming back.” Later on, he saw VJ members confiscate and then tear up Kosovo Albanian documents in Đakovica/Gjakova.⁵⁹ Peraj testified that a MUP checkpoint was set up in Meja, where MUP personnel confiscated identification documents.⁶⁰ When set against the descriptions of systematic identity document confiscation, the Pavković Defence’s claim that this was just the idea of some “half-drunk people standing at the border” is unpersuasive.⁶¹

35. Some Albanian witnesses told of their documents being torn up in Priština/Prishtina, in Zvečan/Zveçan, in Dušanovo/Dushanova, and in Zrze/Xërxa.⁶² In the forest near Celina, some 10,000 people gathered in an attempt to escape violence in their villages; the police demanded that they hand over any identity documents in their possession, warning them that, if they attempted to keep any documentation that was subsequently found in a search, they would be shot. They then put all the identification documents in a pile and set them alight.⁶³ At the Vrbnica/Vërbnica (Morina) border crossing, witnesses reported the burning of Kosovo Albanian identity documents after their confiscation by the forces of the FRY and Serbia.⁶⁴

36. Yet other witnesses spoke of the confiscation or destruction of documents in villages or in locations where they had been detained. In Bela Crkva/Bellacërka, Sabri Popaj witnessed policeman taking documents from men they had captured, piling them up on the riverbank, and setting some of them on fire.⁶⁵ In Dušanovo/Dushanova, Rexhep Krasniqi’s son, Afrim, had his

⁵⁸ Pavković closing arguments, T. 27206 (22 August 2008).

⁵⁹ K89, T. 9124 (24 January 2007), T. 9154, 9201 (25 January 2007).

⁶⁰ Nike Peraj, P2248 (witness statement dated 15 February 2001), p. 9.

⁶¹ Pavković closing arguments, T. 27206 (22 August 2008).

⁶² Emin Kabashi, T. 2098 (22 August 2006), P2250 (witness statement dated 24 April 1999), p. 3; Shukri Gerxhaliu, P2275 (witness statement dated 19 February 2000), para. 35 (“The police examined everyone’s identification cards and tore up those that were written in Albanian.”); Hysni Kryeziu, P2514 (witness statement dated 14 May 1999), e-court p. 9 (“[The police] took all that we had with us They would either tear the documents off or throw them in the garbage.”); Isuf Zhuniqi, P2331 (witness statement dated 4 May 1999), p. 4 (“[The policeman] tore up my passport and also took out my identity card and driving license and did the same to them.”).

⁶³ Reshit Salihi, P2336 (witness statement dated 29 April 1999), p. 4.

⁶⁴ Hamide Fondaj, P2283 (witness statement dated 9 June 2001), p. 5 (“Those people in the convoy who crossed two hours later were beaten and all their ID cards were taken away and burnt.”); Sabri Popaj, T. 5753 (2 November 2006), P2446 (witness statement dated 14 June 1999), p. 12 (“They demanded our documents...They threw these documents into a fire some metres away.”); Sadije Sadiku, T. 1903 (18 August 2006) (“They stopped us at the checkpoint, asked for money and for the IDs, passports ... [we] gave the documents to the guards, and they tore them up and burned them.”).

⁶⁵ Sabri Popaj, P2446 (witness statement dated 14 June 1999), p. 4.

identification card taken from him by the police while they were beating him up.⁶⁶ In Korenica, Lizane Malaj witnessed her brother and nephew being forced to lie on the ground, where Serb forces took away their identifications and told them to leave for Albania.⁶⁷ In Mala Kruša/Krusha e Vogël, “Serb forces” beat the Kosovo Albanian men and forced them to give up their wallets, money, and documents.⁶⁸ In Prilepnica/Përlepnica, Serb soldiers seized money, mobile telephones, jewellery, identity documents, and car keys from the villagers.⁶⁹ In Dušanovo/Dushanova, the police took all that the villagers had with them: cars, jewellery, money, and all kinds of documents, including identification and automobile documents; they either tore the documents or threw them into the garbage.⁷⁰

37. The Defence endeavoured to counter this large body of evidence. Nebojša Ognjenović asserted that he never saw any policemen taking money from people, taking away people’s cars and documents, or taking off the licence plates of cars, and stated that, had there been such cases, he would have taken action against those who did it. However, no one ever came to him to complain about the conduct and attitude of policemen at the border crossing.⁷¹ Ognjenović remembered that some people who left the country were on foot, and some of those had deserted their cars before the border crossing because they did not want to wait in the queue of vehicles any longer.⁷² Ognjenović also claimed that Kosovo Albanians discarded their personal identity documents at or near the border crossing, which the border crossing employees collected and placed in a room. Car documents, license plates, and drivers’ licenses were given to the Prizren SUP, but the personal identity cards remained in the border post building, even after the withdrawal of FRY/Serbian forces from Kosovo.⁷³ Petar Dujković, who was the Head of the Border Police Administration in the MUP, confirmed that, when the NATO air-strikes began, a great number of people from Kosovo sought to cross the borders, describing this period as a “general crisis”.⁷⁴ Like Ognjenović, he denied that he received orders, or ordered anyone to seize identity documents from Kosovo Albanians crossing the borders.⁷⁵

38. Although it may have happened on occasion that people voluntarily discarded their personal documents, in light of the consistent evidence from a number of witnesses led by the Prosecution,

⁶⁶ Rexhep Krasniqi, P2378 (witness statement dated 19 September 2004), e-court p. 13.

⁶⁷ Lizane Malaj, T. 1310 (9 August 2006).

⁶⁸ Lufti Ramadani, T. 4295 (28 September 2006).

⁶⁹ Abdullah Shaqiri, 4D4 (witness statement dated 25 April 1999), p. 4.

⁷⁰ Hysni Kryeziu, P2514 (witness statement dated 14 May 1999), e-court p. 9.

⁷¹ Nebojša Ognjenović, T. 22919 (21 February 2008).

⁷² Nebojša Ognjenović, T. 22919 (21 February 2008).

⁷³ Nebojša Ognjenović, T. 22882–22885, 22889–22891 (20 February 2008).

⁷⁴ Petar Dujković, T. 23327 (27 February 2008).

who themselves had their identity documents confiscated, or witnessed other Kosovo Albanians having their documents seized at the borders and, on occasion, as they were being expelled from their homes, the Trial Chamber is satisfied that this was a common practice, carried out primarily by members of the police.

39. The Chamber notes in this regard the hearsay evidence of witness K54, a VJ soldier who testified that he was informed by a colleague that the police were under orders to take documents away from Kosovo Albanians crossing the border at Vrbnica/Vërbnica (Morina), and that they then set them on fire.⁷⁶ Witness K89, also a VJ soldier, described seeing a large column of women, children, and elderly people heading for the Albanian border, whose identity documents were torn up by members of a VJ unit.⁷⁷ Former KVM observer Richard Ciaglinski testified that on 13 June 1999 he returned to Priština/Prishtina and assisted in taking over the MUP office there. There he saw a very large pile of documents, including passports and identity documents belonging to Kosovo Albanians, being burned. He gave a sample of these documents to Karol John Drewienkiewicz,⁷⁸ who confirmed that Ciaglinski had called his attention to a bonfire made of identity documents at the police headquarters, which he also observed.⁷⁹

40. Taking all the evidence into account, the Chamber finds that the forces of the FRY and Serbia took identity documentation from Kosovo Albanians in the course of their displacement and that many of those documents were destroyed. The Trial Chamber is satisfied that the confiscation and destruction of identity documents is some of the strongest evidence in the case going to show that the events of spring 1999 in Kosovo were part of a common purpose.

(C) Discernible pattern of forcible displacement

41. The Chamber has carefully analysed the evidence about the underlying offences in preceding sections of this Judgement, and made detailed findings on a municipality by municipality basis. Numerous crimes were committed by the forces of the FRY and Serbia, and there is a discernible pattern to those crimes; although not all the crimes alleged in the Indictment have been proved, a clear pattern nevertheless emerges from those that have. Upon the commencement of the NATO bombing on 24 March 1999, the forces of FRY and Serbia launched a widespread and

⁷⁵ Petar Dujković, T. 23312 (27 February 2008).

⁷⁶ K54, T. 10520 (26 February 2007), P2677 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 8253 (under seal).

⁷⁷ K89, T. 9154–9156 (25 January 2007).

⁷⁸ Richard Ciaglinski, T. 6848–6850 (17 November 2006), T. 6983–6987 (21 November 2006), P2489 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 3210–3211.

⁷⁹ Karol John Drewienkiewicz, T. 7816–7817, 7822 (4 December 2006).

systematic attack, using the bombing as a window of opportunity to do this. An atmosphere of terror was created, leading to people fleeing when they heard of attacks on neighbouring villages.

42. As discussed in the municipality sections above, the direct testimony from many witnesses demonstrates that the Kosovo Albanian population was fleeing from the actions of the forces of the FRY and Serbia, rather than the NATO bombing and the KLA.

43. For example, witness K90 testified that during April 1999 his VJ unit was involved in ordering Kosovo Albanian villagers to leave their homes in Đakovica/Gjakova municipality, although that was not their primary task.⁸⁰ K90 was involved in the “relocation” of Kosovo Albanians from villages and hamlets around Đakovica/Gjakova, specifically the removal of people from about nine or ten villages in mid-April 1999.⁸¹ He testified that, in accordance with his orders, he would address villagers in Serbian and would tell them to go towards Đakovica/Gjakova town and its surrounding villages.⁸² The orders his unit received to “relocate” people were never written, but rather passed down verbally;⁸³ and, as stated by K90, “If [you’re] clearing up a village, you’re expelling these people.”⁸⁴

44. The Lazarević Defence argues that Merita Deda’s evidence—that she and the convoy she was with were ordered back to their villages by VJ soldiers at Gradiš/Gradish on 28 April 1999—undermines the Prosecution’s allegation that the VJ was attempting to deport Kosovo Albanians.⁸⁵ However, the Chamber notes that K90 testified that some Kosovo Albanians were not removed from areas in which the VJ was operating because that would have left the VJ without the protection of surrounding civilians and thus vulnerable to NATO attacks. He stated that this was decided at the command level of the VJ.⁸⁶ Momir Stojanović partly agreed with this sentiment, stating that the Priština Corps commanders did not deport Kosovo Albanians as they knew that the

⁸⁰ K90’s evidence was consistent with that of Fuat Haxhibeqiri, K73, Nike Peraj, Merita Deda, Lizane Malaj. The attempts to impeach K90’s credibility through Vlatko Vuković lacked foundation. Challenges mounted as to K90’s presence during the Reka/Caragoj valley operation were based upon statements from individuals not called as witnesses or unadmitted documentation that was cursory and lacking in detail. Consequently, the Chamber finds K90 generally credible and reliable on the issues from his witness statement, which he re-confirmed in his oral evidence.

⁸¹ K90, T. 9271–9273 (closed session), T. 9297–9298 (29 January 2007), P2652 (witness statement dated 8 December 2002), paras. 41–45.

⁸² K90, T. 9302 (29 January 2007).

⁸³ K90, T. 9303 (29 January 2007), P2652 (witness statement dated 8 December 2002), paras. 40–41.

⁸⁴ K90, T. 9331 (29 January 2007). K90 also testified that his major never ordered the expulsion of villagers and that, rather, he was ordered to direct the people towards Đakovica/Gjakova and the first villages near Đakovica/Gjakova: civilians were not directed towards Albania until after cluster bombs were dropped by NATO. T. 9273 (29 January 2007). However, when it was suggested to K90 that the villagers were removed because of NATO bombing and the danger of land invasion, he disagreed with this proposition. T. 9407–9408 (30 January 2007).

⁸⁵ Lazarević Final Trial Brief, 29 July 2008 (public version), para. 384.

⁸⁶ K90, T. 9408 (30 January 2007).

civilian population provided them with protection from the NATO bombing.⁸⁷ Evidence such as this does not undermine the general pattern of displacement apparent from all the evidence in the case.

45. As discussed in Section VII.N, although the NATO bombing and the activities of the KLA were factors in the complicated situation on the ground, they were not the cause of over 700,000 people moving *en masse* both within Kosovo and then across the border.

46. In light of all the evidence discussed in this Judgement, the Chamber is of the view that there is a clearly discernible pattern of numerous crimes committed in Kosovo by the forces of the FRY and Serbia during the Indictment period. These crimes were not committed in a random and un-orchestrated manner, but rather according to a common purpose.

ii. Context of events in 1998 and 1999

47. The Prosecution avers that the crimes in 1999 cannot be understood without reference to what transpired in the 1990s, namely that the containment of the Kosovo Albanians' aspirations for independence or autonomy became a common goal for all the major political forces in Serbia, which under Milošević pursued a two-tier strategy to achieve this goal: (a) "legislation to bring Kosovo under its direct control" and (b) alteration of "the demographic structure of the province to consolidate the Serbian grip over it".⁸⁸ The main challenge to this aspect of the alleged joint criminal enterprise comes from the Milutinović Defence, which argues that Milutinović did everything in his power to find a diplomatic solution to these issues.⁸⁹

48. The Chamber has already found 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. The attempts by the leadership of the FRY and Serbia to exert control over the province by taking away its autonomy and to diminish the influence of the Kosovo Albanians on local governance, public services, and the economic life polarised the community. 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. The evidence on this issue is indeed indicative of an abuse of power by the FRY and Serbian authorities to try to adversely affect the socio-economic

⁸⁷ Momir Stojanović, T. 19732 (6 December 2007).

⁸⁸ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 28–40.

⁸⁹ Milutinović Final Trial Brief, 15 July 2008, paras. 13–14, 303.

circumstances of the Kosovo Albanian majority and “sets the stage” for the events of 1998 and 1999.

iii. Arming of non-Albanians and disarming of Kosovo Albanians

49. The Prosecution alleges that during 1998 and 1999 the VJ, MUP, and Federal Ministry of Defence engaged in a process of arming the Serb and Montenegrin population of Kosovo while at the same time disarming the Kosovo Albanian population. The Prosecution alleges that, although this process was superficially presented as a measure to fight “terrorism”, its ethnic underpinnings rendered the Albanian population in Kosovo vulnerable to the widespread expulsions of 1999, and enabled armed Serbs in their villages to participate in the crimes in 1999.⁹⁰

50. The Ojdanić Defence argues that the collection of weapons from Kosovo Albanian villages was considered to be a necessary security measure so as to remove weapons from the reach of the KLA, rather than being part of a plan to expel ethnic Albanians from Kosovo.⁹¹ The Pavković Defence asserts that, since World War II, Yugoslavia has implemented the concept of citizenry defence of the country and the arming of the non-Albanian population (“all people’s defence”) was done in full accordance with the relevant law in order to protect villages from “terrorists”.⁹² The Lazarević Defence submits that the Kosovo Albanian population did not recognise the institutions of Serbia and the FRY and did not intend to participate in civil defence and civil protection units (and thus did not require arms); in any case, the arming of the civilian population was the prerogative of the Ministry of Defence, and the Priština Corps did not arm civilians, especially not Serbs.⁹³

51. The Chamber will approach this issue in three stages: (a) the process of the arming of the ethnic Serb and Montenegrin population; (b) the legality of the arming of the ethnic Serb and Montenegrin population in their villages; and (c) the discriminatory nature of the arming and disarming of the population on an ethnic basis. The Chamber notes at the outset that in 1998 the term “armed Serbs” was used to refer to the armed non-Albanian population, who were armed in their villages and formed into reserve police detachments (RPOs) and included VJ reservists, MUP reservists, members of the civil defence and civil protection, and villagers outside of these structures. The evidence relating to the structure, command, and numbers of the armed non-Albanian population and civil defence and civil protection units is discussed in Section VI.A.4.

⁹⁰ Prosecution Final Trial Brief (public version), 29 July 2008, paras. 47–50.

⁹¹ Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 23–29, 43, 54.

⁹² Pavković Final Trial Brief, 28 July 2008 (public version), paras. 156, 168, 175.

⁹³ Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 516–518.

(A) Process of arming of the non-Albanian population

52. During 1998 and 1999, over 60,000 citizens from local villages and towns in Kosovo were secretly armed by the VJ and MUP.⁹⁴ These weapons were distributed to persons of non-Albanian ethnicity (so-called “armed Serbs”⁹⁵), who were sent back to their villages to form local defence units known as Reserve Police Detachments (RPOs).⁹⁶

53. Adnan Merovci testified that all Serb males in Kosovo were provided with weapons and that they carried these openly.⁹⁷ A number of witnesses attributed the arming of the non-Albanian population to the Ministry of Defence and sought to distance the VJ or MUP from the process. Thus, Geza Farkaš testified that the VJ could distribute weapons to official units falling under the Ministry of Defence, such as civil defence and civil protection, provided they had been mobilised.⁹⁸ Lazarević testified that the organ in charge of organising, equipping, arming, engaging, and commanding the civil defence and civil protection forces was the Federal Ministry of Defence.⁹⁹ He also asserted that the Priština Corps did not arm the non-Albanian population, because it had neither “the legal nor the *de facto* possibility” to do so;¹⁰⁰ in his opinion, only the Minister of Defence had this competence.¹⁰¹

54. Although these witnesses referred to arming of the civil defence and civil protection structures, whose members were armed by the Federal Ministry of Defence in conjunction with the VJ,¹⁰² the armed non-Albanian population, which was formed into RPOs, involved a far higher number of people than were in the civil defence and civil protection units, as discussed above. Furthermore, various FRY official documents demonstrate that the VJ and MUP carried out the arming of the non-Albanian population.¹⁰³ Moreover, the Chamber heard evidence from Slobodan

⁹⁴ 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 Staff report re visit to regional RPOs), p. 7; Aleksandar Dimitrijević, T. 26634 (8 July 2008).

⁹⁵ See, e.g., P931 (Minutes of the Collegium of the VJ General Staff, 2 February 1999), p. 23; Aleksandar Dimitrijević, T. 26634 (8 July 2008).

⁹⁶ P928 (Minutes of the Collegium of the VJ General Staff, 30 December 1998), p. 9; P2803 (MUP Staff report re visit to regional RPOs), p. 7; see also P931 (Minutes of the Collegium of the VJ General Staff, 2 February 1999), p. 23; Momčilo Stojanović, T. 20073 (12 December 2007); P1415 (Order of the PrK, 26 June 1998), pp. 1–2.

⁹⁷ Adnan Merovci, T. 8439 (16 January 2007); see also Ljubinko Cvetić, T. 8090 (7 December 2006) (stating that the entire Serbian population in the area of Kosovo was armed).

⁹⁸ Geza Farkaš, T. 16380 (25 September 2007); see also Branko Gajić, T. 15463 (12 September 2007).

⁹⁹ Vladimir Lazarević, T. 17967 (9 November 2007).

¹⁰⁰ Vladimir Lazarević, T. 18727 (21 November 2007).

¹⁰¹ Vladimir Lazarević, T. 18728–18729 (21 November 2007); see also Tomislav Mitić, T. 20863–20864 (23 January 2008).

¹⁰² P1060 (Letter from the Priština Defence Administration, 2 November 1998).

¹⁰³ P3121 (Minutes of the MUP Staff meeting, 29 July 1998), p. 7; P928 (Minutes of the Collegium of the VJ General Staff 30 December 1998), p. 9; P2803 (MUP Staff report re visit to regional RPOs), p. 7; P1415 (Order of the PrK, 26 June 1998), pp. 1–2; Ljubinko Cvetić, T. 8055–8056, T. 8091 (7 December 2006). Cf. Tomislav Mitić, 5D1390

Kosovac that, pursuant to the Regulation on Mobilisation, soldiers could sign for a uniform, a weapon, and other types of equipment, and could keep all these at home; and there were many who in fact kept everything they were given at home.¹⁰⁴ In light of this evidence, it is untenable to attribute such arming solely to the Federal Ministry of Defence, and it is clear that the VJ and MUP also carried out the arming of the non-Albanian population of Kosovo.¹⁰⁵

(B) Legality of arming of the non-Albanian population

55. In relation to the practice of arming MUP reservists and allowing them to return home with their weapons, K25 testified that this was not carried out throughout Serbia, but rather was only done in Kosovo.¹⁰⁶ Ljubinko Cvetić testified that the MUP reservists were issued light machine guns as individuals, rather than as a part of units.¹⁰⁷ However, K25 stated that such arming of reservists in their villages was not an abnormal occurrence and had been carried out previously.¹⁰⁸ The Chamber has already discussed above Kosovac's evidence about VJ members being provided with weapons and sent home to their villages. Moreover, aside from VJ and MUP reservists, members of civil defence and protection units, and Serbs outside of these formal structures, were also armed.¹⁰⁹

56. In relation to the arming of the non-Albanian population in general, the FRY Law on Defence provided that units to protect the civilian population from attack could be formed "[i]n a state of war and, if necessary, in case of an imminent threat of war".¹¹⁰ However, during 1998 and early 1999, when the arming of the non-Albanian population of Kosovo occurred, no such state had been declared, as discussed earlier in this Judgement. Article 6 provided that, aside from the powers specifically enumerated within the Constitution, all residuary powers were vested in the member Republics.¹¹¹ On the basis of the constitutional text only, it would therefore appear that, without formal incorporation into the VJ or without an additional legal basis, the arming of the non-Albanian population by the VJ and Federal Ministry of Defence was not permitted by law.

(witness statement dated 19 January 2008), para. 7 (stating, with regard to P1415, that weapons were distributed to VJ reservists in accordance with the Regulation for Mobilisation of the Yugoslav Army). *See also* P1114 (Report to the SUP 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); P1259 (Order of the Priština Defence Administration, 21 May 1998), p. 1; Božidar Filić, T. 24013 (10 March 2008); P931 (Minutes of the Collegium of the VJ General Staff, 2 February 1999), p. 23.

¹⁰⁴ Slobodan Kosovac, T. 15829 (18 September 2007).

¹⁰⁵ *See* P2803 (MUP Staff report re visit to regional RPOs), p. 7; P1415 (Order of the PrK, 26 June 1998), pp. 1–2; Aleksandar Dimitrijević, T. 26634 (8 July 2008).

¹⁰⁶ K25, T. 4683 (11 October 2006).

¹⁰⁷ Ljubinko Cvetić, T. 8061 (7 December 2006).

¹⁰⁸ K25, T. 4683–4685 (11 October 2006).

¹⁰⁹ P1259 (Order of the Pristina Defence Administration, 21 May 1998).

¹¹⁰ *See* P985 (FRY Law on Defence), articles 61–63.

¹¹¹ 1D139 (Constitution of the FRY, 1992), article 6.

However, it may have been that article 61 was ignored by the authorities of the FRY and Serbia, who instead looked to article 54—“citizens ... shall organise, prepare, and participate in the protection of the civilian population and material and other resources from war destruction ... in times of peace or war”—to provide for the arming of civilians even before a state of war or a state of imminent threat of war was proclaimed, in order to prepare them to form civilian defence units as soon as that happened.¹¹² Consequently, the Chamber is unable to conclude whether such arming in general was illegal *per se*, but considers that the primary issue in relation to process of arming and disarming is whether it was done upon ethnic lines. It is to this issue that the Chamber now turns.

(C) Arming and disarming of the population on ethnic grounds

57. *Discriminatory nature of arming and disarming.* A number of VJ, MUP, and Federal Ministry of Defence documents referred to the ethnic basis upon which the process of arming the population was conducted. In a May 1998 order, which was specifically aimed at arming Serb and Montenegrin inhabitants of villages in which they were a minority, the Chief of the Priština Defence Administration stated that the Defence Administration, in conjunction with the MUP and VJ, should inform the municipal leadership of the “special plan to protect Serbian, Montenegrin and other citizens loyal to the state of Serbia”.¹¹³ A Priština Corps order of 26 June 1998 directed the subordinate commands to make lists of military conscripts and organise the distribution of weapons in “Serbian and Montenegrin villages”.¹¹⁴ A day later, a military district command report of 27 June 1998 noted that the organisation of “Serbs and Montenegrins” for the defence of villages was being carried out.¹¹⁵ A 3rd Army combat report of 2 October 1998 noted under the heading “positive experiences” that the distribution of weapons to “citizens loyal to the FRY (of Serbian and Montenegrin ethnicity)” had made it possible to organise the large-scale resistance against the “terrorists”; the report went on to state that the disarming of the Albanian population in Kosovo had undermined the morale of the KLA.¹¹⁶ The Chamber notes that this order thus clearly distinguishes between the “terrorists” and the civilian population, the *latter* of which was being disarmed.

¹¹² P985 (FRY Law on Defence), article 54.

¹¹³ P1259 (Order of the Priština Defence Administration, 21 May 1998), p. 2; *see also* 3D1116 (Radovan Radinović’s Expert Report), p. 37.

¹¹⁴ P1415 (Order of the PrK, 26 June 1998), p. 1.

¹¹⁵ P1138 (Military District Report, 27 June 1998), p. 1.

¹¹⁶ 3D697 (Forward Command Post of 3rd Army, analysis of realisation of tasks in Kosovo), pp. 4, 6.

58. The orders of the Joint Command from March 1999 similarly refer to the armed non-Albanian population.¹¹⁷ Moreover, an operational report of the Joint Command stated that the MUP continued to collect weapons from the Albanian villages that were willing to give these up voluntarily, and that this should continue.¹¹⁸ The report also stated that the VJ was engaged in disarming the population in the border belt. The Joint Command report of 20 November 1998 again reported upon the collection of weapons in Albanian villages.¹¹⁹

59. The Defence contend that efforts were made to arm the Albanian population as well, where this would not lead to arms being provided to the KLA.¹²⁰ Dušan Lončar testified that Šainović tried to form multi-ethnic police forces to protect villages, specifically in Kosovska Mitrovica/Mitrovica municipality, to improve the relationship with Albanians.¹²¹ Lončar also testified that these local security units were formed from the local community and had no contact with the MUP or the VJ.¹²² Dušan Matković testified that efforts were made to set up these units, but that “Albanian extremists and Serbian nationalists” resisted the efforts, and so by October 1998 the attempt had been abandoned.¹²³

60. In support of the contention that efforts were made to establish local security formations with Kosovo Albanian members, a number of documents were tendered as evidence. At a meeting of the Temporary Executive Council, Zoran Anđelković stated that local security or police should be organised in Albanian villages and that “loyal citizens” would be welcome;¹²⁴ he stated that this would avoid the Kosovo Albanians setting up their own police forces. Stanojević stated at the meeting that a local security unit had been set up in Đakovica/Gjakova; that its members had been

¹¹⁷ See, e.g., P1966 (Joint Command Order, 22 March 1998), p. 2; P1968 (Joint Command Order, 24 March 1999), p. 2; P1970 (Joint Command Order, 9 April 1999), p. 2; P1878 (Joint Command Order, 15 April 1999), p. 2; P1198 (Joint Command Operations Report, 23 November 1998); P1203 (Joint Command Report, 15 October 1998), pp. 5, 8; P1206 (Joint Command Report, 17 October 1998), p. 4; P1204 (Joint Command Report, 28 October 1998), p. 5; P1197 (Joint Command Report, 20 November 1998), p. 3; P2623 (Joint Command Report, 23 November 1998), p. 8; Aleksandar Dimitrijević, T. 26634 (8 July 2008).

¹¹⁸ P1203 (Joint Command Report, 15 October 1998), pp. 5, 8.

¹¹⁹ P1197 (Joint Command Report, 20 November), p. 6; P2623 (Joint Command Report, 23 November 1998), p. 8.

¹²⁰ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 494, 497; Šainović Final Trial Brief, 29 July 2008 (public version), paras. 112 *et seq.*

¹²¹ Dušan Lončar, T. 7591 (30 November 2006), P2521 (witness statement dated 3 March 2004), para. 76; see also Zoran Anđelković, T. 14657–14659 (30 August 2007); Vladimir Lazarević, T. 17899, 17945, 17962 (8 November 2007), 17980 (9 November 2007), 18425 (16 November 2007).

¹²² Dušan Lončar, T. 7660–7661 (1 December 2006).

¹²³ Duško Matković, T. 14659–14660 (30 August 2007).

¹²⁴ P1193 (Stenographic notes from Anđelković), pp. 3, 5, 7, 12.

given uniforms, handcuffs, truncheons, and pistols; that they had been paid; and that they had provided the names of 2,000 KLA members to the authorities of the FRY and Serbia.¹²⁵

61. According to Lazarević these units were formed exclusively out of ethnic Albanians, but they were not the regular police because they had different uniforms and insignia. He stated that almost every larger village had a unit of this kind whose purpose was the protection against new “terrorist” attacks,¹²⁶ but he did not know who formed these units or what their numbers were. Nebojša Bogunović testified that in 1998 around 80 such units were established in Đakovica/Gjakova municipality, along with ten or so in Kosovska Mitrovica/Mitrovica municipality; that the members of these local security units wore grey uniforms with the words “local security” written on them; that they were issued with firearms; and that they received their salaries from the local municipal authorities, although chosen by the people.¹²⁷ However, when asked about these formations, Martin Pnishi—and other witnesses called by the Prosecution—stated that they were not selected by the Kosovo Albanian inhabitants, but rather by the police and municipal authorities.¹²⁸ The Chamber has also heard evidence in this regard of local police of Albanian ethnicity being removed from their posts during the expulsions in Dečani/Dečan in March 1999 and being included with the Albanian civilians who were being expelled from their villages.¹²⁹

62. The Chamber finds the evidence adduced by the Prosecution to be more reliable than that adduced by the Defence on this issue. Some efforts were made to establish Kosovo Albanian local security units, and a number were set up. However, according to Lončar and Matković, the political effort for the project had ceased by October 1998, and the evidence indicates that only a few of these units, staffed by Kosovo Albanians picked and paid for by the Serbian MUP, continued to exist during the NATO air campaign, primarily in Đakovica/Gjakova. The Chamber does not accept Lazarević’s evidence that these were formed in almost every larger village: he himself admitted that he did not know how many members of these units existed or who formed them. On the basis of all the evidence on this subject—some of which was vague, for example that given by Lazarević—the Chamber does not consider these local Albanian security units of any

¹²⁵ P1193 (Stenographic notes from Anđelković), p. 12; *see also* 6D972 (Kačanik Municipality, Labour Contract for Local Security, 1 September 1998); 6D449 (ID papers of the local security); 6D62 (Official note from SUP Đakovica/Gjakova, 14 May 1999); 6D484 (List of local security persons in Kačanik, 2 November 1998).

¹²⁶ P950 (Vladimir Lazarević interview with the Prosecution), pp. 65–67.

¹²⁷ Nebojša Bogunović, 6D1614 (witness statement dated 2 April 2008), paras. 18–20; Martin Pnishi, T. 1507 (11 August 2006); Nike Peraj, T. 1760–1762 (16 August 2006).

¹²⁸ Martin Pnishi, T. 1507 (11 August 2006); *see also* Nike Peraj, T. 1760–1762 (16 August 2006); Hani Hoxha, T. 1556 (11 August 2006).

¹²⁹ Mehmet Mazrekaj, P2374 (witness statement dated 4 February 2000), pp. 3–10.

significance in relation to the broader process of arming the non-Albanian population and disarming the Kosovo Albanian population.

63. *Justification for discrimination in arming.* As noted above, the Ojdanić, Pavković, and Lazarević Defences all argue that, in so far as there was discrimination, it was justified by the nature of the security threat in Kosovo. Accordingly, the Chamber now looks to the justifications cited for the practice of arming the Serb population and disarming the Albanian population in Kosovo.

64. When shown the Priština Corps order of 26 June 1998 to distribute weapons to Serbs in Kosovo, Momir Stojanović testified that this was issued in response to requests from representatives of Serb settlements. According to him, these representatives stated that Serb enclaves had been burned and looted; and, after Pavković met with Serbs from Priluzje and Obilić/Obiliq, the arming of the Serb population was organised to allow them to defend themselves in their villages.¹³⁰ Radovan Radinović was asked why the process was carried out in secret, unlike the general mobilisation of VJ units, and why it was carried out upon an ethnic basis. He accepted that the process of arming along ethnic lines was not normal, but testified that it was necessary because it was an ethnic conflict: the VJ had to protect the ethnic community that was under threat, and that was the Serb community of Kosovo. He stated that it was done secretly in order to avoid general panic.¹³¹

65. Aleksandar Dimitrijević testified that Serbs, Montenegrins, and “non-Albanians in general” were armed by the VJ and MUP. According to him, these measures were designed to protect the Serb population against KLA attacks, and a VJ commander was put in charge of each village unit to make sure that the weapons were not misused.¹³² At a meeting of the MUP Staff for Kosovo in November 1998, Lukić directed the SUP chiefs to take additional protection measures in villages with Serb inhabitants, and to make sure that the Serb population and members of the Reserve Police Units did not misuse their weapons or even show them in public when verifiers from the KVM were present. The armed Serbs were directed to deny that Serbs were armed in the villages if asked by the KVM members and to use the excuse that only members of the village guard were armed.¹³³

¹³⁰ Momir Stojanović, T. 20072–20073 (12 December 2007); *see also* Zlatimir Pešić, T. 7190 (23 November 2006); P1011 (Ivan Marković, ed., *The Application of Rules of the International Law of Armed Conflicts* (2001)), p. 58; P1259 (Order of the Priština Defence Administration, 21 May 1998); 3D1116 (Radovan Radinović’s Expert Report), p. 37.

¹³¹ Radovan Radinović, T. 17308–17309 (19 October 2007); *see also* Aleksandar Dimitrijević, T. 26634 (8 July 2008).

¹³² Aleksandar Dimitrijević, T. 26634–26636 (8 July 2008).

¹³³ P3130 (Minutes of the MUP Staff meeting, 2 November 1998), para. 8.

66. The Pavković Defences asserts that, “Since World War II and the activities of Partisans and the rise of Marshal Tito, Yugoslavia has implemented the concept of ‘all people’s defence.’ Every able-bodied citizen was part of the defence of the country. Citizens, civilians were thus armed when the country was threatened from without or within.”¹³⁴ While the Pavković Defence refers to the obligation on citizens to participate in civil defence and protection,¹³⁵ the arming of Serbs and Montenegrins in Kosovo included individuals outside of these structures, as discussed above. Furthermore, this account fails to explain why the phrase “armed population” was supplied with the ethnic qualification “non-Šiptar”, which is the term used in several orders.

67. Krsman Jelić attempted to explain the ethnic basis of the arming by pointing out that the non-Albanian population responded to the call-up to service in the VJ and MUP, whereas Kosovo Albanians did not and so were not issued any weapons.¹³⁶ Radinović referred to the attempt to form an Albanian military territorial detachment within the VJ and the lack of response to this call-up.¹³⁷ However, at least some Kosovo Albanians responded to the call-up, as shown by a 3rd Army report of 13 February 1999, which stated that six of the 136 Albanians called up to the Kosovska Mitrovica military department had replied.¹³⁸ The Chamber notes that response rates to mobilisation calls at this time were low throughout the VJ, and were an issue of concern for the General Staff.¹³⁹ The Chamber does not accept that the failure of Kosovo Albanians to respond in large numbers to the mobilisation call of the VJ justified the issuance of instructions to arm only the Serb population.

68. The arming of the non-Albanian population in their villages involved the distribution of around 60,000 weapons in Kosovo.¹⁴⁰ Given that the Serb population of Kosovo at the time was estimated by Božidar Delić at 234,425, based upon the 1991 census figures,¹⁴¹ these weapons must have been distributed to a very high proportion of Serbs eligible for service, *i.e.*, males of a fighting age, living in Kosovo.¹⁴² Indeed, not only were individuals with wartime assignments in the VJ,

¹³⁴ Pavković Final Trial Brief, 28 July 2008 (public version), para. 156.

¹³⁵ P985 (FRY Law on Defence), article 20.

¹³⁶ Krsman Jelić, T. 19074 (26 November 2007); *see also* Slobodan Kosovac, T. 15795–15796 (17 September 2007); Tomislav Mitić, 5D1390 (witness statement dated 27 December 2007), para. 5, p. 1.

¹³⁷ P1471 (Order of Supreme Command Staff, 31 March 1999); 3D1116 (Radovan Radinović’s Expert Report), p. 37.

¹³⁸ 5D1183 (Report of the 3rd Army, 13 February 1999), p. 1; *see also* Nike Peraj, T. 1760–1761 (16 August 2006).

¹³⁹ P937 (Minutes of the Collegium of the VJ General Staff, 18 February 1999), p. 10 (during which Đorđe Ćurčin reported that the response rate amongst the 11,645 conscripts called up to the 3rd Army was 12.4 percent, and for the Air Force and Anti-Aircraft Defence, it was less than five percent).

¹⁴⁰ *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, 30 December 1998), p. 9; P2803 (MUP Staff report re visit to regional RPOs), p. 7.

¹⁴¹ 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), section 1.2.

¹⁴² *See also* Halit Berisha, T. 3653 (20 September 2006).

MUP, and civil defence and civil protection units issued weapons through their wartime units and then sent back to their villages when not on active duty, but also citizens without wartime assignments in these structures were issued weapons by the Ministry of Defence from May 1998.¹⁴³ The combination of these measures ensured that by March 1999 virtually every able-bodied male of non-Albanian origin living in Kosovo was armed.¹⁴⁴ This supports the Prosecution contention that the process of arming and disarming the population was discriminatory on an ethnic basis, rather than directed at protecting the population as a whole.

69. *Justification for the discrimination in disarming.* The Ojdanić Defence argues that many weapons were being smuggled in from Albania and passed to the KLA, making the disarming of Kosovo Albanians necessary in order to remove weapons from the reach of the KLA.¹⁴⁵ Zyrapi testified that between November 1998 and March 1999 the number of KLA fighters was approximately 17,000 to 18,000, including part-time fighters.¹⁴⁶ When this number is compared to the Albanian population of Kosovo, which was estimated at 1,655,294 by Delić in his 1997 thesis,¹⁴⁷ it can be concluded that the large majority of Kosovo Albanians remained outside of the KLA throughout 1998 and 1999.

70. The Defence point to the various reports of weapons being brought into Kosovo from Albania as proof of the need for the project of disarmament.¹⁴⁸ For example, a report on the security situation in Kosovo in February 1999 noted that the KLA conducted attacks against the civilian population and used Albanian villages as support for their attacks.¹⁴⁹ Veljko Odalović, the Head of the “Kosovo District” in 1998 and Commander of the Kosovo District Civil Protection

¹⁴³ P1259 (Order of Priština Defence Administration, 21 May 1998), pp. 1–2; Božidar Filić, T. 24013 (10 March 2008).

¹⁴⁴ Ljubinko Cvetić, T. 8090 (7 December 2006); Adnan Merovci, T. 8439 (16 January 2007).

¹⁴⁵ Ojdanić Final Trial Brief (public version), 29 July 2008, para. 25; 3D991 (PrK Security Administration Report, 17 April 1998); 3D738 (Perišić’s Letter to the Ministry of External Affairs, 16 July 1998); 6D1637 (US Diplomatic Cable, 15 April 1999).

¹⁴⁶ Bislim Zyrapi, T. 5959 (6 November 2006).

¹⁴⁷ 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), section 1.2. The Chamber notes that the figure in the graph of the translation appears to be incorrectly translated, but that the B/C/S version is consistent between the graph and the body of the thesis. See also Milivoje Mihajlović, T. 24091–24093 (11 March 2008) (confirming that Albanians made up 90 percent of the population in Kosovo in 1999).

¹⁴⁸ 3D991 (PrK Security Administration Report, 17 April 1998); 3D994 (PrK Security Administration Report, 10 July 1998); 3D999 (PrK Security Administration Report, 17 July 1998); 3D1001 (PrK Security Administration Report, 1 August 1998); 3D1012 (PrK Security Administration Report, 27 October 1998); 3D1013 (PrK Security Administration Report, 28 October 1998); 3D1037 (PrK Security Administration Report, 28 December 1998); 3D1038 (PrK Security Administration Report, 29 December 1998); 3D1039 (PrK Security Administration Report, 9 January 1999); 3D1040 (PrK Security Administration Report, 13 January 1999); 3D1041 (PrK Security Administration Report, 19 January 1999); 3D1042 (PrK Security Administration Report, 20 January 1999); 3D1043 (PrK Security Administration Report, 21 January 1999); 3D1044 (PrK Security Administration Report, 26 January 1999); 3D1045 (VJ General Staff Report, 22 February 1999); 3D1046 (VJ General Staff Report, 25 February 1999); 3D1047 (VJ General Staff Report, 1 March 1999); 3D1051 (3rd Army Command Report, 6 March 1999); 3D1052 (3rd Army Command Report, 13 March 1999). See also 3D697 (3rd Army Forward Command Post, Analysis of tasks, 2 October 1998), p. 6.

Staff, testified that he took part in a public campaign calling upon Kosovo Albanians to hand in their illegally-obtained weapons and go back to their homes in the autumn of 1998. Several thousand weapons were surrendered in response to this campaign.¹⁵⁰ However, Joint Command operations reports do not mention that the weapons were being collected because they were illegally obtained and owned, which, according to the testimony of Odalović, was the basis for the disarmament.¹⁵¹

(D) Discriminatory arming and disarming

71. This process of arming the Kosovo Serb population and disarming the Kosovo Albanian population occurred at a time of manifest ethnic clashes in Kosovo. At a VJ Collegium on 21 January 1999, Dimitrijević expressed concern about the armed non-Albanian population, stating, “[B]earing in mind the number of people owning or having been distributed weapons there is a realistic possibility on the Serbian and Montenegrin side of the Serbian population organising itself to offer resistance and of an increasing emergence of radical forces.”¹⁵² In relation to a passage in a VJ report of February 1999, stating that in response to attacks against them the Serb and Montenegrin population of Kosovo could organise resistance, Gajić testified that the VJ General Staff was aware of the risk of the population taking up arms, which he said were freely available, and of this leading to inter-ethnic clashes. He stated that the VJ wanted to avoid such a risk.¹⁵³

72. In conclusion, the Chamber considers that the approach of disarming Kosovo Albanians in their villages, while at the same time arming the large majority of Serbs and Montenegrins in Kosovo, in the context of an acknowledged ethnic dispute, was carried out on a discriminatory basis and was designed to render the Kosovo Albanian population vulnerable to the forces of the FRY and Serbia, while at the same time empowering the non-Albanian population. This conclusion is amply demonstrated by the following: (a) orders and reports stated that the arming and disarming was carried out along ethnic lines; (b) the overwhelming majority of the eligible Serb population in Kosovo was provided with weapons; (c) the arming was conducted in secret; (d) the large majority of Kosovo Albanians remained outside of the KLA throughout 1998 and 1999; and (e) there was a clear risk of the distributed weapons being used by the Serb population against

¹⁴⁹ 3D685 (VJ General Staff Evaluation of security-information and security threat to the FRY), pp. 15–16.

¹⁵⁰ Veljko Odalović, T. 14459–14460 (27 August 2007); *see also* Božidar Delić, T. 19588 (5 December 2007); P1198 (Joint Command Report, 23 November 1998), p. 4; 3D1005 (PrK Security Administration Report, 8 October 1998); P1203 (Joint Command Report, 15 October 1998), pp. 4, 8.

¹⁵¹ Veljko Odalović, T. 14459–14460 (27 August 2007).

¹⁵² P939 (VJ Collegium of the General Staff, 21 January 1999), p. 16.

¹⁵³ Branko Gajić, T. 15252–15253 (7 September 2007); *see also* 3D1034 (PrK Security Administration Report, 22 December 1998).

Albanians, and this risk of ethnic violence in villages was acknowledged by the authorities of the FRY and Serbia.

iv. Breaches of October Agreements and diplomatic efforts

73. The Prosecution argues that the authorities of the FRY and Serbia never intended to abide by the October Agreements, as evidenced by the failure of the forces of the FRY and Serbia to withdraw units back across the border and remain in their barracks and by the importation of additional units into Kosovo.¹⁵⁴ The Milutinović Defence argues that there was full co-operation and compliance with the October Agreements;¹⁵⁵ the Šainović Defence argues the forces of the FRY and Serbia in Kosovo had been reduced to the appropriate level,¹⁵⁶ and the Ojdanić Defence submits that the FRY initially complied, but was then forced into breach due to the KLA taking advantage of the situation to re-arm, regain territory, and perpetrate further terrorist atrocities.¹⁵⁷ The Lazarević Defence argues that a “few sporadic incidents and misunderstandings” did not constitute a violation;¹⁵⁸ and the Lukić Defence argues that MUP forces in Kosovo did in fact comply with the October Agreements.¹⁵⁹

74. In respect of diplomatic negotiations, the Prosecution argues that the members of the joint criminal enterprise obstructed the Rambouillet and Paris negotiations, while simultaneously preparing for the spring offensive.¹⁶⁰ The Milutinović and Šainović Defences take issue with this interpretation and argue that the FRY/Serbian delegation negotiated in good faith in order to find a political solution to the situation.¹⁶¹ The Ojdanić and Pavković Defences emphasise that the military build-up in 1999 was a legitimate response to the NATO and KLA threats and that provisions were taken to protect the civilian population.¹⁶² The Lazarević and Lukić Defences point to the fact that it was the KLA which took advantage of the early part of 1999 to regroup and prepare for further hostilities.¹⁶³

¹⁵⁴ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 70–79.

¹⁵⁵ Milutinović Final Trial Brief, 15 July 2008, para. 303, p. 161.

¹⁵⁶ Šainović Final Trial Brief, 29 July 2008 (public version), para. 317.

¹⁵⁷ Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 63, 73.

¹⁵⁸ Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 590–595.

¹⁵⁹ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 46–47.

¹⁶⁰ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 250–261, 267.

¹⁶¹ Milutinović Final Trial Brief, 15 July 2008, para. 303, pp. 162–163; Šainović Final Trial Brief 29 July 2008 (public version), paras. 487, 491, 901–902.

¹⁶² Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 97; Pavković Final Trial Brief, 28 July 2008 (public version), paras. 70–73, 75–77.

¹⁶³ Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 606, 628; Lukić Final Trial Brief, 7 August 2008 (public version), paras. 266–267.

75. The Chamber has already stated that there were some prospects for a negotiated solution following the Holbrooke-Milošević Agreement and that it was at that point that the forces of the FRY and Serbia temporarily ceased their operations in Kosovo and at least *partially* withdrew. The situation started to calm down and displaced people began to return to their homes. However, as has already been decided by the Chamber in Section VI.D, the “Podujevo Incident” soon followed and was an intentional breach of the October Agreements. There was understandable reluctance on the part of the leadership of the FRY and Serbia to reduce the number of forces in Kosovo due to KLA and NATO activity, and instead there was an increase in VJ and MUP personnel in Kosovo, in further breach of the October Agreements. Additional VJ and MUP forces were “brought” into Kosovo in a variety of ways, including delaying the departure of some units and ordering the deployment of others, sometimes on the pretext of self-defence. Moreover, the MUP retained heavy weaponry and equipment that it was obliged to return to the VJ.

76. In Section V, the Chamber details the evidence and makes findings about the complex processes of the Rambouillet and Paris negotiations in the context of the surrounding events on the ground in Kosovo. The Chamber ultimately came to the conclusion that the blame for the failure of diplomatic efforts relating to Kosovo did not rest solely with the authorities of the FRY and Serbia, but rather had to be shared by the Kosovo Albanian participants and different members of the international community. Although the failure of these negotiations was the responsibility of all the participants, the authorities of the FRY and Serbia made use of the period of the negotiations and the fact that, while they were ongoing, an international military presence in Kosovo was delayed, to bring in additional forces in breach of the October Agreements, thus placing the government authorities in the position in the spring of 1999 to be able to mount a widespread attack upon the Kosovo Albanian civilian population. These dynamic and intertwined processes are indicative of a common purpose.

v. Positioning of high-level officials

77. The Prosecution argues that Milošević and Milutinović removed members of the VJ and MUP who complained about how things were being done and replaced them with people willing to advance the aims of the joint criminal enterprise.¹⁶⁴ Moreover, the Prosecution argues that the members of the joint criminal enterprise, far from being punished for their criminal behaviour, were rewarded, with Milutinović and Šainović remaining in their posts; Ojdanić being promoted to Federal Minister of Defence; Pavković being promoted to Chief of the VJ General Staff; Lazarević being promoted to Commander of the 3rd Army; Đorđević and Stevanović being commended for

¹⁶⁴ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 80–83.

their role in Kosovo in 1999; and Lukić being promoted to Lieutenant-General, awarded the Order of the Yugoslav Flag, and appointed Assistant Minister and Chief of the RJB.¹⁶⁵

78. The Milutinović Defence argues that all changes to personnel in the VJ were always carried out in strict compliance with the law.¹⁶⁶ The Ojdanić Defence disputes that he was hand-picked by Milošević and argues that Perišić's removal was within the purview of Milošević's power and done using appropriate procedures.¹⁶⁷ The Lazarević Defence points out that it was Perišić, the Chief of the VJ General Staff, who proposed his promotion, which was accomplished without any objections from Montenegrin President Đukanović following the proposal by the VJ General Staff.¹⁶⁸ Lukić argues that the progression of his career demonstrates that he was not in the favour of the leadership and that his appointment as a *rukovodilac* of the MUP Staff for Kosovo in June 1998 can only be construed as a demotion or punishment.¹⁶⁹

79. Although most of the evidence on this issue is circumstantial, there is in fact some direct evidence that Milošević removed people of independent judgement from key posts and carefully positioned "yes-men" prior to the implementation of the common purpose. Because the evidence on this issue is more fully discussed below in the sections devoted to the individual Accused, it will be dealt with only briefly here.

80. In a letter dated 23 July 1998, Perišić complained to Milošević about the "[c]onstant tendency to use the VJ outside the institutions of the system"; "[a]ttempt to command VJ units by unauthorised persons"; "[b]ypassing levels of command in official talks with VJ members"; "[c]onducting personnel policies on an illegitimate basis and groundless foundations"; or "[s]upplying material extra-legally".¹⁷⁰ On 24 November 1998, Ojdanić replaced Perišić as Chief of the VJ General Staff, by decree of Milošević.¹⁷¹ At a meeting of the VJ Collegium, it was reported that Perišić, upon handing over his duties to Ojdanić on 27 November 1998, made and signed a statement for the public, stating as follows:

The current regime does not like leaders of high integrity and those who use their own heads to think. I was removed from the position of Chief of General Staff of the Yugoslav Army without consultations in an inappropriate and illegal manner. I do not

¹⁶⁵ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 291–295. The Accused dispute this argument, see Milutinović Final Trial Brief, 15 July 2008, para. 303, p. 166; Šainović Final Trial Brief, 29 July 2008 (public version), para. 904; Lazarević Final Trial Brief, 29 July 2008 (public version), para. 700.

¹⁶⁶ Milutinović Final Trial Brief, 15 July 2008, para. 78.

¹⁶⁷ Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 169.

¹⁶⁸ Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 598–604.

¹⁶⁹ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 1440–1443.

¹⁷⁰ P717 (Letter from Momčilo Perišić to Slobodan Milošević, 23 July 1998), p. 1.

¹⁷¹ Order on Agreed Facts, 11 July 2006, pp. 12–13; P796 (Record of the handover of the duty of Chief of the VJ General Staff, 27 November 1998).

accept the invented position in the current Federal Government that has been offered to me. I remain at the disposal to my Army, state and people.¹⁷²

81. Several witnesses commented upon Perišić's dismissal. Momir Bulatović testified that he considered Perišić's 23 July letter to be beyond the scope of his authority as Chief of the VJ General Staff and that, as a result of the letter, he advocated for him to be replaced, despite the fact that he had known Perišić for years and had a good opinion of him.¹⁷³ Miodrag Simić, General Samardžić's Chief of Staff for the 3rd Army in the summer of 1998, testified that the dispute between Perišić and Milošević in the summer of 1998 was over Perišić's view that the army should not be used to crush the KLA without a declaration of a state of emergency and imminent threat of war.¹⁷⁴

82. John Crosland testified that on 5 November 1998 he met with Aleksandar Dimitrijević, who expressed concerns about Pavković acting outside the chain of command and reporting directly to Milošević.¹⁷⁵ Aleksandar Vasiljević testified that both Perišić and Dimitrijević were replaced because they differed with Milošević's decision to employ the VJ in Kosovo without a declaration of a state of emergency.¹⁷⁶ On 25 March 1999, Geza Farkaš replaced Dimitrijević as Head of the VJ Security Administration, pursuant to a decree of Milošević.¹⁷⁷

83. The Chamber received evidence that there was tension in 1998 between Pavković, the Commander of the Priština Corps, and his superior, Samardžić, then the Commander of the 3rd Army, over the implementation of the Plan for Combating Terrorism in Kosovo that had been adopted in July 1998.¹⁷⁸ On 28 December 1998, Milošević issued a decree replacing Samardžić with Pavković, and Pavković assumed these new duties on 13 January 1999.¹⁷⁹ On 28 December 1998, Milošević issued a decree appointing Lazarević as Commander of the Priština Corps of the

¹⁷² P935 (Minutes of the Collegium of the VJ General Staff, 11 March 1999), p. 27; Miodrag Simić, T. 15694–15698 (14 September 2007); P1576 (Minutes of 7th SDC meeting, 24 November 1998) (discussing replacement of Perišić with Ojdanić), pp. 3–5.

¹⁷³ Momir Bulatović, T. 13919–13922 (17 August 2007).

¹⁷⁴ Miodrag Simić, T. 15694–15696 (14 September 2007).

¹⁷⁵ John Crosland, T. 9818–9822 (7 February 2007).

¹⁷⁶ Aleksandar Vasiljević, T. 8631–8634 (18 January 2007).

¹⁷⁷ P799 (Report on Assuming Duty, 25 May 1999).

¹⁷⁸ P1439 (Letter from Pavković to Samardžić, 5 October 1998); 4D100 (PrK Report to 3rd Army re engagement of units, 22 July 1998); 4D119 (Letter from Samardžić to Pavković, 22 July 1998).

¹⁷⁹ 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).

3rd Army (Pavković's recently-vacated post), and Lazarević took up his duties on 8 or 9 January 1999.¹⁸⁰ Lazarević had previously been Pavković's Chief of Staff in the Priština Corps.¹⁸¹

84. Dimitrijević—when asked upon cross-examination by the Prosecution about his dismissal from the VJ and whether this was consistent with the fact that Samardžić, Perišić, and Jovica Stanišić of the RDB all had been removed from their positions for complaining about how Pavković and Milošević were using the VJ—stated, “Well, perhaps you could put it that way, but I think ... what we're dealing [with] here first of all is a shift in the policy and that people who opposed certain things were simply not acceptable anymore.”¹⁸²

85. There is therefore evidence that high-level officials were carefully positioned as the crisis in Kosovo escalated, but this has been demonstrated by the Prosecution only in relation to Ojdanić and Pavković. As is discussed more fully below, Pavković's rapid ascension is indicative of rewards from Milošević, before, during, and after the campaign: Pavković himself stated that he was promoted early more times than was possible according to the rules, and Dimitrijević, Vasiljević, and Perišić all said his promotion in 1998 was irregular. Moreover, the Chamber holds below that Milošević replaced Perišić with Ojdanić in an effort to have a more malleable Chief of the General Staff and that Milošević, over the objections of Montenegrin President Đukanović, replaced Samardžić with Pavković, after Pavković and Samardžić had clashed over the intensification of the VJ presence in Kosovo without strict adherence to the chain of command. However, some of the replacements and promotions do not fit this pattern, such as with Lazarević and Lukić, and Šainović was Deputy Prime Minister for years before the conflict. The averments of the Prosecution on this point therefore have not been completely proved, but the evidence in relation to Ojdanić and Pavković indicates that they were intentionally positioned by Milošević, a member of the joint criminal enterprise, in order to facilitate the implementation of the common purpose.

vi. Obstruction of justice

86. As discussed in Section VII.P, the Prosecution argues that the common purpose of the joint criminal enterprise was partly implemented through concealment of bodies of Kosovo Albanians killed during the implementation of the joint criminal enterprise. Bodies were exhumed from mass and individual graves in Kosovo and transported to other parts of Serbia, where they were

¹⁸⁰ Vladimir Lazarević, T. 17740–17745 (6 November 2007), T. 18544 (19 November 2007); P801 (Report on the take-over of the duty of PrK Commander by Vladimir Lazarević, 13 January 1999); P950 (Vladimir Lazarević interview with the Prosecution), pp. 7–10.

¹⁸¹ Vladimir Lazarević, T. 17740 (6 November 2007); 5D1324 (Order of the VJ General Staff, 12 January 1998).

¹⁸² Aleksandar Dimitrijević, T. 26713 (9 July 2008).

concealed in various sites, which were under MUP and VJ jurisdiction.¹⁸³ The Defence concedes that the concealment of bodies took place, but challenges the role of the VJ in this operation¹⁸⁴ or challenges the Prosecution's averment that the bodies found belonged to those who were killed as a result of the implementation of a common criminal plan.¹⁸⁵

87. The Chamber has already found that there is no doubt that a clandestine operation consisting of exhuming over 700 bodies originally buried in Kosovo and transferring them to Serbia proper took place during the NATO bombing. According to the evidence discussed above, the main personalities involved in organising this large scale operation were the Head of the RJB at the time, Vlastimir Đorđević; the Minister of Interior, Vljako Stojiljković; and the President of the FRY, Slobodan Milošević, all of whom are named members of the joint criminal enterprise. The purpose of this operation was to conceal hundreds of bodies in Kosovo from the international representatives and/or NATO ground forces, whose presence on the ground in Kosovo was anticipated following the NATO bombing. The Chamber has concluded that Đorđević, Stojiljković, and Milošević knew that the great majority of the corpses moved were victims of crime and civilians, including women and children. The question of the involvement of Lukić and Šainović is dealt with later in this Judgement.

88. The Chamber is of the view that the evidence of the concealment of bodies, as described more fully in Section VII.P, circumstantially supports a finding that there was a common purpose.

vii. Findings

89. The second physical element of the form of responsibility referred to as commission through a joint criminal enterprise spans many different aspects of the evidence in this trial; and, in order to avoid unnecessary repetition, the discussion of that evidence in this section has drawn upon several other sections of the Judgement wherein that evidence is dealt with fully. Those other sections should be referred to for a more expansive analysis of the evidence. The Chamber has taken all the relevant evidence into account in reaching its conclusions on this element and weighed that evidence for its relative reliability, even if a particular item of testimonial or documentary evidence has not been referred to specifically herein.

90. In the 1990s efforts by the FRY and Serbian authorities to contain the Kosovo Albanians' calls for greater autonomy worked to a certain extent, and Kosovo remained a part of the FRY and

¹⁸³ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 278, 282–287.

¹⁸⁴ Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 215–218; Pavković Final Trial Brief, 28 July 2008 (public version), paras. 288–292; Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 692–699.

¹⁸⁵ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 597–602.

Serbia during the wars in Bosnia and Croatia. However, through the 1990s, as the authorities took stronger measures to control the province by taking away its autonomy, the KLA gained in strength and launched more ambitious attacks against state authorities and people perceived to be supportive of them. The FRY and Serbian authorities attempted to quell this new violent element in Kosovo in 1998, and the Kosovo Albanian population suffered from the excessive use of force, with over 200,000 people being internally displaced by the end of the year. It was only international intervention and the October Agreements that enabled these people to return to their homes before the onset of winter; and, even then, the FRY and Serbian authorities breached these agreements in order to continue their heavy-handed fight against the KLA.

91. Although the situation in Kosovo in 1998 and 1999 became more and more violent, there was nonetheless a responsibility upon the part of the authorities of the FRY and Serbia 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. That responsibility was not discharged by the political and military leadership of the FRY and Serbia, who instead treated the Kosovo Albanian population in its entirety as enemies of the state, despite the fact that the KLA formed only a very small part of that population.

92. The international negotiations of 1999 sought to bring about a resolution of the crisis. The FRY/Serbian delegation, along with the other interlocutors, all contributed to the failure of these negotiations, the decision of the NATO Council to use force was put into effect, and the NATO bombing began. The partial responsibility of the FRY delegation in causing the talks to fail, when viewed in light of the movement of additional forces to Kosovo, gives rise to the inference that this was being done to gain time. The resolutions of the United Nations Security Council, the principles espoused by the Contact Group, and the threats of the use of force by NATO should have been eye-openers and warnings to the FRY and Serbian leadership of the need to settle the controversy with the Kosovo Albanians, who were then more than 90 percent of the population, in a responsible manner and without delay. Rather than solving the KLA problem through the democratic and effective use of the police and the judicial system, the commission of crimes was employed instead. The NATO bombing provided an opportunity to the members of the joint criminal enterprise—an opportunity for which they had been waiting and for which they had prepared by moving additional forces to Kosovo and by the arming and disarming process described above—to deal a heavy blow to the KLA and to displace, both within and without Kosovo, enough Kosovo Albanians to change the ethnic balance in Kosovo and maintain control over the province. And now this could all be done with plausible deniability because it could be blamed not only upon the KLA, but upon

NATO as well.¹⁸⁶ While some orders may have been issued directing the police to prevent the departure of civilians from Kosovo after the mass exodus was underway, these orders do not create doubt as to the existence of the common purpose and its execution by VJ and MUP forces. Such orders were similar to those to VJ forces to abide by international humanitarian law, which were systematically violated.¹⁸⁷

93. The Chamber places little stock in the witnesses who testified that there was no common plan, design, or purpose to displace the population or in the lack of any reference to such a common purpose in official meetings of entities such as the VJ Collegium.¹⁸⁸ The Chamber largely accepts the Prosecution's arguments on this point, namely that witnesses who testified that there was no plan (a) had a motive to lie about it to protect themselves, their colleagues, their friends, and the institutions of which they were members; (b) were not told or were not in a position to know about it; or (c) were merely speculating based upon inadequate information.¹⁸⁹

94. The crimes committed during the Indictment period follow a clear pattern of displacement of the Kosovo Albanian population, but not of murder, sexual assault, and destruction of cultural property. Whether these other crimes were reasonably foreseeable to the members of the joint criminal enterprise—a mental element of the third category of joint criminal enterprise—is dealt with in the sections devoted to individual criminal responsibility.

95. Based upon the evidence analysed above and the relevant evidence in the sections below relating to the responsibility of the Accused (excluding the four Accused's interviews with the Prosecution cited therein), the Trial Chamber finds that the common purpose of the joint criminal enterprise was to ensure continued control by the FRY and Serbian authorities over Kosovo and that it was to be achieved by criminal means. Through a widespread *and* systematic campaign of terror and violence, the Kosovo Albanian population was to be forcibly displaced both within and without Kosovo. The members of the joint criminal enterprise were aware that it was unrealistic to expect to be able to displace each and every Kosovo Albanian from Kosovo, so the common purpose was to displace a number of them sufficient to tip the demographic balance more toward ethnic equality and in order to cow the Kosovo Albanians into submission.

¹⁸⁶ Cf. *Kvočka et al.* Appeal Judgement, para. 117 (holding that the common purpose need not be previously arranged or formulated and may materialise extemporaneously).

¹⁸⁷ See, e.g., 6D778 (Dispatch of the MUP Staff, 15 April 1999).

¹⁸⁸ See, e.g., Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 13–21; Pavković Final Trial Brief, 28 July 2008 (public version), para. 53; Lazarević Final Trial Brief, 29 July 2008 (public version), para. 502; Lukić Final Trial Brief, 7 August 2008 (public version), paras. 379–390.

¹⁸⁹ Prosecution closing arguments, T. 26900–26901 (20 August 2008).

96. The Trial Chamber therefore finds that it has been established beyond reasonable doubt that there was a common purpose during the time of the crimes alleged in the Indictment that amounted to or involved the commission of those crimes under the Statute and therefore that the second physical element of joint criminal enterprise has been satisfied.

b. Plurality of persons—First element

97. Based upon the findings below in relation to the individual criminal responsibility of the Accused, the Trial Chamber finds that the first physical element of joint criminal enterprise has been established beyond reasonable doubt, *i.e.*, that there was a plurality of persons in the joint criminal enterprise.

c. Significant contribution—Third element

98. Having found that the first and second physical elements of joint criminal enterprise have been established beyond reasonable doubt, the Trial Chamber will address the *third physical element* in respect of each individual Accused in the following sections of the Judgement, namely whether any of the alleged members of the joint criminal enterprise—Milutinović, Šainović, Ojdanić, Pavković, Lazarević, Lukić, Vlastimir Đorđević, Slobodan Milošević, Vlastimir Stojiljković, Radomir Marković, Obrad Stevanović, and Dragan Ilić—made a significant contribution to the common purpose. In doing so, the Chamber will also deal with the mental elements in respect of joint criminal enterprise, forms 1 and 3, in respect of each of the Accused, as well as the elements of the other forms of responsibility alleged in the Indictment, where necessary and appropriate.

C. INDIVIDUAL CRIMINAL RESPONSIBILITY OF MILAN MILUTINOVIĆ

1. Charges in Indictment

99. The Indictment charges Milan Milutinović, born on 19 December 1942 in Belgrade, Serbia, with crimes against humanity and violations of the laws or customs of war. According to the Indictment, Milutinović was active in the SPS and held the post of President of the Republic of Serbia, to which he was elected on 21 December 1997. Being the President of Serbia during the times relevant to the Indictment, it is alleged that he (a) represented Serbia and conducted its relations with foreign states and international organisations; (b) was a member of the Supreme Defence Council (“SDC”) of the FRY, and thereby participated in decisions regarding the use of the VJ and exercised command authority over the MUP units subordinated to the VJ during the state of war; (c) had the authority, in conjunction with the Assembly of the Republic of Serbia

(“National Assembly”), to request reports from the Serbian Government, concerning matters under its jurisdiction, and from the MUP, concerning its activities and the security situation in Serbia; (d) had the authority to dissolve the National Assembly and with it the Serbian Government; and (e) had the power, during a state of war, to enact measures normally under the competence of the National Assembly, including the passage of laws.¹⁹⁰

100. The Indictment alleges that Milutinović is individually responsible for the crimes alleged against him under Articles 3, 5, and 7 of the Statute. According to the Indictment, he planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation, or execution of these crimes. Within the scope of “committing”, he allegedly participated in the joint criminal enterprise discussed above. He allegedly contributed to the joint criminal enterprise using the *de jure* and *de facto* powers available to him. Milutinović, while holding positions of superior authority, is also alleged to be criminally responsible for failing to prevent or punish his subordinates, pursuant to Article 7(3) of the Statute, for the crimes alleged in Counts 1 to 5 of the Indictment.¹⁹¹

101. The Indictment alleges that Milutinović’s “*mens rea*” for liability under Articles 7(1) and 7(3) can be inferred from various factors, namely his knowledge of the likelihood that forces of the FRY and Serbia would commit crimes in Kosovo, resulting from the widespread reporting from many sources about allegations of crimes committed in Kosovo in 1998; planning and consultation meetings with Slobodan Milošević; presence at meetings where other members of the joint criminal enterprise made statements implying that all Kosovo Albanians were criminals who should be killed; awareness and approval of the dismissal of senior officials in the MUP and the VJ who had expressed disapproval of Slobodan Milošević’s policies in Kosovo while persons supportive of such policies were being promoted in their place; allegations of crimes by the forces of FRY and Serbia, which were known throughout the world, including in the FRY, as the basis upon which NATO declared it was launching its air-strike against the FRY; information he had about the massive displacement of Kosovo Albanians and the perpetration of numerous other crimes through the reporting systems of the VJ and the MUP, the media, and his meetings with VJ and MUP senior staff; and his knowledge of the concealment by members of the forces of the FRY and Serbia, of the crime of murder.¹⁹²

102. The Chamber has concluded in Section VII that the forces of the FRY and Serbia committed crimes directed against the Kosovo Albanian civilian population in many of Kosovo’s

¹⁹⁰ Indictment, paras. 1, 8.

¹⁹¹ Indictment, paras. 16–22.

municipalities, from March to June 1999. This section will therefore address the question of whether Milutinović is responsible for any of these crimes, under the various modes of liability alleged in the Indictment.

2. Milutinović's position as the President of Serbia

103. According to the Prosecution, Milutinović, having been elected by the people as the President of Serbia, and enjoying an effective security of tenure during his term, was one of the most prominent and powerful political figures of the FRY and Serbia. As such, he participated in the decision-making process in the Supreme Defence Council and was also able to utilise certain powers over the Ministry of Interior, granted to him by the Serbian Constitution and the Law on Internal Affairs.¹⁹³ The Prosecution further contends that, in addition to his *de jure* powers, Milutinović also wielded a significant degree of *de facto* power and influence over various bodies, since he was a close political confidante of Milošević, and had even exerted a degree of influence over him.¹⁹⁴ According to the Prosecution, Milutinović used these powers to change the ethnic balance in Kosovo through the commission of the crimes charged. His contribution to this goal was effected through both his acts and omissions.¹⁹⁵

104. The Milutinović Defence, on the other hand, denies these allegations and argues that Milutinović upheld the values enshrined in the Serbian Constitution. He worked to avoid conflict and bring peace to the region, and also worked to preserve the sovereignty and territorial integrity of Serbia and the FRY.¹⁹⁶

105. As elaborated in Section IV, Milutinović's position as the President of Serbia gave him certain powers and responsibilities which allowed him to exercise a number of functions. Jovan Kojić, who was an administrative officer in the office of the President ("Office"), gave evidence about the organisation and daily workings of the Office, as well as evidence relating to Milutinović's daily routine when the latter was President.¹⁹⁷ It emerged during cross-examination that Milutinović spent a great deal of his time out of the Office and it was obvious to the Chamber that Kojić did not know about all the meetings Milutinović attended outside of the Office.¹⁹⁸ The

¹⁹² Indictment, para. 39.

¹⁹³ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 562, 567–568.

¹⁹⁴ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 563–564.

¹⁹⁵ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 560–561.

¹⁹⁶ Milutinović Final Trial Brief, 15 July 2008, paras. 278–280.

¹⁹⁷ Jovan Kojić, T. 13721–13727 (15 August 2007), T. 13762–13763 (16 August 2007), 1D741 (witness statement dated 27 July 2007), paras. 1–21, Annex A; IC135 (Annex A of Kojić's witness statement marked by Kojić); IC136 (Annex A of Kojić's witness statement marked by Kojić).

¹⁹⁸ Jovan Kojić, T. 13755–13762 (16 August 2007).

evidence does not indicate that significant events connected with the allegations in the Indictment took place in Milutinović's Office.

a. Milutinović authority over the armed forces

i. *Milutinović's de jure powers*

106. As explained in Section IV, article 83(5) of the Serbian Constitution, pursuant to which the Serbian President was to "lead the armed forces" in war and peace, was a reserve competency to be triggered in the event that Serbia became an independent state, which in 1998 and 1999 gave Milutinović no commanding authority over the VJ. In addition, the Chamber also notes that all of the senior military and political figures who appeared as witnesses in this case testified that Milošević as the FRY President was the "Supreme Commander" of the VJ.¹⁹⁹ Milutinović himself, during his interview with the Prosecution, stated that Milošević was the commander-in-chief of the VJ, both in peace and in war. Milutinović presumed that Milošević issued orders to the General Staff, but stated that he had never seen any with his own eyes.²⁰⁰

107. Accordingly, the Chamber is satisfied that Milutinović had no direct control over the VJ, nor could he issue orders to its units. Indeed, as confirmed by many witnesses in this case, his only formal connection to the VJ was by virtue of his *ex officio* membership in the SDC.

ii. *Milutinović as a member of the Supreme Defence Council*

108. The Prosecution alleges that Milošević commanded the VJ, in accordance with decisions taken by himself and Milutinović, as one of the three voting members of the SDC. It further contends that, as a member of the SDC, Milutinović could block or impede proposals that were put forward to advance the criminal plan, but instead showed "close convergence of views" with Milošević.²⁰¹ The Prosecution also alleges that, through the SDC, Milošević and Milutinović systematically removed those who opposed the use of the VJ outside of the established chain of command, and instead appointed those who were willing to further the criminal plan. Through this process, according to the Prosecution, Ojdanić, Pavković, and Lazarević, as well as other supportive officials were placed in key positions.²⁰² Even though the Prosecution concedes that the

¹⁹⁹ See, e.g., Aleksandar Vasiljević, T. 8635 (18 January 2007); Milorad Obradović, T. 15042 (5 September 2007); Milovan Vlajković, T. 16089–16093 (20 September 2007); Branko Gajić, T. 15296–15297 (7 September 2007), T. 15434–15436 (12 September 2007); Miodrag Simić, T. 15600–15603, 15610 (13 September 2007).

²⁰⁰ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 183–184.

²⁰¹ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 26, 569–570, 613.

²⁰² Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 80, 137–141.

power to appoint and dismiss high-level VJ personnel was vested solely in the FRY President, it also contends that it would have been “much more difficult, if not practically impossible, for Milošević to carry his proposals against the will of the majority of the SDC.”²⁰³

109. The Milutinović Defence, on the other hand, argues that the evidence demonstrates that the SDC members met to receive certain information on VJ personnel and budget issues, and that they would, in relation to their discussion on threats from the KLA and NATO, adopt conclusions or political standpoints, not decisions. The Defence then points to these conclusions, and argues that they continuously and consistently supported a peaceful resolution of problems. Reference to the defence of the country was contingent on it being attacked first. Finally, the Defence argues that the SDC and Milutinović had no role in relation to the use of the VJ and the MUP once the NATO campaign began.²⁰⁴

110. As found earlier, the Chamber is satisfied that the SDC was more than simply an advisory body, both constitutionally and in practice, and that it did make decisions. There is no direct evidence, however, of the SDC meeting in its full composition after 25 December 1998. There is evidence, however, of one more SDC meeting on 23 March but it was not attended by the Montenegrin President, Đukanović.²⁰⁵ The Chamber now turns to the types of decisions the SDC made and, more specifically, whether there was anything criminal or sinister in them, which could lead to the conclusion that, as a member, Milutinović is responsible for the crimes alleged in the Indictment. The Chamber carefully analysed both the minutes and the stenographic notes of the SDC sessions that are in evidence. The minutes relate to nine sessions of the SDC between 28 October 1997 and 23 March 1999.²⁰⁶ The stenographic notes correspond to six of those nine sessions.²⁰⁷

111. Milutinović was not present at the first three sessions of the SDC, which took place on 28 October 1997,²⁰⁸ 10 November 1997,²⁰⁹ and 24 December 1997,²¹⁰ as he was not the President of

²⁰³ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 574.

²⁰⁴ Milutinović Final Trial Brief, 15 July 2008, paras. 64–82.

²⁰⁵ See Section VI.A.1.d.

²⁰⁶ 1D691 (Minutes of 1st SDC session, 28 October 1997); 1D692 (Minutes of 2nd SDC session, 10 November 1997); P1573 (Minutes of 3rd SDC session, 24 December 1997); 1D550 (Minutes of 4th SDC session, 8 January 1998); P1574 (Minutes of 5th SDC session, 9 June 1998); P1575 (Minutes of 6th SDC session, 4 October 1998); P1576 (Minutes of 7th SDC session, 24 November 1998); P1000 (Minutes of 8th SDC session, 25 December 1998); P1577 (Minutes of 9th SDC session, 23 March 1999).

²⁰⁷ 1D756 (Shorthand notes of 1st SDC session, 28 October 1997); 1D757 (Shorthand notes of 2nd SDC session, 10 November 1997); 1D758 (Shorthand notes of 3rd SDC session, 24 December 1997); 1D759 (Shorthand notes of 4th SDC session, 8 January 1998); 1D760 (Shorthand notes of 5th SDC session, 9 June 1998); P2381 (Shorthand notes of 6th SDC session, 4 October 1998); 1D761 (Shorthand notes of 8th SDC session, 25 December 1998).

²⁰⁸ 1D691 (Minutes of 1st SDC session, 28 October 1997); 1D756 (Shorthand notes of 1st SDC session, 28 October 1997).

Serbia at the time. He attended his first SDC session on 8 January 1998.²¹¹ Aside from the regular members of the SDC, namely FRY President Milošević, Milutinović, and the then President of Montenegro, Momir Bulatović, also present at that session were the FRY Prime Minister, Radoje Kantić; Federal Minister of Defence, Pavle Bulatović; Chief of the VJ General Staff, Momčilo Perišić; and the secretary of the SDC, Lieutenant General Slavoljub Šušić. The main discussion, in which Milutinović did not participate, revolved around the distribution of financial resources for the VJ and the Federal Ministry of Defence. Also briefly touched upon by the SDC was the issue of dealings between Croatia and the FRY. Milutinović's participation in this discussion revealed his involvement in negotiations with Croatia.²¹²

112. The fifth session was held on 9 June 1998, and was attended by the same persons as the fourth, with the exception of Radoje Kantić. In addition, the new President of Montenegro, Milo Đukanović attended as a voting SDC member, while Momir Bulatović attended in his new capacity as the FRY Prime Minister. The two topics on the agenda were (a) the military and political situation in the FRY, including the situation at the state border with Albania and (b) personnel issues. With respect to the first issue, Perišić outlined the potential or possible dangers to the country from the territory of its neighbours, with reference mostly to Albania, as well as the positions of the VJ troops in Kosovo. He also referred to a period from 20 March to 9 June 1998, when 31 incidents involving the KLA had taken place near the Albanian border, and the losses suffered by the VJ as a result. Following this presentation, the SDC adopted three conclusions. First, Perišić's presentation was unanimously accepted. Second, it was concluded that, if terrorist activities escalated, the VJ would "intervene adequately". Third, the VJ would be ready to oppose any kind of external intervention that could endanger the sovereignty of the FRY.²¹³ While giving his presentation, Perišić explained that the VJ was engaged only in the border belt, and that this was in its capacity as a "peacetime army". He explained that the VJ could not get involved inside Kosovo, unless attacked, otherwise the world would have an excuse to interfere in the conflict.²¹⁴ With respect to the personnel discussion, the SDC went through a list of proposals prepared by the General Staff, adopting it in its entirety, and thus appointing or promoting various individuals on

²⁰⁹ 1D692 (Minutes of 2nd SDC session; 10 November 1997); 1D757 (Shorthand notes of 2nd SDC session, 10 November 1997).

²¹⁰ P1573 (Minutes of 3rd SDC session, 24 December 1997); 1D758 (Shorthand notes of 3rd SDC session, 24 December 1997).

²¹¹ 1D550 (Minutes of 4th SDC session, 8 January 1998); 1D759 (Shorthand notes of 4th SDC session, 8 January 1998).

²¹² 1D550 (Minutes of 4th SDC session, 8 January 1998); 1D759 (Shorthand notes of 4th SDC session, 8 January 1998), pp. 13–14.

²¹³ P1574 (Minutes of 5th SDC session, 9 June 1998), pp. 1–4; 1D760 (Shorthand notes of 5th SDC session, 9 June 1998), pp. 4–10.

²¹⁴ 1D760 (Shorthand notes of 5th SDC session, 9 June 1998), pp. 9–10.

that list, including Lazarević.²¹⁵ On the face of the minutes these appointments were by the SDC rather than Milošević on his own. It was following this session of the SDC that the FRY/Serbian forces embarked on the summer 1998 anti-KLA activities in Kosovo pursuant to the Plan for Combating Terrorism, discussed above.²¹⁶

113. The sixth session of the SDC was held on 4 October 1998, following the completion of the Plan for Combating Terrorism, and involved the same persons as the session before. The sole topic on the agenda was the military and political situation in the FRY. This time, the discussion revolved around a possible NATO attack. Perišić presented possible scenarios in the event of such an attack and warned that the FRY forces would not be able to defend the country without an ally. He argued that (a) NATO air strikes should be avoided by all diplomatic and political means; (b) the Federal Assembly should be urged to declare an imminent threat of war and, following the launch of the first missile, declare a state of war immediately so as to create conditions for defence; and (c) the SDC should approve the necessary preparations for the defence of the country, given that air strikes were likely.²¹⁷

114. At this stage Milutinović got involved and agreed with Perišić, but also expressed the hope that it would not come to air strikes as the FRY had fulfilled its obligations under UN Security Council Resolution 1199. Nevertheless, he agreed that the country should be prepared for such an attack.²¹⁸ Đukanović argued that a NATO attack had never been more likely and that the FRY should do all in its power to avoid it, suggesting that Milošević issue a statement immediately, stating that he was ready to accept all obligations imposed by the UN Resolution. He also suggested that Milošević invite representatives of the Tribunal to investigate alleged crimes against Kosovo Albanians and issue a detailed plan for the return of “refugees” to Kosovo, all in order to avoid speculation about the FRY’s compliance with Resolution 1199. Đukanović supported Perišić’s first suggestion wholeheartedly but was not in favour of the second and the third.²¹⁹ Following a contribution from the FRY Prime Minister Momir Bulatović, who was, like Milutinović, against the proclamation of the threat of war,²²⁰ and then the Federal Minister of

²¹⁵ P1574 (Minutes of 5th SDC session, 9 June 1998), pp. 4–8; 1D760 (Shorthand notes of 5th SDC session, 9 June 1998), pp. 10–15.

²¹⁶ See Section VI.E.

²¹⁷ P1575 (Minutes of 6th SDC session, 4 October 1998), pp. 1–4; P2831 (Shorthand notes of 6th SDC session), pp. 4–10.

²¹⁸ P1575 (Minutes of 6th SDC session, 4 October 1998), p. 4; P2831 (Shorthand notes of 6th SDC session), pp. 10–11. See also P604 (Milan Milutinović interview with the Prosecution), e-court pp. 29–33.

²¹⁹ P1575 (Minutes of 6th SDC session, 4 October 1998), pp. 4–5; P2831 (Shorthand notes of 6th SDC session), pp. 11–16.

²²⁰ P2831 (Shorthand notes of 6th SDC session), pp. 17–19.

Defence, Pavle Bulatović, and Perišić,²²¹ Milošević stated that all requests from the international community had been met by the FRY and reminded those present that the “anti-terrorist” actions had stopped six days earlier, and the VJ units had been withdrawn to their barracks. Nevertheless, he said that the threat had to be taken seriously and the country had to prepare to defend itself. He then suggested that only one conclusion be adopted and published, namely that the country would defend itself if attacked. The other SDC members unanimously accepted this proposal.²²² According to the Milutinović Defence, it is this conclusion or “political standpoint” that was later used by Milošević to command the VJ on his own, without the input of the SDC, as reflected in the order on resubordination of MUP to the VJ issued on 18 April 1999, where this conclusion is relied upon specifically.²²³

115. Milošević also accepted Perišić’s proposal that at the next Federal Assembly session an imminent threat of war should be declared which would then allow the country to start necessary defence preparations.²²⁴ The Federal Assembly met the next day, on 5 October 1998, where it *inter alia* expressed support for the Republic of Serbia in its struggle against Albanian separatism; praised the VJ and the MUP for protecting the territorial integrity of the FRY; condemned the actions of Albania which provided training ground for the KLA; condemned media manipulation of the situation in Kosovo; referred to the Milošević-Yeltsin Agreement; and accepted OSCE observers into Kosovo. However, no imminent threat of war was declared. On 13 October the Holbrooke-Milošević Agreement was negotiated.²²⁵

116. Interestingly, the shorthand notes of this SDC session record Milošević as saying that he usually was blamed by the international community for all the problems. He then stated.²²⁶

But they take into account also the things that our organs are doing, i.e. that it is the same. For the police is not within my jurisdiction—there is the President of Serbia, Milutinović, and for other things too. But I accept that as well; I do not flee from those responsibilities—there is no question about that, but the following must be clear: the state organs perform their activities because it is within their jurisdiction, and that is our state policy.

²²¹ P1575 (Minutes of 6th SDC session, 4 October 1998), pp. 6–7; P2831 (Shorthand notes of 6th SDC session), pp. 19–22.

²²² P1575 (Minutes of 6th SDC session, 4 October 1998), pp. 7–10; P2831 (Shorthand notes of 6th SDC session), pp. 22–33.

²²³ Milutinović Final Trial Brief, 15 July 2008, paras. 84–85; 3D670 (Re-subordination order issued by Slobodan Milošević, 18 April 1999).

²²⁴ P1575 (Minutes of 6th SDC session, 4 October 1998), pp. 7–10; P2831 (Shorthand notes of 6th SDC session), pp. 22–33.

²²⁵ 1D234 (Conclusions of the FRY Assembly published on 6 October 1998).

²²⁶ P2831 (Shorthand notes of 6th SDC session), p. 23.

In response to this comment, Đukanović stated that Milošević was underestimating the fact that the international community mistrusted the statements of certain organs in the state, as well as Milošević himself. He mentioned the incident at Gornje Obrinje/Abria e Epërme that took place on 26 September 1998 and the doubts of the international community that war activities had been stopped there.²²⁷ He also mentioned U.S. Ambassador Chris Hill who reported that he personally had witnessed that some police checkpoints had not been removed despite assurances given to the contrary “by Belgrade”.²²⁸

117. On 1 October 1998 Milutinović received a letter from the Deputy Minister of Information asserting that the Gornje Obrinje/Abria e Epërme allegations in the international media were groundless speculation.²²⁹ At its meeting on 5 October 1998 the Federal Assembly condemned recent media manipulation, involving “fabricating and publishing reports about fake execution sites and some kind of ‘humanitarian catastrophe,’ and shameful attempts at staging ‘massacres.’”²³⁰

118. The seventh session of the SDC was held on 24 November 1998 and was attended only by the three voting members of the SDC: Milošević, Milutinović, and Đukanović. There were two topics on the agenda: the review of the military budget for 1999 and personnel issues. Milutinović was involved in both discussions. With respect to the first, he argued that Montenegro should increase its contribution to the military budget to at least ten per cent. The SDC later concluded that it supported the Military Budget and proportional participation of the member republics in the financing of the VJ.²³¹

119. As for the second topic on the agenda, Milošević proposed that Perišić be removed from his post as the Chief of General Staff as he had been holding it for too long. He suggested that Perišić be replaced by either Ojdanić or General Ljubiša Veličković. Đukanović disagreed with this proposal, arguing that Perišić had great experience, had maintained correct co-operation with the leadership of Montenegro, and had successfully represented the interests and the reputation of the VJ at the international level.²³² Milutinović had a different opinion and argued that, although successful at the international level, Perišić should be replaced because he had held the position for too long, because positive opinion at the international level should be taken with a grain of salt, and because the country should not settle its internal affairs according to outside interests. In addition,

²²⁷ This incident is described in more detail in Section VI.C.

²²⁸ P2831 (Shorthand notes of 6th SDC session), pp. 28–31.

²²⁹ P2827 (Letter by Deputy Minister of Information of Serbia to Milan Milutinović, 1 October 1998), pp. 2–3.

²³⁰ 2D67 (Conclusions of the FRY Federal Assembly re: situation in Kosovo, 5 October 1998), p. 2.

²³¹ P1576 (Minutes of 7th SDC session, 24 November 1998), pp. 1–3.

²³² P1576 (Minutes of 7th SDC session, 24 November 1998), pp. 3–4.

Ojdanić was as good a candidate as Perišić.²³³ When Đukanović advanced arguments in favour of retaining Perišić, Milošević acknowledged them but reiterated that he thought that Ojdanić should be the new Chief of the General Staff. Đukanović then strongly protested and argued that the earlier practice of the SDC, as illustrated by the minutes of the fifth session, for appointing or removing VJ personnel should not be dispensed with. To this Milošević responded by reminding the SDC members that, pursuant to the FRY Constitution, decisions on appointments of VJ Generals were to be issued by the FRY President. Milošević also explained that the practice of the SDC was to seek members' opinions even on matters that were exclusively under the jurisdiction of the FRY President. Concluding the debate, Milošević said he would continue to consult the members of the SDC on the most important issues pertaining to the VJ. He then issued decrees appointing Ojdanić to the post of Chief of the General Staff, and appointing Perišić as an adviser to the FRY Government on the issues of defence.²³⁴

120. The eighth session of the SDC took place on 25 December 1998. In attendance were the three members, as well as Šainović (standing in for Momir Bulatović²³⁵), Pavle Bulatović, Ojdanić as the new Chief of General Staff, and the secretary of the SDC. Three topics were on the agenda, namely, the situation on the state border with Albania, financing of the VJ, and a "report on proposed appointments in the Yugoslav Army submitted for decision to the President of the FR of Yugoslavia".²³⁶ Ojdanić gave a presentation on the first topic, outlining the security measures undertaken by the VJ, more specifically the Priština Corps, with respect to the borders with Albania and Macedonia. He also pointed out that, from 1 January to 24 December 1998, there had been over 100 border violations, and 676 persons who were trying to cross the border illegally were arrested. Finally, he outlined some of the problems and weaknesses complicating the functioning of the border system, including the lack of organisation of the Priština Corps units.²³⁷ Šainović spoke next, mentioning the co-operation between the VJ and the MUP, as well as the fact that he was not aware of a single problem in carrying out tasks at the border. However, Milošević pointed out that, in spite of the sealing of the state border, the KLA were still being armed. He argued for even closer co-operation between the VJ and the MUP.²³⁸

²³³ P1576 (Minutes of 7th SDC session, 24 November 1998), p. 4.

²³⁴ P1576 (Minutes of 7th SDC session, 24 November 1998), pp. 4–5.

²³⁵ Bulatović, T. 13858–13859 (17 August 2007).

²³⁶ P1000 (Minutes of 8th SDC session, 25 December 1998), p. 1; 1D761 (Shorthand notes of 8th SDC session, 25 December 1998), p. 3.

²³⁷ P1000 (Minutes of 8th SDC session, 25 December 1998), pp. 1–3; 1D761 (Shorthand notes of 8th SDC session, 25 December 1998), pp. 4–7.

²³⁸ P1000 (Minutes of 8th SDC session, 25 December 1998), pp. 3–4; 1D761 (Shorthand notes of 8th SDC session, 25 December 1998), pp. 7–11.

121. As for the discussion on VJ personnel, one of the proposals on the list drafted by the General Staff was that Pavković be appointed 3rd Army Commander. This was explained by Milošević as follows:

As for regulating the service status of generals, this has been caused by certain reassignments. The post of the Deputy Chief of the General Staff is vacant, as the previous Deputy Chief of the General Staff, General Ojdanić, has been appointed Chief of the General Staff. The plan is for General Marjanović to take up that position. This would leave vacant the position of Chief Inspector, for which General Samardžić is envisioned. ...

Colonel-General Nebojša Pavković has been proposed for Commander of the 3rd Army. He has been outstanding in his post of [Priština] [C]orps commander in the strongest corps of the 3rd Army, as well as in a series of other auxiliary and staff duties.²³⁹

122. Đukanović pointed out that this agenda item now came under the heading of “Information”, which implied that it was presented only for the SDC’s notification and that the SDC could not make any decisions relating to it. He also stated that he would like to see more extensive information on the proposed candidates, and noted that the information being received in Montenegro was that the Priština Corps’s actions were not always in accordance with the constitutional role of the VJ and the decisions of the SDC. For that reason, Đukanović asked that the propriety of promoting Pavković be reconsidered.²⁴⁰ Milošević responded to Đukanović’s comments by saying that there had been no complaints about any illegal actions by the Priština Corps and Milutinović added that reports of “alleged lack of discipline and unconstitutional actions by the Priština Corps were usually inflated.”²⁴¹

123. At the end of the session, Milošević presented, and the SDC members accepted, a number of conclusions, namely that the VJ operated in accordance with the rules of service in Kosovo and that the Priština Corps carried out its tasks successfully, that personnel should have better conditions to protect the border, that the SDC would continue to be apprised of all matters regarding the VJ, and that all remarks should be discussed and taken into account in the decision-making process. Milošević concluded that there were no objections except with respect to Pavković’s promotion; he expressed the hope that this would not be publicised in the media, and

²³⁹ P1000 (Minutes of 8th SDC session, 25 December 1998), pp. 5–9; 1D761 (Shorthand notes of 8th SDC session, 25 December 1998), pp. 13–21.

²⁴⁰ P1000 (Minutes of 8th SDC session, 25 December 1998), pp. 9–10; 1D761 (Shorthand notes of 8th SDC session, 25 December 1998), pp. 21–22.

²⁴¹ P1000 (Minutes of 8th SDC session, 25 December 1998), p. 10; 1D761 (Shorthand notes of 8th SDC session, 25 December 1998), pp. 21–23.

Đukanović said that this would not be the case.²⁴² It is surprising that Đukanović was able to accept the first conclusion in view of what he had said in the meeting.

124. The ninth session of the SDC was a very short one and took place on 23 March 1999. It was chaired by Milošević and attended by Milutinović, Momir Bulatović, Pavle Bulatović, Ojdanić, and the secretary of the SDC. Đukanović was absent.²⁴³ Two topics were on the agenda: the threat of “NATO aggression” and consideration of the SDC Rules of Procedure. With respect to the first issue, Ojdanić outlined to the participants the measures undertaken for defence by the highest military leadership. Milutinović then stressed that the FRY delegation at Rambouillet had done everything it could in order to find a peaceful solution to the problems in Kosovo but that “the West” had obviously decided to mark NATO’s 50th anniversary in a spectacular way. Milošević reminded the others of the SDC’s conclusion from October 1998 about the country defending itself by all means, if attacked. With respect to the second item on the agenda, the SDC adopted new Rules of Procedure, providing for conclusions by consensus of all three voting members and requiring the attendance of the VJ Chief of General Staff and the FRY Minister of Defence.²⁴⁴

125. Having analysed all of the above evidence relating to the SDC sessions up until 23 March 1999, the Chamber finds that none of the SDC records indicate formulation or implementation of the common purpose articulated in the Indictment. The conclusion of 9 June 1998—that the VJ would intervene if KLA activity in Kosovo increased—appears to have been a result of the presentation made by Perišić which dealt with the increasingly tense situation in Kosovo. The decision of 4 October, namely that the country would defend itself if attacked, appears to have come as a result of the NATO threat, which was very serious at the time and was finally deflected on 13 October, when Milošević negotiated a deal with Holbrooke.

126. As for Milutinović’s conduct during the SDC meetings, it is clear that he supported Milošević when the replacement of Perišić and the promotion of Pavković were questioned by Đukanović. These are the only two recorded occasions when there was strong disagreement amongst the three voting members of the SDC. In both situations, and despite making valid arguments, Đukanović was in the minority. In supporting these decisions Milutinović could be said to have been demonstrating loyalty to Milošević rather than exercising independent judgement, more so in relation to promotion of Pavković than replacement of Perišić. However, even if Milutinović had sided with Đukanović in these two matters, the outcome would not have been any

²⁴² P1000 (Minutes of 8th SDC session, 25 December 1998), pp. 10–11; 1D761 (Shorthand notes of 8th SDC session, 25 December 1998), p. 24–25.

²⁴³ P1577 (Minutes of 9th SDC session, 23 March 1999), e-court p. 1.

²⁴⁴ P1577 (Minutes of 9th SDC session, 23 March 1999), e-court pp. 1–2.

different since the appointments and promotions of VJ Generals were exclusively within Milošević's jurisdiction, pursuant to article 136 of the FRY Constitution. Indeed, as noted above, the SDC was informed of this state of affairs during its discussion of Perišić's replacement.

127. The Chamber also notes that Milutinović does not appear to have raised any concerns himself during these meetings, despite having the option to put forward proposals for the agenda.²⁴⁵

iii. Milutinović as a member of the Supreme Command in wartime

128. The Prosecution alleges that, upon the declaration of a state of war, the SDC became a constituent part of the Supreme Command. Thus, Milutinović became a member of the Supreme Command and remained informed of developments in Kosovo throughout the conflict.²⁴⁶ The Milutinović Defence, however, argues that he was never a member of the Supreme Command and that the only civilian who had authority, in peacetime and wartime, over the VJ was the FRY President.²⁴⁷ In addition, the Defence argues that the SDC did not convene after 23 March 1999 exactly because it had no role to play in making determinations concerning the war effort.²⁴⁸

129. The Chamber recalls its finding that, while there is no direct evidence of SDC meetings after 23 March 1999, the SDC retained *de jure* command over the VJ during wartime, in accordance with the FRY Constitution. As stated earlier, whether continuing to be called the SDC, or developing into a body referred to as the "Supreme Command", the Trial Chamber is convinced that the remaining SDC members, namely Milošević and Milutinović, met during the NATO air campaign and exercised formal command over the VJ.

130. However, at the same time, there is no doubt that Milošević, as the "Supreme Commander", was at the apex of the command structure of the VJ throughout the conflict. For example, during the NATO bombing, Milošević, but not Milutinović, was meeting with Ojdanić on a daily basis, using as the basis of his authority the 4 October decision of the SDC. In addition, the Chamber notes that most of the witnesses giving evidence in this trial had never heard of Milutinović attending the "Supreme Command" meetings. Instead, three witnesses testified that Milutinović was seen in the Supreme Command Staff building once or twice during the conflict.²⁴⁹

²⁴⁵ See Section VI.A.1.d.

²⁴⁶ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 640.

²⁴⁷ Milutinović Final Trial Brief, 15 July 2008, para. 88.

²⁴⁸ Milutinović Final Trial Brief, 15 July 2008, paras. 93–96.

²⁴⁹ Spasoje Mučibabić, T. 16578–16580 (28 September 2007); Miodrag Simić, T. 15634–15635 (14 September 2007); Milovan Vlajković, T. 16093 (20 September 2007).

131. Accordingly, the Chamber is of the view that, even though in theory Milutinović still had a formal role in the command structure of the VJ, the real commanding at that point was done by the Supreme Commander, Slobodan Milošević, using the decision of the SDC issued on 4 October and approving for defence of the country in case of an attack by the NATO.

iv. Milutinović and miscellaneous meetings

132. The Prosecution alleges that in both 1998 and 1999 Milutinović attended numerous meetings with the highest political, military, and police leadership where information on Kosovo was exchanged, plans for future actions were discussed, and decisions were made. According to the Prosecution, his attendance as the President of Serbia conferred legitimacy to the decisions that were taken.²⁵⁰ The Milutinović Defence denies this allegation by arguing that these meetings were not connected to VJ and/or MUP deployment, but were in fact aimed at explaining state policy in relation to Kosovo, and that Milutinović's contribution at these meetings was minor.²⁵¹

133. As described in more detail above, on 21 July 1998 Milutinović attended a meeting in Belgrade involving Milošević and representatives of the VJ and MUP. In addition to Milošević, who presided over the meeting, also present were Minić, Matković, Anđelković, Perišić, Samardžić, Pavković, Dimitrijević, Stojiljković, Đorđević, and Lukić. During the meeting a Plan for Combating Terrorism was adopted. With respect to Milutinović's role, Matković testified that he could not remember whether Milutinović took part in the discussion.²⁵²

134. Zlatimir Pešić, who at the time was the Assistant for Logistics on the Command Staff for the Priština Corps and later became the commander of the Priština Military District, testified that he attended a meeting, possibly in May or June of 1998, attended by Milutinović, as well as representatives of the VJ, such as Pavković, and the MUP, such as Lukić. He was invited to that meeting by Pavković to represent the Corps Command. The meeting took place in the MUP building in Priština/Prishtina. Its purpose was to brief Milutinović on the situation in Kosovo, which was done by Lukić.²⁵³ According to Pešić, Milutinović appeared to be Lukić's guest. Pavković and Pešić remained passive throughout the meeting. Following Lukić's briefing,

²⁵⁰ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 578.

²⁵¹ Milutinović Final Trial Brief, 15 July 2008, paras. 167, 181.

²⁵² Duško Matković, T. 14634–14638 (30 August 2007), P2913 (witness statement dated 10 February 2003), p. 9; Milan Đaković, T. 26410 (19 May 2008); Aleksandar Dimitrijević, T. 26622–26623 (8 July 2008). *See also* 4D100 (PrK Report to 3rd Army re engagement of units, 22 July 1998); 4D101 (PrK Plan for the engagement of units in Kosovo, 23 July 1998).

²⁵³ Zlatimir Pešić, T. 7215–7216 (23 November 2006), T. 7297–7298 (24 November 2006), P2502 (witness statement dated 30 January 2004), para. 32. *See also* Zlatimir Pešić, P2515 (supplemental information sheet), correction to para. 32.

Milutinović spoke. Pešić could not remember what he said, other than that it all related to the political and security situation in Serbia and how it was reflected in the situation in Kosovo.²⁵⁴ The Milutinović Defence cross-examined Pešić about the date on which this meeting took place and suggested to him that it occurred in late September 1998, following Milutinović's visit to Radonjić Lake. Pešić conceded that he could have been wrong about the date.²⁵⁵ In view of the points of similarity between Pešić's account of this meeting and that of Cvetić referred to in the next paragraph, the Chamber considers that Pešić was referring to a meeting of 23 September 1998.

135. Ljubinko Cvetić, the head of the Kosovska Mitrovica SUP at the time, was present at a meeting on 23 September 1998. He testified that this meeting was attended by all chiefs of the SUPs and that Milutinović said that "terrorism in Kosovo was defeated, terrorist groups were destroyed, and that all the necessary premises had been created for the problems in Kosovo to be resolved by peaceful means." He also stated that the security situation should improve and that everybody should work in their respective line of work to resolve the problems.²⁵⁶ The Chamber notes that this meeting took place at the end of the activities undertaken by the VJ and the MUP pursuant to the Plan for Combating Terrorism.

136. Milutinović also attended a meeting of the "Operations Inter-Departmental Staff for the Suppression of Terrorism in Kosovo and Metohija," which was held at the Beli Dvor in Belgrade on 29 October 1998. This meeting was chaired by Milošević and attended by Milutinović, Šainović, Pavković, and Lukić, as well as other important figures such as Perišić, Dimitrijević, Samardžić, Minić, Matković, Anđelković, Stojiljković, Đorđević, Marković, and Stevanović.²⁵⁷ While the Chamber is not convinced that the document in evidence purporting to be minutes from that meeting is a genuine record of the content of the meeting, it is in no doubt that the meeting took place, that it was attended by the most senior figures from the political, VJ, and MUP circles, and that the Plan for Combating Terrorism was discussed during it.

137. Towards the end of the meeting Milošević recommended that Milutinović go to Kosovo and meet with the presidents of the districts and municipalities, in order to explain to them the terms of the Holbrooke-Milošević Agreement.²⁵⁸ Consequently, on 5 November 1998, Milutinović travelled to Kosovo with Ratko Marković and met first with political and business figures there, and then had

²⁵⁴ Zlatomir Pešić, T. 7217 (23 November 2006), P2515 (supplemental information sheet), correction to para. 32.

²⁵⁵ Zlatomir Pešić, T. 7225–7227 (23 November 2006); Duško Dunjić, T. 5286–5287 (25 October 2006), 6D99 (witness statement 10 April 2006), para. 37.

²⁵⁶ Ljubinko Cvetić, T. 8189 (8 December 2006).

²⁵⁷ P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998). *See also* Zoran Anđelković, T. 14712 (30 August 2007).

²⁵⁸ P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), p. 14.

a meeting in the MUP building in Priština/Prishtina. The minutes of the second meeting are in evidence and reflect matters that were referred to in the 29 October meeting. The minutes record that, on 5 November 1998, aside from Milutinović, others attending included Šainović, Lukić, Pavković, Stojiljković, Đorđević, Rade Marković, Miroslav Mijatović, Ljubinko Cvetić, the members of the Working Group, SUP and OUP Chiefs, and the PJP unit commanders.²⁵⁹ Lukić briefed the participants on the current situation in Kosovo and informed them of the readiness of the MUP forces to continue with their duties and tasks. Milutinović then talked about the Holbrooke-Milošević Agreement, and how this was a difficult phase in the resolution of the Kosovo issue, even though the “Šiptar terrorist forces” had been “put out of action”.²⁶⁰ Milutinović explained that the NATO threat was now gone, that “[w]ith 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). The police and the Army shall reserve the right to continue to intervene if they are attacked”.²⁶¹ Milutinović also stated:

We think that the OSCE will send about 1,200 representatives and that after that there will be no doubt about what is actually going on in Kosovo. We should expect provocations, but we must persevere, even if it takes several years. We need to play the role of victim in this period. There are indications that the KLA has been taking over positions of the police and the Yugoslav Army, and if they succeed, we will have clearance to take action. ...

All military facilities and roads need to be protected. Continue to plan activities with undiminished commitment and energy. Had we not done what we have done so far, we would have been in a much more difficult political situation. The group led by Clark has shown us understanding and has tacitly endorsed our taking action against Šiptars, as long as it is invisible. They were impressed with our tactics and resourcefulness.²⁶²

138. During his interview with the Prosecution in November 2001, one of the questions related to whether Milutinović had meetings with the Minister of Interior. He responded that, aside from possibly a few phone calls, he did not, or at least could not remember meeting him. For that reason, he asked his staff to extract his agenda where all his meetings were recorded.²⁶³ This agenda noted that the two men met, but this was in March 1998, probably in relation to the Jashari incident. Milutinović also denied meeting any representatives of the Ministry of Interior during the NATO bombing.²⁶⁴ Those conducting the interview then pointed to a meeting noted on 13 May 1999.

²⁵⁹ P2805 (Minutes of meeting at MUP Staff, 5 November 1998). *See also* Ratko Marković, T. Ljubinko Cvetić, T. 8187–8189 (8 December 2006); Milomir Minić, T. 14783–14785 (31 August 2007); Radovan Vučurević, T. 23187–23188 (25 February 2008).

²⁶⁰ P2805 (Minutes of meeting at MUP Staff, 5 November 1998), p. 3.

²⁶¹ P2805 (Minutes of Meeting at MUP Staff in Priština/Prishtina, 5 November 1998), p. 4.

²⁶² P2805 (Minutes of meeting at MUP Staff, 5 November 1998), pp. 4–5.

²⁶³ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 87–91.

²⁶⁴ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 100–101.

Milutinović explained that that meeting was part of a 50 year old tradition of celebrating 13 May as the security day in the President's Office. According to Milutinović, no security issues were discussed during this celebration.²⁶⁵ Milutinović also explained that, after the Jashari incident in 1998, the Ministry of Interior staff generally avoided him.²⁶⁶

139. Milutinović was then asked if he ever met with Radomir Marković, the Head of the RDB. He responded that he did meet Marković, but rarely, and never during the NATO bombing. However, he conceded that they may have talked on the phone during the bombing.²⁶⁷ As for meetings with Sreten Lukić during the NATO bombing, Milutinović said that they would meet when he went to Priština/Prishtina. This was both before the NATO bombing and one time during the bombing when Milutinović was there to meet with Ibrahim Rugova.²⁶⁸ Finally, Milutinović was asked if he recalled meeting Lukić and Ojdanić at his office on 4 May 1999. He responded that he could not recall such a meeting.²⁶⁹

140. However, a meeting did take place on 4 May 1999, albeit in Milošević's villa, where the security situation in Kosovo was discussed.²⁷⁰ Media reports in relation to that meeting state that Milošević, Milutinović, Ojdanić, Pavković, Lukić, and others were present. When asked about the content of one of these press reports, Milovan Vljaković, the Chef de Cabinet of the General Staff/Supreme Command Staff stated that he had heard of this meeting, and that he thought Ojdanić attended.²⁷¹ Ljubiša Stojimirović, who was the Chief of Staff of the 3rd Army, testified that, at the beginning of May, Lukić and Pavković went to see Milošević.²⁷² Furthermore, Lukić issued an order urging his subordinates to read the contents of an article in the *Politika* journal and to adhere to its directions, which would indicate that its contents were accepted by the Serbian authorities.²⁷³ Statements made by Šainović at the meeting of the MUP Staff for Kosovo on 7 May confirm the accuracy of the press accounts. Šainović stated that the FRY President and the Serbian President

²⁶⁵ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 178–181.

²⁶⁶ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 181–182.

²⁶⁷ As for the meetings before the bombing, these related to Milutinović's security and the big battle over who would protect him, the regular police or state security police. The battle arose because he refused to be protected by the state security. See P604 (Milan Milutinović interview with the Prosecution), e-court pp. 158–160.

²⁶⁸ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 184–186.

²⁶⁹ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 186–187.

²⁷⁰ P1696 ("Army, Police Heads Inform Milo[š]evi[ć] of Successful Defense", Report of RTS, 5 May 1999), p. 1. 4D406 ("Security Situation in Kosovo", Report of *Politika*, 6 May 1999). The document was challenged, T. 16105–16106 (21 September 2007); T. 22547 (15 February 2008). However, it is corroborated by 5D1289 (Sreten Lukić's report regarding *Politika* News Article, 6 May 1999). See also Dušan Gavrančić, T. 22722 (19 February 2008); Miloš Vojnović, T. 24188 (12 March 2008).

²⁷¹ Milovan Vljaković, T. 16081–16082 (20 September 2007).

²⁷² Ljubiša Stojimirović, T. 17684 (26 October 2007).

²⁷³ 5D1289 (Sreten Lukić's report regarding *Politika* News Article, 6 May 1999), also admitted as P2159.

had heard reports from Pavković and Lukić, and the text of a statement had been made public and should be distributed to all police commanders.²⁷⁴

141. The Chamber is satisfied that during the 4 May meeting the security situation in Kosovo was discussed, a mention was made of structures put in place to help “all citizens to return to their homes” once the hostilities ceased, and information was presented that, while engaged in fierce fighting with the KLA, the security forces of the VJ had also dealt with numerous cases of violence, murder, looting, and other crimes, and had arrested several hundred perpetrators whose crimes were a great danger to the civilian population. 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 five and 20 years’ imprisonment for these crimes.²⁷⁵ However, these reported statements from the meeting are inconsistent with the various reports on the work of the military courts during the NATO air campaign. None of these reports indicates that any sentences between five and 20 years’ imprisonment had been imposed by the military courts for crimes against civilians by 4 May 1999.²⁷⁶ The Chamber was presented with no evidence that Milutinović knew this information to be incorrect.

142. The Chamber notes that the evidence shows a limited number of meetings attended by Milutinović. As for Milutinović’s contribution at those meetings, it is notable that Matković could not remember whether Milutinović took part in the discussion at the 21 July meeting. In addition, Pešić, when giving evidence of the 23 September 1998 meeting, was also unable to remember the details of Milutinović’s contribution. Cvetić, who was present at the 23 September meeting, was able to remember simply that Milutinović talked of the end of “terrorism in Kosovo” and mentioned a peaceful resolution of problems. The only time Milutinović appears to have been a significant contributor was at the 5 November meeting in the MUP Staff building. His input there consisted of trying to explain the terms of the October Agreements, warning that there were reports of the KLA re-asserting itself, ameliorating the concerns of the local MUP officials in that respect

²⁷⁴ P1696 (Minutes of the MUP Staff meeting, 7 May 1999), p. 4; Miroslav Mijatović, T. 22286–22289 (13 February 2008).

²⁷⁵ P1696 (“Army, Police Heads Inform Milo[š]jević of Successful Defense”, Report of RTS, 5 May 1999), pp. 1–2.

²⁷⁶ P1912 (3rd Army Report on criminal cases, military prosecution, and courts, 1 May 1999); P1940 (Wartime Military Prosecutor’s Offices and Courts Progress Report, 30 April 1999); P1182 (Information sent by PrK to the 52nd Artillery Rocket Brigade, 15 May 1999); 3D986 (VJ General Staff Report on criminal cases, 6 September 1999); P962 (549 the Motorised Brigade Report on criminal cases, military prosecution and courts, May 1998–July 1999); 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 Report on criminal cases, military prosecution, and courts); P845 (Report on criminal cases for sexual assault in military courts, 10 September 2002).

by emphasising that the right of self-defence had been preserved, and, finally, encouraging them to continue planning activities and protecting roads and other facilities.

143. All of this evidence, however, rather than showing that Milutinović had a significant role to play when attending these meetings, instead shows that his contributions were either related to the Holbrooke-Milošević Agreement or were general morale-boosting speeches, designed to ameliorate concerns of the officials working in Kosovo.

b. Milutinović's relationship with the Serbian Government

144. The Prosecution alleges that Milutinović—as the President of Serbia—had several powers available to him that he could have used to make it “significantly more difficult for the crimes charged” to occur. In deliberately omitting to do so, in spite of his knowledge of the crimes committed by the VJ and the MUP, he contributed to the plan to modify the ethnic balance of the province in order to ensure control over it.²⁷⁷ In this context, the Prosecution refers to the Presidential oath, which obliges the President, according to article 86 of the Serbian Constitution, to protect the sovereignty and the territory of Serbia and to preserve the peace and welfare of all citizens of Serbia.²⁷⁸ In addition, the Prosecution also refers to the President's power, pursuant to article 85 of the Serbian Constitution, to request reports from the Government of Serbia on various issues within its competence, including the workings of its organs; and a similar power, under article 9 of the Law on Internal Affairs, relating to the MUP specifically.²⁷⁹ The Prosecution also alleges that Milutinović used his Presidential powers to promote Lukić in May 1999 and thereby “empowered” and encouraged him.²⁸⁰

145. The Milutinović Defence, on the other hand, argues that the Constitutional power in article 85 was meaningless, as the President of Serbia could not order the Government to provide such a report, but could only ask for it, and, following its receipt, could not force the Government to change its view. With respect to article 9 of the Law on Internal Affairs, the Milutinović Defence argues that it was unconstitutional because, pursuant to article 83(12) of the Serbian Constitution, all the President's powers were laid out by the Constitution and not by regular laws. It also argues that the President could not act on his own but had to make this request in conjunction with the

²⁷⁷ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 8, 599.

²⁷⁸ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 608.

²⁷⁹ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 610, note 1618.

²⁸⁰ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 575–576.

National Assembly.²⁸¹ The Chamber has already found that this was indeed the case and that a joint request was necessary.²⁸²

146. The Milutinović Defence also argues that the promotion of Lukić was carried out pursuant to article 6 of the Law on the Ranks of the Members of the MUP and was a mere formality on behalf of the President of Serbia, similar to his task to promulgate laws passed by the National Assembly. Furthermore, the Defence contends that persons promoted by the President do not account to him for his work. Finally, it is pointed out that in 2003 the Serbian Constitutional Court declared article 6 unconstitutional because it had expanded the President's constitutional powers.²⁸³

147. The Chamber recalls here its finding that the powers and responsibilities of the President of Serbia in relation to the Government Ministries and organs, including the Ministry of Interior, potentially could allow for significant oversight. However, as stated earlier, the extent to which they were used to their full potential depended on the person holding the post.²⁸⁴

i. Jashari incident in March 1998

148. According to the Prosecution, Milutinović was aware of the powers he had under the Constitution and the Law on Internal Affairs, and indeed used them in March 1998, following the Jashari incident, to call the Ministry of Interior and receive a short briefing about the incident from its staff.²⁸⁵ This was partly confirmed by Jovan Kojić, who was an administrative officer in the President's Office during the relevant period. He testified that he personally informed Milutinović of the Jashari incident after having watched reports about it on *Sky News*. According to Kojić, Milutinović was surprised and obviously unaware of the action or the developments on the ground.²⁸⁶ Milutinović then instructed Kojić to call Minister of Interior Stojiljković. Kojić called but could not reach the Minister and left a message for Stojiljković to call the President's Office. Stojiljković never—to Milutinović's annoyance—called back in spite of repeated calls over the next two days. Milutinović then wrote to Stojiljković but received no reply.²⁸⁷ When asked what action, if any, Milutinović took to address this behaviour by Stojiljković, Kojić said that he did not know anything about any further action being taken in this respect.²⁸⁸ He was then shown a

²⁸¹ Milutinović Final Trial Brief, 15 July 2008, paras. 28–38.

²⁸² See Section IV.

²⁸³ Milutinović Final Trial Brief, 15 July 2008, paras. 55–61.

²⁸⁴ See Section IV.

²⁸⁵ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 54–55.

²⁸⁶ Jovan Kojić, T. 13725–13726 (15 August 2007), 1D741 (witness statement dated 27 July 2007), para. 17.

²⁸⁷ Jovan Kojić, 1D741 (witness statement dated 27 July 2007), para. 18.

²⁸⁸ Jovan Kojić, T. 13728–13729 (15 August 2007).

statement issued by the Ministry of Information after the incident and indicated that, given the annotations made to it by Milutinović and by Kojić himself, this may have been typed up in the President's Office. The statement referred to the preliminary report of the Ministry of Interior, which described the incident, and noted that an investigation was being conducted with respect to the allegations that the FRY/Serbian forces used excessive force.²⁸⁹

149. During cross-examination, Kojić was asked about Milutinović's interview with the Prosecution during which he said that he did in fact meet Minister Stojiljković about the Jashari incident.²⁹⁰ Kojić responded that, after the letter was sent out, Stojiljković failed to come to the Office for an extended period of time. When he finally did come, the topic of the conversation between the two men was not known to Kojić. When asked if Stojiljković regularly visited Milutinović, Kojić responded that such visits were very rare.²⁹¹

150. This evidence also corresponds to that given by the constitutional law expert Ratko Marković, who testified that MUP officers with the rank of 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.²⁹²

ii. Holbrooke-Milošević Agreement

151. The Serbian Cabinet met every Thursday for discussion, following which it would issue decisions.²⁹³ The evidence suggests that Milutinović attended these meetings very occasionally and only when important matters were discussed. One such meeting was specifically referred to by several witnesses, namely the meeting where the Holbrooke-Milošević Agreement was discussed.²⁹⁴ Following that meeting, Milutinović issued a press-release stating that he had informed the Government of the terms of the Agreement and of the general tenor of these negotiations. The press-release also listed the 11 principles agreed upon by Milošević and

²⁸⁹ Jovan Kojić, T. 13734–13736 (16 August 2007); 1D553 (MUP Press Release, 11 March 1998); IC137 (1D553 marked by Kojić to indicate the handwriting of Milutinović).

²⁹⁰ P604 (Milan Milutinović interview with the Prosecution), pp. 54–55, 100–101.

²⁹¹ Jovan Kojić, T. 13751–13755 (16 August 2007).

²⁹² Ratko Marković, T. 12942–12948 (6 August 2007), T. 12965–12967, 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; 1D639 (Constitutional Court decision).

²⁹³ Momir Bulatović, T. 13838–13839 (16 August 2007); Andreja Milosavljević, T. 14310–14311 (23 August 2007).

²⁹⁴ Jovan Kojić, T. 13748–13750 (16 August 2007); Andreja Milosavljević, T. 14312–14313 (23 August 2007); Života Ćosić, T. 13698–13706 (15 August 2007), 1D738 (witness statement dated 29 June 2007), paras. 7, 41. *See also* 1D204 (Government of Serbia Endorsement of the Agreement between Richard Holbrooke and Slobodan Milošević, 14 October 1998), p. 2.

Holbrooke. It further informed the public that the Government supported the Agreement in its entirety and that it would propose that the FRY Government adopt them too.²⁹⁵

iii. Milutinović's power to promote MUP officials

152. The Chamber has found already that the President could indeed promote by decree an authorised official with the rank of Colonel (or above) to the rank of General (or above) but also accepted that this was only a formality as the relevant candidates had to satisfy conditions regulated by other provisions of the Law on the Ranks of Members of the Ministry of Interior and had to be recommended by the Minister of the Interior.²⁹⁶

153. The evidence of Jovan Kojić confirms this. He testified that the established procedure in terms of MUP promotions was one of the recommendations coming from the Minister of Interior which were then simply copied into a memorandum signed by Milutinović.²⁹⁷ This was supported by Milutinović himself who stated that, during the bombing, he issued an ordinance promoting Lukić but insisted that this was done on the recommendation of the MUP Minister.²⁹⁸ The Chamber indeed has in evidence the recommendation letter sent by the Minister of Interior to Milutinović on 11 May 1999, in which the former recommends that Lukić be promoted to the rank of Lieutenant-General.²⁹⁹ The Prosecution led no evidence to contradict the evidence that the role of the President was a formal one.

iv. Other dealings with the Government

154. Života Ćosić, who was a Minister for Mining and Energy and a personal friend of Milutinović in the relevant period,³⁰⁰ testified about Milutinović's dealings with the Serbian Government. In 1998 Ćosić went to Kosovo with Mirko Marjanović, the Serbian Prime Minister, to inspect factories in Kosovo and to deal with workers' complaints about KLA kidnappings and murders.³⁰¹ He did not have any obligations towards Milutinović but rather answered only to Marjanović, the latter being the only person who could give him tasks.³⁰² Nevertheless, since

²⁹⁵ 1D601 (Milan Milutinović's Press Statement, 13 October 1998), also admitted as 2D354.

²⁹⁶ 1D682 (Ratko Marković's Expert Opinion on the Powers and Position of the President of the Republic of Serbia), paras. 3.32–3.36; P1015 (Law on the Ranks of Members of the Ministry of Interior), article 6(1).

²⁹⁷ Jovan Kojić, T. 13747–13748 (16 August 2007); 1D722 (Stojiljković's suggestion and subsequent ordinance on promotions)

²⁹⁸ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 184–186.

²⁹⁹ 1D680 (Recommendation to promote Sreten Lukić to Lieutenant-General, 11 May 1999).

³⁰⁰ Života Ćosić, T. 13661 (15 August 2007), 1D738 (witness statement dated 29 June 2007), para. 3.

³⁰¹ Života Ćosić, 1D738 (witness statement dated 29 June 2007), paras. 5–6.

³⁰² Života Ćosić, T. 13669–13670, 13712–13714 (15 August 2007), 1D738 (witness statement dated 29 June 2007), para. 8.

Milutinović was interested in certain issues of importance to the general public, such as the uninterrupted supply of electricity, Ćosić kept Milutinović informed about them.³⁰³

155. Following the start of the NATO campaign, Ćosić was tasked by Marjanović, in the presence of Šainović, with organising and relocating hazardous materials in Serbia. Ćosić in turn asked Šainović, then Chairman of the Committee for Nuclear and Other Raw Materials, for help.³⁰⁴ According to Ćosić, Milutinović was constantly enquiring about developments in this operation. Copies of the relevant reports sent daily to the Prime Minister were also sent to Milutinović. In addition, every two or three days Ćosić would call Milutinović and inform him of his activities.³⁰⁵ On 7 April 1999 Ćosić and the Deputy Prime Minister, Dragomir Tomić, met with Milutinović, in order to find a way to relocate hydrochloric acid from a factory near Belgrade to a safer location, and then to destroy it. According to Ćosić, he contacted Milutinović because he knew that “President Milutinović can influence”.³⁰⁶ This was achieved by the end of April 1999.³⁰⁷

156. Another issue in which Milutinović was closely involved related to the destruction of the electrical power grid and installations which NATO had targeted at the end of April 1999. According to Ćosić, Milutinović kept calling Tomić, Ćosić, and others in the electricity industry, enquiring about the state of the electricity supply and telephone connections. By mid-May the electricity situation had become alarming, and on 24 May 1999 Ćosić and the director of the Serbian Electricity Board met with Milutinović in order to explain to him the state of the supply.³⁰⁸ According to Ćosić, the purpose of the meeting was to inform the President about the electricity shortages as this was something that affected all citizens of Serbia. In addition, they created a power supply priority list, which listed the industries that were to be given priority.³⁰⁹

157. Ćosić was cross-examined about Milutinović’s power to ask the Government for a report, but denied any knowledge of the legal provisions relating to this. He did concede, however, that the President of Serbia should have been informed about the work of the Government through his contacts with the Prime Minister.³¹⁰ He also confirmed that he met with Milutinović more than

³⁰³ Života Ćosić, 1D738 (witness statement dated 29 June 2007), para. 9.

³⁰⁴ Života Ćosić, T. 13664–13668, 13681 (15 August 2007), 1D738 (witness statement dated 29 June 2007), paras. 10–18.

³⁰⁵ Života Ćosić, T. 13668–13669, 13690–13692 (15 August 2007), 1D738 (witness statement dated 29 June 2007), para. 19; 1D706 (Report on Hazardous Materials, 11 May 1999).

³⁰⁶ Života Ćosić, T. 13665 (15 August 2007).

³⁰⁷ Života Ćosić, 1D738 (witness statement dated 29 June 2007), paras. 21–22.

³⁰⁸ Života Ćosić, T. 13671–13674 (15 August 2007), 1D738 (witness statement dated 29 June 2007), paras. 23–27.

³⁰⁹ Života Ćosić, T. 13672–13673 (15 August 2007).

³¹⁰ Života Ćosić, T. 13686–13687 (15 August 2007).

twice during the NATO campaign.³¹¹ When asked what options Milutinović would have had if Čosić had not performed his tasks adequately, Čosić responded that Milutinović could ask the Prime Minister to dismiss him but so could anyone else.³¹²

158. The Defence tendered through Čosić a letter sent to Milutinović on 29 April 1999, by the Minister of Interior, summarising the extent of the damage caused by NATO.³¹³ When cross-examined on this letter, Čosić stated that he did not know how frequently Milutinović would receive this type of information, but stated that the Government would receive almost daily reports on the extent of the NATO damage.³¹⁴

v. Conclusion

159. The above evidence indicates that, on certain issues, such as the issue of hazardous materials or the Holbrooke-Milošević Agreement, Milutinović did have authority to deal with various Government members and, in doing so, took an active role. The evidence also shows, however, that in early 1998, following the Jashari incident, Milutinović's attempts to exercise control over Vljako Stojiljković and obtain information about the incident proved unsuccessful. Instead, in the press statement possibly issued by his Office, heavy reliance was placed on the MUP report dealing with the incident, as well as on the fact that further investigation was taking place. This is in line with the evidence presented to the Chamber that Generals within the MUP did not have to account for their work to the President of the Republic. It is also consistent with the evidence that, although the Minister of Interior was formally in charge of the RDB and RJB, in practice it was Slobodan Milošević who directed and controlled both departments.³¹⁵ The Chamber also accepts that the promotion of Lukić was a formal act consequential on the recommendation of the Minister of Interior.

160. Accordingly, taken altogether, the evidence does not establish extensive interaction between Milutinović and the Serbian Government, and the MUP in particular. It therefore partly confirms the evidence of Ratko Marković, outlined in Section IV, that the President of Serbia did not have extensive executive powers. Indeed, the President's *de jure* powers over the MUP were not extensive and the evidence led does not indicate that significant *de facto* powers resided in the hands of Milutinović.

³¹¹ Života Čosić, T. 13695–13697 (15 August 2007).

³¹² Života Čosić, T. 13708, 13714–13715 (15 August 2007).

³¹³ 1D705 (Letter from Stojiljković to Milutinović, 29 April 1999).

³¹⁴ Života Čosić, T. 13692–13694 (15 August 2007), 1D738 (witness statement dated 29 June 2007), para. 38.

³¹⁵ Ratomir Tanić, T. 6406–6407 (13 November 2006); Aleksandar Vasiljević, T. 9001 (23 January 2007).

c. Milutinović's power to issue decrees

161. The Chamber recalls its earlier finding that, when it came to passing laws in peacetime, the President's role was merely to promulgate laws passed by the National Assembly. Jovan Kojić gave evidence about the President's Office procedure regarding promulgation of laws passed by the National Assembly. He said that these laws would be received from the Secretary of the National Assembly and would be signed by Milutinović without ever changing a word.³¹⁶ As also discussed earlier, pursuant to article 83(7) of the Serbian Constitution, the President of Serbia could pass decrees relating to matters within the competence of the National Assembly in an emergency situation. He could do so either on his own initiative or at the proposal of the Serbian Government, but only during a state of war or an imminent threat of war. After 23 March 1999, Milutinović passed 16 such decrees³¹⁷ which were submitted to the National Assembly for ratification when the state of war ceased. These decrees were all ratified, then immediately declared null and void by the Assembly since they were deemed unnecessary during peacetime.³¹⁸

162. The Prosecution alleges that Milutinović used his power to issue decrees in order to further the criminal goal of modifying the ethnic balance of Kosovo, more specifically the Decree on Identity Cards During the State of War ("ID Decree") and the Decree on Citizens' Domicile and Residence During the State of War ("Domicile Decree").³¹⁹ The argument of the Prosecution is as follows:

Of the 16 decrees issued by Milutinović during the state of war two in particular were designed to contribute to achieving the aim of the [joint criminal enterprise] to alter

³¹⁶ Jovan Kojić, T. 13742–13743 (16 August 2007).

³¹⁷ 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, 22 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 and Metohija for 1998, 21 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).

³¹⁸ 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 (Milutinović's Letter to President of National Assembly Regarding Verification of Decrees Signed During State of War, 25th June 1999); 1D192 (Law confirming decrees passed by the President of the Republic during the state of war). See also P604 (Milan Milutinović interview with the Prosecution), e-court pp. 93–100.

³¹⁹ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 615.

ethnic balance in Kosovo: the Decree on Identification Cards in Time of War and the Decree on Citizens' Domicile and Residence During the State of War. ... [T]he Decree on Citizens' Domicile and Residence During the State of War set impossible conditions for the Kosovo Albanians who were expelled. It obliged all persons above the age of 14 to register changes of residence or address within 24 hours, changes of domicile within 12 hours, and deregistration of a residence or domicile had to take place immediately prior to departure.³²⁰

In addition, the Prosecution contends that he failed to use article 83(7) to intervene in the operations of the MUP with a view to preventing or impeding the commission of the crimes.³²¹

163. The Milutinović Defence, on the other hand, argues that Milutinović did not use his decree authority to impose measures to further the crimes charged, and that there was nothing sinister in the 16 decrees issued by Milutinović during the state of war.³²² The Chamber now turns to an analysis of the 16 decrees in question, starting with the two identified by the Prosecution as intended to further the goal of the criminal enterprise.

164. Article 2 of the ID Decree required that all persons aged 14 and above were to have identity cards. According to article 3, in cases where an identity card was lost, the person in question was obliged to report this loss within 24 hours to the MUP.³²³ Marković explained that the ID Decree changed the earlier Law on Identity Cards first by reducing the age from 18 to 14 for persons required to have identity cards, and then by reducing the number of days a person had to report the loss of an identity card, from 15 days to 24 hours.³²⁴ These new rules applied throughout the Republic of Serbia to both men and women equally.³²⁵ In connection to its argument that there was nothing sinister in the ID or Domicile Decrees, the Milutinović Defence also referred the Chamber to the Federal Law on Citizenship of 1996 which provided that no release from, or renunciation of, FRY citizenship would be granted during a state of war, the imminent threat of war, or a state of emergency.³²⁶ Accordingly, it would appear that those Kosovo Albanians who were forced to relinquish their identity documents did not at the same time relinquish their citizenship.

165. Petar Dujković, who was head of administration of the border police in the MUP at the relevant time, was asked by the Chamber about the reasons behind this change of law. He explained that the instructions he received were that it would make the work of the MUP easier in

³²⁰ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 615–617.

³²¹ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 612.

³²² Milutinović Final Trial Brief, 15 July 2008, paras. 41–54.

³²³ P993 (Decree on Identity Cards During the State of War, 31 March 1999), article 3.

³²⁴ Ratko Marković, T. 12926–12927 (6 August 2007), T. 13252–13255 (9 August 2007); P1832 (Law on Identity Cards), articles 3, 12.

³²⁵ Radovan Vučurević, T. 23225 (26 February 2008); Petar Dujković, T. 23354 (28 February 2008).

³²⁶ 1D226 (Law on Yugoslav Citizenship, 19 July 1996), article 34.

terms of “identifying persons in the field”.³²⁷ Dujković denied that this change had anything to do with attempts to control young Kosovo Albanian men from taking up arms against Serbia, and stated that this was impossible as the new law applied to the whole of Republic of Serbia and also to both men and women.³²⁸

166. Branislav Simonović, expert witness called by the Lukić Defence in order to testify about the workings of the MUP during the relevant time period, testified that Yugoslav citizenship was given priority over the possession of a Yugoslav passport. In other words, pursuant to the 1992 FRY Constitution, every Yugoslav citizen had the right to return to the country at any time, and the proof of his or her citizenship did not depend on the possession of a travel document or an identification document.³²⁹ As for the identification card, Simonović testified that it was a document used exclusively in internal legal communication as proof of identity of a person. In other words, it was of no use at the state border crossings or abroad. Having been introduced approximately 30 years earlier, the identification card was a technologically obsolete document and as such could be forged and exploited with ease.³³⁰ Simonović conceded, however, that it would have been easier to prove one’s identity, and thus citizenship, if one was in possession of a Yugoslav identification card when returning to the country.³³¹

167. The Domicile Decree required all persons older than 14 years to register changes of residence within 24 hours and changes of domicile within 12 hours of arrival to the new residence or domicile, and also required those persons to register their departure immediately before leaving.³³² Persons who failed to do so could be sentenced to 30 days in prison.³³³ On 2 May 1999 Sreten Lukić issued directions to the SUPs in Kosovo, referring to the Domicile Decree, and requiring them to (a) organise a residence registration service in all places “accommodating refugees who had left their domicile due to bombing by NATO forces”, (b) make it possible for all persons to register their residence on the established form and then issue certificates of residence registration, (c) provide protection for persons with registered residence, and (d) ensure that they turn over weapons (without any consequences), that they do not receive “terrorists or armed persons in their place of residence”, that they do not obstruct the police and the army in their

³²⁷ Petar Dujković, T. 23340–23341 (27 February 2008), T. 23354–23355 (28 February 2008).

³²⁸ Petar Dujković, T. 23341–23343 (27 February 2008), T. 23354–23355, 23375–23384 (28 February 2008); 1D776 (Redacted Sample of Identification Card).

³²⁹ Branislav Simonović, T. 25635–25636, 25639–25642 (17 April 2008); 6D668 (Expert Report of Branislav Simonović), p. 44; P1833 (Law on Travel Documents of Yugoslav Citizens), article 3.

³³⁰ 6D668 (Expert Report of Branislav Simonović), p. 44.

³³¹ Branislav Simonović, T. 25638–25639 (17 April 2008).

³³² P993 (Decree on Citizens’ Domicile and Residence During the State of War, 1 April 1999), articles 3, 4, and 5.

³³³ P993 (Decree on Citizens’ Domicile and Residence During the State of War, 1 April 1999), article 7.

movements, that they designate representatives who will carry out local police work and make contact with government organs for the purpose of resolving humanitarian matters, and that they carry with them a residence registration certificate, which will give them freedom of movement except in the zones of “combat and anti-terrorist operations”.³³⁴

168. The Chamber also addresses two decrees not particularly relied upon by the Prosecution but tendered into evidence nevertheless. The Decree on Assembly of Citizens During the State of War prohibited public meetings without prior permission of an appropriate organ,³³⁵ whereas the Decree on Internal Affairs During the State of War restricted certain rights during that state of war (“Internal Affairs Decree”).³³⁶ For example, when the defence of the Republic so required, the Minister of Interior was able to remove “to a certain place” a person who presented a threat to the security of the Republic. This measure could not last longer than 60 days, after which time the person in question had to be handed over to the judicial organs.³³⁷ In addition, article 4 of the Internal Affairs Decree allowed authorised officials of the MUP, for security reasons, to conduct a search of a person during detention or arrest without a search warrant, and also to search any persons and their possessions without such warrant with the aim of checking whether these persons possessed weapons illegally. Article 9 of the same Decree defined serious violations of professional duties of the MUP employees, one of which was “exhibiting national, racial or religious intolerance”, the punishment for which, in addition to regular measures, was restriction of movement or demotion to a lower position or rank. The remaining 12 decrees dealt mostly with issues unrelated to this case, such as budget, employment, trade, and taxes and are, therefore, not of particular significance.³³⁸

³³⁴ 6D770 (Sreten Lukić’s Instruction to Kosovo SUPs, 2 May 1999). *See also* Petar Dujković 6D1499 (witness statement dated 22 February 2008), para. 5.

³³⁵ P993 (Decree on Assembly of Citizens During the State of War, 1 April 1999), article 2.

³³⁶ P993 (Decree on Internal Affairs During a State of War, 31 March 1999).

³³⁷ P993 (Decree on Internal Affairs During a State of War, 31 March 1999), article 3.

³³⁸ 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, 22 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 and Metohija for 1998, 21 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).

169. The Chamber has been furnished with letters signed by the Deputy Prime Minister of Serbia and addressed to the Serbian President, recommending that he adopt each of the 16 decrees in question. The Chamber has looked at the drafts and the corresponding letters of the four decrees described in detail above, signed by the then Deputy Prime Minister, Ratko Marković.³³⁹ The letters refer to the 83rd Government session held on 6 April 1999, following which the Government decided to submit the four decrees to the President for adoption. However, these draft decrees already had a signature date of either 31 March or 1 April on them and were later signed by Milutinović next to that date, implying that the recommendation came following the signature. When giving evidence before the Chamber, Ratko Marković was unable to explain the discrepancies in the dates.³⁴⁰ He explained, however, that each decree would be drafted by the Ministry to which it was relevant. Thus, in the case of the ID Decree, it was drafted by the Ministry of Interior.³⁴¹

170. Marković confirmed that he signed the four letters because they dealt with matters within his expertise, while the remaining 12 decrees were signed by another Deputy Prime Minister, Vojislav Šešelj.³⁴² Marković also explained the procedure the Government went through before issuing decrees. First, the matters were discussed by the Cabinet which included the Prime Minister, Deputy Prime Ministers, the Ministers of each of the Ministries and the Ministers without portfolio. Following discussion, the decisions were made by consensus, and were signed by the Minister in charge. Marković could not, however, remember any discussions relating to the ID Decree.³⁴³

171. The Chamber notes that the remaining 12 decrees do not suffer from the date discrepancies affecting the first four. Nevertheless, it also notes that all 12 drafts attached to the letter of recommendation already have a date placed next to Milutinović's signature space, this date usually corresponding to the date of the Government session. This would imply that the decrees were drafted immediately before or immediately following the Government session, with an empty signature space, reserved for Milutinović, next to the date of that session. It is in that format that a particular decree would be sent to Milutinović for signature. It would appear then that, for some reason, the first four decrees were drafted with a date of 31 March and/or 1 April, even though the

³³⁹ 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).

³⁴⁰ Ratko Marković, T. 13246–13250 (9 August 2007).

³⁴¹ Ratko Marković, T. 13250–13252 (9 August 2007).

³⁴² Ratko Marković, T. 13255–13256 (9 August 2007).

³⁴³ Ratko Marković, T. 13257–13261 (9 August 2007).

Government was in session on 6 April. Whether this was an oversight on behalf of the Government or the Government recommended the adoption of the four decrees following Milutinović's initiative to issue the same, is unclear.

172. Nevertheless, having looked at all of the evidence above, the Chamber is satisfied that the Kosovo Albanian citizens of the FRY whose identity documents were seized did not lose their citizenship as a result. The Chamber notes, as acknowledged by Simonović, that proving identity and thus citizenship would be easier for a person in possession of a Yugoslav identity document. However, this would have been the case regardless of whether or not the ID Decree was in force at the time, especially if the person trying to prove his or her citizenship had been out of Kosovo for more than 15 days. In addition, the Chamber received no evidence of Kosovo Albanians encountering problems on their return to Kosovo because of the loss of the identity documents. Accordingly, the Chamber is of the view that the Prosecution failed to explain and show how the ID Decree actually worked in practice in order to achieve the aim of the joint criminal enterprise.

173. In addition, the purpose behind all four decrees described in detail above, is open to an interpretation other than the one suggested by the Prosecution, namely that, rather than encouraging expulsions, they appeared to have been ensuring increased police control over the whereabouts of the population within Kosovo, as well as increased control over the younger members of that population. Indeed, all four decrees were issued around about the same time Lukić instructed the SUPs to prevent civilians from leaving their place of residence.³⁴⁴ Accordingly, for all these reasons, the Chamber is unable to draw an inference adverse to Milutinović from the evidence surrounding the decrees.

d. Milutinović as a negotiator with the Kosovo Albanians

174. As elaborated earlier in this Judgment, throughout 1998 and a part of 1999, Milutinović participated in various negotiations with the Kosovo Albanians and international community, and went to Kosovo on several occasions.³⁴⁵ The Prosecution alleges that these meetings obstructed any real efforts at reaching an agreement with credible Kosovo Albanian representatives, since they were attended only by unrepresentative Kosovo Albanians. They also served to divert attention away from the crimes being committed by the forces of the FRY and Serbia.³⁴⁶ The Defence, on

³⁴⁴ 6D778 (MUP Staff Dispatch signed by Lukić, 15 April 1999).

³⁴⁵ See Section V. See also Jovan kojić, 1D741 (witness statement dated 27 July 2007), para. 39.

³⁴⁶ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 586.

the other hand, argues that, during these negotiations, Milutinović was committed to finding a peaceful solution through dialogue.³⁴⁷

175. The negotiation process started on 11 March 1998, when the Serbian Government appointed a team of representatives, including Ratko Marković and Andreja Milosavljević, to negotiate on its behalf with the representatives of the Kosovo Albanians.³⁴⁸ Since the latter failed to respond to a number of invitations to attend these negotiations, Milutinović issued a statement on 18 March 1998 in which he expressed his readiness to be the guarantor of such talks on the basis of the territorial integrity and self-government of Kosovo within the Republic of Serbia.³⁴⁹ From that moment on, according to Jovan Kojić, Milutinović became intensively involved in the process of political resolution of issues relating to Kosovo. As a result, the President's Office and Kojić personally were in charge of sending many letters to Kosovo Albanian leaders inviting them to talks. All but one of those invitations went unanswered by the representatives of the leading Kosovo Albanian parties while the minor Kosovo Albanian parties and other ethnic minorities responded.³⁵⁰

176. On 31 March 1998 the Serbian Government invited the representatives of the Kosovo Albanian political parties to talks on 7 April 1998. The Serbian delegation, including Milutinović, travelled to Priština/Prishtina. However, the leaders of the largest Albanian political parties in Kosovo failed to attend. Milutinović issued a statement indicating his dissatisfaction with the fact that the Kosovo Albanian leaders neglected the invitation for a political dialogue, but emphasising that, regardless of their absence, the Serbian side remained patient and open for a constructive dialogue. In addition, he reiterated that he was personally ready to meet with the Kosovo Albanian representatives any time they wished to meet, and emphasised the fact that the future of Kosovo and Serbia lay in "equality and well linked mutual life" and not in ethnic division.³⁵¹

177. Wolfgang Petritsch, who was the Austrian Ambassador to the FRY at the time, confirmed that Milutinović made repeated efforts to encourage the Kosovo Albanians to come to the negotiating table. He also said, however, that the international community tried to impress upon the Serb side that "by issuing invitations on short notice, doing this kind of window dressing, traveling to Priština, and so on", was not really serving the purpose of getting the Kosovo

³⁴⁷ Milutinović Final Trial Brief, 15 July 2008, paras. 127–182.

³⁴⁸ Ratko Marković, T. 13125 (8 August 2007); 1D78 (Statement of Serbian Government, 11 March 1998).

³⁴⁹ Ratko Marković, T. 13132–13133 (8 August 2007); 1D79 (Declaration of President of Serbia Milan Milutinović, 18 March 1998); P604 (Milan Milutinović interview with the Prosecution), e-court pp. 56–65, 79–81.

³⁵⁰ Jovan Kojić, 1D741 (witness statement dated 27 July 2007), paras. 34, 37.

Albanians to negotiate, and that a more appropriate way to do so would have to be found. He nevertheless confirmed that the international community very much supported this outreach on the part of the Serbian Government.³⁵²

178. Milutinović and his Office were involved in efforts to negotiate throughout 1998. U.S. Ambassador Hill, with the assistance of his legal expert, James O'Brien, acted as a facilitator and a mediator between the two sides in 1998 up to 1999, in an effort to assist in drafting a plan for the self-government of Kosovo. Ratko Marković and Milutinović were both involved in talks with Hill and O'Brien, which were conducted in parallel with the unsuccessful efforts by the Serbian delegation to hold direct negotiations with the Kosovo Albanians. In these meetings, Hill and O'Brien brought their proposals for a plan, or an agreement on self-government for Kosovo, which were commented upon by the Serbian delegation. Hill and O'Brien then gave these comments to the Kosovo Albanians and thereafter conveyed to the Serbian delegation the opinion of the Kosovo Albanians.³⁵³ These mediation efforts resulted in a number of draft agreements. Some of the proposals were later integrated into the final draft agreement presented in Rambouillet.³⁵⁴ Kojić confirmed that he spent many days and hours typing up different versions of all these agreements, which were checked by Marković. Hill and O'Brien would then bring their own versions and explain them, following which Marković and the other negotiators would give their answers or counter-proposals.³⁵⁵ Petritsch, who at the time was a Special E.U. Envoy for Kosovo working

³⁵¹ Ratko Marković, T. 13143–13144 (8 August 2007); 1D82 (Statement of the Government of the Republic of Serbia on Kosovo and Metohija, 31 March 1998); 1D83 (Statement of the President of the Government of Serbia, 7 April 1998).

³⁵² Wolfgang Petritsch, T. 10771–10787 (1 March 2007).

³⁵³ Ratko Marković, T. 13165 (8 August 2007); Jovan Kojić, 1D741 (witness statement dated 27 July 2007), paras. 34–35. See also Živadin Jovanović, T. 13997 (20 August 2007).

³⁵⁴ Ratko Marković, T. 13166 (8 August 2007), 13175 (9 August 2007); Wolfgang Petritsch, T. 10711 (28 February 2007).

³⁵⁵ Jovan Kojić, 1D741 (witness statement dated 27 July 2007), paras. 35, 58–77, 81; 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).

closely with Hill, also testified about this procedure. He stated that the drafts would be transmitted to both delegations and then he and Hill would travel to Priština/Prishtina and/or Belgrade to meet the delegations' representatives. On the Belgrade side, this representative was Milutinović who, according to Petritsch, made repeated efforts to encourage Kosovo Albanians to negotiate.³⁵⁶

179. On 29 September 1998 Milutinović's Office issued a statement which informed the public that he, together with Ratko Marković and Milošević, had received Hill in order to discuss issues relevant to peace and stability in Kosovo. According to that statement, 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 solve the issues that remained unresolved.³⁵⁷

180. On 5 November 1998 Milutinović went to Priština/Prishtina, where he met with municipal presidents, republican and federal deputies, and district chiefs from Kosovo. He was briefed by Zoran Anđelković, the President of the TEC, and Vojislav Živković, the head of the provincial board of the SPS. Milutinović's Office then issued a public statement describing these talks and referring to the agreement with the international community to allow the OSCE observers into Kosovo. In the statement, Milutinović affirmed Serbia's commitment to a solution by political means, as well as Serbia's support for the verification mission led by the OSCE ("KVM").³⁵⁸ He further stated that the KVM was expected to verify the truth and eliminate rumours, speculation, and organised media incitement.³⁵⁹ The statement also rejected the use of force and argued for a peaceful resolution to the problem, as well as for the elimination of "all exclusivity, extremism, and hatred".³⁶⁰ Finally, it called on the representatives of the Kosovo Albanian political parties to engage in discussion in order to attain peace and preserve the national identity of all ethnic communities in Kosovo.³⁶¹

181. Milutinović sent out a number of letters on 14 November 1998, inviting the LDK leader Ibrahim Rugova, as well as representatives of Kosovo Albanians and other minorities in Kosovo, to a meeting in Priština/Prishtina, citing the Holbrooke-Milošević Agreement as the basis for the

³⁵⁶ Wolfgang Petritsch, T. 10786–10787, 10809–10810 (1 March 2007).

³⁵⁷ 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).

³⁵⁸ Ratko Marković, T. 13170–13172 (8 August 2007); 1D45 (Milutinović's Statement, 5 November 1998). *See also* 1D690 (Tanjug Press Release on Milan Milutinović's Visit to Priština, 5 November 1999).

³⁵⁹ Ratko Marković, T. 13171 (8 August 2007); 1D45 (Milan Milutinović's Press Statement, 5 November 1998).

³⁶⁰ 1D45 (Milan Milutinović's Press Statement, 5 November 1998), p. 1.

³⁶¹ 1D45 (Milan Milutinović's Press Statement, 5 November 1998), p. 2.

talks.³⁶² He also issued a press statement announcing that these invitations had been sent and that both Hill and Petritsch had been invited, among others.³⁶³ The meeting took place on 18 November 1998. While representatives of various ethnic minorities living in Kosovo and representatives of smaller Kosovo Albanian parties attended, Rugova and the representatives of the leading Kosovo Albanian political parties did not participate.³⁶⁴ It was argued by the Prosecution that this could be because all but one of the letters dated 14 November 1998 proposed that the meeting take place on 11 November 1998 which, as Ratko Marković conceded, might have created confusion regarding the date on which this meeting was to take place. On the other hand, despite the same mistake in all letters, the representatives of the minority groups attended the meeting.³⁶⁵ In addition, Jovan Kojić, having participated in the creation of the letters sent out from the President's Office at the time, explained that the exhibited documents were initialled unsigned copies, namely copies filed in the President's Office, while the letters that were actually sent out were signed by Milutinović, using his full name and surname. Kojić thought that the mistakes in the dates must have been discovered before the letters were sent out, as nobody ever complained about the wrong dates.³⁶⁶ In any event, while Petritsch did not attend this meeting, he stated that he considered it a big step forward since, for the first time, already involved international negotiators were openly included in the process by the Serbian authorities.³⁶⁷

182. At the Priština/Prishtina meeting on 18 November 1998, Milutinović gave an introductory statement and also made some concluding remarks. In the former, he referred to the Holbrooke-Milošević Agreement as a major breakthrough and the basis for peaceful resolution of the Kosovo problem. He also emphasised the equality of all citizens in Serbia and the fact that Serbia had, up until then, honoured all the obligations and deadlines set forth in agreements with the international community. He referred to democratic self-government for Kosovo within the Republic of Serbia, and repeated his conviction that the future of Kosovo was in “peace, equality, common life, development and not in conflicts and divisions”. He then invited everyone to submit proposals and ideas.³⁶⁸

³⁶² 1D62 (Letters Sent by Milutinović to Kosovo Albanian Representatives, 14 November 1998), also admitted as 1D621.

³⁶³ 1D88 (Milan Milutinović's Press Statement, 14 November 2007).

³⁶⁴ 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).

³⁶⁵ Ratko Marković, T. 13525–13528 (14 August 2007).

³⁶⁶ Jovan Kojić, T. 13737–13740 (16 August 2007).

³⁶⁷ Wolfgang Petritsch, T. 10810–10811 (1 March 2007); 1D68 (Petritsch's Note to Milutinović, delivered 17 November 1998).

³⁶⁸ 1D622 (Introductory statement by Milutinović at the talks with the Representatives of National Communities in Kosovo); Jovan Kojić, 1D741 (witness statement dated 27 July 2007), para. 79.

183. In his concluding remarks, at the end of the day's talks, Milutinović assessed the talks as positive, but also expressed regret that the meeting was not attended by representatives of the leading Kosovo Albanian political parties. Nevertheless, he emphasised that the Serbian side remained patient and would continue to be open to constructive dialogue as the only way to reach a solution. He reiterated that he personally was willing to meet at any time with representatives of all communities living in Kosovo.³⁶⁹

184. On 19 November 1998 Milutinović met again, this time in Belgrade, with the leaders of the Kosovo minorities, in order to continue the talks which had begun the previous day. A public statement issued by his Office in relation to this meeting described the discussions, and emphasised the agreement between those present that only citizens of the FRY, Serbia, and Kosovo itself could best define the elements of a political solution for Kosovo. The statement also reiterated that real equality of all national communities in Kosovo was possible and would be fully respected.³⁷⁰

185. On the same day Milutinović again sent letters to three prominent Kosovo Albanians, namely Rexhep Qusaj, Adem Demaqi, and Hydajet Hyseni, who had not attended earlier, requesting a meeting on 20 November, as a means to encourage further talks.³⁷¹ In these letters he referred to the meeting of 18 November, and expressed his desire to hear the recipients' opinions about what they saw was a "path to a peaceful solution to the problem".³⁷² On 20 November 1998 two of the three men, namely Rexhep Qusaj 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. In their opinion, a lasting and fair solution to the question of Kosovo implied the need for a well-prepared process of discussions among equals, with the direct engagement of authorised international mediators.³⁷³ Adem Demaqi responded on 24 November, praising Milutinović for his efforts, but refusing to meet because he wanted to have talks at the federal level. He also refused because the invitation was unclear as to whether his status at the talks would be as a private citizen or the chief political representative of the KLA.³⁷⁴

³⁶⁹ 1D623 (Concluding Remarks by Milutinović at the Talks with the Representatives of National Communities in Kosovo); Jovan Kojić, 1D741 (witness statement dated 27 July 2007), para. 80.

³⁷⁰ 1D89 (Public Statement from President's Office, 19 November 1998).

³⁷¹ Ratko Marković, T. 13172–13173 (8 August 2007), T. 13528–13529 (14 August 2007); 1D66 (Milutinović's Letter to Rexhep Qusaj, Hydajet Hyseni, and Adem Demaqi dated 19 November 1998).

³⁷² 1D66 (Milutinović's Letter to Rexhep Qusaj, Hydajet Hyseni, and Adem Demaqi dated 19 November 1998).

³⁷³ 1D67 (Letter of Rexhep Qosja and Hydajet Hyseni to Milutinović, 20 November 2007). *See also* Ratko Marković, T. 13529–13531 (14 August 2007).

³⁷⁴ 1D92 (Adem Demaqi's Letter to Milutinović, 24 November 1998).

186. On 20 November 1998 Milutinović sent out letters to nine individuals, including Ibrahim Rugova and other representatives of leading Kosovo Albanian parties, as well as the leaders of minorities living in Kosovo.³⁷⁵ Some date discrepancies and inconsistencies within these letters were again explained away by Kojić, who said that the exhibited version of these letters had not even been initialled by Milutinović and therefore must not have been the final versions.³⁷⁶ In the letters Milutinović referred to his meetings on 19 and 20 November, and informed the recipients of the fact that these had resulted in the “Joint Draft Agreement on a Political Framework of Self-Government in Kosovo”. He then invited the recipients to attend another meeting in Priština/Prishtina on 25 November 1998, in order to sign a declaration relating to the draft agreement (“Priština Declaration”).³⁷⁷

187. This draft agreement was the culmination of the negotiation process that began in March of 1998, but which was continuously boycotted by the Kosovo Albanians. It was signed by the Serbian Government delegation, the representatives of the two Kosovo Albanian political parties, and the representatives of other ethnic communities that took part in formulating the provisions of that agreement. According to Ratko Marković, the reason behind Milutinović’s involvement in negotiating and drafting this agreement lay in the fact that he was the only person who embodied the state of the Republic of Serbia.³⁷⁸

188. On 20 November, prior to the signing of the Priština Declaration, 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. They agreed that the political solution should be based in its entirety on the Holbrooke-Milošević Agreement. Democratic self-government within the framework of the FRY and Serbian Constitutions was emphasised.³⁷⁹ On 23 November 1998 Milutinović met with Christopher Hill. Also attending were Ratko Marković and Vladan Kutlešić, a personal envoy of Slobodan Milošević. The men discussed the negotiations of 18 and 19

³⁷⁵ Jovan Kojić, 1D741 (witness statement dated 27 July 2007), paras. 37, 82; 1D624 (Letters Sent by Milutinović on 20 November 1998). Kojić testified that only Adem Demaqi replied and this showed Kojić that Albanian leaders had “no desire to reach any agreement”. Jovan Kojić, T. 13744–13745 (16 August 2007).

³⁷⁶ Jovan Kojić, T. 13746–13747 (16 August 2007).

³⁷⁷ 1D603 (Milan Milutinović’s Press Statement, 20 November 1998); 1D620 (Declaration by the Signatories to the Agreement, 25 November 1999); 1D624 (Letters sent by Milutinović on 20 November 1998); 1D577 (List of invitees to 25 November negotiations); 1D91 (Joint Draft Agreement on the Political Framework of Self-Government in Kosovo, 20 November 1998) also admitted as 1D619; 1D18 (Marc Weller, *The Crisis in Kosovo 1989–1999*), e-court p. 372. *See also* 1D754 (Kojić’s Supplemental Information Sheet), para. 7.

³⁷⁸ Ratko Marković, T. 13522–13524 (14 August 2007).

³⁷⁹ 1D602 (Milan Milutinović’s Press Statement, 20 November 1998).

November and the resulting agreement. It was then agreed that a broad self-government, based on the equality of ethnic communities in Kosovo, was the “main pillar for a political solution”.³⁸⁰

189. Following the signing of the Priština Declaration, Milutinović met with the signatories again on 9 December 1998. On the Serbian side, in addition to Milutinović, also present were Ratko Marković, Šainović, and Vojislav Šešelj. The aim of the meeting was to continue negotiations on further activities for reaching a political solution in Kosovo. Participants discussed the latest “Hill draft” presented on 2 December and rejected it, as it departed significantly from the draft agreement negotiated on 18 and 19 November.³⁸¹ The Hill draft had already been rejected the day before by Adem Demađi, who in his press statement criticised Hill and Holbrooke for taking sides with the Serbs. He acknowledged that the Kosovo Albanian delegation never came up with any proposals that would preclude the ultimate goal of an independent Kosovo and stated that it was his mission “to unite the Albanians, so that ‘we be united in force and politics and create our state.’”³⁸²

190. The Chamber recalls here its finding in Section V that the positions of the two parties were always so far apart that it was extremely difficult to imagine agreement ever being reached. The voluminous evidence showing the unwillingness of the leading representatives of the Kosovo Albanians to meet the FRY/Serbian negotiators clearly illustrates an absence of desire to find a solution that would involve an ongoing link between Kosovo and Serbia. On the other hand, the Serbian authorities’ stance was firmly against Kosovo’s independence. Against that background, particularly in light of the refusal of the Kosovo Albanians to negotiate and the evidence of Petritsch, it cannot be concluded that Milutinović, who participated so actively in the negotiation process and appeared to be willing to meet the leading representatives of the Kosovo Albanians, was obstructing any genuine attempt at a solution.

e. Milutinović as a negotiator with the international community

191. As with negotiations with Kosovo Albanians, the Prosecution alleges that Milutinović exhibited an obstructive attitude during his interactions with international representatives. Furthermore, even when agreements were reached, he continued to obstruct their implementation.³⁸³ The Defence, on the other hand, argues that Milutinović’s presence at the

³⁸⁰ 1D604 (Milan Milutinović’s Press Statement, 23 November 1998).

³⁸¹ See 1D605 (Milan Milutinović’s Press Statement, 9 December 1998).

³⁸² 1D18 (Marc Weller, *The Crisis in Kosovo 1989–1999*), e-court pp. 372–379.

³⁸³ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 595.

meetings with international representatives was consistent with his constitutional role as a representative of the state unity of Serbia.³⁸⁴

192. It is not disputed that Milutinović attended meetings with various representatives of the international community. General Klaus Naumann—the chairman of the NATO military committee at the time—gave evidence that, between October 1998 and January 1999, he and Wesley Clark attended three meetings with Milošević, during which Milutinović was present. The first such meeting took place on 15 October 1998, and included Perišić 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, and this was done. Milošević was also told of the use of disproportionate force but rejected the allegations.³⁸⁵ The meeting lasted approximately five hours, and the majority of talking was done by Solana and Milošević. According to Naumann, Milošević inquired as to the number of forces in Kosovo and was told by Perišić that the NATO intelligence reports regarding the excessive numbers of VJ troops were accurate. Naumann also 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 was serious and that there was no more time left to play games.³⁸⁶

193. Milutinović was present at a similar meeting on 24 October 1998, together with Perišić, Šainović, and a number of MUP officials. 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 denied the use of disproportionate force, including the accusation that it was used against civilians.³⁸⁷

194. Following this meeting, a number of technical meetings took place with a larger delegation, which included Shaun Byrnes of US-KDOM.³⁸⁸ The FRY side consisted of Milutinović, Šainović, and various military and police officers, including Lukić, Obrad Stevanović, and Vlastimir Đorđević. The meeting focused on the number of forces that should be present in Kosovo.³⁸⁹

³⁸⁴ Milutinović Final Trial Brief, 15 July 2008, para. 175.

³⁸⁵ Klaus Naumann, T. 8247–8248 (13 December 2006), P1767 (notes of OTP interviews), paras. 3–4; P2512 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 6965–6973.

³⁸⁶ Klaus Naumann, P1767 (notes of OTP interviews), paras. 5–7.

³⁸⁷ Klaus Naumann, T. 8249–8251 (13 December 2006), P1767 (notes of OTP interviews), paras. 11–13; P2512 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 6974–6980.

³⁸⁸ Shaun Byrnes, T. 12142, 12155–12157 (16 April 2007).

³⁸⁹ Klaus Naumann, P1767 (notes of OTP interviews), paras. 14–16; P2512 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 6980–6981; Rade Čučak, T. 14933–14934 (4 September 2007).

According to Naumann, Milutinović was not terribly active during the technical negotiations.³⁹⁰ However, Byrnes, during his evidence, thought, but was not sure, that Milutinović chaired the plenary of some 30 to 40 people, before they were split into two groups in order to discuss two distinct issues.³⁹¹ Later the same day, on the advice of Perišić, the NATO representatives met again with Milošević, in the presence of the “same group of people”. For over two hours pressure was put on Milošević. Having talked to his advisors—including Milutinović and Perišić—he agreed to meet the NATO demands and asked that the details of the agreement be negotiated with Milutinović, Perišić, and Đorđević. These negotiations lasted some six hours and, at 5:00 a.m. on 25 October, the agreement was framed in a manner which Milutinović was prepared to take to Milošević.³⁹² All parties then met with Milošević at 10:00 a.m. on 25 October 1998 and, according to Naumann, he and Clark had great difficulty in persuading Milošević to sign it. Milošević eventually signed it, after consulting with Milutinović.³⁹³ Several days later, on 5 November 1998, when reporting on, and clarifying the terms of, the Holbrooke-Milošević Agreement, Milutinović told those attending a MUP Staff meeting in Kosovo,

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). The police and the Army shall reserve the right to continue to intervene if they are attacked.³⁹⁴

According to the Prosecution, the words he uttered at this meeting show that he was in fact intent on obstructing the October Agreements.³⁹⁵

195. The third meeting between Clark, Naumann, and Milošević took place on 19 January 1999, following the Račak/Rečak incident. Other participants included Milutinović and Šainović. Its purpose was to warn Milošević that there should be no repetition of this kind of action, to persuade him to return to the terms of the October Agreements, and to persuade him to agree to Tribunal Prosecutor Louise Arbour coming into Kosovo and investigating the incident. Milošević was also provided with a list of five to ten incidents that had been observed by the KVM where

³⁹⁰ Klaus Naumann, P2561 (supplemental information sheet dated 7 December 2006), e-court p. 1.

³⁹¹ Shaun Byrnes, T. 12155–12157 (16 April 2007).

³⁹² Klaus Naumann, T. 8251–8252 (13 December 2006) P1767 (notes of OTP interviews), paras. 17–21, P2512 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 6981–6984.; P395 (Clark-Naumann Agreement, 25 October 1998). According to Milorad Obradović—a VJ General 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. Milorad Obradović, T. 14933–14936 (4 September 2007), 15121–15122 (6 September 2007). See also P928 (Minutes of the Collegium of the VJ General Staff, 30 December 1998), p. 17; Rade Čučak, T. 14934–14936 (4 September 2007).

³⁹³ Klaus Naumann, T. 8252–8253 (13 December 2006), P1767 (notes of OTP interviews), paras. 22–23; P2512 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 6985–6989.

³⁹⁴ P2805 (Minutes of Meeting at MUP Staff in Priština/Prishtina, 5 November 1998), p. 4.

disproportionate force had been used. In response, Milošević denied the allegations relating to Račak/Rečak and accused the international community and Walker of being “biased”. He then made counter-proposals relating to Louise Arbour’s entry into Kosovo but, when contacted by Clark, she found them unacceptable as she was not allowed unrestricted access.³⁹⁶

196. Naumann testified that, during all three meetings described above, Milošević was the one making decisions and was the final authority in the country.³⁹⁷ Milutinović and Šainović never interrupted or corrected Milošević and, at the January meeting, it was Šainović who appeared to be Milošević’s closest advisor.³⁹⁸

197. Aside from these meetings with the NATO representatives, the Chamber also heard that Milutinović attended a meeting between Michael Phillips, of the OSCE, and FRY President Milošević on 24 November 1998. According to Phillips, the purpose of this meeting was to discuss the issue of co-operation problems. Phillips testified that the meeting was attended by Milošević, Šainović, Milutinović, Ambassador Miles, and Walker.³⁹⁹ His impression during this meeting was that Milošević was responsible for making security force decisions, which Šainović was then to implement in Kosovo.⁴⁰⁰ As far as Milutinović was concerned, he sat next to Milošević; the two would exchange words in Serbian after which Milutinović would turn to Šainović and say something to him also in Serbian.⁴⁰¹

198. During cross-examination, however, the Defence inquired about the fact that there was no record of the 24 November 1998 meeting in Phillips’s diary. Phillips remained adamant, however, that the meeting did take place. The Defence then put to him that his personal diary records that he attended a dinner in Priština/Prishtina on 24 November 1998, together with Šainović, Lončar, Drewienkiewicz, and Walker. Phillips explained that he was sure that there was a meeting with Milošević in November 1998 and that Milutinović was present.⁴⁰² After further cross-examination, however, Phillips acknowledged that there was a possibility that Milutinović was not present at this meeting.⁴⁰³ On re-examination Phillips explained that he was confused about the dates but that he was certain that there was a meeting with Milošević at which Milutinović was present, and that it

³⁹⁵ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 595.

³⁹⁶ Klaus Naumann, T. 8268–8271 (13 December 2006), P1767 (notes of OTP interviews), paras. 30–38, P2512 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 6998–7009.

³⁹⁷ Klaus Naumann, P1767 (notes of OTP interviews), para. 42.

³⁹⁸ Klaus Naumann, P2561 (supplemental information sheet dated 7 December 2006), e-court pp. 1, 2.

³⁹⁹ Michael Phillips, T. 11841–11842 (19 March 2007).

⁴⁰⁰ Michael Phillips, T. 11843 (19 March 2007).

⁴⁰¹ Michael Phillips, T. 11843–11844 (19 March 2007).

⁴⁰² Michael Phillips, T. 11858–11861 (19 March 2007); 2D17 (Extracts from Phillips’s Notebook).

⁴⁰³ Michael Phillips, T. 11862 (19 March 2007).

possibly happened on 4 December 1998. He said that Milutinović spoke little during the meeting.⁴⁰⁴ This re-examination prompted further cross-examination where Phillips again expressed uncertainty as to whether Milutinović was present at any of the meetings in question.⁴⁰⁵ Given the level of uncertainty that he exhibited, the Chamber is unable to rely on his evidence that Milutinović participated in any meeting with Phillips. Indeed, this uncertainty on behalf of Phillips would suggest that he was not concerned with what Milutinović was doing at the time.

199. The Chamber also heard evidence from Knut Vollebaek who was the OSCE Chairman-in-Office in 1999.⁴⁰⁶ He met with Milošević on three separate occasions in 1999: on 11 January 1999, around 21 January 1999, and on 1 March 1999. They also had a telephone conversation on 24 March 1999.⁴⁰⁷ He stated that those meetings were always attended by a number of other people, including, on occasion, Milutinović. When asked how many of these meetings Milutinović actually attended, he was unable to recall because his attention was always turned to Milošević who was the “main actor”.⁴⁰⁸ According to Vollebaek, Milutinović would generally be very supportive of Milošević in the meetings. He did not address Vollebaek often but made comments to him now and again. According to Vollebaek, Milutinović’s facial expressions clearly showed disdain for him.⁴⁰⁹

200. The evidence summarised above of the meetings Milutinović had with the representatives of NATO and the KVM shows that he did not take an active role during the same and never stood out as somebody who had much influence or involvement in the discussions. All the witnesses who testified about these meetings were of the view that Milošević was in total control and that Šainović was the next in line. In addition, some witnesses, such as Phillips and Vollebaek, could not even say with certainty if Milutinović was present or not during some of the meetings.

201. As for the allegation of his obstructive attitude towards the implementation of the October Agreements, the Chamber recalls its earlier finding that there was a general reluctance on behalf of the FRY/Serbian leadership to accept foreign troops on its territory.⁴¹⁰ However, even bearing that in mind, Milutinović’s statement at the 5 November meeting is not necessarily illustrative of his support for breaches of the October Agreements. This meeting took place several days after the

⁴⁰⁴ Michael Phillips, T. 12002–12004 (20 March 2007).

⁴⁰⁵ Michael Phillips, T. 12010–12013 (20 March 2007).

⁴⁰⁶ Knut Vollebaek, P2634 (witness statement dated 8 January 2002), para. 5.

⁴⁰⁷ Knut Vollebaek, P2634 (witness statement dated 8 January 2002), para. 18, P2632 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 7644–7646.

⁴⁰⁸ Knut Vollebaek, T. 9505, 9512 (31 January 2007), P2632 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 7655–7656.

⁴⁰⁹ Knut Vollebaek, T. 9509 (31 January 2007), P2634 (witness statement dated 8 January), paras. 23, 39.

⁴¹⁰ See Section VI.D.

international community had commended the FRY/Serbian authorities for withdrawing their units in accordance with the deadlines devised in the October Agreements.⁴¹¹ Thus, Milutinović's statement that everything would remain as it was up until that date, including the already reduced MUP forces and non-withdrawal of the VJ forces, could equally have referred to the compliance already achieved by that date. It should also be remembered that the October Agreements allowed for continued presence of the VJ at the border belt, for three VJ companies to continue patrolling three major roads in Kosovo, and for a number of other VJ troops to remain in Kosovo, albeit in their barracks. Finally, Milutinović's point that the forces reserved their right to defend themselves was also in line with the October Agreements which contained a provision for self defence. Accordingly, the Chamber is not satisfied that the purpose of Milutinović's visit to the MUP Staff in Kosovo was to encourage MUP officials to breach the October Agreements as alleged by the Prosecution.

f. Milutinović in Rambouillet and Paris

202. As with other negotiations in which he was involved, the Prosecution alleges that Milutinović showed an obstructionist attitude during the talks at Rambouillet and Paris.⁴¹² The Milutinović Defence, on the other hand, argues that the evidence demonstrates that allegations concerning Milutinović's conduct in Rambouillet and Paris are baseless and incorrect. He was present at the negotiations because of his experience in politics and diplomacy, and he used his best efforts to find a peaceful solution to the problems in Kosovo.⁴¹³

203. As discussed in Section V, Milutinović arrived at the negotiations in Rambouillet around 10 or 11 February 1999, several days after they had started. According to Wolfgang Petritsch, one of the three main international negotiators, Milutinović appeared to serve as the delegation's *de facto* spokesperson, the same role he played during the internal negotiations.⁴¹⁴ Ratko Marković, who was head of the Serbian delegation, testified that Milutinović attended the meetings on his own initiative because, in his capacity as the President, he wanted to represent the Republic of Serbia.⁴¹⁵

⁴¹¹ 2D10 (Excerpt from Marc Weller, *The Crisis in Kosovo 1989–1999*); Karol John Drewienkiewicz, T. 7885–7886 (5 December 2006). *See also* John Crosland, T. 9869 (8 February 2007); 6D1669 (Report of U.S. Embassy in Belgrade re compliance of FRY/Serbia with October agreements, 1 November 1998).

⁴¹² Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 596–598.

⁴¹³ Milutinović Final Trial Brief, 15 July 2008, paras. 183, 200, 225.

⁴¹⁴ Wolfgang Petritsch, T. 10848 (1 March 2007), P2792 (witness statement dated 9 June 1999), p. 3, P2793, (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T.7221. *See also* Ratko Marković, T. 13222 (9 August 2007).

⁴¹⁵ Ratko Marković, T. 13194 (9 August 2007); 13541 (14 August 2007).

Veton Surroi, a member of the Kosovo Albanian delegation, stated that Milutinović would come every now and then from Belgrade but was not seen to be directly involved in the negotiations.⁴¹⁶

204. A number of dispatches prepared by the Austrian Embassy in Belgrade and sent to the Austrian Foreign Affairs Office in Vienna, which reported on the progress of the Rambouillet negotiations, were admitted into evidence.⁴¹⁷ According to one such dispatch, on 16 February 1999, 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.⁴¹⁸ Subsequently, on 18 February 1999, Milutinović met with Hill 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 thus wanted to speak to him in order to achieve an agreement as quickly as possible. This meeting, however, was recorded as having a negative outcome and being "absolutely unproductive", because the most contentious issues, such as the military aspects of the agreement, remained open. Following the meeting Milutinović took a more active stance during the remainder of the negotiations at Rambouillet.⁴¹⁹ However, without having heard from Hill on this matter, it is difficult to regard this as reflecting obstruction by Milutinović against the background of all the evidence of his conduct.

205. Petritsch testified that, on 19 or 20 February 1999, Milutinović told the international negotiators that the proposed political aspects of the agreement were acceptable to the FRY delegation. On 23 February Marković signed a letter, which Milutinović allegedly drafted, confirming this willingness to discuss the "the scope and character of international presence" in Kosovo.⁴²⁰ This attitude was consistent with what was expressed in a press conference given by Milutinović on the same day, where the delegation's willingness to accept the political agreement from Rambouillet was repeated. Milutinović there 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".⁴²¹ At the same time, he criticised extensively the way in which the negotiations were organised and mentioned "strong external pressures" on the FRY/Serbian delegation. He also

⁴¹⁶ Veton Surroi, T. 4544, 4547–4548 (10 October 2006).

⁴¹⁷ Wolfgang Petritsch, T. 10712 (28 February 2007).

⁴¹⁸ Wolfgang Petritsch, T. 10718 (28 February 2007); P2661 (Austrian Embassy Dispatch, 18 February 1999), p. 1.

⁴¹⁹ Wolfgang Petritsch, T. 10724 (28 February 2007); P563 (Austrian Embassy Dispatch, 19 February 1999), p. 2.

⁴²⁰ Wolfgang Petritsch, T. 10748 (1 March 2007), T. 10874–10875 (2 March 2007), P2792 (witness statement dated 9 June 1999), p. 4; Ratko Marković, T. 13209 (9 August 2007), T. 13562–13563 (14 August 2007); P625 (Marković's letter to Petritsch, Hill, Mayorski, 23 February 1999), also admitted as 1D582.

referred to the Kosovo Albanian delegates as having refused to meet with the FRY/Serbian delegation and as having “ruined many things”.⁴²² However, Milutinović concluded the statement by saying that beginning these talks was beneficial and that the Serbian side was in favour of a peaceful solution and “a truly extended autonomy” of Kosovo.⁴²³ The talks were then to be resumed on 14 March in Paris.

206. After the formal close of the Rambouillet negotiations, a meeting was held on 2 March 1999 between Hill on one side and Milutinović, Šainović, and Vuk Drašković on the other, after which Milutinović’s Office issued a statement. The only evidence before the Chamber relating to that statement is a KVM report which Vollebaek said was not accurate and which the Chamber will therefore ignore.⁴²⁴

207. Ratko Marković confirmed that several days later, on 5 March 1999, he and Milutinović held a meeting with the FRY/Serbian delegation and that, following this meeting, the delegation was prepared to continue with talks.⁴²⁵ Petritsch, on the other hand, testified that on 5 March Milutinović issued a public statement which clearly indicated a change of attitude of the FRY/Serbian delegation in regard to the Rambouillet process.⁴²⁶ On the same day, Marković and Milutinović sent letters to Madeleine Albright, Hubert Vedrine, Joschka Fischer, Robin Cook, and others, complaining of 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.”⁴²⁷ According to Petritsch, this illustrated a complete change in attitude of the FRY/Serbian delegation in the interim

⁴²¹ Ratko Marković, T. 13215 (9 August 2007); 1D586 (Press Conference held by Milutinović in Paris, 23 February 1999), p. 1.

⁴²² 1D586 (Press Conference held by Milutinović in Paris, 23 February 1999), p. 1.

⁴²³ 1D586 (Press Conference held by Milutinović in Paris, 23 February 1999), p. 3.

⁴²⁴ P461 (OSCE Daily Report, 2 March 1999); Knut Vollebaek, T. 9519–9520 (31 January 2007).

⁴²⁵ Ratko Marković, T. 13219–13220 (9 August 2007).

⁴²⁶ Wolfgang Petritsch, T. 10758 (1 March 2007).

⁴²⁷ 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 session of the National Assembly, 23 March 1999), p. 8.

period before the Paris talks as it provided that the political aspect of the agreement had not been adopted.⁴²⁸

208. Petritsch further testified that on 8 March 1999 he met with Milošević and Milutinović in Belgrade, in the presence of other foreign aides, including the FRY Foreign Minister Živadin Jovanović, and German Foreign Minister Joschke Fischer. While Milošević and Fischer retired to another room to have a private meeting, Petritsch attempted to speak to Milutinović, but the latter refused to discuss the details of the political parts of the agreement on which the Serbian delegation had earlier shown willingness to compromise. According to Petritsch, this meeting was another indication that the Serbian side would not accept the deal.⁴²⁹ In this context, Petritsch expressed the opinion that, after Milošević, he considered Milutinović to be the most to blame for the events in Kosovo, as Milutinović was most supportive of Milošević's policies and most vociferous in defending those policies.⁴³⁰

209. The talks conducted in Paris, beginning on 14 March 1999, were attended by Milutinović from the outset. Petritsch testified that Milutinović was much more involved in these negotiations than he was in Rambouillet, and that it was clear that he came with instructions from Milošević. These instructions, according to Petritsch, were that the FRY/Serbian delegation should refuse to accept any aspect of the peace deal and backtrack on the compromise agreed to in February.⁴³¹ However, the Chamber notes that, on 16 March 1999 Milutinović issued a press statement in Paris, stating that the Serbian delegation was prepared to accept the political part of the agreement if the objections raised by it the day before were accepted. These objections related to an attempt by the international negotiators to include additional chapters in the political agreement already agreed upon at Rambouillet. He also stated that the agreement had to be signed first 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.⁴³² According to Ratko Marković, this press release was consistent with Milutinović's statement given in Rambouillet on 23 February 1999.⁴³³

⁴²⁸ Wolfgang Petritsch, T. 10758 (1 March 2007).

⁴²⁹ Wolfgang Petritsch, T. 10758 (1 March 2007), P2792 (witness statement dated 9 June 1999), p. 5, P2793 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 7234–7237.

⁴³⁰ Wolfgang Petritsch, P2792 (witness statement dated 9 June 1999), p. 5.

⁴³¹ Wolfgang Petritsch, T. 10929–10930 (2 March 2007), P2792 (witness statement dated 9 June 1999), p. 5, P2793 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 7237–7238. Veton Surroi also testified that he was told by one of the negotiators that Milutinović told the negotiators he “could not make any decisions without his boss”. See Veton Surroi, P2361 (witness statement dated 27 August 2001), p. 8.

⁴³² 1D587 (Milan Milutinović's Press Statement, 16 March 1999); 1D32 (Minutes of the session of the National Assembly, 23 March 1999), pp. 7–9.

⁴³³ Ratko Marković, T. 13222 (9 August 2007).

210. Following the eventual collapse of the Paris talks, the FRY/Serbian delegation went back to Belgrade and provided a report to the Serbian National Assembly during the session held on 23 March 1999.⁴³⁴ In addition to the delegation's report, Milutinović addressed the National Assembly and expressed his own views on the Rambouillet/Paris talks, which, according to Marković, provided an objective account of the situation at the talks. He stated that the delegation, given the circumstances, did as much as it could. Milutinović informed the National Assembly that the FRY/Serbian delegation at the Rambouillet and Paris talks had been subjected to a great deal of pressure to accept the presence of international forces on the ground in Kosovo. Indeed, he asserted that the option presented to them was "troops or bombardment", and described the entire negotiation process as otherwise a farce.⁴³⁵ After debating the report by the FRY/Serbian delegation to the Rambouillet and Paris talks, the National Assembly universally adopted conclusions approving of the delegation's actions and condemning the NATO threat. These conclusions were published in the Official Gazette.⁴³⁶

211. Petritsch testified that, during the Rambouillet and Paris talks, Milutinović was the fiercest critic of the negotiation process, someone who was very negative and very cynical during the negotiations.⁴³⁷ Veton Surroi testified that he was told by one of the negotiators that, at one point during the negotiations in Paris, Milutinović told the negotiators that he could not make any decisions "without his boss".⁴³⁸

212. Ratko Marković assessed Milutinović's role in the negotiations differently. According to him, Milutinović never obstructed the negotiations in Rambouillet or Paris, but rather tried to enhance the process.⁴³⁹ In addition, Milutinović always supported the solution of the Kosovo crisis through a political dialogue between the two sides.⁴⁴⁰ Marković testified that, in each and every statement, the FRY/Serbian delegation underlined that the Kosovo question could only be resolved by getting all the ethnic minorities to agree.⁴⁴¹ When asked if Milutinović misled the National

⁴³⁴ Ratko Marković, T. 13228–13229 (9 August 2007); 1D32 (Minutes of the session of the National Assembly, 23 March 1999).

⁴³⁵ 1D32 (Minutes of the session of the National Assembly, 23 March 1999), pp. 29–30. *See also* Ratko Marković, T. 13576 (14 August 2007).

⁴³⁶ Ratko Marković, T. 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).

⁴³⁷ Wolfgang Petritsch, P2793 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 7228; *see also* Ratimir Tanić, T. 6479–6480 (14 November 2006).

⁴³⁸ Veton Surroi, P2361 (witness statement dated 27 August 2001), p. 8.

⁴³⁹ Ratko Marković, T. 13225 (9 August 2007).

⁴⁴⁰ Ratko Marković, T. 13225–13226 (9 August 2007).

⁴⁴¹ Ratko Marković, T. 13226–13227 (9 August 2007).

Assembly on 23 March 1999, Marković responded that his speech simply reflected what had happened at the talks.⁴⁴²

213. The Chamber recalls here its earlier finding that all sides were ultimately to blame for the failure of the negotiations at Rambouillet.⁴⁴³ Thus, the evidence of Milutinović's criticisms of the process in the later stage of the negotiations does not necessarily lead to the conclusion that he did not want to achieve an agreement and avoid the NATO threat. The evidence above, especially when combined with the evidence discussed earlier in Section V, also indicates that the decision on whether to accept the agreement was ultimately in Milošević's hands and that, therefore, neither Milutinović nor Šainović had the power to make a decision to the contrary. Accordingly, the Chamber is not satisfied that the evidence led shows that Milutinović personally exhibited an obstructive attitude aimed at ensuring their failure. The evidence is equally open to the interpretation that he was endeavouring to secure a deal that would be accepted by the FRY/Serbian authorities.

g. Milutinović's dealings with Rugova

214. The Prosecution alleges that in 1999, during the NATO bombing, Milutinović was aware of various crimes taking place in Kosovo, partly through his dealings with Ibrahim Rugova, the Head of the LDK.⁴⁴⁴ Furthermore, the Prosecution contends that Milutinović's meetings with Rugova, rather than being genuine attempts to reach an agreement, were "part of a propaganda campaign to divert attention from crimes being committed" and to discredit Rugova in the eyes of the Kosovo Albanian population.⁴⁴⁵ The Defence, on the other hand, argues that Milutinović's meetings with Rugova were genuine attempts to restore peace and renew efforts to obtain an agreement on self-government in Kosovo.⁴⁴⁶

215. It is not disputed that Milutinović and Rugova held a meeting in Priština/Prishtina on 28 April 1999, in which Ratko Marković also participated. Marković testified that the meeting unfolded in a constructive atmosphere. At its end, Milutinović and Rugova signed a joint statement in which they emphasised the need to renew and intensify immediately the discussions begun between the Government of the Republic of Serbia and the political leaders of the Albanian political parties in Kosovo. They also agreed on the need to establish, under changed conditions, a

⁴⁴² Ratko Marković, T. 13229–13230 (9 August 2007).

⁴⁴³ See Section V.

⁴⁴⁴ Indictment, para. 39(b).

⁴⁴⁵ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 591.

⁴⁴⁶ Milutinović Final Trial Brief, 15 July 2008, paras. 272–276.

provisional executive council, which would perform the function of a provisional government until the establishment of organs.⁴⁴⁷

216. Evidence about this meeting was also contained in a written witness statement from Rugova, now deceased, which was prepared for the purposes of the *Milošević* trial, as well as the transcript of his testimony in that case.⁴⁴⁸ In addition, the Chamber heard from Rugova's personal secretary, Adnan Merovci.⁴⁴⁹ Both men gave a slightly different account of this meeting to the one given by Marković.⁴⁵⁰

217. Both Rugova and Merovci testified that they were under house arrest from 31 March 1999, during which period Rugova was essentially forced to meet, first with Milošević, then with Šainović, and then with Ratko Marković and Šainović together.⁴⁵¹ According to Merovci, on 13 April 1999 Šainović came to Rugova's house and suggested that Rugova meet Milutinović. Merovci said that, since by that stage they had come to realise that resisting these meetings was pointless, Rugova agreed to the meeting. Rugova himself stated that he only consented to the meeting because the people arranging were insistent and were becoming aggressive. On 16 April 1999 Rugova and Merovci were driven to Belgrade, to the Presidency building, where they met with Milutinović and Šainović. Journalists and photographers were awaiting their arrival.⁴⁵² Merovci testified that, during the meeting, Milutinović talked about complete unity in the Government and that he took exception to Rugova being called the President of Kosovo when there was no such position under the FRY or the Serbian Constitution.⁴⁵³ According to Rugova, Milutinović led the discussion during the meeting.⁴⁵⁴ When Rugova told Milutinović about the forced displacements, violence, and oppression in Kosovo, Milutinović replied that this was the fault of the international community. In the course of this meeting the three issued an unsigned

⁴⁴⁷ Ratko Marković, T. 13234–13235 (9 August 2007); Jovan Kojić, 1D741 (witness statement dated 27 July 2007), para. 48; P416 (Signed Joint Declaration by Rugova and Milutinović, 28 April 1999).

⁴⁴⁸ Ibrahim Rugova, P2613 (witness statement dated 24 April 1999); P2612 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T).

⁴⁴⁹ Adnan Merovci, P2588 (witness statement dated 12 April 2000).

⁴⁵⁰ Ibrahim Rugova, P2613 (witness statement dated 24 April 1999); Adnan Merovci, P2588 (witness statement dated 12 April 2000), para. 17.

⁴⁵¹ Ibrahim Rugova, P2613 (witness statement dated 24 April 1999), p. 9; P2612 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 4225–4226; Adnan Merovci, P2588 (witness statement dated 12 April 2000), paras. 52–66.

⁴⁵² Adnan Merovci, T. 8464–8465 (16 January 2007), P2588 (witness statement, 12 April 2000), para. 68; 1D60 (Video Footage of 16 April 1999 Meeting); Ibrahim Rugova, P2613 (witness statement dated 24 April 1999), p. 11; P2612 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 4234–4235. *See also* Ljubivoje Joksić, T. 21993 (8 February 2008).

⁴⁵³ Adnan Merovci, T. 8465–8467 (16 January 2007), P2588 (witness statement dated 12 April 2000), para. 68.

⁴⁵⁴ Ibrahim Rugova, P2613 (witness statement dated 24 April 1999), p. 11; P2612 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 4234–4235.

press release. In it Rugova wrote that Belgrade had to accept the terms of the international community.⁴⁵⁵

218. The next meeting took place on 28 April 1999 in Priština/Prishtina, and involved Rugova, Merovci, Milutinović, Šainović, Anđelković, and Ratko Marković. During the meeting Milutinović said that he saw the damage in Priština/Prishtina caused by NATO, but could not understand why people were leaving the city. Merovci then told Milutinović that people were leaving because they were being forced out of their homes and that uniformed Serbian men were to blame. According to Merovci, Milutinović then turned to Šainović and asked if this were true. The latter did not respond but gave an expression of surprise. During the meeting it became clear to Merovci that the FRY/Serbian side was moving towards letting him and Rugova go abroad. Merovci had earlier told Milošević personally at one of the initial meetings that they wanted to leave Kosovo in order to be able to consult Rugova's aides and colleagues who were already abroad. When asked directly about this, Milutinović said that he needed 24 hours before he could give Merovci an answer. Thirty hours later, Merovci received a phone call and was told that they would have to meet Milošević again in order to resolve the issue.⁴⁵⁶ Merovci was cross-examined about this meeting with Milutinović and was shown video footage of Milutinović and Rugova giving statements to journalists afterwards. Rugova there spoke of the new trust between the two sides and a desire to form new bodies for the self-government of Kosovo. Merovci remained adamant that these meetings were staged for publicity purposes and that Rugova had no choice but to attend them.⁴⁵⁷

219. In his statement and testimony in the *Milošević* case, Rugova also confirmed that, at the end of April 1999, Milutinović came to Priština/Prishtina, where the two men met. At the "request of Belgrade", the parties issued a signed document stating that direct discussions between the Serbian government and Albanian political parties in Kosovo must be renewed and intensified so that a political agreement could be reached, whereby Kosovo would be given extensive self-government, all citizens would be equal, and the sovereignty and territorial integrity of Yugoslavia would be respected.⁴⁵⁸ Furthermore, the statement noted that an agreement had been reached to establish a provisional executive council in Kosovo, which would function as a provisional government.⁴⁵⁹ Rugova stated that he did not want to sign this statement, and was not involved in its drafting, but

⁴⁵⁵ 1D607 (Milan Milutinović's Press Statement, 16 April 1999); P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4235. Rugova believed that Šainović was the government official most responsible for Kosovo and had "real authority". Several times during the NATO bombing, Šainović told Rugova that he had to meet with somebody, including Milutinović. See Ibrahim Rugova, P2613 (witness statement dated 24 April 1999), p. 12; P2612 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 4236.

⁴⁵⁶ Adnan Merovci, T. 8468–8474 (16 January 2007), P2588 (witness statement dated 12 April 2000), paras. 58–59, 72.

⁴⁵⁷ Adnan Merovci, T. 8502–8509 (17 January 2007). See also Ljubivoje Joksić, T. 21993–21995 (8 February 2008).

⁴⁵⁸ Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 4236–4237.

eventually relented.⁴⁶⁰ He also noted that, at the time the statements were made, he felt like a prisoner.⁴⁶¹ Rugova concluded that he believed that the purpose of these meetings and the issued statements was to foment political conflicts within the Kosovo Albanian community and discredit him in the eyes of the Kosovo Albanian public.⁴⁶²

220. Milutinović himself spoke of this last meeting during his interview with the Prosecution, and confirmed that Rugova visited him in Belgrade. Milutinović also asserted that Rugova asked him for help in leaving the country because he was in physical danger from other Kosovo Albanians.⁴⁶³ It was put to Milutinović that the visit was against Rugova's will. Milutinović denied this suggestion and reiterated that there had been an attempt to assassinate Rugova by the Kosovo Albanian opposition which is why Rugova wanted to join other members of his party who had left the country. Milutinović asserted that Rugova never mentioned that he was attending this meeting against his free will. During the meeting he even gave Milutinović a present.⁴⁶⁴ Milutinović also stated that, once Rugova expressed his desire to go to Italy, Milutinović personally called the Italian foreign minister to make arrangements for this. As a result, the Italians accepted Rugova and sent a plane for him.⁴⁶⁵

221. The Chamber has earlier found that Rugova was indeed under house arrest in Priština/Prishtina in April 1999.⁴⁶⁶ However, unlike Šainović and Joksić who dealt with Rugova on a more regular basis and would visit his house, Milutinović's dealings with Rugova consisted of two meetings, one in Belgrade and one in Priština/Prishtina at the provincial building. The Belgrade meeting happened at a point when Rugova and Merovci realised that there would be no point in resisting those arranging the meetings. The Priština/Prishtina meeting then revolved around the organisation of Rugova's departure for Italy which was eventually procured by Milutinović. Accordingly, although it is possible that Milutinović had knowledge of Rugova's house arrest and the situation he was in, that is far from clear. The Chamber's impression is that these negotiations with Rugova amounted to a propaganda exercise designed to give the impression of ongoing attempts at negotiations with the Kosovo Albanians, with a view to procuring the cessation of the NATO bombing.

⁴⁵⁹ Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 4251.

⁴⁶⁰ Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 4251–4252.

⁴⁶¹ Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 4283.

⁴⁶² Ibrahim Rugova, P2613 (witness statement dated 24 April 1999), p. 12, P2612 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 4256.

⁴⁶³ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 41–45.

⁴⁶⁴ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 212–216.

⁴⁶⁵ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 40–41.

⁴⁶⁶ See Section VII.J.

3. Milutinović's position as a member of the SPS

222. The Prosecution alleges that, as a senior member of the SPS, Milutinović exercised influence over events in Kosovo and enforced policies set by Milošević.⁴⁶⁷ The Milutinović Defence, on the other hand, argues that Milutinović was only a member of the Main Board of the party, and not a member of the Executive Board, and that he never held any important positions in the party during the period relevant to the Indictment.⁴⁶⁸ The Chamber refers back to the findings relating to Milutinović's positions within the party and the fact that he was indeed a member of the Main Board.⁴⁶⁹

223. In order to assess Milutinović's involvement with the party, the Chamber has examined the minutes of several different meetings held by the SPS party and attended by Milutinović. For example, on 10 June 1998 he was present at the 16th session of the Main Board of the SPS, together with Milošević, Šainović, Anđelković, Minić, and Kertes, among others. It was at that meeting that the SPS decided to send Anđelković, Minić, and Matković to Kosovo in order to coordinate the political activity of the SPS in Kosovo. The minutes do not record that Milutinović spoke at this meeting.⁴⁷⁰

224. Dušan Matković, a member of the Working Group on Kosovo, testified that, on 25 June 1998, the Group went back to Belgrade for a meeting with Milošević, where they reported to Milošević, Milutinović, and Šainović on their talks with SPS members in Kosovo. According to Matković, Milutinović did not say anything during the meeting.⁴⁷¹

225. The Chamber also has in evidence the minutes of four SPS Executive Board meetings attended by Milutinović, not as a member but in his capacity as the President of Serbia. At the meeting of 22 September, it was concluded that the situation in Kosovo was getting back to normal.⁴⁷² In essence, this session represented a report and a summary of what had been done pursuant to the conclusions reached by the Main Board on 10 June 1998. From then on the Working Group's activities in Kosovo diminished.⁴⁷³

⁴⁶⁷ Indictment, para. 35(g).

⁴⁶⁸ Milutinović Final Trial Brief, 15 July 2008, para. 126.

⁴⁶⁹ See Section IV.

⁴⁷⁰ P1012 (Minutes of 16th session of Main Board of SPS, 10 June 1998), pp. 6–8.

⁴⁷¹ Duško Matković, T. 14590–14591 (29 August 2007), T. 14633–14634 (30 August 2007), P2913 (witness statement dated 10 February 2003), pp. 7–8. See also Milomir Minić, T. 14744–14745 (31 August 2007).

⁴⁷² Milan Jovanović, T. 14163–14165 (22 August 2007); 2D56 (Minutes of 88th session of SPS Executive Board, 22 September 1998).

⁴⁷³ Milan Jovanović, T. 14166–14167 (22 August 2007); 2D77 (Minutes of 89th session of the SPS Executive Board, 14 October 1998).

226. On 14 October 1998 Milutinović attended another Executive Board meeting where he made an opening statement and talked about the significance of the Holbrooke-Milošević Agreement, as well as about the tasks laying ahead. For the Executive Board, the arrival of the OSCE KVM meant that the threat of the use of force was removed for good.⁴⁷⁴

227. In the meeting of 27 October 1998, Milutinović, together with Šainović, Anđelković, Minić, and Živadin Jovanović, discussed the implementation of the Holbrooke-Milošević Agreement. They briefed those attending about the recent talks between Milošević and the international community regarding implementation of the Agreement. They then talked of the steps so far taken to implement the Agreement, and the responsibility of all state organs to continue doing so in an organised manner. Speakers warned of the possible negative consequences of adopting a lax attitude towards implementation, stressing the need to for all organs and institutions whose duty was to implement the Agreement urgently to take necessary steps and establish concrete plans. The Board then concluded that it was important to increase and strengthen the “Serbian national body in Kosovo” and emphasised the need to make the ultimate effort to “enter” the ranks of Albanian ethnic minority in order to get them involved in all aspects of life and work in Kosovo, as well as to re-establish mutual trust.⁴⁷⁵

228. Another Executive Board meeting attended by Milutinović took place on 3 June 1999. At that meeting Milutinović reported on the draft plan put forward by Chernomyrdin and Ahtisaari to end the NATO campaign. Milutinović gave a detailed explanation of, and commentary on, individual provisions of this plan. Following the meeting, the Executive Board instructed the SPS deputies in the National Assembly to support the plan.⁴⁷⁶

229. Milutinović was asked during his interview with the Prosecution if he had any private meetings with Milošević and others during the war. He acknowledged that there were a few meetings which included SPS members, usually small Executive Board meetings, and usually relating to supplies, the functioning of industry, and so on.⁴⁷⁷

230. Finally, the Prosecution places much reliance on a letter sent to Milutinović on 19 June 1998 by the President of the Provincial Board of the SPS in Kosovo, Vojislav Živković.⁴⁷⁸ In this letter, Živković outlined the position of the Serbs in Kosovo and suggested that all able bodied

⁴⁷⁴ Milan Jovanović, T. 14167–14168 (22 August 2007); 2D77 (Minutes of 89th session of the SPS Executive Board, 14 October 1998).

⁴⁷⁵ Milan Jovanović, T. 14169–14171 (22 August 2007); 2D88 (Minutes of 90th session of Executive Board of SPS, 27 October 1998), pp. 2, 3.

⁴⁷⁶ 2D259 (Minutes of 107th session of Executive Board of SPS, 3 June 1999), pp. 1–2.

⁴⁷⁷ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 101–103.

Serbs in the province be organised into formations, armed, and used to defend Kosovo. When shown this letter, Kojić stated that Milutinović, having read it, instructed the staff to file it, which they immediately did. This, according to Kojić, meant that nothing was done about it. Kojić explained that it was common knowledge that Milutinović was on bad terms with the entire SPS leadership in Kosovo because he had criticised them during the 1997 election campaign.⁴⁷⁹ Milan Jovanović, a senior member of the party who attended both Executive and Main Board meetings of the SPS, testified that arming of Serbian population was never discussed at any of these meetings and that the party line was clear: that sovereignty could not be defended individually and should be left to the police and the army.⁴⁸⁰ The Chamber recalls here its findings relating to the arming of the non-Albanian population in Kosovo and notes that the first order for such arming had already been issued already on 21 May 1998, before the letter in question.⁴⁸¹

231. Having reviewed the material referred to above, the Chamber notes that Milutinović was a member of the Main Board which consisted of up to 250 members of the SPS party.⁴⁸² In 1998 he also attended four meetings of the Executive Board, in his capacity as the President of the Republic and for the purpose of reporting on various international agreements concluded on behalf of the FRY. He further admitted to attending a few Executive Board meetings during the war, but stated that they concerned issues related to supplies and the functioning of industry during the bombing. The Chamber has, accordingly, been presented with very little evidence of Milutinović's influence within the party, or outside of it, and some unchallenged evidence indicating that he was on bad terms with SPS members in Kosovo.

4. Milutinović's relationship and dealings with the FRY President Milošević

232. The Prosecution alleges that Milutinović was a close confidante of Milošević and, in support of that proposition, relies primarily on Petritsch's evidence relating to negotiations in Paris.⁴⁸³

233. During his interview with the Prosecution, Milutinović explained that he did not have a close relationship with Milošević, and that he only ran for the Presidency of Serbia because the SPS needed a candidate who would challenge Vojislav Šešelj and his party. He also stated that, during

⁴⁷⁸ P2828 (Letter from Vojislav Živković to Milan Milutinović, 19 June 1998).

⁴⁷⁹ Jovan Kojić, 1D741 (witness statement dated 27 July 2007), para. 98.

⁴⁸⁰ Milan Jovanović, T. 14216–14218 (22 August 2007).

⁴⁸¹ P1259 (Order of the Priština Defence Administration, 21 May 1998), p. 1; Božidar Filić, T. 24013 (10 March 2008). *See also* Section VIII.B.

⁴⁸² *See* Section IV.

⁴⁸³ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 564–565.

the NATO campaign, he had many arguments with Milošević.⁴⁸⁴ Milutinović explained that 99 percent of the time Milošević worked with people on a one-on-one basis, implying thereby that he had no way of knowing what Milošević was discussing with other officials.⁴⁸⁵ According to Kojić, Milutinović would meet with Milošević about once a month in 1998.⁴⁸⁶ Milošević visited the President's Office twice, once in 1998 and once in 2000, in order to attend the receptions held on 28 March to celebrate Serbia's National Day.⁴⁸⁷

234. Milutinović was asked during his interview if, during the NATO bombing, he had meetings with Milošević and Ojdanić together. He responded that he had somewhere between one and three meetings with them during that time, and implied that this related to his work on the removal of hazardous materials from factories which were targets for NATO.⁴⁸⁸ He also denied attending any meetings with Milošević in which the latter discussed the VJ and its actions in Kosovo because he (Milutinović) was concerned with civilian problems relating to supplies.⁴⁸⁹

235. In addition, during the NATO campaign Milošević called frequent half-hour meetings with a number of other officials, including Milutinović, the FRY Prime Minister, and the Minister of Defence, in order for the public to be shown that these men were all in the country during the crisis. These were public meetings at Beli Dvor, with a number of people around, where pictures were taken by journalists. Milutinović was informed about the situation at those meetings, but in very general terms, because the "fighting" was being controlled by the Chief of the Supreme Command Staff who reported only to the FRY President. The information Milutinović received at these meetings related mostly to the damage done by NATO bombing.⁴⁹⁰ Later in the interview it transpired that there were 12 such meetings in total, starting on 25 March. Three of them took place in March, five in April, and four in May. Pictures from these meetings were published in *Politika*.⁴⁹¹

236. When asked if any representatives from the Ministry of Interior ever attended these meetings, Milutinović said that he did not think so but that this could be checked by looking at the *Politika* articles published at the time.⁴⁹² He also stated that there was no discussion of VJ or MUP action in Kosovo at those meetings, because time was short and no one from those organs was

⁴⁸⁴ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 1–5.

⁴⁸⁵ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 7–8.

⁴⁸⁶ Jovan Kojić, 1D741 (witness statement dated 27 July 2007), para. 33.

⁴⁸⁷ Jovan Kojić, 1D741 (witness statement dated 27 July 2007), para. 29.

⁴⁸⁸ P604 (Milan Milutinović interview with the Prosecution), e-court p. 69.

⁴⁸⁹ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 122–128.

⁴⁹⁰ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 68–79.

⁴⁹¹ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 86–87, 98.

present. There was only general discussion about the VJ, which related to defence of the country from NATO attack, including civilian defence, which is why the Minister of Defence was in attendance.⁴⁹³ When asked if this meant that the KLA was not considered to be a problem, he said that it was considered a big problem but that it was not discussed at these particular meetings because the people attending were not dealing with that issue.⁴⁹⁴

237. Milomir Minić spoke of the same meetings. He confirmed that during the NATO campaign various figures from the leadership of the FRY and Serbia met with Milošević. Those attending included Milutinović, Momir Bulatović (FRY Prime Minister), Pavle Bulatović (FRY Minister of Defence), Živadin Jovanović (FRY Minister of Foreign Affairs), and the presidents of the FRY and Serbian Assemblies, one of whom was Minić. According to him, the purpose of these meetings was to inform everyone present about the situation in the country and, since these meetings were filmed and aired on state television, to show the public that the leadership was still in the country. The meetings took place at Beli Dvor and lasted for approximately half an hour.⁴⁹⁵ Minić also testified that the first of these meetings was attended by Ojdanić, but could not remember whether he, or any other representative of the VJ or MUP, was present at the other meetings. Minić also denied that they ever discussed defence-related matters; rather, they discussed supply problems, electricity problems, and the issue of reconstruction of the country.⁴⁹⁶

238. Milutinović was further asked about his personal relationship with Milošević. He explained that there was a personal disagreement between them “due to his [Milutinović’s] personal disapproval during the war,” and that, for that reason, during the war he would attend only the short public meetings referred to above. He explained that, while the public impression was that he was close to Milošević, the reality was different because Milošević had difficulty swallowing many unpleasant things Milutinović would tell him. It was for that reason that he was pushed out of favour after Rambouillet, even though he remained popular with the public.⁴⁹⁷ When asked if he told anyone about this dispute, Milutinović responded that he told his wife. He did not want to say what the nature of that disagreement (and his disapproval) was, but stated that it was not political. Rather, it related to personal matters and something that caused him great offence.⁴⁹⁸

⁴⁹² P604 (Milan Milutinović interview with the Prosecution), e-court p. 101.

⁴⁹³ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 128–131.

⁴⁹⁴ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 131–135.

⁴⁹⁵ Milomir Minić, T. 14758–14761 (31 August 2007).

⁴⁹⁶ Milomir Minić, T. 14761–14762 (31 August 2007).

⁴⁹⁷ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 148–149.

⁴⁹⁸ P604 (Milan Milutinović interview with the Prosecution), e-court p. 156.

239. The evidence above, including that of Petritsch, has not left the Chamber with a clear impression that Milutinović had a close personal or professional relationship with Milošević. Unlike Šainović, who was considered by many to be Milošević's closest associate, Milutinović had less interaction with Milošević. Also in contrast to the position with Šainović, the Chamber has not been presented with evidence suggesting that the two men had meetings to the exclusion of other high officials within the FRY/Serbian authorities.

5. Milutinović's state of mind in relation to Kosovo and Kosovo Albanians

240. The Prosecution avers that Milutinović shared the intent to further the common purpose of modifying the ethnic balance in Kosovo through criminal means and that he made statements to that effect.⁴⁹⁹ The Milutinović Defence, on the other hand, argues that Milutinović was committed to finding a peaceful solution to the problems in Kosovo. He supported the position expressed by the National Assembly of Serbia, and later the FRY Government, that the root of the problem was Albanian separatism and the use of terrorism to achieve the aim of secession, always making a distinction between members of the KLA and the Kosovo Albanians who wanted to live in peace within the FRY.⁵⁰⁰

241. In support of its position the Prosecution refers to evidence from Petritsch that he recalled a meeting with the FRY/Serbian delegation where its members made a comment to the effect that "[b]ombing Serbia will lead to massacres."⁵⁰¹ In his witness statement and while testifying in the *Milošević* trial, Petritsch attributed this quote to Štambuk. However, in his direct testimony before the Chamber, Petritsch testified that it was actually Milutinović who said it. On cross-examination Petritsch maintained that both Štambuk and Milutinović made this comment, but that he did not actually recall it being said by Milutinović. Even when prompted to do so by reference to Milutinović's comment in his dispatch, he was unable to recall Milutinović uttering these words. However, he was convinced that, because of the circumstances of the meeting and how the contents of such meetings were reported, the comment was accurately recorded. When further pressed on the matter, Petritsch stated that this comment about a potential massacre was made by both Štambuk and Milutinović.⁵⁰² Petritsch interpreted the comment to mean that NATO bombing would lead to the massacre of Kosovo Albanians by FRY/Serbian forces and also explained that

⁴⁹⁹ Prosecution Final Trial Brief, 28 July 2008 (public version), paras. 618–629.

⁵⁰⁰ Milutinović Final Trial Brief, 15 July 2008, paras. 170–174.

⁵⁰¹ Wolfgang Petritsch, P2792 (witness statement dated 9 June 1999), p. 3; P562 (Austrian Embassy Dispatch, 20 February 1999), p. 2.

⁵⁰² Wolfgang Petritsch, T. 10727–10730 (28 February 2007), T. 10876–10888, T. 10958–10959 (2 March 2007), P2793 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 7232–7233; P562 (Austrian Embassy Dispatch, 20 February 1999), p. 2; Jan Kickert, T. 11249–11251 (7 March 2007).

this was a logical conclusion to make, as no international observers would be present in the country once the bombing started.⁵⁰³

242. Given that Petritsch's original statement and testimony in the *Milošević* trial attributed these words to Štambuk, and given that, even when testifying before this Chamber, Petritsch was unable to recall Milutinović uttering them, the Chamber is unable to rely on this evidence. In addition, Ratko Marković testified that he attended all meetings attended by Milutinović and that he never heard Milutinović say that bombing of Serbia would lead to a massacre in Kosovo.⁵⁰⁴

243. The Prosecution also refers to the evidence of Ibrahim Rugova that, when he informed Milutinović that Kosovo was being emptied of people, Milutinović's response was that this was the fault of the international community. However, this evidence was admitted pursuant to Rule 92 *quater* and is not corroborated by any other evidence, and thus cannot be relied upon to show the acts and conduct of Milutinović.

244. Finally, the Prosecution argues that Milutinović's state of mind can be seen from the fact that he did not distance himself from statements made in his presence by Milošević or members of the SPS party. In support, it refers to the incident recounted by Klaus Naumann that took place following the finalisation of the Clark-Naumann agreement. As described in Section V, once that Agreement was signed, the parties entered into further negotiations on how to achieve better relations between the Serbs and the Kosovo Albanians. According to Naumann, remarks were made in the full plenary meeting and in Milutinović's presence, about the high birth rate of Kosovo Albanians. In addition, Milošević later said in Milutinović's presence that Kosovo Albanians were all criminals, murderers, and rapists, and that a solution for the problem would be found in the spring of 1999. When asked what that solution was, Milošević responded that they would round them up and shoot them like they did in Drenica after World War II.⁵⁰⁵ According to Naumann, the statement produced no reaction from those who heard the comment as "[t]hat was, in most cases, their usual attitude that they did not say anything when [Milošević] spoke."⁵⁰⁶ While giving evidence before the Chamber Naumann further recalled that the words "final solution" were used

⁵⁰³ Wolfgang Petritsch, T. 10728 (28 February 2007), T. 10879 (2 March 2007), P2792 (witness statement dated 9 June 1999), p. 3. Ibrahim Rugova testified that when he told Milutinović about the situation and violence in Kosovo, the latter responded by saying that this was the outcome of the actions of the international community. Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 4235.

⁵⁰⁴ Ratko Marković, T. 13226–13227 (9 August 2007), T. 13565 (14 August 2007).

⁵⁰⁵ Klaus Naumann, T. 8259–8260 (13 December 2006), P1767 (notes of OTP interviews), para. 24, P2561 (supplemental information sheet dated 7 December 2006), e-court p. 2, P2512 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 6989–6992.

⁵⁰⁶ Klaus Naumann, T. 8258–8263 (13 December 2006).

by Milošević, but was unable to explain to the Chamber why he did not mention this earlier, either when giving his statement, or while giving evidence in the *Milošević* trial.⁵⁰⁷

245. The Prosecution also refers to the 16th Session of the Main Board of the SPS on 16 June 1998, where Minić said the following:

If our comrades say that our people face a psychological challenge in the summer, when they have to decide whether they should stay or leave, we must solve this problem successfully so that our people will stay. The number of Serbs and Montenegrins in Kosovo and Metohija must remain the same today and must grow tomorrow. This would be the only lasting and real defence of Kosovo and Metohija, in terms of national state interests. Today people are worried, very worried. Some are leaving. It is our responsibility to encourage people with the measures taken and their actual effects and /show them/ that Kosovo will remain ours and that they belong there.⁵⁰⁸

However, the Chamber notes that this was a long session and that Minić said many things during it, including that the party's aim was to integrate the Kosovo Albanian population into Serbian institutions, to support all those living in Kosovo, to ease tensions, to make sure always to make a distinction between "terrorists and terrorism on the one hand and members of the Albanian minority on the other", and to underscore the position that Kosovo Albanians formed an integral and inalienable part of Serbia.⁵⁰⁹

246. The Prosecution also tendered as evidence three letters sent to Milutinović in which the debate revolved around the numbers of the Kosovo Albanians in Kosovo and from which, the Prosecution argued, it can be concluded that Milutinović supported measures to obscure information concerning those numbers.⁵¹⁰ To draw that conclusion from those letters would in the opinion of the Chamber involve reading a great deal into them, as perhaps recognised by the Prosecution when it then failed to refer to them in its final brief.

247. On the other hand, the Chamber heard evidence that Milutinović expressed the opposite sentiment. For example, during the 5 November 1998 meeting held at the MUP Staff building in Kosovo, Milutinović told those present that they should insist "on a joint community with Albanians."⁵¹¹ This position conformed with the conclusion of the National Assembly of Serbia, later endorsed by the FRY Government, in which the Assembly emphasised the fact that there was a clear distinction between members of the KLA and those Kosovo Albanians who were prepared

⁵⁰⁷ Klaus Naumann, T. 8259–8263 (13 December 2006).

⁵⁰⁸ P1012 (Minutes of 16th session of Main Board of SPS, 10 June 1998), p. 21.

⁵⁰⁹ P1012 (Minutes of 16th session of Main Board of SPS, 10 June 1998), p. 30.

⁵¹⁰ Prosecution's Third Request for Admission of Exhibits From the Bar Table, filed on 16 March 2007, para. 17; P2842 (Letter from Vladan Kutlešić to Zoran Jovanović, 6 October 1998); P2843 (Letter from Milovan Živković to Milutinović, 12 January 1999); P2844 (Letter from Mileva Žižić to Borislav Mitrović, 17 February 1999).

⁵¹¹ P2805 (Minutes of meeting at MUP Staff in Priština/Prishtina, 5 November 1998), p. 5.

to live in peace with other citizens of the FRY and Serbia, and insisted on achieving a solution through peaceful dialogue.⁵¹² In addition, referring back to Milutinović's attempts at negotiations with Kosovo Albanians and his statements in Rambouillet, all of them emphasised his support for peaceful resolution to the problem and the extended autonomy for Kosovo.⁵¹³

248. Much of the evidence outlined above and used by the Prosecution to prove Milutinović's state of mind has been deemed insufficiently reliable by the Chamber. What remains is the evidence suggesting that Milutinović did not distance himself from Milošević and Minić's words. With respect to the Drenica statement made by Milošević, the Chamber has decided that it is not appropriate to attribute any intent to Milutinović on the strength of his presence when Milošević made these remarks, which may or may not have included a reference to the "final solution", since, having regard to the whole circumstances, it cannot be said that Milutinović's inaction in the face of such remarks would be indicative of approval. The Chamber is even less prepared to draw inferences about Milutinović's state of mind on the basis of Minić's remarks during an SPS meeting, especially in light of the fact that Minić's statement used by the Prosecution was part of a more extensive speech which included conciliatory rhetoric as well.

6. Milutinović's knowledge of events in Kosovo

249. The Prosecution contends that Milutinović had knowledge of the crimes committed by the FRY/Serbian forces in Kosovo, both in 1998 and during the Indictment period, because the evidence discussed above shows that he was involved in a number of negotiations and meetings where such information was conveyed to him. In addition, he went to Kosovo personally, was aware of the UN Security Council resolutions relating to Kosovo, was sent letters and reports by Human Rights Watch and Tribunal Prosecutor Louise Arbour, and his staff summarised press reports and foreign office briefings daily for him.⁵¹⁴

250. During his interview, Milutinović was asked about the level of his knowledge regarding different events in Kosovo. With respect to the period before the NATO bombing, Milutinović denied that he had good knowledge of events on the ground despite his membership in the SDC. During his visits to Kosovo in 1998, in relation to negotiations with the Kosovo Albanians and

⁵¹² 1D202 (Conclusions of the National Assembly, 28 September 1998); 2D268 (FRY Government Statement, 28 September 1998); 2D70 (FRY Ministry of Foreign Affairs report on FRY Government's 21st session, 28 September 1998).

⁵¹³ *See, e.g.*, 1D83 (Statement of the President of the Government of Serbia, 7 April 1998); 1D45 (Milan Milutinović's Press Statement), p.2; 1D586 (Press Conference held by Milutinović in Paris, 23 February 1999), p. 3.

⁵¹⁴ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 618–619, 630–644.

other ethnic groups in Kosovo,⁵¹⁵ he would simply come to have talks, wait for the Kosovo Albanians for an hour or an hour and a half, and then leave Kosovo straight away when they never appeared.⁵¹⁶ According to his responses, immediately after these attempted negotiations came the Rambouillet process, which preoccupied him to the extent that he did not have very good knowledge of continuing events on the ground in Kosovo.⁵¹⁷

251. It was put to Milutinović that he could see what was happening in Kosovo from the newspapers, and that he must have been aware that a great number of people were leaving. Milutinović responded that people only left Kosovo during the NATO bombing because the majority of the bombs fell on Kosovo. Thus, many people left Kosovo temporarily and came back once the bombing stopped. He also stated that the fatalities in Kosovo were the result of the NATO bombing. When it was put to him that, at the time, he was meeting many foreign dignitaries who were under the impression that people in Kosovo were being killed by Serbian forces, Milutinović explained that he was not present in Kosovo, and thus was not able to know what was propaganda and what was real.⁵¹⁸ In light of his comment that people left Kosovo because of the NATO bombing, Milutinović was asked why Serbs never left Serbia despite the bombing extending to the entire country. He explained that Kosovo was a tribal society, which feared the KLA, and that it was the KLA that ordered the people to leave the towns.⁵¹⁹

252. The Chamber has heard evidence, however, which contradicts Milutinović's position regarding the lack of information available to him. For example, Frederick Abrahams testified that Human Rights Watch had a mailing list of officials and offices to which it would send its reports on various incidents relating to Kosovo, including the report on the events in Drenica which was published in February 1999. One of those addresses included the Serbian Presidency. He also stated that Human Rights Watch disseminated its material to a large number of media contacts, including media outlets in the FRY, and also expressed the view that generally its reports were not based on as much information as they would have been in an ideal situation.⁵²⁰ On 20 July 1998 Human Rights Watch sent seven letters to various ministers in the Serbian Government and various

⁵¹⁵ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 45–46.

⁵¹⁶ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 56–57. This was confirmed by Kojić who testified that Milutinović would never spend a single night in Kosovo. See Jovan Kojić, 13771 (16 August 2007), 1D741 (witness statement dated 27 July 2007), para. 39.

⁵¹⁷ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 45–46.

⁵¹⁸ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 81–85.

⁵¹⁹ P604 (Milan Milutinović interview with the Prosecution), e-court pp. 168–170.

⁵²⁰ Fred Abrahams, T. 811–812, 818 (13 July 2006), T. 894 (7 August 2006).

organs of the same, asking them to provide an explanation about certain persons who were arrested by the MUP, and also seeking further information in relation to Serbian victims.⁵²¹

253. The Prosecution also tendered a number of documents from the bar table with a view to proving that Milutinović had knowledge of events in Kosovo and was intent on furthering Milošević's policies for dealing with Kosovo.⁵²² One such document is a VJ report, dated 25 May 1998, sent to Milutinović by Perišić. The Prosecution argued that this report showed that Milutinović would receive detailed reports on the activities of the VJ in Kosovo.⁵²³ The document describes in detail the activities of the VJ in Kosovo on 23 and 24 May 1998. The Chamber notes that the document itself indicates that it was read by Milutinović as it has his handwriting on the original cover page.⁵²⁴

254. Jovan Kojić conceded that the President's Office would receive daily MUP bulletins on events within the Ministry's purview which had occurred throughout Serbia the day before, as well as daily reports from the VJ. The MUP bulletins provided very general information about various incidents, including murder and theft, but did not include detailed information about the victims and/or the perpetrators. The daily reports from the VJ, however, contained scant information and were based on intelligence reports compiled by military attachés abroad on the security of the region and neighbouring countries. All these reports, together with media and television reports closely followed by the staff of the President's Office, were summarised by that staff and compiled into a single short report, later given to Milutinović on a daily basis.⁵²⁵ On rare occasions, maybe twice in 1998, the Office also received an overview of operations carried out by the KLA, as well as lists of civilians and MUP members killed and/or abducted during those operations. Kojić testified that the Office did not receive reports of crimes committed by FRY and Serbian forces during the conflict.⁵²⁶

⁵²¹ P540 (Letter from Human Rights Watch to Serbian Minister of Justice, 20 July 1998), P541 (Letter from Human Rights Watch to Yugoslav Minister of Justice, 20 July 1998), P542 (Letter from Human Rights Watch to Serbian Minister of Interior, 20 July 1998), P543 (Letter from Human Rights Watch to Yugoslav Secretary of Information, 20 July 1998), P544 (Letter from Human Rights Watch to the VJ, 20 July 1998), P545 (Letter from Human Rights Watch to Serbian Secretary for Information, 20 July 1998), P546 (Letter from Holly Cartner to Yugoslav Minister of Interior, 20 July 1998); P545 (Letter from Human Rights Watch to Serbian Secretary for Information, 20 July 1998).

⁵²² Prosecution's Third Request for Admission of Exhibits From the Bar Table, filed on 16 March 2007, paras. 13–18.

⁵²³ Prosecution's Third Request for Admission of Exhibits From the Bar Table, filed on 16 March 2007, para. 14.

⁵²⁴ P2822 (Report on VJ activities in Kosovo, 25 May 1998).

⁵²⁵ Jovan Kojić, T. 13727–13728 (15 August 2007), T. 13771–13775 (16 August 2007), 1D741 (witness statement dated 27 July 2007), paras. 25–26; P2827 (Letter by Deputy Minister of Information of Serbia to Milutinović, 1 October 1998).

⁵²⁶ Jovan Kojić, T. 13779–13800 (16 August 2007); 1D741 (Kojić's witness statement, 27 July 2007), paras. 55–57; 1D725 (List of terrorist actions by Albanian separatists in Kosovo – part 1, 1 January–7 July 1998); 1D726 (List of terrorist actions by Albanian separatists in Kosovo – part 2, 1 January–7 July 1998); 1D707 (List of kidnapped citizens and MUP members, 1 January–7 July 1998); 1D721 (List of killed citizens, 1 January–8 July 1998).

255. The Prosecution presented a letter sent to Milutinović on 1 October 1998 by the Ministry of Information, mentioning reports in the Western media about an alleged massacre in Gornje Obrinje/Abria e Epërme and calling it an obvious media manipulation, “like the shelling and killings of civilians in Sarajevo’s Markale Market in February 1994 and August 1995, with aim to use it as an immediate reason for the UN Security Council to adopt a decision on a NATO military intervention.”⁵²⁷ The letter also stated that MUP officials denied that its members conducted operations against civilians, and that the MUP would launch an investigation into the alleged crimes which they had learned about through the foreign media. The Ministry then recommended that the Serbian state organs address the domestic and international public as soon as possible and pointed to the facts in relation to the accusations of crimes against Kosovo Albanians. It also suggested that Milutinović liaise with the Serbian state leadership on making a public statement to this effect.⁵²⁸ When shown this letter from the Ministry of Information, Kojić confirmed that this would have been shown to Milutinović by the Office staff.⁵²⁹

256. During the SDC meeting of 4 October 1998, Đukanović suggested that Milošević invite the representatives of the Tribunal to investigate alleged crimes against Kosovo Albanians and issue a detailed plan for the return of “refugees” to Kosovo, all in order to avoid speculation about the FRY’s compliance with UN Security Council Resolution 1199.⁵³⁰ In addition, during the meetings of 15 and 24 October 1998 between Clark, Naumann, and Milošević, Milutinović was present when allegations were made of the use of disproportionate force against the Kosovo Albanians, which were then denied by Milošević.⁵³¹ Vollebaek also testified that he expressed his concern about the treatment of Kosovo Albanian civilians in his meetings with Milošević on several occasions. He remembered passing on the information he had about human rights violations in Kosovo to Milošević, which he had received from the KVM. However, he could not remember the specific meeting at which this took place, nor could he remember if Milutinović was present at the time.⁵³²

257. Milutinović also received information from the local Serbian population in Kosovo, complaining about their position in the province. In a letter dated 11 December 1998, sent to Milošević, Milutinović, and some others, the Podujevo Municipal Assembly complained of the situation in Podujevo/Podujeva and provided a detailed list of incidents involving KLA abuses of

⁵²⁷ P2827 (Letter from Deputy Minister of Information to Milutinović, 1 October 1998).

⁵²⁸ P2827 (Letter from Deputy Minister of Information to Milutinović, 1 October 1998).

⁵²⁹ Jovan Kojić, T. 13771–13775 (16 August 2007), 1D741 (witness statement dated 27 July 2007), paras. 25 and 26; P2827 (Letter from Deputy Minister of Information of Serbia to Milan Milutinović, 1 October 1998).

⁵³⁰ P1575 (Minutes of 6th SDC session, 4 October 1998), pp. 4–5; P2831 (Shorthand notes of 6th SDC session), pp. 11–16.

⁵³¹ Klaus Naumann, T. 8247–8251 (13 December 2006), P1767 (notes of OTP interviews), paras. 3–4. 11–13; P2512 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 6964–6980.

Serbian citizens. The letter also demanded that certain actions be taken by the Government in order to improve the situation in the municipality. For example, the Assembly asked that reinforcements be sent to the Podujevo OUP and that parts of “special forces for anti-terrorist activities” be stationed there.⁵³³ Another similar letter, this time from the president of Đakovica/Gjakova municipality, was sent to Milošević and Milutinović on 5 May 1998, complaining of the situation in the municipality with respect to more frequent KLA attacks, and inviting a declaration of a state of emergency and imposition of military administration in the region. On 12 May Milutinović was informed by one of his staff that the president of the Peć/Peja municipality had informed the Office that Peć/Peja had been cut off from the rest of the province and that it was lacking in food supplies.⁵³⁴

258. On 15 March 1999 Milutinović received a note containing a summary of a telephone conversation between Wesley Clark and Ojdanić and prepared by the VJ General Staff. This note records that Clark warned Ojdanić about a NATO attack. He also told Ojdanić that the VJ was in breach of the “promises made by Milošević in October”, that the KLA could not be destroyed by military means, and that the deployment of the VJ in Kosovo was only destroying the province and its people. Clark further stressed that there was no intention on behalf of the international community to threaten the territorial integrity and sovereignty of the FRY.⁵³⁵ The members of the SDC also received a second note, recording a conversation between the two men that took place on 22 March 1999, and in which they again discussed the breach of the Holbrooke-Milošević Agreement by the VJ, and the possible NATO campaign.⁵³⁶

259. When cross-examining Zoran Anđelković, the President of the TEC at the time of the NATO campaign, the Prosecution produced a report compiled and sent by the TEC to Milutinović.⁵³⁷ Anđelković testified that such reports were sent by the TEC to those in “responsible positions in the republic”, including the President of Serbia, whenever they felt there was a need for it.⁵³⁸ The report deals with the activities of the TEC in the period from 24 March to 13 April 1999, and states *inter alia* that (a) instructions had been provided by the Health Secretariat concerning “the status of health workers of Albanian ethnicity”; (b) the secretariat for

⁵³² Knut Vollebaek, T. 9513–9516 (31 January 2007); P2634, paras. 39–40, and 46.

⁵³³ P414 (Letter to Milutinović regarding situation in Podujevo, 11 December 1998).

⁵³⁴ 1D483 (Letters sent to Milutinović, 5, 6, and 12 May).

⁵³⁵ Milovan Vlajković, T. 16022 (20 September 2007); 3D706 (Record of telephone conversation between Wesley Clark and Dragoljub Ojdanić, 15 March 1999).

⁵³⁶ Milovan Vlajković, T. 16022–16023 (20 September 2007); 3D707 (Record of telephone conversation between Wesley Clark and Dragoljub Ojdanić, 22 March 1999).

⁵³⁷ P2900 (Report on the Engagement and Activities of the TEC, 16 April 1999, received 23 April 1999).

⁵³⁸ Zoran Anđelković, T. 14725–14728 (31 August 2007).

administration and regulations was monitoring the work of civilian and military justice organs and collecting data on the state of criminal activities in Kosovo, as well as the number of criminal proceedings that had been initiated and the structure of criminal acts and their perpetrators (the report records two murders and 75 aggravated thefts); (c) the secretariat for humanitarian issues was working on the return of “refugees” and the accommodation of civilians whose houses were destroyed during NATO bombing, as well as the supply of basic foodstuffs and medicine; and (d) the financial police, in co-operation with the organs of the MUP was taking all necessary steps to prevent looting and stealing from abandoned stores, depots, and warehouses.⁵³⁹

260. Kojić also testified that a couple of weeks before the NATO bombing started, the VJ reports received by the President’s Office changed somewhat. They were now brought to the Office by a VJ soldier, and were identical to the peacetime MUP reports, containing general information on the situation in the VJ, its logistical needs, and, in due course, a detailed list of all NATO strikes. The MUP reports remained the same except that they would now include information on the NATO strikes.⁵⁴⁰

261. The fact that Milutinović was receiving these VJ reports was also confirmed by Radovan Radinović, the military expert called by the Ojdanić Defence, who testified that, during the NATO campaign, daily combat reports about the situation in the VJ, which were based on the combat reports prepared by the subordinate commands and units, were sent to Milutinović among others.⁵⁴¹ The Chamber has admitted all 77 such reports produced in the period between 25 March and 9 June 1999. According to the list of recipients on the last page of each report, Milutinović received most of them, but not all. The categories of information in those reports related to activities of the enemy, the situation and activities of the 1st, 2nd, and 3rd Armies, the situation on the border, and the state of morale amongst the VJ troops.⁵⁴² In four of them Ojdanić briefly referred to allegations of crimes, stating that these were “enemy propaganda” designed to justify the NATO attacks.⁵⁴³

⁵³⁹ P2900 (Report on the Engagement and Activities of the TEC, 16 April, received 23 April).

⁵⁴⁰ Jovan Kojić, 1D741 (witness statement dated 27 July 2007), para. 45, 1D754 (supplemental information sheet), para. 6.

⁵⁴¹ Radovan Radinović, T. 17258–17260 (18 October 2007); 3D1116 (Radovan Radinović’s Expert Report), paras. 71, 112. *See also* P1481 (Supreme Command Staff directive for engagement of VJ in defence against the NATO, 9 April 1999), p. 11.

⁵⁴² The reports which record Milutinović as a recipient are as follows: 3D808 (Supreme Command Staff Report, 3 April 1999); 3D810 (Supreme Command Staff Report, 5 April 1999); 3D811 (Supreme Command Staff Report, 6 April 1999); 3D812 (Supreme Command Staff Report, 7 April 1999); 3D813 (Supreme Command Staff Report, 8 April 1999); 3D814 (Supreme Command Staff Report, 9 April 1999); 3D815 (Supreme Command Staff Report, 10 April 1999); 3D816 (Supreme Command Staff Report, 11 April 1999); 3D817 (Supreme Command Staff Report, 12 April 1999); 3D818 (Supreme Command Staff Report, 13 April 1999); 3D819 (Supreme Command Staff Report, 14 April 1999); 3D820 (Supreme Command Staff Report, 15 April 1999); 3D821 (Supreme Command Staff Report, 16 April 1999); 3D822 (Supreme Command Staff Report, 17 April 1999); 3D823 (Supreme Command Staff Report, 18 April 1999); 3D824 (Supreme Command Staff Report, 19 April 1999); 3D825 (Supreme Command Staff Report, 20 April 1999).

262. The Prosecution tendered a letter dated 26 March 1999, sent to Milutinović by the Tribunal Prosecutor at the time, Louise Arbour, in which she referred to the escalation of violence in Kosovo and expressed concerns that serious violations of international humanitarian law were being committed.⁵⁴⁴ The Prosecution also relied on two UN Security Council Resolutions, Resolution 1160, dated 31 March 1998, and Resolution 1199, dated 23 September 1998, which referred to the use of excessive force by FRY/Serbian forces in Kosovo, as well as to the displacement of a large number of people.⁵⁴⁵ Kojić, however, testified that he could not remember whether Milutinović was aware of various UN resolutions passed in relation to Kosovo, nor could he recall receiving Human Rights Watch reports or a letter from Louise Arbour.⁵⁴⁶ The SDC minutes, however, show that one of the main topics of discussion during the sixth SDC session on 4 October 1998 was UN Security Council Resolution 1199 which, according to Milošević's presentation during the meeting, had been complied with.⁵⁴⁷

263. On 16 April 1999, during the meeting with Rugova and Merovci, Rugova told Milutinović about the forced displacements, violence, and oppression in Kosovo. According to Rugova, Milutinović replied that this was the fault of the international community.⁵⁴⁸ This evidence,

1999); 3D826 (Supreme Command Staff Report, 21 April 1999); 3D827 (Supreme Command Staff Report, 22 April 1999); 3D828 (Supreme Command Staff Report, 23 April 1999); 3D829 (Supreme Command Staff Report, 24 April 1999); 3D830 (Supreme Command Staff Report, 25 April 1999); 3D831 (Supreme Command Staff Report, 26 April 1999); 3D832 (Supreme Command Staff Report, 27 April 1999); 3D833 (Supreme Command Staff Report, 28 April 1999); 3D834 (Supreme Command Staff Report, 29 April 1999); 3D835 (Supreme Command Staff Report, 30 April 1999); 3D836 (Supreme Command Staff Report, 1 May 1999); 3D837 (Supreme Command Staff Report, 2 May 1999); 3D838 (Supreme Command Staff Report, 3 May 1999); 3D839 (Supreme Command Staff Report, 4 May 1999); 3D840 (Supreme Command Staff Report, 5 May 1999); 3D841 (Supreme Command Staff Report, 6 May 1999); 3D842 (Supreme Command Staff Report, 7 May 1999); 3D843 (Supreme Command Staff Report, 8 May 1999); 3D844 (Supreme Command Staff Report, 9 May 1999); 3D846 (Supreme Command Staff Report, 11 May 1999); 3D847 (Supreme Command Staff Report, 12 May 1999); 3D848 (Supreme Command Staff Report, 13 May 1999); 3D849 (Supreme Command Staff Report, 14 May 1999); 3D850 (Supreme Command Staff Report, 15 May 1999); 3D852 (Supreme Command Staff Report, 17 May 1999); 3D853 (Supreme Command Staff Report, 18 May 1999); 3D854 (Supreme Command Staff Report, 19 May 1999); 3D855 (Supreme Command Staff Report, 20 May 1999); 3D856 (Supreme Command Staff Report, 21 May 1999); 3D857 (Supreme Command Staff Report, 22 May 1999); 3D858 (Supreme Command Staff Report, 23 May 1999); 3D859 (Supreme Command Staff Report, 24 May 1999); 3D860 (Supreme Command Staff Report, 25 May 1999); 3D861 (Supreme Command Staff Report, 26 May 1999); 3D863 (Supreme Command Staff Report, 28 May 1999); 3D864 (Supreme Command Staff Report, 29 May 1999); 3D865 (Supreme Command Staff Report, 30 May 1999); 3D866 (Supreme Command Staff Report, 31 May 1999); 3D867 (Supreme Command Staff Report, 1 June 1999); 3D870 (Supreme Command Staff Report, 4 June 1999); 3D871 (Supreme Command Staff Report, 5 June 1999); 3D872 (Supreme Command Staff Report, 6 June 1999); 3D873 (Supreme Command Staff Report, 7 June 1999); 3D874 (Supreme Command Staff Report, 8 June 1999).

⁵⁴³ 3D820 (Supreme Command Staff Report, 15 April 1999); 3D821 (Supreme Command Staff Report, 16 April 1999); 3D825 (Supreme Command Staff Report, 20 April 1999); 3D826 (Supreme Command Staff Report, 21 April 1999).

⁵⁴⁴ P399 (Letter from Louise Arbour to Milutinović, 26 March 1999).

⁵⁴⁵ P455 (UNSC Resolution 1160, 31 March 1998); P456 (UNSC Resolution 1199, 23 September 1998); P433 (UNSC Resolution 1244, 10 June 1999).

⁵⁴⁶ Jovan Kojić, T. 13774–13778 (16 August 2007).

⁵⁴⁷ See Section VI.A.1.d.

⁵⁴⁸ Ibrahim Rugova, P2613 (witness statement dated 24 April 1999), p. 12, P2612 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 4236.

however, has not been corroborated by any other evidence and, since admitted pursuant to Rule 92 *quater*, the Chamber is unable to rely on it to determine the acts and conduct of Milutinović.

264. During his visit to Priština/Prishtina on 28 April 1999 Milutinović said that he saw the damage in Priština/Prishtina caused by NATO but could not understand why people were leaving the city. Merovci then told Milutinović that people were leaving because they were being forced out of their homes and that uniformed Serbian men were to blame. According to Merovci, Milutinović then turned to Šainović and asked if this was true. The latter did not respond but gave an expression of surprise.⁵⁴⁹

265. During the 4 May meeting which, according to media reports, Milutinović attended together with Milošević, Pavković, and Lukić, information was presented that, while engaged in fierce fighting with the KLA, the “security forces” had also dealt with numerous cases of violence, murder, looting, and other crimes, and had arrested several hundred perpetrators whose crimes were a great danger to the civilian population.⁵⁵⁰ It was concluded at the meeting that the work of the military courts had made future occurrences of such crimes “impossible” as they had already processed many cases for crimes against the civilian population and handed down a “large number” of sentences between five and 20 years’ imprisonment for these crimes.⁵⁵¹

266. It is important to note here that Milutinović, somewhat surprisingly, did not participate in the meeting of 17 May 1999 attended by Milošević, Šainović, Ojdanić, Pavković, Rade Marković, Geza Farkaš, and Branko Gajić.⁵⁵² At that meeting Vasiljević reported on crimes committed by the VJ, MUP, and volunteers in Kosovo, such as the rape of civilians by soldiers and crimes committed by the Scorpions in Podujevo/Podujeva. Marković conceded that members of paramilitary groups were in Kosovo as volunteers and were committing crimes.⁵⁵³ Vasiljević testified that it was strange that Milutinović, as a member of the Serbian Government to which the Serbian Ministry of Interior belonged, was not present at this meeting where discussion revolved around crimes committed by the MUP. This meant, according to Vasiljević, that both the RDB and RJB were under the direct control of Milošević.⁵⁵⁴

⁵⁴⁹ Adnan Merovci, T. 8468–8474 (16 January 2007), P2588 (witness statement dated 12 April 2000), para. 72.

⁵⁵⁰ P1696 (“Army, Police Heads Inform Milo[š]jevi[ć] of Successful Defense”, Report of RTS, 5 May 1999), p. 1.

⁵⁵¹ P1696 (“Army, Police Heads Inform Milo[š]jevi[ć] of Successful Defense”, Report of RTS, 5 May 1999), pp. 1–2.

⁵⁵² Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), paras. 63–74, P2589 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 15999–16000. *See also* P2592 (Vasiljević’s diary extract).

⁵⁵³ Aleksandar Vasiljević, P2600 (redacted version of witness statement dated 14 January 2007), paras. 65–67, P2589 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 15999–16004.

⁵⁵⁴ Aleksandar Vasiljević, T. 9001 (23 January 2007).

267. Finally, the Prosecution relies on the original indictment against Milošević, Milutinović, Šainović, Ojdanić, and Stojiljković, which was filed on 23 May 1999 and publicised on 27 May 1999 and which would have put Milutinović on notice of the specific incidents of the alleged crimes committed in the region and on notice that he himself was said to be responsible for them. Jovan Kojić confirmed that Milutinović had seen this indictment.⁵⁵⁵

268. The Chamber is of the view that the above evidence shows that Milutinović was relatively well informed about the situation in Kosovo throughout 1998 and 1999. He was kept in the loop by receiving VJ and MUP reports informing him of the situation and was also privy to some of the complaints coming from the local Serbian population in Kosovo. The question then is whether he was also aware of the crimes alleged to have been committed by the VJ/MUP forces in both 1998 and 1999.

269. Much of the evidence relating to that particular knowledge came from international representatives who complained to Milošević about the breaches of October Agreements and use of disproportionate force. It also came from Merovci during one of the two meetings Milutinović had with him and with Rugova. On the other hand, the information he was receiving from the FRY/Serbian sources either made no mention of crimes (VJ and MUP reports) or, when it did, the allegations were reported as propaganda by the international community (Gornje Obrinje/Abria e Epërme incident), or he was told that they were being dealt with by the relevant authorities (results of the 4 May meeting). As far as the UN Security Council Resolutions are concerned, the 23 September Resolution was discussed at the 4 October session of the SDC, during which Milošević stated that the activities of the forces of the FRY/Serbia in Kosovo were completed and that, therefore, there had now been compliance with requests made by the international community.

270. Despite the lack of specific information from internal sources that crimes were being committed, the Chamber is nevertheless of the view that Milutinović was put on notice that crimes were committed in 1998 and that disproportionate force was used in early 1999, mainly through his dealings with representatives of the international community. The evidence is not as extensive with respect to his knowledge during the NATO bombing, especially in light of the fact that he was told on 4 May, following his meetings with Rugova and Merovci, that crimes were being dealt with. Even though Kojić could not remember the President's Office ever receiving Louise Arbour's letter of 26 March, the Chamber is of the view that Milutinović must have either received it or heard about it. Two months later, the Tribunal indictment against him provided more specific allegations of crimes and incidents. Accordingly, the Chamber is of the view that Milutinović was put on

⁵⁵⁵ Jovan Kojić, T. 13777 (16 August 2007).

notice about the movement of the population in Kosovo and use of excessive force by the FRY/Serbian authorities.

7. Conclusions on responsibility of Milan Milutinović under Article 7(1) of the Statute

a. Commission through participation in a joint criminal enterprise

271. According to the Prosecution, the evidence outlined above proves beyond reasonable doubt that Milutinović was a member of the joint criminal enterprise charged in the Indictment and that he significantly contributed to its implementation by (a) participating in the decision-making process in of various high level bodies; (b) supporting the establishment and work of bodies implementing the joint criminal enterprise, such as the Joint Command; (c) playing an obstructionist role at several meetings and conferences with Kosovo Albanian leaders and international representatives; (d) deliberately omitting to adhere to his duty and to use powers provided to him to protect the civilian population from crimes; and (e) issuing decrees designed to further the aims of the joint criminal enterprise.⁵⁵⁶ The Prosecution also argues that Milutinović's omissions falling under (d) above, and discussed throughout this Section, contributed significantly to the creation of an environment permissive of crimes against the Kosovo Albanian population.⁵⁵⁷

272. The Milutinović Defence, aside from denying the existence of the common criminal purpose, argues that Milutinović never participated, directly or indirectly, in any common criminal purpose, nor was he aware of its existence.⁵⁵⁸

273. For Milutinović's liability to arise pursuant to the first category of joint criminal enterprise, the evidence must show that he participated in at least one aspect of the common purpose to ensure continued control by the FRY and Serbian authorities over Kosovo, through crimes of forcible displacement, which the Chamber has already found existed.⁵⁵⁹ In order to fulfil this element, Milutinović need not have physically committed the crimes through which the goal was achieved, or any other offence for that matter.⁵⁶⁰ Indeed, he need not even have been present at the time and place of the physical perpetration of these crimes.⁵⁶¹ His contribution, however, to the plan must have been significant.⁵⁶² An omission may also lead to responsibility under Article 7(1), where

⁵⁵⁶ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 559.

⁵⁵⁷ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 614.

⁵⁵⁸ Milutinović Final Trial Brief, 15 July 2008, paras. 304–306.

⁵⁵⁹ *Vasiljević* Appeal Judgement, paras. 100, 119; *Tadić* Appeal Judgement, paras. 197, 227; *Brđanin* Appeal Judgement, para. 427.

⁵⁶⁰ *Kvočka et al.* Appeal Judgement, para. 99; *Brđanin* Appeal Judgement, para. 427.

⁵⁶¹ *Krnojelac* Appeal Judgement, para. 81; *see also Simić et al.* Trial Judgement, para. 158.

⁵⁶² *Brđanin* Appeal Judgement, para. 430.

there is a legal duty to act.⁵⁶³ As for the necessary mental element, it must be proved that Milutinović participated voluntarily in the joint criminal enterprise and that he shared the intent with other members of the joint criminal enterprise to commit the crime or underlying offence that was the object of the enterprise, in this case the forcible displacement.

274. Addressing his contribution first, the Chamber is of the view that a number of examples of Milutinović's participation in the joint criminal enterprise alleged by the Prosecution have not been proved beyond reasonable doubt. For example, the Chamber found that, during the negotiations between Kosovo Albanians and the FRY/Serbian authorities, all sides contributed to their failure. As a result, the Chamber was unable to find that Milutinović obstructed the negotiating process. Furthermore, the allegation that he furthered the joint criminal enterprise by issuing two decrees allegedly designed to keep the Kosovo Albanian population out of Serbia was also found not to be proved. The evidence relating to his dealings with the Serbian Government showed that his powers were not extensive and also depended on the popularity and charisma of the person holding the Office, which he did not have. In addition, as far as the VJ was concerned, he did not have command authority over it pursuant to the Serbian Constitution. Instead, his contribution to the war effort was as an *ex officio* member of the SDC. Two decisions relating to the use of the VJ in Kosovo, namely to address the KLA threat, on 9 June 1998, and to defend the country in case of a NATO attack, on 4 October 1998, were made following a unanimous decision of all three voting members of the SDC. As for the period following the start of the NATO campaign, despite having retained some *de jure* authority via his membership on the SDC or the Supreme Command, it has not been proved that Milutinović participated in making specific VJ-related decisions in that period. The allegation that Milutinović helped Milošević place key figures in key positions has also not been proved beyond reasonable doubt since this power was in Milošević's hands alone. As far as the MUP was concerned, his less than extensive powers relating to that organ were even more circumscribed by Milošević who was dealing directly with the RDB and RJB heads, as testified to by Vasiljević. In addition, the evidence has shown that Milošević was the one issuing orders to the MUP personnel in Kosovo, often through Šainović who, as will be seen in the next section, was in continuous contact with Lukić. Finally, unlike Šainović for example, Milutinović did not travel to Kosovo often and was not privy to much of the discussions relating to specific activities of the FRY/MUP forces in the province. Instead, his role was mainly to report to the people in the province on the terms of the October Agreements.

⁵⁶³ *Galić* Appeal Judgement, para. 175.

275. However, Milutinović did participate in the 21 July 1998 meeting with the rest of the leadership when the Plan for Combating Terrorism was approved and the Joint Command established. He also participated in the similar meeting, on 29 October, when the results of these activities were discussed. He also gave two morale-boosting speeches to the MUP. In addition, he failed to raise certain issues during SDC meetings and generally exhibited loyalty to Milošević. In the Chamber's view, however, this was not a significant contribution to the joint criminal enterprise. This is especially so in light of the jurisprudence relied upon by the Prosecution relating to omission liability, showing that his omissions must have been combined not only with his duty to act but also with authority over the physical perpetrators in question. The Chamber does not accept that Milutinović had a legal duty arising from his oath of office alone in the absence of significant *de jure* and *de facto* powers. In addition, the Chamber is not prepared to accept that the contribution by omission was significant, given Milutinović's lack of authority over the forces that were committing the crimes in question.

276. Assuming for the moment that the Chamber is wrong in its analysis of the contribution of Milutinović to the joint criminal enterprise, it will now turn to examination of the mental element required to satisfy this form of responsibility. The Chamber finds that it has been established beyond reasonable doubt that all of Milutinović's actions described above were voluntary rather than coerced. Although convinced beyond reasonable doubt that Milutinović shared the intent to ensure continued control by the FRY and Serbian authorities over Kosovo, the Chamber has not been provided with sufficient evidence to show beyond reasonable doubt that he intended to retain that control through criminal means, such as the crimes of displacement. The evidence that Milutinović failed to distance himself from the two statements made by Milošević in October 1998 is not enough to convince the Chamber beyond reasonable doubt that he possessed that intent. In addition, the evidence outlined above relating to Milutinović having notice of crimes, while at the same time being told by those with official responsibilities therefor that the allegations were either propaganda or were being dealt with, does not, when taken with all the evidence the Chamber has indicated it accepts about his conduct, convince the Chamber to infer that he had the intent to displace Kosovo Albanians from Kosovo. Accordingly, the Chamber finds that Milutinović's participation in the joint criminal enterprise has not been proved beyond reasonable doubt. As a result, it now turns to other forms of liability.

b. Planning/Instigating/Ordering

277. According to the Prosecution, the totality of the evidence establishes Milutinović's criminal responsibility on the basis of planning. In this context, the Prosecution refers to Milutinović's

participation in a number of crucial meetings and decisions in 1998 and 1999 in relation to deployment of the VJ and MUP. According to the Prosecution, the totality of the evidence also establishes Milutinović's criminal responsibility on the basis of instigating. In this context, the Prosecution refers to Milutinović's participation in a number of crucial meetings and decisions in 1998 and 1999 in relation to the deployment of the VJ and MUP. Likewise, his failure to adopt any substantial measures to stop or prevent the commission of crimes, as well as his public commendation of the FRY/Serbian forces, establish his criminal responsibility for instigating them. Finally, the Prosecution is of the view that the totality of the evidence establishes Milutinović's criminal responsibility on the basis of ordering. In this context, the Prosecution refers to Milutinović's participation in a number of crucial meetings and decisions in 1998 and 1999 in relation to the deployment of the VJ and MUP.⁵⁶⁴

278. The Defence, on the other hand, argues that there is no evidence that Milutinović planned any activity, alone or with others, that was a factor substantially contributing to the perpetration of any crime.⁵⁶⁵ In addition, it argues that there is no evidence that Milutinović ever instigated anyone to commit a crime.⁵⁶⁶ Finally, with respect to ordering, the Milutinović Defence argues that Milutinović had no authority or ability, *de jure* or *de facto*, to issue orders to anyone. Furthermore, there is no evidence that he ever issued an order of any kind to anyone or that he was aware that anyone else ever issued an order to commit a crime of any kind.⁵⁶⁷

279. Given that the Chamber has found there to be insufficient evidence that Milutinović possessed the intent to commit crimes of displacement, the Chamber is also not convinced beyond reasonable doubt that Milutinović designed an act or omission with the intent that an underlying offence of forcible displacements be committed. It is also not satisfied that he, through act or omission, prompted another to act in a particular way, with the intent that the crimes of forcible displacements be committed. Finally, the Chamber finds that Milutinović had no authority, *de jure* or *de facto*, to issue orders to either the MUP or the VJ forces involved in committing the crimes in Kosovo. Other than the two SDC decisions mentioned above which were used by the Supreme Commander to issue orders, there is no evidence that he ever did issue such an order. In addition, there is no evidence that he possessed the relevant intent. Accordingly, the Chamber finds that Milutinović cannot be found responsible under the categories of planning, instigating, or ordering.

⁵⁶⁴ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 647–648.

⁵⁶⁵ Milutinović Final Trial Brief, 15 July 2008, paras. 281–284.

⁵⁶⁶ Milutinović Final Trial Brief, 15 July 2008, paras. 285–288.

⁵⁶⁷ Milutinović Final Trial Brief, 15 July 2008, paras. 289–292.

c. Aiding and abetting

280. The Prosecution alleges that Milutinović is responsible for aiding and abetting the crimes charged in the Indictment, both through his substantial contribution to the commission of these crimes and through failing to discharge his duty to prevent them.⁵⁶⁸ The Milutinović Defence argues that there is no evidence that Milutinović ever aided and abetted any of the alleged crimes in the Indictment.⁵⁶⁹

281. The Chamber notes that for his guilt to be established through this form of responsibility, the evidence must show that Milutinović provided practical assistance, encouragement, or moral support to the perpetration of a crime, whether by positive action or omission, and that this had a substantial effect on the commission of that crime. The Chamber notes its findings that Milutinović did provide a number of morale boosting speeches to the officials in Kosovo in September and November 1998, and gave some legitimacy to their actions by doing so. He also did not raise any alarm during the SDC meetings, nor did he support Đukanović who sometimes voiced concerns. These two factors on their own, however, in the context of such a large case with a multiplicity of players, cannot be said to have had a substantial effect on the commission of the crimes of displacement which were committed from late March 1999 onwards. As for the required mental element, it must be proved beyond reasonable doubt that Milutinović knew that his actions or omissions were providing practical assistance, encouragement, or moral support to the commission of the crimes and that he was aware of the physical or intermediary perpetrator's intent to commit crimes. Given that the evidence of the meetings and discussions to which Milutinović was privy shows that the majority of those involved either political issues such as Kosovo's autonomy or involved discussion of activities of the FRY/Serbian forces in the context of anti-KLA operations, the Chamber is not satisfied that the only reasonable inference is that Milutinović had knowledge of intent possessed by those committing crimes. In addition, even when put on notice regarding the displacement and possible crimes, mostly by international representatives, he was at the same time told by the FRY/Serbian authorities with official responsibilities therefor that they were being dealt with or that they were caused by KLA and NATO. Thus, the Chamber cannot be satisfied beyond reasonable doubt that the only inference to be drawn from the evidence relating to notice is that Milutinović knew of the physical or intermediary perpetrators' intent to commit crimes of displacement.

8. Conclusions on responsibility of Milan Milutinović under Article 7(3) of the Statute

⁵⁶⁸ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 649–652.

⁵⁶⁹ Milutinović Final Trial Brief, 15 July 2008, paras. 293–298.

282. According to the Prosecution, as the President of Serbia, Milutinović had authority in relation to the Serbian Government and, in particular, the Ministry of Interior. Thus, for the purposes of Article 7(3), he had effective control over the Minister of Interior and there was a superior-subordinate relationship between them.⁵⁷⁰ Furthermore, the Prosecution contends that, as a member of the SDC and the Supreme Command, Milutinović could propose items for the agenda of those bodies. Thus, he could have proposed a discussion on crimes committed by the VJ in Kosovo and summoned senior VJ personnel to report on that matter. This power gave him the “material ability to reprimand and discipline members of the VJ,” and thus effective control over the senior VJ members, with whom he had a superior-subordinate relationship.⁵⁷¹ The Milutinović Defence, on the other hand, argues that Milutinović is not liable for any of the crimes alleged in the Indictment pursuant to Article 7(3) as he had no subordinates whatsoever and no one over whom he had effective control.⁵⁷²

283. In light of the evidence outlined above, especially the scarce evidence relating to his powers over the MUP, the Chamber is of the view that Milutinović did not have effective control over the forces of the FRY and Serbia and thus cannot be held responsible under Article 7(3) of the Statute.

9. Conclusion

284. The Chamber notes that it has emphasised in this section where a conclusion could not be reached beyond reasonable doubt. This does not mean that the Chamber assessed the evidence in respect of each issue relevant to Milan Milutinović’s responsibility in isolation. The Chamber has taken all the relevant evidence into account in coming to its conclusion that it has not been established beyond reasonable doubt that Milan Milutinović bears responsibility for the crimes in the Indictment, subject to the final paragraph of the Judgement. Had the burden of proof been on a balance of probabilities rather than beyond reasonable doubt, the result may have been different. However, it is not the task of the Trial Chamber to assess the moral culpability of Milan Milutinović, but rather simply to decide whether the Prosecution has proved beyond reasonable doubt the averments in the Indictment. Accordingly, the Chamber finds Milan Milutinović not guilty of the crimes alleged in the Indictment.⁵⁷³

⁵⁷⁰ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 653.

⁵⁷¹ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 654.

⁵⁷² Milutinović Final Trial Brief, 15 July 2008, para. 314.

⁵⁷³ The final paragraph of the Judgement qualifies this statement.

D. INDIVIDUAL CRIMINAL RESPONSIBILITY OF NIKOLA ŠAINOVIĆ

1. The Accused

285. The Accused Nikola Šainović was born on 7 December 1948 in Bor, Serbia, and was active in the Socialist Party of Serbia (“SPS”). He held several positions within the governments of Serbia and the FRY, including Prime Minister of Serbia and Deputy Prime Minister of the FRY. He served as one of a number of Deputy Prime Minister of the FRY from February 1994 until on or about 4 November 2000, when a new Federal Government was formed.⁵⁷⁴

2. Charges in Indictment

286. The Indictment alleges that during 1998, and throughout the Indictment period, Šainović was FRY President Slobodan Milošević's representative for Kosovo. The Indictment further alleges that in this capacity he was Head of the Joint Command, an organ that had authority over the forces of the VJ and the MUP. As Head of the Joint Command, he is said to have participated in the planning, instigating, and ordering of the operations and activities of the FRY/Serbian forces in Kosovo, which were in turn involved in the perpetration of the crimes charged in the Indictment. In addition, a number of diplomats and other international officials who needed to speak with a government official regarding events in Kosovo were directed to him. He allegedly took an active role in negotiations establishing the OSCE verification mission for Kosovo and he participated in numerous other meetings regarding the Kosovo crisis. At all times relevant to the Indictment, he acted as the liaison between Slobodan Milošević and various Kosovo Albanian leaders.⁵⁷⁵

287. In these various capacities, Šainović is charged with having planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation, or execution of these crimes. Within the scope of “committing”, Šainović allegedly participated in a joint criminal enterprise, the purpose of which was to modify the ethnic balance in Kosovo in order to ensure continued control by the FRY and Serbian authorities over the province. He is further charged with responsibility as a superior for failing to prevent or punish crimes committed by his subordinates.⁵⁷⁶

288. The Šainović Defence disputes all of these allegations, arguing that Šainović had neither authority nor control over the VJ and MUP forces, nor participated in any joint criminal enterprise.⁵⁷⁷

⁵⁷⁴ Indictment, paras. 2, 9.

⁵⁷⁵ Indictment, para. 10.

⁵⁷⁶ Indictment, paras. 16–22.

⁵⁷⁷ Šainović Final Trial Brief, 29 July 2008 (public version).

289. The Chamber has concluded in Section VII above that the forces of the FRY and Serbia committed crimes directed against the Kosovo Albanian civilian population in many of Kosovo's municipalities, between March and June 1999. This section will address the question of whether Šainović is responsible for any of these crimes, under any forms of responsibility alleged in the Indictment.

3. Šainović's powers

290. It is a matter of agreement between the parties that, at all times relevant to the Indictment, Šainović was the Deputy Prime Minister of the FRY responsible for foreign policy and international relations of the FRY, as well as being in charge of FRY co-operation with the KVM.⁵⁷⁸ In dispute, however, are the extent of his *de jure* powers with respect to Kosovo, whether he had any power, *de facto*, and, if so, the extent thereof.

a. Šainović as Milošević's representative in Kosovo

291. According to the Prosecution, Šainović was Milošević's personal representative for Kosovo. His primary role was to implement Milošević's objectives there and co-ordinate the activities of the VJ, the MUP, and other armed organisations.⁵⁷⁹ The Šainović Defence denies this and argues that he was simply one of the many persons, such as Andreja Milosavljević and the members of the SPS Working Group for Kosovo, who were sent to try to resolve the situation in the province.⁵⁸⁰ The Defence also argues that Šainović was sent to Kosovo simply because he, in his capacity as the Deputy Prime Minister of the FRY, was in charge of foreign affairs and had experience in dealing with foreign diplomats. It further points to Momir Bulatović's book and the explanation found therein that Milošević, knowing everyone involved in Kosovo would eventually end up being prosecuted in The Hague, was trying to spare Bulatović by sending Šainović to Kosovo instead.⁵⁸¹

292. The fact that Šainović was sent to Kosovo in the summer of 1998 is not disputed as he himself acknowledged that he spent some 80 percent of his time there in the period between July and September 1998.⁵⁸² The main controversy between the parties relates to the issue of whether the decision to give him the Kosovo brief was actually made by Milošević, who was seen to be the most powerful individual in the FRY at the time, or, as required by the FRY Constitution, by the

⁵⁷⁸ Order on Agreed Facts, 11 July 2006, p. 12. *See also* P605 (Nikola Šainović interview with the Prosecution), e-court pp. 8–11, 20–24; 1D260 (Decision on composition of Federal Government).

⁵⁷⁹ Indictment, para. 48; Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 662–663.

⁵⁸⁰ Šainović Final Trial Brief, 29 July 2008 (public version), para. 43.

⁵⁸¹ Šainović Final Trial Brief, 29 July 2008 (public version), paras. 47, 55; Šainović closing arguments, T. 27085 (21 August 2008).

⁵⁸² P605 (Nikola Šainović interview with the Prosecution), e-court pp. 431–432.

FRY Prime Minister, Momir Bulatović. Bulatović testified that he made that decision because of the diplomatic experience Šainović had gained in relation to the implementation of the Dayton Accords which would enable him to liaise and communicate with international representatives such as U.S. Ambassador Christopher Hill.⁵⁸³ However, when cross-examined and faced with an excerpt from his book which stated that this was done at Milošević's request and in order to spare Bulatović from getting involved with Kosovo, Bulatović was forced to concede that the decision was Milošević's idea with which he had wholeheartedly agreed.⁵⁸⁴ Thus the assignment was given to Šainović by Bulatović in strict accordance with the FRY Constitution and the Rules of Procedure of the FRY Government, but at the behest of Milošević. The Chamber does not accept that the reason behind this appointment was Milošević's desire to spare Bulatović. It is more likely that this decision was made because Šainović had toured the province on a fact-finding mission some months earlier and also had the trust of Milošević, as will be seen below.⁵⁸⁵

293. In keeping with that, Bulatović conceded that he never issued specific tasks to Šainović, even though he was formally his superior. He also conceded that Šainović did not report to him about the incidents in Gornje Obrinje/Abria ě Eperme and Račak/Rečak, nor did he tell him about Rugova's house arrest.⁵⁸⁶ In those respects, Šainović's actions were contrary to the formal constitutional position described by constitutional law professor Radomir Lukić, who testified that the role of the Prime Minister was dominant to such an extent that the other Federal Cabinet members were essentially advisors without any scope for autonomous work and decision-making.⁵⁸⁷ All of that points to Šainović acting on the authority of and reporting to someone else. On the evidence, that could only have been Milošević. It is the Chamber's view that, if Bulatović

⁵⁸³ Momir Bulatović, T. 13817–13820 (16 August 2007), T. 13891–13898 (17 August 2007). *See also* P605 (Nikola Šainović interview with the Prosecution), e-court pp. 120–125, 130–131, 192–193, 288, 302; Živadin Jovanović, T. 13997 (20 August 2007); Duško Matković, T. 14589, 14597–14598 (29 August 2007); Zoran Anđelković, T. 14652 (30 August 2007); Milomir Minić, T. 14743–14744, 14756 (31 August 2007).

⁵⁸⁴ Momir Bulatović, T. 13895–13897 (17 August 2007); P2895 (Excerpt from Momir Bulatović's book entitled "Rules of Silence"). *See also* Duško Matković, T. 14588–14589 (29 August 2007); Branko Gajić, T. 15412–15413 (11 September 2007), T. 15439 (12 September 2007); Andreja Milosavljević, T. 14305 (23 August 2007); Radomir Lukić, T. 26298–26302 (15 May 2008).

⁵⁸⁵ Šainović's first public meeting with representatives of Kosovo Albanians took place in March or April 1998, in the Headquarters of the LDK (Rugova's party) in Priština/Prishtina, the purpose of which was to establish permanent contact. After this meeting, Šainović and Zoran Lilić were sent to Kosovo by Bulatović on a fact-finding mission, of which Milošević was aware. Šainović and Lilić carried out two visits sometime in April or May 1998, which lasted no longer than a day each. On return, Šainović and Lilić orally presented their findings at meetings attended by representatives of the FRY and Serbian Government. Milošević then called Šainović and Lilić to a meeting in his office to get some further details about the events in Kosovo they reported about. At the meeting, Šainović expressed his view on the situation and the variety of the measures which were to be undertaken, namely security measures, internal, and external political measures. Milošević, however, did not ask him to give any specific proposals or solutions and no decision was made on what action should be taken. P605 (Nikola Šainović interview with the Prosecution), e-court pp. 24–34, 37, 44–55, 74–78, 84–88, 91.

⁵⁸⁶ Momir Bulatović, T. 13901–13902, 13910–13913 (17 August 2007).

⁵⁸⁷ 2D393 (Expert Report of Radomir Lukić), e-court p. 84.

was not issuing tasks to Šainović, the only possible source of Šainović's actual authority was Milošević.

294. In describing his role, Šainović told the Prosecution during his interview that his main task was to communicate with foreign diplomats and discuss Kosovo issues, including the political situation and incidents, and to report back to the FRY Government. He communicated with Bulatović regularly in weekly cabinet sessions.⁵⁸⁸ He was also in contact with Andreja Milosavljević, who was in Kosovo from July to September 1998 (staying in the same building as Pavković) and who liaised among the Serbian ministries, the heads of the five Kosovo districts, and the presidents of the 29 municipalities in Kosovo.⁵⁸⁹ The two men exchanged information regularly about their work.⁵⁹⁰

295. Several witnesses who met Šainović in different circumstances gave consistent evidence about his authority in Kosovo and its source. Klaus Naumann, who was a chairman of the NATO Military Committee at the time, stated that, during the meetings of 24 and 25 October 1998, Milošević introduced Šainović to him as a FRY Deputy Prime Minister and “the man responsible for Kosovo.”⁵⁹¹ Knut Vollebaek, the Norwegian Minister of Foreign Affairs and OSCE Chairman at the relevant time, testified that he was under the impression that Šainović was the person with responsibility for Kosovo within the FRY Government.⁵⁹² Richard Ciaglinski, who was involved with the KVM in late 1998 and early 1999, testified that Šainović was responsible for Kosovo and that Milošević was the only person higher than Šainović in that respect.⁵⁹³ Michael Phillips, who worked as William Walker's Chief of Staff, gave evidence that, at his first meeting with Šainović, Šainović introduced himself as personal representative of Milošević in Kosovo.⁵⁹⁴ Joseph Maisonneuve, Head of KVM Regional Centre in Prizren, testified that he never heard Šainović defer to another person when it came to interactions about Kosovo. In his opinion, there was no doubt Šainović was well apprised of what was happening in Kosovo, and the power to act was in his hands to a great degree.⁵⁹⁵ Ibrahim Rugova, who met Šainović on a number of occasions during his house arrest, stated that Šainović was responsible for Kosovo and had most authority of all the

⁵⁸⁸ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 20–24, 208, 384. *See also* Momir Bulatović, T. 13820–13821 (16 August 2007), T. 13899–13900 (17 August 2007).

⁵⁸⁹ Andreja Milosavljević, T. 14262–14266, 14268–14272, 14311–14312 (23 August 2007), T. 14336–14338 (24 August 2007).

⁵⁹⁰ Andreja Milosavljević, T. 14304–14306, 14308 (23 August 2007), T. 14358 (24 August 2007).

⁵⁹¹ Klaus Naumann, T. 8251 (13 December 2006), P1767 (notes of OTP interviews), para. 26, P2512 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6993.

⁵⁹² Knut Vollebaek, T. 9508 (31 January 2007), P2634 (witness statement dated 8 January 2002), para. 19.

⁵⁹³ Richard Ciaglinski, T. 6825 (17 November 2006).

⁵⁹⁴ Michael Phillips, T. 11831 (19 March 2007).

⁵⁹⁵ Joseph Maisonneuve, T. 11033 (6 March 2007).

Serbs there.⁵⁹⁶ Dušan Lončar, who worked with Šainović in Kosovo, testified that he held great authority, both formally in his role as Deputy Prime Minister and Chairman of the Commission for Co-operation with the KVM (which is discussed in detail below), and informally, trying to do much more than his various functions strictly compelled him to do.⁵⁹⁷ General Karol John Drewienkiewicz, also part of the KVM, stated that Šainović was consistently presented to him by many individuals as the point of contact or the decision-maker for Kosovo. No one ever raised a constitutional or legal objection to referring a matter to him based on his position as a federal official.⁵⁹⁸ Kosovo Albanian journalist and negotiator, Veton Surroi, testified that Šainović was the most trusted man of Milošević and was his closest associate regarding Kosovo issues.⁵⁹⁹ All this is consistent with the impression of John Crosland, who was a Defence Attaché at the U.K. Embassy in Belgrade.⁶⁰⁰

296. Austrian Ambassador Wolfgang Petritsch testified that Šainović was in charge of Kosovo-related issues, which is why they had frequent meetings. He stated that Šainović was “Mr. Milošević’s Kosovo man”. Petritsch further stated that Šainović would invariably pass many issues on to Milošević for a final decision, as he did when they negotiated the release of KLA prisoners in late January 1999, and that he had a fair amount of influence in what transpired in Kosovo.⁶⁰¹

297. Head of US-KDOM, Shaun Byrnes, testified that he had the impression that Šainović was the “go-to, the point man politically on Kosovo”.⁶⁰² Byrnes met Šainović on a number of occasions, and these meetings were always linked to one or another ongoing crisis, as will be discussed in more detail below. All these meetings only served to confirm Byrnes’s impression of Šainović’s authority in Kosovo.⁶⁰³ Finally, as stated earlier, Momir Bulatović conceded, after having evaded the question several times, that he never issued specific tasks to Šainović even though he was formally superior to Šainović.⁶⁰⁴

298. When asked about those views of his role during his interview with the Prosecution, Šainović stated that they were understandable given that the international community representatives in Kosovo always had to deal with him due to his position as the Chairman of the

⁵⁹⁶ Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4235–4236.

⁵⁹⁷ Dušan Lončar, T. 7590 (30 November 2006).

⁵⁹⁸ Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), para. 201.

⁵⁹⁹ Veton Surroi, T. 4547 (10 October 2006).

⁶⁰⁰ John Crosland, P2645 (witness statement dated 31 October 2006), para. 58.

⁶⁰¹ Wolfgang Petritsch, P2792 (witness statement dated 9 June 1999), pp. 7–8, P2793 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 7216–7217.

⁶⁰² Shaun Byrnes, T. 12138 (16 April 2007).

⁶⁰³ Shaun Byrnes, T. 12138–12140 (16 April 2007).

⁶⁰⁴ Momir Bulatović, T. 13901–13902 (17 August 2007).

Commission for Co-operation with the KVM and someone who would transmit messages to Milošević and other state organs.⁶⁰⁵ He admitted that, in this capacity as Chairman of the Commission for Co-operation with the KVM, he served as an intermediary between Milošević and the international community, saying that “people ... knew that they would come to me for anything that they wanted to be transmitted to Yugoslav government or to Mr. Milošević because that was my task”.⁶⁰⁶

299. The Chamber is convinced that Šainović was a powerful official, who not only relayed information to Milošević and conveyed Milošević’s orders to those in Kosovo, but also had a great deal of influence over events in the province and was empowered to make decisions. The strength of his position was not derived solely from his role as the Chairman of the Commission for Co-operation with the KVM, since he was in Kosovo for many months prior to KVM’s arrival and was already then perceived as having a great deal of power. The analysis of the evidence discussed in the following sections of this part of the Judgement only serves to reinforce this view.

b. Šainović’s authority over the VJ and the MUP

300. The Chamber has already found that a co-ordinating body called the Joint Command existed in the second half of 1998 and the first half of 1999, and that it had significant influence over the actions of MUP and VJ forces.⁶⁰⁷ The Prosecution alleges that Minić at first, and then Šainović later, headed this body. According to the Prosecution, as the Head of the Joint Command in both 1998 and 1999, Šainović oversaw the activities of the VJ, the MUP, and the civilian structures in Kosovo, and also directed them in conformity with instructions provided by Milošević. In this way, he used the FRY/Serbian forces to commit crimes, and also participated in implementing the plan for the training and arming of non-Kosovo Albanian civilians.⁶⁰⁸ The Šainović Defence, on the other hand, apart from denying the existence of the Joint Command, argues that Šainović was not the Head of the Joint Command in 1998 or 1999, nor otherwise had any command authority over the VJ and/or the MUP.⁶⁰⁹ Instead, he was simply attending meetings with representatives of the VJ and MUP (which ceased in October 1998 following the signing of the October Agreements), in order to apprise himself of the situation on the ground and thus exercise his duties in Kosovo efficiently.⁶¹⁰ As an extension of its argument regarding Šainović’s lack of authority over the Joint Command, the Šainović Defence contends that there was no subordinate relationship or other

⁶⁰⁵ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 843–851.

⁶⁰⁶ P605 (Nikola Šainović interview with the Prosecution), e-court p. 845.

⁶⁰⁷ See Section VI.E.

⁶⁰⁸ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 164, 673.

⁶⁰⁹ Šainović Final Trial Brief, 29 July 2008 (public version), paras. 68–93, 103–107.

official relationship between the members of the Working Group for Kosovo, Matković, Minić, Anđelković, on one hand, and Šainović, on the other.⁶¹¹ Finally, the Defence argues that the “minutes” of the Joint Command meetings were in fact simply VJ officer Milan Đaković’s notes of these meetings, recording only the parts that were interesting or relevant to him and, thus, not a complete or entirely accurate record.⁶¹²

301. The Chamber notes that, in deciding on the scope of Šainović’s authority over the VJ and MUP, as well as the scope of his authority in Kosovo in general, particular attention has been paid to various meetings attended by Šainović and other high level officials in 1998 and 1999, during which various VJ and MUP activities in Kosovo were discussed. Many of these meetings have already been referred to in other parts of the Judgement, most prominently in Section VI.E, and thus will not be recounted here in detail. The Chamber will focus instead on the evidence of Šainović’s contribution to those meetings and, in addition to the other evidence, will pay particular attention to his interview with the Prosecution where that contribution is addressed.

i. Šainović’s authority over VJ and MUP in 1998

302. As noted earlier, sometime between late May and early June 1998, before Šainović was based in Kosovo permanently, he and Zoran Lilić, also a Deputy Prime Minister of the FRY at the time, were sent to the province on a “fact-finding” mission by Bulatović.⁶¹³ They carried out two visits, within a week of each other, each lasting no longer than a day.⁶¹⁴ During the second visit, the two men met a number of MUP and VJ officials in VJ barracks in Peć/Peja. Miodrag Simić, Chief of Staff of the 3rd Army at the time, attended this meeting, along with the 3rd Army Commander Dušan Samardžić, Vlastimir Đorđević, Obrad Stevanović, the Accused Lukić, Franko Simatović, and Jovica Stanišić. Stanišić seemed to be in charge on the MUP side. The discussion revolved around the situation in Đakovica/Gjakova-Dečani/Deçan area and the border. Šainović and Lilić mainly listened while the MUP and the VJ officers briefed them on the situation.⁶¹⁵

303. In June 1998 a team composed of Minić, Matković, and Anđelković—known as the “Working Group”—was sent to Kosovo by the Main Board of the SPS of which Šainović was a

⁶¹⁰ Šainović Final Trial Brief, 29 July 2008 (public version), paras. 84–102.

⁶¹¹ Šainović Final Trial Brief, 29 July 2008 (public version), paras. 63–67.

⁶¹² Šainović Final Trial Brief, 29 July 2008 (public version), paras. 189–204.

⁶¹³ P605 (Nikola Šainović interview with Prosecution), e-court pp. 29–33, 37, 55.

⁶¹⁴ P605 (Nikola Šainović interview with Prosecution), e-court pp. 33–34, 45, 53.

⁶¹⁵ Miodrag Simić, T. 15619–15622 (14 September 2007); P605 (Nikola Šainović interview with Prosecution), e-court pp. 91–95.

member at the time.⁶¹⁶ They had meetings with representatives from the military and the police, as well as local authorities and politicians, including SPS members, on which they reported to Milošević, Milutinović, and Šainović on 25 June 1998.⁶¹⁷

304. Šainović then participated in a meeting held in Beli Dvor in Belgrade on 21 July 1998, which has been referred to earlier in the Judgement,⁶¹⁸ and during which a plan comprising both military and political measures for suppressing and combating terrorism in Kosovo (“Plan for Combating Terrorism”) was formally adopted. Others attending included Milutinović, Minić, Perišić, Pavković, Stojiljković, Đorđević, and Lukić.⁶¹⁹ From this meeting, Šainović understood that his task in relation to this Plan was to explain to foreign representatives that actions taken were part of the fight against terrorism rather than actions aimed at the Kosovo Albanian population.⁶²⁰

305. Šainović told the Prosecution in his interview that, between June and early October 1998, he participated in four or five such meetings, at which he spoke only about the issues within his competence, namely the general situation regarding Kosovo, and that he never gave any orders to the VJ or/and the MUP.⁶²¹ He also explained that the participants at these meetings presented their view on the situation in Kosovo and sometimes recommended a course of action. Following discussion, Milošević would formulate or draw conclusions on what measures should be taken, and that became the basis for action by the VJ and the MUP. After the meetings, the VJ and MUP representatives went back to their respective commands or offices and implemented these conclusions.⁶²² The fact that these meetings occurred is confirmed by Duško Matković who also attended. According to Matković, on 5 August 1998 he, along with Milošević, Minić, Anđelković, Šainović, Perišić, Pavković, Dimitrijević, Samardžić, Lukić, Đorđević, and Stevanović attended a meeting where reports were submitted on events occurring in Kosovo.⁶²³ Another meeting of the

⁶¹⁶ P1012 (Minutes of the 16th Session of SPS Main Board, 10 June 1998), pp. 6–8. *See also* P605 (Nikola Šainović interview with the Prosecution), e-court pp. 118, 125–129, 288.

⁶¹⁷ Duško Matković, T. 14590–14592 (29 August 2007), T. 14633–14634 (30 August 2007); Milomir Minić, T. 14744–14751 (31 August 2007); Aleksandar Dimitrijević, T. 26619–26620 (8 July 2008). *See also* P605 (Nikola Šainović interview with the Prosecution, 11 December 2002), pp. 201–202, 310–311, 345.

⁶¹⁸ *See* Section VI.E.

⁶¹⁹ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 197–198, 203, 245, 345, 418–419, 436–440; Duško Matković, T. 14634–14637 (30 August 2007), P2913 (witness statement dated 10 February 2003), p. 9; Milan Đaković, T. 26410 (19 May 2008); Aleksandar Dimitrijević, T. 26589–26590 (8 July 2008). *See also* 4D100 (PrK Report to 3rd Army re engagement of units, 22 July 1998; 4D101 (PrK Plan for the engagement of units in Kosovo, 23 July 1998).

⁶²⁰ P605 (Nikola Šainović interview with the Prosecution), e-court p. 446.

⁶²¹ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 199–203, 245–248, 290; *see also* Aleksandar Dimitrijević, T. 26587–26591 (8 July 2008), T. 26710–26712 (9 July 2008).

⁶²² P605 (Nikola Šainović interview with the Prosecution), e-court pp. 233–235, 240.

⁶²³ Duško Matković, P2913 (witness statement dated 10 February 2003), p. 13.

same personnel was held at the end of August 1998, when the participants reported on “the realisation of the original plan”.⁶²⁴

(A) Joint Command meetings

306. Following the meeting of 21 July 1998, Šainović and the members of the Working Group travelled back to Kosovo and proceeded to meet almost daily in Priština/Prishtina with VJ and MUP representatives, such as Pavković, Lukić, Đorđević, Stevanović, and Đaković.⁶²⁵ As the co-ordination intensified, the decision was taken to hold “coordination meetings” with the VJ and the MUP on a daily basis.⁶²⁶ These daily meetings in Priština/Prishtina, starting in the summer of 1998, were known as meetings of the “Joint Command”.⁶²⁷

307. Šainović claimed that the purpose of these meetings was to discuss issues relating to the civilian authorities, to inform the VJ and the MUP of the problems that the civilian authorities had, and to exchange information which would help to avoid mistakes. According to Šainović, no decisions were taken at these meetings and their main goal was the provision and exchange of information between the civilian authorities and the security forces.⁶²⁸ The Chamber recalls, however, its finding that the Joint Command had significant influence over the actions of the MUP and VJ in respect of the implementation of the various stages of the Plan for Combating Terrorism.

308. Šainović explained that, following the discussions at these meetings, he reported to Milošević, Bulatović, and the Federal Ministry for Foreign Affairs. He also received information from Bulatović and the Minister of Foreign Affairs, which he would then convey to the Priština/Prishtina meetings.⁶²⁹ Šainović denied, however, that his role was to bring instructions from Milošević.⁶³⁰ He also maintained that he was not in a position to question Pavković and Lukić about the issues that fell within their authority, but explained that the atmosphere at the

⁶²⁴ Duško Matković, P2913 (witness statement dated 10 February 2003), p. 13; P1435 (Report of realisation of 5th phase of plan of fight against terrorism, 22 September 1998).

⁶²⁵ Duško Matković, T. 14644–14645 (30 August 2007), P2913 (witness statement dated 10 February 2003) p. 9. *See also* P605 (Nikola Šainović interview with the Prosecution), e-court pp. 201–203, 208, 414, 419–421, 440–442.

⁶²⁶ Duško Matković, T. 14644–14645 (30 August 2007); Zoran Anđelković, T. 14656 (30 August 2007); Milomir Minić, T. 14748 (31 August 2007).

⁶²⁷ 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).

⁶²⁸ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 203–204.

⁶²⁹ P605 (Nikola Šainović interview with the Prosecution), e-court p. 208. *See also* Momir Bulatović, T. 13820–13821 (16 August 2007), T. 13899–13900 (17 August 2007).

⁶³⁰ P605 (Nikola Šainović interview with the Prosecution), e-court p. 307.

meetings was such that everyone could express what they thought and could exchange information on the issues relating to their areas.⁶³¹

309. Over the course of these meetings, in most of which Šainović participated, those attending generally reported on the status of joint actions and commented on the current situation in Kosovo. The Chamber recalls here its earlier finding that there is no doubt that politicians participating in the Joint Command meetings expressed their views on what ought to be done by the VJ and MUP, and that Minić and Šainović played a leadership role, overseeing the meetings and frequently directing the group.⁶³² This is confirmed by the Notes of the Joint Command, which were taken by Milan Đaković. The Chamber appreciates that these Notes do not explicitly identify the roles played by the participants, but merely provide a record of certain things that those attending said. Nevertheless, the Chamber finds that, taken as a whole over the large number of meetings to which they related, the Notes illustrate with clarity the roles played by those attending. They reflect the fact that Šainović, along with Minić, took a leading role during these meetings and demonstrate that Šainović exercised *de facto* authority in directing actions of the VJ and/or the MUP in 1998.

310. For example, at the meeting held on 23 July 1998 Šainović stated that it was no longer a secret that “the operation” was underway; he indicated the need to discuss what other measures were to be undertaken on the observing of the border; and he said that the State Security (RDB) was to intensify its work, and to carry out offensive and even forceful reconnaissance.⁶³³ Šainović also stated that the goal of the forces was to preserve communication and that they needed to start actions with the participation of the army in order to achieve such a goal.⁶³⁴

311. At the meeting held on 25 July Šainović positively assessed that day’s activities and stated that “units” should be stabilised and security measures undertaken.⁶³⁵ At the meeting held on 26 July, after lengthy reports from various participants, Šainović concluded the meeting by saying that he would take responsibility for failures, although it is unclear whether he was referring to the failures of the Joint Command or of specific VJ/MUP actions.⁶³⁶ On 29 July Šainović stated that two “detachments on Mt. Rudnik are to attack Lauša” and that a combat group “must also be active in order to cut off Lauša”.⁶³⁷ On 31 July he opined that the main problem was “the refugee issue”

⁶³¹ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 405–408.

⁶³² See Section VI.E.

⁶³³ P1468 (Notes of the Joint Command), p. 7.

⁶³⁴ P1468 (Notes of the Joint Command), p. 8.

⁶³⁵ P1468 (Notes of the Joint Command), p. 11.

⁶³⁶ P1468 (Notes of the Joint Command), p. 16.

⁶³⁷ P1468 (Notes of the Joint Command), p. 27.

and “TV crews to cover the return of Albanians to their homes, if it is possible”.⁶³⁸ At the meeting of 8 August 1998 he instructed that “the next phase is to be prepared for Tuesday [and] the village of Josić is to be ‘done’”, while Pavković noted that “the village of Vouša is to be ‘done’ as well.”⁶³⁹ On 12 August Šainović stated that the army was to fulfil its obligations in the border belt; the police were to cover all the territory and consolidate, while the State Security (RDB) was to “take over the third area”; the RDB and the army were to make a joint proposal for further plans; and the confiscation of weapons was to continue.⁶⁴⁰ At the 16 August meeting he made several order-like statements: “increase control in villages tomorrow”, “deploy one combat group around Junik”, “that the positions be arranged”, and “that the clearing of the road be prepared (VJ)”.⁶⁴¹ At the meeting held on 27 August he said that a report on where to safely build and develop Serb settlements was to be prepared.⁶⁴²

312. He continued to participate in the meetings in a similar vain throughout September and October. At the meeting held on 2 September Šainović referred to the police undertaking measures in Rugovo/Rugova and particularly in Čičavica/Qiqavica.⁶⁴³ On 15 September he stated that actions were to be continued; specifically civilian activities were to be continued.⁶⁴⁴ On 20 September Šainović stated *inter alia* that the work of local police had to be organised in the areas of Đakovica/Gjakova, Peć/Peja, and Dečani/Dečan.⁶⁴⁵ According to the Notes from 21 September, Šainović stated that the Joint Command should not implement Milošević and Yeltsin’s “matters listed on the statement,” and that they should not decrease the number of men in Kosovo.⁶⁴⁶ He went on to say that no one questions “our legitimate right to defend the country”, but that actions had to be taken in a disciplined manner, “in order to avoid arson”; he also stated that there should be a number of police officers who would arrange the return of civilians.⁶⁴⁷ On 22 September he reported that there had been very heavy clashes and that they had sustained losses; he suggested the regrouping of two companies from the PJP and stated that the operations had to be continued the next day. He also stated that “[a]fter the operation has ended [they]’ll have to engage an intervention platoon to surround the village, where the terrorists are ... One liaison officer, together

⁶³⁸ P1468 (Notes of the Joint Command), p. 34.

⁶³⁹ P1468 (Notes of the Joint Command), p. 47.

⁶⁴⁰ P1468 (Notes of the Joint Command), p. 50. *See also* Zoran Anđelković, T. 14698–14701 (30 August 2007), T. 14731–14734 (31 August 2007).

⁶⁴¹ P1468 (Notes of the Joint Command), pp. 55–56.

⁶⁴² P1468 (Notes of the Joint Command), p. 78.

⁶⁴³ P1468 (Notes of the Joint Command), p. 85.

⁶⁴⁴ P1468 (Notes of the Joint Command), p. 115.

⁶⁴⁵ P1468 (Notes of the Joint Command), p. 123.

⁶⁴⁶ P1468 (Notes of the Joint Command), p. 124.

⁶⁴⁷ P1468 (Notes of the Joint Command), pp. 124–125.

with Lukić /are in charge/ for engagement of the intervention platoon.”⁶⁴⁸ At the meeting held on 26 September, following Pavković and Lukić’s report that the action in Gornje Obrinje/Abria e Eperme and Donje Obrinje/Abria e Poshtme was completed, Šainović stated that “the Jezerce” operation had to be continued the next day.⁶⁴⁹ On 29 September he said that they had to “demoralise” Kosovo Albanians and “convince them to abandon their reviving of separatism”. He also stated that they had to equip “at least one company from every detachment”.⁶⁵⁰

313. On 4 October Šainović stated that all necessary measures were to be taken at the border, because all types of attacks were possible, including bombing, and the headquarters and other installations that could be a place for those groups were to be secured.⁶⁵¹ On 7 October he further stated that the level of “operational activities” was to be raised, and that the actions were to be carried out secretly.⁶⁵² On 8 October he stated that Trajković, the head of the SAJ, and another person from that unit had to enter the area in question and tasks had to be distributed.⁶⁵³ On 11 October he reported that “4–5 areas have made their plans,” and further proposals for the Joint Command were to be submitted the next day (four to five actions). He also suggested “giv[ing] assignments to all other secretariats to liquidate the individual targets”.⁶⁵⁴ On 13 October he instructed that minor losses should be caused in order to create the feeling of insecurity, and that action plans for Đakovica/Gjakova and Peć/Peja should be prepared.⁶⁵⁵

314. On 21 October, following the Holbrooke-Milošević Agreement and his own meeting with Wesley Clark, Šainović brought the withdrawal plan of FRY/Serbian forces from certain areas. The first part of the plan was to move the police out of the village of Pogoruše, following which the VJ was to move out from Podujevo/Podujeva. Šainović characterised the withdrawal of the police units and the VJ as shifting of units into peacetime conditions, rather than as leaving the territory. He indicated that a MUP station should exist in Mališevo/Malisheva, and that the level of combat readiness was to be decreased “as the Albanians fulfil certain conditions which had been set before them.”⁶⁵⁶ At the meeting held on 22 October, he stated that it was necessary to step up efforts to gather intelligence about the state, strength, and deployment of “DTS” (sabotage terrorist forces), and indicated that heavy artillery should not be used during MUP operations and that data on the

⁶⁴⁸ P1468 (Notes of the Joint Command), pp. 126–128.

⁶⁴⁹ P1468 (Notes of the Joint Command), p. 129.

⁶⁵⁰ P1468 (Notes of the Joint Command), p. 132.

⁶⁵¹ P1468 (Notes of the Joint Command), pp. 135–136.

⁶⁵² P1468 (Notes of the Joint Command), p. 141.

⁶⁵³ P1468 (Notes of the Joint Command), p. 142; IC199 (Milan Đaković’s clarifications of Joint Command Notes), p. 8 (reference to entry numbered KO2228540).

⁶⁵⁴ P1468 (Notes of the Joint Command), p. 145.

⁶⁵⁵ P1468 (Notes of the Joint Command), p. 148.

position of mines in the field should be prepared.⁶⁵⁷ On 26 October, when Pavković reported on the 3rd Army Command's belief that the Joint Command should cease to exist, Šainović responded that this stage of operations was to be closed and that decisions and tasks were to be given. He further stated that subordination was public and that "with OSCE pressure, there should be more co-ordination between all the bodies." Anđelković said that nobody was authorised to take away the Joint Command documents which were to be kept on the Joint Command's premises. Šainović responded by saying that conditions warranted keeping the documents in a MUP building. He also stated that "When we withdraw, we have to be careful, we have to take care that nobody finds parts of certain detachments who have not withdrawn. There must be no discrepancy with the information already issued."⁶⁵⁸ At the meeting of 30 October Šainović instructed that an armoured combat vehicle "shall patrol tonight between Emiljevo and Dulj".⁶⁵⁹

315. Some witnesses also indicated that Šainović was not only a member of the Joint Command, but that he also headed it. Ljubinko Cvetić, former Head of the Kosovska Mitrovica SUP, testified that, at the meeting in the MUP Staff building in Priština/Prishtina on 10 July 1998 attended by all the heads of secretariats from Kosovo, they were told by either Vlastimir Đorđević or Obrad Stevanović that it had been agreed at the highest level to set up a Joint Command for all formations of the army and the police in the implementation of anti-terrorist operations. At a second meeting of the MUP Staff, held on 22 July 1998, Vlastimir Đorđević reiterated the establishment of the Joint Command which comprised Šainović, Duško Matković, Milomir Minić, Lukić, Pavković, Zoran Anđelković and David Gajić. Cvetić testified that it was conveyed to him and other MUP chiefs during those MUP Staff meetings that Šainović was the Head of the Joint Command and that he was entrusted with the co-ordination of the military and the police.⁶⁶⁰

316. The Chamber has in evidence the minutes from the MUP Staff meeting of 22 July, which do not record any mention of the Joint Command or Šainović.⁶⁶¹ However, this document is not complete and does not, therefore, provide a basis for the Chamber to determine whether Šainović was mentioned as the Head of the Joint Command.

317. Miroslav Mijatović, who was a deputy of Sreten Lukić at the MUP Staff, rejected Cvetić's evidence, stating that, unlike Cvetić, he was not told during the July 1998 MUP Staff meetings that

⁶⁵⁶ P1468 (Notes of the Joint Command), pp. 152–153.

⁶⁵⁷ P1468 (Notes of the Joint Command), p. 156.

⁶⁵⁸ Šainović closing arguments, T. 27069 (21 August 2008).

⁶⁵⁹ P1468 (Notes of the Joint Command), p. 164.

⁶⁶⁰ Ljubinko Cvetić, T. 8051–8052, 8077–8078 (7 December 2006), T. 8123–8124 (8 December 2006).

⁶⁶¹ 6D798 (Minutes of MUP Staff meeting, 22 July 1998).

Šainović was the commander of the Joint Command.⁶⁶² Radovan Vučurević, who also worked at the MUP Staff in Priština/Prishtina and was present at the 22 July meeting, testified that neither Đorđević nor Stevanović informed the meeting that Šainović was the commander of the Joint Command.⁶⁶³ In addition, challenges were posed to Cvetić's credibility by his deputy Nebojša Bogunović, as well as some other witnesses called by Defence.⁶⁶⁴ The Chamber notes that it was generally not persuaded by the challenges to Cvetić's credibility. The witnesses led to impeach him merely provided responses to leading questions posed by the Šainović Defence.⁶⁶⁵ On the other hand, the Chamber was impressed by the straightforward way in which Cvetić responded to questions in court and considered him to be well-informed. The Chamber considers Cvetić to be credible on this point and accepts his evidence regarding the July meetings in the MUP Staff.

318. The Chamber also heard from VJ General Branko Gajić, who 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.⁶⁶⁶ On cross-examination by the Šainović Defence, Gajić conceded that there was no interference with the command of the MUP or VJ in the meetings at issue.⁶⁶⁷ Nevertheless, the Chamber notes that his testimony is consistent with the Notes of the Joint Command, which show that a leading role, making proposals and giving suggestions and instructions, was undertaken by both Minić and Šainović and that it consisted of co-ordinating the activities of the VJ and MUP rather than interfering with their internal command processes.

319. The fact that Šainović and Minić were the leading members of the Joint Command is also consistent with the complaint in July 1998 of Momčilo Perišić, VJ Chief of Staff in 1998, about an alternative chain of command, pursuant to which Šainović and Minić were involved in directing VJ units. In his letter to Milošević he stated the following:

The attempt by the civilian part of the Staff to command the Corps. The Corps commander is responsible for assessing the situation and for planning VJ and MUP operations in cooperation with the civilian part of the staff and the MUP, for forwarding it to Šainović and Minić for them to distribute assignments to all except the Priština Corps. In practice, the commander of Priština Corps plans what he has been ordered to, and this is at the request of Šainović and Minić and the MUP, and so turns into

⁶⁶² Miroslav Mijatović, T. 22284–22285 (13 February 2008).

⁶⁶³ Radovan Vučurević, T. 23130–23131 (25 February 2008).

⁶⁶⁴ Šainović Final Trial Brief, 15 July 2008 (public version), para. 725; Šainović closing arguments, T. 27064 (21 August 2008); *see also* Lukić closing arguments, T. 27363 (26 August 2008); Miloš Vojnović, T. 24157 (12 March 2008).

⁶⁶⁵ Nebojša Bogunović, T. 25119–25120 (10 April 2008). When Bogunović was asked whether he agreed that Cvetić “was a bad superior officer and as a person he was even worse than that,” he responded, “Yes.”

⁶⁶⁶ Branko Gajić, T. 15412 (11 September 2007).

⁶⁶⁷ Branko Gajić, T. 15439–15446 (12 September 2007).

something like a service of theirs, for planning and execution. Since it is his wish and that of all of us that the plan be realised, if others will not or cannot, he executes /it/ with PrK /Priština Corps/ units, which leads to an illegitimate, unsystematic and inadequate utilisation of VJ units, thereby wrecking the system; they split up units, expend them, tie them down, and so if it is actually necessary to use the Corps according to the regulations on its use in combat, it may not be possible to use it.⁶⁶⁸

At the end of the letter Perišić proposed that Milošević not permit the commanding of the VJ outside the system of military subordination and unity of command.⁶⁶⁹

320. John Crosland testified that it was a well-known fact amongst the foreign attachés that Šainović was the man directly responsible for events in Kosovo, that Milošević's orders would be given to Pavković through Šainović, and that Šainović was Milošević's "day-to-day operational man".⁶⁷⁰ The Chamber has in evidence a telegram prepared by the U.K. Embassy and recounting a meeting of 3 October 1998 between Crosland, U.K. Ambassador Donnelly, and Aleksandar Dimitrijević, chief of the VJ Security Administration.⁶⁷¹ The telegram recorded Dimitrijević's dissatisfaction with Šainović's actions in Kosovo:

He personally [Dimitrijević] and General Staff personnel [namely Chief of General Staff Perišić] did not agree with the actions that had been taken in recent months since Šainović had taken over in Kosovo.⁶⁷² ...

I asked how, in light of what he had said about Šainović over-riding General Staff wishes, we could be confident of this assurance [not to deploy VJ units again]. He said that he and Perišić would do their best not to let it happen again. They had spelled out clearly to the State leadership the seriousness of the situation and the need to comply with [U.N. Security Council Resolution] 1199. But unfortunately, he could not give a guarantee.⁶⁷³

I said that I hoped what he said was true since we would detect very quickly any contrary signs. Did the MUP also understand that we were monitoring their activities very closely and saw signs of continuing activity. He said only Šainović could answer that. He had been responsible for policy and deployments. But would I please not tell Šainović that he had said that.⁶⁷⁴

Dimitrijević came about as close as he could to disloyalty in his remarks about Milošević and Šainović. He may have an eye to possible ICTY investigation of recent events and was very keen to shuffle responsibility to the MUP.⁶⁷⁵

⁶⁶⁸ P717 (Momčilo Perišić's letter to Slobodan Milošević, 23 July 1998), pp. 2–3.

⁶⁶⁹ P717 (Momčilo Perišić's letter to Slobodan Milošević, 23 July 1998), pp. 2–3.

⁶⁷⁰ John Crosland, P2645 (witness statement dated 31 October 2006), paras. 54, 56, 58.

⁶⁷¹ P683 (Confidential Sitrep from U.K. Military Representative, 3 October 1998); *see* John Crosland, T. 9874 (8 February 2007).

⁶⁷² P683 (Confidential Sitrep from U.K. Military Representative, 3 October 1998), para. 6.

⁶⁷³ P683 (Confidential Sitrep from U.K. Military Representative, 3 October 1998), para. 8.

⁶⁷⁴ P683 (Confidential Sitrep from U.K. Military Representative, 3 October 1998), para. 9. *See also* John Crosland, P2645 (witness statement dated 31 October 2006), para. 52.

⁶⁷⁵ P683 (Confidential Sitrep from U.K. Military Representative, 3 October 1998), para. 12.

321. According to Crosland, another meeting with Dimitrijević took place on 5 October 1998, where the latter again complained about Pavković working outside of the chain of command and going straight to Milošević and Šainović.⁶⁷⁶

322. Dimitrijević also referred to Šainović during one of the VJ collegium meetings where he said: “I think that there is a priority to ensure that not even Šainović, or any other Šainović can solve these problems by lightly deciding to use the units.”⁶⁷⁷

323. Having been called by the Chamber to give evidence, Dimitrijević was invited to comment on the contents of the telegram referred to above. He expressed surprise at its contents and stated that it was clearly the author’s interpretation of what he had said. In relation to the recorded comment that he did not agree with the actions taking place upon Šainović’s arrival in Kosovo, Dimitrijević stated that he could not have said that because “Šainović absolutely was no authority in Kosovo, and that would have been a lie”.⁶⁷⁸ When asked by the Chamber why Crosland and Donnelly would record the meeting inaccurately, Dimitrijević stated that he never said something like that then, nor could he say it now, since Šainović “went, like all the others, to the Pri[š]tina Corps command”.⁶⁷⁹ Dimitrijević then explained that during some of the VJ Collegium meetings he would intervene and argue that no civilians should be allowed to use the VJ outside of the chain of command, and conceded that in that context he had mentioned Šainović. However, he explained that he did so simply because Šainović was someone who represented the FRY Government in matters relating to Kosovo.⁶⁸⁰ He further explained that he was not implying that the army was in fact being used in that way but was simply trying to say that it should not be so used.⁶⁸¹ Dimitrijević finally testified that the chain of command was intact and that there was no need for Milošević to have an intermediary between himself and the Chief of the General Staff and/or Pavković.⁶⁸²

324. Dimitrijević was also asked on cross-examination about Perišić’s letter and the reference to the “civilian part of the staff” contained therein. He testified that he did not know what that meant and that Perišić’s comments were confusing. Dimitrijević did agree, however, that Perišić thought that there was a problem with the chain of command and subordination.⁶⁸³ He also made the point,

⁶⁷⁶ John Crosland, P2645 (witness statement dated 31 October 2006), para. 54.

⁶⁷⁷ P928 (VJ Collegium Minutes, 30 December 1998), p. 14.

⁶⁷⁸ Aleksandar Dimitrijević, T. 26666–26669 (9 July 2008).

⁶⁷⁹ Aleksandar Dimitrijević, T. 26669 (9 July 2008).

⁶⁸⁰ Aleksandar Dimitrijević, T. 26669–26670 (9 July 2008).

⁶⁸¹ Aleksandar Dimitrijević, T. 26701–26704 (9 July 2008).

⁶⁸² Aleksandar Dimitrijević, T. 26714–26718 (9 July 2008).

⁶⁸³ Aleksandar Dimitrijević, T. 26687–26690 (9 July 2008).

during cross-examination, that Perišić was referring to an “attempt” by civilians to control the army, and that the letter does not indicate that the attempt had been successful.⁶⁸⁴

325. The Chamber is unconvinced by Dimitrijević’s denial of any significant role played by Šainović in the Joint Command or in exercising authority over the police and the VJ forces in Kosovo and rejects his attempts to contradict the plain import of what he had said earlier. The Chamber considers that the documents in evidence listing the complaints expressed by some in the VJ about what Šainović’s role entailed speak for themselves and demonstrate that his role within the Joint Command was highly significant.

326. This was confirmed by Wolfgang Petritsch, Austrian Ambassador in the FRY, who testified that the understanding and the knowledge in the diplomatic community in Belgrade was that Šainović was in charge of co-ordinating the security forces in Kosovo from the summer of 1998. Šainović was well-informed about issues pertaining to Kosovo, and Petritsch always had a very pleasant and factual conversation with him, in spite of the tense situation and the ongoing conflict.⁶⁸⁵ Austrian diplomat Jan Kickert also stated that during the summer of 1998 Šainović was a close associate of Milošević and was “responsible for coordinating the security forces in Kosovo.” Šainović was very often in Priština/Prishtina in the governmental building, and “he was referred to ... as the person the Americans would bring security issues up with”.⁶⁸⁶

327. Against that is evidence to the effect that Šainović was not in fact the Head of the Joint Command and had no authority or influence over the VJ and/or MUP. For example, Momir Bulatović denied that Šainović ever commanded the VJ and/or the MUP and stated that he (Bulatović) did not even hear about the Joint Command until it was mentioned in the *Milošević* trial.⁶⁸⁷ Lazarević, who attended five of these meetings, testified that Šainović was present on at least one of those occasions, but that neither Šainović nor the other men from the political structures issued any orders to him or Pavković.⁶⁸⁸ And the Šainović Defence rightly points out that there is not a single document that refers to Šainović as the Head of the Joint Command. Instead, he is always referred to as the FRY Deputy Prime Minister.⁶⁸⁹

⁶⁸⁴ Aleksandar Dimitrijević, T. 26723, 26760–26761 (9 July 2008).

⁶⁸⁵ Wolfgang Petritsch, T. 10766–10767 (1 March 2007).

⁶⁸⁶ Jan Kickert, T. 11235 (7 March 2007); P560 (Austrian Embassy Dispatch, 7 October 1998), p. 1.

⁶⁸⁷ Momir Bulatović, T. 13855–13857, 13907–13910 (17 August 2007).

⁶⁸⁸ Vladimir Lazarević, T. 17815–17822 (7 November 2007), T. 18138–18139 (12 November 2007), T. 18155–18156 (13 November 2007), T. 18404 (15 November 2007), T. 18462–18467 (16 November 2007); P1468 (Notes of the Joint Command), pp. 117–123.

⁶⁸⁹ Šainović Final Trial Brief, 29 July 2008 (public version), para. 709. *See, e.g.*, P1989 (Minutes of the MUP Staff meeting, 4 April 1999).

328. In light of all the evidence surrounding the Joint Command and referred to in detail above, the Chamber finds Bulatović's evidence of ignorance completely lacking in credibility and, as a result, rejects his denial of Šainović's role. The evidence of Lazarević is confined to a small number of meetings and is largely consistent with the way in which the body operated; it does not, therefore, detract from the evidence showing that Šainović had a leadership role. Even though the Chamber accepts that neither the Notes nor other documents in evidence in this case refer to Šainović as anything other than the Deputy Prime Minister of the FRY, this is not inconsistent with the way in which the Joint Command operated in 1998, namely that its decisions were implemented through the existing chains of command.

329. The Chamber also notes Milan Đaković's evidence to the effect that Minić held the highest post of all the politicians there and seemed to be participating in the meetings the most.⁶⁹⁰ Đaković further testified that Šainović was not in charge during the meetings, that he did not issue orders to Pavković or Lukić, and that he usually took the floor in order to talk about foreign policy issues because he needed to be informed about the situation on the ground in order to be able to participate in the meetings with foreign representatives.⁶⁹¹ As observed above, in trying to explain the Notes, Đaković stated that they contained a record of the matters that were important to him as a soldier and thus were not representative of everything that was said at these meetings. Accordingly, much of Šainović's contribution that dealt with politics and foreign policy was not recorded, and the parts that were recorded were in "military-speak".⁶⁹² Đaković also stated that none of the four politicians present at these meetings had significant influence on the decisions made by the VJ.⁶⁹³

330. Đaković's evidence about Minić's participation is not inconsistent with the Chamber's view that Minić, as well as Šainović, took an active role during the Joint Command meetings. The Chamber is, however, less persuaded by Đaković's description of Šainović's role given that the Notes Đaković personally took indicate that Šainović often discussed various VJ and MUP-related issues that went beyond foreign policy. Having analysed the Notes carefully, the Chamber is of the view that they do not in fact consist of "military speak" alone but also refer to issues such as distribution of humanitarian aid, crimes being committed in Kosovo, and so on. Although it is understandable that Đaković would record things of interest to his own work, there is no reason for him to record things said by the politicians that were not proposals, suggestions, or instructions,

⁶⁹⁰ Milan Đaković, T. 26481 (20 May 2008).

⁶⁹¹ Milan Đaković, T. 26380, 26412–26414 (19 May 2008), T. 26443–26444, 26478–26483 (20 May 2008).

⁶⁹² Milan Đaković, T. 26375 (19 May 2008), T. 26484 (20 May 2008).

⁶⁹³ Milan Đaković, T. 26486 (20 May 2008).

using language that indicated that they were. The Chamber is thus of the view that, although Đaković appeared to be a straightforward witness in general, he did here give evidence which the Chamber rejects because it is not consistent with the terms in which the Notes were written.

331. Accordingly, the Chamber is of the view that Šainović, along with Minić, was an active participant in the Joint Command meetings where he undertook a leading role. In addition, on his own admission, he reported to Milošević, Bulatović, and the Federal Ministry for Foreign Affairs. Given that politicians liaised with the VJ and the MUP at the time, and given that both of those organs had to get approval from Milošević, Šainović's role was pivotal in both giving such approval and issuing instructions. The various instructions he issued, as outlined above, reveal that he was indeed a political co-ordinator of the activities of the VJ and the MUP in Kosovo in 1998.

(B) Other meetings

332. On 29 October 1998 Šainović attended a meeting involving Milošević and other influential figures, including Pavković, Lukić, and Milutinović discussed in detail above.⁶⁹⁴ While the Chamber appreciates that the document in evidence purporting to be minutes from that meeting is not a verbatim record of the content of the meeting, it is in no doubt that the meeting took place, that it was attended by the most senior figures from the political, VJ, and MUP circles, and that the Plan for Combating Terrorism was discussed during it.⁶⁹⁵ This was one of the four or five meetings of the kind that Šainović said he attended between July and September 1998.

333. On 5 November 1998 Šainović attended a meeting at the MUP Staff in Priština/Prishtina, where he met with Milutinović, Lukić, Pavković, Stojiljković, Đorđević, Rade Marković, Miroslav Mijatović, the members of the Working Group, SUP and OUP Chiefs, as well as the PJP commanders. At this meeting Lukić briefed the participants on the current situation in Kosovo and informed them of the readiness of the MUP forces to continue with their duties and tasks. Milutinović then spoke about the Holbrooke-Milošević Agreement and how this was a difficult phase in the resolution of the Kosovo issue, even though the "Šiptar terrorist forces" had largely been "put out of action".⁶⁹⁶ Milutinović explained that the NATO threat was now gone, and that, with regard to the VJ, "everything will remain the same as it has been up to now (a joint command, VJ /Yugoslav Army/ units will not withdraw, and police forces have only been reduced by the number that has already been withdrawn)".⁶⁹⁷ In addition, according to Milutinović, both the VJ

⁶⁹⁴ P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), p. 1.

⁶⁹⁵ See Section VI.E.

⁶⁹⁶ P2805 (Minutes of meeting at MUP Staff in Priština/Prishtina, 5 November 1998), p. 3.

⁶⁹⁷ P2805 (Minutes of meeting at MUP Staff in Priština/Prishtina, 5 November 1998), p. 4.

and the MUP forces reserved the right to defend themselves if attacked and were thus told to continue planning “activities with undiminished commitment and energy”.⁶⁹⁸ The minutes of this meeting do not record any participation by Šainović.

334. The Chamber also has in evidence the minutes of the MUP Staff meeting, dated 2 December 1998, during which Lukić referred to another meeting held in Belgrade on 27 November 1998. He said that this meeting, convened at the Ministry of Interior, was attended by himself, Minister Vlado Stojiljković, assistant ministers, chiefs of RDB and RJB, and Šainović. After the situation in Kosovo was examined first, the duties and further engagement of members of the police in Kosovo were defined. The essence of the meeting was to continue the execution of anti-terrorist actions. Additionally, the police were to take a more offensive role in the newly-arisen situation.⁶⁹⁹

335. It is, therefore, clear that, in addition to the Joint Command meetings, Šainović attended other meetings in Kosovo during and after the implementation of the Plan for Combating Terrorism. These meetings involved both officials at the highest level in Belgrade, as well as the officials at the highest level entrusted with dealing with the situation in Kosovo. This is in line with the voluminous evidence, outlined above, of the influence Šainović exerted when it came to Kosovo. It is also in line with the earlier conclusion that he was a political co-ordinator of the VJ and the MUP at this time.

ii. Šainović’s authority over VJ and MUP in 1999

336. The Prosecution claims that, even though the composition of the Joint Command in 1999 changed with the departure of Minić and Matković from Kosovo, Šainović remained at its Head.⁷⁰⁰ On the other hand, the Šainović Defence argues that there is no evidence that the “manner of work” that was characteristic for one part of 1998 continued into 1999. In fact, according to the Šainović Defence, once the October Agreements were signed, the need for the politicians to meet with VJ and MUP representatives ceased to exist. The Šainović Defence argues furthermore that, after the October Agreements and especially after 24 March 1999, Šainović was “not in any way” involved in the activities of the VJ and MUP in Kosovo.⁷⁰¹ However, the Chamber cannot accept the Šainović Defence suggestion that Šainović had no involvement in the activities of the VJ and the MUP after the October Agreements, given his involvement with the Commission for Co-operation with the KVM, discussed below.

⁶⁹⁸ P2805 (Minutes of meeting at MUP Staff in Priština/Prishtina, 5 November 1998), pp. 4–5. *See also* Ljubinko Cvetić, T. 8187–8189 (8 December 2006); Milomir Minić, T. 14783–14785 (31 August 2007).

⁶⁹⁹ P3122 (Minutes of MUP Staff meeting, 2 December 1998), p. 2.

⁷⁰⁰ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 201–202.

337. Šainović stated in his interview with the Prosecution that the meetings which took place in Priština/Prishtina in 1998 were impossible and did not take place during the NATO bombing.⁷⁰² Indeed, except for one Joint Command meeting on 1 June 1999, which was attended by Šainović, there is no evidence of this body meeting in the same way it did in 1998. However, based on documentary and testimonial evidence, the Chamber has found that, even though less apparent, the Joint Command existed in 1999 and co-ordinated a number of actions in Kosovo. In addition, even though there is no evidence of Šainović attending meetings similar to the meetings that he attended in 1998, his role as the politician whose task was to liaise between the VJ and the MUP on the one hand, and Milošević on the other, continued, since he attended a number of meetings with VJ and MUP officials in Belgrade and Kosovo.

338. For example, on 5 January 1999 he attended another “co-ordination” meeting which included Milošević, Milutinović, Ojdanić, Stojiljković, Pavković, Lukić, and Đorđević in Beli Dvor in Belgrade. Šainović stated that this meeting was different to the 1998 Beli Dvor meetings in that, having been completed, the anti-terrorist operation was not discussed.⁷⁰³ Šainović understood that he was invited to the meeting as the Head of the Commission for Co-operation with KVM, which is what he reported on during its course. In particular, he reported on the problems of the re-activation of the KLA in some parts of Kosovo and the difficulties he had in explaining this problem to the KVM. Other participants at the meeting also spoke of the re-grouping of the KLA and strengthening of their activities, and how to deal with this issue within the framework of the October agreements. At that time the problem of Podujevo/Podujeva was an illustration of the KLA’s re-activation and the KVM’s attitude.⁷⁰⁴

339. As for the period of the NATO bombing, Vasiljević, while giving evidence in the *Milošević* case regarding problems of subordination of the MUP to the VJ in May 1999, stated that the “executive command was in the hands of Mr. Šainović down there, who was there for that purpose, to coordinate the activities of the army and the MUP”.⁷⁰⁵

340. On 29 March 1999 Ljubinko Cvetić saw Šainović in the basement of the Grand Hotel. Cvetić was attending a meeting held there but testified that Šainović did not take any part in that

⁷⁰¹ Šainović Final Trial Brief, 29 July 2008 (public version), paras. 648–654, 766–768.

⁷⁰² P605 (Nikola Šainović interview with the Prosecution), e-court p. 865.

⁷⁰³ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 828–830.

⁷⁰⁴ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 830–834, 840.

⁷⁰⁵ Aleksandar Vasiljević, P2589 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 15993.

meeting. Instead he was in another part of the basement, watching television and listening to reports on NATO attacks against the FRY.⁷⁰⁶

341. On 4 April 1999 Šainović participated in a meeting at the MUP Staff offices.⁷⁰⁷ This meeting, which was presided over by Stevanović and Lukić, was attended by the chiefs of all the Kosovo SUPs, PJP detachment commanders, the SAJ commander and the JSO commander. The minutes of the meeting show that Šainović seemingly gave directives to senior members of the MUP after various senior police officials gave reports on their activities. The minutes record him as saying that “it was necessary for the first stage of anti-terrorist operations to be completed today for the purpose of active defence and for the protection of the territory and the border in case of a breakthrough by the aggressor deep into the territory of the FRY.” He added that persons detained for committing crimes should be held in custody until they were taken over by the judicial organs.⁷⁰⁸ Dušan Gavranić, who was Chief of Gnjilane SUP at the relevant time, testified that he attended this meeting and that Šainović was not present at the start, but walked in later on.⁷⁰⁹ This late arrival was confirmed by Miloš Vojnović, Chief of Prizren SUP at the time, who also testified that it was typical of a visit by a high-ranking political official to the police to provide encouragement.⁷¹⁰ Ljubinko Cvetić, who was also present at this meeting, confirmed that Šainović requested the police to conduct themselves professionally when carrying out their duties and to be strict with anyone who had committed any sort of misdemeanour or crime, saying that such people were to be held in custody until wartime military courts were set up. Confirming what was in the minutes, Cvetić testified that Šainović requested that actions be concluded by the end of that day, and that they were to move on to two other tasks: first, protect the units at the last attained position and camouflage themselves against any NATO attacks; and second, secure and protect the border so as to prevent NATO ground forces from entering. All tasks were to be planned and carried out in conjunction with the VJ.⁷¹¹ The Chamber does not accept Vojnović’s evidence that Šainović was simply providing encouragement at this meeting but is of the view that he was issuing directives, as can be seen from the minutes which were corroborated by Pešić. Again, it is clear from these directives that Šainović was exhibiting a leadership role with respect to the use of the MUP forces in Kosovo, much like the one he had during summer 1998 and despite the fact that he was a federal politician not in the formal chain of command of the republican MUP.

⁷⁰⁶ Ljubinko Cvetić, T. 8086 (7 December 2006), T. 8135 (8 December 2006).

⁷⁰⁷ P1989 (Minutes of the MUP Staff meeting, 4 April 1999).

⁷⁰⁸ P1989 (Minutes of the MUP Staff meeting, 4 April 1999), p. 4.

⁷⁰⁹ Dušan Gavranić, T. 22719–22720 (19 February 2008).

⁷¹⁰ Miloš Vojnović, T. 24185–24186 (12 March 2008). Dragan Živaljević, who was also at this meeting, testified that Šainović arrived towards its end. Dragan Živaljević, T. 24841–24842 (3 April 2008).

⁷¹¹ Ljubinko Cvetić, T. 8085 (7 December 2006).

342. The evidence of Zlatomir Pešić confirms that Šainović was able to exert influence over the VJ and its high level officers during the NATO bombing. He testified that he was summoned to a building near the Grand Hotel in Priština/Prishtina on 13 April 1999. Šainović, Anđelković, Pavković, Lazarević, and Stojanović, as well as some MUP Colonels, were present. They wanted to know about a “detachment in Istok which allegedly formed a detention camp” for Kosovo Albanians.⁷¹² Pešić testified that Pavković blamed him and asked which territorial detachment did this, to which Pešić responded by denying that there was such a camp. Pešić was told that “an order would be issued for a commission comprising a military prosecutor and investigators” to look into this issue, which is what happened.⁷¹³ This was eventually done and the commission produced a report, establishing that no such detention camp existed.⁷¹⁴

343. On 4 May 1999 Šainović either attended or, at the very least, was fully informed about the contents of a meeting where events in Kosovo were discussed, including the crimes being committed there and the reaction of the military courts.⁷¹⁵ This meeting followed the receipt of communications from then Tribunal Prosecutor, Louise Arbour, expressing her grave concern at the continued commission of serious breaches of international humanitarian law in Kosovo.⁷¹⁶

344. The media reports in relation to the 4 May meeting state that Milošević, Milutinović, Ojdanić, Pavković, Lukić, and others were present. When asked about the content of one of these press reports, Milovan Vljaković, the Chef de Cabinet of the General Staff/Supreme Command Staff, stated that he had heard of this meeting, and that he thought Ojdanić attended.⁷¹⁷ Additionally, Ljubiša Stojimirović, who was the Chief of Staff of the 3rd Army, testified that, at the beginning of May, Lukić and Pavković went to see Milošević.⁷¹⁸ Furthermore, Lukić issued an order urging his subordinates to read the contents of the article in the *Politika* journal and to adhere to its directions, which would indicate that its contents were officially accepted.⁷¹⁹ The later statements of Šainović, made at the meeting of the MUP Staff for Kosovo on 7 May, corroborate

⁷¹² Zlatomir Pešić, P2502 (witness statement dated 30 January 2004), para. 34.

⁷¹³ Zlatomir Pešić, P2502 (witness statement dated 30 January 2004), paras. 34–35.

⁷¹⁴ P1721 (Report of VJ/MUP Commission, 14 April 1999). See also 5D190 (3rd Army Command order establishing VJ/MUP Commission, 13 April 1999).

⁷¹⁵ P1696 (“Army, Police Heads Inform Milo[š]evi[ć] of Successful Defense”, Report of RTS, 5 May 1999), p. 1. 4D406 (“Security Situation in Kosovo”, Report of *Politika*, 6 May 1999). The document was challenged by the Ojdanić defence, T. 16105–16106 (21 September 2007), T. 22547–22548 (15 February 2008). However, it is corroborated by 5D1289 (Sreten Lukić’s report regarding *Politika* News Article, 6 May 1999). See also Dušan Gavrančić, T. 22722 (19 February 2008); Miloš Vojnović, T. 24188 (12 March 2008).

⁷¹⁶ P401 (Letter from Louise Arbour to Dragoljub Ojdanić 26 March 1999); 3D790 (Pavković Letter responding to accusations of Louise Arbour, 17 May 1999); Milovan Vljaković, T. 16046–16047 (20 September 2007); 3D483 (Order of the Supreme Command Staff, 10 May 1999).

⁷¹⁷ Milovan Vljaković, T. 16081–16082 (20 September 2007).

⁷¹⁸ Ljubiša Stojimirović, T. 17684 (26 October 2007).

⁷¹⁹ 5D1289 (Sreten Lukić’s report regarding *Politika* News Article, 6 May 1999), also admitted as P2159.

these accounts of the 4 May meeting. At that later meeting Šainović stated that the FRY President and the Serbian President had heard reports from Pavković and Lukić, and the text of a statement had been made public and should be distributed to all police commanders.⁷²⁰ Miroslav Mijatović testified that Šainović was referring to the meeting of 4 May 1999, and that the statement in the *Politika* journal was known to Šainović.⁷²¹

345. According to a report of the content of the 4 May meeting, information was presented that the “security forces” had dealt with numerous cases of violence, killings, pillage, and other crimes, had arrested several hundred perpetrators whose crimes were a great danger to the civilian population, and had already processed many cases for crimes against the civilian population, handing down a “large number” of sentences between five and 20 years’ imprisonment for these crimes.⁷²² As found earlier, this information is inconsistent with various reports produced by the VJ on the work of the military courts during the NATO air campaign, none of which indicates that any sentences between five and 20 years’ imprisonment had been imposed by the military courts for crimes committed during the NATO campaign against civilians by 4 May 1999.⁷²³

346. The minutes of the meeting of 7 May referred to above show that Šainović addressed the group at the very beginning of the meeting; he first assessed the situation and reported on some of the activities aimed at the destruction of the KLA forces. He then set out the main objectives and tasks in achieving the primary goal, which was “defending the country from the aggressor” and the “struggle against terrorism”, and said that “[a]fter Operation *Jezerce*, all detachments of PJP will return to their Secretariats and, in co-operation with the VJ, work on destroying the remaining terrorist groups.”⁷²⁴ He stated that “the state’s no. 1 task” was to clear up the terrain and that this had to be done without delay. He also observed that the relationship of the VJ and the police had been defined and settled and was functioning well.⁷²⁵ In referring to an order from Milošević, Šainović stated that it should be relayed to “all police commanders as a task assigned by the

⁷²⁰ P1996 (Minutes of the MUP Staff meeting, 7 May 1999), p. 4.

⁷²¹ Miroslav Mijatović, T. 22286–22289 (13 February 2008).

⁷²² P1696 (“Army, Police Heads Inform Milo[š]jević of Successful Defense”, Report of RTS, 5 May 1999).

⁷²³ P1912 (3rd Army Report on criminal cases, military prosecution, and courts, 1 May 1999); P1940 (Wartime Military Prosecutor’s Offices and Courts Progress Report, 30 April 1999); P1182 (Information sent by PrK to the 52nd Artillery Rocket Brigade, 15 May 1999); 3D986 (VJ General Staff Report on criminal cases, 6 September 1999); 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 Report on criminal cases, military prosecution and courts); P845 (Report on criminal cases for sexual assault in military courts, 10 September 2002). The Chamber notes that P962 (549 the Motorised Brigade Report on criminal cases, military prosecution and courts, May 1998–July 1999) does list some serious sentences imposed but observes that these relate to crimes in 1998 and were imposed against Kosovo Albanians listed as civilians and that Radomir Gojović, who was the head of the Legal Administration of the General Staff of the VJ during the NATO air campaign in 1999, testified that he did not know of any prosecutions of KLA members in the military courts. Radomir Gojović, T. 16704 (2 October 2007).

⁷²⁴ P1996 (Minutes of the MUP Staff meeting, 7 May 1999), p. 2.

Supreme Command.” He thanked all police members for achieving immense results, but added that those who did not prove themselves and whose conduct was poor should be punished and prosecuted. He pointed out the need to separately regulate the conduct of VJ reservists by resorting to legal measures of imprisonment and to work on restoring the terrain.⁷²⁶ Šainović left the meeting before it was concluded.⁷²⁷

347. Miroslav Mijatović, who was Lukić’s deputy at the MUP Staff, testified that Šainović was not a member of the Staff, and that his role was to give political speeches and not to issue orders or directives to the MUP.⁷²⁸ Mijatović was shown the minutes of the 7 May meeting, and stated that Šainović was simply reiterating what Milošević had said a few days earlier, following a 4 May meeting with high-ranking VJ and MUP officials, as published in *Politika* and other Serbian newspapers.⁷²⁹ Gavranić also confirmed that the speech Šainović gave at that time was a political speech, that he merely repeated what could be found in the papers, that he was not issuing orders or instructions, and that, as a FRY Deputy Prime Minister, he had no authority over the MUP.⁷³⁰

348. However, it is clear that he did much more than pass on a message of encouragement from the President. Aside from the fact that the minutes reflect that Šainović was again demonstrating a leadership role during this meeting, the Chamber notes that the contents of the *Politika* article are more general than the contents of Šainović’s speech at the 7 May meeting. For example, in his presentation Šainović referred to “Operation Jezerce”, which was never mentioned, at least not by name, in the *Politika* article. Furthermore, Šainović’s speech was much longer and more detailed than the newspaper report. Indeed, on cross-examination, Gavranić was confronted with this proposition and asked who provided Šainović with the details of the operation. He was unable to provide an answer to that question.⁷³¹ Accordingly, the Chamber does not accept Mijatović’s explanation of Šainović’s role during this meeting. As in many of the other meetings with VJ and/or MUP officials he attended, Šainović was providing approval for their actions and was also issuing instructions and conveying Milošević’s orders. He did this even though the MUP Staff was part of the Republican and not the Federal MUP, over which, in theory, neither he nor Milošević should have had any direct authority.

⁷²⁵ P1996 (Minutes of the MUP Staff meeting, 7 May 1999), p. 3.

⁷²⁶ P1996 (Minutes of the MUP Staff meeting, 7 May 1999), p. 4.

⁷²⁷ Dušan Gavranić, T. 22720–22721 (19 February 2008). See also Miroslav Mijatović, T. 22286–22287 (13 February 2008); Božidar Filić, T. 23974 (10 March 2008).

⁷²⁸ Miroslav Mijatović, T. 22289–22290 (13 February 2008).

⁷²⁹ Miroslav Mijatović, T. 22287–22289 (13 February 2008); 5D1289 (Lukić’s report regarding *Politika* article of 4 May 1999, 6 May 1999).

⁷³⁰ Dušan Gavranić, T. 22721–22723 (19 February 2008). The same evidence was given by Božidar Filić, T. 23974–23975 (10 March 2008), and Miloš Vojnović, T. 24187–24189 (12 March 2008).

⁷³¹ Dušan Gavranić, T. 22774 (19 February 2008).

349. Vasiljević testified that on 16 May 1999 he attended a meeting with Ojdanić, Pavković, Geza Farkaš, and Branko Gajić. Pavković informed Ojdanić that the MUP was accusing the VJ of crimes, involving some 800 bodies. This number did not distinguish between those who had died as a result of crimes and those who had died from other causes, and was not the total number of persons killed in Kosovo. Pavković also reported that he had asked Lukić that they form a joint commission to establish who was responsible for which crimes but that Lukić had refused. Thus, Pavković had ordered military organs to do this and had informed Šainović about it. This investigation showed that 271 deaths had occurred in areas covered by the VJ. The MUP then came out with its own figures, namely 376 deaths in areas covered by the MUP forces. Vasiljević stated that the fact that these figures did not add up to 800 was discussed at the meeting, and that it was explained that some of the deaths may have been caused by NATO strikes.⁷³² Pavković also informed those attending that he had seen members of the Scorpions in Kosovo and that he had informed Šainović about it, but provided no details as to when he mentioned it to Šainović.⁷³³

350. On the following day, 17 May, the same group of men attended a meeting with Milošević, Šainović, and Rade Marković. As stated earlier, not a single MUP general attended this meeting, nor was the Minister of Interior, Stojiljković, present. Stojiljković's absence, according to Vasiljević, meant that both the RDB and RJB were under the direct control of Milošević.⁷³⁴

351. During the meeting, Vasiljević presented information on reports of crimes committed by the VJ, MUP, and volunteers in Kosovo, such as the rapes of civilians by soldiers and crimes committed by the Scorpions in Podujevo/Podujeva. Marković responded to this and stated that he had ordered that the Scorpions be pulled out of Kosovo. Nevertheless, he also admitted that there were some 30 members of "Arkan's group" in Kosovo, calling all volunteers a "necessary evil". Following this, Pavković reported on bodies found in Jezerce, among other places, and denied VJ involvement. Again, Marković acknowledged that the JSO, rather than the VJ, was in the Jezerce area and that, in fact, the JSO commander, Legija, had been there. When Pavković mentioned the MUP allegations relating to 800 bodies, Milošević advised the VJ and the MUP to resolve their overlapping or conflicting issues, including the problem with the volunteers. He also stated that he wanted those who committed crimes to be urgently dealt with and that these "so-called great Serbs acting in this way were inflicting great damage to everything that Yugoslavia had so far achieved in

⁷³² Aleksandar Vasiljević, T. 8763, 8783 (19 January 2007), T. 9041 (24 January 2007), P2600 (witness statement dated 14 January 2007), para. 62, P2589 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 15999.

⁷³³ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), paras. 60–62, P2589 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 15998–16004.

⁷³⁴ Aleksandar Vasiljević, T. 9001 (23 January 2007), P2600 (witness statement dated 14 January 2007), paras. 63–64.

the war.”⁷³⁵ Šainović then stated that he had no knowledge of volunteer groups in the “Kosovo Polje centre”, but said that he would check this report. He also stated that people had been paying large sums of money for army and MUP uniforms and entering Kosovo illegally in order to loot. He agreed with Pavković that it would be a good idea to send a “neutral body” or a “joint state commission” from Belgrade to Kosovo to investigate all allegations made at the meeting. Milošević, however, ignored these recommendations, saying instead that there should be no more paramilitary groups in Kosovo.⁷³⁶ At the end of the meeting Milošević told Marković to stay behind and Šainović stayed as well. Vasiljević thought this was inappropriate. It was his impression that they were kept behind in order to discuss something outwith the hearing of the others who were at the meeting. Farkaš and Gajić did not see this happen as Ojdanić had started issuing tasks to them even as they left.⁷³⁷

352. In his Prosecution interview Šainović confirmed that he attended the 17 May meeting at the invitation of Milošević. He said that during the meeting Marković and Pavković brought up the issue of civilian casualties in Kosovo and Marković mentioned that certain groups had committed crimes. Marković said that there was suspicion that Arkan was in Kosovo and that there was an allegation that a group of policemen had committed a crime near Kosovska Mitrovica/Mitrovica. Ojdanić then requested that all these matters be investigated and charged Vasiljević to immediately go to Kosovo and find out what had been happening. Milošević also stated that this should not be allowed to happen and that there should be an investigation.⁷³⁸ The Head of the Security Administration of the General Staff/Supreme Command Staff, Geza Farkaš, testified that, following the meeting of 17 May, Ojdanić asked him to set up a team to inspect the basic VJ units and the security organs within Kosovo, which he did. This team was sent to Kosovo on 1 June 1999 to inspect 16 security organs and basic units in the field.⁷³⁹ After returning to Belgrade on 7 June 1999, Gajić and Vasiljević reported orally to their senior staff members, stating that the security organs were doing a good job in detecting crimes and preparing cases for prosecution.⁷⁴⁰ Vasiljević and Gajić documented 42 cases of crimes, some committed by the MUP and some by the VJ. According to the reports Vasiljević received from the security organs, in all but one of those 42 cases prosecutions were brought against the perpetrators although he did not know the final

⁷³⁵ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), paras. 65–68, P2589 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 15999–16004; P2592 (Vasiljević’s diary extract).

⁷³⁶ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), paras. 69–70. Farkaš and Gajić’s account of this meeting is entirely consistent with that of Vasiljević. Geza Farkaš, T. 16294–16298, 16329–16330 (25 September 2007); Branko Gajić, T. 15283–15284, 15289–15292 (7 September 2007).

⁷³⁷ Aleksandar Vasiljević, T. 8783 (22 January 2007), P2600 (witness statement dated 14 January 2007), para. 71. *See also* Geza Farkaš, T. 16298–16299, 16368 (25 September 2007).

⁷³⁸ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 866–871.

⁷³⁹ Geza Farkaš, T. 16300 (25 September 2007); Aleksandar Vasiljević, T. 8707 (19 January 2007).

outcomes of those cases. Vasiljević noted that one of the events investigated was the discovery of graves in Izbica, but could not say how the people in question died.⁷⁴¹

353. The two accounts of this meeting given by Vasiljević, Farkaš, and Gajić on one side, and Šainović on the other, are largely consistent with each other. In the end, what happened was that there was an investigation of the VJ but not the MUP, in accordance with Vasiljević's evidence that Lukić was not in favour of a joint commission. Neither Milošević nor Šainović arranged that such investigation occurred.

354. As stated earlier,⁷⁴² Vasiljević added in his witness statement that shortly after the 17 May meeting there was another meeting of VJ and MUP officials, at which Milošević and "Šaja" (Šainović) were also present, and at which the VJ officials raised the subject of responsibility for crimes being committed in Kosovo. However, it transpired that all Vasiljević was doing when giving this statement was trying to interpret Šainović's role from a diary belonging to Obrad Stevanović which was difficult to read. Although Stevanović gave evidence in the *Milošević* trial, he was not called as a witness in this trial.⁷⁴³ In addition, Vasiljević testified before this Chamber that, since he did not attend the meeting in question, he could not be sure that Šainović was present, or that Milošević used the words ascribed to him by Stevanović.⁷⁴⁴ Accordingly, the Chamber cannot place any weight on this exhibit to prove that Šainović was present at that meeting or what was said.

355. As discussed earlier in this Judgement,⁷⁴⁵ on 1 June 1999 another meeting of the Joint Command took place in the basement of the Grand Hotel in Priština/Prishtina.⁷⁴⁶ Pavković and Lazarević were already there when Vasiljević arrived with Momir Stojanović, Chief of the Security Department of the Priština Corps. A group of MUP generals arrived later. Pavković mentioned to Vasiljević that "Šaja" (Šainović) would be there. The MUP generals, except Lukić, were seated on one side of the table, while the VJ generals sat along the other side. It was clear that they were awaiting the arrival of two key men. When Šainović entered with Zoran Anđelković, everyone rose, small talk stopped, and the atmosphere became more serious. Šainović sat at the head of the

⁷⁴⁰ Geza Farkaš, T. 16303 (25 September 2007); Branko Gajić, T. 15292 (7 September 2007).

⁷⁴¹ Aleksandar Vasiljević, T. 8789–8791 (22 January 2007), P2600 (witness statement dated 14 January 2007), paras. 86–89.

⁷⁴² See Section VII.P.

⁷⁴³ Aleksandar Vasiljević, T. 8778 (22 January 2007), P2600 (witness statement dated 14 January 2007), para. 72. See also P1898 (Obrad Stevanović's notebook), e-court p. 106.

⁷⁴⁴ Aleksandar Vasiljević, T. 8829–8830 (22 January 2007).

⁷⁴⁵ See Section VI.E.

⁷⁴⁶ Aleksandar Vasiljević, T. 14504–14505 (29 August 2007), P2600 (witness statement dated 14 January 2007), paras. 78–80, P2589 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 15967–15969.

table, while Anđelković sat to one side with the MUP generals. Lukić sat at the other end opposite Šainović.⁷⁴⁷ Stojanović and Lazarević confirmed that they also attended this meeting.⁷⁴⁸

356. Vasiljević testified that, after presentations by Lukić, Lazarević, and Pavković on the activities of the VJ and MUP on that particular day, which made Vasiljević think that the meeting was a daily occurrence, Šainović addressed the meeting, agreeing that things should be done as planned by the Generals of the VJ and the MUP, saying, “Okay, do as you’ve planned.” What was planned was an action in Drenica where the plan was to engage 300 police officers. Šainović then said that the remaining “terrorist groups” were to be destroyed in the next three or four days, and that the organisation of the activities in the field and co-operation between the MUP and the VJ was to be improved. Vasiljević explained that the meeting was not such that orders were being issued, since Šainović listened to all of the presentations and then briefly agreed that things should be done as planned by the MUP and VJ.⁷⁴⁹ On cross-examination Vasiljević could not say whether Šainović attended these meetings every day, but merely that the meetings themselves seemed to be a daily occurrence.⁷⁵⁰ Stojanović’s recollection of the discussion at the meeting of 1 June was similar to that of Vasiljević. Šainović informed the participants that an agreement between the FRY and the international community would be signed soon; that it envisaged withdrawal of the VJ and the MUP from Kosovo; and that this withdrawal would have to commence soon. Both Lazarević and Lukić expressed dissatisfaction at this, as their units were in the middle of combat actions. According to Stojanović, and in line with Vasiljević’s testimony, Šainović responded that the operations had to be finalised as soon as possible and that Lazarević and Lukić should think about the best way of doing so.⁷⁵¹

357. According to Vasiljević, throughout this meeting Šainović was treated deferentially by the other members. He presided over the meeting, did not take any notes, and gave the distinct impression that he was the head. In Vasiljević’s view, Šainović must have been appointed by Milošević and must have reported to him.⁷⁵² In his oral testimony Vasiljević briefly referred to

⁷⁴⁷ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 80. Momir Stojanović confirmed that everybody rose but explained that this was standard behaviour in the VJ “when somebody senior comes in”. Momir Stojanović, T. 19803–19804 (7 December 2007). *See also* Vladimir Lazarević, T. 18122–18124 (12 November 2007).

⁷⁴⁸ Momir Stojanović, T. 19772–19774, 19801–19802 (7 December 2007); Vladimir Lazarević, T. 18122–18124 (12 November 2007).

⁷⁴⁹ Aleksandar Vasiljević, T. 8954–8955 (23 January 2007), T. 14505–14506 (29 August 2007), P2600 (witness statement dated 14 January 2007), paras. 81–82, 2D387 (witness statement dated 25 July 2007), paras. 1–4; P2862 (Extract from Vasiljević’s diary).

⁷⁵⁰ Aleksandar Vasiljević, T. 8838 (22 January 2007), P2600 (witness statement dated 14 January 2007), paras. 77–84.

⁷⁵¹ Momir Stojanović, T. 19772–19776, 19802–19803 (7 December 2007). *See also* Vladimir Lazarević, T. 18122–18124 (12 November 2007).

⁷⁵² Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 80.

Šainović as the “chairperson of the meeting”.⁷⁵³ However, he later clarified that he did not know what the official position of Šainović was at the meeting. He further explained that “whether he was the commander of a Joint Staff or a Joint Command, I can’t say. I can just say that he was the most senior person by the positions he held in the government and a man of unquestionable political authority.” Vasiljević was under the impression that Šainović was “to be informed and coordinate the eventual problems between the VJ and the MUP, and to follow the overall situation on Kosovo, keeping Belgrade informed thereof.”⁷⁵⁴ Stojanović confirmed that no orders were issued during the meeting, and that nobody chaired it; Pavković simply introduced Šainović, who then proceeded to inform the attendees about the upcoming agreement.⁷⁵⁵

358. Zoran Anđelković testified that he was at this same meeting on 1 June 1999, but described it rather differently. He claimed that Šainović visited him at the Temporary Executive Council building and told him that they had been invited for dinner to the Grand Hotel by representatives of the VJ.⁷⁵⁶ The dinner was preceded by a meeting.⁷⁵⁷ Representatives of the VJ, including Lazarević, described what was going on in the field, and Šainović spoke about talks in Belgrade between Ahtisaari, Chernomyrdin, and Milošević.⁷⁵⁸

359. The Chamber notes that the various accounts of this meeting outlined above are in fact largely consistent with each other. They are also consistent with the leadership role Šainović had exhibited in the 1998 Joint Command meetings, as well as the fact that he was the person responsible for relaying Milošević’s orders to officials in Kosovo. He was seen by the others in the meeting as the most senior figure and as somebody who could order that activities of the joint forces cease due to the agreement reached between Milošević and Martti Ahtisaari. More importantly, he was someone who had discretion to instruct *completion* of these activities in the following days. Accordingly, the 1 June meeting had hallmarks of the Joint Command meetings in 1998. It is, therefore, clear that also in 1999 he was able to convey orders and provide approval for certain VJ and MUP activities. Indeed, the Chamber finds that Vasiljević’s description of Šainović’s role at this stage is particularly apt.⁷⁵⁹

⁷⁵³ Aleksandar Vasiljević, T. 9042 (24 January 2007).

⁷⁵⁴ Aleksandar Vasiljević, 2D387 (witness statement dated 25 July 2007), paras. 3–4. *See also* Aleksandar Vasiljević, T. 14505–14507 (29 August 2007).

⁷⁵⁵ Momir Stojanović, T. 19804 (7 December 2007).

⁷⁵⁶ Zoran Anđelković, T. 14663–14664 (30 August 2007). Interestingly, Vasiljević noted that Anđelković seemed to be tagging along with Šainović. Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 80.

⁷⁵⁷ Zoran Anđelković, T. 14663–14664, 14717 (30 August 2007). Stojanović, however, testified that they did not have dinner during this meeting. Momir Stojanović, T. 19775, 19804 (7 December 2007).

⁷⁵⁸ Zoran Anđelković, T. 14663–14664, 14716 (30 August 2007).

⁷⁵⁹ *See* Section VI.E.2.b.ii.(B).

360. It is important to note that the Indictment against Šainović also alleges that he exercised *de facto* authority over Chief of the VJ General Staff, Ojdanić.⁷⁶⁰ The Šainović Defence rejects this claim, stating that Ojdanić was receiving orders directly from Milošević.⁷⁶¹ Supporting the Defence’s argument is evidence given by Đorđe Ćurčin, Chief of the First Administration of the Sector for Operations and Staff Affairs in the VJ, and Milorad Obradović, Assistant Chief of the General Staff for Operations and Staff Sector. They both testified that this allegation was neither logical nor factually correct.⁷⁶² Obradović also stated that neither Šainović, nor any other state authority, could decide to use VJ units and that Ojdanić would never take instructions from a civilian, other than the “Supreme Commander” of the VJ, Milošević. Obradović denied a suggestion that Šainović was simply relaying Milošević’s orders, since there would be no need for that as Milošević could go straight to Ojdanić.⁷⁶³ The Chamber accepts that there is no evidence that Šainović exercised authority over Ojdanić, who during the war met with Milošević on a daily basis. However, this is not to say that Šainović had no influence over the activities of the VJ and the MUP, given his close relationship with Milošević on the one hand, and his dealings with Pavković and Lukić on the other, as described throughout this section of the Judgement.

361. This is confirmed by Aleksandar Vasiljević who testified that in 1999 Pavković often circumvented the chain of command by going directly to Milošević and Šainović without the knowledge or authorisation of Ojdanić.⁷⁶⁴ When Vasiljević and Ojdanić went to visit Milošević in mid-June 1999, they saw Pavković leaving Milošević’s villa. According to Vasiljević, Ojdanić told him that Pavković was meeting privately with Milošević without Ojdanić’s knowledge, and was placing more importance on keeping Šainović informed than on informing Ojdanić.⁷⁶⁵

c. Šainović’s dealings with KVM and obstruction of October Agreements

i. *Obstruction of October Agreements*

362. The Prosecution contends that Šainović never intended to comply with the various October Agreements between NATO, the KVM, and the FRY/Serbia, and that he obstructed their implementation.⁷⁶⁶ The Šainović Defence, on the other hand, argues that the FRY and Serbia had a

⁷⁶⁰ Indictment, para. 48.

⁷⁶¹ Šainović Final Trial Brief, 29 July 2008 (public version), paras. 666–668.

⁷⁶² Đorđe Ćurčin, T. 16978–16980 (5 October 2007); Milorad Obradović, T. 15040–15043 (5 September 2007).

⁷⁶³ Milorad Obradović, T. 15039–15043 (5 September 2007). *See also* P928 (Minutes of the Collegium of the General Staff of the Yugoslav Army, 30 December 1998), pp. 13–14, where Aleksandar Dimitrijević mentioned Šainović as someone who could decide “lightly” to use the “units”.

⁷⁶⁴ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 19, T. 8669 (18 January 2007).

⁷⁶⁵ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 20, T. 8670 (18 January 2007), T. 8811 (22 January 2007), T. 8932 (23 January 2007).

⁷⁶⁶ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 683–684.

great interest in seeing the KVM succeed, which they showed by establishing the Commission for Co-operation with the KVM.⁷⁶⁷ Addressing the argument that Šainović was obstructive when it came to implementation of the October Agreements, the Defence argues that the FRY/Serbian authorities had already by 27 October 1998 complied fully with their terms.⁷⁶⁸

363. In support of its contention, the Prosecution refers to the 21 September 1998 Joint Command meeting where, even before the October Agreements were entered into, Šainović had already expressed a view that: “[W]e shouldn’t implement Milošević’s and Yeltsin’s matters listed in the statement, and we shouldn’t decrease the number of men.”⁷⁶⁹ This attitude is partially confirmed by the Austrian Ambassador Wolfgang Petritsch who met with Šainović on 7 October 1998, prior to the Agreements. During this meeting Petritsch emphasised the “humanitarian problem”, referring to thousands of displaced people hiding in the Rugova valley, and insisted on the withdrawal of police forces. Šainović responded, however, that the police numbers were already at their minimum and said that they had to remain numerous enough to be able to preserve law and order, especially along the main travel routes.⁷⁷⁰

364. Šainović was then involved in meetings surrounding the Clark-Naumann Agreement, the negotiations of which were described in detail in Section V which placed the VJ under an obligation not to raise troop levels in Kosovo.⁷⁷¹ As stated earlier, one day later, on 26 October 1998, at a meeting of the Joint Command Šainović told the other participants:

When we withdraw, we have to be careful, we have to take care that nobody finds parts of certain detachments who have not withdrawn. There must be no discrepancy with the information already issued.⁷⁷²

That is the interpretation of Šainović’s comment into English provided in court during closing arguments, which the Chamber accepts as accurate.⁷⁷³

365. The Šainović Defence in response argues that at this meeting Šainović was not exhibiting obstructionist behaviour but was in fact instructing those attending the meeting to ensure

⁷⁶⁷ Šainović Final Trial Brief, 29 July 2008 (public version), paras. 254–364.

⁷⁶⁸ Šainović Final Trial Brief, 29 July 2008 (public version), paras. 311–364.

⁷⁶⁹ P1468 (Notes of the Joint Command), p. 124.

⁷⁷⁰ Wolfgang Petritsch, T. 10944–10945 (2 March 2007); 2D16 (Record of talks between Wolfgang Petritsch and Šainović, 7 October 1998).

⁷⁷¹ Klaus Naumann testified that the attachment was referred to as the “Statement” because Clark and Naumann, as military personnel did not have the authority to sign political agreements. Klaus Naumann, P1767 (notes of OTP interviews), para. 22; P395 (Clark-Naumann-Agreement, 25 October 1998).

⁷⁷² Šainović closing arguments, T. 27069 (21 August 2008).

⁷⁷³ The Chamber notes that the translation of the Notes with respect to this meeting differs from the in-court translation provided during closing arguments. The Chamber will rely upon the latter because it finds that it is more accurate. *Compare* Šainović closing arguments, T. 27069 (21 August 2008), *with* P1468 (Notes of the Joint Command), p. 160.

compliance with the October Agreements.⁷⁷⁴ In support it points to the fact that on 27 October both the Secretary-General of NATO and the U.S. Secretary of State, Madeleine Albright, expressed their satisfaction with the way in which withdrawals of units were proceeding.⁷⁷⁵ In addition, a number of witnesses testified that VJ and police units brought from outside of Kosovo were withdrawn from the province.⁷⁷⁶ Moreover, Zoran Anđelković testified that during this meeting Šainović was acting in accordance with his position as the Chairman of the Commission for the Co-operation with the KVM, and that he was essentially warning everyone that there should be no breaches of the agreement to withdraw troops.⁷⁷⁷

366. The Šainović Defence also points to evidence that, during the period of November and December 1998, Šainović had a series of meetings with foreign officials and representatives of international organisations, at which he reported compliance with the October Agreements. Thus, on 3 November 1998 Šainović met with Petritsch and informed him that the process of stabilisation was advancing, that thousands of refugees were returning, and that life was returning to normal.⁷⁷⁸ Sometime between 20 and 22 December 1998 he met with Sadako Ogata, the UN High Commissioner for Refugees, and discussed the issue of displaced people in Kosovo. During her visit Ogata stated that the number of displaced people in Kosovo had dropped significantly and that there was no humanitarian catastrophe.⁷⁷⁹ Yet another meeting between Petritsch and Šainović, and a number of other ambassadors, took place on 29 December 1998.⁷⁸⁰ In early January 1999 Šainović travelled to Austria where he met with Austrian officials, as well as Petritsch, and emphasised that there was a need to find a peaceful political solution encompassing equality for all ethnic communities in Kosovo.⁷⁸¹

367. The Chamber notes the potential ambiguity of the translation of Šainović's statement about withdrawal of troops at the Joint Command meeting of 26 October. The in-court translation

⁷⁷⁴ Šainović closing arguments, T. 27069–27070 (21 August 2008).

⁷⁷⁵ 2D10 (Excerpt from Marc Weller, *The Crisis in Kosovo 1989–1999*).

⁷⁷⁶ *See, e.g.*, Karol John Drewienkiewicz, T. 7885–7886 (5 December 2006). *See also* John Crosland, T. 9868–9869 (8 February 2007); 6D1669 (Report of U.S. Embassy in Belgrade re compliance of FRY/Serbia with October agreements, 1 November 1998), pp. 1–2.

⁷⁷⁷ Zoran Anđelković, T. 14703–14706 (30 August 2007).

⁷⁷⁸ 2D321 (FRY Ministry of Foreign Affairs note on talks between Wolfgang Petritsch and Šainović, 3 November 1998).

⁷⁷⁹ 2D169 (FRY Ministry of Foreign Affairs report on the visit of Sadako Ogata, 5 January 1999), p. 2.

⁷⁸⁰ Wolfgang Petritsch, T. 10945–10946 (2 March 2007).

⁷⁸¹ Wolfgang Petritsch, T. 10947 (2 March 2007); 2D15 (FRY Ministry of Foreign Affairs note on talks between Šainović and Austrian officials, 6 January 1999). The Trial Chamber has also received in evidence records of a number of similar meetings between Šainović and foreign diplomats both before and during the NATO bombing. *See, e.g.*, 2D196 (FRY Government report on the FRY delegation visit to the E.U. Commission, 25 January 1999); 2D183 (FRY Government guidelines re FRY delegation's visit to Denmark and Sweden, 14 January 1999); 2D330 (FRY Government decision on Šainović's visit to Denmark and Sweden, 21 January 1999); 2D332 (Šainović's letter to Secretary of ECE/UN, Yves Berthelot, 27 May 1999).

accepted by the Chamber is capable of supporting the interpretation advanced by the Šainović Defence, especially in light of the evidence outlined in preceding paragraphs. Accordingly, the Chamber is unable to accept this piece of evidence to the detriment of Šainović.

ii. Šainović as Chairman of the Commission for Co-operation with the KVM

368. In support of its assertion that Šainović had great authority in Kosovo, the Prosecution refers to his position as the Head of the Commission of the Federal Government for the Co-Operation with the OSCE Mission for Verification in Kosovo (“Commission”), which he used both to exert control over the province and to be obstructive to the KVM.⁷⁸² On the other hand, the Šainović Defence points to this post as evidence that Šainović was not Milošević’s representative for Kosovo, but was simply viewed as such by the international representatives and diplomats who communicated with him due to his role within the Commission.⁷⁸³ According to the Defence, this particular appointment, together with the fact that he was the highest-ranking person from the FRY in Kosovo, completely explains Šainović’s position, powers, and responsibilities in the province.⁷⁸⁴ The Chamber notes, however, relying on the evidence above, that Šainović’s responsibilities and authority in Kosovo were extensive even before the Commission for Co-operation came into existence.

369. The Chamber has already made findings with respect to the Commission in Section VI.D above, including the finding that the Commission did not have command authority over the VJ and MUP. The Chamber will now turn to Šainović’s acts and conduct while heading the Commission.

370. As stated in Section VI.D, other members of the Commission included Živadin Jovanović, Pavle Bulatović, Momčilo Perišić, Mihalj Kertes, Zoran Anđelković, Vlajko Stojiljković, and Dušan Lončar.⁷⁸⁵ Its primary task was to help the various Ministries in dealing with the KVM.⁷⁸⁶ Even though officially established in October 1998 in Belgrade, where it would meet once a week, the Commission also had an office in Priština/Prishtina. That office was headed by Dušan Lončar,

⁷⁸² Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 660, 686.

⁷⁸³ Šainović Final Trial Brief, 29 July 2008 (public version), paras. 410–416.

⁷⁸⁴ See, e.g., Joseph Maisonneuve, T. 11162–11164 (7 March 2007); Michael Phillips, T. 11863–11866 (19 March 2007).

⁷⁸⁵ 2D8 (FRY Government Decision on the Formation of the Federal Government Commission for the Co-operation with OSCE Mission for Verification in Kosovo, 19 October 1998), para. 3; 2D9 (FRY Government Supplement to Decision on the Formation of Federal Government Commission for Co-operation with OSCE Mission for Verification in Kosovo), para. 1.

⁷⁸⁶ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 532–543.

a retired VJ General. Unlike the situation in summer and autumn 1998, Šainović spent only one third of his time in Kosovo in this period.⁷⁸⁷

371. Lončar testified that, as early as late July 1998, Milošević personally asked him to take charge of liaising between the KVM head, William Walker, and his closest associates on the one hand, and the FRY/Serbian authorities on the other.⁷⁸⁸ Having previously worked successfully with Walker in Croatia in the mid-1990s, Lončar was considered an obvious choice for the job, even though he was not on good terms with Milošević.⁷⁸⁹ Lončar accepted the offer and was told that he would work directly for Šainović. Several months later, on 30 October 1998, Šainović called Lončar, and the two men met in Šainović's office where Lončar was informed that he had officially become a new member of the Commission.⁷⁹⁰ Before the KVM arrived and while KDOM was still in Kosovo, Šainović used to meet with Shaun Byrnes of US-KDOM every two to three days.⁷⁹¹ Following the establishment of the Commission and its office in Priština/Prishtina, it was Lončar's duty to arrange Šainović's meetings with the KVM.⁷⁹²

372. Unlike the other members of the Commission who continued to undertake their own regular duties, Lončar worked exclusively with the Commission. He was to ensure that the KVM verifiers were provided with freedom of movement and safety in Kosovo; help them find suitable accommodation; ensure good relations between Walker and the Commission such that all incidents were fully investigated and clarified; ensure mobility of the mission 24 hours per day, 7 days per week; note down the requests of the mission which he then had to forward to Šainović who would answer personally or through Lončar; and ensure that the KVM referred to the KLA as "terrorists".⁷⁹³ He was also to have 24-hour communication with the KVM and the Commission, the VJ, and the MUP. If an incident or an issue was really important, he would schedule a meeting between Šainović and the KVM personnel.⁷⁹⁴

373. Lončar first travelled to Kosovo on 12 November 1998, accompanied by Šainović. Immediately upon arrival in Priština/Prishtina the two men went to the MUP Staff building where

⁷⁸⁷ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 543–549.

⁷⁸⁸ Dušan Lončar, P2521 (witness statement dated 3 March 2004), paras. 13–15.

⁷⁸⁹ Dušan Lončar, T. 7584 (30 November 2006), P2521 (witness statement dated 3 March 2004), paras. 12–15, 48. *See also* P605 (Nikola Šainović interview with the Prosecution), e-court pp. 544–545.

⁷⁹⁰ Dušan Lončar, P2521 (witness statement dated 3 March 2004), paras. 17–20. According to Šainović, Lončar was employed as a civilian and was being paid by the FRY Government, which meant that he had no connections to the VJ; P605 (Nikola Šainović interview with the Prosecution, 11 December 2002), e-court pp. 528–530.

⁷⁹¹ Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 25, P2530 (supplemental information sheet dated 28 November 2006), para. 6.

⁷⁹² Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 25.

⁷⁹³ Dušan Lončar, T. 7582–7585 (30 November 2006), P2521 (witness statement dated 3 March 2004), para. 18.

⁷⁹⁴ Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 24.

they met with Lukić and Pavković and a person from the RDB. Šainović introduced Lončar to the others and told them of Lončar's mandate. Šainović insisted that all VJ and MUP information and requests for the KVM be forwarded to Lončar. Similarly, when Lončar received requests from the KVM, he would forward them to either the MUP or the VJ. Šainović also organised a team for Lončar, which included high-ranking representatives from the MUP (Miroslav Mijatović, Sreten Lukić's deputy), from the VJ (Priština Corps Colonel Milan Kotur), and from the Ministry of Foreign Affairs (Veljo Slana).⁷⁹⁵ According to Lončar, Šainović instructed Lukić and Pavković to continue with the already established practice of informing him (Šainović) of important incidents first, and only then informing their own superiors.⁷⁹⁶

374. Following each meeting between the Commission members and the KVM representatives, Veljo Slana would make five copies of the minutes which had been signed by those attending. These were then sent to the FRY Government, the Serbian Government, the Ministry of Foreign Affairs, the archives, and Šainović.⁷⁹⁷

375. Lončar also testified that, as part of his daily routine in liaising with the KVM, there was a regular exchange of reports.⁷⁹⁸ Every morning the VJ and MUP, through Kotur and Mijatović respectively, would send reports to Lončar's office regarding incidents that had happened over the past 24 hours in Kosovo. Lončar would compile, stamp, and seal these reports, without altering them, and would then send them to Walker. Additionally, Mijatović and Kotur would send their individual reports to the representatives of the KVM by 7:00 a.m. every day.⁷⁹⁹ When Drewienkiewicz reported an incident, like he did with Račak/Rečak, Lončar would immediately contact Kotur to go with Drewienkiewicz and prepare a clear and detailed report about it. In addition, if there was an emergency, Lončar would immediately call Šainović. Drewienkiewicz also assigned someone from the KVM to meet with Mijatović every morning when they would analyse the situation from the MUP perspective. Reports came to Lončar after the discussion, and the next morning he forwarded those to Walker as well.⁸⁰⁰ Lončar believed that he heard about all incidents in Kosovo because Kotur and Mijatović were very thorough in their work. In his opinion, the KVM was also well informed about all incidents.⁸⁰¹

⁷⁹⁵ Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 21. *See also* Richard Ciaglinski, T. 6860 (17 November 2006).

⁷⁹⁶ Dušan Lončar, T. 7652–7654 (1 December 2006).

⁷⁹⁷ 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.

⁷⁹⁸ Dušan Lončar, T. 7577 (30 November 2006).

⁷⁹⁹ Dušan Lončar, T. 7594, 7596 (30 November 2006), P2521 (witness statement dated 3 March 2004), para. 28.

⁸⁰⁰ Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 32.

⁸⁰¹ Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 35.

376. Lončar further testified that he would phone Šainović every morning and inform him about what had happened during the night, although often Šainović would already have been informed by Lukić and Pavković.⁸⁰² Since Šainović insisted on being informed in a timely manner of incidents in the field, especially the important ones and those involving many victims, Pavković and Lukić were under an obligation to inform him by phone if an important incident occurred. Sometimes there was a need for them to contact Šainović twice or even three times a day, but for the most part Pavković and Lukić reported to Šainović two, three, or four times a week.⁸⁰³

377. Every Tuesday at 9:00 a.m. the entire Commission met in Šainović's office in Belgrade to analyse the work of the KVM and the TEC. That is where the tasks for the next seven days were set out. Lončar was present at five of these meetings, sometimes reporting on new KVM members and problems that KVM officials had on the mission.⁸⁰⁴ Perišić never attended, nor did Ojdanić when he took over as the Chief of General Staff. Instead, they sent a representative, Milorad Obradović.⁸⁰⁵ Živadin Jovanović, the Minister of Foreign Affairs, always sent his deputy, Slana.⁸⁰⁶ Anđelković attended some meetings.⁸⁰⁷

378. Šainović chaired the Belgrade meetings of the Commission. On one occasion the meeting was chaired by Milomir Minić, who was not a member of the Commission. Šainović opened the meetings by talking about the political situation in Kosovo. He also reported on issues concerning the role of the KVM. Stojiljković reported on MUP incidents, Obradović reported on VJ issues, and Anđelković reported on economic and civil measures. All political relations were handled by Anđelković and Šainović. Following these discussions Šainović would issue specific tasks. For example, he once told Stojiljković that a particular road was dangerous and that patrols there should be increased. Stojiljković complied with this direction.⁸⁰⁸ According to Lončar, the tasks of the VJ and MUP were discussed only in so far as they related to the work of the Commission.⁸⁰⁹ Milorad Obradović, however, when asked if these meetings had a command structure, described them as analysis type meetings, where "people offered their opinions" and "talked about certain problems from their areas".⁸¹⁰

⁸⁰² Dušan Lončar, P2521 (witness statement dated 3 March 2004), paras. 28, 53.

⁸⁰³ Dušan Lončar, T. 7576–7577 (30 November 2006), T. 7649, 7653–7654 (1 December 2006).

⁸⁰⁴ Dušan Lončar, P2521 (witness statement dated 3 March 2004), paras. 29, 31.

⁸⁰⁵ Milorad Obradović, T. 15031 (5 September 2007); Dušan Lončar, T. 7691 (1 December 2006), P2521 (witness statement dated 3 March 2004), para. 30.

⁸⁰⁶ Dušan Lončar, T. 7592 (30 November 2006), P2521 (witness statement dated 3 March 2004), para. 30.

⁸⁰⁷ Dušan Lončar, T. 7580 (30 November 2006), P2521 (witness statement dated 3 March 2004), para. 14.

⁸⁰⁸ Dušan Lončar, T. 7691–7692 (1 December 2006), P2521 (witness statement dated 3 March 2004), paras. 30, 67.

⁸⁰⁹ Dušan Lončar, T. 7601 (30 November 2006), P2521 (witness statement dated 3 March 2004), para. 30.

⁸¹⁰ Milorad Obradović, T. 15031 (5 September 2007).

379. In addition to being informed by phone and through the weekly Commission meetings in Belgrade, Šainović visited Kosovo at least once or twice a week. In case of a serious incident, such as the one in Račak/Rečak in January 1999, Šainović would spend two or three days there.⁸¹¹ Lončar did not meet Šainović on every such visit, but Lukić, Pavković, and Anđelković, always did. Lončar did not know the nature of these meetings, but assumed that they had to do with the fact that Šainović had *de facto* authority over Kosovo.⁸¹² When in Priština/Prishtina, Šainović would chair the meetings with KVM.⁸¹³

380. Summarising Šainović's role in Kosovo, Lončar thought that his work with the Commission was part of his duties as the Deputy Prime Minister of the FRY Government, and was therefore based on the assignments he received from the FRY Government.⁸¹⁴ In his witness statement, Lončar said that he presumed that all this was done on Milošević's instruction.⁸¹⁵ In court, based on documents in the federal archives, Lončar testified that Šainović received directions from the FRY Government and Momir Bulatović.⁸¹⁶ However, he conceded that Milošević, as FRY President at the time, also had influence on the decisions of the FRY Government.⁸¹⁷ Indeed, with regard to Lončar's own appointment, Milošević contacted Bulatović and proposed him for inclusion on the Commission.⁸¹⁸ The Chamber is in no doubt that Milošević was also instrumental in the appointment of Šainović to head the Commission. This enabled Šainović to expand his role as Milošević's political representative in Kosovo.

381. The extent of Šainović's authority was such that Lončar described him as having it among "all the structures" in Kosovo.⁸¹⁹ According to Lončar, Šainović's conscientious devotion to his work led to him informally extending his influence into spheres beyond the strict formal limits of his responsibility. For example, he worked with Anđelković in establishing the local authorities and the local mixed police force.⁸²⁰

⁸¹¹ Dušan Lončar, T. 7577–7578 (30 November 2006), P2521 (witness statement dated 3 March 2004), para. 38.

⁸¹² Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 38; *see also* P2530 (supplemental information sheet dated 28 November 2006), para. 8.

⁸¹³ Dušan Lončar, T. 7691–7692 (1 December 2006). *See also* Richard Ciaglinski, T. 7002–7003 (21 November 2006).

⁸¹⁴ Dušan Lončar, T. 7585 (30 November 2006).

⁸¹⁵ Dušan Lončar, P2521 (witness statement dated 3 March 2004), paras. 38, 65.

⁸¹⁶ Dušan Lončar, T. 7604 (30 November 2006), T. 7688–7689 (1 December 2006), P2530 (supplemental information sheet dated 28 November 2006), paras. 8, 11.

⁸¹⁷ Dušan Lončar, T. 7688–7690 (1 December 2006), P2521 (witness statement dated 3 March 2004), para. 14.

⁸¹⁸ Dušan Lončar, T. 7690 (1 December 2006), P2521 (witness statement dated 3 March 2004), para. 14.

⁸¹⁹ Dušan Lončar, T. 7603–7604 (30 November 2006), P2530 (supplemental information sheet dated 28 November 2006), para. 8.

⁸²⁰ Dušan Lončar, T. 7590 (30 November 2006).

382. Lončar also explained that he rarely received immediate decisions from Šainović when he asked for instructions on how to proceed. In response to requests from the KVM, Šainović would say “let them wait and I will talk to Walker when we meet.”⁸²¹ However, Lončar added that Walker’s demands on his own behalf or on behalf of the KVM usually went beyond the specific terms of the October Agreements and, unless the issue fell within Šainović’s exclusive jurisdiction, Šainović had to consult the FRY Government, since he was not an “absolute ruler” and could not give answers *ad hoc*.⁸²²

383. It was the view of Lončar that the FRY genuinely wanted the OSCE mission to succeed. As a result, Šainović always insisted on thoroughness of the Commission, and on having a fair and honourable relationship with the KVM; his commitment was to ensure the success of the mission.⁸²³ Šainović always instructed his people to co-operate with the KVM and to honour all their demands, and never instructed anyone to obstruct that co-operation.⁸²⁴

384. Even those who were unaware of Šainović’s official role as the Head of the Commission regarded him as in authority in Kosovo because of the way in which he conducted himself. Michael Phillips, in his position as Walker’s Chief of Staff, would meet with Šainović regularly. As noted above, at their first meeting Šainović introduced himself as personal representative of Milošević in Kosovo.⁸²⁵ As to his specific role, he explained that he would be involved in all the political aspects and would assist the KVM in setting up its mission.⁸²⁶ Phillips had the impression that Šainović was the one in charge at the meeting, as he did most of the talking, would sit at the table directly across from Walker, and would give guidance to other participants on his side, including Lukić who attended some of these meetings. None of Šainović’s team would sit down until he sat down.⁸²⁷ Whenever a concern relating to certain troops was raised, Šainović would turn to Lončar or Lukić and ask a question. Phillips concluded that Šainović had “some authority” over the activities of both the VJ and the MUP.⁸²⁸ While Phillips’s impression was consistent with the views of others, he, surprisingly, was not familiar with the Commission and Šainović’s position

⁸²¹ Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 65.

⁸²² Dušan Lončar, T. 7586–7588 (30 November 2006).

⁸²³ Dušan Lončar, T. 7584, 7586 (30 November 2006), P2521 (witness statement dated 3 March 2004), para. 59. *See also* 2D119 (FRY Ministry of Foreign Affairs memo re arrival of KVM, 18 November 1998); 2D112 (FRY Ministry of Foreign Affairs memo re visit of French portion of KVM, 16 November 1998).

⁸²⁴ Dušan Lončar, T. 7590–7591 (30 November 2006). *See, e.g.*, 2D321 (FRY Ministry of Foreign Affairs memorandum re talks between Wolfgang Petritsch and Šainović), p. 1. This document records Šainović as encouraging continuity of monitoring and constant presence of KDOM and KVM monitors. *See also* 2D318 (FRY Ministry of Foreign Affairs memorandum re talks between Staffan de Mistura and Šainović).

⁸²⁵ Michael Phillips, T. 11831 (19 March 2007).

⁸²⁶ Michael Phillips, T. 11832 (19 March 2007).

⁸²⁷ Michael Phillips, T. 11832 (19 March 2007).

⁸²⁸ Michael Phillips, T. 11855–11857 (19 March 2007).

as Chairman. Nevertheless, having seen the FRY Government's decision establishing the Commission, he confirmed that his observation of Šainović's duties with regard to the KVM corresponded to what Šainović was in fact authorised to do by the FRY Government. He remained adamant that Šainović introduced himself as a personal representative of Milošević for Kosovo, but said that he also believed that Šainović represented the Government.⁸²⁹

385. Phillips would bring to the attention of Milošević and Šainović complaints relating to the heavy-handed use of FRY/Serbian armed forces in Kosovo in late 1998 and early 1999. Šainović was told about these concerns during the weekly meetings and in the presence of Lukić. 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 that), and that they were doing something that was perfectly logical, responding to KLA activity.⁸³⁰

386. Phillips also testified about a meeting with Milošević, which was held around 24 November 1998, 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 outlining the co-operation the mission expected from the FRY/Serbian authorities and listing various problems they had in Kosovo.⁸³¹ Phillips explained that this was done because they were not getting any results from Šainović.⁸³² When Milošević heard about the problems he became upset as he felt that he was providing a high degree of co-operation. The issue related mostly to the security required by the KVM and the fact that Milošević felt that any such security concerns would be addressed by the MUP. Phillips's impression during this meeting was that Milošević was responsible for security decisions which Šainović was then to implement in Kosovo. This assessment was based on the fact that Milošević would ask Šainović to look into a situation for him, suggesting, for example, the removal of a roadblock.⁸³³

387. Joseph Maisonneuve, head of the KVM Regional Centre in Prizren, testified that, when he met Šainović on a few occasions, he found him to be "a confident, polished gentleman, who seemed very well-aware of the activities that were going on in Kosovo at the time."⁸³⁴ He never heard Šainović defer to another person when it came to interactions about Kosovo. In his opinion,

⁸²⁹ Michael Phillips, T. 11863–11866 (19 March 2007).

⁸³⁰ Michael Phillips, T. 11845–11846 (19 March 2007).

⁸³¹ Michael Phillips, T. 11841–11842, 11944–11945 (19 March 2007); P396 (Letter from William Walker to Slobodan Milošević).

⁸³² Michael Phillips, T. 11872–11873 (19 March 2007).

⁸³³ Michael Phillips, T. 11842–11844 (19 March 2007).

⁸³⁴ Joseph Maisonneuve, T. 11033 (6 March 2007).

there was no doubt Šainović was well apprised of what was happening in Kosovo and the power to act was in his hands to a great degree.⁸³⁵ On cross-examination, the Šainović Defence asked him whether he was aware of the fact that Šainović was Chairman of the Commission for Co-operation with KVM. Maisonneuve responded that he was not aware of it in detail, but that he knew that Šainović had been delegated responsibility to co-ordinate the Kosovo theatre. He conceded that this position would explain his impression of Šainović's powers in Kosovo.⁸³⁶

388. Between 1 January and 24 March 1999 there is evidence of Šainović going to Priština/Prishtina on only a few occasions. He remained Chairman of the Commission for the Co-operation with the KVM until the KVM's departure from Kosovo.⁸³⁷

iii. Examples of Šainović's authority as Chairman of the Commission for Co-operation

389. The Chamber heard evidence about Šainović's involvement, as part of his work with the Commission, in various incidents around Kosovo throughout 1998 and 1999. One of these incidents related to the troublesome Podujevo/Podujeva area, already discussed in general terms above in Section VI.D.

390. Both Lončar and Drewienkiewicz testified about an incident in the village of Obrandža/Obranča in Podujevo/Podujeva municipality, where in late December 1998 an elderly Serb villager was killed by the KLA.⁸³⁸ When police arrived at the village they were ambushed by the KLA. The stand off between the two sides lasted for a number of days. At first, according to Lončar, Lukić and the MUP were in charge of this incident; days later VJ forces who were training nearby came to the location.⁸³⁹ The incident was so tense that both Walker and Šainović took a personal interest.⁸⁴⁰

391. Another incident in Podujevo/Podujeva around approximately the same time involving a kidnapped Serb farmer in the area, and the efforts that the FRY/Serbian authorities made to ensure his release, was recounted by Ciaglinski.⁸⁴¹ He first heard about this incident during a meeting with Lončar and the Commission, when Lončar advised the KVM that they would be launching an

⁸³⁵ Joseph Maisonneuve, T. 11033 (6 March 2007), P2772 (witness statement dated 10 March 2000), para. 9.

⁸³⁶ Joseph Maisonneuve T. 11162–11164 (7 March 2007).

⁸³⁷ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 550, 842.

⁸³⁸ Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 49; Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), paras. 109–111.

⁸³⁹ Dušan Lončar, T. 7622–7623 (1 December 2006), P2521 (witness statement dated 3 March 2004), para. 49.

⁸⁴⁰ Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 49; Karol John Drewienkiewicz, T. 7786–7790 (4 December 2006), P2508 (witness statement dated 23 June 2000), para. 111.

attack to free the kidnapped farmer with forces from both the MUP and the VJ. Ciaglinski knew that the KLA was also preparing by bringing up additional forces, equipment and ammunition, and that an attack by the FRY/Serbian forces would probably result in the loss of a great number of lives on both sides. Ciaglinski and Drewienkiewicz then volunteered the KVM to go and talk to the KLA and negotiate the release of the farmer. Lončar responded that he was not in a position to make any such decisions. He made a phone call from an adjacent room. Ciaglinski first suspected that Lončar called Šainović for authorisation; however, Kotur later told him that it was a person at an even higher level of authority, which made Ciaglinski suspect that he was referring to Milošević.⁸⁴² As a result of this phone-call, the attack was held off while the KVM personnel went into the village and recovered the farmer.⁸⁴³ According to Ciaglinski, this was when he and Drewienkiewicz first realised that Lončar was not sufficiently powerful to make certain decisions relating to the KVM, and had to consult Belgrade regularly, where the principal representative of the Commission was Šainović.⁸⁴⁴ It does not matter whether it was Šainović or Milošević whom Lončar contacted since they were in regular contact with each other.

392. Ciaglinski gave a further example of Šainović's authority over events in Kosovo, as demonstrated during two meetings he had with Lončar on 24 December 1998. At the first of these, Ciaglinski complained about the lack of information being passed to the KVM regarding troop movements. At a 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 Walker and Šainović and the MUP Commander. According to Ciaglinski, this demonstrated that Lončar could only affect "local matters" and that anything to do with policy had to go via Šainović in Belgrade.⁸⁴⁵

393. Wolfgang Petritsch testified about another incident in early January 1999, when nine VJ soldiers were taken hostage by the KLA and, in turn, a group of KLA fighters were detained by the VJ. Petritsch was asked to mediate to secure the release of the two groups, which he did by dealing with Šainović.⁸⁴⁶ However, Petritsch confirmed that, while Šainović was the negotiator he dealt with, probably Milošević alone could have made the relevant decision to release the KLA; indeed,

⁸⁴¹ According to Ciaglinski, Podujevo/Podujeva was a hotspot with significant KLA presence and many skirmishes; Richard Ciaglinski, T. 6823 (17 November 2006).

⁸⁴² Richard Ciaglinski, T. 6822–6826 (17 November 2006), P2488 (witness statement dated 23 March 2000), p. 4.

⁸⁴³ IC109 (Map of the area marked by Ciaglinski and showing location of different forces during the operation).

⁸⁴⁴ Richard Ciaglinski, T. 6825–6828 (17 November 2006), P2488 (witness statement dated 23 March 2000), pp. 4–5.

⁸⁴⁵ Richard Ciaglinski, P2488 (witness statement dated 23 March 2000), pp. 5–6.

⁸⁴⁶ Wolfgang Petritsch, P2793 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 7240–7241, P2792 (witness statement dated 9 June 1999), p. 7.

Šainović clearly indicated that that was what happened.⁸⁴⁷ Petritsch added that Šainović must have prevailed upon Milošević to decide in a positive way, which was a constructive move.⁸⁴⁸ Drewienkiewicz also mentioned this incident. He said that verifiers were sent to the KLA camp to ensure that the kidnapped VJ soldiers were alive and well. While the verifiers were with the KLA, the KVM received information that FRY/Serbian special forces were being moved to a position from which they would attempt to rescue the soldiers. Worried about the safety of his team, Drewienkiewicz immediately ordered their return, and also contacted the French Ambassador, who in turn spoke to Šainović. According to Drewienkiewicz, Šainović assured the Ambassador that “whatever was being contemplated would be put on hold” and that he was content for the negotiations to continue.⁸⁴⁹ Lončar was also involved during this incident, and testified that he spent two nights and a day in his office in constant contact with Drewienkiewicz. In the end, the nine VJ soldiers were exchanged for 28 KLA members.⁸⁵⁰

394. Ciaglinski too referred to the incident above, and testified about a meeting on 6 January 1999 where the KVM asked to be permitted to visit the detained KLA men who were held in the military prison in Niš. Šainović stated that that would be arranged, but that certain procedures had to be followed for the arrangements to be made. Around 10 days later Ciaglinski received a telephone call from Lončar who informed him that he alone was permitted to visit the prisoners. As stated above, Šainović was then very closely involved in arranging the release of the same prisoners.⁸⁵¹ This showed Ciaglinski that Šainović “commanded a lot of respect from the other Serbs and was an impressive man who kept command of meetings, a very effective leader.”⁸⁵² In Ciaglinski’s view, there was no doubt that Šainović spoke on behalf of the FRY Government in Belgrade.⁸⁵³ The Chamber notes that, in its final trial brief, the Šainović Defence argues that this is not an example of Šainović’s influence but simply illustrates that he was “an exposed entity of the FRY nation state vis à vis all the foreign representatives in connection with the KVM.”⁸⁵⁴

395. Another incident, of which the aftermath was closely managed by Šainović, was that in Račak/Rečak on 15 January 1999. According to Lončar, who was not personally involved due to

⁸⁴⁷ Wolfgang Petritsch, P2793 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 7241, 7296.

⁸⁴⁸ Wolfgang Petritsch, T. 10946 (2 March 2007).

⁸⁴⁹ Karol John Drewienkiewicz, T. 7742–7745 (4 December 2006). *See also* 2D181 (FRY Ministry of Foreign Affairs correspondence re talks between Živadin Jovanović and Knut Vollebaek, 13 January 1999), p. 4.

⁸⁵⁰ Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 82. *See also* Shaun Byrnes, T. 12138–12140 (16 April 2007); Richard Ciaglinski, T. 6891 (20 November 2006); Michael Phillips, T. 11884–11886 (19 March 2007); 2D20 (extract from Phillips’s notebooks).

⁸⁵¹ Richard Ciaglinski, T. 6878–6879 (20 November 2006), P2488 (witness statement dated 23 March 2000), p. 5.

⁸⁵² Richard Ciaglinski, P2488 (witness statement dated 23 March 2000), p. 5.

⁸⁵³ Richard Ciaglinski, P2488 (witness statement dated 23 March 2000), p. 5.

⁸⁵⁴ Šainović Final Trial Brief, 29 July 2008 (public version), paras. 424–427.

the extreme political sensitivity of this incident, Pavković and Lukić informed Šainović of the incident.⁸⁵⁵ Lončar first learned about it from Drewienkiewicz the day after it happened. Lončar immediately telephoned Lukić who told him that there was indeed an operation, that people had been killed on both sides, and that the operation was still ongoing. Lončar asked if Šainović had been informed and was told that he had.⁸⁵⁶ He nevertheless called Šainović to inform him of the incident and to tell him that he was angry that he had heard about it from the KVM and not from the FRY/Serbian authorities. Šainović said that he was already aware of the situation but made no comments in relation to Lončar's complaint.⁸⁵⁷

396. Phillips testified that the nature and frequency of his weekly meetings with Šainović changed following the Podujevo/Podujeva incidents. Leading up to the Račak/Rečak incident, the meetings were hostile in nature, and after that incident 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; they tried to invite him, but he could not be contacted. Lončar attended in his stead.⁸⁵⁸

397. Šainović was asked about his handling of Račak/Rečak during his interview with the Prosecution. He stated that on 15 January 1999, while he was in Belgrade, a local journalist informed him over the phone that the MUP had destroyed a very large terrorist unit in Račak/Rečak and that some 100 persons had been killed.⁸⁵⁹ Šainović then called Lukić who told him that there had been a battle with the terrorists, and as a result 15 terrorists had been killed. Lukić also told him that Đorđević was at Štimlje/Shtima police station. Šainović then called Đorđević to find out what had happened. Đorđević told Šainović the same as Lukić, namely that a large KLA group had been destroyed.⁸⁶⁰

398. Šainović also explained to the Prosecution that he was not involved with the MUP in the planning of this action; however, he knew that the MUP was preparing to "neutralise" that KLA group.⁸⁶¹ He decided to become involved because of the international complications that resulted from it. He insisted that an investigative judge come to the scene and conduct an investigation.⁸⁶² Šainović was then asked why he avoided contacts with international representatives and why he

⁸⁵⁵ Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 51.

⁸⁵⁶ Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 50.

⁸⁵⁷ Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 55.

⁸⁵⁸ Michael Phillips, T. 11830–11831 (19 March 2007).

⁸⁵⁹ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 722–723, 795–796, 825.

⁸⁶⁰ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 723, 725–726, 748. *See also* K86, T. 7377–7382 (27 November 2006) (closed session).

⁸⁶¹ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 731, 763–768.

⁸⁶² P605 (Nikola Šainović interview with the Prosecution), e-court pp. 735, 760, 804.

was not available after the incident. He responded that Lončar was in contact with them because he (Šainović) was not in Priština/Prishtina, and that he was in contact with Lončar. Šainović also stated that he did not know that international representatives were unable to contact him. Lončar was supposed to go to Račak/Reçak and establish what had happened because he was already in Kosovo and because in all such events he was the one who was in the field; however, Lončar did not go and instead had discussions with Drewienkiewicz and others.⁸⁶³

399. In his contacts with Stojiljković, Šainović asked about the investigation of the Račak/Reçak incident but never received an answer. At one of the meetings with Milošević a few days after the incident, Milošević criticised Stojiljković for the way he and the MUP had handled the matter. Stojiljković was a Minister of the Government of Serbia and as such was formally subordinated to the Serbian Prime Minister; however, in practice, he reported directly to Milošević.⁸⁶⁴

iv. Conclusion

400. The Chamber, as stated earlier, accepts that the level of FRY/Serbian forces was reduced immediately following the October Agreements. However, after this initial compliance it would later emerge that breaches occurred, such as the increase in personnel and the non-return of equipment from the MUP to the VJ. The evidence from the various meetings attended by Šainović in September and October 1998 indicates that, as with the FRY/Serbian leadership in general, there always was a reluctance on his behalf to accept an international military presence in Kosovo and to comply fully with the terms of the Agreements which demanded the reduction of the level of FRY/Serbian forces and allowed for an international military presence in the province. This attitude could later be seen in his dealings with the KVM, especially following the incident in Račak/Reçak.

401. As for Šainović's authority as the Chairman of the Commission for Co-operation with the KVM, the Chamber has already noted that Milošević was instrumental in this appointment, which in turn enabled Šainović to expand his role as Milošević's political representative in Kosovo and to continue liaising not only with the VJ and the MUP representatives, but also with KVM personnel. Thus, the Chamber finds that, in his official capacity as the Chairman of the Commission, Šainović was able to continue his dealings with high-level VJ and MUP officials in Kosovo, in the manner similar to that employed during 1998. In other words, his dealings with and influence over Pavković and Lukić continued without interruption. The evidence above also shows that he was more than simply "an exposed entity of the FRY" as argued by the Šainović Defence, as he still

⁸⁶³ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 735–737.

exhibited authority over all representatives of the VJ and MUP he came into contact with. In particular, the events surrounding the incidents in Podujevo/Podujeva and Račak/Rečak show that he was in regular contact with Lukić and Pavković, that he was able to exert influence over them, and that he knew about the impending joint VJ and MUP actions. The Chamber notes that this finding is not undermined by the fact that all of Šainović's activities in this period can be seen as part of his official role within the Commission. This is because it is the nature, rather than the source, of his authority that is of importance here. The Chamber's finding is also not undermined by the fact that, in this role, Šainović was at times helpful to the KVM.

d. Šainović at Rambouillet

402. The Prosecution contends that the negative attitude of the FRY/Serbian delegation during the Rambouillet and Paris talks was "clearly the result of Milošević's instructions", and that, by conveying these instructions, Šainović contributed to the failure to reach agreement.⁸⁶⁵ The Šainović Defence, on the other hand, argues that Šainović was simply one of the members of the FRY/Serbian delegation at Rambouillet, which was led by Ratko Marković, and which was limited by the clear mandate given to it by the Serbian National Assembly. In addition the work of the delegation was overseen by the FRY Government.⁸⁶⁶

403. It is not disputed that Šainović participated in the Rambouillet talks as one of the members of the FRY/Serbian delegation which was formally headed by Ratko Marković.⁸⁶⁷ According to Wolfgang Petritsch and Jan Kickert, however, Šainović was seen as the political head of the delegation by the international negotiators, although Marković held the title of head of delegation.⁸⁶⁸ Veton Surroi saw Šainović as the political leader of the delegation, although from a legal point of view the person in charge of direct negotiations was Marković.⁸⁶⁹ Indeed, when Surroi questioned the relevance of the FRY/Serbian negotiating team, Hill told him that Šainović was the most trusted man of Milošević.⁸⁷⁰ Surroi understood Marković's role as a legal expert on constitutional issues, whereas Šainović was responsible for the representation of political

⁸⁶⁴ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 807–811.

⁸⁶⁵ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 688.

⁸⁶⁶ Šainović Final Trial Brief, 29 July 2008 (public version), paras. 440–454.

⁸⁶⁷ P967 (Serbian Government decision to appoint Rambouillet delegation, 4 February 1999). *See also* Momir Bulatović, T. 13845–13846 (17 August 2007); Živadin Jovanović, T. 14053 (20 August 2007).

⁸⁶⁸ Jan Kickert, T. 11259 (7 March 2007); Wolfgang Petritsch, T. 10717 (28 February 2007), T. 10746 (1 March 2007). *See* 1D97 (Letter from Ratko Marković to Ambassadors Hill, Petritsch, Mayorski, Complaint about documents not adopted by the Contact Group, 22 February 1999); P967 (Serbian Government decision to appoint Rambouillet delegation, 4 February 1999).

⁸⁶⁹ Veton Surroi, T. 4544 (10 October 2006).

⁸⁷⁰ Veton Surroi, T. 4547 (10 October 2006), P2361 (witness statement dated 27 August 2001), p. 8.

interests, and contacts with Belgrade and Milošević personally.⁸⁷¹ Surroi stated that “in every single negotiating situation” neither Šainović nor Marković had decision-making powers, but only the right to consult Milošević.⁸⁷²

404. The witnesses called by the Defence, on the other hand, testified that Šainović was included in the delegation due to his position as Deputy Prime Minister, and his responsibilities with regard to international co-operation. Zoran Anđelković testified that they felt the need to strengthen the delegation and for that reason he personally proposed to include Šainović.⁸⁷³ Živadin Jovanović 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, because he was the one with the most international contacts, and because he was the Head of the Commission for the Co-operation with the KVM.⁸⁷⁴

405. The evidence shows that Šainović communicated with Milošević during the Rambouillet talks and sought instructions from him. According to Petritsch, the progress of the negotiations at Rambouillet depended on Milošević, and whenever there was a problem the FRY/Serbian delegation was asked to call Milošević to get approval and further directions.⁸⁷⁵ When the negotiations reached a critical point, Šainović received permission to leave the castle where the talks were taking place, while other participants were confined therein, to visit Belgrade in order to consult with Milošević.⁸⁷⁶ In Petritsch’s view, Šainović was allowed to leave because there was “no other way to facilitate the negotiations without Milošević’s approval.”⁸⁷⁷ Surroi testified that Hill explained to them that this was an urgent consultation that needed to be made face to face between Šainović and Milošević.⁸⁷⁸ Another member of the delegation, Živadin Jovanović, explained that Šainović’s trip to Belgrade was prompted by the fact that the delegation was asked to state its position and to accept certain solutions that were not in keeping with the ten principles of the Contact Group. Jovanović also told the Chamber that he spoke to Šainović when the latter was in Belgrade, as did Milošević and Bulatović. According to Jovanović, two conclusions were reached during these discussions, namely that the talks in Rambouillet should continue, and that

⁸⁷¹ Veton Surroi, T. 4585 (10 October 2006).

⁸⁷² Veton Surroi, P2362 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 3399–3400.

⁸⁷³ Zoran Anđelković, T. 14661 (30 August 2007).

⁸⁷⁴ Živadin Jovanović, T. 14053 (20 August 2007).

⁸⁷⁵ Wolfgang Petritsch, P2792 (witness statement dated 9 June 1999), p. 4.

⁸⁷⁶ Veton Surroi, T. 4544–4545, 4586 (10 October 2006); Wolfgang Petritsch, P2792 (witness statement dated 9 June 1999), p. 4.

⁸⁷⁷ Wolfgang Petritsch, P2792 (witness statement dated 9 June 1999), p. 4.

⁸⁷⁸ Veton Surroi, T. 4596 (10 October 2006), P2362 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 3406–3407.

FRY diplomats should start securing the support of the international community in relation to the ten principles.⁸⁷⁹

406. Ratko Marković testified that, as nominal head of the delegation at Rambouillet, he did not have any powers in relation to the delegation members. Each member of the delegation was an autonomous figure. When Šainović left for Belgrade to speak to Milošević, he was not obliged to report to Marković, nor did Marković have the right to ask him to do so. According to Marković, as a Deputy Prime Minister of the Serbian Government, it was inappropriate for him to question the Deputy Prime Minister of the Federal Government.⁸⁸⁰ Referring to the evidence of Jovanović and Marković, the Šainović Defence, in its final brief, argues that, rather than emphasising the fact that Šainović was the one who went to see Milošević, the important fact in relation to these events was that the talks between Šainović and Milošević helped continue the negotiations.⁸⁸¹

407. This was confirmed by Petritsch who described Šainović as “the most reasonable” member of the Serbian delegation at Rambouillet and someone with whom he had developed a good working relationship. During the meetings in Rambouillet Šainović was “of use” to him. Petritsch had the impression that Šainović listened and tried to provide answers to the demands made by the international community, and stated that their meetings were conducted in a very pleasant atmosphere.⁸⁸² As an example, he recounted the events of 23 February 1999 when Ratko Marković sent a letter indicating 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 with the negotiations and agreeing to discuss the scope of international presence in Kosovo, without restricting it to a civilian presence. After another couple of hours a third letter arrived, agreeing to the same but also emphasising the territorial integrity and sovereignty of the FRY.⁸⁸³

408. Shaun Byrnes, who participated in the subsequent negotiations at Paris, told the Chamber that he had several conversations with Šainović there. Byrnes recalled one conversation where he told Šainović that NATO was not bluffing, that the FRY was unlikely to receive a better deal than

⁸⁷⁹ Živadin Jovanović, T. 14055–14056 (20 August 2007), T. 14120–14121 (21 August 2007); *see also* Ratko Marković, T. 13542–13546 (14 August 2007).

⁸⁸⁰ Ratko Marković, T. 13543–13545, 13553–13554 (14 August 2007); *see also* Živadin Jovanović, T. 14055 (20 August 2007).

⁸⁸¹ Šainović Final Trial Brief, 29 July 2008 (public version), paras. 529–534.

⁸⁸² Wolfgang Petritsch, T. 10945 (2 March 2007).

⁸⁸³ Wolfgang Petritsch, T. 10747–10748 (1 March 2007), T. 10930–10934 (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). *See also* 1D18 (Marc Weller: Crisis in Kosovo), e-court p. 466.

the one offered at Rambouillet, and that the FRY/Serbian delegation needed to be more flexible. Byrnes then said:

And I distinctly remember Mr. Šainović sitting there thoughtfully and finally responding to my question with words something to the effect that he did not have the authority to be that flexible, that there were too many constraints on him imposed by Belgrade, and at the end of the day, there was nothing he could do in this direction, whether he wanted to or not. Q. In other words, you will agree with me that Šainović did his very best to be flexible, he himself, that is, but that obviously he was constrained in that by the actual powers he had from Belgrade. Is that what you were actually trying to say? A. What I would say is, first, I was not in Mr. Šainović's shoes. I do not know, therefore, whether he did everything he possibly could. He told me he did. Fundamentally, I trusted that. I trusted what he told me.⁸⁸⁴

Byrnes's personal impression was that, when Šainović mentioned the superior powers which were constraining him, he was in fact referring to Milošević.⁸⁸⁵

409. The Chamber recalls here its findings regarding the negotiations in Rambouillet to the effect that all participants, including the international negotiators, contributed to the failure of the negotiations. The Chamber also recalls the evidence of Petritsch and Byrnes that Šainović was a reasonable negotiator, but that he was constrained by Belgrade. Accordingly, the evidence does not show Šainović to have been obstructive at Rambouillet. Nevertheless, what the witnesses confirm yet again is that Šainović was one of the closest associates of Slobodan Milošević at the time and, in effect, the most senior and influential member of the delegation at Rambouillet.

e. Šainović's dealings with Rugova

410. The Chamber heard evidence that during the NATO campaign one of Šainović's tasks was to establish political contacts and dialogue with LDK leader, Ibrahim Rugova. As stated earlier, the Chamber finds that Rugova was under house arrest during those contacts.⁸⁸⁶ It is the Prosecution's position that, by conducting these meetings with Rugova, Šainović engaged in a propaganda campaign to give the impression that the FRY/Serbian authorities were willing to meet with Kosovo Albanians, when, in fact, Kosovo Albanians were being expelled at the time in furtherance of the criminal plan alleged by the Prosecution.⁸⁸⁷ The Šainović Defence, on the other hand, denies this allegation and argues that Šainović was simply trying to revive the political process.⁸⁸⁸

⁸⁸⁴ Shaun Byrnes, T. 12191 (16 April 2007).

⁸⁸⁵ Shaun Byrnes, T. 12231 (17 April 2007).

⁸⁸⁶ See Section V.

⁸⁸⁷ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 668.

⁸⁸⁸ Šainović Final Trial Brief, 29 July 2008 (public version), paras. 810–826.

411. According to Šainović himself and witnesses called by the Šainović Defence, these dealings started in April 1999, when a few meetings were held in which Rugova and Šainović agreed to work together on a political process to resolve Kosovo issues and to bring displaced citizens back to their homes.⁸⁸⁹ These commitments were endorsed on 6 April by both the FRY and the Serbian Governments.⁸⁹⁰ Momir Bulatović testified that, a few days after the Federal and Serbian Governments had informed the international public about the possibility of the start of a real dialogue with Rugova and solving the most serious issue in Kosovo, which was the return of those displaced, the most severe NATO air-strikes against civilian targets in Kosovo occurred. According to Bulatović, the talks were frustrated by the NATO strikes. Šainović returned to Belgrade and resumed his tasks as Deputy Prime Minister.⁸⁹¹ Adnan Merovci confirmed Šainović's participation in these discussions. He testified, however, that the arrival of the MUP and VJ forces at Rugova's residence on 31 March 1999 heralded a five-week period of house-arrest for him and Rugova, throughout which Šainović would visit.⁸⁹²

412. Šainović first met with Rugova on 1 April, during a meeting between Milošević and Rugova. The broadcast of footage of this meeting on television caused a stir as many people had thought that Rugova was dead. Merovci asked that he and Rugova be allowed to leave Kosovo in order to consult with Rugova's aides and "make contact with key people." On returning to Priština/Pristina Merovci wrote to Milošević once again insisting that they be allowed to go abroad.⁸⁹³ On 4 April 1999 Šainović came to Rugova's house for the first time to try to convince him to meet with Ratko Marković. Merovci did not understand Marković to be a person who could help them in their situation. Rather, he thought that was the state leadership trying to show to the international community that there was an ongoing negotiation process, the existence of which might aid in stopping the bombing by NATO.⁸⁹⁴ Ljubivoje Joksić, who was assistant co-ordinator of the RDB at the relevant time, testified that he was asked by the chief of the RDB to organise security for this meeting between Šainović and Rugova, as well as for subsequent meetings between the two men. Joksić was present at most of those talks, and testified that Šainović relayed

⁸⁸⁹ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 842, 871; Momir Bulatović, T. 13849–13850 (17 August 2007); Živadin Jovanović, T. 14066–14069 (20 August 2007); Veljko Odalović, T. 14425–14426 (27 August 2007); Milomir Minić, T. 14757 (31 August 2007); Zoran Anđelković, T. 14661–14662 (30 August 2007); Duško Matković, T. 14599–14600 (29 August 2007).

⁸⁹⁰ 1D36 (Joint Statement of the Federal Government and the Government of the Republic of Serbia, 6 April 1999); Momir Bulatović, T. 13851–13852 (17 August 2007).

⁸⁹¹ Momir Bulatović, T. 13852–13853 (17 August 2007).

⁸⁹² Adnan Merovci, T. 8438–8450 (16 January 2007), P2588 (witness statement dated 12 April 2000), paras. 54–62.

⁸⁹³ Momir Bulatović, T. 13850 (17 August 2007); Ibrahim Rugova, P2613 (witness statement dated 3 November 2001), pp. 11–12; Adnan Merovci, P2588 (witness statement dated 12 April 2000), paras. 58–59. *See also* 2D300 (Announcement from the FRY Government session, 2 April 1999).

⁸⁹⁴ Adnan Merovci, T. 8462–8464 (16 January 2007), P2588 (witness statement dated 12 April 2000), para. 62.

“messages of a general political nature,” to the effect that “everything should be done to stop the air-strikes,” that the organisation of government in Kosovo should be discussed, and that “all displaced persons and refugees of all ethnicities who had lived in Kosovo previously should come back”.⁸⁹⁵ According to Joksić, the atmosphere in those meetings was one of “mutual trust and confidence.”⁸⁹⁶ The Chamber notes, however, that it has found Joksić unreliable in his account of Rugova’s house arrest.⁸⁹⁷

413. On 5 April 1999 Šainović again visited Rugova’s residence, according to Merovci, to discuss the issue of locating Rugova’s aides and the departure of Rugova and Merovci from Kosovo. During the meeting Šainović remarked that Merovci was free to go to Macedonia, but that “[they] cannot guarantee [his] security”.⁸⁹⁸ Merovci understood this warning to be more of a threat to his security, should he decide to leave nevertheless.⁸⁹⁹ Following this meeting, a joint statement was issued confirming the purported readiness of Šainović and Rugova to work together on the political process and on returning displaced persons to their homes.⁹⁰⁰ During the course of Merovci’s contacts with Šainović, Šainović constantly said that he had to check with Belgrade whenever requests were put to him. When Merovci asked Šainović with whom he had to check in Belgrade, and suggested that it must be Milošević, Šainović nodded in the affirmative.⁹⁰¹ Joksić partly confirmed this evidence when he testified that Šainović was always very eager to return to Belgrade as soon as he had finished talking to Rugova, even if it was night-time and unsafe.⁹⁰²

414. Another meeting with Rugova, this time involving Ratko Marković as well as Šainović, took place on 9 April 1999. Rugova reiterated his demand that the NATO conditions be met, and that he and his staff be allowed to travel abroad. The visitors insisted that Rugova demand that NATO stop the bombing campaign.⁹⁰³ At yet another meeting, on 13 April 1999, Šainović suggested that Rugova meet with Milutinović. According to Merovci, Rugova had no choice but to agree to this meeting.⁹⁰⁴ The meeting took place on 16 April 1999, in the Serbian Presidency building in Belgrade, and involved Milutinović, Šainović, Rugova, and Merovci. Rugova and

⁸⁹⁵ Ljubivoje Joksić, T. 21989–21991 (8 February 2008), T. 22064–22065 (11 February 2008).

⁸⁹⁶ Ljubivoje Joksić, T. 21991 (8 February 2008). Joksić also testified that Šainović met with Merovci twice, in the absence of Rugova, but could not remember if he was present during the talks. Ljubivoje Joksić, T. 21998 (8 February 2008).

⁸⁹⁷ See Section VII.J.

⁸⁹⁸ Adnan Merovci, T. 8490–8491 (16 January 2007), P2588 (witness statement dated 12 April 2000), para. 64.

⁸⁹⁹ Adnan Merovci, T. 8532–8533, 8584–8585 (17 January 2007).

⁹⁰⁰ Momir Bulatović, T. 13849–13851 (17 August 2007); 2D365 (Joint Statement, 5 April 1999). See also 2D303 (Statement from the FRY Government meeting, 8 April 1999), which endorsed the negotiations between the two sides.

⁹⁰¹ Adnan Merovci, P2588 (witness statement dated 12 April 2000), para. 64.

⁹⁰² Ljubivoje Joksić, T. 21997 (8 February 2008).

⁹⁰³ Adnan Merovci, P2588 (witness statement dated 12 April 2000), para. 65.

⁹⁰⁴ Adnan Merovci, T. 8464–8465 (16 January 2007).

Merovci were informed that Merovci would be allowed to go to Skopje to meet Rugova's aides. At the conclusion of the meeting Šainović gave him instructions about what to say in Skopje and that he was not to say that Rugova and Merovci were under arrest. Merovci was also instructed not to mention Šainović's name too much and to watch out for the KLA because they would try to kill Merovci. Šainović said that he was sure that Merovci would come back because of his loyalty to Rugova, and that he had, therefore, guaranteed to his superiors that Merovci would return.⁹⁰⁵

415. On 28 April 1999 a further meeting between Rugova and Merovci on one side, and Milutinović, Šainović, Marković, and Anđelković on the other, took place in Priština/Prishtina. During this meeting Milutinović stated that he could not understand why people were leaving the city. Merovci responded that people were being forced out of their homes, and that his own flat had been destroyed by the MUP. When Milutinović asked Šainović whether that was true he nodded. At some point Merovci reiterated his demand that he and Rugova be allowed to leave the country. Milutinović responded, however, that they could not make a decision on this immediately and that they would need 24 hours.⁹⁰⁶ A joint statement was signed at the end of this meeting.⁹⁰⁷

416. Eventually Merovci, Rugova, and Rugova's other aides were told that they could leave the country. On 4 May 1999 Merovci travelled with Rugova to Belgrade for a very short meeting with Milošević, to deal with technicalities and the travel arrangements. They also met again with Šainović, who was involved in organising their departure. The next day they travelled to Italy.⁹⁰⁸ Merovci explained that, when Šainović visited Rugova, he was treated as the head of the mission by those around him.⁹⁰⁹ Merovci also testified that, throughout his dealings with Šainović, he had private conversations with him about the abuses in Kosovo and Šainović's responsibility for these acts. During one of those conversations he asked about Račak/Rečak, and Šainović replied that it was all a set-up on the part of Walker and accused the KVM of gathering intelligence for NATO.⁹¹⁰

417. Given the Chamber's finding that these dealings with Rugova were not in fact free negotiations and were conducted while he was effectively under house arrest, and given the extent of Šainović's involvement in this activity, including his visits to Rugova's place of residence, the Chamber is satisfied that Šainović engaged in them, knowing full well the situation Rugova was in

⁹⁰⁵ Adnan Merovci, T. 8465–8468 (16 January 2007), P2588 (witness statement dated 12 April 2000), para. 68; Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4234–4236. See also Ljubivoje Joksić, T. 21993 (8 February 2008).

⁹⁰⁶ Adnan Merovci, T. 8469–8472 (16 January 2007), P2588 (witness statement dated 12 April 2000), para. 72.

⁹⁰⁷ P416 (Signed Joint Declaration by Rugova and Milutinović, 28 April 1999); Adnan Merovci, T. 8472–8474 (16 January 2007). See also Ljubivoje Joksić, T. 21993 (8 February 2008).

⁹⁰⁸ Adnan Merovci, T. 8475, 8479 (16 January 2007), P2588 (witness statement dated 12 April 2000), para. 73.

⁹⁰⁹ Adnan Merovci, T. 8585–8586 (17 January 2007).

⁹¹⁰ Adnan Merovci, T. 8475–8476 (16 January 2007).

at the time. This, in the Chamber's view, was not an attempt at negotiating a solution, but rather a campaign which involved threats to the personal safety of Rugova and his associates, designed to show that the FRY/Serbian authorities were meeting with Kosovo Albanians in the hope that this would lead to cessation of the NATO campaign. Šainović knowingly and wilfully participated in this campaign.

4. Šainović's relationship with Milošević

418. The Prosecution alleges that most of Šainović's power derived from his close relationship with Milošević. In addition, it is alleged that he belonged, together with Minić, to Milošević's SPS "inner circle" where policy was formulated.⁹¹¹ The Defence, on the other hand, argues that Šainović was not only outside of Milošević's inner circle, but was also bereft of any important role in the SPS at the relevant time, as he had been dismissed from his position as the vice-president of the party by Milošević. According to the Šainović Defence, his role in relation to the leading political party in Serbia was marginal.⁹¹²

a. Šainović's position as a member of SPS

419. As stated earlier,⁹¹³ in March 1996 an SPS Congress was held at which Šainović was elected vice-president of the SPS.⁹¹⁴ According to Milan Jovanović, who between 1993 and 2000 worked as a secretary at the technical services section of the Main Board of the SPS,⁹¹⁵ it was believed that at that Congress a "so-called softer line of politicians" was elected.⁹¹⁶ On 24 April 1997 Šainović was removed from his position of vice-president, at the proposal of Slobodan Milošević and following a decision of the Main Board. Jovanović testified that Šainović was removed because "he had not met the expectations in carrying out the work assigned to him by the President of the SPS", but did not know the details of the removal.⁹¹⁷ During the same session, however, mostly due to his good results in the elections, Šainović was appointed a member of the SPS Executive Board.⁹¹⁸

⁹¹¹ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 661–662.

⁹¹² Šainović Final Trial Brief, 29 July 2008 (public version), paras. 837–842.

⁹¹³ See Section IV.

⁹¹⁴ Milan Jovanović, T. 14197 (22 August 2007); P2875 (SPS Website, report about 3rd SPS congress, 3 March 1996).

⁹¹⁵ Milan Jovanović, T. 14139 (21 August 2007).

⁹¹⁶ Milan jovanović, T. 14200 (22 August 2007).

⁹¹⁷ Milan Jovanović, T. 14198 (22 August 2007).

⁹¹⁸ Milan Jovanović, T. 14198–14199 (22 August 2007); 2D25 (Minutes of 10th session of SPS Main Board, 24 April 1997), pp. 2–3.

420. As also stated earlier,⁹¹⁹ in 1998 one of the major issues on the SPS agenda was the increasingly tense situation in Kosovo. For that reason, at the 16th session of the Main Board of the SPS held on 10 June 1998, the situation was discussed in detail. Milošević proposed that a Working Group for Kosovo be formed, with the task of co-ordinating the political activities of the SPS in Kosovo.⁹²⁰ This meeting was attended by the members of the Main Board, and also by Šainović.⁹²¹ According to the members of the Working Group—Anđelković, Matković, and Minić—the Working Group’s activities consisted of obtaining information, holding meetings with political agents, and talking to people,⁹²² and Šainović was neither superior nor subordinated to the Working Group.⁹²³

421. On 14 October 1998 Šainović attended an Executive Board meeting at which the Board expressed support for the Holbrooke-Milošević Agreement, following Milutinović’s opening statement emphasising its significance. For the Executive Board the arrival of the KVM meant that the threat of use of force was removed for good.⁹²⁴ In the meeting of 27 October 1998, Šainović, together with, Milutinović, Anđelković, Minić, and Živadin Jovanović, discussed the implementation of the October Agreements. First they briefed the others attending about the recent talks between Milošević and the international community regarding implementation. They then talked of the steps taken to implement the Agreements, and the responsibility of all state organs to continue doing so in an organised manner. Finally, the speakers warned of possible negative consequences of adopting a lax attitude towards implementation, stressing the need for all organs and institutions, whose duty was to implement the agreement, to proceed urgently to take necessary steps and establish concrete plans. The Board then concluded that it was important to increase and strengthen the “Serbian national body in Kosovo”, and emphasised the need to make the ultimate effort to “enter” the ranks of the “Albanian ethnic minority” in order to get them involved in all aspects of life and work in Kosovo, as well as to re-establish mutual trust.⁹²⁵

⁹¹⁹ See Section IV.

⁹²⁰ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 300–301.

⁹²¹ Zoran Anđelković, T. 14651, 14713 (30 August 2007); Živadin Jovanović, T. 14078–14079 (21 August 2007); Duško Matković, T. 14586–14587 (29 August 2007); Milomir Minić, T. 14742–14743 (31 August 2007); P1012 (Minutes of 16th session of the Main Board of SPS, 10 June 1998). See also P605 (Nikola Šainović interview with the Prosecution), e-court pp. 118, 125–128.

⁹²² 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). See also P605 (Nikola Šainović interview with Prosecution), e-court pp. 301, 373–374.

⁹²³ Zoran Anđelković, T. 14654 (30 August 2007); Duško Matković, T. 14588 (29 August 2007); Milomir Minić, T. 14752 (31 August 2007).

⁹²⁴ Milan Jovanović, T. 14167–14168 (22 August 2007); 2D77 (Minutes of 89th session of the SPS Executive Board, 14 October 1998).

⁹²⁵ Milan Jovanović, T. 14169–14171 (22 August 2007); 2D88 (Minutes of 90th session of Executive Board of SPS, 27 October 1998), p. 3.

b. Meetings with Milošević

422. In addition to the meetings with Milošević discussed above, Šainović had regular weekly political consultations with him and other representatives from both the FRY and the Serbian Governments which took place in Milošević's office.⁹²⁶ During the crisis in Kosovo in 1998, Šainović attended these consultations only when he was in Belgrade,⁹²⁷ and would report on his and the SPS Working Group's progress in Kosovo. Sometimes Minić would go instead, and on occasion both would attend.⁹²⁸

423. According to Šainović, one-to-one meetings with Milošević were uncommon and would only happen on Milošević's invitation when he wanted to hear Šainović's opinion on something that was topical at that time.⁹²⁹ In addition, Šainović spoke to Milošević on the phone when there was a particular issue or other particular reason. In his view, this was not a procedure of regular reporting, but they did speak about once a week. Most of the time Milošević was the one who called him.⁹³⁰ He would be contacted by Milošević for different reasons. For example, if during a certain period Šainović and Milošević were to meet foreign representatives, then Milošević would call Šainović to co-ordinate their position and give him instructions with regard to these representatives. Milošević sometimes called him to hear his opinion on events in Kosovo which were of political significance.⁹³¹

424. On 24 March 1999 there was a political consultation meeting "at Milošević's" without the "security people".⁹³² At the end of the meeting Šainović stated that he would like to meet Anđelković because of the new situation. On the same day he set off to Priština/Prishtina and arrived at the TEC just before the NATO bombing began.⁹³³ In addition, during the NATO campaign, Šainović attended two or three meetings with Milošević and representatives of the Republic and the FRY organs, which were held mostly to show the public that the state leadership was still working together. They lasted for only about ten minutes.⁹³⁴

⁹²⁶ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 50, 206–207, 218–220.

⁹²⁷ P605 (Nikola Šainović interview with the Prosecution), e-court p. 220.

⁹²⁸ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 225–227.

⁹²⁹ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 227, 348.

⁹³⁰ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 223–224.

⁹³¹ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 377–381.

⁹³² P605 (Nikola Šainović interview with the Prosecution), e-court p. 874.

⁹³³ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 873–876.

⁹³⁴ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 865.

425. As for his private relationship with Milošević, Šainović stated that they worked together for many years, but that he did not have any particular private relationship with Milošević and was not a member of his circle of personal friends.⁹³⁵

426. During his interview Šainović denied ever discussing the activities of the VJ or the MUP with Milošević.⁹³⁶ In light of the voluminous evidence about Šainović's role as a political co-ordinator of VJ and MUP activities and the fact that he was permitted to leave Rambouillet in order to meet with Milošević, the Chamber does not accept this assertion. It is inconceivable that they did not do so.

c. Conclusion

427. Given the voluminous evidence recounting the various meetings between Šainović and Milošević, as well as the testimony of many witnesses called both by the Prosecution and the Defence about the relationship between Milošević and Šainović, the Chamber is of the view that Šainović was indeed one of the closest and most trusted associates of Slobodan Milošević both in 1998 and 1999. It was this relationship that led to him undertaking a leading role during the Joint Command meetings and various other meetings involving VJ and MUP officials. It was also this relationship that led to him becoming the Chairman of the Commission for Co-operation with the KVM. These various roles in turn enabled him to be a political co-ordinator of both civilian and military activities in Kosovo and somebody who had a decision-making role with respect to the province.

5. Šainović's state of mind in relation to Kosovo and Kosovo Albanians

428. The Prosecution alleges that Šainović had the intent to ethnically cleanse Kosovo in order to ensure continued control by the FRY and Serbian authorities over the province and was aware of the persecutory conduct of the forces of the FRY and Serbia against Kosovo Albanians prior to and after 23 March 1999.⁹³⁷

429. In support of its allegations, the Prosecution refers to the evidence given by Ratomir Tanić and Klaus Naumann. Tanić testified that he had information from his RDB sources that Šainović

⁹³⁵ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 382–384.

⁹³⁶ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 377–381.

⁹³⁷ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 691–694.

was not committed to the peaceful resolution of the problems in Kosovo.⁹³⁸ Given the nature of this evidence, the Chamber does not rely upon it.

430. Naumann testified that he had an impression that Šainović profoundly disliked the Kosovo Albanians.⁹³⁹ Following the signing of the Clark-Naumann Agreement on 25 October 1998, those involved entered into further discussion on how to achieve better relations between the Serbs and the Kosovo Albanians. According to Naumann's original statement prepared for the purposes of the *Milošević* case, at that point either Milošević or Šainović stated that "if they did not solve the Albanian problem now, the Yugoslavs would have the same problem in 20 years because the Albanians re-populated at a far greater rate."⁹⁴⁰ However, in a supplemental information sheet prepared for the purposes of this case, Naumann stated that Šainović was the one talking of the high birth rate of Kosovo Albanians.⁹⁴¹ When cross-examined about this by the Šainović Defence, he stated that he was still uncertain as to who had made the comment and said that it was made during the full plenary session.⁹⁴²

431. During the same series of meetings Naumann recalled Milošević's words to the effect that the Kosovo Albanians were all criminals, murderers, and rapists, and that a solution for the problem would be found in the spring of 1999, namely that they would round them up and shoot them, like they did in Drenica after World War II.⁹⁴³ The statement produced no reaction from those who heard the comment as "[t]hat was, in most cases, their usual attitude that they did not say anything when [Milošević] spoke."⁹⁴⁴ Šainović was not present when the statement was uttered.⁹⁴⁵ In his interview with the Prosecution, Šainović confirmed his involvement in this meeting but made no mention of, and was not asked about, the statements testified to by Naumann.⁹⁴⁶

432. The Šainović Defence challenges the evidence of the statement relating to the high birth-rate on the basis that Naumann could not remember who made it and by arguing that it was not Šainović. In addition, if this was said in Šainović's presence, Naumann testified that many people were present. Thus, according to the Šainović Defence, there is no evidence that Šainović participated in this discussion or heard what was said. Even if he did, this revealed nothing about

⁹³⁸ Ratomir Tanić, T. 6325–6326, 6335 (10 November 2006).

⁹³⁹ Klaus Naumann, P1767 (notes of OTP interviews), para. 26.

⁹⁴⁰ Klaus Naumann, P1767 (notes of OTP interviews), para. 29.

⁹⁴¹ Klaus Naumann, P2561 (supplemental information sheet dated 7 December 2006), p. 2.

⁹⁴² Klaus Naumann, T. 8374–8375 (14 December 2006), P1767 (notes of OTP interviews), para. 29.

⁹⁴³ Klaus Naumann, P1767 (notes of OTP interviews), para. 24, P2561 (supplemental information sheet dated 7 December 2006), p. 2, P2512 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6989–6992.

⁹⁴⁴ Klaus Naumann, T. 8258–8263 (13 December 2006).

⁹⁴⁵ Klaus Naumann, P2561 (supplemental information sheet dated 7 December 2006), p. 2.

his personal stand on the matter. The Šainović Defence also challenges the part of Naumann's testimony regarding Drenica by pointing to the fact that he could not confirm Šainović's presence when this particular statement was uttered.⁹⁴⁷

433. Michael Phillips testified that, during one of their meetings in November 1998, Šainović expressed a view that ethnic Albanians did not belong in Kosovo, by stating that Kosovo was a Serbian homeland and the cradle of Serbian civilisation and that he felt that the Kosovo Albanian people had no desire to co-exist with the Serbs.⁹⁴⁸ The Šainović Defence points out that Phillips also testified that Šainović was sincere about trying to find a strategy for the co-existence of the Serbian and Kosovo Albanian population in Kosovo when, at a dinner of 24 November 1998, he said that most people in Kosovo believed that they could arrive at a political solution. Phillips commented that this told him that Šainović was hopeful there could be some sort of a political solution.⁹⁴⁹

434. Shaun Byrnes testified that Šainović, being a practical politician, thought that the situation in Kosovo should be resolved by political means: he sought to find a mutually acceptable political solution to the problem and was working in that direction. Byrnes also confirmed that during his meetings with Šainović the latter was always co-operative and did not deliver propaganda.⁹⁵⁰ As stated above, in January 1999 Šainović was also campaigning for the release of a number of VJ soldiers and their exchange with captured KLA fighters.⁹⁵¹ Byrnes accepted that, following the success of this endeavour, Šainović tried to negotiate with the KLA and "reach out to the KLA leadership in an effort to find some sort of a solution" in hope that the prisoner exchanges could be expanded "into something that had a broader political consequence."⁹⁵²

435. Petritsch also confirmed Šainović's readiness to achieve an agreement by peaceful means on the basis of the October Agreements, at least up until the Račak/Reçak incident.⁹⁵³ Meetings with Šainović were always amicable meetings "based on mutual respect."⁹⁵⁴ As stated earlier, during the meetings in Rambouillet Petritsch had the impression that Šainović "listened and tried to

⁹⁴⁶ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 450–454, 556–557, 576–581, 604–615, 626–633, 642–650.

⁹⁴⁷ Šainović Final Trial Brief, 29 July 2008 (public version), paras. 875–879.

⁹⁴⁸ Michael Phillips, T. 11840 (19 March 2007).

⁹⁴⁹ Michael Phillips, T. 11877–11879, 11886–11887 (19 March 2007); 2D17 (Extract from Michael Phillips's notebooks).

⁹⁵⁰ Shaun Byrnes, T. 12188 (16 April 2007).

⁹⁵¹ Shaun Byrnes, T. 12189 (16 April 2007). *See also* Wolfgang Petritsch, T. 10946 (2 March 2007).

⁹⁵² Shaun Byrnes, T. 12188–12189 (16 April 2007).

⁹⁵³ Wolfgang Petritsch, T. 10947 (2 March 2007).

⁹⁵⁴ Wolfgang Petritsch, T. 10945 (2 March 2007).

provide answers to the demands made by [the] international community”, and he concluded that those meetings were conducted in a very pleasant atmosphere.⁹⁵⁵

436. Dušan Lončar testified that Šainović tried to form multi-ethnic police forces to protect villages and to improve the relationship with the Kosovo Albanians, but this was ultimately unsuccessful when three members of these forces were killed by the KLA.⁹⁵⁶ During the MUP Staff meeting of 7 May 1999 Šainović referred to the return of those displaced and dealings with the Kosovo Albanian people in order to ensure their loyalty.⁹⁵⁷ This, according to the Šainović Defence, is proof that he never shared an objective to expel Kosovo Albanians from Kosovo.⁹⁵⁸

437. The Šainović Defence also points to the series of meetings Šainović had with foreign officials during which he always expressed a desire for achieving a peaceful solution for Kosovo. For example, in early January 1999 Šainović travelled to Austria where he met with Austrian officials, as well as Petritsch, and emphasised that there was a need to find a peaceful political situation and insisted on equality for all ethnic communities in Kosovo.⁹⁵⁹

438. The Chamber is satisfied that the statement about the high birth-rate of Kosovo Albanians was made in Klaus Naumann’s presence. However, given that he was unable to say with certainty who made the comment and given that it was made at a meeting where a number of people were present, the Chamber is unable to conclude that Šainović either uttered or heard Milošević utter this comment. Furthermore, Naumann said Šainović was not present when the Drenica comment was made. Although the evidence indicates that Šainović could appear to be one of the more reasonable politicians in the FRY/Serbian leadership and, aside from disagreements with the KVM over the terms of the October Agreements, was in general co-operative with international representatives at least until the Podujevo/Podujeva and Račak/Rečak incidents and then also during the Rambouillet negotiations, the evidence from Phillips also indicates that Šainović considered that the Kosovo Albanian population did not belong in Kosovo. The Chamber accepts this evidence.

6. Šainović’s knowledge of crimes in Kosovo and efforts to address them

439. The Prosecution submits that Šainović had knowledge of the excessive and disproportionate force used by the FRY/Serbian forces in 1998, and that he was aware that, if those forces were

⁹⁵⁵ Wolfgang Petritsch, T. 10945 (2 March 2007), P2792 (witness statement dated 9 June 1999), p. 3.

⁹⁵⁶ Dušan Lončar, T. 7591 (30 November 2006), P2521 (witness statement dated 3 March 2004), para. 76.

⁹⁵⁷ P1996 (Minutes of the MUP Staff meeting, 7 May 1999), p. 3.

⁹⁵⁸ Šainović Final Trial Brief, 29 July 2008 (public version), para. 692.

⁹⁵⁹ Wolfgang Petritsch, T. 10947 (2 March 2007); 2D15 (FRY Ministry of Foreign Affairs note on talks between Šainović and Austrian officials, 6 January 1999).

employed again in 1999, they would continue in the same vein. His knowledge derived from the numerous meetings that he attended in both 1998 and 1999, during which he received reports on the security and political situation in Kosovo.⁹⁶⁰ The Prosecution also alleges that Šainović as a FRY Deputy Prime Minister, *de facto* Head of the Joint Command, and Milošević's representative for Kosovo, had responsibilities to take effective steps to prevent or punish crimes, including ordering investigations and referring cases to military or civilian courts. According to the Prosecution, he was in a position to report effectively to the competent authorities; he was able to submit reports to the Supreme Defence Council and other competent authorities about allegations of crimes in Kosovo, and he was able to make recommendations as to their prevention and the punishment of the perpetrators.⁹⁶¹

440. The Šainović Defence argues that Šainović was not in a position to know about crimes allegedly committed by VJ members, because reports relating to those were not sent to him. According to the Defence, the first time Šainović heard about such crimes was during the 17 May 1999 meeting.⁹⁶² With respect to efforts to prevent and punish crimes, the Šainović Defence argues that, at the various meetings referred to above, Šainović always advocated that crimes should be prosecuted and punished, and, as a politician, this is all he could have done.⁹⁶³

a. Knowledge of crimes

441. As recounted above in the section dealing with Joint Command meetings in 1998, there is no doubt that Šainović was privy to the VJ and MUP reports relating to the Plan for Combating Terrorism and the actions conducted pursuant to this Plan in summer of 1998. Furthermore, the Notes of the Joint Command meetings in 1998 show that Šainović was well informed about crimes taking place in Kosovo. For example, at the meeting of 24 July 1998 Gajić reported that “after Orahovac, uncontrollable robbing of Albanian houses started.”⁹⁶⁴ During the 7 August meeting Šainović said that the “greatest damage to us is caused by burning the houses without any need”.⁹⁶⁵ On 12 August he is recorded as present when Minić stated that “setting houses on fire has to stop.”⁹⁶⁶ At the Joint Command meeting held on 1 October and attended by Šainović, Radović brought a newspaper article on events in Gornje Obrinje/Abria e Epërme to the attention of the Joint Command. In response Minić stated that investigating crimes should be a priority. Lukić

⁹⁶⁰ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 696–717.

⁹⁶¹ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 724.

⁹⁶² Šainović Final Trial Brief, 15 July 2008 (confidential version), paras. 598, 739–742.

⁹⁶³ Šainović Final Trial Brief, 29 July 2008 (public version), para. 690.

⁹⁶⁴ P1468 (Notes of the Joint Command), p. 9.

⁹⁶⁵ P1468 (Notes of the Joint Command), p. 46.

⁹⁶⁶ P1468 (Notes of the Joint Command), p. 52.

then stated that “allegedly, there is a mass grave in the region of Jablanica.”⁹⁶⁷ During the 4 October 1998 meeting Gajić said “there are some indications that they are going to come up with some more cases, as D. and G. Obrinje” and later referred to “mass crimes”, “3 or 4 more places ... close to Jablanica” and “50 victims more”. In response, Šainović said that a commission for investigation of crimes was to be formed at the state level.⁹⁶⁸ Then, on 26 October 1998, Šainović referred to the wounding of a young man and the killing of a child in a village, and stated that this had caused a lot of “damage”.⁹⁶⁹

442. The Joint Command Notes also reveal that the participants discussed the issue of displacements in some detail. For example, on 2 August 1998 Pavković reported that “huge numbers of the refugees were spotted on the road toward the village of Lauša”⁹⁷⁰ At the meeting held on 26 August Šainović was present when it was reported that 16,000 to 17,000 people took refuge in Albania while 40,000 people took refuge in Montenegro.⁹⁷¹ At the meeting held on 1 September 1998 Šainović stated that “one of the problems is humanitarian catastrophe”.⁹⁷²

443. All this confirms that Šainović was a very well informed politician about criminal conduct and alleged criminal acts related to the VJ and MUP activities in the summer of 1998. At the same time, he was also aware of various allegations levelled at the FRY/Serbian authorities by the international community. For example, 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.”⁹⁷³ As Deputy Prime Minister of the FRY, Šainović would have been aware of this UN Security Council Resolution.

444. Šainović acknowledged that he was present at one of the “coordination” meetings when Perišić complained of unnecessary damage being caused to private property in Kosovo. Šainović explained that he knew that damage was done to private property during anti-terrorist operations, but explained that he had received information that this was the result of legitimate combat operations. Since he had no authority to conduct any investigation in relation to the VJ and the

⁹⁶⁷ P1468 (Notes of the Joint Command), p. 134. When asked about Šainović’s duty to report to him, Bulatović asserted that he could not recall Šainović telling him about the Gornje Obrinje/Abri e Epërme massacre. Momir Bulatović, T. 13912 (17 August 2007).

⁹⁶⁸ P1468 (Notes of the Joint Command), pp. 135–136.

⁹⁶⁹ P1468 (Notes of the Joint Command), p. 159.

⁹⁷⁰ P1468 (Notes of the Joint Command), p. 36.

⁹⁷¹ P1468 (Notes of the Joint Command), p. 74.

⁹⁷² P1468 (Notes of the Joint Command), p. 124.

⁹⁷³ P456 (UNSC Resolution 1199, 23 September 1998), p. 1.

MUP, he focused on opening centres throughout Kosovo to distribute building material.⁹⁷⁴ This knowledge of damage to private property corresponds to the records of the Joint Command meeting of 7 August 1998 outlined above.⁹⁷⁵

445. Following the October Agreements, when forces were withdrawn and the KVM arrived in Kosovo, Šainović was again in a position where he was comprehensively informed about the situation on the ground from different sources. The evidence of Dušan Lončar shows that there was a reporting system whereby senior members of the forces of the FRY and Serbia reported to Šainović on events in Kosovo, including Pavković, Lazarević, and Lukić. Lončar testified that Šainović organised and planned the work of all the structures involved in Kosovo; as a member of the Federal Cabinet and the Chairman of the Federal Commission on Co-operation with the KVM, he was of the opinion that he had to be informed of everything, especially incidents. Indeed, because Šainović insisted on being informed of activities in Kosovo, he organised the work in such a way as to be able to gather as much information as possible. The idea was that those most responsible for different areas in Kosovo informed Lukić, Pavković, and Lazarević about the events there. They would then forward that information to Šainović.⁹⁷⁶ Lončar also testified that, as part of his liaising with the KVM, there was a regular exchange of reports, and that he would phone Šainović to inform him of incidents, if any.⁹⁷⁷ Šainović's handling of the Račak/Rečak incident is the clearest example of co-operation between Šainović on one side, and Lukić, Pavković, and Lončar on the other.

446. Šainović's report to the SDC about the activities of the VJ and the MUP in Kosovo, on the border with Albania, at the 8th session of the SDC held in Belgrade on 25 December 1998, is further evidence that he was well informed of events on the ground. He also learned, during this session, of Đukanović's concern about the Priština Corps's actions not always being in accordance with the constitutional role of the army and the decisions of the SDC.⁹⁷⁸ This participation in an SDC meeting indicates to the Chamber that Šainović was considered to be so well informed about Kosovo as to be able to participate meaningfully in a meeting of the highest state organ exercising command over the VJ in the province. It also shows that he was aware of the allegations levelled against the Priština Corps.

⁹⁷⁴ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 653, 664–665, 673–674, 692, 695–702, 706–709.

⁹⁷⁵ P1468 (Notes of the Joint Command), p. 46.

⁹⁷⁶ Dušan Lončar, T. 7649–7650 (1 December 2006), T. 7654 (1 December 2006), P2521 (witness statement dated 3 March 2004), para. 28.

⁹⁷⁷ See para. 376.

⁹⁷⁸ P1000 (Minutes of 8th SDC session, 25 December 1998), pp. 3, 9–10; 1D761 (Shorthand notes of 8th SDC session, 25 December 1998), pp. 8, 21–22.

447. Šainović was also made aware of violations of international humanitarian law in 1998 and early 1999 through his interactions with international interlocutors, such as Michael Phillips, Karol John Drewienkiewicz, and Klaus Naumann. Phillips testified about informing Šainović and Milošević in November 1998 of displaced persons from Mališevo/Malisheva, which had been “burned to the ground”. Both were concerned about the displaced people but also viewed them as “terrorists”. Šainović felt it would be unsafe to pull out the troops, despite the fact that the village was empty, because it was close to Priština/Prishtina.⁹⁷⁹ Phillips found Šainović very helpful in resolving the Mališevo/Malisheva problem. In his opinion, Šainović certainly knew what was going on in Kosovo.⁹⁸⁰ Drewienkiewicz testified that during a meeting on 4 December 1998, which he held with Lazarević, Mijatović, Kotur, and Lončar, Šainović was informed about the harassment of the Kosovo Albanian population by the MUP in Mališevo/Malisheva.⁹⁸¹ Naumann testified that, at a meeting on 19 January 1999 attended by Milošević, Milutinović, and Šainović, a list of violations of the Clark-Naumann Agreement, including issues of excessive and disproportionate use of force by police and military forces, was handed to Milošević by Clark and Naumann. Clark and Naumann clearly explained their knowledge of the incidents to Milošević in the presence of Šainović.⁹⁸² The list in question was not presented to the Chamber but Naumann recalled that it included the Račak/Rečak and Podujevo/Podujeva incidents discussed above.⁹⁸³

448. As discussed above, once the KVM left Kosovo and the VJ and MUP launched a number of actions, the then Tribunal Prosecutor, Louise Arbour, sent a letter on 26 March 1999 to Šainović and others, in which she expressed concerns about violations of international humanitarian law and stated her intention to investigate all serious violations of international humanitarian law, particularly those involving attacks on the civilian population.⁹⁸⁴ Frederick Abrahams, a Human Rights Watch researcher, also testified that reports on incidents in Kosovo were sent to various FRY Government officials as well as being disseminated to the media.⁹⁸⁵

449. Despite the Defence’s attempts to minimise Šainović’s connection to Kosovo during the NATO campaign, the available evidence shows that Šainović was in the province on 24 March, 29

⁹⁷⁹ Michael Phillips, T. 11838–11839 (19 March 2007).

⁹⁸⁰ Michael Phillips T. 11875–11877 (19 March 2007).

⁹⁸¹ Karol John Drewienkiewicz, T. 7777–7782 (4 December 2006), P2508 (witness statement dated 23 June 2000), paras. 72–79.

⁹⁸² Klaus Naumann, P1767 (notes of OTP interviews), paras. 36–37, P2512 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 7007–7009.

⁹⁸³ Klaus Naumann, T. 8270 (13 December 2006).

⁹⁸⁴ P400 (Letter from Louise Arbour to Nikola Šainović, 26 March 1999).

⁹⁸⁵ Frederick Abrahams also expressed the view that generally the HRW reports were not based on as much information as they would have been in an ideal situation. Frederick Abrahams, T. 811–812, 818 (13 July 2006), T. 984 (7 August 2006).

March, 4 April, 5 April, 9 April, 13 April, 28 April, 7 May, and 1 June. In other words, it shows that he was travelling to Kosovo regularly, and that the bulk of his trips were taking place in late March and early April, the period when the majority of crimes took place in the province as discussed above in Section VII. Indeed, he was in Priština/Prishtina on 29 March and 4 April, the time when massive expulsions were taking place there.

450. On 28 April 1999, at the meeting with Milutinović, Šainović, Marković, and Anđelković, LDK leader Ibrahim Rugova and his secretary Adnan Merovci complained about the fact that the MUP was forcing the Kosovo Albanian population from their homes.⁹⁸⁶ Merovci also told them that he had learned from his neighbour that his flat had been destroyed by uniformed policemen which.⁹⁸⁷

451. The evidence discussed above shows that Šainović referred to crimes in Kosovo at a number of meetings with senior MUP officials.⁹⁸⁸ In addition, Šainović himself said that, due to his position, he received information from the Foreign Ministry, and also from the MUP, namely the RDB and RJB. However, he explained that it was at their discretion to decide what piece of information they would forward to him, and that he was not in a position to question this or change it. Thus, he never had a full picture of events, whereas Milošević always did.⁹⁸⁹

452. The next time Šainović participated in the discussion relating to crimes in Kosovo was at the 17 May meeting where crimes committed by VJ, MUP, and paramilitary and volunteer groups, including the Scorpions, were discussed. According to Vasiljević, Šainović had already, even prior to the 17 May meeting, been informed by Pavković about the presence of members of the Scorpions in Kosovo. There is, therefore, no doubt that Šainović was told of crimes being committed in Kosovo during the conflict. The Šainović Defence, accepting that Šainović was put on notice about the crimes at this time, at the same time points to Farkaš's testimony that, following the inspection of Priština Corps units, the team did not notice any failures or omissions in the operation of the military police units in the Priština Corps.⁹⁹⁰ The Chamber notes, however, that the 17 May meeting concerned not only crimes committed by the VJ but also discussion of crimes committed by various MUP units and paramilitary groups. The Chamber accepts that Šainović

⁹⁸⁶ Adnan Merovci, P2588 (witness statement dated 13 April 2000), para. 72; Ibrahim Rugova, P2613 (witness statement dated 3 November 2001), p. 12.

⁹⁸⁷ Adnan Merovci, T. 8469–8471 (16 January 2007), P2588 (witness statement dated 13 April 2000), para. 72.

⁹⁸⁸ Ljubinko Cvetić, T. 8052, 8077–8080, 8085–8086 (7 December 2006), T. 8123–8124 (8 December 2006). In addition, Živadin Jovanović testified that Foreign Ministry outposts would receive information about incidents from various international representatives in Kosovo and would then relay the same to the Ministry in Belgrade. Živadin Jovanović, T. 14103 (21 August 2007).

⁹⁸⁹ P605 (Nikola Šainović interview with the Prosecution), e-court pp. 811–812.

⁹⁹⁰ Geza Farkaš, T. 16303 (25 September 2007).

supported Pavković in his suggestion that both MUP and VJ should be investigated by a joint state commission, and also accepts that this suggestion was rejected by Milošević. While the inspection of the Priština Corps was conducted on Ojdanić's initiative, nothing appears to have been done on the MUP side. Šainović was thus aware not only of crimes being committed, but also of the lack of action being taken, at least on behalf of the MUP, in respect of these crimes.

453. On 27 May the original indictment against Milošević, Milutinović, Šainović, Ojdanić, and Stojiljković, which had been filed on 23 May 1999, became public.⁹⁹¹ Given the extensive publicity the indictment received in the media, Šainović would have been made aware of it soon after 27 May.

b. Efforts to prevent and/or punish crimes

454. It is important to note that, in addition to his support of Pavković during the 17 May meeting, there is other evidence that Šainović advocated that the perpetrators of any crimes committed should be prosecuted and punished. For example, at the Joint Command meeting of 4 August 1998 he stated: "We have to call on the Prosecutor's Office of the Republic of Serbia. Perpetrators, who committed crimes, have to be put on the wanted list."⁹⁹² During the Joint Command meeting of 7 August 1998 Šainović ordered that "locations that would not cause the movement of the civilian population are to be chosen."⁹⁹³

455. At the meeting with senior police officials in Kosovo on 4 April 1999, Šainović stated that "persons who have been detained for perpetrating crimes should be held in custody until they are taken over by judicial organs."⁹⁹⁴ In the meeting held in the MUP Staff building on 7 May 1999, Šainović stated that "[t]he MUP must ensure stable public law and order and the security of citizens and property" and "[a]rrest all those who are caught stealing". He further stated that there should be no private wars and that private killings must be prevented; any such actions must be punished right away because "we cannot allow the Serbs to be stigmatised as those who torch, loot and swagger about in abandoned and deserted villages."⁹⁹⁵ He ordered that they should inform Lukić about every incident. He also stated that "[e]very person in uniform must be held accountable for theft, because with his uniform he brings shame not only upon himself but upon the state."⁹⁹⁶

⁹⁹¹ The original indictment was against Milošević, Milutinović, Šainović, Ojdanić, and Stojiljković. P968 (*Prosecutor v. Milošević et al.*, Case No. IC-99-37, First Indictment, 23 May 1999).

⁹⁹² P1468 (Notes of the Joint Command), p. 42.

⁹⁹³ P1468 (Notes of the Joint Command), p. 46.

⁹⁹⁴ P1989 (Minutes of the MUP Staff meeting, 4 April 1999), p. 4.

⁹⁹⁵ P1996 (Minutes of the MUP Staff meeting, 7 May 1999), p. 3.

⁹⁹⁶ P1996 (Minutes of the MUP Staff meeting, 7 May 1999), p. 3.

c. Conclusion

456. The voluminous evidence about Šainović's role and involvement in Kosovo establishes beyond reasonable doubt that he had knowledge about the crimes that took place there in 1998 and were taking place in 1999. This knowledge came from his visits to Kosovo, from FRY/Serbian sources, and from allegations made by international observers and the international community. The Chamber acknowledges that Šainović made a number of statements both in 1998 and in 1999 insisting on prosecution and punishment of those committing crimes, which also serve to reinforce the point that he had knowledge of crimes in that period. Moreover, in light of his involvement with Kosovo in 1998, when excessive and disproportionate force was used by the FRY/Serbian authorities resulting in the displacement of over 200,000 civilians, Šainović would have been well able to predict the repetition of this situation.

457. However, even though Šainović made statements encouraging VJ and MUP officials to prevent and punish crimes, the crimes continued to be committed on a major scale, and Šainović continued to be informed about them, including by way of the indictment against him. Šainović's extensive authority amongst the officials in Kosovo, coupled with the fact that nothing much was done with respect to widespread crimes and that Šainović made little to no effort to ensure that they were either prevented or dealt with, indicates that Šainović's statements at these meetings were simply window dressing. Following the 17 May meeting it was clear to Šainović that Milošević was not interested in investigating the actions of the FRY/Serbian forces in Kosovo and Šainović himself took no action to encourage those forces, especially the MUP, to do so, even though he was quick to offer his encouragement to the MUP on other occasions. Šainović also failed to use his extensive authority in Kosovo and his own initiative to persuade those in charge of the physical perpetrators of crimes to act with urgency to eliminate such conduct.

7. Conclusions on responsibility of Nikola Šainović

458. The Prosecution alleges that Šainović is responsible for planning, instigating, ordering, committing (through participation in a joint criminal enterprise), or otherwise aiding and abetting the crimes in the Indictment.⁹⁹⁷ He is also charged with responsibility as a superior for failing to prevent or punish crimes committed by his subordinates, pursuant to Article 7(3) of the Statute.⁹⁹⁸

459. According to the Prosecution, Šainović participated in the joint criminal enterprise aimed at modifying the ethnic balance of the population in Kosovo, in order to ensure continued control by

⁹⁹⁷ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 658, 720.

⁹⁹⁸ Indictment, paras. 16–22.

the FRY and Serbian authorities over the province. The Prosecution contends that Šainović shared the intent to carry out this common plan, and his actions—including his participation in commanding bodies (such as the Joint Command, for example)—demonstrate that he intended to further the plan through criminal means.⁹⁹⁹ The Šainović Defence, on the other hand, argues that Šainović did not participate in a joint criminal enterprise.¹⁰⁰⁰

460. For Šainović's liability to arise pursuant to the first category of joint criminal enterprise, the evidence must show that he participated in at least one aspect of the common purpose to ensure continued control by the FRY and Serbian authorities over Kosovo, through crimes of forcible displacement, which the Chamber has already found existed.¹⁰⁰¹ In order to fulfil this element, Šainović need not have physically committed the crimes through which the goal was achieved, or any other offence for that matter.¹⁰⁰² Indeed, he need not even have been present at the time and place of the physical perpetration of these crimes.¹⁰⁰³ His contribution, however, to the plan must have been significant.¹⁰⁰⁴ As for the necessary mental element, it must be proved that Šainović participated voluntarily in the joint criminal enterprise and that he shared the intent with other members of the joint criminal enterprise to commit the crime or underlying offence that was the object of the enterprise, in this case forcible displacement.

461. Some specific references are provided in relation to issues addressed, but the Chamber notes that these findings are based on all the relevant evidence.

462. Addressing the mental element first, the Chamber finds that it has been established beyond reasonable doubt that all of Šainović's actions described above were voluntary rather than coerced. With respect to his intent, the Chamber is of the view that, as one of the leading members of the Joint Command, Šainović possessed extensive *de facto* powers over both the VJ and the MUP forces in Kosovo. As such, he was able to make proposals, give suggestions, and issue instructions to both Pavković and Lukić and thus to the VJ and the MUP respectively. He was the crucial link between Milošević, who was in Belgrade, and the VJ and MUP units that were operating in Kosovo. His role was, therefore, that of the political co-ordinator of the forces in Kosovo. He continued to hold it following the completion of the Plan for Combating Terrorism in October 1998, first as the Chairman of the Commission for Co-operation with the KVM and then, in the

⁹⁹⁹ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 8, 658–659, 691.

¹⁰⁰⁰ Šainović Final Trial Brief, 29 July 2008 (public version), para. 1.

¹⁰⁰¹ *Vasiljević* Appeal Judgement, paras. 100, 119; *Tadić* Appeal Judgement, paras. 197, 227; *Brđanin* Appeal Judgement, para. 427.

¹⁰⁰² *Kvočka et al.* Appeal Judgement, para. 99; *Brđanin* Appeal Judgement, para. 427.

¹⁰⁰³ *Krnojelac* Appeal Judgement, para. 81; *see also Simić et al.* Trial Judgement, para. 158.

¹⁰⁰⁴ *Brđanin* Appeal Judgement, para. 430.

period of the NATO bombing, both as a member of the Joint Command and as the highest-ranking politician who continued meeting with Pavković and Lukić, was travelling to Kosovo often, and had extensive dealings with Ibrahim Rugova. In addition, as seen from the meeting of 7 May 1999 in the MUP Staff building, he was also relaying Milošević's orders to the Serbian MUP.

463. The information received by Šainović before and during the NATO air campaign is important evidence for the determination of his responsibility, because knowledge of the commission of crimes by individuals associated with an accused, combined with continuing participation in joint operations with those individuals, can be conclusive as to an accused's intent. The evidence elaborated above on Šainović's knowledge shows that in 1998 he was well aware of displacements and crimes taking place in Kosovo, as reported to him during a number of the Joint Command meetings. For example, at the Joint Command meeting of 31 July 1998, Šainović opined that the main problem was the "refugee issue" and wanted the "TV crews to cover the return of Albanians to their homes".¹⁰⁰⁵ He was present on 2 August 1998 when Pavković reported that "huge numbers of refugees were spotted on the road toward the village of Lauša",¹⁰⁰⁶ and was also present at the meeting held on 26 August, when it was reported that 16,000 to 17,000 people took refuge in Albania, while 40,000 people took refuge in Montenegro.¹⁰⁰⁷ Showing his awareness of the extent of the problem, at the meeting held on 21 September 1998, Šainović stated that "one of the problems is humanitarian catastrophe".¹⁰⁰⁸ In addition, he was aware of the UN Security Council Resolution 1199 of 23 September 1998, which referred to the displacement of over 200,000 Kosovo Albanians. Nevertheless, during the 29 September Joint Command meeting, he said that the FRY/Serbian authorities had to "demoralise" Kosovo Albanians and "convince them to abandon their reviving of separatism".¹⁰⁰⁹ Šainović also received similar information during his meetings with international representatives. For example, at the meeting of 7 October 1998 Petritsch told Šainović about the "humanitarian problem", referring to thousands of displaced people hiding in the Rugova valley, and insisted on the withdrawal of police forces. To this Šainović responded that the police numbers were already at their minimum, and said that they had to remain numerous enough to be able to preserve law and order, especially along the main travel routes.¹⁰¹⁰ That same evening he went to the Joint Command meeting and said that the level of

¹⁰⁰⁵ P1468 (Notes of the Joint Command), p. 34.

¹⁰⁰⁶ P1468 (Notes of the Joint Command), p. 36.

¹⁰⁰⁷ P1468 (Notes of the Joint Command), p. 74.

¹⁰⁰⁸ P1468 (Notes of the Joint Command), p. 124.

¹⁰⁰⁹ P1468 (Notes of the Joint Command), p. 132.

¹⁰¹⁰ Wolfgang Petritsch, T. 10944–10945 (2 March 2007); 2D16 (Record of talks between Wolfgang Petritsch and Šainović, 7 October 1998).

operations was to be raised and that the actions were to be carried out secretly.¹⁰¹¹ This evidence, already outlined in more detail above, leaves the Chamber in no doubt that Šainović knew that the heavy-handed approach of the FRY/Serbian forces during his co-ordination of these forces in 1998 resulted in the displacement of over 200,000 people, but nevertheless supported it and did little to change it.

464. As seen above, in 1999 Šainović continued to acquire information and participate in the co-ordination of the forces in a manner similar to the one employed in 1998 and with the help of the same persons, all with the approval or at the instigation of Milošević. Accordingly, the Chamber is of the view that during the NATO air campaign Šainović was again a very well-informed politician when it came to the events in Kosovo, and continued to receive information that crimes were being committed there by VJ and MUP members. He showed this knowledge at the 4 April 1999 meeting in the MUP Staff building, where he stated that persons detained for committing crimes should be held in custody until they were taken over by judicial organs. On 13 April he was present when Pešić was summoned and questioned about an allegation of a detention camp. At the MUP Staff meeting of 7 May he pointed out the need to separately regulate the conduct of VJ reservists who were known to be committing crimes in the province. Most importantly, at the 17 May meeting with Milošević, Ojdanić, and other VJ and MUP personnel, he was informed of the behaviour of MUP and paramilitary units in Kosovo, which included the murder of Kosovo Albanians and a reference to 800 bodies. And even though he knew that Ojdanić had sent his men to investigate the Priština Corps units, he also knew that nothing was done to investigate the MUP. The Chamber also received evidence that Šainović was informed about the presence of the Scorpions in Kosovo, even before this meeting took place. During his dealings with Ibrahim Rugova in Kosovo, Šainović was told of the widespread commission of crimes against the Kosovo Albanian population, including the displacement of large numbers of them. On 26 March 1999 Šainović was sent a letter from the Tribunal Prosecutor Louise Arbour in which she expressed concern about violations of international humanitarian law and stated her intention to investigate all such violations. Finally, on 27 May, the original indictment issued against Šainović and others became public and included specific information on various crimes committed in Kosovo in the relevant period.

465. In contrast to his extensive knowledge of crimes in Kosovo, Šainović showed little initiative in dealing with the allegations, other than making a few statements. This was despite his extensive *de facto* and *de jure* authority within the province, and his close relationship with Milošević.

¹⁰¹¹ P1468 (Notes of the Joint Command), p. 141.

466. Taking all the relevant evidence into account, the Chamber concludes that the only reasonable inference is that Šainović had the intent to forcibly displace part of the Kosovo Albanian population, both within and without Kosovo, and thereby change the ethnic balance in the province to ensure continued control by the FRY and Serbian authorities over it. As will be shown later, the Chamber is also satisfied that that intent was shared by others found to be members of the joint criminal enterprise, namely Pavković and Lukić—and indeed Milošević. The Chamber makes this finding notwithstanding its conclusion regarding Šainović’s participation in the Rambouillet negotiations.

467. As for the question whether Šainović contributed to the joint criminal enterprise, the Chamber is of the view that it is plain from the preceding paragraphs that he did contribute and that that contribution was significant. As stated above, he was the person Milošević used to orchestrate the events in Kosovo. His purpose was to co-ordinate the forces in Kosovo, convey Milošević’s instructions for the activities of the various actors there, and provide his own suggestions and instructions to these actors, all in pursuit of the ultimate goal to retain control in Kosovo. As such, Šainović was one of the most crucial members of this joint criminal enterprise. While the Chamber notes that the direct evidence of his activity in influencing and co-ordinating the activities of the forces of the FRY and Serbia in 1999 is not as extensive as that relating to 1998, that evidence nevertheless indicates clearly that his authority and influence were undiminished and his presence at a number of meetings in Kosovo during the NATO campaign is in keeping with his previous involvement with the province.

468. As can be seen from the findings relating to various municipalities discussed above, the members of the joint criminal enterprise used the VJ and MUP forces under their control to carry out the crimes charged in the present Indictment. The Chamber is aware that not every individual member of these forces need be a member of the joint criminal enterprise. Nevertheless, the actions of VJ and MUP personnel are imputable to the members of the joint criminal enterprise. In this connection, the Chamber notes its later findings that Pavković and Lukić were members of the joint criminal enterprise. Pavković, as the Commander of the 3rd Army of the VJ, was in command and control of all the VJ forces in Kosovo throughout the period when the crimes were committed, and issued orders for the operations of the VJ in Kosovo during this time. Pavković’s counterpart with respect to the MUP was Lukić who, throughout the NATO air campaign, had both *de jure* and *de facto* responsibility over MUP forces that committed crimes on a massive scale. Šainović himself was a political co-ordinator of the VJ and MUP forces in Kosovo. All three were involved in the co-ordination of VJ and MUP activities. Slobodan Milošević, another member of the joint criminal enterprise, was both the “Supreme Commander” of the VJ and had significant *de facto*

powers over the MUP. For all those reasons, the crimes of both the VJ and the MUP are imputable to Šainović.

469. Since the Chamber has found that the common purpose was to be achieved through forcible displacement alone, it follows that the other charged crimes alleged against Šainović, namely murder and persecution, including through murder, sexual assault, and the destruction of cultural property, need to be examined in the context of the third category of joint criminal enterprise. It has to be proved beyond reasonable doubt that these crimes, although falling outside of the common purpose, were reasonably foreseeable to Šainović and that he willingly took the risk that they would be committed.

470. *Murder.* As described above, Šainović intended to forcibly displace part of the Kosovo Albanian population and shared this intent with other members of the joint criminal enterprise, the object of which was to forcibly displace Kosovo Albanians within and deport them from Kosovo in order to maintain control over the province. Šainović was aware of the strong animosity between ethnic Serbs and Kosovo Albanians in Kosovo during 1998 and 1999. He was aware of the context in which the forcible displacement took place. It was thus reasonably foreseeable that other crimes, including murder, would be committed by physical and intermediary perpetrators with intent to discriminate against Kosovo Albanians. The Chamber is of the view that Šainović's detailed knowledge of events on the ground in Kosovo in 1998 and 1999 put him on notice that murders would be committed by the VJ and MUP as a result of the displacements taking place in 1999. In addition, there is specific evidence to support this conclusion. For example, during 1 and 4 October 1998 meetings, the events in Gornje Obrinje/Abria e Epërme were discussed.¹⁰¹² Gajić referred to "mass crimes" and "50 victims more", while Pavković talked of another mass grave alleged in Jablanica/Jabllanica. In response, Šainović said that a commission for investigation of crimes was to be formed at the state level.¹⁰¹³ On 26 October 1998 Šainović referred to the wounding of a young man and the killing of a child in a village, and stated that this had caused a lot of "damage".¹⁰¹⁴ Phillips and other witnesses testified that Šainović was told of the harassment of the Kosovo Albanian population in Mališevo/Malisheva and of the large number of Kosovo Albanian men killed at Račak/Reçak. Thus, he knew from those experiences what the consequences of the heavy-handed activities by the FRY/Serbian forces would be. Nevertheless, as stated above, the same strategy was used again in 1999.

¹⁰¹² See Section VI.C.

¹⁰¹³ P1468 (Notes of the Joint Command), pp. 134, 136.

¹⁰¹⁴ P1468 (Notes of the Joint Command), p. 159.

471. Šainović was also aware, early on in the NATO campaign, that crimes which included murder and looting were being committed during the joint actions by the VJ and the MUP and that these were based on ethnic grounds. As outlined above, at the MUP Staff meeting of 4 April, he referred to crimes and, at the 7 May meeting, he pointed out the need to separately regulate the conduct of VJ reservists who were known to be committing crimes in the province. Most importantly, at the 17 May meeting with Milošević, Ojdanić, and other VJ and MUP personnel, he was informed of the behaviour of VJ, MUP, and paramilitary units in Kosovo, which included the murder of Kosovo Albanians and a reference to 800 bodies. As stated above, he was also informed of the widespread campaign of crimes against the Kosovo Albanian population during his dealings with Ibrahim Rugova. Accordingly, the Chamber is satisfied that the murder of Kosovo Albanians, even though falling outside of the object of the joint criminal enterprise, was in fact reasonably foreseeable to Šainović.

472. *Sexual assault.* With respect to the sexual assault charges that have been proved (in Beleg and Ćirez/Qirez),¹⁰¹⁵ the Prosecution has failed to adduce evidence that convinces the Chamber that these sexual assaults were reasonably foreseeable to Šainović. While sexual offences were discussed at the 17 May meeting in presence of Šainović, this discussion took place after the sexual assaults in Beleg and Ćirez/Qirez. The Chamber has examined the *Krstić* and *Kvočka* Trial Chambers' findings in relation to the foreseeability of rapes in those cases. However, the particular facts of those cases with regard to foreseeability were significantly more compelling than those in relation to this case and, specifically, Šainović.¹⁰¹⁶ Šainović's lack of knowledge about sexual assaults also leads to the conclusion that he did not plan, instigate, order, or otherwise aid and abet them. He is also not responsible for them under Article 7(3) because he did not have reason to know of them.

473. *Destruction of or damage to religious property.* The Chamber has already found that four mosques were destroyed by the forces of the FRY and Serbia and that these offences fell into the category of persecution. The Chamber finds that it was reasonably foreseeable to Šainović that the forces of the FRY and Serbia would commit wanton destruction or damage of Kosovo Albanian religious sites, cultural monuments, and Muslim sacred sites during their forcible displacement of the Kosovo Albanian population. The conflict was one that involved ethnic divisions. Moreover, the common purpose was to be achieved through a campaign of terror and violence against the

¹⁰¹⁵ While the Chamber has found above that K14, K31, and K62 were raped in Priština/Prishtina, the Prosecution failed to bring the requisite evidence of discriminatory intent and, therefore, the charge of persecution by way of sexual assault in Priština/Prishtina has not been proved. See Section VII.O.10.

¹⁰¹⁶ *Krstić* Trial Judgement, paras. 616–618; *Kvočka* Trial Judgement, paras. 326–327. See also *Krstić* Appeal Judgement, paras. 149, 151; *Kvočka* Appeal Judgement, paras. 330, 334.

Kosovo Albanian civilian population. Under these conditions, and keeping in mind Šainović's detailed knowledge of events on the ground in Kosovo during the conflict, the inescapable conclusion is that it was reasonably foreseeable to Šainović that, while the forces of the FRY and Serbia were forcibly transferring and deporting the Kosovo Albanian population, they would at the same time wantonly destroy or damage their religious sites, cultural monuments, and sacred sites.

474. Having made the above findings, it is not necessary for the Trial Chamber to make findings on the other forms of responsibility alleged in the Indictment.

475. The Trial Chamber, therefore, finds that it has been established beyond reasonable doubt that Nikola Šainović is responsible for committing (through his participation in a joint criminal enterprise) the following crimes in the following locations:

- Peć/Peja
 - Peć/Peja town—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Dečani/Dečan
 - Beleg—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Đakovica/Gjakova
 - Đakovica/Gjakova town—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity;
 - Korenica—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity;
 - Dobroša/Dobrosh—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Ramoc—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Meja—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity;
 - Other villages in the Reka/Caragoj area—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Prizren
 - Pirane/Pirana—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;

- Dušanovo/Dushanova, part of the town of Prizren—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Orahovac/Rahovec
 - Celina—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; persecution (destruction of or damage to religious property) as a crime against humanity;
 - Bela Crkva/Bellacërka—murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity;
 - Mala Kruša/Krusha e Vogël—murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity;
- Suva Reka/Suhareka
 - Suva Reka/Suhareka town—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity; persecution (destruction of or damage to religious property) as a crime against humanity;
- Srbica/Skenderaj
 - Turićevac/Turiçec—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Izbica—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity;
 - Tušilje/Tushila—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Ćirez/Qirez—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity.
- Kosovska Mitrovica/Mitrovica
 - Kosovska Mitrovica/Mitrovica town—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Žabare/Zhabar—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Vučitrn/Vushtrria
 - Vučitrn/Vushtrria town— other inhumane acts (forcible transfer) as a crime against humanity; persecution (destruction of or damage to religious property) as a crime against humanity;
 - Convoy near Gornja Sudimlja/Studimja e Epërme—deportation as a crime against humanity; other inhumane acts (forcible transfer), as a crime against humanity; murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity;
- Priština/Prishtina

- Priština/Prishtina town—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Gnjilane/Gjilan
 - Žegra/Zhegra—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Vladovo/Lladova—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Vlačica/Llashtica—persecution (destruction of or damage to religious property) as a crime against humanity;
 - Prilepnica/Përlepnica—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Uroševac/Ferizaj
 - Sojevo/Sojeva—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Mirosavlje/Mirosala—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Staro Selo—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Kačanik/Kaçanik
 - Kotlina/Kotllina—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Kačanik/Kaçanik—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Dubrava/Lisnaja—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity.

476. Šainović is not responsible for all other charges alleged in the Indictment, including the sexual assault charges set out in count 5 (persecution), subject to the final paragraph of the Judgement.

477. Nikola Šainović is, therefore, guilty of counts 1 through 5 of the Indictment to the extent specified above.

E. INDIVIDUAL CRIMINAL RESPONSIBILITY OF DRAGOLJUB OJDANIĆ

1. The Accused

478. Dragoljub Ojdanić was born on 1 June 1941 in the village of Ravni, which is near Užice in Serbia.¹⁰¹⁷ It is uncontested that Ojdanić first joined the Yugoslav Army in his teenage years,

¹⁰¹⁷ Order on Agreed Facts, 11 July 2006, p. 12.

enrolling in the non-commissioned officers' school of the infantry branch of the VJ Land Forces, serving at almost every level of its ranks, including combat command positions, eventually attaining the position of Deputy Chief of the General Staff on 1 July 1996, and serving in that position until 24 November 1998, when he was appointed Chief of the General Staff. Subsequently, in February 2000, he was appointed FRY Minister of Defence.¹⁰¹⁸ Concurrently with his VJ service, he continued his education, attaining a Masters degree in military science, but aborted his doctoral studies before obtaining that qualification.¹⁰¹⁹

2. Charges in Indictment

479. According to the Indictment, as Deputy Chief of Staff and then Chief of the General Staff of the VJ, Ojdanić exercised command authority over the entirety of the VJ forces, and other forces subordinated to the VJ. In particular, it is alleged that he commanded, ordered, instructed, regulated, manned, and otherwise directed the VJ, which was utilised to carry out a campaign of violence aimed at the removal of the Kosovo Albanian population.¹⁰²⁰ It is further alleged that he co-operated with the MUP and the Ministry of Defence of the FRY in mobilising organs and units of the MUP and exercised command authority over MUP units.¹⁰²¹ On this basis, he is charged with planning, instigating, ordering, or otherwise aiding and abetting in the planning, preparation, or execution of the crimes alleged in the Indictment, and with participating in the joint criminal enterprise discussed above.¹⁰²² Ojdanić is further charged with responsibility as a superior for the crimes committed by his subordinates, pursuant to Article 7(3) of the Statute.¹⁰²³

480. The Ojdanić Defence indicates that Ojdanić contests every element of each offence with which he is charged and submits that the Prosecution has failed to prove that he is liable for planning, ordering, instigating, committing, or otherwise aiding and abetting the crimes charged in the Indictment.¹⁰²⁴ The Ojdanić Defence argues that his actions, in so far as they have been proven to have occurred, were all legitimate responses to the threat posed by the KLA and NATO.¹⁰²⁵

481. The Chamber has concluded in Section VII above that the forces of the FRY and Serbia committed crimes directed against the Kosovo Albanian civilian population in many of Kosovo's

¹⁰¹⁸ Order on Agreed Facts, 11 July 2006, pp. 12–13.

¹⁰¹⁹ 3D1116 (Radovan Radinović's Expert Report), p. 70.

¹⁰²⁰ Indictment, paras. 3, 11.

¹⁰²¹ Indictment, para. 11.

¹⁰²² Indictment, paras. 16–22.

¹⁰²³ Indictment, paras. 11, 40–44.

¹⁰²⁴ Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 5.

¹⁰²⁵ Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 29.

municipalities, from March to June 1999. This section will therefore address the question of whether Ojdanić is responsible for any of these crimes under the various modes of liability alleged in the Indictment.

3. Ojdanić's powers and responsibilities in the General Staff of the VJ

482. The Prosecution argues that Ojdanić had extensive powers as Deputy Chief of the General Staff in 1998,¹⁰²⁶ and that, upon becoming Chief of the General Staff, he had both *de jure* and *de facto* command and control over all the VJ forces.¹⁰²⁷ The Ojdanić Defence argues that his formal powers as Deputy Chief of the General Staff were minimal and that his practical influence was even more limited.¹⁰²⁸ It adds that, as Chief of the General Staff, Ojdanić was the head of the professional staff body of the Supreme Command and carried out the orders of the Supreme Commander, but that he did not have effective control over physical perpetrators of crimes in Kosovo.¹⁰²⁹

483. When he held the position of Deputy Chief of the General Staff, Ojdanić had formal responsibility over the VJ Administration for Relations with Foreign Military Representatives and International Organisations.¹⁰³⁰ In addition, he would chair meetings of its collegium in the absence of the Chief of the General Staff and occasionally issue orders.¹⁰³¹ Radovan Radinović testified that Ojdanić's ability to influence events in Kosovo was limited while he was Deputy Chief of the General Staff, due to his cold relationship with Perišić, the Chief of the General Staff.¹⁰³² However, this assessment was based primarily on the fact that, according to Radinović, Perišić had refused to give approval to Ojdanić's proposed doctoral thesis.¹⁰³³ Beyond this, the Chamber has not heard any other evidence that would suggest such a relationship between the two officers. The minutes of the General Staff collegium meetings in evidence do not provide any clear insights in this respect, although it is notable that there were instances where Perišić expressed agreement with suggestions made by Ojdanić.¹⁰³⁴

¹⁰²⁶ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 727.

¹⁰²⁷ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 820.

¹⁰²⁸ Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 150.

¹⁰²⁹ Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 221–223, 479 *et seq.*

¹⁰³⁰ Rade Čučak, T. 14895 (4 September 2007).

¹⁰³¹ *See, e.g.*, 3D664 (Minutes of the Collegium of the General Staff of the VJ for 6 November 1998); 3D586 (Briefing to the Chief of the Supreme Command Staff, 15 April 1999); 4D503 (Order to the General Staff, 19 October 1999).

¹⁰³² 3D1116 (Radovan Radinović's Expert Report), e-court p. 79.

¹⁰³³ Radovan Radinović, T. 17197–17198 (18 October 2007).

¹⁰³⁴ *See, e.g.*, P926 (Minutes of the Collegium of the General Staff of the VJ for 28 October 1998), p. 17.

484. The Ojdanić Defence argues that, while serving as Deputy Chief of the General Staff, Ojdanić was not receiving daily operative reports about VJ operations in Kosovo.¹⁰³⁵ In support of this, the Ojdanić Defence points to the minutes of the VJ collegium meeting held on 22 June 1998, where Perišić, then Chief of the General Staff, mentioned a draft decision of the 3rd Army Commander. Ojdanić responded, “as your Deputy, I request that I receive the Third Army commander’s report”.¹⁰³⁶ When questioned about this comment, Radovan Radinović insisted that Ojdanić was referring to all the daily operative reports, indicating that he was not receiving such reports.¹⁰³⁷ The Chamber notes that Ojdanić requested the “Third Army commander’s report” but did not expressly mention the daily operations reports that were prepared in the General Staff, as discussed above in Section VI.A. By October 1998 Ojdanić was receiving those daily operations reports; at the collegium meeting of 28 October 1998 he drew attention to two issues from the regular operations reports.¹⁰³⁸ Noting that none of the allegations of individual criminal responsibility contained in the Indictment turn upon Ojdanić’s powers as Deputy Chief of the General Staff, the Chamber moves directly to examine his powers as Chief of the General Staff.

485. The Chief of the General Staff was the highest ranking military officer in the VJ, and under the FRY Law on Defence was subordinate only to the civilian organs in which overall command of the VJ was vested.¹⁰³⁹ He had authority over all the VJ forces, including those in Kosovo.¹⁰⁴⁰ The primary function of the Chief of the General Staff was to command the VJ through the issuing of orders.¹⁰⁴¹ His tasks included determining the plan for manning and training VJ personnel, promoting officers up to the rank of colonel, and nominating the president, judges, prosecutors and their staff to serve on military disciplinary courts.¹⁰⁴² The Chief of the General Staff could also propose candidates to the FRY President for appointment to posts requiring the rank of general or admiral.¹⁰⁴³

¹⁰³⁵ Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 152; 3D1116 (Radovan Radinović’s Expert Report), e-court p. 79.

¹⁰³⁶ P923 (Minutes of the Collegium of the General Staff of the VJ for 22 June 1998), p. 15. These collegiums are described in Section VI.A.

¹⁰³⁷ Radovan Radinović, T. 17203–17205 (18 October 2007).

¹⁰³⁸ P926 (Minutes of the Collegium of the General Staff of the VJ for 28 October 1998), p. 17.

¹⁰³⁹ P984 (FRY Law on the VJ), article 5; Spasoje Mučibabić, T. 16579 (28 September 2007); Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), paras. 9, 15, T. 8639–8643 (18 January 2007).

¹⁰⁴⁰ P984 (FRY Law on the VJ), article 5; Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), paras. 9, 15.

¹⁰⁴¹ P984 (FRY Law on the VJ), article 6; P985 (FRY Law on Defence); P1041 (VJ Command and Control Manual), p. 97.

¹⁰⁴² Order on Agreed Facts, 11 July 2006, p. 13.

¹⁰⁴³ P984 (FRY Law on the VJ), article 46; 1D139 (Constitution of the FRY, 1992), article 136; Ratko Marković, T. 13057 (7 August 2007); P1738 (Rules of Procedure of the SDC, 23 March 1999), article 4; *see also* Vladimir Lazarević, T. 17744 (6 November 2007).

486. According to the FRY Law on the VJ, Ojdanić could instigate proceedings against any other member of the VJ and, under article 159, there was an obligation to ensure that VJ members who committed offences and infractions against VJ military discipline were held responsible.¹⁰⁴⁴ This included taking measures against any subordinate failing to execute an order due to indiscipline.¹⁰⁴⁵ Refusing to obey an order in the VJ was also a criminal offence, punishable with up to five years' imprisonment.¹⁰⁴⁶ During a state of war, an obligation existed to conclude disciplinary measures as urgently as possible.¹⁰⁴⁷ Ojdanić had the ability to issue orders requiring commanders of VJ units to investigate VJ members committing crimes in Kosovo and to have them prosecuted in the military courts, and he exercised this power on a number of occasions during the NATO air campaign.¹⁰⁴⁸ The VJ Rules of Service stated that, in the case of unusual incidents that affected the VJ's combat readiness or reputation, the Chief of the General Staff was obliged to form a commission to enquire into the incident.¹⁰⁴⁹ He could also request special reports outside of the usual reporting lines directly from secondary levels of subordination.¹⁰⁵⁰ These options were a significant source of power directly, in terms of the punishments that could eventuate, and indirectly, in terms of the effects on an officer's career in the VJ; where such measures resulted in criminal or disciplinary proceedings, that would constitute a bar to the promotion of the VJ member involved, unless the proceedings were discontinued on non-jurisdictional grounds.¹⁰⁵¹

487. Radinović testified that, whilst these powers bestowed upon Ojdanić a certain "control responsibility", they did not provide him with "command responsibility" (either *de jure* or *de facto*) over the VJ and asserted that the Chief of the General Staff did not operate as a separate command body, but merely as a specialist staff organ for the preparation and execution of orders of the Supreme Defence Council and, in times of conflict, the Supreme Command.¹⁰⁵² However, the provisions regulating the VJ, as set out in Section VI.A, are clear in providing the Chief of the General Staff with extensive *de jure* powers. Ojdanić also possessed the corresponding *de facto*

¹⁰⁴⁴ P984 (FRY Law on the VJ), articles 159, 180, 181, 185; 4D532 (VJ Rules on Service, 1 January 1996), article 291. See also P985 (FRY Law on Defence), article 8; P984 (FRY Law on the VJ), Articles 5, 46, and 168; P1041 (VJ Command and Control Manual), p. 97.

¹⁰⁴⁵ 4D532 (VJ Rules of Service, 1 January 1996), p. 11, rule 36. See also P1041 (VJ Command and Control Manual), pp. 61–63.

¹⁰⁴⁶ P1736 (SFRY Criminal Code), article 203.

¹⁰⁴⁷ P984 (FRY Law on the VJ), articles 180 and 181.

¹⁰⁴⁸ See, e.g., P1476 (Order on Collecting Data on NATO Crimes Against Humanity, 3 April 1999); P1477 (Order on Military Discipline, 3 April 1999), p. 2.

¹⁰⁴⁹ 4D532 (VJ Rules on Service, 1 January 1996), articles 313, 314. Unusual incidents included "compromised combat readiness, endangered lives and health of personnel, violated order and discipline, undermined morale ..., failure to take appropriate measures, or *force majeure*". See 4D532 (VJ Rules on Service, 1 January 1996), article 310.

¹⁰⁵⁰ Vladimir Lazarević, T. 17939 (8 November 2007).

¹⁰⁵¹ P984 (FRY Law on the VJ), articles 41, 42, 44 and 45.

¹⁰⁵² 3D1116 (Radovan Radinović's Expert Report), e-court pp. 100–105.

powers, as demonstrated *inter alia* by his issuing of the *Grom* 3 and *Grom* 4 directives, which were subsequently implemented at the level of the 3rd Army and then the Priština Corps.¹⁰⁵³ A report written by Ojdanić for Milošević on 12 February 1999 about the *Grom* plans indicates that he had considerable autonomy in planning these VJ operations.¹⁰⁵⁴ Moreover, during the NATO air campaign, Ojdanić worked closely with FRY President Milošević. The two met daily to clarify issues arising from combat reports that were sent in summary form to Milošević.¹⁰⁵⁵ Milošević would give instructions to Ojdanić, who would then turn them into military orders.¹⁰⁵⁶ The VJ command system continued to function throughout the NATO air campaign.¹⁰⁵⁷ It is established that Ojdanić possessed both *de jure* and *de facto* authority over all VJ forces from his appointment as Chief of the General Staff on 24 November 1998 until he became Minister of Defence of the FRY in February 2000.

488. The Prosecution submits that Ojdanić's powers stretched also to the forces of the MUP.¹⁰⁵⁸ In response, the Ojdanić Defence argues that resubordination of the MUP to the VJ never took place in fact, and so Ojdanić had neither power nor authority over the forces of the MUP operating in Kosovo.¹⁰⁵⁹

489. During 1998 the VJ and MUP operated together in combat operations in Kosovo; these joint operations continued in 1999, as described in Section VI.E. For example, on 29 May 1999 an order from the Supreme Command Staff directed the 3rd Army to support MUP forces within MUP zones of responsibility by providing artillery fire when requested.¹⁰⁶⁰ However, although the VJ continued to operate in co-ordination and co-operation with the forces of the MUP, and even

¹⁰⁵³ 3D690 (VJ General Staff Directive for the engagement of the VJ, *Grom* 3 Directive, 16 January 1999); 3D676 (*Grom* 3 Order of the 3rd Army Command, 27 January 1999), also admitted as 5D245; 5D249 (Order of the 3rd Army, 1 February 1999), p. 2; P2808 (Order of the PrK, 16 February 1999); P1481 (Supreme Command Staff directive for engagement of VJ in defence against the NATO, 9 April 1999); 4D308 (3rd Army order on defence from NATO, 10 April 1999); 5D175 (Order of the PrK, 6 April 1999); Vladimir Lazarević, T. 17957 (8 November 2007); Đorđe Ćurčin, T. 16929 (5 October 2007). *See, e.g.*, 3D696 (Order of the VJ General Staff, 10 March 1999); P1495 (Supreme Command Staff response to 3rd Army, 24 May 1999).

¹⁰⁵⁴ 3D704 (Report to Milošević on Plans for Use of VJ, 12 February 1999), pp. 1–2.

¹⁰⁵⁵ Đorđe Ćurčin, T. 16979 (5 October 2007); Branko Gajić, T. 15417 (11 September 2007); Aleksandar Vasiljević P2600 (witness statement dated 26 October 2006), para. 15; 3D1116 (Radovan Radinović's Expert Report), e-court p. 106.

¹⁰⁵⁶ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 15; Đorđe Ćurčin, T. 16979–16980 (5 October 2007).

¹⁰⁵⁷ 3D865 (Report of the Supreme Command Staff, 30 May 1999), pp. 8, 11; Miodrag Janković, 4D504 (witness statement dated 1 October 2007), paras. 8, 12–13; P1319 (Pavković responds to callers' questions, Belgrade RTS Television First Program, 20 October 2000), p. 17.

¹⁰⁵⁸ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 748.

¹⁰⁵⁹ Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 454.

¹⁰⁶⁰ P1465 (Supreme Command Staff warning to 3rd Army about a possible NATO operation, 29 May 1999), also admitted as P1920.

resubordinated some MUP units in certain actions,¹⁰⁶¹ the MUP as a whole was never integrated into the VJ chain of command.¹⁰⁶²

490. Additionally, the Prosecution has contended that Ojdanić had command powers over the armed non-Albanian population in Kosovo during the NATO air campaign.¹⁰⁶³ The VJ's role in commanding and controlling the armed non-Albanian population, including those which were organised into reserve police units, is discussed above in Section VI.A. It is concluded there that, although the armed non-Albanian population did not form part of the VJ, the VJ nonetheless was involved in arming and organising this entity, and ordered its engagement during joint operations with the MUP in 1999.¹⁰⁶⁴

4. Ojdanić's conduct in 1998 and 1999

a. Use of the VJ in Kosovo in 1998 and appointment as Chief of the General Staff

491. The Prosecution argues that Ojdanić was more amenable to the VJ's involvement in combat operations in Kosovo, which contrasted with his predecessor, Perišić, who questioned the legality and wisdom of such a use.¹⁰⁶⁵ The Ojdanić Defence counters that the use of the VJ in Kosovo in 1998 against the KLA was in accordance with its constitutional role.¹⁰⁶⁶ The Ojdanić Defence further argues that the use of the VJ in Kosovo was first ordered by Perišić, when he was Chief of the General Staff, and that Ojdanić simply continued that policy.¹⁰⁶⁷

492. The Chamber has found in Section VI.C above that in 1998 the VJ was used extensively to engage in offensive operations against the KLA, sometimes supporting MUP forces, and sometimes operating independently, despite the protests from *inter alios* the Chief of the General Staff, Perišić, that this breached the constitutional regime for the use of the VJ. The Chamber now turns to the alleged contrast between Ojdanić's and Perišić's attitudes towards the use of the VJ in Kosovo in 1998 and early 1999.

¹⁰⁶¹ See Dragan Živaljević, T. 24921 (8 April 2008); P1269 (Order of the 3rd Army, 8 May 1999); Neboša Bogunović 6D1614 (witness statement dated 2 April 2008), para. 92; Vladimir Ilić, T. 24350 (17 March 2008).

¹⁰⁶² See Section VI.E.

¹⁰⁶³ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 126.

¹⁰⁶⁴ P2086 (Instructions for the Defence of Populated Areas (temporary), issued by the Joint Command for Kosovo and Metohija, 1 July 1998), p. 7; P1114 (Report to the MUP Staff from the Kosovska Mitrovica SUP, 1 July 1998), pp. 1–8; Zlatimir Pešić, T. 7316 (24 November 2006); Nike Peraj, P2253 (witness statement dated 9 August 2006), para. 15. See also 3D1087 (Interpretation of the Law of Defence by Federal Ministry of Justice, 8 April 1999), p. 3.

¹⁰⁶⁵ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 80, 771.

¹⁰⁶⁶ Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 164.

¹⁰⁶⁷ Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 167.

493. At several General Staff collegium meetings in 1997 and 1998 Ojdanić made comments about the desirability of avoiding a full-scale “war” in Kosovo, which would increase international attention and prompt possible NATO intervention.¹⁰⁶⁸ For example, at the collegium meetings of 10 April and 29 June 1998 he stated that political and diplomatic solutions to the problem in Kosovo had to be sought.¹⁰⁶⁹ At the 10 April meeting he observed that the KLA was aiming to become so strong that it could not be opposed by the MUP, which was the “only competent and internationally recognized force for combating terrorist groups”.¹⁰⁷⁰ On 23 October 1998 he suggested moving all of the VJ units back to their barracks or out of Kosovo to prevent any party from accusing the VJ of breaching UN Security Council Resolution 1199.¹⁰⁷¹

494. Perišić opposed the use of the VJ in the interior of Kosovo absent the appropriate declaration from the Federal Assembly or the SDC.¹⁰⁷² Nonetheless, Perišić was ordered to prepare a plan for the use of the VJ in Kosovo and duly complied, issuing the *Grom 98* plan on 28 July 1998.¹⁰⁷³ Nike Peraj testified that, although the VJ was involved in military operations in Kosovo while Perišić was the Chief of the General Staff, there was a distinct change in these operations once Ojdanić assumed the position; under Ojdanić the army increasingly used tanks and shelled villages.¹⁰⁷⁴ However, Milovan Vlajković, who was the Chief of the Office of the Chief of the General Staff under both Perišić and Ojdanić, testified that both had similar approaches to the use of the VJ in Kosovo.¹⁰⁷⁵ The Chamber notes that Peraj’s account of this difference in approach was vague and lacked specific supporting examples.¹⁰⁷⁶ The Chamber does not rely on his evidence in this regard.

495. At the SDC meeting of 4 October 1998 Perišić suggested *inter alia* that the Federal Assembly should declare an imminent threat of war and, in the event of missile strikes, a state of

¹⁰⁶⁸ 3D1075 (Minutes of the Collegium of the General Staff of the VJ for 12 December 1997), p. 4; 3D1076 (Minutes of the Collegium of the General Staff of the VJ for 15 December 1997), p. 1; *see also* 3D1074 (Minutes of the Collegium of the General Staff of the VJ for 26 September 1997), p. 3; 3D659 (Minutes of the Collegium of the General Staff of the VJ for 4 May 1998); P923 (Minutes of the Collegium of the General Staff of the VJ for 22 June 1998), pp. 11–12.

¹⁰⁶⁹ 3D657 (Minutes of the Collegium of the General Staff of the Yugoslav Army (VJ) for 10 April 1998), p. 2; P927 (Minutes of the Collegium of the General Staff of the Yugoslav Army (VJ) for 29 June 1998), p. 12; Vlade Nonković, T. 16198 (24 September 2007).

¹⁰⁷⁰ 3D657 (Minutes of the Collegium of the General Staff of the VJ for 10 April 1998), p. 2.

¹⁰⁷¹ 3D645 (Minutes of the Collegium of the General Staff of the VJ for 23 October 1998), p. 4; Milorad Obradović, T. 14938 (4 September 2007).

¹⁰⁷² P717 (Letter from Momčilo Perišić to Slobodan Milošević, 23 July 1998); 1D760 (Shorthand notes of 5th SDC session, 9 June 1998), p. 10; P922 (Minutes of the Collegium of the General Staff of the VJ, 20 July 1998), p. 3.

¹⁰⁷³ 4D137 (General Staff Directive to Deploy VJ in Kosovo, 28 July 1998); Milan Đaković, T. 26409 (19 May 2008).

¹⁰⁷⁴ Nike Peraj, T. 1717 (15 August 2006), P2253 (witness statement dated 9 August 2006), para. 100.

¹⁰⁷⁵ Milovan Vlajković, 3D1112 (witness statement dated 17 August 2007), para. 27; *see also* Đorđe Ćurčin, 3D1121 (witness statement dated 24 August 2007), para. 8.

¹⁰⁷⁶ Nike Peraj, T. 1717 (15 August 2006).

war.¹⁰⁷⁷ At that meeting Milošević proposed a decision, that the country would defend itself if attacked, and this was unanimously adopted.¹⁰⁷⁸ Milošević accepted Perišić's proposal that an imminent threat of war should be declared at the next Federal Assembly session, which would then allow the country to start necessary defence preparations.¹⁰⁷⁹ However, at the following meeting of the SDC on 24 November 1998, Perišić was replaced by Ojdanić, pursuant to Milošević's decision.¹⁰⁸⁰ The declaration of an imminent threat or state of war was not made at that time, and in fact was not made until March 1999, when NATO launched its air campaign.

496. Vasiljević testified that the removal of Perišić to a post outside of the organisation of the VJ was a marginalisation.¹⁰⁸¹ The Chief of the Personnel Administration of the General Staff, Branko Fezer, conceded that the role of advisor was less prestigious than that of Chief of the General Staff.¹⁰⁸² John Crosland, who met with Ojdanić on a number of occasions in 1998 in his capacity as British Military Attaché to discuss VJ and MUP actions in Kosovo, stated that in his view Perišić's replacement, Ojdanić, was a Milošević "puppet".¹⁰⁸³

497. The Ojdanić Defence points out that Ojdanić had indicated a reluctance to use the VJ in Kosovo, as described below, and that Ojdanić was the natural replacement for Perišić because he was the Deputy Chief of the General Staff.¹⁰⁸⁴ Noting that there is no further evidence concerning Ojdanić's support for the *Grom* 98 plan for the use of the VJ in Kosovo, the Chamber finds that he was not involved in its formation nor was he enthusiastic for its implementation in 1998. The Chamber finds that Milošević removed Perišić from his post and replaced him with Ojdanić as a response to Perišić's outspokenness in relation to the use of the VJ in 1998 and in an effort to have a more malleable Chief of the General Staff. However, the Chamber notes that this does not bear directly on Ojdanić's individual criminal responsibility for the crimes alleged in the Indictment. Ojdanić's actions upon assuming the position of Chief of the General Staff are now addressed.

¹⁰⁷⁷ P1575 (Minutes of 6th SDC session, 4 October 1998), pp. 1–4; P2831 (Shorthand notes of 6th SDC session, 4 October 1998), pp. 4–10.

¹⁰⁷⁸ P1575 (Minutes of 6th SDC session, 4 October 1998), pp. 7–10; P2831 (Shorthand notes of 6th SDC session, 4 October 1998), pp. 22–33.

¹⁰⁷⁹ P1575 (Minutes of 6th SDC session, 4 October 1998), pp. 7–10; P2831 (Shorthand notes of 6th SDC session, 4 October 1998), pp. 22–33.

¹⁰⁸⁰ P1576 (Minutes of 7th SDC session, 24 November 1998).

¹⁰⁸¹ Aleksandar Vasiljević, T. 8928 (23 January 2007).

¹⁰⁸² Branko Fezer, T. 16501–16502 (27 September 2007).

¹⁰⁸³ John Crosland, P2645 (witness statement dated 31 October 2006), para. 57.

¹⁰⁸⁴ Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 167(b).

b. Role in the Supreme Defence Council, Supreme Command, and Joint Command

498. The Prosecution argues that Ojdanić was a non-voting member of the SDC, putting him in a position of significant influence over the decisions made by the SDC, and that during the NATO air campaign he participated in the work of the Supreme Command.¹⁰⁸⁵ It alleges that through these bodies he participated in the joint criminal enterprise to ensure continued control by the FRY and Serbian authorities over Kosovo and that, although he was not a member of the Joint Command, he adhered to its instructions, and propagated these to his subordinates.¹⁰⁸⁶ The Ojdanić Defence counters that Ojdanić was not a member of the SDC and would only attend its sessions.¹⁰⁸⁷ The Ojdanić Defence adds that he operated exclusively through the regular VJ chain of command during the period relevant to the Indictment.¹⁰⁸⁸

499. The minutes of the SDC meetings indicate that it was routine for the Chief of the General Staff to be in attendance and, in the period after his appointment but before the start of the NATO air campaign, Ojdanić attended both the SDC sessions that were held.¹⁰⁸⁹ At those sessions he reported to those present and offered opinions. However, there is no evidence that he had voting rights in the SDC. Ojdanić first attended one of its sessions on 25 December 1998, after he became Chief of the General Staff.¹⁰⁹⁰ There he gave a presentation on the situation in Kosovo, outlining the security measures undertaken by the VJ.¹⁰⁹¹ He proposed and actively supported the replacement of Dušan Samardžić as Commander of the 3rd Army with Pavković, and the appointment of Lazarević as Commander of the Priština Corps.¹⁰⁹²

500. Ojdanić attended the next session of the SDC on 23 March 1999 and provided an update of the measures taken to prepare for the defence of the country against possible military action by NATO.¹⁰⁹³ Concluding the discussion, Milošević reminded those present of one of the earlier SDC conclusions, made in October 1998, about the country defending itself by all means if attacked. At the same session the SDC adopted new Rules of Procedure for its future operation.¹⁰⁹⁴ According

¹⁰⁸⁵ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 754, 767–768.

¹⁰⁸⁶ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 756; Indictment, para. 24.

¹⁰⁸⁷ Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 223.

¹⁰⁸⁸ Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 56.

¹⁰⁸⁹ P1000 (Minutes of 8th SDC session, 25 December 1998), p. 1; 1D761 (Shorthand notes of 8th SDC session, 25 December 1998), p. 3; P1577 (Minutes of 9th SDC session, 23 March 1999), p. 1.

¹⁰⁹⁰ P1000 (Minutes of 8th SDC session, 25 December 1998), p. 1; 1D761 (Shorthand notes of 8th SDC session, 25 December 1998), p. 3.

¹⁰⁹¹ P1000 (Minutes of 8th SDC session, 25 December 1998), pp. 1–3; 1D761 (Shorthand notes of 8th SDC session, 25 December 1998), pp. 4–7.

¹⁰⁹² P1000 (Minutes of 8th SDC session, 25 December 1998), pp. 5–9; 1D761 (Shorthand notes of 8th SDC session, 25 December 1998), pp. 13–21.

¹⁰⁹³ P1577 (Minutes of 9th SDC session, 23 March 1999), p. 1.

¹⁰⁹⁴ P1577 (Minutes of 9th SDC session, 23 March 1999), pp. 1–2.

to these, the Chief of the General Staff or his representative was bound to attend SDC sessions, which could not proceed in his absence, was able to convene sessions, and could make proposals to the SDC on issues of appointments, promotions, and the retirement of VJ Generals and admirals.¹⁰⁹⁵ Thus, in theory, Ojdanić's role in this body after 23 March 1999 was more extensive than it had been, although it did not equate to full membership status with voting rights. However, there are no records of SDC meetings held during the NATO campaign in evidence and the Trial Chamber has not heard if or how Ojdanić exercised this increased role. The Chamber thus finds that the role of Chief of the General Staff carried with it a significant involvement in the work of the SDC, which was responsible for the policy for the use of the VJ. In addition the Chief of the General Staff had the authority to implement the decisions of the SDC by issuing orders for the use of the VJ forces.

501. The Chamber recalls its finding that, while there is no direct evidence of SDC 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. There is no doubt that Milošević, as the "Supreme Commander", was at the apex of the command structure of the VJ throughout the conflict.

502. At a briefing to the Supreme Command Staff on 11 April 1999, Ojdanić stated to those present that there would be a meeting on a draft plan at 9:00 a.m. the next morning with the "Supreme Command" and listed as expected Milošević, Milutinović, Sreten Lukić,¹⁰⁹⁶ Šainović, and Pavković, along with Smiljanić, Krga, and himself from the General Staff.¹⁰⁹⁷ That plan was referred to in another document, an order from Ojdanić to the Commander of the 3rd Army to prepare a proposal for a decision, which would be presented to the "Supreme Commander" and Supreme Command Staff on 11 April 1999.¹⁰⁹⁸ Subsequently, on 12 April, Milošević was present at a meeting of the General Staff/Supreme Command Staff and issued the order on breaking up the KLA forces, based on the draft plan drawn up the day before.¹⁰⁹⁹ The Chamber considers that this demonstrates Ojdanić's participation in the top command body of the VJ during the NATO air campaign.

¹⁰⁹⁵ P1738 (Rules of Procedure of the SDC, 23 March 1999), articles 3–5; Ratko Marković, T. 13353 (10 August 2007).

¹⁰⁹⁶ He is described as "Sreten, adjutant of the MUP unit from Kosovo". Branko Gajić agreed that this was a reference to Sreten Lukić. T. 15416 (11 September 2007).

¹⁰⁹⁷ 3D728 (Briefing of the Supreme Command Staff, 11 April 1999), p. 3.

¹⁰⁹⁸ P1480 (Supreme Command Staff Order to prepare plans for defence, 9 April 1999).

¹⁰⁹⁹ 4D420 (Communication from 3rd Army to Supreme Command Staff, 20 April 1999).

503. The Chamber has found above that in the period relevant to the Indictment, and earlier, there was a body known as the Joint Command which had a direct role in the co-ordination of the military and security forces operating in Kosovo. Ojdanić referred to the Joint Command on a number of occasions in the period relevant to the Indictment. On 17 April 1999 Ojdanić addressed the 3rd Army Command, explicitly linking a series of “suggestions” regarding comprehensive preparations and deployment of forces to a specific Joint Command order.¹¹⁰⁰ According to Đorđe Ćurčin, who was the Chief of the First Administration of the Sector for Operations and Staff Affairs of the General Staff, Pavković came to see Ojdanić after a meeting with Milošević, essentially bypassing his immediate superior.¹¹⁰¹ Ojdanić wrote the suggestions on the basis of a map shown to him by Pavković, which represented the situation in the broader Rugova Gorge area.¹¹⁰² Lazarević testified that the reason for Ojdanić only making suggestions, rather than issuing orders in relation to this document, was because it had been planned and approved at a lower level of the VJ hierarchy and so was not within Ojdanić’s sphere of command.¹¹⁰³ However, the Head of the Land Forces for the General Staff of the VJ, Miodrag Simić, testified that suggestions normally come from a lower-ranking level and go up to a high-ranking level, but not the other way around.¹¹⁰⁴ Radinović noted that, although “suggestions” were not a common form of military document, they were not unheard of, and opined 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.¹¹⁰⁵ He agreed that a commander issuing such suggestions would examine the linked document to be sure of its contents.¹¹⁰⁶

504. Prior to this, at a VJ collegium meeting held on 21 January 1999, concern was expressed, primarily by Dimitrijević, regarding military involvement in the action at Račak/Rečak village that had not been reported to the General Staff.¹¹⁰⁷ Ojdanić’s response at the meeting was to placate the concern expressed by reminding the staff of “a well-co-ordinated methodology of the use of forces and decision-making”.¹¹⁰⁸ Notably, he characterised the methodology as “quite risky and not really quite justifiable from a military point of view.”¹¹⁰⁹ Ojdanić also made a vague reference that if the

¹¹⁰⁰ P1487 (Suggestions to 3rd Army from Supreme Command Staff, 17 April 1999). *See also* Spasoje Smiljanić, T. 15781 (17 September 2007); P1878 (Joint Command Order, 15 April 1999).

¹¹⁰¹ Đorđe Ćurčin, T. 17025–17027 (16 October 2007).

¹¹⁰² Đorđe Ćurčin, T. 16966–16968 (5 October 2007).

¹¹⁰³ Vladimir Lazarević, T. 18367–18368 (15 November 2007).

¹¹⁰⁴ Miodrag Simić, T. 15691 (14 September 2007).

¹¹⁰⁵ Radovan Radinović, T. 17328–17336 (19 October 2007); *see also* Đorđe Ćurčin, T. 16970–16974 (5 October 2007); 6D1130 (Overview of VJ Archives for 1998 and 1999), p. 40.

¹¹⁰⁶ Radovan Radinović, T. 17333 (19 October 2007).

¹¹⁰⁷ P939 (Minutes of the Collegium of the General Staff of the VJ, 21 January 1999), p. 9.

¹¹⁰⁸ P939 (Minutes of the Collegium of the General Staff of the VJ, 21 January 1999).

¹¹⁰⁹ P939 (Minutes of the Collegium of the General Staff of the VJ, 21 January 1999).

“*joint staff, command, or whatever*” decided that an operation in Račak/Reçak village could not be carried out without the assistance of the VJ, they would have to seek approval from the FRY President.¹¹¹⁰ Finally, Ojdanić referred to the use of VJ forces in Kosovo, involving the “*joint command* down there whereby the President orders me.”¹¹¹¹

505. It is established that the Chief of the General Staff would attend SDC meetings in 1998 and early 1999. While there is no evidence that he ever acquired voting rights or decision-making powers within the body,¹¹¹² the minutes of SDC meetings show that he participated in discussions of strategic issues, including the need for closer co-operation between the VJ and the MUP,¹¹¹³ along with significant personnel issues, such as the appointment of Pavković as the 3rd Army Commander.¹¹¹⁴ During the NATO air campaign, Ojdanić continued to participate in the top command body of the VJ. Although Ojdanić was not a member of the Joint Command, he was aware of it and accepted its operation.

c. Arming the non-Albanian population

506. The Prosecution alleges that Ojdanić participated in the arming of the non-Albanian population in Kosovo, which was later used to assist in the expulsion of Kosovo Albanians.¹¹¹⁵ According to the Prosecution, Ojdanić was made aware of, and was involved in, the arming of non-Albanian civilians within Kosovo from December 1998 at the latest.¹¹¹⁶ The Ojdanić Defence argues that these acts were undertaken prior to Ojdanić’s appointment as Chief of the General Staff, that the arming of civilians was a legitimate and proportionate response to the threat posed by the KLA, and that all those civilians who were given arms had legitimate roles within the state structures during a time of war.¹¹¹⁷

507. The nature of the armed non-Albanian population and the process of arming this group are discussed in Sections VI.A and VIII.B, where it is concluded that in 1998 and early 1999 around

¹¹¹⁰ P939 (Minutes of the Collegium of the General Staff of the VJ, 21 January 1999), p. 11 (emphasis added).

¹¹¹¹ P939 (Minutes of the Collegium of the General Staff of the VJ, 21 January 1999), p. 12 (emphasis added). *See also* Radomir Čučak, T. 14867 (4 September 2007); Branko Krga, T. 16870 (4 October 2007); Ljubomir Anđelković, T. 16440 (26 September 2007).

¹¹¹² Ratko Marković, T. 13352–13354 (10 August 2007); 3D1116 (Radovan Radinović’s Expert Report), e-court pp. 86–87.

¹¹¹³ P1000 (Minutes of 8th SDC session, 25 December 1998), pp. 3–4; 1D761 (Shorthand notes of 8th SDC session, 25 December 1998), pp. 7–11.

¹¹¹⁴ P1000 (Minutes of 8th SDC session, 25 December 1998), pp. 5–9; 1D761 (Shorthand notes of 8th SDC session, 25 December 1998), pp. 13–21.

¹¹¹⁵ Prosecution Final Brief, July 29 2008 (public version), para. 47.

¹¹¹⁶ 3D438 (Notes re meeting between Drewienkiewicz and Ojdanić, 15 December 1998), p. 3; P928 (Minutes of the Collegium of the General Staff of the VJ for 30 December 1998), p. 9; P931 (Minutes of the Collegium of the General Staff of the VJ for 2 February 1999), p. 23.

¹¹¹⁷ Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 23, 42.

60,000 non-Albanians were provided with weapons to use in their villages while Kosovo Albanians were being disarmed. As Chief of the General Staff, Ojdanić was present at meetings when this process of arming and the associated risk of these arms being mis-used by non-Albanians were discussed.¹¹¹⁸ At the 2 February 1999 collegium meeting Ojdanić mentioned that he had heard that there were “50,000 armed Serbs”.¹¹¹⁹ Samardžić, who at this stage was the Head of the VJ Inspectorate, replied that, judging by the amount of weapons distributed, it was 47,000 and that several thousand of them had “already left with their weapons”. Ojdanić asked Samardžić, “[w]hat are the assignments of those armed Serbs and what is the plan for including them in the units”.¹¹²⁰ Samardžić informed those present at the collegium that the role of the armed Serbs was to “defend their villages and participate together with army units in any operations in the immediate vicinity”.¹¹²¹ The information conveyed by Samardžić shows that Ojdanić had knowledge of the arming of the non-Albanian population by the VJ and that these individuals were intended to assist with VJ operations.

508. An assessment made by the Section for Operations and Staff Affairs of the General Staff concerning the security situation in Kosovo in February 1999 referred to the “danger” that the armed non-Albanian population would organise on their own and “complicate” the situation.¹¹²² Branko Gajić, the Deputy Chief of the Security Administration of the VJ in 1998 and 1999, testified in relation to that assessment that there was a concern that the armed non-Albanian population would engage in inter-ethnic conflict against the Kosovo Albanians who, according to him, had been armed by the KLA.¹¹²³

509. To counter the allegation that only non-Albanian civilians were armed by the VJ, MUP, and Federal Ministry of Defence, the Ojdanić Defence points to the attempt to form an Albanian Military Territorial Detachment as an example of arming the Kosovo Albanian population.¹¹²⁴ Although it was intended that a Colonel Vladimir Ristić would organise and co-ordinate this unit and that it would operate as a part of the VJ,¹¹²⁵ the attempt was not successful as the majority of Kosovo Albanians did not desire to join it.¹¹²⁶

¹¹¹⁸ P928 (Minutes of the Collegium of the General Staff of the VJ for 30 December 1998), p. 9; P939 (Minutes of the Collegium of the General Staff of the VJ for 21 January 1999), pp. 16–17.

¹¹¹⁹ P931 (Minutes of the Collegium of the General Staff of the VJ for 2 February 1999), p. 23.

¹¹²⁰ P931 (Minutes of the Collegium of the General Staff of the VJ for 2 February 1999), p. 23.

¹¹²¹ P931 (Minutes of the Collegium of the General Staff of the VJ for 2 February 1999), p. 23.

¹¹²² 3D685 (VJ General Staff evaluation of security information, February 1999).

¹¹²³ Branko Gajić, T. 15252–15253 (7 September 2007).

¹¹²⁴ Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 28; P1471 (Order to Form “Military-Territorial Unit in Wartime”, 31 March 1999).

¹¹²⁵ Zlatimir Pešić, T. 7250 (23 November 2006).

¹¹²⁶ Zlatimir Pešić, T. 7250 (23 November 2006).

510. Ojdanić was aware of and did not oppose the use of the armed non-Albanian population during the conflict in 1999. In his 17 April “suggestions”, which were linked to an order of the Joint Command from 15 April, he directed the Priština Corps, together with the “armed non-Šiptar population,” to support the MUP in breaking up and destroying the “ŠTS” in the Rugova Gorge sector.¹¹²⁷

511. The Chamber is satisfied that Ojdanić had knowledge of VJ involvement in the arming of the non-Albanian population in Kosovo. The abortive attempt to form a unit within the VJ composed of Kosovo Albanians does not have any direct bearing on this issue, as the allegation from the Prosecution concerns attempts to create an atmosphere in which crimes would be committed by Serb civilians against Kosovo Albanians, which would not be affected by the formation of a unit of Kosovo Albanians within the folds of the VJ.

d. Conduct with respect to the October Agreements

512. In relation to the international agreements concluded in October 1998, the Prosecution alleges that Ojdanić, once he became Chief of the General Staff, did not fulfil his obligations pursuant to these October Agreements, insofar as he failed to co-operate fully with the KVM, he increased the level of VJ forces in Kosovo, and VJ forces were used in operations that breached the agreements.¹¹²⁸ In response, the Ojdanić Defence argues that he took measures to ensure the co-operation of the VJ with the KVM, and that the introduction of additional troops to Kosovo was consistent with the Clark-Naumann Agreement, as it was a legitimate defensive response to the activity of the KLA and, later, to the threat of a NATO land invasion.¹¹²⁹ The Ojdanić Defence argues that, whether or not the FRY interpretation of the October Agreements was correct, Ojdanić was obliged to accept this interpretation and implement it.¹¹³⁰

513. The issue of compliance with the October Agreements is discussed above in Section VI.D, where it is found that the VJ intentionally breached these Agreements by engaging forces in the Podujevo/Podujeva incident, that the increase in VJ and MUP personnel in Kosovo in late 1998 and early 1999 was in contravention of the October Agreements, as was the retention by the MUP of heavy weaponry and equipment that it was obliged to return to the VJ. This section focuses on Ojdanić’s conduct in relation to these breaches.

¹¹²⁷ P1487 (Suggestions to 3rd Army from Supreme Command Staff, 17 April 1999), p. 1, referring to P1878 (Joint Command Order, 15 April 1999).

¹¹²⁸ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 776.

¹¹²⁹ Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 7, 63, 75, 85, 97, 194.

¹¹³⁰ Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 183.

514. In late 1998 and early 1999 Ojdanić issued orders stating that the VJ should enhance co-operation with the KVM.¹¹³¹ When Ojdanić met with Drewienkiewicz, he stated that the VJ would be undertaking training exercises outside of barracks but when asked about the details of the training locations, did not provide them.¹¹³² Commenting on these exercises of the VJ, in late 1998 and early 1999, Dimitrijević expressed his dismay at VJ collegium meetings that planned operations of the Priština Corps in Kosovo were being reported as defensive reactions to KLA attacks in reports from the 3rd Army to the General Staff.¹¹³³ In relation to the incidents around Podujevo/Podujeva, a report indicates that Ojdanić approved the decision to keep forces at the Batlava/Batlava airfield in the area despite pressure from the KVM to remove them.¹¹³⁴ Dimitrijević informed Ojdanić at a collegium meeting of 30 December that the deployment of VJ personnel was not a defensive action, stating:

After the so-called pretend or real planned exercises in which this company took part in the field...General, these sorts of moves will lead us to disaster; the explanation that this was a planned exercise, that is not true. It was planned that the unit would provoke the terrorists so that the MUP would then have to do whatever it had to do.¹¹³⁵

Ojdanić's response was that the deployment of VJ troops in Podujevo/Podujeva was part of a genuine training exercise, and that he was assured of this by the 3rd Army Commander, who at that time was Samardžić.¹¹³⁶ However, Milorad Obradović, the Head of the Section for Operations and Staff Affairs of the VJ General Staff, stated at the meeting that the VJ had "managed to avoid registering it as a combat group" by calling it a training exercise, implying an awareness that this was a combat operation.¹¹³⁷ Subsequently, at a VJ collegium meeting on 2 February 1999, Ojdanić

¹¹³¹ 3D408 (VJ General Staff Supplementary Order on implementation of obligations of the VJ, 23 December 1998); Dušan Lončar, T. 7676–7677 (1 December 2006). 3D409 (Order to the VJ General Staff Team for Liaison with the OSCE and NATO Missions, 22 October 1998); 3D405 (Summary of obligations and methodology of work with OSCE, 16 October 1998); 3D411 (Instructions on relations of the VJ with the OSCE, October 1998). 3D407 (General Staff VJ- Order on organisation of work and relations with OSCE, 8 March 1999); *see also* Dušan Lončar, T. 7677–7680 (1 December 2006).

¹¹³² Karol John Drewienkiewicz, T. 7918 (5 December 2006), P2508 (witness statement dated June 2000), paras. 64–66; P2535 (Notes of Meeting with Ojdanić 27 November 1998).

¹¹³³ P928 (Minutes of the Collegium of the General Staff of the VJ, 30 December 1998), p. 14; P933 (Minutes of the Collegium of the General Staff of the VJ, 4 March 1999), p. 15; P938 (Minutes of the Collegium of the General Staff of the VJ, 18 March 1999), p. 21; Aleksandar Dimitrijević, T. 26627, T. 26653–26654 (8 July 2008).

¹¹³⁴ P928 (Minutes of the Collegium of the VJ General Staff, 30 December 1998), pp. 3–4; Milorad Obradović, T. 14948 (4 September 2007); 3D785 (3rd Army Team for relation with OSCE and NATO, Mission Report, 18–24 December 1998), e-court p. 1; 4D423 (Report: 3rd Army to VJ General Staff, Operations Centre, 21 December 1998), p. 3; P924 (Minutes of the Collegium of the VJ General Staff, 24 December 1998), p. 14.

¹¹³⁵ P928 (Minutes of the Collegium of the General Staff of the VJ for 30 December 1998), p. 14; Aleksandar Dimitrijević, T. 26631 (8 July 2008).

¹¹³⁶ P928 (Minutes of the Collegium of the General Staff of the VJ, 30 December 1998), p. 17.

¹¹³⁷ P928 (Minutes of the Collegium of the VJ General Staff, 30 December 1998), pp. 14–15.

pointed out that “one group” of the VJ forces in Kosovo was in contravention of the Clark-Naumann Agreement, although he did not provide any specification of the activities.¹¹³⁸

515. During the week of 26 February to 4 March 1999, the OSCE/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 projected their authority upon members of the KVM.¹¹³⁹ Dimitrijević referred to these provocations at the collegium of 4 March 1999. He stated that the 3rd Army was lying to the General Staff about its activities in Kosovo, as these were planned activities rather than defensive reactions to attacks, and that the General Staff should not accept the practice as it concerned information that they “ought to know”.¹¹⁴⁰ He continued that “stories that an army convoy was attacked here or there might satisfy our own people, but they don’t mean anything to those outside because the facts are evident”.¹¹⁴¹ He stated that this was misrepresentative and that the practice of lying and mislabelling the operations as defensive would get the General Staff in trouble. He repeated these assertions at the collegium meeting of 18 March 1999, stating:

[T]here have been 16 attacks on our army units in one week. Did a single one of those operations occur while we were carrying out a previously planned operation, and was not an attack? ... I contend that the yesterday’s two were conducted by us and we were not attacked. In other words, we did not launch an operation following an attack on our units by terrorists, but instead as they say, a mopping-up of the terrain, /operation/ had been launched. Hence, it was presumably giving support to the MUP.¹¹⁴²

Dimitrijević continued, “you need to know what is really going on because the reports from the Priština Corps Command are all textbook, attack-returned, attack-returned, etc. I think that to say the least, this is not correct behaviour towards you as the Chief of General Staff”.¹¹⁴³ Ojdanić brushed this comment aside, stating “do you have any suggestions how to resolve this? If not, let us move on”.¹¹⁴⁴ Later in the meeting Ojdanić came back to the subject and informed those present that he would talk to the commander of the 3rd Army, who at that time was Pavković, about the issue.¹¹⁴⁵ He tasked the Section for Operations and Staff Affairs with preparing an order regarding the deployment of “our officers in the Priština Corps and the army command”, stating that this was

¹¹³⁸ P931 (Minutes of the Collegium of the General Staff of the Yugoslav Army (VJ), 2 February 1999), pp. 20–21.

¹¹³⁹ P680 (OSCE/KVM Fusion Working Papers), pp. 1, 5. *See also* Karol Drewienkiewicz, T. 7932–7933 (5 December 2006).

¹¹⁴⁰ P933 (Minutes of the Collegium of the General Staff of the VJ, 4 March 1999), p. 15.

¹¹⁴¹ P933 (Minutes of the Collegium of the General Staff of the VJ for 4 March 1999), pp. 9, 15; Aleksandar Dimitrijević, T. 26627, T. 26653 (8 July 2008).

¹¹⁴² P938 (Minutes of the Collegium of the General Staff of the VJ, 18 March 1999), p. 21; Aleksandar Dimitrijević, T. 26654 (8 July 2008).

¹¹⁴³ P938 (Minutes of the Collegium of the General Staff of the VJ, 18 March 1999), p. 21.

¹¹⁴⁴ P938 (Minutes of the Collegium of the General Staff of the VJ, 18 March 1999), p. 22.

¹¹⁴⁵ P938 (Minutes of the Collegium of the General Staff of the VJ, 18 March 1999), p. 25.

necessary to prevent “any other rampage without the knowledge of the army and the corps commanders” and to ensure that their “conscience is clear that they have more or less done everything to avoid that from happening”.¹¹⁴⁶

516. When asked about these references in the minutes of the meeting, Dimitrijević explained that he was concerned that, while allegations were being spread in the west about atrocities in Kosovo, the reports from the subordinate VJ units simply stated each time that it was acting in response to provocations from the KLA.¹¹⁴⁷ He stated that he and the General Staff members were aware that the allegations in the west focused on these “mopping up” operations, and that he was concerned about the lack of any references to such operations in the combat reports. He warned Ojdanić that it would be “an ugly situation if he were to be found out not knowing about that”, referring to such operations.¹¹⁴⁸ Dimitrijević testified that during his final months in the VJ, before he was removed on 23 March 1999 by Milošević, he considered this problem with reporting from the 3rd Army to be ongoing.¹¹⁴⁹ When asked about the same references, Milorad Obradović stated that Dimitrijević’s views were nothing new, and that the General Staff/Supreme Command Staff had to rely on the information that was sent up to them from the subordinate commands.¹¹⁵⁰

517. Dimitrijević had also previously raised legal qualms, such as in relation to the practice of lending VJ equipment, including helicopters, to the MUP.¹¹⁵¹ At the collegium meeting of 24 December 1998 Ojdanić acknowledged that this concern had been raised with him by Supreme Allied Commander, Wesley Clark, and that Ojdanić himself had avoided answering the question.¹¹⁵² At that meeting Ojdanić stated that the existing international resolutions and agreements should be complied with, except if there was a need to violate them, and then the highest military and political organs of the State should adopt the appropriate decision.¹¹⁵³

518. In an effort to reduce conflict between the VJ and MUP on the one side and the KLA on the other, the October Agreements prohibited the VJ from bringing additional units into Kosovo. Nonetheless, in early 1999 the VJ brought a number of units into Kosovo to augment its forces.

¹¹⁴⁶ P938 (Minutes of the Collegium of the General Staff of the VJ, 18 March 1999), p. 25; 3D1073 (Tasks from Collegium Meeting, 18 March 1999).

¹¹⁴⁷ Aleksandar Dimitrijević, T. 26656 (8 July 2008).

¹¹⁴⁸ Aleksandar Dimitrijević, T. 26657 (8 July 2008).

¹¹⁴⁹ Aleksandar Dimitrijević, T. 26654 (8 July 2008).

¹¹⁵⁰ Milorad Obradović, T. 15107–15108 (6 September 2007); *see also* Đorđe Ćurčin, T. 16948 (5 October 2007).

¹¹⁵¹ 3D557 (Minutes of the Collegium of the General Staff of the VJ, 3 December 1998), pp. 19–20.

¹¹⁵² P924 (Minutes of the Collegium of the General Staff of the VJ, 24 December 1998), p. 26.

¹¹⁵³ P924 (Minutes of the Collegium of the General Staff of the VJ, 24 December 1998), p. 28.

These included the 37th Infantry Brigade,¹¹⁵⁴ the 72nd Special Brigade,¹¹⁵⁵ the 211th Armoured Brigade,¹¹⁵⁶ the 252nd Armoured Brigade,¹¹⁵⁷ and the resubordination of the 21st Niš Corps to the 3rd Brigade of the Priština Corps.¹¹⁵⁸ In relation to the 72nd Special Brigade, despite an instruction from Ojdanić to keep it in the border belt of Kosovo beside Albania, Pavković brought this unit into the interior of Kosovo prior to 25 February 1999.¹¹⁵⁹ Ojdanić reported to the General Staff that although he had not agreed to moving this unit into the interior of Kosovo, Pavković had nonetheless done so.¹¹⁶⁰ Ojdanić told those present that he would have a talk with Pavković about the matter.¹¹⁶¹ However, Ojdanić did not seek to have Pavković disciplined.¹¹⁶²

519. Subsequently, at a meeting of the General Staff on 11 March, Ojdanić indicated that the introduction of new troops was a violation of the October Agreements, telling those present at the meeting that they knew “quite well why we had to violate”, that being the heightened numbers of NATO forces on the borders and the KLA threat. Ojdanić recounted his conversation with 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 with Albania, he did not dispute the number but rather said that this was a necessary response to the build up of NATO forces and the actions of the KLA.¹¹⁶³

520. The VJ forces in Kosovo were also increased by delaying the departure of some units. At the collegium meeting of 27 November 1998 Ojdanić stated that troop rotations should be reported to verifiers.¹¹⁶⁴ However, soldiers’ periods of service were prolonged on 15 March 1999, following a decision of the FRY President, and resulted in between 2,500 and 2,800 soldiers being retained in

¹¹⁵⁴ This occurred on 10 March, P1615 (3rd Army Diary), p. 22; P2039 (37th Motorised Brigade Operations Report to PrK, 20 March 1999); P941 (Minutes of the Collegium of the General Staff of the VJ, 25 February 1999), p. 24.

¹¹⁵⁵ P941 (Minutes of the Collegium of the General Staff of the VJ, 25 February 1999), p. 24; P1947 (Pavković Request for Resubordination, 2 February 1999); P1948 (VJ General Staff Order for Resubordination, 19 February 1999).

¹¹⁵⁶ 5D261 (Order of the VJ General Staff, 13 March 1999); P941 (Minutes of the Collegium of the General Staff of the VJ, 25 February 1999), p. 24.

¹¹⁵⁷ 5D261 (Order of the VJ General Staff, 13 March 1999), p. 2; P941 (Minutes of the Collegium of the General Staff of the VJ, 25 February 1999), p. 24.

¹¹⁵⁸ 3D680 (Order of the General Staff for Resubordination of 37th Mtbr/2nd Army, 6 March 1999).

¹¹⁵⁹ P941 (Minutes of the Collegium of the General Staff of the VJ, 25 February 1999), pp. 16, 24; Aleksandar Dimitrijević, T. 26708 (9 July 2008); P1948 (VJ General Staff Order for Resubordination, 19 February 1999); Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), paras. 54, 65, T. 17656–17657 (26 October 2007);

¹¹⁶⁰ P941 (Minutes of the Collegium of the General Staff of the VJ, 25 February 1999), p. 24; Aleksandar Dimitrijević, T. 26648–26649 (8 July 2008).

¹¹⁶¹ P941 (Minutes of the Collegium of the General Staff of the VJ, 25 February 1999), pp. 16, 24.

¹¹⁶² Radovan Radinović, T. 17323–17325 (19 October 2007).

¹¹⁶³ P935 (Minutes of the Collegium of the General Staff of the VJ, 11 March 1999), p. 21; *see also* Đorđe Ćurčin, T. 17009–17013 (5 October 2007).

¹¹⁶⁴ P925 (Minutes of the Collegium of the General Staff of the VJ, 27 November 1998), pp. 8–9, 16. *See also* Milorad Obradović, T. 14973 (5 September 2007).

the ranks of the Priština Corps, up until and after the start of the NATO air campaign.¹¹⁶⁵ 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”.¹¹⁶⁶ Maintaining the existing conscripted soldiers for longer periods, while still bringing in their replacements, effectively increased the VJ troop levels within Kosovo.¹¹⁶⁷

521. On the basis of the above, the Chamber finds that Ojdanić was aware and approved of these breaches of the October Agreements. Ojdanić’s actions in relation to the bolstering of VJ troop levels in Kosovo and allowing them to conduct provocative exercises, without consultation with the representatives of KVM, demonstrates that he was willing to ignore obligations under the international agreements in force at the time to achieve the purpose of using the VJ in Kosovo. However, the fact that he wished to keep the additional VJ troops at the border with Albania, and was not properly informed by Pavković of the provocative exercises being undertaken by the VJ in Kosovo at this time, suggests that Ojdanić’s motivation to breach the October Agreements was his fear of a genuine threat from NATO and the KLA, rather than a desire to prepare for a widespread campaign of forcible displacement in the interior of Kosovo.

e. The replacement of high-level VJ personnel

522. The Prosecution alleges that once he was appointed Chief of the General Staff, Ojdanić assisted in the replacement of VJ officers who were opposed to the use of the VJ in Kosovo, in order to further the aims of the joint criminal enterprise.¹¹⁶⁸ The Ojdanić Defence does not address this argument directly, but argues generally that none of Ojdanić’s actions during the relevant period were intended for anything other than military purposes and submits that the appointments he made were justified by the credentials of the appointees and the circumstances prevailing in the VJ.¹¹⁶⁹

523. The records of the SDC meetings demonstrate that, after his own appointment in November 1998, Ojdanić positively supported the SDC decision to replace the Commander of the 3rd Army, Dušan Samardžić, with Pavković.¹¹⁷⁰ The appointments of both Pavković, as Commander of the 3rd Army, and Lazarević, as Commander of the Priština Corps, were proposed in writing to the

¹¹⁶⁵ Vladimir Lazarević, T. 17877–17878 (7 November 2007); 3D750 (Order of the VJ General Staff, 15 March 1999).

¹¹⁶⁶ 3D750 (Order of the VJ General Staff, 15 March 1999).

¹¹⁶⁷ Karol John Drewienkiewicz, P2508 (witness statement dated June 2000), para. 66. *But see* Dušan Lončar, T. 7645 (1 December 2006).

¹¹⁶⁸ Prosecution Final Brief, 29 July 2008 (public version), para. 80.

¹¹⁶⁹ Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 148.

¹¹⁷⁰ P1000 (Minutes of 8th SDC session, 25 December 1998), pp. 5–9; 1D761 (Shorthand notes of 8th SDC session, 25 December 1998), pp. 13–21.

Supreme Defence Council by Ojdanić at the meeting of 25 December 1998.¹¹⁷¹ This followed a series of disagreements between Samardžić and Pavković concerning the use of the VJ in Kosovo, as discussed above.¹¹⁷² Prior to nominating Pavković for appointment, Ojdanić had received complaints about Pavković's behaviour from his own staff. At a VJ collegium meeting on 10 December 1998, Dimitrijević complained about "so many unusual incidents and a lot of what's going on in the Priština Corps are precisely the consequence of ... the alienation of the Corps Commander, and with him the command, from the VJ."¹¹⁷³ He testified that these "unusual incidents" meant desertion, wounding, and suicides, and not acts by Pavković, but added that these acts were contributed to by Pavković's absence from his command post while he was in Belgrade for long periods.¹¹⁷⁴ Ojdanić had also received direct complaints from representatives of the international community, such as John Crosland, who provided warnings to Ojdanić that the Priština Corps under Pavković was using excessive and indiscriminate force in Kosovo in 1998.¹¹⁷⁵

524. Nonetheless, at the meeting of the SDC on 25 December 1998, after Milošević noted that Pavković had been "outstanding" in his post as Commander of the Priština Corps, as well as in his other previous posts, Ojdanić offered more detailed comments about Pavković, giving him high praise for his service in the VJ, and supported his appointment as Commander of the 3rd Army.¹¹⁷⁶ Despite the concerns raised by the President of Montenegro, Milo Đukanović, that the Priština Corps was not always operating in accordance with the constitutional role of the VJ and the decisions of the SDC, Milošević appointed Pavković as Commander of the 3rd Army.¹¹⁷⁷

525. On 25 March 1999 Ojdanić discussed the replacement of Aleksandar Dimitrijević, as Head of the Security Administration, by Geza Farkaš.¹¹⁷⁸ Ojdanić stated that this issue was in the sphere

¹¹⁷¹ P1000 (Minutes of 8th SDC session, 25 December 1998), p 5–7; 4D35 (FRY President Decree on appointment of Nebojša Pavković, 28 December 1998); P800 (Report on the take-over of the duty of 3rd Army Commander by Nebojša Pavković, 13 January 1999); P802 (Report on the hand-over of the duty of 3rd Army Commander by Dušan Samardžić, 13 January 1999); P801 (Report on the take-over of the duty of PrK Commander by Vladimir Lazarević, 9 January 1999).

¹¹⁷² See, e.g., P1011 (Ivan Marković, ed., *The Application of Rules of the International Law of Armed Conflicts* (2001)), p. 57; P1439 (Reply from PrK to 3rd Army, 5 October 1998).

¹¹⁷³ 3D484 (Minutes of the Collegium of the General Staff of the VJ, 10 December 1998), p. 14.

¹¹⁷⁴ Aleksandar Dimitrijević, T. 26624–26628 (8 July 2008).

¹¹⁷⁵ P2554 (Confidential Sitrep from U.K. Military Representative, 28 August 1998), p. 1; John Crosland, T. 9750–9751, 9787–9790 (7 February 2007)

¹¹⁷⁶ P1000 (Minutes of 8th SDC session, 25 December 1998), pp. 5, 9–10; 1D761 (Shorthand notes of 8th SDC session, 25 December 1998), pp. 24–25.

¹¹⁷⁷ 4D35 (FRY President Decree on appointment of Nebojša Pavković, 28 December 1998).

¹¹⁷⁸ P932 (Minutes of the Collegium of the General Staff of the VJ, 4 February 1999), pp. 7, 11–12; P799 (Report on the takeover of the duty of Chief of Security Administration Geza Farkaš, 25 March 1999); P803 (Report on the handover of the duty of Chief of Security Administration from Aleksandar Dimitrijević, 25 March 1999). Dimitrijević testified that he was removed on 23 March 1999, T. 26580 (8 July 2008).

of competence of the FRY President.¹¹⁷⁹ This was one week after the collegium meeting at which Dimitrijević had voiced his suspicions that information was being purposely misconstrued and withheld by VJ forces on the ground.¹¹⁸⁰ Dimitrijević had also previously complained about the lending of VJ equipment, including helicopters, to the MUP.¹¹⁸¹ He testified that Milošević told him that he was being retired due to his long years of service and need for some rest; but that this was a false story and that Milošević was under pressure from Pavković and from members of the MUP to have him removed because he had voiced complaints about the use of the VJ and MUP units in Kosovo. He added that these people wanted somebody in the position that would be “more co-operative”.¹¹⁸²

526. In April 1999 General Grahovac was removed from his post as Assistant Chief of the General Staff for the Airforce and the Anti-Aircraft Defence, following his statements against the use of the VJ in Kosovo in late 1998.¹¹⁸³ In late 1998 and early 1999 Grahovac had exhibited concern at the use being made of the VJ in Kosovo, particularly noting that the VJ had acquired helicopters in breach of embargo on the acquisition of arms from foreign sources placed upon them in March 1998 by UN Security Council Resolution 1160.¹¹⁸⁴ When asked about this, the Chief of the Personnel Administration of the General Staff, Branko Fezer, insisted that this was not a dismissal. Fezer claimed that any allegations by Grahovac that he was removed because he did not sympathise with Milošević’s methods were only made because Grahovac was “not satisfied with his status”.¹¹⁸⁵

527. In April 1999 Milorad Obradović was appointed Commander of the 2nd Army, and Jagoš Stevanović was appointed his Chief of Staff pursuant to the decision of Milošević.¹¹⁸⁶ The Prosecution put it to Fezer that this was a case of putting a Milošević loyalist into “a position of control in the course of a war”.¹¹⁸⁷ However, Fezer denied any justification for such reasoning.¹¹⁸⁸ The previous Commander of the 2nd Army, Martinović, was given a role as an “advisor” in the Federal Ministry of Defence, which was reported to be a “demotion”.¹¹⁸⁹ Ojdanić was aware of the

¹¹⁷⁹ P932 (Minutes of the Collegium of the General Staff of the VJ, 4 February 1999), pp. 7, 11–12.

¹¹⁸⁰ P938 (Minutes of the Collegium of the General Staff of the VJ, 18 March 1999), pp. 21–22.

¹¹⁸¹ 3D557 (Minutes of the Collegium of the General Staff of the VJ, 3 December 1998), pp. 19–20.

¹¹⁸² Aleksandar Dimitrijević, T. 26675 (9 July 2008).

¹¹⁸³ P1739 (List of Members of the VJ General Staff); Branko Krga, T. 16914 (4 October 2007); P797 (Record on the take over of duty between Veličković and Grahovac, 16 April 1999).

¹¹⁸⁴ 3D557 (Minutes of the Collegium of the General Staff, 3 December 1998), pp. 19–20; P455 (UNSC Resolution 1160, 31 March 1998).

¹¹⁸⁵ Branko Fezer, T. 16508–16509 (27 September 2007).

¹¹⁸⁶ P1352 (Montenegrin Information Ministry announcement, 2 April 1999).

¹¹⁸⁷ Branko Fezer, T. 16495 (27 September 2007).

¹¹⁸⁸ Branko Fezer, T. 16511 (27 September 2007).

¹¹⁸⁹ P1352 (Montenegrin Information Ministry announcement, 2 April 1999).

appointment and told the Supreme Command Staff at the briefing of 3 April 1999 that there should be no talk of this replacement.¹¹⁹⁰ Fezer conceded that the role of advisor was less prestigious than that of a general with command responsibilities, a sentiment echoed by Aleksandar Vasiljević.¹¹⁹¹

528. Although Ojdanić did not have the final say on the appointments and dismissals of members of the VJ to the rank of General and to the posts for which a rank of General was required, he had the power to present such proposals to the SDC for its consideration, and to the FRY President for his decision. With regard to the appointment of Pavković as 3rd Army Commander, Ojdanić was made aware of concerns expressed by Đukanović, due to the alleged misuse of the VJ in Kosovo. Nonetheless, Ojdanić actively supported this appointment. Although there were no similar complaints about Lazarević and Obradović before they were appointed, their promotions can be seen as consistent with the approach of rewarding those who did not express concerns about the legality of the use of the VJ in Kosovo. The dismissals of Dimitrijević and Grahovac were founded on the corresponding disapproval of those who questioned the legality of VJ activities in Kosovo, although these removals appear to have been ordered by Milošević, and there is no evidence that Ojdanić prompted them. Consequently, it is established that Ojdanić supported the appointment of personnel to high level posts who either supported the activities of the VJ in Kosovo, or else did not raise objections to this involvement, most notably in the case of Pavković, and was aware of the removal of high level officials of the VJ who objected to the use being made of the VJ in Kosovo.

f. Military orders for the use of the VJ

529. The Prosecution claims that Ojdanić used the VJ General Staff to plan, direct, and coordinate the operations, activities, and deployment of VJ forces in Kosovo, to further the joint criminal enterprise, which was to be achieved by criminal means consisting of a widespread or systematic campaign of terror and violence directed at the Kosovo Albanian population.¹¹⁹² The Ojdanić Defence submits that there is no evidence, either direct or indirect, of the Supreme Command Staff ordering or encouraging forces to expel the Kosovo Albanian population across the border, or to alter the ethnic balance in Kosovo, and that all the directives and orders issued by Ojdanić were oriented towards the threats emanating from the KLA and NATO.¹¹⁹³

¹¹⁹⁰ 3D721 (Briefing to the Chief of the Supreme Command Staff, 3 April 1999), p. 5; Branko Fezer, T. 16510 (27 September 2007).

¹¹⁹¹ Branko Fezer, T. 16501–16502 (27 September 2007); Aleksandar Vasiljević, T. 8928 (23 January 2007).

¹¹⁹² Prosecution Final Trial Brief, 29 July 2008 (public version), para. 302.

¹¹⁹³ Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 195.

530. As discussed above, Ojdanić would meet with Milošević daily during the NATO air campaign and discuss the combat reports and proposals prepared the previous evening.¹¹⁹⁴ The two were located in the same building in Belgrade at this time.¹¹⁹⁵ At these meetings Milošević would give Ojdanić general instructions for the use of the VJ in Kosovo and Ojdanić would then formulate orders for the use of the VJ, with the assistance of the General Staff/Supreme Command Staff.¹¹⁹⁶

531. During the lead up to and opening days of the NATO air campaign, Ojdanić issued a number of orders mobilising the forces of the VJ and providing the basis for their use in Kosovo. On 16 January 1999 Ojdanić issued the plan for the defence of the country in case of a foreign attack, known as the *Grom 3* plan.¹¹⁹⁷ This order provided the basis for VJ operations against both the NATO threat and against the KLA in the interior of Kosovo. The directive listed the enemy forces as those of the KLA within Kosovo, the KLA in Albania, and NATO forces in the region. The first stage of the operation was to take measures to prevent NATO from entering Kosovo and, in co-ordination with the MUP, to “block” the KLA in Kosovo. The objective of the second stage was to “crush and destroy” the NATO and KLA forces, in co-ordination with the MUP.¹¹⁹⁸ On 10 March Ojdanić ordered the Priština Corps and the 2nd Army to act together in sealing off roads to prevent the movement of KLA forces.¹¹⁹⁹ Lazarević testified that this order was a “concretisation” of the *Grom 3* plan, and that it called for the 2nd and 3rd Armies to co-ordinate their activities in sealing off routes between Kosovo and Montenegro in the Rugova Gorge area.¹²⁰⁰ Aside from orders for the resubordination of various units to the VJ units in Kosovo, as described above, Ojdanić also mobilised Military Territorial Detachments in Priština/Prishtina,¹²⁰¹ Kosovska Mitrovica/Mitrovica, Peć/Peja, and Prizren.¹²⁰²

532. On the basis of Ojdanić’s *Grom 3* order, VJ units were engaged in operations alongside the MUP in Kosovo. On 28 March 1999 units of the Priština Corps were ordered to provide support

¹¹⁹⁴ Đorđe Ćurčin, T. 16979 (5 October 2007); Branko Gajić, T. 15417 (11 September 2007); Aleksandar Vasiljević P2600 (witness summary dated 26 October 2006), para. 15; Radovan Radinović, T. 17253 (18 October 2007).

¹¹⁹⁵ Aleksandar Dimitrijević, T. 26717 (9 July 2008).

¹¹⁹⁶ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 15; Radovan Radinović, T. 17248 (18 October 2007); Radovan Radinović, T. 17238–17239 (18 October 2007); Miodrag Simić, 3D1089 (witness statement dated 15 August 2007), para. 29.

¹¹⁹⁷ 3D690 (VJ General Staff Directive for the engagement of the VJ, *Grom 3* Directive, 16 January 1999).

¹¹⁹⁸ 3D690 (VJ General Staff Directive for the engagement of the VJ, *Grom 3* Directive, 16 January 1999); Vladimir Lazarević, T. 17894 (8 November 2007).

¹¹⁹⁹ 3D696 (Order of the VJ General Staff, 10 March 1999).

¹²⁰⁰ Vladimir Lazarević, T. 17895–17896 (8 November 2007).

¹²⁰¹ 5D261 (Order of the VJ General Staff, 13 March 1999).

¹²⁰² P1925 (Order of the VJ General Staff, 23 March 1999); *see also* P1924 (Request by Paković for Mobilisation, 23 March 1999).

for MUP operations to destroy the KLA in the Mališevo/Malisheva area.¹²⁰³ On 30 March the 3rd Army Command sent a telegram to the Supreme Command Staff, addressed personally to Ojdanić, stating that it had launched operations in the Mališevo/Malisheva area, Orahovac/Rahovec, Suva Reka/Suhareka, Dulje/Duhel village, and Guncat village.¹²⁰⁴ These locations include some named in the Indictment as sites of criminal activity and in relation to which the Chamber has heard evidence of the commission of criminal acts during 25 March 1999 and the following days.¹²⁰⁵ In relation to these orders the Ojdanić Defence points to the evidence of Radojko Stefanović that the areas of Malo Kosovo, Drenica, and Mališevo/Malisheva were vulnerable areas, where it was feared that a multinational NATO force could be landed.¹²⁰⁶

533. On 9 April 1999 Ojdanić sent out a general directive to the commands of the Strategic Groups of the VJ, to mobilise and prepare for combat use, to secure the border, and to destroy the KLA. The 3rd Army was specifically tasked *inter alia* to “smash and destroy” the KLA, and to organise for the reception of “refugees” at the border, including through the direction to “offer assistance to organs of the Government for their [the refugees’] future care”.¹²⁰⁷

534. On 17 April 1999 Ojdanić sent a document to the command of the 3rd Army containing a number of “suggestions” linked to an order of the Joint Command from 15 April, directing the Priština Corps, together with the “armed non-Šiptar population,” to support the MUP in breaking up and destroying the “ŠTS” in the Rugova Gorge sector.¹²⁰⁸ Ojdanić suggested that the goal of destruction of the KLA would be hard to achieve with the 3rd Army units under blockade, that the tasks should be delayed, and that joint action be undertaken with the 2nd Army.¹²⁰⁹

535. Although there is no written order for the Reka/Caragoj valley operation in late April 1999, the forcible displacements from the villages in this valley were described by VJ members as being ordered down the VJ chain of command.¹²¹⁰ This is consistent with the fact that the operation was

¹²⁰³ P1969 (Joint Command Order, 28 March 1999). *See also* P2000 (Order of the 549th Motorised Brigade, 29 March 1999); P2035 (125th Motorised Brigade Command Combat Report, 30 March 1999); P2802 (War Diary of the Armoured Battalion of the 125th Motorised Brigade); P2047 (37th Motorised Brigade Command Operations Report to PrK, 29 March 1999).

¹²⁰⁴ P1446 (Document sent by 3rd Army to Supreme Command Staff, 30 March 1999). *See also* 4D307 (3rd Army Combat Report Pavković to the General Staff/Supreme Command Staff, 30 March 1999).

¹²⁰⁵ Indictment, paras. 72 and 75.

¹²⁰⁶ Radojko Stefanović, T. 21817 (7 February 2008).

¹²⁰⁷ P1481 (Supreme Command Staff directive for engagement of VJ in defence against the NATO, 9 April 1999); *see also* Branko Krga, T. 16803, T. 16814 (3 October 2007), T. 16840 (4 October 2007); P1483 (Supplement to Directive DT Number 22-1 of 9 April 1999, 12 April 1999).

¹²⁰⁸ P1487 (Suggestions to 3rd Army from Supreme Command Staff, 17 April 1999), p. 1 (referring to P1878 (Joint Command Order, 15 April 1999)).

¹²⁰⁹ P1487 (Suggestions to 3rd Army from Supreme Command Staff, 17 April 1999), pp. 1–2.

¹²¹⁰ K90, P2652 (witness statement dated 8 December 2002), paras. 40, 41; K73, T. 3382–3383 (14 September 2006) (closed session).

a large one involving a number of VJ units operating together with the MUP and the fact that it was reported to the Supreme Command Staff.¹²¹¹ However, the Chamber notes that there is no specific evidence showing the precise level of the VJ at which this operation was ordered and that there is no specific evidence showing that Ojdanić ordered the crimes that were committed during this operation.

536. Ojdanić continued to issue orders for the VJ to support the MUP in Kosovo. On 12 May he ordered that significant amounts of weaponry, including rifles, ammunition, and anti-aircraft heavy guns, be made available to the MUP, subject to approval from the Federal Ministry of Defence.¹²¹² On 14 May 1999 he issued an order requiring that military police units only be used for basic military police tasks, including *inter alia* searches and arrests, prevention of crime, and in combat for tasks such as “mopping-up” of the terrain, control of the territory by organising check points and cruising patrols, and engagement in both offensive and defensive operations against the KLA.¹²¹³

537. On 25 May 1999, VJ and MUP forces attacked the town of Dubrava/Lisnaja in Kačanik/Kaçanik municipality.¹²¹⁴ This was an organised operation, reported back to the VJ chain of command.¹²¹⁵ Ojdanić was informed that the VJ were involved in this operation in Dubrava/Lisnaja on the day before and the day after it occurred.¹²¹⁶ Following this operation, on 29 May 1999 Ojdanić issued a general order for the preparation for a possible land invasion by NATO. In this order he directed the Priština Corps to provide artillery support to MUP units engaging the KLA outside of the Priština Corps’s areas of responsibility.¹²¹⁷

538. Leading up to and during the NATO air campaign Ojdanić issued orders for the VJ to carry out operations throughout Kosovo, including by supporting the MUP. In addition, during the lead-up to late March 1999, when the majority of the crimes that occurred in the municipalities covered by the indictment has been found to have occurred, Ojdanić mobilised extra units from the Military Territorial Detachments in Priština/Prishtina, Kosovska Mitrovica/Mitrovica, Peć/Peja, and Prizren.

¹²¹¹ 6D1468 (PrK Combat Report to 3rd Army, 30 April 1999), p. 1.

¹²¹² 3D744 (Supreme Command Staff approval, 12 May 1999). *See also* Vladimir Lazarević, T. 18817 (22 November 2007); Vidoje Pantelić 3D1113 (witness statement dated 16 September 2007).

¹²¹³ P1493 (VJ General Staff instructions on use of military police in combat, 14 May 1999), p. 2.

¹²¹⁴ Fadil Vishi, T. 3555–3557 (19 September 2006); P2284 (witness statement dated 18 October 1999), pp. 3–4; P2285, *Prosecutor v. Milošević*, Case No. IT-02-54, T. 4461 (7 May 2002).

¹²¹⁵ Krsman Jelić, T. 19015–19016 (26 November 2007); 5D666 (Order of the 243rd Mechanised Brigade, 4 May 1999).

¹²¹⁶ 4D309 (3rd Army report to General Staff/Supreme Command Staff, 24 May 1999), p. 2; 4D335 (3rd Army report to General Staff/Supreme Command Staff, 26 May 1999).

¹²¹⁷ P1465 (Supreme Command Staff warning to 3rd Army about a possible NATO operation, 29 May 1999), also admitted as P1920.

Consequently, Ojdanić was aware that VJ forces under his control were operating in these municipalities and others throughout Kosovo, during the NATO air campaign.

5. Ojdanić's knowledge of and reaction to crimes in Kosovo by VJ and MUP

539. The Prosecution submits that Ojdanić was made aware of criminal behaviour by forces under his control in Kosovo, and failed to take the necessary measures to address that criminal behaviour.¹²¹⁸ The Prosecution argues that, while VJ members were frequently and regularly investigated and punished in proceedings before military courts for disciplinary matters, such as desertion and insubordination, they were almost never prosecuted for crimes such as deportation, murder, rape, robbery, or destruction and damage committed against Kosovo Albanians and their property.¹²¹⁹

540. The Ojdanić Defence counters that, within the confines of his powers, Ojdanić took the measures that were available to him. The Ojdanić Defence further argues that, during the course of the war, Ojdanić received general information that crimes were being committed by members of the VJ, but was reassured by reports that consistently stated that these crimes were being addressed by the military justice organs, which were the competent authorities to handle such matters.¹²²⁰

a. Knowledge of crimes in Kosovo prior to the NATO air campaign

541. A system of reporting events in Kosovo existed in the VJ in 1998 and 1999, as discussed in Section VI.A. Through combat reports and information presented orally at collegium meetings of the General Staff and later briefings of the Supreme Command Staff, Ojdanić would be kept abreast of events in Kosovo. Ojdanić met daily with Milošević during the NATO air campaign to discuss events in Kosovo. Additionally, the VJ had checkpoints in various locations in Kosovo, which were a source of information on the movement of the population.¹²²¹ Miodrag Simić testified that at the General Staff/Supreme Command Staff there was a map on the wall showing the deployment of the Priština Corps reflecting their operations in the previous 24 hours.¹²²² Consequently, the Chamber is satisfied that Ojdanić had a thorough knowledge of the general events that were taking place in Kosovo throughout 1998 and 1999 while he was Deputy and then Chief of the General Staff of the VJ.

¹²¹⁸ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 823.

¹²¹⁹ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 832.

¹²²⁰ Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 265.

¹²²¹ 5D1031 (Order of the 37th Motorised Brigade to set-up checkpoints, 18 April 1999); Hamide Fondaj, T. 3838–3839 (25 September 2006); Dragan Zlatković, T. 25292–25294 (15 April 2008); Nebojša Bogunović, 6D1614 (witness statement dated 6 April 2008), para. 89; Agim Jemini, T. 4278 (28 September 2006).

542. The Chamber is also satisfied that in 1998 MUP and VJ forces used excessive or disproportionate force on some occasions in Kosovo.¹²²³ Although Ojdanić was informed that the KLA was responsible for some of the associated population movement,¹²²⁴ the displacement of tens of thousands of Kosovo Albanians was caused, at least in part, by this excessive use of force by the VJ and MUP in 1998. The United Nations Security Council passed resolutions concerning the situation in Kosovo and the actions of the VJ and MUP. On 31 March 1998 it issued Resolution 1160, which condemned “the use of excessive force by the Serbian police forces against civilians and peaceful demonstrators in Kosovo”.¹²²⁵ It also condemned activities of violence by the KLA.¹²²⁶ Subsequently, the Security Council issued Resolution 1199 on 23 September 1998, expressly noting its “grave concern” at the conflict in Kosovo, and “in particular the excessive and indiscriminate use of force” by the MUP and VJ, which in its consideration had resulted in “numerous civilian casualties and ... the displacement of over 230,000 people from their homes”.¹²²⁷ Resolution 1199 and its requirements were referred to explicitly and discussed at length in Ojdanić’s presence at the VJ collegium of 23 October 1998.¹²²⁸

543. Ojdanić was provided with specific information in relation to the killing of a number of civilians in Gornje Obrinje/Abria e Epërme in late September 1998, as described in Section VI.C. On 2 October 1998 the Sector for Operations and Staff Affairs of the General Staff requested information on the alleged massacre in Gornje Obrinje/Abria e Epërme, stating that, according to reports from the 3rd Army, on 26 and 27 September units of the Priština Corps provided support fire to MUP units carrying out combat operations in the villages of Gornje Obrinje/Abria e Epërme, Donje Obrinje/Abria e Poshtme, Banjica/Baica, and Basiljeno. Noting that foreign media, humanitarian organisations, and representatives of foreign states had reported a massacre of civilians, the request asked for any information on the massacre and, if it occurred, the identity of its perpetrators.¹²²⁹ Human Rights Watch researcher Frederick Abrahams testified that the Human Rights Watch report on this incident was provided to the FRY Presidency, the FRY and Serbian

¹²²² Miodrag Simić, T. 15474 (12 September 2007).

¹²²³ See Section VI.C.

¹²²⁴ See, e.g., 3D993 (PrK Report, 31 May 1998); Branko Gajić, T. 15187 (7 September 2007); P933 (Minutes of the Collegium of the General Staff of the VJ, 4 March 1999), p. 4; 3D1050 (General Staff/Supreme Command Staff Security Report, 5 March 1999).

¹²²⁵ P455 (UNSC Resolution 1160, 31 March 1998).

¹²²⁶ P455 (UNSC Resolution 1160, 31 March 1998). At the next collegium meeting in evidence following the adoption of this Resolution, it was not mentioned specifically but the views of the international community were mentioned by both Ojdanić and Perišić; 3D657 (Minutes of the Collegium of the General Staff of the VJ, 10 April 1998).

¹²²⁷ P456 (UNSC Resolution 1199, 23 September 1998).

¹²²⁸ 3D645 (Minutes of the Collegium of the General Staff of the VJ 23 October 1998).

¹²²⁹ 4D403 (General Staff Request for written statement, 2 October 1998). Frederick Abrahams, T. 806 (13 July 2006); P441 (Human Rights Watch Report entitled “A Week of Terror in Drenica - Humanitarian Law Violations in Kosovo”, 1 February 1999); Frederick Abrahams, P2227 (witness statement dated 30 May 2002), para. 19.

Ministries of Justice and the Interior, the VJ, and was also disseminated in the media.¹²³⁰ Despite this information, the General Staff was informed by Pavković that VJ units did not commit a massacre but that there was no reliable information about the MUP.¹²³¹

544. Information relating to excessive force by the VJ in Kosovo was also personally conveyed to Ojdanić in 1998. Crosland testified that he considered that Ojdanić was well aware of events due to “very precise information that we were passing to General Ojdanić and the VJ staff, that the VJ was actively engaged in operations with the MUP, and they were providing ... both the direct fire support from tanks, the indirect from artillery, and mortars”.¹²³² Crosland discussed his visit to Dečani/Dečan municipality with Ojdanić at the briefing to the Belgrade Defence Attaché Association, on 27 August 1998.¹²³³ He told Ojdanić about his observation of four hours of direct and indirect fire on the villages of Prilep/Prelep, Junik, Rznica/Rznic and Glogane/Glogjan, in the areas of Štimlje/Shtima, and Mališevo/Malisheva.¹²³⁴ Crosland told Ojdanić that he understood that the VJ’s role had been changed, but that such massive destruction was unacceptable.¹²³⁵ He asserted that Ojdanić did not refute the facts but attempted to explain what Crosland and his colleagues had seen, stating that the VJ was operating in Kosovo to protect the lines of communication.¹²³⁶ Ojdanić responded to information that the VJ had been using disproportionate force in Kosovo by saying that “force would be met with [appropriate] force”.¹²³⁷

545. Crosland gave evidence that in 1998 he made a video of the VJ shelling villages using multi-rocket launchers, artillery, and tanks in direct support of MUP forces in Kosovo.¹²³⁸ The video showed shells landing in and among villages. In his written statement and oral testimony, Crosland stated that he handed the video to Ojdanić and confronted him with it.¹²³⁹ Subsequently, however, on cross-examination, he stated that he handed it to the Foreign Liaison Service, which was headed by Negovan Jovanović, and that he did not know whether Ojdanić actually saw the

¹²³⁰ Frederick Abrahams, T. 818 (13 July 2006), P2228 (witness statement dated 30 May 2002), p. 12.

¹²³¹ P1440 (Reply 880 - 290 re details on incident in region of border tower "Kosara", 5 October 1998).

¹²³² John Crosland, T. 9892–9893 (8 February 2007).

¹²³³ John Crosland, P2645 (witness statement dated 31 October 2006), para. 42, T. 9750–9751, T. 9792–9794 (7 February 2007).

¹²³⁴ Crosland accepted that in his witness statement he gave a different date for this meeting and explained that he had been mistaken as to the exact date at that earlier stage. John Crosland, T. 9881–9884 (8 February 2007); 3D512 (Crosland’s Notes on Brief on the Kosovo Situation by Ojdanić, 28 August 1998); *see also* P684 (Confidential Sitrep from U.K. Military Representative, 6 November 1999), p. 2.

¹²³⁵ John Crosland, T. 9804–9805 (7 February 2007). Dimitrijević stated that Crosland told him that the VJ was using excessive force in Kosovo. Aleksandar Dimitrijević, T. 26627 (8 July 2008).

¹²³⁶ John Crosland, T. 9789–9790, T. 9803–9804 (7 February 2007); John Crosland, 3D507 (witness statement dated 26 May 1999), para. 26

¹²³⁷ P2554 (Confidential Sitrep from U.K. Military Representative, 28 August 1998), p. 1; John Crosland, T. 9750–9751, T. 9787–9790 (7 February 2007).

¹²³⁸ John Crosland, T. 9798 (7 February 2007).

video.¹²⁴⁰ Negovan Jovanović testified that he did not receive any such video and neither did his staff.¹²⁴¹ Dimitrijević also testified that Crosland told him that he had a video showing the excessive use of force by the VJ, but that he never delivered it to him.¹²⁴² The Chamber does not rely on Crosland's account that a video was handed over but is satisfied that information regarding excessive uses of force by the VJ in 1998 was passed on by Crosland orally to Ojdanić.

546. Once Ojdanić became Chief of the General Staff, he chaired its collegium meetings, at which reports from the strategic groups and the various sectors and administrations were provided. Ojdanić's first collegium meeting as Chief of the General Staff was on 27 November 1998.¹²⁴³ At that meeting, after a report on some unusual incidents involving the non-combat deaths of VJ members and civilians, he issued his first task to the Sector for Operations and Staff Affairs, that being to provide him personally with all reports by commands and units about "unusual events involving fatal consequences."¹²⁴⁴ Nonetheless, problems with reporting from the 3rd Army and Priština Corps about VJ actions in Kosovo continued in December 1998 and 1999, as noted above. Later, after Dimitrijević expressed his disapproval of operations of the Priština Corps in Kosovo being reported as defensive reactions on 4 March 1999, Ojdanić tasked the Section for Operations and Staff Affairs with preparing a warning order, on the grounds that this was necessary to prevent any "rampage" without the relevant command being aware of it, and thus to ensure that they had done what they could to avoid future actions.¹²⁴⁵ Đorđe Ćurčin stated that, following the meeting, he drafted an order for signature by Ojdanić, but did not elaborate on the content of that order or whether it was signed and disseminated.¹²⁴⁶

547. Ojdanić also took measures to counter reports of criminal activity by VJ members. Upon becoming Chief of the General Staff, he accepted the offer from the International Committee of the Red Cross ("ICRC") to run a seminar for high-ranking officers of the VJ on the requirements of international humanitarian law, which was held Ojdanić's first day in office.¹²⁴⁷ Ojdanić personally provided the opening speech at this seminar, which occurred on 25 and 26 November 1998, coinciding with his first day as Chief of the General Staff.¹²⁴⁸ In the speech he noted that seminars

¹²³⁹ John Crosland, P2645 (witness statement dated 31 October 2006); John Crosland, T. 9785, 9798 (7 February 2007).

¹²⁴⁰ John Crosland, T. 9785 (7 February 2007), T. 9889–9893 (8 February 2007).

¹²⁴¹ Negovan Jovanović, T. 14911–14914 (4 September 2007).

¹²⁴² Aleksandar Dimitrijević, T. 26628 (8 July 2008).

¹²⁴³ P925 (Minutes of the Collegium of the General Staff of the VJ, 27 November 1998).

¹²⁴⁴ P925 (Minutes of the Collegium of the General Staff of the VJ, 27 November 1998), p. 8.

¹²⁴⁵ P938 (Minutes of the Collegium of the General Staff of the VJ, 18 March 1999), pp. 15, 26.

¹²⁴⁶ Đorđe Ćurčin, T. 16948 (5 October 2007).

¹²⁴⁷ Zlatoje Terzić, T. 15888–15894 (18 September 2007); 3D712 (Ojdanić Order on Preparation of Seminar, 3 February 1998); 3D713 (List of Participants at Seminar); 3D714 (Professor Borović Report on Seminar).

¹²⁴⁸ 3D711 (Ojdanić Welcoming Speech at the Seminar for the VJ Main HQ Officers, 25 November 1998).

had been held in all the strategic commands of the VJ, with the assistance of ICRC representatives. Concluding his address, he stated that the military operations of the FRY to defend its territorial integrity were being conducted in accordance with the principles of international law.

b. Knowledge of crimes in Kosovo after 23 March 1999

548. At the outset of the NATO air campaign, the General Staff of the VJ was transformed into the Supreme Command Staff, and the meetings of the collegium were replaced by Supreme Command Staff briefings. Throughout the conflict, the VJ command system continued to operate, and combat reports were regularly sent from subordinate commands to superior commands.¹²⁴⁹

549. On 20 March 1999 the VJ reporting system was adjusted, ending the practice of sending separate security reports from the security organs in subordinate units directly to the Security Administration of the General Staff/Supreme Command Staff. Instead, the new practice was to include the information formerly in the separate reports in the regular combat reports, sent to the 3rd Army and, from there, up to the Supreme Command Staff.¹²⁵⁰ Geza Farkaš testified that the reason for this change was the new wartime scenario and to speed up communications with subordinate units.¹²⁵¹ However, from approximately 10 April onwards combat reports from the Priština Corps were sent to the General Staff/Supreme Command Staff as well as the 3rd Army command. Radojko Stefanović, who was the commander of the 52nd Mixed Artillery Brigade of the Priština Corps, stated that the reason for this adjustment was to facilitate quick information flows as the situation became more complex.¹²⁵² The Chamber notes that this reasoning is inconsistent with the reasoning provided for the 20 March change to the reporting system, stopping the direct transmission of separate security reports to the Security Administration, which was that it would speed up reporting to have security reports included in the regular combat reports instead of being sent directly to superior commands. The Chamber does not reach any finding based on this inconsistency but notes that crimes committed within the areas of VJ responsibility should have been reported in the regular combat reports.¹²⁵³

550. During the conflict, in response to concerns about information in combat reports, Ojdanić issued general orders to improve the organisation of information contained in these reports to the

¹²⁴⁹ 3D865 (Report of the Supreme Command Staff, 30 May 1999), pp. 8, 11; Miodrag Janković, 4D504 (witness statement dated 23 October 2007), paras. 8, 12–13; P1319 (Pavković responds to callers' questions, Belgrade RTS Television First Program, 20 October 2000), e-court p. 17; 3D801 (Combat Report of General Staff, 27 March 1999), p. 5; Miodrag Simić, 3D1089 (witness statement dated 15 August 2007), para. 11; Branko Gajić, 3D1084 (witness statement dated 17 August 2007), paras. 139–140.

¹²⁵⁰ Branko Gajić, T. 15188–15189 (7 September 2007); Geza Farkaš, T. 16292 (25 September 2007).

¹²⁵¹ Geza Farkaš, T. 16291 (25 September 2007).

¹²⁵² Radojko Stefanović, T. 21710 (5 February 2008).

General Staff/Supreme Command Staff.¹²⁵⁴ The security organs also provided to Ojdanić information about the commission of crimes in Kosovo that was not contained in regular combat reports.¹²⁵⁵ Information was also reported from the military justice organs to the Legal Administration of the General Staff/Supreme Command Staff.¹²⁵⁶

i. Crimes by VJ members

551. As the NATO air campaign continued, specific references to crimes committed by VJ members were provided to Ojdanić. Third Army combat reports of 26 and 31 March referred to “[i]solated incidents of unacceptable behaviour” and “individual cases of robbery”, but added that these were being resolved by the respective commands and also referred to some prosecutions being initiated.¹²⁵⁷ The 3rd Army combat report of 3 April referred to 32 criminal reports submitted to the Military Prosecutor’s Office for disciplinary and criminal offences.¹²⁵⁸ At the Supreme Command Briefing of the same day, Branko Gajić, the Deputy Head of the Security Administration, reported that VJ soldiers had committed criminal acts in Kosovo and that 32 volunteers had been demobilised.¹²⁵⁹ He testified that these volunteers were involved in the killing of eight civilians as well as robbing civilians and torching their houses in Žegra/Zhegra in Gnjilane/Gjilan municipality.¹²⁶⁰ At the briefing Ojdanić stated that the 3rd Army Command would have to explain why the 32 volunteers were together and not dispersed in units.¹²⁶¹

552. On 7 April 1999 Ojdanić referred to “earlier negative experiences” including arson, theft, and looting committed by VJ members and stated that these activities, along with the commission of rape, would not be tolerated.¹²⁶² Specific information concerning criminal activity by VJ personnel was again provided at the briefing of 18 April 1999. There Ojdanić was informed of a case in Đakovica/Gjakova, which concerned the rape of a 16 year-old Kosovo Albanian girl by three VJ soldiers.¹²⁶³ Gajić testified that these soldiers were arrested and prosecuted, and that as far

¹²⁵³ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 55.

¹²⁵⁴ 3D678 (Order on Combat Reports, 30 May 1999); 3D688 (VJ Manual on Combat Reports, 30 May 1999).

¹²⁵⁵ Geza Farkaš, T. 16292–16293 (25 September 2007); Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 56; *see also* Momir Stojanović, T. 19778–19779, 19818 (7 December 2007).

¹²⁵⁶ Aleksandar Vasiljević, T. 8964 (23 January 2007).

¹²⁵⁷ 4D272 (3rd Army Combat Report to VJ General Staff, 26 March 1999), p. 2; 4D273 (3rd Army Combat Report to VJ General Staff, 31 March 1999), pp. 2–3.

¹²⁵⁸ 4D276 (3rd Army Combat Report to VJ General Staff, 3 April 1999).

¹²⁵⁹ 3D721 (Briefing to the Chief of Staff of the Supreme Command, 3 April 1999), p. 2; *see also* P1938 (3rd Army Report to Supreme Command Staff, 10 April 1999), p. 2.

¹²⁶⁰ Branko Gajić, T. 15333 (11 September 2007).

¹²⁶¹ 3D721 (Briefing to the Chief of Staff of the Supreme Command, 3 April 1999), p. 2.

¹²⁶² P1479 (Order re Volunteers, 7 April 1999).

¹²⁶³ 3D589 (Briefing to the Chief of Staff of the Supreme Command, 18 April 1999), p. 1; *see also* 4D513 (3rd Army Security Report to VJ General Staff, 18 April 1999), p. 1.

as he knew they received prison sentences.¹²⁶⁴ The 17 April report of the 3rd Army Legal Affairs Department informed the Supreme Command Staff that one VJ member was being prosecuted for the crime of murder but that other prosecutions were for less serious crimes such as abandonment of post or property-related crimes.¹²⁶⁵

553. At the same time regular reports were received by the Supreme Command Staff indicating that some criminal activity by VJ members was being dealt with by the military justice system.¹²⁶⁶ At the briefing of 16 April the Assistant Chief of the General Staff for Recruitment, Mobilisation, and System Matters, Risto Matović, reported that the military judicial organs had passed sentences ranging from one month to ten years' imprisonment.¹²⁶⁷ However, these reports did not contain references to serious violent crimes committed by VJ members against Kosovo Albanians. Witnesses from the General Staff/Supreme Command Staff testified that, although there were reports of individual crimes by VJ personnel, there was no mention in reports received by the General Staff/Supreme Command Staff of mass violations of international humanitarian law.¹²⁶⁸ At the briefings of the Chief of the Supreme Command Staff during the NATO air campaign, only vague references were made to crimes committed by VJ forces in Kosovo.¹²⁶⁹ This is consistent with Section VI.A.1.e, where the Chamber concluded that the VJ military justice system functioned throughout the NATO campaign but in a way that resulted in only a small proportion of the violent crimes against Kosovo Albanians being the subject of prosecution, while crimes against the VJ or Serbian victims were prosecuted more effectively.

¹²⁶⁴ Branko Gajić, T. 15317 (10 September 2007).

¹²⁶⁵ 5D1350 (Report of 3rd Army Legal Department, 17 April 1999).

¹²⁶⁶ See 4D273 (3rd Army Combat Report to VJ General Staff, 31 March 1999), p. 2; 4D274 (3rd Army Combat Report to VJ General Staff, 1 April 1999), p. 2; P1937 (3rd Army Combat Report to VJ General Staff, 5 April 1999), p. 3; P1945 (3rd Army Combat Report to VJ General Staff, 20 April 1999), p. 3; 4D281 (3rd Army Combat Report to Supreme Command Staff, 24 April 1999), p. 2; P1912 (3rd Army Report on criminal cases, military prosecution, and courts, 1 May 1999), p. 1; 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); 4D260 (3rd Army Combat Report to VJ General Staff, 28 May 1999), pp. 2–3.

¹²⁶⁷ 3D587 (Briefing to the Chief of Staff of the Supreme Command, 16 April 1999), p. 2.

¹²⁶⁸ Miodrag Simić, 3D1089 (witness statement dated 15 August 2007), para. 22; Staniša Ivković, 3D1117 (witness statement dated 20 August 2007), paras. 13, 27; Đorđe Ćurčin, 3D1121 (witness statement dated 24 August 2007), para. 41.

¹²⁶⁹ 3D598 (Briefing to the Chief of Staff of the Supreme Command, 28 April 1999), p. 1 ("Proceedings are underway against 24 individuals who have demonstrated a form of negative activity."); 3D599 (Briefing to the Chief of Staff of the Supreme Command, 29 April 1999), p. 1 ("The security situation is stable, although with an incidence of crime in the 608th [logistics base]."); 3D600 (Briefing to the Supreme Command Staff, 30 April 1999), p. 5 ("The work of courts is quite slow."); 3D601 (Briefing to the Supreme Command Staff, 1 May 1999), p. 1 ("12 cases of negative conduct registered."); 3D612 (Briefing to the Supreme Command Staff, 12 May 1999), p. 2 ("The work of military prosecutors has increased. The number of sentences has increased."); 3D613 (Briefing to the Supreme Command Staff, 13 May 1999), p. 2 ("The order to study and apply the criminal code was prepared.").

554. The Supreme Command Staff also received information during the NATO campaign that the “West” continued to be concerned by widespread and serious crimes being committed in Kosovo. At the briefing of 15 April 1999 Gajić reported that activity was being undertaken in relation to allegations of mass graves.¹²⁷⁰ He testified that the Security Administration had “tried to check things out” but that it could not obtain details and so attributed the matter to media manipulation.¹²⁷¹ The measures taken by the Priština Corps in relation to these discoveries are detailed below. On 15 April Ojdanić reported to the Supreme Commander, along with *inter alios* the Federal Minister of Defence and the Serbian President, Milutinović, that foreign sources continued to collect data on crimes allegedly committed against the Kosovo Albanian population.¹²⁷² On 16 April Ojdanić reported to the same recipients that these foreign “psychological and propaganda activities” were continuing, with the “enemy” stressing the humanitarian catastrophe, ethnic cleansing, the documentation of mass graves from satellite imagery, and mass rape being carried out in Kosovo.¹²⁷³ He made repeated reports of a similar nature in the following days.¹²⁷⁴ Moreover, at the briefing of 4 May, Ojdanić was told that the foreign press was reporting mass killings in the FRY, although no further details were provided.¹²⁷⁵

555. Ojdanić issued a number of orders requiring adherence to international humanitarian law and the prosecution of VJ members breaching these rules throughout the NATO air campaign.¹²⁷⁶ On 18 April 1999 Ojdanić had 350 copies of an ICRC brochure on the laws of international humanitarian law distributed within the 3rd Army.¹²⁷⁷ Members of the VJ were typically issued with a brochure containing general guidance in relation to international humanitarian law upon induction into the VJ.¹²⁷⁸ Ojdanić also issued an order on 23 April 1999 requiring that documents containing the international laws of war be distributed to all officers and soldiers in the VJ.¹²⁷⁹

¹²⁷⁰ 3D586 (Briefing to the Chief of Staff of the Supreme Command, 15 April 1999), p. 1; *see also* 3D821 (VJ General Staff Combat Report, 16 April 1999), p. 6.

¹²⁷¹ Branko Gajić, T. 15268–15269 (7 September 2007).

¹²⁷² 3D820 (Supreme Command Staff Combat Report, 15 April 1999), p. 5.

¹²⁷³ 3D821 (Combat Report of the Supreme Command Staff, 16 April 1999), p. 6.

¹²⁷⁴ 3D825 (Combat Report of the Supreme Command Staff, 20 April 1999), p. 5; 3D826 (Combat Report of the Supreme Command Staff, 21 April 1999), p. 6.

¹²⁷⁵ 3D604 (Briefing to the Chief of the Supreme Command Staff, 4 May 1999), p. 1.

¹²⁷⁶ 3D1121 (witness statement dated 24 August 2007), para. 32; *see, e.g.*, 3D480 (Order of the Supreme Command Staff, 2 April 1999); Miodrag Simić, 3D1089 (witness statement dated 15 August 2007), para. 12; P1477 (Order on military discipline, 3 April 1999); P1486 (warning on adherence to international humanitarian law, 16 April 1999), also admitted as 3D482, 4D216; *see also* Branko Gajić, T. 15262 (7 September 2007). *But cf.* P1476 (Order on collecting data on NATO crimes against humanity, 3 April 1999).

¹²⁷⁷ Branko Gajić, 3D1084 (witness statement dated 8 August 2007), para. 145; 3D1116 (Radovan Radinović’s Expert Report), p. 149; 3D1110 (Regulations on the Application of International Laws of War in the SFRY), e-court p. 89.

¹²⁷⁸ Radomir Gojović, T. 16647–16648 (2 October 2007); Geza Farkaš, T. 16315 (25 September 2007).

¹²⁷⁹ P1944 (Letter by Blagoje Kovačević re distribution of documents International Laws of War), p. 1.

556. On 26 March 1999, then Tribunal Prosecutor, Louise Arbour, wrote to Ojdanić, informing him of her grave concern at the continued commission of serious breaches of international humanitarian law in Kosovo. She directed him to the substantive criminal provisions of the Statute of the Tribunal on individual criminal responsibility and exhorted him to take measures to prevent and punish the commission of such crimes by his subordinates. Although it appears that the Federal Ministries of Foreign Affairs and Justice held on to this letter for some time before passing it on to him, it is clear that Ojdanić received the letter by 2 May 1999.¹²⁸⁰

557. Following the receipt of the letter, a meeting took place on 4 May 1999 to discuss events in Kosovo during the NATO air campaign, including the crimes allegedly being committed there and the reaction of the military courts.¹²⁸¹ Press releases issued after the meeting indicated that Milošević, Milutinović, Pavković, Lukić, and others were present along with Ojdanić. These reports, which are identical in content aside from some language differences, were challenged by the Ojdanić Defence.¹²⁸² However, the occurrence of the 4 May meeting to deal with criminal activity involving the VJ and MUP in Kosovo is corroborated by a number of sources, and the press release issued after the meeting was in fact issued to the MUP as a formal order for MUP personnel to read.¹²⁸³ Furthermore, when asked about the content of one of these press reports, Milovan Vljaković, the Chef de Cabinet of the Chief of the General Staff/Supreme Command Staff, stated that he had heard of this meeting, and that he thought Ojdanić attended.¹²⁸⁴ The Chamber is satisfied as to the reliability of the documents in so far as they indicate that a meeting occurred, that the issues referred to therein were discussed, and the press release issued.

558. According to the reports of the meeting, information was presented that the “security forces” had dealt with numerous cases of violence, killings, pillage, and other crimes, and had arrested several hundred perpetrators whose crimes endangered the civilian population.¹²⁸⁵ Those present at the meeting concluded 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 five and 20

¹²⁸⁰ Milovan Vljaković, T. 16024–16025 (20 September 2007); P401 (Letter from Louise Arbour to Dragoljub Ojdanić, 26 March 1999); *see also* 3D1090 (Letter from Louise Arbour to Dragoljub Ojdanić, with cover letter from Ministry of Justice).

¹²⁸¹ P1696 (“Army, Police Heads Inform Milo[š]evi[ć] of Successful Defense”, Report of RTS, 5 May 1999), p. 1; 4D406 (Security Situation in Kosovo, Report of Politika, 5 May 1999).

¹²⁸² T. 16105–16106 (21 September 2007), T. 22547 (15 February 2008).

¹²⁸³ *See* 5D1289 (Sreten Lukić’s report regarding *Politika* News Article, 6 May 1999), also admitted as P2159; Dušan Gavranović, T. 22722 (19 February 2008); Miloš Vojnović, T. 24188 (12 March 2008); *see also* Ljubiša Stojimirović, T. 17684 (26 October 2007); P1996 (Minutes of the MUP Staff meeting, 7 May 1999), p. 4; Miroslav Mijatović, T. 22286–22289 (13 February 2008).

¹²⁸⁴ Milovan Vljaković, T. 16081–16082 (20 September 2007).

¹²⁸⁵ P1696 (“Army, Police Heads Inform Milo[š]evi[ć] of Successful Defense”, Report of RTS, 5 May 1999), p. 1.

years' imprisonment for these crimes.¹²⁸⁶ The Chamber notes that the statement emerging from the meeting about a "large number" of sentences is inconsistent with various reports produced by the VJ on the work of the military courts during the NATO air campaign, none of which indicates that any sentences of between five and 20 years' imprisonment had been imposed by the military courts for crimes committed during the NATO campaign against civilians by 4 May 1999.¹²⁸⁷ Given this clash with other VJ official reports, the Chamber does not rely on the press releases as evidence that military courts had in fact imposed serious sentences for crimes against civilians committed during the NATO campaign.

559. A meeting of the MUP Staff for Kosovo on 7 May 1999 also discussed how crimes by VJ members, including murder, looting, and torching homes, were not being adequately dealt with by the military justice system.¹²⁸⁸ Božidar Filić testified that, following the meeting, he investigated further and found out that those VJ members who had been found committing crimes were investigated but were returned to their VJ units pending the end of the NATO campaign.¹²⁸⁹ This information is consistent with accounts of the 4 May meeting, which indicate that numerous crimes against civilians had been committed in Kosovo in the preceding weeks, including by VJ members, and that Ojdanić was made aware of this.

560. Following the meeting of 4 May, Ojdanić issued an order strongly emphasising the need to prevent violations of international humanitarian law, as described below.¹²⁹⁰ He warned that officers would also be held responsible if they knew that violations had been committed and they failed to take appropriate actions against the perpetrators.¹²⁹¹ There was an annex attached to this

¹²⁸⁶ P1696 ("Army, Police Heads Inform Milo[š]evi[ć] of Successful Defense", Report of RTS, 5 May 1999), pp. 1–2.

¹²⁸⁷ P1912 (3rd Army Report on criminal cases, military prosecution, and courts, 1 May 1999); P1940 (Wartime Military Prosecutor's Offices and Courts Progress Report, 30 April 1999); *see* P1182 (Information sent by PrK to the 52nd Artillery Rocket Brigade, 15 May 1999); 3D986 (VJ General Staff Report on criminal cases, 6 September 1999); P830 (Report on criminal proceedings instituted by the military judicial organs, 9 April 2002); P954 (Report on criminal cases, military prosecution and courts, 20 August 2001); P955 (Summary Review of Report on criminal cases, military prosecution and courts); P845 (Report on criminal cases for sexual assault in military courts, 11 September 2002). The Chamber notes that P962 (549 the Motorised Brigade Report on criminal cases, military prosecution and courts, May 1998–July 1999) lists some serious sentences imposed but observes that these relate to crimes in 1998 and were imposed against Kosovo Albanians listed as civilians and that Radomir Gojović, who was the head of the Legal Administration of the General Staff of the VJ during the NATO air campaign in 1999, testified that he did not know of any prosecutions of KLA members in the military courts. Radomir Gojović, T. 16704 (2 October 2007). This indicates that the reference made at the 4 May meeting to numerous serious sentences for crimes committed during the NATO campaign being imposed by military courts were not sentences against KLA members for crimes during the NATO campaign.

¹²⁸⁸ P1996 (Minutes of the MUP Staff meeting, 7 May 1999), pp. 5–9.

¹²⁸⁹ Božidar Filić, T. 23976 (10 March 2008).

¹²⁹⁰ Radomir Gojović, T. 16672–16673 (2 October 2007); Milovan Vlajković, 3D1112 (witness statement dated 17 August 2007), para. 15; 3D483 (Order of the Supreme Command Staff, 10 May 1999).

¹²⁹¹ Radomir Gojović, T. 16674 (2 October 2007).

order, outlining criminal liability for war crimes and other violations of the international laws of war, which commanders of units were ordered to review with their units.¹²⁹²

561. At the later stages of the NATO air campaign, allegations of further crimes by VJ members were reported to the Supreme Command Staff. At the 2 June briefing of the Supreme Command Staff, Farkaš stated that crimes were occurring in Kosovo but that reports of crimes committed by VJ personnel in Kosovo were not going through the regular channels and that the reports were not providing information with respect to the criminal activity of VJ members in Kosovo.¹²⁹³ Farkaš further stated that the bodies of 15 people, including women and children, had been found in the area of the 15th Armoured Brigade which, according to Vladimir Marinković, was deployed in the general Vučitrn/Vushtrria area.¹²⁹⁴ When questioned about these comments, Farkaš explained that, in the turmoil of pulling out of Kosovo, some reservists had taken the opportunity to commit crimes.¹²⁹⁵ At the briefing of 4 June Farkaš reported that claims were being made that criminals were working in the VJ and that the “mobilised” judicial organs were implicated in criminal activity.¹²⁹⁶ Nonetheless, at the following briefing, on 8 June 1999, Farkaš reported that an analysis had been carried out and that most of the atrocities and serious crimes from looting to rapes had been documented and were before military court organs. He reported that around 95 per cent of the perpetrators had been arrested or were under investigation.¹²⁹⁷

ii. Measures taken in relation to volunteers

562. The VJ received volunteers into its ranks in 1999, as described in section VI.A. The Administration for Recruitment, Mobilisation, and System Issues within the General Staff/Supreme Command Staff was the office in charge of the organisation and mobilisation of volunteers into the VJ.¹²⁹⁸ Žarko Kostić, the head of the 3rd Army Office for Accepting, Selection and Training of Volunteers, testified that, following training, volunteers would be transferred to units of the VJ, and that this transfer was handled by a special commission of the General Staff/Supreme Command

¹²⁹² Radomir Gojović, T. 16675 (2 October 2007); 3D483 (Order of the Supreme Command Staff, 10 May 1999).

¹²⁹³ 3D633 (Briefing to the Supreme Command Staff, 2 June 1999), pp. 1–3; Geza Farkaš, T. 16365 (25 September 2007).

¹²⁹⁴ 3D633 (Briefing to the Supreme Command Staff, 2 June 1999), p. 1.

¹²⁹⁵ Geza Farkaš, T. 16301–16302, 16366–16367 (25 September 2007).

¹²⁹⁶ 3D635 (Briefing to the Supreme Command Staff, 4 June May 1999), p. 2. Ojdanić was not present at the meeting, but Matović stated that he would report its content to the Chief of Staff. 3D635 (Briefing to the Supreme Command Staff, 4 June May 1999), p. 4.

¹²⁹⁷ 3D479 (Report to the Chief of the Supreme Command Staff, 8 June 1999). The handwritten version of these notes are contained in the document 3D493.

¹²⁹⁸ Slobodan Kosovac, T. 15802–15803 (17 September 2007); 3D481 (Order of the Supreme Command Staff, 14 April 1999).

Staff of the VJ through computer systems, to avoid any kind of personal requests or favouritism.¹²⁹⁹ Slobodan Kosovac testified that measures were adopted by the General Staff/Supreme Command Staff at the start of the NATO campaign,¹³⁰⁰ which were designed to prevent criminals entering the VJ as volunteers.¹³⁰¹

563. Following the receipt of information that volunteers in the VJ were committing serious crimes in Kosovo, at the start of April 1999 Ojdanić issued an order relating to volunteers.¹³⁰² Close attention was to be paid to the results of the psychiatric examinations required of volunteers, and the MUP was to be consulted to establish that they would not constitute security risks. The order prohibited the grouping of volunteers in one unit, and strictly prohibited the operation of paramilitary groups. However, it allowed paramilitary members to become volunteers as long as they passed screening requirements.¹³⁰³ Subsequently, Ojdanić issued a second order on the training of volunteers on 14 April 1999, directing that they be told that unlawful behaviour would not be tolerated.¹³⁰⁴ In that order, which was issued to the various armies and the sections of the General Staff/Supreme Command Staff, he required that paramilitaries being admitted as volunteers had to pass the correct procedures outlined in the order.¹³⁰⁵ The order itself referred to a security check and the fact that volunteers should undertake a seven day training, during which they would be told to adhere to the laws and customs of war and that any violations of these rules would be prosecuted.¹³⁰⁶ However, this order also allowed paramilitary members to become volunteers as long as such individuals complied with the screening requirements.¹³⁰⁷

564. Ojdanić issued a similar order on 20 April 1999.¹³⁰⁸ In relation to the reference therein that volunteers were most often “paramilitary groups that had been formed before”, Slobodan Kosovac testified that the volunteers were processed individually and so reports of membership in paramilitary groups were mere assumptions.¹³⁰⁹ However, Dragiša Marinković, who inspected the 175th Infantry Brigade in mid-April 1999, said that the soldiers were ill-disciplined and that he came across a unit of approximately 30 men in the 175th Infantry Brigade that was composed

¹²⁹⁹ Žarko Kostić, T. 17506 (23 October 2007).

¹³⁰⁰ See, e.g., P1678 (Order about Induction of Foreign Nationals, 5 April 1999).

¹³⁰¹ Slobodan Kosovac, T. 15857 (18 September 2007); see also Geza Farkaš, T. 16314 (25 September 2007).

¹³⁰² P1479 (Order re Volunteers, 7 April 1999).

¹³⁰³ P1479 (Order re Volunteers, 7 April 1999); see also Slobodan Kosovac, T. 15860 (18 September 2007).

¹³⁰⁴ 3D481 (Order of Supreme command Staff on the Reception of Volunteers, 14 April 1999), p. 3.

¹³⁰⁵ 3D481 (Order of Supreme command Staff on the Reception of Volunteers, 14 April 1999), p. 2.

¹³⁰⁶ 3D481 (Order of Supreme command Staff on the Reception of Volunteers, 14 April 1999), pp. 2–4.

¹³⁰⁷ 3D481 (Order of Supreme command Staff on the Reception of Volunteers, 14 April 1999), p. 2.

¹³⁰⁸ P1943 (Supreme Command Staff document re problems related to volunteers, 20 April 1999).

¹³⁰⁹ Slobodan Kosovac, T. 15808 (17 September 2007). See generally P1943 (Supreme Command Staff document re problems related to volunteers, 20 April 1999), p. 1.

entirely of volunteers.¹³¹⁰ Branko Gajić testified that it was known that a Colonel Štupar assisted volunteers with circumventing admission procedures to the VJ, but he was unsure what action was taken against him.¹³¹¹ Ojdanić subsequently issued further orders regulating the intake of volunteers to the VJ.¹³¹²

iii. Knowledge of VJ and MUP involvement in humanitarian crisis

565. Information about the broader humanitarian situation in Kosovo was provided to Ojdanić during the opening stages of the NATO air campaign. For example, at the briefing of 28 March 1999 it was stated by the Intelligence Administration of the General Staff/Supreme Command Staff that NATO was meeting to consider the Kosovo issue and the figure of 500,000 refugees “over which there is much speculation.”¹³¹³ Specific information indicating that the MUP and VJ were involved in controlling the movement of the civilian population was provided to Ojdanić on 28 March in the General Staff/Supreme Command Staff combat report, which noted that to secure the situation in Kosovo it was necessary to intensify controls on the movement of the population in coordination with the MUP.¹³¹⁴

566. Velimir Obradović testified that movements of the civilian population did not fall within the sphere of competence of the VJ, unless they interfered with the movement of troops or if the KLA was involved.¹³¹⁵ However, on 31 March 1999 a report from the Priština Corps stated that MUP and military territorial units were controlling the movement of the Kosovo Albanian population and “channeling” them towards the border.¹³¹⁶ Another VJ combat report at this time indicated that displaced people in Kosovo were being directed by the VJ to stay in Kosovo.¹³¹⁷ The Chamber is satisfied that the VJ was involved with the movement of the civilian population and that Ojdanić was aware of this involvement.

567. In relation to displaced people and crimes being committed in Kosovo, Drewienkiewicz gave a press statement on 2 April 1999 at the latest. He reported large numbers of displaced Kosovo Albanians arriving at the borders, and conveyed reports of widespread crimes committed

¹³¹⁰ Dragiša Marinković, T. 20148–20149 (12 December 2007).

¹³¹¹ Branko Gajić, T. 15311–15313 (10 September 2007).

¹³¹² P1688 (Cable re cases of abuse, persons with psychological problems, 4 May 1999); 3D1116 (Radovan Radinović’s Expert Report), pp. 151–152; 3D490 (Supreme Command Staff Telegram, 4 May 1990), p. 1; *see also* Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), paras. 25–27.

¹³¹³ 3D898 (Supreme Command Staff Intelligence Administration Briefing, 28 March 1999), p. 1; *see also* 3D803 (General Staff Combat Report, 29 March 1999), p. 5; 3D584 (Briefing to the Chief of Staff of the Supreme Command, 31 March 1999), p. 2; 3D805 (General Staff Combat Report, 31 March 1999), p. 5.

¹³¹⁴ 3D802 (General Staff Combat Report, 28 March 1999), p. 4.

¹³¹⁵ Velimir Obradović, T. 17377 (22 October 2007).

¹³¹⁶ P2930 (PrK Command Group Combat Report to PrK, 31 March 1999), p. 2.

by the VJ and MUP, including deportation from Kosovo. He stated that 6,000 to 8,000 displaced Kosovo Albanians had left for Macedonia the day before and 7,000 were seen leaving on a train that day, along with 50,000 more waiting to cross the border. He specifically referred to crimes by FRY/Serbian forces committed against Kosovo Albanians and their property in Peć/Peja and Prizren, and “systematic looting” and the forcible removal of Kosovo Albanians from Priština/Prishtina.¹³¹⁸ The Intelligence Administration was charged with informing Ojdanić of such accounts, as described in Section VI.A. Given the relevance of the topic and Drewienkiewicz’s involvement in Kosovo prior to the NATO air campaign, the Chamber is satisfied that this press release was provided to Ojdanić.

568. The issue of displaced Kosovo Albanians was discussed the next day at the 3 April 1999 briefing of the General Staff/Supreme Command Staff. Ojdanić was informed by Branko Krga, the Head of the Intelligence Administration, of claims that there were 500,000 “refugees” in Kosovo.¹³¹⁹ Krga suggested setting up “refugee” checkpoints. In response, Ojdanić ordered that a denial of the refugee problem be prepared by the Information Administration.¹³²⁰ Milivoje Novković explained that this meant a denial of the numbers of refugees being claimed, rather than a denial of the problem altogether.¹³²¹ This information was again conveyed a week later at the collegium meeting of the General Staff/Supreme Command Staff held on 9 April. There Ojdanić was informed by Gajić that it was the KLA that was causing the population to move.¹³²² Gajić stated “the enemy will conduct planned activity to push out *Šiptars* in order to accuse the Army of Yugoslavia and the state of ethnic cleansing and genocide of the *Šiptars*, thereby creating even more favourable conditions ... for operations by NATO ... against ... our forces.”¹³²³ His recommendation was that the security regime in Kosovo should be “stepped up” and should “focus on controlling the movements of the population and foreigners in the zones of combat operations and particularly in the areas of unit deployment” and concentrate on “protecting the secrecy of the decisions and activities of forces”.¹³²⁴ Additionally, the Supreme Command Staff combat report of

¹³¹⁷ See 4D510 (3rd Army Combat Report to VJ General Staff, 24 March 1999), pp. 1–2.

¹³¹⁸ P2542 (Drewienkiewicz’s Press Statement, April 1999); Karol John Drewienkiewicz, T. 7815 (4 December 2006).

¹³¹⁹ 3D721 (Briefing to the Chief of Staff of the Supreme Command, 3 April 1999), p. 1; see also 3D911 (Intelligence Administration Briefing, 3 April 1999), p. 1.

¹³²⁰ 3D721 (Briefing to the Chief of Staff of the Supreme Command, 3 April 1999), pp. 1, 5.

¹³²¹ Milivoje Novković, T. 16269–16270 (24 September 2007).

¹³²² P929 (Minutes of the Collegium of the General Staff of the VJ for 9 April 1999), pp. 8–9.

¹³²³ P929 (Minutes of the Collegium of the General Staff of the VJ for 9 April 1999), p. 10.

¹³²⁴ P929 (Minutes of the Collegium of the General Staff of the VJ for 9 April 1999), pp. 10–11.

21 April 1999 recorded that 3,000 people had passed from Kosovo into Macedonia through the Priština Corps area of responsibility, while being accompanied by MUP forces.¹³²⁵

569. In his directive of 9 April 1999 Ojdanić discussed the issue of “refugees”.¹³²⁶ After tasking the 3rd Army to *inter alia* “smash and destroy” the KLA, he specifically directed that they organise for the reception of “refugees” at the border, including through the direction to “offer assistance to the organs of government for their further care.”¹³²⁷ Branko Krga stated that it was not the VJ’s objective to expel the Kosovo Albanians from Kosovo and, furthermore, that the VJ did nothing to prevent “refugees” from returning to Kosovo.¹³²⁸ He agreed that one of the objectives of setting up check points to deal with these “refugees” was to try to alter the media perception by providing assistance in an organised way to the “refugees” and to be seen doing this.¹³²⁹ Novković testified that, although the Supreme Command Staff considered the “refugee” problem outside of its realm of responsibility, it did press the federal bodies to address the matter and a press conference was held on 10 May 1999 dedicated to this issue.¹³³⁰

570. On 11 May 1999 Ojdanić reported to Milošević and *inter alios* Serbian President Milutinović that the VJ had captured around 600 Kosovo Albanian men from the villages of Dvorane, Ruhot, and Nabrđe, and “directed” around 10,000 civilians to the towns of Peć/Peja and Klina.¹³³¹ Rather than referring to these men as “terrorists” as was done elsewhere in the report in relation to other incidents, it merely stated that they were 600 “Šiptar men” fit for service. It did not state that these 600 men were armed, as was done elsewhere in the report in relation to “Šiptar terrorists”.¹³³² The Chamber considers this indicative of the approach of the VJ and MUP of targeting male Kosovo Albanians, irrespective of whether they were KLA members or not.

iv. VJ General Staff security administration missions to Kosovo

571. Despite the receipt of reports indicating the commission of crimes in Kosovo, as detailed above, in May 1999 it emerged that the Supreme Command Staff was not receiving all the

¹³²⁵ 3D826 (Combat report of the General Staff/Supreme Command Staff, 21 April 1999), p. 3.

¹³²⁶ P1481 (Supreme Command Staff directive for engagement of VJ in defence against the NATO, 9 April 1999), p. 5; Miodrag Simić, T. 15627–15629 (14 September 2007).

¹³²⁷ P1481 (Supreme Command Staff directive for engagement of VJ in defence against the NATO, 9 April 1999), p. 5; *see also* Miodrag Simić, T. 15489–15491 (12 September 2007).

¹³²⁸ Branko Krga, T. 16803, 16814 (3 October 2007), T. 16840 (4 October 2007).

¹³²⁹ Branko Krga, T. 16803 (3 October 2007), T. 16899–16900 (4 October 2007); *see also* 3D938 (Intelligence Administration Report, 25 April 1999).

¹³³⁰ Milivoje Novković, T. 16236–16237 (24 September 2007).

¹³³¹ 3D846 (Combat Report of the Supreme Command Staff, 11 May 1999), p. 5; *see also* 4D315 (3rd Army Combat Report, 10 May 1999), p. 1.

¹³³² 3D846 (Combat Report of the Supreme Command Staff, 11 May 1999), p. 5; *see also* 4D315 (3rd Army Combat Report, 10 May 1999), p. 1.

information it should. The Chief of the Security Administration, Geza Farkaš, testified that during the NATO air campaign he received information from the security organs in Kosovo that crimes were being committed by members of the VJ but that this information was not appearing in combat reports.¹³³³ This under-reporting was confirmed by Aleksandar Vasiljević, who gave evidence that the problem was caused by an obstruction in the information flow from the 3rd Army to the Supreme Command Staff.¹³³⁴ Ojdanić ordered Vasiljević out of retirement on 27 April 1999, appointed him the Deputy Head of the Security Administration, and tasked him to investigate and report to the Supreme Command Staff about crimes being committed in Kosovo.¹³³⁵

572. Farkaš testified that, also as a consequence of the revelation of the under-reporting of crimes, Ojdanić sent him on a mission, as Head of the Security Administration, to inspect the security organs in the 3rd Army and the Priština Corps on 5 and 6 May 1999.¹³³⁶ Farkaš found that there were serious problems arising from the criminal activity of paramilitaries, including rape, looting, and theft, along with the improper engagement of VJ Military Police units in Kosovo.¹³³⁷ Farkaš reported back about these problems to Ojdanić on 7 May, and Ojdanić's reaction was a "strong one".¹³³⁸ Vasiljević testified that on 8 May 1999 he met with the Chief of the Security Department in the Priština Corps, who informed him about crimes committed by VJ members against civilians in Kosovo. These crimes included *inter alia* a rape case involving a reservist, the murder of a Kosovo Albanian man in a village near Srbica/Skenderaj, and the murder of a man in Šipovo. Vasiljević responded by asking the Chief of the Priština Corps Security Department to write a report detailing these past incidents to be passed on to Farkaš.¹³³⁹ In relation to the under-reporting, Vasiljević gave evidence that he later discovered that a decision had been taken by the 3rd Army Command not to report the occurrence of certain crimes in the regular combat reports, as they were being dealt with by the military judicial organs.¹³⁴⁰ He was told that all the crimes were being processed by the military justice system.¹³⁴¹ The Chamber notes that, while Vasiljević was

¹³³³ Geza Farkaš, T. 16292–16293, 16303–16304 (25 September 2007).

¹³³⁴ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 56; Aleksandar Vasiljević, T. 8750 (19 January 2007); *see also* Geza Farkaš, T. 16359, 16363–16364 (25 September 2007).

¹³³⁵ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 53.

¹³³⁶ Geza Farkaš, T. 16292 (25 September 2007).

¹³³⁷ Geza Farkaš, T. 16293–16294, 16310, 16370 (25 September 2007); Branko Gajić, T. 15280–15282 (7 September 2007). An example of abuse by a paramilitary formation was the massacre committed in Podujevo/Podujeva by the Scorpions. 3D1055 (Supreme Command Staff Security Department Report on Activities of Paramilitaries, 13 May 1999).

¹³³⁸ Geza Farkaš, T. 16294 (25 September 2007).

¹³³⁹ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 59.

¹³⁴⁰ Aleksandar Vasiljević, T. 8749–8751 (19 January 2007); *see also* Geza Farkaš, T. 16359, 16364 (25 September 2007).

¹³⁴¹ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 56.

generally a reliable witness, he was only brought back into the Security Administration on 27 April 1999 and only reported on what he was told by VJ members in Kosovo during his mission.

573. On 13 May 1999 Ojdanić was informed of the details of these crimes.¹³⁴² Vasiljević stated that Ojdanić seemed “very taken aback” by this information, and that he immediately telephoned Milošević to inform him that he had just received information concerning rapes and killings by VJ members, and organised a meeting with Milošević.¹³⁴³ The Chamber notes that Ojdanić had previously been informed of “numerous” crimes, including killings, being committed by VJ members, at *inter alia* the meeting of 4 May, and had been informed that crimes were being committed by VJ members in Kosovo by Farkaš on 7 May. Consequently, the Chamber does not consider that Ojdanić’s reaction to this news indicates that he was learning of such criminal activity for the first time.

574. Additionally, Ojdanić sent inspection teams from the Supreme Command Staff, headed by Miodrag Simić, to inspect a number of units, including the 37th, 125th, and 549th Motorised Brigades, and the 52nd Artillery Rocket Brigade during the NATO air campaign.¹³⁴⁴ Miodrag Simić testified that none of the various inspection teams reported anything that would point to the commission of crimes by VJ members relating to the incidents alleged in the Indictment.¹³⁴⁵ Given the VJ involvement in many of the crimes alleged in the Indictment, as discussed above in Section VII, the Chamber does not find Simić’s testimony on this issue credible and does not consider that it creates any doubt as to Ojdanić’s knowledge of the widespread commission of crimes by VJ members, as discussed above.

v. Meetings of 16 and 17 May

575. Following the receipt of this information from members of the Security Administration, Ojdanić invited Pavković and other members of the Supreme Command Staff to a meeting on 16 May 1999.¹³⁴⁶ At this meeting Ojdanić was informed by Pavković of the details of crimes being committed in Kosovo by members of the VJ,¹³⁴⁷ including allegations of VJ involvement in the deaths of 800 civilians.¹³⁴⁸ Pavković stated that his enquiries had revealed that 271 of these deaths

¹³⁴² Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 59; Geza Farkaš, T. 16294–16295 (25 September 2007).

¹³⁴³ Aleksandar Vasiljević, T. 8747–8748 (19 January 2007).

¹³⁴⁴ 3D489 (Supreme Command Staff order for tour of inspection, 20 April 1999); 3D491 (Supreme Command Staff order for tour of inspection, 8 May 1999).

¹³⁴⁵ Miodrag Simić, 3D1089 (witness statement dated 15 August 2007), para. 12.

¹³⁴⁶ Geza Farkaš, T. 16296–16298 (25 September 2007); Branko Gajić, T. 15284–15285 (7 September 2007).

¹³⁴⁷ Geza Farkaš, T. 16295 (25 September 2007).

¹³⁴⁸ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 62.

occurred in areas covered by the VJ, and 376 in areas covered by the MUP forces.¹³⁴⁹ Vasiljević stated that the fact that these figures did not add up to 800 was discussed at the meeting, and that it was stated that some of the deaths may have been caused by NATO strikes.¹³⁵⁰ The issue of crimes by paramilitary groups was also discussed.¹³⁵¹ Pavković stated that he had had contact with Slobodan Medić (a.k.a. Boca), the leader of the armed group known as the “Scorpions”, engaged under the auspices of the MUP, who were in Kosovo wearing SAJ insignia.¹³⁵² However, Gajić testified that the main subject of the meeting was not the discovery of the “Pauk” or Spider group operating in the VJ, but rather the war crimes and other breaches of international law that were occurring in Kosovo.¹³⁵³ Ojdanić told those present that war crimes had to be urgently investigated and documented and, if it was established that somebody had committed such a crime, that person should be arrested immediately and the matter reported to the Supreme Command Staff. If the matter was not within the jurisdiction of the military courts, but rather of the civilian courts, then the civilian judiciary should resolve it.¹³⁵⁴

576. After that pre-meeting, a second meeting was held with Milošević on 17 May 1999.¹³⁵⁵ Present were Ojdanić, Radomir Marković, Farkaš, Šainović, Pavković, Vasiljević, and Branko Gajić.¹³⁵⁶ Pavković repeated the information concerning crimes being committed by members of the VJ in the 3rd Army’s area of responsibility within Kosovo.¹³⁵⁷ Vasiljević also presented a report about serious crimes committed by VJ forces and volunteers against civilians, including murders and rapes.¹³⁵⁸ He then informed the group of crimes committed by the “Scorpions” and by the paramilitary figure Slobodan Medić (a.k.a. Boca), as well as Arkan’s men.¹³⁵⁹ Pavković reported again about the 800 bodies that had been found in Kosovo, and added that the problem stemmed

¹³⁴⁹ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 62.

¹³⁵⁰ Aleksandar Vasiljević, T. 8763 (19 January 2007), T. 9041 (24 January 2007), P2589 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 15999–16000.

¹³⁵¹ Branko Gajić, T. 15290 (7 September 2007).

¹³⁵² Branko Gajić, T. 15286 (7 September 2007); Aleksandar Vasiljević, T. 8756 (19 January 2007).

¹³⁵³ Branko Gajić, T. 15360 (11 September 2007).

¹³⁵⁴ Branko Gajić, T. 15285 (7 September 2007).

¹³⁵⁵ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 62; Branko Gajić, T. 15290 (7 September 2007).

¹³⁵⁶ Geza Farkaš, T. 16296 (25 September 2007); Aleksandar Vasiljević, T. 8772–8773 (19 January 2007), P2600 (witness statement dated 14 January 2007), para. 63.

¹³⁵⁷ Geza Farkaš, T. 16296–16297 (25 September 2007); Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 67.

¹³⁵⁸ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 65. The recollections of the order of the presentations at this meeting differed between Vasiljević and Farkaš. Vasiljević stated that he gave the first report. Farkaš stated that Pavković gave the first report. However, both agree that both presentations occurred.

¹³⁵⁹ P2592 (Extract from Vasiljević’s diary, 17 May 1999), p. 1; Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 65; Branko Gajić, T. 15290 (7 September 2007).

from the MUP and VJ trying to shift the blame onto each other.¹³⁶⁰ Vasiljević testified that Ojdanić and Pavković proposed a joint state commission to establish what was occurring in Kosovo, but that Pavković reported that Lukić was not interested in creating this commission.¹³⁶¹ Milošević's response to these problems was to avoid the issue of crimes by the VJ and MUP; he referred only to the need to establish which paramilitary groups were operating in Kosovo.¹³⁶²

577. Ojdanić followed up on the meeting with Milošević at the Supreme Command Staff briefing the next day. There he directed the 3rd Army security organs to uncover and document possible crimes committed in Kosovo, stating that “[t]he perpetrator must be identified, and responsibility assumed.”¹³⁶³ Farkaš testified that, following the meeting of 17 May, Ojdanić also asked him to set up a team to inspect the basic VJ units and the security organs within Kosovo.¹³⁶⁴ Farkaš thus set up an inspection team headed by Gajić and Vasiljević, which was sent to Kosovo on 1 June 1999 to inspect 16 security organs and basic units in the field.¹³⁶⁵ Gajić testified that the team got the impression that there were problems with war crimes, but that the security organs in the Priština Corps were active in investigating these incidents.¹³⁶⁶ He stated that the main issue was the lack of reporting of these crimes to the Supreme Command Staff.¹³⁶⁷ Vasiljević testified that this mission was not a supervisory commission, but rather the usual control that was carried out into the work of the security organs. They did not confer with personnel from the military justice system and they did not compare what they were told by the members of the security organs in the Priština Corps and 3rd Army with data from the military prosecutors and military courts.¹³⁶⁸

578. Vasiljević prepared a report based on his fact-finding mission, which he delivered to Farkaš.¹³⁶⁹ The report documented 42 cases of crime, some committed by VJ forces and some by MUP forces, although Vasiljević testified that most of the cases he dealt with concerned members of the military.¹³⁷⁰ These 42 cases included murders, rapes, looting and misdemeanours.¹³⁷¹

¹³⁶⁰ Aleksandar Vasiljević, P2589 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 16000, P2600 (witness statement dated 14 January 2007), para. 65–71; P2592 (Extract from Vasiljević's diary, 17 May 1999), p. 1.

¹³⁶¹ Aleksandar Vasiljević, T. 8783 (22 January 2007).

¹³⁶² Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 70, T. 8783 (22 January 1999).

¹³⁶³ 3D618 (Briefing to the Chief of the Supreme Command Staff, 18 May 1999), p. 3; Geza Farkaš, T. 16369 (25 September 2007); Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 75.

¹³⁶⁴ Geza Farkaš, T. 16300 (25 September 2007).

¹³⁶⁵ Geza Farkaš, T. 16300 (25 September 2007); Aleksandar Vasiljević, T. 8707 (19 January 2007); Branko Gajić, T. 15292 (7 September 2007).

¹³⁶⁶ Branko Gajić, T. 15292 (7 September 2007).

¹³⁶⁷ Branko Gajić, T. 15292 (7 September 2007).

¹³⁶⁸ Aleksandar Vasiljević, T. 8790 (22 January 2007).

¹³⁶⁹ Aleksandar Vasiljević, T. 8700 (19 January 2007) (private session), T. 8786 (22 January 2007).

¹³⁷⁰ Aleksandar Vasiljević, T. 8786–8787 (22 January 2007), P2600 (witness statement dated 14 January 2007), para. 87; Branko Gajić, T. 15293 (7 September 2007).

¹³⁷¹ Aleksandar Vasiljević, T. 8786–8788, 8791 (22 January 2007).

According to Vasiljević, cases in which VJ members were involved included *inter alia* the killing of an Albanian man in Bresje by three reserve VJ members, the killing of four Kosovo Albanians and rape of a girl by a Captain Steković, and the commission of crimes by members of the 52nd Armoured Brigade.¹³⁷² After returning to Belgrade on 7 June 1999, Gajić and Vasiljević reported orally to their senior staff members, stating that the security organs were active in detecting crimes and preparing cases for prosecution.¹³⁷³ Gajić added that the security organs “had the full support of the command”.¹³⁷⁴ Vasiljević was told by the security organs of the Priština Corps and 3rd Army that all crimes were being prosecuted.¹³⁷⁵ However, the Chamber does not rely on this information that was provided to Gajić and Vasiljević as proof that all crimes were in fact being prosecuted. Quite the contrary, it has been established that many crimes by VJ members were not being prosecuted due to interference in the system, as found in Section VI.A.1.e.

vi. Crimes by MUP members and paramilitaries

579. As noted above, Ojdanić received information indicating criminal activities by MUP forces in Kosovo in 1999. On 3 and 16 April Gajić reported to the Supreme Command Staff that there had been problems with paramilitary groups operating with the MUP in Kosovo.¹³⁷⁶ In response to learning about these activities, Ojdanić issued a general instruction to the Security Administration to investigate paramilitary activities, including where they were operating, what their purposes were, and under whose authority they were acting.¹³⁷⁷

580. Six days after Gajić’s first report, the issue of paramilitaries re-arose at the briefing of 22 April 1999, where he stated that data was being collected regarding adherence to the laws of war by VJ members, and that paramilitary groups were becoming more active in Kosovo.¹³⁷⁸ Ojdanić then ordered that the judicial organs be made more efficient, that the MUP be contacted about volunteers, and that this be done through the Federal Ministry of Foreign Affairs.¹³⁷⁹

¹³⁷² Aleksandar Vasiljević, T. 8786–8788 (22 January 2007). When the Chamber asked for the relevance of these incidents, if they were not specifically pleaded in the Indictment, the Prosecution stated that the information demonstrated that certain cases of criminal conduct were not reported to the General Staff meetings. T. 8788–8789 (22 January 2007).

¹³⁷³ Geza Farkaš, T. 16303 (25 September 2007); *see also* Branko Gajić, T. 15292 (7 September 2007).

¹³⁷⁴ Branko Gajić, T. 15292 (7 September 2007).

¹³⁷⁵ Aleksandar Vasiljević, T. 8790 (22 January 2007).

¹³⁷⁶ 3D721 (Briefing to the Chief of Staff of the Supreme Command, 3 April 1999), p. 2; 3D587 (Briefing to the Chief of Staff of the Supreme Command, 16 April 1999), p. 1.

¹³⁷⁷ 3D587 (Briefing to the Chief of Staff of the Supreme Command, 16 April 1999), p. 4.

¹³⁷⁸ 3D592 (Briefing to the Supreme Command Staff, 22 April 1999), p. 1.

¹³⁷⁹ 3D592 (Briefing to the Supreme Command Staff, 22 April 1999), p. 4.

581. Upon receiving further reports of criminal activity by paramilitaries in Kosovo at the briefings of 22 April,¹³⁸⁰ 23 April,¹³⁸¹ and through the Priština Corps daily combat report of 25 April,¹³⁸² Ojdanić issued another order, requiring that the commanders of the armies ensure that paramilitaries operating in Kosovo were disarmed and legal measures taken against them.¹³⁸³ The order required that the Geneva Conventions and laws of war be strictly obeyed, that individuals violating international humanitarian law were to be apprehended, prosecuted, and that superior officers would be held responsible for ensuring that this occurred.¹³⁸⁴ However, Gajić gave evidence that no further measures were taken against paramilitaries, because the MUP forces did not respect Ojdanić's order that all paramilitaries were to be removed from Kosovo.¹³⁸⁵

582. When Ojdanić sent Vasiljević and Gajić to Kosovo in early May 1999, he also sought further information about the problems with paramilitary organisations. At a Supreme Command Staff briefing held on 6 May Ojdanić asked Gajić if such groups were operating in Kosovo.¹³⁸⁶ Gajić affirmed this and Ojdanić stated that general information was not adequate and that he needed specific details about any alleged crimes committed in Kosovo. Gajić testified that Ojdanić wanted to have this cleared up, and Ojdanić said that, if there were such persons in Kosovo, they should be expelled, and legal measures should be taken against them.¹³⁸⁷ On 13 May Farkaš told Ojdanić about *inter alia* crimes committed by a paramilitary group headed by Slobodan Medić (a.k.a. Boca) and other paramilitary groups, as described above.¹³⁸⁸ The Security Administration had learnt that there was concrete evidence of a crime committed by Medić's Scorpions in Podujevo/Podujeva, where ten children and two adults were killed.¹³⁸⁹ Vasiljević also testified that he learnt of a group of around 15 people called "Legija", which had killed and robbed Kosovo Albanians in Đakovica/Gjakova, and of other similar activity in Kosovska Mitrovica/Mitrovica.¹³⁹⁰ Gajić stated

¹³⁸⁰ 3D592 (Briefing to the Supreme Command Staff, 22 April 1999), p. 1.

¹³⁸¹ 3D593 (Briefing to the Supreme Command Staff, 23 April 1999), p. 1; Branko Gajić, T. 15278–15279 (7 September 2007).

¹³⁸² See P2016 (PrK Combat report to 3rd Army and Supreme Command Staff, 25 April 1999), p. 2.

¹³⁸³ P1490 (Order re paramilitary formations, investigation and prosecution of violations of laws of war, 26 April 1999).

¹³⁸⁴ The order directs the command and security organs to monitor the behaviour of both VJ and MUP personnel, and directs that criminal proceedings be initiated against those breach international humanitarian law but does not specify if proceedings should be initiated against VJ and MUP personnel. For details of the jurisdictional rules applicable to VJ and MUP personnel. See Section VI.A.1.e.

¹³⁸⁵ Branko Gajić, T. 15378 (11 September 2007).

¹³⁸⁶ Branko Gajić, T. 15281 (7 September 2007); 3D606 (Briefing to the Chief of Staff of the Supreme Command Staff, 6 May 1999), p. 3.

¹³⁸⁷ Branko Gajić, T. 15281 (7 September 2007).

¹³⁸⁸ Geza Farkaš, T. 16294 (25 September 2007); Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 59. See generally 3D1055 (Supreme Command Staff Security Department Report on Activities of Paramilitaries, 13 May 1999); Goran Stoparić, P2224 (witness statement dated 6 July 2006), paras. 38–64.

¹³⁸⁹ Branko Gajić, T. 15273–15274 (7 September 2007).

¹³⁹⁰ Aleksandar Vasiljević, T. 8698 (19 January 2007).

that all of these groups operated wearing SAJ/MUP uniforms.¹³⁹¹ The perpetrators were removed from Kosovo, only to return there shortly after.¹³⁹² Gajić only knew of one person being prosecuted for these crimes.¹³⁹³

583. Details of these occurrences were conveyed in a written report from the Security Administration, which indicated that a group of around 100 volunteers was organised by the MUP and sent to Kosovo to conduct operations between 27 and 31 March 1999.¹³⁹⁴ According to the report, a MUP inspector, addressed the volunteers prior to their departure, telling them that they would be reinforcements to the MUP forces. They committed crimes against Kosovo Albanians in Podujevo/Podujeva, including the murder of two elderly people and ten children. Upon learning of this, the Commander of the 354th Brigade of the VJ, expelled the group from the area of operations. The report stated that unconfirmed information had been received that, following the expulsion, Slobodan Medić and a group of 100 volunteers again entered Kosovo, and departed on 10 May 1999.¹³⁹⁵ Ojdanić received further information concerning crimes by the MUP and paramilitaries operating in Kosovo at the meetings of 16 and 17 May 1999, as described above.

vii. 25 May and 4 June reports

584. The Ojdanić Defence raised specific challenges in relation to two reports sent from the 3rd Army to the Supreme Command Staff during the NATO air campaign.¹³⁹⁶ These reports were dated 25 May and 4 June respectively and concerned criminal activities by MUP members in Kosovo.¹³⁹⁷

585. The 25 May 1999 report, which is addressed from Pavković to the Supreme Command Staff (addressed to Ojdanić personally), stated that the security situation in Kosovo was unstable due to the frequent commission of crimes.¹³⁹⁸ Pavković asserted that this was most evident at joint VJ/MUP check points, where MUP members condoned and committed criminal activity, primarily in the form of misappropriation of vehicles and goods. He also stated that MUP members and units were committing serious crimes against the Kosovo Albanian population in settlements and

¹³⁹¹ Branko Gajić, T. 15275 (7 September 2007).

¹³⁹² Branko Gajić, T. 15347 (11 September 2007); Goran Stoparić, P2224 (witness statement dated 6 July 2006), paras. 59–64, T. 724–725 (12 July 2006), 749–750 (13 July 2006).

¹³⁹³ Branko Gajić, T. 15351 (11 September 2007).

¹³⁹⁴ 3D1055 (Supreme Command Staff Security Department Report on Activities of Paramilitaries, 13 May 1999), p. 1.

¹³⁹⁵ 3D1055 (Supreme Command Staff Security Department Report on Activities of Paramilitaries, 13 May 1999), pp. 1–2.

¹³⁹⁶ Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 245–246; *see also* 3D1078 (Letter to the Ministry of Defence, 1 March 2002); 3D1077 (Letter to Ojdanić from the Ministry of Defence, 13 March 2002).

¹³⁹⁷ P1459 (3rd Army Report on the non-compliance of MUP organs, 25 May 1999), also admitted as 3D1106; P1725 (3rd Army request to Supreme Command Staff, 4 June 1999).

“refugee” shelters in Kosovo, including “murder, rape, plunder, robbery aggravated, [sic] theft, etc.”¹³⁹⁹ Notably, Pavković mentioned that MUP personnel committing these crimes would then “purposefully attribute or plan to attribute those crimes to units and individuals in the VJ.”¹⁴⁰⁰ Finally, he reported that the flow of security information from the RDB had been unsatisfactory, and that the only positive aspect of the joint actions with the MUP had been the location and detention of military conscripts who failed to report.¹⁴⁰¹ The 4 June 1999 report, which was also addressed from Pavković to the Supreme Command Staff, was a telegram also outlining complaints concerning *inter alia* the lack of resubordination of the MUP forces, improper behaviour by MUP forces, and the lack of financial support for VJ conscripts. It stated that MUP forces were breaching agreements and “looting, etc.”¹⁴⁰²

586. The Ojdanić and Lukić Defences called the VJ archivist, Dušan Mladenovski, and an expert witness, Živojin Aleksić, to contest the authenticity of these reports. It should first be noted that there are two versions of the 25 May report, one lacking a stamp of receipt by the General Staff/Supreme Command Staff and one with such a stamp. The latter is stamped as being received on 26 May 1999.¹⁴⁰³ Two VJ record books were examined in connection with these reports – a VJ Archive list, which was a list of VJ material that was entered into the military archives, and the Cabinet of Chief of the VJ General Staff Log Book, that kept track of documents received by the office of the Chief of the General Staff/Supreme Command Staff.¹⁴⁰⁴

587. Mladenovski stated in relation to the list from the VJ Archive containing the 25 May report entry, that he made all the amendments and alterations except the one in the unit 82, which recorded the receipt of the 25 May report.¹⁴⁰⁵ He also testified that the total number of documents in the list from the VJ Archive was 278 and not 277, as indicated on the front page of the list, which was updated to keep a track of the totals. He stated that this indicated that it was not a professional

¹³⁹⁸ P1459 (3rd Army Report on the non-compliance of MUP organs, 25 May 1999), also admitted as 3D1106.

¹³⁹⁹ P1459 (3rd Army Report on the non-compliance of MUP organs, 25 May 1999), paras. 3–4, also admitted as 3D1106.

¹⁴⁰⁰ P1459 (3rd Army Report on the non-compliance of MUP organs, 25 May 1999), para. 4, also admitted as 3D1106.

¹⁴⁰¹ P1459 (3rd Army Report on the non-compliance of MUP organs, 25 May 1999), paras. 6–7, also admitted as 3D1106.

¹⁴⁰² P1725 (3rd Army request to Supreme Command Staff, 4 June 1999).

¹⁴⁰³ Živojin Aleksić, 3D1140 (expert report dated 26 February 2008), para. 15; *compare* P1459 (3rd Army Report on the non-compliance of MUP organs, 25 May 1999) (not stamped), *with* 3D1106 (3rd Army Report on the non-compliance of MUP organs, 25 May 1999) (stamped); *see also* 3D1133 (colour version of P1459); 3D1132 (colour version of 3D1106).

¹⁴⁰⁴ 3D1130 (Cabinet of the Chief of Supreme Command- Archive list, 24 September 1999); 3D1131 (Cabinet of Chief of the General Staff-Log book, excerpt).

¹⁴⁰⁵ Dušan Mladenovski, 3D1135, (witness statement dated 14 January 2008), paras. 8–14. Documents received by the General Staff/Supreme Command Staff of the VJ were recorded in lists and subsequently taken to the VJ Archives, where they were entered into the Archives. Dušan Mladenovski, 3D1135 (witness statement dated 14 January 2008), paras. 3–6.

who had made the changes to the list from the VJ Archive, as they would have known to update the front page list.¹⁴⁰⁶ On cross-examination Mladenovski stated that this particular archive list had come from the General Staff and was originally prepared by Miodrag Janković, who had made 68 mistakes which were corrected by Mladenovski himself.¹⁴⁰⁷ However, he added that, had he seen emendations in the archive list before it reached him, he would have insisted that the changes be initialled.¹⁴⁰⁸

588. Aleksić claimed that the handwriting in the list from the VJ Archive, which recorded the receipt of the 25 May report, was different to other handwriting in the list.¹⁴⁰⁹ This is consistent with Mladenovski's claim that he made all the emendations except for that in column 82. However, after identifying that certain entries had a "swan's neck termination", Aleksić then admitted that this featured in entries other than that relating to the 25 May report, such as on the first page of the list, as is evident by looking at the list itself.¹⁴¹⁰ This considerably weakens the Ojdanić Defence's argument that the entry in line 82 was a forgery and that the 25 May report was not received until much later than 25 May 1999, as it would mean that the forger would have been responsible for a number of other entries in the archive list as well.

589. In relation to the date stamp accompanying the entry relating to the 25 May report in the VJ General Staff Log Book, Aleksić testified that this was added at a different point in time to the other entries in that list.¹⁴¹¹ However, Aleksić's testimony indicated that he based his conclusions on essentially an "eyeball" examination of the writing of the digits, without providing any more scientific backing for his conclusions. Even if his view is accepted concerning the use of a different or re-adjusted numerator, rather than it simply being a case of different pressure being applied when making the stamp, he was unable to discount the possibility of such alterations being made for innocuous reasons, such as there being two numerators used for this work. Aleksić stated that the two versions of this report were not in keeping with usual VJ procedure for such documents.¹⁴¹² However, he also stated that he was not asked to check whether the handwriting for the entries relating to the 25 May report in the VJ General Staff Log Book matched the other entries

¹⁴⁰⁶ Dušan Mladenovski, T. 25770–25771 (21 April 2008), T. 25795 (22 April 2008).

¹⁴⁰⁷ Dušan Mladenovski, T. 25789–25790 (22 April 2008).

¹⁴⁰⁸ Dušan Mladenovski, T. 25795 (22 April 2008).

¹⁴⁰⁹ Živojin Aleksić, T. 26063 (13 May 2008).

¹⁴¹⁰ Živojin Aleksić, T. 26065 (13 May 2008). He stated that in this document there are several examples, such as Archive Unit 29. Accordingly, he testified that the person who made the 2 in line 29 is the same person who made the changes in line 82, since they both have a "swan's neck termination" *See also* 3D1130 (Cabinet of the Chief of Supreme Command-Archive list, 24 September 1999).

¹⁴¹¹ Živojin Aleksić, T. 26085–26089 (13 May 2008); 3D1140 (expert report of Živojin Aleksić, 26 February 2008), para. 14.

¹⁴¹² 3D1140 (expert report of Živojin Aleksić, 26 February 2008), para. 15.

made in that book.¹⁴¹³ If the report was inauthentic or not received by the VJ General Staff on 25 or 26 May, it would be expected that the handwriting in the entry in the VJ General Staff Log Book would also be irregular, or different from the other entries. However, the handwriting for the previous entry in the VJ General Staff Log Book is the same as that for the entry of the 25 May report.¹⁴¹⁴

590. Aside from Mladenovski and Aleksić's evidence, a number of other witnesses gave evidence that this document was not received by Ojdanić. Aleksandar Vasiljević testified that there was no stamp of receipt from the General Staff/Supreme Command Staff on the copy of the 25 May report admitted as exhibit P1459.¹⁴¹⁵ However, the other version of the 25 May report, exhibit 3D1106, does have a stamp indicating that it was received by the General Staff/Supreme Command Staff on 26 May 1999.¹⁴¹⁶

591. In 2002 Ojdanić wrote to Milan Radoičić, Chief of the Office of the Minister of Defence, concerning the 25 May and 4 June reports, as he had read about them in an article in the VJ publication *Vojska* but claimed to have never seen them himself.¹⁴¹⁷ Radoičić replied that he had no knowledge of them and that they had not been recorded in the register of the office of the Chief of the General Staff/Supreme Command Staff.¹⁴¹⁸ Other witnesses who worked within the General Staff/Supreme Command Staff at the time testified that they did not remember seeing the document, and that it would have been included in their respective analyses if it had been received.¹⁴¹⁹ Momir Stojanović, the Chief of the Security Department of the Priština Corps, testified that he never wrote any report to the effect that the MUP was committing crimes in Kosovo.¹⁴²⁰ Furthermore, Milovan Vlajković testified that the report was improperly entered into the VJ General Staff Log Book, as it was given the sub-number of an unrelated document, whereas the usual procedure was to give sub-numbers to related documents.¹⁴²¹ The Chamber notes in this regard that, although the content of these documents is different, they both relate to interactions between the VJ and other forces that it sought to resubordinate, the Federal Ministry of Defence and the MUP.

¹⁴¹³ Živojin Aleksić, T. 26057–26058 (13 May 2008).

¹⁴¹⁴ 3D1109 (Log Book of the VJ General Staff, 1999), e-court p. 2; 3D1131 (excerpt of Log Book of the VJ General Staff, 1999), e-court p. 2.

¹⁴¹⁵ Aleksandar Vasiljević, T. 8720–8721 (19 January 2007).

¹⁴¹⁶ 3D1106 (Report on the non-compliance of MUP organs, 25 May 1999).

¹⁴¹⁷ 3D1078 (Letter to The Ministry of Defence by Army General Dragoljub Ojdanić, 1 March 2002).

¹⁴¹⁸ 3D1077 (The Ministry of Defence. Letter to the Army General Dragoljub Ojdanić, 13 March 2002); Milan Radoičić, T. 16129–16130 (21 September 2007).

¹⁴¹⁹ Branko Gajić, T. 15428–15429 (12 September 2007); Đorđe Ćurčin, T. 17020–17021 (16 October 2007); Milovan Vlajković, T. 16058 (20 September 2007).

592. The Ojdanić Defence further argues that the content of the 25 May report is incongruous with other combat reports, as it refers to regular combat reports of MUP personnel committing crimes, but these references are not present in other reports. The Chamber notes that Pavković had received information in a report on the non-resubordination of the MUP on 24 May 1999 from Lazarević, as the Priština Corps Commander.¹⁴²² In that report, Lazarević had detailed serious crimes being committed by MUP members against Kosovo Albanian civilians.¹⁴²³ Furthermore, the identification number of the 25 May report is consistent with that of a previous report on the same subject matter: problems with the resubordination of the MUP.¹⁴²⁴ Ojdanić also received information consistent with that in the 25 May report on 27 May in a report from Veličković, who had undertaken a tour of the Priština Corps and its subordinate units on behalf of the Supreme Command Staff.¹⁴²⁵ The 27 May report stated that the MUP was inadequately performing during joint operations, and that PJP members were engaging in looting. On 29 May 1999 Ojdanić received a report based on the information gained during the Supreme Command Staff tour of the Priština Corps between 23 and 26 May. The report identified a number of shortcomings amongst the troops, including a lack of discipline, and the inability to control crimes being committed by MUP personnel.¹⁴²⁶ A report of 2 June repeated similar complaints about MUP personnel behaviour.¹⁴²⁷ Additionally, Ojdanić received information indicating that serious crimes were being committed by MUP members in Kosovo at the meetings of 16 and 17 May.

593. In relation to the 4 June report, the Ojdanić Defence points to a note from the Government of Serbia stating that this report was not entered into the VJ General Staff Log Book for 1999.¹⁴²⁸ However, the copies of the relevant pages of the VJ General Staff Log Book were not tendered to support this claim. Furthermore, Đorđe Ćurčin testified that the report had a stamp showing that it had been received by the VJ Archives.¹⁴²⁹ The Chamber notes that Mladenovski was not asked about this report. Đorđe Ćurčin also testified, when shown the 4 June report, that a meeting was

¹⁴²⁰ Momir Stojanović, T. 19815 (7 December 2007), T. 20027–20028 (11 December 2007).

¹⁴²¹ Milovan Vlajković, 3D1114 (witness statement dated 17 September 2007), pp. 2–3.

¹⁴²² P1458 (PrK Report on non-compliance with Resubordination Order, 24 May 1999), also admitted as 4D192 and P1723.

¹⁴²³ P1458 (PrK Report on non-compliance with Resubordination Order, 24 May 1999), also admitted as 4D192 and P1723.

¹⁴²⁴ Compare P1457 (Order to resubordinate MUP, 20 April 1999), p. 1 (“Strictly confidential No. 872-94/1”), with P1459 (3rd Army Report on non-compliance of MUP organs, 25 May 1999) (“Strictly confidential No. 872-94/1-2”).

¹⁴²⁵ 5D436 (Report of the VJ General Staff re tour of inspection of the 354th Brigade, 27 May 1999), p. 5; see also 5D434 (Report of the Supreme Command Staff, signed by Colonel-General Veličković, 2 June 1999), p. 4.

¹⁴²⁶ 3D692 (Ljubiša Veličković Report on tour and fulfilled access of the of tasks, 29 May 1999), p. 4.

¹⁴²⁷ 5D434 (Report of the Supreme Command Staff, signed by Colonel-General Veličković, 2 June 1999), p. 4.

¹⁴²⁸ 3D1136 (Government of Serbia Conclusion, 27 December 2007).

¹⁴²⁹ Đorđe Ćurčin, T. 16988–16989 (5 October 2007).

held between Ojdanić and Milošević to discuss the issue of the lack of MUP resubordination.¹⁴³⁰ Furthermore, a report that was produced by the members of the Veličković mission to Kosovo confirms that the subject matter of the 4 June report is authentic as it also reported on crimes being committed by MUP members and insubordination.¹⁴³¹ The report is consistent with other reports and discussions being held amongst VJ high-level personnel at the time.

594. As noted above, in his letter of 2002 Ojdanić complained of not having seen either of the reports of 25 May and 4 June and the Ojdanić Defence has challenged the receipt and authenticity of both these documents together. The Chamber did not find the evidence of Aleksić reliable. It did find Mladenovski to be a reliable witness, but notes that his knowledge was limited to the VJ Archive and that his evidence about the handwriting accompanying the 25 May report was undermined by the same handwriting being present in relation to other entries in the VJ archive. He was not asked about the 4 June report. The Chamber notes the various other reports and communications received by the General Staff/Supreme Command Staff on the issue of crimes committed by MUP members in Kosovo, which show that this was not an isolated document of unique significance. None of the challenges to the authenticity and receipt of these reports has been adequately established and the reports are consistent with other information received by Ojdanić at the time. There is no doubt as to their authenticity and receipt by the General Staff/Supreme Command Staff of the VJ.

viii. Issuance of first indictment

595. In addition to all these reports from VJ units and organs, Ojdanić was made aware of allegations that crimes were committed by VJ personnel on a large-scale through the publicising of the first indictment on 27 May 1999, which was filed in the Tribunal on 23 May 1999.¹⁴³² This first indictment contained specific allegations of war crimes and crimes against humanity being committed by forces under the control of Ojdanić throughout Kosovo. The indictment was discussed at the Supreme Command Staff briefing of 28 May, where Branko Krga stated that one of the purposes of bringing the indictment against the high FRY/Serbian officials was to stall peace initiatives.¹⁴³³ On this basis and given that the indictment was issued against him, the Chamber is satisfied that Ojdanić had notice of the indictment on or around 27 May. That same day, 27 May, Ojdanić received a letter from Pavković, responding to the allegations made by Tribunal Prosecutor

¹⁴³⁰ Đorđe Ćurčin, T. 16990 (5 October 2007).

¹⁴³¹ 3D692 (Ljubiša Veličković Report on tour and fulfilled access of the of tasks, 29 May 1999).

¹⁴³² P968 (*Prosecutor v. Milošević et al.*, Case No. IT-99-37, First Indictment, 23 May 1999).

¹⁴³³ 3D628 (Briefing to the Chief of Staff, 28 May 1999), p. 1.

Louise Arbour in March 1999.¹⁴³⁴ Pavković stated that all his actions in his role as Commander of the Priština Corps, and later as the Commander of the 3rd Army, had been in accordance with the Constitution and Law on the VJ. He added that he had always informed his superior commands of the activities of his units, and that he had disseminated information regarding his subordinates' obligations to adhere to international humanitarian law. In conclusion, he stated that he was not authorised to give permission to carry out investigations into war crimes, and that this power lay with the Federal Government.¹⁴³⁵ In response to the issuance of the first indictment, the General Staff/Supreme Command Staff reported that western propaganda continued to be spread, but did not refer to any special enquiries or commissions undertaken to ascertain the veracity of the allegations set out in that indictment.¹⁴³⁶

596. The fact that Ojdanić was informed of allegations of VJ involvement in forcible displacements and other crimes in the first indictment against him, but did not take any actions specifically in relation to these allegations, supports the contention that he was already aware of them. These forcible displacements included several discussed in Section VII above, which the Chamber found to have been committed by VJ and/or MUP forces, those being from Peć/Peja town and out of Kosovo on 27 and 28 March, from Pirane/Pirana in Prizren in late March, from Đakovica/Gjakova town starting in April and continuing into May, from Prilepnica/Përlepnica in Gnjilane/Gjilan on 13 April, from Sojevo/Sojeva in Uroševac/Ferizaj in April, from Celina in Orahovac/Rahovec on 25 March, and the shelling of Turićevac/Turiçec in late March and April.¹⁴³⁷

597. Additionally, the fact that Ojdanić was informed of VJ involvement in the forcible displacement of civilians from Priština/Prishtina starting in April, but did not take any actions specifically in relation to this crime, supports the contention that he was already aware of it, particularly as he knew that the Command Post of the Priština Corps was located in this city and he had mobilised the military territorial detachment to engage in operations there.¹⁴³⁸

¹⁴³⁴ 3D790 (Pavković Letter responding to accusations of Louise Arbour, 17 May 1999); Milovan Vlajković, T. 16046 (20 September 2007). The letter indicates that it was a response to the order from the Legal Department of the Supreme Command Staff of 10 May 1999 to all VJ commanders to adhere to the laws of war. See 3D483 (Order of the Supreme Command Staff, 10 May 1999).

¹⁴³⁵ 3D790 (Pavković Letter responding to accusations of Louise Arbour, 17 May 1999).

¹⁴³⁶ 3D865 (report of the Supreme Command Staff, 30 May 1999), pp. 8, 11.

¹⁴³⁷ P968 (*Prosecutor v. Milošević et al.*, Case No. IT-99-37, First Indictment, 23 May 1999), pp. 21–28.

¹⁴³⁸ Ojdanić was informed of the “systematic looting” and the exodus of Kosovo Albanians from Priština/Prishtina, which the Chamber has found to have been an organised process, carried out by VJ and MUP forces, involving thousands of Kosovo Albanians. P2542 (Drewienkiewicz’s Press Statement, April 1999). He knew that the Command Post of the Priština Corps was located in this city and mobilised the military territorial detachment to engage in operations there. 5D261 (Order of the VJ General Staff, 13 March 1999). Ojdanić was also informed of the VJ involvement in the forcible displacement from Priština/Prishtina starting in April by the original indictment against him. P968 (*Prosecutor v. Milošević et al.*, Case No. IT-99-37, Indictment, 23 May 1999), p. 24.

ix. Failure to discipline Pavković

598. In late 1998 and early 1999 Dimitrijević expressed his dismay that planned operations of the Priština Corps in Kosovo were being reported as defensive reactions to KLA attacks in reports from the 3rd Army to the General Staff.¹⁴³⁹ At a VJ collegium meeting on 10 December 1998 Dimitrijević complained about unusual incidents due to Pavković's absence from his post.¹⁴⁴⁰ He testified that these "unusual incidents" meant desertion, wounding, and suicides, and not acts by Pavković, but added that these acts were contributed to by Pavković's absence from his command post while he was in Belgrade for long periods.¹⁴⁴¹ Nonetheless, two weeks later Ojdanić proposed to the SDC that Pavković be promoted to Commander of the 3rd Army in place of the incumbent Dušan Samardžić.¹⁴⁴²

599. In January 1999, after Pavković had been promoted to be Commander of the 3rd Army, Dimitrijević complained that reports from Pavković did not contain details of unusual incidents in Kosovo, and that there were no indications of the measures taken by the Priština Corps and 3rd Army commanders to deal with these occurrences.¹⁴⁴³ At the collegium of 3 March he stated that the 3rd Army was lying to the General Staff about its activities in Kosovo, as these were planned activities rather than defensive reactions to attacks, and that the General Staff should not accept this practice as it concerned information that they "ought to know".¹⁴⁴⁴ In February 1999 Pavković brought the 72nd Special Brigade unit into the interior of Kosovo, in contravention of Ojdanić's orders to keep it at the border with Albania and in breach of the October Agreements.¹⁴⁴⁵ Despite Ojdanić acknowledging the problem and assuring the members of the collegium that he would do something about the issue,¹⁴⁴⁶ there is no evidence that he took any actions in this respect, or in relation to the previous complaints about reports and actions of the 3rd Army, and Pavković was in fact promoted to the rank of colonel-general on 31 March 1999.¹⁴⁴⁷

600. On 25 March 1999 Ojdanić issued a warning to the commands of the armies, including the 3rd Army, to maintain a constant flow of correct and confirmed information between the commands

¹⁴³⁹ 3D484 (Minutes of the Collegium of the General Staff of the VJ, 10 December 1998), pp. 13–14; P928 (Minutes of the Collegium of the General Staff of the VJ, 30 December 1998), p. 14; P933 (Minutes of the Collegium of the General Staff of the VJ, 4 March 1999), p. 15; P938 (Minutes of the Collegium of the General Staff of the VJ, 18 March 1999), p. 21; Aleksandar Dimitrijević, T. 26627, 26653–26654 (8 July 2008).

¹⁴⁴⁰ 3D484 (Minutes of the Collegium of the General Staff of the VJ, 10 December 1998), p. 14.

¹⁴⁴¹ Aleksandar Dimitrijević, T. 26624 (8 July 2008).

¹⁴⁴² P1000 (Minutes of 8th SDC session, 25 December 1998), pp. 5–9; 1D761 (Shorthand notes of 8th SDC session, 25 December 1998), pp. 13–21.

¹⁴⁴³ 3D559 (Minutes of the Collegium of the General Staff of the VJ, 28 January 1999), p. 20.

¹⁴⁴⁴ P933 (Minutes of the Collegium of the General Staff of the VJ, 4 March 1999), pp. 15–16.

¹⁴⁴⁵ P941 (Minutes of the Collegium of the General Staff of the VJ, 25 February 1999), pp. 16, 24.

¹⁴⁴⁶ P938 (Minutes of the Collegium of the General Staff of the VJ, 18 March 1999), p. 25.

¹⁴⁴⁷ Radovan Radinović, T. 17323–17325 (19 October 2007); 4D163 (Military Record for Nebojša Pavković), p. 6.

and the MUP.¹⁴⁴⁸ The 3rd Army was obliged to report on crimes and unlawful events to the General Staff/Supreme Command Staff.¹⁴⁴⁹ Ojdanić confirmed this obligation in his order of 2 April 1999.¹⁴⁵⁰ Nonetheless, the combat reports from the 3rd Army of the following two days omitted important information relating to serious violent crimes including murders.¹⁴⁵¹ Problems with reporting continued as indicated by Ojdanić's order of 15 April 1999.¹⁴⁵² Although Ojdanić allowed for flexibility amongst his subordinates in commanding VJ units, he had also stated that commanders had to answer for their actions and decisions.¹⁴⁵³

601. After the Supreme Command Staff was informed that crimes committed by VJ members were not being reported from the 3rd Army, Vasiljević discovered that a decision had been taken by the 3rd Army Command not to report the occurrence of certain crimes in the regular combat reports as they were being dealt with by the military judicial organs.¹⁴⁵⁴ This clashed with the duty to report such events in the VJ as well as the explicit order issued by Ojdanić on 2 April. It is also inconsistent with the reference to other criminal prosecutions relating to less serious offences that were reported to the Supreme Command Staff in reports omitting mention of serious violent crimes, such as in the report of 3 April which did refer to “[i]solated incidents of attempted robbery”.¹⁴⁵⁵

602. On 2 May Ojdanić again expressed his dissatisfaction with occurrences in the 3rd Army, as there had been a large number of wounded in one day. He stated that “[s]omeone has made a mistake here”, and directed his staff to request an explanation from the 3rd Army Command.¹⁴⁵⁶ Furthermore, at the later stages of the NATO air campaign, it was reported at a General Staff/Supreme Command Staff briefing that crimes were being committed by VJ members but were still not being reported through the regular VJ channels.¹⁴⁵⁷ Again Ojdanić refrained from taking disciplinary measures against Pavković, who was later promoted to Chief of the General Staff.¹⁴⁵⁸

¹⁴⁴⁸ P1469 (warning on delivery of accurate and confirmed reports, 25 March 1999), p. 1.

¹⁴⁴⁹ Ljubiša Stojimirović, T. 17681 (26 October 2007); Radojko Stefanović, T. 21728 (6 February 2008); Miloš Mandić, T. 20924 (23 January 2008); Aleksandar Vasiljević, T. 8666 (18 January 2007); *cf.* Radomir Gojović, T. 16706 (2 October 2007).

¹⁴⁵⁰ 3D480 (Supreme Command Staff order, 2 April 1999), pp. 1–2.

¹⁴⁵¹ *E.g.*, 4D276 (3rd Army Report to General Staff, 3 April 1999).

¹⁴⁵² P1744 (Order re reporting of significant events, 15 April 1999); 3D1116 (Radovan Radinović's Expert Report), p. 115; Aleksandar Vasiljević, T. 8845 (22 January 2007).

¹⁴⁵³ 3D669 (Monitoring of Situation in Kosovo, 23 February 1999), p. 2.

¹⁴⁵⁴ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 56, T. 8750 (19 January 2007); *see also* Geza Farkaš, T. 16359, 16363–16364 (25 September 2007).

¹⁴⁵⁵ 4D276 (3rd Army Report to General Staff, 3 April 1999), p. 2.

¹⁴⁵⁶ 3D602 (Briefing to the Supreme Command Staff, 2 May 1999), p. 4.

¹⁴⁵⁷ 3D633 (Briefing to the Supreme Command Staff, 2 June 1999), pp. 1–3; Geza Farkaš, T. 16365 (25 September 2007).

¹⁴⁵⁸ 4D163 (Military Record for Nebojša Pavković), p. 6; Radovan Radinović, T. 17323–17325 (19 October 2007).

x. Measures through the military courts

603. At the outset of the NATO air campaign, Ojdanić issued an order to all VJ commands to mobilise the wartime military courts and prosecutors.¹⁴⁵⁹ The order called for the augmentation of the military courts' staff numbers to deal with expected criminal activity during the conflict.¹⁴⁶⁰ Although this mobilisation took effect the next day,¹⁴⁶¹ at the briefing of the General Staff/Supreme Command Staff on 29 March 1999 Ojdanić stated that the military courts were not working properly, and that trials were conducted as "short" procedures. He called for reports on the work of the military courts.¹⁴⁶² Gojović testified that the problems with the functioning of the military courts were related to the personnel, and that, accordingly, 125 new judges and prosecutors were appointed in a short period of time.¹⁴⁶³ A report from the General Staff written after the conflict also recorded the problems experienced by the military courts at the start of the conflict.¹⁴⁶⁴

604. In relation to the work of the military courts during the NATO air campaign, on 7 May 1999 Ojdanić received a report stating that, after initial difficulties, the organs of the military justice system were working according to wartime conditions, and that military prosecutors and courts were being increased in numbers.¹⁴⁶⁵ Soon after, on 14 May, Ojdanić received a report from Risto Matović, stating that the military justice system had been put into operation as soon as a state of war was proclaimed, but that the large number of criminal reports required the reinforcing of these organs with professional and experienced personnel. Consistent with the report of 7 May, it noted that the initial deficiencies were overcome. The report further stated that the military judicial organs at the command of the Priština Corps were dealing with complex criminal cases concerning serious crimes, necessitating the inclusion of information supporting the charges in the criminal reports. It contained recommendations for improving the efficiency of the military judicial organs, including that the prosecutors and presidents of courts should liaise with the commanders of the units to which they were attached to share information about criminal behaviour by VJ personnel and to enhance measures for preventing such crime, that co-operation with the civilian courts should be

¹⁴⁵⁹ P1470 (Order re Mobilisation of Military Courts, 25 March 1999), also admitted as 4D217; 3D800 (General Staff Combat Report, 26 March 1999), p. 3; *see also* 3D582 (Briefing to the Chief of Staff of the Supreme Command, 29 March 1999), p. 3.

¹⁴⁶⁰ P1470 (Order re Mobilisation of Military Courts, 25 March 1999), also admitted as 4D217.

¹⁴⁶¹ P1470 (Order re Mobilisation of Military Courts, 25 March 1999), also admitted as 4D217; *see also* P1011 (Ivan Marković, ed., *The Application of Rules of the International Law of Armed Conflicts* (2001)), p. 79.

¹⁴⁶² 3D582 (Briefing of the Chief of the Supreme Command Staff, 29 March 1999), p. 6; *see also* 3D804 (Combat Report of the General Staff/Supreme Command Staff, 30 March 1999).

¹⁴⁶³ Radomir Gojović, T. 16658–16659 (2 October 2007).

¹⁴⁶⁴ P2826 (Report on Work of Military Courts, 12 September 1999), p. 2.

¹⁴⁶⁵ P1917 (Information by Matović on the work of military legal organs during time of war, 7 May 1999).

established, and that the various military commands should monitor the work of the judicial organs.¹⁴⁶⁶

605. On 15 May Ojdanić called for a further analysis of the work of the military judicial bodies,¹⁴⁶⁷ and a week later the Supreme Command Staff received a request from the 3rd Army that the work of the military judicial bodies be stepped up.¹⁴⁶⁸ In response, Ojdanić called for the Supreme Command Staff to carry out another analysis to establish whether the military courts were sufficiently resourced in light of the number of criminal reports.¹⁴⁶⁹ At this time Ojdanić continued to be informed that the military courts were functioning – including at the briefing of 26 May, by the President and Prosecutor of the Supreme Military Court, at the briefing of 28 May, and by Matović at the briefing of 2 June.¹⁴⁷⁰ Following the receipt of the report on the military courts, and as a consequence of the 17 May 1999 meeting with Milošević, Ojdanić had guidelines drawn up, outlining the operation and responsibilities of the military justice system along with other organs responsible for the detection of crimes and their perpetrators, and the initiation and adjudication of criminal proceedings.¹⁴⁷¹

606. A differing account of the relationship between the military courts and the VJ appeared in a report prepared by Lakić Đorović, whose testimony is discussed in detail in section VI.A.1.e. Đorović testified 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 military justice organs—including selection, replacement, removal, and relieving of military judges and prosecutors of their duties, especially in management and leadership positions.¹⁴⁷² He also testified that the prosecution of VJ personnel for crimes committed during the conflict was inadequate largely as a result of the failure to report and the covering up of evidence by the security administrations of the VJ.¹⁴⁷³ Đorović implicated Ojdanić in a scheme involving the illegal confiscation of the property of Kosovo Albanians. However, he had previously referred to

¹⁴⁶⁶ P1918 (Information by Matovic on the work of military legal organs during time of war, 14 May 1999), pp. 3, 7, 7.

¹⁴⁶⁷ 3D615 (Briefing to the Supreme Command Staff, 15 May 1999), p. 3.

¹⁴⁶⁸ 3D621 (Briefing to the Supreme Command Staff, 21 May 1999), p. 3.

¹⁴⁶⁹ 3D621 (Briefing to the Supreme Command Staff, 21 May 1999), p. 5.

¹⁴⁷⁰ 3D626 (Briefing to the Supreme Command Staff, 26 May 1999), p. 2; 3D628 (Briefing to the Supreme Command Staff, 28 May 1999), p. 2; 3D633 (Briefing to the Supreme Command Staff, 2 June 1999), p. 2; *see also* 3D862 (Combat Report of the Supreme Command Staff, 27 May 1999), p. 9.

¹⁴⁷¹ Aleksandar Vasiljević, T. 8878 (22 January 2007); 3D492 (Supreme command Staff-the Guidelines, 22 May 1999).

¹⁴⁷² P2672 (Lakić Đorović, report outlining the procedures of the Military Court in wartime and peacetime, 14 August 2006), p. 2.

¹⁴⁷³ Lakić Đorović, P2671 (witness statement dated 1 September 2006), paras. 6, 9.

Lazarević rather than Ojdanić.¹⁴⁷⁴ The Chamber does not rely on his account in so far as it purports to implicate Ojdanić in that illegal scheme.

607. At the briefing of 8 June Farkaš reported that a full analysis of breaches of international humanitarian law in Kosovo had been carried out, which concluded that serious crimes, including rape and looting, were committed, but that 95 percent of the perpetrators had been arrested and were being investigated.¹⁴⁷⁵ At this meeting Ojdanić issued a document ordering that military judicial organs should prioritise their prosecution of crimes, and that violations of international law should be the top priority.¹⁴⁷⁶

608. Radomir Gojović, the Head of the Legal Administration of the General Staff/Supreme Command Staff during the NATO campaign, testified that, after the NATO air campaign, Ojdanić questioned him on a report he had written which referred to a large number of criminal prosecutions in the military courts during the conflict, but few for war crimes. He stated that Ojdanić pointed out the large discrepancy between the numbers of victims complaining of serious crimes, and the few prosecutions for such crimes.¹⁴⁷⁷ He informed Ojdanić that this was partly due to the difficulty of identifying perpetrators in times of war, when their fellow soldiers would assist in covering up their involvement.¹⁴⁷⁸ Subsequently Ojdanić arranged a meeting between Farkaš and the Head of the RDB, Radomir Marković, to discuss a common approach to the investigation of crimes, which took place on 9 July 1999.¹⁴⁷⁹ Present at the meeting representing the VJ were Vasiljević, Ojdanić, Farkaš, Krga, and Gajić, and representing the MUP were Stojiljković, Đorđević, Stevanović, and Marković.¹⁴⁸⁰ According to Vasiljević, the participants discussed the processing of criminal cases and Stojiljković stated that only 16 criminal cases against MUP members were being prosecuted.¹⁴⁸¹

xi. Conclusion of knowledge of and reaction to crimes in Kosovo

609. It is established that Ojdanić possessed knowledge of the commission of crimes by his subordinates in the VJ in Kosovo along with crimes committed by members of the MUP. The Ojdanić Defence points to the fact that combat reports do not report VJ participation in forcible

¹⁴⁷⁴ Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 17, T. 11625–11627 (13 March 2007).

¹⁴⁷⁵ 3D493 (Reports to the Supreme Command chief of staff, 8 June 1999), p. 2; Geza Farkaš, T. 16304 (25 September 2007).

¹⁴⁷⁶ 3D487 (Tasks set by the Chief of Supreme Command Staff, 8 June 1999), p. 1; Geza Farkaš, T. 16306 (25 September 2007); 3D493 (Reports to the Supreme Command and Chief of Staff, 8 June 1999), p. 5.

¹⁴⁷⁷ Radomir Gojović, T. 16684–16685 (2 October 2007).

¹⁴⁷⁸ Radomir Gojović, T. 16685 (2 October 2007).

¹⁴⁷⁹ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), paras. 74, 90.

¹⁴⁸⁰ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 90.

displacement and argues that Ojdanić therefore could not have known about such crimes.¹⁴⁸² The Trial Chamber notes that Ojdanić's knowledge came from a variety of sources, as detailed above, and so does not consider that the lack of reporting of forcible displacement in combat reports creates any doubt as to Ojdanić's knowledge of the commission of forcible displacement in Kosovo.

610. Ojdanić's reaction to this information amounted primarily to ordering adherence to international humanitarian law, relying on the continued operation of the military justice system, and dispatching information gathering missions by members of his Security Administration. Nonetheless, he continued to order the VJ to participate in military operations with the MUP in Kosovo, as discussed above.

611. However, he was also made aware of serious concerns over the impartiality and effectiveness of the military justice system.¹⁴⁸³ In combination with his awareness of widespread criminal activity, and the lack of effective criminal prosecutions, this information alerted Ojdanić to the fact that reliance on the military justice system would not constitute an effective measure to punish the crimes committed by his subordinates. At the conclusion of the NATO air campaign he received reports indicating that a large number of VJ personnel had been prosecuted for less serious offences against the VJ, such as desertion, but very few for serious offences or violations of international humanitarian law. He was aware of the widespread commission of crimes, including those alleged in the first indictment. Although he continued to be Chief of the General Staff until February 2000, reports from the VJ military justice system show that no prosecutions of VJ commanders were initiated in relation to the events alleged in the indictment, and he did not establish a commission to enquire into the veracity of the charges in that indictment, which included the involvement of the VJ in widespread and systematic forcible displacement of Kosovo Albanians. This evidence is relevant to the question whether the mental element required for any form of responsibility is established.

6. Conclusions on responsibility of Dragoljub Ojdanić

612. The Prosecution alleges that Ojdanić is responsible for planning, instigating, ordering, committing (through participation in a joint criminal enterprise), or otherwise aiding and abetting the crimes in the Indictment.¹⁴⁸⁴ Ojdanić is also charged with responsibility as a superior for the

¹⁴⁸¹ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 90.

¹⁴⁸² Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 264.

¹⁴⁸³ *See, e.g.*, 3D635 (Briefing to the Supreme Command Staff, 4 June 1999), p. 2.

¹⁴⁸⁴ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 725, 808.

crimes committed by his subordinates, pursuant to Article 7(3) of the Statute.¹⁴⁸⁵ The Ojdanić Defence responds that the Prosecution has not established that he participated in any of the crimes alleged in the Indictment, nor that he knew that they had occurred or were about to occur.¹⁴⁸⁶

613. According to the Prosecution, Ojdanić was a member of the joint criminal enterprise and significantly contributed to its implementation. The Prosecution submits that Ojdanić shared the intent to carry out this common plan, and that his actions—such as his commanding, ordering, and directing of VJ operations in Kosovo, including joint operations with the MUP—demonstrate that he intended to further the plan, through criminal means.¹⁴⁸⁷ The Ojdanić Defence, on the other hand, argues that he did not participate in a joint criminal enterprise and that it has not been established that he shared the intent to participate in such an enterprise.¹⁴⁸⁸

614. The Chamber notes that it is not obliged to make exhaustive factual findings on each and every charged form of responsibility, and rather may examine only those that describe the conduct of the accused most accurately.¹⁴⁸⁹ In response to the Prosecution's allegation that Ojdanić was a member of a joint criminal enterprise aimed at the perpetration of crimes in Kosovo, the Chamber first addresses his liability under this form of responsibility. Specific references are provided in relation to issues addressed, but the Chamber notes that these findings are based on all the relevant evidence.

a. Commission through participation in a joint criminal enterprise

615. For Ojdanić's liability to arise pursuant to the first category of joint criminal enterprise, the evidence must show that he participated in at least one aspect of the common purpose to ensure continued control by the FRY and Serbian authorities over Kosovo, through crimes of forcible displacement, which the Chamber has already found existed.¹⁴⁹⁰ In order to fulfil this element, Ojdanić need not have physically committed the crimes through which the goal was achieved, or any other offence for that matter.¹⁴⁹¹ Indeed, he need not even have been present at the time and place of the physical perpetration of these crimes.¹⁴⁹² His contribution, however, to the plan must

¹⁴⁸⁵ Indictment, paras. 11, 40–44.

¹⁴⁸⁶ Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 5.

¹⁴⁸⁷ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 8, 725–729, 783.

¹⁴⁸⁸ Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 4–5.

¹⁴⁸⁹ See *Krstić* Trial Judgement, para. 602; *Kunarac et al.* Trial Judgement, paras. 388–389.

¹⁴⁹⁰ *Brđanin* Appeal Judgement, para. 427; *Vasiljević* Appeal Judgement, paras. 100, 119; *Tadić* Appeal Judgement, paras. 197, 227.

¹⁴⁹¹ *Brđanin* Appeal Judgement, para. 427; *Kvočka et al.* Appeal Judgement, para. 99.

¹⁴⁹² *Krnjelac* Appeal Judgement, para. 81; see also *Simić et al.* Trial Judgement, para. 158.

have been significant.¹⁴⁹³ As for the necessary mental element, it must be proved that Ojdanić participated voluntarily in the joint criminal enterprise and that he shared the intent with other members of the joint criminal enterprise to commit the crime or underlying offence that was the object of the enterprise, in this case the forcible displacement of Kosovo Albanians.

616. The Chamber finds that, although there is considerable evidence supporting the Prosecution's allegation that Ojdanić was supportive of the commission of crimes throughout Kosovo by VJ and MUP forces in a widespread and systematic campaign targeting Kosovo Albanians by continuing to authorise actions and operations of the VJ, including the use of the armed non-Albanian population by exercising his powers, it has not been proved beyond reasonable doubt that he shared the intent of the joint criminal enterprise members. The evidence supporting the Prosecution allegation includes specific reports of criminal activity by his subordinates, along with Ojdanić's awareness of the general situation in Kosovo based on his position as the highest ranking officer in the VJ, his daily meetings with Milošević during the NATO air campaign, his attendance at the meetings of 4, 16, and 17 May in Belgrade to discuss criminal activity in Kosovo, and his continued issuance of orders for the use of the VJ in Kosovo in 1999, despite his awareness of crimes being committed there by forces of the VJ and MUP.¹⁴⁹⁴

617. However, the evidence also shows that Pavković, a member of the joint criminal enterprise, minimised some reports of crimes by VJ members that were sent to Ojdanić, and continued to meet with Milošević in 1999 without notifying Ojdanić. Prior to the NATO air campaign, Ojdanić breached the October Agreements by introducing additional troops into Kosovo. However, he ordered that the additional units remain at the border with Albania, suggesting that Ojdanić's motivation to breach the October Agreements was to counter the perceived NATO and KLA threat, rather than a desire to prepare for a widespread campaign of forcible displacement in Kosovo. Despite Ojdanić's orders, Pavković introduced the 72nd Special Brigade into the interior of Kosovo, and also misreported to Ojdanić on provocative actions undertaken by the VJ in Kosovo, in breach of the October Agreements, in late 1998 and early 1999. This evidence suggests that Ojdanić was not a member of the joint criminal enterprise. He also took a number of steps in relation to the criminal activities of members of the VJ and MUP in Kosovo, including hosting a seminar for VJ officers on the application of international humanitarian law in 1998, dispatching members of his Security Administration to the 3rd Army and Priština Corps Commands in order to find out further information on crimes by VJ members, commissioning reports on the working of the military justice system, and arranging a meeting on 9 July 1999 between Farkaš and Radomir Marković

¹⁴⁹³ *Brđanin* Appeal Judgement, para. 430.

¹⁴⁹⁴ Further evidence relating to Ojdanić's knowledge of the campaign is discussed below.

from the MUP to discuss a common approach to the investigation of crimes. This evidence runs counter to the allegation that he shared the intent to commit the crimes that were encompassed by the joint criminal enterprise.

618. In light of this evidence, the Chamber finds that the Prosecution has not proved beyond reasonable doubt that Ojdanić shared the intent of the joint criminal enterprise members to maintain control over Kosovo through the forcible displacement of Kosovo Albanians. Because of this finding, the Chamber does not address whether Ojdanić made a significant contribution to the joint criminal enterprise.

619. Recalling that a Chamber need only address those forms of responsibility under Article 7(1) that describe the conduct of the accused most accurately, the Chamber makes the general observation of the physical elements of the other forms of responsibility under Article 7(1) that planning primarily applies to those who design crimes, that instigating primarily applies to those who prompt others to commit crimes, and that ordering primarily applies to those who instruct others to commit crimes; whereas aiding and abetting applies to those who provide practical assistance, encouragement, or moral support to the perpetration of a crime.¹⁴⁹⁵ On this basis, the Chamber does not consider that planning, instigating, or ordering most accurately describe the conduct of Ojdanić and dismisses these modes of liability to describe his individual criminal responsibility. Accordingly, the Chamber now addresses his responsibility for aiding and abetting the commission of the crimes proved to have occurred.

b. Aiding and abetting

620. In order for Ojdanić to be held responsible for aiding and abetting any of the crimes that have been proved, it must be shown that he provided practical assistance, encouragement, or moral support to the perpetrator of a crime or underlying offence and also that such practical assistance, encouragement, or moral support had a substantial effect upon the commission of a crime or underlying offence.¹⁴⁹⁶ Furthermore, it must be shown that he intentionally provided this assistance and that he was aware of the essential elements of that crime or underlying offence, including the mental state of the physical or intermediary perpetrator.¹⁴⁹⁷ The lending of practical assistance, encouragement, or moral support may occur before, during, or after the crime occurs.¹⁴⁹⁸ An accused may aid and abet through an omission, where (a) there is a legal duty to act, (b) the accused

¹⁴⁹⁵ For the complete descriptions of the elements of these forms of responsibility, see Section II.

¹⁴⁹⁶ *Blaškić* Appeal Judgement, paras. 45, 46; *Vasiljević* Appeal Judgement, para. 102.

¹⁴⁹⁷ *Simić et al.* Appeal Judgement, para. 86; *Blaškić* Appeal Judgement, para. 49; *Vasiljević* Appeal Judgement, para. 102; *Aleksovski* Appeal Judgement, para. 162.

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.

621. In relation to liability under Article 7(1) of the Statute for omissions to act, the Ojdanić Defence argues that the Prosecution has failed to prove any legal duty that Ojdanić was under during the relevant period and that he failed to fulfil.¹⁴⁹⁹ The Ojdanić Defence further disputes that Ojdanić's failure to prevent or punish the commission of crimes by his subordinates, if that were to be proved, could be a basis for liability under Article 7(1), pointing to the Judgement in *Prosecutor v. Mpambara*, in which the Trial Chamber rejected the Prosecution theory that the failure to prevent or punish could found liability under Article 6(1) (the ICTR's equivalent of Article 7(1) of the Statute).¹⁵⁰⁰ According to the Ojdanić Defence, Articles 7(1) and 7(3) of the Tribunal's Statute denote distinct forms of criminal responsibility, and conflation of the two by allowing the failure to prevent or punish to constitute a culpable omission under Article 7(1), would render Article 7(3) redundant.¹⁵⁰¹

622. The Chamber notes that, while Articles 7(1) and 7(3) do connote distinct forms of criminal responsibility, this does not imply that there is no overlap between the two in respect of the factual conduct that can lead to liability. The overlap has been recognised, and a well-established rule of the Tribunal's jurisprudence holds that, in general, where convictions are possible under both forms of responsibility, a chamber should convict under Article 7(1). With regard to culpability under Article 7(1) for omissions to act, the Chamber has found that this may result in liability where there was a legal duty to act and the accused failed to do so. The definition of such a legal duty is independent of, and not restricted by, the terms of Article 7(3), which connotes a distinct form of criminal responsibility, applying to superiors. Consequently, the Chamber examines Ojdanić's acts and omissions in addressing the allegation that he aided and abetted the crimes committed in Kosovo in 1999.

623. In 1998 and during the period leading up to the NATO air campaign, Ojdanić was provided with information indicating that VJ and MUP personnel were responsible for serious criminal acts committed against ethnic Albanians within Kosovo. This information included *inter alia* warnings from John Crosland that VJ troops were using excessive force in Kosovo in 1998 and indications of VJ and MUP involvement in violence against civilians at Gornje Obrinje/Abria e Epërme, in

¹⁴⁹⁸ *Blaškić* Appeal Judgement, para. 48.

¹⁴⁹⁹ Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 443.

¹⁵⁰⁰ Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 446–447; *Mpambara* Trial Judgement, para. 39.

¹⁵⁰¹ Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 453.

Glogovac/Gllogoc in 1998. In conjunction with information conveyed by UN Security Council Resolutions 1160 and 1199, this made Ojdanić aware that excessive uses of force and forcible displacements were likely to occur if he ordered the VJ into Kosovo in 1999.

624. The Chamber has found that, from March to June 1999, VJ and MUP forces carried out a widespread and systematic attack on numerous villages across 13 municipalities in Kosovo, which involved the commission of crimes against hundreds of thousands of Kosovo Albanians.

625. Ojdanić was aware of the general campaign of forcible displacements that was conducted by the VJ and MUP throughout Kosovo during the NATO air campaign. As Chief of the General Staff, with both *de jure* and *de facto* power over the VJ forces in Kosovo, he met daily with Milošević to discuss the actions of the VJ and the situation in Kosovo and attended meetings with MUP, VJ, and other FRY leaders, such as on 4, 16, and 17 May 1999, to discuss the commission of crimes by VJ and MUP forces in Kosovo. The VJ command and communication system continued to function throughout the NATO campaign; and, although Pavković sought to minimise reports of criminal activity by VJ members, Ojdanić also obtained information from other sources, including directly from VJ security organs and his intelligence department's reports on information from the international community. From the opening days of the conflict in 1999, Ojdanić knew of MUP and VJ involvement in the movement of Kosovo Albanians,¹⁵⁰² and that this involved criminal acts by VJ and MUP forces including forcible displacement.¹⁵⁰³ Ojdanić acknowledged on 7 April 1999 that he was aware of the earlier commission of crimes, including arson, theft, and looting, by VJ members against Kosovo Albanians.¹⁵⁰⁴ Ojdanić was also aware of the broad discriminatory context of the conflict.¹⁵⁰⁵ He was made aware of allegations of the widespread nature of such criminal activity, including forcible displacements, through internal sources of information, such as briefings of the Supreme Command Staff, and through external sources, such as through the publication of the first indictment against him, which specifically referred to the widespread campaign of forcible displacements being conducted by VJ and MUP forces in Kosovo, and named a number of specific sites at which these forcible displacements were perpetrated.¹⁵⁰⁶ The combination of Ojdanić's general knowledge of the widespread displacement of Kosovo Albanians in the course of VJ operations and his specific knowledge of the locations of those operations, including at most of the locations named in the Indictment, lead the Chamber to conclude that the

¹⁵⁰² 3D802 (General Staff Combat Report, 28 March 1999), p. 4.

¹⁵⁰³ P2542 (Drewienkiewicz's Press Statement, April 1999); Karol John Drewienkiewicz, T. 7815 (4 December 2006).

¹⁵⁰⁴ P1479 (Order re Volunteers, 7 April 1999), p. 3.

¹⁵⁰⁵ 3D685 (VJ General Staff evaluation of security information, February 1999).

¹⁵⁰⁶ P968 (*Prosecutor v. Milošević et al.*, Case No. IC-99-37, First Indictment, 23 May 1999).

only reasonable inference is that he knew of the campaign of terror, violence, and forcible displacement being carried out by VJ and MUP forces against Kosovo Albanians.

626. Ojdanić provided practical assistance, encouragement, and moral support to the VJ forces engaging in the forcible displacement of Kosovo Albanians in co-ordinated action with the MUP. He contributed by issuing orders for VJ participation in joint operations with the MUP in Kosovo during the NATO air campaign, by mobilising the forces of the VJ to participate in these operations, and by furnishing them with VJ military equipment.¹⁵⁰⁷ In addition to issuing orders allowing the VJ to be in the locations where the crimes were committed, he also refrained from taking effective measures at his disposal, such as specifically enquiring into the forcible displacements, despite his awareness of these incidents. Furthermore, Ojdanić contributed to the commission of crimes in Kosovo by the VJ through his role in arming the non-Albanian population and ordering its engagement in 1999.¹⁵⁰⁸ These contributions had a substantial effect on the commission of the crimes, because they provided assistance in terms of soldiers on the ground to carry out the acts, the VJ weaponry to assist these acts, and encouragement and moral support by granting authorisation within the VJ chain of command for the VJ to continue to operate in Kosovo, despite the occurrence of these crimes.

627. Furthermore, Ojdanić had extensive powers to instigate disciplinary proceedings against any other member of the VJ and was obliged to ensure that VJ members who committed offences and infractions against VJ military discipline were held responsible as soon as possible during a state of war.¹⁵⁰⁹ After he issued an order at the start of April 1999 that criminal activities be reported to the Supreme Command Staff, Pavković failed to do so.¹⁵¹⁰ This under-reporting occurred throughout 1998 and 1999, and Ojdanić was expressly warned by Dimitrijević of such misreporting by Pavković on a number of occasions.¹⁵¹¹ Ojdanić did take certain measures in response to Pavković's actions, including sending members of his Security Administration to find out more information and initiating the 17 May 1999 meeting with Milošević. However, these actions were insufficient to remedy the problem, as discussed above. In light of his knowledge of widespread criminal activity amongst VJ members from the 16 and 17 May meetings, the Arbour letter, the

¹⁵⁰⁷ 3D690 (VJ General Staff Directive for the engagement of the VJ, *Grom* 3 Directive, 16 January 1999); Vladimir Lazarević, T. 17894–17895 (8 November 2007); P1487 (Suggestions to 3rd Army from Supreme Command Staff, 17 April 1999), p. 1; P1925 (Order of the VJ General Staff, 23 March 1999).

¹⁵⁰⁸ P931 (Minutes of the Collegium of the General Staff of the VJ for 2 February 1999), p. 23; P1487 (Suggestions to 3rd Army from Supreme Command Staff, 17 April 1999), p. 1.

¹⁵⁰⁹ P984 (FRY Law on the VJ), articles 159, 180, 181; 4D532 (VJ Rules on Service, 1 January 1996), articles 291, 313, 314.

¹⁵¹⁰ 4D276 (3rd Army Report to General Staff, 3 April 1999).

publication of the first indictment, and various prior reports of criminal offences by VJ members, Ojdanić's request for a response from Pavković was insufficient.¹⁵¹² Subsequently, when information was again presented to the Supreme Command Staff that crimes were still being committed by VJ personnel in Kosovo in June 1999, Ojdanić stuck to his approach of calling for reports and issuing orders to enhance the operation of the military courts.¹⁵¹³ Again, he did not take disciplinary measures against the 3rd Army Commander, despite the fact that crimes were still not being included in written reports up to the Supreme Command Staff from the 3rd Army.¹⁵¹⁴ Ojdanić's failure to take effective measures against Pavković provided practical assistance, encouragement, and moral support to members of the VJ who perpetrated crimes in Kosovo, by sustaining the culture of impunity surrounding the forcible displacement of the Kosovo Albanian population, and by allowing the Commander of the 3rd Army to continue to order operations in Kosovo during which the forcible displacement took place.

628. The Chamber finds that it has been established that all of Ojdanić's actions described above were voluntary. The Chamber finds that, through his acts and omissions, Ojdanić provided practical assistance, encouragement, and moral support to members of the VJ, who were involved in the commission of forcible transfer and deportation in the specific crime sites where it has been found that the VJ participated, that his conduct had a substantial effect on the commission of these crimes, that he was aware of the intentional commission of these crimes by the VJ in co-ordinated action with the MUP, and that he knew that his conduct assisted in the commission of these crimes.

629. While the forcible displacements were part of the VJ and MUP organised campaign, the Chamber is not satisfied beyond reasonable doubt that killings, sexual assaults, or the destruction of religious and cultural property were intended aims of this campaign. Accordingly, although he was aware of VJ members killing Kosovo Albanians in some instances, it has not been proved that Ojdanić was aware that VJ and MUP forces were going into the specific crime sites referred to above in order to commit killings, sexual assaults, or the destruction of religious and cultural property. Consequently, in Ojdanić's case, the mental element of aiding and abetting has not been established in relation to counts 3, 4, and 5.

¹⁵¹¹ P928 (Minutes of the Collegium of the General Staff of the VJ, 30 December 1998), p. 14; P933 (Minutes of the Collegium of the General Staff of the VJ, 4 March 1999), p. 15; P938 (Minutes of the Collegium of the General Staff of the VJ, 18 March 1999), p. 21.

¹⁵¹² 3D790 (Pavković Letter responding to accusations of Louise Arbour, 17 May 1999); Milovan Vlajković, T. 16046–16047 (20 September 2007).

¹⁵¹³ 3D633 (Briefing to the Chief of Staff of the Supreme Command, 2 June 1999), p. 2; 3D487 (Tasks set by the Chief of Supreme Command Staff, 8 June 1999), p. 1.

¹⁵¹⁴ Radovan Radinović, T. 17323–17325 (19 October 2007).

630. The Trial Chamber therefore finds that it has been established that Dragoljub Ojdanić is responsible for aiding and abetting, under Article 7(1) of the Statute, the crimes in the following locations:

- Peć/Peja
 - Peć/Peja town—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Đakovica/Gjakova
 - Đakovica/Gjakova town—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Korenica—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Dobroš/Dobrosh—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Ramoc—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Meja—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Other villages in the Reka/Caragoj valley—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Prizren
 - Pirane/Pirana—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Orahovac/Rahovec
 - Celina—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Srbica/Skenderaj
 - Turićevac/Turiçec—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Izbica—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Tušilje/Tushila—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Ćirez/Qirez—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Priština/Prishtina
 - Priština/Prishtina town—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Gnjilane/Gjilan
 - Žegra/Zhegra—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Vladovo/Lladova—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;

- Prilepnica/Përlepnica—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Uroševac/Ferizaj
 - Sojevo/Sojeva—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Mirosavlje/Mirosala—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Staro Selo—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Kačanik/Kaçanik
 - Kotlina/Kotllina—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Kačanik/Kaçanik—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Dubrava/Lisnaja—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity.

631. In respect of the crimes proved to have been committed for which Ojdanić has not been held responsible as an aider and abettor, the Chamber finds that he also did not plan, instigate, or order them.

c. Superior Responsibility

632. Looking to Ojdanić's responsibility under Article 7(3) of the Statute for counts 1 and 2, the Chamber notes that there are specific crimes of forcible displacement for which he has not been found responsible as an aider and abettor. These specific crimes were those of forcible displacement carried out by the MUP, without the participation of the VJ. As found above, it has not been established that Ojdanić had effective control of the forces of the MUP acting in Kosovo. Consequently, he is not responsible under Article 7(3) for the remaining crimes in counts 1 and 2 that have been proved, those being:

- Dečani/Deçan
 - Beleg—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Prizren
 - Dušanovo/Dushanova, part of the town of Prizren—deportation, crime against humanity; forcible transfer, other inhumane act, crime against humanity;
- Suva Reka/Suhareka
 - Suva Reka/Suhareka town—deportation, crime against humanity; forcible transfer, other inhumane act, crime against humanity;
- Kosovska Mitrovica/Mitrovica

- Kosovska Mitrovica/Mitrovica town—deportation, crime against humanity; forcible transfer, other inhumane act, crime against humanity;
- Žabare/Zhabar—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Vučitrn/Vushtrria
 - Vučitrn/Vushtrria town—forcible transfer, other inhumane act, crime against humanity;
 - Convoy near Gornja Sudimlja/Studimja e Epërme—deportation, crime against humanity; forcible transfer, other inhumane act, crime against humanity.

633. Ojdanić is further charged with being responsible under Article 7(3) of the Statute for counts 3, 4, and 5 of the Indictment. The Chamber notes that it has not been proved beyond reasonable doubt that killings, sexual assaults, or the destruction of religious and cultural property were intended aims of the campaign of forcible displacement. Therefore, Ojdanić would only have reason to know that his forces were committing these crimes where information relating to the specific crimes of killings, sexual assaults, or the destruction of religious and cultural property, carried out by VJ forces, was available to him. The Chamber does not consider that information regarding the specific killings, sexual assaults, or the destruction of religious and cultural property, for which it has been proved that the VJ was responsible, was available to him or that he had reason to know about them.

634. Ojdanić is not responsible for all other charges alleged in the Indictment, subject to the final paragraph of the Judgement.

635. Dragoljub Ojdanić is, therefore, guilty of counts 1 and 2 of the Indictment. However, he is not guilty of counts 3, 4, and 5 of the Indictment, subject to the final paragraph of the Judgement.

F. INDIVIDUAL CRIMINAL RESPONSIBILITY OF NEBOJŠA PAVKOVIĆ

1. The Accused

636. Nebojša Pavković was born on 10 April 1946 in Senjski Rudnik, Serbia, and held numerous positions in the JNA and the VJ.¹⁵¹⁵ In 1994 Pavković was assigned to the Priština Corps, where he served in various positions in the command staff until he was appointed Commander of the Corps on 9 January 1998.¹⁵¹⁶ On 28 December 1998 he was appointed Commander of the 3rd Army, and

¹⁵¹⁵ Order on Agreed Facts, 11 July 2006, pp. 13–14.

¹⁵¹⁶ Order on Agreed Facts, 11 July 2006, p. 13.

took up this position on 13 January 1999, where he remained until early 2000.¹⁵¹⁷ While holding these positions, Pavković was promoted to the rank of Lieutenant-General on 21 July 1998, and to the rank of Colonel-General on 31 March 1999.¹⁵¹⁸ In February 2000, he was appointed Chief of the General Staff of the VJ.¹⁵¹⁹

2. Charges in Indictment

637. According to the Indictment, as Commander of the 3rd Army during the time the crimes specified in the Indictment are alleged to have been committed, Pavković exercised command authority over VJ forces in the 3rd Army, and other forces subordinated to the VJ. In particular, it is alleged that he planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation, or execution of these crimes. Within the scope of “committing”, Pavković allegedly participated in a joint criminal enterprise, the purpose of which was *inter alia* to modify the ethnic balance in Kosovo in order to ensure continued control by the FRY and Serbian authorities over the province. This was to be achieved by criminal means consisting of a widespread or systematic campaign of terror and violence that included deportations, murders, forcible transfers, and persecutions directed at the Kosovo Albanian population during the Indictment period. Pavković allegedly contributed to the joint criminal enterprise using the *de jure* and *de facto* powers available to him. As one holding positions of superior authority, Pavković is also alleged to be criminally responsible for “the acts or omissions of [his] subordinates, pursuant to Article 7(3) of the Statute of the Tribunal for the crimes alleged in Counts 1 to 5 of the Indictment”.¹⁵²⁰

638. Pavković, however, submits that the Prosecution has failed to prove that he is liable for planning, ordering, instigating, committing, or otherwise aiding and abetting the crimes charged in the Indictment.¹⁵²¹ Pavković also argues that the Prosecution has failed to show that he is responsible under Article 7(3) for the crimes charged in the Indictment.¹⁵²²

639. The Chamber has concluded in Section VII that the forces of the FRY and Serbia committed crimes directed against the Kosovo Albanian civilian population in many of Kosovo’s municipalities, from March to June 1999. This section will therefore address the question of

¹⁵¹⁷ P802 (Report on the hand-over of the duty of 3rd Army Commander by Dušan Samardžić, 13 January 1999); 4D35 (FRY President Decree on appointment of Nebojša Pavković, 28 December 1998); 4D36 (Report on the take-over of the duty of 3rd Army Commander by Nebojša Pavković, 13 January 1999), also admitted as P800.

¹⁵¹⁸ Order on Agreed Facts, 11 July 2006, pp. 13–14.

¹⁵¹⁹ 4D163 (Military Record for Nebojša Pavković), p. 6; Order on Agreed Facts, 11 July 2006, p. 14.

¹⁵²⁰ Indictment, paras. 16–22, 50–54.

¹⁵²¹ Pavković Final Trial Brief (public version), 28 July 2008, para. 18.

whether Pavković is responsible for any of these crimes, under the various modes of liability alleged in the Indictment.

3. Pavković's role as the Commander of the Priština Corps

a. Appointment and powers

640. The Priština Corps was commanded by Pavković from 5 January 1998 until 13 January 1999, when he took up his duties as Commander of the 3rd Army and was replaced by Lazarević as the Commander of the Corps.¹⁵²³ Throughout 1998 General Dušan Samardžić was the 3rd Army Commander, and thus Pavković's direct superior.¹⁵²⁴

641. The Priština Corps Commander had the duty to command the Corps in accordance with the law and regulations governing the VJ.¹⁵²⁵ When he was Commander of the Priština Corps, Pavković could carry out this duty directly or "through his Chief of Staff, his assistant or the head of branches".¹⁵²⁶ His duties included controlling the work of the Corps Command, assigning tasks to his subordinates, and making sure the tasks were carried out, as well as overseeing and analysing the performance, order, and discipline of the Priština Corps.¹⁵²⁷ He was obliged to report directly to the 3rd Army Command, including on crimes and unlawful events.¹⁵²⁸

b. Pavković's role as Commander of the Priština Corps

i. Interactions with Milošević and participation in the Joint Command in 1998

642. The Prosecution argues that in 1998, while he was Commander of the Priština Corps, Pavković was an enthusiastic supporter of the use of the VJ within Kosovo and by-passed the

¹⁵²² Pavković Final Trial Brief (public version), 28 July 2008, paras. 91–94.

¹⁵²³ P801 (Report on the takeover of the duty of PrK Commander by Vladimir Lazarević, 9 January 1999); Vladimir Lazarević, T. 17744–17745 (6 November 2007); *see also* Nike Peraj, P2248 (witness statement dated 18 April 2000), p. 2, P2253 (witness statement dated 9 August 2006), para. 6, p. 2; 4D36 (Report on the take-over of the duty of 3rd Army Commander by Nebojša Pavković, 13 January 1999), also admitted as P800.

¹⁵²⁴ 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 handover of the duty of 3rd Army Commander by Dušan Samardžić, 13 January 1999).

¹⁵²⁵ P987 (Regulations on the responsibilities of the land army corps command in peacetime, 1990), articles 4, 5, 9; *see also* P982 (Instructions to the 4th Corps Command), P987 (Regulations on the responsibilities of the land army corps command in peacetime, 1990).

¹⁵²⁶ P982 (Instructions to the 4th Corps Command), p. 14.

¹⁵²⁷ P982 (Instructions to the 4th Corps Command), p.14; P1078 (Annual analysis of performance, order, discipline inside the PrK, 28 December 1998), p. 1.

¹⁵²⁸ Geza Farkaš, T. 16362–16363 (25 September 2007); Ljubiša Stojimirović, T. 17681 (26 October 2007); Radojko Stefanović, T. 21728 (6 February 2008); *see also* Miloš Mandić, T. 20924 (23 January 2008); Aleksandar Vasiljević, T.

regular chain of command within the VJ, including through his participation in the Joint Command.¹⁵²⁹ The Pavković Defence denies the Prosecution's allegations and submits that he did not operate outside of the chain of command in 1998 and that in all instances his use of the VJ was approved down the proper chain of command.¹⁵³⁰

643. From 21 April to 12 May 1998 Pavković used a variety of VJ units to engage in combat operations in Kosovo. However, these efforts were not successful in destroying the KLA.¹⁵³¹ Consequently, in May and June 1998 Pavković was involved in a series of meetings concerning the increased use of the VJ in Kosovo to combat the KLA. In May Pavković presented a plan to take action against the KLA in Kosovo, first to Samardžić and then to Perišić.¹⁵³² Then, on 30 May 1998, he attended a meeting with Milošević in Belgrade and discussed the adoption of a Plan for Combating Terrorism.¹⁵³³ Those present included Perišić, Aleksandar Dimitrijević, and Samardžić from the VJ, along with Stojiljković, Obrad Stevanović, and Sreten Lukić from the MUP.¹⁵³⁴ A report sent by Samardžić also indicated that the Plan for Combating Terrorism was proposed by Pavković.¹⁵³⁵ As described in Section VI.B, the Plan for Combating Terrorism was a five phase plan for the use of both the VJ and MUP in co-ordinated actions in Kosovo, which was later followed by the *Grom* 98 plan for the use of the VJ.¹⁵³⁶ In his interview with the Prosecution, Pavković gave his own explanation upon the topic and stated that the VJ was engaged in the territory of Kosovo and dispatched to garrisons throughout Kosovo as of 4 June 1998, pursuant to a decision taken at the meeting on 30 May 1998 between Milošević and top state and VJ officials.¹⁵³⁷

644. According to Dimitrijević, Pavković was the one asked to draft the Plan for Combating Terrorism because Milošević wanted Pavković to be in command of "all the forces in Kosovo". Also in June 1998, and following Pavković's proposal of the Plan for Combating Terrorism, Milošević called Dimitrijević and Perišić to suggest that Pavković be appointed as Commander of all the forces in Kosovo, including the MUP. This idea was objected to by the VJ representatives, who told Milošević that the MUP would not agree to such an arrangement, and was not

8666 (18 January 2007); cf. Radomir Gojović, T. 16706 (2 October 2007); 3D480 (Supreme Command Staff order, 2 April 1999), pp. 1–2.

¹⁵²⁹ Indictment, paras. 50–54; Prosecution Final Trial Brief (public version), 29 July 2008, paras. 853, 855, 860.

¹⁵³⁰ Pavković Final Trial Brief (public version), 28 July 2008, paras. 127, 242.

¹⁵³¹ P1401 (Conclusions for the engagement of forces of PrK, 13 May 1998), pp. 1–3.

¹⁵³² Milan Đaković, T. 26409–26411 (19 May 2008); see P1401 (Conclusions for the engagement of forces of PrK, 13 May 1998).

¹⁵³³ P949 (Nebojša Pavković interview with the Prosecution), e-court pp. 321–325; Milan Đaković, T. 26411 (19 May 2008).

¹⁵³⁴ Milan Đaković, T. 26409–26411 (19 May 2008).

¹⁵³⁵ 4D119 (3rd Army Report to PrK, 22 July 1998).

¹⁵³⁶ Milan Đaković, T. 26409 (19 May 2008).

¹⁵³⁷ P949 (Nebojša Pavković interview with the Prosecution), pp. 34–35, 39, 48–49; 321–324.

implemented.¹⁵³⁸ Dimitrijević also testified that, starting in 1998, Pavković by-passed the usual chain of command, utilising direct communications with Milošević which allowed him to act without seeking approval from the General Staff.¹⁵³⁹ Dimitrijević further testified that Pavković had become a “favourite of the President” and that Pavković often claimed that he was the only one that understood the problems in Kosovo and cared for the “Serb people” there.¹⁵⁴⁰ The Chamber notes that he testified that Pavković was partly responsible for his dismissal in 1999.¹⁵⁴¹ Nonetheless, the Chamber found Dimitrijević generally reliable and does not consider that his evidence is undermined in relation to Pavković.

645. Aleksandar Vasiljević also testified that two generals, whom he named in private session, told him that Pavković was known for by-passing two levels of command in 1998 during his command of the Priština Corps in Kosovo.¹⁵⁴²

646. Contrary to this evidence, in his interview with the Prosecution, Pavković claimed that the “command principle” was never violated in the VJ, and that Milošević never issued orders or contacted him without following the regular chain of command.¹⁵⁴³ He stated that he first officially met Milošević in June 1998, and that he did not know Milošević or his family prior to this time.¹⁵⁴⁴ He further asserted that he never met with Milošević alone and that Milošević never telephoned him directly during 1998. Indeed, according to Pavković, when the relationship between Perišić and Milošević cooled in the second half of 1998, Perišić grew suspicious of Pavković’s interactions with Milošević and ensured that he was always present at meetings between the two.¹⁵⁴⁵

647. In May 1998 a body known as the “Joint Command” was formed to ensure that the security and military forces co-ordinated their actions in Kosovo towards common objectives, as discussed in Section VI.E. Pavković participated in the Joint Command from its formation and throughout 1998.¹⁵⁴⁶ According to Pavković, the primary mandate of the body when initially established was to adopt and implement a plan to combat “terrorism” in Kosovo through combined political and

¹⁵³⁸ Aleksandar Dimitrijević, T. 26592–26593 (8 July 2008).

¹⁵³⁹ Aleksandar Dimitrijević, T. 26592–26595, T. 26624–26624, T. 26642 (8 July 2008).

¹⁵⁴⁰ Aleksandar Dimitrijević, T. 26625 (8 July 2008).

¹⁵⁴¹ Aleksandar Dimitrijević, T. 26673 (9 July 2008).

¹⁵⁴² Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 21; Aleksandar Vasiljević, T. 8671–8672 (open session), 8673 (private session) (18 January 2007).

¹⁵⁴³ P949 (Nebojša Pavković interview with the Prosecution), pp. 1–2.

¹⁵⁴⁴ P949 (Nebojša Pavković interview with the Prosecution), pp. 10, 298.

¹⁵⁴⁵ P949 (Nebojša Pavković interview with the Prosecution), pp. 10–11, 120.

¹⁵⁴⁶ P949 (Nebojša Pavković interview with the Prosecution), pp. 321–322; P1468 (Notes of the Joint Command); Aleksandar Vasiljević, T. 8726 (19 January 2007); Ljubinko Cvetić, T. 8051–8052, 8077–8078 (7 December 2006), 8194 (8 December 2006); Zlatimir Pešić, P2502 (witness statement dated 30 January 2004), para. 32, P2515 (supplemental information sheet, 21 November 2006), p. 2, T. 7215–7217 (23 November 2006), T. 7297–7298 (24 November 2006).

military activities.¹⁵⁴⁷ Pavković stated that the Joint Command never issued orders, but did arrive at “joint positions”.¹⁵⁴⁸ Milan Đaković served as Pavković’s Chief of the Department for Operations and Training in the Priština Corps, and as Chief of the Department for Operations and Training in the 3rd Army when Pavković became commander of that unit. He testified that in 1998 Milošević authorised Pavković to co-ordinate activities with the MUP on the entire territory of Kosovo.¹⁵⁴⁹ The Notes of the meetings of the Joint Command from 22 July to 30 October 1998, taken by Đaković and then his successor Tešević, show that Pavković played a prominent role in these meetings, attending almost every session, reporting on the VJ’s activities in Kosovo, stating that further actions involving MUP and VJ elements would be necessary, and making suggestions for these further actions.¹⁵⁵⁰ These Notes show that Pavković was well informed of the facts on the ground in Kosovo up to end of October 1998.¹⁵⁵¹

648. The legality of the use of the VJ in Kosovo in 1998 has been the subject of much debate during the trial proceedings and is discussed in Section VI.A. The relevance of this issue to the case against Pavković is his divergent approach from that taken by members of the VJ senior to him and the subsequent clashes between them. Perišić, who was Chief of the General Staff in 1998, objected to the Plan for Combating Terrorism advocated by Pavković, as it involved the use of the VJ in the interior of Kosovo outside of a declared state of emergency, imminent threat of war, or war. At a meeting of the SDC on 9 June 1998, Perišić presented to the SDC the possibility of intensifying VJ activities in Kosovo, but at the same time expressed his reluctance to increase the VJ presence beyond its then position in the border belt, which he termed “legitimate”. The SDC concluded by issuing a statement indicating support for the use of the VJ against the KLA, stating that, “should the terrorist activities of the Albanian separatist movement escalate, the Army of Yugoslavia shall intervene adequately.”¹⁵⁵²

649. On 20 July 1998, at a meeting of the VJ Collegium, Perišić complained about the dangers of using the VJ in Kosovo, and then explicitly banned this, except in the border areas and in defence of VJ facilities.¹⁵⁵³ Dimitrijević testified that Samardžić attempted to initiate disciplinary

¹⁵⁴⁷ P949 (Nebojša Pavković interview with the Prosecution), pp. 14–15, 62, 94, 253, 361.

¹⁵⁴⁸ P949 (Nebojša Pavković interview with the Prosecution), pp. 229, 244–245, 381, 387.

¹⁵⁴⁹ Milan Đaković, T. 26381–26382, 26387 (19 May 2008), T. 26473–26474 (20 May 2008).

¹⁵⁵⁰ P1468 (Notes of the Joint Command), pp. 2, 4, 6, 15, 17–20, 22–26, 29–30, 34, 36, 39–43, 46–47, 49, 51, 54–56, 59, 62, 64–72, 75–77, 79–86, 88, 92–95, 97–100, 102–120, 121–126, 128–145, 146–149, 151–152, 155–156, 158, 160–164.

¹⁵⁵¹ See also P949 (Nebojša Pavković interview with the Prosecution), pp. 109–110.

¹⁵⁵² ID760 (Shorthand notes of 5th SDC session, 9 June 1998), pp. 3–10.

¹⁵⁵³ P922 (Minutes of the Collegium of the General Staff of the VJ, 20 July 1998), p. 3; Perišić also stated that the VJ had been used to support the MUP in Orahovac, and that this action was not planned and was unwise. He attributed this to Samardžić, but stated that he was not completely sure of this. Subsequently, in a letter to the FRY President,

proceedings against Pavković for breaching orders in relation to the use of the VJ in Kosovo.¹⁵⁵⁴ When Pavković was informed of this he visited Milošević, following which the General Staff was informed by Milošević that Pavković was to be promoted.¹⁵⁵⁵ Aleksandar Vasiljević also testified that Pavković's promotion did not go through the regular procedure and that VJ General Staff members were simply informed that Pavković was promoted.¹⁵⁵⁶

650. On 21 July 1998 Pavković attended another meeting with Milošević in Belgrade, discussed above,¹⁵⁵⁷ along with Dimitrijević, Samardžić, Pavković, Perišić, Stojiljković, Đorđević, Lukić, Milutinović, Minić, Matković, Anđelković, and Šainović.¹⁵⁵⁸ There, Pavković, along with Lukić, proposed several stages of operations where both the military and police would take part in an effort to lift road blocks, disarm the "terrorists," and establish security in Kosovo.¹⁵⁵⁹ Milošević and Pavković indicated that certain actions had already been undertaken, pursuant to a decision of the SDC on 9 June 1998.¹⁵⁶⁰ The Plan for Combating Terrorism, which was comprised of military, police, and political measures, was formally adopted at this meeting. Perišić was ordered to prepare a parallel, purely military plan for the deployment of the VJ in Kosovo (the *Grom 98* plan) to achieve a "final" resolution to the KLA problem.¹⁵⁶¹ That same day Pavković was promoted to Lieutenant-General.¹⁵⁶²

651. In a letter of 22 July 1998, Pavković reminded Samardžić that the Plan for Combating Terrorism had been agreed in a meeting with the FRY President, and then directed Samardžić to draw up details of the Priština Corps operations.¹⁵⁶³ Samardžić replied that, because the FRY President had accepted the plan as "personally" proposed by Pavković, the Priština Corps command

Perišić clarified that it was the Commander of the PrK, which was at that time Pavković, who was ordering these VJ operations in Kosovo. P717 (Letter from Momčilo Perišić to Slobodan Milošević, 23 July 1998), pp. 2–3.

¹⁵⁵⁴ Aleksandar Dimitrijević, T. 26622–26623 (8 July 2008), T. 26682–26683 (9 July 2008).

¹⁵⁵⁵ Aleksandar Dimitrijević, T. 26622–26624 (8 July 2008), T. 26682 (9 July 2008). *See also* P1510 ("Milošević promotes Priština Corps Chief Lieutenant-General", *Tanjug*, 21 July 1998).

¹⁵⁵⁶ Aleksandar Vasiljević, T. 8676 (18 January 2007).

¹⁵⁵⁷ P949 (Nebojša Pavković interview with the Prosecution), pp. 331, 339; *see also* Milan Đaković, T. 26523 (20 May 2008); 4D100 (PrK Report to 3rd Army re engagement of units, 22 July 1998); Duško Matković, T. 14634–14635 (30 August 2007).

¹⁵⁵⁸ Duško Matković, T. 14634–14638 (30 August 2007), P2913 (witness statement dated 10 February 2003), p. 9. *See also* Milan Đaković, T. 26410 (19 May 2008); Aleksandar Dimitrijević, T. 46588 (8 July 2008); 4D100 (PrK Report to 3rd Army re engagement of units, 22 July 1998); 4D101 (PrK Plan for the engagement of units in Kosovo, 23 July 1998).

¹⁵⁵⁹ Duško Matković, P2913 (witness statement dated 10 February 2003), p. 9.

¹⁵⁶⁰ P949 (Nebojša Pavković interview with the Prosecution), p. 61; Duško Matković, P2913 (witness statement dated 10 February 2003), p. 9, T. 14636–14637 (30 August 2007).

¹⁵⁶¹ P949 (Nebojša Pavković interview with the Prosecution), pp. 332–335. *See also* Milan Đaković, T. 26409 (19 May 2008).

¹⁵⁶² P1510 ("Milošević promotes Priština Corps Chief Lieutenant-General", *Tanjug*, 21 July 1998).

¹⁵⁶³ 4D100 (PrK Report to 3rd Army re engagement of units, 22 July 1998).

should prepare a plan for VJ involvement in the implementation of the second phase of the Plan.¹⁵⁶⁴ The next day, 23 July 1998, Pavković wrote to Samardžić regarding the implementation of the second phase of the Plan, which called for the joint engagement of MUP and VJ units in operations in Dečani/Dečan, the Drenica area, and Suva Reka/Suhareka. He stated that several mechanised units of the Priština Corps and tank platoons were directly engaged in “support of the MUP units.”¹⁵⁶⁵ Pavković stressed that Samardžić had been briefed on the plan as a whole “several times” and that it had been accepted by the FRY President and the highest leadership of the VJ and the MUP without any serious objections.¹⁵⁶⁶ Samardžić responded that, because the FRY President was not explicitly briefed on the plan to de-block roads, Priština Corps units were not authorised to be used in that manner, and he asserted the obligation to adhere to the VJ chain of command.¹⁵⁶⁷

652. Also on 23 July, Pavković wrote to the “Collegium of the 3rd Army Commanders” complaining that MUP forces in Kosovo had not professionally and fully executed the tasks of preserving security and stability in Kosovo, and that “their level of organisation and equipment, motivation and overall combat readiness cannot cope with rising terrorism”.¹⁵⁶⁸ He added that, “despite the arming of the population, that factor in the system against terrorist struggle ha[d] not been fully included”, and continued by stating that the 3rd Army commanders bore “great responsibility for this situation” and that it was their “duty to take any measures within [their] jurisdiction to ensure the necessary conditions, stamp out terrorism in [Kosovo], and to protect the people, the members of the [Priština Corps] and those facilities vital to this state”.¹⁵⁶⁹ Pavković indicated his commitment to retaining Kosovo within Serbia, warning that “if urgent measures [were] not taken, Kosovo [would] be lost forever, and with it both Serbia and the VJ.” He added that he could not “resign [him]self to the fact that as a soldier [he] ha[d] not done everything that [he] was required to do in order to avoid such a situation”.¹⁵⁷⁰

653. That same day Perišić sent the letter to Milošević complaining of the use of the VJ in Kosovo, as discussed above.¹⁵⁷¹ Perišić explained in the letter that, following the SDC meeting of 9 June, the FRY government had been requested to declare a state of war, threat of war, or

¹⁵⁶⁴ 4D119 (3rd Army Report to PrK, 22 July 1998).

¹⁵⁶⁵ 4D101 (PrK Plan for the engagement of units in Kosovo, 23 July 1998), p. 1. *See also* 3D702 (Perišić Order to 3rd Army, 28 July 1998).

¹⁵⁶⁶ 4D101 (PrK Plan for the engagement of units in Kosovo, 23 July 1998), pp. 1–2.

¹⁵⁶⁷ 4D102 (Response to PrK plan for the engagement units, 23 July 1998).

¹⁵⁶⁸ P1011 (Ivan Marković, ed., *The Application of Rules of the International Law of Armed Conflicts* (2001)), pp. 57–58.

¹⁵⁶⁹ P1011 (Ivan Marković, ed., *The Application of Rules of the International Law of Armed Conflicts* (2001)), p. 58.

¹⁵⁷⁰ P1011 (Ivan Marković, ed., *The Application of Rules of the International Law of Armed Conflicts* (2001)), pp. 58–59.

¹⁵⁷¹ P717 (Letter from Momčilo Perišić to Slobodan Milošević, 23 July 1998).

emergency, but that had not occurred, and so “any engagement of the VJ in combat operations outside of the border zones and beyond is still illegal”. He described interference in the VJ chain of command complaining of:

The attempt by the civilian part of the Staff to command the Corps. The Corps commander is responsible for assessing the situation and for planning VJ and MUP operations in cooperation with the civilian part of the Staff and the MUP, for forwarding it to Šainović and Minić for them to distribute assignments to all except the Priština Corps. In practice the Commander of the Priština Corps plans what he has been ordered to, and this is at the request of Šainović and Minić and the MUP, and so turns into something like a service of theirs, for planning and execution.¹⁵⁷²

He then suggested that Milošević not let the VJ be commanded “outside the system of military subordination and unity of command”.¹⁵⁷³ In the letter Perišić also complained about Milošević’s by-passing of the chain of command, and the promotion of individuals to the rank of general without proper procedure.¹⁵⁷⁴

654. Both Dimitrijević and Momir Bulatović noted that this section of the letter used the term “attempt”, and so testified that this did not necessarily imply that the alternative means of controlling the VJ were realised.¹⁵⁷⁵ However, the letter clearly alleged that a parallel chain of command was in operation, rather than just an attempt, as it referred to what was occurring “in practice”.¹⁵⁷⁶

655. The Pavković Defence disputes that implementation of the Plan for Combating Terrorism was undertaken at Pavković’s individual behest outside of the chain of command, arguing rather that he acted in accordance with orders from his superiors, the Commander of the 3rd Army and the Chief of the General Staff of the VJ.¹⁵⁷⁷ Đaković stated that during meetings requests were submitted to Pavković, mainly from the MUP, “for him to report to the Army Commander and for the Army Commander to correct or augment his decision”.¹⁵⁷⁸ Following discussion of such orders, Pavković would go to Samardžić or the Chief of Staff of the 3rd Army, Miodrag Simić, for their approval but that the decision was always taken outside of the meeting.¹⁵⁷⁹ In his interview with the Prosecution, Pavković stated that the main VJ operation in Kosovo in 1998 was

¹⁵⁷² P717 (Letter from Momčilo Perišić to Slobodan Milošević, 23 July 1998), pp. 2–3. Perišić used the term “Staff” but it is clear that he was referring to the Joint Command.

¹⁵⁷³ P717 (Letter from Momčilo Perišić to Slobodan Milošević, 23 July 1998), p. 3.

¹⁵⁷⁴ P717 (Letter from Momčilo Perišić to Slobodan Milošević, 23 July 1998), pp. 2–4.

¹⁵⁷⁵ Aleksandar Dimitrijević, T. 26723 (9 July 2008); Momir Bulatović, T. 13920–13921 (17 August 2007).

¹⁵⁷⁶ P717 (Letter from Momčilo Perišić to Slobodan Milošević, 23 July 1998), p. 2.

¹⁵⁷⁷ Pavković Final Trial Brief (public version), 28 July 2008, paras. 127, 245.

¹⁵⁷⁸ Milan Đaković, T. 26485 (20 May 2008).

undertaken pursuant to an order issued by Perišić on 28 July 1998, the so-called *Grom* plan, which provided for the deployment of the VJ to secure the border with Albania, as well as units and facilities in the territory of Kosovo, and to crush the “armed rebel forces”.¹⁵⁸⁰ The Chamber notes that in this order Perišić allowed for the use of the VJ to secure the border “in-depth” in order to protect VJ facilities and secure supply routes; the order also provided for VJ actions in coordination with the MUP to attack the KLA in the interior of Kosovo according to a “special order” from the General Staff.¹⁵⁸¹ The 28 July 1998 order from Perišić was implemented the following day through an order issued by Samardžić.¹⁵⁸² The 3rd Army order repeated the directions to secure the border “in-depth”, protect VJ facilities, and secure supply routes, and stated that the Priština Corps should stand-by to launch rapid attacks against the KLA in Kosovo in accordance with a “special order” of the General Staff.¹⁵⁸³

656. However, minutes of the collegiums of the General Staff and notes taken from the meetings of the Joint Command indicate that VJ actions in the interior of Kosovo had been conducted prior to the issuance of Perišić’s order for commencement of the *Grom* plan on 28 July.¹⁵⁸⁴ Dušan Matković stated that at the meeting of 21 July Pavković said that the VJ had already undertaken certain actions as a part of the Plan for Combating Terrorism.¹⁵⁸⁵ On 26 July, two days before Perišić’s order, Pavković reported to the Joint Command, with Samardžić present, that operations of the VJ battle group had been undertaken in Dulje/Duhel, Štimlje/Shtima, and Blace/Bllaca, with success, despite the loss of one tank.¹⁵⁸⁶ Pavković referred to these operations as preparing the area for the second phase, indicating that the operations were part of the five phase Plan for Combating Terrorism.¹⁵⁸⁷ Consequently, although the evidence shows that Samardžić and Perišić issued orders for the use of the VJ to operate in Kosovo, it also shows that Pavković implemented the use of the VJ in the interior of Kosovo prior to the formal adoption of these orders, on the basis of the “Supreme Commander’s” approval of the Plan for Combating Terrorism that had been presented to

¹⁵⁷⁹ Milan Đaković, T. 26485 (20 May 2008); Tomislav Mladenović, T. 17602, 17606–17607, 17620–17621 (25 October 2007); Velimir Obradović, T. 17402–17409 (22 October 2007); Miodrag Simić, T. 15532 (13 September 2007).

¹⁵⁸⁰ P949 (Nebojša Pavković interview with the Prosecution), pp. 60–64; 4D137 (General Staff Directive to Deploy VJ in Kosovo, 28 July 1998). See also 3D703 (Order from General Staff to 3rd Army, 28 July 1998).

¹⁵⁸¹ 4D137 (General Staff Directive to Deploy VJ in Kosovo, 28 July 1998), pp. 2–3.

¹⁵⁸² 4D137 (General Staff Directive to Deploy VJ in Kosovo, 28 July 1998); 4D140 (3rd Army Command Order, 29 July 1998).

¹⁵⁸³ 4D140 (3rd Army Command Order, 29 July 1998), p. 7. See also John Crosland, T. 9985–9987 (8 February 2007).

¹⁵⁸⁴ P922 (Minutes of the Collegium of the General Staff of the VJ, 20 July 1998), pp. 3, 12–13; P1468 (Notes of the Joint Command), p. 13.

¹⁵⁸⁵ Duško Matković, P2913 (witness statement dated 10 February 2003), p. 9.

¹⁵⁸⁶ P1468 (Notes of the Joint Command), p. 13. These villages do not fall within even the most extended border belt, 3D739 (Map of Extent of Border Belt).

¹⁵⁸⁷ P1468 (Notes of the Joint Command), p. 13. See also Aleksandar Vasiljević, T. 8924–8926 (23 January 2007).

him by Pavković, despite the fact that Perišić had forbidden the use of the VJ in Kosovo outside of his express instructions on 20 July.

657. The Chamber also analysed an order from Samardžić on 30 July 1998, whereby he instructed Pavković “as a member of the Joint Command” to attend all meetings of the Joint Command. According to the order, prior to attending such meetings Pavković was to report to the Chief of Staff of the 3rd Army and inform him of possible requests and proposals for the engagement of forces with reinforcements; after Joint Command meetings Pavković was to report back to the Chief of Staff, letting him know of accepted proposals or further requests made at the meeting, and was to ask him for permission relating to those requests. Pavković was then ordered to inform the Joint Command of any decisions concerning those requests.¹⁵⁸⁸ A number of other orders from the 3rd Army that are referred to by Pavković as providing the basis for his orders to the Priština Corps in 1998 are also in evidence.¹⁵⁸⁹ In light of the evidence surrounding the operation of the Joint Command in 1998 and Pavković’s by-passing of the chain of command to communicate directly with Milošević, the Chamber considers that these orders demonstrate attempts by Samardžić to retain some control over Pavković’s involvement in the Joint Command, consistent with the contention that Pavković was by-passing the regular VJ chain of command to plan operations in Kosovo with Milošević.

658. Further clashes between Pavković and Samardžić occurred in 1998. On 1 August Pavković sent a request to the 3rd Army Forward Command Post for permission to launch the third phase of the Plan for Combating Terrorism. 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 1998.¹⁵⁹⁰ The Notes of the Joint Command meetings in 1998 clearly indicate that this decision had in fact been made on 30 July, where it was decided that the third stage of the Plan would be realised through actions in Drenica and Jablanica/Jabllanica.¹⁵⁹¹ However, Pavković’s request was denied by Samardžić, who issued an order responding to the request on the same day forbidding the engagement of Priština Corps units in the third phase of the operation, pending authorisation from the office of the FRY President, which he stated would occur on 3 August.¹⁵⁹² Despite this order, Pavković reported to the Joint Command on 2 August that “[VJ] units were directed towards the

¹⁵⁸⁸ 4D91 (Order from the 3rd Army Command, 30 July 1998); Miodrag Simić, T. 15532 (13 September 2007).

¹⁵⁸⁹ See, e.g., P1427 (PrK Decision, 10 August 1998); Milan Kotur, T. 20724–20727 (21 January 2008); 3D697 (Document from the 3rd Army Forward Command Post-Analysis of the realisation of the tasks in Kosovo, 2 October 1998).

¹⁵⁹⁰ P1419 (Request from Pavković to 3rd Army, 1 August 1998).

¹⁵⁹¹ P1468 (Notes of the Joint Command), pp. 33, 36.

¹⁵⁹² 4D125 (Order of the 3rd Army, 1 August 1998).

three main points – Drenica, Jablanica/Jabllanica, and Smonica”.¹⁵⁹³ The Chamber has found above that excessive force was used by the VJ during this operation in Drenica in 1998, as discussed in Section VI.C.

659. A week later Samardžić issued an order providing for VJ support of MUP operations and the continued securing of the border belt and VJ facilities. It was apparently aimed at Pavković: Samardžić stressed that the units were not to be used contrary to the order and that, if they were, unit commanders who received such orders would immediately have to inform the second superior officer and act according to his orders.¹⁵⁹⁴ On 6 September 1998 Samardžić and Pavković also clashed over a request made by Pavković to make a helicopter available to the Priština Corps.¹⁵⁹⁵

660. On 5 October 1998 Pavković sent a letter to Samardžić informing him that, despite orders from the 3rd Army Command to the contrary, the Priština Corps Command had not formed new combat groups and instead formed rapid intervention forces pursuant to a decision of the Joint Command at meetings held on 19 and 20 September 1998. In this letter Pavković reminded Samardžić that he had informed him of this decision by telephone and that he had sent him the decision of the Joint Command.¹⁵⁹⁶ Radovan Radinović explained that this was not necessarily a breach of the principle of subordination, as Pavković did not necessarily overrule Samardžić’s decision, but rather elaborated upon the situation and raised the question again for Samardžić’s consideration.¹⁵⁹⁷ However, the Chamber does not accept Radinović’s interpretation of this letter, as it conflicts with the express wording used therein.¹⁵⁹⁸ Vasiljević commented on the letter and stated that it was not a breach of the chain of command. However, he erred in reading the battle groups favoured by Samardžić to be the same thing as the rapid reaction force favoured by Pavković.¹⁵⁹⁹ Furthermore, he testified that he was aware of the clash between Perišić and Samardžić on the one hand, and Pavković on the other, concerning the use of the VJ in Kosovo in 1998.¹⁶⁰⁰ In light of the express wording of the letter and the other evidence relating to the relationship between Pavković and his superiors Perišić and Samardžić, the Chamber regards this

¹⁵⁹³ P1468 (Notes of the Joint Command), p. 36.

¹⁵⁹⁴ P1421 (3rd Army Order re engaging units in supporting MUP, 7 August 1998), p. 2. *See also* Dragan Živanović, T. 20534–20536 (18 January 2008).

¹⁵⁹⁵ P1011 (Ivan Marković, *The Application of Rules of the International Law of Armed Conflicts* (2001)), p. 64; 4D230 (3rd Army Command to PrK, 12 September 1998); P1468 (Notes of the Joint Command), pp. 94, 109.

¹⁵⁹⁶ P1439 (Reply from the PrK Command to the 3rd Army Command, 5 October 1998). Although in the translation of this document it states “Joint Commission”, when asked to read this, Radovan Radinović stated that it was the “Joint Command”. Radovan Radinović, T. 17340 (19 October 2007).

¹⁵⁹⁷ Radovan Radinović, T. 17338–17342 (19 October 2007); *see also* Aleksandar Vasiljević, T. 9094 (24 January 2007).

¹⁵⁹⁸ *See, e.g.*, P717 (Letter from Momčilo Perišić to Slobodan Milošević, 23 July 1998), pp. 1–3; John Crosland, P2645 (witness statement dated 31 October 2006), para. 54, T. 9789, 9819–9822 (7 February 2007).

¹⁵⁹⁹ Aleksandar Vasiljević, T. 9094 (24 January 2007).

letter as demonstrating a breach of the VJ principle of subordination, which required that orders from superior commands be “unconditionally, exactly and promptly” executed by subordinates.¹⁶⁰¹

661. To augment its contention that Pavković was not supportive of an increased role for the VJ in Kosovo in 1998, the Pavković Defence points to the meeting of FRY President Milošević and top state and VJ officials on 29 October 1998, at which Pavković emphasised that the reason for not declaring a state of emergency in relation to the events in Kosovo was that such a move would draw increased international attention to the issue and the escalation of the VJ’s involvement and would inevitably lead to greater civilian casualties.¹⁶⁰² The Chamber notes its reservations about the precision of the record of what was said at the meeting, but accepts that the meeting took place and that the general issues recorded in the minutes were discussed.¹⁶⁰³ Regardless of that, the meeting occurred after the October Agreements had been signed, which placed the VJ under specific restraints not to operate in Kosovo apart from in the border belt and with only three companies along three designated communications lines, under threat of bombing. Pavković’s comments at that meeting do not have a bearing on his attitude to the use of the VJ in Kosovo prior to the October Agreements being concluded in 1998.

662. U.K. Defence Attaché John Crosland testified that, along with British Ambassador Robert Donnelly, he met with Dimitrijević on 3 October 1998 to discuss the issue of the “misuse of anti-aircraft artillery weapons to shell villages”, which he considered to be excessive force. When the issue was raised by Crosland, Dimitrijević’s reaction was to indicate that Pavković “was trying to make his name”. According to Crosland, implicit in this statement “was the intention to suppress the KLA and the Kosovo Albanian population”.¹⁶⁰⁴ Dimitrijević himself testified that he recalled being told by Crosland about the use of excessive force by the VJ.¹⁶⁰⁵ When shown a set of notes taken by the British representatives at the conversation, he stated that he probably did make the comments that Crosland referred to.¹⁶⁰⁶

663. Crosland added that, when he met with Dimitrijević again on 5 November 1998, the latter told him that he was extremely worried about the situation within Kosovo and that Pavković was

¹⁶⁰⁰ Aleksandar Vasiljević, T. 9092–9093 (24 January 2007).

¹⁶⁰¹ See, e.g., P984 (FRY Law on the VJ), p. 2; P1041 (VJ Command and Control Manual), pp. 62, 96.

¹⁶⁰² P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), p. 3. While this document is dated 2 November 1998, it states that the meeting occurred on 29 October 1998.

¹⁶⁰³ P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), p. 3.

¹⁶⁰⁴ John Crosland, P2645 (witness statement dated 31 October 2006), para. 53; P683 (Confidential Sitrep from U.K. Military Representative, 3 October 1998).

¹⁶⁰⁵ Aleksandar Dimitrijević, T. 26627 (8 July 2008), T. 26667 (9 July 2008).

¹⁶⁰⁶ Aleksandar Dimitrijević, T. 26668 (9 July 2008).

working “outside the loop of command”, referring to the formal VJ chain of command.¹⁶⁰⁷ According to Crosland, it was obvious that Perišić and Dimitrijević were not fully informed as to what was going on in Kosovo and that “they were being excluded from the operational chain of command which went directly from Pavković back to Milošević, and to Šainović who was Milošević’s day-to-day-operational man”.¹⁶⁰⁸ Crosland further testified about another conversation he had with Dimitrijević on 6 November 1998, which he described at the time in a report to the British Government.¹⁶⁰⁹ On that occasion, and while discussing the VJ and MUP reaction to KLA provocations, Dimitrijević said that “Pavković might react without permission from the General Staff and outside the military chain of command”, and alluded to Pavković “being determined to carry out the orders of Milošević, which would be given through Šainović to deal with the situation firmly.”¹⁶¹⁰ Dimitrijević noted, when presented with the 6 November 1998 report, that Crosland’s impressions and understandings could have been wrong, and that he had erred in referring to Pavković as the Commander of the 3rd Army in October 1998.¹⁶¹¹ However, Crosland confirmed that he was definitely referring to Pavković.¹⁶¹² The Chamber accepts this explanation, and does not accept that Dimitrijević’s comment undermines the evidential value of the notes taken by Crosland, who was considered a reliable witness, as noted above.

664. In late 1998 and early 1999 Dimitrijević complained at VJ collegium meetings a number of times about the way Pavković was using the VJ in Kosovo and the poor reporting coming from that sector. In October 1998 Dimitrijević complained that VJ units should only be used in Kosovo if they were threatened.¹⁶¹³ He testified that his concern arose because previously units had been used in Kosovo without the approval of the General Staff.¹⁶¹⁴ He added that Pavković’s irregular behaviour in office continued throughout 1998. At a VJ collegium meeting on 10 December 1998, Dimitrijević complained about “so many unusual incidents and a lot of what’s going on in the Priština Corps are precisely the consequence of ... the alienation of the Corps Commander, and with him the command, from the VJ.”¹⁶¹⁵ He clarified during his testimony that the “unusual incidents” in the Priština Corps were a reference to issues such as desertion, wounding, and

¹⁶⁰⁷ John Crosland, P2645 (witness statement dated 31 October 2006), paras. 48, 54, T. 9789, 9819–9822 (7 February 2007). Crosland clarified that the date of 5 October in P2645 was an error and was actually 5 November.

¹⁶⁰⁸ John Crosland, P2645 (witness statement dated 31 October 2006), para. 54.

¹⁶⁰⁹ John Crosland, P2645 (witness statement dated 31 October 2006), para. 56; P684 (Confidential Sitrep from U.K. Military Representative, 6 November 1998).

¹⁶¹⁰ John Crosland, P2645 (witness statement dated 31 October 2006), para. 56; T. 9965 (8 February 2007).

¹⁶¹¹ Aleksandar Dimitrijević, T. 26672 (9 July 2008), referring P2645 (John Crosland’s witness statement dated 31 October 2006), para. 54.

¹⁶¹² John Crosland, T. 9965 (8 February 2007).

¹⁶¹³ 3D646 (Minutes of the Collegium of the General Staff of the VJ, 26 October 1998), p. 9.

¹⁶¹⁴ Aleksandar Dimitrijević, T. 26693 (9 July 2008).

¹⁶¹⁵ 3D484 (Minutes of the Collegium of the General Staff of the VJ, 10 December 1998), p. 14.

suicides, and not acts by Pavković, but that these acts were contributed to by Pavković's absence from his command post while he was in Belgrade for long periods.¹⁶¹⁶ In January 1999 Dimitrijević complained that reports did not contain details of unusual incidents in Kosovo, and that there were no indications of the measures taken by the Priština Corps and 3rd Army commanders to deal with these occurrences.¹⁶¹⁷ Later, in March 1999, Dimitrijević repeated his warnings to the General Staff and to Ojdanić in particular and advised that measures be taken to ensure that the 3rd Army was reporting accurate information.¹⁶¹⁸

665. As concluded above, the series of events leading to the implementation of the Plan for Combating Terrorism demonstrates that Pavković was one of the main proponents of the increased utilisation of the VJ in the interior of Kosovo. Pavković was a member of the Joint Command, attended almost all of its meetings, and used the influence of this body and his direct access to Milošević to advance his aggressive strategy of using the VJ and MUP together in Kosovo including by by-passing the usual VJ chain of command. This also resulted in personal benefit to him; the adoption of the Plan for Combating Terrorism at the meeting of 21 July 1998 coincided with his promotion to Lieutenant-General. Pavković clashed with Perišić and Samardžić and utilised the VJ in Kosovo at the start of August 1998 in direct contravention of Samardžić's orders. The fact that Pavković felt the need to go beyond his normal duties and actively sought to increase the engagement of the VJ in Kosovo is consistent with his approach to the role of the VJ, which he also sought to utilise despite complaints that its use breached constitutional limitations, both attitudes being overtly founded upon a deep commitment to the maintenance of Kosovo within the Republic of Serbia, as he expressed in his letter to the 3rd Army Command on 23 July. The Chamber notes that, after the clashes between Pavković and his superiors, Perišić and Samardžić were both removed from their command positions, and Pavković took over as Commander of the 3rd Army.

ii. Arming the non-Albanian population in Kosovo

666. The Prosecution submits that, during the implementation of the 1998 Plan for Combating Terrorism in Kosovo, members of the VJ, MUP, and civilian authorities armed the non-Albanian population and disarmed Kosovo Albanians, in order to further the aims of the joint criminal enterprise, and that Pavković willingly contributed to this effort.¹⁶¹⁹ The Pavković Defence

¹⁶¹⁶ Aleksandar Dimitrijević, T. 26624 (8 July 2008).

¹⁶¹⁷ 3D559 (Minutes of the Collegium of the General Staff of the VJ, 28 January 1999), p. 20.

¹⁶¹⁸ P933 (Minutes of the Collegium of the General Staff of the VJ, 4 March 1999), pp. 9, 15.

¹⁶¹⁹ Indictment, para. 51; Prosecution Final Trial Brief (public version), 29 July 2008, paras. 871–872.

counters that such arming was a legitimate defence policy of the FRY state, and that Pavković never exercised command over groups not in the VJ.¹⁶²⁰

667. The nature of the armed non-Albanian population and the process of arming this group have been discussed in Sections VI.A. and VIII.B. It included VJ reservists, MUP reservists, members of the civil defence and civil protection, and others outside of all these structures. When shown the Priština Corps order of 26 June 1998 to distribute weapons to Serbs in Kosovo, Momir Stojanović, who was the Chief of the Security Department in the Priština Corps, testified that this was issued in response to requests from representatives of Serb settlements. These representatives had stated that Serb enclaves had been burned and looted, and, after Pavković met with Serbs from Priluzje and Obilić/Obiliq, the arming of the Serb population was organised to allow them to defend themselves in their villages.¹⁶²¹ Pavković demonstrated his support for arming the non-Albanian population in Kosovo as part of the strategy of the Joint Command. In his letter of 23 July 1998, he wrote that “despite the arming of the population, that factor in the system against terrorist struggle has not been fully included”.¹⁶²² Pavković’s support and leadership of the process of arming the armed non-Albanian population is also demonstrated in discussions of the Joint Command on the issue throughout 1998.¹⁶²³ On 28 October 1998, Pavković again raised the issue of how the “armed population” could be used and how it could be involved in the “defence of communications”.¹⁶²⁴

668. While the MUP undertook the task of disarming Kosovo Albanians in the interior of the province, Pavković ordered that the Priština Corps carry this out in the border belt, directing his subordinate units to “monitor the behaviour of the Albanian population in the sectors of responsibility” and “plan and carry out the planned disarming of the Albanian population”.¹⁶²⁵ Later, he was present at the 29 October meeting in Beli Dvor in Belgrade, at which the issues of arming the non-Albanian population and disarming Kosovo Albanian villages were discussed as

¹⁶²⁰ Pavković Final Trial Brief (public version), 28 July 2008, paras. 90, 156.

¹⁶²¹ Momir Stojanović, T. 20072–20074 (12 December 2007). *See also* Zlatomir Pešić, T. 7190 (23 November 2006); P1259 (Priština Defence Administration order on the implementation of measures for the security and protection of population, 21 May 1998); Radovan Radinović, 3D1116 (Radovan Radinović’s Expert Report), p. 37; *see also* Momir Stojanović, T. 19747 (7 December 2007); 5D1378 (Video of Pavković and Lazarević in Đakovica/Gjakova).

¹⁶²² P1011 (Ivan Marković, ed., *The Application of Rules of the International Law of Armed Conflicts* (2001)), p. 58 (para. 3).

¹⁶²³ P1468 (Notes of the Joint Command), pp. 2, 4–6, 24–26.

¹⁶²⁴ P1468 (Notes of the Joint Command), p. 163.

¹⁶²⁵ P1433 (Order of the PrK, 15 September 1998). *See also* P1468 (Notes of the Joint Command), p. 97.

part of the Plan for Combating Terrorism.¹⁶²⁶ This disarming activity continued into October and November 1998.¹⁶²⁷

669. These parallel processes are particularly significant in light of the highly charged nature of the ethnic tension prevailing in 1998 and 1999. In his interview with the Prosecution, Pavković acknowledged that there was a conflict between Kosovo Albanians and non-Albanians at this time. He stated that “it is known from the previous historical period that it [conflict between the Albanian and non-Albanian population] took place every time that events of this kind happened in Kosovo” and that “crimes” occurred when there were such conflicts and people were protecting their villages.¹⁶²⁸ The Chamber notes that, despite this incendiary situation, Pavković provided weapons to the non-Albanian population, while concurrently disarming the Kosovo Albanian population.

iii. Knowledge and actions as Commander of the Priština Corps

670. The Prosecution alleges that in 1998 Pavković ordered the VJ to engage in operations in Kosovo and was aware that these involved excessive and disproportionate force.¹⁶²⁹ The Pavković Defence counters that all uses of the VJ in 1998 were lawful applications of force in response to the threat from the KLA.¹⁶³⁰

671. The Chamber has found that MUP and VJ forces used excessive or disproportionate force on some occasions in Kosovo.¹⁶³¹ The Chamber has also found that tens of thousands of Kosovo Albanians were displaced by the ongoing conflict between the KLA and the forces of the FRY and Serbia by late 1998, and that this was in part caused by the excessive or disproportionate uses of force by the VJ and MUP in 1998.

672. In 1998 Pavković was involved in Joint Command discussions about the large number of displaced civilians in Kosovo.¹⁶³² He was also informed of the practice of burning Kosovo Albanian houses at meetings of the Joint Command. On 7 August Šainović stated to the Joint Command that “the greatest damage to us is caused by burning houses without any need”.¹⁶³³ On the same day Samardžić told Pavković specifically that it was “a disgrace” to “fight terrorism by

¹⁶²⁶ P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), pp. 3–4.

¹⁶²⁷ P1203 (Operational report of the Joint Command regarding the security situation in Kosovo, 15 October 1998), p. 5; P1197 (Joint Command Sitreps with an accompanying envelope for Milomir Minić), p. 6.

¹⁶²⁸ P949 (Nebojša Pavković interview with the Prosecution), pp. 1–2, 88, 205, 213, 347.

¹⁶²⁹ Indictment, paras. 95–96; Prosecution Final Trial Brief (public version), 29 July 2008, para. 864.

¹⁶³⁰ Pavković Final Trial Brief (public version), 28 July 2008, para. 124.

¹⁶³¹ See Section VI.C.

¹⁶³² P1468 (Notes of the Joint Command), pp. 36, 40–41, 121.

¹⁶³³ P1468 (Notes of the Joint Command), p. 46. See also 4D201 (Order of the PrK prohibiting destruction, 7 August 1998), p. 1.

torching”.¹⁶³⁴ On 12 August Minić repeated again that the setting of houses on fire had to stop.¹⁶³⁵ In September, Šainović directed that the units be prepared for “faster intervention” and added that tasks had to be carried out in a disciplined way in order to avoid arson.¹⁶³⁶ In his interview with the Prosecution, Pavković stated that this arson was carried out by local armed Serbs and some “irresponsible individuals from the units”.¹⁶³⁷ Consequently, the Chamber is satisfied that Pavković knew that members of VJ units were involved in the burning of Kosovo Albanian houses in 1998.

673. Pavković issued a number of written orders in 1998 directing his subordinate forces to adhere to international humanitarian law.¹⁶³⁸ Some of these orders demonstrate that there had been breaches of international humanitarian law by VJ forces in 1998. These included the mistreatment of prisoners of war near Brestovac, in relation to which the ban on repression, torture, and inhumane conduct was emphasised and it was noted that there had been breaches of the laws of war.¹⁶³⁹ He also noted excessive firing of artillery into inhabited areas,¹⁶⁴⁰ and the destruction and looting of Kosovo Albanian civilian property.¹⁶⁴¹ Two orders issued by Pavković on 26 May and 5 June 1998 directed unit commanders to prevent individuals and units from entering populated places and damaging the property of citizens, and to prevent theft of property of the citizens of “Šiptar nationality”; they further instructed that all property stolen to date should immediately be returned.¹⁶⁴² In July 1998 Pavković passed on an order issued by the General Staff to avoid firing on areas if it was suspected that international observers may be present there, which was put into effect by Lazarević.¹⁶⁴³ Miodrag Simić testified that this order was also intended to prevent harm to civilians.¹⁶⁴⁴ On 3 October he issued an order banning all un-provoked use of artillery and heavy

¹⁶³⁴ 4D97 (Minutes from the briefing of the commanders of the PrK and 3rd Army, 7 August 1998), p. 3.

¹⁶³⁵ P1468 (Notes of the Joint Command), p. 52.

¹⁶³⁶ P1468 (Notes of the Joint Command), pp. 124–125.

¹⁶³⁷ P949 (Nebojša Pavković interview with the Prosecution), p. 358.

¹⁶³⁸ See P1535 (Order for commanders of units to engage in securing state border, 29 April 1998), p. 2; 4D183 (PrK, Pavković Order, 16 May 1998); 4D428 (Order of the PrK, 27 May 1998); 4D231 (Order of the PrK re support of MUP, 20 July 1998), also admitted as 5D1172; 4D201 (Order of the PrK prohibiting destruction, 7 August 1998); P1422 (Order of the PrK re “overuse” of equipment, 7 August 1998); 4D375 (Order of the PrK re prevention of theft, 18 August 1998); 6D698 (Order of the PrK, 5 September 1998), also admitted as P1101; P1430 (Order of the PrK, 9 September 1998); P626 (VJ General Staff reminder for VJ personnel engaged with KLA, June 1998).

¹⁶³⁹ 4D428 (Order of the PrK, 27 May 1998), p. 1.

¹⁶⁴⁰ 4D231 (Order of the PrK re support of MUP, 20 July 1998), also admitted as 5D1172.

¹⁶⁴¹ 4D201 (Order of the PrK prohibiting destruction, 7 August 1998); P1422 (Order of the PrK re “overuse” of equipment, 7 August 1998); 4D375 (Order of the PrK re prevention of theft, 18 August 1998).

¹⁶⁴² P1011 (Ivan Marković, ed., *The Application of Rules of the International Law of Armed Conflicts* (2001)), p. 47; P2098 (PrK Forward Command Post Order, 5 June 1998).

¹⁶⁴³ Miodrag Simić, T. 15562–15564 (13 September 2007); 4D177 (Order of the PrK, 7 July 1998); P969 (Order issued by Vladimir Lazarević, 10 July 1998).

¹⁶⁴⁴ Miodrag Simić, T. 15562–15564 (13 September 2007).

weaponry in Kosovo, stating that this was in order to quash the image of excessive force that was being propagated in the western media.¹⁶⁴⁵

674. Pavković issued orders in September 1998 stating that allegations in the international media about VJ and MUP displacement of Kosovo Albanians were false and attributing this to the KLA.¹⁶⁴⁶ He called on the VJ to care for refugees and allow them to return home.¹⁶⁴⁷ However, in light of the comments made to Pavković in the preceding weeks about the involvement of his forces in the burning of villages in Kosovo, the Chamber considers that that instruction served only to shift the blame from VJ forces, rather than to act as an effective measure to reduce such occurrences.

675. On 24 September 1998 Pavković ordered the 125th Motorised Brigade to undertake combat operations in *inter alia* Gornje Obrinje/Abri e Epërme.¹⁶⁴⁸ On 26 September he reported that the resistance had been strong, but that the “group” had been forced into a much smaller area. Subsequently, the General Staff noted that according to reports from the 3rd Army, on 26 and 27 September units of the Priština Corps provided fire support to MUP units carrying out combat operations in this village, and foreign media, humanitarian organisations, and representatives of foreign States had reported a massacre of civilians, and requested further information.¹⁶⁴⁹ In his report Pavković stated that his command did not have information about the “alleged massacre of the civilian population”. He acknowledged that he had unconfirmed information indicating that MUP members had executed individuals taken into custody, but stated that this information “was not about the massacre of civilian population, as mentioned in the media”.¹⁶⁵⁰ His report failed to mention details that he had received the same day from the 125th Motorised Brigade. Their report recorded that VJ forces present had found a woman’s body in the village and had handed three children aged between two and four years old to the MUP who left them in a house with supplies to wait for the local villagers to return.¹⁶⁵¹

¹⁶⁴⁵ 4D150 (Order of the PrK re prohibition of use of weaponry, 3 October 1998).

¹⁶⁴⁶ P1430 (Order of the PrK, 9 September 1998); P1434 (PrK Order, 19 September 1998), pp. 2, 5.

¹⁶⁴⁷ P1434 (Order of the PrK, 19 September 1998), pp. 2, 5.

¹⁶⁴⁸ 6D700 (Order of the PrK, 24 September 1998), pp. 1–3.

¹⁶⁴⁹ 4D403 (VJ General Staff request for written statement, 2 October 1998). There is evidence that 21 civilians were executed in this village at Gornje Obrinje/Abri e Epërme. Frederick Abrahams, T. 806–814 (13 July 2006), P2227 (witness statement dated 30 May 2002), para. 19; P441 (Human Rights Watch Report entitled “A Week of Terror in Drenica - Humanitarian Law Violations in Kosovo”, 1 February 1999), pp. 16–47. KDOM determined that, during this incident, 21 civilians were killed, including women and children. P1468 (Notes of the Joint Command), p. 129; 4D402 (3rd Army report regarding incidents resulting in death and use of critical ammunition, 3 October 1998).

¹⁶⁵⁰ P1440 (PrK Report on incidents resulting in death, 5 October 1998), p. 4.

¹⁶⁵¹ P1011 (Ivan Marković, ed., *The Application of Rules of the International Law of Armed Conflicts* (2001)), pp. 70–71.

676. In late 1998 concern was expressed during VJ General Staff Collegium meetings about the accuracy of the reporting from subordinate units.¹⁶⁵² Dimitrijević testified in relation to his statement during the collegium of 10 December 1998 that “unusual incidents” were a result of the “alienation” of Pavković from the 3rd Army and the General Staff. He explained that, when he questioned the accuracy of reports being delivered through the reporting chain, the answer he got from the assistant of the General Staff for Operations, Obradović, was simply that the reports of the Priština Corps were coming through the regular channels. He and the Chief of General Staff (first Perišić then Ojdanić) were dissatisfied with these responses. Perišić asked for daily reports on ammunition used by the Priština Corps, since the reports indicated no actions even when ammunition was being depleted, and Ojdanić did the same when he took over in December.¹⁶⁵³

677. In addition to various internal reports from VJ units and organs indicating criminal activity by members of the VJ in 1998, the UN Security Council issued resolutions conveying similar information. On 31 March 1998 the Security Council issued Resolution 1160, which condemned “the use of excessive force by the Serbian police forces against civilians and peaceful demonstrators in Kosovo”,¹⁶⁵⁴ as well as the violent activities of the KLA. Subsequently, the Security Council issued Resolution 1199 on 23 September 1998, expressly noting that it was “gravely concerned” at the conflict in Kosovo and particularly about “the excessive and indiscriminate use of force” by the MUP and VJ, which in its consideration had resulted in “numerous civilian casualties and ... the displacement of over 230,000 people from their homes.”¹⁶⁵⁵ Pavković referred to “the principles as regulated in the Resolution of the UN” at a meeting of the Joint Command on 28 October 1998, demonstrating that he was aware of the contents of UN Security Council resolutions.¹⁶⁵⁶

678. The Chamber considers that the orders and reports of the VJ show that Pavković engaged the VJ in joint operations with MUP forces in 1998, during which excessive and disproportionate force was used. Whilst Pavković issued a number of orders calling upon his subordinates to ensure discipline in the Priština Corps and to adhere to international humanitarian law, he was also informed of allegations that excessive or disproportionate force was being used in these joint

¹⁶⁵² 3D484 (Minutes of the Collegium of the General Staff of the VJ, 10 December 1998), pp. 14–15; P928 (Minutes of the Collegium of the General Staff of the Yugoslav Army, 30 December 1998), p. 14; P933 (Minutes of the Collegium of the General Staff of the VJ, 4 March 1999), p. 15; P938 (Minutes of the Collegium of the General Staff of the VJ, 18 March 1999), p. 21; Aleksandar Dimitrijević, T. 26627, 26653 (8 July 2008).

¹⁶⁵³ Aleksandar Dimitrijević, T. 26622–26628 (8 July 2008); 3D484 (Minutes of the Collegium of the General Staff of the VJ, 10 December 1998), p. 14.

¹⁶⁵⁴ P455 (UNSC Resolution 1160, 31 March 1998), p. 1.

¹⁶⁵⁵ P456 (UNSC Resolution 1199, 23 September 1998), p. 1.

¹⁶⁵⁶ P1468 (Notes of the Joint Command), p. 161.

operations, notably at Gornje Obrinje/Abri e Epërme.¹⁶⁵⁷ His subsequent report on that incident sought to minimise the seriousness of the incident and omitted relevant knowledge in his possession.¹⁶⁵⁸ He was also warned on a number of occasions about the burning of houses in Kosovo by subordinate units. Despite his knowledge of criminal activities by VJ and MUP forces in Kosovo, Pavković continued to order the VJ to engage in joint operations in Kosovo and continued to participate in the Joint Command. The Chamber notes that, during a discussion of the security situation in Kosovo at a meeting of the Joint Command on 13 August 1998, Milomir Minić told those present, including Pavković, that they had to “prepare these actions and mask our actions with undertakings for civilians”.¹⁶⁵⁹ In light of this evidence and Pavković’s minimisation of the criminal activity of his subordinates, the Chamber does not consider that written orders calling for adherence to international humanitarian law were genuine efforts to take effective measures to prevent the commission of crimes against Kosovo Albanians. Moreover, the Chamber does not accept the explanation that the order not to fire on areas when international observers may be present was designed to protect international observers, but considers rather that its terms demonstrated that it was an effort to avoid the VJ being detected committing crimes.¹⁶⁶⁰

4. Pavković’s role as Commander of the 3rd Army

a. Appointment and powers

679. The Prosecution argues that Pavković was appointed 3rd Army commander after a series of disagreements between Milošević and Perišić (with Samardžić’s support) concerning the use of the VJ in Kosovo. It further argues that, following his elevation to Commander of the 3rd Army, Pavković had *de jure* and *de facto* control over the 3rd Army, and that, as the superior of all VJ forces in Kosovo, he was able to employ the VJ to ensure the expulsion of the Kosovo Albanian population.¹⁶⁶¹ The Pavković Defence, however, denies these allegations and asserts that he never ordered or organised the commission of any crime while Commander of the 3rd Army.¹⁶⁶²

i. Appointment

¹⁶⁵⁷ P441 (Human Rights Watch Report, 1 February 1999), pp. 16–47; Frederick Abrahams, T. 806–812 (13 July 2006); P1011 (Ivan Marković, ed., *The Application of Rules of the International Law of Armed Conflicts* (2001)), p. 70–71; P1440 (PrK Report on incidents resulting in death, 5 October 1998), p. 4.

¹⁶⁵⁸ P1440 (PrK Report on incidents resulting in death, 5 October 1998), p. 4.

¹⁶⁵⁹ P1468 (Notes of the Joint Command), p. 53; P949 (Nebojša Pavković interview with the Prosecution), p. 364.

¹⁶⁶⁰ Miodrag Simić, T. 15562–15565 (13 September 2007); 4D177 (Order of the PrK, 7 July 1998); P969 (Order issued by Vladimir Lazarević, 10 July 1998).

¹⁶⁶¹ Indictment, paras. 50–54; Prosecution Final Trial Brief (public version), 29 July 2008, paras. 847–848.

¹⁶⁶² Pavković Final Trial Brief (public version), 28 July 2008, para. 18.

680. Pavković replaced Dušan Samardžić as the 3rd Army Commander on 28 December 1998.¹⁶⁶³ The tension between the two officers concerning the use of the VJ in Kosovo has been analysed above, where it was concluded that they clashed about Pavković intensifying the VJ presence in Kosovo, without strict adherence to the chain of command of the VJ.

681. The proposal for Pavković's appointment as 3rd Army Commander in the place of Samardžić was discussed at the eighth session of the Supreme Defence Council on 25 December 1998.¹⁶⁶⁴ Objections to the appointment of Pavković were raised at the meeting by Montenegrin President Milo Đukanović, who stated that the Priština Corps's actions were not always in accordance with the constitutional role of the VJ.¹⁶⁶⁵ Notwithstanding these objections, Milošević issued Presidential decrees appointing Pavković to Commander of the 3rd Army and Lazarević to Commander of the Priština Corps on 28 December 1998.¹⁶⁶⁶

682. Appointment to higher ranking posts was under the jurisdiction of the President of the FRY and was explicitly regulated by article 136 of the FRY Constitution and article 151 of the Law on the VJ.¹⁶⁶⁷ Branko Fezer, who worked as Chief of Personnel Administration for the VJ General Staff,¹⁶⁶⁸ explained the process for appointment and promotion of VJ officers, which he stated was adhered to in the promotion of Pavković.¹⁶⁶⁹ The Pavković Defence avers, through reliance upon evaluations received throughout his career, that Pavković was a professional and honourable soldier, who conducted himself and the units under his command in accordance with military regulations and with the principles of international humanitarian law. In particular, the Chamber notes that in the evaluation given to Pavković in January 1999, and signed by Samardžić, he was rated "excellent" and "exceptional".¹⁶⁷⁰

¹⁶⁶³ P800 (Report on the take-over of the duty of 3rd Army Commander by Nebojša Pavković, 13 January 1999), also admitted as 4D36 (Report on the take-over of the duty of 3rd Army Commander by Nebojša Pavković, 13 January 1999), also admitted as P800; P802 (Report on the hand-over of the duty of 3rd Army Commander by Dušan Samardžić, 13 January 1999); 4D35 (FRY President Decree on appointment of Nebojša Pavković, 28 December 1998).

¹⁶⁶⁴ P1000 (Minutes of 8th SDC session, 25 December 1998), pp. 1, 5–9; 1D761 (Shorthand notes of 8th SDC session, 25 December 1998), pp. 3, 13–21.

¹⁶⁶⁵ P1000 (Minutes of 8th SDC session, 25 December 1998), pp. 9–10; 1D761 (Shorthand notes of 8th SDC session, 25 December 1998), pp. 21–22; *see also* Ratko Marković, T. 13407–13409 (13 August 2007).

¹⁶⁶⁶ 4D35 (FRY President Decree on appointment of Nebojša Pavković, 28 December 1998); P801 (Report on the take-over of the duty of PrK Commander by Lazarević, 9 January 1999).

¹⁶⁶⁷ Branko Fezer, T. 16482 (27 September 2007), 3D1118 (witness statement dated 3 September 2007), para. 5. *See also* Branko Krga, T. 16901–16902 (4 October 2007).

¹⁶⁶⁸ Branko Fezer, 3D1118 (witness statement dated 3 September 2007), paras. 1–2.

¹⁶⁶⁹ Branko Fezer, T. 16483–16485, 16489–16490 (27 September 2007), 3D1118 (witness statement dated 3 September 2007), para. 5.

¹⁶⁷⁰ *See* 4D136 (Nebojša Pavković's career assessment signed by Dušan Samardžić, 10 January 1999). The Chamber also analysed previous assessments made of Pavković during his military career. *See* 4D178 (Nebojša Pavković's career assessment, 16 March 1973), e-court p. 3 (rating his performance as "excellent"); 4D180 (Nebojša Pavković's career assessment, 10 March 1979), e-court p. 3 (rating his performance as "exceptionally distinguished"); 4D181

683. On 9 January 1999 Lazarević was promoted into the position of the Priština Corps commander,¹⁶⁷¹ and on 13 January 1999 Pavković took up his position as 3rd Army Commander, replacing Samardžić.¹⁶⁷² In a media interview in 2000 Pavković stated that he received early promotions five times in his VJ career, including once in 1998 and once in 1999, despite the rules only allowing for three such early promotions.¹⁶⁷³

ii. Powers and responsibilities

684. The 3rd Army Commander was subordinated to the Chief of the General Staff, who was the highest ranking military officer in the VJ; in turn, the 3rd Army Commander exercised authority over all the forces subordinated to him, including the Priština Corps and the Niš Corps, and the Priština and Niš Military Districts, with their subordinate Military Departments.¹⁶⁷⁴ Pavković was able to command the VJ forces in Kosovo throughout the NATO air campaign despite the bombing.¹⁶⁷⁵ His disciplinary and preventive powers included the authority to dismiss brigade commanders, as well as other officers, for not obeying orders,¹⁶⁷⁶ and the power to have volunteers removed from VJ units.¹⁶⁷⁷ He was obliged to discipline any subordinate failing to execute an order due to indiscipline,¹⁶⁷⁸ and the 3rd Army Command was obliged to report directly to the General Staff/Supreme Command Staff including on crimes and unlawful events.¹⁶⁷⁹

b. Pavković's conduct as Commander of the 3rd Army

(Nebojša Pavković's career assessment, 10 October 1989) (rating his performance as "particularly outstanding"); 4D182 (Nebojša Pavković's career assessment, 30 June 1997), e-court p. 2 (rating his performance as "excellent").

¹⁶⁷¹ P801 (Report on the take-over of the duty of PrK Commander by Vladimir Lazarević, 9 January 1999).

¹⁶⁷² 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). Pavković had been appointed by decree to the position of 3rd Army Commander on 28 December, as discussed above. *See* 4D35 (FRY President Decree on appointment of Nebojša Pavković, 28 December 1998).

¹⁶⁷³ P1319 (Pavković responds to callers' questions, Belgrade RTS Television First Program, 20 October 2000), p. 9.

¹⁶⁷⁴ *See* P984 (FRY Law on the VJ), articles 5, 6. *See also* Ljubiša Stojimirović, T. 17646 (26 October 2007); Zlatimir Pešić, P2502 (witness statement dated 30 January 2004), paras. 6–9; P949 (Nebojša Pavković interview with the Prosecution), p. 144; 4D240 (Structure, Deployment and Manning Level of the 3rd Army Military-Territorial Component), p. 1.

¹⁶⁷⁵ *See, e.g.*, P1319 (Pavković responds to callers' questions, Belgrade RTS Television First Program, 20 October 2000), p. 17.

¹⁶⁷⁶ P949 (Nebojša Pavković interview with the Prosecution), p. 271; *see also* 4D198 (3rd Army order with list of instructions, 7 May 1999), para. 7; Mirko Starčević, 4D500 (witness statement dated 29 September 2007), para. 24.

¹⁶⁷⁷ 4D198 (3rd Army Comprehensive List of Instructions, 7 May 1998), para. 11.

¹⁶⁷⁸ 4D532 (VJ Rules of Service, 1 January 1996), rule 36.

¹⁶⁷⁹ Geza Farkaš, T. 16362–16363 (25 September 2007); Ljubiša Stojimirović, T. 17681 (26 October 2007); Radojko Stefanović, T. 21728 (6 February 2008). *See also* Miloš Mandić, T. 20924 (23 January 2008); Aleksandar Vasiljević, T. 8666 (18 January 2007), Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 52. *Cf.* Radomir Gojović, T. 16706 (2 October 2007); 3D480 (Supreme Command Staff order, 2 April 1999), pp. 1–2; P1469 (warning on delivery of accurate and confirmed reports, 25 March 1999).

i. Breaches of the October Agreements

685. The Prosecution submits that Pavković participated in the efforts of the FRY and Serbian leadership to avoid and undermine their obligations under the October Agreements of 1998.¹⁶⁸⁰ The Pavković Defence argues that, from the initiation of the October Agreements, co-operation between the VJ and the OSCE mission was exemplary, with only a few disagreements occurring.¹⁶⁸¹

686. The issue of compliance with the October Agreements is discussed in Section VI.D, where the Chamber has found that the VJ intentionally breached the October Agreements by engaging forces in the Podujevo/Podujeva incident, that the increase in VJ and MUP personnel in Kosovo in late 1998 and early 1999 was in contravention of the October Agreements, and that the MUP retained heavy weaponry and equipment that it was obliged to return to the VJ. This section focuses on Pavković's conduct in relation to these breaches.

687. Shaun Byrnes, who was a member of the U.S. diplomatic observer mission in Kosovo (KDOM) in 1998 and 1999, testified that he met Pavković on one occasion, shortly after the October Agreements, when Pavković summoned KDOM officials to a meeting in his offices at the Priština Corps Command, to go over the "rules-of-the-road", the October Agreements, Pavković's obligations derived from the agreements, and the KDOM duties. According to Byrnes, Pavković was professional and direct.¹⁶⁸² On 28 October 1998, during a meeting of the Joint Command, Pavković requested that it be confirmed or stated to him in writing that the OSCE/KVM verifiers could be allowed into barracks to count weapons. He stated in this regard that "the principles as regulated in the Resolution the UN ... should be respected".¹⁶⁸³

688. However, in relation to the Podujevo/Podujeva incident in December 1998, Aleksandar Dimitrijević gave evidence that calls into question Pavković's claim that the actions of the Priština Corps were only a necessary response to KLA provocations.¹⁶⁸⁴ In late 1998 and early 1999 Dimitrijević reported to the General Staff of the VJ that the characterisation by the 3rd Army and Priština Corps of all of the VJ operations in Kosovo as defensive was misleading.¹⁶⁸⁵ Dimitrijević explained that he had been troubled by the fact that all reports stated that the units had only acted in

¹⁶⁸⁰ Prosecution Final Trial Brief (public version), 29 July 2008, para. 876.

¹⁶⁸¹ Pavković Final Trial Brief (public version), 28 July 2008, para. 123.

¹⁶⁸² Shaun Byrnes, T. 12143, 12198 (16 April 2007).

¹⁶⁸³ P1468 (Notes of the Joint Command), p. 161.

¹⁶⁸⁴ Aleksandar Dimitrijević, T. 26627 (8 July 2008), T. 26653 (8 July 2008).

¹⁶⁸⁵ P928 (Minutes of the Collegium of the General Staff of the VJ, 30 December 1998), p. 14; P933 (Minutes of the Collegium of the General Staff of the VJ, 4 March 1999), p. 15; P938 (Minutes of the Collegium of the General Staff of the VJ, 18 March 1999), p. 21; Aleksandar Dimitrijević, T. 26627, 26653 (8 July 2008).

response to attacks by the KLA, when they knew that many actions had been pre-planned by the VJ.¹⁶⁸⁶ During his final months in the VJ, before he was removed from his position on 23 March 1999, he considered this problem to be ongoing.¹⁶⁸⁷

689. In early 1999 Pavković brought a number of units into Kosovo to augment the forces of the VJ. Pavković brought the 72nd Special Brigade into the interior of Kosovo prior to 25 February 1999, despite an instruction from Ojdanić to keep it in the border belt area.¹⁶⁸⁸ In his media interview in 2000, Pavković himself stated that, following the October Agreements, the VJ “carried out timely additional mobilisation, brought them to Kosovo in the greatest secrecy, distributed the war reserves, and blocked those forces [KLA] without them even knowing it. The signal for a total blockade was the first rocket that came this way.”¹⁶⁸⁹ Pavković added that this was a response to the activities of the KVM, which, according to him, was aiding the KLA.¹⁶⁹⁰

690. These additional units introduced to Kosovo were in breach of the limits established under the October Agreements, as discussed in Section VI.D. The ordering of the 72nd Special Brigade into the interior of Kosovo was notable, as it was in contravention of Ojdanić’s orders to keep the unit at the border. However, the Pavković Defence argues that, even if the introduction of extra VJ units was viewed as a breach of the October Agreements, it was merely a response to the threat of a NATO attack, and the marked increase in KLA activity in late March 1999 after the KVM mission departed.¹⁶⁹¹ The Chamber concludes that Priština Corps units under Pavković’s control engaged in provocative action at Podujevo/Podujeva. Furthermore, Pavković introduced additional troops to Kosovo, without notice to the KVM, in order to be in a position to engage in widespread operations in Kosovo in March 1999. Consequently, Pavković breached the October Agreements. This conclusion is not disturbed by the fact that one of the stated purposes of introducing these troops and taking these actions was to counter the threat emanating from the KLA and the potential NATO action.

¹⁶⁸⁶ Aleksandar Dimitrijević, T. 26627, 26654 (8 July 2008). *See also* P938 (Minutes of the Collegium of the General Staff of the VJ, 18 March 1999), p. 21.

¹⁶⁸⁷ Aleksandar Dimitrijević, T. 26654 (8 July 2008).

¹⁶⁸⁸ P941 (Minutes of the Collegium of the General Staff of the VJ, 25 February 1999), pp. 16, 24; Aleksandar Dimitrijević, T. 26708 (9 July 2008); P1948 (VJ General Staff Order for Resubordination, 19 February 1999); Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), paras. 54, 65, T. 17656–17657 (26 October 2007).

¹⁶⁸⁹ P1319 (Pavković responds to callers’ questions, Belgrade RTS Television First Program, 20 October 2000), p. 17; P912 (Video entitled “JNA-Srpska Verzija Sloma” by the Serbian Helsinki Human Rights Watch, 1 January 2004).

¹⁶⁹⁰ P1319 (Pavković responds to callers’ questions, Belgrade RTS Television First Program, 20 October 2000), p. 17; P912 (Video entitled “JNA-Srpska Verzija Sloma” by the Serbian Helsinki Human Rights Watch, 1 January 2004); 3D1048 (3rd Army Command Security Department Report, 2 March 1999).

¹⁶⁹¹ Pavković Final Trial Brief (public version), 28 July 2008, paras. 105, 109, 119; Vladimir Lazarević, T. 17944 (8 November 2007); Krsman Jelić, T. 18846 (22 November 2007).

ii. Military orders

691. The Prosecution submits that Pavković's continued use throughout the NATO air campaign in 1999 of the same "heavy-handed" tactics that resulted in violations of international humanitarian law in 1998 demonstrates his approval of the crimes that were being committed in Kosovo and his intent to further their commission.¹⁶⁹² The Pavković Defence denies the Prosecution's allegations and asserts that he never ordered or organised the commission of any crime while Commander of the 3rd Army.¹⁶⁹³

692. According to the Law on the VJ, the 3rd Army Commander was responsible for commanding the units and institutions subordinated to him in accordance with documents issued by the Chief of the General Staff.¹⁶⁹⁴ Pavković confirmed this procedure in his interview with the Prosecution, and stated that all the military actions of the 3rd Army during the NATO air campaign arose from orders coming from Ojdanić.¹⁶⁹⁵ He also claimed that the 3rd Army never received or gave orders to carry out organised killings of civilians, prisoners, or any other category of the Kosovo Albanian population.¹⁶⁹⁶

693. On 16 January 1999 Ojdanić issued the plan for the defence of the country in case of a foreign attack, known as the *Grom 3* plan.¹⁶⁹⁷ The first stage of the operation was to take measures to prevent NATO from entering Kosovo and, in co-ordination with the MUP, to "block" the KLA in Kosovo. The objective of the second stage was to "crush and destroy" the NATO and KLA forces, in co-ordination with the MUP.¹⁶⁹⁸ On 27 January 1999 Pavković issued the 3rd Army order containing the *Grom 3* plan. This was an order for the engagement of VJ troops, with the support of MUP forces, in Kosovo in response to the threat from NATO and the KLA forces.¹⁶⁹⁹ The order called *inter alia* for unit commanders to "engage the armed non-Šiptar population" for the securing of facilities and the defence of populated areas. On 1 February 1999 Pavković ordered Lazarević to draft a plan for operations in the Drenica, Lab/Llap, and Mališevo/Malisheva areas of Kosovo, in co-ordination with the MUP.¹⁷⁰⁰ In accordance with these orders, Lazarević drew up an order in the Priština Corps, which directed that operations begin within Kosovo on 20 March 1999, as well

¹⁶⁹² Indictment, paras. 50–54; Prosecution Final Trial Brief (public version), 29 July 2008, para. 881.

¹⁶⁹³ Pavković Final Trial Brief (public version), 28 July 2008, para. 18.

¹⁶⁹⁴ P984 (FRY Law on the VJ), article 6.

¹⁶⁹⁵ P949 (Nebojša Pavković interview with the Prosecution), pp. 277–280.

¹⁶⁹⁶ P949 (Nebojša Pavković interview with the Prosecution), p. 1, 409.

¹⁶⁹⁷ 3D690 (VJ General Staff Directive for the engagement of the VJ, *Grom 3* Directive, 16 January 1999).

¹⁶⁹⁸ 3D690 (VJ General Staff Directive for the engagement of the VJ, *Grom 3* Directive, 16 January 1999), p. 4; Vladimir Lazarević, T. 17894 (8 November 2007).

¹⁶⁹⁹ 5D245 (*Grom 3* Order of the 3rd Army Command, 27 January 1999), p. 5.

¹⁷⁰⁰ 5D249 (Order of the 3rd Army, 1 February 1999), p. 2.

as the 16 Joint Command orders for the use of the VJ in conjunction with the MUP in Kosovo in March 1999, which are discussed in Section VI.E.¹⁷⁰¹

694. An order issued by Pavković on 23 March 1999 directed that the VJ was to be immediately engaged against all enemy forces. It further stated that, in places or sectors where the presence of the KLA had been established, units were to establish a preventive shell in order to prevent attacks on the 3rd Army commands and units, to focus on populated places with a “loyal population”, and to prevent a link-up between the KLA and NATO airborne assaults.¹⁷⁰² Also on 23 March 1999, in response to a request from Pavković,¹⁷⁰³ Ojdanić ordered the mobilisation of military territorial detachments in Priština/Prishtina, Kosovska Mitrovica/Mitrovica, Peć/Peja, and Prizren.¹⁷⁰⁴ These territorial detachments were primarily tasked with securing roads but were also sometimes involved in actual combat operations.¹⁷⁰⁵ Another order issued by Pavković on 26 March stated that VJ unit commanders were to continue to undertake combat operations to “smash and destroy” the KLA, to “ensure the holding of advantageous features and territory”, and to “make comprehensive and intensive preparations for the defence [of the territory] and [for] preventing enemy forces penetrating into [Kosovo]”.¹⁷⁰⁶

695. Also at this time, through orders issued under the authority of the Joint Command, a number of joint VJ and MUP operations were conducted, which coincided in terms of time and place with crimes found to have been committed by VJ and/or MUP forces.¹⁷⁰⁷ For example, on 28 March 1999, units of the Priština Corps, including the 549th Motorised Brigade, were ordered to provide support for MUP operations to destroy the KLA in the Mališevo/Malisheva area.¹⁷⁰⁸ Over the following days various VJ units named in the order acknowledged their receipt and implementation of this order.¹⁷⁰⁹ On 30 March the 3rd Army Command sent a telegram to the Supreme Command Staff, stating that it had launched operations in the Mališevo/Malisheva area, specifically

¹⁷⁰¹ P3049 (Joint Command Order, 19 March 1999); Vladimir Lazarević, T. 17894 (8 November 2007).

¹⁷⁰² 4D103 (3rd Army Command Order, 23 March 1999), para. 1.6; Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 38.

¹⁷⁰³ P1924 (Request by Pavković for mobilisation, 23 March 1999).

¹⁷⁰⁴ P1925 (Order of the VJ General Staff, 23 March 1999).

¹⁷⁰⁵ Miloš Mandić, T. 20946 (24 January 2008); 5D1074 (Combat report of Military District Command, 15 April 1999).

¹⁷⁰⁶ 4D133 (3rd Army Order to undertake measures for future operations, 26 March 1999), para. 3.

¹⁷⁰⁷ See, e.g., P2015 (Joint Command Order, 23 March 1999); P1968 (Joint Command Order, 24 March 1999); P1969 (Joint Command Order, 28 March 1999); P2000 (Order of the 549th Motorised Brigade, 29 March 1999); P1975 (Joint Command Order, 15 April 1999); P2031 (Joint Command Decision, 22 March 1999).

¹⁷⁰⁸ P1969 (Joint Command Order, 28 March 1999), e-court pp. 7–8.

¹⁷⁰⁹ P2000 (Order of the 549th Motorised Brigade, 29 March 1999); P2035 (125th Motorised Brigade Command Combat Report, 30 March 1999); P2802 (War Diary of the Armoured Battalion of the 125th Motorised Brigade); P2047 (37th Motorised Brigade Operations Report to PrK, 29 March 1999).

Orlate/Arlat village, Iglarevo/Gllarevë village, Volujak/Volljaka village, Orahovac/Rahovec, Suva Reka/Suhareka, Dulje/Duhel village, and Guncat village.¹⁷¹⁰

696. As discussed in greater detail above, K90, who was a member of the 549th Motorised Brigade, testified that the displacement of villagers would not be ordered in writing, but rather orally. He testified that, in accordance with his orders, he would address villagers in Serbian and would tell them to go towards Đakovica/Gjakova town and its surrounding villages.¹⁷¹¹ The orders his unit received to expel people were never written, but were passed down verbally.¹⁷¹² Furthermore, these orders always related only to Kosovo Albanian villages. While there was an exception allowing local commanders to order the relocation of villagers for their own protection, in which case the order would be put in writing, there was, in K90's view, no legitimate military rationale for the relocation of the civilians.¹⁷¹³

697. In April 1999 another large-scale plan for the use of the VJ in Kosovo was devised. On 6 April the Priština Corps Command issued an order for the implementation of *Grom 4*. Three days later the Supreme Command Staff issued its version of the *Grom 4* directive "for the engagement of the VJ in defence against the NATO aggression", and then, on 10 April 1999, the 3rd Army Command issued its own *Grom 4* order.¹⁷¹⁴ Several other joint operations were carried out in mid-April 1999 pursuant to Joint Command orders in the area of Kosmač,¹⁷¹⁵ the sector of Žegovac,¹⁷¹⁶ Drenica,¹⁷¹⁷ Orlane/Orllan-Zlaš,¹⁷¹⁸ Čičavica/Qiqavica,¹⁷¹⁹ Jezerce,¹⁷²⁰ Rugovo,¹⁷²¹ the Bajgora–Bare area,¹⁷²² and the Zastrić sector.¹⁷²³

¹⁷¹⁰ P1446 (Document sent by 3rd Army to Supreme Command Staff, 30 March 1999). *See also* 4D307 (3rd Army Combat Report Pavković to the General Staff/Supreme Command Staff, 30 March 1999).

¹⁷¹¹ K90, T. 9302 (29 January 2007).

¹⁷¹² K90, P2652 (witness statement dated 8 December 2002), para. 41; K90, T. 9303 (29 January 2007).

¹⁷¹³ K90, P2652 (witness statement dated 8 December 2002), para. 41.

¹⁷¹⁴ P1481 (Supreme Command Staff directive for engagement of VJ in defence against the NATO, 9 April 1999); 4D308 (3rd Army order on defence from NATO, 10 April 1999); 5D175 (PrK Command Order, 6 April 1999). *See also* P1480 (Supreme Command Staff Order to prepare plans for defence, 9 April 1999).

¹⁷¹⁵ P1970 (Joint Command Order, 9 April 1999).

¹⁷¹⁶ P1971 (Joint Command Order, 13 April 1999).

¹⁷¹⁷ P1972 (Joint Command Order, 14 April 1999).

¹⁷¹⁸ P1973 (Joint Command Order, 14 April 1999).

¹⁷¹⁹ P1974 (Joint Command Order, 15 April 1999); 5D1023 (Combat report of 37th Motorised Brigade, 19 April 1999).

¹⁷²⁰ P1976 (Joint Command Order, 15 April 1999).

¹⁷²¹ P1878 (Joint Command Order, 15 April 1999); 5D194 (Information of the PrK Command to the 3rd Army Command, 15 April 1999); 5D1411 (PrK Combat Report to 3rd Army and to Supreme Command Staff, 19 April 1999); P2016 (PrK Combat report to 3rd Army and Supreme Command Staff, 25 April 1999).

¹⁷²² P1975 (Joint Command Order, 15 April 1999); P2619 (Extract from the War Diary of the 15th Armoured Brigade), pp. 10, 13–15; P2572 (War Diary of the 15th Armoured Brigade), pp. 57, 61–62; 5D220 (PrK Combat Report to 3rd Army and Supreme Command Staff, 1 May 1999); P1977 (Joint Command Order, 16 April 1999).

¹⁷²³ P1977 (Joint Command Order, 16 April 1999).

698. On the basis of the above analysis, the Chamber concludes that Pavković, as Commander of the 3rd Army, ordered VJ units to engage in operations within Kosovo, through the regular chain of command and through the Joint Command, which in some cases coincided in time and area of implementation with the locations of crimes committed by forces of the VJ.

iii. Statement at Kosovski Junaci barracks

699. Direct evidence offered by the Prosecution of Pavković's intent to commit the crimes alleged in the Indictment is a statement attributed to him by K73, a member of the VJ who was deployed in Kosovo and who testified that Pavković and Lazarević visited the *Kosovski Junaci* barracks in Priština/Prishtina some time in February or March 1999. While at the barracks, Pavković addressed members of the VJ and said that as soon as the first NATO bomb fell on Kosovo they would have to "clean our back from Albanians." However, K73 conceded that he was not sure whether this was a reference to getting rid of the Kosovo Albanian civilian population or of the KLA forces.¹⁷²⁴

700. The Pavković Defence questioned Saša Antić, a Commander in the 52nd Military Police Battalion of the VJ, about the video film of Pavković during a visit to the *Kosovski Junaci* barracks on 18 March 1999.¹⁷²⁵ Antić stated that he was present during this visit by Pavković and that he never heard Pavković say anything along the lines of "we need to rid our backs of the Albanians" on that day or during any of his prior visits.¹⁷²⁶ The Chamber notes that, whereas K73 spoke of a speech at a hall with many officers present, the video referred to by Antić and also by Stojanović shows an outdoor scene with only a few VJ members present.¹⁷²⁷

701. Given K73's uncertainty as to the meaning of this statement, the Chamber is not prepared to rely on it in relation to Pavković's state of mind.

iv. Interaction with Milošević and participation in the Joint Command in 1999

702. The Prosecution contends that during 1999 Pavković maintained his influence over events in Kosovo and his participation in the Joint Command.¹⁷²⁸ The Pavković Defence submits that the

¹⁷²⁴ K73, P2440 (witness statement dated 2 December 2005), para. 34; T. 3317–3319 (13 September 2006) (closed session), T. 3403 (14 September 2006) (closed session).

¹⁷²⁵ 4D18 (Interview of Nebojša Pavković, Priština, 18 March 1999); Momir Stojanović confirmed that this video shows the speech made by Pavković. Momir Stojanović, T. 19822–19823 (7 December 2007).

¹⁷²⁶ Saša Antić, T. 21150–21152 (28 January 2008).

¹⁷²⁷ 4D18 (Interview of Nebojša Pavković, Priština, 18 March 1999).

¹⁷²⁸ Indictment, paras. 50–54; Prosecution Final Trial Brief (public version), 29 July 2008, para. 866.

Joint Command was simply a co-ordination body.¹⁷²⁹ The Pavković Defence claims that the references to the Joint Command in 1999 were mistakes, and unusual features of the Joint Command orders and decisions issued in 1999 undermine their reliability. He also argues that the few contacts he had with Milošević in 1999 did not concern the commission of crimes in Kosovo.¹⁷³⁰

703. Pavković himself confirmed that he attended Joint Command meetings in 1998, but that the Joint Command practically ceased by the beginning of the NATO air strikes.¹⁷³¹ The Chamber has concluded in Section VI.E on the functioning of the Joint Command that the evidence of the existence of the Joint Command during the period of the Indictment is less apparent than in 1998, although orders were still issued under the authority of the Joint Command for co-ordinated actions by VJ and MUP forces in 1999.

704. Upon becoming the Commander of the 3rd Army in January 1999, Pavković's responsibilities extended beyond Kosovo. However, there is evidence that Pavković's involvement in the Joint Command continued throughout the NATO air campaign in 1999. Pavković ordered the use of the VJ and "armed non-Šiptar population" in Kosovo in the *Grom 3* plan on 27 January 1999.¹⁷³² Then on 23 March 1999 he directed that units were to be immediately engaged against all enemy forces, especially against "Šiptar terrorist groups or units".¹⁷³³ These orders provided the basis for the Joint Command orders for the VJ and MUP to engage in widespread joint operations in late March 1999, as discussed above.

705. The Chamber heard evidence on the circumstances surrounding the drafting of a document issued on 17 April 1999 by Ojdanić, addressed to the 3rd Army Command, containing a series of "suggestions" regarding comprehensive preparations and deployment of forces, as per the Joint Command order of 15 April 1999.¹⁷³⁴ Đorđe Ćurčin testified that he transcribed the document, and added that the suggestions were written in an urgent manner by Ojdanić on the basis of a map shown to him by Pavković, which represented the situation in the broader Rogovo/Rogova area in western Kosovo near Peć/Peja.¹⁷³⁵ Ćurčin further testified that Pavković came to see Ojdanić after

¹⁷²⁹ Pavković Final Trial Brief (public version), 28 July 2008, para. 243.

¹⁷³⁰ Pavković Final Trial Brief, 28 July 2008 (public version), para. 263; P949 (Nebojša Pavković interview with the Prosecution), pp. 2, 201, 244, 282, 299.

¹⁷³¹ P949 (Nebojša Pavković interview with the Prosecution), pp. 96–97, 113, 116–117, 321–322.

¹⁷³² 5D245 (*Grom 3* Order of the 3rd Army Command, 27 January 1999), p. 5.

¹⁷³³ 4D103 (3rd Army Command Order on the Defence from NATO attacks, 23 March 1999), para. 1.6; Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 38.

¹⁷³⁴ P1487 (Suggestions to 3rd Army from Supreme Command Staff, 17 April 1999); Đorđe Ćurčin, T. 16966–16968 (5 October 2007).

¹⁷³⁵ Đorđe Ćurčin, T. 16966–16969 (5 October 2007).

meeting with Milošević, having by-passed his immediate superior.¹⁷³⁶ It is notable that these suggestions relating to the Joint Command order presented by Pavković were drafted in such a way as to tell Pavković to “consider the possibility for the forces to ...” despite the fact that Ojdanić, as the Chief of the General Staff, formally possessed the power to issue orders to the 3rd Army Command.¹⁷³⁷

706. Pavković’s awareness of and continued support for the Joint Command is also demonstrated by the letter he sent to the Chief of the Supreme Command Staff on 25 May 1999. In the letter he noted that there had been an order for the formal resubordination of the MUP to the VJ throughout Kosovo and called for the “Supreme Command” to either enforce the resubordination order or else annul the order and maintain command of the MUP units in the hands of the Ministry of the Interior “through the Joint Command as has so far been the case.”¹⁷³⁸

707. Vasiljević testified that Pavković called him to the meeting of a group called the “Joint Command” held on 1 June 1999 in the basement of the Grand Hotel in Priština/Prishtina. Presentations were given by Lukić, Lazarević, and Pavković, and included technical details about VJ and MUP activities. Šainović also addressed the meeting, agreeing that things should be done as planned by the Generals of the VJ and the MUP. Vasiljević got the impression that this was a daily meeting, as the discussion was confined to the events of the previous 24 hours.¹⁷³⁹ Zoran Anđelković testified that he was at this same meeting.¹⁷⁴⁰ Lazarević confirmed that he attended the meeting, and that *inter alios* Vasiljević, Pavković, Gajić, and Stojanović from the VJ, along with the state officials Anđelković and Šainović, were present.¹⁷⁴¹ Stojanović provided a consistent account, testifying that in June 1999 he attended a meeting at the Grand Hotel with Vasiljević, at the invitation of Pavković.¹⁷⁴² Also present at the meeting were Anđelković, Kovačević, Lazarević, Lukić, Šainović, and Vilotić.¹⁷⁴³

708. Vasiljević testified that he believed that in 1999 Pavković often circumvented the chain of command by going directly to Milošević without the knowledge or authorisation of Ojdanić.¹⁷⁴⁴ He recounted his own experience of this by-passing, stating that when Vasiljević and Ojdanić went to

¹⁷³⁶ Đorđe Ćurčin, T. 17025–17027 (16 October 2007).

¹⁷³⁷ P1487 (Suggestions to 3rd Army from Supreme Command Staff, 17 April 1999).

¹⁷³⁸ P1459 (3rd Army report on the non-compliance of MUP organs, 25 May 1999). Objections to the authenticity and receipt of this letter by the General Staff/Supreme Command Staff of the VJ are discussed below.

¹⁷³⁹ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), paras. 80–82; T. 8784–8785 (22 January 2007), T. 8954 (23 January 2007); 2D387 (witness statement dated 25 July 2007), para. 4.

¹⁷⁴⁰ Zoran Anđelković, T. 14663 (30 August 2007).

¹⁷⁴¹ Vladimir Lazarević, T. 18122–18123 (12 November 2007).

¹⁷⁴² Momir Stojanović, T. 19773 (7 December 2007).

¹⁷⁴³ Momir Stojanović, T. 19774 (7 December 2007).

visit Milošević in mid-June 1999 at Beli Dvor in Belgrade they saw Pavković leaving the building. According to Vasiljević, Ojdanić himself told him that Pavković was meeting privately with Milošević without Ojdanić's knowledge, and was not reporting back to him as his superior officer.¹⁷⁴⁵ Ojdanić complained to Milošević, who replied that it was not an official meeting.¹⁷⁴⁶

709. On the other hand, in his interview with the Prosecution, Pavković stated that, once he was appointed 3rd Army Commander, Ojdanić always accompanied him to meetings with Milošević.¹⁷⁴⁷ He referred to a meeting with Milošević on 5 January 1999, but provided no further details.¹⁷⁴⁸ Pavković stated that Milošević called him at the start of the NATO bombing and ordered him and Lazarević to avoid Kosovo as much as possible so they would not get into trouble. Pavković also said that he called Milošević twice during the "cease-fire" to inform him about supply problems with the army and about an incident after the NATO bombing, wherein KFOR had disarmed VJ members.¹⁷⁴⁹ He stated that he never received oral orders from Milošević during the NATO bombing.¹⁷⁵⁰

710. In relation to the allegation that in 1999 Pavković participated in the ordering of VJ actions, in co-ordination with MUP forces through the Joint Command, and through his direct interaction with the FRY President, the Chamber has analysed the various witness accounts and pieces of documentary evidence. A number of Joint Command orders were issued at the start of the NATO air campaign that coincide in time and place with the commission of crimes detailed in the Indictment, as described above. VJ units engaged in operations on the basis of these commands, and in accordance with the usual VJ reporting system the 3rd Army Command received reports about the conduct of these operations, as detailed in Section VI.E. The circumstances surrounding Ojdanić's "suggestions" to the 3rd Army Command indicate that the VJ chain of command functioned with a degree of flexibility, and that Pavković exerted major influence on the planning of actions. Although the evidence of Pavković's participation in the Joint Command is not as prevalent as in 1998, there is evidence that in 1999 he continued to support its functioning and activities. Furthermore, the Chamber does not accept Pavković's account that he only had minimal

¹⁷⁴⁴ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 19; T. 8669 (18 January 2007).

¹⁷⁴⁵ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 20; T. 8670 (18 January 2007), T. 8932 (23 January 2007).

¹⁷⁴⁶ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 20.

¹⁷⁴⁷ P949 (Nebojša Pavković interview with the Prosecution), pp. 11–12, 123.

¹⁷⁴⁸ P949 (Nebojša Pavković interview with the Prosecution), p. 396.

¹⁷⁴⁹ P949 (Nebojša Pavković interview with the Prosecution), pp. 2, 203.

¹⁷⁵⁰ P949 (Nebojša Pavković interview with the Prosecution), pp. 282, 299; *see also* Tomislav Mladenović, T. 17622 (25 October 2007); Ljubiša Stojimirović, T. 17656–17662 (26 October 2007).

contact with Milošević in 1999,¹⁷⁵¹ as the evidence discussed above shows that Pavković continued to work closely with Milošević on the issue of Kosovo in 1999.

v. Responsibility for the actions of forces of the MUP

711. The Prosecution argues that, after the resubordination of the MUP to the VJ in April 1999, Pavković became the superior of the MUP forces operating in Kosovo. Particularly, it contends that, after resubordination, Pavković directly commanded MUP troops with the same level of detail as he applied in orders to the VJ forces under his command, including ordering the Accused Lukić to use particular units in specific actions.¹⁷⁵² The Pavković Defence argues, on the other hand, that actual resubordination never occurred, but rather there was only co-operation and co-ordination between the VJ and MUP during some operations in Kosovo, and that Pavković never had effective control over the MUP forces in Kosovo.¹⁷⁵³

712. This issue is discussed above, in Section VI.E. On 20 April 1999 Pavković, as the 3rd Army Commander, 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, pursuant to the FRY President's order for resubordination of 18 April, and the resubordination order issued by Ojdanić the same day.¹⁷⁵⁴ Extensive co-operation between VJ and MUP forces in Kosovo during and after 1998 has been acknowledged by various witnesses. Pavković himself stated that within Kosovo there was "absolute co-operation" between the VJ and MUP,¹⁷⁵⁵ but there was no subordination of the MUP to the VJ.¹⁷⁵⁶ According to him, the VJ and the MUP "did not perform any joint actions", but rather "separate and individual" operations that were co-ordinated at the local level by the commanders of the units involved.¹⁷⁵⁷ Pavković did acknowledge that "in late stages some joint actions were planned, where [the VJ] provided logistic[al] support" to the MUP.¹⁷⁵⁸

713. Despite evidence of extensive co-ordination between the MUP and VJ, and the various orders issued to implement the FRY President's order for the resubordination of the MUP to the VJ in Kosovo, the evidence shows that the relationship between the VJ and the MUP did not evolve

¹⁷⁵¹ P949 (Nebojša Pavković interview with the Prosecution), pp. 2, 203, 282, 299.

¹⁷⁵² Prosecution Final Trial Brief (public version), 29 July 2008, para. 845.

¹⁷⁵³ Pavković Final Trial Brief (public version), 28 July 2008, paras. 90, 177.

¹⁷⁵⁴ P1457 (3rd Army Command Post Order, 20 April 1999); 3D670 (Order for Resubordination of MUP forces to the Army by President Slobodan Milošević, 18 April 1999); P1488 (Order re Resubordination of the units and organs of the MUP to the VJ, 18 April 1999).

¹⁷⁵⁵ P949 (Nebojša Pavković interview with the Prosecution), p. 39.

¹⁷⁵⁶ P949 (Nebojša Pavković interview with the Prosecution), pp. 112, 222, 399–400.

¹⁷⁵⁷ P949 (Nebojša Pavković interview with the Prosecution), pp. 216–218, 352–353. In Prilep/Prejlep and Glođane/Gllogjan, Pavković stated that the VJ supported these MUP operations by providing a tank.

¹⁷⁵⁸ P949 (Nebojša Pavković interview with the Prosecution), pp. 39, 216.

into a relationship of subordination of one to the other. Various witnesses testified to this effect.¹⁷⁵⁹ Due to the fact that the re-subordination of the MUP did not occur in 1999, the Prosecution's allegation that Pavković had control over MUP units engaged in combat operations in Kosovo has not been established.

c. Knowledge of crimes in Kosovo and reactions of Pavković

714. The Prosecution argues that Pavković was aware that crimes were being committed in Kosovo and of the risk that further crimes would be committed by forces under his control but nevertheless failed to take effective measures to counter these occurrences.¹⁷⁶⁰ The Pavković Defence responds that Pavković's knowledge was limited, because he was six levels removed from the actual fighting on the ground, and that information was corrupted and often incomplete by the time it reached him.¹⁷⁶¹ Furthermore, the Defence claims that Pavković did not know of crimes committed by his subordinates in 1998, and that, even if he did hear of such allegations, the VJ personnel had changed by the time of the NATO air campaign in 1999.¹⁷⁶² It is argued that, on the occasions when Pavković became aware of the commission of crimes by his subordinates within the VJ, he took steps to ensure that they were investigated and prosecuted in accordance with the accepted procedures of military justice.¹⁷⁶³

i. Presence in Kosovo

715. During 1998 and 1999 the Priština Corps Command was located in Priština/Prishtina in a building about 500 metres from the MUP Staff Building.¹⁷⁶⁴ Andreja Milosavljević, who was a coordinator of the activities of the state organs in 1998, testified that, while he was in Priština/Prishtina during 1998, he lived in the building where parts of the Priština Corps were stationed and that Pavković also lived there.¹⁷⁶⁵ On 27 July 1998 the 3rd Army established a Forward Command Post in Priština/Prishtina.¹⁷⁶⁶ Pavković visited the 3rd Army Forward

¹⁷⁵⁹ See Section VI.E.

¹⁷⁶⁰ Indictment, paras. 50–54; Prosecution Final Trial Brief (public version), 29 July 2008, paras. 851, 884–906, 918, 920.

¹⁷⁶¹ Pavković Final Trial Brief (public version), 28 July 2008, para. 92.

¹⁷⁶² Pavković Final Trial Brief (public version), 28 July 2008, para. 94.

¹⁷⁶³ Pavković Final Trial Brief (public version), 28 July 2008, paras. 268–298, 314.

¹⁷⁶⁴ P950 (Vladimir Lazarević interview with the Prosecution), p. 109.

¹⁷⁶⁵ Andreja Milosavljević, T. 14294–14296 (23 August 2007).

¹⁷⁶⁶ 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); Miodrag Janković, 4D504 (witness statement dated 1 October 2007), paras. 16, 21; Velimir Obradović, 4D499 (witness statement dated 27 September 2007), para. 24; Tomislav Mladenović, 4D505 (witness statement dated 27 September 2007), para. 8; T. 17598 (25 October 2007).

Command Post every day from the end of July until the end of August 1998, and he reported to Samardžić on events in Kosovo.¹⁷⁶⁷

716. Pavković stated in his interview with the Prosecution that he familiarised himself with the situation in Kosovo from reports he received and his physical presence in the province.¹⁷⁶⁸ He added that he was in Kosovo more than 95 percent of the time between March and June 1999, because this was in accordance with his duties as 3rd Army Commander.¹⁷⁶⁹ Lazarević testified that, throughout the conflict, “not a single day went by without the presence of the Army Commander at the Command Post of the Priština Corps.”¹⁷⁷⁰ He added that this provided Pavković with “personal insight” into the activities of the Priština Corps units.¹⁷⁷¹ Milan Đaković testified that during the NATO air campaign, when Pavković was in Niš, he directly received reports from the Priština Corps; when he was in Priština/Prishtina, he had direct contacts with the commander, or received combat reports through the forward command.¹⁷⁷²

717. Mirko Starčević, who was Assistant Commander for Information and Moral Guidance for the 3rd Army, testified that in 1999 Pavković and Lazarević would tour subordinate VJ units throughout their working hours and in the afternoons they would meet up to exchange views on the developments on the ground.¹⁷⁷³ K73 testified that Pavković and Lazarević inspected troops at the *Kosovski Junaci* barracks in Priština/Prishtina around February 1999.¹⁷⁷⁴ According to Goran Jevtović, Lazarević and Pavković also came to inspect the area of responsibility of the Forward Command Post on 10 April 1999.¹⁷⁷⁵ Milan Kotur described reporting on 10 April 1999 to the Command Post of the Priština Corps, which at the time had been located in an area called “Gmija” near Priština/Prishtina, and meeting there with Pavković, who informed him of problems at the border with Albania in the area of Košare/Koshara.¹⁷⁷⁶ Lazarević also recounted having a meeting on 19 April 1999 in Priština/Prishtina with Pavković and Đaković from the VJ along with Obrad Stevanović and Đorđević from the MUP.¹⁷⁷⁷ As noted above in Section VII.J on the municipality of Priština/Prishtina, in late March and early April, VJ and MUP forces were forcibly displacing

¹⁷⁶⁷ Žarko Kostić, 4D501 (witness statement dated 28 September 2007), para. 22; Nike Peraj, P2253 (witness statement dated 9 August 2006), pp. 5, 15; T. 1663 (15 August 2006).

¹⁷⁶⁸ P949 (Nebojša Pavković interview with the Prosecution), p. 73.

¹⁷⁶⁹ P949 (Nebojša Pavković interview with the Prosecution), p. 82.

¹⁷⁷⁰ Vladimir Lazarević, T. 18080 (12 November 2007); *see also* Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 21, T. 7578 (30 November 2006).

¹⁷⁷¹ Vladimir Lazarević, T. 18104–18105 (12 November 2007).

¹⁷⁷² Milan Đaković, T. 26401–26403 (19 May 2008).

¹⁷⁷³ Mirko Starčević, T. 17436 (22 October 2007).

¹⁷⁷⁴ K73, P2440 (witness statement), para. 34; T. 3317–3318 (13 September 2006) (closed session).

¹⁷⁷⁵ Goran Jevtović, T. 20354–20355 (16 January 2008).

¹⁷⁷⁶ Milan Kotur, T. 20676–20678 (21 January 2008).

¹⁷⁷⁷ Vladimir Lazarević, T. 18260 (14 November 2007).

Kosovo Albanians from Priština/Prishtina town in an organised manner. Consequently, this evidence of Pavković's regular presence on the ground in Kosovo supports the contention that he was aware of criminal activities occurring in that territory.

ii. Knowledge of crimes from reports and meetings

718. As discussed above, in 1998 Pavković was involved in discussions of the large number of displaced civilians in Kosovo, and was aware of the UN Security Council Resolutions attributing responsibility, at least in part, to the MUP and VJ.¹⁷⁷⁸ He was informed of the practice of burning Kosovo Albanian houses at meetings of the Joint Command, by his superior Samardžić, and later by Minić, who repeated again that the setting of houses on fire had to stop.¹⁷⁷⁹

719. At the outset of the NATO air campaign, communications within the 3rd Army and the Priština Corps continued to function, allowing the continued operation of the 3rd Army and Priština Corps command system.¹⁷⁸⁰ Pavković stated that the command system of the VJ operated throughout the NATO campaign, and that he familiarised himself with the situation in Kosovo from the reports he received.¹⁷⁸¹ At this time Pavković issued further orders for adherence to international humanitarian law.¹⁷⁸² He also altered the military court structure to its war-time formation, in accordance with directives from the General Staff/Supreme Command Staff.¹⁷⁸³ However, a few days after the NATO bombing started, Pavković received information that crimes were being committed by VJ members against civilians in Kosovo; on 27 March 1999 he warned the Priština Corps and the Military Territorial Commands about the specific risk of the lack of discipline among Military Territorial Units, especially concerning Kosovo Albanian civilians and their property, noting that the lack of discipline and misconduct had increased in the previous days.¹⁷⁸⁴ By 31 March Pavković had information indicating that VJ Military Territorial Units and MUP forces were “channelling” displaced Kosovo Albanians to Albania.¹⁷⁸⁵

¹⁷⁷⁸ P1468 (Notes of the Joint Command), pp. 36, 40, 41, 121.

¹⁷⁷⁹ P1468 (Notes of the Joint Command), pp. 46, 52, 124–125; 4D97 (Minutes from the briefing of the commanders of the Prk and 3rd Army, 7 August 1998).

¹⁷⁸⁰ Miodrag Janković, 4D504 (witness statement dated 1 October 2007), paras. 8, 12–13; 3D865 (Supreme Command Staff Report, 30 May 1999), pp. 10–11.

¹⁷⁸¹ P949 (Nebojša Pavković interview with the Prosecution), p. 73.

¹⁷⁸² See 5D249 (Order of the 3rd Army, 1 February 1999), p. 5; 4D103 (3rd Army Command Order, 23 March 1999); 4D407 (3rd Army Command Combat Report, 5 April 1999), p. 3, in which Pavković reported that “[i]n order to curb crime and looting in combat operations, mixed-points comprising organs of military and civilian police [had been] established on all significant routes leading from [Kosovo]”.

¹⁷⁸³ 4D153 (Notification re: War Time Court Officials, 28 March 1999); 4D160 (Order to Supreme Military Courts to Inform the 3rd Army about their Activities on a Daily Basis, 29 March 1999).

¹⁷⁸⁴ Pavković ordered the “subordinate commands to take all prescribed measures to eliminate theft, looting and other forms of crime and unsoldierly behaviour”, including “disciplinary and legal prosecution measures against all

720. Pavković stated in his interview that he was aware of identity documents being taken from displaced Kosovo Albanians who were leaving the country through the Đeneral Janković/Hani i Elezit border crossing, but that he established that no VJ personnel were involved and sent a report on this to the General Staff/Supreme Command Staff. He specified that the VJ did not have control over the border crossings, where the identity documents were being taken.¹⁷⁸⁶ He informed the General Staff/Supreme Command Staff of the movement of the population, and that the VJ was not involved in sending civilians out of Kosovo. As the conflict developed, he realised that it was not good for the VJ that people were leaving the country and so ordered the VJ to prevent this from occurring.¹⁷⁸⁷ Branko Krga testified that in early April 1999 he received a call from Pavković, who stated that arrangements needed to be made for the clothing, shelter, and feeding of displaced people in Kosovo.¹⁷⁸⁸ The Chamber notes that, despite this information, Pavković continued to approve of the joint VJ and MUP operations in Kosovo, such as in the Rugovo area on 15 April.¹⁷⁸⁹

721. In April 1999 Pavković again acknowledged the commission of crimes by VJ forces and issued further written orders calling for adherence to international humanitarian law.¹⁷⁹⁰ In response to learning of allegations of there being a detention camp for Kosovo Albanian “refugees” in Istok/Istog municipality, Pavković ordered that a commission headed by Milan Đaković and including MUP personnel be formed to investigate the acts of the responsible organs in this municipality on 13 April 1999.¹⁷⁹¹ The Commission was formed and reported the next day to Pavković that there were no Kosovo Albanian refugee camps in Istok/Istog. There was a group of 544 “refugees” accommodated in a school in Suvi Lukavac and another group of 221 “refugees” on the outskirts of Istok/Istog. According to the report, the second group had set off for Albania and had been intercepted *en route* by JSO members who had taken property from them. They were then stopped at the border by VJ members and sent back to Istok/Istog.¹⁷⁹² In relation to the functioning of the various armed forces in the municipality, the report noted that there was a

perpetrators”. The Priština Corps Command and the Priština Military District Command were to submit information on the behaviour of the members in the Military Territorial Units and the efficiency of measures undertaken in regular reports. 4D154 (3rd Army warning to subordinate commands, 27 March 1999).

¹⁷⁸⁵ P2930 (PrK Command Group Combat Report to PrK, 31 March 1999), p. 2.

¹⁷⁸⁶ P949 (Nebojša Pavković interview with the Prosecution), pp. 91–92.

¹⁷⁸⁷ P949 (Nebojša Pavković interview with the Prosecution), pp. 76–80.

¹⁷⁸⁸ Branko Krga, T. 16916–16917 (4 October 2007).

¹⁷⁸⁹ P1878 (Joint Command Order, 15 April 1999); 5D194 (Information of the PrK Command to the 3rd Army Command, 15 April 1999); 5D1411 (PrK Combat Report to 3rd Army and to Supreme Command Staff, 19 April 1999); P2016 (PrK Combat Report to 3rd Army and Supreme Command Staff, 25 April 1999). *See also* P1487 (Suggestions to 3rd Army from Supreme Command Staff, 17 April 1999); Đorđe Ćurčin, T. 16966–16968 (5 October 2007).

¹⁷⁹⁰ 4D191 (Order of the 3rd Army, 15 April 1999); *see also* Žarko Kostić, 4D501 (witness statement dated 28 September 2007), para. 5; Vladimir Lazarević, T. 18091 (12 November 2007).

¹⁷⁹¹ 4D86 (Order by Nebojša Pavković re formation of a commission, 13 April 1999), also admitted as P1720; Milan Đaković, T. 26403–26408 (19 May 2008).

¹⁷⁹² P1721 (Report of commission for Istok, 14 April 1999).

problem with co-ordination and that the criminal activity was a result of this. It proposed that a mixed commission be formed with members of the VJ, MUP, and local municipality to establish the causes for the “mistakes made” and appropriate measures to be taken.¹⁷⁹³ When shown this report, Momir Panić, who was the head of the OUP in Istok/Istog, testified that there was a group of 544 displaced Kosovo Albanians at the school in Suvi Lukavac and another group of 221 on the outskirts of Istok/Istog that included families that he knew personally. He stated that he spoke to Đaković about the displaced people.¹⁷⁹⁴ Panić maintained that the conclusions in the report of the commission were incorrect, and that it was written for the purpose of showing that the MUP was not co-operating with resubordination orders from the VJ.¹⁷⁹⁵ He did not hear any story about them being stopped by JSO members and robbed. The group of displaced people on the outskirts of Istok/Istog remained there during the NATO air campaign and in fact grew to a total of 250.¹⁷⁹⁶ He said that, following the recommendation of the report, no further investigation was carried out into the criminal activity discussed therein.¹⁷⁹⁷ Although this series of events demonstrates that Pavković could form commissions to rapidly enquire into alleged criminal activity, in light of Panić’s testimony about the accuracy of and motivation behind the commission’s report, the Chamber does not rely on its contents.

722. Also in April Pavković learned of crimes committed by volunteers in the VJ.¹⁷⁹⁸ According to Žarko Kostić, who was the head of the Office for Accepting, Selection and Training of Volunteers in the 3rd Army, these were conscripts sent from the 1st Army. The situation in the 3rd Army Receiving Centre was better as it insisted on discipline and extensive training, which helped ensure an adequate selection of volunteers.¹⁷⁹⁹ Following these revelations, Pavković issued orders referring to volunteers, which stated that they should be received only where there was a need for them, and that they should be sent out of Kosovo if they failed to follow orders from their commanders.¹⁸⁰⁰

¹⁷⁹³ P1721 (Report of commission for Istok, 14 April 1999), p. 2.

¹⁷⁹⁴ Momir Panić, T. 24760–24765, 24779–24795 (2 April 2008), 24805–24806 (3 April 1999).

¹⁷⁹⁵ Momir Panić 6D1604 (witness statement dated 26 March 2008), paras. 54–55.

¹⁷⁹⁶ Momir Panić, T. 24782–24783 (2 April 2008).

¹⁷⁹⁷ Momir Panić, T. 24793 (2 April 2008).

¹⁷⁹⁸ P1938 (3rd Army Report to Supreme Command Staff, 10 April 1999), pp. 1–2. According to such 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. Twenty-five of the deployed volunteers were returned and seven were detained for criminal activity. Fifty percent of the volunteers at the reception centres were reported to have given up and left for various reasons, such as “poor informing, incomplete clothing, [and] poor screening criteria”.

¹⁷⁹⁹ Žarko Kostić, 4D501 (witness statement dated 28 September 2007), paras. 35–36; T. 17504–17505 (23 October 2007). *See also* Žarko Kostić, 4D501 (witness statement dated 28 September 2007), para. 39, T. 17505 (23 October 2007).

¹⁸⁰⁰ 4D353 (3rd Army Command order on the intake of volunteers, 6 May 1999); 4D198 (3rd Army order with list of instructions, 7 May 1999), para. 11.

723. Branko Gajić testified that the Security Administration had learned of a group called “Pauk” (“Spider”) in Kosovo under an individual named Jugoslav Petrušić, and that after investigation it was found that a group of 23 paramilitary volunteers was embedded in the 125th Infantry Brigade.¹⁸⁰¹ According to Vasiljević, Milošević ordered that Petrušić and another be arrested.¹⁸⁰² He stated that this arrest occurred, but the military prosecutor’s office assessed that there were insufficient grounds to bring charges.¹⁸⁰³

724. Dragiša Marinković was specifically asked about what he saw when he inspected the 175th Infantry Brigade in mid-April 1999. He said that some soldiers did not “come up to standard” as “their appearance was not soldierly” and “they weren’t well-kept, neat.”¹⁸⁰⁴ When asked about volunteers, he said that he came across a group in the 175th Infantry Brigade which was entirely volunteers.¹⁸⁰⁵ One month later similar problems with this unit were reported.¹⁸⁰⁶

725. Pavković stated that he personally dismissed three brigade commanders during the NATO campaign, as well as other officers, for not obeying orders, including Commander Kuzmanović in Gnjilane/Gjilan, Nikola Petrović of the 175th Infantry Brigade, and Dragomir Milentijević of the 58th Light Infantry Brigade. He added that Miodrag Jovanović of the 252nd Combat Group was disciplinarily punished.¹⁸⁰⁷ Starčević testified that, after the killings of civilians carried out in late March and early April 1999 in Žegra/Zhegra, Gnjilane/Gjilan,¹⁸⁰⁸ Pavković had Petrović dismissed, since this unit did not comply with the image and the idea of the Yugoslav Army.¹⁸⁰⁹ However, according to Pavković himself, he removed these men “mostly because they did not undertake

¹⁸⁰¹ Branko Gajić, T. 15288–15290 (7 September 2007).

¹⁸⁰² Aleksandar Vasiljević, T. 8780 (22 January 2007).

¹⁸⁰³ Aleksandar Vasiljević, T. 8780–8781 (22 January 2007).

¹⁸⁰⁴ Dragiša Marinković, T. 20148–20150 (12 December 2007).

¹⁸⁰⁵ Dragiša Marinković, T. 20149 (12 December 2007).

¹⁸⁰⁶ 5D563 (175th Infantry Brigade Combat Report to PrK, 19 May 1999), p. 1. The combat report stated that, while order and discipline had improved, “[t]here [were] still isolated incidents of unauthorised leave from the units, attempts at theft, sloppy uniforms, etc., which [were] detrimental to the unit’s image”.

¹⁸⁰⁷ P949 (Nebojša Pavković interview with the Prosecution), pp. 270–271, 394; *see also* 4D198 (3rd Army order with list of instructions, 7 May 1999), para. 7. Pavković gave the last name Milosavljević to the commander of the 58th Light Infantry Battalion, but the Chamber is satisfied that Pavković was referring to Milentijević. Momir Stojanović, T. 19738–19740 (6 December 2007); Mirko Starčević, 4D500 (witness statement dated 29 September 2007), paras. 24–25.

¹⁸⁰⁸ According to VJ reports, these incidents involved the murder of six Kosovo Albanians on the same day by VJ reserves acting according to a prior agreement. One VJ reserve was the physical perpetrator of the killings while the others accompanied him. P954 (Report on criminal cases, military prosecution and courts, 21 August 2001), p. 57–58; P955 (Summary Review of Report on criminal cases, military prosecution and courts), p. 19. The lead physical perpetrator received a sentence of 20 years and the others one year each “or more”. Branko Gajić, T. 15332–15333, 15350 (11 September 2007); Mirko Starčević, T. 17442–17444 (22 October 2007).

¹⁸⁰⁹ Mirko Starčević, T. 17442–17444 (22 October 2007). *See also* Momir Stojanović, T. 19794–19795 (7 December 2007); 3D721 (briefing of the Supreme Command Staff, 3 April 1999), p. 5; Mirko Starčević, 4D500 (witness statement dated 29 September 2007), para. 24; *see also* 4D174 (Report on alleged 175th Brigade improprieties, 27 April 1999); Branko Gajić, T. 15332–15333 (11 September 2007).

certain measures for protection and camouflaging of the units”.¹⁸¹⁰ Stojanović testified that none of these commanders was criminally prosecuted, except Milentijević, who was prosecuted for failing to take protective measures resulting in the death of a member of his unit.¹⁸¹¹

726. On 17 April 1999 Pavković issued a warning that “all provisions of the international law of war” should be implemented.¹⁸¹² In this order, he noted that some individuals had not fully adhered to the provisions of the “Instructions on Conduct in Combat or those of the International Law of War”, and that “some commands and units ha[d] failed to devote the necessary attention to the suppression of incidents related to looting and crime”.¹⁸¹³ The next day the Security Department of the 3rd Army reported that four VJ members had raped two Kosovo Albanian women in Đakovica/Gjakova.¹⁸¹⁴

727. On 19 April Pavković issued an order to the subordinate commands of the 3rd Army to care for displaced civilians, to find suitable villages to accommodate them outside of the zone of combat operations, or to return them to their own villages.¹⁸¹⁵ The order also called on the commands to prevent the looting of personal property of the civilians, or the burning of their houses, and to submit to the 3rd Army information as to the whereabouts of the displaced people.¹⁸¹⁶ In relation to these orders, and evidence above concerning Pavković’s awareness of identity documents being taken from displaced Kosovo Albanians at the border, the Chamber notes that K90 testified that in some cases Kosovo Albanians were not removed from areas in which the VJ was operating as that would have left the VJ without the protection of surrounding civilians and thus vulnerable to NATO attacks.¹⁸¹⁷ Pavković himself stated that he reported the large numbers of displaced people in Kosovo to the Supreme Command Staff, and proposed that measures be taken to prevent this as it was not desirable to have the civilian population leave and only the VJ remain in Kosovo.¹⁸¹⁸ Furthermore, despite the order of 19 April, Pavković continued to approve of joint VJ and MUP

¹⁸¹⁰ P949 (Nebojša Pavković interview with the Prosecution), pp. 270–272, 394–395. Mirko Starčević, 4D500 (witness statement dated 29 September 2007), para. 24; 4D175 (175th Infantry Brigade Petrović to PrK, 28 April 1999).

¹⁸¹¹ Momir Stojanović, T. 19736–19740 (6 December 2007).

¹⁸¹² P1011 (Ivan Marković, ed., *The Application of Rules of the International Law of Armed Conflicts* (2001)), pp. 80–81, 90.

¹⁸¹³ P1454 (Warning from the 3rd Army Commander against violations of, or failure to apply, the international laws or customs of war, 17 April 1999), p. 1. *See also* Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), paras. 60–61.

¹⁸¹⁴ 4D513 (3rd Army Security Report to General Staff of the VJ, 18 April 1999), p. 1.

¹⁸¹⁵ P1766 (3rd Army Order on providing shelter and aid to “refugees”, 19 April 1999), also admitted as 4D350

¹⁸¹⁶ P1766 (3rd Army Order on providing shelter and aid to “refugees”, 19 April 1999), also admitted as 4D350; *see also* 5D1101 (Order of the 52nd Motorised Brigade, 22 April 1999).

¹⁸¹⁷ K90, T. 9408 (30 January 2007). *See also* Momir Stojanović, T. 19732 (6 December 2007); Goran Jevtović, 5D1385 (witness statement dated 24 December 2007), para. 4.

¹⁸¹⁸ P949 (Nebojša Pavković interview with the Prosecution), pp. 1, 77–78.

operations in Kosovo,¹⁸¹⁹ and VJ units continued to be involved in large movements of displaced people out of Kosovo, such as during operations in the Reka/Caragoj valley in Đakovica/Gjakova on 27 and 28 April 1999, and in Dubrava/Lisnaja in the municipality of Kačanik/Kaçanik on 25 May 1999, as discussed in Sections VII.C and VII.M, respectively.

728. The Pavković Defence cites numerous reports from the Priština Corps to the 3rd Army Command, in the period 3 April to 12 May 1999, in support of the contention that a proper system of reporting operated at that time, and that Lazarević was assuring Pavković that the small number of crimes being committed by VJ forces were being properly dealt with.¹⁸²⁰ In particular, a report from the Priština Corps Command to the 3rd Army Command, dated 3 April 1999, noted that “legal measures” had been taken against members of the VJ who had perpetrated crimes.¹⁸²¹ Similar reports were issued by the Priština Corps on 4 April, 13 April, 14 April, 25 April, 9 May, and 12 May 1999.¹⁸²²

729. Reports from the 3rd Army Command to the Supreme Command Staff at the start of April 1999 indicate that many criminal and disciplinary proceedings had been initiated for crimes against the VJ, but did not mention any specific investigations of war crimes or serious violent crimes.¹⁸²³ Moreover, the 3rd Army combat report of 31 March 1999 recorded that the military prosecutor’s office attached to the 3rd Army had received 62 criminal reports, and requested 31

¹⁸¹⁹ See also P1459 (3rd Army Report on the non-compliance of MUP organs, 25 May 1999), p. 2 (calling for either the resubordination of the MUP or the continued operation of the Joint Command to co-ordinate joint operations).

¹⁸²⁰ See 5D84 (PrK Combat Report to 3rd Army, 3 April 1999); 5D85 (PrK Combat Report to the 3rd Army, 4 April 1999); P2617 (PrK Combat Report to the 3rd Army, 4 April 1999); P2004 (PrK Combat Report to the 3rd Army, 13 April 1999); 4D172 (PrK Combat report to the 3rd Army and the Supreme Command Staff, 14 April 1999); P2016 (PrK Combat report to 3rd Army and Supreme Command Staff, 25 April 1999); P2006 (PrK Combat Report to the 3rd Army and the Supreme Command Staff, 9 May 1999); P2007 (PrK Combat Report to the 3rd Army and the Supreme Command Staff, 12 May 1999).

¹⁸²¹ The report further notes that the previous day 32 criminal reports were submitted against the perpetrators of crimes (eight for murder, one for abuse, three for attempted murder, two for taking vehicles, six for theft, and 12 for wilful abandonment). 5D84 (PrK Combat Report to 3rd Army, 3 April 1999), p. 2.

¹⁸²² The 4 April combat report from Lazarević to the 3rd Army Command states that the day before six criminal reports were filed against two privates, three conscripts, and one contract soldier, although it does not specify for what offences. P2617 (Combat Report from the PrK to the 3rd Army, 4 April 1999), p. 2. The 13 April report establishes that the previous day eight criminal reports had been sent to the investigating judge of the military court in Priština/Priština. P2004 (Combat report from the PrK to the 3rd Army, 13 April 1999), p. 3. The 14 April report established that in the past 24 hours the security organs and the Military Police submitted eight criminal reports for criminal activity, two against “šiptar terrorists” for terrorism and serial killings, two against non-commissioned officers for misappropriation of vehicles, and three against privates for theft. 4D172 (Combat report from the PrK to the 3rd Army and the Supreme Command Staff, 14 April 1999), p. 3. In his report of 25 April, Lazarević noted that “there are instances of crimes” and that security organs are involved in “shedding light on them”. P2016 (PrK Combat report to 3rd Army and Supreme Command Staff, 25 April 1999), p. 2. In his report of 9 May, Lazarević did not mention any crimes, but stated that the local population was being treated “correctly and humanely” by the VJ forces. P2006 (Combat report from the PrK to the 3rd Army and the Supreme Command Staff, 9 May 1999), p. 4. Finally, the 12 May report again does not mention any criminal proceedings, or criminal conduct on the part of VJ troops. P2007 (Combat report from the PrK to the 3rd Army and the Supreme Command Staff, 12 May 1999).

¹⁸²³ 3D1128 (3rd Army Combat report to the General Staff/Supreme Command Staff, 4 April 1999), p. 2; 3D1129 (3rd Army Combat report to the General Staff/Supreme Command Staff, 7 April 1999).

investigations.¹⁸²⁴ However, the vast majority of the crimes reported were for insubordination and property-related offences, and there do not appear to be any charges of murder or serious injury noted in this report.¹⁸²⁵ The reports from the 3rd Army to the General Staff of 1 and 2 April stated that crimes of looting from abandoned houses of Kosovo Albanians had occurred.¹⁸²⁶

730. As noted above, on 30 March 1999 the 3rd Army Command sent a telegram to the Supreme Command Staff, addressed personally to Ojdanić, stating that it had launched operations in the Mališevo/Malisheva area, specifically Orlate/Arlat village, Iglarevo/Gllarevë village, Volujak/Volljaka village, Orahovac/Rahovec, Suva Reka/Suhareka, Dulje/Duhel village, and Guncat village.¹⁸²⁷ These locations include some of those named in the Indictment, and in relation to which the Chamber has concluded that crimes were committed by the forces of the FRY and Serbia. The telegram from the 3rd Army command was a response to a request from Ojdanić to Pavković for an estimate of the amount of time it would take to eliminate the KLA, due to the impending visit of a Russian delegation.¹⁸²⁸ Also on 30 March Pavković referred to the operations in his daily combat report to the Supreme Command Staff, briefly stating that an operation had commenced to break up the KLA in the sector of Mališevo/Malisheva.¹⁸²⁹ Pavković was thus aware that units under his command were operating in these areas, which were later mentioned in the indictment sent to Pavković as locations where VJ members were involved in the commission of crimes, as discussed below.

731. On 26 April 1999 Pavković had a book on international humanitarian law distributed to his subordinate commanders.¹⁸³⁰ The Chamber has also examined the instructions given to military psychologists. These instructions for addressing military conscripts do not mention adherence to the laws of war, but rather stress that these soldiers were to be told to fulfil all combat tasks or else face imprisonment.¹⁸³¹ Velimir Obradović, who was the Chief of the Operational Centre in the 3rd Army Command in 1999, testified that he became familiar with various orders and commands of

¹⁸²⁴ 4D273 (3rd Army Combat Report to the General Staff, 31 March 1999), p. 2.

¹⁸²⁵ See P1736 (Criminal Code of the SFRY).

¹⁸²⁶ 4D274 (3rd Army Combat Report to the General Staff, 1 April 1999), p. 2; 4D275 (3rd Army Combat Report to the General Staff, 2 April 1999), p. 3.

¹⁸²⁷ P1446 (Document sent by 3rd Army to Supreme Command Staff, 30 March 1999).

¹⁸²⁸ P1951 (Order re visit by the Russian delegation, 30 March 1999).

¹⁸²⁹ 4D307 (3rd Army Combat Report to the General Staff, 30 March 1999).

¹⁸³⁰ 4D372 (Basics of the Laws of War—A Handbook, 26 April 1999); 4D203 (Pavković Order on paramilitaries and laws of war, 27 April 1999); Žarko Kostić, 4D501 (witness statement dated 28 September 2007), para. 5; Velimir Obradović, 4D499 (witness statement dated 27 September 2007), para. 27; Mirko Starčević, 4D500 (witness statement dated 29 September 2007), para. 19; Mirko Starčević, T. 17432 (22 October 2007); Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 62.

¹⁸³¹ 3D732 (Instructions for war psychologists, 29 May 1999).

the 3rd Army and that they were intended to prevent VJ members from committing crimes.¹⁸³² Mirko Starčević, who was the Assistant Commander for Information and Moral Guidance for the 3rd Army, added that he toured VJ units in Kosovo “a week or a few days” after they had been inspected by Lazarević and Pavković and that, when speaking to soldiers, they told him “they were familiar with the orders issued by Generals Pavković and Lazarević to observe IHL ... and the importance of such orders”.¹⁸³³

732. In April 1999 Pavković learned of mass graves in Izbica. Upon hearing that no VJ members were involved in the killings of Kosovo Albanians in this village, he passed this information on to the Supreme Command Staff.¹⁸³⁴ Additionally, a report was provided about the killing of 20 Kosovo Albanian civilians in Mali Alaš/Hallac i Vogel, Lipljan/Lypjan municipality, allegedly by members of the Priština Corps.¹⁸³⁵ This incident was discussed at the briefing with Milošević on 17 May 1999; however, according to Gajić, the case was dropped because it was determined that the VJ members involved had been fired upon first by unidentified people.¹⁸³⁶ Lazarević sent a request to the 3rd Army and the General Staff/Supreme Command Staff for the engagement of a forensic pathologist. The request stated that there was an urgent need for professional processing of bodies found in graves in Kosovo, because those who had put the bodies in the mass grave were unknown, and there were “indications” that VJ personnel were responsible.¹⁸³⁷ Lazarević testified that information had been received from local residents in Lipljan/Lypjan concerning bodies, but that, because these residents had not been able to adequately identify the uniforms worn by the perpetrators, he wanted further information to be obtained.¹⁸³⁸ The request was granted and a forensic pathologist (a Major Milosavljević) from the Belgrade Military Medical Academy (“VMA”) was sent to the Priština Corps.¹⁸³⁹ Lazarević testified that 36 bodies were found at this location and that there were requests for exhumations in a total of six locations in Kosovo that were

¹⁸³² Velimir Obradović, 4D499 (witness statement dated 27 September 2007); para. 27; Žarko Kostić, 4D501 (witness statement dated 28 September 2007), para. 43; Mirko Starčević, 4D500 (witness statement dated 29 September 2007), para. 29.

¹⁸³³ Mirko Starčević, 4D500 (witness statement dated 29 September 2007), para. 19; T. 17432 (22 October 2007).

¹⁸³⁴ 3D586 (Briefing to the Chief of Staff of the Supreme Command, 15 April 1999), p. 1. The notes of this meeting indicate that Ojdanić was not present, and it was chaired by the Assistant Chief for Operations and Staff Affairs, Kovačević; P949 (Nebojša Pavković interview with the Prosecution), pp. 169–176.

¹⁸³⁵ 3D1061 (3rd Army Additional Report, 14 July 1999); Aleksandar Vasiljević, P2594 (witness statement dated 26 October 2006), para. 57 (under seal); Branko Gajić, T. 15304–15305 (10 September 2007).

¹⁸³⁶ Branko Gajić, T. 15304–15306 (10 September 2007).

¹⁸³⁷ 5D379 (Request of the PrK Command, 26 April 1999).

¹⁸³⁸ Vladimir Lazarević, T. 18645–18647 (20 November 2007).

¹⁸³⁹ 4D293 (3rd Army telegram to PrK, 27 April 1999); 5D383 (Response of the 3rd Army Command, 27 April 1999).

carried out by military experts. Requests for exhumations carried out by civilian authorities were a separate matter.¹⁸⁴⁰

733. Dr. Gordana Tomašević, a forensic medicine specialist employed by the VMA gave evidence about forensic examinations she performed on bodies from Izbica, as discussed in Section VII.G. She testified that she travelled with a team of experts to Priština/Prishtina on 12 May 1999 for a meeting with Pavković and Lazarević, at which nothing much was discussed. Ten days later, on 22 May 1999, the group had another meeting with Pavković and Lazarević, and was informed by Pavković that they were to use their expertise for the purposes of “*asanacija*” or, as explained by Pavković, the taking of all hygienic, sanitary, and technical measures in relation to animal and human corpses to ensure the non-spreading of disease and taking the necessary steps for identification and cause of death of the bodies found.¹⁸⁴¹ According to Tomašević, Pavković directed her to an abandoned house in Staro Čikatovo/Qikatova e Vjetër, in Glogovac/Gllogoc, where bodies had been found. She prepared an expert report with her findings following her examination of the corpses. Since Pavković did not ask her to prepare a report, she did not send one to him.¹⁸⁴² A report regarding the mass graves in Izbica was submitted to the Supreme Command, but Pavković claimed that he did not know what further actions were taken in respect of the bodies.¹⁸⁴³ The Chamber finds this evidence to be further indication of Pavković’s awareness of the possibility of killings being carried out by forces of the MUP operating in Kosovo.

734. The Prosecution led evidence designed to show that Pavković was aware of crimes being committed by VJ members and the under-reporting of these crimes, because he attended meetings where these topics were discussed. Such a meeting took place on 4 May 1999 to discuss events in Kosovo, including the crimes being committed there and the reaction of the military courts.¹⁸⁴⁴ This meeting followed the receipt of communications from then Tribunal Prosecutor, Louise Arbour, expressing her concern at the continued commission of serious breaches of international

¹⁸⁴⁰ Vladimir Lazarević, T. 18645–18648 (20 November 2007).

¹⁸⁴¹ Gordana Tomašević, T. 7022–7026, 7044 (21 November 2006), P2490 (witness statement dated 5 March 2003), pp. 3–4, P2507 (witness statement dated 25 July 2006), pp. 2–3. *See also* Stanimir Radosavljević, T. 17496 (23 October 2007).

¹⁸⁴² Gordana Tomašević, T. 7025–7026 (21 November 2006).

¹⁸⁴³ 3D586 (Briefing to the Chief of Staff of the Supreme Command, 15 April 1999), p. 1; P949 (Nebojša Pavković interview with the Prosecution), pp. 172–175.

¹⁸⁴⁴ P1696 (“Army, Police Heads Inform Milo[š]evi[ć] of Successful Defense”, Report of RTS, 4 May 1999); 4D406 (“Security Situation in Kosovo”, Report of Politika, 5 May 1999). These documents were challenged in court. T. 16105–16106 (21 September 2007); Miloš Deretić, T. 22547 (15 February 2008). However, they are corroborated by 5D1289 (Sreten Lukić’s report regarding *Politika* News Article, 6 May 1999); *see also* Dušan Gavrančić, T. 22722 (19 February 2008); Miloš Vojnović, T. 24188 (12 March 2008).

humanitarian law in Kosovo.¹⁸⁴⁵ Information was presented that the “security forces” 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. A statement was issued indicating that numerous sentences ranging from five to 20 years’ imprisonment had been imposed by the military courts for crimes committed during the NATO air campaign, which is inconsistent with the information in VJ reports on the work of the military justice system up to 4 May 1999.¹⁸⁴⁶

735. The day after the 4 May meeting Pavković noted that armed VJ members operating outside combat zones had been conducting themselves “inappropriately” and compromising the reputation of the VJ. He ordered his subordinate commands to ensure that the activities of VJ members outside of combat zones were monitored.¹⁸⁴⁷ At a meeting of the MUP Staff for Kosovo on 7 May 1999 it was noted that crimes were being committed by VJ members, but were not being adequately dealt with by the military justice system. At that meeting, the Chief of the SUP in Priština/Prishtina stated that the VJ was not taking sufficient measures and that “most crimes” were being perpetrated by VJ members; various MUP chiefs reported that VJ members were committing crimes including murder, looting, and torching homes.¹⁸⁴⁸ Božidar Filić testified that, following the meeting, he investigated further and found out that the VJ members committing crimes were investigated but were returned to their VJ units pending the end of the NATO campaign.¹⁸⁴⁹ This information is consistent with accounts of the 4 May meeting, which indicate that numerous crimes against civilians had been committed in Kosovo in the preceding weeks, including by VJ and MUP members, and that Pavković was aware of this.

736. It is clear from his interview with the Prosecution that Pavković was made aware of significant population movements in 1998 and 1999. He attributed these to people fleeing areas where there were clashes between the security forces and the “terrorists” and later to fear of NATO bombing.¹⁸⁵⁰ Velimir Obradović testified that only a few VJ combat reports made mention of the movements of the civilian population, because these movements did not fall within the sphere of competence of the VJ unless they interfered with the movement of troops or if the KLA was

¹⁸⁴⁵ P401 (Letter from Louise Arbour to Dragoljub Ojdanić 26 March 1999); 3D790 (Pavković Letter responding to accusations of Louise Arbour, 17 May 1999); Milovan Vlajković, T. 16046 (20 September 2007); 3D483 (Order of the Supreme Command Staff, 10 May 1999).

¹⁸⁴⁶ P1696 (“Army, Police Heads Inform Milo[š]evi[ć] of Successful Defense”, Report of RTS, 4 May 1999), pp. 1–2.

¹⁸⁴⁷ P1672 (3rd Army Order, 5 May 1999), p. 1. In particular, Pavković ordered that “adequate measures prescribed by law against those responsible for violations of [the] order” be undertaken.

¹⁸⁴⁸ P1996 (Minutes of the MUP Staff meeting, 7 May 1999), pp. 4–5.

¹⁸⁴⁹ Božidar Filić, T. 23976 (10 March 2008).

¹⁸⁵⁰ P949 (Nebojša Pavković interview with the Prosecution), pp. 171–72, 220, 353–355.

involved.¹⁸⁵¹ A list of directions to subordinate commands, issued by Pavković on 7 May 1999, required them to “ensure complete control of the territory and movement of Šiptar civilians.”¹⁸⁵² Ljubiša Stojimirović explained that this direction meant making sure units were secure in their positions, and also moving civilians to avoid accidents.¹⁸⁵³ He failed, however to explain why the ethnic distinction was made in the order.¹⁸⁵⁴ Subsequently, on 10 May, the 3rd Army reported that 10,000 civilians from villages in Peć/Peja municipality had been “sent toward” Klina and Peć/Peja, after an operation by the 7th Infantry Brigade and Peć Military Detachment during which 600 KLA members had been captured.¹⁸⁵⁵ The report does not refer to any NATO bombing in the Peć/Peja sector at that time.

737. In May 1999 the head of the VJ Security Administration, Geza Farkaš, was sent on a mission to Kosovo. Farkaš found that there were serious problems arising from criminal activity in Kosovo, including rape, looting, theft, and the improper engagement of Military Police units.¹⁸⁵⁶ On 8 May Aleksandar Vasiljević met with the Chief of the Priština Corps security department, who informed him about crimes committed by VJ members against civilians in Kosovo. These crimes included a rape case involving a reservist, the murder of a Kosovo Albanian man in a village near Srbica/Skenderaj, and the murder of a man in Šipovo.¹⁸⁵⁷ Vasiljević gave evidence that he later found out that a decision had been taken by the 3rd Army Command in Priština/Prishtina not to report the occurrence of certain crimes in the regular combat reports, on the ground that they were being dealt with by the military judicial organs.¹⁸⁵⁸ He opined that this was not an attempt to cover up crimes by the security service, but merely a mistaken belief that reports were not necessary if the perpetrators of crimes had already been prosecuted.¹⁸⁵⁹ However, the Chamber notes that the excuse that it was thought there was no need to report serious crimes once they were referred to the military justice organs is inconsistent with the fact that lesser crimes continued to be reported to the superior commands even after being referred to the military justice system, as discussed herein.

738. Following the receipt of this information by the Supreme Command Staff, Pavković attended a meeting with Ojdanić on 16 May 1999 at the Command Post of the Supreme Command

¹⁸⁵¹ Velimir Obradović, T. 17377 (22 October 2007).

¹⁸⁵² 4D198 (3rd Army Comprehensive List of Instructions, 7 May 1999), p. 2.

¹⁸⁵³ Ljubiša Stojimirović, T. 17693–17694 (26 October 2007).

¹⁸⁵⁴ Ljubiša Stojimirović, T. 17694–17695 (26 October 2007).

¹⁸⁵⁵ 4D315 (3rd Army Combat Report, 10 May 1999), p. 1.

¹⁸⁵⁶ Geza Farkaš, T. 16293–16294 (25 September 2007); Branko Gajić, T. 15280–15282 (7 September 2007).

¹⁸⁵⁷ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 59.

¹⁸⁵⁸ Aleksandar Vasiljević, T. 8750–8751 (19 January 2007).

¹⁸⁵⁹ Aleksandar Vasiljević, T. 8749–8751 (19 January 2007).

Staff.¹⁸⁶⁰ Farkaš stated that Ojdanić was informed by Pavković of the details of crimes being committed in Kosovo by members of the VJ, and the results of investigations into these crimes.¹⁸⁶¹ Vasiljević testified that Pavković discussed allegations of crimes committed by the VJ involving the discovery of 800 bodies in Kosovo.¹⁸⁶² Prior to the meeting Pavković had attempted to verify if the number of bodies was correct, but had not launched an official investigation.¹⁸⁶³ At the meeting he said that these enquiries found that 271 of these deaths occurred in areas covered by the VJ, and 326 in areas covered by the MUP forces.¹⁸⁶⁴ Vasiljević stated that the fact that these figures did not add up to 800 was discussed at the meeting.¹⁸⁶⁵ It was also stated at the meeting that some of the deaths may have been caused by NATO strikes.¹⁸⁶⁶ The issue of crimes by paramilitary groups was also discussed.¹⁸⁶⁷ Pavković stated that he had had contact with the leader of the armed group organised by the MUP known as the “Scorpions”, Slobodan Medić (a.k.a. Boca), who, in his opinion, had lied to Pavković about not having been to Kosovo.¹⁸⁶⁸ However, Pavković stated that these groups were seen wearing SAJ insignia, and it was difficult to control their movement because they were not under his control.¹⁸⁶⁹

739. After that pre-meeting, a second meeting was held on 17 May 1999 involving Milošević.¹⁸⁷⁰ Pavković repeated the information concerning crimes being committed by members of the VJ in the 3rd Army’s area of responsibility within Kosovo.¹⁸⁷¹ Vasiljević also presented a report about serious crimes committed by VJ forces and volunteers against civilians, including murders and rapes.¹⁸⁷² He then informed the group of crimes committed by the “Scorpions” and by the paramilitary figure Slobodan Medić (a.k.a. Boca).¹⁸⁷³ Vasiljević’s notes of the meeting indicated that those present discussed the criminal activities of these paramilitaries within Kosovo who were

¹⁸⁶⁰ Geza Farkaš, T. 16296–16299 (25 September 2007); Branko Gajić, T. 15284–15287 (7 September 2007).

¹⁸⁶¹ Geza Farkaš, T. 16295 (25 September 2007).

¹⁸⁶² Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 62.

¹⁸⁶³ Aleksandar Vasiljević, T. 8760–8762 (19 January 2007).

¹⁸⁶⁴ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 62.

¹⁸⁶⁵ Aleksandar Vasiljević, P2589 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 15999.

¹⁸⁶⁶ Aleksandar Vasiljević, T. 8763 (19 January 2007), T. 9041 (24 January 2007).

¹⁸⁶⁷ Branko Gajić, T. 15290 (7 September 2007).

¹⁸⁶⁸ Branko Gajić, T. 15285–15286 (7 September 2007); Aleksandar Vasiljević, T. 8755–8756 (19 January 2007).

¹⁸⁶⁹ Aleksandar Vasiljević, T. 8756 (19 January 2007).

¹⁸⁷⁰ Aleksandar Vasiljević, T. 8772–8773 (19 January 2007), P2600 (witness statement dated 14 January 2007), paras. 62–63; Branko Gajić, T. 15290–15291 (7 September 2007); *see also* Geza Farkaš, T. 16296 (25 September 2007).

¹⁸⁷¹ Geza Farkaš, T. 16296–16297 (25 September 2007); Aleksandar Vasiljević, P2600 (witness statement 14 January 2007), para. 67.

¹⁸⁷² Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 65. The recollections of the order of the presentations at this meeting differed between Vasiljević and Farkaš. Vasiljević stated that he gave the first report. Farkaš stated that Pavković gave the first report. However, both agree that both presentations occurred.

¹⁸⁷³ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 65; Branko Gajić, T. 15269, 15273 (7 September 2007).

operating in association with the MUP forces deployed in that area.¹⁸⁷⁴ This included Arkan's men, who numbered 30 and were implicated in the killing of an elderly couple.¹⁸⁷⁵ According to Vasiljević, Pavković stated that some of the killings had occurred in Jezerce, which was acknowledged by Marković to be a village in the JSO's zone of control. The Chamber notes that, while Marković stated that the village of Jezerce was controlled by the JSO, a Joint Command order of 15 April had sent VJ and MUP forces to the village and the surrounding areas to carry out operations.¹⁸⁷⁶ At the meeting Pavković reported again about the 800 bodies that had been found in Kosovo.¹⁸⁷⁷ He added that the problem stemmed from the MUP and VJ trying to shift the blame onto each other.¹⁸⁷⁸ Vasiljević further testified that Ojdanić and Pavković proposed to establish a "joint state commission" to examine what was occurring in Kosovo, but that Milošević was not interested in creating this commission.¹⁸⁷⁹ Milošević's response to these problems was to "turn[] the tables on everyone" and avoid addressing the issue of crimes occurring in Kosovo by stating that there was no "proper communication between the civilian and the military services".¹⁸⁸⁰

740. In relation to Pavković's suggestion to form a commission to enquire into the approximately 800 bodies discussed at the 16 and 17 May meetings, which was never realised, the Chamber notes that the meetings themselves were convened in part due to the discovery of the under-reporting of crime from the 3rd Army. The suggested commission did not in fact come about, and Pavković implemented no further effective measures in relation to these 800 bodies despite the considerable array of powers at his disposal. The Chamber finds that these meetings provide further indications that VJ and MUP members were committing crimes in Kosovo, and does not consider that Pavković's abortive suggestion concerning the commission, on which he took no further action, evinces a genuine will to take effective measures against criminal activity in Kosovo.

741. On 25 May 1999 Pavković sent a report to the Supreme Command Staff (addressed to Ojdanić personally) stating that the security situation in Kosovo was unstable due to the frequent

¹⁸⁷⁴ P2592 (Extract from Vasiljević's diary, 17 May 1999).

¹⁸⁷⁵ P2592 (Extract from Vasiljević's diary, 17 May 1999), p. 1; Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 67.

¹⁸⁷⁶ P1976 (Joint Command Order, 15 April 1999), pp. 1, 4.

¹⁸⁷⁷ Aleksandar Vasiljević, P2589 (transcript from *Prosecutor v. Milošević*, Case IT-02-54-T), T. 15999, P2600 (witness statement dated 14 January 2007), para. 64.

¹⁸⁷⁸ Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), para. 68; P2592 (Extract from Vasiljević's diary, 17 May 1999), p. 1.

¹⁸⁷⁹ Aleksandar Vasiljević, T. 8783, 8826–8827 (22 January 2007). Vasiljević also referred to an "independent state commission".

¹⁸⁸⁰ Aleksandar Vasiljević, T. 8783 (22 January 2007), P2600 (witness statement dated 14 January 2007), para. 71.

commission of crimes by the MUP.¹⁸⁸¹ Pavković asserted that this was most evident at the border posts, where MUP members condoned and committed criminal activity, primarily in the form of misappropriation of vehicles and goods. He also stated that MUP members and units were committing serious crimes against the Kosovo Albanian population in settlements and “refugee” shelters in Kosovo, including “murder, rape, plunder, aggravated theft, etc”. Pavković mentioned that MUP personnel committing these crimes would then “purposefully attribute or plan to attribute those crimes to units and individuals in the VJ.”¹⁸⁸² Finally, Pavković reported that the flow of security information from the RDB had been unsatisfactory, and that the only positive aspect of the joint actions with the MUP had been the location and detention of military conscripts who failed to report.¹⁸⁸³ Pavković had received information on the non-resubordination of the MUP to the VJ on 24 May 1999 from Lazarević. In that report Lazarević had detailed serious crimes being committed by MUP members against Kosovo Albanian civilians.¹⁸⁸⁴

742. Subsequently, on 4 June 1999, Pavković sent a further telegram to the Supreme Command Staff outlining the same complaints concerning MUP forces: “failure to observe agreements, looting, etc”. In this report Pavković requested that a number of problems, which were noted during visits to some of the units between 23 and 26 May 1999, should be resolved at the level of the Supreme Command Staff. He listed the problems to be addressed, including the fact that the MUP forces were not resubordinated to the appropriate VJ commands because they did not receive orders from their superior commands.¹⁸⁸⁵ Ćurčin testified about the 4 June 1999 report, explaining problems Pavković encountered regarding the MUP. When asked if he knew if anything was done to remedy the problems contained in Pavković’s report, Ćurčin responded that Milošević and Ojdanić met to discuss the issue, but that ultimately the MUP was never resubordinated to the VJ, and thus these concerns could not be remedied.¹⁸⁸⁶

743. Branko Gajić gave evidence that continued action was taken by the VJ, after the cessation of hostilities on 10 June 1999, in order to investigate war crimes perpetrated during the NATO campaign, and cited individual cases that were referred to him and transferred to the civilian

¹⁸⁸¹ P1459 (3rd Army Report on the non-compliance of MUP organs, 25 May 1999). The challenges to this document and P1725 are addressed in Section VIII.E. *See also* 3D1078 (Letter to the Ministry of Defence, 1 March 2002); 3D1077 (Letter to Ojdanić from the Ministry of Defence, 13 March 2002).

¹⁸⁸² P1459 (3rd Army Report on the non-compliance of MUP organs, 25 May 1999), para. 4.

¹⁸⁸³ P1459 (3rd Army Report on the non-compliance of MUP organs, 25 May 1999), paras. 6–7.

¹⁸⁸⁴ P1458 (PrK Report on non-compliance with Resubordination Order, 24 May 1999), also admitted as 4D192 and P1723.

¹⁸⁸⁵ P1725 (3rd Army request to Supreme Command Staff, 4 June 1999), para. 1.

¹⁸⁸⁶ Đorđe Ćurčin, T. 17019–17021 (16 October 2007).

courts.¹⁸⁸⁷ One of these cases concerned the killing of 20 Kosovo Albanian civilians in Mali Alaš/Hallac i Vogel, Lipljan/Lypjan municipality, allegedly by members of the 252nd Tactical Group of the Priština Corps,¹⁸⁸⁸ which was discussed at the briefing with Milošević on 17 May 1999.¹⁸⁸⁹

iii. Reporting from the 3rd Army

744. The Prosecution submits that on certain occasions Pavković intentionally under-reported or misreported crimes committed by VJ personnel in Kosovo, and that this had the effect of encouraging further criminal activity.¹⁸⁹⁰ The Pavković Defence responds that he was reliant on the information received from subordinate units and that, when he received this information, he forwarded it to the General Staff/Supreme Command Staff for their consideration, and that subordinate units in the VJ were only required to report crimes to the military police or military prosecutors and not their superiors.¹⁸⁹¹

745. According to Geza Farkaš, the 3rd Army Command reported directly to the General Staff/Supreme Command Staff.¹⁸⁹² Ljubiša Stojimirović, who was the Chief of Staff of the 3rd Army, testified that that VJ commanders were to report crimes and unlawful events that occurred in their zones of responsibility.¹⁸⁹³ Similarly, Radojko Stefanović, who was the Head of the Operations and Training Sector 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.¹⁸⁹⁴ Ojdanić confirmed this obligation in his order of 2 April 1999.¹⁸⁹⁵

746. During the NATO bombing problems occurred in the line of communications with the lower commanding levels, which meant that on various occasions combat reports were sent by the 3rd Army to the General Staff/Supreme Command Staff without input from the Priština Corps and

¹⁸⁸⁷ Branko Gajić, T. 15301–15307 (10 September 2007); 3D1057 (3rd Army Command Security Department Additional Report, 25 June 1999); 3D1058 (3rd Army Command Security Department Additional Report, 25 June 1999); 3D1059 (3rd Army Combat report to Supreme Command Staff, 25 June 1999).

¹⁸⁸⁸ 3D1061 (3rd Army Additional Report, 14 July 1999); Aleksandar Vasiljević, P2594 (witness statement dated 14 January 2007), para. 57 (under seal); Branko Gajić, T. 15304–15306 (10 September 2007).

¹⁸⁸⁹ Branko Gajić, T. 15304–15306 (10 September 2007).

¹⁸⁹⁰ Prosecution Final Trial Brief (public version), 29 July 2008, para. 895.

¹⁸⁹¹ Pavković Final Trial Brief (public version), 28 July 2008, para. 216.

¹⁸⁹² Geza Farkaš, T. 16362–16363 (25 September 2007); Ljubiša Stojimirović, T. 17681 (26 October 2007).

¹⁸⁹³ Ljubiša Stojimirović, T. 17681 (26 October 2007).

¹⁸⁹⁴ 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).

¹⁸⁹⁵ 3D480 (Order of the Supreme Command Staff, 2 April 1999), pp. 1–2. The Chamber notes that the rules governing the VJ provided for a system of unity and singleness of command that required that orders were to be “unconditionally, exactly and promptly” executed by subordinates. *See, e.g.*, P984 (FRY Law on the VJ), p. 2; P1041 (VJ Command and Control Manual), pp. 61–63, 96.

the Niš Corps.¹⁸⁹⁶ However, according to Pavković, at no point during the NATO air campaign was the system of command broken, even though communication centres and relays had been destroyed.¹⁸⁹⁷

747. A comparison of combat reports received by the 3rd Army Command and those sent on to the General Staff/Supreme Command Staff demonstrates that Pavković was under-reporting certain criminal activity within the VJ. On 29 March 1999 the 175th Infantry Brigade reported to the Priština Corps Command that eight volunteers, for whom there were reasonable grounds to suspect had committed “the crime in Žegra village”, had been arrested. The report also stated that the Commander of the Priština Corps had approved the sending of volunteers to the 243rd Mechanised Brigade, but that 32 of them had said they wanted to leave and so were to be disarmed and sent back.¹⁸⁹⁸ The report from the 3rd Army to the General Staff of 1 April stated that a group of volunteers “amounting to one platoon” had been dismissed from the Priština Corps for “lack of discipline”.¹⁸⁹⁹ It also referred to criminal reports being processed by the offices of the military prosecutors, but these cases concerned the failure to respond to call-up and failure to “fulfil material requirements”.¹⁹⁰⁰ The report from the 3rd Army to the Supreme Command Staff of 2 April referred to looting by VJ members from Kosovo Albanian houses and prosecutions of VJ members, including for theft and abandonment of position.¹⁹⁰¹

748. The daily combat report of 3 April 1999 from the Priština Corps Command to the 3rd Army Command stated that legal measures were being taken against VJ members who committed crimes, and that during the previous day 32 criminal reports had been submitted to the military prosecutor’s office, including eight for murder and three for attempted murder.¹⁹⁰² However, the combat report from the 3rd Army to the Supreme Command Staff that same day, which referred to the 32 criminal reports submitted to the military prosecutor’s office, omitted the details about the seriousness of the crimes, referring to the disciplinary offences against the VJ specifically, and then simply referring to “isolated incidents of attempted robbery and other criminal offences”, without making any mention of the murders or attempted murders.¹⁹⁰³ The combat report from the 3rd Army to the

¹⁸⁹⁶ Velimir Obradović, 4D499 (witness statement dated 27 September 2007), para. 14. *See also* 4D274 (3rd Army Combat report to VJ General Staff, 1 April 1999), p. 3; 4D275 (3rd Army Combat report to VJ General Staff, 2 April 1999), p. 3; 4D276 (3rd Army Combat Report to VJ General Staff, 3 April 1999), p. 3.

¹⁸⁹⁷ P1319 (Pavković responds to callers’ questions, Belgrade RTS Television First Program, 20 October 2000), p. 17.

¹⁸⁹⁸ 5D825 (175th Infantry Brigade Combat Report to PrK, 31 March 1999), p. 1.

¹⁸⁹⁹ 4D274 (3rd Army Combat Report to VJ General Staff, 1 April 1999), p. 2.

¹⁹⁰⁰ 4D274 (3rd Army Combat Report to VJ General Staff, 1 April 1999), p. 2.

¹⁹⁰¹ 4D278 (3rd Army Combat Report to VJ General Staff, 2 April 1999), p. 2.

¹⁹⁰² 5D84 (PrK Combat Report to 3rd Army, 3 April 1999), p. 2.

¹⁹⁰³ 4D276 (3rd Army Report to VJ General Staff, 3 April 1999), pp. 2–3.

Supreme Command Staff of the next day also did not refer to these violent crimes.¹⁹⁰⁴ Such suppression of the details of crimes being committed in Kosovo was inconsistent with Ojdanić's order of the previous day that crimes be reported to both security organs and to the Supreme Command Staff, and was inconsistent with the VJ command principle of following orders promptly and exactly.¹⁹⁰⁵ On 10 April 1999, after he was specifically requested for information about this incident by the Supreme Command Staff, Pavković reported that 25 volunteers had been withdrawn from the Priština Corps, seven of whom were charged with criminal activity including murder and rape. The report also conveyed that paramilitaries were amongst the volunteers.¹⁹⁰⁶ The report indicated that, at the Niš Military District, 1,517 volunteers had been admitted, 360 had been dismissed on various bases, 849 had been deployed in the 3rd Army war units—500 in the Priština Corps units and 349 in the Niš Corps units—and 308 were undergoing training in the reception centre. Pavković also pointed to several issues encountered during the admission process. In particular, he noted that “the security check at the 3rd Army reception centre could not be completed due to lack of information, so a number of volunteers with criminal background were also deployed in the war units (previously convicted or awaiting sentencing)”. He stated *inter alia* that the training of volunteers was carried out over five to seven days, which was “enough time for quality selection and final screening”.¹⁹⁰⁷

749. The Pavković Defence asserts that, as of 30 March 1999, Pavković sent frequent combat reports to the General Staff/Supreme Command Staff, containing information regarding the activity of the military prosecutors and courts. It argues that, although the information was reported in general terms, Ojdanić could have requested additional information, particularly due to the fact that the daily reports indicated a large number of criminal matters.¹⁹⁰⁸ Stojimirović testified that he had not heard that the Supreme Command Staff was dissatisfied with reporting from the 3rd Army.¹⁹⁰⁹ The Pavković Defence makes reference to various other combat reports sent by the 3rd Army Command to the Supreme Command Staff during the NATO bombing, which indicated criminal activity by VJ and MUP forces in Kosovo, and implies that by doing so, he was transferring the

¹⁹⁰⁴ 3D1128 (3rd Army Report to VJ General Staff, 4 April 1999).

¹⁹⁰⁵ Đorđe Ćurčin, T. 16961 (5 October 2007); 3D480 (Order of the Supreme Command Staff, 2 April 1999); P984 (FRY Law on the VJ), p. 2; P1041 (VJ Command and Control Manual), pp. 61–63, 96.

¹⁹⁰⁶ P1938 (3rd Army Combat Report to Supreme Command Staff, 10 April 1999), p. 2.

¹⁹⁰⁷ P1938 (3rd Army Combat Report to Supreme Command Staff, 10 April 1999), pp. 1–2.

¹⁹⁰⁸ Pavković Final Trial Brief (public version), 28 July 2008, paras. 216–217.

¹⁹⁰⁹ Ljubiša Stojimirović, T. 17669–17670 (26 October 2007); *see also* Velimir Obradović, 4D499 (witness statement dated 27 September 2007), para. 19.

responsibility to deal with these cases to his superior Ojdanić, who could have requested additional information or taken additional measures.¹⁹¹⁰

750. Criminal wrongdoing by VJ members was indeed referred to in a number of reports submitted to the Supreme Command Staff during the NATO air campaign. The 3rd Army combat reports of 30 and 31 March 1999 indicated that a number of criminal cases had been received by the military prosecutor's office.¹⁹¹¹ However, the vast majority of the crimes reported were for insubordination and property-related offences, and there were no specific charges of murder or serious injury. The Chamber has also analysed various 3rd Army combat reports for the months of April and May 1999 and notes that most of them contain no information as to crimes committed, and when they do contain such information, most of the cases being dealt with were for failure to respond to call-up and failure to fulfil material requirements of service.¹⁹¹² The combat report for 24 April referred to attempts to plunder civilian property.¹⁹¹³ The combat report for 30 April stated that the security of units was threatened by negative incidents (crime and excessive consumption of alcohol).¹⁹¹⁴ The combat report for 12 May stated that there were individual cases of crimes, especially among volunteers and conscripts, which were being dealt with by the security department and command measures.¹⁹¹⁵ However, in none of these reports were the details of these crimes provided.

751. The Chamber has heard arguments that the combat reports from the 3rd Army Command to the Supreme Command Staff might have been altered. In that regard Velimir Obradović testified

¹⁹¹⁰ Pavković Final Trial Brief (public version), 28 July 2008, para. 217.

¹⁹¹¹ 4D307 (3rd Army Combat Report to VJ General Staff, 30 March 1999), p. 3; *see also* 4D273 (3rd Army Combat Report to VJ General Staff, 31 March 1999), p. 2.

¹⁹¹² 4D275 (3rd Army Combat Report to VJ General Staff, 2 April 1999), p. 2; 4D278 (3rd Army Combat Report to VJ General Staff, 2 April 1999), pp. 2–3; 4D276 (3rd Army Combat Report to VJ General Staff, 3 April 1999), p. 2; P1997 (3rd Army Combat Report to VJ General Staff, 13 April 1999), pp. 3–4; 4D280 (3rd Army Combat Report to VJ General Staff, 15 April 1999), p. 2; P1945 (3rd Army Combat Report to VJ General Staff, 20 April 1999), p. 3; 4D281 (3rd Army Combat Report to VJ General Staff, 24 April 1999), p. 2; 4D282 (3rd Army Combat Report to VJ General Staff, 25 April 1999), p. 2; 4D283 (3rd Army Combat Report to VJ General Staff, 26 April 1999), p. 2; P2005 (3rd Army Combat Report to VJ General Staff, 27 April 1999), p. 2, also admitted as 4D284; P2017 (3rd Army Combat Report to VJ General Staff, 29 April 1999), p. 2, also admitted as 4D122; 4D285 (3rd Army Combat Report to VJ General Staff, 30 April 1999), p. 2; 4D286 (3rd Army Combat Report to VJ General Staff, 1 May 1999), p. 2; 4D123 (3rd Army Combat Report to VJ General Staff, 2 May 1999), p. 2; 4D422 (3rd Army Combat Report to VJ General Staff, 3 May 1999), p. 2; 4D287 (3rd Army Combat Report to VJ General Staff, 4 May 1999), p. 2; 4D288 (3rd Army Combat Report to VJ General Staff, 5 May 1999), p. 3; 4D356 (3rd Army Combat Report to VJ General Staff, 7 May 1999), p. 2; 4D315 (3rd Army Combat Report to VJ General Staff, 10 May 1999), p. 3; 4D290 (3rd Army Combat Report to VJ General Staff, 12 May 1999), p. 3; 4D316 (3rd Army Combat Report to VJ General Staff, 13 May 1999), pp. 2–3; 4D291 (3rd Army Combat Report to VJ General Staff, 14 May 1999), p. 3; 4D358 (3rd Army Combat Report to VJ General Staff, 15 May 1999), p. 3; 4D317 (3rd Army Combat Report to VJ General Staff, 16 May 1999), p. 3; 4D292 (3rd Army Combat Report to VJ General Staff, 17 May 1999), p. 3; 4D336 (3rd Army Combat Report to VJ General Staff, 19 May 1999), p. 3; P2008 (3rd Army Combat Report to VJ General Staff, 20 May 1999), p. 4; 4D270 (3rd Army Combat Report to VJ General Staff, 22 May 1999), p. 3; 4D271 (3rd Army Combat Report to VJ General Staff, 23 May 1999), p. 3.

¹⁹¹³ 4D281 (3rd Army Combat Report to VJ General Staff, 24 April 1999), p. 2.

¹⁹¹⁴ 4D285 (3rd Army Combat Report to VJ General Staff, 30 April 1999), p. 3.

that Pavković was never present at the Operations Centre during the NATO bombing campaign and never instructed him to leave out information from the combat reports being prepared at the centre.¹⁹¹⁶ Obradović further testified that Pavković would have had no opportunity to influence the drafting of the combat reports, because they were drafted daily by new officers on duty, which, according to Obradović, would make it impossible for him to “have talked that many people into that kind of thing”.¹⁹¹⁷ However, the Chamber notes that these reports were sent in the name of Pavković, and the under-reporting was attributed to the 3rd Army Command by Vasiljević.¹⁹¹⁸

752. Following the revelations of under-reporting from the 3rd Army in April and May 1999, the problem continued. At the briefing of the Chief of the General Staff of 2 June 1999, Geza Farkaš informed the attendees that crimes were being committed by VJ personnel in Kosovo and reports on these crimes were not “going through regular channels and lines of command”.¹⁹¹⁹

753. Having analysed these combat reports, the Chamber is of the view that, although the fact of criminal activity in Kosovo was mentioned, the 3rd Army sometimes minimised the reports of serious criminal wrongdoing, as is noticeable in the discrepancies of the Priština Corps and 3rd Army combat reports of 3 April 1999. A similar problem was discovered by the General Staff/Supreme Command Staff, when the issue of crimes by VJ, MUP, and paramilitary groups in Kosovo was revealed, and the under-reporting of crimes led to a series of meetings involving Ojdanić, Pavković, Milošević, and other VJ and MUP personnel. Furthermore, although the combat reports did mention the fact that the military judicial organs were investigating and prosecuting various crimes and were dealing with many cases, most of the cases were related to crimes committed against the VJ, such as failure to respond to mobilisation and avoiding military service, and did not refer to other (more serious) criminal offences committed against the civilian population despite the widespread commission of forcible displacement as discussed in Section VII above. The Chamber consequently finds that Pavković under-reported and sought to minimise the involvement of forces subordinate to him in the commission of crimes in Kosovo.

¹⁹¹⁵ 4D290 (3rd Army Combat Report to VJ General Staff, 12 May 1999), pp. 3–4.

¹⁹¹⁶ Velimir Obradović, T. 17365 (22 October 2007). The Prosecution asserted that, due to the rotation of shifts, Obradović could not say with certainty that Pavković never instructed the officers who compiled the combat reports, to which Obradović replied that he always made sure that he was informed on what went on at the centre during his absence. Velimir Obradović, T. 17400 (22 October 2007).

¹⁹¹⁷ Velimir Obradović, T. 17366 (22 October 2007); Velimir Obradović, 4D499 (witness statement dated 27 September 2007), para. 16.

¹⁹¹⁸ See, e.g., 3D1128 (3rd Army Report to the Supreme Command Staff, 4 April 1999).

¹⁹¹⁹ 3D633 (Briefing to the Supreme Command Staff, 2 June 1999), p. 1. Farkaš explained that, after the briefing with Milošević on 17 May 1999, “things were dealt with ... and for a while regular reports came in, but then again the problem cropped up when it came to the withdrawal of the troops from Kosovo”. He added that he had information that “the information they were receiving [was] not sufficient”. Geza Farkaš, T. 16364–16365 (25 September 2007).

iv. Information provided by the international community

754. In addition to various internal reports from VJ units and organs indicating criminal activity by members of the VJ in 1998, the UN Security Council issued resolutions conveying similar information.¹⁹²⁰ On 3 February 1999 Drewienkiewicz reported to Lončar about the looting of civilian homes at the end of January 1999 by members of the VJ and MUP.¹⁹²¹ However, Lončar testified only about having reported these incidents to Šainović.¹⁹²² Subsequently, Drewienkiewicz gave a press statement by 2 April 1999 at the latest, in which he reported large numbers of displaced Kosovo Albanians arriving at the borders, and conveyed reports of widespread atrocities committed by the VJ and MUP, including deportation from Kosovo. Drewienkiewicz's press release conveyed that thousands of displaced Kosovo Albanians had left for Macedonia the day before, and more were seen leaving on a train that day, along with another 50,000 waiting to cross the border.¹⁹²³ He specifically referred to the "systematic looting" and forcible removal of Kosovo Albanians from Priština/Prishtina, where, according to Lazarević, Pavković visited "every day" during the conflict.¹⁹²⁴ The 3rd Army Command had an intelligence department, and the Chief of Staff of the 3rd Army was specifically tasked with providing intelligence support to the Commander.¹⁹²⁵ Given the subject matter of Drewienkiewicz's press release and his notoriety to the FRY and Serbian authorities, the Chamber is satisfied that Pavković was made aware of this report at the start of April 1999.

755. In addition to all these reports from VJ units and organs, Pavković was made aware of allegations that crimes had been committed by VJ personnel on a large scale, through communications from Tribunal Prosecutor Louise Arbour. Pavković received by 29 April 1999, at the latest, a letter from Arbour alleging criminal acts by his subordinates.¹⁹²⁶ Furthermore, the original indictment against Milošević, Milutinović, Šainović, Ojdanić, and Stojiljković, which had been filed on 23 May 1999, was publicised on 27 May 1999.¹⁹²⁷ The indictment was

¹⁹²⁰ P455 (UNSC Resolution 1160, 31 March 1998), p. 1; P456 (UNSC Resolution 1199, 23 September 1998), p. 1.

¹⁹²¹ P621 (OSCE Letter to the FRY Commission for Co-operation with the KVM), p. 1; *see also* Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), pp. 31–32.

¹⁹²² Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 28, T. 7576–7578 (30 November 2006). Lončar testified that he had telephone communications with Pavković and Lukić, and that they were in communication on a regular basis, so that he could inform Pavković of any important developments on the ground, but did not refer to informing Pavković about these incidents. Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 47; Dušan Lončar, T. 7652–7654 (1 December 2006).

¹⁹²³ P2542 (Drewienkiewicz's Press Statement, April 1999); Karol John Drewienkiewicz, T. 7815 (4 December 2006).

¹⁹²⁴ P2542 (Drewienkiewicz's Press Statement, April 1999), p. 3; Vladimir Lazarević, T. 18080 (12 November 2007).

¹⁹²⁵ Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 9.

¹⁹²⁶ P401 (Letter from Louise Arbour to Dragoljub Ojdanić, 26 March 1999); 3D788 (Cover letter from Zoran Knežević to Louise Arbour, 29 April 1999); Milovan Vlajković, T. 16046 (20 September 2007).

¹⁹²⁷ The original indictment was against Milošević, Milutinović, Šainović, Ojdanić, and Stojiljković. P968 (*Prosecutor v. Milošević et al.*, Case No. IC-99-37, First Indictment, 23 May 1999).

discussed at the Supreme Command Staff briefing of 28 May, where Branko Krga stated that one of the purposes of bringing the indictment against the high FRY/Serbian officials was to stall peace initiatives.¹⁹²⁸ Given this awareness within the VJ, Pavković must have been informed of the existence of the indictment on or around 27 May.

756. That indictment contained specific allegations of war crimes and crimes against humanity being committed throughout Kosovo by forces under Pavković's control, which also form part of the Indictment in this case, and listed the names of alleged murder victims, many of whom have been found to have been killed by FRY/Serbian forces, as detailed in Section VII. The first indictment alleged that crimes were being committed by VJ and MUP personnel, including expulsion in Kosovska Mitrovica/Mitrovica, expulsion and sexual assault in Dečani/Dečan, expulsion in Peć/Peja, expulsion in Priština/Prishtina, expulsion in Prizren, expulsion and murder in Đakovica/Gjakova, expulsion in Gnjilane/Gjilan, Kačanik/Kaçanik, Orahovac/Rahovec, and Srbica/Skenderaj, and expulsion in Uroševac/Ferizaj—all of which are also contained in the current Indictment, and in which VJ soldiers have been found to be involved. These VJ forces were within the 3rd Army at the relevant times, and thus were under the command of Pavković.

757. On 17 May Pavković sent Ojdanić a letter responding to the allegations made by Arbour in March 1999.¹⁹²⁹ He stated that all his actions in his role as Commander of the Priština Corps, and later as the Commander of the 3rd Army, had been in accordance with the Constitution and Law on the VJ. He continued to state that he had always informed his superior commands of the activities of his units, and that he had disseminated information regarding his subordinates' obligations to adhere to international humanitarian law. In conclusion, he stated that he was not authorised to give permission to carry out investigations into war crimes, and that this power lay with the Federal Government.¹⁹³⁰ However, the Chamber notes that Pavković was able to initiate enquiries into alleged war crimes and that he formed a commission upon hearing allegations of a detention camp in Istok/Istog municipality, as discussed above. Furthermore, the explanation that in the confusion of the end of the NATO bombing there was no time to take measures is inconsistent with his immediate establishment of this commission.¹⁹³¹ Pavković's response to the receipt of the indictment, that he was unable to take further measures against perpetrators of crimes in Kosovo,

¹⁹²⁸ 3D628 (Briefing to the Chief of Staff, 28 May 1999), p. 1.

¹⁹²⁹ 3D790 (Pavković Letter responding to accusations of Louise Arbour, 17 May 1999); Milovan Vljaković, T. 16046 (20 September 2007). The letter indicates that it was a response to the order from the Legal Department of the Supreme Command Staff of 10 May 1999 to all VJ commanders to adhere to the laws of war. See 3D483 (Order of the Supreme Command Staff, 10 May 1999).

¹⁹³⁰ 3D790 (Pavković Letter responding to accusations of Louise Arbour, 17 May 1999). See also Stanimir Radosavljević, T. 17499–17500 (23 October 2007).

omitted to mention measures that were at his disposal, such as disciplinary measures, the formation of a commission into the widespread expulsions, the use of 3rd Army Security Department, whose tasks included investigating alleged crimes by VJ members, or the engagement of forensic experts.¹⁹³²

v. Pavković and the military justice system

758. Lakić Đorović, the military prosecutor whose evidence is discussed in detail in Section VI.A.1.e, testified that the prosecution of members of VJ for crimes committed during the conflict was inadequate, largely as a result of the failure to report and the cover-up of evidence by the Security Administration of the VJ.¹⁹³³ His general account of interference with prosecutions of serious crimes in Kosovo was consistent with the information presented in reports from the military courts.¹⁹³⁴

759. Đorović provided specific evidence that members of his staff, as well as of the VJ in general, used “confiscated” cars in Kosovo during the period relevant to the Indictment, and that Pavković was involved in these activities.¹⁹³⁵ The Chamber also heard from Milan Uzelac, the Head of the Transport Administration of the General Staff of the VJ, and Miloš Spasojević, the Military Prosecutor for the Priština Corps, both of whom the Chamber found unreliable.

760. From documents he was given, Đorović concluded that a first meeting on how to divide seized goods between the VJ and the MUP and conceal the fact that they had stolen was ordered by Pavković.¹⁹³⁶ Đorović further testified that the minutes of a second meeting of the same people recorded that it was held in the offices of the President of the Supreme Military Court at the end of the October or the beginning of November 1999, and that the same people from the first meeting

¹⁹³¹ 4D86 (Order by Nebojša Pavković re formation of a commission, 13 April 1999). This commission was given two days to carry out its initial enquiries and report back.

¹⁹³² 4D86 (Order by Nebojša Pavković re formation of a commission, 13 April 1999); Gordana Tomašević, T. 7022–7025, 7044 (21 November 2006), P2490 (witness statement dated 5 March 2003), pp. 3–4, P2507 (witness statement dated 25 July 2006), pp. 2–3.

¹⁹³³ Lakić Đorović, P2671 (witness statement dated 1 September 2006), paras. 6, 9.

¹⁹³⁴ P1912 (3rd Army Report on criminal cases, military prosecution, and courts, 1 May 1999); P1940 (Wartime Military Prosecutor’s Offices and Courts Progress Report, 30 April 1999); P1182 (Information sent by PrK to the 52nd Artillery Rocket Brigade, 15 May 1999); 3D986 (VJ General Staff Report on criminal cases, 6 September 1999), pp. 7–10; P962 (549 the Motorised Brigade Report on criminal cases, military prosecution and courts, May 1998–July 1999); 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 Report on criminal cases, military prosecution and courts); P845 (Report on criminal cases for sexual assault in military courts, 10 September 2002); 4D171 (Report of Military Prosecutor, 6 April 2001).

¹⁹³⁵ Lakić Đorović, P2671 (witness statement dated 1 September 2006), paras. 40–41; Lakić Đorović, T. 11470–11481 (12 March 2007). Cf. Milan Uzelac, T. 16157–16158 (21 September 2007); Miloš Spasojević, 3D532 (witness statement dated 9 January 2007), para. 7.

were present.¹⁹³⁷ The participants discussed the fact 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 between the MUP, the VJ General Staff, and the Ministry of Defence.¹⁹³⁸ At a third meeting involving at least 30 officers from the General Staff and the Ministry of Defence, at which Đorović was actually in attendance, Uzelac and other officers spoke about Pavković and Ojdanić being angry that the vehicles had not yet been distributed.¹⁹³⁹

761. After the meeting, Đorović, together with Grigorije Spasojević from the General Staff, was directed to draft an order for Pavković and Ojdanić to sign. He was directed to draft the order so 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 drafted the decision differently, Radomir Gojović (the then Chief of the Legal Department of the General Staff) “went crazy”.¹⁹⁴⁰ Pavković and Ojdanić then decided against issuing the order at all and to simply keep the vehicles and goods.¹⁹⁴¹ On the other hand, Uzelac testified that the transport administration and the General Staff made immediate efforts to return the vehicles after the war. When owners did come to collect their vehicles, those with proof of ownership had their vehicles returned to them. However, Uzelac admitted that no public notification was made so that the owners of the vehicles would know to apply for their return.¹⁹⁴²

762. Đorović also testified that during his time in Belgrade he started an investigation against Milovan Tijanić, a reserve officer in the technical procurement department within the Priština Corps, who illegally seized goods during the NATO bombing and transported them in trucks to Belgrade, while being escorted by security organs and organs of the military police.¹⁹⁴³ Although Đorović claimed that the illegal seizing of items was done as per orders from Pavković and

¹⁹³⁶ Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 41. *Cf.* Milan Uzelac, T. 16162, 16172–16174 (21 September 2007).

¹⁹³⁷ Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 42.

¹⁹³⁸ Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 42. *Cf.* Milan Uzelac, T. 16164 (21 September 2007).

¹⁹³⁹ Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 43; T. 11476–11478 (12 March 2007). *See* P2752 (Table Overview of Temporarily Seized Cars, 23 November 1999); *cf.* Milan Uzelac, T. 16164 (21 September 2007).

¹⁹⁴⁰ Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 45.

¹⁹⁴¹ Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 45.

¹⁹⁴² Milan Uzelac, T. 16177–16179 (21 September 2007).

¹⁹⁴³ Lakić Đorović, P2671 (witness statement dated 1 September 2006), para. 18; T. 11421 (12 March 2007). *Cf.* Milutin Filipović, T. 19154–19155 (27 November 2007); Novica Stamenković, T. 20115–20118 (12 December 2007); Branko Žigić, 3D528 (witness statement dated 5 January 2007), paras. 5–6, T. 15949–15951 (19 September 2007).

Ojdanić¹⁹⁴⁴, who by doing so committed “abuse of authority”, he conceded that he never saw official orders signed by either Pavković or Ojdanić.¹⁹⁴⁵ He added that he got this information from a number of people, such as Mihalj Kertes (the chief of the customs administration), the Minister for Health, and the commissioner for refugees, as well as from directors of several stores and companies. Đorović further clarified that Tijanić himself told him that he had permission from the military leadership, ranging from the Defence Minister, to Ojdanić and Pavković.¹⁹⁴⁶

763. Aside from his awareness of members of the military justice system being involved in criminal acts concerning Kosovo Albanian property, Pavković was aware of the more general improper functioning of the VJ military justice system. The discrepancy between the large number of incidents of forcible displacement and other serious crimes in relation to which he received information, as discussed below, and the small number of investigations and prosecutions for such crimes being undertaken by the military justice system, must have alerted him that it was not functioning adequately.¹⁹⁴⁷ Indeed, upon being shown such reports, the Chief of the General Staff, Ojdanić, pointed out this discrepancy to Gojović, as discussed in Section VIII.E.¹⁹⁴⁸

764. In relation to the seizure of Kosovo Albanian property, the Chamber finds the account of Lakić Đorović credible and reliable and does not consider that the witnesses called to refute it cast any doubt upon its veracity. Although his account of the role of Pavković in this matter was based on indirect knowledge, the involvement of over 30 officers of the VJ, including members of the military justice system, and the fact that this was an issue concerning property seized from Kosovo, support his evidence that Pavković was aware of the illegal taking and distribution of Kosovo Albanian property by VJ forces and the involvement of members of the military justice system in this practice.

¹⁹⁴⁴ 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).

¹⁹⁴⁵ Lakić Đorović, P2671 (witness statement dated 1 September 2006), paras. 17–18, T. 11421 (12 March 2007). Cf. Arsenije Katanić, T. 15961–15969 (19 September 2007); see also 3D530 (witness statement dated 18 January 2007), paras. 5–6.

¹⁹⁴⁶ Lakić Đorović, T. 11625–11627 (13 March 2007), T. 11718–11723 (14 March 2007).

¹⁹⁴⁷ P1912 (3rd Army Report on criminal cases, military prosecution, and courts, 1 May 1999); P1940 (Wartime Military Prosecutor’s Offices and Courts Progress Report, 30 April 1999); P1182 (Information sent by PrK to the 52nd Artillery Rocket Brigade, 15 May 1999); 3D986 (VJ General Staff Report on criminal cases, 6 September 1999); P962 (549 the Motorised Brigade Report on criminal cases, military prosecution and courts, May 1998–July 1999); 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 Report on criminal cases, military prosecution and courts); P845 (Report on criminal cases for sexual assault in military courts, 10 September 2002); 4D171 (Report of Military Prosecutor, 6 April 2001).

¹⁹⁴⁸ Radomir Gojović, T. 16679, 16685 (2 October 2007).

vi. Conclusion

765. When meetings were called to address the issue of Pavković's under-reporting of crimes committed in Kosovo by VJ, MUP, and paramilitary forces, he suggested a commission, but this was not formed, and he implemented no effective measures to deal with the issue.¹⁹⁴⁹ Following the NATO air campaign, he became the Chief of the General Staff in 2000 and so had the power to conduct enquiries into the conduct of any VJ member, but did not form a special commission to look into the VJ involvement in the crimes. His subsequent inaction is relevant to his mental state at the time. The Chamber notes that Pavković's response to the receipt of the first indictment, *i.e.*, that he was unable to take further measures against perpetrators of crimes in Kosovo, omitted to mention the measures that were at his disposal, such as disciplinary measures, the formation of a commission into the widespread expulsions, or the engagement of forensic experts that were available to him.¹⁹⁵⁰ The Chamber has considered the evidence relating to orders issued by Pavković to adhere to international humanitarian law and to prevent Kosovo Albanians from leaving Kosovo.¹⁹⁵¹ Noting the statement relating to the security situation in Kosovo to "prepare these actions and mask our actions with undertakings for civilians" made by Minić in Pavković's presence at a Joint Command meeting in August 1998,¹⁹⁵² and noting K90's evidence that Kosovo Albanians were prevented from leaving areas in which the VJ was operating because that would have left the VJ without the protection of surrounding civilians and thus vulnerable to NATO attacks, the Chamber does not consider these were genuine measures to limit the criminal offending occurring in Kosovo.¹⁹⁵³ Finally, Pavković Defence points to Pavković's dismissal of three brigade commanders during the NATO campaign as an example of an effective measure taken in response to the perpetration of crime in Kosovo.¹⁹⁵⁴ However, in relation to this example, the Chamber notes that Pavković stated that his motivation in dismissing the brigade commanders was related to enhancing combat readiness, and so the Chamber does not consider this a genuine or effective measure to limit criminal offending by the VJ in Kosovo.

766. The Chamber, therefore, finds that Pavković was aware of specific allegations of widespread crimes, including forcible displacements within and without Kosovo, murder, and

¹⁹⁴⁹ 3D1061 (3rd Army Additional Report, 14 July 1999); Aleksandar Vasiljević, P2594 (witness statement dated 26 October 2006), para. 57 (under seal); Branko Gajić, T. 15304–15305 (10 September 2007).

¹⁹⁵⁰ 3D790 (Pavković Letter responding to accusations of Louise Arbour, 17 May 1999); 4D86 (Order by Nebojša Pavković re formation of a commission, 13 April 1999); Gordana Tomašević, T. 7022–7025, 7044 (21 November 2006), P2490 (witness statement dated 5 March 2003), pp. 3–4, P2507 (witness statement dated 25 July 2006), pp. 2–3;

¹⁹⁵¹ P1766 (3rd Army Order on providing shelter and aid to "refugees", 19 April 1999), also admitted as 4D350.

¹⁹⁵² P1468 (Notes of the Joint Command), pp. 52–53; P949 (Nebojša Pavković interview with the Prosecution), p. 364.

¹⁹⁵³ K90, T. 9408 (30 January 2007).

¹⁹⁵⁴ P949 (Nebojša Pavković interview with the Prosecution), pp. 270–271, 394 (stating that three were dismissed, and then clarifying that two were dismissed and one given disciplinary measures). *See also* 4D198 (3rd Army Order with list of instructions, 7 May 1999), para. 7.

sexual assaults, which were being committed against the Kosovo Albanian civilian population by members of the VJ and MUP during the NATO campaign.¹⁹⁵⁵

5. Conclusions on responsibility of Nebojša Pavković

767. The Chamber now turns to the issue of Pavković's individual criminal responsibility for crimes committed by the VJ and MUP in Kosovo from March to June 1999.

768. The Prosecution alleges that Pavković is responsible for planning, instigating, ordering, committing (through participation in a joint criminal enterprise), or otherwise aiding and abetting the crimes in the Indictment.¹⁹⁵⁶ He is also charged with responsibility as a superior for failing to prevent or punish crimes committed by his subordinates.¹⁹⁵⁷ The Pavković Defence responds that the Prosecution has not established any of these forms of responsibility.¹⁹⁵⁸

769. According to the Prosecution, the evidence shows that Pavković was a member of the joint criminal enterprise and that he significantly contributed to its implementation. The Prosecution submits that Pavković shared the intent to carry out this common plan, and that his actions—such as his commanding, ordering, and directing of VJ operations in Kosovo, including joint operations with the MUP—demonstrate that he intended to further the plan, through criminal means.¹⁹⁵⁹ The Pavković Defence, on the other hand, argues that he did not participate in a joint criminal enterprise and that it has not been established that he shared the intent to participate in such an enterprise.¹⁹⁶⁰

770. For Pavković's liability to arise pursuant to the first category of the joint criminal enterprise, the evidence must show that he participated in at least one aspect of the common purpose to ensure continued control by the FRY and Serbian authorities over Kosovo, through crimes of forcible displacement, which the Chamber has already found existed.¹⁹⁶¹ In order to fulfil this element, Pavković need not have physically committed the crimes through which the goal was achieved, or any other offence for that matter.¹⁹⁶² Indeed, he need not even have been present at the time and

¹⁹⁵⁵ The original indictment was against Milošević, Milutinović, Šainović, Ojdanić, and Stojiljković; P968 (*Prosecutor v. Milošević et al.*, Case No. IC-99-37, First Indictment, 23 May 1999), pp. 2–29; P401 (Letter from Louise Arbour to Dragoljub Ojdanić, 26 March 1999); 3D788 (Cover letter from Zoran Knežević to Louise Arbour, 29 April 1999); Milovan Vlajković, T. 16046 (20 September 2007).

¹⁹⁵⁶ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 843, 909.

¹⁹⁵⁷ Indictment, paras. 16–22, 50–54.

¹⁹⁵⁸ Pavković Final Trial Brief (public version), 28 July 2008, para. 18.

¹⁹⁵⁹ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 8, 843–846.

¹⁹⁶⁰ Pavković Final Trial Brief (public version), 28 July 2008, para. 18.

¹⁹⁶¹ *Vasiljević* Appeal Judgement, paras. 100, 119; *Tadić* Appeal Judgement, paras. 197, 227; *Brđanin* Appeal Judgement, para. 427.

¹⁹⁶² *Kvočka et al.* Appeal Judgement, para. 99; *Brđanin* Appeal Judgement, para. 427.

place of the physical perpetration of these crimes.¹⁹⁶³ His contribution, however, to the plan must have been significant.¹⁹⁶⁴ As for the necessary mental element, it must be proved that Pavković participated voluntarily in the joint criminal enterprise and that he shared the intent with other members of the joint criminal enterprise to commit the crime or underlying offence that was the object of the enterprise, in this case forcible displacement.

771. Specific references are provided in relation to issues addressed, but the Chamber notes that these findings are based on all the relevant evidence.

772. Addressing the mental element first, the Chamber finds that it has been established beyond reasonable doubt that all of Pavković's actions described above were voluntary rather than coerced. The Chamber is also convinced that Pavković had the intent to ensure continued control by the FRY and Serbian authorities over Kosovo through the crimes of forcible displacement of the Kosovo Albanian population.

773. The Chamber notes at the outset that, as Commander of the Priština Corps in 1998 and then Commander of the 3rd Army, Pavković possessed extensive *de jure* powers and had command authority over the VJ forces in Kosovo throughout the period during which crimes were committed. Furthermore, Pavković's influence was extended by his considerable *de facto* authority. As a member of the Joint Command in 1998, he worked closely with the MUP leadership, in particular Sreten Lukić. He had a close connection with the "Supreme Commander", particularly in relation to the activities of the MUP and VJ in Kosovo, which continued from 1998 through 1999.

774. The information received by Pavković before and during the NATO air campaign is important evidence for the determination of his responsibility, because his knowledge of the commission of crimes by VJ subordinates and MUP members, combined with his continuing ordering of and participation in the joint operations with those perpetrators, is indicative of his intent that those crimes occur. Pavković was aware that crimes were committed in 1998 and that forces under his control were responsible.¹⁹⁶⁵ For example, he was told on repeated occasions that the burning of villages in Kosovo had to be stopped.¹⁹⁶⁶ He ordered the VJ into Drenica in early August 1998, contrary to orders from his superior Samardžić, and during this operation excessive force was used. He was informed of the violent crimes committed during joint VJ and MUP

¹⁹⁶³ *Krnjelac* Appeal Judgement, para. 81; *see also Simić et al.* Trial Judgement, para. 158.

¹⁹⁶⁴ *Brđanin* Appeal Judgement, para. 430.

¹⁹⁶⁵ *See, e.g.*, 4D428 (Order of the PrK, 27 May 1998); P1422 (Order of the PrK re "overuse" of equipment, 7 August 1998).

¹⁹⁶⁶ P1468 (Notes of the Joint Command), p. 46; 4D97 (Minutes from the briefing of the commanders of the Prk and 3rd Army, 7 August 1998), p. 3.

operations in Gornje Obrinje/Abri e Epërme, and of allegations that the VJ and MUP were responsible for these crimes.¹⁹⁶⁷ His subsequent report sought to minimise the seriousness of the incident and omitted relevant knowledge in his possession.¹⁹⁶⁸ Pavković was also aware of allegations in the international community that excessive and indiscriminate use of force by VJ and MUP forces in 1998 had led to the forcible displacement of over 230,000 Kosovo Albanians.¹⁹⁶⁹ Nonetheless, while possessing knowledge of previous criminal activity by VJ and MUP forces in Kosovo and while aware of allegations of widespread criminal activity by VJ and MUP forces against Kosovo Albanians, Pavković ordered the VJ operations in conjunction with the MUP in Kosovo in March 1999 and thereafter.¹⁹⁷⁰

775. During the NATO air campaign, Pavković continued to receive information that crimes were being committed by VJ members against civilians in Kosovo. The VJ command and communication system functioned throughout the air strikes, and Pavković was present at the command post of the Priština Corps in Priština/Prishtina regularly during the conflict, and attended a meeting there with Stevanović and Đorđević from the MUP while Kosovo Albanians were being forcibly displaced from the town by VJ and MUP forces acting together.¹⁹⁷¹ His frequent presence on the ground in Kosovo,¹⁹⁷² in conjunction with the widespread practice of displacing Kosovo Albanians, supports the contention that he was aware of criminal offences in Kosovo by the MUP and VJ. Reports from international sources made him aware of MUP and VJ involvement in the forcible displacement and commission of crimes against Kosovo Albanians, including in Priština/Prishtina, where he was regularly located.¹⁹⁷³ In the opening days of the air strikes, he referred to the increase in the previous days of ill-discipline and misconduct amongst VJ members in relation to Kosovo Albanian civilians and their property.¹⁹⁷⁴ He subsequently received further information indicating criminal offences by his subordinates operating in Kosovo, including serious violent crimes.¹⁹⁷⁵ Additionally, he acknowledged that identity documents were taken from Kosovo Albanians by MUP members and that other serious crimes were being committed by the

¹⁹⁶⁷ P441 (Human Rights Watch Report, 1 February 1999), pp. 16–48; Frederick Abrahams, T. 806–811 (13 July 2006); P1011 (Ivan Marković, ed., *The Application of Rules of the International Law of Armed Conflicts* (2001)), pp. 70–72; P1440 (PrK Report on incidents resulting in death, 5 October 1998), p. 4.

¹⁹⁶⁸ P1440 (PrK Report on incidents resulting in death, 5 October 1998), p. 4.

¹⁹⁶⁹ P455 (UNSC Resolution 1160, 31 March 1998), p. 1; P456 (UNSC Resolution 1199, 23 September 1998), p. 1.

¹⁹⁷⁰ 5D245 (*Grom* 3 Order of the 3rd Army Command, 27 January 1999), p. 5; 4D103 (3rd Army Command Order on the Defence from NATO attacks, 23 March 1999), para. 1.6; Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 38.

¹⁹⁷¹ Vladimir Lazarević, T. 18260 (14 November 2007).

¹⁹⁷² P949 (Nebojša Pavković interview with the Prosecution), p. 92; Vladimir Lazarević, T. 18080 (12 November 2007); Mirko Starčević, T. 17436 (22 October 2007).

¹⁹⁷³ P2542 (Drewienkiewicz's Press Statement, April 1999); Karol John Drewienkiewicz, T. 7815 (4 December 2006).

¹⁹⁷⁴ 4D154 (3rd Army warning to subordinate commands, 27 March 1999).

¹⁹⁷⁵ See, e.g., P1938 (3rd Army Report to Supreme Command Staff, 10 April 1999), p. 2.

MUP, but continued to order joint operations of the VJ and MUP.¹⁹⁷⁶ As well as being present on the ground in Kosovo while the campaign of forcible displacements was being conducted, he was also regularly present in Belgrade and involved in meetings with the FRY and Serbian military and civilian leadership. The issue of serious crimes being committed by VJ and MUP members was discussed at meetings on 4 May, 16 May, and 17 May, which Pavković attended.

776. Pavković under-reported crimes in 1999, including murder and attempted murder by his subordinates in the VJ, in breach of express obligations to report such incidents to the General Staff/Supreme Command Staff.¹⁹⁷⁷ The Chamber notes that the explanation provided for this under-reporting, *i.e.*, that it was an unimportant oversight and that effective prosecutions were being undertaken against the perpetrators, does not affect the finding that Pavković sought to minimise the VJ involvement in criminal activity, and is inconsistent with the fact that he continued to report on less serious crimes in those reports even where these cases were in the hands of the military justice organs.¹⁹⁷⁸

777. The Chamber has looked at evidence relating to Pavković's efforts to limit and investigate the commission of crimes in Kosovo, including the suggestion for a joint state commission, his dismissal of three brigade commanders, and his orders to adhere to international humanitarian law and to prevent Kosovo Albanians leaving Kosovo. These ineffective measures were manifestly insufficient in light of the widespread commission of crimes by VJ and MUP forces against Kosovo Albanians, of which Pavković was aware.

778. Pavković's sharing of the intent to commit the crime or underlying offence that was the object of the joint criminal enterprise can be inferred from the evidence above. Pavković's intent to participate in the common purpose can also be inferred from the way in which he worked closely with Milošević on the issue of Kosovo in 1998 and 1999.¹⁹⁷⁹ As an indication of his influence through his connection with Milošević, he was able to bring troops into the interior of Kosovo in contravention of orders of his superior, Ojdanić, without sanction.¹⁹⁸⁰ Milošević's approval of Pavković's approach to the problem in Kosovo is further demonstrated by Pavković's rapid

¹⁹⁷⁶ P949 (Nebojša Pavković interview with the Prosecution), pp. 91–92; P1459 (3rd Army report on the non-compliance of MUP organs, 25 May 1999).

¹⁹⁷⁷ 5D84 (PrK Combat Report to 3rd Army, 3 April 1999), p. 2; 4D276 (3rd Army Report to General Staff, 3 April 1999); 3D480 (Order of the Supreme Command Staff, 2 April 1999), p. 2; Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007) (public version), paras. 55–56, T. 8748–8750 (19 January 2007).

¹⁹⁷⁸ Geza Farkaš, T. 16359–16361 (25 September 2007).

¹⁹⁷⁹ Aleksandar Dimitrijević, T. 26595–26597, 26624 (8 July 2008); 3D484 (Minutes of the Collegium of the General Staff of the VJ, 10 December 1998), p. 14.

¹⁹⁸⁰ P941 (Minutes of the Collegium of the General Staff of the VJ, 25 February 1999), pp. 16, 24–25; Aleksandar Dimitrijević, T. 26708 (9 July 2008).

ascension up the VJ chain of command. Pavković went from Chief of Staff of the Priština Corps in 1997 to Priština Corps Commander in January 1998 to Commander of the 3rd Army in January 1999 and on to Chief of the General Staff in February 2000.¹⁹⁸¹ His promotions to Commander of the 3rd Army and Chief of the General Staff were rewards from Milošević to Pavković for his participation in the joint criminal enterprise.

779. In 1998 Pavković was involved in the process of arming of the non-Albanian population and the disarming of the Kosovo Albanian population in villages and towns in the province. He participated in the efforts of the FRY and Serbian leadership to carry out these processes despite his awareness of the commission of criminal acts during inter-ethnic clashes.¹⁹⁸² His enthusiasm for and involvement with these processes supports the Prosecution contention that Pavković acted in concert with the members of the joint criminal enterprise to further the common purpose of maintaining control over Kosovo through various criminal means.

780. Furthermore, Pavković was aware that, in his role as Commander of the 3rd Army, his positive participation was important for the accomplishment of the common aims of the joint criminal enterprise. He knew that he could impede and even prevent the objective of forcibly displacing the Kosovo Albanian population if he used his *de jure* and *de facto* authority to bring to account those responsible for crimes or by refusing to order the VJ to operate in Kosovo jointly with the MUP. However, in 1999 he continued to issue orders from the command of the 3rd Army for the use of the VJ in Kosovo, and he continued to be aware and approving of the co-ordination of VJ and MUP activities through the Joint Command.¹⁹⁸³

781. Taking all the relevant evidence into account, the Chamber concludes that the only reasonable inference is that Pavković had the intent to forcibly displace the Kosovo Albanian population, both within and without Kosovo, and thereby ensure continued FRY and Serbia control over the province. The Chamber is also satisfied that he shared that intent with other members of the joint criminal enterprise, such as Milošević, Lukić, and Šainović.

782. As for the question whether Pavković contributed to the joint criminal enterprise, the Chamber is of the view that it is plain from the preceding paragraphs that he did contribute and that that contribution was significant. Despite his knowledge of the crimes being committed by the VJ

¹⁹⁸¹ 4D163 (Military Record for Nebojša Pavković), pp. 5–6; P1319 (Pavković responds to caller's questions, Belgrade RTS Television First Program, 20 October 2000), p. 9.

¹⁹⁸² Momir Stojanović, T. 20072–20074 (12 December 2007); P1011 (Ivan Marković, ed., *The Application of Rules of the International Law of Armed Conflicts* (2001)), p. 58; P1468 (Notes of the Joint Command), p. 163; P949 (Nebojša Pavković interview with the Prosecution), pp. 1–2, 205, 213–216, 347–348.

¹⁹⁸³ Đorđe Ćurčin, T. 17025–17027 (16 October 2007); P1459 (3rd Army report on the non-compliance of MUP organs, 25 May 1999).

and MUP forces, he ordered and supported the operations of the VJ in Kosovo in 1999, including joint operations with the MUP co-ordinated through the Joint Command, throughout the period during which the crimes were committed.¹⁹⁸⁴ He mobilised the troops for and commanded them during the operations, including through his presence on the ground in Kosovo. Pavković's introduction of additional VJ forces into Kosovo in early 1999, in breach of the October Agreements, put the VJ in a position to engage in widespread operations throughout Kosovo in March 1999, both on its own and in support of the MUP. He supported the arming of the non-Albanian population and disarming of the Kosovo Albanian population in 1998, which assisted the efforts of the joint criminal enterprise members to pursue their aims. Furthermore, through his minimisation of crimes committed by forces under his control and failure to take effective measures in response to information indicating the widespread perpetration of crimes by these forces in Kosovo, Pavković contributed to the creation and maintenance of an environment of impunity, which encouraged the commission of crimes by forces under the control of members of the joint criminal enterprise.

783. As can be seen from the findings relating to various municipalities in Kosovo discussed above, the members of the joint criminal enterprise used VJ and MUP forces under their control to carry out the crimes charged in the Indictment. The Chamber is aware that not every individual member of these forces need be a member of the joint criminal enterprise. Nevertheless, the actions of VJ and MUP personnel are imputable to the members of the joint criminal enterprise. In this connection, the Chamber notes its findings that Šainović and Lukić were members of the joint criminal enterprise. Šainović was a political co-ordinator of the VJ and MUP forces in Kosovo. Pavković's counterpart with respect to the MUP was Lukić who, throughout the NATO air campaign, had both *de jure* and *de facto* responsibility over MUP forces that committed crimes on a massive scale. Pavković, as the Commander of the 3rd Army of the VJ, was in command and control of all the VJ forces in Kosovo throughout the period when the crimes were committed, and issued orders for the operations of the VJ in Kosovo during this time. All three were involved in the co-ordination of VJ and MUP activities. Slobodan Milošević, another member of the joint criminal enterprise, was both the "Supreme Commander" of the VJ and had significant *de facto* powers over the MUP. For all those reasons, the crimes of both the VJ and the MUP are imputable to Pavković.

¹⁹⁸⁴ See, e.g., 5D245 (*Grom 3 Order of the 3rd Army Command, 27 January 1999*), pp. 5–7, 11–12; 4D103 (*3rd Army Command Order on the Defence from NATO attacks, 23 March 1999*), para. 1.6; Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 38.

784. Since the Chamber has found that the common purpose was to be achieved through forcible displacement alone, it follows that the other charged crimes alleged against Pavković, namely murder and persecution, including through murder, sexual assault, and the destruction of cultural property, need to be examined in the context of the third category of joint criminal enterprise. It has to be proved beyond reasonable doubt that the commission of these crimes, although falling outside of the common purpose, was reasonably foreseeable to Pavković and that he willingly took the risk that they would be committed.

785. *Murder and sexual assault.* As described above, Pavković intended to forcibly displace part of the Kosovo Albanian population and shared this intent with other members of the joint criminal enterprise, the object of which was to forcibly displace Kosovo Albanians within and deport them from Kosovo in order to maintain control over the province. Pavković was aware of the strong animosity between ethnic Serbs and Kosovo Albanians in Kosovo during 1998 and 1999. He was aware of the context in which the forcible displacement took place. It was thus reasonably foreseeable that other crimes, including murder, would be committed by physical and intermediary perpetrators with intent to discriminate against Kosovo Albanians.¹⁹⁸⁵ The Chamber is of the view that Pavković's detailed knowledge of events on the ground in Kosovo in 1998 and 1999 put him on notice that murders and sexual crimes would be committed by the VJ and MUP as a result of the displacements taking place in 1999. In addition, there is specific evidence to support this conclusion. For example, the incident at Gornje Obrinje/Abri e Epërme in October 1998 made it reasonably foreseeable to Pavković that MUP and VJ forces would engage in crimes, including murder, if engaged in Kosovo. A 4 April 1999 order issued by Pavković ordered the Niš Corps to prevent the population from being robbed, raped, or mistreated by conducting daily checks on deserted settlements and buildings.¹⁹⁸⁶ A 6 April 1999 order issued by Pavković instructed the Priština Corps and Niš Corps to improve combat discipline and prevent misconduct, including looting and murder.¹⁹⁸⁷ A 10 April 1999 report from Pavković indicated that volunteers who were either convicted or awaiting sentence were deployed in Kosovo and that seven volunteers had been detained for *inter alia* killing and rape.¹⁹⁸⁸ On 25 May 1999 Pavković sent a report to the Supreme Command Staff referring to *inter alia* murder and rape committed by MUP forces against the Kosovo Albanian population.¹⁹⁸⁹ Consequently, it was reasonably foreseeable to Pavković that VJ

¹⁹⁸⁵ P949 (Nebojša Pavković interview with the Prosecution), pp. 1–2, 88, 219, 264.

¹⁹⁸⁶ P1448 (3rd Army Order on instructions regarding security arrangements, 4 April 1999), p. 2.

¹⁹⁸⁷ 4D224 (3rd Army Order on defensive measures, 6 April 1999), p. 3; *see also* Aleksandar Vasiljević, P2600 (witness statement dated 14 January 2007), paras. 59, 62, 65–67 (reporting on the discussion of killings in Kosovo at the 17 May 1999 meeting at which Pavković was present).

¹⁹⁸⁸ P1938 (3rd Army Report to Supreme Command Staff, 10 April 1999), p. 2.

¹⁹⁸⁹ P1459 (3rd Army report on the non-compliance of MUP organs, 25 May 1999), paras. 3–4.

and MUP forces would commit murder and sexual assault against Kosovo Albanians during their forcible displacement of them.

786. *Destruction of or damage to religious property.* The Chamber has already found that four mosques were destroyed by the forces of the FRY and Serbia and that these offences fell into the category of persecution. The Chamber finds that it was reasonably foreseeable to Pavković that the forces of the FRY and Serbia would commit wanton destruction or damage of Kosovo Albanian religious sites, cultural monuments, and Muslim sacred sites during their forcible displacement of the Kosovo Albanian population. The conflict was one that involved ethnic divisions. Moreover, the common purpose was to be achieved through a campaign of terror and violence against the Kosovo Albanian civilian population. Under these conditions, and keeping in mind Pavković's detailed knowledge of events on the ground in Kosovo during the conflict, the inescapable conclusion is that it was reasonably foreseeable to Pavković that, while the forces of the FRY and Serbia were forcibly transferring and deporting the Kosovo Albanian population, they would at the same time wantonly destroy or damage their religious sites, cultural monuments, and sacred sites.

787. Having made the above findings, it is not necessary for the Chamber to make findings on the other forms of responsibility alleged in the Indictment.

788. The Trial Chamber therefore finds that it has been established beyond reasonable doubt that Nebojša Pavković is responsible for committing (through his participation in a joint criminal enterprise) the following crimes in the following locations:

- Peć/Peja
 - Peć/Peja town—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Dečani/Dečan
 - Beleg—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; persecution (sexual assault) as a crime against humanity;
- Đakovica/Gjakova
 - Đakovica/Gjakova town—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; murder as a crime against humanity; murder as violation of the laws or customs of war; persecution (murder) as a crime against humanity;
 - Korenica—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity;

- Dobroša/Dobrosh—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Ramoc—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Meja—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity;
- Other villages in the Reka/Caragoj area—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Prizren
 - Pirane/Pirana—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Dušanovo/Dushanova, part of the town of Prizren—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Orahovac/Rahovec
 - Celina—deportation as a crime against humanity; other inhumane act (forcible transfer) as a crime against humanity; persecution (destruction of or damage to religious property) as a crime against humanity;
 - Bela Crkva/Bellacërka—murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity;
 - Mala Kruša/Krusha e Vogël—murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity;
- Suva Reka/Suhareka
 - Suva Reka/Suhareka town—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity; persecution (destruction of or damage to religious property) as a crime against humanity;
- Srbica/Skenderaj
 - Turićevac/Turiçec—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Izbica—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity;
 - Tušilje/Tushila—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Ćirez/Qirez—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; persecutions (sexual assault) as a crime against humanity;
- Kosovska Mitrovica/Mitrovica

- Kosovska Mitrovica/Mitrovica town—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Žabare/Zhabar—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Vučitrn/Vushtrria
 - Vučitrn/Vushtrria town— other inhumane acts (forcible transfer) as a crime against humanity; persecution (destruction of or damage to religious property) as a crime against humanity;
 - Convoy near Gornja Sudimlja/Studimja e Epërme—deportation as a crime against humanity; other inhumane acts (forcible transfer), as a crime against humanity; murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity;
- Priština/Prishtina
 - Priština/Prishtina town—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Gnjilane/Gjilan
 - Žegra/Zhegra—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Vladovo/Lladova—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Vlačica/Llashtica—persecution (destruction of or damage to religious property) as a crime against humanity;
 - Prilepnica/Përlepnicë—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Uroševac/Ferizaj
 - Sojevo/Sojeva—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Mirosavlje/Mirosala—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Staro Selo—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Kačanik/Kaçanik
 - Kotlina/Kotllina—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Kačanik/Kaçanik—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Dubrava/Lisnaja—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity.

789. Pavković is not responsible for all other charges alleged in the Indictment, subject to the final paragraph of the Judgement.

790. Nebojša Pavković is, therefore, guilty of counts 1 through 5 of the Indictment to the extent specified above.

G. INDIVIDUAL CRIMINAL RESPONSIBILITY OF VLADIMIR LAZAREVIĆ

1. The Accused

791. The Accused Vladimir Lazarević was born on 23 March 1949 in the town of Grnčar in Babušnica municipality, Serbia.¹⁹⁹⁰ After holding numerous positions in the JNA and the VJ, he was appointed Chief of Staff of the Priština Corps in January 1998.¹⁹⁹¹ On 25 December 1998 Lazarević was appointed Commander of the Priština Corps and remained in that position until 28 December 1999, when he was appointed Chief of Staff of the 3rd Army.¹⁹⁹² Subsequently, on 13 March 2000, he was appointed Commander of the 3rd Army, and in early 2002 he became the Assistant for Ground Forces within the General Staff of the VJ.¹⁹⁹³ His military career ended on 5 October 2004 at his personal request.¹⁹⁹⁴ Lazarević was promoted to the rank of Lieutenant-General in June 1999 and to the rank of Colonel-General on 30 December 2000.¹⁹⁹⁵

2. Charges in Indictment

792. According to the Indictment, as of 6 January 1999 at the latest, Vladimir Lazarević, as Commander of the Priština Corps, bore full responsibility for operations conducted by units of the Priština Corps and units attached to it, and exercised command authority or control over MUP units subordinated to, or operating in co-operation or co-ordination with, the Priština Corps, as well as other structures.¹⁹⁹⁶ The Prosecution claims that Lazarević's intention to participate in the joint criminal enterprise can be inferred from his actions, including his orders and his participation in co-ordination bodies such as the Joint Command, and submits that Lazarević knew that the heavy-handed tactics employed by the forces of the FRY and Serbia in operations in 1998 led to the commission of crimes against the ethnic Albanian civilian population. Throughout the Indictment

¹⁹⁹⁰ Vladimir Lazarević, T. 17735–17736, 17739–17745 (6 November 2007); P950 (Vladimir Lazarević interview with the Prosecution), p. 7.

¹⁹⁹¹ Vladimir Lazarević, T. 17740–17741 (6 November 2007); P950 (Vladimir Lazarević interview with the Prosecution), pp. 14–15. *See also* 5D1324 (Order of the VJ General Staff appointing Lazarević as Chief of Staff of the PrK, 12 January 1998); P801 (Report on the take-over of the duty of PrK Commander by Vladimir Lazarević, 28 December 1998); Nike Peraj, P2248 (witness statement dated 18 April 2000), paras. 5–6.

¹⁹⁹² Vladimir Lazarević, T. 17735–17736, 17739–17745 (6 November 2007); P801 (Report on the take-over of the duty of PrK Commander by Vladimir Lazarević, 28 December 1998).

¹⁹⁹³ Vladimir Lazarević, T. 17735–17736, 17739–17745 (6 November 2007); P950 (Vladimir Lazarević interview with the Prosecution), pp. 14–15.

¹⁹⁹⁴ Vladimir Lazarević, T. 17745 (6 November 2007).

¹⁹⁹⁵ Vladimir Lazarević, T. 17735–17736, 17739–17745 (6 November 2007).

¹⁹⁹⁶ Indictment, paras. 13, 58.

period, he continued to engage the same units and employ the same tactics, demonstrating his approval of the crimes and his intent to commit them. The Prosecution also argues that, although Lazarević had the power to do so, he deliberately refrained from intervening against the perpetrators of crimes because he intended these crimes to occur.¹⁹⁹⁷ Finally, according to the Prosecution, Lazarević significantly contributed to the joint criminal enterprise by participating in the incorporation of volunteers into the Priština Corps.¹⁹⁹⁸

793. On this basis, he is charged with planning, instigating, ordering, or otherwise aiding and abetting in the planning, preparation, or execution of the crimes alleged in the Indictment, and with participating in the joint criminal enterprise discussed above. Lazarević is further charged with responsibility as a superior for the crimes committed by his subordinates, pursuant to Article 7(3) of the Statute.¹⁹⁹⁹

794. The Lazarević Defence refutes these averments and argues that the Prosecution has failed to prove that Lazarević had the intent to contribute to the realisation of the plan by his acts or his negligence, and has not shown that he was aware of the existence of a criminal plan directed towards the civil population.²⁰⁰⁰

795. The Chamber has concluded in Section VII above that the forces of the FRY and Serbia committed crimes directed against the Kosovo Albanian civilian population in many of Kosovo's municipalities, from March to June 1999. This section will therefore address the question of whether Lazarević is responsible for any of these crimes, under the various modes of liability alleged in the Indictment.

3. Lazarević's appointment as Chief of Staff and Commander of the Priština Corps

796. The Prosecution submits that in 1998 several VJ officers who denounced the use of the VJ outside of the established chain of command in combat operations in Kosovo were removed by Milošević and Milutinović, and replaced by more compliant individuals. It adds that, by being appointed Priština Corps Commander, Lazarević was placed in a key position from which he could contribute to the joint criminal enterprise.²⁰⁰¹ According to the Lazarević Defence, the fact that Perišić, who became one of Milošević's opponents in 1998, appointed Lazarević as Chief of Staff within the Priština Corps at the end of 1997, and suggested to Milošević in June 1998 that

¹⁹⁹⁷ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 953–956.

¹⁹⁹⁸ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 924.

¹⁹⁹⁹ Indictment, para. 22.

²⁰⁰⁰ Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 849–851, 951.

²⁰⁰¹ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 80.

Lazarević be promoted from the rank of Colonel to the rank of General, demonstrates that the Prosecution submission is not substantiated.²⁰⁰²

797. Lazarević was appointed Chief of Staff of the Priština Corps at the end of 1997 by the then Chief of the General Staff Perišić.²⁰⁰³ On 9 June 1998 Perišić pointed out, during a session of the Supreme Defence Council, that Lazarević was “a very capable senior officer who proved his high qualities in the most difficult situations”, and therefore suggested to Milošević that he be promoted to the rank of General. No one objected to Perišić’s suggestion which was therefore approved.²⁰⁰⁴ At the eighth session of the SDC on 25 December 1998, Ojdanić, as Chief of the General Staff, proposed that Lazarević be appointed as Commander of the Priština Corps.²⁰⁰⁵ No objections were made regarding the suggested promotion of Lazarević.²⁰⁰⁶ Although criticisms were voiced at this meeting about the activities of the Priština Corps in Kosovo, these arose in the discussion of Pavković’s appointment. Following the SDC session, Milošević issued a Presidential decree appointing Lazarević as Commander of the Priština Corps on 28 December 1998.²⁰⁰⁷ On 9 January 1999 Lazarević took over Pavković’s former position as Commander of the Priština Corps, on Pavković taking over Dušan Samardžić’s position as Commander of the 3rd Army.²⁰⁰⁸ During his testimony, Lazarević stressed that the procedure followed for his appointment as Commander of the Priština Corps in December 1998 was the normal procedure for appointments to such positions.²⁰⁰⁹

798. The Trial Chamber is satisfied that the appointment of Lazarević as Commander of the Priština Corps was effected in accordance with the normal *de jure* procedures. Noting that Lazarević’s professionalism was praised by Perišić in June 1998 and that, unlike the appointments of Ojdanić and Pavković to succeed Perišić and Samardžić respectively, there was no specific controversy surrounding Lazarević’s appointment, the Chamber finds that the evidence does not support the Prosecution’s submission that Lazarević was appointed Priština Corps Commander because he was “more compliant” than other VJ officers. The reasons for Lazarević being

²⁰⁰² Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 598–599. *See also* paras. 600–604.

²⁰⁰³ Vladimir Lazarević, T. 17736 (6 November 2007); 5D1324 (Order from the Chief of the General Staff, 12 January 1998). *See also* 5D1323 (Order from the Chief of the General Staff, 30 December 1997).

²⁰⁰⁴ 1D760 (Shorthand notes of 5th SDC session, 9 June 1998), pp. 14–15. *See also* Aleksandar Dimitrijević, T. 26743–26444 (9 July 2008); 5D1325 (Lazarević’s report on transfer of duties, 26 June 1998).

²⁰⁰⁵ P1000 (Minutes of 8th SDC session, 25 December 1998), pp. 5–7.

²⁰⁰⁶ P1000 (Minutes of 8th SDC session, 25 December 1998), pp. 1, 5–9; 1D761 (Shorthand notes of 8th SDC session, 25 December 1998), pp. 3, 13–21. Unlike with the suggested promotion of Pavković, Milo Đukanović did not express any opinion as to Lazarević’s promotion.

²⁰⁰⁷ 4D35 (FRY President Decree on appointment of Nebojša Pavković, 28 December 1998); P801 (Report on the take-over of the duty of PrK Commander by Lazarević, 9 January 1999). *See* Order on Agreed Facts, 11 July 2006, p. 14.

²⁰⁰⁸ P801 (Report on the take-over of the duty of PrK Commander by Vladimir Lazarević, 9 January 1999). P800 (Report on the take-over of the duty of 3rd Army Commander by Nebojša Pavković, 13 January 1999); P802 (Report on the hand-over of the duty of 3rd Army Commander by Dušan Samardžić, 13 January 1999).

²⁰⁰⁹ Vladimir Lazarević, T. 17744–17745 (6 November 2007).

appointed as the Commander of the Priština Corps were his experience, particularly as Chief of Staff of the Priština Corps, and his qualities as an officer.

4. Lazarević as Chief of Staff of the Priština Corps in 1998

a. Lazarević and joint operations

799. The Prosecution argues that Lazarević participated in the Joint Command and contributed to its work. It points out that he attended Joint Command meetings in 1998, and submits that the Slup/Sllup and Vokša/Voksh action conducted in August 1998 illustrates Lazarević's contribution to Joint Command operations.²⁰¹⁰ The Lazarević Defence submits that Lazarević signed the decision for this operation only because Pavković was away at that time and stresses that it had already been approved by Samardžić and Perišić.²⁰¹¹

i. Lazarević's involvement in joint operations

800. As Pavković's Chief of Staff of the Priština Corps, Lazarević served as a link between the heads of the Priština Corps organs and the Commander, and served as his Deputy Commander.²⁰¹² The two were in regular contact throughout 1998, as discussed in Section VI.A. At the time, Lazarević was present at the Forward Command Post constantly, and remained there until October 1998.²⁰¹³ He was also in contact with Samardžić, as the Forward Command Post had a direct telephone line with the 3rd Army Command. The Forward Command Post also had a direct telephone line with Perišić, the then Chief of the General Staff.²⁰¹⁴ Perišić often phoned Lazarević at the Forward Command Post in order to obtain a personal briefing on the situation at the border.²⁰¹⁵ Furthermore, Lazarević met with Perišić when the latter came for three days to the border with a team composed of a dozen officers to verify the state of combat readiness in August 1998.²⁰¹⁶

²⁰¹⁰ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 933.

²⁰¹¹ Lazarević Final Trial Brief, 29 July 2008 (public version), para. 555.

²⁰¹² P950 (Vladimir Lazarević interview with the Prosecution), pp. 20–21; P982 (Instructions to the 4th Corps Command), p. 16.

²⁰¹³ P950 (Vladimir Lazarević interview with the Prosecution), p. 92; *see also* Vladimir Lazarević, T. 17809 (6 November 2007), T. 17823 (7 November 2007); Milorad Obradović, T. 15044 (5 September 2007); Goran Jevtović, 5D1385 (witness statement dated 24 December 2007), para. 4; Dragan Živanović, T. 20617–20618 (18 January 2008); Milan Kotur, T. 20629 (18 January 2008).

²⁰¹⁴ Goran Jevtović, 5D1385 (witness statement dated 24 December 2007), para. 6.

²⁰¹⁵ Goran Jevtović, 5D1385 (witness statement dated 24 December 2007), para. 6. *See also* Vladimir Lazarević, T. 17809 (6 November 2007).

²⁰¹⁶ Vladimir Lazarević, T. 18297 (14 November 2007).

801. Lazarević testified that in April 1998 he was personally ordered by the 3rd Army Commander, Samardžić, to take a group of officers from the Priština Corps Command to the Forward Command Post in Đakovica/Gjakova and to co-ordinate from there the actions of the Priština Corps forces in securing and defending the state border.²⁰¹⁷ Samardžić considered that, because of the complex situation in the border area between Albania and Kosovo, a group of officers from the Priština Corps Command was required at the Forward Command Post “to monitor the situation and to command units in the general Đakovica sector more effectively”.²⁰¹⁸

802. Several joint operations were conducted in Kosovo during the second half of 1998.²⁰¹⁹ As explained above, according to Samardžić’s order of 20 April 1998, Lazarević, as Chief of Staff of the Priština Corps, had the responsibility to monitor the situation at the border area between Albania and Kosovo.²⁰²⁰ The evidence regarding Lazarević’s involvement in joint operations conducted in the border area when he was at the Forward Command Post in 1998 is limited to the evidence pertaining to the Slup/Sllup and Vokša/Voksh operation. The Chamber has already established that this operation was discussed during a Joint Command meeting on 13 August 1998 and its plan was prepared by the Priština Corps Command in advance of this Joint Command meeting.²⁰²¹ Lazarević’s order of 14 August 1998 contained a clause stipulating that the units engaged in the sector of the Slup/Sllup and Vokša/Voksh villages were to be “commanded by the Joint Command for Kosovo and Metohija”. The VJ and MUP chains of command remained separate on the ground. Lazarević testified that he was at the Forward Command Post from whence he monitored the action.²⁰²²

803. In light of this evidence, the Chamber finds that Lazarević contributed to the implementation of joint operations conducted in the border area between Albania and Kosovo during the second half of 1998. Lazarević’s responsibility for issuing Joint Command orders in 1999 will be examined below.

ii. Lazarević’s participation in Joint Command meetings

804. The evidence indicates that in 1998 Lazarević attended Joint Command meetings on only five occasions:²⁰²³ one meeting in August and four meetings in September 1998.²⁰²⁴ Lazarević

²⁰¹⁷ Vladimir Lazarević, T. 17808 (6 November 2007).

²⁰¹⁸ 4D380 (Order from the 3rd Army Command, 20 April 1998).

²⁰¹⁹ See Section VI.C.

²⁰²⁰ 4D380 (Order from the 3rd Army Command, 20 April 1998).

²⁰²¹ See Section VI.E.

²⁰²² Vladimir Lazarević, T. 18297 (14 November 2007).

²⁰²³ See Section VI.E.

confirmed in court that he was present at these meetings.²⁰²⁵ He added that, although he was in Priština/Prishtina in late October 1998, he did not attend any meetings at that time.²⁰²⁶ The Notes record Lazarević as having spoken at only three of these meetings.²⁰²⁷ During his testimony, Lazarević explained that during the meeting on 18 September 1998 all the participants were interested in “hearing [him] say firsthand what was happening at the border”. He informed them about the “dramatic situation” there.²⁰²⁸ The topics discussed during the meetings attended by Lazarević will be dealt with below.

805. Although Lazarević attended some of the Joint Command meetings held in Priština/Prishtina between July and October 1998, the Chamber does not conclude that, through his attendance at these meetings, he was fully informed about what was happening in Belgrade at that time, nor that he was able to appreciate during these meetings the influence exerted by the Joint Command over the MUP and VJ in respect of the implementation of the various stages of the Plan for Combating Terrorism. The Chamber notes that Lazarević did not go to Belgrade in 1998, nor did he attend meetings in the capital.²⁰²⁹ In light of Lazarević’s remoteness from both Priština/Prishtina and Belgrade in 1998, the fact that he was not part of the Collegium of the Chief of General Staff, and the absence of any evidence indicating knowledge, the Chamber does not consider it established that Lazarević was aware of the clashes that existed at that time between Pavković, Samardžić, and Perišić.

b. Lazarević’s knowledge of crimes committed by VJ and MUP units in 1998

806. The Prosecution argues that Lazarević knew that the heavy-handed tactics employed by the forces of the FRY and Serbia in operations in 1998 led to the commission of crimes against the Kosovo Albanian civilian population. Moreover, according to the Prosecution, Lazarević knew of the massive displacement of the civilian population through the VJ reporting system, the relevant UN Security Council Resolutions, reports by international human rights organisations, and his

²⁰²⁴ P1468 (Notes of the Joint Command), pp. 68–70 (23 August 1998); pp. 117–119 (17 September 1998); pp. 119–120 (18 September 1998); pp. 121–122 (19 September 1998); pp. 124–125 (21 September 1998); *see also* Vladimir Lazarević, T. 18455–18467 (16 November 2007).

²⁰²⁵ Vladimir Lazarević, T. 18455–18467 (16 November 2007).

²⁰²⁶ Vladimir Lazarević, T. 17819 (7 November 2007).

²⁰²⁷ P1468 (Notes of the Joint Command), p. 68 (23 August 1998), p. 121 (19 September 1998), pp. 124–125 (21 September 1998).

²⁰²⁸ Vladimir Lazarević, T. 17817–17819 (7 November 2007).

²⁰²⁹ Vladimir Lazarević, T. 18134 (12 November 2007).

frequent contacts with the representatives of the international community in Kosovo.²⁰³⁰ The Lazarević Defence argues that he did not know that VJ members had committed crimes in 1998.²⁰³¹

807. Several joint operations were conducted in the border area between Albania and Kosovo at the time when Lazarević was at the Forward Command Post. Looking to examples from areas where crimes are alleged to have been committed in 1998 by VJ forces, the Chamber has found that MUP and VJ forces used excessive or disproportionate force on some occasions in Kosovo. VJ forces caused excessive destruction near Glodane/Gllogjan in late August 1998 and October 1998; VJ and MUP forces used excessive force in Mališevo/Malisheva at the end of July 1998, and again in Drenica at the end of July and start of August 1998. The Chamber has found that a significant number of Kosovo Albanians were displaced by the ongoing conflict between the KLA and the forces of the FRY and Serbia by late 1998, and that this was in part caused by the excessive or disproportionate uses of force by the VJ and MUP in 1998.²⁰³²

808. While these incidents were occurring, Lazarević was closely following events on the ground in Kosovo. He explained that the main tasks of the Forward Command Post, where he was located during most of 1998, were to monitor the situation at the state border and report to the Corps Command, to propose measures for securing the border and preventing the escalation of “terrorist” activities coming from Albania, to visit and control the Priština Corps units on a daily basis, and to co-ordinate their activities.²⁰³³ Lazarević was present at a meeting of the VJ leadership on 7 August, when Samardžić stated specifically that fighting terrorism by torching was “a disgrace”.²⁰³⁴ Subsequently, during a Joint Command meeting held on 21 September 1998, attended by Lazarević, Šainović recognised the “humanitarian catastrophe” in Kosovo. To address the Kosovo problem he stressed that actions were to be carried out “in a disciplined manner, in order to avoid arson” and he continued that they had to “destroy their determination for struggle”.²⁰³⁵

809. Two days later, UN Security Council Resolution 1199 expressed serious concern “at the recent intense fighting in Kosovo in particular the excessive and indiscriminate use of force by Serbian security forces and the Yugoslav Army which ha[d] resulted in numerous civilian casualties and, according to the estimate of the Security-General, the displacement of over 230,000

²⁰³⁰ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 954, 957–959.

²⁰³¹ Lazarević Final Trial Brief, 29 July 2008 (public version), para. 642.

²⁰³² See Section VI.C.

²⁰³³ See Section VI.A.

²⁰³⁴ 4D97 (Minutes from the briefing of the commanders of the PrK and 3rd Army, 7 August 1998), p. 3.

²⁰³⁵ P1468 (Notes of the Joint Command), p. 119 (18 September 1998), p. 125 (22 September 1998).

persons from their homes”.²⁰³⁶ Based on the fact that Lazarević was later involved in the implementation of obligations imposed on the VJ under the October Agreements and the fact that these agreements were expressly based on Resolution 1199, the Chamber is satisfied that he was aware of the resolution and its contents.

810. Lazarević discussed the large number of displaced Kosovo Albanians and their return during meetings of the Joint Command. On 17 September 1998 it was explained that 10,000 civilians had been located close to the border and that some of them were planning to cross the border.²⁰³⁷ The agenda for the meeting held on 18 September 1998 indicates that those present discussed the “refugee” issue. Lazarević stated that there were reports from Montenegro about the return of “refugees”. Radović stated that 3,000 people were to be expected in the area of Jezerce. Matković informed those present that around 10,000 “refugees” needed to be taken care of in three other villages.²⁰³⁸ On 19 September 1998 Šainović stated that daily reports about the location of “refugees” were needed and instructed that two persons should report daily about the return of “refugees”.²⁰³⁹

811. A number of Priština Corps documents also have a bearing on Lazarević’s awareness of the commission of crimes. On 5 June 1998 the Priština Corps Command sent an order containing “measures to increase the level of combat readiness” to the Command at the Forward Command Post in Đakovica/Gjakova. The order stated that unit commanders were to prevent individuals and units from entering populated places and damaging the property of citizens, and to prevent theft of property of the citizens of “Šiptar nationality”; it further instructed that all property that had been stolen should immediately be returned.²⁰⁴⁰

812. On 10 July 1998 Lazarević issued an order on the protection of representatives of monitoring missions and humanitarian organisations to Kosovo.²⁰⁴¹ He informed the units of the fact that, due to the visit of international observers to the area of responsibility of the Priština

²⁰³⁶ P456 (UNSC Resolution 1199, 23 September 1998); *see also* P455 (UNSC Resolution 1160, 31 March 1998); P433 (UNSC Resolution 1244, 10 June 1999).

²⁰³⁷ P1468 (Notes of the Joint Command), p. 117. Pavković, Lazarević, Šainović, Lukić, Radović, and Davidović were present at the meeting. The Notes specified that Matković was absent.

²⁰³⁸ Vladimir Lazarević, T. 18463–18464 (16 November 2007); P1468 (Notes of the Joint Command), pp. 119–121. Lazarević, Đorđević Radović, Anđelković, and Matković were present at the meeting; the Notes specified that Šainović, Mijač, and Lukić were absent.

²⁰³⁹ Vladimir Lazarević, T. 18455–18457 (16 November 2007); P1468 (Notes of the Joint Command), pp. 121–123. Minić and Matković were absent. Pavković, Lazarević, Šainović, Đorđević, and Radović were present at the meeting.

²⁰⁴⁰ P1011 (Ivan Marković, ed., *The Application of Rules of the International Law of Armed Conflicts* (2001)), p. 47; P2098 (PrK Forward Command Post Order on measures for increasing combat readiness, 5 June 1998).

²⁰⁴¹ P969 (Order from the PrK Command on visit of diplomatic and monitoring mission representatives to Kosovo, 10 July 1998). *See also* Miodrag Simić, T. 15562 (13 September 2007); 4D231 (Order of the PrK re support of MUP, 20 July 1998), p. 1; 4D177 (Order of the PrK, 7 July 1998).

Corps, the Albanian “terrorist” forces were “taking advantage of the circumstances and [were] trying to provoke VJ units”. He ordered that VJ units should not open fire if international observers were present, but that if it was required to fire, the VJ should not use excessive force and only open fire “from the same kind of weapons”.²⁰⁴² Lazarević testified that this order was meant to protect international observers.²⁰⁴³

813. Some of the evidence presented at trial indicates that the KLA provoked VJ units. For example, the KVM pointed to this problem in a report in 1999, stating: “Over reaction by Serb forces will also be the intention of the KLA – again utilising the power of the media coverage”.²⁰⁴⁴ In the Chamber’s view, Lazarević’s order of 10 July 1998 demonstrates that he knew of the risk that Priština Corps units would “over-react” to KLA provocations and thereby commit crimes. Consequently, the Chamber does not accept the explanation that the order not to fire on areas when international observers were present was designed to protect international observers, and considers rather that it was an effort to avoid the detection of VJ criminal conduct.

814. On 20 July 1998 the Priština Corps Command sent another order to subordinate units, explaining that there had recently been “a few instances” in which, “without the approval from the Corps Command”, Priština Corps units had been engaged to support MUP units in combat operations against Albanian “terrorist” forces. The Priština Corps stressed that such actions could result in “an uncontrolled fire at buildings housing civilians or at individuals not involved in combat operations”.²⁰⁴⁵ An order of 7 August 1998, signed by Pavković and sent to *inter alia* the Forward Command Post, establishes that Lazarević was aware of instances of use of excessive force in 1998 as well as acts of looting being committed by members of Priština Corps units. In this order the Priština Corps Command condemned the fact that some units overused combat equipment during last operations, “the consequence of which was greater damage to buildings in areas of combat operations”. It specifically noted that a large number of houses had been destroyed and torched. The Corps Command considered these actions to be “reckless actions of irresponsible individuals and groups”. The Priština Corps Command, therefore, ordered that combat equipment be used very rationally during operations against Albanian “terrorist” forces, that torching of

²⁰⁴² P969 (Order from the PrK Command on visit of diplomatic and monitoring mission representatives to Kosovo, 10 July 1998), p. 1.

²⁰⁴³ Vladimir Lazarević, T. 17841–17842 (7 November 2007). *See also* Goran Jevtović, 5D1385 (witness statement dated 24 December 2007), paras. 16–18.

²⁰⁴⁴ P680 (OSCE/KVM Fusion Working Papers). The Chamber also notes that, during the 29 October 1998 meeting at Beli Dvor in Belgrade, Perišić strongly recommended that the VJ do “everything possible to avoid being provoked by terrorists who will stage various incidents for foreign observers in order to have [the VJ] subjected to new pressures”. P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), p. 11.

²⁰⁴⁵ 4D231 (Order of the PrK re support of MUP, 20 July 1998), p. 1.

houses and other economic and auxiliary buildings be forbidden, that stolen goods be returned, and that disciplinary and criminal measures would be taken against individuals breaching the order.²⁰⁴⁶

815. Regarding the killing of civilians in the village of Gornje Obrinje/Abria e Epërme in Glogovac/Gllogoc municipality in October 1998, Lazarević stated that in late 1998 he had heard from the media that heavy weapons were used against civilians there.²⁰⁴⁷ He was also aware of an order issued by Pavković to all units to report back about media allegations concerning the incident.²⁰⁴⁸ Lazarević sent a report to Pavković on 5 October 1998 summarising these reports and stating that VJ units did not commit a massacre, but that there was no reliable information about the MUP.²⁰⁴⁹ A document dated 5 October 1998 indicates that Pavković was informed about information sent from the Security Department of the Priština Corps to the Security Administration of the VJ General Staff, 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.²⁰⁵⁰ Lazarević further explained that he heard in the media that in the second half of 1998 disproportionate force had been used in Gornje Obrinje/Abria e Epërme. According to him, the Priština Corps Command ordered in the following days that this matter be investigated to determine whether the VJ was involved.²⁰⁵¹ Although Lazarević knew of the killings of civilians and the alleged involvement of the MUP and VJ in this incident, the evidence does not show that he knew of VJ responsibility for these killings.

816. The Chamber takes note of Lazarević's testimony that, during an official meeting between the KVM and the FRY/Serbian liaison team, it was stated that there had been use of disproportionate force by the VJ on 8 January 1999 in Slapuzhane/Slapuzhan village, where a tank projectile had been fired. He explained that, apart from the information he received during this meeting, he did not receive any other information about the excessive use of force from the KVM.²⁰⁵² As regards what had occurred in the Slapuzhane/Slapuzhan village, Lazarević was of the view that a team from the Priština Corps Command had conducted an investigation.²⁰⁵³

²⁰⁴⁶ 4D201 (Order of the PrK prohibiting destruction, 7 August 1998), p. 1. *See also* 4D375 (Order of the PrK re prevention of theft, 18 August 1998).

²⁰⁴⁷ Vladimir Lazarević, T. 18561 (19 November 2007).

²⁰⁴⁸ Vladimir Lazarević, T. 18489 (16 November 2007). *See* P1440 (PrK Report on incidents resulting in death, 5 October 1998).

²⁰⁴⁹ 4D401 (Report from PrK Chief of Staff to PrK Commander, 5 October 1998).

²⁰⁵⁰ P1440 (PrK Report on incidents resulting in death, 5 October 1998), p. 4.

²⁰⁵¹ Vladimir Lazarević, T. 18562 (19 November 2007).

²⁰⁵² Vladimir Lazarević, T. 18561 (19 November 2007).

²⁰⁵³ Vladimir Lazarević, T. 18844–18845 (22 November 2007).

817. The evidence above indicates that Lazarević was aware of the fact that crimes were committed against civilians and civilian property during operations conducted by the VJ and the MUP in 1998. He also knew that this had resulted in the displacement of a significant number of civilians. This evidence also demonstrates that in 1998 Lazarević issued written orders instructing the VJ to prevent the commission of crimes against civilians and to ensure that civilians returned to their villages.

5. Lazarević as Commander of the Priština Corps in 1999

a. Lazarević's duties and powers as Commander of the Priština Corps

818. The Priština Corps Commander had the duty to command the Corps, based upon the law and regulations, on authorisations received from his superior officer, and in line with the Instructions for the Internal Organisation of the Corps.²⁰⁵⁴ He also 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.²⁰⁵⁵ In addition, the Priština Corps Commander had to oversee and analyse the performance, order, and discipline of the Priština Corps.²⁰⁵⁶ He was obliged to discipline any subordinate failing to execute an order due to indiscipline.²⁰⁵⁷ As noted in Section VI.A, Lazarević had a command staff at his disposal with full information as to the location of the various units of the Priština Corps in Kosovo. This staff included departments for operations and training, intelligence, and security, and throughout the NATO bombing, although there were some disruptions in the communications system, the Priština Corps Command functioned continuously.²⁰⁵⁸

819. It is established that following his appointment as Commander of the Priština Corps, Lazarević had both *de jure* and *de facto* authority over members of Priština Corps units throughout the NATO air campaign. From 8 April 1999, the Priština Military District was subordinated to the Priština Corps, placing all military territorial detachments under Lazarević's command.²⁰⁵⁹ Although the MUP units were not resubordinated to the VJ, there was still a high-level of co-

²⁰⁵⁴ P987 (Regulations on the responsibilities of the land army corps command in peacetime, 1990), article 9; *see also* P982 (Instructions to the 4th Corps Command).

²⁰⁵⁵ P982 (Instructions to the 4th Corps Command), p. 14.

²⁰⁵⁶ P1078 (Annual analysis of performance, order, discipline inside the PrK, 28 December 1998), p. 1.

²⁰⁵⁷ 4D532 (VJ Rules of Service, 1 January 1996), p. 11, rule 36.

²⁰⁵⁸ Momir Stojanović, T. 19733–19734 (6 December 2007); Dragiša Marinković, 5D1379 (witness statement dated 6 December 2007), para. 9; Milutin Filipović, T. 19232–19233 (28 November 2007).

²⁰⁵⁹ Vladimir Lazarević, T. 18780 (22 November 2007).

operation or co-ordination between the forces of the FRY and Serbia, which enabled them to carry out joint operations in Kosovo during the Indictment period.²⁰⁶⁰

b. Lazarević and joint operations in 1999

820. The Prosecution submits that, on its face, the spring offensive in March 1999 was a legitimate operation against the KLA; however, its true purpose was the commission of crimes against Kosovo Albanians, including widespread forcible displacement.²⁰⁶¹ Once the NATO bombing began, the spring offensive was implemented down both the VJ and MUP chains of command through a series of Joint Command orders.²⁰⁶² By April 1999 VJ and MUP units were conducting large-scale combat operations across Kosovo.²⁰⁶³ During some of these operations, crimes alleged in the Indictment, including the massive displacement of Kosovo Albanian civilians were committed.²⁰⁶⁴ The Prosecution adds that Lazarević commanded, planned, and ordered the activities of the Priština Corps Command and its subordinate units during the operations conducted in Kosovo during the indictment period. Lazarević also co-ordinated joint VJ and MUP operations in 1999.²⁰⁶⁵

821. However, according to the Lazarević Defence, the orders for the joint operations conducted at the end of March and mid-April 1999 were fully legitimate.²⁰⁶⁶ In particular, it points out that, at the beginning of the year 1999, it was obvious to the security organs of the VJ that the KLA was mobilising its forces and that it was preparing for an offensive. It was, therefore, necessary for the VJ to take measures.²⁰⁶⁷ The Lazarević Defence concludes that Lazarević “exclusively participated in planning of use of his units in defence from NATO aggression and in planning of legitimate actions against KLA, pursuant to law and military doctrine.”²⁰⁶⁸

822. The Chamber has concluded in Section VII that starting in March 1999, while the VJ and MUP launched its offensive against the KLA and NATO, the VJ and MUP forces in Kosovo also launched a widespread and systematic campaign of forcible displacement against the civilian population, which continued until the VJ and MUP were forced to withdraw from Kosovo in June 1999.

²⁰⁶⁰ See Section VI.E.

²⁰⁶¹ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 267, 954.

²⁰⁶² Prosecution Final Trial Brief, 29 July 2008 (public version), para. 265.

²⁰⁶³ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 266.

²⁰⁶⁴ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 262.

²⁰⁶⁵ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 924.

²⁰⁶⁶ Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 640–648.

²⁰⁶⁷ Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 605–618.

²⁰⁶⁸ Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 885; *see also* paras. 859, 870.

823. Two large-scale plans—the *Grom 3* and *Grom 4* plans—were prepared within the VJ in January and then in April 1999. The General Staff issued the *Grom 3* plan, which outlined defence plans against NATO as well as offensive plans against the KLA in the interior of Kosovo, on 16 January 1999.²⁰⁶⁹ On 27 January 1999 Pavković, then Commander of the 3rd Army, issued the *Grom 3* order for the use of the 3rd Army in Kosovo in co-ordination with the MUP,²⁰⁷⁰ and on 1 February 1999 Pavković issued a further order to draft a plan for blocking and destroying Albanian terrorist forces in the Drenica, Lab/Llap, and Mališevo/Malisheva sectors, again in co-ordination with the MUP.²⁰⁷¹

824. The Priština Corps Command issued its own *Grom 3* order to all the Corps units on 7 February 1999.²⁰⁷² On 16 February 1999 it also issued an order for the elimination of Albanian “terrorist” forces in the sector of Malo Kosovo, Drenica, and Mališevo/Malisheva.²⁰⁷³ Lazarević testified that this order was planned in co-ordination with the MUP.²⁰⁷⁴ The 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.²⁰⁷⁵ The three areas mentioned by Lukić were broadly the same ones as those referred to in the Priština Corps *Grom 3* order. Moreover, the 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 22nd PJP, 35th PJP, 37th PJP, the SAJ, and the JSO.²⁰⁷⁶ This evidence indicates that, pursuant to 3rd Army orders, Lazarević and the Priština Corps Command planned the joint operations that were to be conducted at the end of March 1999 in co-operation with the MUP: the VJ and the MUP communicated and exchanged information during the

²⁰⁶⁹ 3D690 (VJ General Staff Directive for the engagement of the VJ, *Grom 3* Directive, 16 January 1999).

²⁰⁷⁰ 5D245 (*Grom 3* Order of the 3rd Army Command, 27 January 1999), pp. 3, 5– 7. The order included tasks for the Priština Corps, specifying *inter alia* that, in a first phase, the Priština Corps was to “continue strengthening the depth security of the state border towards the Republics of Albania and Macedonia, prevent landings, forced 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 to “prevent infiltration of sabotage and terrorist forces from the Republic of Albania, break up and destroy the NATO brigade and ŠTS in Kosovo and Metohija” in co-operation with the MUP forces.

²⁰⁷¹ 5D249 (Order of the 3rd Army, 1 February 1999), p. 2. See also Vladimir Lazarević, T. 17900–17902, 17905–17906 (8 November 2007).

²⁰⁷² Vladimir Lazarević, T. 17905 (8 November 2007).

²⁰⁷³ P2808 (Order of the PrK, 16 February 1999).

²⁰⁷⁴ Vladimir Lazarević, T. 17917–17918 (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 (8 November 2007).

²⁰⁷⁵ 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.

²⁰⁷⁶ P2808 (Order of the PrK, 16 February 1999).

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.²⁰⁷⁷

825. At the end of March 1999 major joint operations were conducted pursuant to Joint Command orders in the areas of Podujevo/Podujeva,²⁰⁷⁸ Malo Kosovo,²⁰⁷⁹ Donja Drenica,²⁰⁸⁰ Orahovac/Rahovec, Suva Reka/Suhareka, and Velika Kruša/ Krusha e Madhe,²⁰⁸¹ Drenica,²⁰⁸² and in the general area of Mališevo/Malisheva.²⁰⁸³ 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.²⁰⁸⁴ The areas where these joint operations were carried out correspond with the three larger sectors referred to in the Priština Corps Command order of 16 February 1999.²⁰⁸⁵ In that order, the Priština Corps Command informed subordinate units that the “terrorists” had re-organised: “they have equipped themselves with modern weapons and combat equipment and have trained to continue their armed combat against the defence forces of the FRY”. The order also stated that the biggest “terrorist” strongholds were the areas of Malo Kosovo, Drenica, Mališevo/Malisheva, and Šalja/Shala i Bajgora and that there were approximately 6,800 “terrorists” in these areas.²⁰⁸⁶ The subordinate units were instructed to eliminate Albanian “terrorist” forces and to prevent them from infiltrating from Albania and Macedonia. The Joint Command order issued on 23 March 1999 for joint operations to be carried out in Prizren, Suva

²⁰⁷⁷ See Section VI.E.

²⁰⁷⁸ P3049 (Joint Command Order, 19 March 1999); 5D1357 (Combat report of PrK to 3rd Army, 25 March 1999).

²⁰⁷⁹ P1966 (Joint Command Order, 22 March 1999).

²⁰⁸⁰ P2031 (Joint Command Decision, 22 March 1999); P2042 (37th Motorised Brigade Operational Report to PrK, 23 March 1999), p. 1.

²⁰⁸¹ P2015 (Joint Command Order, 23 March 1999); P1981 (Order of the 549th Motorised Brigade, 23 March 1999); P1995 (Analysis of the operation of the 549th Motorised Brigade, 30 March 1999); 5D1357 (PrK Combat report to 3rd Army, 25 March 1999).

²⁰⁸² P1968 (Joint Command Order, 24 March 1999); P2043 (37th Motorised Brigade Combat Report to PrK, 25 March 1999). See also P2045 (37th Motorised Brigade Combat Report to PrK, 27 March 1999); P2046 (37th Motorised Brigade Combat Report to PrK, 28 March 1999); P2616 (War Diary of the 125th Motorised Brigade), pp. 1–9; P2042 (37th 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 3rd Army, 25 March 1999); 5D1358 (PrK Combat Report to 3rd Army, 26 March 1999).

²⁰⁸³ P1969 (Joint Command Order, 28 March 1999); See P1446 (Document sent by 3rd Army to Supreme Command Staff, 30 March 1999); P2000 (Order of the 549th Motorised Brigade, 29 March 1999); P2035 (125th Motorised Brigade Combat Report to PrK, 30 March 1999); 4D371 (PrK Combat Report to 3rd Army, 1 April 1999); P2002 (Analysis of operations of 549th Motorised Brigade, 30 March [sic] 1999).

²⁰⁸⁴ P2003 (Joint Command Order, 2 April 1999), p. 1; 5D84 (PrK Combat Report to 3rd Army, 3 April 1999); 5D85 (PrK Combat Report to 3rd Army, 4 April 1999).

²⁰⁸⁵ The Chamber notes that the Lazarević Defence argues that it was “obvious” that the Joint Command orders issued at the end of March 1999 were individual orders stemming from the Priština Corps Command order issued on 16 February 1999. Lazarević Final Trial Brief, 29 July 2008 (public version), para. 829.

²⁰⁸⁶ P2808 (Order of the PrK, 16 February 1999).

Reka/Suhareka, and Orahovac/Rahovec municipalities indicated that in the previous 15 to 20 days the KLA had increased its combat activities and attacks on VJ and MUP members.²⁰⁸⁷

826. As discussed in Section VI.E, in April 1999 another large-scale plan for the use of the VJ in Kosovo (*Grom 4*) was devised and subsequently implemented by the Priština Corps.²⁰⁸⁸ Several joint operations were carried out in mid-April 1999 pursuant to Joint Command orders in the area of Kosmač,²⁰⁸⁹ the sector of Žegovac/Zhegovc,²⁰⁹⁰ Drenica,²⁰⁹¹ Orllan-Zlas,²⁰⁹² Čičavica/Qiqavica,²⁰⁹³ Jezerce,²⁰⁹⁴ Rugovo,²⁰⁹⁵ the Bajgora–Bare area,²⁰⁹⁶ and the Zastric sector.²⁰⁹⁷

827. The Trial Chamber has already found in Section VI.E that the Priština Corps Command was the source of the Joint Command orders. In particular, the Trial Chamber notes that Lazarević has taken responsibility for the issuance of these orders. The joint operations were planned by the VJ in co-operation with the MUP. 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.

828. As explained in Section VI.E, joint operations were also carried out in May 1999 pursuant to orders of Priština Corps Command. On 4 May a second operation in the Bajgora area was ordered.²⁰⁹⁸ On 20 May the Priština Corps Command issued an order for a joint MUP/VJ action in the Radonjić Lake sector, otherwise known as “Operation *Sekač*”.²⁰⁹⁹ On 22 May the Priština Corps Command ordered a joint operation in the Palatna sector.²¹⁰⁰ Another joint operation was ordered on 25 May 1999 “in the Mt. Drenica sector”.²¹⁰¹ On 28 May the Priština Corps Command

²⁰⁸⁷ P2015 (Joint Command Order, 23 March 1999); *see also* P2808 (Order of the PrK, 16 February 1999); 3D1048 (Security Report of the 3rd Army Command, 2 March 1999), p. 2.

²⁰⁸⁸ *See* P1481 (Supreme Command Staff directive for engagement of VJ in defence against the NATO, 9 April 1999); 4D308 (3rd Army order on defence from NATO, 10 April 1999); 5D175 (Order of the PrK, 6 April 1999).

²⁰⁸⁹ P1970 (Joint Command Order, 9 April 1999).

²⁰⁹⁰ P1971 (Joint Command Order, 13 April 1999).

²⁰⁹¹ P1972 (Joint Command Order, 14 April 1999).

²⁰⁹² P1973 (Joint Command Order, 14 April 1999).

²⁰⁹³ P1974 (Joint Command Order, 15 April 1999); 5D1023 (Combat report of 37th Motorised Brigade, 19 April 1999).

²⁰⁹⁴ P1976 (Joint Command Order, 15 April 1999).

²⁰⁹⁵ P1878 (Joint Command Order, 15 April 1999); 5D194 (Information of the PrK to 3rd Army, 15 April 1999); 5D1411 (PrK Combat Report to 3rd Army and to the Supreme Command Staff, 19 April 1999); P2016 (PrK Combat report to 3rd Army and Supreme Command Staff, 25 April 1999).

²⁰⁹⁶ P1975 (Joint Command Order, 15 April 1999); P2619 (Extract from the War Diary of the 15th Armoured Brigade), pp. 10, 13–15; P2572 (War Diary of the 15th Armoured Brigade), pp. 57, 61–62; 5D220 (PrK Combat Report to 3rd Army and Supreme Command Staff, 1 May 1999); P1977 (Joint Command Order, 16 April 1999).

²⁰⁹⁷ P1977 (Joint Command Order, 16 April 1999).

²⁰⁹⁸ 6D704 (Order of the PrK, 4 May 1999), pp. 1, 5.

²⁰⁹⁹ P2011 (Order of the PrK, “Operation *Sekač*,” 20 May 1999); 5D230 (PrK IKM Combat Report to PrK, 26 May 1999).

²¹⁰⁰ 6D709 (Order of the PrK, 22 May 1999).

²¹⁰¹ P2014 (Order of the PrK, 25 May 1999).

issued another order to destroy Albanian “terrorist” forces in “the Mt. Drenica–1 sector”.²¹⁰² Another order from the Priština Corps Command to the MUP was sent on 27 May 1999. The objective of this order was to crush and destroy the Albanian “terrorist” forces in the Prekaze area.²¹⁰³

829. This evidence demonstrates that Lazarević and the Priština Corps Command significantly participated in the planning and the execution of the joint operations conducted from March to June 1999. The Priština Corps Command co-ordinated these operations with the MUP. The 16 Joint Command orders described the KLA brigades that were to be eliminated by the Priština Corps units during the operations. The Chamber notes that during the NATO air campaign the VJ engaged in military operations against the KLA but at the same time also carried out a widespread and systematic campaign of forcibly dispelling Kosovo Albanians from their homes, as discussed in Section VII. In a number of cases, specified below, the Priština Corps orders put the VJ troops in place to carry out these expulsions. Lazarević’s knowledge of this campaign of forcible displacements and his knowledge of the VJ involvement in this campaign in specific villages in Kosovo is further discussed below.

c. Lazarević’s involvement in incorporating volunteers into Priština Corps units

830. The Prosecution submits that Lazarević was directly involved in the admission, reception, and integration of volunteers into the forces of the Priština Corps, and their subsequent assignment to subordinate units, some of whom were later dismissed due to their unsatisfactory conduct and non-observance of military discipline and rules.²¹⁰⁴ The Lazarević Defence argues that the admission of volunteers into the army was “legally regulated” and, in general, was not executed at the level of the Priština Corps, but at a higher level.²¹⁰⁵ It adds that Lazarević, “although not being in charge for selection and admission of volunteers”, executed a strict control of those who were admitted into the Priština Corps units.²¹⁰⁶

831. The admission of volunteers into VJ units, including Priština Corps units, is discussed in Section VI.A. For the purpose of the discussion in this section, the Chamber will only examine the evidence relevant to the issue of Lazarević’s involvement in incorporating volunteers into Priština Corps units.

²¹⁰² 6D712 (Order of the PrK, 28 May 1999).

²¹⁰³ P1503 (Order of the PrK, 27 May 1999).

²¹⁰⁴ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 950–951.

²¹⁰⁵ Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 717, 721.

²¹⁰⁶ Lazarević Final Trial Brief, 29 July 2008 (public version), para. 722.

832. Lazarević issued orders at the start of the NATO air campaign dealing with the incorporation of volunteers.²¹⁰⁷ On 16 April 1999 Lazarević ordered that a “detailed screening” had to be carried out before admitting a volunteer. For instance, the volunteer was to be asked whether he or she wanted to undergo training in the admissions centre in Niš. The order indicated that, if this person did not want to undergo such training, he or she would not be admitted.²¹⁰⁸ Lazarević explained that, at the level of the Corps, additional measures were undertaken: the volunteers had to go through security, psychological, and medical processing, and their training level as well as their ability to use the weaponry was examined.²¹⁰⁹ Lazarević testified that the Priština Corps admitted around 1,400 volunteers as soldiers, around a third of whom were quickly dismissed because they could not take the war effort, fell ill, or did not observe military discipline.²¹¹⁰

833. Lazarević testified that several volunteers “who did not observe the regimen of military discipline and the Rules of Conduct in Wartime” were arrested, handed over to investigative military organs, and dismissed.²¹¹¹ Some evidence corroborates his testimony.²¹¹² A number of documents indicate that the measures undertaken against volunteers found to have committed crimes were not different from those undertaken against regular soldiers.²¹¹³ On 29 March 1999, the 175th Infantry Brigade reported that Lazarević had approved the sending of volunteers to the 243rd Mechanised Brigade but that 32 of them had said they wanted to leave and so were to be disarmed and sent back.²¹¹⁴

²¹⁰⁷ Vladimir Lazarević, T. 17977–17978 (9 November 2007); 5D338 (Order of the PrK, 27 March 1999).

²¹⁰⁸ 5D197 (Order of the PrK, 16 April 1999), p. 2.

²¹⁰⁹ Vladimir Lazarević, T. 17978–17979 (9 November 2007).

²¹¹⁰ Vladimir Lazarević, T. 17980 (9 November 2007); P950 (Vladimir Lazarević interview with the Prosecution), pp. 42–46; P1938 (3rd Army Report to Supreme Command Staff, 10 April 1999); 5D215 (PrK Combat Report to 3rd Army, 18 April 1999).

²¹¹¹ Vladimir Lazarević, T. 17980 (9 November 2007). *See also* P1943 (Supreme Command Staff document re problems related to volunteers, 20 April 1999) (“Several days after receiving the volunteers, 25 of them were returned from the Priština Corps, and 7 of them were detained for outlawry, murder, rape, refusing to obey orders and desertion”).

²¹¹² Vladimir Marinković, T. 20272–20273, 20327–20328 (14 December 2007); Branko Gajić, T. 15310–15311 (10 September 2007); Žarko Kostić, T. 17543 (23 October 2007); P1938 (3rd Army Report to Supreme Command Staff, 10 April 1999), p. 2; P1943 (Supreme Command Staff document re problems related to volunteers, 20 April 1999), p. 2; 3D1059 (3rd Army Combat report to Supreme Command Staff, 25 June 1999); Vlatko Vuković, 5D1401 (witness statement dated 5 January 2008), para. 83 (under seal); Žarko Kostić, 4D501 (witness statement dated 28 September 2007), para. 34.

²¹¹³ 5D315 (Order of PrK on the prevention of abuse of weapons, 10 May 1999); P2082 (Order of the 549th Motorised Brigade Command on the prevention of abuse of weapons, 11 May 1999); 5D1351 (Information about crimes and incidents sent by the 549th Motorised Brigade, 27 May 1999), p. 2.

²¹¹⁴ 5D825 (175th Infantry Brigade Combat Report to PrK, 31 March 1999), p. 1.

834. Dragiša Marinković testified that he came across a group in the 175th Infantry Brigade which was entirely volunteers, when he inspected the unit in mid-April 1999.²¹¹⁵ This unit had previously experienced serious disciplinary problems, including the killing of six Kosovo Albanians by volunteers in its ranks.²¹¹⁶ One month later, similar problems with this unit were reported to the Priština Corps.²¹¹⁷ Nonetheless, Lazarević knew that whole companies of volunteers continued to operate later in the conflict, despite express orders prohibiting the grouping of volunteers in one unit,²¹¹⁸ as he was informed that a volunteer company had operated as part of the 125th Motorised Brigade during the Reka/Caragoj valley operation in late April 1999.²¹¹⁹

835. As explained in Section VI.A, some evidence indicates that some volunteers by-passed the regular procedures for the reception and admission of volunteers and that some “unscreened volunteers” were deployed in VJ units. However, the Chamber finds that the Prosecution has failed to show that Lazarević assisted volunteers in by-passing the procedure, and that in fact he issued orders on 27 March and 16 April 1999 that put in place the system to improve the selection and discipline of volunteers. Moreover, the fact that the training undergone by the volunteers may have been insufficient is not relevant to Lazarević, as the length of this training was decided at the Supreme Command Staff level. The Chamber notes that Lazarević was aware of the breach of the order from the General Staff/Supreme Command Staff prohibiting groups of volunteers in the VJ, and the engagement of these groups in combat activities, despite their previous commission of serious crimes against Kosovo Albanians.

d. Lazarević’s knowledge of and reactions to crimes committed in 1999

i. Lazarević’s presence in the field

836. The Prosecution claims that Lazarević had first-hand knowledge of operations as he toured the Priština Corps units daily.²¹²⁰ The Lazarević Defence argues that Lazarević, as the Priština Corps Commander, was distant from the immediate activities of units subordinated to him, and from the actions carried out in the field.²¹²¹

²¹¹⁵ Dragiša Marinković, T. 20148–20149 (12 December 2007).

²¹¹⁶ 5D84 (PrK Combat Report to 3rd Army, 3 April 1999); 5D85 (PrK Combat Report to 3rd Army, 4 April 1999).

²¹¹⁷ 5D563 (175th Infantry Brigade Combat Report to PrK, 19 May 1999).

²¹¹⁸ P1479 (Order re Volunteers, 7 April 1999).

²¹¹⁹ P2026 (Combat Report of 125th Motorised Brigade, 29 April 1999), p. 2 (stating that volunteer companies were engaged in the Reka/Caragoj valley operation).

²¹²⁰ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 964, 927.

²¹²¹ Lazarević Final Trial Brief, 29 July 2008 (public version), para. 929.

837. According to the Order on the organisation of the work of the Priština Corps Command dated 29 March 1999, the Corps Command was divided into four sections. Lazarević explained that these sections were located “all over Kosovo”.²¹²² Lazarević, as Commander of the Priština Corps, was generally located in one of these sections.

838. Lazarević was primarily located in and around Priština/Prishtina during the NATO air campaign. As discussed in Section VI.A, the Priština Corps Command was located in Priština/Prishtina during March, April, and May 1999, and Lazarević was regularly there, often with Momir Stojanović.²¹²³ Pavković was also regularly present at the command post of the Priština Corps in Priština/Prishtina during the conflict.²¹²⁴ Lazarević explained that Pavković was with him “most of the time” and that the 3rd Army Forward Command Post was at the Priština Corps Command.²¹²⁵ Furthermore, Lazarević attended at least one meeting in Priština/Prishtina town with Stevanović and Đorđević from the MUP while Kosovo Albanians were being forcibly displaced from the town by VJ and MUP forces acting together in an organised manner, as discussed in Section VII.J.²¹²⁶

839. Lazarević was also present at the 1 June 1999 Joint Command meeting in Priština/Prishtina described by Vasiljević.²¹²⁷ Lazarević’s reaction to Šainović’s informing those present that withdrawal of the MUP and VJ would begin soon, and that all activities were to be terminated as soon as possible, was to ask what he was supposed to do since he had already commenced “anti-terrorist” activities in some sectors.²¹²⁸

840. There is significant evidence indicating that Lazarević frequently travelled to the field to inspect his subordinate units.²¹²⁹ During his inspection tours, he talked with various commanders of Priština Corps units about morale, their combat readiness, and the situation on the ground.²¹³⁰ On 3 and 4 March 1999, Ojdanić, Pavković, and Lazarević inspected some of the Priština Corps

²¹²² Vladimir Lazarević, T. 18070–18071 (12 November 2007); 5D342 (Order of the PrK on the organisation of the work of the Command of the PrK, 29 March 1999). *See also* 5D348 (Order of the PrK, 30 March 1999).

²¹²³ K73, T. 3336 (13 September 2006) (closed session); P2440 (witness statement dated 2 December 2005), para. 50.

²¹²⁴ Vladimir Lazarević, T. 18080 (12 November 2007); Mirko Starčević, T. 17436 (22 October 2007).

²¹²⁵ P950 (Vladimir Lazarević interview with the Prosecution), p. 84.

²¹²⁶ Vladimir Lazarević, T. 18260 (14 November 2007).

²¹²⁷ Vladimir Lazarević, T. 18121–18123 (12 November 2007).

²¹²⁸ Momir Stojanović, T. 19773–19777 (7 December 2007).

²¹²⁹ Goran Jeftović, T. 20355 (16 January 2008); Krsman Jelić, T. 19038–19039 (26 November 2007); K73, T. 3317–3318 (13 September 2006) (closed session); Dragan Živanović, T. 20591 (18 January 2008); P950 (Vladimir Lazarević interview with the Prosecution), p. 84; P633 (Document of the PrK Command re praise for results achieved, 5 March 1999); K73, P2307 (witness statement dated 2 December 2005), para. 34 (under seal); IC167 (Marking made on page 21 of P615 by witness Živanović in court); P2026 (125th Motorised Brigade Combat Report to PrK and the Đakovica IKM, 29 April 1999); 5D230 (PrK IKM Combat Report to PrK, 26 May 1999); *see also* 5D1378 (Video of Pavković and Lazarević in Đakovica/Gjakova).

²¹³⁰ P1355 (Transcript of Milan Drecun’s report, Belgrade RTS SAT Television, 8 April 1999), p. 2.

units primarily engaged in providing security at the state border. The objective of the inspection was to assess “the combat readiness, and particularly the morale, competence and effectiveness of command in these units”.²¹³¹ Mirko Starčević also testified that in 1999 Pavković and Lazarević toured the subordinate units “to talk to troops, to inform them, to conduct briefings”, and in the afternoons Pavković and Lazarević would meet with Mirko Starčević to exchange their views “on the developments on the ground”.²¹³² In addition, two reports from the Priština Corps to the 3rd Army Command dated 4 and 5 April 1999 indicate that Lazarević visited “a part of the Priština Corps units” on 3 and 4 April 1999, during which “the state of combat morale was reviewed and informing of the subordinated units was carried out”.²¹³³ The Chamber notes that Lazarević’s inspection of the Priština Corps units is referred to in these two reports under the headings “state of morale” and “Army morale”. It was specified that the “results achieved in combat operations” contributed to “strengthening the combat morale of the Priština Corps members”.²¹³⁴

841. Lazarević stated in an interview published in *Glas Javnosti* newspaper in July 1999 that he spent time in the field in Kosovo in 1999. When asked whether he was in close contact with ordinary soldiers, he answered, “All the commanders, the Army Commander in the first place, then the Corps Commander, as well as commanders and their soldiers, were practically on the first front line.”²¹³⁵

842. As explained below, on 1 May 1999 Lazarević and Pavković went to inspect the units subordinated to the 175th Infantry Brigade.²¹³⁶ Lazarević noted that there was a lack of discipline and soldiers were drinking alcohol. Lazarević also inspected the 125th Motorised Brigade on 29 April 1999.²¹³⁷ Dragan Živanović, the Commander of the 125th Motorised Brigade, confirmed that Lazarević was in Dečani/Deçan with him on 29 April 1999.²¹³⁸

843. The Chamber finds that this evidence further demonstrates Lazarević’s role as the Commander of the VJ units on the ground in Kosovo, and his awareness of the situation there. However, Lazarević’s apparent surprise at the 1 June 1999 Joint Command meeting at being told to withdraw his troops militates against a finding that he was “kept in the loop” regarding events in

²¹³¹ P633 (Document of the PrK Command re praise for results achieved, 5 March 1999), p. 1.

²¹³² Mirko Starčević, T. 17432, 17436 (22 October 2007), 4D500 (witness statement dated 29 September 2007), para. 19. See also Ljubomir Savić, 5D1392 (witness statement dated 27 December 2007), para. 14.

²¹³³ P1903 (PrK Combat Report to 3rd Army, 5 April 1999), p. 3.

²¹³⁴ P2617 (PrK Combat Report to 3rd Army, 4 April 1999), p. 2.

²¹³⁵ P1523 (Transcript of a talk show held on 18 July 1999, published on 21 July 1999), p. 2.

²¹³⁶ Vladimir Lazarević, T. 18110–18112 (12 November 2007); 5D388 (Order of the PrK, 2 May 1999), pp. 1–2.

²¹³⁷ Vladimir Lazarević, T. 18105 (12 November 2007); P2026 (125th Motorised Brigade Combat Report to PrK, 29 April 1999), p. 2.

²¹³⁸ Dragan Živanović, T. 20592–20593 (18 January 2008).

Belgrade and that he was involved in the decision-making process there. In particular, the Chamber notes that Lazarević was not in Belgrade in 1999, nor did he attend meetings in the capital.²¹³⁹ Moreover, Lazarević did not participate in the meetings held in Belgrade on 4, 16, and 17 May 1999.²¹⁴⁰

ii. Knowledge of crimes committed by members of Priština Corps units

844. Some evidence shows that the reporting system within the Priština Corps did not always work properly in 1999 and that reports were not being received by the Priština Corps Command as often as they should have been.²¹⁴¹ Nonetheless, the evidence—including the reports described in the sections below on the punitive and preventive measures undertaken within the Priština Corps—demonstrates that communications were maintained and a significant number of reports on engagement in combat activities were sent by subordinate units to the Priština Corps Command in 1999.²¹⁴² Indeed, as discussed in Section VI.A, throughout the NATO air campaign, despite some disruptions, communications within the 3rd Army and the Priština Corps continued to function, allowing the continued operation of the 3rd Army and Priština Corps Command system.²¹⁴³

845. Lazarević learned about crimes committed by members of Priština Corps units from different sources, including the Priština Corps security organs. As the chief of the Priština Corps Security Department, Stojanović informed Lazarević regularly about security issues in and affecting the units; he also informed him about the strength, location, plans, intentions, arming

²¹³⁹ Vladimir Lazarević, T. 18134 (12 November 2007).

²¹⁴⁰ Vladimir Lazarević, T. 18657 (20 November 2007). Lazarević testified he had no knowledge in 1999 about the letter from Prosecutor Louise Arbour.

²¹⁴¹ P950 (Vladimir Lazarević interview with the Prosecution), pp. 81–82; 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* Vladimir Lazarević, T. 18074 (12 November 2007); Aleksandar Vasiljević, T. 8659 (18 January 2007); 5D473 (125th Motorised Brigade Combat Report to PrK, 8 May 1999); 5D955 (15th Armoured Brigade Combat Report to PrK, 20 April 1999); 5D942 (15th Armoured Brigade Combat Report to PrK, 7 April 1999); 5D1099 (52nd KCSV Stationary Communications Centre of the VJ Combat Report to PrK, 24 May 1999); P2591 (37th Brigade Post-Operations Analysis, 25 April 1999); 5D362 (Order of the PrK, 4 April 1999) (declaring that, “although it has been regulated that the combat reports [from subordinate units] are to be delivered by 1600 hours every day ... in the last five days, except for the 15th Armoured Brigade and the 125th Motorised Brigade, no other unit has submitted its reports on time.”); 5D608 (211th Armoured Brigade Combat Report to PrK, 7 April 1999); 5D550 (175th Infantry Brigade Combat Report to PrK, 28 April 1999); 5D473 (125th Motorised Brigade Combat Report to PrK, 8 May 1999); 5D1109 (52nd Medical Battalion Combat Report to PrK, 22 May 1999); 5D1072 (252nd Armoured Brigade Combat Report to PrK, 20 April 1999); 5D1354 (175th Light Infantry Brigade Combat Report to PrK, 12 April 1999); 4D251 (175th PBR Combat Report to PrK, 5 May 1999); 5D545 (175th Infantry Brigade Combat Report to PrK, 21 April 1999); 5D546 (175th Infantry Brigade Combat Report to PrK, 24 April 1999); 5D549 (175th Infantry Brigade Combat Report to PrK, 27 April 1999); 5D554 (175th Infantry Brigade Combat Report to PrK, 2 May 1999); 5D570 (175th Infantry Brigade Combat Report to PrK, 31 May 1999).

²¹⁴² Miodrag Janković, 4D504 (witness statement dated 1 October 2007), paras. 8, 12–13; 3D865 (Report of the Supreme Command Staff, 30 May 1999), pp. 8, 11; P1319 (Pavković responds to callers’ questions, Belgrade RTS Television First Program, 20 October 2000), p. 17.

process, and activities of the KLA, and about intelligence obtained that was interesting from the security point of view for the Priština Corps.²¹⁴⁴

846. Moreover, several documents issued by the Priština Corps Command during the NATO air strikes indicate that Lazarević knew of specific crimes committed by his subordinates.²¹⁴⁵ For instance, two Priština Corps Command combat reports demonstrate that the Priština Corps reported some crimes to the 3rd Army Command at the beginning of April 1999.²¹⁴⁶ An order issued by the Priština Corps Command on 18 April 1999 also shows that Lazarević received information concerning “individual cases of behaviour [during] combat operations” not fully in compliance with instructions on conduct during combat and international humanitarian law, namely, “individual cases of looting and crime”.²¹⁴⁷ The orders issued by the Priština Corps Command prohibiting acts of looting and other forms of crime constitute further evidence that Lazarević knew that such crimes were being committed during combat operations.²¹⁴⁸

847. As demonstrated in Section VI.A.1.e, several documents sent by subordinate units to the Priština Corps Command informed Lazarević about crimes committed by members of Priština Corps units.²¹⁴⁹ In a report of 31 March 1999 Lazarević was informed about crimes committed by members of the 175th Infantry Brigade.²¹⁵⁰ In a combat report dated 3 April 1999, the 549th Motorised Brigade Command stressed that several VJ conscripts had tried to take property away from the “refugees”.²¹⁵¹ On 18 April 1999 a report from a “military post” in the area of Đakovica/Gjakova informed the Priština Corps Command that four soldiers had committed the crime of rape against a civilian.²¹⁵² The 37th Motorised Brigade Command reported 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.²¹⁵³ On 1 May 1999 the 354th Infantry Brigade Command reported to the Priština Corps Command about an act committed by a VJ

²¹⁴³ Miodrag Janković, 4D504 (witness statement dated 1 October 2007), paras. 8, 12–13; 3D865 (Report of the Supreme Command Staff, 30 May 1999), pp. 8, 11; P1319 (Pavković responds to callers’ questions, Belgrade RTS Television First Program, 20 October 2000), p. 17.

²¹⁴⁴ Momir Stojanović, T. 19734 (6 December 2007).

²¹⁴⁵ See P1182 (Information sent by PrK to the 52nd Artillery Rocket Brigade, 15 May 1999).

²¹⁴⁶ 5D84 (PrK Combat Report to 3rd Army, 3 April 1999); P2617 (PrK Combat Report to 3rd Army, 4 April 1999).

²¹⁴⁷ 5D198 (Warning of the PrK Command, 18 April 1999).

²¹⁴⁸ See also P2029 (Order of the PrK, 1 April 1999); 5D32 (Order of the Priština Military District Command, 20 April 1999); 5D35 (Order of the Priština Military District Command, 24 April 1999), p. 1; 5D396 (Order of the PrK, 6 May 1999); 5D372 (Order of the PrK, 22 April 1999); 5D398 (Order of the PrK, 7 May 1999); 5D385 (Order of the PrK, 29 April 1999).

²¹⁴⁹ 5D1061 (37th Motorised Brigade Combat Report to PrK, 20 May 1999), p. 2.

²¹⁵⁰ Momir Stojanović, T. 19739 (6 December 2007); 5D825 (175th Infantry Brigade Combat Report to PrK, 31 March 1999).

²¹⁵¹ 5D885 (Document of the 549th Motorised Brigade Command, 3 April 1999), p. 2.

²¹⁵² 5D1148 (Report of the military post 1936, 18 April 1999).

conscript against a civilian.²¹⁵⁴ On 10 May 1999, Savić reported that two soldiers committed acts of looting during the implementation of the second operation in the Bajgora area.²¹⁵⁵ The documents indicated that measures had been taken against the perpetrators of the crimes, but did not provide details of these measures.

848. As regards crimes committed by members of the MUP, the report sent by Lazarević to the 3rd Army Command on 24 May 1999 indicates that he was aware of problems at checkpoints and when MUP forces were engaged in clearing-up battlefields after combat operations. Lazarević pointed out that “the work of mixed checkpoints of the MUP and the Military Police units [was] fraught with problems and salient issues since the MUP tolerate[d] criminal activities of its members against the [Albanian] civilian population – murder, rape, looting, robbery, aggravated theft”. He also requested that “vigorous and concrete measures be undertaken to attach the units and organs of the MUP to the Priština Corps Command”, stressing that he did not want to be “held responsible for the consequences which ha[d] already taken place and could take place in the future due to their unconstitutional and unlawful engagement”.²¹⁵⁶ It appears from Stefanović’s testimony that Lazarević’s report was based on a report that the former had previously sent to the Priština Corps Command. Stefanović explained that Điković, the commander of the 37th Motorised Brigade, had reported to him several times in May 1999 that he was having problems in his area or zone of responsibility with members of the MUP. He further testified that the “corps commander”, after having received this information, formed three teams: one of these teams “was led by the security organs to look into the given information about possible police crimes”.²¹⁵⁷ Despite the receipt of this information, Lazarević continued to approve joint VJ and MUP operations, such as the attack on the village of Dubrava/Lisnaja on 25 May 1999,²¹⁵⁸ which involved the forcible displacement of Kosovo Albanians.²¹⁵⁹

849. Aside from these reported cases of specific crimes by VJ members, several documents demonstrate that the Priština Corps Command knew of the massive displacement of the Kosovo Albanian population in 1999, and that this was at least in part due to the actions of the VJ and

²¹⁵³ 5D1057 (37th Motorised Brigade Combat Report to PrK, 25 April 1999), p. 2.

²¹⁵⁴ 5D509 (Regular Combat Report from the 354th Infantry Brigade Command, 1 May 1999), p. 1.

²¹⁵⁵ Ljubomir Savić, T. 20972–20973 (24 January 2008); 5D1132 (58th Light Infantry Brigade Combat Report to PrK, 10 May 1999), p. 2.

²¹⁵⁶ P1458 (PrK Report on non-compliance with Resubordination Order, 24 May 1999), p. 2, also admitted as 4D192 and P1723.

²¹⁵⁷ Radojko Stefanović, T. 21727–21729 (6 February 2008).

²¹⁵⁸ Fadil Vishi, T. 3555–3557 (19 September 2006); P2284 (witness statement dated 18 October 1999), pp. 3–4; P2285 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4461.

²¹⁵⁹ Krsman Jelić, T. 19015–19016 (26 November 2007); 5D666 (Order of the 243rd Mechanised Brigade, 4 May 1999); 4D309 (3rd Army Combat Report to General Staff/Supreme Command Staff, 24 May 1999), p. 2; 4D335 (3rd Army Combat Report to General Staff/Supreme Command Staff, 26 May 1999).

MUP.²¹⁶⁰ In a combat report dated 3 April 1999 the 549th Motorised Brigade Command reported to the Priština Corps Command on the behaviour of VJ personnel and conscripts towards the columns of civilians who were waiting to cross the border. The report stated that from 24 March to 2 April 290,000 Kosovo Albanians had crossed the border into Albania at Vrbnica/Vërbnica (Morina) border post, and another 20,000 to 25,000 had crossed at the Čafa Prušit/Qafa e Prushit border crossing. It stated that this was at least in part due to fear of the VJ and MUP. However, the report also stated that the Kosovo Albanians were not fearful of the VJ when it was acting alone. The report stated that their behaviour was “generally proper” but stressed that several VJ conscripts had tried to take property away from the refugees. The report specified that all such cases were “efficiently” dealt with: perpetrators were disciplined and criminal reports were filed against six other conscripts who had been arrested.²¹⁶¹

850. The Chamber also takes note of the combat report sent by Pešić on 31 March 1999 informing the Priština Corps Command that the MUP and military territorial units were “channelling” Kosovo Albanian “refugees” to Albania, and that there were no particular incidents.²¹⁶² Goran Jevtović explained that the mass movement of Kosovo Albanian civilians towards Albania was the most pressing problem at the time. He stated that part of the area where the “refugees” were was ringed with mines and obstacles. In addition, some units were already in combat disposition in this area. According to him, it was therefore necessary for the safety of these people to “channel or direct them in safe directions to prevent them from getting killed”.²¹⁶³ He further explained that the VJ did not have “the legal right to stop [the refugees] or forbid them to leave the country, although the migration did not suit [the VJ]”: the fact that the civilians were leaving Kosovo made the VJ more exposed to heavy bombing from NATO.²¹⁶⁴

851. The documents of the Priština Corps Command and those of the subordinate units discussed above pertaining to the measures undertaken regarding civilians further demonstrate that Lazarević was aware of the massive displacement of the civilian population,²¹⁶⁵ in which the Chamber has

²¹⁶⁰ See, e.g., Vlatko Vuković, 5D1401 (witness statement dated 5 January 2008), para. 44 (under seal); Nike Peraj, T. 1574 (14 August 2006); P326 (map of Reka/Caragoj valley operation); Mahmut Halimi, T. 4457 (9 October 2006); Lizane Malaj T. 1384, 1391 (10 August 2006). Lizane Malaj testified that she crossed the border at Vrbnica/Vërbnica on 28 April 1999 and that the crossing is called “Vrbnica” by Serbs and “Qafa e Morinë” by Albanians. According to P615 (Kosovo Atlas dated 2000, p. 14), the border is called “Vrbnica/Vërmicë” on the Serbian side and “Morinë” on the Albanian side.

²¹⁶¹ 5D885 (Document of the 549th Motorised Brigade Command, 3 April 1999), pp. 1–2.

²¹⁶² P2930 (PrK Command Group Combat Report to PrK, 31 March 1999), p. 2.

²¹⁶³ Goran Jevtović, 5D1385 (witness statement dated 24 December 2007), para. 22.

²¹⁶⁴ Goran Jevtović, 5D1385 (witness statement dated 24 December 2007), para. 23.

²¹⁶⁵ See Vladimir Lazarević, T. 18687–18688 (21 November 2007); P2046 (37th Motorised Brigade Combat Report to PrK, 28 March 1999); P1306 (Order of the PrK, 16 April 1999); 5D201 (Order of the PrK, 19 April 1999); 5D372 (Order of the PrK, 22 April 1999); 5D897 (Order of the 549th Motorised Brigade, 23 April 1999); 5D35 (Order of the Military District Command, 24 April 1999); 5D389 (Order of the PrK, 2 May 1999); 5D1072 (252nd Armoured Brigade

found that the VJ was involved. A 27 April 1999 report sent by Živanović, the Commander of the 125th Motorised Brigade, in which he described a column of Kosovo Albanian civilians, stated that in his view the civilians were leaving because they wanted “to pull out from the sector of operations of [his] forces in the general area of the Ramoč facility”.²¹⁶⁶ Furthermore, on 23 April 1999 Lazarević indicated that he was aware of the previous forcible displacement of Kosovo Albanians by members of the Priština Corps.²¹⁶⁷

852. Diković warned Lazarević on 25 April 1999 that the Priština Corps was using excessive tactics which did not make military sense in operations in and around Kosmač and Čičavica/Qiqavica. He stated that too many troops were used given the “results achieved” and that “the operations spread across a large area, but the effects of actions aimed at destroying the [KLA] were relatively limited”. He complained of the “lack of training on the part of the VJ reserve forces in carrying out operations”, and referred to mopping up populated places, forests, blockades, and searches. He complained that the “large-scale mopping up operations” were ineffective and consisted of “just taking a walk through the area”. He added that due to a lack of intelligence about the KLA, there had been inappropriate uses of fire support.²¹⁶⁸

853. A significant number of Kosovo Albanians in Peć/Peja town were also directly expelled from their homes on 27 and 28 March 1999. Forces of the VJ and the police worked together to ensure and control the direction of the departure of the Kosovo Albanian residents into Albania and Montenegro. The forcible transfer and deportation of the Kosovo Albanian population of the town was carried out in an organised manner, and Lazarević was alerted to it by the international community.²¹⁶⁹ Lazarević knew that the 125th Motorised Brigade had its headquarters in the centre of Raušić village, in Peć/Peja municipality.²¹⁷⁰ Furthermore, the large number of Kosovo Albanians leaving the town in columns was common knowledge.²¹⁷¹

854. VJ and MUP forces engaged in operations involving the forcible transfer and deportation of Kosovo Albanians from Pirane/Pirana in Prizren during a joint operation on or around 25 March

Combat Report to PrK, 20 April 1999); 5D973 (252nd Armoured Brigade Combat Report to PrK, 25 April 1999); 5D615 (211th Armoured Brigade Combat Report to PrK, 26 April 1999); 5D1103 (52nd Mixed Artillery Brigade Combat Report to PrK, 4 May 1999); 5D486 (354th Infantry Brigade Combat Report to PrK, 4 May 1999); 5D499 (354th Infantry Brigade Combat Report to PrK, 18 April 1999).

²¹⁶⁶ P2024 (125th Motorised Brigade Combat Report to PrK, 27 April 1999), p. 2.

²¹⁶⁷ 5D374 (Order of the PrK, 23 April 1999).

²¹⁶⁸ P2591 (37th Brigade Post-Operations Analysis, 25 April 1999), p. 2.

²¹⁶⁹ Ndrec Konaj, P2372 (witness statement dated 12 June 2001), p. 4, T. 4894, 4912–4913 (16 October 2006); P2542 (Drewienkiewicz’s Press Statement, April 1999); Karol John Drewienkiewicz, T. 7815 (4 December 2006). *See also* P2802 (War Diary of the Armoured Battalion of the 125th Motorised Brigade), p. 3 (recording that the VJ was involved in “clearing” areas of the town on 28 March).

²¹⁷⁰ P2802 (War Diary of the Armoured Battalion of the 125th Motorised Brigade), pp. 1–2.

1999. This operation was carried out pursuant to Joint Command orders and was reported back to the VJ chain of command.²¹⁷² This was part of a large operation, which involved over 1,000 VJ soldiers, 21 tanks, several howitzers, and anti-aircraft weaponry, and for which Lazarević drafted the orders.²¹⁷³ Additionally, Lazarević knew that the VJ was in Žegra/Zhegra, in Gnjilane/Gjilan municipality, and that VJ members committed crimes there at the end of March 1999.²¹⁷⁴

855. Drewienkiewicz provided a press statement indicating that the VJ and MUP were responsible for these deportations in early April 1999. Drewienkiewicz's press release reported large numbers of displaced Kosovo Albanians arriving at the borders, and conveyed reports of widespread atrocities committed by the VJ and MUP, including deportation.²¹⁷⁵ As described in Section VI.A, the Priština Corps had an intelligence department, responsible for reporting such information to the Commander.²¹⁷⁶ Furthermore, the press release specifically referred to the systematic looting and forcible removal of Kosovo Albanians from Priština/Prishtina, where Lazarević was located during the conflict.²¹⁷⁷ Given the subject matter of Drewienkiewicz's press release and his notoriety to the FRY and Serbian authorities, the Chamber is satisfied that Lazarević was made aware of this report at the start of April 1999. The Chamber has examined Lazarević's knowledge of VJ and MUP actions in relation to the forcible displacements in Kosovo, which are detailed in Section VII. Lazarević was informed of the systematic looting and the exodus of Kosovo Albanians from Priština/Prishtina, which the Chamber has found to have been an organised process, carried out by VJ and MUP forces, involving thousands of Kosovo Albanians.²¹⁷⁸ He was located in this town while these forcible displacements were being conducted and the Chamber is satisfied that he would have known of the climate of terror created by the VJ and MUP forces there.

856. The Reka/Caragoj valley operation on 27 and 28 April was an organised operation primarily designed to displace the Kosovo Albanian civilian population down the valley.²¹⁷⁹ Lazarević was aware that the VJ operated together with the MUP in this operation, and that parts of the MUP 73rd Territorial Detachment had been "attached" to the 125th Motorised Brigade and sent to Korenica,

²¹⁷¹ Radovan Paponjak, 6D1603 (witness statement dated 14 March 2008), para. 46.

²¹⁷² P2015 (Joint Command Order, 23 March 1999), pp. 2–3; P1981 (Order of the 549th Motorised Brigade, 23 March 1999), pp. 4–5.

²¹⁷³ P1995 (Analysis of the operation of the 549th Motorised Brigade, 30 March 1999), p. 3.

²¹⁷⁴ 5D825 (175th Infantry Brigade Combat Report to PrK, 31 March 1999), p. 1; 5D84 (PrK Combat Report to 3rd Army, 3 April 1999).

²¹⁷⁵ John Drewienkiewicz, T. 7815–7816 (4 December 2006); P2542 (Drewienkiewicz's Press Statement, April 1999).

²¹⁷⁶ Ljubiša Stojimirović, 4D506 (witness statement dated 2 October 2007), para. 9.

²¹⁷⁷ P2542 (Drewienkiewicz's Press Statement, April 1999), p. 2.

²¹⁷⁸ P2542 (Drewienkiewicz's Press Statement, April 1999), p. 2.

²¹⁷⁹ See Section VII.C.8.

where many crimes were committed, on 25 April 1999.²¹⁸⁰ Živanović, who was involved in ordering the operation, confirmed that Lazarević was with him in Dečani/Dečan the day after the operation and that he reported to Lazarević on that day about the operation.²¹⁸¹ The operation was also reported to the Supreme Command Staff.²¹⁸² K73 testified that the expulsion of Kosovo Albanians during this operation was carried out pursuant to orders and that the suggestion that it was a military operation directed at the KLA failed to explain why women, children, and old men were forced out of their villages.²¹⁸³ K90 said that there was no operational purpose for the orders that his unit received to expel Kosovo Albanians from their villages in the Reka/Caragoj valley and specified that such orders would have had to have been approved at a higher level than a brigade commander, such as Božidar Delić.²¹⁸⁴ The Chamber notes that Delić's immediate superior was Lazarević. The Chamber also notes Saša Antić's evidence on an unrelated military action that "it would be insane to think that even a chief of security would issue an order to a unit without approval and without the knowledge of the corps commander".²¹⁸⁵ This indicates that Lazarević was aware that this operation involved forcible displacement of the civilian population of the Reka/Caragoj valley in late April 1999.

857. Lazarević was also aware that VJ forces were present in a number of villages in Kosovo on dates on which the Chamber has found it to be proved that those VJ forces were carrying out the campaign of forcible displacement. The crimes, which were often large-scale and systematic, include the shelling of Turićevac/Turiçec and the expulsion of civilians from Ćirez/Qirez and Tušilje/Tushila in late March and April 1999, carried out during joint operations of the VJ and MUP,²¹⁸⁶ the attack on the village of Dubrava/Lisnaja on 25 May, which was carried out during an organised operation, reported back to the VJ chain of command,²¹⁸⁷ and the forcible displacement of Kosovo Albanians from Celina on 25 March 1999 during an operation carried out pursuant to Joint Command orders and reported back to the VJ chain of command.²¹⁸⁸ This was a large

²¹⁸⁰ P2023 (125th Motorised Brigade Combat Report to PrK, 25 April 1999), p. 2.

²¹⁸¹ P2026 (125th Motorised Brigade Combat Report to PrK, 29 April 1999), p. 2 (stating that volunteer companies were engaged in the Reka/Caragoj valley operation); Dragan Živanović, T. 20592–20593 (18 January 2008).

²¹⁸² 6D1468 (PrK report to 3rd Army Command and Supreme Command Staff, 30 April 1999), p. 1.

²¹⁸³ K73, T. 3385 (14 September 2006).

²¹⁸⁴ K90, P2652 (witness statement dated 31 January 2007).

²¹⁸⁵ Saša Antić, T. 21163 (28 January 2008).

²¹⁸⁶ P1968 (Joint Command Order, 24 March 1999); P3049 (Joint Command Order, 19 March 1999), p. 4; 6D1416 (PrK Plan of Action, 18 March 1999), p. 1.

²¹⁸⁷ Krsman Jelić, T. 19015–19016 (26 November 2007); 5D666 (Order of the 243rd Mechanised Brigade, 4 May 1999); 4D309 (3rd Army Combat Report to General Staff/Supreme Command Staff, 24 May 1999), p. 2; 4D335 (3rd Army Combat Report to General Staff/Supreme Command Staff, 26 May 1999).

²¹⁸⁸ P2015 (Joint Command Order, 23 March 1999), pp. 2–3; P1995 (Analysis of the operation of the 549th Motorised Brigade, 30 March 1999), pp. 3, 5; P2019 (War Diary of the 2nd Motorised Battalion) (under seal), p. 3.

operation, which involved over 1,000 VJ soldiers, 21 tanks, several howitzers, and anti-aircraft weaponry.²¹⁸⁹

858. The Chamber notes the evidence that orders for the expulsion of Kosovo Albanians, or reports of such activities, would not be written but rather provided orally.²¹⁹⁰ It is consistent with this that a review of several combat reports from subordinate units did not include information regarding crimes and the widespread forcible displacement of Kosovo Albanians that the Chamber has held proved. For instance, in the report of 30 March 1999 to the Priština Corps Command in relation to operations conducted in Orahovac/Rahovec and Suva Reka/Suhareka municipalities, Delić informed Lazarević about the numerical strength of the “terrorists”, the resistance his troops encountered, the “terrorists” casualties, the Priština Corps and MUP units that participated in the operations, the specific attacks carried out, the soldiers wounded, and the NATO attacks. However, no crimes were reported.²¹⁹¹

859. Similarly, the reports sent by the 125th Motorised Brigade between 27 and 29 April 1999 to the Priština Corps Command in relation to the activities that were being conducted at that time in the Reka/Caragoj valley do not report any crimes, although the evidence demonstrates the widespread forcible displacement of Kosovo Albanians by a number of VJ and MUP units operating together in an organised manner.²¹⁹² On 29 April, Živanović, the Commander of the 125th Motorised Brigade, explained that the “Operation *Reka* ... was completed successfully” and then referred to attacks conducted by the KLA, the losses sustained by the Priština Corps units, the various actions being carried out, the NATO attacks, and the morale of the troops.²¹⁹³

860. The Chamber considers that this evidence shows that Lazarević was aware of a number of specific criminal acts by his subordinates in the VJ, as well as serious violent acts committed by MUP members against Kosovo Albanians. He was aware of the widespread forcible displacement of Kosovo Albanians, and that this was at least in part due to the actions of the VJ. The fact that forcible displacements in some of the crime sites in Kosovo were not expressly referred to in VJ combat reports after operations in some of these locations does not create any doubt as to Lazarević’s knowledge of the campaign of forcible displacements.

²¹⁸⁹ P1995 (Analysis of the operation of the 549th Motorised Brigade, 30 March 1999).

²¹⁹⁰ K90, T. 9302–9303 (29 January 2007); K90, P2652 (witness statement dated 8 December 2002), paras. 40, 41.

²¹⁹¹ P1995 (Analysis of the operation of the 549th Motorised Brigade, 30 March 1999). *See also* Božidar Delić, T. 19349–19350 (29 November 2007); P2002 (Analysis of operations of 549th Motorised Brigade, 30 March [sic] 1999).

²¹⁹² P2024 (125th Motorised Brigade Combat Report to PrK, 27 April 1999); P2025 (125th Motorised Brigade Combat Report to PrK, 28 April 1999).

²¹⁹³ P2026 (125th Motorised Brigade Combat Report to PrK, 29 April 1999), p. 2.

861. The Lazarević Defence submits that, in light of the tactic of the Albanian “terrorists” of using the civilian population as a shield and the beginning of the intensive NATO bombing, the movements of the civilian population did not necessarily suggest to Lazarević that a plan had been devised to expel Albanian civilians from Kosovo.²¹⁹⁴ However, the Chamber has noted above evidence relating to these other suggested causes for the population movement,²¹⁹⁵ and concluded that, although they were present in some situations, the primary cause of the displacement of the Kosovo Albanian population was the widespread and systematic operations of the VJ and MUP acting together.²¹⁹⁶ The Chamber considers that the evidence above, including Lazarević’s attempt to prevent the mistreatment of Kosovo Albanians by VJ members, shows that he was aware of the VJ and MUP forcibly displacing Kosovo Albanian civilians, and also aware that this sometimes occurred during VJ operations against the KLA and in places where NATO was bombing VJ and MUP targets.

e. Reactions to crimes by Priština Corps members

862. The Prosecution argues that crimes committed by VJ members went unpunished²¹⁹⁷ and that the criminal proceedings brought against VJ perpetrators were insufficient to discharge Lazarević’s duties to prosecute his subordinates.²¹⁹⁸ Appropriate measures would have included immediate action against subordinates responsible for crimes and effective investigations into allegations of crimes involving his subordinates.²¹⁹⁹ According to the Prosecution, Lazarević “deliberately refrained” from punishing members of the Priština Corps units who committed crimes against the Kosovo Albanian civilian population.²²⁰⁰

863. The Lazarević Defence submits that the Prosecution has not proved beyond reasonable doubt that Lazarević failed to take reasonable measures to prevent the perpetration of criminal offences and to punish the perpetrators of such offences. It specifies that, according to the FRY Constitution, army officers fulfilled their obligations as soon as they submitted criminal reports against any of the VJ members who had been caught committing a crime: they did not bear responsibility for any further steps undertaken in the case.²²⁰¹ The Lazarević Defence submits that, in order for the Priština Corps Command to take measures, it needed information from the brigade,

²¹⁹⁴ Lazarević Final Trial Brief, 29 July 2008 (public version), para. 860.

²¹⁹⁵ P680 (OSCE/KVM Fusion Working Papers); John Drewienkiewicz, T. 7933 (5 December 2006).

²¹⁹⁶ See Sections VII.N and VIII.B.

²¹⁹⁷ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 989.

²¹⁹⁸ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 990.

²¹⁹⁹ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 991.

²²⁰⁰ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 977.

²²⁰¹ Lazarević Final Trial Brief, 29 July 2008 (public version), para. 669.

battalion, squad and troops commanders. Therefore “taking measures directly depended on [the] degree and quantity of information which [was] coming from the subordinated units”.²²⁰²

i. Measures undertaken in relation to crimes by Priština Corps members

864. The Chamber notes its conclusion in Section VI.A.1.e, and in particular the evidence of Lakić Đorović, that the military justice system functioned throughout the NATO air campaign but in a way that resulted in only a small proportion of the violent crimes against Kosovo Albanians being the subject of prosecution while crimes against the VJ or Serbian victims were prosecuted more effectively. Every VJ member had the duty to report to both their superior and to the relevant security organ if there was crime being committed.²²⁰³

865. Two Priština Corps Command reports demonstrate that the Priština Corps reported some crimes to the 3rd Army Command at the beginning of April 1999. On 3 April the Priština Corps Command sent a combat report to the 3rd Army Command, in which Lazarević noted that, the day before, 32 criminal reports had been submitted against the perpetrators of crimes, including eight for murder, one for mistreatment, three for attempted murder, two for taking vehicles, and six for thefts.²²⁰⁴ Another combat report submitted to the 3rd Army Command on 4 April established that four criminal reports had been filed the day before against three conscripts, and one soldier, but did not contain any details of the offences.²²⁰⁵

866. During the NATO air strikes, Lazarević issued written orders calling for the prosecution or disciplining of VJ members caught committing crimes. Following the announcement of the decision of the FRY on the declaration of a state of war on 25 March 1999, the Priština Corps Command issued instructions to subordinate units regarding the procedures for disciplinary hearings to be applied during wartime as well as the criminal proceedings to be taken.²²⁰⁶ On 8 April 1999, with the stated objective of preventing *inter alia* the unlawful use of weapons and all other forms of crime by VJ members, the Priština Corps Command ordered all members of the Priština Corps units to immediately bring perpetrators of criminal offences before the relevant military justice organs following the filing of a criminal report. The order specified that the

²²⁰² Lazarević Final Trial Brief, 29 July 2008 (public version), para. 929.

²²⁰³ 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).

²²⁰⁴ 5D84 (PrK Combat Report to 3rd Army, 3 April 1999), p. 2.

²²⁰⁵ P2617 (PrK Combat Report to 3rd Army, 4 April 1999), p. 2.

²²⁰⁶ 5D332 (Instructions from the PrK, 25 March 1999).

aforementioned measures were to apply to volunteer military conscripts. All members of the Priština Corps units were to be informed of this order.²²⁰⁷

867. In addition, upon receipt of information concerning individual cases of behaviour during combat operations not fully in compliance with instructions on conduct during combat and international humanitarian law, Lazarević issued an order on 18 April 1999 to subordinate commanders requiring full respect for such provisions by all subordinate units in preparing and carrying out tasks in Kosovo. Lazarević condemned the fact that certain commanders and units “were not paying the necessary attention to the fight against individual cases of looting and crime”. Commands and specialist organs were tasked to take effective measures to prevent all forms of criminal activity. The order directed that reports be submitted to the Priština Corps Command on the measures taken as part of the regular combat reports.²²⁰⁸ An order was sent by Lazarević to all unit commanders on 23 April, mandating the use of all means to prevent “any attempted or committed crime in the zones of responsibility”, and to take “the most rigorous measures against any perpetrators”.²²⁰⁹

868. On 15 May 1999 the Command of the Priština Corps sent a document entitled “Information on the situation and movement of criminals among professional military personnel” to the 52nd Artillery Rocket Brigade Command. This report revealed that, during the NATO air campaign and up to 15 May 1999, most of the prosecutions were for crimes against the VJ, such as desertion, and that aside from a few prosecutions for aggravated robbery, which resulted in sentences of less than five years imprisonment, only one officer from the Priština Corps was charged with a serious violent crime.²²¹⁰ He was prosecuted for ordering two subordinates to kill two elderly Kosovo Albanians when they refused to leave their village, and given a nine year sentence, while his two subordinates were given seven year sentences.²²¹¹

869. 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.²²¹² In an order dated 7 May 1999, the Priština Corps Command informed the commanders of subordinate

²²⁰⁷ 5D176 (Order of the PrK, 8 April 1999).

²²⁰⁸ 5D198 (Warning of the PrK Command, 18 April 1999).

²²⁰⁹ 5D374 (Order of the PrK, 23 April 1999). *See also* P1268 (Order of the PrK, 30 April 1999), paras. 2–3.

²²¹⁰ P1182 (Information sent by PrK to the 52nd Artillery Rocket Brigade, 15 May 1999), p. 4. *See also* P1210 (Report of the Artillery Rocket Brigade on the situation and trends in crime among professional military personnel, 1999).

²²¹¹ Radomir Gojović, T. 16694–16695 (2 October 2007), T. 16756 (3 October 2007); P1011 (Ivan Marković, ed., *The Application of Rules of the International Law of Armed Conflicts* (2001)), p. 166.

²²¹² *See, e.g.* 5D1148 (Report of the Military post 1936, 18 April 1999); 5D889 (Criminal report filed to the Military Prosecutor, 17 April 1999); 5D1057 (37th Motorised Brigade Combat Report to PrK, 25 April 1999), p. 2; 5D509 (354th Infantry Brigade Combat Report to PrK, 1 May 1999); 5D1351 (Information about crimes and incidents sent by the 549th Motorised Brigade, 27 May 1999), p. 2.

units that, from the declaration of the state of war until 5 May 1999, criminal proceedings had been instituted before the war military courts in the 3rd Army territory against several VJ officers as well as civilians, “in all cases for serious crimes”. However, it noted that, despite this fact, the commands and institutions had not carried out investigations into these persons in order to take them before a military disciplinary court. The Priština Corps Command therefore instructed the subordinate units to (a) “immediately hold an investigation into all these persons – professional VJ members who committed crimes against the VJ or property crimes, regardless of the fact that criminal proceedings had been instituted against them”, (b) “instigate a disciplinary investigation in all other cases [where] major disciplinary offences have been committed in commands and units”, and (c) “immediately submit proposals for taking perpetrators before a military disciplinary court, along with other evidence and files, to the Priština Corps Command for further processing within its jurisdiction”.²²¹³ This order confirms that Lazarević could initiate additional investigations and disciplinary proceedings within the VJ, even where criminal investigations had been commenced.

870. Documents from the Priština Corps Command and subordinate units demonstrate that some measures were undertaken at different levels against members of Priština Corps units who were found to have committed crimes of murder, rape, and robbery. Although it has been concluded above that the few prosecutions of VJ members in Kosovo were manifestly inadequate in light of the scale of offences occurring there, the Chamber finds that this evidence shows that Lazarević undertook some punitive measures against subordinates responsible for the crimes of murder and rape, along with property crimes. However, the Chamber notes that the evidence does not demonstrate any prosecutions undertaken or punishments imposed in respect of the forcible expulsion of Kosovo Albanians by VJ members. It considers that the widespread commission of forcible displacement, as detailed in Section VII, and the lack of criminal prosecutions for such acts, does support the Prosecution contention that Lazarević intentionally failed to ensure prosecutions of subordinates responsible for forcibly displacing Kosovo Albanians.

ii. Lazarević and the military court of the Priština Corps Command

871. Radomir Mladenović testified that that as Corps Commander Lazarević ensured that during the war all resources required for normal functioning of the judiciary were provided. According to him, the judiciary would have functioned less efficiently without the efforts being made by the Priština Corps Command to provide all the resources necessary.²²¹⁴ He provided the example of Lazarević asking him, as the President of the Court, to ensure that an investigative judge was

²²¹³ 4D237 (Order of the PrK to investigate crimes, 7 May 1999), p. 1.

²²¹⁴ Radomir Mladenović, T. 21269–21270 (29 January 2008).

present during the sanitation of the terrain. Mladenović considered this request to be an example of Lazarević's overreaction, as the Law on Criminal Procedure did not require the presence of an investigative judge during such activities, and because investigative judges could be seriously harmed during these activities, either by snipers or the NATO bombings. Mladenović however stated that Lazarević's request was "useful because the presence of an investigative judge in such cases carri[e]d more of a probative value later on in criminal proceedings once a perpetrator [was] discovered". The investigative judge ensured that everything was properly documented during these activities.²²¹⁵

iii. Lazarević and forensic examinations in Kosovo

872. As explained in Section VII.P, on 26 April 1999, Lazarević sent a request to the 3rd Army and the Supreme Commander asking for a military forensic pathologist, as there were indications of possible VJ responsibility for the deaths of individuals in graves in the area of responsibility of the Priština Corps.²²¹⁶ The next day, the 3rd Army Command responded by telegram stating that Major Milosavljević, forensic pathologist at the VMA, had been sent to be involved in the exhumation and examination of bodies in Kosovo.²²¹⁷ Lazarević was cross-examined about this telegram and asked what prompted him to send it. He responded that the telegram was his second initiative of this kind, and was done to prepare the VJ to perform on-site investigations even during the war, and thereby prevent any cover-up of any crimes.²²¹⁸ He further clarified that his reference to indications of VJ involvement in crimes came from various sources, including local residents, unidentified persons, and the MUP, but stated that often these were mistaken as local residents were unable to distinguish between uniforms and equipment used by the VJ and the MUP. Lazarević then referred to two locations in the Lipljan/Lypjan municipality, from which the VMA specialists exhumed 36 bodies. He also stated that he knew of two requests for the involvement of these VMA specialists, and said that they involved altogether six locations within Kosovo.²²¹⁹ The report on forensic medicine expert examination of the site in Mali Alaš/Hallac i Vogel village dated 4 May 1999 confirms that, on 2 May 1999, a forensic medicine team headed by Milosavljević carried out the exhumation of the 20 bodies found in Mali Alaš/Hallac i Vogel.²²²⁰

²²¹⁵ Radomir Mladenović, T. 21270–21271 (29 January 2008). Mladenović explained that the people engaged in the sanitation activities were all wearing uniforms and were all, therefore, targets.

²²¹⁶ 5D379 (Request from Vladimir Lazarević to PrK Command, 26 April 1999).

²²¹⁷ 5D383 (3rd Army Response to PrK, 27 April 1999).

²²¹⁸ Vladimir Lazarević, T. 18127–18128 (12 November 2007). Lazarević testified that he asked for forensic experts once before and that one such person was sent to Kosovo on 20 April 1999.

²²¹⁹ Vladimir Lazarević, T. 18645–18647 (20 November 2007).

²²²⁰ 5D1313 (Report of the VMA Forensic Medicine Institute on Mali Alaš site, 4 May 1999); 5D1315 (Record of forensic expert analysis, 10 May 1999), p. 2.

iv. Measures undertaken regarding the Mali Alaš/Hallac i Vogel massacre

873. The Prosecution argues that, although Lazarević knew about the execution of 20 civilians in the village of Mali Alaš/Hallac i Vogel on 19 April 1999 and of the possible involvement in those killings of the 252nd Armoured Brigade, Lazarević continued to use that brigade in combat operations in April and May 1999.²²²¹

874. The Priština Corps security organs received a report from the MUP in April 1999, which included “details of a crime committed in Mali Alaš”: approximately 20 civilians had been executed, and “[m]embers of the 252nd Armoured Brigade were thought to be to blame”.²²²² Lazarević testified that he knew of these allegations when he sent a request to the 3rd Army asking for a military forensic pathologist on 26 April 1999. He explained that the Priština Corps Command heard of crimes allegedly committed by members of Priština Corps units in Lipljan/Lypjan municipality from several sources, including local residents and members of the MUP.²²²³

875. Radomir Mladenović, who was President of the Military Court attached to the Priština Corps Command during the war, explained that proceedings were first started against unknown perpetrators by the Military Court of the Priština Corps, and that an investigative judge carried out an investigation to see if it was possible to determine who the perpetrators of the killing were. The investigative judge later submitted a report about the killings to the military prosecutor of the Priština Corps, requesting that further action be undertaken. The military prosecutor went to the area to carry out an on-site investigation and the requested the court to launch an investigation in order to shed light on the circumstances under which these civilians had come to harm. A team of forensic experts from the VMA was sent to the site.²²²⁴ The report on the forensic examination of the site dated 4 May 1999 confirms that, on 2 May 1999, a forensic team headed by Milosavljević carried out the exhumation of the 20 bodies found in Mali Alaš/Hallac i Vogel.²²²⁵ According to Mladenović, the investigating judges of the Military Court in Niš, together with the military prosecutor, interviewed a number of reservists who had been in the area. In the end, the “case file was forwarded to a civilian court because after the military prosecutor had done everything that he

²²²¹ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 988.

²²²² Aleksandar Vasiljević, P2594 (witness statement dated 26 October 2006), para. 57 (under seal).

²²²³ Vladimir Lazarević, 18645–18648 (20 November 2007).

²²²⁴ Radomir Mladenović, T. 21254 (28 January 2008), T. 21260–21261 (29 January 2008).

²²²⁵ 5D1313 (Report of the VMA Forensic Medicine Institute on Mali Alaš site, 4 May 1999); 5D1315 (Record of forensic expert analysis, 10 May 1999).

was supposed to do the case file was forwarded to a prosecutor and then he concluded, based on everything that had been gathered, that no military personnel were involved.”²²²⁶

876. The report sent by the Security Department of the 3rd Army Command on 14 July 1999 to the General Staff Security Administration confirms that an investigation was carried out by the Military Court of the Priština Corps Command.²²²⁷ Comments written on the report by Branko Gajić indicate that the investigating judge had done a poor job of interviewing witnesses and had not addressed the details. A report of 20 August 2001 indicates that criminal proceedings regarding the killing of Kosovo Albanian civilians in the village of Mali Alaš/Hallac i Vogel were initiated on 21 April 1999.²²²⁸

877. Branko Gajić personally dealt with the incident following instructions from Milošević at the 17 May 1999 meeting. He testified that the case was dropped because it was determined that the VJ members involved had been fired upon first by unidentified individuals, thus confirming that the killers were VJ members but stating that the victims were KLA members and so it was not a crime.²²²⁹

878. The evidence demonstrates that the Priština Corps security organs were aware of the MUP allegations that 20 civilians had been executed in Mali Alaš/Hallac i Vogel on 19 April 1999, and of the possible involvement in those killings of the 252nd Armoured Brigade. Lazarević was informed of the proceedings that had been initiated at the end of April 1999 by the wartime military court attached to the Priština Corps in order to determine who the perpetrators of the Mali Alaš/Hallac i Vogel were. However, given the differing accounts of why no members of the VJ were prosecuted for this crime, the Chamber does not reach any conclusion about Lazarević’s conduct in relation to this incident, other than the fact that no punishment was imposed against the perpetrators.

v. Measures undertaken regarding the Izbica massacre

879. The Prosecution argues that Lazarević failed to take adequate measures to investigate the Izbica massacre committed on 28 March 1999 once he learnt about it in March or April 1999. It points out that Diković, whose units were involved in a joint VJ/MUP operation in Izbica during

²²²⁶ Radomir Mladenović, T. 21260–21261 (29 January 2008).

²²²⁷ 3D1061 (3rd Army Additional Report, 14 July 1999), p. 1.

²²²⁸ P954 (Report on criminal cases, military prosecution and courts, 21 August 2001), pp. 64–65.

²²²⁹ Branko Gajić, T. 15304–15305 (10 September 2007).

the time of the massacre, did not conduct any investigations into allegations of killings at Izbica as he was not authorised to do so.²²³⁰

880. Lazarević described the measures undertaken by the Priština Corps Command regarding the Izbica massacre as follows:

Izbica was first mentioned as a problem ... in the first days of April and it was first mentioned ... by foreign media. ... [R]ecorded satellite pictures showed that there was a mass grave in Izbica... [D]uring those days at the end of March beginning of April, we ... ordered the 125th Motorised Brigade which was the unit[] closest to the area to carry out reconnaissance and try to find this village of Izbica, and then to carry out an on-site investigation and see what took place, together with MUP and civil authorities, investigative authorities. This unit carried out its tasks and found the village of Izbica somewhere in the area of Drenica, and reported that there was no information leading to the conclusion that anything similar to a mass grave was found in the village. The Corps Command reported to the Army Command that there ... were no mass graves. But several days later, [the Priština Corps Command] were again given the task, but this time with more specific information as to the exact location, and we were tasked with trying ... to find this location together with MUP. Since there had been intensive combat operations and clashes with terrorists in the wide Drenica area and NATO had also launched a great number of attacks in the area at the time, ... the units which were closest to the village of Izbica were given the task to secure the village area. The units were tasked with blocking this wider area, and they were also given the tasks to make it possible for the civil investigative authorities and MUP to carry out an on-site investigation. According to the investigating judge, it was upon instructions issued by the civilian investigative judge that the bodies were exhumed, but ... there was an incident and a terrorist attack on these investigative organs, and the investigation was [postponed]... [T]he investigation at this location was carried out by the MUP and civilian investigating bodies. The Corps units did not participate in the investigating procedure.²²³¹

881. Gvozden Gagić testified that satellite imagery shown on television by the BBC indicated that there was a mass grave in the village of Izbica towards the end of May 1999. Dragan Ilić, his superior, instructed him to establish the circumstances in which the massacre had occurred.²²³² Nebojša Bogunović, deputy chief of Kosovska Mitrovica SUP, stated that a team composed of members of his SUP was sent to the site on 27 May 1999.²²³³ When the team arrived, it encountered VJ soldiers who provided them with information as to the location of a number of fresh graves. The team was unable to continue its work because of shots fired in the vicinity.²²³⁴ A document sent by the Kosovska Mitrovica SUP dated 27 May 1999 confirms that a team went to Izbica on 27 May 1999 to find the mass grave, and that it left the village quickly as there were shots

²²³⁰ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 986.

²²³¹ P950 (Vladimir Lazarević interview with the Prosecution), pp. 486–487.

²²³² Gvozden Gagić, T. 24447–24450, 24483–24484 (18 March 2008).

²²³³ Ljubiša Diković, T. 19985–19988 (11 December 2007).

²²³⁴ Nebojša Bogunović, T. 25128–25130 (10 April 2008); Nebojša Bogunović, 6D1614 (witness statement dated 2 April 2008), para. 83.

fired nearby.²²³⁵ According to Bogunović, “the public prosecutor and the investigating judge were informed about this and they started the proceedings and ordered that the bodies be exhumed”. He explained that forensic investigation activities were carried out by employees of the Kosovska Mitrovica SUP following the order of the investigating judge of the Kosovska Mitrovica District Court.²²³⁶ The MUP report on the forensic examination of the site in Izbica dated 2 June 1999 indicates that on that day members of the forensic department of the Kosovska Mitrovica SUP carried out “forensic activities”.²²³⁷

882. Gordana Tomašević, a forensic medicine specialist employed by the Military Medical Academy in Belgrade, confirmed that civilian authorities were involved in the on-site investigation. Tomašević’s team received an official order from a civilian court, namely from the District Court in Kosovska Mitrovica/Mitrovica, dated 31 May 1999.²²³⁸ This order provided for the exhumation of the bodies discovered in Izbica for the purpose of forensic examination, with a view to establishing the time and the cause of death.²²³⁹ She did not know why she was tasked with a job from a civilian court, but Gagić testified that an investigating judge had the authority to choose the institution which would carry out forensic examination.²²⁴⁰ Tomašević was not present for the exhumation of the bodies, so she only heard that they were exhumed from individual graves in Izbica.²²⁴¹ She testified that while most of the bodies had civilian clothing, some wore a black KLA uniform.²²⁴²

883. Diković testified that the reason why his unit did not conduct any investigations into the allegations of killings at Izbica was not that the Priština Corps Command forbade him to do so, but rather that his brigade was not in general authorised to engage in any investigative activities.²²⁴³ The Chamber notes that, although Lazarević stated that he first learnt of the reports and satellite images of mass graves in Izbica by early April 1999, and although he knew that the 37th Motorised

²²³⁵ 6D613 (SUP Kosovska Mitrovica document regarding Izbica, 27 May 1999), p. 1, also admitted as 6D115. The document indicated that the team encountered ten VJ members who did not know about the mass graves but pointed out to the team the existence of a new graveyard somewhere down at the end of the village.

²²³⁶ Nebojša Bogunović, T. 25128–25130 (10 April 2008); Nebojša Bogunović, 6D1614 (witness statement dated 2 April 2008).

²²³⁷ 6D116 (MUP Report on the forensic examination of the site in Izbica, 2 June 1999), p. 1.

²²³⁸ P2496 (District Court of Kosovska Mitrovica order re Izbica/Izbičë graves).

²²³⁹ Gordana Tomašević, T. 7028–7029 (21 November 2006); P2496 (District Court of Kosovska Mitrovica order re Izbica/Izbičë graves).

²²⁴⁰ Gvozden Gagić, T. 24483–24484 (18 March 2008); Gordana Tomašević, P2490 (witness statement dated 5 March 2003), pp. 8–9; P2507 (witness statement dated 25 July 2006), e-court p. 2.

²²⁴¹ Gordana Tomšević, P2490 (witness statement dated 5 March 2003), pp. 8–9; P2507 (witness statement dated 25 July 2006), e-court p. 2.

²²⁴² Gordana Tomšević, T. 7032 (21 November 2006).

²²⁴³ Ljubiša Diković, T. 19985–19986 (11 December 2007).

Brigade, which was resubordinated to the Priština Corps at this time,²²⁴⁴ had reported operations against the KLA in the area of Voćnjak/Vojnika village (this village is within two kilometres of Izbica)²²⁴⁵ starting on 28 March 1999, Diković acknowledged that he was not even asked about the Izbica mass grave by the Priština Corps Command.²²⁴⁶

884. Reports prepared by organs of the military justice system indicate that a proceeding was initiated in the military courts on 29 May 1999 in relation to the discovery of mass graves in Izbica. This followed the discovery of the graves by the MUP on 27 May 1999.²²⁴⁷ Stanimir Radosavljević, a military prosecutor in the Supreme Military Prosecutor's Department in the 3rd Army, testified that the Izbica case was referred from the Military Court in Niš to a civilian prosecutor at some point after 2001, because there was no evidence indicating that members of the military were responsible for the massacre. He opined that this may have occurred in 2003 or 2004.²²⁴⁸

885. The Chamber notes that Lazarević did not ask the 37th Motorised Brigade about the mass grave or the killings, despite the fact that it had engaged in operations in the close vicinity of Izbica in the period immediately prior to media reports emerging about this mass grave. However, Lazarević's testimony about efforts in May 1999 in relation to the Izbica mass grave is consistent with that of Gagić, Bogunović, and Tomašević. The fact that the Kosovska Mitrovica SUP team encountered VJ soldiers in Izbica on 27 May 1999 who provided it with information as to the location of the mass grave corroborates Lazarević's evidence that measures were undertaken by the Priština Corps Command to locate the mass grave prior to 27 May 1999. The absence of investigation conducted by the Priština Corps Command can be explained by the fact that, even though VJ soldiers were in the area and alleged to be responsible for the crimes, Lazarević was satisfied that the Kosovska Mitrovica District Court was in charge of the examination of the site. Noting its previous finding that MUP members were responsible for the killings of Kosovo Albanians in Izbica and that the VJ did not participate in the killings, the Chamber does not

²²⁴⁴ P2046 (37th Motorised Brigade Combat Report to PrK, 28 March 1999) (Diković reported to the PrK, and sent copies to the 2nd Army and Užice Corps Command for their information), p. 1; P2048 (Interim Combat Report of the 37th Motorised Brigade to PrK, 29 March 1999).

²²⁴⁵ P615 (Kosovo Atlas), p. 17.

²²⁴⁶ Ljubiša Diković, T. 19985–19986 (11 December 2007). The 37th Motorised Brigade was first resubordinated to the Priština Corps in early March and the whole unit was brought into Kosovo before 3 April. Ljubiša Diković, T. 19870, 19872 (10 December 2007). *See* 5D84 (PrK Combat Report to 3rd Army, 3 April 1999); 3D680 (Order of the General Staff for Resubordination of 37th Mtbr/2nd Army, 6 March 1999).

²²⁴⁷ P955 (Summary review of criminal proceedings instituted against persons who committed crimes in the area of Kosovo during the NATO aggression in Yugoslavia from 24 March 1999 until 10 June 1999), p. 76; 4D171 (Information on criminal proceedings for offences committed in Kosovo from the Military Prosecutor in Niš, 6 April 2001), p. 8.

²²⁴⁸ Stanimir Radosavljević, T. 17495–17496 (23 October 2007); *see also* Đura Blagojević, T. 21559 (1 February 2008).

consider that the failure of the Priština Corps to launch its own forensic investigation into the mass graves results in any criminal responsibility on the part of Lazarević.

vi. Reaction to crimes committed by members of the MUP

886. As regards the crimes committed by members of the MUP, the Chamber recalls that the Priština Corps Command did not have the authority to undertake punitive measures against members of the MUP, as the VJ and MUP chains of command remained separate during the conflict. However, Radojko Stefanović testified that, when Lazarević was informed of problems caused by MUP officers at the end of May 1999, he formed a team led by the security organs “to look into the given information about possible police crimes”.²²⁴⁹

f. Preventive measures undertaken within the Priština Corps

i. General preventive measures

887. The Prosecution submits that, while Lazarević issued orders and instructions to his subordinates on the necessity of respecting international humanitarian law and VJ regulations to protect the civilian population, they were insufficient. It submits that the mere issuance of orders without ensuring their implementation does not fulfil the responsibility of a Corps Commander.²²⁵⁰

888. Lazarević issued a number of orders calling for his subordinates to take measures to prevent the commission of crimes. In an order issued on 1 April 1999, Lazarević instructed the brigades engaged in the combat operation in the Jablanica/Jabllanica sector to “prevent looting, theft and other forms of crime and war profiteering, protect civilians from robbery and establish law and order”, and added that “perpetrators and persons responsible for negative developments [were to be] identified and caught quickly and efficiently and the Military Court shall take the harshest measures envisaged by the Law against these persons”.²²⁵¹ Orders similar to that of Lazarević were issued and followed with further written orders by subordinate units down the chain of command.²²⁵² In early May 1999 Lazarević also issued an order to the 354th Infantry Brigade with regard to the conduct of operations; the order instructed the Brigade, among various tasks, to

²²⁴⁹ Radojko Stefanović, T. 21727–21728 (6 February 2008).

²²⁵⁰ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 986.

²²⁵¹ P2029 (Order of the PrK, 1 April 1999), p. 5.

²²⁵² 5D86 (Order of the 2nd Motorised Battalion, 8 April 1999), p. 8 (under seal); 5D87 (Order of Combat Group 2 Command, 3 April 1999), p. 6 (under seal); 5D32 (Order of the Priština Military District, 20 April 1999); 5D35 (Order of the Priština Military District, 24 April 1999), p. 1.

prevent torching and destruction of buildings, to open fire only in case of resistance and danger to the units, and to prevent maltreatment and persecution of civilians.²²⁵³

889. Some measures were also undertaken to strengthen discipline in the Military Territorial Detachments. The Priština Corps Command ordered on 22 April 1999 that all Military Territorial Detachments be moved from inhabited places to new sectors to eliminate the weaknesses observed.²²⁵⁴ Moreover, according to an order issued by the Priština Corps Command on 21 May 1999, the Corps Command detected “a number of omissions and weaknesses” during its inspection of Military Territorial Detachments resubordinated to the commands of the brigades. The weaknesses included improper behaviour and the consumption of large quantities of alcohol by some members of such detachments. The Commands of the brigades involved were subsequently ordered to carry out daily inspections within the Military Territorial Detachments, to secure better order and discipline, and to undertake disciplinary and criminal responsibility measures against persons violating order and discipline. This order further instructed that the implementation of such measures be reported in daily combat reports.²²⁵⁵

890. The Priština Corps Command insisted on limiting the “uncontrolled movement” of members of Priština Corps units. After having received a number of reports indicating “uncontrolled movement by troops in an aimless and most unsoldierly manner”, Lazarević reiterated on 29 April 1999 the previously issued instructions aimed at preventing any misconduct by soldiers, by issuing an order to use all means available at the level of the brigade and lower-level units and to ensure “a fully operational system and uninterrupted system of command down to the last soldier”. Commanders were to ensure that no subordinate soldiers left the zone of responsibility without the knowledge and consent of a superior officer. The order stressed that the commanders were deemed personally answerable to Lazarević for its implementation.²²⁵⁶

891. On 7 May 1999 another document bearing the signature of Lazarević was issued, (a) outlining that the conduct of VJ members outside the combat zone was compromising the reputation of the VJ, (b) prohibiting soldiers with weapons from moving outside their unit’s combat zone, (c) prohibiting entry into places—such as hotels and other public institutions—where foreign

²²⁵³ 5D396 (Order of the PrK, 6 May 1999); *see also* 5D86 (Order of the 2nd Motorised Battalion Command, 8 April 1999), p. 8 (under seal); 5D87 (Order of Combat Group 2 Command, 3 April 1999), p. 6 (under seal); 5D32 (Order of the Priština Military District Command, 20 April 1999); 5D35 (Order of the Priština Military District Command, 24 April 1999), p. 1; 5D1101 (Order of the 52nd Mixed Artillery Brigade, 22 April 1999); 5D1041 (Order of the 37th Motorised Brigade on preventing any abuses during combat activities, 22 May 1999), p. 1.

²²⁵⁴ 5D372 (Order of the PrK re moving the Military Territorial Detachments from inhabited places, 22 April 1999); *see also* 5D816 (Order of the 7th Infantry Brigade, 23 April 1999).

²²⁵⁵ 5D417 (Order of the PrK, 21 May 1999).

²²⁵⁶ 5D385 (Order of PrK, 29 April 1999). *See also* 5D1020 (Order of the 37th Motorised Brigade, 1 May 1999).

nationals were present, and (d) mandating adequate measures against those who violated such orders. As set forth in the document, the implementation of such measures was to be reported through regular combat reports, and commanders of subordinate units were to be deemed responsible in case of non-compliance with the order therein.²²⁵⁷

ii. Removal of commanders

892. The Prosecution submits that some measures were taken to remove commanders who were responsible for omissions or deficiencies in their work, as in the case of the Commander of the 175th Infantry Brigade and the Commander of the 58th Light Infantry Brigade, who were both removed from their positions. However, according to the Prosecution, those were only sporadic episodes and unrelated to crimes committed by troops.²²⁵⁸

893. Lazarević testified that, as early as the beginning of April 1999, he removed from his post the Commander of the 58th Light Infantry Brigade. According to Lazarević, this commander was criminally prosecuted during the conflict for the acts he had committed and disciplinary measures were also undertaken against him.²²⁵⁹ Dragiša Marinković explained that in mid-April 1999 Lazarević sent him to the region of Stari Trg/Stari Tërg, along with a team from the Priština Corps Command, to inspect the formation of the unit and its preparation for the execution of its assigned tasks. Marinković's assessment, as well as that of the team from the Priština Corps Command, was negative, and he therefore suggested to Lazarević that the commander be suspended. Lazarević instructed Marinković to immediately inform the commander that he was suspended, and he was subsequently arrested by the Military Police and transferred to the military courts.²²⁶⁰ The Chamber notes that no commanders from the Priština Corps were criminally prosecuted, except for this individual, who was only prosecuted for failing to take protective measures resulting in the death of a member of his unit.²²⁶¹

894. Lazarević testified that, during the conflict, he received "raw data" from the Priština Corps Security Department about "some omissions or deficiencies in the work of the Commander of the 175th Infantry Brigade". This brigade had been resubordinated from the Niš Corps to the Priština Corps.²²⁶² In particular, the Chamber notes that, in a combat report of 31 March 1999 to the Priština Corps Command, Nikola Petrović, Commander of the 175th Infantry Brigade, explained

²²⁵⁷ 5D398 (Order of the PrK, 7 May 1999).

²²⁵⁸ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 986.

²²⁵⁹ Vladimir Lazarević, T. 18109–18112 (12 November 2007).

²²⁶⁰ Dragiša Marinković, 5D1379 (witness statement dated 6 December 2007), para. 21.

²²⁶¹ Momir Stojanović, T. 19736–19740 (6 December 2007).

²²⁶² Vladimir Lazarević, T. 18110 (12 November 2007).

that “certain volunteers showed indiscipline and other criminal activities”. Eight volunteers for whom there were reasonable grounds to suspect that they had committed “the crime in Žegra village” had been arrested. He added that the situation was becoming more stable.²²⁶³

895. After sending Marinković to inspect the unit, as described above, Lazarević requested that Petrović send him a report indicating which of these allegations were true.²²⁶⁴ In his report dated 28 April 1999, Petrović denied the allegations.²²⁶⁵ On 1 May 1999, Lazarević and Pavković went to inspect the units subordinated to the 175th Infantry Brigade.²²⁶⁶ In an order issued on 2 May, Lazarević described the situation in these units as being “an extremely unfavourable, chaotic and intolerable situation”, particularly in relation to the conduct of members of these units. He further ordered that an analysis of the situation be carried out in order to determine the causes of this situation and those responsible for it. A concrete plan of measures designed to improve the situation was to be submitted to the Priština Corps Command in the forthcoming days.²²⁶⁷ The Command of the 175th Infantry Brigade sent a combat report to the Priština Corps Command that same day in which Petrović explained that, pursuant to the order of the Priština Corps Command, the brigade commander “held a briefing session”, and the commanders submitted reports. Moreover, Petrović stated that “[a] series of disciplinary measures [had been] applied and criminal prosecutions instituted on various grounds”. He stressed that “the first verdicts had a considerably positive effect” and that the tasks would “continue to be pursued persistently and thoroughly”. He concluded that the “focus [was] on correcting the flaws that ha[d] been identified”.²²⁶⁸ The Chamber notes that Petrović’s mention of verdicts must have been referring to disciplinary measures within the unit, as no criminal sentences had been imposed on the members of the 175th Infantry Brigade even by 2001.²²⁶⁹

896. On 2 May 1999 the Priština Corps Command also issued an order to the commanders of all its subordinate units, in which Lazarević condemned the situation that he had observed in the units subordinated to the 175th Brigade and warned the commanders “to take extremely energetic measures to implement orders issued by the Priština Corps Command with the thrust of activities on the organisation of defence according to the effective regime of security, flawless organisation

²²⁶³ 5D825 (175th Infantry Brigade Combat Report to PrK, 31 March 1999).

²²⁶⁴ Vladimir Lazarević, T. 18110 (12 November 2007).

²²⁶⁵ 5D533 (Report of the 175th Infantry Brigade to PrK regarding accusations of irregular activity in the Brigade, 28 April 1999), p. 1, also admitted as 4D175.

²²⁶⁶ Vladimir Lazarević, T. 18110 (12 November 2007).

²²⁶⁷ Vladimir Lazarević, T. 18111 (12 November 2007); 5D388 (Order of the PrK, 2 May 1999), pp. 1–2.

²²⁶⁸ 5D554 (175th Infantry Brigade Combat Report, 2 May 1999).

²²⁶⁹ P954 (Report on criminal cases, military prosecution and courts, 21 August 2001), p. 57; P955 (Summary Review of Report on criminal cases, military prosecution and courts), p. 6.

of life and work in units, ... and in particular [to] ensur[e] neat soldiery [sic] appearance of units members". Lazarević ordered that the commanders personally visit all their subordinated units and submit a report to him by 4 May 1999.²²⁷⁰

897. According to Lazarević, around 2 May 1999 Pavković ordered the Niš Corps Commander to send a team to assist the Priština Corps Command to get a more detailed picture of the situation in the 175th Infantry Brigade of the Niš Corps, which had been resubordinated to the Priština Corps. Some days later, Lazarević and Pavković visited the Brigade again. The situation had improved regarding some of the elements, but they were still not happy with all the measures that had been taken. Pavković, therefore, decided to remove Petrović from his post together with 17 other officers from the brigade, including officers from the security organs, the chief of staff, and some of the commanders of the battalions. Other officers were later appointed to those posts by the Niš Corps.²²⁷¹ This was confirmed by Marinković.²²⁷²

898. On 19 May 1999, Mirolad Stanojević, the new Commander of the 175th Infantry Brigade, sent a combat report to the Priština Corps Command in which he informed *inter alia* that "[o]rder and discipline ha[d] improved", but that there were "still isolated incidents of unauthorised leave from the units, attempts at theft, sloppy uniforms, etc". He also noted that three soldiers from the brigade had been caught looting the day before; they had been immediately taken into custody and criminal reports had been filed.²²⁷³

899. Furthermore, according to Stojanović, approximately 40 battalion commanders were removed from their positions between March and June 1999, and some were brought before the military disciplinary court. However, he did not provide any details as to the reason why they were disciplined, and when asked whether any were criminally prosecuted, he only knew of the Commander of the 58th Light Infantry Brigade, who was prosecuted for failing to take protective measures resulting in the death of a member of his unit, and not for the murders of Kosovo Albanians that were perpetrated by members of his unit.²²⁷⁴

900. The Chamber finds that the measures undertaken by the Priština Corps Command with respect to the Commander of the 58th Light Infantry Brigade and the Commander of the 175th

²²⁷⁰ 5D387 (Order of the PrK, 2 May 1999), pp. 1–2. *See also* Dragiša Marinković, 5D1379 (witness statement dated 6 December 2007), para. 23 ("All formation parts of the Priština Corps were informed of[f] the issue, since the Commander of the Priština Corps sent this information as a warning to commanders of the units in person, demanding them to take most energetic measures to prevent occurrence of similar disorders").

²²⁷¹ Vladimir Lazarević, T. 18111–18112 (12 November 2007).

²²⁷² Dragiša Marinković, 5D1379 (witness statement dated 6 December 2007), para. 22.

²²⁷³ 5D563 (175th Infantry Brigade Combat Report to PrK, 19 May 1999).

²²⁷⁴ Momir Stojanović, T. 19736–19737, 19739–19740 (6 December 2007).

Infantry Brigade were aimed at improving discipline in the Priština Corps units. However, the fact that only one of these commanders was prosecuted—and then only for failure to take measures, resulting in the death of a VJ member, rather than for crimes committed against Kosovo Albanians—shows that these measures were not taken in response to the campaign of forcible displacement being imposed in Kosovo against Kosovo Albanians, nor the crimes committed therein.

iii. Measures taken in relation to civilians

901. A number of written orders pertaining to the relocation, as well as the protection and return of civilians, have been presented at trial.

902. On 16 April 1999 the Priština Corps Command issued an order to all subordinate commanders in which it explained that “[d]ue to the aggressor’s operations”, the civilian population in the Corps zone of responsibility was exposed every day to “direct attacks which seriously threaten[ed] its safety”. With the aim of preventing and reducing losses in the civilian population, the Priština Corps Command ordered the subordinate commanders to: (a) form “special forces – elements of combat disposition for evacuating the civilian population”; (b) “help to shelter and evacuate civilians, ensure the best possible conditions for their accommodation, assist in providing supplies ... especially medical support, ensure ... the protection of personal property and safety, prevent any limitation of the freedom and rights of the citizens, unless they threaten[ed] their safety or the safety of units”; (c) “establish the number of civilians in the deployment areas of the units and make the necessary inventories of foodstuffs for feeding the population and other basic necessities”. Lazarević wrote at the end of the order that he would “personally take the strictest measures to bring to account those who violate this order.”²²⁷⁵ Subordinate units issued similar orders in the following days.²²⁷⁶

903. On 19 April 1999 the Corps Command issued another order in which it instructed subordinate commanders to “assess the overall situation with regard to accommodation and movements of civilian population”. The order stated that “[w]henever possible” the subordinate units were to “protect the civilian population and prevent any movement and spilling” and that, if some civilians happened to be in the area of a combat operation, the subordinate units were to “evacuate them to the most convenient sectors and protect them from fire”. The most convenient locations were “villages, residential and other buildings” that were “most appropriate for the

²²⁷⁵ P1306 (Order of the PrK to secure civilian population, 16 April 1999).

²²⁷⁶ 5D888 (Order of the 549th Motorised Brigade, 17 April 1999); 5D963 (Order of the 252nd Armoured Brigade, 17 April 1999).

evacuation and temporary accommodation of civilian population”.²²⁷⁷ Similar orders were subsequently issued by subordinate units.²²⁷⁸ The Priština Corps Command reiterated its order on 23 April 1999. This order specified that the commanders were to prevent “any misconduct, especially in the lower command structure, with regard to the civilian population”. Banning civilians from returning to their homes was listed as an example of misconduct to prevent.²²⁷⁹ The 549th Motorised Brigade Commander and the Priština Military District Command issued similar orders to their subordinate units.²²⁸⁰ During this same period of time, the Priština Corps Command issued an order in which it instructed the brigades to “[s]peed up the return of civilians who [were] returning to the villages and towns from where they moved out.” It stressed that civilians were not to remain in the zones of defence of brigades.²²⁸¹

904. On 2 May 1999 the Priština Corps Command reiterated that all units of the Corps were to “continue providing accommodation for the civilian population in the zones of responsibility, in settled places and locations, in line with decisions of commanders of brigades and in co-ordination with the organs of civilian authorities and civilian protection”. It instructed the units to set up civilians in “adequate facilities” to avoid them remaining “in the open”, and to “create conditions for the fulfilment of their basic needs”.²²⁸²

905. Additionally, on 28 March 1999, the 37th Motorised Brigade Commander informed the Priština Corps Command that several thousand civilian refugees were expected to be found in shelters around the village of Vočjnak/Vojnika, where his brigade was to conduct its next operation. He added that his unit “ha[d] neither the force nor the means to seal off the shelters and escort the refugees outside the zone of combat operation”, and therefore requested “instructions and orders” from the Priština Corps Command.²²⁸³ Diković testified that, in response to his request, an officer from the Priština Corps visited him and confirmed that if any civilians were to appear in the zone where combat operations were taking place, the Priština Corps units engaged in these

²²⁷⁷ 5D201 (Order of the PrK regarding protection of the civilian population, 19 April 1999).

²²⁷⁸ 5D1033 (Order from the 37th Motorised Brigade, 20 April 1999); 5D1004 (Order from the Military District Command, 20 April 1999), also admitted as 5D32; 5D1101 (Order from the Command of the 52nd Mixed Artillery Brigade, 22 April 1999); 5D964 (Order from the 252nd Armoured Brigade on the accommodation of civilians, 20 April 1999).

²²⁷⁹ 5D374 (Order from the PrK on measures for stabilising defence, 23 April 1999).

²²⁸⁰ 5D897 (Order of the 549th Motorised Brigade, 23 April 1999) (“Prevent any undisciplined behaviour on the part of commanding officers in relation to the civilian population (ban return to populated localities and so on)”, para. 2); 5D35 (Order from the Military District Command, 24 April 1999) (“Prevent any form of misconduct towards civilians (e.g. banning their return to populated places) especially by individuals (squad commanders, platoon commanders, etc)”, para. 2).

²²⁸¹ 5D372 (Order from the PrK, 22 April 1999).

²²⁸² 5D389 (Order of the PrK, 2 May 1999).

²²⁸³ P2046 (37th Motorised Brigade Combat Report to PrK, 28 March 1999); Vladimir Lazarević, T. 18687–18688 (21 November 2007).

operations should stop their activities and send the civilians along a secure axis, towards a safe area. The units were to provide assistance to the civilians when needed.²²⁸⁴

906. The Chamber notes that, although these measures show that Lazarević was aware of the widespread relocation of the Kosovo Albanian population by VJ forces, they also indicate that he attempted to have this done in a non-violent way, without abuses of the displaced people.

907. Reports from some subordinate units indicate that they complied with the Priština Corps Command orders in certain areas in Kosovo. On 18 April 1999, the 354th Infantry Brigade Commander informed the Priština Corps Command that “about 15,000 ethnic Albanian refugees (returnees) [had] arrived” in the territory of Podujevo/Podujeva municipality and that they had been accommodated in the villages of Ladovac/ Lladofc and Šajkovac/Shajkofc. He added that his brigade was in the process of “establishing the number of refugees (returnees) and securing the territory where they [were] deployed”.²²⁸⁵ On 4 May 1999 he reported to the Priština Corps Command that, in connection with its order on the relocation of the civilian population from the area of deployment issued on 2 May 1999, it had relocated approximately 10,000 displaced civilians from Podujevo/Podujeva municipality to villages east of Podujevo/Podujeva town. The report explained that the registering process was slow because of “the large volume of work”. It also listed the names of several villages as “[p]ossible locations for further settlement/relocation”.²²⁸⁶

908. On 20 April 1999 the 252nd Armoured Brigade informed the Priština Corps Command that the “reception of refugees” had started: “they were transported in two vehicles and one bus in several trips”; “they were also provided with food”; “they were then escorted to Dragobilje village, from which they went to Jović village”.²²⁸⁷ On 25 April 1999 the 252nd Armoured Brigade Commander informed the Priština Corps Command that there were two groups of “refugees” of 2,000 and 3,000 men, women, and children in its zone of responsibility. He learned from one of these people that a group of “terrorists” was forbidding them to leave and was using them as a human shield.²²⁸⁸ Two days later he reported that his brigade was protecting the civilians in his sector.²²⁸⁹ In a 26 April 1999 report to the Priština Corps Command, the Commander of the 211th

²²⁸⁴ Ljubiša Diković, T. 19984–19985 (11 December 2007).

²²⁸⁵ 5D499 (Report from the 354th Infantry Brigade Command, 18 April 1999), p. 3.

²²⁸⁶ 5D486 (Report from the 354th Infantry Brigade Command, 4 May 1999).

²²⁸⁷ 5D1072 (252nd Armoured Brigade Combat Report to PrK, 20 April 1999).

²²⁸⁸ 5D973 (252nd Armoured Brigade Combat Report to PrK, 25 April 1999).

²²⁸⁹ 5D974 (252nd Armoured Brigade Combat Report to PrK, 27 April 1999).

Armoured Brigade requested that humanitarian aid, primarily food, be provided urgently for the Kosovo Albanian “refugees”.²²⁹⁰

909. On 20 April 1999, the 37th Motorised Brigade Command sent a request to the Priština Corps Command for humanitarian aid to be “distributed to the local population in co-operation with the Red Cross of Srbica and Glogovac”. The request was sent pursuant to the Priština Corps Command order of 16 April 1999.²²⁹¹ On 25 April, Diković, the 37th Motorised Brigade Commander, informed the Priština Corps Command that, pursuant to its order of 23 April, measures had been taken against members of his brigade who were suspected of having committed crimes against the civilian population in Glogovac/Gllogoc.²²⁹² On 3 May 1999 the 37th Motorised Brigade Command sent a report to the Priština Corps Command on the situation in Glogovac/Gllogoc. It explained that, when combat operations started, a large number of civilians from the surrounding villages found refuge in the town of Glogovac/Gllogoc, which had no electricity or water. Diković proposed that representatives of the Red Cross be asked to visit the civilians in Glogovac/Gllogoc, assess the situation, and provide the most essential assistance in food, water and, healthcare. He also suggested that measures be undertaken to have the organs of civilian authorities come to Glogovac/Gllogoc from Kosovo Polje/Fushë Kosova. Finally, he noted that, “if none of the possibilities for providing assistance existed, then an evacuation of the population should be organised”.²²⁹³ On 4 May he reported to Lazarević that all civilians in the zone of responsibility of the brigade were “assigned accommodation in suitable buildings” and that “nobody [was] in the open”; “civilians ha[d] been put under the control of units, people ha[d] been registered” and they were “treated humanely”. The report also stated that there were 23,000 civilians in the zone of responsibility of the brigade and that food reserves were running out.²²⁹⁴ On 13 May 1999, Lazarević sent a report on the situation in Glogovac/Gllogoc to the Temporary Executive Council, requesting that urgent measures be taken by the provincial authorities to supply food and health care to the civilians in this area.²²⁹⁵

910. On 4 May 1999 the 52nd Anti-Aircraft Defence Artillery Rocket Brigade Command informed the Priština Corps Command that “the civilian population ha[d] been accommodated” in various sectors.²²⁹⁶ The 7th Infantry Brigade Command also informed the Priština Corps Command

²²⁹⁰ 5D615 (211th Armoured Brigade Combat Report to PrK, 26 April 1999), p. 2.

²²⁹¹ 5D1034 (Request for provision of humanitarian aid to the Red Cross, 20 April 1999).

²²⁹² 5D1057 (37th Motorised Brigade Combat Report to PrK, 25 April 1999).

²²⁹³ 5D1037 (37th Motorised Brigade Combat Report to PrK, 3 May 1999).

²²⁹⁴ 4D303 (37th Motorised Brigade Combat Report to PrK, 4 May 1999); *see also* 5D1059 (37th Motorised Brigade Combat Report to PrK, 5 May 1999).

²²⁹⁵ 5D412 (Report from PrK to Temporary Executive Council on situation in Glogovac, 13 May 1999).

²²⁹⁶ 5D390 (52nd Anti-Aircraft Defence Artillery Rocket Brigade Combat Report to PrK, 4 May 1999).

about sectors where “refugees” could be relocated.²²⁹⁷ The 252nd Armoured Brigade also sent a report to the Priština Corps Command on this issue that day.²²⁹⁸ In another report dated 2 May 1999, Gergar, the Commander of the 211th Armoured Brigade, informed the Priština Corps Command that a convoy of Kosovo Albanian “refugees” that arrived from the direction of Priština/Prishtina had been “sent to Sibovac village”.²²⁹⁹

911. On 22 May 1999 the 52nd Medical Battalion Command sent a combat report to the Priština Corps Command in which it requested the Priština Corps Command to reassess the deployment sector of the battalion due to “the increased number of returning refugees, the possibility of attacks by individuals and armed terrorist groups, and the lack of training of units for organised defence in settled areas”.²³⁰⁰ Several days later it informed the Priština Corps Command that it had visited the “refugee camp” in Stanica Metohija and had proposed measures to the Crisis Staff for the prevention of epidemics and care of the “refugees”.²³⁰¹

912. The Chamber notes that none of these reports from subordinate units about the large numbers of displaced Kosovo Albanians, and the VJ involvement in their movement and care, relate to the sites where it has been proved that forcible displacement was committed by the VJ. Furthermore, K90, a VJ member, testified that, as opposed to these written orders pertaining to the care of civilians in combat zones, orders for their forcible displacement would not be written but rather provided orally.²³⁰² He testified that in some cases Kosovo Albanians were not removed from areas in which the VJ was operating as that would have left the VJ without the protection of surrounding civilians and thus vulnerable to NATO attacks.²³⁰³ Furthermore, despite the order of 19 April 1999, Lazarević continued to order joint VJ and MUP operations in Kosovo, and VJ units continued to be involved in large movements of displaced people out of Kosovo, such as during planned operations in the Reka/Caragoj valley in Đakovica/Gjakova on 27 and 28 April 1999, in which K73, who was a VJ member, recounted systematically moving from village to village to expel the population, and in Dubrava/Lisnaja in the municipality of Kačanik/Kaçanik on 25 May 1999, as discussed in Section VII.M.

6. Conclusions on responsibility of Vladimir Lazarević

²²⁹⁷ 5D793 (Report from the 7th Infantry Brigade Command, 4 May 1999).

²²⁹⁸ 5D965 (Report from the 252nd Armoured Brigade, 4 May 1999).

²²⁹⁹ 5D618 (211th Armoured Brigade Combat Report to PrK, 2 May 1999), p. 1.

²³⁰⁰ 5D1109 (52nd Medical Battalion Combat Report to PrK, 22 May 1999).

²³⁰¹ 5D1037 (37th Motorised Brigade Combat Report to PrK, 3 May 1999).

²³⁰² K90, T. 9302–9304 (29 January 2007), P2652 (witness statement dated 8 December 2002), paras. 40–41.

²³⁰³ K90, T. 9408 (30 January 2007); *see also* Momir Stojanović, T. 19732 (6 December 2007).

913. The Prosecution alleges that Lazarević is responsible for planning, instigating, ordering, committing (through participation in a joint criminal enterprise), or otherwise aiding and abetting the crimes contained in the Indictment.²³⁰⁴ Furthermore, Lazarević is charged with responsibility as a superior for the crimes committed by his subordinates, pursuant to Article 7(3) of the Statute.²³⁰⁵ The Lazarević Defence responds that the Prosecution has not established that he participated in any of the crimes alleged in the Indictment, nor that he was aware of what had occurred or were about to occur.²³⁰⁶

914. According to the Prosecution, Lazarević was a member of the joint criminal enterprise and significantly contributed to its implementation. The Prosecution submits that Lazarević shared the intent to carry out this common plan, and his actions—such as his commanding, ordering, and directing of VJ operations in Kosovo, including joint operations with the MUP—demonstrate that he intended to further the plan, through criminal means.²³⁰⁷ The Lazarević Defence, on the other hand, argues that he did not participate in a joint criminal enterprise and that it has not been established that he shared the intent to participate in such an enterprise.²³⁰⁸

915. The Chamber notes that it is not obliged to make exhaustive factual findings on each and every charged form of responsibility, but rather may examine only those that describe the conduct of the accused most accurately.²³⁰⁹ In response to the Prosecution's allegation that Lazarević was a member of a joint criminal enterprise, the Chamber first addresses Lazarević's liability under this form of responsibility. Relevant references are provided in relation to issues addressed, but the Chamber notes that these findings are based on all the relevant evidence.

a. Commission through participation in a joint criminal enterprise

916. For Lazarević's liability to arise pursuant to the first category of joint criminal enterprise, the evidence must show that he participated in at least one aspect of the common purpose to ensure continued control by the FRY and Serbian authorities over Kosovo, through crimes of forcible displacement, which the Chamber has already found existed.²³¹⁰ In order to fulfil this element, Lazarević need not have physically committed the crimes through which the goal was achieved, or

²³⁰⁴ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 922, 975.

²³⁰⁵ Indictment, paras. 13, 55–59.

²³⁰⁶ Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 850–851, 867–868, 888, 905, 924.

²³⁰⁷ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 8, 922.

²³⁰⁸ Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 849–851.

²³⁰⁹ See *Krstić* Trial Judgement, para. 602; *Kunarac et al.* Trial Judgement, paras. 388–389.

²³¹⁰ *Vasiljević* Appeal Judgement, paras. 100, 119; *Tadić* Appeal Judgement, paras. 197, 227; *Brđanin* Appeal Judgement, para. 427.

any other offence for that matter.²³¹¹ Indeed, he need not even have been present at the time and place of the physical perpetration of these crimes.²³¹² His contribution, however, to the plan must have been significant.²³¹³ As for the necessary mental element, it must be proved that Lazarević participated voluntarily in the joint criminal enterprise and that he shared the intent with other members of the joint criminal enterprise to commit the crime or underlying offence that was the object of the enterprise, in this case forcible displacement.

917. The Chamber finds that, although there is considerable evidence supporting the Prosecution's allegation that Lazarević was supportive of the commission of crimes throughout Kosovo by VJ and MUP forces in a widespread and systematic campaign targeting Kosovo Albanians, it has not been proved beyond reasonable doubt that Lazarević shared the intent of the joint criminal enterprise members. The evidence supporting the Prosecution's allegation includes specific reports of criminal activity by Lazarević's subordinates in the Priština Corps, his awareness of the general situation in Kosovo based on his position as the Commander of the VJ forces in Kosovo, and his presence in Kosovo while the campaign of forcible displacement was being committed, most notably in Priština/Prishtina, where he was located while Kosovo Albanians were being forcibly displaced by VJ forces.²³¹⁴ There is evidence that forcible displacements were ordered orally from within the VJ chain of command. Lazarević's meeting in April 1999 with MUP leaders Stevanović and Đorđević in Priština/Prishtina while Kosovo Albanians were being forcibly displaced from the town by VJ and MUP forces acting together also suggests his involvement in the joint criminal enterprise.²³¹⁵ The fact that he continued to issue orders for the use of the VJ in Kosovo in 1999, despite his awareness of crimes being committed there by forces of the VJ and MUP, further supports the allegation.

918. However, there is evidence that runs counter to the allegation that he shared the intent to commit the crimes that were encompassed by the joint criminal enterprise. In relation to Lazarević's appointment as Commander of the Priština Corps, the Chamber reiterates its finding that he did not appear to have been one of Milošević's "yes-men" at the time when he was appointed at the end of 1998. The Chamber has noted that Lazarević did not go to Belgrade in 1998, nor did he attend meetings in the capital, and he was not part of the Collegium of the Chief of General Staff. Moreover, Lazarević's participation in Joint Command meetings in 1998 was limited: he attended Joint Command meetings on only a handful of occasions, and so was not able

²³¹¹ *Kvočka et al.* Appeal Judgement, para. 99; *Brđanin* Appeal Judgement, para. 427.

²³¹² *Krnjelijac* Appeal Judgement, para. 81; *see also Simić et al.* Trial Judgement, para. 158.

²³¹³ *Brđanin* Appeal Judgement, para. 430.

²³¹⁴ Further evidence relating to Lazarević's knowledge of the campaign is discussed below.

²³¹⁵ Vladimir Lazarević, T. 18260 (14 November 2007).

to appreciate during these meetings the influence exerted by the Joint Command over the MUP and VJ in respect of the implementation of the various stages of the Plan for Combating Terrorism. In 1999, he did not participate in the meetings held in Belgrade on 4, 16, or 17 May between *inter alia* Milošević, Milutinović, Pavković, Ojdanić, and Lukić.²³¹⁶ Consequently, the Chamber considers that he was distanced from the policy-makers in Belgrade and that this militates against him being a member of the joint criminal enterprise. Lazarević also took a number of steps in relation to the criminal offences of members of the VJ and MUP in Kosovo, including in some cases issuing written orders to prevent the civilian population from being displaced and requiring that misconduct towards civilians be severely punished. These orders suggest that, although he knew that the VJ was involved in the widespread movement of the Kosovo Albanian population, he took some steps to ameliorate the circumstances in which this occurred.

919. In light of this evidence, the Chamber finds that the Prosecution has not proved beyond reasonable doubt that Lazarević shared the intent of the joint criminal enterprise members to maintain control over Kosovo through the forcible displacement of Kosovo Albanians. Because of this finding, the Chamber does not address whether he made a significant contribution to the joint criminal enterprise.

920. Recalling that a Chamber need only address those forms of responsibility under Article 7(1) that describe the conduct of the accused most accurately, the Chamber makes the general observation on the physical elements of the other forms of responsibility under Article 7(1) that planning primarily applies to those who design crimes, that instigating primarily applies to those who prompt others to commit crimes, and that ordering primarily applies to those who instruct others to commit crimes; whereas aiding and abetting applies to those who provide practical assistance, encouragement, or moral support to the perpetration of a crime.²³¹⁷ On this basis, the Chamber does not consider that planning, instigating, or ordering most accurately describe the conduct of Lazarević and dismisses these modes of liability to describe his individual criminal responsibility. Accordingly, the Chamber now addresses his responsibility for aiding and abetting the commission of the crimes proved to have occurred.

b. Aiding and abetting

921. In order for Lazarević to be held responsible for aiding and abetting any of the crimes that have been proved, it must be shown that he provided practical assistance, encouragement, or moral

²³¹⁶ Vladimir Lazarević, T. 18134 (12 November 2007), T. 18657 (20 November 2007). The Chamber notes that Lukić did not attend the 16 and 17 May meetings but did attend the 4 May meeting.

²³¹⁷ For the complete descriptions of the elements of these forms of responsibility, see Section II.

support to the perpetrator of a crime or underlying offence and also that such practical assistance, encouragement, or moral support had a substantial effect upon the commission of a crime or underlying offence.²³¹⁸ Furthermore, it must be shown that he intentionally provided this assistance and that he was aware of the essential elements of that crime or underlying offence, including the mental state of the physical perpetrator or intermediary perpetrator.²³¹⁹ The lending of practical assistance, encouragement, or moral support may occur before, during, or after the crime occurs.²³²⁰ An accused may aid and abet through an omission, 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.

922. The Chamber has found that, from March to June 1999, VJ and MUP forces carried out a campaign of widespread and systematic forcible displacements in numerous villages across 13 municipalities in Kosovo, which involved the commission of crimes against hundreds of thousands of Kosovo Albanians.

923. Lazarević was aware of this campaign of forcible displacements that was conducted by the VJ and MUP throughout Kosovo during the NATO air campaign. During 1998 and the period leading up to the campaign, Lazarević was provided with information indicating that VJ and MUP personnel were responsible for serious criminal acts committed against ethnic Albanians within Kosovo. The evidence above, including the notes of the Joint Command meetings, some Priština Corps Command orders, the evidence pertaining to Lazarević's presence in the border area between Albania and Kosovo at the time when joint operations were being conducted there, and the evidence of his knowledge of the crimes committed in the village of Gornje Obrinje/Abria e Epërme in Glogovac/Gllogoc municipality in October 1998, as well as in the village of Slapuzne on 8 January 1999, indicates that Lazarević was aware of the fact that crimes were committed against civilians and civilian property during operations conducted by the VJ and the MUP in 1998 and early 1999. He was aware of the humanitarian catastrophe in Kosovo, as described in UN Security Council Resolution 1199, which stated that this was in part caused by the VJ and MUP using excessive force,²³²¹ and he was aware that the VJ were involved in burning the houses of Kosovo Albanians; indeed, he was present at a meeting of the VJ leadership when Samardžić stated that

²³¹⁸ *Blaškić* Appeal Judgement, paras. 45, 46; *Vasiljević* Appeal Judgement, para. 102.

²³¹⁹ *Blaškić* Appeal Judgement, para. 49; *Vasiljević* Appeal Judgement, para. 102; *Aleksovski* Appeal Judgement, para. 162; *Simić et al.* Appeal Judgement, para. 86.

²³²⁰ *Blaškić* Appeal Judgement, para. 48.

²³²¹ P1468 (Notes of the Joint Command), pp. 124–125.

fighting terrorism by torching was “a disgrace”.²³²² Consequently, Lazarević was aware that similar excessive uses of force and forcible displacements were likely to occur if he ordered the VJ to operate in Kosovo in 1999.

924. From late March 1999 and throughout the campaign of forcible displacements, Lazarević, as the Commander of the Priština Corps, was present in Kosovo where the campaign was being conducted by his subordinates acting together with the MUP, and was reported as stating of himself that he was on the “front-line” of the action.²³²³ From 24 March 1999, continuing for some weeks, the VJ and MUP, operating together, forcibly displaced large numbers of Kosovo Albanian civilians from Priština/Prishtina in an organised manner, which required significant planning and co-ordination. Lazarević was present in Priština/Prishtina throughout most of this time and was aware of these displacements and the atmosphere of terror in the town created by the VJ and MUP. Lazarević indicated that he was aware of the previous forcible displacement of Kosovo Albanians by members of the Priština Corps when he called upon his subordinates to prevent the mistreatment of the civilian population, through practices such as banning civilians from returning to inhabited places.²³²⁴ Furthermore, Lazarević was informed about the massive scale of the displacement of the civilian population in reports sent by his subordinate units. For example, he knew that from 24 March to 2 April over 300,000 Kosovo Albanians left for Albania.²³²⁵ The combination of Lazarević’s general knowledge of the widespread displacement of Kosovo Albanians in the course of VJ operations and his specific knowledge of the locations of those operations, including at most of the locations named in the Indictment, lead the Chamber to conclude that the only reasonable inference is that he knew of the campaign of terror, violence, and forcible displacement being carried out by VJ and MUP forces against Kosovo Albanians.

925. Lazarević provided practical assistance, encouragement, and moral support to the VJ forces engaging in the forcible displacement of Kosovo Albanians in co-ordinated action with the MUP. Throughout the campaign of forcible displacements, Lazarević was the Commander of the Priština Corps, with *de jure* and *de facto* authority over all its members and the power to plan the VJ activities and operations in Kosovo.²³²⁶ Lazarević significantly participated in the planning and

²³²² 4D97 (Minutes from the briefing of the commanders of the PrK and 3rd Army, 7 August 1998), p. 3.

²³²³ P1523 (Transcript of a talk show held on 18 July 1999, published on 21 July 1999), p. 2.

²³²⁴ 5D374 (Order of the PrK, 23 April 1999), p. 1.

²³²⁵ 5D885 (Document of the 549th Motorised Brigade Command, 3 April 1999), p. 1.

²³²⁶ The Chamber notes that the military territorial detachments in Kosovo were resubordinated to Lazarević by 8 April at the latest. In respect of the crimes listed below, for which Lazarević is being convicted, the Chamber is satisfied that members of the Priština Corps or VJ units subordinated to the Priština Corps at the time were involved in their commission. In relation to Staro Selo in Uroševac/Ferizaj, the Chamber notes that VJ volunteers were involved. The Chamber recalls the evidence discussed in Section VI.A.2.c.iv, where it is noted that volunteers were sent to training

execution of the joint operations conducted by the VJ, acting solely or in co-ordination with the MUP, on the ground in Kosovo from March to June 1999. His *Grom* 3 and 4 orders, and the Joint Command orders—which the Priština Corps drafted—sent the VJ into actions in Kosovo and provided the authorisation within the VJ chain of command for the VJ to operate in the crime sites where many of the forcible displacements of Kosovo Albanians were conducted. Lazarević's presence in the field, inspecting VJ units that were involved in the commission of crimes against Kosovo Albanians, was expressly noted to improve the morale of soldiers.²³²⁷ Lazarević knew that the military courts were not effectively prosecuting VJ members for expelling Kosovo Albanians from their homes. Despite his knowledge of the campaign of forcible displacements occurring in Kosovo, he reported on 15 May 1999 that only one officer from the Priština Corps was charged with murder.²³²⁸ Furthermore, only one commander of a Priština Corps unit was criminally prosecuted in relation to the events in Kosovo and that was for failing to take measures, resulting in the death of the VJ member. Lazarević knew that his failure to take adequate measures to secure the proper investigation of serious crimes committed by the VJ enabled the forces to continue their campaign of terror, violence, and displacement.

926. These acts and omissions provided a substantial contribution to the commission of the crimes that the Chamber has found to have been committed by VJ members, as specified below, as they provided assistance in terms of soldiers on the ground to carry out the acts, the organisation and equipping of VJ units, and the provision of weaponry, including tanks, to assist these acts. Furthermore, Lazarević's acts and omissions provided encouragement and moral support by granting authorisation within the VJ chain of command for the VJ to continue to operate in Kosovo, despite the occurrence of these crimes by VJ members. As the Commander of the Priština Corps, Lazarević knew that his conduct would assist the implementation of the campaign to forcibly displace Kosovo Albanians.

927. The Chamber finds that it has been established beyond reasonable doubt that all of Lazarević's actions described above were voluntary. Consequently, the Chamber finds that, through his acts and omissions, Lazarević provided practical assistance, encouragement, and moral support to members of the VJ, who were involved in the commission of forcible transfer and deportation in the specific crime sites outlined above, which had a substantial effect on the

centres in Serbia and then assigned to Priština Corps units in Kosovo. On this basis, the Chamber is satisfied that these volunteers in Staro Selo were under the jurisdiction of the Priština Corps at the relevant time.

²³²⁷ P1903 (PrK Combat Report to 3rd Army, 5 April 1999), p. 3; P2617 (PrK Combat Report to 3rd Army, 4 April 1999), p. 2.

²³²⁸ P1182 (Information sent by PrK to the 52nd Artillery Rocket Brigade, 15 May 1999), p. 4; Radomir Gojović, T. 16694–16695 (2 October 2007), T. 16756 (3 October 2007); P1011 (Ivan Marković, ed., *The Application of Rules of the International Law of Armed Conflicts* (2001)), p. 166.

commission of these crimes, that he was aware of the intentional commission of these crimes by the VJ in co-ordinated action with the MUP, and that he knew that his conduct assisted in the commission of these crimes.

928. While the forcible displacements were part of the VJ and MUP organised campaign, the Chamber is not satisfied beyond reasonable doubt that killings, sexual assaults, or the destruction of religious and cultural property were intended aims of this campaign. Accordingly, although he was aware of VJ members killing Kosovo Albanians in some instances, it has not been proved that Lazarević was aware that VJ and MUP forces were going into the specific crime sites referred to above in order to commit killings, sexual assaults, or the destruction of religious and cultural property. Consequently, in Lazarević's case, the mental element of aiding and abetting has not been established in relation to counts 3, 4, and 5.

929. The Chamber notes here that, in making its findings in relation to the responsibility of Lazarević, it has had regard to all the relevant evidence in relation to Lazarević, including that which supports his plea of not guilty and his own evidence denying any responsibility for events that are the subject of the Indictment. However, the Chamber finds that these denials are overwhelmed in some cases by the evidence identified above that it has accepted and that paints a clear picture of the practical assistance, encouragement, and moral support that Lazarević gave to the perpetrators of some of the underlying offences.

930. The Trial Chamber therefore finds that it has been established beyond reasonable doubt that Vladimir Lazarević is responsible for aiding and abetting, under Article 7(1) of the Statute, the crimes in the following locations:

- Peć/Peja
 - Peć/Peja town—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Dečani/Dečan
 - Beleg—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Đakovica/Gjakova
 - Đakovica/Gjakova town—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Korenica—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Dobroš/Dobrosh—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Ramoc—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;

- Meja—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Other villages in the Reka/Caragoj valley—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Prizren
 - Pirane/Pirana—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Orahovac/Rahovec
 - Celina—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Srbica/Skenderaj
 - Turićevac/Turićec—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Izbica—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Tušilje/Tushila—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Ćirez/Qirez—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Priština/Prishtina
 - Priština/Prishtina town—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Gnjilane/Gjilan
 - Žegra/Zhegra—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Vladovo/Lladova—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Prilepnica/Përlepnicë—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Kačanik/Kaçanik
 - Kotlina/Kotllina—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Kačanik/Kaçanik—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Dubrava/Lisnaja—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity.

931. In respect of the crimes proved to have been committed for which Lazarević has not been held responsible as an aider and abettor, the Chamber finds that he also did not plan, instigate, or order them.

c. Superior responsibility

932. Looking to Lazarević's responsibility under Article 7(3) of the Statute for counts 1 and 2, the Chamber notes that there are specific crimes of forcible displacement for which he has not been found responsible as an aider and abettor. These specific crimes were those of forcible displacement carried out by the MUP, without the participation of the VJ. As found above, it has not been established that Lazarević had effective control of the forces of the MUP acting in Kosovo. Consequently, he is not responsible under Article 7(3) for the remaining crimes in counts 1 and 2 that have been proved, those being:

- Prizren
 - Dušanovo/Dushanova, part of the town of Prizren—deportation, crime against humanity; forcible transfer, other inhumane act, crime against humanity;
- Suva Reka/Suhareka
 - Suva Reka/Suhareka town—deportation, crime against humanity; forcible transfer, other inhumane act, crime against humanity;
- Kosovska Mitrovica/Mitrovica
 - Kosovska Mitrovica/Mitrovica town—deportation, crime against humanity; forcible transfer, other inhumane act, crime against humanity;
 - Žabare/Zhabar—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Vučitrn/Vushtrria
 - Vučitrn/Vushtrria town—forcible transfer, other inhumane act, crime against humanity;
 - Convoy near Gornja Sudimlja/Studimja e Epërme—deportation, crime against humanity; forcible transfer, other inhumane act, crime against humanity.
- Uroševac/Ferizaj
 - Sojevo/Sojeva—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Mirosavlje/Mirosala—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Staro Selo—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity.

933. Lazarević is further charged with being responsible under Article 7(3) of the Statute for counts 3, 4, and 5 of the Indictment. The Chamber notes that it has not been proved beyond reasonable doubt that killings, sexual assaults, or the destruction of religious and cultural property were intended aims of the campaign of forcible displacement. Therefore, Lazarević would only have reason to know that his forces were committing these crimes where information relating to the specific crimes of killings, sexual assaults, or the destruction of religious and cultural property, carried out by VJ forces, was available to him. Lazarević had information indicating that MUP or VJ forces were responsible for the killings of Kosovo Albanians in Izbica. However, the Chamber

has found that these were committed by MUP forces and that, although the VJ was in the vicinity, it was not responsible for the killings. Consequently, Lazarević did not have effective control over the perpetrators. Aside from the Izbica killings, the Chamber does not consider that information regarding the specific killings, sexual assaults, or the destruction of religious and cultural property, for which it has been proved that the VJ was responsible, was available to him or that he had reason to know about them.

934. Lazarević is not responsible for all other charges alleged in the Indictment, subject to the final paragraph of the Judgement.

935. Vladimir Lazarević is, therefore, guilty of counts 1 and 2 of the Indictment. However, he is not guilty of counts 3, 4, and 5 of the Indictment, subject to the final paragraph of the Judgement.

H. INDIVIDUAL CRIMINAL RESPONSIBILITY OF SRETEN LUKIĆ

1. The Accused

936. Sreten Lukić was born on 28 March 1955, in Višegrad. In 1974 he graduated from a police preparatory high school in Sremska Kamenica.²³²⁹ He then studied in the Belgrade military academy, which at the time served both the VJ and the MUP.²³³⁰ Upon his graduation from the academy, and throughout his career, Lukić served in various MUP posts, including Police Inspector, Head of the Department for Public Peace and Order, Deputy Head of the Užice SUP, and Head of the Police Department for Public Peace and Order, as well as Traffic Matters in the Belgrade Headquarters of the MUP.²³³¹

937. In 1991 Lukić was appointed to the position of Deputy Head of the Belgrade City SUP, and later in May 1998 he was reassigned to serve at the MUP Staff for Kosovo.²³³² Upon the completion of his assignment in Kosovo, Lukić was appointed the Head of the Border Police Administration. In 2001 he was promoted to the position of Head of the RJB.

2. Charges in Indictment

²³²⁹ 1D680 (Recommendation to promote Sreten Lukić to Lieutenant-General, 11 May 1999); P948 (Sreten Lukić interview with the Prosecution), p. 4.

²³³⁰ 1D680 (Recommendation to promote Sreten Lukić to Lieutenant-General, 11 May 1999); P948 (Sreten Lukić interview with the Prosecution), p. 4.

²³³¹ 1D680 (Recommendation to promote Sreten Lukić to Lieutenant-General, 11 May 1999; 6D1360 (Sreten Lukić's work book).

²³³² Duško Adamović, 6D1613 (witness statement dated 30 March 2008), para. 51; P1252 (Decision on the composition of the MUP Staff for Kosovo and Metohija), para. 1.

938. According to the Indictment, Lukić planned, organised, guided, co-ordinated, and controlled the work of the MUP in Kosovo. As Head of the MUP Staff for Kosovo, he is alleged to have had command over MUP operations and to have been responsible for MUP units in Kosovo between 1 January and 20 June 1999. He is charged with planning, instigating, ordering, or otherwise aiding and abetting in the planning, preparation, or execution of the crimes alleged in the Indictment, and with participating in the joint criminal enterprise to modify the ethnic balance in Kosovo. He is further charged with responsibility as a superior for crimes committed by his subordinates, pursuant to Article 7(3) of the Statute.²³³³

939. The Lukić Defence maintains that at all times during and after the period of the Indictment Lukić functioned in a legitimate and professional manner, did not plan, instigate, order, commit in any form, or otherwise aid and abet in the planning or execution of any such crimes, either under Article 7(1) or 7(3).²³³⁴ It particularly contests the nature and powers of the MUP Staff as asserted by the Prosecution, and Lukić's role therein.²³³⁵

940. The Chamber has concluded in Section VII that the forces of the FRY and Serbia committed crimes directed against the Kosovo Albanian civilian population in many of Kosovo's municipalities, between March and June 1999. This section will address the question of whether Lukić is responsible for any of these crimes, under any forms of responsibility alleged in the Indictment.

3. Lukić's rank

941. The Prosecution alleges that Lukić was the highest ranking MUP officer in Kosovo during the relevant time period.²³³⁶ The Lukić Defence denies this and points out that in the MUP command structure, as opposed to the VJ command structure, ranks alone did not establish the seniority of the police official in question; the position held was instead determinative.²³³⁷ According to the Lukić Defence, several high-ranking MUP officials senior to Lukić were often present on the ground in Kosovo in 1998 and 1999.²³³⁸ It also argues that "often other persons

²³³³ Indictment, para. 15, 65–69.

²³³⁴ Lukić Final Trial Brief, 7 August 2008 (public version), para. 7.

²³³⁵ Lukić Final Trial Brief, 7 August 2008 (public version), para. 7.

²³³⁶ Prosecution Final Brief, 29 July 2008 (public version), para. 994.

²³³⁷ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 620–627, 629–638.

²³³⁸ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 620–627, 629–638; Lukić Defence closing arguments, T. 27309 (26 August 2008).

would sign dispatches based upon their position within a particular line of work or Administration, and in that sense would be senior and superior to Lukić.”²³³⁹

942. During his oral testimony, Branislav Simonović had difficulty indicating which ranks of the police were senior to Lukić’s, only stating that there was no rank higher than colonel-general.²³⁴⁰ In his report he stated that the promotion system within the MUP was fundamentally different from that in the VJ, despite the fact that the names of the ranks were identical.²³⁴¹ He explained that, in addition to ranks, the Ministry of Interior also used titles, and the promotion systems for employees with ranks and those with titles were “virtually identical.”²³⁴² Simonović also explained that the position and function of an authorised official at the Ministry of Interior was more important than his rank in terms of influence and authorisations, a practice that was necessary because of the nature of tasks and responsibilities in ministries.²³⁴³ Despite the Chamber’s reservations about the precise nature of Simonović’s expertise,²³⁴⁴ his evidence on this issue was confirmed by other witnesses, including Časlav Golubović, who was the Head of the Bor SUP in eastern Serbia. Golubović conceded upon cross-examination that it was possible for a member of the MUP with a lower rank to hold a superior position.²³⁴⁵

943. The work record book documenting Lukić’s career in the MUP shows that from 1 January 1992 until 14 July 1999, which includes the period he served as the Head of the MUP Staff, he was considered to be an employee of the Belgrade SUP.²³⁴⁶ In June 1997 the Minister of Interior appointed Lieutenant-Colonel Branko Đurić to serve as the Head of the Belgrade SUP, which effectively made him Lukić’s superior and supervisor, although Lukić was ranked higher than Đurić.²³⁴⁷

944. The Chamber accepts that a practice within the MUP existed whereby a person with a lower rank could serve as a superior to officers who outranked him, and that the nature of the position and its responsibilities mattered more than rank. Therefore, the Chamber finds it unnecessary to determine who was the highest ranked police official in Kosovo, and instead will examine below the scope of Lukić’s tasks and responsibilities.

²³³⁹ Lukić Final Trial Brief, 7 August 2008 (public version), para. 638.

²³⁴⁰ Branislav Simonović, T. 25627 (17 April 2008).

²³⁴¹ 6D668 (Expert report of Branislav Simonović), p. 46.

²³⁴² 6D668 (Expert report of Branislav Simonović), pp. 46–48.

²³⁴³ 6D668 (Expert report of Branislav Simonović), pp. 46–48.

²³⁴⁴ See Section VI.A.3.

²³⁴⁵ Časlav Golubović, T. 7425–7426 (27 November 2006); K84, T. 5212 (19 October 2006), T. 5237 (25 October 2006) (confirming that it was possible for an official to hold a rank higher than that of his superior, although this practice was not customary).

4. Lukić's position within the MUP Staff

945. On 11 June 1998 the Head of the RJB, Vlastimir Đorđević, issued a decision appointing Lukić, who at the time was a Major-General, to serve as the Head of the MUP Staff in Priština/Prishtina.²³⁴⁸ On 16 June 1998 Lukić's mandate at the MUP Staff was affirmed by the Serbian Minister of Interior, Vlajko Stojiljković.²³⁴⁹ On 31 May 1999 his appointment was renewed once again by Stojiljković.²³⁵⁰ On 11 May 1999 Stojiljković recommended that Lukić be promoted to the rank of Lieutenant-General.²³⁵¹

946. Lukić's actual position and functions within the MUP Staff are major points of contention between the Prosecution and the Lukić Defence, closely linked to the contested issue of the nature of the MUP Staff itself. Thus, before turning to Lukić's role in the Staff in particular, the Chamber first considers the evidence in relation to the purpose and tasks of the MUP Staff, and the arguments of the parties in relation thereto. It should be noted, however, that much of the evidence in relation to the MUP Staff in general is also relevant to the question of Lukić's powers and functions as its Head.

a. Functions of the MUP Staff for Kosovo

947. It is a feature of this issue that the testimony given by the witnesses brought by the Lukić Defence was often in conflict with the admitted documentary evidence. While the witnesses, many of whom were former colleagues or subordinates of Lukić, generally depicted the MUP Staff as without any commanding or controlling authority over the MUP forces in Kosovo, the documents in evidence suggest it had a central role in the process of planning "anti-terrorist" operations and ensuring co-ordination between the various forces in order to implement the overarching objectives of these operations. When deliberating, the Trial Chamber analysed the documentary evidence alongside the witness accounts and was particularly conscious of the conflict between the terms of the documents and the oral testimony in reaching its conclusions both about the reliability of the witnesses and the nature of the MUP Staff itself.

i. Arguments of the parties and witness testimony

²³⁴⁶ 6D1360 (Sreten Lukić's work book).

²³⁴⁷ 6D1458 (Decision on appointment of Branko Đurić as the Head of the Belgrade SUP, 4 June 1997).

²³⁴⁸ P1252 (Decision on the composition of the MUP Staff for Kosovo and Metohija), para. 1; P1505 (Decision to establish a Ministerial Staff for the Suppression of Terrorism, 16 June 1998). The Chamber notes that although the date on the P1252 is illegible, P1505 clearly indicates that it was issued on 11 June 1998; *see also* Ljubinko Cvetić, T. 8030 (6 December 2006).

²³⁴⁹ P1505 (Decision to establish a Ministerial Staff for the Suppression of Terrorism, 16 June 1998).

²³⁵⁰ P1811 (Decision on establishment of the Ministry's Staff for the Suppression of Terrorism, 31 May 1999).

²³⁵¹ 1D680 (Recommendation to promote Sreten Lukić to Lieutenant-General, 11 May 1999).

(A) MUP Staff authority over units of the RJB

948. As set out in Section VI.A.3, various documents in evidence relate to the establishment, composition, functions, and renewal of the MUP Staff.²³⁵² The Prosecution argues that the role of the MUP Staff was to plan, organise, and control the activities of the SUPs and all MUP units engaged in combat activities in Kosovo.²³⁵³ In addition to asserting that the MUP Staff had “authority over MUP special units in Kosovo (PJPs, SAJ and JSO) during their engagement in combat actions”,²³⁵⁴ the Prosecution submits that “[o]nce deployed to Kosovo, the MUP Staff had the role of directing and organising their operations”.²³⁵⁵ It argues that, in relation to operations that were to be conducted jointly by VJ and MUP forces, “[o]nce authority to proceed was issued by the Joint Command, [Lukić and Pavković] would each task their subordinates to provide the required units and to liaise with their respective counterparts in the VJ and the MUP at the VJ brigade or PJP detachment level, where the ground level details of the plan would be finalised.”²³⁵⁶

949. In support of its arguments, the Prosecution relies upon the mandate of the MUP Staff, as laid out in the 16 June 1998 “Decision to Establish a Ministerial Staff for the Suppression of Terrorism”, and later reaffirmed in the 31 May 1999 Decision, which both state that the MUP Staff was to control the work and engagement of the “organisational units of the Ministry, and also sent and attached units, in suppressing terrorism” in Kosovo.²³⁵⁷ Miroslav Mijatović, who was Lukić’s deputy in the Staff from July 1998 to the end of May 1999, testified that the “sent” units were PJP detachments, but that he did not know what “attached” units were.²³⁵⁸

950. The Prosecution also relies on the evidence of Ljubinko Cvetić, who was the Head of the Kosovska Mitrovica SUP. Cvetić testified that the functions of the MUP Staff were set out in the order establishing it, namely to “plan, organise, coordinate, and direct the work of the secretariat[s] of the interior and police border stations in Kosovo and Metohija, especially when it comes to

²³⁵² 6D1368 (Decision on the Establishment of MUP Staff in Kosovo, 11 June 1997); 6D1370 (Decision to define the duties and tasks of the Ministry Staff in Priština, 15 January 1998); P1251 (Decision the formation of a Staff of the Ministry in Priština, 15 May 1998); P1252 (Decision on the composition of the MUP Staff for Kosovo and Metohija, 11 June 1998); P1505 (Decision to establish a Ministerial Staff for the Suppression of Terrorism, 16 June 1998); P1811 (Decision on establishment of the Ministry’s Staff for the Suppression of Terrorism, 31 May 1999).

²³⁵³ Prosecution Final Brief, 29 July 2008 (public version), paras. 210–227, 998–1002.

²³⁵⁴ Prosecution Final Brief, 29 July 2008 (public version), para. 210.

²³⁵⁵ Prosecution Final Brief, 29 July 2008 (public version), para. 210.

²³⁵⁶ Prosecution Final Brief, 29 July 2008 (public version), para. 228.

²³⁵⁷ P1505 (Decision to establish a Ministerial Staff for the Suppression of Terrorism, 16 June 1998); P1811 (Decision on establishment of the Ministry’s Staff for the Suppression of Terrorism, 31 May 1999).

²³⁵⁸ Miroslav Mijatović, T. 22430 (14 February 2008).

serious security issues and breaches, such as to prevent riots, armed resistance and insurgency, as well as terrorism.”²³⁵⁹ The Head of the MUP Staff was to report to the Head of the RJB.²³⁶⁰

951. The Lukić Defence asserts that, despite the language of the decisions establishing the MUP Staff, it was created as an “auxiliary body” and not an “organisational unit” of the MUP, and as such did not change the existing and lawful chain of command, whereby the SUPs answered only to the Head of the RJB and the Minister of Interior.²³⁶¹ It argues that “the structure and functioning of the MUP Staff for Kosovo and Metohija showed it to be a mere token, ad hoc assistance organ without authority or power over existing MUP structures.”²³⁶² Consequently, the MUP Staff could not and did not control the work of the SUPs or issue orders to them. In relation to the combat units, the Lukić Defence submits that the MUP Staff was unable to issue binding orders to them; it could, however, encourage them to abide by the law.²³⁶³ It contends that the decision of 16 June 1998 establishing the MUP Staff “gave the Staff powers that could not be carried out in practice.”²³⁶⁴ In particular, it submits that “the circumstances surrounding [the issuance of this decision] led to that document’s primacy being usurped and superseded, as all anti-terrorist activities were to be developed as called for in the 5-phase plan.”²³⁶⁵

952. Miroslav Mijatović referred to the MUP Staff as a temporary auxiliary body which was not superior to the SUPs and other organisational units of the MUP;²³⁶⁶ that made it impossible for the MUP Staff to implement the tasks with which it was entrusted in the decision establishing it, namely planning and organising the activities of the organisational units and the police units sent to Kosovo.²³⁶⁷ Branislav Simonović gave a similar account of the role of the MUP Staff.²³⁶⁸ Duško Adamović, who in 1998 and early 1999 served as the assistant at the MUP Staff responsible for operational affairs, also asserted that the MUP Staff was an auxiliary body of the MUP and maintained that, despite the existence of the MUP Staff, there was no change in the procedures or rules followed by the organisational units of the MUP in Kosovo.²³⁶⁹ Similarly, when asked

²³⁵⁹ Ljubinko Cvetić, T. 8067 (7 December 2006).

²³⁶⁰ Ljubinko Cvetić, T. 8067 (7 December 2006).

²³⁶¹ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 416–435.

²³⁶² Lukić Final Trial Brief, 7 August 2008 (public version), p. 135.

²³⁶³ Lukić Final Trial Brief, 7 August 2008 (public version), para. 381.

²³⁶⁴ Lukić Final Trial Brief, 7 August 2008 (public version), para. 723.

²³⁶⁵ Lukić Final Trial Brief, 7 August 2008 (public version), para. 769.

²³⁶⁶ Miroslav Mijatović, T. 22210, 22216 (12 February 2008) (“This chain of management was not changed for a very simple reason. The staff was not an organisational unit of the ministry, and the existence of the staff did not disrupt this chain of management. So the staff is not an organizational unit, and as such it is not superior to or subordinate to any other unit except for the ministry.”).

²³⁶⁷ Miroslav Mijatović, T. 22204–22205, 22210–22212 (12 February 2008).

²³⁶⁸ Branislav Simonović, T. 25520–25521 (16 April 2008), T. 25534–25536, 25545 (17 April 2008).

²³⁶⁹ Duško Adamović, T. 25087–25088 (9 April 2008), 6D1613 (witness statement dated 30 March 2008), para. 29.

whether changes were made in the work of the Kosovska Mitrovica SUP due to the appointment of Lukić as the Head of the MUP Staff, Cvetić replied, “No.”²³⁷⁰

953. Mijatović and Adamović testified that the Kosovo SUPs received their orders directly from the MUP headquarters in Belgrade, which also sent these orders to the MUP Staff for information.²³⁷¹ Dušan Gavranić, the Chief of the Gnjilane SUP, testified that, despite the wording of the decision of 16 June 1998 suggesting that the MUP Staff managed some of the activities of the SUPs, he “worked on the basis of the documents [he] received from the heads of the administrations at the ministry headquarters in Belgrade.”²³⁷² According to him, the MUP Staff “assist[ed] the SUPs”.²³⁷³ He considered the Staff to be an organ “that helped ... the secretariats in [their] work in every way”: when the SUP “needed consultations to take place ... [i]t was easier to get to Priština rather than Belgrade.”²³⁷⁴ As an example of the MUP Staff’s assistance to the SUP, Gavranić stated that the SUP would send urgent requests to the MUP Staff when material technical resources were lacking and the Staff would submit the request to the administrations in Belgrade.²³⁷⁵

954. The Trial Chamber notes the testimony of Gavranić that the SUPs “quite often” received from the MUP Staff (a) “cumulative [reports] about the state security generally speaking”, (b) “dispatches and information of different kinds” in which the MUP Staff cautioned the SUPs to act professionally “in terms of crime prosecution”, and (c) “analytical reports” on how other SUPs worked and on how the SUPs should act in order to “work efficiently”.²³⁷⁶ He added that his SUP received a “multitude of dispatches from the Staff via courier, involving tasks in relation to how to treat civilians”.²³⁷⁷

955. In addition, Adamović testified that the MUP Staff issued certain orders to organisational units “to direct them to a certain procedure, or to take preventive measures and prevent various kind of abuse.”²³⁷⁸ According to him, the objective of these orders was to reduce the occurrence of incidents and unauthorised activities on the ground.²³⁷⁹ He stressed that these dispatches from the

²³⁷⁰ Ljubinko Cvetić, T. 8145 (8 December 2006).

²³⁷¹ Miroslav Mijatović, T. 22210–22213 (12 February 2008); Duško Adamović, 6D1613 (witness statement dated 30 March 2008), para. 39.

²³⁷² Dušan Gavranić, T. 22747 (19 February 2008).

²³⁷³ Dušan Gavranić, T. 22747 (19 February 2008).

²³⁷⁴ Dušan Gavranić, T. 22655 (18 February 2008).

²³⁷⁵ Dušan Gavranić, T. 22655 (18 February 2008).

²³⁷⁶ Dušan Gavranić, T. 22755 (19 February 2008).

²³⁷⁷ Dušan Gavranić, T. 22755–22756 (19 February 2008).

²³⁷⁸ Duško Adamović, 6D1613 (witness statement dated 30 March 2008), para. 46.

²³⁷⁹ Duško Adamović, 6D1613 (witness statement dated 30 March 2008), para. 46.

MUP Staff “did not contain commands relating to operations or orders on how [a MUP unit] should act”; rather, the MUP Staff merely “emphasised that special attention should be paid to a certain segment of the task.”²³⁸⁰

956. Božidar Filić testified that the MUP Staff was “a sort of forward working body of the ministry that was supposed to help the SUPs in Kosovo and Metohija in some situations that were complicated security-wise.”²³⁸¹

957. The Lukić Defence also argues that the MUP Staff did not have command authority over the PJP units engaged in Kosovo, as the PJP had a separate chain of command, which went from the Minister of Interior to the commander of PJP units, Obrad Stevanović, and then to the PJP units themselves.²³⁸² Moreover, the SAJ was a stand-alone unit, which constituted a separate organisational unit of the MUP directly linked to the RJB; it was subordinated to the SAJ commander in Belgrade, Živko Trajković.²³⁸³ The Defence further submits that, despite the fact that the 16 June 1998 decision on the establishment of the MUP Staff lists Trajković as a member, he never served as such.²³⁸⁴

958. Adamović claimed that the role of the MUP Staff in dealing with combat units deployed in Kosovo was largely a logistical one. He explained that the MUP Staff monitored the arrival, departure, and location of PJP units in Kosovo, and provided them with logistical support, such as weapons, ammunition, fuel, and vehicles.²³⁸⁵ He further summarised the tasks of the MUP Staff, stating that it was responsible for collating information on the security situation in Kosovo on the basis of the reports received from SUPs; providing logistical support to the units sent to Kosovo; providing assistance with the training of the PJP units; organising meetings when the Minister of Interior visited Kosovo; keeping contacts with international organisations based in Priština/Prishtina to ensure the implementation of international agreements; issuing orders to organisational units, only to direct them to certain procedures or to prevent abuses; and forwarding sections of Priština Corps maps for the conduct of joint VJ/MUP “anti-terrorist operations”.²³⁸⁶ Ljubivoje Joksić, who was the Assistant Co-ordinator of the RDB centres in Kosovo, supported Adamović’s assertion that the Staff was involved in the training of the PJP when he testified that in

²³⁸⁰ Duško Adamović, 6D1613 (witness statement dated 30 March 2008), para. 46.

²³⁸¹ Božidar Filić, T. 23986 (10 March 2008).

²³⁸² Lukić Final Trial Brief, 7 August 2008 (public version), paras. 391–409.

²³⁸³ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 410–415.

²³⁸⁴ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 753–755.

²³⁸⁵ Duško Adamović, 6D1613 (witness statement dated 30 March 2008), para. 28.

²³⁸⁶ Duško Adamović, 6D1613 (witness statement dated 30 March 2008), paras. 25, 46.

1999 Goran Radosavljević (a.k.a. Guri), was the member of the MUP Staff in charge of training MUP units.²³⁸⁷

959. The 35th and 85th detachments of the PJP were attached to the Kosovska Mitrovica SUP during the NATO campaign and Cvetić, the former SUP Chief, testified about their engagement in Kosovo.²³⁸⁸ Cvetić agreed with the suggestion that the PJP had its own chain of command.²³⁸⁹ However, according to Cvetić, while none of the regulations guiding the work of the MUP was changed after the MUP Staff was established,²³⁹⁰ in practice PJP detachments engaged in Kosovo “were manoeuvring forces and would be under the command of the MUP Staff.”²³⁹¹ When asked whether directives were given by the MUP Staff to the PJP once they were engaged in combat operations, Cvetić answered that “the engagement of the PJPs would be taken at the level of the ministry ... and the orders would be submitted to the unit via the MUP staff in Priština,”²³⁹² and went on to explain that the MUP Staff was not simply conveying orders from the Ministry, but was involved in the planning of how to use the PJP in “anti-terrorist” operations.

960. Cvetić further testified to the role of the MUP Staff in the SAJ chain of command. He explained that the MUP Staff “did not have the authority to make decisions on the use of anti-terrorist units, but if such a decision has been taken, the MUP staff could issue orders to such a unit.”²³⁹³ However, he stressed that “the commander of that unit would be directly in charge of commanding the unit in the field.”²³⁹⁴ Filić explained that “[t]he SAJ was a separate organisational unit of the ministry”, which “[f]or a number of years ... had been subordinated directly to the SAJ command in Belgrade”.²³⁹⁵ Radovan Vučurević and Miloš Vojnović testified that Živko Trajković, the commander of the SAJ units, was not a member of the MUP Staff, despite being listed as such in the 16 June 1998 decision.²³⁹⁶ The Chamber does not accept the evidence of Vučurević and Vojnović on this issue. It finds that Vučurević was an unreliable witness, who during his testimony failed to answer questions in a frank and honest manner, and failed to comply with the terms of the solemn declaration he took to tell the truth. The Chamber also finds that Vojnović stretched

²³⁸⁷ Ljubivoje Joksić, T. 21949 (8 February 2008), T. 22025 (11 February 2008); *see* 6D1045 (Decision on completion of deployment in MUP Staff for Goran Radosavljević, 30 May 1999).

²³⁸⁸ Ljubinko Cvetić, T. 8158–8159 (8 December 2006).

²³⁸⁹ Ljubinko Cvetić, T. 8158 (8 December 2006).

²³⁹⁰ Ljubinko Cvetić, T. 8145 (8 December 2006).

²³⁹¹ Ljubinko Cvetić, T. 8034 (7 December 2006).

²³⁹² Ljubinko Cvetić, T. 8074–8075 (7 December 2006).

²³⁹³ Ljubinko Cvetić, T. 8073 (7 December 2006).

²³⁹⁴ Ljubinko Cvetić, T. 8074 (7 December 2006).

²³⁹⁵ Božidar Filić, T. 23929 (10 March 2008); *see also* 6D1355 (Decision on establishing Special Anti-Terrorist Units, 5 April 1999).

²³⁹⁶ Radovan Vučurević, T. 23056 (22 February 2008); Miloš Vojnović, T. 24148 (12 March 2008).

credulity during his testimony on several occasions, for example when stating that he only heard about the Berisha family killings years after the fact, even though he was the Chief of the Prizren SUP. As discussed in Section VII, the Chamber is convinced that the Chief of the Prizren SUP was aware of these killings when they occurred, or shortly afterwards.

961. In his interview with the Prosecution Lukić explained that the “task of the Staff was to coordinate the work of [the police] units, and in this part ... the special police units, had practically dual responsibility: to the commander and, at the same time, to ... the Staff itself.”²³⁹⁷ When subsequently asked who gave instructions to the PJP units, Lukić answered that “from mid July until the end of September or beginning of October [1998], the Chief of the Department, Mr Đorđević and Obrad Stevanović, the Assistant Minister and commander of special units, were with [him] constantly in Priština.”²³⁹⁸ He stressed that Đorđević and Stevanović were “by all means above the head of the Staff”.²³⁹⁹ Adamović confirmed that Đorđević and Stevanović were in Kosovo in 1998: he specified that they went frequently to locations where the units were, whereas the MUP Staff personnel rarely went into the field.²⁴⁰⁰

962. K25, a former PJP member, gave evidence that it was “common knowledge” that “[a]ll MUP units in Kosovo were commanded by the MUP HQ in Priština”, and that Lukić was the commander of all the MUP forces in Kosovo.²⁴⁰¹ K25 further stated that when operations were conducted in Kosovo “allocation of MUP units and assets was determined by [Lukić] and his HQ.” These references to the MUP Staff as the “MUP HQ” suggest that the MUP Staff had an overall commanding role in Kosovo, but on cross-examination K25 conceded that he had no first-hand knowledge of the operation or functioning of the MUP Staff, and had never met Lukić.²⁴⁰²

(B) MUP Staff authority over units of the RDB

963. In addition to asserting command over MUP units forming part of the RJB, the Prosecution submits that, as of 16 June 1998, the MUP Staff “was expanded to include both branches of the MUP in Kosovo”, namely the RJB and the RDB, and from then on it had “authority over both

²³⁹⁷ P948 (Sreten Lukić interview with the Prosecution), p. 41.

²³⁹⁸ P948 (Sreten Lukić interview with the Prosecution), p. 41; *see also* Duško Adamović, T. 25069 (10 April 2008).

²³⁹⁹ P948 (Sreten Lukić interview with the Prosecution), p. 42.

²⁴⁰⁰ Duško Adamović, T. 25081 (10 April 2008).

²⁴⁰¹ K25, P2439 (witness statement dated 12 September 2001), p. 20.

²⁴⁰² K25, T. 4729–4730 (12 October 2006).

branches of the MUP in Kosovo.”²⁴⁰³ According to the Prosecution, such authority allowed the MUP Staff to co-ordinate the work of all special units, including the JSO.²⁴⁰⁴

964. The Lukić Defence asserts that the RDB was a stand-alone service within the MUP, which had a complete and uninterrupted command structure in place, of which the MUP Staff was not part.²⁴⁰⁵ It further argues that the JSO was formed and existed under the Rules of Internal Organisation of RDB, as a separate organ solely under the RDB.²⁴⁰⁶ The JSO base in Kosovo was located near Kosovska Mitrovica/Mitrovica and had a unit commander responsible directly to the Chief of the RDB, who was the only one who could issue orders to it. The Lukić Defence relies upon witness testimony that the composition of the MUP Staff as listed in the 16 June 1998 decision did not accurately reflect the way things really were in Kosovo during the Indictment period. It argues that “the evidence does not support a finding that [the decision of 16 June 1998 establishing the MUP Staff] ever was officially enacted on the ground as to personnel”.²⁴⁰⁷

965. According to the 16 June 1998 decision, the MUP Staff included members of the RDB in addition to members of the RJB. David Gajić, the Co-ordinator of the RDB centre in Priština/Prishtina, was listed as Deputy Head of the Staff, and Milorad Ulemek Luković (a.k.a. Legija), the Commander of the JSO, was listed as the Assistant Head of Operations of the Staff.²⁴⁰⁸ Additionally, paragraph 1 of the decision stated that “the expanded Staff” was also to include “chiefs of the secretariats for internal affairs, centres and branches of the RDB in the Autonomous Province of Kosovo and Metohija.”²⁴⁰⁹

966. Ljubivoje Joksić testified that the RDB was a completely autonomous body and none of its members in Kosovo were subordinated to the MUP Staff.²⁴¹⁰ However, the RDB organs in Kosovo co-operated with the SUPs in Kosovo in their efforts to combat “terrorism” and were exchanging intelligence.²⁴¹¹ In particular, Joksić stressed that

in its entirety, the management in the [RDB] and the reporting only proceeded within the [RDB] itself ... No one from the [RJB] was in charge of anything or could issue any

²⁴⁰³ Prosecution Final Brief, 29 July 2008 (public version), para. 209.

²⁴⁰⁴ Prosecution Final Brief, 29 July 2008 (public version), para. 209.

²⁴⁰⁵ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 436–448, 736–741.

²⁴⁰⁶ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 445–448.

²⁴⁰⁷ Lukić Final Trial Brief, 7 August 2008 (public version), para. 755.

²⁴⁰⁸ P1505 (Decision to establish a Ministerial Staff for the Suppression of Terrorism, 16 June 1998).

²⁴⁰⁹ P1505 (Decision to establish a Ministerial Staff for the Suppression of Terrorism, 16 June 1998).

²⁴¹⁰ Ljubivoje Joksić, T. 21945–21946 (8 February 2008). He added that that no one from the RDB was ever subordinated, or in any way answered, to the MUP Staff in Priština. Ljubivoje Joksić, T. 21945–21946 (8 February 2008), T. 22019–22023, 22025–22026 (11 February 2008).

²⁴¹¹ Ljubivoje Joksić, T. 21946 (8 February 2008).

orders in the [RDB]. It all went from the chief and then down to the lowest-ranking people within the [RDB] and not outside it.²⁴¹²

He also stated that David Gajić and Milorad Ulemek Luković (a.k.a. Legija), were never members of the MUP Staff.²⁴¹³ Joksić further testified that in 1998 and 1999 the JSO was responsible directly to the Head of the RDB: only the Head of the RDB could use this unit and issue orders to it.²⁴¹⁴

967. Cvetić also stated that, as far as he knew, the MUP Staff did not have command responsibility over the JSO, and that he had no knowledge of whether or not the JSO, when deployed in Kosovo, received tasks or instructions from the MUP Staff.²⁴¹⁵

968. Mijatović and Adamović also denied that David Gajić and Milorad Ulemek Luković (a.k.a. Legija), were members of the MUP Staff.²⁴¹⁶ Mijatović stated that the heads of RDB centres in Kosovo, though listed as members of the expanded MUP Staff, never performed any tasks for the Staff in practice. He conceded, however, that they came to the MUP Staff meetings when the Minister of the Interior or his assistants visited Priština/Prishtina.²⁴¹⁷

969. When asked what position David Gajić held, Milan Đaković answered that, as far as he knew, he was “one of the assistant heads” of the RDB.²⁴¹⁸ Đaković did not mention Gajić’s position as Deputy Head of the MUP Staff and testified that the VJ received information from the RDB directly, rather than through the MUP Staff.²⁴¹⁹

(C) MUP Staff role in planning operations

970. In support of the Prosecution contention that the MUP Staff was responsible for planning and organising the operations of MUP units in Kosovo, Cvetić testified that the MUP Staff adopted plans on the use of PJP and other MUP units in countering terrorism.²⁴²⁰ He added that those plans laid out “the basic tasks and the locations at which those units would be engaged.”²⁴²¹ Cvetić,

²⁴¹² Ljubivoje Joksić, T. 21941–21942 (8 February 2008).

²⁴¹³ Ljubivoje Joksić, T. 21945–21946 (8 February 2008).

²⁴¹⁴ Ljubivoje Joksić, T. 21950–21951 (8 February 2008).

²⁴¹⁵ Ljubinko Cvetić, T. 8034, 8037 (6 December 2006).

²⁴¹⁶ Miroslav Mijatović, T. 22167–22172, 22176, 22177–22180 (12 February 2008); Duško Adamović, 6D1613 (witness statement dated 30 March 2008), paras. 7–9, 13.

²⁴¹⁷ Miroslav Mijatović, T. 22179–22180 (12 February 2008).

²⁴¹⁸ Milan Đaković, T. 26370 (19 May 2008).

²⁴¹⁹ Milan Đaković, T. 26428, 26430 (19 May 2008) (testifying that Stojanović “could freely contact the organs of state security and the MUP organs with regard to specific security-related problems”, and going on to say that he “would receive reports from the MUP and the state security.”).

²⁴²⁰ Ljubinko Cvetić, T. 8074–8075 (7 December 2006).

²⁴²¹ Ljubinko Cvetić, T. 8075 (7 December 2006).

therefore, ascribed to the MUP Staff a central role in planning how particular MUP units were to be deployed in Kosovo in the implementation of the overall “anti-terrorism” plan, once decisions were taken in Belgrade to employ those units in Kosovo.

971. The Lukić Defence attempts to rebut the Prosecution’s allegation by relying on the testimonies of several witnesses who stated that the SUPs adopted their own annual work plans, which were neither seen nor approved by the MUP Staff.²⁴²² It further argues that the Priština Corps prepared “orders and Decision maps for individual actions that included tasking for both specified VJ and MUP units” and that “the MUP Staff neither drafted maps nor issued orders.”²⁴²³ It also submits that in 1998 the MUP Staff had a “minimal role ... within the VJ’s planning of the 5-phase plan”.²⁴²⁴ Its role was “merely to provide information as to what PJP units were available for a given action” as well as to act “as a courier to transmit excerpts of maps from the Priština Corps to PJP detachment commanders.”²⁴²⁵ In other words, the MUP Staff was “a postbox for communications”.²⁴²⁶

972. The Chamber finds that, while it might be the case that the SUPs adopted their own work plans, these plans dealt with regular SUP activities, rather than activities related to the combating of “terrorism”. Indeed, Mijatović explained that such plans dealt with the everyday administrative matters of all SUPs throughout Serbia, not just those in Kosovo,²⁴²⁷ which is not inconsistent with the fact that the MUP Staff was responsible for planning, organising, and approving “anti-terrorist” activities in Kosovo.

973. In relation to the role of the MUP Staff in planning joint actions with the VJ, Đaković testified that in 1998 Adamović provided him with information about the strength and location of MUP units in Kosovo, and that they worked together in drafting the plans for “anti-terrorist” actions. Once the Priština Corps Command issued decisions, excerpts of these decisions and accompanying maps that related to the MUP were given to the MUP Staff “in order for it to be able to coordinate things that were within its purview.”²⁴²⁸ The excerpts of the maps pertaining to the

²⁴²² Lukić Final Trial Brief, 7 August 2008 (public version), paras. 425–426; Miroslav Mijatović, T. 22204–22205 (12 February 2008); Dušan Gavranić, T. 22652–22655 (18 February 2008); Božidar Filić, T. 23922–23923 (7 March 2008).

²⁴²³ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 508, 510.

²⁴²⁴ Lukić Final Trial Brief, 7 August 2008 (public version), para. 770.

²⁴²⁵ Lukić Final Trial Brief, 7 August 2008 (public version), para. 509.

²⁴²⁶ Lukić Final Trial Brief, 7 August 2008 (public version), para. 773.

²⁴²⁷ Miroslav Mijatović, T. 2203–22204 (12 February 2008).

²⁴²⁸ Milan Đaković, T. 26393–26394 (19 May 2008).

MUP units were used by the PJP commanders to “do their own assessments and to make their own decisions in accordance with the actual situation”.²⁴²⁹

974. Adamović confirmed that the written orders by which MUP units were directed to carry out a certain operation were drafted by the Priština Corps.²⁴³⁰ He agreed that the orders were prepared based on information about the availability of MUP units provided by the MUP Staff,²⁴³¹ and explained that it was his task to submit this kind of information to the Priština Corps through Đaković.²⁴³² He added that, if the Priština Corps “had planned on more forces, then [he and Đaković] would see who else could become involved as well.”²⁴³³ Adamović denied, however, that he or the MUP Staff had a role in formulating the plans that these orders then implemented, or that he had any input into the preparation of the operation maps.²⁴³⁴ Đaković, on the other hand, testified that he could not have planned the joint MUP/VJ actions and drafted the corresponding maps without the help of Adamović.²⁴³⁵ The Chamber considers the evidence of Đaković to be more reliable on this issue, as it found Adamović to be evasive at times. Nonetheless, where his evidence is uncontroversial, or corroborated by other reliable evidence, the Chamber has accepted Adamović’s account.

975. Adamović further explained that he “would take the map excerpts and distribute them to the officers in the field.”²⁴³⁶ According to him, before the map excerpts were distributed to the PJP commanders and before “anti-terrorist” operations were carried out, meetings were held at the MUP Staff, during which “the plan would be discussed for carrying out anti-terrorist actions [involving] the [VJ] and the police. That 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”.²⁴³⁷ He added that these meetings were usually held at the MUP Staff and attended by the commanders of PJP detachments, and chiefs of secretariats. During these meetings “all the attendees would be familiarised with the plan for carrying out anti-terrorist actions”.²⁴³⁸ He concluded by saying that “[t]here would be a meeting with the commanders of the detachments and the chiefs of the SUPs where the assistant

²⁴²⁹ Milan Đaković, T. 26397–26398 (19 May 2008).

²⁴³⁰ Duško Adamović, T. 24973–24979 (8 April 2008); *see* P2808 (Order of the PrK, 16 February 1999) (assigning VJ units to “coordinated action[s] with forces of the MUP”).

²⁴³¹ Duško Adamović, 6D1613 (witness statement dated 30 March 2008), para. 28; *see also* Duško Adamović, T. 24978 (8 April 2008) (testifying that he “was in contact with representatives of the Priština Corps”).

²⁴³² Duško Adamović, T. 25067, 25071 (9 April 2008).

²⁴³³ Duško Adamović, T. 25067 (9 April 2008).

²⁴³⁴ Duško Adamović, T. 25097 (10 April 2008).

²⁴³⁵ Milan Đaković, T. 26397 (19 May 2008).

²⁴³⁶ Duško Adamović, T. 24978 (8 April 2008); *see also* Duško Adamović, T. 24971 (8 April 2008) (“I took these excerpts and I submitted them to commanders.”), 6D1613 (witness statement dated 30 March 2008), para. 25.

²⁴³⁷ Duško Adamović, T. 24975 (8 April 2008).

²⁴³⁸ Duško Adamović, T. 24977 (8 April 2008).

ministers, generals—that is to say General Đorđević and General Obrad Stevanović—told the officers about the tasks that were to follow.”²⁴³⁹ Following the completion of an operation, either the PJP commanders or their respective SUPs would inform the MUP Staff.²⁴⁴⁰ Mijatović testified that “the Staff would send [the map for joint ‘anti-terrorist’ actions sent by the Priština Corps to the MUP Staff] along to whichever units were involved in these activities.”²⁴⁴¹

(D) Reporting to the MUP Staff

976. Several witnesses testified that the SUPs regularly reported to the MUP Staff.²⁴⁴² For instance, Cvetić testified that “every morning, each of the SUP chiefs had to call the MUP Staff head in Priština” and report to him “on the latest events”.²⁴⁴³ He also stated that an order from the MUP Staff to the Kosovo SUPs, dated 21 October 1998, “prescrib[ed] a uniform methodology to be used across all the secretariats” to inform the MUP Staff.²⁴⁴⁴ Pursuant to this methodology, the reports were to contain detailed information regarding *inter alia* “[t]errorist actions”; “[p]olice operations carried out”; “[m]ovement of police units to, from and within [Kosovo and Metohija]”.²⁴⁴⁵ Bogunović stated that the SUPs in which he worked reported to the MUP Staff on the daily security-related incidents in their area of responsibility. However, he added, somewhat contradicting himself, that periodical reports of the SUPs were not forwarded to the MUP Staff, whereas urgent reports were.²⁴⁴⁶ Bogunović also stated that he did not know what the purpose of the MUP Staff was and that he had absolutely no information about it.²⁴⁴⁷ The Chamber finds that claim to be incredible and considers that it undermines this witness’s testimony in relation to the MUP Staff, which the Chamber rejects.

977. Adamović explained that the SUPs reported to the MUP Staff in addition to the MUP headquarters in Belgrade, as the MUP Staff did not have its representatives on the ground and had to rely on the SUPs for its information.²⁴⁴⁸ The MUP Staff was responsible for collating

²⁴³⁹ Duško Adamović, T. 24977 (8 April 2008).

²⁴⁴⁰ Duško Adamović, T. 25074–25078 (9 April 2008).

²⁴⁴¹ Miroslav Mijatović, T. 22443–22444 (14 February 2008).

²⁴⁴² Ljubinko Cvetić, T. 8045 (7 December 2006); Duško Adamović, 6D1613 (witness statement dated 30 March 2008), para. 22; Dušan Gavranic, T. 22640–22641 (18 February 2008); Nebojša Bogunović, 6D1614 (witness statement dated 6 April 2008), para. 4; Miroslav Mijatović, T. 22328–22329 (12 February 2008).

²⁴⁴³ Ljubinko Cvetić, T. 8083–8084 (7 December 2006).

²⁴⁴⁴ Ljubinko Cvetić, T. 8097–8098 (7 December 2006); *see* P2528 (Order to the Heads of Kosovo SUPs issued by Sreten Lukić, 21 October 1998).

²⁴⁴⁵ Ljubinko Cvetić, T. 8097–8098 (7 December 2006); P2528 (Order to the Heads of Kosovo SUPs issued by Sreten Lukić, 21 October 1998).

²⁴⁴⁶ Nebojša Bogunović, 6D1614 (witness statement dated 6 April 2008), para. 4.

²⁴⁴⁷ Nebojša Bogunović, T. 25153–25158 (10 April 2008).

²⁴⁴⁸ Duško Adamović, 6D1613 (witness statement dated 30 March 2008), paras. 25, 49–50. *See also* Nebojša Bogunović, 6D1614 (witness statement dated 6 April 2008), para. 4.

information on the security situation in Kosovo on the basis of reports received from the SUPs.²⁴⁴⁹ Gavranić explained that the MUP Staff had a “better insight into the overall situation with regard to all of these areas for which there are secretariats.”²⁴⁵⁰

978. Nebojša Ognjenović asserted that each border police station made official notes on every action conducted by its employees and on unusual activity. These official notes were then sent to the Border Police Administration in Belgrade, and also to the MUP Staff.²⁴⁵¹ In addition, when asked whether the border police stations received notifications or announcements from the MUP Staff in 1999, Ognjenović replied that they did.²⁴⁵²

979. According to 6D2 and Debeljković, the Crime Police Department (OKP) reported to the Crime Police Administration (UKP) in Belgrade about “incidents” and the subsequent actions taken. Such reports were also sent to, among others, the MUP Staff, and the head of the relevant SUP.²⁴⁵³ Radovan Zlatković confirmed 6D2’s assertion.²⁴⁵⁴

980. Filić testified that the MUP Staff

was supposed to monitor the situation in the area of the province, to summarize the outcomes of all these events and incidents ... it was convenient for the minister to have such a body and to have on his desk every morning aggregated information, summaries of all security-related incidents in that crisis area rather than receiving seven different papers from the Secretariats in Kosovo.²⁴⁵⁵

981. Lukić, in his interview with the Prosecution, stated that, in actions that involved more than the units pertaining to one SUP, the commanders of the relevant units reported back to the MUP Staff.²⁴⁵⁶ Cvetić also stated that the commanders of units participating in operations reported to the MUP Staff on the activity undertaken.²⁴⁵⁷ He further testified that “manoeuvre and combat units in the field” had the obligation to inform the head of the MUP Staff.²⁴⁵⁸ However, no such reports were tendered into evidence.

982. Adamović testified that the MUP Staff received information in relation to SAJ units; however, his testimony is unclear on how this occurred. According to him, the secretariats

²⁴⁴⁹ Duško Adamović, 6D1613 (witness statement dated 30 March 2008), para. 25.

²⁴⁵⁰ Dušan Gavranić, T. 22656 (18 February 2008).

²⁴⁵¹ Nebojša Ognjenović, T. 22857 (20 February 2008).

²⁴⁵² Nebojša Ognjenović, T. 22874–22875 (20 February 2008).

²⁴⁵³ Branislav Debeljković, T. 24258–24262, 24266–24267 (13 March 2008), 6D1533 (witness statement dated 11 March 2008), para. 17; *see also* 6D2, 6D1631 (witness statement dated 12 April 2008), para. 20 (under seal).

²⁴⁵⁴ Radovan Zlatković, 6D1627 (witness statement dated 13 April 2008), para. 3.

²⁴⁵⁵ Božidar Filić, T. 23986 (10 March 2008).

²⁴⁵⁶ P948 (Sreten Lukić interview with the Prosecution), p. 57.

²⁴⁵⁷ Ljubinko Cvetić, T. 8193–8194 (8 December 2006).

²⁴⁵⁸ Ljubinko Cvetić, T. 8195 (8 December 2006).

informed the Staff once an activity was over.²⁴⁵⁹ The Chamber notes that Adamović's testimony with regard to the MUP Staff's involvement in co-ordination between the MUP units on the ground and the MUP Staff was extremely evasive, and he refused to provide reasonable and logical answers in this regard. For example, when asked by the Prosecution how he would know which units of the MUP were available for further operations, in particular referring to a decision issued by the Priština Corps about the joint engagement of VJ and MUP units on 10 August 1998,²⁴⁶⁰ in which the SAJ forces were to take part, Adamović appeared unwilling to answer the question directly. He stated: "I did not have any specific information and I didn't need it"; "[u]pdated information was not needed"; "they [the SAJ unit] could have been either in their base or out performing an action."²⁴⁶¹ He eventually explained that, once an activity in a certain area was over, the SUPs or officers from the relevant unit would notify the Staff about that.²⁴⁶²

ii. Documentary evidence

(A) 1998

983. In contrast to most witnesses' accounts, the 16 June 1998 decision issued by Stojiljković, and the decision he issued almost a year later, in the midst of the NATO air campaign—which re-confirmed the MUP Staff mandate and altered its composition slightly—suggest that it was comprised of both RJB and RDB officials, and that its task was to "plan, organise and manage" the work of the "organisational units" of the MUP and any other MUP units sent to Kosovo, without restricting these to units falling within the RJB.²⁴⁶³ Other documents in evidence indicate that the MUP Staff fulfilled this role in practice with regard to RJB units, without disturbing the commanding functions of specific unit commanders and their normal chain of reporting.

984. For example, on 10 July 1998 Lukić, as the Head of the MUP Staff, sent a dispatch to the Head of the of Kosovska Mitrovica SUP, as well as the commanders of the Kosovska Mitrovica OUPs, instructing them to *inter alia* "[o]rganise the defence of villages with the newly formed [RPOs], and for that purpose construct defence fortifications."²⁴⁶⁴ On 16 July 1998 Lukić sent a dispatch to the heads of all the Kosovo SUPs and the commanders of the PJP detachments in Kosovo, referring to "oversights noticed in performance of duties" and laying out instructions for

²⁴⁵⁹ Duško Adamović, T. 25078 (9 April 2008).

²⁴⁶⁰ See generally P1427 (PrK Decision, 10 August 1998).

²⁴⁶¹ Duško Adamović, T. 25074–25077 (8 April 2008).

²⁴⁶² Duško Adamović, T. 25076–25078 (8 April 2008).

²⁴⁶³ P1505 (Decision to establish a Ministerial Staff for the Suppression of Terrorism, 16 June 1998); P1811 (Decision on establishment of the Ministry's Staff for the Suppression of Terrorism dated 31 May 1999).

²⁴⁶⁴ P2804 (Dispatch from the MUP Staff to the commanders of organisational units of the MUP in Kosovo, 10 July 1998).

MUP interaction with foreign diplomatic representatives and members of international organisations. One of the instructions set out in the dispatch was that any contact with foreign diplomats or representatives of international organisations was to be reported to the MUP Staff.²⁴⁶⁵

985. On 22 July 1998 a meeting was held in Priština/Prishtina, attended by Lukić and other MUP Staff members, and Đorđević, Stevanović, SUP chiefs, and all PJP commanders.²⁴⁶⁶ The minutes of this meeting indicate that one of the objectives was to “[d]efin[e] tasks in the implementation of the Global Plan”, an apparent reference to the Plan on Combating Terrorism.²⁴⁶⁷

986. On 28 July 1998 Lukić chaired a meeting of the MUP Staff, attended by *inter alios* the Minister of Interior, the Head of the RDB Rade Marković, and the heads of the Kosovo SUPs. Lukić welcomed those present and gave a briefing “on measures and activities of police units ... according to the Plan” and described what actions had been undertaken and by which detachment in co-ordination with the VJ.²⁴⁶⁸ Lukić stated that some police units were reluctant to be deployed and even refused to carry out tasks and added that “[p]olice members and units who refuse to be deployed will not return [home] even if they have to stay [in Kosovo] for a month. There will be no going back home, but to the front line.”²⁴⁶⁹ Lukić maintained that the police had insufficient forces to keep the captured territory, which made engaging the operational units more difficult, and he added that an additional 2,000 policemen were required, especially police reservists.²⁴⁷⁰ Stojiljković noted that this was a change to the “Main Plan”, which Lukić confirmed. When asked by Stojiljković whether everything had gone in accordance to the Plan in terms of co-operation with the VJ, Lukić replied, “[n]ot fully.”²⁴⁷¹

987. On 7 August 1998 Lukić ordered the heads of all Kosovo SUPs, as well as PJP commanders, to take disciplinary measures against police officers engaged in looting. He also stated that the SUP chiefs and PJP commanders were responsible for the “implementation of [these] measures and for preventing such occurrences.”²⁴⁷² In a dispatch dated 9 August 1998, Lukić directed the heads of the Kosovo SUPs to *inter alia* interview Kosovo Albanians seeking copies of

²⁴⁶⁵ 6D968 (Dispatch from Sreten Lukić, 16 July 1998).

²⁴⁶⁶ 6D798 (Minutes of the MUP Staff meeting, 22 July 1998), p. 1.

²⁴⁶⁷ 6D798 (Minutes of the MUP Staff meeting, 22 July 1998). Lukić reported on the implementation of the Global Plan at the meeting on 28 July 1998 attended by Minister Stojiljković and Rade Marković. P3121 (Minutes of the MUP Staff meeting, 29 July 1998), p. 3; *see also* Duško Adamović, T. 25019 (9 April 2008) (characterising it as a plan that “had been adopted for carrying out anti-terrorist actions in whose implementation the army and the police were to participate”).

²⁴⁶⁸ P3121 (Minutes of the MUP Staff meeting, 29 July 1998), p. 3.

²⁴⁶⁹ P3121 (Minutes of the MUP Staff meeting, 29 July 1998), p. 3.

²⁴⁷⁰ P3121 (Minutes of the MUP Staff meeting, 29 July 1998), p. 3.

²⁴⁷¹ P3121 (Minutes of the MUP Staff meeting, 29 July 1998), pp. 3–4.

²⁴⁷² 6D768 (Order to heads of Kosovo SUPs and commanders of the PJP, issued by Sreten Lukić, 7 August 1998), p. 2.

their identity documents, and “take other measures to ascertain whether they are involved in terrorist activities.”²⁴⁷³

988. On 18 October 1998 Lukić sent the text of the agreement establishing the KVM to the Kosovo SUPs, and gave instructions on steps to ensure its implementation.²⁴⁷⁴ On 21 October he gave instructions to the heads of Kosovo SUPs as to the treatment of the KVM verifiers and ordered them to provide detailed daily reports related to police activities, actions carried out, and contacts with the KVM. Lukić stressed that his orders were necessary in light of “the objective of consistent implementation of tasks arising from the Agreement of the OSCE Verification Mission on Kosmet.”²⁴⁷⁵

989. A meeting held on 3 November 1998 was chaired by Lukić and attended by all SUP chiefs and PJP commanders. It addressed “the current security situation in the territory of every secretariat following the signing of the Agreement on the OSCE Verification Mission in Kosmet and the level of readiness and organisation related to maintaining roads in winter.” One of the conclusions of this meeting was that “[a]rmoured vehicles and weapons of [large] caliber[s] ... must not be moved, engaged or used without the agreement and permission from the Staff”. Moreover, the SUPs were to “inform the MUP Staff in Priština about everything connected to terrorism.” The final conclusion was that “[t]he MUP Staff in Priština will now take on the role of planning and the Secretariats will have greater independence in carrying out their regular duties, tasks and obligations from the above agreements, that is to say, the Secretariats will return to peacetime work conditions.”²⁴⁷⁶

990. On 2 December 1998 the MUP Staff held a meeting in Priština/Prishtina, which was attended by Duško Adamović, Miroslav Mijatović, Goran Radosavljević, other members of the MUP Staff, all chiefs of SUPs, and commanders of the special police detachments. The agenda of the meeting was the security situation in Kosovo; definition of duties and engagement of members of the police; continuation of execution of “anti-terrorist actions”; and execution of “more offensive activity” by the members of the police in response to the newly-arisen situation.²⁴⁷⁷ Lukić briefed those present about a prior meeting that he had attended in Belgrade on 27 November 1998. This earlier Belgrade meeting had been chaired by Vlajko Stojiljković and attended by the Heads of the RJB and RDB, the Assistant Ministers, and Šainović. Lukić reported that the “current security

²⁴⁷³ 6D665 (MUP Staff Dispatch, 9 August 1998).

²⁴⁷⁴ 6D690 (MUP Staff Dispatch, 18 October 1998).

²⁴⁷⁵ P2528 (Order to the heads of Kosovo SUPs issued by Sreten Lukić, 21 October 1998), p. 1.

²⁴⁷⁶ P3130 (Minutes of the MUP Staff meeting, 3 November 1998), p. 3.

²⁴⁷⁷ P3122 (Minutes of the MUP Staff meeting, 2 December 1998), pp. 2–3.

situation in Kosovo was examined” and “the duties and further engagement of members of the police in Kosovo were defined.” He explained that “[t]he essence of the meeting [in Belgrade] was to continue execution of anti-terrorist actions aimed at suppressing terrorism in Kosovo, and that in this regard the police will be more offensive in taking measures in the newly-arisen situation.”²⁴⁷⁸ Following this briefing, and after having heard the SUP chiefs report on the “current security situation”, Lukić listed the forthcoming tasks.²⁴⁷⁹ He also instructed the attendees to submit, by 7 December 1998, “a plan for the prevention of terrorism”.²⁴⁸⁰ He required that information and reports be submitted to the MUP Staff on time and that they should be “realistic, by way of immediately reporting the more important events by telephone and then sending a dispatch on the incident.”²⁴⁸¹

991. The Chamber notes that, at the 2 December 1998 meeting, Lukić gave generalised instructions, which would be expected of someone in overall command, and instructed the submission of a plan for the prevention of terrorism. He stated *inter alia* that it was necessary to “prevent additional arming, training and organising of ... terrorists” and to “be more offensive in work”. He further instructed that, for security reasons, two vehicles needed to be sent during inspection operations in the field.²⁴⁸² It is also noteworthy that, while Lukić instructed those present to take various measures, he did not define these measures. For instance, he instructed those present to “[t]ake measures to provide a larger number of local police in all Secretariats and equip and arm them” and stressed that “[t]he MUP was responsible for this part of the work.”²⁴⁸³ He then instructed those present to “take all measures for the prevention of bringing in of arms from the Republic of Albania and Macedonia, as well as for control of roads from the Republic of Serbia.” However, he emphasised that these measures had to be taken “[i]n agreement with the Yugoslav Army and the RDB”.²⁴⁸⁴ Lukić also recalled that the commanders of the detachments were members of the “Collegium of the Chief of the SUP and should be linked up daily with the Chief of the SUP for the purposes of work and control.”²⁴⁸⁵

992. At the same meeting Cvetić complained that he was not receiving appropriate information from the RDB “in order for the service to plan and harmonise its activities pursuant to this

²⁴⁷⁸ P3122 (Minutes of the MUP Staff meeting, 2 December 1998), p. 3.

²⁴⁷⁹ P3122 (Minutes of the MUP Staff meeting, 2 December 1998), pp. 7–8.

²⁴⁸⁰ P3122 (Minutes of the MUP Staff meeting, 2 December 1998), p. 8.

²⁴⁸¹ P3122 (Minutes of the MUP Staff meeting, 2 December 1998), p. 7.

²⁴⁸² P3122 (Minutes of the MUP Staff meeting, 2 December 1998), p. 7.

²⁴⁸³ P3122 (Minutes of the MUP Staff meeting, 2 December 1998), p. 8.

²⁴⁸⁴ P3122 (Minutes of the MUP Staff meeting, 2 December 1998), p. 7.

²⁴⁸⁵ P3122 (Minutes of the MUP Staff meeting, 2 December 1998), p. 8.

information.”²⁴⁸⁶ Lukić later stated that “mixed patrols should be sent, composed of policemen and members of the [R]DB and [R]JB in civilian clothes” to control towns and suburbs where there were “terrorists”.²⁴⁸⁷ Lukić instructed those present that “[i]f there are problems with regard to the exchange of information between the RDB and the RJB, notify me so that we can overcome it.”²⁴⁸⁸

993. Lukić also stated that the “plan for the prevention of terrorism” that had to be submitted by 7 December 1998 had to contain, in principle: “[a] security assessment”; “[m]easures for the prevention of bringing in of arms across the border”; “[c]ontrol of communications”; “[c]ontrol of territory”; “[m]easures in towns”; “[s]ecurity of facilities”; “[i]dentification of sites and villages where staffs and terrorist groups are located”; and “[m]easures of disarmament”.²⁴⁸⁹

994. In accordance with Lukić’s instructions, on 4 December 1998 Petar Damjanac, who served as the Head of Glogovac OUP, prepared a plan, or “proposals” to prevent terrorism.²⁴⁹⁰ His plan was then approved by the Chief of the Priština SUP, Boško Petrić.²⁴⁹¹ At another MUP Staff meeting, held on 21 December 1998, the SUP chiefs, among them Petrić, explained that they had drafted plans to combat terrorism and that these plans were mostly being implemented.²⁴⁹² Stevanović also informed those present of the forthcoming tasks. One of these tasks was that “[b]roader actions towards terrorist bases should be planned by the Ministry Staff, however, the initiative should be with the Secretariats, who should make preparations and compile recommendations of the Activity Plan.”²⁴⁹³

995. These minutes, dispatches, and instructions all indicate that in 1998 the MUP Staff, and Lukić as its Head, had significant authority over the SUPs and PJP detachments in Kosovo, in terms of providing broad directions to them, requiring information from them, and ensuring that their activities were in line with the overall policy or plan of the MUP. Lukić’s instruction at the 2 December meeting that he be notified of any problems regarding the exchange of information between the RDB and the RJB,²⁴⁹⁴ also shows that the MUP Staff played a role in the exchange of information between RJB and RDB forces.

(B) 1999

²⁴⁸⁶ P3122 (Minutes of the MUP Staff meeting, 2 December 1998), p. 4.

²⁴⁸⁷ P3122 (Minutes of the MUP Staff meeting, 2 December 1998), p. 7.

²⁴⁸⁸ P3122 (Minutes of the MUP Staff meeting, 2 December 1998), p. 6.

²⁴⁸⁹ P3122 (Minutes of the MUP Staff meeting, 2 December 1998), p. 7.

²⁴⁹⁰ Petar Damjanac, T. 23791–23798 (6 March 2008).

²⁴⁹¹ P3116 (Plan of the Glogovac OUP to prevent terrorism, 4 December 1998); Petar Damjanac, T. 23792–23795 (6 March 2008).

²⁴⁹² P1991 (Minutes of the MUP Staff meeting, 21 December 1998), pp. 4–8.

²⁴⁹³ P1991 (Minutes of the MUP Staff meeting, 21 December 1998), pp. 1, 10–11.

²⁴⁹⁴ P3122 (Minutes of the MUP Staff meeting, 2 December 1998), p. 6.

996. A similar picture is presented by the documents from early 1999. On 24 January 1999 Lukić directed the SUPs and PJP detachments in Kosovo to ensure correct behaviour towards KVM members, and reminded them of the obligation to provide security to the KVM.²⁴⁹⁵ He reiterated this instruction on 23 February 1999, and stated that “[m]embers of the Ministry who are found to be guilty of abuse or overstepping of authority are to be brought to account through disciplinary and other measures.”²⁴⁹⁶ At a meeting held on 17 February at the MUP Staff, attended by *inter alios* Stojiljković, RDB Chief Rade Marković, and Obrad Stevanović, Lukić set out the situation in Kosovo at that time, and reported that “[t]he MUP is still taking all the necessary measures to control the roads, secure the territory, facilities, persons and the safety of people and property.”²⁴⁹⁷ He then stated:

A plan of the RJB has been worked out to prevent and thwart the entry of NATO troops into our territory. The Staff plans, when it is ordered, to carry out three mopping up operations in the Podujevo, Dragobilja and Drenica areas and has allotted around 4,000 policemen, around 70 policemen of the [operative pursuit group] and around 900 police reservists.²⁴⁹⁸

He reported that a meeting of the MUP Staff would be held three days later, involving all “Police Unit Detachments commanders” for further consultation about their engagement. Stojiljković was recorded as having instructed those present to “[a]pproach and engage volunteers carefully, linking their engagements through the reserve police force when assessed as necessary.”²⁴⁹⁹

997. Cvetić commented on the 17 February 1999 meeting, stating that Stojiljković’s comments ran “contrary to the existing legislation at the time.”²⁵⁰⁰ Cvetić added that, at another MUP Staff meeting held on 17 March 1999, Lukić

raised the issue of volunteers. He 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.²⁵⁰¹

Cvetić then explained the illegal nature of the MUP’s use of such volunteers, stating that

[p]ursuant 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 volunteers. Therefore, the legislator did not allow for such a possibility to

²⁴⁹⁵ 6D871 (MUP Staff Dispatch, 24 January 1999).

²⁴⁹⁶ 6D872 (MUP Staff Dispatch, 23 February 1999).

²⁴⁹⁷ P1990 (Minutes of the MUP Staff meeting, 17 February 1999), p. 1.

²⁴⁹⁸ P1990 (Minutes of the MUP Staff meeting, 17 February 1999), p. 1.

²⁴⁹⁹ P1990 (Minutes of the MUP Staff meeting, 17 February 1999), p. 3.

²⁵⁰⁰ Ljubinko Cvetić, T. 8099–8100 (7 December 2006); *see generally* P1990 (Minutes of the MUP Staff meeting, 17 February 1999).

²⁵⁰¹ Ljubinko Cvetić, T. 8100 (7 December 2006). While Cvetić’s testimony referred to the “Head of the MUP staff in Priština”, he later clarified that this was a reference to Lukić. Ljubinko Cvetić, T. 8103 (7 December 2006).

any other defence structures to be able to make use of volunteers, including the Ministry of the Interior.²⁵⁰²

This evidence provided by Cvetić was called into question by the Lukić Defence through the evidence of Miloš Vojnović. Vojnović stated that he had no recollection of a meeting on 17 March 1999, nor had he ever heard Lukić make any statement regarding the engagement of volunteers.²⁵⁰³ Dušan Gavranić also testified that Stojiljković spoke about volunteers at a meeting. He recalled that this happened at the meeting held on 17 February 1999, rather than 17 March 1999. He did not recall hearing Lukić say anything about the use of volunteers at any of the meetings. Instead, he remembered being told by the Minister of Interior that further instructions would follow, but did not indicate whether he ever received further instruction. He noted that the Gnjilane SUP never used a single volunteer; if any volunteers reported to the SUP, they were sent to the VJ.²⁵⁰⁴ Although the Lukić Defence maintains that Cvetić misattributed the Minister's statement to Lukić, Cvetić clearly recounted reference by both to volunteers at meetings one month apart.²⁵⁰⁵ The cross-examination by the Lukić Defence, which was somewhat confusing, failed to undermine Cvetić's evidence on this. Moreover, the Chamber finds Vojnović and Gavranić not to be reliable in the face of Cvetić's testimony and the documentary evidence.²⁵⁰⁶

998. In relation to the issue of volunteers, Đorđević sent a dispatch on 18 February 1999 to the heads of the Kosovo SUPs, the 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."²⁵⁰⁷ On 24 March 1999 Stojiljković issued a dispatch instructing the same recipients to *inter alia* "register all volunteer and paramilitary units and their members and keep them under control in case that you might need to engage them."²⁵⁰⁸

999. On 1 April 1999 Lukić sent an order to all of the Kosovo SUPs instructing them, in light of the NATO bombing and "in order to keep the Ministry of the Interior of the Republic of Serbia

²⁵⁰² Ljubinko Cvetić, T. 8100 (7 December 2006).

²⁵⁰³ Miloš Vojnović, T. 24154–24155 (12 March 2008).

²⁵⁰⁴ Dušan Gavranić, T. 22724–22725 (12 February 2008).

²⁵⁰⁵ Ljubinko Cvetić, T. 8099–8100 (7 December 2006); *see generally* P1990 (Minutes of the MUP Staff meeting, 17 February 1999).

²⁵⁰⁶ The Chamber does not believe that Gavranić's evidence puts at issue the dates of the meetings Cvetić mentioned. Both Gavranić and Cvetić recall that a meeting took place on 17 February 1999 at which the Minister of Interior addressed the issue of volunteers. Ljubinko Cvetić, T. 8099–8100 (7 December 2006); Dušan Gavranić, T. 22724–22725 (19 February 2008). Cvetić also recalled a meeting on 17 March 1999 at which Lukić addressed the same issue. Ljubinko Cvetić, T. 8100 (7 December 2006). However, Gavranić's testimony was limited to the 17 February meeting, and did not address whether there had been a meeting on 17 March or what had transpired thereat. *See* Dušan Gavranić, T. 22724–22725 (19 February 2008).

²⁵⁰⁷ 6D269 (Dispatch of the RJB No 312, 18 February 1999), p. 3.

²⁵⁰⁸ 6D238 (Dispatch of Vlajko Stojiljković, 24 March 1999), p. 1.

effectively and timely informed,” to submit a daily summary of important events and incidents to the MUP Staff.²⁵⁰⁹

1000. On 4 April 1999 a “meeting with senior police officials in Kosovo” was held and attended by *inter alios* Lukić, Stevanović, Šainović, the chiefs of Kosovo SUPs, and commanders of PJP, SAJ, and JSO units.²⁵¹⁰ During this meeting the SUP chiefs reported on the situation in their municipalities.²⁵¹¹ A JSO commander, Milorad Janković, also briefed those present about co-operation with the VJ.²⁵¹² After having heard their presentations, Lukić and Stevanović listed the forthcoming tasks. The tasks listed by Lukić included “[c]lear[ing] up the battlefield, taking all necessary measures and actions”; “[u]s[ing] ammunition and [mines and explosives] very rationally”; “[r]educ[ing] radio communication to a minimum due to the possibility of revealing the locations of command posts and units”; “[t]ak[ing] rigorous measures towards paramilitary units”; “[s]eiz[ing] ... vehicles without documents and licence plates”; and “[p]ay[ing] special attention to the number of laid mines”.²⁵¹³ Lukić also stated that the “[s]ecretariat chiefs and unit commanders must report to the Staff”.²⁵¹⁴ With respect to the tasks listed by Lukić, Gavranić testified that he “did not issue any special tasks to us that were not in accordance with the tasks that we were already involved in according [sic] to our own plan of work.”²⁵¹⁵ He also stated that the MUP Staff never issued any tasks regarding anti-terrorist actions to his SUP.²⁵¹⁶

1001. On 5 April 1999 Lukić issued an “order” to the chiefs of the Kosovo SUPs and the commanders of the 21st to 87th Detachments of the PJP, in which he instructed the recipients to prevent the departure of civilians from their homes.²⁵¹⁷ On 15 April Lukić sent a dispatch again to the chiefs of the Kosovo SUPs and the commanders of the 21st to 87th Detachments of the PJP, which referred back to the “order” of 5 April. In the dispatch, Lukić noted that it had come to his attention that this order had not been fully complied with by some MUP commanders, and emphasised that commanders who did not obey would be held accountable. He also directed the

²⁵⁰⁹ 6D808 (Order issued by Sreten Lukić to the Kosovo SUPs, 1 April 1999), pp. 1, 4.

²⁵¹⁰ P1989 (Minutes of the MUP Staff meeting, 4 April 1999), p. 1.

²⁵¹¹ P1989 (Minutes of the MUP Staff meeting, 4 April 1999), pp. 1–3.

²⁵¹² P1989 (Minutes of the MUP Staff meeting, 4 April 1999), p. 3.

²⁵¹³ P1989 (Minutes of the MUP Staff meeting, 4 April 1999), pp. 3–4.

²⁵¹⁴ P1989 (Minutes of the MUP Staff meeting, 4 April 1999), p. 4.

²⁵¹⁵ Dušan Gavranić, T. 22754–22755 (19 February 2008).

²⁵¹⁶ Dušan Gavranić, T. 22756 (19 February 2008).

²⁵¹⁷ 6D778 (Dispatch from Sreten Lukić to the heads of Kosovo SUPs and PJP commanders, 15 April 1999) (referring to the order of 5 April 1999).

chiefs of the SUPs and PJP commanders to inform the MUP Staff in writing about any problems that might arise in relation to the order.²⁵¹⁸

1002. On 9 April 1999 Lazarević notified his subordinate units that the MUP Staff had issued an order to all the SUPs to “commence planning actions to crush the terrorist groups that remain in their respective zones of responsibility.”²⁵¹⁹ Lazarević then ordered his subordinates to immediately establish contact with the SUP chiefs in order to co-ordinate their actions in “crushing” the “terrorist groups”.²⁵²⁰ During his testimony, Lazarević explained that the operations organ of the Priština Corps told him that they had been informed by the MUP Staff that it was “engaged in planning to the effect that secretariats of the interior in the territory of Kosovo and Metohija were planning or had planned specific counter-terrorist actions.” Lazarević then “ordered the VJ commanders to establish contact with the [SUPs], to identify their place and role in terms of their potential to engage in coordinated action with the MUP forces, to implement the tasks of combat control of the territory.”²⁵²¹

1003. The VJ units’ commanders were then to submit such plans to the Priština Corps command for approval.²⁵²² Radojko Stefanović, who was the commander of the 52nd Mixed Artillery Brigade of the Priština Corps, 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.²⁵²³ However, when cross-examined by the Lukić Defence, Stefanović clarified that he personally did not see an order from the MUP Staff to the SUPs to plan “anti-terrorist” actions, as stated in Lazarević’s order.²⁵²⁴

1004. On 13 April 1999 Lukić sent another dispatch to the chiefs of the Kosovo SUPs and SAJ commanders, stating that the MUP Staff was forwarding coloured armbands and instructions on their use by members of the MUP. Lukić ordered that all uniformed police officers must wear the correct armband when moving outside of MUP premises.²⁵²⁵

1005. On 6 May 1999 Lukić sent a copy of an article from *Politika*, dated 5 May, to the chiefs of the Kosovo SUPs and the PJP and SAJ commanders in Kosovo. He instructed them to familiarise their forces with the contents of the article, which related to a meeting in Belgrade involving Milošević and various high-ranking officials, including Lukić himself, where the current situation

²⁵¹⁸ 6D778 (Dispatch from Sreten Lukić to the heads of Kosovo SUPs and PJP commanders, 15 April 1999).

²⁵¹⁹ 5D476 (Dispatch from Vladimir Lazarević to the PrK units, 9 April 1999), p. 1.

²⁵²⁰ 5D476 (Dispatch from Vladimir Lazarević to the PrK units, 9 April 1999), p. 1.

²⁵²¹ Vladimir Lazarević, T. 18006–18007 (9 November 2007), 18804–18805 (22 November 2007).

²⁵²² Vladimir Lazarević, T. 18007 (9 November 2007), T. 18804–18805 (22 November 2007).

²⁵²³ Radojko Stefanović, T. 21700–21701 (5 February 2008).

²⁵²⁴ Radojko Stefanović, T. 21770–21771 (6 February 2008).

²⁵²⁵ 6D237 (MUP Staff dispatch re armbands for policemen, 13 April 1999).

and plans for the defence of the country, and the “fight against terrorism”, were discussed. This is the 4 May 1999 meeting discussed above in Section VIII.C–F. He further directed the SUP chiefs and PJP and SAJ commanders to take “all measures in the forthcoming period to prevent paramilitary formations and individuals from committing acts of violence”.²⁵²⁶ The same day, a dispatch containing Lukić’s typewritten name at the bottom was sent to the heads of all of the Kosovo SUPs, instructing them to implement tasks related to the perpetrators of crimes in Kosovo and urgently undertake criminal prosecution. The dispatch stressed that the SUP chiefs were “responsible for the realisation of the envisaged activities” and the Crime Police Department chiefs were “tasked with their direct realisation” under the overall direction of the MUP Staff.²⁵²⁷ Gvozden Gagić testified that, despite the fact that the dispatch bears Lukić’s name, it was in fact Gagić who drafted this document together with a MUP employee by the name of Spanović. The dispatch was later signed by Dragan Ilić. Gagić explained that he sent the dispatch from the MUP Staff bearing Lukić’s name because at the time there were no conditions to send it through the channels of the OKP. He also explained that a MUP Staff log book existed, which registered who sent the dispatch; consequently, in case of a “misunderstanding”, it would have been easy to find out the identity of the sender.²⁵²⁸ In this regard, the Chamber finds that, even if the dispatch was not sent by Lukić, it was, nevertheless, sent from the MUP Staff in his name; no suggestion was made that it was unauthorised.

1006. On 7 May 1999 a meeting was held in the MUP Staff building, chaired by Lukić and attended by Šainović, Stevanović, Dragan Ilić, members of the MUP Staff, and the chiefs of the Kosovo SUPs. The agenda for the meeting included discussing the “[f]orthcoming tasks in defending the country from the aggressor” and the “[i]mportant issues related to the work and execution of assignments by MUP members in Kosovo and Metohija.”²⁵²⁹ Lukić, who chaired the meeting, instructed the heads of the SUPs to take measures against the perpetrators of crimes and issued instructions on the wearing of uniforms. He also instructed the Priština SUP, in co-operation with the VJ, to secure the Priština/Prishtina–Podujevo/Podujeva road.²⁵³⁰

1007. During this meeting Stevanović instructed the heads of SUPs to focus on crime prevention and to organise “anti-terrorist” actions and carry them out following the approval of the MUP Staff. He noted that “[a]fter the end of some of the larger actions ... each SUP will be expected to work

²⁵²⁶ 5D1289 (Dispatch from Sreten Lukić, 6 May 1999).

²⁵²⁷ 6D874 (Dispatch from Sreten Lukić to the heads of Kosovo SUPs, 6 May 1999), p. 2.

²⁵²⁸ Gvozden Gagić, T. 24476–24478 (18 March 2008), T. 24517–24524 (19 March 2008).

²⁵²⁹ P1996 (Minutes of the MUP Staff meeting, 7 May 1999), pp. 1–2.

²⁵³⁰ P1996 (Minutes of the MUP Staff meeting, 7 May 1999), pp. 10–12.

independently on organising anti-terrorist actions in their own areas. The plan must be approved by the Staff.”²⁵³¹

1008. Regarding this statement, Dušan Gavrančić sought to minimise the role of the SUPs in planning and conducting anti-terrorist actions.²⁵³² However, his evidence is contradicted by Stevanović’s comment at the 7 May meeting that “[i]n the organisation of work, the Secretariat of the Interior must ensure that in KiM, the organisation is such that all [PJP and OPG units] are subordinated to the Chief of the Secretariat.”²⁵³³ Gavrančić also stated that he was not aware of the fact that the plans had to be approved by the MUP Staff.²⁵³⁴

1009. On 11 May 1999 another meeting was held at the MUP Staff in Priština/Prishtina, chaired by Lukić and attended by four other MUP Staff members, 13 PJP commanders, and Obrad Stevanović. The agenda was similar to that of the 7 May meeting, and included discussion of the “forthcoming tasks related to the defence of the country from the aggressor” and the “antiterrorist struggle”.²⁵³⁵ After the various PJP commanders addressed the group about their own activities, Stevanović stated that “[e]very SUP and OPJP will establish a priority list of antiterrorist actions with detailed plans, which will be approved by the Staff.”²⁵³⁶ He also stressed that “police units are subordinated to the Chief of the SUP, and OPJP and police heads must attend every SUP Collegium”. Lukić finally took the floor and reminded the attendees that measures should be taken to prevent the exodus of civilians from Kosovo.²⁵³⁷ He also noted that Kosovo Albanian men fit for military service were to be arrested and checked, and relevant criminal proceedings instituted, and issued instructions on the wearing of police uniforms.²⁵³⁸ Following the 7 and 11 May meetings, conclusions were issued by the MUP Staff setting out the forthcoming tasks.²⁵³⁹

1010. On 13 May 1999 Lukić sent a dispatch to the heads of the Prizren, Uroševac, and Priština SUPs, and the commander of the “traffic police station” in Đeneral Janković/Hanit i Elezit, enclosing a letter from the International Committee of the Red Cross (ICRC). While Lukić directed the SUP chiefs and the traffic police commander to take specific actions to assist the ICRC, he also made a point of instructing them to “remove all abandoned vehicles and objects that might indicate

²⁵³¹ P1996 (Minutes of the MUP Staff meeting, 7 May 1999), pp. 10–11.

²⁵³² Dušan Gavrančić, T. 22758–22759, 22762–22763, 22787 (19 February 2008).

²⁵³³ P1996 (Minutes of the MUP Staff meeting, 7 May 1999), p. 11.

²⁵³⁴ Dušan Gavrančić, T. 22764, 22793 (19 February 2008).

²⁵³⁵ P1993 (Minutes of the MUP Staff meeting, 11 May 1999), p. 1.

²⁵³⁶ P1993 (Minutes of the MUP Staff meeting, 11 May 1999), p. 7.

²⁵³⁷ By this time, the MUP Staff had reported to the MUP in Belgrade that more than 700,000 Kosovo Albanians had left Kosovo. See P1693 (MUP Staff overview of security situation, 1 May 1999).

²⁵³⁸ P1993 (Minutes of the MUP Staff meeting, 11 May 1999), pp. 8–9.

²⁵³⁹ 6D802 (Conclusions of the MUP Staff Meeting of 7 and 11 May 1999).

that refugees [had been] staying on the route” the ICRC members were scheduled to take through Kosovo.²⁵⁴⁰ On 15 May Lukić sent another dispatch to all SUP chiefs in Kosovo and the chiefs of the Crime Police Departments, “requir[ing]” them to send immediately certain information to the MUP Staff concerning detentions and criminal proceedings in their areas of responsibility.²⁵⁴¹

1011. Finally, a telegram dated 26 May 1999 from Dragan Živaljević, the Commander of the PJP 122nd Intervention Brigade, to the MUP Staff²⁵⁴² contained a report on the “achieved lines” of the 122nd Intervention Brigade, using reference codes that corresponded to a map.²⁵⁴³ It also reported one injured PJP officer, and the position of some “refugees”, and requested instructions from the MUP Staff about where to accommodate these “refugees.”²⁵⁴⁴ In the top right hand corner of the telegram, there is a handwritten note stating, “General Lukić, for information and decision”, with the signature underneath of Miroslav Mijatović.²⁵⁴⁵ In response, the MUP Staff directed Živaljević to take civilians back to their villages, or, if this was not possible, to accommodate them at the positions that he had suggested. It instructed him to arrest all “able-bodied men” and to turn them over to the “Regional Secretariat.” It also directed Živaljević to ensure that the police acted “in full compliance with the law.”²⁵⁴⁶

b. Conclusions on the role and functions of the MUP Staff

1012. All of these documents demonstrate that, in the period leading up to and during the NATO air campaign, the MUP Staff played a central role in planning, organising, controlling, and directing the work of the various MUP units active in Kosovo, as well as co-ordinating and planning joint operations with the VJ. The MUP Staff did not replace the day-to-day command structures within the MUP. The SUP chiefs, and commanders of PJP and SAJ units, maintained their direct control over their own forces. Rather, the MUP Staff fulfilled a broader role, directing and controlling the activities of all of these commanders and the units under them, and ensuring that they acted in accordance with overarching policies and plans.

²⁵⁴⁰ 6D796 (MUP Staff dispatch, 13 May 1999).

²⁵⁴¹ 6D876 (MUP Staff dispatch, 15 May 1999).

²⁵⁴² 5D1418 (MUP Staff dispatch, and telegram from the 122nd Intervention Brigade, 26 May 1999). Note that the heading on the telegram from the 122nd Intervention Brigade suggests that it was sent to the “Chief of Staff” of the PJP, but Živaljević explained during his testimony that this was an error on the part of the person who drafted it, and that it should have been addressed to the MUP Staff. Dragan Živaljević, T. 24862–24863 (3 April 2008).

²⁵⁴³ See Dragan Živaljević, T. 24869–24870 (3 April 2008).

²⁵⁴⁴ 5D1418 (MUP Staff dispatch, and telegram from the 122nd Intervention Brigade, 26 May 1999), p. 3; Miroslav Mijatović, T. 22537 (15 February 2008).

²⁵⁴⁵ 5D1418 (MUP Staff dispatch, and telegram from the 122nd Intervention Brigade, 26 May 1999), p. 3; Miroslav Mijatović, T. 22379 (14 February 2008).

²⁵⁴⁶ 5D1418 (MUP Staff dispatch, and telegram from the 122nd Intervention Brigade, 26 May 1999), p. 2.

1013. This picture was confirmed by Lukić himself in his interview with the Prosecution, where he explained that the main role of the MUP Staff was to co-ordinate, plan, and direct the organisational units, primarily in the task of “curbing terrorism”. He further noted, in relation to the PJP in particular, that the PJP units had “dual responsibility”: to the PJP commander (Stevanović) and, at the same time, to the MUP Staff.²⁵⁴⁷

1014. Although several witnesses called by the Lukić Defence attempted to suggest that the MUP Staff was a “post-box” for communications, a weak body that did not have any real powers, the Chamber rejects that evidence because of the consistent and compelling contradictory evidence derived from the documents referred to above, many of which were signed by Lukić himself. This conclusion is supported by Lukić’s own interview.

1015. The Chamber recognises that, by virtue of the 16 June 1998 decision, the MUP Staff formally included members of the RDB. However, in light of the absence of sufficient direct evidence of how Lukić, as Head of the MUP Staff, exercised authority over RDB personnel and units in Kosovo, the Chamber cannot conclude beyond reasonable doubt that he indeed had such authority in practice. This conclusion does not, however, have any effect upon the Chamber’s ultimate findings with regard to Lukić’s criminal responsibility.

5. Lukić’s powers as Head of the MUP Staff

1016. The Chamber notes that it would ordinarily be logical to address the role of the MUP Staff and that of its Head, Sreten Lukić, together. However, because of a particular argument that was advanced by the Lukić Defence in relation to Lukić’s position within the MUP Staff, the Chamber addresses these two issues separately.

1017. The Lukić Defence argues that Lukić’s position within the MUP Staff was not that of a Head (*načelnik*), but rather that of “manager” or “administrator” (*rukovodilac*).²⁵⁴⁸ It further argues that the Prosecution is mistaken in its analysis of the MUP structure, due to its reliance upon the testimonies of outsiders, such as members of KDOM and KVM, as well as VJ witnesses. The Defence points out that the Prosecution did not call a police expert witness, and thus mistakenly refers to Lukić as the “Chief,” “Commander,” or “Commandant” of the MUP Staff for Kosovo.²⁵⁴⁹ The Lukić Defence argues that the language of the Decision to establish a Ministerial Staff for the Suppression of Terrorism demonstrates that he was appointed to serve as administrator or manager

²⁵⁴⁷ P948 (Sreten Lukić interview with the Prosecution), p. 41.

²⁵⁴⁸ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 692–722, 1432.

²⁵⁴⁹ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 692–722.

(*rukovodilac*) of the Staff, which has a narrower scope of powers than that of a chief or head (*načelnik*).²⁵⁵⁰

1018. The original Serbian of the 16 June 1998 decision does indeed state that Lukić was appointed “*rukovodilac*” of the Staff, as noted by the Lukić Defence.²⁵⁵¹ However, the Chamber considers that the precise title of Lukić’s position, and its translation into English, is immaterial. Rather, his powers and responsibilities are what really matter. It is only for convenience that the English translation “Head of the MUP Staff” is used throughout this section.

a. Lukić’s participation in high-level meetings

1019. In addition to the meetings held at the MUP Staff in Priština, Lukić also participated in other meetings involving senior MUP, VJ, and political figures of the FRY and Serbia, throughout his period of tenure as Head of the MUP Staff.

1020. On 30 May 1998 Lukić attended a meeting with Milošević in Belgrade, at which, among others, Perišić, Stanišić, Samardžić, Dimitrijević, Pavković, and Stevanović were present. The meeting was called by Milošević and a plan for fighting terrorism in Kosovo was discussed, as described in Section VI.E.²⁵⁵²

1021. Aleksandar Dimitrijević testified that in July and August 1998 he attended meetings “four or five times”, convened by Milošević in the Beli Dvor in Belgrade. In addition to senior army officers, Dimitrijević recalled that Lukić, Stojiljković, Stevanović, and Đorđević were present for the MUP, along with politicians such as Šainović, Matković, Minić, and Anđelković.²⁵⁵³ In his interview, Lukić confirmed attending a meeting convened by Milošević, which he believed was held in the beginning of July, at which Stojiljković, Đorđević, and Stevanović of the MUP were present, as well as Milutinović, Šainović, Pavković, Matković, Minić, and Anđelković. The Chamber has already found that this meeting took place on 21 July 1998.²⁵⁵⁴ Lukić stated that at this meeting Pavković presented the situation in Kosovo and proposed carrying out joint VJ and MUP operations in three or four phases. At this meeting the plan proposed by Pavković was adopted. Lukić emphasised that the MUP Staff did not take an active part in the drafting of the plan and that he did not embrace the plan readily, as it involved a large number of personnel who

²⁵⁵⁰ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 692–722, 730.

²⁵⁵¹ P1505 (Decision to Establish a Ministerial Staff for the Suppression of Terrorism, 16 June 1998).

²⁵⁵² Milan Đaković, T. 26410–26411 (19 May 2008).

²⁵⁵³ Aleksandar Dimitrijević, T. 26587–26590 (8 July 2008).

²⁵⁵⁴ See Section VI.E.1.

were not present in Kosovo and due to other logistical problems.²⁵⁵⁵ The Lukić Defence argues that Lukić did not participate in planning of the Plan for Combating Terrorism.²⁵⁵⁶ The Chamber accepts that Lukić was not involved in the actual formulation of the Plan at the highest levels; he was, however, involved in the meeting at which it was adopted and in implementing measures to ensure proper execution of the Plan.

1022. Some of the meetings attended by Lukić were of the Joint Command, discussed in Section VI.E. The Prosecution alleges that Lukić was a member of the Joint Command from its inception, and that he regularly met with other members of the Joint Command to plan operations to be conducted in Kosovo. At these meetings Lukić briefed those present on MUP-related issues and took part in discussions on upcoming operations. According to the Prosecution, joint MUP/VJ operations could not have taken place without Lukić's involvement as the Head of the MUP Staff, who passed the conclusions adopted by the Joint Command down the MUP chain of command.²⁵⁵⁷

1023. The Lukić Defence, on the other hand, claims that the Joint Command was a legitimate effort by the MUP and VJ to exchange information and was not a body with commanding authority over the MUP and VJ forces. It argues that the term "Joint Command" was simply VJ shorthand to describe co-ordination between the MUP and the VJ, prior to the issuance of the resubordination order; and, as such, the Joint Command did not have the authority to issue orders. The Lukić Defence further asserts that after 1998 the Joint Command ceased to exist, implying that Lukić could not have been a member of the body in 1999.²⁵⁵⁸ The Chamber has, however, concluded above that the Joint Command played a significant role in directing and co-ordinating the activities of the VJ and the MUP in Kosovo in both 1998 and 1999.

1024. The Chamber has analysed evidence pertaining to the Joint Command, and Lukić's participation in it in particular. In his interview with the Prosecution, Lukić explained that, as of 20 July 1998, the Joint Command would meet practically every evening in order to exchange information and provide an overview of the situation.²⁵⁵⁹ Close examination of the Notes taken by Milan Đaković during Joint Command meetings from July to October 1998 shows that Lukić was regularly in attendance.²⁵⁶⁰ Moreover, Đaković identified Lukić as the person in command of the

²⁵⁵⁵ P948 (Sreten Lukić interview with the Prosecution), pp. 68–73; Lukić Final Trial Brief, 7 August 2008 (public version), paras. 500–506. The Chamber notes that while Lukić stated that the meeting took place in the beginning of July, Duško Matković gave evidence that it in fact took place on 20 July. Duško Matković, T. 14634–14637 (30 August 2007), P2913 (witness statement dated 10 February 2003), p. 9 (public version).

²⁵⁵⁶ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 500–506.

²⁵⁵⁷ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 156–180, 1012.

²⁵⁵⁸ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 788–799.

²⁵⁵⁹ P948 (Sreten Lukić interview with the Prosecution), p. 77.

²⁵⁶⁰ P1468 (Notes of meetings of the Joint Command).

MUP forces in Kosovo.²⁵⁶¹ Lukić's role and the nature of his involvement in the Joint Command meetings are illustrated by some examples discussed below.

1025. The Notes indicate that at the 22 July 1998 meeting Lukić reported that "several ... situations were registered on the territory of Kosovo and Metohija, in Uroševac and Gornje Nerodimlje terrorist group was broken down and seven persons were arrested."²⁵⁶² He further reported that "[a] meeting was held with all the platoon commanders and then with MUP chiefs."²⁵⁶³ On 23 July Lukić informed those in attendance that the MUP had taken measures against "terrorist attacks" in the municipality of Peć/Peja; that a checkpoint had been set up in the area; that the number of patrols had been increased; and that a group of 35 persons had been arrested in Orahovac/Rahovec and checked for gun powder residue.²⁵⁶⁴

1026. At a Joint Command meeting held on 27 July 1998 Lukić reported about the progress of MUP units in Rudnik/Runik.²⁵⁶⁵ At the 29 July meeting he referred to an attack on the MUP in Prizren, and informed those present that there were 3,000 uniforms ready for distribution to reserve policemen.²⁵⁶⁶ The following day he informed the meeting that a total of 1,203 reserve policemen and "peacetime staff" from Serbia had arrived in Kosovo, bringing the overall number of reserve policemen and "peacetime staff" in Kosovo to 14,687. The Notes record Lukić as further stating that, by the next day, all manoeuvre units would be pulled out, except for the 5th and 8th squads and the squad at Dulje/Duhël.²⁵⁶⁷ Lukić is also recorded as commenting that "[t]he Plan for Kosovska Mitrovica is not good. It has to be created again, especially in [the Albanian part], for example Šipolje."²⁵⁶⁸

1027. The Notes indicate that, at a meeting held on 4 August 1998, Lukić stated that "[a]n Investigative Judge [is] to issue the warrant for the arrest of the perpetrators within 30 days", and talked about the need "[t]o adhere to the legal procedures" when dealing with suspects.²⁵⁶⁹ It appears that Lukić was referring to two suspects who Radović, the Deputy Chief of the Priština

²⁵⁶¹ Milan Đaković, T. 26434 (19 May 2008) (stating that, when asked about the term "Joint Command", he meant "General Lukić and General Pavković, no one else, because no one else in the chain of command could issue orders to the MUP units apart from General Lukić and to the army units apart from General Pavković or General Samardžić. So as far as I was concerned, there was no one else that was meant by this term that I use here").

²⁵⁶² P1468 (Notes of meetings of the Joint Command), p. 3.

²⁵⁶³ P1468 (Notes of meetings of the Joint Command), p. 3.

²⁵⁶⁴ P1468 (Notes of the Joint Command), pp. 6–7.

²⁵⁶⁵ P1468 (Notes of the Joint Command), p. 17.

²⁵⁶⁶ P1468 (Notes of the Joint Command), pp. 25–26, 28–29.

²⁵⁶⁷ P1468 (Notes of the Joint Command), pp. 30–31.

²⁵⁶⁸ P1468 (Notes of the Joint Command), p. 33.

²⁵⁶⁹ P1468 (Notes of the Joint Command), p. 42.

centre of the RDB, reported were detained for committing crimes, without specifying who these suspects were or the nature of their crimes.²⁵⁷⁰

1028. On 13 August 1998 Lukić informed the Joint Command that trenches had been dug in certain areas of Kosovo; that “propaganda flyers” concerning the return of civilians from the cities to their villages had been disseminated; that he had spoken to the “Head of Mission” about the need to prevent a humanitarian catastrophe; and spoke about the need to co-operate with humanitarian organisations.²⁵⁷¹ The Notes indicate that at the meeting on 27 August 1998, Lukić, while discussing the numbers of MUP detachments and companies in Kosovo, stated that “[t]omorrow evening all of this should be completed, MUP Plan (engagement)”, and that “[r]eporters are to be escorted to Dulje tomorrow to photograph bunker and other KLA facilities”.²⁵⁷²

1029. On 1 September 1998 Lukić described the surrender of weapons in the villages of Dubovik, Beleg, Donji Streoc, Ljubuša, and Papaćane.²⁵⁷³ At the meeting of 6 September 1998 he reported that “there is a joint preparation for the action ‘Ratis’”, described the need to “go to Oštrozub with 1 company, it needs to be captured”, mentioned the apprehension of 537 people in Prizren, Peć/Peja, and Đakovica/Gjakova, and stated that weapons had been surrendered in “H. Zagrodska”.²⁵⁷⁴ At the meeting on 12 September 1998 Lukić informed those present that 29 corpses had been found around Ratiš in Dečani/Dečan municipality.²⁵⁷⁵

1030. At the 13 September 1998 meeting Lukić reported on “preparations for the operation ‘Bajgora’”.²⁵⁷⁶ The next day he informed the attendees that the *Bajgora* action had been carried out.²⁵⁷⁷ At a meeting on 15 September Lukić once again reported on the engagement of the 5th and 2nd PJP Detachments in the Stari Trg/Stari Tërg area,²⁵⁷⁸ which is near Kosovska Mitrovica/Mitrovica and Bajgora. At the 16 September meeting he continued his reporting about the ongoing actions in the Bajgora area, in a village named Bare.²⁵⁷⁹

²⁵⁷⁰ P1468 (Notes of the Joint Command), p. 42.

²⁵⁷¹ P1468 (Notes of the Joint Command), pp. 52–53. Although the Joint Command notes do not indicate who is the “Head of Mission” to whom Lukić was referring, given the fact that the relevant notes were taken on 13 August 1998, the Chamber concludes that Lukić was referring to the Head of the KDOM Mission in Kosovo.

²⁵⁷² P1468 (Notes of the Joint Command), pp. 77–78.

²⁵⁷³ P1468 (Notes of the Joint Command), pp. 100–101.

²⁵⁷⁴ P1468 (Notes of the Joint Command), p. 92.

²⁵⁷⁵ P1468 (Notes of the Joint Command), p. 106.

²⁵⁷⁶ P1468 (Notes of the Joint Command), p. 109.

²⁵⁷⁷ P1468 (Notes of the Joint Command), p. 111.

²⁵⁷⁸ P1468 (Notes of the Joint Command), p. 113.

²⁵⁷⁹ P1468 (Notes of the Joint Command), p. 116.

1031. On 26 September Lukić is recorded as stating that “D. Obrinje was completed today ... Three detachments, two companies and SAJ were pulled out ... A large number of persons were apprehended.”²⁵⁸⁰ On 30 September he stated that a deployment chart for the MUP would be made for the following day.²⁵⁸¹ On 1 October 1998 Lukić mentioned, “Allegedly, there a mass grave in the region of Jablanica.”²⁵⁸² On 30 October he commented that “[t]here were some fires that were not explained yet in around 30 villages in the area of Prizren.”²⁵⁸³

1032. These examples all indicate Lukić’s detailed knowledge of events on the ground in Kosovo in 1998, and his role in reporting on the activities of the MUP forces to the other members of the Joint Command. His participation in the vast majority of Joint Command meetings recorded in the Notes, often as the only representative from the MUP, show that he had a senior and central role in co-ordinating the actions of the MUP and the VJ.

1033. Confirming Lukić’s role as a crucial member of the Joint Command, involved in ensuring the implementation of its directives in a co-ordinated manner between the VJ and MUP forces, Adamović testified that he was assigned by Lukić, following the 22 July 1998 meeting at the MUP Staff noted above, to forward maps of joint MUP/VJ operations to the MUP units on the ground.²⁵⁸⁴ Specifically, Lukić instructed him to “go from time to time to Colonel Đaković and to submit information about the units that were in the territory of Kosovo and Metohija, all with a view to planning the implementation of anti-terrorist actions.”²⁵⁸⁵ As described above, Đaković testified that he could not have planned the joint MUP/VJ actions and drafted the corresponding maps without the help of Adamović and other MUP Staff members.²⁵⁸⁶

1034. In addition to his participation in the Joint Command, Lukić was present at many meetings with senior VJ and MUP officials, along with political leaders, where he gave reports on the situation in Kosovo, and was involved in the planning of further operations.

1035. Lukić participated in the meeting held on 29 October 1998 at the Beli Dvor in Belgrade, which involved many of the same participants as the 21 July meeting. Following a presentation by

²⁵⁸⁰ P1468 (Notes of the Joint Command), p. 129.

²⁵⁸¹ P1468 (Notes of the Joint Command), p. 133.

²⁵⁸² P1468 (Notes of the Joint Command), p. 134. The B/C/S version records “Jablanica”.

²⁵⁸³ P1468 (Notes of the Joint Command), p. 164.

²⁵⁸⁴ Duško Adamović, T. 24969–24970, 24978 (8 April 2008), T. 25063–25065 (9 April 2008).

²⁵⁸⁵ Duško Adamović, T. 25065 (9 April 2008).

²⁵⁸⁶ Milan Đaković, T. 26397 (19 May 2008).

Pavković about the successful execution of the Plan, Lukić briefed the participants about the positioning of MUP forces in Kosovo, in light of the Holbrooke-Milošević Agreement.²⁵⁸⁷

1036. Dušan Lončar testified that, when he first arrived in Kosovo in November 1998, he attended a meeting at the MUP building in Priština/Prishtina, which included Šainović, Lukić, and Pavković, as well as others. At that meeting, Šainović introduced Lončar to those present, and instructed them that all relationships with the KVM had to go through Lončar.²⁵⁸⁸ Although it is not clear whether Lončar had subsequent interactions with Lukić, he did communicate with Lukić's deputy, Mijatović, who reported to him about incidents in Kosovo.²⁵⁸⁹ In his interview with the Prosecution, Lukić confirmed that Mijatović held daily meetings with the representatives of the KVM.²⁵⁹⁰ Lončar further added that Šainović continued to visit Kosovo once or twice a week, between November 1998 and March 1999, and always met with both Pavković and Lukić. These two men were also obliged to inform Šainović by telephone should anything important occur.²⁵⁹¹

1037. The minutes of the meeting held on 2 December 1998 at the MUP Staff record Lukić as describing a prior meeting, held in Belgrade on 27 November 1998. This meeting was convened at the Ministry of Interior, and involved Lukić, Šainović, Stojiljković, the assistant ministers of the MUP, and the heads of the RDB and RJB. They examined the situation in Kosovo and discussed the further engagement of MUP forces in "anti-terrorist actions".²⁵⁹²

1038. There is also evidence that Lukić's role as a key MUP interlocutor in relation to Kosovo continued into 1999. At a briefing on 11 April 1999, Ojdanić told senior VJ officers that a meeting would occur between representatives of the Supreme Command Staff and the "Supreme Commander" (Milošević), as well as Milutinović, Šainović, Pavković, and Lukić.²⁵⁹³ In his interview with the Prosecution, Lukić himself described another meeting held in a villa in Belgrade, in May 1999. The meeting was called by Milošević, and also participating were Milutinović, Šainović, Pavković, Ojdanić, Stojiljković, Đorđević, Rade Marković, and Stevanović. As head of the MUP Staff, Lukić presented a report on the situation in Kosovo, as did Pavković for the VJ.²⁵⁹⁴

²⁵⁸⁷ P2166 (Minutes of the Beli Dvor meeting held on 29 October 1998), p. 7. See Section VI.E.2.b.i.C for the Chamber's assessment of this document.

²⁵⁸⁸ Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 21.

²⁵⁸⁹ See Dušan Lončar, T. 7594, 7596 (30 November 2006), P2521 (witness statement dated 3 March 2004), paras. 21, 22, 35; P948 (Sreten Lukić interview with the Prosecution), p. 80.

²⁵⁹⁰ P948 (Sreten Lukić interview with the Prosecution), p. 122.

²⁵⁹¹ Dušan Lončar, T. 7576–7578 (30 November 2006), T. 7652–7654 (1 December 2006), P2521 (witness statement dated 3 March 2004), para. 38.

²⁵⁹² P3122 (Minutes of MUP Staff meeting, 2 December 1998), p. 3.

²⁵⁹³ Branko Gajić, 15414–15418 (11 September 2007); 3D728 (Briefing to the Chief of Staff of the Supreme Command, 11 April 1999), p. 3.

²⁵⁹⁴ P948 (Sreten Lukić interview with the Prosecution), pp. 142–143.

The Chamber is satisfied that the meeting Lukić referred to is the one that took place on 4 May discussed above, following the receipt of a letter from the then Prosecutor of the International Tribunal, Louise Arbour, noting her grave concern at the continued commission of serious breaches of international humanitarian law in Kosovo.²⁵⁹⁵ A media report relating to the 4 May meeting states that Milošević, Milutinović, Ojdanić, Pavković, Lukić, and others were present. According to the report, information was presented that the “security forces” 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. The report stated that at the meeting it was concluded that the state authorities’ unbiased performance of their duties to protect civilians had rendered such crimes “impossible”.²⁵⁹⁶

1039. Ljubiša Stojimirović, who was the Chief of Staff of the 3rd Army, confirmed that, at the beginning of May, Lukić and Pavković went to see Milošević.²⁵⁹⁷ Two days after the meeting, Lukić issued an order urging his subordinates to read the contents of an article in the *Politika* newspaper and to adhere to its directions.²⁵⁹⁸ The statements of Šainović at the meeting at the MUP Staff on 7 May 1999 support the account of the 4 May meeting contained in the article. Šainović stated that the FRY and Serbian Presidents had heard reports from Pavković and Lukić, the text of a statement was made public, and that this statement should be distributed to all police commanders.²⁵⁹⁹ Miroslav Mijatović testified that Šainović was referring to the statement in the *Politika* newspaper that reported on the meeting of 4 May 1999.²⁶⁰⁰

1040. Finally, Lukić was also present at the 1 June 1999 meeting of the Joint Command in the basement of the Grand Hotel in Priština/Prishtina, discussed in detail in Section VI.E, at which he, among others, gave a presentation about MUP activities.²⁶⁰¹

b. Lukić’s interaction with international observers

1041. Head of US-KDOM, Shaun Byrnes, testified about Lukić’s participation, along with Đorđević and Stevanović for the MUP, in a number of technical meetings that took place following

²⁵⁹⁵ See generally P398 (Letter from Louise Arbour to Milošević, 26 March 1999); P399 (Letter from Louise Arbour to Milutinović, 26 March 1999); P400 (Letter from Louise Arbour to Nikola Šainović, 26 March 1999); P401 (Letter from Louise Arbour to Dragoljub Ojdanić, 26 March 1999).

²⁵⁹⁶ P1696 (“Army, Police Heads Inform Milo[š]evi[ć] of Successful Defense”, Report of RTS, 5 May 1999), p. 1.

²⁵⁹⁷ Ljubiša Stojimirović, T. 17684 (26 October 2007).

²⁵⁹⁸ 5D1289 (Sreten Lukić’s report regarding *Politika* News Article, 6 May 1999), also admitted as P2159.

²⁵⁹⁹ P1996 (Minutes of the MUP Staff meeting, 7 May 1999), p. 4.

²⁶⁰⁰ Miroslav Mijatović, T. 22286–22289 (13 February 2008).

²⁶⁰¹ Aleksandar Vasiljević, T. 14505 (29 August 2007), P2600 (witness statement dated 14 January 2007), paras. 78–81; Momir Stojanović, T. 19774–19775 (7 December 2007).

the 24 October 1998 meeting between Milošević, Wesley Clark, and Klaus Naumann.²⁶⁰² The discussion revolved around the number of forces to be permitted in Kosovo following the Holbrooke-Milošević Agreement.²⁶⁰³ Byrnes and Lukić participated in a sub-group discussing in particular the issue of the police forces, which resulted in the signing of an “Understanding Between KDOM and Ministry of Interior of Republic of Serbia” by Byrnes and Đorđević.²⁶⁰⁴

1042. Following the insertion of the KVM into Kosovo, as noted above, an office of the Federal Commission for Co-operation was established in Priština/Prishtina to oversee local interactions with the KVM. This was headed by Dušan Lončar and included Milan Kotur, representing the VJ, and Lukić’s Deputy, Miroslav Mijatović, representing the MUP,²⁶⁰⁵ who met with representatives of the KVM almost every day during the early months of 1999.²⁶⁰⁶ At these meetings, information concerning VJ, MUP, and KLA activities within Kosovo was exchanged.²⁶⁰⁷

1043. In his interview with the Prosecution, Lukić stated that, following the Holbrooke-Milošević Agreement, Mijatović met with representatives of the KVM in Kosovo every morning.²⁶⁰⁸ According to Lukić, when he did have contact with the KVM it was most often through Richard Heaslip, an Irish officer who was appointed to liaise with the MUP Staff.²⁶⁰⁹ Karol John Drewienkiewicz, who appointed Heaslip to this position, and also met with Lukić occasionally, stated that Lukić identified himself to him as “the Serbian Police Commander in Kosovo”.²⁶¹⁰ On cross-examination, he further testified that it was his assumption that Lukić was the “head of the police in Kosovo”.²⁶¹¹ The record of a 24 December 1998 meeting kept by the OSCE notes that Drewienkiewicz also told Lukić that the KVM had received unconfirmed reports of excessive use of force by the police in villages to the west of Kosovo Polje/Fushë Kosova. Lukić, however, rejected Drewienkiewicz’s suggestion that prior warning of MUP operations should be given to the KVM.²⁶¹²

²⁶⁰² Shaun Byrnes, T. 12156–12158 (16 April 2007).

²⁶⁰³ Klaus Naumann, P1767 (notes of OTP interviews), paras. 14–16, P2512 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6980–6983; Rade Čučak, T. 14933–14934 (4 September 2007).

²⁶⁰⁴ Shaun Byrnes, T. 12157–12159 (16 April 2007); *see also* P394 (Understanding Between KDOM and Ministry of Interior of Republic of Serbia).

²⁶⁰⁵ Richard Ciagliniski, P2488 (witness statement dated 23 March 2000), e-court p. 6.

²⁶⁰⁶ Richard Ciagliniski, T. 6859 (17 November 2006).

²⁶⁰⁷ Richard Ciagliniski, T. 6860 (17 November 2006).

²⁶⁰⁸ P948 (Sreten Lukić interview with the Prosecution), pp. 122–123.

²⁶⁰⁹ P948 (Sreten Lukić interview with Prosecution), p. 123; Richard Ciagliniski, T. 6986–6987 (21 November 2006).

²⁶¹⁰ Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), para. 56.

²⁶¹¹ Karol John Drewienkiewicz, T. 7987–7988 (6 December 2006); *see also* Karol John Drewienkiewicz, P2508 (witness statement dated 23 June 2000), para. 103; P2544 (Main Points of the Meeting between Lukić and Drewienkiewicz, 24 December 1998).

²⁶¹² P2544 (Main Points of the Meeting between Lukić and Drewienkiewicz, 24 December 1998).

1044. Shaun Byrnes had many dealings with Lukić, both before and after the completion of the October Agreements. Often this occurred on a daily basis, especially in the period of setting up the KVM.²⁶¹³ He also dealt often with Mijatović. Byrnes recalled that he was told that Lukić had replaced Obrad Stevanović as the “Serbian police chief in Kosovo” and that Lukić reported to Stevanović in Belgrade.²⁶¹⁴ He would discuss events in Kosovo with Lukić and relay observations by KDOM teams of unacceptable behaviour by the police; Lukić would in turn call Byrnes to tell him of misconduct by the KLA, which KDOM would later try to verify.²⁶¹⁵ According to Byrnes, the disappearance and/or killing of Serbs living in Kosovo would always prompt a request for help by Lukić.²⁶¹⁶ Later, when responsibility for dealing with the Serbian police and authorities moved from KDOM to KVM, Byrnes nevertheless remained in contact with Lukić.²⁶¹⁷

1045. Lončar also gave evidence about Lukić’s dealings with the international representatives, testifying that Lukić was very diligent in his communications with the KVM and that he never refused their requests. Lončar stated that, at the time of his arrival in Kosovo on 11 December 1998, Lukić was “in charge of the MUP”.²⁶¹⁸ He further added that Lukić insisted through Mijatović upon maximum co-operation in relations with the KVM.²⁶¹⁹

1046. When he testified in the *Milošević* trial, Richard Ciaglinski initially stated simply that he understood Lukić was the Chief of the MUP in Kosovo.²⁶²⁰ Later on, he specified that this was confirmed to him on many occasions during the meetings with the Federal Commission for Co-operation with the KVM and on the “rare occasions” when he met Lukić in person.²⁶²¹ In his written statement, Ciaglinski described Lukić as “the overall commander for the police forces in Kosovo”.²⁶²² He stated that he only met Lukić once or twice as Lukić “just wouldn’t deal with OSCE, that job had been left to Mijatović”.²⁶²³

1047. Michael Phillips confirmed that he met weekly with Lukić, along with Šainović and Lončar, to resolve the problem of movement of the KVM monitors in Kosovo. These meetings however

²⁶¹³ Shaun Byrnes, T. 12140–12142 (16 April 2007).

²⁶¹⁴ Shaun Byrnes, T. 12146 (16 April 2007).

²⁶¹⁵ Shaun Byrnes, T. 12141–12142 (16 April 2007).

²⁶¹⁶ Shaun Byrnes, T. 12142 (16 April 2007).

²⁶¹⁷ Shaun Byrnes, T. 12140–12141 (16 April 2007).

²⁶¹⁸ Dušan Lončar, P2521 (witness statement dated 3 March 2004), para. 21.

²⁶¹⁹ Dušan Lončar, T. 7659–7660 (1 December 2006).

²⁶²⁰ Richard Ciaglinski, P2489 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 3176. The weight ascribed to Ciaglinski’s 2002 testimony from the *Milošević* trial takes into account the qualification he made during his evidence in the *Milutinović et al.* trial. See Richard Ciaglinski, T. 6811 (17 November 2006).

²⁶²¹ Richard Ciaglinski, P2489 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 3182.

²⁶²² Richard Ciaglinski, P2488 (witness statement dated 23 March 2000), e-court p. 10.

²⁶²³ Richard Ciaglinski, P2488 (witness statement dated 23 March 2000), e-court pp. 11–12.

ceased in January 1999, following the Račak/Reçak incident. From these meetings, Phillips concluded that Šainović had substantial authority over both the VJ and the MUP, but noted that he required details about particular issues pertaining to the MUP from Lukić.²⁶²⁴ Phillips further testified that, when they first met, Lukić presented himself to Phillips as “the chief of the MUP or the commander of the MUP in Priština.”²⁶²⁵ Lukić attended his first meeting with the KVM on 24 December 1998, but remained quiet for most of the meeting.²⁶²⁶ When it was put to Phillips that none of the other entries in his notebooks mention any other meetings where Lukić was present, Phillips responded that he was fairly certain that Lukić was present at more than one meeting involving Šainović.²⁶²⁷ Phillips also testified that in December 1998 he brought to the attention of Šainović, Milošević, and Lukić the fact that the KVM was concerned about the use of disproportionate force by the forces of the FRY and Serbia in Kosovo: he pointed out that the KLA were using small calibre weapons, while the FRY forces used heavy calibre weapons. According to Phillips, the reactions of Šainović and Lukić were defensive in nature, always claiming that they had to protect the Serbian people, as the OSCE would not.²⁶²⁸

1048. The Chamber finds that the accumulation of consistent evidence about what Lukić said to the international observers and the impression he gave them leads to the conclusion that Lukić did present himself as the Chief of Police in Kosovo.

c. Lukić’s disciplinary powers

1049. The Lukić Defence argues that neither Lukić nor the MUP Staff were able to initiate disciplinary proceedings against members of the MUP.²⁶²⁹ While the Chamber is satisfied that disciplinary proceedings were generally initiated by a person’s immediate supervisor and were dealt with by the relevant SUPs, instructions given by Lukić in August 1998 and February 1999 indicate that he had *de facto* authority to require the chiefs of the SUPs to conduct investigations into crimes, even if he was not the person who actually initiated proceedings.²⁶³⁰ Furthermore, when, Lukić brought up the actions taken after a specific massacre in his interview with the

²⁶²⁴ Michael Phillips, T. 11829–11831, 11855 (19 March 2007).

²⁶²⁵ Michael Phillips, T. 11829–11830 (19 March 2007).

²⁶²⁶ Michael Phillips, T. 11987–11989 (20 March 2007); 6D198 (excerpt from Phillips’s notebook).

²⁶²⁷ Michael Phillips, T. 11989 (20 March 2007).

²⁶²⁸ Michael Phillips, T. 11845–11846 (19 March 2007).

²⁶²⁹ Lukić Defence closing arguments, T. 27306 (26 August 2008).

²⁶³⁰ 6D768 (Order to the heads of Kosovo SUPs and commanders of the PJP, issued by Sreten Lukić, 7 August 1998); 6D872 (MUP Staff Dispatch, 23 February 1999).

Prosecution, he stated, “What was to be done the second I received this information, they were immediately arrested”.²⁶³¹

d. Conclusions

1050. The Chamber is in no doubt that, whatever his precise title, Lukić was in charge of the MUP Staff from June 1998 to July 1999. Much of the evidence discussed above in relation to the powers and functions of the MUP Staff also reveals the extent of Lukić’s involvement in planning, organising, and controlling MUP units in Kosovo. The documents in evidence indicate that Lukić chaired most of the meetings held at the MUP Staff, including those attended by high level figures such as the President of Serbia, the Minister of Interior, the heads of RJB and RDB, the Accused Šainović, and the Head of PJP units, Obrad Stevanović. For example, at the 22 July 1998 meeting described above—attended by Đorđević and Stevanović—Lukić was the one who proposed the agenda and led the meeting.²⁶³² On 28 July 1998 Lukić chaired a meeting at the MUP Staff, at which the Minister of Interior, the Head of the RDB Rade Marković, and the heads of the SUPs were present. As noted above, Lukić welcomed those present and gave a briefing “on measures and activities of police units according to the Plan” and described what actions had been undertaken and by which detachment in coordination with the VJ.²⁶³³ Additionally, on 5 November 1998, at another meeting held at the MUP Staff, involving Milutinović, Stojiljković, Đorđević, Marković, Šainović, Pavković, all the heads of the Kosovo SUPs and the PJP commanders, Lukić, as the chair, “greeted the participants, thanked President Milutinović, Minister Stojiljković and others for visiting the MUP Staff, and briefed them on the current security situation in Kosovo and Metohija and informed them of the readiness of police units to continue to carry out their duties and tasks.”²⁶³⁴

1051. Lukić also issued numerous dispatches on behalf of the MUP Staff, containing tasks and instructions for the SUPs and PJP and SAJ units, as set out above. Having reached the conclusion that the MUP Staff played a central role in planning, organising, controlling, and directing the work of the various MUP units active in Kosovo, as well as co-ordinating and planning joint operations with the VJ, and taking into account all the evidence set out above about Lukić’s central role in the MUP Staff as its Head, the Chamber finds beyond a reasonable doubt that he was a *de facto* commander over MUP forces deployed in Kosovo from mid-1998 to mid-1999. These forces

²⁶³¹ P948 (Sreten Lukić interview with the Prosecution), pp. 155–156. Lukić appears to have been discussing the massacre in Podujevo/Podujeva committed by the SAJ reservist unit known as the Scorpions discussed in Section VI.A.3.f.

²⁶³² 6D798 (Minutes of the MUP Staff meeting, 22 July 1998).

²⁶³³ P3121 (Minutes of the MUP Staff meeting, 29 July 1998).

²⁶³⁴ P2805 (Minutes of the meeting held of 5 November 1998, at the MUP Staff), pp. 3, 7–8.

included the regular police in the SUPs, as well as the PJP and SAJ units. This is indeed confirmed by Stojiljković's letter to Milutinović dated 11 May 1999, recommending Lukić for promotion, in which he stated that Lukić "has excelled in successful command and control of the MUP units engaged in the prevention of terrorism in Kosovo and Metohija."²⁶³⁵ While there are no combat orders in evidence giving specific deployment taskings to MUP units, there were differences between the organisation and structure of the MUP and that of the VJ, as emphasised by the Lukić Defence. Lukić did not replace Stevanović, Đorđević, or Ilić, the heads of the SUPs, or the commanders of PJP or SAJ units, but rather was the bridge between those commanders and the policy and plans set in Belgrade, as well as being directly involved in the planning process and in ensuring that day-to-day operations were conducted by the various MUP forces in accordance with those plans.

6. Lukić's role in reporting to the Ministry of Interior

1052. According to the decision on the establishment of the MUP Staff of 16 June 1998, the Head of the MUP Staff had to "report to the Minister about his own actions, actions of the staff, and the aspects of the security situation under the remit of the staff, informing the Minister about security-related developments, measures taken, and the effects of those measures."²⁶³⁶ Cvetić confirmed that the Head of the RJB, Đorđević, would sometimes go to Kosovo to receive information, but that the MUP Staff would forward information to him and to the Minister of Interior when they were not in Kosovo.²⁶³⁷ Adamović stated that the Staff submitted reports to the Ministry of Interior about "security-related incidents" in Kosovo.²⁶³⁸

1053. In evidence are reports sent by the MUP Staff to the MUP in Belgrade between 1 January and 1 May 1999.²⁶³⁹ The reports issued before 29 March 1999 were sent to the Minister of Interior,

²⁶³⁵ 1D680 (Recommendation to promote Sreten Lukić to Lieutenant-General, 11 May 1999).

²⁶³⁶ P1505 (Decision to establish a Ministerial Staff for the Suppression of Terrorism, 16 June 1998).

²⁶³⁷ Ljubinko Cvetić, T. 8104–8105 (7 December 2006).

²⁶³⁸ Duško Adamović, T. 24993 (8 April 2008).

²⁶³⁹ 6D1156 (MUP Staff report to the Ministry of Interior, 1 January 1999); 6D1157 (MUP Staff report to the Ministry of Interior, 2 January 1999); 6D1158 (MUP Staff report to the Ministry of Interior, 3 January 1999), also admitted as P1228; 6D1151 (MUP Staff report to the Ministry of Interior, 16 January 1999); 6D1207 (MUP Staff report to the Ministry of Interior, 23 February 1999); 6D1208 (MUP Staff report to the Ministry of Interior, 24 February 1999); 6D1152 (MUP Staff report to the Ministry of Interior, 26 February 1999); 6D1153 (MUP Staff report to the Ministry of Interior, 27 February 1999); 6D1155 (MUP Staff report to the Ministry of Interior, 2 March 1999); 6D1221 (MUP Staff report to the Ministry of Interior, 13 March 1999); 6D1222 (MUP Staff report to the Ministry of Interior, 14 March 1999); 6D1223 (MUP Staff report to the Ministry of Interior, 15 March 1999); 6D1224 (MUP Staff report to the Ministry of Interior, 16 March 1999); 6D1225 (MUP Staff report to the Ministry of Interior, 17 March 1999); 6D1226 (MUP Staff report to the Ministry of Interior, 18 March 1999); 6D1227 (MUP Staff report to the Ministry of Interior, 19 March 1999); 6D1228 (MUP Staff report to the Ministry of Interior, 20 March 1999); 6D1229 (MUP Staff report to the Ministry of Interior, 21 March 1999); 6D1230 (MUP Staff report to the Ministry of Interior, 22 March 1999); 6D1231 (MUP Staff report to the Ministry of Interior, 23 March 1999); 6D1232 (MUP Staff report to the Ministry of Interior, 24 March 1999); 6D1233 (MUP Staff report to the Ministry of Interior, 25 March 1999); 6D1234 (MUP Staff

the Head of the RJB, the Head of the RDB, other organs of the Ministry such as the Police Administration, and the chiefs of the Kosovo SUPs.²⁶⁴⁰ Beginning on 2 April 1999, reports were sent exclusively to the Minister of Interior, Vljako Stojiljković, and to the Chief of RJB Vlastimir Đorđević. From 21 April 1999 on, the Head of the Administration for Analysis was added to the list of recipients, and beginning on 24 April 1999, the Head of the RDB, Rade Marković, was also included. The reports made after 2 April 1999 do not, however, indicate that the chiefs of the Kosovo SUPs were among their recipients.²⁶⁴¹ All of these reports bear Sreten Lukić's typed name as a signature.²⁶⁴²

report to the Ministry of Interior, 26 March 1999); 6D1235 (MUP Staff report to the Ministry of Interior, 27 March 1999), also admitted as P1100; 6D1236 (MUP Staff report to the Ministry of Interior, 28 March 1999); 6D1237 (MUP Staff report to the Ministry of Interior, 29 March 1999); 6D1238 (MUP Staff report to the Ministry of Interior, 2 April 1999); 6D1239 (MUP Staff report to the Ministry of Interior, 3 April 1999); 6D1240 (MUP Staff report to the Ministry of Interior, 4 April 1999); 6D1241 (MUP Staff report to the Ministry of Interior, 5 April 1999); 6D1242 (MUP Staff report to the Ministry of Interior, 6 April 1999); 6D1243 (MUP Staff report to the Ministry of Interior, 7 April 1999); 6D1244 (MUP Staff report to the Ministry of Interior, 8 April 1999); 6D1245 (MUP Staff report to the Ministry of Interior, 9 April 1999); 6D1246 (MUP Staff report to the Ministry of Interior, 10 April 1999); 6D1248 (MUP Staff report to the Ministry of Interior, 12 April 1999); 6D1249 (MUP Staff report to the Ministry of Interior, 13 April 1999); 6D1250 (MUP Staff report to the Ministry of Interior, 14 April 1999); 6D1251 (MUP Staff report to the Ministry of Interior, 15 April 1999); 6D1252 (MUP Staff report to the Ministry of Interior, 16 April 1999); 6D1254 (MUP Staff report to the Ministry of Interior, 18 April 1999); 6D1255 (MUP Staff report to the Ministry of Interior, 19 April 1999); 6D1256 (MUP Staff report to the Ministry of Interior, 20 April 1999); 6D1257 (MUP Staff report to the Ministry of Interior, 21 April 1999); 6D1259 (MUP Staff report to the Ministry of Interior, 23 April 1999); 6D1260 (MUP Staff report to the Ministry of Interior, 24 April 1999); 6D1261 (MUP Staff report to the Ministry of Interior, 25 April 1999); P1693 (MUP Staff report to the Ministry of Interior, 1 May 1999).

²⁶⁴⁰ 6D1156 (MUP Staff report to the Ministry of Interior, 1 January 1999); 6D1157 (MUP Staff report to the Ministry of Interior, 2 January 1999); 6D1158 (MUP Staff report to the Ministry of Interior, 3 January 1999), also admitted as P1228; 6D1151 (MUP Staff report to the Ministry of Interior, 16 January 1999); 6D1207 (MUP Staff report to the Ministry of Interior, 23 February 1999); 6D1208 (MUP Staff report to the Ministry of Interior, 24 February 1999); 6D1152 (MUP Staff report to the Ministry of Interior, 26 February 1999); 6D1153 (MUP Staff report to the Ministry of Interior, 27 February 1999); 6D1155 (MUP Staff report to the Ministry of Interior, 2 March 1999); 6D1221 (MUP Staff report to the Ministry of Interior, 13 March 1999); 6D1222 (MUP Staff report to the Ministry of Interior, 14 March 1999); 6D1223 (MUP Staff report to the Ministry of Interior, 15 March 1999); 6D1224 (MUP Staff report to the Ministry of Interior, 16 March 1999); 6D1225 (MUP Staff report to the Ministry of Interior, 17 March 1999); 6D1226 (MUP Staff report to the Ministry of Interior, 18 March 1999); 6D1227 (MUP Staff report to the Ministry of Interior, 19 March 1999); 6D1228 (MUP Staff report to the Ministry of Interior, 20 March 1999); 6D1229 (MUP Staff report to the Ministry of Interior, 21 March 1999); 6D1230 (MUP Staff report to the Ministry of Interior, 22 March 1999); 6D1231 (MUP Staff report to the Ministry of Interior, 23 March 1999); 6D1232 (MUP Staff report to the Ministry of Interior, 24 March 1999); 6D1233 (MUP Staff report to the Ministry of Interior, 25 March 1999); 6D1234 (MUP Staff report to the Ministry of Interior, 26 March 1999); 6D1235 (MUP Staff report to the Ministry of Interior, 27 March 1999), also admitted as P1100; 6D1236 (MUP Staff report to the Ministry of Interior, 28 March 1999); 6D1237 (MUP Staff report to the Ministry of Interior, 29 March 1999).

²⁶⁴¹ 6D1238 (MUP Staff report to the Ministry of Interior, 2 April 1999); 6D1239 (MUP Staff report to the Ministry of Interior, 3 April 1999); 6D1240 (MUP Staff report to the Ministry of Interior, 4 April 1999); 6D1241 (MUP Staff report to the Ministry of Interior, 5 April 1999); 6D1242 (MUP Staff report to the Ministry of Interior, 6 April 1999); 6D1243 (MUP Staff report to the Ministry of Interior, 7 April 1999); 6D1244 (MUP Staff report to the Ministry of Interior, 8 April 1999); 6D1245 (MUP Staff report to the Ministry of Interior, 9 April 1999); 6D1246 (MUP Staff report to the Ministry of Interior, 10 April 1999); 6D1248 (MUP Staff report to the Ministry of Interior, 12 April 1999); 6D1249 (MUP Staff report to the Ministry of Interior, 13 April 1999); 6D1250 (MUP Staff report to the Ministry of Interior, 14 April 1999); 6D1251 (MUP Staff report to the Ministry of Interior, 15 April 1999); 6D1252 (MUP Staff report to the Ministry of Interior, 16 April 1999); 6D1254 (MUP Staff report to the Ministry of Interior, 18 April 1999); 6D1255 (MUP Staff report to the Ministry of Interior, 19 April 1999); 6D1256 (MUP Staff report to the Ministry of Interior, 20 April 1999); 6D1257 (MUP Staff report to the Ministry of Interior, 21 April 1999); 6D1259 (MUP Staff report to the Ministry of Interior, 23 April 1999); 6D1260 (MUP Staff report to the Ministry of Interior, 24 April 1999);

1054. The reports consisted of a summary of “events”, “occurrences”, “phenomena”, and other “information” related to “security”.²⁶⁴³ Before the NATO bombing campaign, they addressed for the most part “terrorist attacks”, “terrorist provocations”, “persons brought into custody to be interviewed concerning participation in terrorist attacks on members of the police and VJ”, the “number of serious criminal offences”, “serious traffic accidents involving official vehicles”, and “incidents involving fire, break-downs and explosions”. From 26 March 1999 the reports included information about the “consequences of the NATO bombing”, while from 2 April 1999 they began addressing the numbers of “persons from the Albanian and other national communities who fled” Kosovo. This followed a 1 April 1999 order by Lukić to the SUPs that the number of Albanians leaving Kosovo through their border crossings should be tracked.²⁶⁴⁴

1055. None of the reports contained information on operations carried out by MUP units or their work, although they did report if members of the MUP or the VJ retaliated to attacks from the KLA. For example, on 2 April 1999 it was reported that an attack was carried out against MUP personnel in Srbica/Skenderaj municipality and that the “police adequately responded to the attack.”²⁶⁴⁵ On 3 April Lukić reported that the previous day, in the vicinity of Grebno/Greben village in Uroševac/Ferizaj, the police came under a “terrorist” attack. Subsequently, in a “mopping up” operation, three members of the PJP were injured. The “mopping up” operation was halted due the fierce resistance of the KLA fighters.²⁶⁴⁶ The MUP Staff report of 4 April 1999 reports that on 3 April, after members of the Uroševac SUP and the VJ came under a terrorist attack in Grebno/Greben, “[t]hey forcefully returned fire and crushed the terrorist gangs.”²⁶⁴⁷ The report also stated that following a terrorist attack in Vučitrn/Vushtrria municipality “an adequate response was made to the attacks.”²⁶⁴⁸

1056. The reports also addressed opportunistic crimes such as thefts, taking vehicles, and looting that were committed by VJ personnel, members of the SUPs, and civilians.²⁶⁴⁹ They further reported deaths and injuries among VJ and MUP personnel. For example, the report of

6D1261 (MUP Staff report to the Ministry of Interior, 25 April 1999); P1693 (MUP Staff report to the Ministry of Interior, 1 May 1999).

²⁶⁴² While the English translation of 6D1222 (MUP Staff report to the Ministry of Interior, 14 March 1999) does not indicate that Lukić signed the report, the original was indeed signed with his name.

²⁶⁴³ See, e.g., P1228 (MUP Staff report to the Ministry of Interior, 3 January 1999); P1100 (MUP Staff report to the Ministry of Interior, 27 March 1999); P1693 (MUP Staff report to the Ministry of Interior, 1 May 1999).

²⁶⁴⁴ 6D808 (Letter from the MUP Staff to the Heads of the Kosovo SUPs, 1 April 1999), p. 2.

²⁶⁴⁵ 6D1238 (MUP Staff report to the Ministry of Interior, 2 April 1999), p. 2.

²⁶⁴⁶ 6D1239 (MUP Staff report to the Ministry of Interior, 3 April 1999), p. 4.

²⁶⁴⁷ 6D1240 (MUP Staff report to the Ministry of Interior, 4 April 1999), p. 3.

²⁶⁴⁸ 6D1240 (MUP Staff report to the Ministry of Interior, 4 April 1999), p. 2.

²⁶⁴⁹ See, e.g., 6D1241 (MUP Staff report to the Ministry of Interior, 5 April 1999), pp. 3–5; 6D1245 (MUP Staff report to the Ministry of Interior, 9 April 1999), p. 4.

21 April 1999 addressed a “terrorist attack” in Priština/Prishtina municipality, during which a MUP officer died; and the report of 23 April 1999 stated that five members of the VJ were killed and their bodies were burned in a “terrorist attack” in Glogovac/Gllogoc municipality.²⁶⁵⁰ The reports addressed instances of unidentified bodies of civilians being found and the subsequent legal steps taken by the police or an investigating judge. For instance, the report of 3 April 1999 provides that 30 unidentified bodies had been found in Srbica/Skenderaj, about 25 charred bodies next to Mala Kruša/Krusha e Vogël, and 11 unidentified bodies of men between 25 and 35 years of age had been found in Mamuša/Mamusha village in Prizren municipality.²⁶⁵¹

1057. Miroslav Mijatović testified that the report of 1 May 1999 was “produced by the Staff on the basis of daily reports of the secretariats of the interior in Kosovo and Metohija [and] was then forwarded to the Ministry of the Interior”.²⁶⁵² Most of the reports do not indicate on what basis the MUP Staff prepared them. However, the one of 10 April 1999 explained that it did not include incidents from Gnjilane/Gjilan municipality, whose reports had not yet been received, suggesting that normally the reports were prepared based on the information obtained from the various SUPs.²⁶⁵³

1058. The minutes of the meeting held on 28 July 1998, attended by Stojiljković, also demonstrate that Lukić, as Head of the MUP Staff, reported to the Ministry of Interior. During this meeting, Lukić “gave a briefing on measures and activities of police units between 25 and 28 July 1998 aimed at lifting the blockade of roads and certain towns according to the Plan ... as well as on which (concrete) actions had been undertaken and by which detachment”.²⁶⁵⁴ He further stated that “[t]he second phase of the Global Plan has been carried out, in accordance with the established schedule, with ten detachments.”²⁶⁵⁵ As regards actions carried out in co-ordination with the VJ, he gave “a detailed explanation about the locations at which actions had been carried out and about had been [sic] achieved, showing axes of action and other things on a topographic map”.²⁶⁵⁶

1059. The Chamber concludes that the fact that the MUP Staff received various reports from the SUPs, collated them, and sent them to Belgrade, further shows that Lukić held an instrumental

²⁶⁵⁰ 6D1257 (MUP Staff report to the Ministry of Interior, 21 April 1999), p. 2; 6D1259 (MUP Staff report to the Ministry of Interior, 23 April 1999), p. 2.

²⁶⁵¹ 6D1239 (MUP Staff report to the Ministry of Interior, 3 April 1999), pp. 2–3.

²⁶⁵² Miroslav Mijatović, T. 22464 (15 February 2008); *see* P1693 (MUP Staff report to the Ministry of Interior, 1 May 1999); *see also* Ljubinko Cvetić, T. 8165–8166 (8 December 2006).

²⁶⁵³ 6D1246 (MUP Staff report to the Ministry of Interior, 10 April 1999), p. 4.

²⁶⁵⁴ P3121 (Minutes of the MUP Staff meeting, 29 July 1998), p. 3.

²⁶⁵⁵ P3121 (Minutes of the MUP Staff meeting, 29 July 1998).

²⁶⁵⁶ P3121 (Minutes of the MUP Staff meeting, 29 July 1998).

position in co-ordinating information exchange between the MUP forces in Kosovo and the MUP headquarters in Belgrade.²⁶⁵⁷

7. Lukić's involvement in arming non-Albanian civilians

1060. The Prosecution alleges that Lukić participated in the arming of non-Albanian civilians through the creation of the RPOs in Kosovo starting in July 1998.²⁶⁵⁸ The Lukić Defence, however, argues that he did not have control over the RPOs, as they “consist[ed] mainly of VJ conscripts with very few reserve policemen, and with mobilisation they fell apart because VJ conscripts went to war-time assignments.”²⁶⁵⁹ The Lukić Defence goes on to imply that the RPOs were essentially VJ units coming under the auspices of the civil protection and civil defence units.

1061. There is a significant body of documentary and testimonial evidence related to the RPOs, much of which has been discussed in Section VI.A.3. Significantly, a report to the MUP Staff from the Kosovska Mitrovica SUP, dated 1 July 1998, indicates that the various RPOs established in villages throughout Kosovo included individuals who were active-duty police officers, members of the reserve police forces, and VJ reservists.²⁶⁶⁰ Mijatović stated that the RPOs were “composed of the reservists in the Ministry of the Interior, or rather, the police and the reserve force of the Territorial Defence units.”²⁶⁶¹ Cvetić stated that the RPOs were comprised of “citizens who had a wartime duty station also according to a different obligation. For instance, people who were assigned either to the civil defence or to local units of the Army of Yugoslavia, and their exclusive task was defence of the villages.”²⁶⁶² Cvetić described the overlap between the members of the RPOs and the military territorial organs in Kosovo, which had responsibility for recruiting and mobilising reservists for the VJ on an ongoing basis and as needs dictated.²⁶⁶³ These military organs armed “units” with automatic and semi-automatic weapons. If these “units” were not used by the military territorial organs, they would be engaged as part of the RPOs.²⁶⁶⁴

1062. This evidence is supported by a dispatch sent by the Commander of the Priština Military District, Vojkan Savić, on 1 July 1998, to Lukić, informing him that organs of the MUP in Kosovo

²⁶⁵⁷ Lukić's name is typed at the end of every report, but he did not physically sign them.

²⁶⁵⁸ Prosecution Final Brief, 29 July 2008 (public version), paras. 1016–1026.

²⁶⁵⁹ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 465–474.

²⁶⁶⁰ P1114 (Report to the MUP Staff from the Kosovska Mitrovica SUP, 1 July 1998) (listing the various RPOs established, and naming their commanders and deputy commanders).

²⁶⁶¹ Miroslav Mijatović, T. 22343 (13 February 2008).

²⁶⁶² Ljubinko Cvetić, T. 8051, 8055 (7 December 2006).

²⁶⁶³ Ljubinko Cvetić, T. 8055 (7 December 2006). However, Cvetić did not specify whether he was referring to RPOs, civil defence, or civil protection.

²⁶⁶⁴ Ljubinko Cvetić, T. 8055 (7 December 2006); *see also* P1115 (Overview of number of weapons issued by VJ broken down by municipality on the territory of the SUP in Kosovo and Metohija).

had been assigning “an increasing number of [military detachments] into organs and units of the police on wartime assignments. They have been doing this without the consent or knowledge of the responsible military territorial organs.”²⁶⁶⁵ Savić also reported that the majority of the military territorial organs already had their wartime assignments in other defence structures.

1063. A report from the Kosovska Mitrovica SUP to the MUP Staff, dated 1 July 1998, indicates that it had distributed 1060 automatic and semi-automatic rifles, and claimed that 735 long-barreled weapons had been issued to members of the RPOs in its jurisdiction.²⁶⁶⁶ Cvetić stated that the RPO members were also issued with light machine guns.²⁶⁶⁷ An additional 7,436 weapons were distributed to members of the RPOs throughout Kosovo by the VJ.²⁶⁶⁸ Cvetić and Filić explained that the RPOs did not have a separate facility or storage space, and therefore these weapons were issued to individuals who kept them in their homes.²⁶⁶⁹

1064. On 10 July 1998 Lukić sent a dispatch to the commanders of various organisational units of the MUP in Kosovo, instructing them to organise the defence of villages, engaging the newly established RPOs, and to carry out training. They were also to prepare a dossier containing the security assessment of the threats to the RPOs, their tasks, training plans and so on. Reports about the activities of the RPOs were to be submitted to the MUP Staff.²⁶⁷⁰

1065. Cvetić explained that the RPOs were organised based on a military principle, meaning that they had a commander or squad leader and the necessary number of policemen.²⁶⁷¹ The commander of each RPO would submit reports to the commander of the police station that covered the village in question.²⁶⁷² The relevant police commander would then provide the RPO commanders with instructions in terms of carrying out tasks. Decisions about the activities of RPOs were made, depending upon the security situation, by either the MUP command in Belgrade, the MUP Staff, the SUPs, the OUPs, or police stations.²⁶⁷³

²⁶⁶⁵ 4D521 (Warning from the Military District Command to Sreten Lukić).

²⁶⁶⁶ P1114 (Report by Kosovska Mitrovica SUP to the MUP Staff on the fulfillment of the tasks). The document itself does not give the total number of semi-automatic and automatic rifles distributed, but rather specifies how many weapons were issued in each OUP or police station. The numbers provided above are the sum of the reported numbers. *See also* P1582 (List of RPO members who were issued with automatic and semi-automatic rifles).

²⁶⁶⁷ Ljubinko Cvetić, T. 8061 (7 December 2006).

²⁶⁶⁸ P1115 (Overview of number of weapons issued by VJ broken down by municipality on the territory of the SUP in Kosovo and Metohija); *see* P1114 (Report by Kosovska Mitrovica SUP to the MUP Staff on the fulfillment of the tasks) (indicating that in some cases, the VJ had issued weapons to RPO members).

²⁶⁶⁹ Ljubinko Cvetić, T. 8061 (7 December 2006); Božidar Filić, T. 24013–24014 (10 March 2008).

²⁶⁷⁰ P2804 (Dispatch from the MUP Staff to the commanders of organisational units of the MUP in Kosovo).

²⁶⁷¹ Ljubinko Cvetić, T. 8051 (7 December 2006).

²⁶⁷² Ljubinko Cvetić, T. 8052–8053 (7 December 2006).

²⁶⁷³ Ljubinko Cvetić, T. 8053 (7 December 2006).

1066. At a meeting held on 4 April 1999 at the MUP Staff, Lukić instructed the heads of the Kosovo SUPs and the heads of various police special units to pay particular attention to the RPOs while using ammunition and mines.²⁶⁷⁴ On 7 May 1999 Lukić gave the instruction to the heads of the Kosovo SUPs that members of the RPOs could only wear police or military uniforms when they were performing tasks as police or VJ reservists.²⁶⁷⁵ This instruction was repeated in the document issued by the MUP Staff following the 7 and 11 May 1999 meetings at the MUP Staff.²⁶⁷⁶

1067. Based upon this evidence, the Chamber concludes that Lukić, as the Head of the MUP Staff, was involved in the establishment of the RPOs and the arming of its members. The Chamber also finds that Lukić exercised authority over the RPOs, which were subordinated to the SUPs, whose work in turn was controlled and directed by the MUP Staff in conjunction with the MUP in Belgrade.

8. Lukić's involvement in breaches of the October Agreements

1068. As already mentioned above, after the signing of the October Agreements, the MUP was under an obligation to decrease the number of its personnel on the ground. The Prosecution alleges that the MUP violated these Agreements by its failure to reduce police numbers in Kosovo and its continued use of heavy weaponry.²⁶⁷⁷ The Lukić Defence argues that the MUP complied with its obligations under the Agreements and scaled down its forces in Kosovo.²⁶⁷⁸

1069. Miroslav Mijatović and Ljubinko Cvetić testified that, following the Agreements, the MUP scaled down the total number of police present in Kosovo to 10,021.²⁶⁷⁹ Klaus Naumann confirmed this number, asserting that the MUP withdrew 5,000 to 6,000 police forces.²⁶⁸⁰ In his view, Milošević initially honoured his commitment by withdrawing police from Kosovo so that there were about 10,000.²⁶⁸¹ However, Naumann added that later intelligence from the OSCE and KDOM indicated that there were about 500 more police in the region than there were supposed to

²⁶⁷⁴ P1989 (Minutes of the MUP Staff meeting, 4 April 1999), p. 3.

²⁶⁷⁵ P1996 (Minutes of the MUP Staff meeting, 7 May 1999), p. 12; 6D802 (Conclusions of the MUP Staff Meeting of 7 and 11 May 1999), para. 19.

²⁶⁷⁶ 6D802 (Conclusions of the MUP Staff Meeting of 7 and 11 May 1999), para. 19.

²⁶⁷⁷ Prosecution Final Brief, 29 July 2008 (public version), paras. 78, 1021–1022.

²⁶⁷⁸ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 41–54.

²⁶⁷⁹ Miroslav Mijatović, T. 22278 (13 February 2008); Ljubinko Cvetić, T. 8198 (8 December 2006); *see also* 6D800 (Conclusions of the MUP Staff meeting, 25 October 1998).

²⁶⁸⁰ Klaus Naumann, T. 8263–8264 (13 December 2006), P2512 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 6969–6970, 6994–6995, 7056–7059.

²⁶⁸¹ Klaus Naumann, T. 8277 (13 December 2006), T. 8376–8378 (14 December 2006); 3D377 (Article by David Morrison published in Labour and Trade Union review November-December, 2000 citing General Naumann).

be.²⁶⁸² In November 1998 reports surfaced of disproportionate use of force, additional checkpoints being created, and redeployments of police.²⁶⁸³ About ten incidents between December 1998 and January 1999 were brought to the attention of Milošević, which were examples, in Naumann's view, of clear-cut violations of the October Agreements.²⁶⁸⁴

1070. At a VJ collegium meeting held on 3 December 1998, Obradović reported that, despite written requests by the VJ, the MUP refused to return 20 personnel carriers and 23 mortars to the VJ, contrary to their obligations based on the October Agreements.²⁶⁸⁵ At the VJ collegium meeting held on 24 December 1998, Ojdanić notified those present that, in his meeting with Clark, the latter queried "why [the VJ] had not fulfilled the demands from that [October] agreement to withdraw all heavy equipment that had been given to the MUP to use".²⁶⁸⁶ Dimitrijević confirmed that Ojdanić was talking about the same equipment addressed by Obradović at the 3 December collegium meeting, and added that the MUP were "dragging their feet" over the issue and that in his view the equipment was never given back.²⁶⁸⁷

1071. The Prosecution argues that, by arming the local non-Albanian population and the members of RPOs in particular, the MUP circumvented the restrictions imposed by the October Agreements and alleges that Lukić sought to mislead the KVM about the real strength of the police.²⁶⁸⁸ The Prosecution supports its assertion by referring to the minutes of the meeting held at the MUP Staff on 2 November 1998, involving 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 the 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.²⁶⁸⁹

1072. In Section VI.D, the Chamber has already found that there was an increase in VJ and MUP personnel in contravention of the October Agreements and that the MUP retained heavy weaponry and equipment that it was obliged to return to the VJ. However, the Chamber is unable to conclude

²⁶⁸² Klaus Naumann, T. 8380–8382 (14 December 2006).

²⁶⁸³ Klaus Naumann, T. 8263–8265 (13 December 2006).

²⁶⁸⁴ Klaus Naumann, T. 8269–8270 (13 December 2006).

²⁶⁸⁵ 3D557 (Minutes of the Collegium of the General Staff of the VJ, 3 December 1998), p. 19.

²⁶⁸⁶ P924 (Minutes of the Collegium of the General Staff of the VJ, 24 December 1998), pp. 25–26.

²⁶⁸⁷ Aleksandar Dimitrijević, T. 26606–26610 (8 July 2008).

²⁶⁸⁸ Prosecution Final Brief, 15 July 2008 (public version), paras. 1021–1022.

²⁶⁸⁹ P3130 (Minutes of the MUP Staff meeting, 3 November 1998), para. 8.

on the basis of the evidence above that the MUP Staff, or Lukić as its Head, bore responsibility for those breaches.

9. Lukić's control over the border police stations

1073. In its final brief, the Lukić Defence asserts that the MUP Staff and Lukić as its Head did not have control over the border police stations in Kosovo. It argues that the MUP Staff could not command the border police stations, as the MUP Staff was not an organisational unit of the MUP. It also maintains that the border police stations were directly and organisationally linked to the Border Police Administration in Belgrade, and as such were not subordinated to the local SUPs.²⁶⁹⁰ Although the Prosecution did not advance specific arguments in relation to Lukić's control over the border stations in Kosovo, the Indictment does allege that Lukić was in control of all MUP units in Kosovo during the Indictment period.²⁶⁹¹

1074. In support of its arguments, the Lukić Defence relies upon the testimonies of Mijatović, Adamović, Vučurević, Dujković, and Ognjenović, all of whom stated that the border police stations were answerable to the Border Police Administration in Belgrade, rather than to the Border Police Departments in the relevant Kosovo SUPs.²⁶⁹² It also relies upon documentary evidence such as officials notes sent by the members of Vrbnica/Vërbnica border crossing to the Border Police Administration in Belgrade, and certain orders sent from Belgrade directly to the border police stations, arguing that these show that the border police stations were under direct control of the headquarters in Belgrade, rather than the control of the relevant Kosovo SUPs or the MUP Staff.²⁶⁹³

1075. Having considered all of the relevant evidence, the Chamber finds that it has not been proved that the MUP Staff, or Lukić as its Head, had control over the border police stations in Kosovo. This conclusion does not, however, affect the findings relating to his criminal responsibility, set out below.

10. Lukić's knowledge of crimes

²⁶⁹⁰ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 451–463.

²⁶⁹¹ Indictment, para. 66.

²⁶⁹² Duško Adamović, T. 25053 (9 April 2008), 6D1613 (witness statement dated 30 March 2008), para. 20; Miroslav Mijatović, T. 22205 (12 February 2008); Petar Dujković, T. 23315–23316 (27 February 2008); Nebojša Ognjenović, T. 22848, 22855 (20 February 2008); Radovan Vučurević, T. 23047, 23071 (22 February 2008). The Chamber notes that the testimony ascribed to Vučurević was actually that of Dragan Milenković.

²⁶⁹³ 6D1497 (Official note of Vrbnica border police station dated 27 March 1999); 6D1498 (Official note of Vrbnica border police station dated 6 June 1999); 6D266 (Dispatch of the Public security sector No 1066, 1 July 1998); 6D129 (Dispatch from UKP dated 1 December 1998).

1076. The Prosecution alleges that, throughout the summer offensive of 1998, Lukić knew that the MUP and VJ operations in Kosovo were resulting in the massive displacement of Kosovo Albanians and the perpetration of widespread crimes against them. The Prosecution relies upon the fact that in the summer of 1998 Lukić regularly attended Joint Command meetings, at which the five phase Plan for Combating Terrorism was co-ordinated.²⁶⁹⁴ It argues, moreover, that in 1999 information about crimes was available to Lukić through various channels, such as the reporting system of the MUP; his participation in the MUP Staff meetings; his participation in Joint Command meetings; and his meetings with senior MUP, VJ, and political figures.²⁶⁹⁵

1077. The Lukić Defence counters that Lukić did not know that crimes were committed or going unpunished in either 1998 or 1999, due to the fact that the MUP Staff did not have access to that type of information.²⁶⁹⁶ In support of this position, the Defence relies upon the testimony of Miloš Deretić, an employee of the Priština SUP who provided communications support to the MUP Staff. The Defence argues that, first, the MUP Staff did not have its own communications hub or switchboard system, and thus had to rely upon the Priština SUP for its communications;²⁶⁹⁷ second, the units on the ground reported directly to the SUPs and then to the MUP in Belgrade “on parallel lines to the MUP Staff for its information”;²⁶⁹⁸ third, due to NATO bombing of the MUP Staff building, the communications were severely impaired, and therefore the MUP Staff had to rely mainly upon couriers to obtain information.²⁶⁹⁹ Consequently, due to the poor state of the communications system, it was not possible for Lukić to have adequate knowledge of crimes being committed. Lastly, it is argued that information sent to the MUP Staff did not include combat reports from the PJP.²⁷⁰⁰

1078. The Chamber will assess below the evidence in relation to this issue in respect of events in 1998 and events in 1999.

a. Knowledge of crimes in 1998

1079. As discussed above, in 1998 Lukić regularly attended the meetings of the Joint Command, at which various issues were discussed, such as joint VJ/MUP operations, the “refugee” crisis, and the need to discipline the forces of the FRY and Serbia.²⁷⁰¹ Lukić also regularly met with

²⁶⁹⁴ Prosecution Final Brief, 29 July 2008 (public version), paras. 1045–1054.

²⁶⁹⁵ Prosecution Final Brief, 29 July 2008 (public version), paras. 1055–1067.

²⁶⁹⁶ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 539–596.

²⁶⁹⁷ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 541–558.

²⁶⁹⁸ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 559–567.

²⁶⁹⁹ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 568–590.

²⁷⁰⁰ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 591–596.

²⁷⁰¹ See generally P1468 (Notes of the Joint Command).

representatives of international organisations who provided him with information about potential criminal activity by the MUP in Kosovo.

1080. The Notes of Joint Command meetings taken by Đaković indicated that acts of arson committed by forces of the FRY and Serbia were often discussed. For example, at a meeting held on 7 August 1998, Šainović noted that “the greatest damage to us is caused by burning the houses without any need, which could cause the pressures to the country”.²⁷⁰² At a meeting held on 12 August Minić instructed those present that setting houses on fire must stop.²⁷⁰³ Later, at a meeting on 1 September, Šainović noted that tasks should be accomplished in a disciplined manner in order to avoid arson.²⁷⁰⁴ On 7 September 1998 Đorđević also warned against persons who set houses on fire.²⁷⁰⁵

1081. In addition, the members of the Joint Command discussed specific operations of the MUP and VJ, and incidents relating thereto. For example, on 26 September 1998, Pavković reported that “[t]he operation in the area of D. Obrinje and G. Obrinje is finished. Resistance was strong, but [the KLA] was squeezed into a smaller area.”²⁷⁰⁶ In evidence are Pavković’s orders for this operation, which show that it was a joint MUP/VJ action.²⁷⁰⁷ He nevertheless complained that the lack of participation of the JSO had contributed to certain losses within the MUP and noted that, following this operation, “refugees” were spotted near the village of Trđevac/Tërdec. At the same meeting, Lukić confirmed that this action was indeed completed and that “[t]he units had merged.”²⁷⁰⁸ At the Joint Command meeting of 4 October 1998, also attended by Lukić, Šainović stated that there was a need to initiate an investigation into Gornje Obrinje/Abria e Epërme.²⁷⁰⁹

1082. Moreover, as noted above, Lukić was in constant communication with KDOM and KVM representatives in Kosovo, who kept him informed about their observations. Shaun Byrnes testified that in August and September 1998 his team observed, on an almost day-to-day basis, PJP and other police units burning villages, destroying crops, killing farm animals, intimidating Kosovo Albanian civilians, and driving them from their homes. Byrnes testified that he “brought this to the attention of particularly General Lukić, who [he understood to be] in charge of the Serbian police in

²⁷⁰² P1468 (Notes of the Joint Command), p. 46.

²⁷⁰³ P1468 (Notes of the Joint Command), p. 52.

²⁷⁰⁴ P1468 (Notes of the Joint Command), p. 125. Although the date of this meeting may be incorrectly recorded, it does not change the conclusions of the Chamber.

²⁷⁰⁵ P1468 (Notes of the Joint Command), p. 96.

²⁷⁰⁶ P1468 (Notes of the Joint Command), p. 129.

²⁷⁰⁷ 6D700 (Order of the PrK, 24 September 1998).

²⁷⁰⁸ P1468 (Notes of the Joint Command), p. 129.

²⁷⁰⁹ P1468 (Notes of the Joint Command), p. 136; IC-199 (Addendum to P1468), p. 7.

Kosovo.”²⁷¹⁰ Byrnes also described an incident he witnessed in mid or late September 1998: while touring western Kosovo, he observed PJP units leaving a village located to the south of Kijevo/Kieva village. He could clearly observe that the village was empty of inhabitants and in flames. He explained that nobody was trying to put out the fire.²⁷¹¹ Byrnes notified Lukić about this event.²⁷¹² On cross-examination, it was put to Byrnes that he arrived there after a fierce fight between the KLA and the “Serb forces” in the area. Byrnes stated that he did not know whether there was such a battle or not.²⁷¹³ However, the evidence that PJP units stood by while homes in deserted villages burned was not undermined by cross examination.

1083. According to Byrnes, when he brought information about MUP crimes to the attention of Lukić, whom he described as being “very accessible”, Lukić’s response was generally a denial that such incidents took place, or acknowledgement of the incidents with the claim that they were in response to attacks from the KLA.²⁷¹⁴ Byrnes also reported about an event that took place in September 1998, in the Peć/Peja area, in which MUP forces conducted an operation against villages they believed were KLA strongholds. In the course of this action, Kosovo Albanian villagers were driven from their homes and had to stay out in the woods. Byrnes testified that, once the international media began to report upon this incident, the MUP sent forces to the area and “effectively herded [the villagers] home” in police buses.²⁷¹⁵ Byrnes photographed this event and reported that the displaced Kosovo Albanians were terrified to be forced against their will on to the MUP buses by members of the police, who on occasion used unnecessary force. When Byrnes complained about this to Lukić, his reaction was that it “was a humanitarian operation.”²⁷¹⁶

1084. As noted above, at a meeting held on 24 December 1998 Drewienkiewicz informed Lukić that he had received unconfirmed reports that MUP was using excessive force in the area of Kosovo Polje/Fushë Kosova. Drewienkiewicz also emphasised that the ongoing operation in Podujevo/Podujeva was a serious breach of the cease-fire and called upon Lukić to take the appropriate steps in this matter.²⁷¹⁷ Lukić, however, disagreed that it was inappropriate activity and refused to take any measures in this regard.²⁷¹⁸

²⁷¹⁰ Shaun Byrnes, T. 12149–12150, 12152–12153 (16 April 2007).

²⁷¹¹ Shaun Byrnes, T. 12148–12149 (16 April 2007).

²⁷¹² Shaun Byrnes, T. 12148–12151 (16 April 2007).

²⁷¹³ Shaun Byrnes, T. 12208 (16 April 2007).

²⁷¹⁴ Shaun Byrnes, T. 12151–12153 (16 April 2007).

²⁷¹⁵ Shaun Byrnes, T. 12154 (16 April 2007).

²⁷¹⁶ Shaun Byrnes, T. 12153–12155 (16 April 2007).

²⁷¹⁷ P2544 (Main Points of the Meeting between Lukić and Drewienkiewicz, 24 December 1998).

²⁷¹⁸ Karol John Drewienkiewicz, T. 7785–7786 (4 December 2006).

1085. Furthermore, there were allegations from the international community that widespread crimes committed by VJ and MUP forces in 1998 had led to the forcible displacement of over 230,000 Kosovo Albanians.²⁷¹⁹

1086. Based on all the evidence adduced in relation to this matter, the Chamber finds that Lukić was aware that there were serious allegations of criminal activity by MUP forces in Kosovo in mid-to late 1998, directed against the Kosovo Albanian civilian population. Moreover, the Chamber has found that some of these incidents were indeed examples of excessive force used by the forces of the FRY and Serbia in 1998, as is discussed in Section VI.C.

b. Knowledge of crimes in 1999

1087. The Prosecution argues that Lukić's subordinates regularly informed him of events on the ground in 1999. According to the Prosecution, one specific channel through which Lukić was kept informed was at the MUP Staff meetings, which he chaired; at these meetings, the heads of the Kosovo SUPs and commanders of the MUP special units reported upon their activities.²⁷²⁰

1088. The Lukić Defence responds that the MUP Staff had limited access to information in the course of the NATO bombing, due to technical difficulties, the physical communications structure in Kosovo, the war-time conditions, and because MUP units on the ground were not required to report to the MUP Staff.²⁷²¹

1089. Contrary to the arguments advanced by the Lukić Defence, Adamović testified that the MUP Staff received reports from PJP and SAJ units on the ground, as well as from the Kosovo SUPs.²⁷²² None of these was tendered into evidence. Cvetić also gave evidence that it received information from the SUPs, and that the various MUP combat units were obliged to report to the Head of the MUP Staff.²⁷²³

1090. Indeed, various reporting alternatives were available to the MUP Staff and Lukić as its Head. The Serbian Internal Rules for the MUP, amended in 1996, specified that the seven Kosovo SUPs were to send dispatches to both the MUP in Belgrade and the MUP Staff in Kosovo.²⁷²⁴ In addition, on 21 October 1998, Lukić instructed the heads of the Kosovo SUPs to send urgent daily

²⁷¹⁹ P456 (UNSC Resolution 1199, 23 September 1998), p. 1; *see also* P455 (UNSC Resolution 1160, 31 March 1998), p. 1.

²⁷²⁰ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 1006–1008.

²⁷²¹ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 541–590.

²⁷²² Duško Adamović, 6D1613 (witness statement dated 30 March 2008), para. 50.

²⁷²³ Ljubinko Cvetić, T. 8166, 8195 (8 December 2006).

²⁷²⁴ P10444 (List of changes made to the MUP Organisational rules, 19 April 1996), p. 3.

reports, containing, information about “terrorist actions”, descriptions of attacks, and subsequent police responses.²⁷²⁵ Cvetić stated that these instructions prescribed a uniform methodology to be used by all the SUPs, which were duty-bound to implement it.²⁷²⁶ This was confirmed by Miroslav Mijatović.²⁷²⁷ On 15 February 1999 shift leaders at police stations throughout Kosovo were ordered by then Deputy Chief for Operative Affairs of the MUP, Vesko Petrović, to report any incident in their area to the MUP Staff in Kosovo, as well as to the MUP in Belgrade.²⁷²⁸ Moreover, at the beginning of the NATO campaign, the Minister of Interior instructed all organisational units of the MUP in Kosovo to report any security incidents to the MUP Staff in Kosovo, as well as to the MUP in Belgrade.²⁷²⁹ A MUP Staff report to the Ministry of Interior dated 10 April 1999, and signed by Lukić, indicated that it did not include incidents from the Gnjilane SUP, “whose reports ha[d] not yet been received”.²⁷³⁰ As discussed above, this suggests that normally the daily reports were compiled based on the information sent from the SUPs to the MUP Staff and that, as a result, Lukić, as the Head of the Staff, was updated on a daily basis about events throughout Kosovo.

1091. Lukić’s knowledge of crimes committed in Kosovo can also be seen from the report he sent to the MUP in Belgrade on 3 April 1999. In this report, he recorded that on 1 April police members had found 11 unidentified bodies of men between the ages of 25 and 35 in the village of Mamuša/Mamusha, Prizren. Subsequently the bodies were marked with numbers from one to 11 and buried at the Muslim cemetery on the orders of an investigating judge. Lukić further stated in his report that on 1 April, in the general area of Srbica/Skenderaj municipality, 30 unidentified bodies of “men killed during operations by *Šiptar* terrorist gangs were found”, six out of which were identified.²⁷³¹ Following an order from an investigating judge the bodies were buried at the Muslim cemetery. And finally, the report maintains that on 2 April “25 unidentified charred bodies of men were found in several houses of unknown owners at the crossroads for the *Kosovo vino* wine cellar in Mala Kruša”.²⁷³² On the orders of the investigating judge, the bodies were marked

²⁷²⁵ P2528 (Order to the Heads of Kosovo SUPs issued by Sreten Lukić on 21 October 1998), section b; *see also* 6D808 (Letter from the MUP Staff to the Heads of the Kosovo SUPs, 1 April 1999) (updating the format of reports to include information about the NATO bombing and the number of Kosovo Albanians leaving Kosovo through border crossings).

²⁷²⁶ Ljubinko Cvetić, T. 8096–8098 (7 December 2006).

²⁷²⁷ Miroslav Mijatović, 6D1492 (witness statement dated 6 February 2008), para. 11.

²⁷²⁸ P1092 (Instructions to Kosovo OUPs and Police Stations, 15 February 1999).

²⁷²⁹ 6D238 (Dispatch of Vlajko Stojiljković, 24 March 1999), point 9.

²⁷³⁰ 6D1246 (MUP Staff report to the Ministry of Interior, 10 April 1999), p. 4.

²⁷³¹ 6D1239 (MUP Staff report to the Ministry of Interior, 3 April 1999), p. 2.

²⁷³² 6D1239 (MUP Staff report to the Ministry of Interior, 3 April 1999), pp. 2–3.

with numbers from one to 25 and buried at the Muslim cemetery.²⁷³³ Other daily reports contain descriptions about finding of other individual unidentified bodies in various municipalities.

1092. Lukić stated in his interview that once the MUP received information about the mass graves in Izbica and Pusto Selo/Pastasella it complied with the law and informed the relevant court in charge of the area. Subsequently, an order was given by an investigative judge and bodies were examined, identified, and buried. According to Lukić, the examination of the bodies confirmed that the victims were members of the KLA who died in combat, as most bodies sustained fire-arm injuries.²⁷³⁴ The Chamber recalls here its finding that at least 93 Izbica victims, the majority of whom were of advanced age, were not killed in combat.

1093. On 1 April 1999 Lukić issued instructions about uniform reporting to the heads of the Kosovo SUPs, whereby they had to submit reports about the NATO bombings, crimes committed in the respective areas of responsibility, and “terrorist activities”, to the MUP Staff.²⁷³⁵ On 4 April Lukić again instructed the commanders of the PJP, SAJ, and JSO, as well as the Kosovo SUPs, to report to the MUP Staff.²⁷³⁶ On 6 May a dispatch bearing Lukić’s name was sent to the heads of Kosovo SUPs, stating that “[s]ince the start of NATO aggression against our country, because of the specific and general security conditions, crimes and other unlawful acts have been committed in a new way in the area of Kosovo.”²⁷³⁷ Consequently, the heads of SUPs were instructed to collect information on the most serious crimes, such as murders, rapes, ill-treatment, and arson and to send this data to the MUP Staff twice a month.²⁷³⁸ On 15 May 1999 Lukić sent a dispatch to the heads of the Kosovo SUPs and the Head of the Crime Police Department, ordering them to send a table reflecting the crime situation from the beginning of the NATO bombing.²⁷³⁹ On 28 May 1999, shortly after this Tribunal indicted Slobodan Milošević, Vljeko Stojiljković, and others, a dispatch from the MUP Staff was sent to the heads of Kosovo SUPs and the Head of OKP, instructing them to provide information about the number of crimes committed for which a criminal report had been filed, the number of buildings burned as a result of a deliberate fire, and the number of dead bodies found, for the time period from 24 March until 25 May 1999.²⁷⁴⁰

²⁷³³ 6D1239 (MUP Staff report to the Ministry of Interior, 3 April 1999), p. 3.

²⁷³⁴ P948 (Sreten Lukić interview with the Prosecution), pp. 160–162.

²⁷³⁵ 6D808 (Order issued by Sreten Lukić to the Kosovo SUPs, 1 April 1999).

²⁷³⁶ P1989 (Minutes of the MUP Staff meeting, 4 April 1999), p. 4.

²⁷³⁷ 6D874 (Instructions from Sreten Lukić to the Chiefs of Kosovo SUPs, 6 May 1999).

²⁷³⁸ 6D874 (Instructions from Sreten Lukić to the Chiefs of Kosovo SUPs, 6 May 1999).

²⁷³⁹ 6D876 (MUP Staff Dispatch, 15 May 1999).

²⁷⁴⁰ P1188 (Dispatch from the MUP Staff, 28 August 1999).

1094. In addition, several documents in evidence support the conclusion that, in fact, Lukić had detailed knowledge of the situation on the ground in Kosovo, including the large numbers of displaced people. In a dispatch of 3 April 1999 Lukić instructed the heads of the Kosovo SUPs and the commanders of the PJP detachments to prevent any forcible eviction of the Kosovo Albanian population.²⁷⁴¹ On 15 April 1999 Lukić issued another dispatch, stating that, even though an earlier order had been issued on 5 April, some of the commanders had not been obeying the order and were “tolerating massive-scale departures of civilian population.”²⁷⁴² The Chamber notes that, from 24 March to 5 April 1999, 613,530 Kosovo Albanians left the province.²⁷⁴³ After Lukić’s dispatch, the mass departure continued, and from 5 April to 30 April 1999, a total number of 101,628 more Kosovo Albanians had left, bringing the overall number to 715,158.²⁷⁴⁴

1095. In his interview with the Prosecution, Lukić described a meeting held in a villa in Belgrade in May 1999. The meeting was called by Milošević, and also participating were Milutinović, Šainović, Pavković, Ojdanić, Stojiljković, Đorđević, Rade Marković, and Stevanović.²⁷⁴⁵ Ljubiša Stojimirović, who was the Chief of Staff of the 3rd Army, confirmed that at the beginning of May, Lukić and Pavković went to see Milošević.²⁷⁴⁶ The Chamber has already found that the meeting Lukić referred to was the one that took place on 4 May, following the receipt of a letter from the then Prosecutor of the Tribunal, Louise Arbour, noting her grave concern at the continued commission of serious breaches of international humanitarian law in Kosovo.²⁷⁴⁷ According to a media report about 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.²⁷⁴⁸ Two days after the meeting, Lukić issued an order urging his subordinates to read the contents of an article in the *Politika* newspaper and to adhere to its directions.²⁷⁴⁹

1096. On 11 May 1999, at a meeting of the MUP Staff, Lukić addressed the commanders of the PJP detachments and ordered them, while planning operations, to make sure to “foresee the

²⁷⁴¹ 6D666 (MUP Staff Dispatch, 3 April 1999).

²⁷⁴² 6D778 (MUP Staff Dispatch, 15 April 1999).

²⁷⁴³ 6D1242 (MUP Staff report to the Ministry of Interior, 6 April 1999), p. 6.

²⁷⁴⁴ P1693 (MUP Staff report to the Ministry of Interior, 1 May 1999), p. 8.

²⁷⁴⁵ P948 (Sreten Lukić interview with the Prosecution), pp. 142–143.

²⁷⁴⁶ Ljubiša Stojimirović, T. 17684 (26 October 2007).

²⁷⁴⁷ See generally P398 (Letter from Louise Arbour to Milošević, 26 March 1999); P399 (Letter from Louise Arbour to Milutinović, 26 March 1999); P400 (Letter from Louise Arbour to Nikola Šainović, 26 March 1999); P401 (Letter from Louise Arbour to Dragoljub Ojdanić, 26 March 1999).

²⁷⁴⁸ P1696 (Army, Police heads inform Milošević of Successful Defence, Report of RTS, 5 May 1999), p. 1.

²⁷⁴⁹ 5D1289 (Sreten Lukić’s report regarding *Politika* News Article, 6 May 1999), also admitted as P2159.

measures and treatment of civilians in the zone of action and operations.”²⁷⁵⁰ Lukić’s knowledge of the movement of Kosovo Albanians across the borders is also supported by the reports that were sent daily from the MUP Staff in Kosovo to the Ministry of Interior in Belgrade and signed by Lukić, listing the numbers of Kosovo Albanians who had fled the province.²⁷⁵¹

1097. The Chamber therefore finds that Lukić, as Head of the MUP Staff, had detailed information about the activities of the MUP in Kosovo during the Indictment period, including the commission of crimes, and rejects Lukić’s argument that he had access to only a limited amount of information.

c. Lukić’s participation in concealment of bodies

1098. The Prosecution alleges that Lukić attempted to conceal murders committed by the forces of FRY and Serbia in Kosovo, contending that, during the 1999 conflict, members of the MUP transported the bodies of Kosovo Albanians from Kosovo to different clandestine mass grave locations in Serbia, namely Petrovo Selo and Batajnica, and that Lukić participated in this operation.²⁷⁵² In support of its argument, the Prosecution mainly relies upon the evidence of Božidar Protić, a MUP driver, who testified that on three occasions in 1999 he transferred truck-loads of bodies from Kosovo to other parts of Serbia, pursuant to the instructions of Lukić, among others.

1099. While not challenging the fact of Protić’s involvement in the transfer of bodies, the Lukić Defence argues that his evidence is contradictory, unreliable, and driven by a personal vendetta against Lukić, who signed the decision for Protić’s retirement in 2001.²⁷⁵³ It relies upon the testimony of Čedomir Šakić, who accompanied Protić on some of his trips; Dragan Furdulović, who was a member of the MUP working group set up in 2001 by Lukić to investigate a refrigerated lorry found in the Danube river containing dead bodies; Aleksandar Kostić, who was part of the MUP department for investigating war crimes, which grew out of the initial working group; and

²⁷⁵⁰ P1993 (Minutes of the MUP Staff meeting, 11 May 1999), p. 8.

²⁷⁵¹ 6D1232 (MUP Staff report to the Ministry of Interior, 24 March 1999); 6D1236 (MUP Staff report to the Ministry of Interior, 28 March 1999), also admitted as P1099; 6D1238 (MUP Staff report to the Ministry of Interior, 2 April 1999); 6D1239 (MUP Staff report to the Ministry of Interior, 3 April 1999); 6D1240 (MUP Staff report to the Ministry of Interior, 4 April 1999); 6D1241 (MUP Staff report to the Ministry of Interior, 5 April 1999); 6D1242 (MUP Staff report to the Ministry of Interior, 6 April 1999); 6D1244 (MUP Staff report to the Ministry of Interior, 8 April 1999); 6D1254 (MUP Staff report to the Ministry of Interior, 18 April 1999); 6D1255 (MUP Staff report to the Ministry of Interior, 19 April 1999); 6D1256 (MUP Staff report to the Ministry of Interior, 20 April 1999); 6D1257 (MUP Staff report to the Ministry of Interior, 21 April 1999); 6D1259 (MUP Staff report to the Ministry of Interior, 23 April 1999); 6D1260 (MUP Staff report to the Ministry of Interior, 24 April 1999); 6D1261 (MUP Staff report to the Ministry of Interior, 25 April 1999); P1693 (MUP Staff report to the Ministry of Interior, 1 May 1999).

²⁷⁵² Prosecution Final Brief, 29 July 2008 (public version), paras. 1033–1040.

²⁷⁵³ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 1408–1421.

Gvozden Gagić, who headed the department for murder and sex-related criminal offences of the general crime section in the MUP crime police administration. Furdulović, Kostić, and Gagić all interviewed Protić in the course of their work, with regard to his involvement in the transfer of bodies.

1100. On 27 August 2002 Protić was interviewed on the premises of the MUP by Gagić, while notes of the interview were taken by Kostić.²⁷⁵⁴ At the end of 2003 Protić was interviewed by an investigative judge, Milan Dilparić.²⁷⁵⁵ In 2006 Protić gave a statement to the Deputy War Crimes Prosecutor, Dragoljub Stanković.²⁷⁵⁶ On 8 February 2007, approximately one month prior to giving evidence in the present case, Protić testified in the Belgrade District Court about the operation he participated in as a MUP driver.²⁷⁵⁷ Čedomir Šakić was also interviewed by police in 2006.²⁷⁵⁸

1101. During his testimony Protić explained that he worked as a MUP driver, employed at the Administration for Joint Affairs of Serbia.²⁷⁵⁹ On three separate occasions in early 1999 he transferred bodies from Kosovo to other parts of Serbia, and once from Tekija in eastern Serbia, to the Batajnica base near Belgrade.²⁷⁶⁰ On his first trip to Kosovo, he was instructed by the Head of the Joint Affairs Administration, General Zeković, to travel to Priština/Prishtina to a company named *Gemaks*.²⁷⁶¹ Zeković also provided him with a special telephone number, which Protić understood to be a Belgrade number. He was instructed to dial this number, without an access code, when he arrived in Priština/Prishtina in order to get further instructions.²⁷⁶² According to Protić, he did as instructed, using a landline in the Priština MUP building and spoke to a person whose voice he recognised as being that of Sreten Lukić.²⁷⁶³ Protić explained that he recognised Lukić's voice because in the course of 1990 he had worked on and off as his unofficial driver, and he had known Lukić for ten years.²⁷⁶⁴ In a statement given to the Special War Crimes Court in

²⁷⁵⁴ P3134 (Protić's statement to the MUP, 27 August 2002).

²⁷⁵⁵ P2816 (Transcript of Protić's interview with Dilparić).

²⁷⁵⁶ P2817 (Protić's statement to Belgrade Prosecutor Stanković).

²⁷⁵⁷ P2824 (Transcript of Protić's testimony in Belgrade District Court); *see also* Božidar Protić, T. 11308–11310 (9 March 2007).

²⁷⁵⁸ Čedomir Šakić, T. 22102–22103 (11 February 2008).

²⁷⁵⁹ P2824 (Transcript of Protić's testimony in Belgrade District Court), p. 4.

²⁷⁶⁰ P2824 (Transcript of Protić's testimony in Belgrade District Court), pp. 3, 15; Božidar Protić, T. 11320–11323 (9 March 2007).

²⁷⁶¹ P2816 (Transcript of Protić's interview with Dilparić), p. 4; Božidar Protić, T. 11324–11325, 11354 (9 March 2007).

²⁷⁶² Božidar Protić, T. 11324–11325 (9 March 2007).

²⁷⁶³ Božidar Protić, T. 11324–11326 (9 March 2007); P2824 (Transcript of Protić's testimony in Belgrade District Court), pp. 19, 27.

²⁷⁶⁴ Božidar Protić, T. 11130–11131, 11380, 11399–11402 (9 March 2007); P2824 (Transcript of Protić's testimony in Belgrade District Court), p. 2.

Belgrade in 2007, he said that it was his “deep conviction”, and that he was 99.9 percent certain that he had spoken to Lukić.²⁷⁶⁵ On cross-examination in the present case Protić testified that he was 90 to 99 percent certain that it was indeed Lukić on the phone.²⁷⁶⁶ He was adamant that the person on the phone was not Đorđević as suggested to him by the Lukić Defence.²⁷⁶⁷ It also transpired that, during the first Kosovo trip, he simply entered an office in the headquarters and used a random phone rather than a phone that he was sure had a Belgrade line. This meant that he could not have been sure whether he spoke to Belgrade or Priština/Prishtina on that day.²⁷⁶⁸

1102. Protić claimed that the person whom he believed to be Lukić instructed him to follow a certain dark-red Golf car, which he did, eventually arriving at Janjevo/Janjeva in Lipljan/Lypjan municipality, where he met local police personnel. With the help of a tractor, people whom he did not know loaded bodies on to Protić’s truck.²⁷⁶⁹ Protić then transported these bodies—between 17 and 19 in number—to Petrovo Selo.²⁷⁷⁰ When he arrived there, pits had already been dug.²⁷⁷¹

1103. A few days later Protić was instructed once again by Zeković to travel to Kosovo. Upon his arrival there he received telephone instructions from the person he believed to be Lukić, who told him to transfer the bodies to Petrovo Selo.²⁷⁷² This time, Protić collected over 50 bodies²⁷⁷³ and was accompanied by members of the MUP, one of whom was Čedomir Šakić.²⁷⁷⁴ On this occasion there was a different pit in Petrovo Selo, located approximately 50 to 60 metres away from the first one;²⁷⁷⁵ three or four men in various uniforms were present when he unloaded the bodies, but he did not see any indication of rank on their uniforms.²⁷⁷⁶

1104. A few days later Protić travelled to Kosovo for a third time, once again upon the instructions of Zeković. This time, he collected the bodies from the centre of Priština/Prishtina and drove them to the centre for special units in Batajnica, near Belgrade.²⁷⁷⁷ While he did not actually

²⁷⁶⁵ P2824 (Transcript of Protić’s testimony in Belgrade District Court), pp. 19, 27; Božidar Protić, T. 11367 (9 March 2007).

²⁷⁶⁶ Božidar Protić, T. 11367 (9 March 2007).

²⁷⁶⁷ Božidar Protić, T. 11370 (9 March 2007).

²⁷⁶⁸ Božidar Protić, T. 11361–11363 (9 March 2007).

²⁷⁶⁹ Božidar Protić, T. 11326 (9 March 2007).

²⁷⁷⁰ Božidar Protić, T. 11322 (9 March 2007); P2824 (Transcript of Protić’s testimony in Belgrade District Court), pp. 4–5.

²⁷⁷¹ P2816 (Transcript of Protić’s interview with Dilparić), p. 4.

²⁷⁷² Božidar Protić, T. 11327 (9 March 2007).

²⁷⁷³ Božidar Protić, T. 11322 (9 March 2007). When asked about the number of bodies transported on this trip, the witness stated, “[F]ifty-five or fifty-six. Over fifty”. P2824 (Transcript of Protić’s testimony in Belgrade District Court), p. 15.

²⁷⁷⁴ P2816 (Transcript of Protić’s interview with Dilparić), p. 4; Božidar Protić, T. 11381–11382 (9 March 2007) (private session).

²⁷⁷⁵ Božidar Protić, T. 11322 (9 March 2007); P2816 (Transcript of Protić’s interview with Dilparić), pp. 11–12.

²⁷⁷⁶ P2816 (Transcript of Protić’s interview with Dilparić), p. 12.

²⁷⁷⁷ Božidar Protić, T. 11323 (9 March 2007).

see the bodies because the truck was already closed, he was told that there were approximately 500 of them.²⁷⁷⁸ In relation to this trip Protić stated that, when he called the special telephone number, the voice on the telephone he believed to be Lukić's told him to go to the car park behind the *Rilindija* building in Priština/Prishtina, where he would be met by men who had a truck he could take. The voice on the phone also told him to take the bodies to the Batajnica base.²⁷⁷⁹ However, later, on cross-examination, he stated that this was incorrect and that he did not call the special number on this trip.²⁷⁸⁰ Instead, he guessed the location in Priština/Prishtina where he was supposed to report because there were a lot of vehicles and a crowd of police officers.²⁷⁸¹ Protić attributed the inconsistency in his testimony to the lapse of time.²⁷⁸²

1105. It was put to Protić during cross-examination that the only reason he was now incriminating Lukić was a personal grudge he held against him because Lukić had not given him a flat as requested and because Lukić had signed Protić's retirement documents on terms that turned out to be unsatisfactory. Protić acknowledged his feelings of animosity towards Lukić, but denied that this was the reason behind his testimony. He further confirmed that Lukić did offer him a flat, but that it was occupied by a policeman who was injured in Kosovo and who, as a result, was an invalid. Protić stated he would rather live in a tent than participate in evicting the man in question.²⁷⁸³ As for the problems regarding his retirement, Protić admitted that he was hurt by the fact that he was retired in such a way.²⁷⁸⁴

1106. Čedomir Šakić was brought by the Lukić Defence to challenge certain aspects of Protić's account. He accompanied Protić on his trips to Kosovo, although in a separate car, and asserted that, during their trips to Kosovo, Protić never mentioned Lukić's name.²⁷⁸⁵ He also stated that Protić never went to the building of the MUP Staff in Priština/Prishtina to make the phone calls; that he never used a landline because he had a mobile phone; and that all Protić's assignments were given to him in Belgrade.²⁷⁸⁶ Šakić further testified that he met Protić again in 2005, outside his flat in Belgrade, at which point Protić began verbally attacking Lukić, saying that he intended to testify against him before the Tribunal due to a grudge he held against him over a dispute related to

²⁷⁷⁸ Božidar Protić, T. 11323 (9 March 2007); P2816 (Transcript of Protić's interview with Dilparić), pp. 4–5.

²⁷⁷⁹ Božidar Protić, T. 11328 (9 March 2007).

²⁷⁸⁰ Božidar Protić, T. 11361–11363 (9 March 2007).

²⁷⁸¹ Božidar Protić, T. 11360–11361 (9 March 2007). On direct examination, he stated that he supposed they were local policemen or reserve officers because he saw their insignia, and there were five or six trucks in the parking lot when he arrived. Božidar Protić, T. 11328 (9 March 2007).

²⁷⁸² Božidar Protić, T. 11363 (9 March 2007).

²⁷⁸³ Božidar Protić, T. 11344–11345, 11352–11353, 11388–11389, 11396–11398 (9 March 2007).

²⁷⁸⁴ Božidar Protić, T. 11388 (9 March 2007).

²⁷⁸⁵ Čedomir Šakić, T. 22100 (11 February 2008).

²⁷⁸⁶ Čedomir Šakić, T. 22080–22084 (11 February 2008).

a flat. According to Šakić, Protić told him that he was promised 1,000 U.S. dollars if he testified.²⁷⁸⁷ In 2006 Šakić spoke to Protić on the phone, and then met with him twice in February 2007 in Protić's apartment. Protić told him that he had received help from the "administration or department for war crimes" of the MUP, in return for testifying in the present proceedings. Protić stated that his moment had come and that he was going to "bury [Lukić] 50 metres below the ground."²⁷⁸⁸

1107. The Chamber does not believe Šakić that Protić's testimony against Lukić was driven by feelings of personal grudge. The Chamber notes that Protić was extremely reluctant to testify in these proceedings. On 14 December 2006 the Prosecution, in its Motion to Issue a Subpoena, explained that in the past Protić failed to comply with numerous summonses for an interview with the Office of the Prosecutor in Belgrade²⁷⁸⁹ and refused to appear voluntarily to testify before the Trial Chamber.²⁷⁹⁰ On 19 January 2007 the Chamber issued a subpoena for his attendance.²⁷⁹¹ Protić refused to receive the subpoena on numerous occasions and on 1 February 2007, in a telephone conversation, notified an investigator from the Prosecution that he did not intend to travel to The Hague, saying that he would disappear and keep his telephone switched off so that he could no longer be contacted.²⁷⁹² Consequently, on 22 February 2007, the Chamber issued an *ex parte* and confidential warrant of arrest and order for surrender of Božidar Protić.²⁷⁹³ This order was subsequently vacated on 9 March 2007, after the Prosecution notified the Chamber that Protić was finally willing to testify.²⁷⁹⁴ The Chamber finds that Protić demonstrated sincere unwillingness to testify, which is completely inconsistent with and plainly contradicts Šakić's testimony, whereby Protić was eager to testify due to his desire to take vengeance upon Lukić.

1108. Dragan Furdulović testified that in June 2001 at least five interviews were conducted with Protić, but an official note was drafted after only one of these interviews, on 4 June 2001, because Protić was frequently confused and gave incomplete statements. During the interviews Protić never mentioned Lukić in regard to the mass graves, the transport of bodies from Kosovo, or indeed at all.

²⁷⁸⁷ Čedomir Šakić, T. 22100–22101, 22107–22110, 22115–22116 (11 February 2008).

²⁷⁸⁸ Čedomir Šakić, T. 22107–22108 (11 February 2008).

²⁷⁸⁹ Prosecution's Motion for Issuance of Subpoenas, 14 December 2006, para. 11, confidential Annex C, paras. 2–7.

²⁷⁹⁰ Prosecution's Motion for Issuance of Subpoenas, 14 December 2006, confidential Annex C.

²⁷⁹¹ Subpoena *ad Testificandum*, 19 January 2007.

²⁷⁹² Confidential and *ex parte* Application for Arrest Warrant for Witness Božidar Protić and Order for his Transfer to the Tribunal, 8 February 2007, para. 8; confidential Republic of Serbia's Report Concerning the Service of the Subpoena to Witnesses Božidar Protić, 7 February 2007, para. 3.

²⁷⁹³ *Prosecutor v. Protić*, Case No. IT-05-87-R77.1, confidential and *ex parte* Warrant of Arrest and Order for Surrender of Božidar Protić, 22 February 2007.

²⁷⁹⁴ *Prosecutor v. Protić*, Case No. IT-05-87-R77.1, Order to Vacate Warrant of Arrest and Order in Lieu of Indictment, 9 March 2007.

On 14 June 2001 Furdulović personally opened the mass grave in Petrovo Selo; Protić was present, but could not remember the exact location of the pits.²⁷⁹⁵

1109. Aleksandar Kostić testified about the establishment of the working group for the investigation of the mass graves discovered in Petrovo Selo and Batajnica. After it completed its work, on 1 October 2001, a permanent division for investigating war crimes was established within the MUP, of which Kostić became a member.²⁷⁹⁶ In the course of his work Kostić interviewed Protić over 15 times, in relation to the refrigerated truck case, dealt with in Section VII.P. He said that a record was only made after four or five interviews, which were essentially compilations of interviews.²⁷⁹⁷ According to Kostić, Protić frequently changed his story and gave contradictory accounts of the events.²⁷⁹⁸ Kostić testified that Protić first mentioned Lukić in the spring of 2006, after more than seven interviews.²⁷⁹⁹ The team of investigators took notes of Protić's contradictions during the interviews, but Kostić did not bring these notes to present as evidence in court.²⁸⁰⁰ The MUP interviewed everyone who was suspected of involvement in the refrigerated truck case, and no one mentioned Lukić.²⁸⁰¹ The MUP criminal investigation did not establish that Lukić participated in the matter.²⁸⁰²

1110. Gvozden Gagić stated that he “conducted an interview with Božidar Protić in relation to his testimony, when he was summoned to testify before the Hague Tribunal” in 2006.²⁸⁰³ Upon cross-examination, Gagić clarified that he interviewed Protić in 2002, before he was summoned for an interview at the Tribunal's field office in Belgrade. According to Gagić, this was a standard practice, because MUP members invited for an interview by the Tribunal were entitled to legal and technical assistance before such interviews. Gagić, without being prompted, stated that the MUP “did not lean on any of the witnesses; quite the contrary, in fact.”²⁸⁰⁴ Gagić stated that Protić never mentioned that Lukić was the voice on the other side of the phone.²⁸⁰⁵ The Chamber finds that it is logical that the interview with Gagić had, whether intended or not, an intimidating effect on Protić,

²⁷⁹⁵ Dragan Furdulović, T. 24709–24711 (1 April 2008).

²⁷⁹⁶ Aleksandar Kostić, T. 24097, 24099 (11 March 2008).

²⁷⁹⁷ Aleksandar Kostić, T. 24112, 24130–24132 (11 March 2008).

²⁷⁹⁸ Aleksandar Kostić, T. 24113, 24130 (11 March 2008).

²⁷⁹⁹ Aleksandar Kostić, T. 24113 (11 March 2008).

²⁸⁰⁰ Aleksandar Kostić, T. 24130–24133 (11 March 2008).

²⁸⁰¹ Aleksandar Kostić, T. 24117 (11 March 2008).

²⁸⁰² Aleksandar Kostić, T. 24119 (11 March 2008); Dragan Furdulović, T. 24708 (1 April 2008), T. 24738 (2 April 2008).

²⁸⁰³ Gvozden Gagić, T. 24466 (18 March 2008).

²⁸⁰⁴ Gvozden Gagić, T. 24528–24530 (19 March 2008).

²⁸⁰⁵ Gvozden Gagić, T. 24466 (18 March 2008).

and it is thus understandable that Protić did not name Lukić as the voice on the other side of the phone.

1111. The Chamber notes that, although Protić was interviewed numerous times about his involvement in the transport of the bodies from Kosovo to Serbia,²⁸⁰⁶ he first mentioned Lukić's involvement in his interview with the Prosecutor of the War Crimes Chamber in Belgrade in June 2006,²⁸⁰⁷ and repeated it in February 2007.²⁸⁰⁸ However, he explained that he never mentioned Lukić in his initial interview because he was afraid for close members of his family who are employed by the MUP.²⁸⁰⁹ The Chamber find this explanation to be a reasonable one and believes Protić on it.

1112. The Chamber further notes that in 2001, when the MUP investigating group was formed, Lukić was the Head of the RJB and Assistant Minister of the MUP. The Chamber accepts Protić's explanation that in 2001 he was afraid of mentioning Lukić's name, especially given the fact that he was forced into early retirement in December 2001.²⁸¹⁰

1113. The Chamber considers that Protić, while sincerely believing that he was talking to Lukić, might have been mistaken, since he did not otherwise have occasion to speak to Lukić on the telephone in 1999. Moreover, when pressed, he seemed to admit that there could have been a ten percent chance that it was not Lukić. Despite the fact that it finds Protić's testimony to be generally credible, the Chamber is of the view that his evidence of identification through voice is not, in the circumstances, on its own a satisfactory basis for concluding beyond reasonable doubt that the person on the end of the telephone was Lukić. Thus, in the absence of further evidence, the Chamber cannot conclude that Lukić was directly involved in the concealment of the bodies.

11. Conclusions on responsibility of Sreten Lukić

1114. The Prosecution alleges that Lukić is responsible for planning, instigating, ordering, committing through participation in a joint criminal enterprise, and also for aiding and abetting, the crimes in the Indictment.²⁸¹¹ The Prosecution contends that Lukić shared the intent to carry out the common criminal plan, and his actions—including his participation in commanding bodies, such as

²⁸⁰⁶ P586 (Working Group's notes of interview with Božidar Protić, 4 June 2001); P3134 (Witness statement by Božidar Protić before the investigating team of the MUP, 27 September 2002); P2816 (Transcript of Protić's interview with Dilparić); P2817 (Protić's statement to Belgrade Prosecutor Stanković); P2824 (Transcript of Protić's testimony in Belgrade District Court).

²⁸⁰⁷ P2817 (Protić's statement to Belgrade Prosecutor Stanković), p. 2.

²⁸⁰⁸ P2824 (Transcript of Protić's testimony in Belgrade District Court), pp. 19, 27.

²⁸⁰⁹ Božidar Protić, T. 11342 (9 March 2007).

²⁸¹⁰ Božidar Protić, T. 11335–11340 (9 March 2007).

the Joint Command, for example—demonstrate that he intended to further the plan, through criminal means.²⁸¹² He is further charged with responsibility as a superior for crimes committed by his subordinates, pursuant to Article 7(3) of the Statute.²⁸¹³

1115. For Lukić's liability to arise pursuant to the first category of the joint criminal enterprise, the evidence must show that he participated in at least one aspect of the common purpose to ensure continued control by the FRY and Serbian authorities over Kosovo, through crimes of forcible displacement, which the Chamber has already found existed.²⁸¹⁴ In order to fulfil this element, Lukić need not have physically committed the crimes through which the goal was achieved, or any other offence for that matter.²⁸¹⁵ Indeed, he need not even have been present at the time and place of the physical perpetration of these crimes.²⁸¹⁶ His contribution, however, to the plan must have been significant.²⁸¹⁷ As for the necessary mental element, it must be proved that Lukić participated voluntarily in the joint criminal enterprise and that he shared the intent with other members of the joint criminal enterprise to commit the crime or underlying offence that was the object of the enterprise, in this case the forcible displacement.

1116. Specific references are provided in relation to issues addressed, but the Chamber notes that these findings are based on all the relevant evidence.

1117. Addressing the mental element first, the Chamber finds that it has been established that all of Lukić's actions described above were voluntary rather than coerced. The Chamber is also convinced that Lukić shared the intent to ensure continued control by the FRY and Serbian authorities over Kosovo through the crimes of forcible displacement of the Kosovo Albanian population.

1118. As the Head of the MUP Staff for Kosovo, Lukić had *de jure* powers over the Kosovo SUPs, OUPs, regular police stations, as well as over the RJB units participating in combat activities, such as the PJP and the SAJ, during the period throughout which the crimes were committed. In addition, Lukić exercised considerable *de facto* powers. As a member of the Joint Command, Lukić worked closely with the leadership of the VJ, in particular with the Commander of the Priština Corps, and then of the 3rd Army, Nebojša Pavković, co-ordinating various joint VJ

²⁸¹¹ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 993, 1068–1069, 1072.

²⁸¹² Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 8, 993, 1068–1069.

²⁸¹³ Indictment, paras. 15, 22.

²⁸¹⁴ *Brđanin* Appeal Judgement, para. 427; *Vasiljević* Appeal Judgement, paras. 100, 119; *Tadić* Appeal Judgement, paras. 197, 227.

²⁸¹⁵ *Brđanin* Appeal Judgement, para. 427; *Kvočka et al.* Appeal Judgement, para. 99.

²⁸¹⁶ *Krnojelac* Appeal Judgement, para. 81; *see also Simić et al.* Trial Judgement, para. 158.

²⁸¹⁷ *Brđanin* Appeal Judgement, para. 430.

and MUP “anti-terrorist” actions. As the Head of the MUP Staff, Lukić was also present at several high-level meetings with the leadership of the FRY and Serbia, at which the Plan for Combating Terrorism was discussed.²⁸¹⁸

1119. The information received by Lukić before and during the NATO air campaign is vital evidence for the determination of his responsibility, because knowledge of the commission of crimes by MUP subordinates and VJ members from mid-1998 until the end of the NATO campaign in 1999, combined with his continuing work to ensure co-operation of the joint MUP/VJ operations despite the knowledge of such crimes, is indicative of his intent that those crimes occur.

1120. As discussed above, Lukić was aware that crimes were committed in 1998 by various forces, including the PJP and the SAJ, which were under his control while deployed in Kosovo.²⁸¹⁹ Furthermore, Lukić was put on notice of the crimes committed by the forces under his control by the representatives of the international community, with whom he was in regular contact. Lukić was also aware of allegations in the international community that widespread crimes committed by VJ and MUP forces in 1998 had led to the forcible displacement of over 230,000 Kosovo Albanians.²⁸²⁰ Despite this knowledge, Lukić continued to fulfil his tasks as the Head of the MUP Staff, which included, *inter alia*, planning “anti-terrorist” activities in co-operation with the VJ and issuing corresponding instructions and orders to the SUPs, the PJP, and the SAJ.²⁸²¹ For example, on 9 April 1999, Lazarević notified his subordinate units that the MUP Staff had issued an order to all the SUPs to “commence planning actions to crush the terrorist groups that remain in their respective zones of responsibility.”²⁸²²

1121. In 1998 Lukić was actively involved in the secret process of arming of the non-Albanian population, under the auspices of the RPOs, and the disarming of the Kosovo Albanian population in villages and towns in the province. He participated in the efforts of the FRY and Serbian leadership to carry out these processes despite his awareness of the commission of criminal acts during the inter-ethnic clashes.²⁸²³ Lukić’s active involvement in this process supports the

²⁸¹⁸ Aleksandar Dimitrijević, T. 26587–26590 (8 July 2008); P948 (Sreten Lukić interview with the Prosecution), pp. 67–73, 142–144; Duško Matković, T. 14634–14635 (30 August 2007), P2913 (witness statement dated 10 February 2003), p. 9 (public version).

²⁸¹⁹ See, e.g., Duško Adamović, 6D1613 (witness statement dated 30 March 2008), para. 50; P1989 (Minutes of the MUP Staff meeting, 4 April 1999), p. 4; 6D874 (Instructions from Sreten Lukić to the Chiefs of Kosovo SUPs, 6 May 1999).

²⁸²⁰ P455 (UNSC Resolution 1160, 31 March 1998), p. 1; P456 (UNSC Resolution 1199, 23 September 1998), p. 1.

²⁸²¹ P3130 (Minutes of the MUP Staff meeting, 3 November 1998), p. 3; P3122 (Minutes of the MUP Staff meeting, 2 December 1998), pp. 7–8; P1991 (Minutes of the MUP Staff meeting, 21 December 1998), pp. 10–11.

²⁸²² 5D476 (Dispatch from Lazarević to PrK, 9 April 1999).

²⁸²³ P1989 (Minutes of the MUP Staff meeting, 4 April 1999), p. 3; P2804 (Dispatch from the MUP Staff to the commanders of organisational units of the MUP in Kosovo).

Prosecution contention that he acted in concert with the members of the joint criminal enterprise to further the common purpose of maintaining control over Kosovo through various criminal means.

1122. As noted above, prior to the start of the NATO airstrikes Lukić directed the participants at a meeting in the MUP Staff to retain volunteers, who would be incorporated into the MUP system once the “war operations” began. Such use of volunteers by the MUP was not provided for by law.

1123. During the NATO campaign, Lukić continued to receive information that crimes were being committed by the MUP and VJ members against Kosovo Albanian civilians in Kosovo. The MUP Staff received daily reports from the Kosovo SUPs, which dealt with the events throughout Kosovo. The SUPs’ reports were then compiled into one comprehensive report, which was signed by Lukić and sent to the MUP in Belgrade, as discussed in Section VI.A.3. The reports show that Lukić was frequently informed about members of the VJ, RPOs, the SUPs, and police stations committing crimes such as appropriating vehicles, stealing technical goods, and “confiscating” money from Kosovo Albanians.²⁸²⁴ Lukić was also aware of the discovery of bodies in Izbica and Pusto Selo/Pastasella, as he confirmed in his interview.²⁸²⁵

1124. Lukić knew that large numbers of civilians were leaving Kosovo in 1999, and that some PJP commanders were “tolerating massive-scale departures of civilian population.”²⁸²⁶ He instructed his subordinates that “[i]ll-treatment of civilians is to be prevented” and that “[m]embers of the MUP are not to participate in any kind of organised transportation of civilians who intend to leave” Kosovo, and yet the displacement continued.²⁸²⁷ This shows Lukić’s awareness that ill-treatment and forcible displacement of civilians was occurring.

²⁸²⁴ 6D1239 (MUP Staff report to the Ministry of Interior, 3 April 1999), p. 5; 6D1240 (MUP Staff report to the Ministry of Interior, 4 April 1999), pp. 4–5; 6D1241 (MUP Staff report to the Ministry of Interior, 5 April 1999), pp. 3–4; 6D1242 (MUP Staff report to the Ministry of Interior, 6 April 1999), pp. 3–5; 6D1248 (MUP Staff report to the Ministry of Interior, 12 April 1999), p. 3; 6D1254 (MUP Staff report to the Ministry of Interior, 18 April 1999), p. 3; 6D1255 (MUP Staff report to the Ministry of Interior, 19 April 1999), p. 3; 6D1257 (MUP Staff report to the Ministry of Interior, 21 April 1999), p. 3.

²⁸²⁵ P948 (Sreten Lukić interview with the Prosecution), pp. 160–162.

²⁸²⁶ 6D778 (MUP Staff Dispatch, 15 April 1999). *See generally* 6D1232 (MUP Staff report to the Ministry of Interior, 24 March 1999); 6D1236 (MUP Staff report to the Ministry of Interior, 28 March 1999), also admitted as P1099; 6D1238 (MUP Staff report to the Ministry of Interior, 2 April 1999); 6D1239 (MUP Staff report to the Ministry of Interior, 3 April 1999); 6D1240 (MUP Staff report to the Ministry of Interior, 4 April 1999); 6D1241 (MUP Staff report to the Ministry of Interior, 5 April 1999); 6D1242 (MUP Staff report to the Ministry of Interior, 6 April 1999); 6D1244 (MUP Staff report to the Ministry of Interior, 8 April 1999); 6D1254 (MUP Staff report to the Ministry of Interior, 18 April 1999); 6D1255 (MUP Staff report to the Ministry of Interior, 19 April 1999); 6D1256 (MUP Staff report to the Ministry of Interior, 20 April 1999); 6D1257 (MUP Staff report to the Ministry of Interior, 21 April 1999); 6D1259 (MUP Staff report to the Ministry of Interior, 23 April 1999); 6D1260 (MUP Staff report to the Ministry of Interior, 24 April 1999); 6D1261 (MUP Staff report to the Ministry of Interior, 25 April 1999); P1693 (MUP Staff report to the Ministry of Interior, 1 May 1999).

²⁸²⁷ 6D666 (MUP Staff dispatch, 3 April 1999).

1125. The issue of serious crimes being committed by VJ and MUP members was also discussed at a meeting with the FRY and Serbian military and civilian leadership on 4 May 1999, which Lukić attended. The meeting was called by Milošević, following the receipt of a letter from the then Prosecutor of the Tribunal, Louise Arbour, noting her grave concern at the continued commission of serious breaches of international humanitarian law in Kosovo. According to a report of the content of the meeting, information was presented that the security forces of the MUP and 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.²⁸²⁸

1126. At the MUP Staff meeting held on 7 May 1999, measures for the prevention of crimes and means to protect the civilian population were addressed once again. At this meeting, Šainović emphasised the need to uphold law and order, so as not to “allow the Serbs to be stigmatised as those who torch, loot and swagger about in abandoned and deserted villages.” Šainović emphasised that “[t]here are no private wars and private killings must be prevented. Punish any such actions right away. You must inform General Lukić about every incident.”²⁸²⁹ Lukić demonstrated knowledge of the situation on the ground, by stating that the number of 27 murder investigations was “not realistic” and that there was information available that a greater number of criminal investigations had been conducted and that the number of criminal reports was greater.²⁸³⁰ Bogunović reported that buildings had been torched and that murders had been perpetrated by the presence and movement of paramilitaries and the military in the area.²⁸³¹

1127. On 11 May 1999 an additional meeting was held at the MUP Staff, with an agenda similar to that of the 7 May 1999 meeting, only this time the attendees were the commanders of the MUP forces in Kosovo. At the meeting Lukić once again reminded those present that measures should be taken to prevent the exodus of civilians from Kosovo.²⁸³²

1128. Despite Lukić’s knowledge of the wide-spread crimes being committed in the territory of Kosovo by the members of the MUP and the VJ, he continued to instruct the MUP to engage in additional joint operations with the VJ in Kosovo.

²⁸²⁸ P1696 (Army, Police heads inform Milosevic of Successful Defence, Report of RTS, 5 May 1999), p. 1.

²⁸²⁹ P1996 (Minutes of the MUP Staff meeting, 7 May 1999), pp. 2–3.

²⁸³⁰ P1996 (Minutes of the MUP Staff meeting, 7 May 1999), p. 10.

²⁸³¹ P1996 (Minutes of the MUP Staff meeting, 7 May 1999), p. 6.

²⁸³² P1993 (Minutes of the MUP Staff meeting, 11 May 1999), p. 8; *see also* 6D1634 (Prizren SUP Plan of activities to prevent crimes dated 8 May 1999) (issuing a plan for crime prevention in response to a dispatch from the MUP Staff).

1129. The Chamber finds that, while some orders may have been issued by Lukić directing the police to prevent the departure of civilians from Kosovo after the mass exodus was underway, such orders were similar to those to VJ forces to abide by international humanitarian law, which were systematically violated.²⁸³³ The fact that Lukić, despite his knowledge of the events on the ground, nevertheless continued to order the MUP to engage in joint operations with the VJ shows that his orders were not genuine, and thus do not create any doubt as to his intent to further the objectives of the joint criminal enterprise. For example, Lukić authorised the participation of various MUP units in the joint VJ/MUP operation *Bajgora*, which was ordered on 15 April 1999 by Lazarević and executed between 25 April and 6 May 1999, after various crimes had already been committed and 669,071 Kosovo Albanians had already left Kosovo.²⁸³⁴ The engagement of the MUP forces in this operation led to the death of at least three persons and the displacement of thousands of others, as discussed in Section VII.I.

1130. Taking all the relevant evidence into account, the Chamber concludes that the only reasonable inference is that Lukić had the intent to forcibly displace the Kosovo Albanian population, both within and without Kosovo, and thereby ensure continued control by the FRY and Serbian authorities over the province. The Chamber is also satisfied that he shared that intent with other members of the joint criminal enterprise, such as Milošević, Pavković, and Šainović.

1131. As for the question whether Lukić contributed to the joint criminal enterprise, the Chamber is of the view that it is plain from the preceding paragraphs that he did contribute and that that contribution was significant. Lukić was the *de facto* commander over MUP forces deployed in Kosovo from mid-1998 to mid-1999, including the regular police in the SUPs, PJP, and SAJ units. Lukić was also the bridge between the policy-planners in Belgrade, such as Milošević, Stojiljković, and Đorđević, and those on the ground in Kosovo. Finally, he was directly involved in the planning process and in ensuring that day-to-day operations were conducted by the various MUP forces in accordance with those plans. As such, Lukić was an important member of this joint criminal enterprise.

1132. As can be seen from the findings relating to various municipalities in Kosovo discussed above, the members of the joint criminal enterprise used VJ and MUP forces under their control to carry out the crimes charged in the Indictment. The Chamber is aware that not every individual member of these forces need be a member of the joint criminal enterprise. Nevertheless, the actions of VJ and MUP personnel are imputable to the members of the joint criminal enterprise. In

²⁸³³ See, e.g., 6D778 (Dispatch of the MUP Staff, 15 April 1999).

this connection, the Chamber notes its findings that Šainović and Pavković were members of the joint criminal enterprise. Šainović was a political co-ordinator of the VJ and MUP forces in Kosovo. Pavković, as the Commander of the 3rd Army of the VJ, was in command and control of all the VJ forces in Kosovo throughout the period when the crimes were committed, and issued orders for the operations of the VJ in Kosovo during this time. Lukić was Pavković's counterpart with respect to the VJ who, throughout the NATO air campaign, had both *de jure* and *de facto* responsibility over MUP forces that committed crimes on a massive scale. All three were involved in the co-ordination of VJ and MUP activities. Slobodan Milošević, another member of the joint criminal enterprise, was both the "Supreme Commander" of the VJ and had significant *de facto* powers over the MUP. For all those reasons, the crimes of both the VJ and the MUP are imputable to Lukić.

1133. Since the Chamber has found that the common purpose was to be achieved through forcible displacement alone, it follows that the other charged crimes alleged against Lukić, namely murder and persecution, including through murder, sexual assault, and the destruction of cultural property, need to be examined in the context of the third category of joint criminal enterprise. It has to be proved beyond reasonable doubt that these crimes, although falling outside of the common purpose, were reasonably foreseeable to Lukić and that he willingly took the risk that they would be committed.

1134. *Murder.* As described above, Lukić intended to forcibly displace part of the Kosovo Albanian population and shared this intent with other members of the joint criminal enterprise, the object of which was to forcibly displace Kosovo Albanians within and deport them from Kosovo in order to maintain control over the province. Lukić was aware of the strong animosity between ethnic Serbs and Kosovo Albanians in Kosovo during 1998 and 1999. He was aware of the context in which the forcible displacement took place. It was thus reasonably foreseeable that other crimes, including murder, would be committed by physical and intermediary perpetrators with intent to discriminate against Kosovo Albanians.²⁸³⁵ The Chamber is of the view that Lukić's detailed knowledge of events on the ground in Kosovo in 1998 and 1999 put him on notice that murders would be committed by the VJ and MUP as a result of the displacements taking place in 1999. In addition, there is specific evidence to support this conclusion. For example, the incident at Gornje Obrinje/Abria e Epërme in October 1998 put Lukić on notice that murders and persecution were

²⁸³⁴ P1975 (Joint Command Order, 15 April 1999), p. 3; 5D1329 (Map and Decision of the 211th Armoured Brigade); 6D1261 (MUP Staff report to the Ministry of Interior, 25 April 1999).

²⁸³⁵ See P948 (Sreten Lukić interview with the Prosecution), pp. 67–68, 133, 167–168.

likely to be committed by the members of the MUP and the VJ, if engaged in Kosovo.²⁸³⁶ On 6 May 1999 Lukić urged the Heads of Kosovo SUPs to familiarise all the members of the PJP with the content of the *Politika* article, which addressed allegations of numerous incidents of murders committed by the members of the VJ, and instructed them to prevent killings, rapes, and looting.²⁸³⁷

1135. *Sexual assault.* With respect to the sexual assault charges that have been proved (in Beleg and Ćirez/Qirez),²⁸³⁸ the Prosecution has failed to adduce evidence that convinces the Chamber beyond reasonable doubt that these sexual assaults were reasonably foreseeable to Lukić. Lukić reported on 1 May 1999 that a MUP reservist had been detained for committing indecent assault against a Kosovo Albanian woman, indicating his knowledge, by that time, that such crimes were being committed.²⁸³⁹ However, this evidence does not demonstrate that the sexual assaults committed in late March (in Beleg) and mid-April (in Ćirez/Qirez) were reasonably foreseeable to him. The Chamber has examined the *Krstić* and *Kvočka* Trial Chambers' findings in relation to the foreseeability of rapes in those cases. However, the particular facts of those cases with regard to foreseeability were significantly more compelling than those in relation to this case and, specifically, Lukić.²⁸⁴⁰ Lukić's lack of knowledge about sexual assaults also leads to the conclusion that he did not plan, instigate, order, or otherwise aid and abet them. He is also not responsible for them under Article 7(3) because he did not have reason to know of them.

1136. *Destruction of or damage to religious property.* The Chamber has already found that four mosques were destroyed by the forces of the FRY and Serbia and that these offences fell into the category of persecution. The Chamber finds that it was reasonably foreseeable to Lukić that the forces of the FRY and Serbia would commit wanton destruction or damage of Kosovo Albanian religious sites, cultural monuments, and Muslim sacred sites during their forcible displacement of the Kosovo Albanian population. The conflict was one that involved ethnic divisions. Moreover, the common purpose was to be achieved through a campaign of terror and violence against the Kosovo Albanian civilian population. Under these conditions, and keeping in mind Lukić's detailed knowledge of events on the ground in Kosovo during the conflict, the inescapable conclusion is that it was reasonably foreseeable to Lukić that, while the forces of the FRY and

²⁸³⁶ P1468 (Notes of the Joint Command), p. 136; IC-199 (Addendum to P1468), p. 7.

²⁸³⁷ 5D1289 (Sreten Lukić's report regarding *Politika* News Article, 6 May 1999), also admitted as P2159.

²⁸³⁸ While the Chamber has found above that K14, K31, and K62 were raped in Priština/Prishtina, the Prosecution failed to bring the requisite evidence of discriminatory intent and, therefore, the charge of persecution by way of sexual assault in Priština/Prishtina has not been proved. See Section VII.O.10.

²⁸³⁹ P1693 (MUP Staff report to the Ministry of Interior, 1 May 1999), p. 7; see also 5D1289 (Sreten Lukić's report regarding *Politika* News Article, 6 May 1999), also admitted as P2159.

²⁸⁴⁰ *Krstić* Trial Judgement, paras. 616–618; *Kvočka* Trial Judgement, paras. 326–327. See also *Krstić* Appeal Judgement, paras. 149, 151; *Kvočka* Appeal Judgement, paras. 330, 334.

Serbia were forcibly transferring and deporting the Kosovo Albanian population, they would at the same time wantonly destroy or damage their religious sites, cultural monuments, and sacred sites.

1137. Having made the above findings, it is not necessary for the Chamber to make findings on the other forms of responsibility alleged in the Indictment.

1138. The Trial Chamber therefore finds that it has been established beyond reasonable doubt that Sreten Lukić is responsible for committing (through his participation in a joint criminal enterprise) the following crimes in the following locations:

- Peć/Peja
 - Peć/Peja town—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Dečani/Dečan
 - Beleg—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Đakovica/Gjakova
 - Đakovica/Gjakova town—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity;
 - Korenica—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity;
 - Dobroša/Dobrosh—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Ramoc—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Meja—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity;
 - Other villages in the Reka/Caragoj area—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Prizren
 - Pirane/Pirana—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Dušanovo/Dushanova, part of the town of Prizren—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Orahovac/Rahovec

- Celina—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; persecution (destruction of or damage to religious property) as a crime against humanity;
- Bela Crkva/Bellacërka—murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity;
- Mala Kruša/Krusha e Vogël—murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity;
- Suva Reka/Suhareka
 - Suva Reka/Suhareka town—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity; persecution (destruction of or damage to religious property) as a crime against humanity;
- Srbica/Skenderaj
 - Turićevac/Turiçec—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Izbica—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity;
 - Tušilje/Tushila—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Ćirez/Qirez—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity.
- Kosovska Mitrovica/Mitrovica
 - Kosovska Mitrovica/Mitrovica town—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Žabare/Zhabar—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Vučitrn/Vushtrria
 - Vučitrn/Vushtrria town— other inhumane acts (forcible transfer) as a crime against humanity; persecution (destruction of or damage to religious property) as a crime against humanity;
 - Convoy near Gornja Sudimlja/Studimja e Epërme—deportation as a crime against humanity; other inhumane acts (forcible transfer), as a crime against humanity; murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity;
- Priština/Prishtina
 - Priština/Prishtina town—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Gnjilane/Gjilan

- Žegra/Zhegra—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Vladovo/Lladova—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Vlačica/Llashtica—persecution (destruction of or damage to religious property) as a crime against humanity;
- Prilepnica/Përlepnicë—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Uroševac/Ferizaj
 - Sojevo/Sojeva—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Mirosavlje/Mirosala—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Staro Selo—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
- Kačanik/Kaçanik
 - Kotlina/Kotllina—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Kačanik/Kaçanik—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity;
 - Dubrava/Lisnaja—deportation as a crime against humanity; other inhumane acts (forcible transfer) as a crime against humanity; murder as a crime against humanity; murder as a violation of the laws or customs of war; persecution (murder) as a crime against humanity.

1139. Lukić is not responsible for all other charges alleged in the Indictment, including the sexual assault charges set out in count 5 (persecution), subject to the final paragraph of the Judgement.

1140. Sreten Lukić is, therefore, guilty of counts 1 through 5 of the Indictment to the extent specified above.

IX. SENTENCING

A. LAW ON SENTENCING

1141. A sentence must be determined with reference to the provisions of Article 24 of the Statute, and to Rules 87(C) and 101 of the Rules of Procedure and Evidence. Article 24(2) provides that “Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.” In addition to these individual circumstances, Rule 101 obliges Trial Chambers to take into account, in determining the sentence, aggravating and mitigating circumstances,²⁸⁴¹ the general practice regarding prison sentences in the courts of the former Yugoslavia,²⁸⁴² and the extent to which any penalty imposed by a court of any state upon the convicted person for the same act has already been served.²⁸⁴³

1142. Rule 87(C) provides,

If the Trial Chamber finds the accused guilty on one or more of the charges contained in the indictment, it shall impose a sentence in respect of each finding of guilt and indicate whether such sentences shall be served consecutively or concurrently, unless it decides to exercise its power to impose a single sentence reflecting the totality of the criminal conduct of the accused.²⁸⁴⁴

A convicted person may be sentenced to imprisonment for a term up to and including the remainder of his life.²⁸⁴⁵ The Appeals Chamber has stated that Trial Chambers are vested with broad discretion in determining an appropriate sentence, due to their obligation to individualise the penalties to fit the circumstances of the accused and the gravity of the crime.²⁸⁴⁶

1143. Decisions on sentences in other cases of the Tribunal may provide limited guidance if they relate to the same offence committed in substantially similar circumstances; otherwise, the Chamber is only bound by provisions of the Statute and Rules.²⁸⁴⁷ As a result, previous sentencing practice is but one factor among a host of others that must be taken into account when determining

²⁸⁴¹ Rule 101(B)(ii) of the Rules.

²⁸⁴² Article 24(1) of the Statute; Rule 101(B)(iii) of the Rules; *Hadžihasanović* Appeal Judgement, para. 301; *Limaj et al.* Appeal Judgement, para. 126; *Blaškić* Appeal Judgement, para. 679.

²⁸⁴³ Rule 101(B)(iv) of the Rules.

²⁸⁴⁴ *Strugar* Appeal Judgement, para. 335.

²⁸⁴⁵ Article 24(1) of the Statute; Rule 101(A) of the Rules. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners. Article 24(3) of the Statute.

²⁸⁴⁶ *Strugar* Appeal Judgement, paras. 336, 348; *Hadžihasanović* Appeal Judgement, para. 302; *Limaj et al.* Appeal Judgement, paras. 127, 135; *Blagojević* Appeal Judgement, 137; *Zelenović* Judgement on Sentencing Appeal, para. 11; *Galić* Appeal Judgement, para. 393; *D. Nikolić* Judgement on Sentencing Appeal, para. 19; *Čelebići* Appeal Judgement, para. 717; *see also Nahimana et al.* Appeal Judgement, para. 1037; *Ndindabahizi* Appeal Judgement, para. 132.

²⁸⁴⁷ *Furundžija* Appeal Judgement, para. 250; *Čelebići* Appeal Judgement, paras. 719–721; *Stakić* Appeal Judgement, para. 381.

the sentence.²⁸⁴⁸ Keeping in mind the fact that it is difficult to detect any pattern or guidance in the sentencing “practice” of the Tribunal, the Chamber has applied its judgement and discretion to the facts that have been proved in this case, including the context and background circumstances amidst which the crimes were committed.

1. Purposes of sentencing

1144. The jurisprudence of the Tribunal has consistently held that the main purposes of sentencing for crimes within the jurisdiction of the Tribunal are retribution and deterrence.²⁸⁴⁹

1145. As a form of retribution, the sentence serves as condemnation by the international community of the crimes committed, and should not be misunderstood as a means of expressing revenge or vengeance.²⁸⁵⁰ The Appeals Chamber has explained that “retribution should be seen as”

an objective, reasoned and measured determination of an appropriate punishment which properly reflects the ... culpability of the offender, having regard to the international risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender’s conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more.²⁸⁵¹

1146. Deterrence as a sentencing purpose encompasses two forms: individual and general. Accordingly, the penalties imposed by the Tribunal must have sufficient deterrent value both to dissuade the wrongdoer from repeating the offences in the future and to discourage others from committing similar crimes.²⁸⁵² However, deterrence “must not be accorded undue prominence in the overall assessment of the sentences to be imposed on persons convicted by the International Tribunal”.²⁸⁵³ Rehabilitation is another legitimate purpose of punishment, although one that should not be assigned undue weight.²⁸⁵⁴

2. Determination of sentences

a. Gravity of the offence

²⁸⁴⁸ *Strugar* Appeal Judgement, para. 349; *Krstić* Appeal Judgement, para. 248.

²⁸⁴⁹ *Čelebići* Appeal Judgement, para. 806; *Aleksovski* Appeal Judgement, para. 185; *Stakić* Appeal Judgement, para. 402; *see also* *Čelebići* Appeal Judgement, para. 800 (citing *Tadić* Jurisdiction Decision on Interlocutory Appeal, para. 72).

²⁸⁵⁰ *Kordić* Appeal Judgement, para. 1075; *Aleksovski* Appeal Judgement, para. 185.

²⁸⁵¹ *Kordić* Appeal Judgement, para. 1075 (quoting *R. v. M. (C.A.)* [1996] 1 S.C.R. 500, para. 80 (emphasis in original)).

²⁸⁵² *Kordić* Appeal Judgement, paras. 1076–1078.

²⁸⁵³ *Kordić* Appeal Judgement, para. 1078; *Čelebići* Appeal Judgement, para. 801.

²⁸⁵⁴ *Čelebići* Appeal Judgement, para. 806; *Stakić* Appeal Judgement, para. 402.

1147. The gravity of an offence is the primary consideration in determining a sentence.²⁸⁵⁵ When assessing the gravity of the offence, or the totality of the criminal conduct of the convicted person, a Trial Chamber must take into account the inherent gravity of the crime and the criminal conduct of the convicted person, the determination of which requires a consideration of the particular circumstances of the case and the crimes for which the person was convicted, as well as the form and degree of participation of the convicted person in those crimes.²⁸⁵⁶ In assessing the gravity of the crime, a Trial Chamber may consider a convicted person's position of authority,²⁸⁵⁷ the number of victims, and the effect of the crimes upon the broader targeted group.²⁸⁵⁸ The Appeals Chamber has also held that the consequences of the crime upon the victims directly injured, namely the extent of the long-term physical, psychological, and emotional suffering of the victim, is always relevant to sentencing.²⁸⁵⁹ Further factors, such as the effects of the crime on relatives of the immediate victims, may also be considered.²⁸⁶⁰

b. Aggravating and mitigating circumstances

1148. In determining a sentence, the Trial Chamber must also take into consideration the individual circumstances of the convicted person, as well as any mitigating or aggravating circumstances. Neither the Statute nor the Rules stipulate which factors are to be considered as aggravating or mitigating circumstances, except that Rule 101(B)(ii) requires the Trial Chamber to take into account any "significant cooperation" with the Prosecutor as a mitigating factor. Whether certain factors going to a convicted person's character constitute mitigating or aggravating factors depends largely upon the particular circumstances of each case.²⁸⁶¹

1149. Only those circumstances directly related to the commission of the offence charged and to the offender himself when he committed the offence, such as the manner in which the offence was committed, may be considered in aggravation.²⁸⁶² Further, only those matters which are proved

²⁸⁵⁵ *Galić* Appeal Judgement, para. 442; *Blaškić* Appeal Judgement, para. 683; *Čelebići* Appeal Judgement, para. 731; *Kupreškić et al.* Appeal Judgement, para. 442; *Aleksovski* Appeal Judgement, para. 182.

²⁸⁵⁶ *Blagojević* Appeal Judgement, para. 339; *Galić* Appeal Judgement, para. 409; *Blaškić* Appeal Judgement, para. 683; *Stakić* Appeal Judgement, para. 380; *D. Nikolić* Judgement on Sentencing Appeal, para. 18; *Krstić* Appeal Judgement, para. 241; *Jelisić* Appeal Judgement, para. 101; *Čelebići* Appeal Judgement, para. 731; *Aleksovski* Appeal Judgement, para. 182; *Vasiljević* Appeal Judgement, para. 182; *Furundžija* Appeal Judgement, para. 249.

²⁸⁵⁷ *Strugar* Appeal Judgement, para. 353; *Naletilić* Appeal Judgement, paras. 609–613, 625–626; *Musema* Appeal Judgement, paras. 382–383.

²⁸⁵⁸ *Erdemović* Appeal Judgement, para. 15; *Galić* Trial Judgement, para. 758, *see also Galić* Appeal Judgement, para. 410.

²⁸⁵⁹ *Blaškić* Appeal Judgement, para. 683; *Krnjelac* Trial Judgement, para. 512; *see also Zelenović* Sentencing Judgement, para. 38; *Babić* Sentencing Trial Judgement, para. 47.

²⁸⁶⁰ *Blaškić* Appeal Judgement, para. 683; *Krnjelac* Appeal Judgement, para. 260; *see also Čelebići* Trial Judgement, para. 1226.

²⁸⁶¹ *Hadžihasanović* Appeal Judgement, para. 328; *Babić* Judgement on Sentencing Appeal, para. 49.

²⁸⁶² *Simba* Appeal Judgement, para. 82; *Kunarac et al.* Trial Judgement, para. 850.

beyond reasonable doubt against a convicted person may be the subject of his sentence or taken into account in aggravation of that sentence.²⁸⁶³ Factors taken into consideration as aspects of the gravity of the crime cannot additionally be taken into account as separate aggravating circumstances, and *vice versa*.²⁸⁶⁴ Likewise, elements of a crime should not be reviewed a first time as a constitutive element and a second time as an aggravating circumstance.²⁸⁶⁵

1150. In contrast to aggravating circumstances, mitigating circumstances must be proved on a balance of probabilities.²⁸⁶⁶ It lies within the discretion of the Trial Chamber whether or not to accept a factor as a mitigating circumstance and what weight to give to mitigating factors.²⁸⁶⁷ Mitigating factors include those not directly related to the offence.²⁸⁶⁸ The absence of a mitigating factor can never serve as an aggravating factor.²⁸⁶⁹

i. Aggravating circumstances

1151. The jurisprudence of the Tribunal has identified potentially aggravating factors, such as the accused's abuse of his superior position;²⁸⁷⁰ the length of time during which the crime continued;²⁸⁷¹ active and direct criminal participation, if linked to a high-ranking position of command;²⁸⁷² premeditation and motive;²⁸⁷³ the zealotry with which a crime was committed;²⁸⁷⁴ a discriminatory state of mind, where discrimination is not an element of the offence;²⁸⁷⁵ the violent and humiliating nature of the acts and the vulnerability of the victims;²⁸⁷⁶ the status of the victims, their age and number, and the effect of the crimes upon them;²⁸⁷⁷ the character of the convicted

²⁸⁶³ *Blaškić* Appeal Judgement, para. 686; *Čelebići* Appeal Judgement, para. 763.

²⁸⁶⁴ *Limaj et al.* Appeal Judgement, para. 143; *M. Nikolić* Judgement on Sentencing Appeal, para. 58; *Deronjić* Judgement on Sentencing Appeal, paras. 106–107.

²⁸⁶⁵ *Krstić* Trial Judgement, para. 707.

²⁸⁶⁶ *Babić* Judgement on Sentencing Appeal, para. 43; *Čelebići* Appeal Judgement, para. 590.

²⁸⁶⁷ *Babić* Judgement on Sentencing Appeal, para. 43; *Blaškić* Appeal Judgement, para. 696; *Galić* Appeal Judgement, para. 419; *Čelebići* Appeal Judgement, para. 780.

²⁸⁶⁸ *Kunarac et al.* Trial Judgement, para. 850; *Stakić* Trial Judgement, paras. 911, 920.

²⁸⁶⁹ *Blaškić* Appeal Judgement, para. 687.

²⁸⁷⁰ *Blagojević* Appeal Judgement, para. 324; *Galić* Appeal Judgement, para. 412; *Blaškić* Appeal Judgement, para. 686 (citing *Jokić* Sentencing Trial Judgement, paras. 61–62); *Stakić* Appeal Judgement, para. 411; *Babić* Judgement on Sentencing Appeal, para. 80.

²⁸⁷¹ *Blaškić* Appeal Judgement, para. 686 (citing *Kunarac et al.* Appeal Judgement, para. 356).

²⁸⁷² *Blaškić* Appeal Judgement, para. 686 (citing *Krstić* Trial Judgement, para. 708).

²⁸⁷³ *Blaškić* Appeal Judgement, para. 686 (citing *Krstić* Trial Judgement, paras. 711–712); *see also* *Krstić* Appeal Judgement, para. 258; *Čelebići* Appeal Judgement, para. 847.

²⁸⁷⁴ *Simba* Appeal Judgement, para. 320; *Kvočka et al.* Trial Judgement, para. 705.

²⁸⁷⁵ *Vasiljević* Trial Judgement, para. 278.

²⁸⁷⁶ *Blaškić* Appeal Judgement, para. 686 (citing *Kunarac et al.* Trial Judgement, para. 867); *Kunarac et al.* Appeal Judgement, para. 352; *see also* *Zelenović* Sentencing Judgement, para. 39.

²⁸⁷⁷ *Blaškić* Appeal Judgement, para. 686 (citing *Kunarac et al.* Trial Judgement, paras. 864, 866); *Kunarac et al.* Appeal Judgement, para. 355; *see also*, *Zelenović* Sentencing Judgement, para. 40.

person,²⁸⁷⁸ and the circumstances of the offences generally.²⁸⁷⁹ Intelligence and good education have been considered to be possible aggravating factors.²⁸⁸⁰

ii. Mitigating circumstances

1152. Mitigating factors include co-operation with the Prosecution,²⁸⁸¹ the admission of guilt or a guilty plea,²⁸⁸² the expression of remorse,²⁸⁸³ sympathy, compassion, or sorrow for the victims of the crimes;²⁸⁸⁴ voluntary surrender;²⁸⁸⁵ good character with no prior criminal convictions;²⁸⁸⁶ comportment while in detention;²⁸⁸⁷ personal and family circumstances;²⁸⁸⁸ the character of the convicted person subsequent to the conflict;²⁸⁸⁹ duress,²⁸⁹⁰ indirect participation;²⁸⁹¹ diminished mental responsibility;²⁸⁹² age,²⁸⁹³ and assistance to detainees or victims.²⁸⁹⁴ Poor health is to be considered only in exceptional or rare cases.²⁸⁹⁵ Further, the Trial Chamber may credit a convicted person for fully complying with certain obligations, such as the terms and conditions of his provisional release,²⁸⁹⁶ or may permissibly credit him for preventing the commission of crimes.²⁸⁹⁷

iii. General practice regarding prison sentences in the courts of the former Yugoslavia

1153. Article 24(1) of the Statute provides that “Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia”.²⁸⁹⁸ The case law of the Tribunal has consistently held that this does not require Trial Chambers to conform to the practice regarding prison sentences in the courts of the former Yugoslavia; it only requires that Trial

²⁸⁷⁸ *Blaškić* Appeal Judgement, para. 686 (citing *Čelebići* Appeal Judgement, para. 788).

²⁸⁷⁹ *Blaškić* Appeal Judgement, para. 686.

²⁸⁸⁰ *Brdanin* Trial Judgement, para. 1114; cf. *Hadžihasanović* Appeal Judgement, para. 328 (“This does not mean, however, that these factors should *only* be considered aggravating factors.”).

²⁸⁸¹ Rule 101(B)(ii) of the Rules; *Blagojević* Appeal Judgement, para. 344; *Vasiljević* Appeal Judgement, para. 180; *Jokić* Sentencing Judgement, paras. 95–96.

²⁸⁸² *Jelisić* Appeal Judgement, para. 122; *Jokić* Sentencing Judgement, para. 76.

²⁸⁸³ *Jokić* Sentencing Judgement, para. 89; *Erdemović* Sentencing Judgement, para. 16(iii); *Kunarac et al.* Trial Judgement, para. 868.

²⁸⁸⁴ *Strugar* Appeal Judgement, para. 366.

²⁸⁸⁵ *Plavšić* Sentencing Judgement, para. 84; *Jokić* Sentencing Judgement, para. 73.

²⁸⁸⁶ *Erdemović* Sentencing Judgement, para. 16(i); *Kupreškić et al.* Appeal Judgement, para. 459.

²⁸⁸⁷ *Jokić* Sentencing Judgement, para. 100; *D. Nikolić* Sentencing Judgement, para. 268.

²⁸⁸⁸ *Kunarac et al.* Appeal Judgement, paras. 362, 408.

²⁸⁸⁹ *Jokić* Sentencing Judgement, paras. 90–91, 103.

²⁸⁹⁰ *Erdemović* Sentencing Judgement, para. 17 (stating that duress “may be taken into account only by way of mitigation”).

²⁸⁹¹ *Krstić* Appeal Judgement, para. 273.

²⁸⁹² *Čelebići* Appeal Judgement, para. 590.

²⁸⁹³ *Jokić* Sentencing Judgement, para. 100.

²⁸⁹⁴ *Sikirica et al.* Sentencing Judgement, paras. 195, 229.

²⁸⁹⁵ *Simić et al.* Trial Judgement, para. 98; see also *Babić* Appeal Judgement, para. 43.

²⁸⁹⁶ *Blagojević* Appeal Judgement, para. 342; see also *Jokić* Sentencing Appeal Judgement, para. 82.

²⁸⁹⁷ *Blagojević* Appeal Judgement, para. 342; see also *Kupreškić et al.* Appeal Judgement, para. 430.

²⁸⁹⁸ See also *D. Nikolić* Judgement on Sentencing Appeal, para. 85.

Chambers take that practice into account.²⁸⁹⁹ Thus the Trial Chamber is not prevented from imposing a lesser or greater sentence than would have been legally imposed in the former Yugoslavia during the Indictment period.²⁹⁰⁰

1154. The sources to be consulted pursuant to these provisions are not limited to case law from the former Yugoslavia, but also include statutory provisions in force in the former Yugoslavia at the time of the commission of the crimes in question.²⁹⁰¹ Criminal law in Serbia in 1999 for offences of the kind that are the subject of the Indictment was regulated by the Criminal Code of the FRY. That Code was originally adopted by the SFRY Federal Assembly on 28 September 1976, and had been in force since 1 July 1977 (“FRY Criminal Code”).²⁹⁰²

1155. Article 142(1) of the FRY Criminal Code, entitled “War crimes against the civilian population”, provided as follows:

Whoever, in violation of international law in time of war, armed conflict or occupation, orders an attack on the civilian population, settlement, individual civilians or persons *hors de combat*, which results in death or serious injury to body or health; indiscriminate attack affecting civilian population; the killing, torture or inhuman treatment of the civilian population, ... causing great suffering or serious injury to body or health; unlawful deportation, transfers, ... rape; use of measures of intimidation and terror, ... or whoever commits any of the aforementioned offences, shall be punished by no less than five years in prison, or by the death penalty.²⁹⁰³

Article 151, entitled “Destruction of cultural and historical monuments”, sub-paragraph (1) prohibited the destruction of cultural and historical monuments and buildings in violation of international law in time of war or armed conflict and provided for a sentence of no less than one year in prison. Sub-paragraph (2) provided for a sentence of no less than five years if the building was clearly distinguished as being under special protection of international law as part of the cultural and spiritual heritage of peoples.²⁹⁰⁴

1156. The Chamber has also considered Article 145, entitled “Organising and instigating a group to commit genocide and war crimes”, which provided,

²⁸⁹⁹ See, e.g., *Čelebići* Appeal Judgement, paras. 813, 816, 820; *Tadić* Judgement on Sentencing Appeal, para. 21; *Kunarac et al.* Appeal Judgement, para. 377; *Jelisić* Appeal Judgement, paras. 116–117; *Stakić* Appeal Judgement, para. 398; *Galić* Appeal Judgement, para. 443.

²⁹⁰⁰ *Krstić* Appeal Judgement, para. 262; *Prosecutor v. Banović*, Case No. IT-02-65, Sentencing Judgement, 28 October 2003, para. 88.

²⁹⁰¹ *D. Nikolić* Judgement on Sentencing Appeal, para. 85.

²⁹⁰² P1736 (Criminal Code of the Socialist Federative Republic Yugoslavia). The Criminal Code of the SFRY remained in force after 1992 (with some modifications) and was renamed the Criminal Code of the FRY. The Criminal Code of the FRY was renamed the Basic Criminal Code of Serbia in 2003.

²⁹⁰³ P1736, article 142(1) of the Criminal Code of the FRY.

²⁹⁰⁴ P1736, article 151 of the Criminal Code of the FRY.

(1) Whoever organises a group for the purpose of committing criminal offences referred to in Articles 141 to 144 of the present Code, shall be punished by no less than five years in prison.

(2) Whoever becomes a member of the group referred to in paragraph 1 of this Article, shall be punished by no less than one year in prison. ...

(4) Whoever incites or instigates the commission of criminal offences referred to in Articles 141 to 144 of the present Code, shall be punished by no less than one and no more than ten years in prison.

1157. Article 38(1) and (2) 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.²⁹⁰⁵

1158. Domestic crimes of the nature of the underlying offences in this case were the subject of the Criminal Code of the Republic of Serbia in the relevant period. That Code provided that the crime of murder was punishable by at least five years' imprisonment, and aggravated murder was punishable by at least ten years' imprisonment or the death penalty.²⁹⁰⁶

1159. 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. Since then, amendments to the FRY Criminal Code replaced the death penalty with a punishment of imprisonment for 40 years. A similar substitution of 40 years for the death penalty was made in the Criminal Code of Serbia in 2002. In this regard, the Chamber notes that the Appeals Chamber in *Krstić* stated that, in addition to being required to consider the relevant law of the former Yugoslavia in force at the time of the commission of the crimes, the "Trial Chamber was entitled to consider ... how that law evolved subsequently".²⁹⁰⁷ However, the *Mrkšić et al.* Trial Chamber has recently noted that Serbian courts have applied the *lex mitior* principle and regarded 20 years as the maximum applicable to offences committed before the increase to 40 years was made.²⁹⁰⁸

1160. The Chamber is cognisant of the fact that the UN Security Council created the Tribunal, in part, to contribute to the restoration and maintenance of peace in the former Yugoslavia.²⁹⁰⁹ Although the Chamber is not bound by the sentencing practices of the former Yugoslavia, it is of the view that in the exercise its "broad discretion in determining an appropriate sentence"²⁹¹⁰

²⁹⁰⁵ P1736, articles 38(1)–(2) of the Criminal Code of the FRY.

²⁹⁰⁶ P1020, article 47 of the Criminal Code of the Republic of Serbia.

²⁹⁰⁷ *Krstić* Appeal Judgement, paras. 260–263.

²⁹⁰⁸ *Mrkšić et al.* Trial Judgement, paras. 706–708.

²⁹⁰⁹ S/Res/808 (1993), 22 February 1993, p. 2.

²⁹¹⁰ *Strugar* Appeal Judgement, para. 336.

it should respect those practices to the greatest extent possible, provided that it is still doing justice in the particular case. It is for these reasons that the Chamber has had particular attention to the law in the FRY and Serbia at the time of the events that are the subject of the Indictment, as set forth in the foregoing paragraphs. In this respect, the Chamber notes that it seems unlikely that a person convicted of the crimes alleged in the Indictment would have received in Serbia in 1999 a sentence greater than 20 years.

iv. Credit for time served in custody

1161. Pursuant to Rule 101(C), credit shall be given to the convicted person for the period during which the convicted person was detained pending surrender to the Tribunal or pending trial.

B. LAW ON CUMULATIVE CONVICTIONS AND SPECIFIC CHARGES IN THIS CASE²⁹¹¹

1162. Where a Chamber has made findings of guilt on more than one statutory crime arising out of the same acts or omissions on the part of the accused, a conviction for each crime is permissible only if it has a materially distinct element that the other crimes in question do not.²⁹¹² If two crimes charged in respect of the same conduct do not contain at least one mutually distinct element, a Chamber may only convict the accused of the crime with the more specific element or elements.²⁹¹³ As the Appeals Chamber has held, “[t]he cumulative convictions test serves twin aims: ensuring that the accused is convicted only for distinct offences, and at the same time, ensuring that the convictions entered fully reflect his criminality”.²⁹¹⁴

1163. In applying the cumulative convictions test, therefore, a Chamber must compare in the abstract all the general requirements of the statutory crimes in question, as well as the elements of the charged underlying offences, to determine whether each crime requires, as a matter of law,

²⁹¹¹ The Trial Chamber will follow the practice of the Appeals Chamber in using the term “cumulative convictions” to describe simultaneous convictions for more than one substantive crime in respect of the same conduct, reserving the term “concurrent convictions” to describe simultaneous convictions pursuant to different forms of responsibility enshrined in Articles 4(3)(e), 7(1), and 7(3). *See, e.g., Kordić Appeal Judgement*, paras. 35, 1030; *Blaškić Appeal Judgement*, paras. 89–93; *Kajelijeli Appeal Judgement*, para. 81. *But see Gacumbtsi Trial Judgement*, para. 266 (using the term “cumulative convictions” when referring to simultaneous convictions pursuant to different forms of responsibility).

²⁹¹² *Semanza Appeal Judgement*, para. 315; *Kordić Appeal Judgement*, para. 1032–1033; *Krstić Appeal Judgement*, para. 218; *Kunarac et al. Appeal Judgement*, para. 173; *Čelebići Appeal Judgement*, para. 412; *Limaj et al. Trial Judgement*, para. 717; *Strugar Trial Judgement*, para. 447; *Blagojević Trial Judgement*, para. 799.

²⁹¹³ *Semanza Appeal Judgement*, para. 315; *Kordić Appeal Judgement*, para. 1033; *Krstić Appeal Judgement*, para. 218; *Čelebići Appeal Judgement*, para. 413; *Limaj et al. Trial Judgement*, para. 717; *Strugar Trial Judgement*, para. 447; *Blagojević Trial Judgement*, para. 799.

²⁹¹⁴ *Kordić Appeal Judgement*, para. 1033.

proof of an element that the others do not.²⁹¹⁵ For example, since Article 3 and Article 5 of the Statute have at least one mutually distinct general requirement—that is, Article 3 requires proof of a close link between the acts of the accused and the armed conflict,²⁹¹⁶ and Article 5 requires a widespread or systematic attack against a civilian population²⁹¹⁷—an accused may be convicted of statutory crimes under both Articles even though the facts supporting each underlying offence are the same.²⁹¹⁸

1164. As long as the statutory crimes in question have at least one mutually distinct general requirement, it is immaterial that the underlying offences charged—for instance, murder, which may be charged either as a violation of the laws or customs of war or as a crime against humanity²⁹¹⁹—have mutually identical elements.²⁹²⁰ As a result, a Chamber may always enter cumulative convictions under Articles 3 and 5.²⁹²¹ Similarly, as long as the underlying offences in question have at least one mutually distinct element—for example, the Article 5 underlying offences of rape, which requires sexual penetration, and torture, which must be inflicted for a prohibited purpose—it is immaterial that they are charged as forms of the same statutory crime on the basis of the same conduct.²⁹²²

1165. In respect of the specific charges in this case, each of the Accused in this case is charged with murder as a violation of the laws or customs of war under Article 3 of the Statute (count 4), and the same underlying facts for these alleged murders are also charged as crimes against humanity under Article 5(a) of the Statute (count 3). Because these murders are charged under different articles, which require mutually different elements, there is no impermissible cumulateness.

²⁹¹⁵ *Kordić* Appeal Judgement, paras. 1033, 1039–1040 (overruling *Krstić* Appeal Judgement, paras. 231–232; *Vasiljević* Appeal Judgement, paras. 145–146; *Krnjelac* Appeal Judgement, paras. 174, 188).

²⁹¹⁶ *Galić* Appeal Judgement, para. 165; *Jelisić* Appeal Judgement, para. 82; *Tadić* Appeal Jurisdiction Decision, para. 94(i)–(ii).

²⁹¹⁷ *Blaškić* Appeal Judgement, para. 98; *Kunarac et al.* Appeal Judgement, para. 85; *Tadić* Appeal Judgement, para. 248.

²⁹¹⁸ *Kordić* Appeal Judgement, para. 1036; *Kunarac et al.* Appeal Judgement, para. 176; *Kupreškić et al.* Appeal Judgement, para. 388.

²⁹¹⁹ See *Brđanin* Trial Judgement, paras. 382, 388; *Krnjelac* Trial Judgement, para. 326.

²⁹²⁰ See *Kordić* Appeal Judgement, para. 1037.

²⁹²¹ *Kordić* Appeal Judgement, para. 1036; *Kunarac et al.* Appeal Judgement, para. 176; *Kupreškić et al.* Appeal Judgement, para. 388; *Jelisić* Appeal Judgement, para. 82; *Blagojević* Trial Judgement, para. 800; *Krnjelac* Trial Judgement, para. 503; *Kunarac et al.* Trial Judgement, paras. 556–557. See, e.g., *Furundžija* Trial Judgement, p. 112 (convicting the accused cumulatively of rape as a violation of the laws or customs of war and torture as a violation of the laws or customs of war on the basis of the same conduct involving the same victims).

²⁹²² See, e.g., *Furundžija* Trial Judgement, p. 112 (convicting the accused cumulatively of rape as a violation of the laws or customs of war and torture as a violation of the laws or customs of war on the basis of the same conduct involving the same victims).

1166. The Accused are also charged with deportation, a crime against humanity under Article 5(d) of the Statute (count 1) and forcible transfer as “other inhumane acts,” a crime against humanity under Article 5(i) of the Statute (count 2). Deportation requires the intent to displace, permanently or otherwise, the victims across the relevant national border, whereas other inhumane acts require proof of an act or omission causing serious mental or physical suffering or injury or constituting a serious attack on human dignity. Therefore, these two charges are not impermissibly cumulative.²⁹²³

1167. Finally, the Accused are charged with persecutions, a crime against humanity under Article 5(h) (count 5) for the murders described in counts 3 and 4, for sexual assault, and for damage to or destruction of property as a form of persecution. The murders are thus charged as crimes against humanity under two separate sub-paragraphs of Article 5, *viz* (a) and (h). The Appeals Chamber has held that to convict under both is not impermissibly cumulative.²⁹²⁴ Sexual assault and damage to or destruction of property as forms of persecution are only charged as persecutions under Article 5(h), and thus have no issues in relation to cumulative convictions in this case.

1168. Therefore, convictions upon all the charges in this case would not qualify as impermissible cumulative convictions.

C. DETERMINATION OF SENTENCES IN THIS CASE

1169. The Prosecution has chosen to address the issue of sentencing in a general manner, and has not articulated separate submissions for each Accused. The final submissions on behalf of some of the Accused have failed to address the issue of sentencing, or have failed to address obviously relevant factors that the Chamber should consider. The Trial Chamber, in an effort to make as informed a decision as possible, considered the trial record in order to ascertain whether aggravating and mitigating factors had been proved beyond a reasonable doubt or on a balance of the probabilities, respectively.

1170. The use of the term “Accused” in this section does not refer to Milan Milutinović, who has been acquitted of the charges in the Indictment, subject to the final paragraph of the Judgement.

1. Gravity of the offences

²⁹²³ *Stakić* Appeal Judgement, para. 366.

²⁹²⁴ *Kordić* Appeal Judgement, para. 1041; *Naletilić* Appeal Judgement, para. 589.

1171. According to the Prosecution, the scope of the crimes warrants lengthy prison sentences.²⁹²⁵ It is argued that the impact upon victims is permanent and that the vulnerability of particular victims should be taken into account.²⁹²⁶

1172. The crimes that have been proved by the Prosecution and for which the Accused are responsible include hundreds of murders, several sexual assaults, and the forcible transfer and deportation of hundreds of thousands of people.

1173. Not all the crimes alleged in the Indictment have been proved. The Trial Chamber has determined, regarding some of the crimes in the Indictment, that they were committed, but that they were not attributable to some or all of the Accused. However, the Accused have all, save Milan Milutinović, been found guilty of committing or aiding and abetting the forcible displacement of hundreds of thousands of Kosovo Albanians. These crimes were not isolated instances, but rather part of a widespread and systematic campaign of terror and violence over a period of just over two months. Some of the victims were of a particularly vulnerable nature, such as young women, elderly people, and children.

1174. The Trial Chamber therefore finds that the crimes for which each of the Accused has been found to incur criminal liability are of a high level of gravity.

1175. The forms of responsibility in respect of each Accused have been taken into account in the determination of his sentence.

1176. The Chamber has not taken into account any of the above factors when assessing the aggravating factors below.

2. Aggravating and mitigating circumstances

a. General circumstances

1177. The Prosecution submits that all of the Accused occupied high leadership positions and that they “did not allow themselves to be restrained” in the massive and brutal campaign of crimes committed on the basis of the ethnicity of the victims. Nor were the Accused deterred by the fact that the rest of the world, including the Tribunal Prosecutor, was watching and heeding their actions.²⁹²⁷ The merit of these averments will be discussed individually below.

²⁹²⁵ Prosecution Final Trial Brief, 29 July 2008 (public version), para. 1100.

²⁹²⁶ Prosecution closing arguments, T. 26947 (20 August 2008).

²⁹²⁷ Prosecution Final Trial Brief, 29 July 2008 (public version), paras. 1099–1100.

1178. Good behaviour during trial, at the United Nations Detention Unit, and during provisional release has been considered to be a factor for Chambers to consider in relation to mitigation.²⁹²⁸ The Trial Chamber would like to acknowledge the deportment of the Accused throughout the trial and while in detention. It enhanced the ability of the Chamber to discharge its duty under Article 20(1) of the Statute to ensure that the trial was conducted in a fair and expeditious manner. Their good behaviour has been taken into account when considering the sentences to be imposed.

1179. The Chamber has also taken into account the fact that none of the Accused has a prior criminal record and that each was, prior to these events, of apparent good character.

b. Šainović

1180. The Šainović Defence submits that he played a limited role in the events for which he is charged.²⁹²⁹ The Chamber disagrees and has found that he was an important member of the joint criminal enterprise and wrongfully exercised his authority in order to commit the crimes. Although the Chamber acknowledges that Šainović was acting in the midst of a complicated situation, including the defence of the country against NATO bombing and some combat operations against the KLA, the Chamber nevertheless finds that he abused his position of authority and that this aggravates his sentence.

1181. The Šainović Defence submits that the Chamber must take into consideration the good character of Šainović, citing the evidence of Ćosić and Milanović to show that Šainović was a highly educated family man, a distinguished businessman, a man who followed the law and who was against corruption, and one of the few state officials never surrounded during the war by “thieves and tycoons”.²⁹³⁰ The Chamber has also taken into account the evidence of Jovanović, Milosavljević, Anđelković, and Matković on the issue of Šainović’s character.²⁹³¹ The Chamber is of the view that Šainović’s good character has been shown, but only prior to the events that are the subject of the Indictment. The Prosecution has proved that Šainović received the Tribunal Prosecutor Louise Arbour’s letter on 26 March 1999 and had other notice of the crimes in the Indictment, yet still persisted in the conduct that has led to his criminal liability. Šainović’s good character has therefore not been demonstrated. It will not therefore be considered as a mitigating circumstance.

²⁹²⁸ *Kordić Appeal Judgement*, para. 1053.

²⁹²⁹ Šainović Final Trial Brief, 29 July 2008 (public version), para. 891.

²⁹³⁰ Šainović Final Trial Brief, 29 July 2008 (public version), para. 892; Šainović Defence closing arguments, T. 27052 (21 August 2008)

1182. The Šainović Defence submits that the Chamber must take into consideration the family situation of Šainović, including serious health conditions of close family members.²⁹³² The Chamber has taken this factor into consideration. Although Šainović is suffering certain health problems, these are not such as to warrant consideration as mitigating factors.²⁹³³

1183. Although not mentioned in the final trial brief, the Chamber takes note of the fact that Šainović, after he was indicted, gave an interview to the Prosecution. Substantial co-operation with the Prosecution shall be taken into account as a mitigating circumstance; whether the co-operation by an accused qualifies as “substantial” depends on the quality and quantity of the information given.²⁹³⁴ The Chamber’s review of Šainović’s interview does not reveal any substantial co-operation with the Prosecution, but the Chamber does take into account the general co-operation by Šainović in having given the interview.

1184. The Chamber does not consider Šainović’s surrender as a mitigating circumstance in the determination of his sentence.²⁹³⁵

c. Ojdanić

1185. Ojdanić was the most senior military official in the FRY.²⁹³⁶ He received, by 29 April 1999 at the latest, a letter from Tribunal Prosecutor Arbour alleging criminal acts by his subordinates; he also received the original indictment charging him for crimes in Kosovo on 27 May 1999. After receiving these communications, Ojdanić continued to issue orders displaying an awareness of VJ operations, in co-ordination with the MUP, despite his knowledge of crimes being committed against Kosovo Albanians during previous joint operations. This conduct, which was undertaken by Ojdanić in his official capacity as the highest ranking officer of the VJ, constitutes an abuse of his superior position and thus aggravates his sentence. This finding is made despite the Chamber’s acknowledgement that Ojdanić was acting in the midst of a complicated situation, including the defence of the country against NATO bombing and some combat operations against the KLA.

²⁹³¹ Živadin Jovanović, T. 14070 (20 August 2007), T. 14201 (22 August 2007); Andreja Milosavljević, T. 14304, 14309–14310 (23 August 2007); Zoran Anđelković, T. 14665 (30 August 2007); Duško Matković, T. 14600–14601 (29 August 2007).

²⁹³² Šainović Final Trial Brief, 15 July 2008 (confidential version), para. 893.

²⁹³³ See, e.g., partially confidential and *ex parte* Decision on Šainović Motion for Temporary Provisional Release, 9 February 2009; confidential and *ex parte* Registry Submission Pursuant to Rule 33(B) Regarding the Accused Šainović’s Health Status, 30 December 2008; confidential and *ex parte* Registry Submission Pursuant to Rule 33(B) Regarding the Accused Šainović’s Health Status, 26 January 2009.

²⁹³⁴ *Bralo* Judgement on Sentencing Appeal, 2 April 2007, para. 51; *Blaškić* Trial Judgement, para. 774.

²⁹³⁵ *Prosecutor v. Šainović and Ojdanić*, Case No. IT-99-37, Decision on Provision Release, 30 October 2002, para. 10; *Prosecutor v. Šainović and Ojdanić*, Case No. IT-99-37, Decision on Second Applications for Provisional Release,

1186. The Ojdanić Defence submits that evidence of the good character of Ojdanić should be considered a mitigating factor, citing the evidence of Vasiljević, Pešić, Lončar, Drewienkiewicz, Vlajković, Pantelić, and Jovanović.²⁹³⁷ Family members of Ojdanić indicate that he is a respected man who would do everything he could for family, homeland, and anyone else who sought out his help.²⁹³⁸ Although the Chamber acknowledges this evidence, the fact remains that Ojdanić has been found responsible for aiding and abetting a multitude of crimes in Kosovo during the period covered by the Indictment. The Chamber therefore gives limited weight to Ojdanić’s purported good character.

1187. The Ojdanić Defence submits that Ojdanić’s work during 1998 and 1999 emphasised the importance of international humanitarian law, as well as improvements to the military justice system so that perpetrators of crimes would be prosecuted. Moreover, the Chamber is asked to take into account Ojdanić’s co-operation with the international observer mission, his persistent calls for a peaceful resolution to the conflict, his attempts to recruit ethnic Albanians to the VJ, and the practical difficulty in exercising authority to prevent or punish crimes.²⁹³⁹ Although the Chamber finds that Ojdanić took some measures to reduce human suffering during the conflict, only minimal weight will be placed upon this as a mitigating factor.

1188. The Ojdanić Defence submits that Ojdanić’s relatively advanced age should be considered as a mitigating circumstance when considering his sentence. It is also submitted that he is in very poor health and the Trial Chamber “must consider the likely impact of any further custodial sentence”.²⁹⁴⁰ The Chamber does consider that Ojdanić’s poor medical condition and relatively advanced age are serious enough to warrant some mitigation of the sentence.²⁹⁴¹

1189. The Ojdanić Defence submits that in April 2002 General Ojdanić “was the first official from Serbia to surrender to the Tribunal after the passage of the law on co-operation”. Furthermore, it is argued that the fact that it was voluntary should be considered a “significant mitigating factor”, citing a press release wherein the U.S. State Department applauded Ojdanić’s “courageous decision and his show of leadership”.²⁹⁴² However, the Appeals Chamber, in a 30

29 May 2003, p. 7; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87, Decision on Joint Defence Motion for Provisional Release during Winter Recess, 5 December 2006, para. 19, note 42.

²⁹³⁶ See Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 548–551.

²⁹³⁷ Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 566–573.

²⁹³⁸ Ojdanić Final Trial Brief, 15 July 2008 (confidential version), para. 574.

²⁹³⁹ Ojdanić Final Trial Brief, 29 July 2008 (public version), paras. 553–561.

²⁹⁴⁰ Ojdanić Final Trial Brief, 15 July 2008 (confidential version), paras. 577–579.

²⁹⁴¹ See, e.g., 3D1152 (confidential and *ex parte* Medical Status of General Ojdanić, 29 April 2008) (under seal); partially confidential and *ex parte* Decision on Ojdanić Motion for Temporary Provisional Release, 2 May 2008, Annex A; confidential and *ex parte* Registry Submission Pursuant to Rule 33 of the Rules of Procedure and Evidence Regarding the Medical Status of the Accused, 29 April 2008.

²⁹⁴² Ojdanić Final Trial Brief, 29 July 2008 (public version), para. 563.

October 2002 decision on provisional release, determined that it was incorrect for the Trial Chamber to have determined that Ojdanić's surrender was voluntary.²⁹⁴³ The Trial Chamber followed the Appeals Chamber's decision in its 29 May 2003 decision on provisional release, when it stated that "the Trial Chamber is not satisfied that any new material has been brought to its attention such as to persuade it not to follow the Appeals Chamber Decision that the surrenders were not voluntary".²⁹⁴⁴ Accordingly, the Trial Chamber in a 5 December 2006 decision stated that Ojdanić was not entitled to credit for his surrender.²⁹⁴⁵ The press release does not alter the force of the Tribunal's past decisions relating to Ojdanić. The Chamber does not consider the circumstances of Ojdanić's surrender to be a mitigating circumstance in the determination of his sentence.

d. Pavković

1190. Pavković received, by 29 April 1999, at the latest, the letter from Tribunal Prosecutor Arbour alleging criminal acts by his subordinates. Furthermore, the original indictment against Milošević, Milutinović, Šainović, Ojdanić, and Stojiljković was publicised on 27 May 1999. After receiving these communications, Pavković continued to approve of joint MUP and VJ operations, despite his knowledge of crimes being committed against Kosovo Albanians during previous joint operations, and refrained from taking effective measures, which were at his disposal, in relation to crimes committed by his subordinates. This conduct, which was undertaken by Pavković in his official capacity as the Commander of the 3rd Army, constitutes an abuse of his superior position and thus aggravates his sentence. This finding is made despite the Chamber's acknowledgement that Pavković was acting in the midst of a complicated situation, including the defence of the country against NATO bombing and some combat operations against the KLA.

1191. The Pavković Defence asserts the good character of Pavković and describes him as an "intelligent, accomplished professional soldier and [he] has been throughout his entire military career". Further, Pavković was at the top of his class and was consistently promoted ahead of his colleagues, and his superiors always gave him the highest possible ratings.²⁹⁴⁶ The Pavković Defence refers to the testimony of Shaun Byrnes where he described Pavković as direct and

²⁹⁴³ *Prosecutor v. Šainović and Ojdanić*, Case No. IT-99-37, Decision on Provision Release, 30 October 2002, para. 10; *Prosecutor v. Šainović and Ojdanić*, Case No. IT-99-37, Decision on Applications of Nikola Šainović and Dragoljub Ojdanić for Provisional Release, 26 June 2002, para. 12; see also *Prosecutor v. Šainović and Ojdanić*, Case No. IT-99-37, Decision on Provision Release, 30 October 2002, para. 10.

²⁹⁴⁴ *Prosecutor v. Šainović and Ojdanić*, Case No. IT-99-37, Decision on Second Applications for Provisional Release, 29 May 2003, p. 7.

²⁹⁴⁵ *Prosecutor v. Milutinović et al.*, Case No. IT-05-87, Decision on Joint Defence Motion for Provisional Release during Winter Recess, 5 December 2006, para. 19, note 42.

²⁹⁴⁶ Pavković Defence closing arguments, T. 27177 (22 August 2008).

professional, stating that the VJ, in his opinion, conducted itself professionally and honourably both before and during the conflict.²⁹⁴⁷ The Chamber considers that the above assertions neither aggravate nor mitigate Pavković's sentence.

1192. The Pavković Defence asserts that at meetings on 16 and 17 May 1999 in Belgrade, Pavković discussed crimes being committed and urged the formation of an investigative commission to take an in-depth look into those responsible for the commission of crimes.²⁹⁴⁸ But, the Chamber has concluded that these meetings were not sincere efforts on behalf of Pavković. The Pavković Defence submits that 27 orders were issued by Pavković demanding adherence to the laws and rules of war and that this shows an "extraordinary effort to prevent and punish".²⁹⁴⁹ The Chamber disagrees and finds these efforts, again apparently pointing toward his good character, to have been ineffective and sporadic efforts to prevent and punish crimes.²⁹⁵⁰ On the balance of probabilities, the Chamber does not consider these assertions as circumstances that mitigate his sentence.

1193. Although Pavković is suffering certain health problems, these are not such as to warrant consideration as mitigating factors.²⁹⁵¹

1194. The Chamber finds that Pavković's interview with the Prosecution, given before he was indicted, does not qualify on the balance of probabilities as evidence of substantial co-operation with the Prosecution, and does not entitle him to a reduction of his sentence. Nor does the Chamber consider the circumstances of Pavković's surrender as a mitigating circumstance in the determination of his sentence.²⁹⁵²

e. Lazarević

1195. Lazarević was the Commander of the Priština Corps, a high-level position in the VJ. The Chamber has held that Lazarević was aware of at least one UN Security Council Resolution

²⁹⁴⁷ Pavković Defence closing arguments, T. 27177–27178 (22 August 2008); *see also* Pavković Final Trial Brief, 28 July 2008 (public version), para. 213.

²⁹⁴⁸ Pavković Defence closing arguments, T. 27178–27179 (22 August 2008); *see also* Pavković Final Trial Brief, 28 July 2008 (public version), para. 294.

²⁹⁴⁹ Pavković Defence closing arguments, T. 27199–27200 (22 August 2008).

²⁹⁵⁰ *Prosecutor v. Blaškić*, Case No. IT-95-14, Trial Judgement, 3 March 2000, paras. 781–782; *cf. Obrenović Sentencing Judgement*, paras. 132–134 (stating that help provided by Obrenović to several Muslims on an "ongoing basis" during the war, in addition to finding that pre-war he was a highly respected member of the community, amounted to an "important" mitigating factor).

²⁹⁵¹ *See, e.g.*, Decision on Pavković Motion for Temporary Provisional Release, 26 September 2008; Decision on Pavković Renewed Motion for Temporary Provisional Release, 27 November 2008.

²⁹⁵² *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-AR65.1, Decision on Interlocutory Appeal from Trial Chamber Decision Granting Nebojša Pavković Provisional Release, 1 November 2005, para. 9; *Prosecutor v. Milutinović et al.*,

alleging massive crimes being perpetrated by his subordinates, and yet continued to engage his forces in Kosovo. His knowledge of crimes has also been demonstrated by many other items of evidence adduced by the Prosecution. This conduct, which was undertaken by Lazarević in his official capacity as the Commander of the Priština Corps, constitutes an abuse of his superior position and thus aggravates his sentence. This finding is made despite the Chamber's acknowledgement that Lazarević was acting in the midst of a complicated situation, including the defence of the country against NATO bombing and some combat operations against the KLA.

1196. The Lazarević Defence submits that the good personal character of Lazarević should be taken into account as a mitigating factor, citing the evidence of Lončar, Vladimir Marinković, and Kosovac.²⁹⁵³ Although the Chamber acknowledges this evidence, the fact remains that Lazarević has been found responsible for aiding and abetting a multitude of crimes in Kosovo during the period covered by the Indictment. The Chamber therefore gives limited weight to Lazarević's purported good character.

1197. The Lazarević Defence, misconstruing a statement by the Chamber during the pre-defence conference, argues that his choice to take the stand in his own defence during the trial shows his readiness to assist the Trial Chamber in establishing the truth.²⁹⁵⁴ The Chamber does not consider that electing to give evidence, albeit at the beginning of an accused's defence case, necessarily entitles an accused to mitigation of his sentence and finds that, in this case, it does not have a mitigating effect.

1198. The Lazarević Defence submits that, during the pre-trial phase, Lazarević gave an interview to the Prosecution, only days after his initial appearance, without even having the possibility of reading the Prosecution's supporting materials and that this demonstrates Lazarević's "active contribution in efforts to establish truth in this procedure".²⁹⁵⁵ This was considered by the Trial Chamber in a subsequent decision on provisional release, in which the Chamber noted that Lazarević had co-operated with the Prosecution by participating in "an extensive interview over the course of several days and providing new documents".²⁹⁵⁶ The Chamber is of the view that this co-operation with the Prosecution was substantial and will treat it accordingly as a mitigating circumstance.

Case No. IT-05-87, Decision on Joint Defence Motion for Provisional Release During Winter Recess, 5 December 2006, para. 19, note 42.

²⁹⁵³ Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 945–948.

²⁹⁵⁴ Lazarević Final Trial Brief, 29 July 2008 (public version), paras. 941–942.

²⁹⁵⁵ Lazarević Final Trial Brief, 29 July 2008 (public version), para. 940.

²⁹⁵⁶ *Prosecutor v. Lazarević*, Case No. IT-03-70-PT, Decision on Defence Request for Provisional Release, 14 April 2005, p. 4; *see also Prosecutor v. Lazarević*, Case No. IT-03-70-PT, Prosecution's Response to Defence Request for Provisional Release, 29 March 2005, para. 3.

1199. It is submitted that Lazarević’s “specific family situation”, including the severe illness of family members and difficult family living circumstances, should be a significant mitigating circumstance.²⁹⁵⁷ Moreover, Lazarević has suffered serious health problems while in detention, which continue to plague him.²⁹⁵⁸ The Chamber does consider these factors to be mitigating and will reduce Lazarević’s sentence accordingly.

1200. For reasons set out in previous interlocutory provisional release decisions, the Chamber considers the circumstances of Lazarević’s surrender to be a mitigating circumstance in the determination of his sentence.²⁹⁵⁹

f. Lukić

1201. After the Tribunal Prosecutor Arbour sent a letter of warning to Milošević, Milutinović, Šainović, and Ojdanić—the contents of which Lukić learned about at the 4 May 1999 meeting in Belgrade—Lukić continued to instruct the MUP to engage in joint operations with the VJ in Kosovo, despite his knowledge of crimes being committed against Kosovo Albanians during previous joint operations. This conduct, which was undertaken by Lukić in his official capacity as the Head of the MUP Staff, constitutes an abuse of his superior position and thus aggravates his sentence. This finding is made despite the Chamber’s acknowledgement that Lukić was acting in the midst of a complicated situation, including the defence of the country against NATO bombing and some combat operations against the KLA.

1202. The Lukić Defence submits that Lukić was a professional policeman with a lifetime of maintaining public law and order for the Ministry of the Interior.²⁹⁶⁰ It is argued that Lukić “spearheaded efforts to stamp out organized crime” connected to the previous political regime, as well as leading efforts for police reforms within the Ministry of the Interior.²⁹⁶¹ This included establishing a multi-ethnic police force and a calm situation in multi-ethnic communities, as well as being in charge of Police Operations to apprehend the “killers” involved in the assassination of

²⁹⁵⁷ Lazarević Final Trial Brief, 15 July 2008 (confidential version), para. 949.

²⁹⁵⁸ See, e.g., Lazarević Final Trial Brief, 15 July 2008 (confidential version), para. 950; partially confidential and *ex parte* Decision on Lazarević Motion for Temporary Provisional Release, 9 February 2009, Annex; confidential and *ex parte* Registry Submission Pursuant to Rule 33(B) Regarding the Accused Lazarević’s Health Status, 8 January 2009; confidential and *ex parte* Registry Submission Pursuant to Rule 33(B) Regarding the Accused Lazarević’s Health, 26 November 2008; confidential and *ex parte* Registry Submission Pursuant to Rule 33(B) Regarding the Accused Lazarević’s Health, 20 January 2009; confidential and *ex parte* Registry Submission Pursuant to Rule 33(B) Regarding the Accused Lazarević’s Health, 5 February 2009.

²⁹⁵⁹ *Prosecutor v. Vladimir Lazarević*, Case No. IT-03-70-PT, Decision on Defence Request for Provisional Release, 14 April 2005, p. 3. See also *Prosecutor v. Vladimir Lazarević*, Case No. IT-03-70-PT, Prosecution’s Response to Defence Request for Provisional Release, 29 March 2005, para. 5; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87, Decision on Lazarević Motion for Provisional Release, 22 May 2007, para. 10.

²⁹⁶⁰ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 1423, 1425.

²⁹⁶¹ Lukić Final Trial Brief, 7 August 2008 (public version), pp. 282–283.

Prime Minister Zoran Đinđić.²⁹⁶² The Lukić Defence submits that, during democratic reforms, when Lukić was Chief of the MUP RJB, amnesty was granted to hundreds of Kosovo Albanians who had been previously tried and convicted for acts of terrorism as part of the KLA.²⁹⁶³ It is also said that Lukić “spearheaded efforts of the [MUP] to uncover and investigate crimes dating from the Kosovo war and identify perpetrators”.²⁹⁶⁴ Specifically, Lukić organised in 2001 a special police commission to investigate a refrigerated truck filled with bodies of Kosovo Albanian citizens found in the Danube River. The Lukić Defence submits that this was the first working group established to deal professionally with war crimes and their detailed investigation uncovered the “complete picture” of the clandestine transport of bodies from Kosovo to Serbia.²⁹⁶⁵ According to the Lukić Defence, Lukić personally initiated the creation of a separate database of all data relevant to the events in Kosovo in 1998 and 1999, one of the purposes being co-operation with the Tribunal, as well as attempting for the first time to compile a list of missing persons in Kosovo.²⁹⁶⁶ The Lukić Defence asserts furthermore that Lukić, as Chief of the RJB, engaged in co-operation with the Tribunal until 2004 through investigative and information-gathering exercises.²⁹⁶⁷ Although not mentioned in the final trial brief, prior to being indicted, Lukić gave an interview to the Prosecution. While the Chamber does not consider all the above to have been substantiated or to be outside what any competent law enforcement official would be expected to do in the normal course of his duties, the Chamber does consider that on the balance of probabilities Lukić contributed to law and order in a number of cases connected the crimes in the Indictment,²⁹⁶⁸ and therefore will take this into account in mitigation when determining his sentence.

1203. During closing arguments, the Lukić Defence raised the issue of Lukić’s health and urged the Chamber to consider all of the confidential filings related to prior motions for provisional release regarding Lukić’s health situation.²⁹⁶⁹ The Chamber has re-examined the relevant documentation in the record of the proceedings, but does not consider that Lukić’s state of health rises to the level that would warrant mitigation of his sentence.²⁹⁷⁰

²⁹⁶² Lukić Final Trial Brief, 7 August 2008 (public version), paras. 1453–1462, 1471.

²⁹⁶³ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 1453–1463.

²⁹⁶⁴ Lukić Final Trial Brief, 7 August 2008 (public version), p. 284.

²⁹⁶⁵ Lukić Final Trial Brief, 7 August 2008 (public version), paras. 1464–1467.

²⁹⁶⁶ Lukić Final Trial Brief, 15 July 2008 (confidential version), paras. 1500, 1502; Lukić Defence closing arguments, T. 27374–27375 (26 August 2008).

²⁹⁶⁷ Lukić Final Trial Brief, 7 August 2008 (public version), para. 1506.

²⁹⁶⁸ *See, e.g.*, Aleksandar Kostić, T. 24103, 24119 (11 March 2008); 6D2, T. 25447–25448 (16 April 2008) (closed session).

²⁹⁶⁹ Lukić Defence closing arguments, T. 27374 (26 August 2008).

²⁹⁷⁰ *See, e.g.*, Decision on Lukić Motion for Temporary Provisional Release, 12 December 2008; partially confidential Decision on Lukić Motion for Temporary Provisional Release, 31 October 2008.

1204. The Lukić Defence has not made any submissions in relation to Lukić's surrender as a mitigating factor. Even if it had, the Chamber would not have considered the circumstances of Lukić's surrender to be a mitigating circumstance in the determination of his sentence, based upon past decisions relevant to this matter.²⁹⁷¹

1205. As can be seen in the foregoing analysis, the Chamber has considered the circumstances of each Accused separately. However, although different circumstances apply to each of the Accused, the Chamber does not consider it appropriate in fixing the term of imprisonment to discriminate between the two Accused convicted on the basis of aiding and abetting and to discriminate among the three Accused convicted on the basis of their participation in the joint criminal enterprise.

²⁹⁷¹ *Prosecutor v. Milutinović et al.*, Case No. IT-05-87, Decision on Sreten Lukić's Provisional Release, 30 September 2005, p. 5; Decision on Lukić Motion for Temporary Provisional Release, 7 December 2007, para. 6.

X. DISPOSITION

1206. For all the foregoing reasons and pursuant to Articles 23, 24, and 27 of the Statute of the Tribunal and Rules 98 *ter*, 99, 101, 102, 103 of the Rules of Procedure and Evidence of the Tribunal, the Trial Chamber hereby **DECIDES** (subject to paragraph 1213 below) as follows:

1207. The Trial Chamber finds **Milan Milutinović** to be **NOT GUILTY**, pursuant to Articles 7(1) and 7(3) of the Statute, of counts 1 to 5 of the Indictment, subject to the final paragraph of this Judgement. Pursuant to Rule 99(A) of the Rules, the Chamber orders that Milan Milutinović be released from the United Nations Detention Unit immediately upon the completion of the necessary modalities, without prejudice to any further proceedings that may follow Trial Chamber III's determination under the final paragraph of this Judgement.

1208. The Trial Chamber finds **Nikola Šainović** to be **GUILTY** of counts 1 to 5 of the Indictment, pursuant to Article 7(1) of the Statute. The Trial Chamber hereby sentences Nikola Šainović to a single sentence of 22 years of imprisonment. Nikola Šainović has been in custody since 2 May 2002; and, pursuant to Rule 101(C) of the Rules, he is entitled to credit for time spent in detention thus far. Pursuant to Rule 103(C) of the Rules, Nikola Šainović shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the state where he shall serve his sentence.

1209. The Trial Chamber finds **Dragoljub Ojdanić** to be **GUILTY** of counts 1 and 2 of the Indictment, pursuant to Article 7(1) of the Statute, and **NOT GUILTY** of counts 3 to 5 of the Indictment, pursuant to Articles 7(1) and 7(3) of the Statute. The Trial Chamber hereby sentences Dragoljub Ojdanić to a single sentence of 15 years of imprisonment. Dragoljub Ojdanić has been in custody since 25 April 2002; and, pursuant to Rule 101(C) of the Rules, he is entitled to credit for time spent in detention thus far. Pursuant to Rule 103(C) of the Rules, Dragoljub Ojdanić shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the state where he shall serve his sentence.

1210. The Trial Chamber finds **Nebojša Pavković** to be **GUILTY** of counts 1 to 5 of the Indictment, pursuant to Article 7(1) of the Statute. The Trial Chamber hereby sentences Nebojša Pavković to a single sentence of 22 years of imprisonment. Nebojša Pavković has been in custody since 25 April 2005; and, pursuant to Rule 101(C) of the Rules, he is entitled to credit for time spent in detention thus far. Pursuant to Rule 103(C) of the Rules, Nebojša Pavković shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the state where he shall serve his sentence.

1211. The Trial Chamber finds **Vladimir Lazarević** to be **GUILTY** of counts 1 and 2 of the Indictment, pursuant to Article 7(1) of the Statute, and **NOT GUILTY** of counts 3 to 5 of the Indictment, pursuant to Articles 7(1) and 7(3) of the Statute. The Trial Chamber hereby sentences Vladimir Lazarević to a single sentence of 15 years of imprisonment. Vladimir Lazarević has been in custody since 3 February 2005; and, pursuant to Rule 101(C) of the Rules, he is entitled to credit for time spent in detention thus far. Pursuant to Rule 103(C) of the Rules, Vladimir Lazarević shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the state where he shall serve his sentence.

1212. The Trial Chamber finds **Sreten Lukić** to be **GUILTY** of counts 1 to 5 of the Indictment, pursuant to Article 7(1) of the Statute. The Trial Chamber hereby sentences Sreten Lukić to a single sentence of 22 years of imprisonment. Sreten Lukić has been in custody since 4 April 2005; and, pursuant to Rule 101(C) of the Rules, he is entitled to credit for time spent in detention thus far. Pursuant to Rule 103(C) of the Rules, Sreten Lukić shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the state where he shall serve his sentence.

1213. Pursuant to the Trial Chamber's "Decision on Application of Rule 73bis", issued on 11 July 2006, relating to the crime sites in Račak/Rečak, Padalište/Padalishta, and Dubrava Prison in paragraphs 75(a), (e), and (j), respectively, of the Indictment, the parties shall, within two weeks of the date of this Judgement, make appropriate submissions to Trial Chamber III of the Tribunal regarding how to proceed in relation to these existing charges.

Judge Ali Nawaz Chowhan appends a partially dissenting opinion to this Judgement.

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

Judge Iain Bonomy
Presiding

Judge Ali Nawaz Chowhan

Judge Tsvetana Kamenova

Dated this twenty-sixth day of February 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

PARTIALLY DISSENTING OPINION OF JUDGE CHOWHAN

I respectfully differ from the view expressed by the majority regarding the foreseeability of sexual assault of Kosovo Albanian women to members of the joint criminal enterprise. In a conflict like the one we are addressing, which involved able-bodied military and security forces acting pursuant to a common plan to use violence to remove large numbers of Kosovo Albanian civilians, including women, from their homes, prudence and common sense, as well as the past history of conflicts in the region, lead me to think that sexual assaults, like murders, were certainly foreseeable realities. Thus, I consider that it was foreseeable to the Accused found to have participated in the joint criminal enterprise that Kosovo Albanian women and girls would be raped and sexually assaulted in the execution of their criminal enterprise, and would find them responsible by way of the third form of joint criminal enterprise for the sexual assaults proved in the present case.

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

Judge Ali Nawaz Chowhan

Dated this twenty-sixth day of February 2009
At The Hague
The Netherlands

[Seal of the Tribunal]