

# Report on Serious Violations of International Humanitarian Law in Kosovo in 1998

February 1999

Prepared for Justice Louise Arbour, Prosecutor of the  
International Criminal Tribunal for the former Yugoslavia,  
under Article 18 of the ICTY Statute

and to the attention of:

Judge Gabrielle Kirk McDonald, President of the ICTY  
H.E. Kofi Anan, Secretary General of the United Nations  
The President of the Security Council  
The Council of Ministers and the Commission of the European Union  
The Contact Group on former Yugoslavia

No Peace Without Justice (NPWJ), was launched in 1993 as a campaign of the Transnational Radical Party (TRP) for the creation of the International Criminal Tribunals for the Former Yugoslavia (ICTY). After the establishment of the ICTY, the campaign became an international committee of Parliamentarians, Mayors and citizens in May 1994.

During the last five years, NPWJ has focused its worldwide campaign on raising public awareness on the establishment of the International Criminal Court (ICC) and has worked for the convening of the Diplomatic Conference of Plenipotentiaries in Rome. In 1996 and 1997, NPWJ launched two solemn appeals for the prompt establishment of the permanent Court. The petitions, signed by over 80 personalities, Heads of States, Nobel Laureates and world leaders from all over the world, contributed significantly to the successful finalization of the ICC Statute at the Rome Conference. The appeals were published in *The International Herald Tribune*, *Le Monde*, *La Repubblica*, *El País*, *Il Messaggero* and the *Irish Times* on the eve of the last session of the Preparatory Committee of the ICC Statute.

The “1997-1998 NPWJ International Campaign” was made of a series of regional conferences organized in conjunctions with Governments, international as well as Non-Governmental Organizations. All events saw the participation of local political leaders, legal experts, diplomats as well as representatives of the UN and the civil society; the proceedings of all meetings were published and disseminated at the UN during the ICC negotiations.

For the last two years, NPWJ has also constituted an inter-group at the EP called *Amici Curiae*, (Friends of the Court) that has presented several resolutions regarding both legal and political aspects related to the establishment of the international Court. Since its foundation, NPWJ has published a quarterly in four languages (English, French, Spanish and Italian) to update politicians, diplomats and the public on the progress of the ICC negotiations and on the events of its international campaigns. In addition to that NPWJ also realized a series of legal publications in cooperation with the academic community: Istituto Superiore Internazionale di Scienze Criminali, Nouvelles Etudes Pénales and the European Law Students Association.

To secure a wide participation at the Rome Diplomatic Conference, NPWJ, through its Judicial Assistance Project, provided some 40 legal experts from all over the world to 13 Governments' delegations mainly developing Countries. All delegations helped by NPWJ eventually joined the so-called ‘Like Minded Group’ and voted in favor of the ICC Statute. The majority of these Countries have already signed the Rome Treaty for the establishment of the Court. In Cooperation with the Transnational Radical Party, the Rome negotiations were covered by a daily newsletters called *Terra Viva* and *Notizie Radicali*, and the plenary meetings were also broadcast on the TRP website.

On October 1998, during a conference at the United Nations Headquarters, NPWJ launched its “Ratification Now” campaign, an international endeavor for the entry into operation of the ICC by the year 2000.

Since Summer 1998, NPWJ is following the situation in Kosovo with particular attention to the general human rights crisis. Purpose of the undertaking is to prepare a dossier on violations of

International Humanitarian Law. A 6-people team, mainly formed of former ICTY personnel, has visited twice the Balkans on a fact finding mission last Fall.

NPWJ has been supported throughout its work by generous contributions from the Open Society Institute, the European Union, the Transnational Radical Party, as well as other private and public donors.

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## I. INTRODUCTION

In October 1998, No Peace Without Justice established a team of experts in international humanitarian and international criminal law to engage in a project concerning the alleged commission of violations of international humanitarian law in Kosovo, in the Federal Republic of Yugoslavia (Serbia and Montenegro) (hereafter “FRY”), during 1998. More specifically, the project was concerned with those violations that are within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (hereafter “International Tribunal” or “ICTY”) and the present report analyses the conflict in Kosovo from this perspective.

The team, composed of six members, travelled to Kosovo and other parts of the FRY, as well as to neighbouring Macedonia (FYROM) and Albania, in October 1998 in order to conduct the necessary field research for this report. The method of operation during the field mission largely involved meeting and interviewing various individuals and organisations on the ground, including local journalists and non-governmental organisations (“NGOs”), members of the diplomatic community, representatives of international NGOs, as well as of international governmental agencies, and personnel from the various Kosovo Diplomatic Observer Missions (“KDOM”).

In November and December 1998, a second field mission was conducted to follow up on the initial contacts which had been established. A smaller team again visited Kosovo, as well as Belgrade, and gathered some new material, in addition to confirming existing information and the conclusions that had been formulated on the basis the previous visit. This aspect of the work of the project has also been supplemented by research and analysis conducted in Brussels, New York and Washington D.C. Public information which is available on the conflict in Kosovo, including news reports and those compiled by various international NGOs, has been gathered, along with military information. This has been utilised to provide the context for as well as the substance of the present report, which seeks to present the findings of the project from the perspective of the relevant norms of international humanitarian law and the jurisdictional provisions of the Statute of the ICTY.

It is not the purpose of the report to document each and every violation of international humanitarian law committed in Kosovo during the conflict. The present aim is rather to demonstrate the existence of a campaign organised from within the State structure of the FRY, which involved the widespread commission of violations of international humanitarian law. It should thus be emphasised that, while violations may have been committed by both parties to the conflict – the Serbian/FRY forces and those of the Kosovo Liberation Army – the subject of the report does not extend to the latter. Such potential violations are nonetheless worthy of further investigation, and the Office of the Prosecutor of the International Tribunal (“Prosecutor”) should seek to gather any and all information in this regard, along with evidence of crimes committed by the FRY/Serbian forces.

Furthermore, it should be noted that the report does not cover those most recent events which have occurred since the agreement reached between the President of the FRY, Slobodan Milosevic, and the United States Special Envoy, Richard Holbrooke, in October 1998. While the conflict in Kosovo has clearly continued since this agreement and recent events, including the massacre of numerous Kosovars in Racak and the continued shelling of

towns and villages in that and other areas, fall equally within the jurisdiction of the ICTY and merit substantial investigation by the Prosecutor, the research for the current report has been limited to a specific time-period. The report thus focuses on serious violations of international humanitarian law which are rapidly fading into the past and seeks to ensure that they are fully investigated and discussed in order to assess the criminal responsibility of those who directed the violence, destruction and suffering of the whole Kosovo conflict, from the highest level.

## II. JURISDICTION OF THE INTERNATIONAL TRIBUNAL

### A. Applicability of Articles 2, 3, 4 and 5

The jurisdiction of the International Tribunal over potential violations of international humanitarian law in Kosovo is, on its face, apparent. Article 1 of the ICTY Statute provides that any serious violation of international humanitarian law committed within the territory of the former Yugoslavia since 1991 may be prosecuted and punished by the Tribunal. Kosovo, which has the status of a province of the Republic of Serbia, thus falls within the spatial requirement of Article 1 and the temporal requirement is met by virtue of the open-ended term “since 1991”. Articles 2, 3, 4 and 5 of the Statute then provide the framework for the types of violations with which the International Tribunal is concerned by enunciating its subject matter jurisdiction in more detail. These Articles read as follows:

#### Article 2

##### Grave breaches of the Geneva Conventions of 1949

The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (a) wilful killing;
- (b) torture or inhuman treatment, including biological experiments;
- (c) wilfully causing great suffering or serious injury to body or health;
- (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
- (f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
- (g) unlawful deportation or transfer or unlawful confinement of a civilian;
- (h) taking civilians as hostages.

#### Article 3

##### Violations of the laws or customs of war

The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:

- (a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;
- (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
- (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;
- (d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;
- (e) plunder of public or private property.

#### **Article 4 Genocide**

1. The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

3. The following acts shall be punishable:

- (a) genocide;
- (b) conspiracy to commit genocide;
- (c) direct and public incitement to commit genocide;
- (d) attempt to commit genocide;
- (e) complicity in genocide.

#### **Article 5 Crimes against humanity**

The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

- (a) murder;
- (b) extermination;
- (c) enslavement;

- (d) deportation;
- (e) imprisonment;
- (f) torture;
- (g) rape;
- (h) persecutions on political, racial and religious grounds;  
other inhumane acts.

(i) **Article 2**

Article 2 of the Statute is drawn from the four Geneva Conventions of 1949 (Geneva Conventions)<sup>1</sup> and, more specifically, those provisions of the Conventions which mandate the criminal prosecution of those responsible for “grave breaches” of their terms. In 1949, this regime of universal jurisdiction and mandatory prosecution or extradition was regarded as limited to breaches of the provisions of the Conventions which concerned international armed conflicts, as opposed to conflicts which were determined to be internal in character. While article 3, common to each of the four Conventions, enunciated basic prohibitions in relation to internal armed conflicts, the mechanism for enforcement established in the “grave breaches” provisions was not considered to extend to common article 3. It must be emphasised that this did not preclude a State from prosecuting an individual for violations of common article 3, but merely rendered States under no obligation to do so.

Until relatively recently, the mechanisms for prosecuting individuals for “grave breaches” of the Geneva Conventions remained remarkably untested. By incorporating the terminology of the Conventions into the Statute of the International Tribunal, however, the debate surrounding the exact scope of the “grave breaches” regime has been reopened. Many voices have been raised in support of an extension of these provisions to incorporate internal armed conflicts as well as international armed conflicts, the former category being of far greater incidence than the latter, and developments in international law rendering any strict division along these lines wholly artificial. Within the International Tribunal itself and in the context of its particular Statute, there remains some debate on the matter. While the majority of the Appeals Chamber, in a Decision on Jurisdiction, in the case of *Prosecutor v. Dusko Tadic*<sup>2</sup> (*Tadic* case), expressed the view that Article 2 of the Statute should only be applied in the context of a conflict determined to be international in nature, Judge Abi-Saab, in a Separate Opinion, advocated its applicability also in internal armed conflicts. Similarly, in their final Judgement in the case of *Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic and Esad Landžo*<sup>3</sup> (*Delalic et al.* case), Trial Chamber II, while finding the conflict in Bosnia and Herzegovina to have been international throughout 1992, suggested, *obiter dicta*, that violations of common article 3 of the Geneva Conventions should now be considered as “grave breaches” of the Conventions.

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<sup>1</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of 12 August 1949; Geneva Convention Relative to the Treatment of Prisoners of War, of 12 August 1949; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of 12 August 1949.

<sup>2</sup> Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, IT-94-1-AR72.

<sup>3</sup> Judgement, 16 November 1998, IT-96-21-T.



Despite these indications of a nascent development in the law, the current report does not consider the applicability of Article 2 of the Statute to the Kosovo conflict. As will be discussed further below, there has been some dispute about the actual existence of an “armed conflict” in Kosovo and, while it is here contended that such a view is entirely unsupported in law and fact, it is not argued that the armed conflict was or is international in nature.

(ii) **Article 3**

Even a cursory glance at the description of the military campaign conducted by the Serbian/FRY authorities in Kosovo, laid out below, suffices to raise the applicability of Article 3 of the Statute – particularly paragraphs (b), (c) and (e). The Appeals Chamber, in its Decision on Jurisdiction in the *Tadić* case, held that Article 3 is applicable in situations of armed conflict, whether international or internal. In addition, the Appeals Chamber described Article 3 as a catch-all provision designed to ensure that the jurisdiction of the International Tribunal is “watertight”. In its view, therefore, violations of common article 3 of the Geneva Conventions, concerning internal armed conflicts, also fall squarely within the ambit of Article 3 of the Statute, whose enumerated provisions are illustrative rather than exhaustive. Common article 3 of the Geneva Conventions states as follows:

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

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Trial Chamber II, in its Judgement in the *Delalic et al.* case, further confirmed that violations of common article 3 must be considered as within the jurisdiction of the International Tribunal by virtue of Article 3 of the Statute, absent the above-mentioned development which would bring violations of common article 3 within the “grave breaches” regime of the Geneva Conventions and thus within Article 2 of the Statute.

Bearing this in mind, the evidence discussed below points to violations of international humanitarian law within the scope of Article 3 of the Statute. However, in order to satisfy all of the jurisdictional prerequisites for the applicability of this Article, it is indeed necessary to confirm the actual existence of an “armed conflict” as such and the link between the acts alleged and this armed conflict. This is discussed further below.

**(iii) Article 4**

In addition, Article 4 of the Statute, respecting genocide, is not discussed in relation to the events in Kosovo with which the present report is concerned. Once again, a cautious approach is here adopted, which does not involve an analysis of the legal definition of genocide and the factual circumstances which may or may not fit within that definition. The developing jurisprudence of the International Tribunal, as well as the International Criminal Tribunal for Rwanda (“ICTR”), will further elaborate the extent of the requirement that the acts enumerated in Article 4 be committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such, and further investigations by the Prosecutor may lead to the conclusion that such is the case in Kosovo. Nonetheless, the research conducted for the preparation of the present report does not reveal sufficient evidence of this intent requirement to construct an argument for the applicability of Article 4.

**(iv) Article 5**

While isolated acts in the course of an armed conflict may constitute violations of the laws or customs of war, the concept of crimes against humanity entails an added dimension. The United Nations Secretary-General, in his Report pursuant to Security Council Resolution 808 that contains the Statute of the International Tribunal,<sup>4</sup> described crimes against humanity thus:

“47. Crimes against humanity were first recognized in the Charter and Judgement of the Nürnberg Tribunal, as well as in Law No. 10 of the

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<sup>4</sup> Report of the Secretary-General pursuant to paragraph 2 of Security Council Resolution 808 (1993), 3 May 1993, S/25704.

Control Council for Germany. Crimes against humanity are aimed at any civilian population and are prohibited regardless of whether they are committed in an armed conflict, international or internal in character.

48. Crimes against humanity refer to inhumane acts of a very serious nature, such as wilful killing, torture or rape, committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds. In the conflict in the territory of the former Yugoslavia, such inhumane acts have taken the form of so-called “ethnic cleansing” and widespread and systematic rape and other forms of sexual assault, including enforced prostitution.”

Ordinarily, the concept of crimes against humanity extends to crimes committed outwith the context of an armed conflict, as was emphasised by the Appeals Chamber in its Decision on Jurisdiction in the *Tadic* case. However, the Statute of the International Tribunal specifically requires that, in order to incur its jurisdiction under Article 5, these crimes be committed in an armed conflict in the former Yugoslavia, although this armed conflict may be international or internal in nature.

In the *Nikolic* Rule 61 Decision of 20 October 1995,<sup>5</sup> Trial Chamber I confirmed that an armed conflict was the first requirement for a crime to be considered a crime against humanity by the International Tribunal. In addition, the Trial Chamber considered that the requirement that crimes must be “directed against any civilian population” is specific to crimes against humanity and entails three components.

“First, the crimes must be directed at a civilian population, specifically identified as a group by the perpetrators of those acts. Secondly, the crimes must, to a certain extent, be organised and systematic. Although they need not be related to a policy established at State level, in the conventional sense of the term, they cannot be the work of isolated individuals alone. Lastly, the crimes, considered as a whole, must be of a certain scale and gravity.”

Subsequently, Trial Chamber II, in a Decision on the Form of the Indictment in the *Tadic* case, emphasised that

“The very nature of the criminal acts in respect of which competence is conferred upon the International Tribunal by Article 5, that they be “directed against any civilian population”, ensures that what is to be alleged will not be one particular act but, instead, a course of conduct.”

Of further importance is the finding of the International Tribunal that crimes against humanity may be committed against persons who at one time bore arms, but who have subsequently ceased from taking part in combat activities. In its *Vukovar* Rule 61 Decision,

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<sup>5</sup> *Prosecutor v Dragan Nikolic*, Review of the Indictment pursuant to Rule 61, 20 October 1995, IT-94-2-R61.

rendered on 3 April 1996,<sup>6</sup> Trial Chamber I stated that,

“[a]lthough according to the terms of Article 5 of the Statute of this Tribunal, the combatants in the traditional sense of the term cannot be victims of a crime against humanity, this does not apply to individuals who, at one particular point in time, carried out acts of resistance. As the Commission of Experts, established pursuant to Security Council resolution 780, noted, “it seems obvious that Article 5 applies first and foremost to civilians, meaning people who are not combatants. This, however, should not lead to any quick conclusions concerning people who at one particular point in time did bear arms. ... Information of the overall circumstances is relevant for the interpretation of the provision in a spirit consistent with its purpose.” (Doc S/1994/674, para. 78). This conclusion is supported by case law, particularly the Barbie case. In that case the French Cour de Cassation said that “inhumane acts and persecution which, in the name of a State practising a policy of ideological hegemony, were committed systematically or collectively not only against individuals because of their membership in a racial or religious group but also against the adversaries of that policy whatever the form of the opposition” could be considered a crime against humanity. (Cass. Crim. 20 December 1985).

Crimes against humanity are to be distinguished from war crimes against individuals. In particular, they must be widespread or demonstrate a systematic character. However, as long as there is a link with the widespread or systematic attack against a civilian population, a single act could qualify as a crime against humanity. As such, an individual committing a crime against a single victim or a limited number of victims might be recognised as guilty of a crime against humanity if his acts were part of the specific context identified above.”

In its final Opinion and Judgment in the *Tadic* case, rendered on 7 May 1997,<sup>7</sup> Trial Chamber II largely agreed with these findings and added that a discriminatory intent is also a requirement for any crime against humanity. When considering the definition of “civilian”, the Trial Chamber held that “a wide definition of civilian population ... is justified”. Indeed, in the view of the Trial Chamber,

“the targeted population must be of a predominantly civilian nature. The presence of non-civilians in their midst does not change the character of the population.”

Furthermore, “those actively involved in a resistance movement can qualify as victims of crimes against humanity.”

The Trial Chamber further noted that,

<sup>6</sup> *Prosecutor v Mile Mrksic, Miroslav Radic, Veselin Slijivancanin*, Review of the Indictment pursuant to Rule 61, 3 April 1996, IT-95-13-R61.

<sup>7</sup> Opinion and Judgment, 7 May 1997, IT-94-1-T.

“the emphasis is not on the individual victim but rather on the collective, the individual being victimised not because of his individual attributes but rather because of his membership of a targeted civilian population. This has been interpreted to mean, as elaborated below, that the acts must occur on a widespread or systematic basis, that there must be some form of a governmental, organizational or group policy to commit these acts and that the perpetrator must know of the context within which his actions are taken, as well as the requirement imported by the Secretary-General and members of the Security Council that the actions be taken on discriminatory grounds.”

It should be emphasised that the Trial Chamber determined that, in order to constitute crimes against humanity, the relevant crimes can occur on either a widespread basis, referring to number of victims, or in a systematic manner, indicating a pattern or methodical plan. As long as one of these two conditions is met, this is sufficient to exclude isolated or random acts. Similarly, “[e]ven an isolated act can constitute a crime against humanity if it is the product of a political system based on terror or persecution.”

The Trial Chamber also stated that the concept of crimes against humanity necessarily implies a policy element, although this policy need not be explicitly formulated, nor need it be the policy of a State.

“Importantly, however, such a policy need not be formalized and can be deduced from the way in which the acts occur. Notably, if the acts occur on a widespread or systematic basis that demonstrates a policy to commit those acts, whether formalized or not.”

It is with all of these considerations in mind that the report presents the campaign of the Serbian/FRY security forces and the violations of international humanitarian law which characterise it. It is the view here advocated that each of the attacks and incidents described in the following text are illustrative of a criminal policy on the part of the Serbian/FRY authorities and, as such, clearly constitute crimes against humanity within the jurisdiction of the International Tribunal by virtue of Article 5 of the Statute.

It is thus the intention of the present report to analyse the events of the Kosovo conflict in the context of Articles 3 and 5 of the Statute. This reflects a caution designed to ensure that the findings of the report are stated in the strongest possible terms, without there being any possible question as to the jurisdiction of the International Tribunal over the events discussed.

Before continuing, however, it is necessary to settle the matter of the existence of an armed conflict in Kosovo in 1998, for, as has been revealed above, this is a prerequisite for the application of both Articles 3 and 5.

## B. Existence of an Armed Conflict

### (i) Legal Definition

There is no convenient legal formulation of that which constitutes an “armed conflict” for the purposes of the applicability of international humanitarian law. Furthermore, the nature of modern armed conflicts is such that it is often difficult to determine when, precisely, a conflict commences. Given, however, that the basic principles of international humanitarian law seek to protect fundamental rights to humane treatment, and that the application of this body of law to a conflict is not intended to confer any legal status on the parties engaged in hostilities, it is generally accepted that the basic provisions of international humanitarian law should be applied as widely as possible.

The level of protection afforded by international humanitarian law is currently determined, in the first instance, by the nature of the particular conflict in question – international or internal. While the law is perhaps moving towards an erosion of this dichotomy, it remains the case that persons involved in or affected by a conflict between States can call upon a much wider panoply of legal provisions than those caught up in a conflict between the State and internal forces, or between two or more groups of such internal forces.

In the most recent judicial expression of that which constitutes an armed conflict, and thus triggers the application of international humanitarian law, the Appeals Chamber of the International Tribunal recognised these two different forms of conflict and described them thus:

“[A]n armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring states or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there”<sup>8</sup>

As has been previously stated, it is not here argued that the conflict in Kosovo was or is international in nature, but rather, that it must be considered to be an armed conflict to which the provisions of international humanitarian law concerning internal armed conflicts apply. The above quotation from the Appeals Chamber recognises two factors in the determination that such a conflict exists: the occurrence of protracted armed violence, and the organisation of the groups involved. These factors are also well established in the discussion on the applicability of common article 3 of the Geneva Conventions and Additional Protocol II to the Geneva Conventions, which relate to internal armed conflicts, in the ICRC Commentaries to these instruments.

In relation to these provisions of so-called “Geneva law”, the paramount concern has been

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<sup>8</sup> *Tadić* case, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, IT-94-1-AR72.

to distinguish between a situation of internal armed conflict and the existence of civil strife or internal disturbance, involving isolated acts of violence. Such civil strife is often considered by States to be inappropriate for international attention, and this is indeed the position of the government of the FRY in relation to the Kosovo conflict. Thus, in 1949, during the drafting of the Geneva Conventions, different criteria were evoked to define an armed conflict of a non-international character. The Commentary to common article 3 describes certain elements which could be indicative of the existence of such an armed conflict:

- “(1) That the Party in revolt against the *de jure* Government possesses an organized military force, an authority responsible for its acts, acting within a determinate territory and having the means of respecting and ensuring respect for the Convention.
- (2) That the legal Government is obliged to have recourse to the regular military forces against insurgents organized as military and in possession of a part of the national territory.
- (3) (a) That the *de jure* Government has recognized the insurgents as belligerents; or
  - (b) That it has claimed for itself the rights of a belligerent; or
  - (c) That it has accorded the insurgents recognition as belligerents for the purposes only of the present Convention; or
  - (d) That the dispute has been admitted to the agenda of the Security Council or the General Assembly of the United Nations as being a threat to international peace, a breach of the peace, or an act of aggression.
- (4) (a) that the insurgents have an organization purporting to have the characteristics of a State.
  - (b) That the insurgent civil authority exercises *de facto* authority over the population within a determinate portion of the national territory.
  - (c) That the armed forces act under the direction of an organized authority and are prepared to observe the ordinary laws of war.
  - (d) That the insurgent civil authority agrees to be bound by the provisions of the Convention.”<sup>9</sup>

The Commentary is also careful to emphasise that the absence of such indicators does not, however, render article 3 inapplicable, for “the scope of application of the Article must be as wide as possible.”

During the Diplomatic Conference which led to the adoption of the two Additional Protocols to the Geneva Conventions in 1977, it became clear that the scope of application of the second Protocol would be more restrictive than that of common article 3, which it was intended to supplement. Nonetheless, it is useful to consider also the criteria for the applicability of Protocol II for some guidance on what is considered to be an internal armed conflict. The ICRC Commentary to the Protocol states,

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<sup>9</sup> Jean Pictet (ed.) – *Commentary: Geneva Convention III Relative to the Treatment of Prisoners of War* (International Committee of the Red Cross, 1960).

“First, a non-international armed conflict is distinct from an international armed conflict because of the legal status of the parties opposing each other; the parties to the conflict are not sovereign States, but the government of a single State in conflict with one or more armed factions within its territory.

It is therefore appropriate to raise the question whether all forms of violent opposition to a government, from simple localized rioting to a general confrontation with all the characteristics of a war, can be considered as non-international armed conflicts.

The expression “armed conflict” gives an important indication in this respect since it introduces a material criterion: the existence of open hostilities between armed forces which are organized to a greater or lesser degree. Internal disturbances, characterized by isolated or sporadic acts of violence, do not therefore constitute armed conflict in a legal sense, even if the government is forced to resort to police forces or even to armed units for the purpose of restoring law and order. Within these limits, non-international armed conflict seems to be a situation in which hostilities break out between armed forces or organized armed groups within the territory of a single State. Insurgents fighting against the established order would normally seek to overthrow the government in power or alternatively to bring about a secession so as to set up a new State.”

Through this explanation, the Commentary illustrates the collective character of the confrontation between forces, which cannot consist of isolated individuals without coordination. Moreover, a Sub-Group of the Working Group at the Conference of Government Experts, which was established in 1971 to consider the drafting of the new instruments to supplement the Geneva Conventions, adopted three criteria that had to be met on the side of the insurgents for the recognition of the existence of an internal armed conflict and these were indeed incorporated into the text of article 1 of Protocol II.

- (i) a responsible command;<sup>10</sup>
- (ii) such control over part of the territory<sup>11</sup> as to enable them to carry out sustained and concerted military operations;<sup>12</sup> and

<sup>10</sup> According to the ICRC Commentary,

“[t]he existence of a responsible command implies some degree of organization of the insurgent armed group or dissident armed forces, but this does not necessarily mean that there is a hierarchical system of military organization similar to that of regular armed forces. It means an organization capable, on the one hand of planning and carrying out sustained and concerted military operations, and on the other, of imposing discipline in the name of a *de facto* authority.”

<sup>11</sup> The ICRC Commentary states,

“In many conflicts there is considerable movement in the theatre of hostilities; it often happens that territorial control changes hands rapidly. Sometimes domination of a territory will be relative, for example, when urban centres remain in government hands while rural areas escape their authority. In practical terms, if the insurgent armed groups are organized in accordance with the requirements of the Protocol, the extent of the territory they can claim to control will be that which escapes the control of the government armed forces. However, there must be some degree of stability in the control of even a modest area of land for them to be capable of effectively applying the rules of the Protocol.”



(iii) the ability to implement the Protocol.<sup>13</sup>

These criteria evidently restrict the applicability of Protocol II to conflicts of a certain degree of intensity. Thus, not all cases of non-international armed conflict are covered, as is the case with common article 3.

In light of all of these considerations and bearing in mind that the application of Additional Protocol II, as such, is not being sought, but rather the fundamental protections of international humanitarian law in times of internal armed conflict, such as to trigger the jurisdiction of the International Tribunal in their breach, it is here submitted that only a relatively low threshold of demonstrated “organisation” of an armed group need be satisfied by the forces involved in the Kosovo conflict. There therefore follows a brief description of the Kosovo Liberation Army and a preliminary consideration of the extent of the fighting between these forces and those of the Serbian/FRY authorities.

**(ii) The Kosovo Liberation Army as an organised armed group engaged in protracted armed violence**

While reliable information on the size and organisation of the Kosovo Liberation Army throughout 1998 is difficult to gather, and a certain degree of speculation about its strength and activities has been published in the media, it is possible to establish certain basic facts by utilising press sources, NGO reports and through discussions with professed members or associated persons.<sup>14</sup>

The group calling itself the Kosovo Liberation Army (*Ushtria Clirimtare e Kosoves* in Albanian, referred to as the “UCK” throughout this report) emerged in 1996 and 1997, apparently in response to the mounting repression of the Kosovar population by the Serbian/FRY authorities during the course of the preceding decade.<sup>15</sup> The initial activities of the UCK were limited to isolated attacks on police vehicles and stations in Kosovo and then the targeting of Serbs and Kosovars loyal to the Serbian regime. By the end of 1997, however, it was demonstrating its ability to launch co-ordinated operations over a fairly wide area, indicating the emergence of a high degree of organisational structure, which many speculated came from members based outside of the FRY, particularly in Germany, Austria and

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<sup>12</sup> The ICRC Commentary states,

“Sustained” means that the operations are kept going or kept up continuously. The emphasis is therefore on continuity and persistence. “Concerted” means agreed upon, planned and contrived, done in agreement according to a plan. Thus we are talking about military operations conceived and planned by organized armed groups.”

<sup>13</sup> According to the ICRC Commentary,

“This is the fundamental criterion which justifies the other elements of the definition: being under responsible command and in control of a part of the territory concerned, the insurgents must be in a position to implement the Protocol. The threshold for application therefore seems fairly high. Yet apart from the fact that it reflects the desire of the Diplomatic Conference, it must be admitted that this threshold has a degree of realism. The conditions laid down in this paragraph 1, as analysed above, correspond with actual circumstances in which the parties may reasonably be expected to apply the rules developed in the Protocol, since they have the minimum infrastructure required therefor.”

<sup>14</sup> Members of the team researching the present report were granted access to one of these bases in Kosovo in early December 1998 and spent two days discussing the organisation and activities of the UCK with various of its members.

<sup>15</sup> See further below in Section III. A.

Switzerland. The looting of Albania's military depots in 1997 boosted the availability of large supplies of weapons and other equipment to the UCK and other groups, and the reigning anarchy in northern Albania facilitated its ability to move personnel and supplies freely.

Sources indicate that, at the beginning of 1998, the UCK had approximately 500 active members, which then swelled into the several thousand towards the summer. Some sources estimate that the number could have reached 12-20,000 during June as the Kosovar population became more and more disillusioned with the effectiveness of their struggle for increased autonomy through non-violent methods.

The American-Albanian community provides important financial and logistical backing to the UCK and its North American based organisation purchases equipment, especially army fatigues, other clothing necessities and, apparently, arms, through its contacts and then has them transported to Kosovo. Communities in Switzerland and Germany are the other two main channels of financial support and a foundation which translates as "the Motherland calls you" is utilised to raise funds. Sources allege that bank accounts in Switzerland were used to centralise donations, although there are indications that some of these were closed in August. In addition, there have been claims that the taxes imposed by the Kosovar "parallel government",<sup>16</sup> both within Kosovo and abroad, have also been utilised latterly for UCK activities.

The soldiers of the UCK wear various types of uniforms, often depending on availability. These do, however, all bear the insignia of the black double-headed eagle on a red background. Through its network of support, these forces are mostly equipped with light weaponry and some sophisticated telecommunications equipment, including satellite telephones. According to a prominent fund-raiser for the UCK in New York City, the UCK has access to a variety of different weapons, including AK 47s, M 48s, 50 mm calibre guns from Pakistan and Bulgaria, anti-aircraft and anti-tank rockets, Chinese rocket launchers, and 75mm cannons. A UCK member based in Likovac further stated that they had access to kalashnikovs, sniper rifles, and 62 and 82 mm mortars, which were brought in from northern Albania, having originated in the United States or Montenegro. Furthermore, there are a number of UCK training camps and bases in northern Albania, as well as many, of a more mobile nature, throughout Kosovo.

UCK sources maintain that strict discipline is kept within the Army and that if a soldier refuses to execute an order or take part in a mission, he is jailed in camp. Furthermore, a military tribunal with an appeals chamber has been created in order to adjudicate claims of misbehaviour or any other violations of the military code. To this effect, a formal military code has reportedly been drafted.

At the end of June 1998, an experienced international monitor in Kosovo observed that the UCK appeared to have created a military structure with distinct levels of command and that UCK military police controlled roads and guarded headquarters locations. This observer assessed that the UCK had achieved a significant level of control of an area west of Pristina and were utilising the local infrastructure of small roads to great effect. In his view, a greater degree of strategy and planning had gone into the taking of territory than had previously

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<sup>16</sup> See further below in Section III. A.

been thought possible and the co-ordination between different UCK units was evident, particularly when required to mount a rapid response to block the road that leads west out of the Drenica region to Klina, as, in the space of two hours, a series of obstacles had been placed on the road and defensive positions dug.

Indeed, an individual associated with the UCK has asserted that its hierarchy and structure has been a preoccupation since its inception. Thus, the region for UCK activity was divided at an early stage into 5 zones, being: Zone 1- Dukagjin; Zone 2 - Drenica; Zone 3 - Pashtriku; Zone 4 - Llapi (near Pristina); Zone 5 - Moravia. According to this individual, the Supreme Command of the entire province was composed of seven people. Each zone has an operative command with around five commanders, although this number may vary from zone to zone. A UCK member has also claimed that the structure per region was defined strictly, with only one “Shtabi Suprem”, and units break down into brigades, “compounds”, and “togs” (apparently equivalent to platoons). The commanders head the brigades and together with their counterparts from other regions they discuss the strategies to be adopted.

As will become apparent in the chronology of events laid out below, before the Serbian/FRY offensive at the end of July 1998, the UCK controlled significant parts of the central regions of Kosovo, from the Drenica area south to Malisevo. Although the area west of the road between Djakovica and Pec was never completely under UCK control due to the strong presence of the Yugoslav Army and police forces, it nonetheless remained strong in this region, capable of relatively free movement and access to Albania. Subsequently, the UCK lost much of its gained territory, although it continued in its military operations, using its local networks and infrastructure.

Initially, the UCK had no representation amongst the plethora of political actors in Kosovo. Indeed, the leader of the biggest Kosovar political party, Ibrahim Rugova, refused to even acknowledge its existence. This position did, however, change as the conflict in Kosovo ensued and Adem Demaci, the popular leader of the Parliamentary Party of Kosovo, met with its representatives in February 1998, and subsequently became its political spokesman. Nonetheless, it was never altogether clear who was the real “voice” of the UCK and a variety of figures claiming some position of leadership on the political level have emerged.<sup>17</sup>

It would seem that the UCK was not and is not a singular, unified body, with one simple hierarchy. Instead, it appears more likely that it is formed by an interlinked system of regional centres, organised around a small, core group of individuals, who have largely been living abroad. As the conflict has progressed, various commanders have emerged, many with previous experience in the former Yugoslav People’s Army, and new recruits have received rapid training in the field. Despite these regional divisions, however, each of the groups has been fighting with a common goal and with a certain level of overarching strategy. The demonstrated level of co-ordination and structure, it is submitted, is sufficient to satisfy the requirement of being an organised armed group, or groups, for the purposes of the existence of an armed conflict.

There can be no debate on the satisfaction of the second requirement of an armed conflict, that of “protracted armed violence”, in the Kosovo context. Numerous press reports,

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<sup>17</sup> Most significantly, Bardyl Mahmuti and Jacup Krasniqi.

government statements, United Nations resolutions and declarations from regional and international organisations have condemned the violence in Kosovo, from the beginning of the clamp-down by Serbian/FRY forces in February 1998, until the present time. The level of fighting between the UCK and the Serbian/FRY authorities has far exceeded the isolated or sporadic attacks characteristic of a civil disturbance and the massive deployment of special police forces, as well as Yugoslav Army units, utilising a sophisticated array of weaponry and equipment, indicates the truly military nature of the response to the UCK mounted by the regime in Belgrade.

Indeed, on 31 March 1998, the UN Security Council imposed an arms embargo on the FRY, utilising Chapter VII of the UN Charter. Moreover, by 23 September, the Security Council was calling for an immediate cessation of hostilities and the maintenance of a cease-fire in Kosovo, indicating the widespread view that what was occurring in the province was no less than an armed conflict.

The present report does not, however, seek to make a determination of when exactly this armed conflict commenced and, in an excess of caution, avoids an extensive discussion of events which took place in the first half of 1998, concentrating instead on the campaigns of July, August and September. It must be emphasised that the purpose of this limitation is merely to ensure that there can be no question as to the jurisdiction of the ICTY at least over some of the events which occurred in Kosovo, and is not intended as a judgement that there was not an armed conflict, in the legal sense, prior to this time, or that the ICTY should not investigate, prosecute and punish any violations of international humanitarian law which might have been committed earlier in the year.

### **III. CAMPAIGN BY THE SERBIAN/FRY FORCES**

While it is not possible to document every incident during the course of the conflict in Kosovo which might be considered to constitute a violation of international humanitarian law, the current report seeks to provide a picture of the campaign mounted by the Serbian/FRY authorities and their forces during 1998. By engaging in a systematic review of several incidents which took place in the chosen time period, in the context of the conflict as a whole, the report demonstrates that these events must be regarded as part of a wider policy on the part of the Serbian/FRY authorities. The Belgrade regime, including President Milutinovic of the Republic of Serbia and President Milosevic of the FRY, sought to crush the Kosovo Liberation Army through direct attacks on their bases and strongholds, as well as the targeting of their support network among the civilian population by instigating a campaign designed to terrorise the Kosovar population as a whole. This fundamental aim dictated all of the events which occurred in Kosovo and involved the commission of serious violations of international humanitarian law by personnel acting under the authority of the leaders of both the Republic of Serbia and the FRY.

As is demonstrated below, the course of events in Kosovo, from the spring, through the summer and into the autumn of 1998 can only be regarded as a military campaign on the part of the Serbian/FRY forces under the control of both Serbia and the leadership of the FRY. The most sensational atrocities that have characterised this campaign and which have been reported sporadically in the media, as well as the less notorious violations of

international humanitarian law which have occurred on a widespread basis, cannot be regarded as the mere consequence of the excesses of “rogue elements” within the security and military personnel present in Kosovo and charged with neutralising the threat of terrorism. The following summary of events from March and April through to October instead reveals the stark reality of a sequence of attacks and operations conforming to a large degree to a pattern, which could only have been directed by a central policy and source.

Before entering into a more detailed discussion of the course of the Serbian/FRY campaign from April to October 1998, it is useful to briefly outline the more recent political and historical developments within the FRY and Kosovo, which must be understood in order to place the current conflict in context. It should be emphasised, however, that such an analysis is in no ways an attempt to explain the causes of the conflict, nor to assess the validity of the Kosovars’ claim to increased autonomy or independence. The present report is concerned solely with the methods utilised by the Serbian/FRY authorities to pursue their policies and no conclusions should be drawn beyond those that concern the existence of violations of international humanitarian law. It should also be noted that, for reasons of practicality, place names cited throughout the report are generally given in the Serbian version, although a few may appear in the Albanian.<sup>18</sup>

## **A. Background**

Under the 1974 Constitution of the Socialist Federal Republic of Yugoslavia (SFRY) Kosovo had the status of an autonomous province within the Republic of Serbia, one of the six republics making up Yugoslavia. Despite the fact that Kosovo lacked the formal status of a republic, the 1974 Constitution granted it a large measure of autonomy and, along with Vojvodina, it was a constituent member of the federation, having its own Assembly and seat on the Federal Parliament and Presidency. Despite these measures, the Kosovar population sustained an aspiration to achieve recognition as a republic, with equal rights and privileges to the others. In the census of 1981, 77.4% of its population (1,226,735) were registered as ethnic Albanian and 13.2% (209,498) as Serbs. While more up to date figures have not yet been compiled, most estimates indicate that, due to the much higher birth rate among the Albanian population and recent migrations, around 90% of the population now are considered ethnic Albanian.<sup>19</sup>

Throughout the 1980s the Kosovar population became increasingly vocal, through protests and demonstrations, in its demands for better living conditions as well as republican status. Many people were arrested and sentenced to long terms of imprisonment during this period and prominent Kosovar members of the Communist party were removed. At the same time, towards the end of the 1980s, the Kosovo Serb population, feeling increasingly threatened by these events and being subjected to a concerted propaganda campaign from Belgrade itself, demanded the imposition of measures to prevent what they considered to be attacks upon Serbs within Kosovo. This escalation in tension resulted in a petition

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<sup>18</sup> The choice of language is not intended to carry any implication and has been dictated solely by the availability of detailed maps and the toponymy used by international observers.

<sup>19</sup> See “Kosovo Spring: The International Crisis Group Guide to Kosovo”. The term utilised throughout the present report for the ethnic Albanian population is “Kosovar”.

presented to Belgrade in 1987 and signed by 60,000 Kosovo Serbs, which called for the removal of the Albanian leadership of Kosovo. At precisely this time, Slobodan Milosevic, head of the Serbian Communist party, was consolidating his power and it was the very issue of Kosovo which he utilised to galvanise popular support. In a now infamous speech given in Kosovo Polje, on 24 April 1987, he promised the Kosovo Serbs that no-one would be allowed to “beat” them again.

Milosevic swiftly ensured the dismissal of two of Kosovo’s top officials and replaced them with persons loyal to himself. The demonstrations and riots which resulted from this were met with the imposition of a partial state of emergency in 1989 and the Kosovo Assembly was coerced into accepting a new constitution, returning their powers to Belgrade. In the unrest which followed, several demonstrators were killed on the streets of Pristina and elsewhere across the province.

Despite this abrogation of autonomy, the Kosovar population established their own parallel State structures and proclaimed their own Constitution of the independent Republic of Kosovo in 1990. The only State to recognise the Republic of Kosovo, however, was Albania, in 1991. Thereafter, the Kosovars organised elections for a parliament, the majority of seats going to the Democratic League of Kosovo (LDK) and its leader, Ibrahim Rugova, became their President. The parliament was, however, prevented from convening due to concerns about safety from the Serbian police.

Since 1989, the Serbian government in Belgrade, headed by now President Milosevic, imposed a series of measures which resulted in a state of apartheid with Kosovo. Serbs were prohibited from selling property to the Kosovars and were encouraged to move into the province. A uniform school curriculum was imposed which removed the teaching of Albanian culture, language and history and, subsequently, funding was cut off to Albanian language schools. Similarly, in the field of university education, Kosovar students and professors were prevented from continuing their classes and many teachers were dismissed. In addition, in the health-care system, large-scale dismissals of Kosovar professionals were inflicted. In response, the Kosovar parliament established a parallel system of education and health-care, financed largely by way of taxes imposed on the many Kosovars who live abroad, mainly in Switzerland, Germany and Scandinavia.

Furthermore, after the removal of the majority of Kosovars from the police forces within the province, the Serbian police adopted a *modus operandi* characterised by intimidation, arbitrary arrest and mistreatment. Trials of those considered to be “separatists” have been swift and often resulted in long terms of imprisonment. Moreover, many of those interned have described various forms of ill-treatment and torture inflicted upon them. Indeed, in December 1996, the United Nations General Assembly passed a resolution demanding an improvement in the human rights situation in Kosovo, the release of political prisoners and the establishment of genuine democratic institutions.<sup>20</sup> The UN Special Rapporteur on Human Rights in the former Yugoslavia has also condemned the torture and mistreatment of persons in custody in Kosovo.

Despite the harshness of the Belgrade regime and the denigration of the Kosovar

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<sup>20</sup> A/RES/51/111.

community, the LDK, and particularly its leader, the elected president of Kosovo, Ibrahim Rugova, have maintained a policy advocating the independence of Kosovo through non-violent methods. Until recently, the majority of Kosovars appear to have supported this stance of their leader. However, the prevailing attitude began to change by 1997, when a group calling themselves the Kosovo Liberation Army (UCK) claimed responsibility for a series of attacks on Serbian police officers and Albanians loyal to Belgrade. In response, the police imposed even harsher measures of restriction on the Kosovar community and arrested and imprisoned many individuals on suspicion of being members of the UCK. By the end of 1997, the UCK were launching increasingly bold and well co-ordinated attacks on police barracks and vehicles and declared themselves publicly to be fighting for the independence of Kosovo.

The crackdown on the UCK and escalation into protracted conflict came in February and March 1998, when Serbian police forces (MUP), including special units, mounted several operations within the Drenica region, between the municipalities of Srbica, Klina and Glogovac. Instead of crushing the aspirations of the UCK and their support among the civilian population, these attacks and the casualties thus inflicted served to further incense the Kosovar community and convince them of the uselessness of the non-violent approach of the LDK. More and more young men and women began to join the UCK and the majority of the population became open in its approval of the movement. In turn, large numbers of MUP infantry, as well as special forces, were sent into the province from elsewhere in Serbia, and the Yugoslav Army (VJ) was mobilised along the border with Albania.

## **B. Method of Operation of the Serbian/FRY forces in Kosovo**

From the information gathered, it is clear that a priority for the Serbian/FRY forces in the summer of 1998 was to take control of the major roads which criss-cross Kosovo. Having done this, it was then possible to divide the area into segments which could be systematically “swept” in order to destroy any UCK bases or strongholds and terrorise the local Kosovar population into submission. These operations in each segment of the territory bear remarkable similarity, indicating a significant amount of co-ordination and planning.

Generally, the majority of troops used in each operation were from the Ministry of Interior police of the Republic of Serbia (MUP) and were simply ordinary police infantry (often referred to as the *Milicija*), dressed in the dark blue camouflage combat uniforms of the police. Other, more specialised, units of the MUP were also used to augment these ordinary forces, such as Special Police Units (*Posebne Jedinice Policije*, “PJP”), brought in from other parts of the FRY, and smaller units of Special Anti-terrorist forces (*Specijalne Antiteroristicke Jedinice*, “SAJ”). Within the region, the main MUP bases (SUPs) were in Pristina, Kosovska Mitrovica, Pec, Djakovica, Prizren, Urosevac and Gnjilane, and there were also many stations and sub-stations in numerous smaller towns and villages, each with their own commanders.

In addition, it is clear that elements drawn from the State security branch of the Serbian Ministry of Interior were also involved in Kosovo. These “secret” police formations are more difficult to identify and trace, due to their lack of public presence or identifiable uniforms. Nonetheless, the available information suggests two groupings – the plain-clothes

agents of State security (DB), who are ordinarily housed in the regular police stations throughout Serbia alongside their colleagues in the MUP and are not involved in combat-style operations, and the State security special operations units (*Jedinica za Specijalne Operacije*, “JSO”, also sometimes referred to as the Red Berets), which are irregular formations constituted as need dictates and who wear a variety of uniforms, depending much on availability and group affiliations. These Serbian forces, as organised in the period relevant to the present report,<sup>21</sup> may be simply represented on a diagram as follows:



In overall command of the local police in Kosovo at the relevant time was General Sreten Lukic, who clearly had the formal authority to control the MUP forces on the ground and with whom international organisations, including KDOM observers, communicated concerning matters of security for themselves as well as for the local Kosovar population. The members of the PJP were generally drawn from the ranks of the ordinary police throughout the FRY and were dispatched to Kosovo for short periods on a rotation basis in order to boost the local police forces. General Lukic would thus have had nominal authority over these forces also, for the duration of their presence in the province. The SAJ, however, is a much smaller group of elite MUP personnel, established in 1995, originally under the command of Radovan Stojcic, who are utilised in specific situations in the role of “commandos”. These forces generally wear dark, blackish, uniforms and balaclavas, and have sophisticated equipment and weaponry at their disposal. Once again, there is some speculation about who is in command of the SAJ forces on the ground, and it would appear unlikely that this would be a local MUP officer. The available information, however, names General Obrad Stevanovic as the present commander of all SAJ formations, including those in Kosovo. Sources have also revealed that the overall Chief of the MUP forces, Vlastimir Djordevic, was himself in Kosovo during the relevant period, ensuring the co-ordination of operations.

As stated above, public information on the JSO forces is relatively limited. The transient

<sup>21</sup> It should be noted that recent changes within the hierarchy of the Ministry of Interior, as well as in the Yugoslav Army, have affected the individuals incorporated into the structures of command. Nonetheless, the present report seeks only to represent the position at the time relevant to the events described



nature of their formations and variety of their dress appears, indeed, to be designed to obscure and confuse. Nonetheless, it is the assessment of the team that these forces were present during many of the operations described in the following sections of the report and, in particular, they appear to have maintained a strong presence in the western regions of Kosovo. Key to an understanding of the role of these forces is that “paramilitaries”, as such, were not involved in the conflict, for every “soldier” operating in Kosovo was nominally incorporated into a formation of security forces within the responsibility of the Serbian authorities. Thus, unlike during the conflicts in Bosnia and Herzegovina and Croatia, no private armies were permitted. However, there is no doubt that many of the paramilitary groups which took part in the aforementioned conflicts, were, in fact, also involved in Kosovo and provided the substance of the JSO. Additionally, there appears to have been some overlapping between members of the SAJ and members of the JSO. Thus, witnesses to many of the operations by Serbian/FRY forces in Kosovo recount the presence of soldiers with “painted faces” and others with distinctive, large knives, or with shaven heads, or red scarves. This indicates different groups of “soldiers”, with their own internal structure and hierarchy, brought in under the auspices of the JSO. It would further appear likely that these groups were involved in those operations which resulted in the more notorious atrocities of the conflict and, moreover, that the choice of a particular group for a specific operation would have been sufficient to indicate the level of destruction and/or loss of life that was required by those directing the campaign, without them having to give explicit orders. The one individual whose name arises many times as being a, or the, commander of the JSO in the Kosovo conflict is Franki Simatovic, whose men were designated “Frenki’s”.<sup>22</sup>

While it is not possible to further elaborate on the structure of the JSO, without more sophisticated, technical methods of information gathering, it is clear that they came under the overall authority of the then Chief of State security, Jovica Stanisic, who was also the National Security Adviser to President Milosevic of the FRY.<sup>23</sup> Indeed, it appears that, for a certain period of time, Stanisic was himself present in Kosovo, to maintain control over the diverse groupings within the JSO and ensure their co-ordination and co-operation with the other Serbian/FRY forces involved.

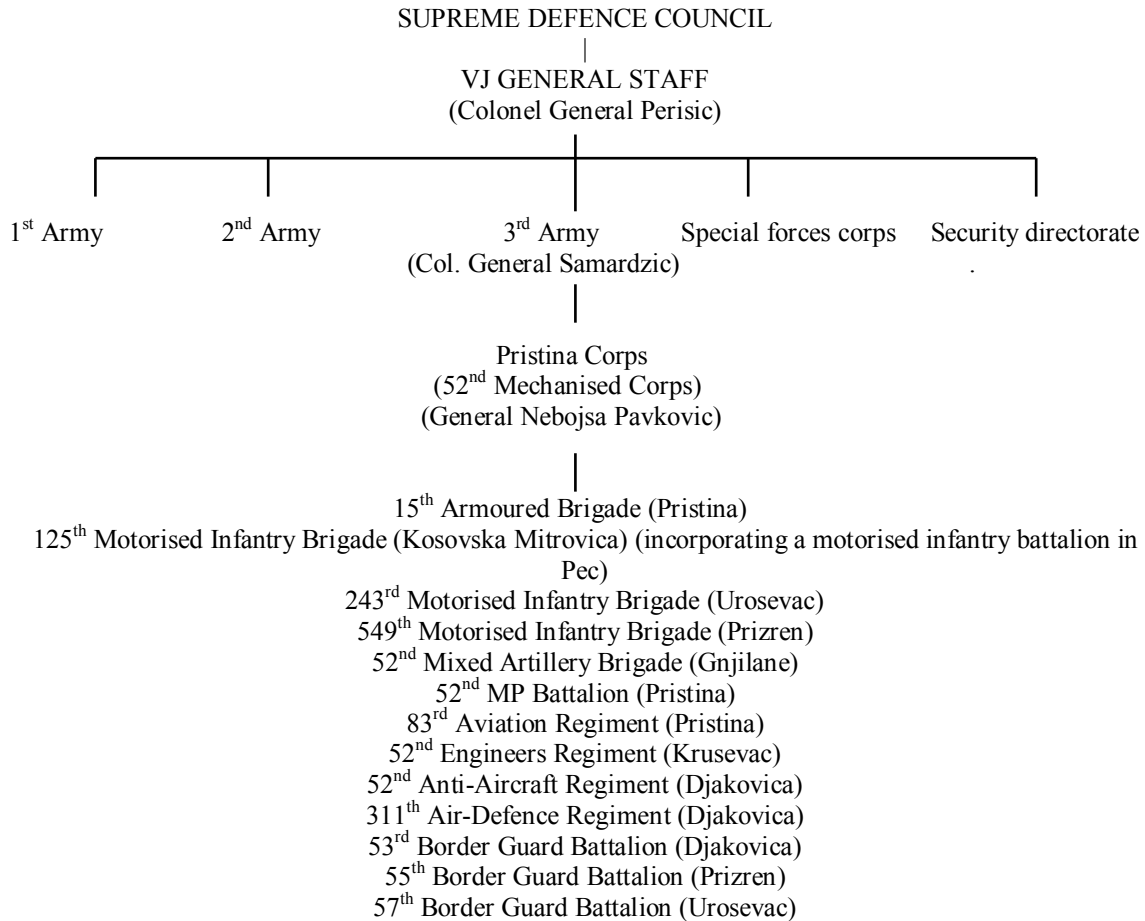
These MUP and State security forces themselves possessed considerable weaponry and equipment, but it is also the case that the Yugoslav Army (“VJ”) was present in the interior of Kosovo, contrary to its constitutional role to protect the borders, and provided much in the way of support to the MUP, as well as conducting its own operations, particularly in the border regions. The VJ is a federal institution, born out of the previous Yugoslav National Army (“JNA”) of the SFRY and now subject to the ultimate authority of the Supreme Defence Council, headed by the President of the FRY. At the time relevant to the present report, the VJ was comprised of 3 Armies and a Special Forces Corps, all under the formal command of the Chief of the VJ General Staff, Colonel General Momcilo Perisic. The territory of Kosovo comes within the area of responsibility of the 3rd Army, based in Nis, which was, in turn, under the command of Colonel General Dusan Samardzic. Within the

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<sup>22</sup> In an interview with Human Rights Watch researchers, a Serbian policeman who had been active in Kosovo stated, “Frenki’s boys kill everything. Believe me, you do not want to see them.” See, “A Week of Terror in Drenica: Humanitarian Law Violations in Kosovo”, published by Human Rights Watch on 6 February 1999.

<sup>23</sup> Milosevic became President of the FRY in July 1997, after two terms as President of the Republic of Serbia

3rd Army, the units forming the Pristina Corps, which was commanded by General Nebojsa Pavkovic, were those which maintained a presence in Kosovo itself and were involved in combat operations. The organisation of these forces can be represented diagrammatically as follows:<sup>24</sup>



It is generally felt that the VJ had fallen out of favour within the FRY State hierarchy, and particularly with President Milosevic, by the time of the Kosovo conflict, and preference in terms of resources and prestige was being given to the MUP and State security forces. Nonetheless, the VJ remained a well-equipped, modern army, possessing M-84 and T-55 tanks, M-80 armoured fighting vehicles, BOV-M armoured personnel carriers, BOV-3 self-propelled anti-aircraft guns and Praga armoured trucks. There was also clearly some dispute about the role of the VJ in Kosovo, with the Montenegrin President refusing to allow Montenegrin soldiers to serve in the province and a rift becoming apparent between President Milosevic and Colonel General Perisic, who was subsequently removed. Nonetheless, the VJ activity within Kosovo is undeniable.

Numerous witness accounts, as well as reports from international organisations on the

<sup>24</sup> Locations of brigades, regiments and battalions represent the position in November 1998.

ground, reveal that the pattern of attack of these combined MUP and VJ forces consisted of a process lasting three or four days. Having chosen a particular village or area for action,<sup>25</sup> the MUP and VJ forces would approach with armoured vehicles, often including tanks, seal off the roads leading to the area, and set up positions around or on two sides of the area. From these, the area would then be shelled over a continuous period of time, often a day and a night. This shell-fire was not generally designed to inflict substantial damage on the village or area itself, although civilian casualties often resulted, but to encourage the local population to leave their property and homes. For this purpose, the attacking forces would generally leave a corridor open to allow the fleeing population to move in the desired direction.

After this process was largely completed, the MUP infantry “troops” would enter the village or area and move from house to house, searching for those residents who had chosen to remain in their homes. Such persons would be gathered together in a central area and the men may be separated from the women and taken to a nearby police station for further questioning and detention. The accounts of the witnesses to such events relate the threats, intimidation and physical violence to which they were subjected during this process. At the same time, the police forces in the villages would engage in large-scale looting and destruction of property. Any items of value were taken away on trucks and houses and crops were often subsequently set on fire and livestock killed. In addition, snipers would often be located throughout the relevant area and would often-times fire upon those of the local residents who had been allowed to remain in their homes, or who had been released. After this phase of the operation, the majority of the forces involved would be withdrawn and only a small police contingent left behind to patrol the area and continue the intimidation of the population over the following days.<sup>26</sup>

Sometimes, the displaced Kosovar residents returned to their homes relatively swiftly following such operations, although often those who had fled were hesitant to return, fearing further attack. These preferred instead to remain with friends or relatives in other parts of Kosovo, or even camp out in the open over a prolonged period. It was observed

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<sup>25</sup> It has been commented by several persons during the research for the present report, that operations or attacks upon particular locations would often be commenced by the Serbian/FRY forces during the weekends, presumably on the assumption that international observers and other groups would be less active at the weekends.

<sup>26</sup> On the basis of extensive field research, a recent report by Human Rights Watch also confirms this pattern. The report – “A Week in Terror in Drenica” – states:

“The experiences related by people from various villages that have been destroyed in Kosovo present a strikingly similar pattern. First, a village was surrounded by Yugoslav forces, sometimes after fighting with the KLA, and soon thereafter shelling of the village began, usually by the army. Villagers would flee to escape the shelling, leaving the village abandoned except for those unable to flee. Time and time again, villagers would tell Human Rights Watch how they watched from a nearby vantage point as their village was systematically looted and burned by the Serbian police. The testimonies of these witnesses is corroborated by Human rights Watch’s own observations: police forces were repeatedly seen entering areas as military forces were withdrawing. Although the main forces of the army have generally been less involved in the most egregious atrocities committed in Kosovo – maybe because they have focused on destructive long-range bombardment rather than close combat – the pattern of operation described confirms close coordination between the Yugoslav Army and the various police units involved in the Kosovo conflict.”

by KDOM in mid August that the majority of destruction, throughout Kosovo, was concentrated along the main roads and that, generally, the smaller villages that were hit were virtually uninhabitable but the larger towns could be reinhabited with nominal repairs. From discussions with local displaced Kosovars, however, it appeared that security was more of an issue for them than housing availability and was the primary factor precluding return to their homes.

By 6 October 1998, the United Nations High Commission for Refugees (“UNHCR”) estimated that 294,100 people had thus been displaced by the fighting: 200,000 remaining within Kosovo; 20,000 being elsewhere in Serbia; 20,500 having travelled over the border into Albania; 41,800 to Montenegro; 6,800 to Bosnia and Herzegovina; 1,000 to FYROM and 2,000 in each of Turkey and Slovenia.<sup>27</sup> Many of the internally displaced have been forced to move from area to area within Kosovo, as the offensive operations of the Serbian/FRY forces progressed, carrying with them only those of their belongings which were easily transportable. By the approach of winter, however, it seems that the overwhelming majority of displaced persons were living within permanent structures, generally the homes of their extended families, rather than in the open, and it is largely due to this feature of the structure and interrelations of Kosovar society that a more massive humanitarian disaster was averted at this time.

Having thus identified the general pattern of attack and the Serbian/FRY forces involved in the campaign, there follows an outline of events from March to the beginning of October, before attention is focused on some specific examples of the serious violations of international humanitarian law which were committed by these forces. It should be noted that, while the summary seeks to chart the general progression of the campaign and mentions many towns and villages throughout Kosovo, it is in no way an exhaustive description of the damage or casualties inflicted. Instead, what is sought to be developed is a broad picture of trends and movement, as well as to leave no doubt as to the level of organisation and co-ordination required for such a campaign to have been mounted. It must also be emphasised once again that the present report does not attempt to chart the violations of international humanitarian law committed by the UCK, nor the various attacks and operations mounted by it.

### **C. Chronological summary: March – October 1998<sup>28</sup>**

The region of Drenica, in the centre of Kosovo, being a known stronghold of the UCK, was the first to be targeted by the Serb security forces. In February and March 1998, operations were mounted by large numbers of MUP troops, including special units, who attacked Kosovar families in Prekaz, Cirez and Likosane, resulting in the deaths of 83 people as well as substantial destruction of property.<sup>29</sup> Witnesses and the media report the arrival of MUP

<sup>27</sup> UN Inter-Agency Situation Report 66, 30 September - 6 October 1998.

<sup>28</sup> This chronology is drawn largely from the reports of the European Community Monitoring Mission and subsequent KDOM reports, as well as from some press sources. The spelling of names is generally in the Serbian, although some are necessarily in Albanian. Inaccuracies in spelling have been sought to be reduced as much as possible.

<sup>29</sup> See “Humanitarian Law Violations in Kosovo”, a report prepared by Human Rights Watch in October 1998. See also, Military Watch, 12 March 1998 (vol. 3.5) and “Spotlight on Kosovo, Human Rights in times of Armed Conflict”, issued by the Humanitarian Law Center, in Belgrade, in May 1998.

reinforcements in the town of Srbica in mid-March, who were stationed at the ammunitions factory located there. Towards the end of the month, these forces were utilised in a number of further operations in Drenica, while access to the area was cut off to international monitors. Despite this restriction, the European Community Monitoring Mission (ECMM), who conducted patrols throughout the FRY, as well as in Albania, Bosnia and Herzegovina, Croatia and FYROM, noted a police convoy entering the Drenica region on the road from Pristina to Pec on 31 March, including one armoured personnel carrier (APC), accompanied by a VJ truck containing soldiers with the appearance of being conscripts.

At the beginning of April, the Drenica region was reopened to the ECMM, who reported that the police (MUP) did not appear to be in control of much of the area, although they were continuing to increase their presence and create heavily fortified bunkers and checkpoints on the major roads. All the police thus encountered were dressed in standard blue uniforms bearing the "milicija" insignia and some were clearly special units, who wore distinctive shoulder flashes with the PJP emblem. On patrol on 4 April, the ECMM noted that the village of Donje Obilic, to the south west of Srbica, in Drenica, bore the evidence of fighting and appeared deserted, local police complaining of attacks by the UCK. The ECMM further noted that the UCK seemed to have established a strong presence and concluded that by mid April they controlled a corridor from Sedlare through Lapusnik to Rezala. The VJ had also established a camp east of the road from Pristina to Kosovska Mitrovica by mid-April and, on 23 April, the ECMM observed four VJ tanks and a number of APCs about two kilometres east of Komorane. Reports of action by MUP forces on 21 April, in the area of Lausa, described the shelling of villages by armoured vehicles, possibly including tanks.

In the region bordering Albania, particularly around Djakovica, the ECMM also reported a clear build up of police and military forces. The VJ had established a semi-permanent base at a factory north of Djakovica and by the end of April there was some firing upon villages in the Decane area. Local press sources confirmed such attacks, particularly on the villages of Ponoshec and Morina.

In addition to the operations in Drenica and on the border around Decane, towards the end of April offensive operations by the Serbian/FRY forces had spread to the area of Dukagjin, around Jablanica. According to the local press, many villages were being subjected to shelling from a distance while the surrounding roads were blocked in order to prevent access to journalists, international observers and organisations and the distribution of humanitarian aid. The press further reported that the town of Klina was being targeted by Serbian/FRY forces at the end of April, along with Sicevo, to the east of Klina, and Resnik.

It seems that the UCK had a base in Glodjane, in the north-east Decane area, from which it had easy access to weapons being brought across the border from Albania. At the end of April, the ECMM noted that it appeared to be gaining in strength, particularly in the area of Lausa and south of the road from Srbica to Klina. However, at the beginning of May there were many reports that Serbian/FRY forces were conducting operations in the border area, with the apparent intent to divide the UCK strongholds around Decane from those in Drenica, as well as to separate them from Albania. Official sources maintained that all clashes in the border region were the consequence of efforts to prevent weapons from being smuggled into Kosovo by Albanian terrorists, although the Kosovar press continually

reported indiscriminate attacks on civilians and their homes by police and army forces. The presence of MUP forces in Djakovica had increased greatly and many were also reported to be stationed in a health centre in Decane town. According to these same reports, combined police units engaged in the shelling of several villages along the border area, including Babaloc, Erec and Gramacel and these attacks continued and increased in intensity into May.

On 16 May, after the first meeting between President Milosevic and Ibrahim Rugova, operations intensified and moved eastwards to the area between Djakovica and Orahovac, where police forces, including special police forces with armoured vehicles, targeted several villages. The town of Zrze, on the main road and a major crossing point, was observed by the ECMM to be deserted and police to be moving between the houses, which clearly bore some shell damage as well as being burnt. Local media sources confirmed the fighting in and around Zrze, as well as around Lapusnik, Srbica, Junik and Djakovica.<sup>30</sup>

At the end of May, the town of Djakovica was sealed off to outside observers and organisations for a week. From Albania, however, it could be observed by ECMM that many of the border villages were being shelled over a period of several days. Once again, the press reported several casualties among the local Kosovar population as well as the expansion of the area of offensive action. It was stated that, starting on 23 May, the Klina municipality was the focus of many attacks. Additionally, in the town of Ljubenic, between Pec and Decane, eight members of a Kosovar family were reported to have been executed.<sup>31</sup>

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<sup>30</sup> See also, Report of the Secretary-General Prepared Pursuant to Resolution 1160 (1998) of the Security Council, 4 June 1998, S/1998/470, in which the Secretary-General commented upon the situation in Kosovo in the following terms:

“The activities of the Yugoslav Army, which maintains a large presence in Kosovo, have centred on securing the borders. Fighting continues between the Government forces and armed Kosovo Albanians in several areas, including Drenica and the Ponosevac region, near the border with Albania.

The upsurge in violence since mid-May has been characterized by an increase in civilian casualties and the use of heavy weapons against non-combatants. Security incidents have spread beyond Srbica and Glodovac to Klina in the Drenica region, and to the west and south into Decani and Djakovica municipalities, bordering Albania. ... During recent police operations in Klina, Ponosevac and Decani municipalities, a number of casualties on both sides were reported. According to Government sources, the clashes were provoked by the KLA attacks. Several villages were reportedly razed or burned, and there are reports that police summarily executed a number of ethnic Albanians. ...

The intensity of the conflict significantly increased in recent days as a result of a major Serbian police offensive operation in the south-western part of Kosovo, adjacent to the Albanian border. The most recent reports indicate extremely heavy fighting between the Serbian police and armed groups, believed to be KLA, resulting in the loss of dozens of lives. Some observers indicate that the Serbian forces used heavy weaponry, including mortars and possibly artillery. There are also reports that several villages in the area and a number of houses in the town of Decani have been burnt and destroyed. It was not possible to verify these reports as access to the area has been restricted.”

<sup>31</sup> See also, “Spotlight on Kosovo, Human rights in times of Armed Conflict”, published by the Humanitarian Law Center, in Belgrade, in May 1998, which states that,

“at least five ethnic Albanians were killed [in Ljubenic] on 25 May 1998. All the victims were men whose ages ranged from 23 to 68. All were members of the Hamzaj family and were killed in their homes. The bodies were found in the yard shared by the Hamzaj family,

Also at the end of May, there was an apparent increase in the police forces stationed in Pec itself, locals reporting that these included special forces of both the MUP and the VJ. By this time, the zone of operations extended from Rausic down to Djakovica.

In addition to shelling and clashes between the Serbian/FRY forces and the UCK, it was becoming apparent that large-scale looting was being engaged in by the MUP. Once a village was abandoned by its inhabitants, troops would take whatever property of value they could find and it is believed that this practice was permitted as a method of supplementing the insufficient wages paid to the ordinary MUP forces. Furthermore, after such plunder of property had taken place, houses were often set on fire by these same MUP forces.

At the beginning of June, the offensive in the border region, between Decane and Djakovica, continued. Rastavica was observed by the ECMM being shelled and VJ troops were seen torching a house. Smoke was also seen coming from Prilep and reports from local sources stated that several houses in Junik were in flames. Allegations that helicopter gunships were being used in the border area to fire upon fleeing refugees and VJ planes used to attack villages, began to be made in the Kosovar media. Popovac, Smonica and Morina were being subjected to artillery fire, including from tanks, and it appeared that the UCK were returning fire to a limited extent. By 9 June, the VJ operation in this area appeared to be reducing, although fires were clearly observed to be still burning in Popovac and VJ tanks were patrolling throughout. The town of Decane itself bore the evidence of heavy fighting, many houses being destroyed. Albanian border guards reported to the ECMM that VJ forces had been firing with tanks and mortars and using illuminating devices at night to light up their targets along the border. In addition, on 15 June, ECMM monitors stationed in Albania observed the shelling of the border villages of Novo Selo, Zndrelle and Kramavik.

Despite the VJ and MUP actions, the territory under the control of the UCK had expanded by mid June and for a short period the Serbian police could not hold the main artery between Pristina and Pec. The UCK quickly established their own check-points here and on the road between Suva Reka and Orahovac. Direct clashes between the UCK and the Serbian/FRY forces increased greatly at this time, while international observers and humanitarian organisations were denied access to the main areas of conflict.

Around Stimlje, further to the east, the presence of VJ and MUP forces increased at this time. The nearby village of Crnojjevo was clearly deserted, while ECMM noted the presence of bullet case and anti-aircraft shell cases on the road, and 50% of population of Suva Reka had also fled. Among the local Kosovar population there was much concern about reports of the presence of Serbian "paramilitary forces" in Suva Reka and Dulje. While the UCK "liberated territory" had extended from Suva Reka to Malisevo, Srbica was still under the control of the Serbian/FRY forces and Glogovac had been deserted. Reports indicated that many Kosovars who had fled the Klina area had moved into those parts of Drenica within the "liberated territory".

By the end of June significant areas of central Kosovo were in UCK control, rendering the

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dressed only in underwear and with visible marks of torture. Two houses were destroyed and four burned."

supply route for the Serbian/FRY forces precarious. These gains, while undoubtedly being somewhat exaggerated in much of the Kosovar press, served to boost the confidence of the population in the methods utilised by the UCK, rather than the so-called non-violent strategy which continued to be advocated by the LDK and Ibrahim Rugova, who would not recognise the UCK, and this resulted in the further increase in its membership.

Towards the end of June, the offensive by the VJ and MUP in the border area continued further, with the shelling of villages. The widespread looting of houses was also observed in this area and it appeared to the ECMM that the VJ were strengthening their positions. Additionally, on 28 and 29 June a significant assault was launched on Belacevac, to the west of Pristina, north of Slatina, which had been in the control of the UCK, and the press also reported a police attack, using helicopters, on Klina.

It should be noted that during a meeting in Moscow on 16 June, between President Milosevic and the Russian President, Boris Yeltsin, an agreement was reached to allow international diplomatic observers into Kosovo to monitor the situation there. These observers formed three groups – those under the auspices of the States of the European Union (EU KDOM), those coming from the United States, also incorporating Canada, (US KDOM) and those from the Russian Federation (Russian KDOM) – and became operational on 6 July 1998. EU KDOM thus replaced the role played by the ECMM in Kosovo. While these observers were, by the agreement, entitled to unimpeded access throughout Kosovo, they were often prevented from patrolling large areas of territory by MUP forces at checkpoints along the roads. The general pattern of such denial of access involved a complete block whenever the Serbian/FRY forces were engaged in an operation in a particular area, until the completion of that operation and a degree of “cleaning up”.

By the beginning of July, clashes between the UCK and Serbian/FRY forces had spread further northwards, on the road from Kosovska Mitrovica and Gornje Klina. Further evidence of fighting at Crnoljevo was also observed.

The border villages continued to sustain shelling by the VJ and soldiers were observed by the ECMM monitors stationed across the border in Albania to be involved in the clearing of houses. Many houses were being torched by these same forces and a significant degree of troop movement could be seen, along with the presence of military helicopters. Additional reports of displaced persons seeking to cross the border into Albania being fired upon were being collected upon the arrival of such persons in Tropoje, and other locations. The village of Batusa was apparently targeted on 6 and 7 July and many houses set on fire. Such reports continued towards mid July of helicopters and heavy mortar and artillery fire in the area from Djakovica to Junik. In confirmation of such witness accounts, smoke was observed coming from the area of Rastavica.<sup>32</sup>

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<sup>32</sup> See also, press release of Physicians for Human Rights, 24 June 1998, which summarises a compilation of witness accounts of attacks on Kosovars in south west Kosovo, particularly in the Decane and Djakovica areas, taken by a PHR team in northern Albania from 15 to 22 June 1998:

“Refugees told the PHR team that the attacks began in the early morning, with the sudden explosion of ground-to-ground missiles or rocket-launched grenades slamming into the periphery or the center of their villages. ...



The village of Lodja, south of Pec, was the location of heavy clashes on 5, 6 and 7 July and Istinic also sustained shell-fire. In addition, fighting around the location of the Trepca mine, in Stari Trg, north east of Kosovska Mitrovica, commenced and continued over many days. Also at the beginning of July, the village of Kijevo, on the road between Pristina and Pec, fell under the control of the Serbian/FRY forces after a concerted attack, although the surrounding area was still controlled by the UCK. Once again, the international community, including KDOM, was denied access to this area.

By 22 July, reports were being received that Orahovac had come under complete MUP control, after significant clashes with the UCK. It was further reported that the town had been abandoned by its residents, many of whom had fled towards Malisevo. Lurid accounts of executions and other atrocities during the fighting in Orahovac began to be received by the press and KDOM and this served only to increase the mounting panic of the local population.

After this, and towards the end of July, the Serbian/FRY forces launched significant new offensives across Kosovo, including the area west of Pristina aimed at retaking the road to Pec, the area east of Suva Reka, and in the region of Blace and Dulje, where there was a significant VJ presence. The MUP also reported fighting between themselves and the UCK for control of the road between Suva Reka and Stimlje, while they also appeared to be making progress towards the UCK stronghold of Malisevo. These operations seemed to mark a turning point in the conflict, the UCK losing much of its previously gained territory. The local press reported that the Serbian/FRY forces were operating in three fighting zones at this time – Gryka e Carraleves, Gryka e Lapushnikut and Kijevo – in order to isolate the UCK bases in the Decane, Reke e Keqe and Drenica regions.

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Sniper fire from police forces made it unsafe to linger or work in exposed areas. Intermittent nighttime bombardment forced those who had returned to their homes back into the mountains or again to nearby villages. For some refugees, this low-grade conflict persisted for weeks, during which they stayed in the mountains during the day and hurried back to their homes at night to replenish supplies. ...

During the next phase in the attack, police and special police forces moved into the villages. Wearing distinctive dark blue uniforms and carrying serrated machetes and "Skorpion" automatic weapons of Czech manufacture, these special police forces are said by the refugees to have committed a number of killings and atrocities. ...

Gradually, over a period of days to weeks, the night barrage increased in intensity and daytime sniper fire and paramilitary attacks made it impossible to stay in the villages. In the face of this onslaught, most families left their homes for good, moving to another village or crossing the mountains into Albania. In some instances, the men sent their families over the mountains with other villagers and remained behind barricades in the village in an attempt to fight off the snipers and target the source of the ground bombardment. Interviews with several refugee wives and mothers in Albania indicated that few had received news of their men for over a month. ...

According to men who had retreated from their villages but remained in the mountains nearby observing Serb police and military maneuvers, the last phase of the attacks occurred after the villages were emptied of inhabitants. Armed forces proceeded into the villages, often on foot but occasionally in tanks or armored personnel carriers, looting, killing cattle and other animals, and burning whatever structures remained."

On 27 July, EU KDOM observed that Blace and Dulje were being subjected to artillery fire by VJ forces and that these villages were deserted. Furthermore, the UCK claimed that Serbian tank crews had looted houses and then set fire to them and that special forces, milicija and VJ troops participated in the operation. Action in the area of Rudnik and south and south-west of Srbica in the direction of Lausa and Glogovac was reported and UCK sources stated that on 2 and 3 August, security forces attacked south from Srbica and Rudnik, destroying many villages, while US KDOM was denied access to these areas.<sup>33</sup> As a result of these new offensives, by 31 July, MUP forces were in control of the major roads in the interior of Kosovo. Previous UCK checkpoints on the road from Pristina to Pec and Lapusnik to Zrze and Pec had been dismantled. However, the UCK apparently still held control of areas east and west of the road between Malisevo and Orahovac.

In the area on the border with Albania, troop and vehicle movements were visible at the end of July, around the villages of Panosevac and Smonica. Many smoke plumes could be seen coming from this area by both the ECMM in northern Albania and KDOM within Kosovo. The town of Junik, which was occupied by the UCK, remained under siege and was being subjected to heavy shelling. EU KDOM reported that the town, which was one of the largest UCK bases, was surrounded by MUP forces, who made an offer of safe passage for unarmed persons within the town who wished to leave, and warned that any attack on the police would result in the complete destruction of the village. In addition, MUP reinforcements could be observed entering the area from the north. On 2 August, east of the road between Decane and Djakovica, there was also clearly heavy fighting between the UCK and VJ and MUP forces, particularly in the area of Prilep.

Fighting was also reported east of Klina, on 2 August, and smoke was observed by US KDOM from this area and to the south of Kijevo. South and south-east of Klina, the villages of Dolovo, Gornje Grabinica, Novo Selo and Zaimovo were evidently being systematically burnt. The town of Malisevo, which had been a stronghold for the UCK, itself fell under the control of MUP forces by the end of July and the majority of its population, along with the many Kosovars who had arrived in the town after fleeing their homes elsewhere, abandoned the area. In the following days, the damage to the town increased rapidly as the MUP continued to loot and destroy property. KDOM reported the visible bullet pock-marking, artillery/tank round holes as well as the damage from arson. Moreover, on 4 August US KDOM observed the security forces (MUP) blatantly looting shops.

In addition, from Malisevo to Lapusnik it was apparent that more and more farms were burning and these deserted towns were becoming increasingly damaged. US KDOM observed many newly burning houses in Lapusnik and noted a group of partially uniformed MUP in the vicinity of these fires. Furthermore, Blace was reported as being severely

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<sup>33</sup> A witness described the attack on Radishevo, a small village of approximately 200 inhabitants to the north of Rudnik, on 25 July. According to the witness, Serbian/FRY forces arrived from the north and started shelling in the morning, whereupon the local population began to flee. The witness then saw Serbian police infantry, wearing blue and black uniforms surrounding the village. People tried to protect themselves with hunting rifles, hatchets, hoes etc, but the Serbian/FRY forces were armed with rocket launchers, cannons, Katuyshas, and tanks. At least two civilians were executed during the attack, according to this witness.

damaged and deserted and the town of Decane, in the west, was also becoming increasingly destroyed. On 31 July, US KDOM noted that the killing of livestock by MUP forces was widespread, from Lopusnik, to Malisevo and Blace and, between Iglarevo and Lopusnik, there was also much damage to property in evidence. The area appeared to have been largely deserted, many buildings having burnt to the ground. Between Komorane and Orahovac burnt fields and unharvested crops marked the landscape, and there was quite some considerable damage to buildings and to the road, the latter seeming to have been recently caused by heavy tracked vehicles.

EU KDOM noted that, at the northern edge of Orahovac, the VJ and the MUP were apparently co-ordinating their activities and the destruction of the town appeared to be the result of damage and looting after fighting had taken place, rather than as a result of it. While some internally displaced persons (IDPs) were returning to Orahovac, male returnees had been told they must register with the security forces. In addition, locals reported that male IDPs had been taken by the MUP forces for use as labour and some of the residents of Banja claimed to have seen such men working for the MUP in Malisevo. It seems that the Serbian authorities had also air-dropped leaflets in the Banja area, urging IDPs to return home.

Both EU and US KDOM teams found it extremely difficult to exercise their functions at the beginning of August due to the denial of access to many parts of the Drenica area by the Serbian/FRY forces. Other international organisations were similarly denied free movement around Malisevo and Suva Reka. Nonetheless, it was clear that there had been a large-scale exodus of the Kosovar population from Drenica, some towards Prizren in the south, and others towards Kosovska Mitrovica, to the north. In addition, EU KDOM noted that the VJ was clearly being used within Kosovo instead of just in the border areas and it observed VJ troops looting property, as well as VJ tanks and equipment being used in support of police actions.

On 4 August, the Serbian authorities claimed to have “neutralised” heavily armed groups of Kosovars in Lausa and stated that the MUP were now in control of this entire region. However, towards the middle of August, the road between Glogovac and Srbica was in contention between the UCK and Serbian/FRY forces and towns and villages from Komorane to Srbica were clearly deserted. Smoke could also be observed coming from the Krnjice area, north east of Klina, as well as south of Klina and Kijevo. KDOM observed that many towns and villages from the area west of Kijevo, through Lopusnik, Malisevo and Stimlje had been badly damaged and that from Lopusnik to Dulje buildings continued to burn. MUP forces were observed occupying many houses and other buildings in these villages, as well as setting them on fire. In the view of EU KDOM, the village of Drenovac, on the Pristina to Pec road, had been intentionally destroyed and also the nearby village of Zaimovo, to a lesser degree. The village of Lausa, near Srbica, had clearly also been very badly destroyed. Between Malisevo, Orahovac and Blace, MUP forces dominated, Blace itself being occupied by the Serbian forces. However, the area in the vicinity of Crnoljevo appeared still to be in contention.

Between Rudnik and the vicinity of Durakovac, to the north and east of Pec, a strong MUP presence was also observed, including members standing beside some burning crops and engaged in the searching of houses. EU KDOM reported action by Serbian security forces

in Rudnik itself, on 6 August. Some units of the VJ were also observed in this area, where there had been much damage to houses and shops. Further east, KDOM reported that practically every house in Lausa had been destroyed.

On 10 August, reports indicated the prolonged artillery shelling of Junik and Erec. Junik appeared to be surrounded on three fronts and the VJ was demanding that the villagers leave by 12 August. In accordance with the pattern of previous offensive actions, access to this area and around Djakovica was denied to the international community, although, from over the Albanian border, the ECMM was able to observe the final assault on Junik on 12 August. On 13 August, Junik finally fell to the Serbian forces after a ten day blockade, and the villagers who fled reported that the VJ had destroyed it.

In mid August, there were some reports that Glodjane, Rznice and Prilep had been destroyed and were occupied by MUP forces. Furthermore, south-east of Pec fighting continued and thick smoke was observed over the villages of Lodja and Brezanik. Members of EU KDOM clearly observed these villages burning fiercely in the evening of 15 August, after an attack which had commenced early in the morning and involved three helicopters, four fixed wing propeller driven aircraft, artillery and tanks. There was a significant level of activity by both MUP and JSO forces between Pec and north of Djakovica and local UCK commanders alleged that an area north east of Decane had been bombed by military aircraft. From Pec to Decane, many civilian dwellings had clearly been damaged or destroyed and MUP forces were occupying them. It appeared that the area east of this road was still in contention, while Junik itself was deserted and around 40% destroyed and Prilep around 90% destroyed. However, very quickly after the Serbian forces gained control of an area, the UCK would return and engage in sniping against the MUP personnel stationed there. Smoke was also seen coming from the village of Blace, to the north east of Suva Reka, where MUP and VJ forces were located in defensive positions.

On 16 and 17 August, significant numbers of MUP, JSO and VJ forces were observed by KDOM, departing the Pec and Junik areas on the roads to Kosovska Mitrovica and Pristina. KDOM noted the decline in the presence of the MUP and VJ in western Kosovo but also the increase in the number of checkpoints - both MUP and UCK - which continually denied them access to large areas during their patrols. On 21 August, KDOM reported that the UCK continued to be present in the Drenica area, while heavily armed VJ forces had reinforced the normal MUP checkpoint south of Srbica. The VJ had also established a new mobile checkpoint on the road to Prizren, one kilometre south of Zrze, and appeared to be conducting a search operation on both sides of the road. EU KDOM also observed a large fire blazing in the vicinity of Planeja and Gorozup, close to the Albanian border west of Prizren, as well as some evidence of fighting in and around Prizren itself.

On 21 August, residents of the village of Vrela, to the north east of Pec, spoke to KDOM and reported that they had fled the village after being issued an ultimatum by the MUP to turn over their weapons or have the village destroyed.

Local sources claimed that the villages of Zociste, Opterusa, Retimlje, Samodraza and Zojic, between Suva Reka and Orahovac, were attacked by the MUP on 20 August. At this time, reports were also received by KDOM of the harassment and threatening of villagers in Magura, to the south west of Pristina, many of whom fled their homes, as well as an attack

on nearby Klecka, which had been a UCK stronghold.

From 19 August, large armoured columns of VJ were observed by US KDOM departing their base at Kosovo Polje and moving westwards.<sup>34</sup> According to EU KDOM, the main aim of the Serbian/FRY forces at this time was to keep the supply lines open, keep the UCK out of the border towns and control the surrounding areas. It appeared that further attacks by the MUP in Drenica were anticipated and offensive operations around Komorane were progressing. US KDOM observed significant activity by MUP and VJ forces on the road between Komorane and Lapusnik, as well as seeing smoke and hearing mortars and small arms fire from the area north and west of Komorane on 22 August.

On 22 August, villagers from Donja Fustica and Sedlare, in the valley south of Komorane, also claimed that the MUP forces had invited them to return to their homes by dropping leaflets, and then, after they had done so, shelled the villages during the night. Consistent with this, US KDOM found two artillery craters and one unexploded artillery round in a nearby field.

On 23 August, the anticipated Serbian offensive in the valley south of Komorane commenced. KDOM observed smoke rising from this area and heard artillery reports. It also received reports of attacks on the areas west of Stimlje and west of Suva Reka, although it was denied access to these locations by a ring of MUP forces on the main roads. Nonetheless, team members could see several artillery rounds impacting in the hills near Magura. In addition, just east of Orahovac, KDOM observed MUP forces operating in conjunction with civilians carrying side arms and assault rifles and wearing red ribbons on their right sleeves. To the north east of Malisevo, a significant increase in the MUP and VJ presence was also noted.

On 24 August, KDOM observed that many VJ armoured vehicles were lined up between Komorane and Klina, with their guns pointed towards the Malisevo area and, in the Pec to Decane area, with their guns pointed towards the vicinity of Lodja. Smoke was also seen rising from the area of Stimlje, although access here was still denied. The following day, flames and smoke were clearly visible in the valley south of Komorane. EU KDOM also reported fighting in the area between Orahovac, Suva Reka and Dulje. South of the Pristina to Pec road at Komorane and Lapusnik and north towards Klina, KDOM was prevented from patrolling by MUP forces stationed at checkpoints, who stated that ongoing “security operations” rendered the area too dangerous.

Residents of Sedlare reported that an artillery barrage on the village began on 25 August and that about five tanks or armoured vehicles appeared from the north, which entered the village and began to fire into homes. Then, a large number of ground troops arrived behind the tanks and thoroughly looted and burned the majority of houses along their path. KDOM observed mortar impacts and tailfins on the road, which appeared to confirm these

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<sup>34</sup> At the same time, EU KDOM also reported that a battalion sized mechanised battle group consisting of a tank convoy, and APC convoy, an infantry convoy (in trucks), an artillery battery (tracked), six AAA vehicles (20/30 mm cannon), Engineers (including an Armoured Brigade layer), Communications & Maintenance trucks and Tankers was moving west on the road from Pristina to Pec and noted that this configuration of military equipment was that commonly used by the Serbian security forces for route clearance.

events. Locals also told US KDOM that the shelling of Banja, further south west from Sedlare, had begun on 25 August and KDOM noted artillery impacts and smoke rising from the area.

Towards the end of August, the VJ and MUP operations in this area of central and south-west Kosovo continued. US KDOM observed artillery impacting in the area east of Malisevo and north of Banja, as well as a group of VJ tanks and armoured vehicles moving north of Komorane towards Glogovac. VJ and MUP forces had encircled many villages in the Suva Reka and Komorane areas, including Magura, Stimlje, Dulje, Studencane and Negorvoce, and EU KDOM noted smoke and shelling from the direction of Komorane and Glogovac, Magura and Suva Reka. Reports were also received that the village of Senik, east of Malisevo, was under serious attack. In the Lopusnik to Kijevo and Malisevo triangle it appeared that fighting between Serbian/FRY forces and the UCK was continuing, along with the destruction of villages and property.

On 29 August, KDOM gained access to Senik, which had been the site of VJ and MUP offensive operations over the previous several days. US KDOM saw evidence of a mortar attack on civilians and verified eight dead - all being women and children - the attack having taken place on 27 August. From the accounts given by witnesses, it appeared that, on 26 August, a group of armoured vehicles approached the village from the direction of Malisevo and many of the women and children evacuated into the hills. The next day, mortars impacted on the village and more people fled. On 28 August, villagers hiding in a gully in the hills came under fire from snipers and mortar rounds were fired at the hills surrounding them. The villagers fled their cover, leaving behind their possessions, and moved back towards Senik. Many of their vehicles and possessions thus left were then set on fire by the Serbian/FRY forces. Villagers from nearby Klecka also claimed that VJ and MUP forces had shelled their village on 27 August, burned it on 28 August, spent 3 nights there and then withdrew. The Serbian authorities in Kosovo stated in turn that on 28 August their police forces had broken down an "Albanian extremist stronghold" in Klecka, and these forces now controlled the whole area.

In the neighbouring village of Rusinovce, residents claimed they had been shelled on 31 August and evidence of damage to houses was observed, as well as four dead and sixteen injured Kosovars. Once again, local Kosovars claimed that leaflets had been dropped urging them to return, before the attack. KDOM was also informed that in nearby Sedlare, around 171 houses had been burnt down - 50% of the town. US KDOM subsequently visited Sedlare and observed evidence of ransacking and looting of houses and shops as well as the deliberate setting of fires.

By the end of August, US KDOM estimated that the town of Banja had been 70% damaged, several houses still being on fire. Small arms fire damage, burning and looting was evident, but the village was around 50% inhabitable. The village of Semetiste, near Suva Reka, had been 90% burned out, with one house still smouldering when KDOM visited it. A witness claimed that the village had been set on fire after the MUP had occupied it, and a similar fate had befallen Studencane, Dobro Deljane, Slapuzane and Pecane. Indeed, in a large area of former UCK territory between Orahovac and Suva Reka, over 70% of homes in the villages had been burned, apparently without there having been any fighting. In addition, locals reported an attack in the area of Susica, north east of Istok, which had resulted in several

casualties. The Serbian authorities in Kosovo announced that this operation had been against known terrorists and confirmed seven deaths.

On 1 September, a new offensive was launched by Serbian/FRY forces on the outskirts of Prizren. Locals claimed that the villages of Leskovac, Jeshkovo and Posliste were the targets of Serbian shelling and smoke was observed by EU KDOM. A convoy of approximately fifteen VJ armoured vehicles was also observed that day, moving from Zrze towards Prizren.

On 2 September, the Serbian/FRY operation against several villages close to Prizren continued. EU KDOM was told that in the Vrini region villages were encircled and under attack by VJ, MUP and special forces. US and EU KDOM observed what appeared to be a VJ led offensive south of Prizren, towards the Albanian border. In addition, US KDOM observed a VJ led offensive west of Orahovac, focused on Drenovac. The Serbian/FRY operation here appeared to have begun in the area from Zrze to Orahovac, the Serbian authorities claiming that Drenovac was a UCK stronghold. On 5 September, VJ units and MUP forces continued their operations to the south west, west and north of Orahovac, focusing on Drenovac and Ponorac. A witness told KDOM that the villages of Donje Potocane, Gornje Potocane, Sopsio, Bela Crvka, Nasfale and Drenovac had been targeted, shelled and set on fire. In confirmation of this, smoke was observed coming from the area. On 7 September, KDOM observed VJ and MUP forces repositioning north from the Drenovac area towards Ostrozub. KDOM spoke to residents of Ponorac who claimed that the area was surrounded on 4 and 5 September by MUP forces coming from Malisevo, Orahovac and Klina. On the morning of the 4th, the village of Zatric to the south and Labucevo to the west were shelled and destroyed. The villagers fled into the woods and the MUP forces herded them to a field just to the west of Ponorac, where the men were separated from the women and taken to be detained in the schoolhouse. KDOM visited this building and noted the damage inflicted upon it. Residents also claimed that tractors with supplies were burned by the MUP nearby.

South of Prizren, KDOM observed houses on fire in Leskovac, Hoca Zagradaska and Posliste on 5 September. US KDOM observed a coordinated artillery, tank and dismounted VJ unit attack on the village of Hoca Zagradaska, although there appeared to be a lack of coordination between the VJ and the MUP in this area.

There was also evidence that MUP forces were burning villages in the Kpuz area. In addition, the village of Radoste, north of Zrze had been badly damaged - about 75% of buildings being burnt out - and this was also the case in nearby Ratovac. KDOM were further informed of an operation at Sanovac, 1 kilometre north of Drenovac, where MUP forces encircling the village fired shots into a crowd of civilians, and one in Kramovik, on the road between Klina and Djakovica, during which MUP forces had set many houses on fire.

On 8 September, US KDOM observed "specialised paramilitary forces" in and around Rznice, east of Decane, which was burning, and MUP and VJ forces were also occupying the village. A joint MUP/VJ operation was also observed further north in Krusevac, where houses were on fire and the Serbian/FRY forces were conducting "sweeps" in and out of houses. Villagers told KDOM that the MUP and VJ had surrounded the village and then attacked it on 9 September. Nearby, the village of Rasic was also burning and in Istinic there

was a significant presence of MUP and VJ forces who were seen "processing" a large group of IDPs. Later, members of the MUP forces were seen to be physically forcing around 40,000 IDPs to leave Istinic and by 13 September, nearly all of these people had been removed. In nearby Decane KDOM noted an increased VJ presence as well as evidence of the recent burning of homes. In addition, in Glodjane, two witnesses described to KDOM the attack on the village and the methodological and organised manner in which it was looted and some of the houses burned once the majority of the population had fled to Istinic. US KDOM noted instances of apparently deliberate well contamination in this area, a practice which was also reported in the region of Pagarusa.<sup>35</sup>

On 11 September a large number of armoured vehicles were observed in the area south of Pec and a strong MUP presence was noted in the Istinic area. KDOM also noticed large amounts of smoke coming from Drenovac. Additionally, there were reports that the MUP had begun renewed aggressive action in the Drenica region south of Srbica, focusing on Likovac. Subsequently, the Serbian authorities in Kosovo announced that the UCK had suffered "total defeat" in the area between Decane and Klina.

By mid September, parts of southern Prizren were clearly deserted, as the inhabitants had moved towards the centre of the town. Residents of Ljubicevo, to the south, described recent VJ/MUP operations in their area and told of the shelling of Jesoko as well as Ljubicevo, during which they fled to the mountains. On 3 September they saw various police units looting their village, who then burned most of the buildings, as well as cars and tractors, on their departure.

On 13 September, EU KDOM observed that most of the buildings the village of Likovac, in Drenica, had been destroyed and there was evidence of direct fire upon them. MUP forces, armed civilians and VJ troops with mortars and armoured vehicles maintained a presence in the centre of the village.

In addition, by mid-September there was new action by Serbian/FRY forces in the Shala region, south east of Kosovska Mitrovica, and in the Podujevo area. EU KDOM observed shelling and one village burning in these areas and, on patrol moving northwards from Stari Trg towards Bare, noted that many houses beside the road were burning and fields were scorched. The corridor between Kosovska Mitrovica and Vucitrn was under attack by the VJ and MUP and Russian KDOM observed the deployment of VJ and police forces in an arc between Pristina and Podujevo. On 21 September, US KDOM visited the village of Lepaje, near Dobrotin, in this area, and found some burnt human remains. Locals reported that on 15 September, first thing in the morning, Serbian police and VJ arrived with tanks and other vehicles. Witnesses stated that thirty homes in Lepaje itself were surrounded and the occupants not permitted to leave for three hours, whereupon they fled. KDOM found no evidence of fighting in the area but there had clearly been a systematic and deliberate burning of houses, livestock and food supplies.

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<sup>35</sup> In its recent report ("A Week of Terror in Drenica") Human Rights Watch states that the UNHCR had found that wells in Dobrosevac had been intentionally polluted with dead animals and rubbish, and that other humanitarian organisations also had confirmed this practice.



On 20 September, EU KDOM reported that the villages of Kusnin, Lubizda, Kabas, Dedaj and Damnjane, to the north-west of Prizren, in the region of Has, were under siege by Serbian/FRY forces. Smoke and flames were observed coming from Dedaj, Maros, Kivza and Retimnje. Further, on 21 September EU KDOM visited nearby Romaja and observed several burnt out houses. According to local Kosovars, Serbs in the uniform of the VJ had arrived in the village and terrorised the population, beating, threatening and raping women, as well as offering money for information about hidden weapons. Similarly, the inhabitants of Kusnin told of mistreatment at the hands of VJ special forces, including the rape and threats of rape of women and the beating and ill-treatment of men.

On 23 September, EU KDOM reported the large-scale burning of areas south of Kosovska Mitrovica and north west of Obilic. It was denied access around Lausa and Glogovac as all roads into the eastern Drenica region were blocked by MUP milicija due to large-scale operations in the area. Nonetheless, KDOM noted that these operations were of such an intensity that it was possible to see houses burning in a north-westerly direction from Pristina. VJ artillery fire was clearly being directed at the Cicavica area and, indeed, the Serbian authorities claimed that their police forces had broken down “groups of heavily armed Albanians” in villages on the slopes of the Cicavica mountains. From its observations, KDOM assessed that heightened joint VJ and MUP actions in the eastern Drenica and Cicavica regions were taking place in an area bounded by Pristina, Komorane, Srbica, Kosovska Mitrovica, Vucitrn and Obilic. EU KDOM observed villages burning in the Obilic area on 23 September and US KDOM observed thirteen burning houses in and around Grabovac and Velika Belacea, west of Kosovo Polje. Further south, the presence of substantial VJ forces north west of Kacanik was rendering the local Kosovar population increasingly fearful of attack.

Also on 23 September, the UN Security Council adopted Resolution 1199, which expressed its concern at the fighting in Kosovo, particularly “the excessive and indiscriminate use of force by Serbian security forces and the Yugoslav Army”, and demanded that all hostilities cease immediately, especially action by the security forces affecting the civilian population, and that the FRY withdraw all security units used for civilian repression.<sup>36</sup> Subsequently, however, the offensive actions undertaken by the Serbian/FRY forces intensified markedly and this was indeed noted by the UN Secretary-General in his Report of 3 October 1998.<sup>37</sup> Indeed, EU KDOM reported on 25 September that a major Serbian/FRY offensive had begun that morning in the Drenica region, launched from the south and using the Pristina-Pec road as a start-line. Although it was prevented from getting close to the area, KDOM

<sup>36</sup> S/RES/1199 (1998)

<sup>37</sup> Report of the Secretary-General prepared pursuant to Resolutions 1160 (1998) and 1199 (1998) of the Security Council, 3 October 1998, S/1998/912. The Secretary-General stated that:

“During the reporting period [4 September to 3 October], fighting in Kosovo continued unabated. Government security forces conducted offensives in the various parts of Kosovo, including the areas of Licovac, Glogovac and Cicavica. In the week following the adoption, on 23 September 1998, of resolution 1199 (1998), the forces in fact intensified their operations, launching another offensive in the Drenica region and in the Suva Reka-Stimilje-Urosevac triangle. ... Smaller operations were conducted by the Serbian security forces in the Prizren area. Fighting continued on 28 and 29 September, contrary to the statement of the Serbian Prime Minister, Mr. Marjanovic, on 28 September, that anti-insurgency operations in Kosovo had been completed and that peace reigned in Kosovo.”

observed tanks, artillery, multiple barrellled rocket launchers, mortars, APCs and trucks full of VJ soldiers being assembled for the attack and noted that the villages of Mlecane and Cerovik were the first to be in flames (see below).

In addition, the offensive between Pristina and Kosovska Mitrovica, especially west of Obilic and Vucitrn, continued. Villages north east of Mitrovica suffered extensive damage, rendering them uninhabitable. Artillery was also observed impacting east of the road from Glogovac to Srbica. The villages of Stari Trg, Bajgora and Kacandol had clearly been heavily damaged and KDOM considered this likely to have been caused by heavy weapons fire and burning, during the occupation of this area by MUP forces from 15 to 17 September. KDOM also observed columns of smoke to the north of Komorane but were denied access to the area. The VJ further denied KDOM access to the village of Gornje Lapastica, north west of Podujevo, because of ongoing military operations there, although it was clear that it was surrounded by VJ forces.

On 25 September, heavy armour vehicles were observed deploying towards the north and KDOM also confirmed large MUP and VJ operations in the southern Drenica area, between Kijevo and Komorane. VJ self-propelled artillery units were firing to the north of Negrovce and MUP forces were observed 30 metres off the Pristina to Pec road, south of Mlecane, firing a mortar northwards in the direction of Cerovik and Plocica. In addition, Mlecane, Cabic and Cerovik, to the west of Glogovac, were themselves in flames, while Glogovac was engulfed in smoke. On 27 September, EU KDOM observed a large VJ convoy leaving Kosovska Mitrovica and moving in the direction of Pristina, noting that it was possible that these forces were being used for the operations in the Drenica area.

It was thus evident that VJ and MUP units were continuing their offensive in the Komorane-Kijevo-Gornje Klina triangle and, as always, KDOM was denied access to this area. The village of Vucak appeared to have been systematically torched, as there was no evidence of fighting although half of the village was completely destroyed. To the north west of Klina, many villages were empty and houses appeared to have been looted.

On 28 September, KDOM observed approximately 50 fires burning in the area to the south and east of Suva Reka - from Musutiste to Movjane. In addition, KDOM began to receive reports that this area had been shelled from Stimlje in the west. KDOM further reported a massacre site at Gornje Obrinje, with 14 confirmed deaths. Locals said that the offensive on this village had started on 23 September, when VJ, MUP and special forces had surrounded the village with tanks and APCs. After shelling, they entered the village and began looting and burning houses and killing livestock.

By the end of September, villages in southern Drenica, north of Kijevo and Lapusnik, including Dobri Doh, Dobri Voda, Cabic, Cerovik, Mucubelj and Golubovac clearly bore the evidence of the recent MUP and VJ action. Villagers claimed that Serbian special forces had executed a number of their young men on 27 September. Later, KDOM visited the site of this alleged massacre in Golubovac and spoke to witnesses to the attack, as well as observing the graves of those killed.

At the end of September, local Kosovars from the area of Strze, south east of Urosevac, told KDOM that villages in that region - including Vic, Kastanevo, Biti and Izhance - had been

attacked by MUP and VJ forces, often without warning. IDPs also told KDOM that an attack on the area of Vranic and Bukos had commenced on 26 September. The villages of Vranic, Bukos, Savrova, Buzal, Budakovo, Matiqeva, Papaz, Mulan and Krusica were attacked first with artillery and then infantry backed up by mechanised vehicles. Apparently, on 27 September the villagers were told it was safe to return to their homes and, as their convoy of about 240 vehicles entered Vranic, they were stopped and attacked and their property stolen and set on fire. Consistent with such accounts, on 28 September, EU KDOM reported thick clouds of smoke rising from the Pagarusa area, north west of Suva Reka and the following day, although it was denied access to Suva Reka on the road from Prizren, team members could see villages in the area burning. That day KDOM also observed smoke rising from Nerodimlje and Dromnjak, to the west of Urosevac, as well as MUP forces, consisting of five blue police trucks and six civilian trucks full of personnel, returning to their barracks in Urosevac along with a military convoy of three M-47 tanks, three T-55, two M-53/59 AD vehicles and three BMP-1 together with some police trucks. On 30 September, EU KDOM also observed that Serbian/FRY forces were continuing to shell the villages of Sajtuk Mah, Krusica and Budakovo, further to the west. Kosovar residents of Dinovce and Grejkovce, south east of Suva Reka, informed US KDOM that their villages had been surrounded by Serbian police and VJ forces on 29 and 30 September. They were given an ultimatum to hand over all of their weapons or have the villages destroyed. Additionally, in Grejkovce money was demanded and paid to prevent destruction by these forces.

At the beginning of October, VJ units reportedly returned to and largely remained in garrison, although ordinary MUP forces maintained a strong presence on the main roads throughout Kosovo and JSO units were still in evidence in Istok.

#### **IV. SPECIFIC EVENTS ILLUSTRATIVE OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW**

Having thus traced the general course of the operations mounted by the Serbian/FRY forces, it is possible to analyse certain selected incidents as constituting violations of international humanitarian law within the jurisdiction of the International Tribunal. It must be emphasised once again, however, that these incidents are merely illustrative of the kinds of violations which have marked the conflict as a whole and should in no sense be regarded as either the most serious or the entirety of such violations.

##### **A. Factual Description**

###### **(i) Operations in Senik, Sedlare, Rusinovce and Klecka at the end of August**

Visible preparation for the attack on Senik began on Wednesday 26 August, when local residents saw a group of Serbian/FRY armoured vehicles approaching on the main road from the direction of Malisevo, heading towards Blace.<sup>38</sup> Fearful of impending attack, many

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<sup>38</sup> Subsequent physical evidence of the recent presence of armoured vehicles, including tanks was visible on the road.

Kosovar villagers, mostly women and children, fled at this time and sought refuge in the nearby hills.

The following day, at around 2:00 p.m., seven mortar rounds were fired into Senik by these Serbian/FRY forces, several of which resulted in direct hits on civilian homes, killing at least one inhabitant. Upon this assault, more people left the village and moved into the hills. In confirmation of the accounts given by the local residents, KDOM subsequently observed several craters and two houses damaged by “indirect fire”. Several pieces of mortar shrapnel and tail fins were also found on the site.

On 28 August, those persons who were hiding in a small gully in the hills beside Senik came under sniper fire and noticed that several of the armoured vehicles had taken up positions overlooking their location, to the west. At around noon, at least eleven mortar rounds impacted in the hills surrounding them, upon which they fled, leaving their possessions and their tractors and other vehicles in the gully, and moved southwards, back towards Senik. At this point, UNHCR representatives arrived on the scene and witnessed several MUP officers departing the area of the gully and the abandoned property there, which was burning fiercely.

On Saturday 29 August, US KDOM visited Senik and observed that the local residents had departed and that Serbian/FRY forces were “sweeping” the hills, burning possessions and destroying tractors and automobiles. KDOM members noted eleven craters and saw shrapnel and tail fins from 60 mm mortar rounds. The team also noticed recently fired AK shells littering the area. It was evident that the possessions abandoned outside the village - cars, tractors, mattresses, clothing, cradles, food and toys – had been intentionally set on fire and those vehicles that had not been torched had had their tyres blown out as a result of bullet-fire.

In the valley two kilometres north of Senik, another KDOM team counted 15 destroyed vehicles, being mainly tractors and cars. Under some of the cars the team noticed streaks of solidified melted metal, indicating subjection to very high temperatures. Up on a hill, this team found ten small craters of 50cm diameter and the angle of impact indicated that these were caused by 50mm or 60 mm high explosive anti-personnel mortar bombs, fired from the east.

Villagers informed KDOM that, while in the hills two kilometres north of Senik, snipers were shooting at them a few minutes prior to the arrival of the team. KDOM did not hear any shooting but observed five men in dark blue uniforms, taking up positions around 800 to 1000 metres away. The team also noticed approximately 30 civilians “trapped” in the bottom of a ravine below these uniformed men on the hill.

KDOM observed eight of the ten dead civilians, all being women and children, including one infant. In addition, all but one of the wounded were women and children, the one injured male being elderly. All of the injuries observed appeared to have been caused by shrapnel and a local resident claimed there were thirty such wounded people from the previous days’ attack. Early in the evening, the ICRC evacuated thirteen of the most critically injured to the city hospital in Pristina. KDOM later visited these patients and noted once again that their injuries appeared to derive from bullets or shrapnel impacts.

Residents of nearby Klecka informed KDOM that VJ/MUP forces had shelled their village on 27 August and then set many of the houses alight the following day. The villagers further claimed that the FRY/Serbian forces responsible for the attack remained there for three days and that they had fired shells at persons fleeing towards Senik, causing fifteen civilian deaths and numerous injuries. These accounts were in accordance with the observations of KDOM in Senik.

A KDOM team also visited the neighbouring village of Rusinovce, whose residents asserted that, on 31 August, their village was shelled by Serbian/FRY forces. The KDOM team saw four dead and sixteen injured Kosovars and noted that three houses were damaged and there were 100 mm shell casings bearing writing in Cyrillic on the ground. Locals claimed that, on 29 August, MUP helicopters had dropped leaflets in the area, telling people they could return to their homes. Then, Serbian/FRY forces, dressed in black uniforms and with camouflage paint on their faces, attacked the village. Furthermore, these attackers appeared under the influence of drugs. KDOM found syringes and half a kilo of unspecified pills in the village of Sedlare, 3 kilometres away from Rusinovce.

The attack on Sedlare itself apparently started on 25 August, with an artillery barrage and then the entry of five tanks into the village from the north. Villagers claimed that the tanks began to fire into homes and other structures and KDOM observed gaping holes in numerous residences which the team believed to be the result of both direct and indirect fire. The local residents alleged that approximately “2000 ground troops” followed these tanks and thoroughly looted and burned the majority of the homes along their path. KDOM observed mortar impacts and tail fins (M-74, 80 mm) on the north road leading to Sedlare and estimated that 171 houses had been burned down, constituting approximately 50% of the town. On 4 September, KDOM reported the repeated evidence of ransacking and looting of the houses and shops throughout Sedlare. In particular, the team noted several areas within a family compound where fires appeared to have been started deliberately. In another compound, evidence of burnt food supplies, rugs, TVs, curtains, furniture and fixtures was visible.

On 1 September, KDOM reported that two local doctors in a small house in Sedlare were treating shrapnel wounds reportedly caused by the shelling of the previous night. The seven patients, lying on the floor, were in varying states of injury and more patients were waiting outside for treatment. One of the doctors told KDOM that these people needed to be evacuated in order to have a chance of full recovery and at least one seemed likely to die if not evacuated rapidly.

It is noteworthy that MUP forces denied access to KDOM teams in the area south of Komorane at the end of August, which was the general indication that it was conducting military operations in the area. In addition, there were no evident legitimate military targets in the Senik area, nor any evidence of combat with UCK forces.

The above-described events appear to illustrate that Serbian/FRY forces took part in, *inter alia*,

- Indiscriminate shelling, resulting in the killing and injury of civilian persons;

- Sniping and shell-fire directed at civilians and civilian dwellings;
- Attacks on undefended towns;
- Deliberate, malicious destruction of private property;
- Plunder of private property.

The VJ units that were based most closely to this area and which may have been utilised in these operations were the 549th Motorised Infantry Brigade, from Prizren, and the 243rd Mechanised Infantry Brigade, from Urosevac. Both of these fell under the authority of the commander of the Pristina Corps, General Pavkovic. The MUP forces involved could have been brought from the SUPs in Prizren, with sub-stations in Suva Reka and Orahovac, and Urosevac, with a sub-station in Stimlje. It appears that one Milan Sipka is presently at the head of the SUP in Prizren but he was not in that position at the time of the above described attacks. In the Suva Reka sub-station, one Dobri Vitosevic has been named as the chief of police and in Orahovac, one Bogoslav "Bogi" Soric may have had some commanding role, as well as one Dusan Vujsic. The commander of the Urosevac SUP has been identified as Bogoljub "Bogi" Janicijevic and an inspector there, Ratko Doder, has been named in the context of the detention and torture of Kosovars in July 1998. In any case, all ordinary MUP forces were subject to the overall command of General Lukic.

**(ii) Attack on the Vranic area at the end of September**

According to eyewitnesses' statements, FRY/Serbian forces, including foot soldiers and police forces with a large number of armoured vehicles, tanks and Pinzgauers, arrived in the Vranic area, between Prizren and Urosevac, on Friday 25 September, from Suva Reka. Some of these forces took up positions in Sopina, three or four kilometres from the village of Vranic, and others were deployed around the villages of Musitiste, Budakovo and Maticvevo. An eyewitness described the appearance of these soldiers as varied, some wearing military uniforms with red and black bands around their heads and with gloves and others wearing police camouflage uniforms. In addition, some had bandanas, while others wore distinctive knives and a few even wore uniforms of the UCK.

In the morning of 26 September, the shelling of Budakovo, Musitiste, Maticvevo, Bukos, Buzala, Savrova, Matiqeva, Papaz, Mulan and Krusica began. The pattern of attack was typical of the Serbian/FRY operations in Kosovo, consisting of artillery bombardment, followed by the advance of infantry backed by mechanised vehicles. On this occasion, the Serbian/FRY forces attacked from the direction of Sivoko, Birac (a forest around Suva Reka) and Dulje and they systematically set on fire the houses in their path. At approximately 11:00 a.m., Vranic itself was shelled and then the infantry forces entered the village, via Lugovic. Witnesses claimed that these forces contained many Montenegrins, Bulgarians, Russians and Hungarians, as well as Serbs, and that they looted property from many houses and then torched the buildings. During the attack, the local residents fled towards the Gradina valley and were fired upon as they made their escape.

The next day, the villagers who were sheltering in the valley were surrounded by the Serbian/FRY forces and several witnesses have given accounts of their treatment. On the basis of these accounts, it seems that that the women in the group were searched and robbed of their valuables as an identification process was conducted. The police/soldiers on foot

also separated the men from the women and children and took the latter group back to the village, while the men were ordered to remain and undress to the waist. At that stage the police/soldiers removed two men from the group, accusing them of belonging to the UCK because wounds were visible on their bodies. As the rest of the men were ordered to march towards the village, they heard shots coming from the direction of where these two men were being held and their bodies were subsequently discovered.

On their way back to the village, these male Kosovars could see that many of the houses were on fire and were being looted by the FRY/Serbian forces. Then, some of the younger men were beaten before being put on to trucks and taken to Prizren. There, they were interrogated in the police station, beaten and administered a paraffin test on their hands. They were detained for three days without food or drink and were finally released and driven back to Vranic.

After having been separated from the men, the group of women and children were confined in a local elementary school. From there they could observe the arrival of about 100 men who had been rounded up, being detained for a couple of hours and some being subjected to beatings. These men were reportedly taken later to the elementary school in Bukos. The women and children were detained for 24 hours without food, water or access to bathrooms and at 9:00 a.m. the next day, they were loaded on to trucks and taken to Suva Reka, from where they were released.

The accounts of the Vranic attack and the experiences of the villagers which were recounted to KDOM concur with the witness testimony gathered by the Humanitarian Law Center. IDPs told KDOM that, on 27 September, they were informed by the Serbian/FRY forces that it was safe to return to Vranic and yet, as they made their way back to the village, in a convoy of around 240 vehicles, Serbian police, VJ and paramilitary forces stopped the convoy, attacked it, searched it and looted it, apparently looking for money, gold and jewellery. KDOM subsequently located this vehicle convoy along the road to Vranic and observed that more than 150 vehicles were burned or destroyed. KDOM also went to the elementary school where the women and children were allegedly detained, and observed considerable human waste outside the building.

IDPs also claimed that some of the women had been sedated, beaten and raped during and after the attack. It should be noted that other rumours of the rape of Kosovar women and girls, have emerged, but reports are rare, due to the societal implications which are entailed for a woman who tells of having been raped.

Kosovars in the area told KDOM that some men had been transported to the Printex and Prelanka factories in Prizren and that four others had been killed in the hills near Vranic, as well as two in Maticvevo. KDOM observed the bodies of two men in their twenties on a hillside overlooking the burnt out convoy but could not confirm these allegations. Residents of Vranic further asserted that ten persons from the village had been killed in the fighting and forty people from the area in general had lost their lives. Moreover, villagers in Vranic gave KDOM a list of more than fifty people who had been "brutalized" by the Serbian police when they attacked the town.

KDOM was informed that the men who were detained during the attack were being held in

Prizren, some in the jail and others in the Central Hospital. Some of those who had been released told KDOM that, when they were detained, the MUP Deputy Commander from the Prizren area, “Captain Milan Sipka”, presented them with an ultimatum to the effect that if they did not hand in their weapons within 8 days they would all be “burned”. The deadline was thus to expire on 8 October.

On 30 September, KDOM was itself able to observe the shelling of Sajtuk Mah, Krusica and Budakovo and it could also see smoke and flames rising from the whole area. After the attack, KDOM estimated that Vranic was around 80% destroyed and Savrovo around 70% destroyed.

The above-described events appear to illustrate that Serbian/FRY forces took part in, *inter alia*,

- Indiscriminate shelling, resulting in the killing and injury of civilian persons;
- Sniping and shell-fire directed at civilians and civilian dwellings;
- Attacks on undefended towns;
- Deliberate, malicious destruction of private property;
- Plunder of private property.
- Arbitrary and unlawful confinement of civilians
- Intimidation, humiliation and mistreatment of civilians, possibly including rape

The 549th Motorised Infantry Brigade, based in Prizren, was the closest VJ Brigade to this area of operations and it is possible that it was utilised for the artillery bombardment of the relevant villages. Once again, these VJ forces, or any others that were utilised, were subject to the overall command of General Pavkovic of the Pristina Corps.

The closest SUP is located in Prizren, with a sub-station in Suva Reka, and it seems clear from the accounts of witnesses that the Prizren MUP played a role in these attacks. The name Milan Sipka arises as a MUP officer in a position of some command here, as well as one Dobri Vitosevic and, again, General Lukic was the commanding officer for all regular MUP formations throughout Kosovo. It would appear also from the witness accounts that some JSO units may have been involved.

### **(iii) Attacks in the border regions in August and September**

Since May of 1998, control of the town of Junik alternated between the UCK and the Serbian/FRY forces. On many occasions, access to this area was denied to KDOM and other members of the international community, although ECMM observers in northern Albania were often able to see and hear the shelling and destruction being visited upon the border villages. On 5 August, in particular, observers note the shelling of Junik, which involved the use of multiple rocket launchers and continued over an extended period. This offensive incorporated many other villages in the vicinity over the following weeks and Junik itself was held in siege for several days, while the surrounding MUP and VJ forces warned of the complete destruction of the town, should any attempt be made to attack their lines. On 9 August, shelling was heard in the vicinity of the village of Rznik, from which KDOM observed convoys of Kosovar IDPs departing in open trailers. The ECMM reported that the final assault on Junik came on 12 August and the town was abandoned by both the local



residents and the UCK. The Serbian/FRY infantry forces which then entered, engaged in further, deliberate destruction of property.<sup>39</sup> Subsequently, when KDOM gained access, it assessed that Junik was around 40% destroyed, although this damage then increased over time. The nearby village of Prilep was also estimated to be around 90% destroyed.

KDOM reported that, early in the morning of 15 August, the village of Lodja, just to the south of Pec, was attacked with a combined Serbian/FRY force of 3 helicopters, 4 fixed-wing propeller driven aircraft, artillery and tanks. At 9:00 a.m. the same day, aircraft also attacked an area 6 kilometres to the north-east of Decane and UCK units in the vicinity communicated that 20,000 IDPs were located here, living unprotected. Indeed, the UCK reported that, after this attack, 60 civilians were seriously injured and it requested an immediate cease-fire in order to evacuate these IDPs. In the evening of the same day, KDOM noted that both Lodja and Brezanik were burning intensely.

At 04:30 a.m. on 16 August, artillery fire began once again and continued intermittently in the Lodja and Brolic area. Vast columns of smoke were observed over Lodja and Brezanik and the occasional report of artillery and mortar fire was heard throughout the day, while freedom of access was denied to KDOM towards Istinic. Despite this restriction, KDOM noted that the Serbian/FRY forces in the area incorporated many MUP and JSO units. Additionally, to the north of Rausic a KDOM team found 200 shell containers of 60 and 82mm mortars along with remnants of mortar fire grenades and hundreds of 12.7 mm cartridges. Also on the road from Pec to Decane, KDOM was able to observe, on 18 August, a convoy of 14 trucks (holding 25 men each), 2 APCs with mounted 12.7 mm HMG and two black Suzuki jeeps, all driven by members of the security forces and heading back towards Pec.

By September, the border villages in the Junik area had been shelled and attacked a number of times. Junik, Prilep and Rznic were considered by KDOM to be totally destroyed, rendering the latter two uninhabitable. Even the mosques were badly damaged. KDOM noted the evidence of looting in Rznic and Krusevac as well as the intentional contamination of water supplies in the latter of these villages. On 8 September, KDOM observed a significant number of “specialized” paramilitary troops in and around the burning village of Rznic. KDOM also observed several houses and haystacks burning in the nearby village of Glodjane, which appeared to be 85% destroyed. IDPs further reported that, when they had tried to return to Glodjane from Istinic, on 10 September, they were refused access by the Serbian police and were beaten and threatened, clearly to prevent them from returning to Glodjane. KDOM also noted that many homes around the village of Istinic were burned over a couple of days in early September during operations by Serbian/FRY forces. A KDOM team was also informed of the forced movement of many hundreds of IDPs in and around Istinic by a very large and armed concentration of Serbian police.

In mid-September, an assessment of the level of damage in villages in this border area led to the conclusion that: in Ljumbarda, 25 out of 100 houses were destroyed; in Pozar, 40 out of 61 houses had been destroyed and all had been looted; in Barnic, 20 of the 60 houses had

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<sup>39</sup> A witness interviewed by the Humanitarian Law Center claimed that VJ forces entered Junik on 15 August and searched all the houses, ordering those elderly people who remained there to move outside, from where they were taken to Decane.

been destroyed and all looted and vandalised; in Donje Ratis and Gornje Ratis, 90% of the homes were destroyed; and in Krusevac, only 20 out of 160 houses were left undamaged.

All of these events appear to illustrate that Serbian/FRY forces took part in, *inter alia*,

- Indiscriminate shelling;
- Sniping and shell-fire directed at civilians and civilian dwellings;
- Attacks on undefended towns;
- Deliberate, malicious destruction of private property;
- Plunder of private property.

More than in any other area of Kosovo, units of the VJ were openly involved in the clashes in the border areas and in the destruction of villages and property. There are several VJ Brigades, Regiments and Battalions stationed in the border region, ostensibly to protect the FRY from external attack, including a Motorised Infantry Battalion, in Pec, the 52<sup>nd</sup> Anti-aircraft Regiment and the 311<sup>th</sup> Air-Defence Regiment in Djakovica, and the 53<sup>rd</sup> Border Guard Battalion in Djakovica. Once again, all of these forces were subject to the general command of General Pavkovic in Pristina.

In addition to these VJ forces, MUP forces from the SUPs in Djakovica and Pec were also in a position to be utilised, as well as from the sub-station in Decane. Named as persons in positions of command in these stations are Milan Stanovljevic, Dragutin Adamovic and Vukmir Mircic. Additionally, it has been speculated that the forces involved in the attack on Lodja included JSO units based in the prison compound at Dubrava, near Istok.

#### (iv) **Attack near Susica at the end of August**

While not being a widely reported incident, the attack on a hamlet near Susica, to the north-east of Istok, on 29 August, merits attention on the basis of the organised, efficient and co-ordinated manner in which it was carried out and the variety of forces utilised. A KDOM team received reports of the attack and the killing of eight male members of one family in the hamlet and went to Susica to investigate. The targeted individuals were the male members of the Salihaj family and their neighbours recounted the details of the operation.

On Saturday 29 August, at 6:00 a.m., Serbian police forces arrived and ordered the four neighbouring families to the Salihaj compound to assemble in one house and not move. Then, these police forces set the freshly collected grain and hay on fire and waited until the male members of the Salihaj family came out to extinguish the fire. At that moment, the police opened fire, although the witnesses were unable to see what ensued.

It seems that these MUP forces used 60mm mortars and the KDOM team could confirm 15 mortar impacts in the location of the Salihaj compound. KDOM also observed blood spots in the garden where the eight men were killed, some allegedly having had their throats slit. The youngest of those killed was 16 and the oldest was 75 years of age. According to the accounts of the neighbours, the bodies of the victims were then put in a van and were left in different places in the locality. The police then authorised the neighbours to leave their houses and ordered them to bury the bodies. KDOM observed these graves. One of the female members of the family also went missing during the attack and sources claim that her

body was also recovered later.

It appears that around 200 men were involved in this operation on the Serbian side and they were arranged in concentric circles around the relevant location. The outer ring was used to fire mortars in on the target, then police “infantry” moved in, shooting towards the compound, and an inner circle of “special forces” were involved in the killing of the target inhabitants. Sources assert that the forces used in the attack were stationed in the nearby Dubrava prison, which had recently been emptied of its regular occupants. These forces had small aircraft and helicopters at their disposal. KDOM noted that the access roads to the prison could easily serve as landing strips.

This attack would seem to have involved, *inter alia*,

- Shelling of civilian dwellings
- An attack on an undefended village
- Destruction of crops and food supplies
- Wilful killing

The closest SUP to this area of operation is located in Pec, which has a sub-station in Istok. It seems that that chief of police in Istok was one Momir Pantic, although sources claim that the deputy chief, Sima Lusic, was in charge of the Susica operation. While, yet again, General Lukic had overall command of all ordinary MUP formations, if JSO units were involved in the attack these were ultimately subject to the authority of Jovica Stanisic, possibly through Franki Simatovic.

#### (v) **Operations in the area of Obrinje and Golubovac at the end of September**

During the final offensive in Drenica towards the end of September and after taking Likovac, Serbian/FRY forces attacked the Golubovac municipality, the villages of Gornje Obrinje and Golubovac being particularly targeted. The massacres in Obrinje and Golubovac have been widely reported in the media and have also been the subject of a detailed report by Human Rights Watch, released recently.<sup>40</sup> An extensive description of the recovery of the bodies of those persons killed and the witness accounts of the attacks in these areas are contained in the Human Rights Watch report and are therefore not reproduced here.

On 25 September, KDOM noted the deployment of more than a 100 men with tanks, self-propelled multiple rocket launchers and armoured vehicles to the north of the main road between Komorane and Kijevo, apparently preparing for action. Human Rights watch researchers in the area also noticed the presence of helicopters on 26 September. According to witnesses interviewed by the Humanitarian Law Center, the shelling of Gornje Obrinje began at daybreak on the 26 September, with different artillery and mortar fire coming from the direction of Likovac. By then, most of the Kosovar residents of the village had fled to Golubovac or into the surrounding forest. This shelling continued sporadically during the night and then, with renewed vigour the following morning. On that day, about 68 tanks started to move toward the Delijaj compound in Gornje Obrinje, firing ground to ground

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<sup>40</sup> See, “A Week of Terror in the Drenica: Humanitarian Law Violations in Kosovo”.

missiles at the villagers who remained in the vicinity and these were followed by infantry forces. These forces were reportedly wearing blue police uniforms, police tiger stripes (camouflage) and VJ camouflage uniforms. Some also wore scarves on their heads and black gloves on their hands and one witness stated that many had knives or small axes. According to this witness, these infantry troops set houses on fire along their way.

It seems that a contingent of these advancing forces had entered the forest by the village at 10:00 a.m. on 26 September. The Delijaj family was among those who had sought refuge in the forest prior to the final assault. On 29 September Human Rights Watch researchers arrived in the village and observed seven bodies of members of the Delijaj family, while eleven others were in the process of being buried by local villagers. Five of these seven were women and the other two were children aged five and seven. All had been shot in the head at close range, apparently while attempting to flee the attack. The bodies of several of the victims displayed clear evidence of mutilation. In addition, a 95 year old male member of the family was found burnt in his house. At this time, two teen-age girls from the family remained missing, but KDOM subsequently reported the discovery of their bodies.

In the village of Golubovac, located approximately 5 kilometres to the south of Gornje Obrinje, Human Right Watch researchers visited what appeared to be the execution site of 14 young men who, according to a survivor's statement, had also been severely beaten prior to their murder. According to the same witness, on 26 September Serbian/FRY forces had lured those persons who had sought refuge in the woods into returning to their village. However, upon emerging, these forces rounded up around 200 civilians, separating the men from the women. Fourteen men were then selected from the group and were questioned as to their ties to the UCK. These men were beaten and forced to crouch on the ground for an extensive period of time, and then led to a garden where they were executed. The witness claimed that after this summary execution, the bodies were buried in the woods 2 kilometres to the east of Golubovac. A KDOM team and Human Rights Watch researchers observed significant pools of blood in the dirt, blood covered pipes and other tools, and approximately 100 small calibre shell casings at the site of the alleged massacre, all of which would appear to confirm the account given by the survivor.

Even this brief description of the attacks in these areas demonstrates that Serbian/FRY forces engaged in the following,

- Indiscriminate shelling and attacks on civilian populations;
- Deliberate destruction of property;
- Wilful killing of civilians
- Inhumane treatment of civilians

The forces involved in these attacks were clearly a combination of various groups, acting in a co-ordinated fashion. Some reports indicate that members of the SAJ and JSO were present and were responsible for the killings. Regular MUP forces from the police stations in Srbica and Glogovac (whose chief is named as one Milos Vukobrat) may have been involved and VJ forces were clearly utilised, possibly coming from bases in Pristina and Kosovska Mitrovica. Once again, these VJ units were subject to the authority of General Pavkovic.

## B. Applicable Law

As has been previously stated, the aim of the Serbian/FRY authorities and the forces under their control was to ensure that the Kosovar population did not achieve any form of autonomy or independence from Serbia as a whole. By the summer of 1998, military and police forces were thus being used to halt the activities of the UCK, which had garnered a large amount of support from the civilian population, by seeking to destroy their bases, remove their key personnel, prevent their acquisition of arms and equipment and ensure that the Kosovars as a whole were cowed into submission through fear, intimidation and the destruction of their property. This escalation into terrorisation of the civilian population came after several years of intimidation by the Serbian police forces in Kosovo and the widespread abuse of human rights in the province and constitutes an unlawful method of operation during armed conflict.

The most clear expression of the prohibition on such methods of warfare in the course of an internal armed conflict is contained in article 13(2) of Additional Protocol II to the Geneva Conventions, of 1977. This provision states:

The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

Of further relevance is article 14 of the Additional Protocol which reads:

Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless for that purpose, objects indispensable to the survival of the civilian population such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works.

The principle of protection of the civilian population is one of the most fundamental rules of the laws of armed conflict and must be respected in the course of any conflict, whether international or internal in nature. The basic prohibitions expressed in article 13 therefore reflect customary international law and this is indeed recognised in the ICRC Commentary to the article. The obligation of the armed forces involved in a conflict is not only to refrain from launching direct attacks on civilians, but also to avoid, or at least minimise, incidental losses during attacks on legitimate military targets.

While article 13(3) provides that the protections afforded to civilians in the Protocol are lost should such civilians engage in hostilities, it should be noted that the ICRC Commentary states:

“It cannot be denied that in situations of non-international armed conflict in particular, the civilian population sometimes shelters certain combatants, and it may be difficult to ascertain the status of individuals making up the population. However, we must point out that if the mere presence of some individuals not protected under paragraph 3 of this article were to permit an attack against a whole group of civilians, the protection enjoyed by the civilian population would become totally illusory. Thus the fact that the

Protocol is silent on this point, should not be considered to be a licence to attack.”

Moreover, while a civilian enjoys no protection so long as his or her participation in hostilities lasts, afterwards “as he no longer presents any danger for the adversary, he may not be attacked... [and] in case of doubt regarding the status of an individual, he is presumed to be a civilian.”

The Commentary further emphasises the importance of the prohibition on acts or threats of violence whose primary purpose is to spread terror. It states that,

“Attacks aimed at terrorising are just one type of attack, but they are particularly reprehensible. Attempts have been made for a long time to prohibit such attacks, for they are frequent and inflict particularly cruel suffering upon the civilian population.”

The above chronology of the military campaign conducted by the Serbian/FRY forces, as well as the specific incidents/attacks described, demonstrate in the clearest of terms that this fundamental prohibition has been violated time and time again in Kosovo. Without seeking to enter a discussion of the applicability of Additional Protocol II *per se*, it is submitted that article 13(2) reflects customary international law and comes within the scope of Article 3 of the Statute of the International Tribunal. Thus, those persons responsible for the attacks on Senik, Vranic, Susica, Junik, Lodja, Gornje Obrinje and countless other locations are liable to be prosecuted before the International Tribunal for violations of the laws or customs of war.

In addition, as has been discussed at the beginning of this report, common article 3 of the Geneva Conventions is considered as falling within the ambit of Article 3 of the Statute and it is evident that its provisions have also been violated in the course of the conflict. In particular, the above factual description leaves no doubt that persons taking no active part in the hostilities have not received the requisite humane treatment and have indeed been subjected to violence to life and person, including murder and cruel treatment and outrages upon personal dignity, involving humiliating and degrading treatment.

Moreover, the specific prohibitions enumerated in Article 3 of the Statute have clearly been violated during the course of the Serbian/FRY campaign. In particular, it is evident that many of the above-described attacks involved the wanton destruction of towns and villages, devastation not justified by military necessity, the bombardment of undefended dwellings, and the plunder of private property. For all of these violations of the laws or customs of war there must be individual accountability.

Insofar as these attacks and incidents demonstrate a widespread or systematic nature, they are also considered as crimes against humanity, within the jurisdiction of the International Tribunal by virtue of Article 5 of the Statute. Particularly relevant is Article 5(h), which relates to the prohibition on persecution. In its Opinion and Judgment in the *Tadic* case, Trial Chamber II found that

“... persecution can take numerous forms, so long as the common element of discrimination in regard to the enjoyment of a basic or fundamental right

is present, and persecution does not necessarily require a physical element.”

It is submitted that the sequence of attacks against and terrorisation of the Kosovar population by Serbian/FRY police and military forces constitutes precisely this crime of persecution, for the Kosovars were targeted as a group on the basis of their Albanian ethnicity and had been subjected to the most blatant policy of discrimination since 1989. Thus, during the conflict in 1998, the elements of “persecution” took the form of:

- (i) attacks on towns and villages inhabited by Kosovar civilians;
- (ii) the killing and causing of serious injury or harm to Kosovar civilians, including women, children, the elderly and the infirm, both during and after such attacks;
- (iii) the arbitrary selection, detention and imprisonment of male members of the Kosovar population during such attacks;
- (iv) the coercion, intimidation and terrorisation the Kosovar population such that they abandoned their property and homes;
- (v) wanton and excessive destruction of civilian dwellings and other buildings;
- (vi) wilful destruction of private property, including crops and livestock;
- (vii) the organised looting and plundering of civilian property.

In addition, murder, torture, rape and other inhumane acts are themselves crimes against humanity, listed in Article 5, paragraphs (a), (f), (g) and (i) respectively. Those responsible for the above-described events in, *inter alia*, Gornje Obrinje, Golubovac, Vranic and Susica should therefore also be subject to prosecution under these provisions.

Having thus laid out the facts and the legal prohibitions which relate to these facts, the final issue to be addressed is that of responsibility, for only by determining the nature and extent of responsibility can a judicial response to the Kosovo conflict contribute to peace and reconciliation.

## V. INDIVIDUAL CRIMINAL RESPONSIBILITY

Article 7 of the Statute of the International Tribunal concerns the individual criminal responsibility of perpetrators of serious violations of international humanitarian law and reads as follows:

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.
2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.
3. The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate

was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

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

In his discussion of the parameters of individual criminal responsibility within the context of the International Tribunal, the UN Secretary-General emphasised that all persons who commit serious violations of international humanitarian law must be held accountable, no matter their political or military position, and the responsibility of such persons in positions of authority extends not only for their own actions but also for the actions of their subordinates, in certain circumstances.

“53. An important element in relation to the competence *ratione personae* (personal jurisdiction) of the International Tribunal is the principle of individual criminal responsibility. As noted above, the Security Council has reaffirmed in a number of resolutions that persons committing serious violations of international humanitarian law in the former Yugoslavia are individually responsible for such violations.

54. The Secretary-General believes that all persons who participate in the planning, preparation or execution of serious violations of international humanitarian law in the former Yugoslavia contribute to the commission of the violation and are, therefore, individually responsible.

55. Virtually all of the written comments received by the Secretary-General have suggested that the statute of the International Tribunal should contain provisions with regard to the individual criminal responsibility of heads of State, government officials and persons acting in an official capacity. These suggestions draw upon the precedents following the Second World War. The Statute should, therefore, contain provisions which specify that a plea of head of State immunity or that an act was committed in the official capacity of the accused will not constitute a defence, nor will it mitigate punishment.

56. A person in a position of superior authority should, therefore, be held individually responsible for giving the unlawful order to commit a crime under the present statute. But he should also be held responsible for failure to prevent a crime or to deter the unlawful behaviour of his subordinates. This imputed responsibility or criminal negligence is engaged if the person in superior authority knew or had reason to know that his subordinates were about to commit or had committed crimes and yet failed to take the necessary and reasonable steps to prevent or repress the commission of such crimes or to punish those who had committed them.”<sup>41</sup>

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<sup>41</sup> Report of the Secretary-General pursuant to paragraph 2 of Security Council Resolution 808 (1993).



In the *Martić* Rule 61 Decision, of 6 March 1996,<sup>42</sup> Trial Chamber I emphasised the importance of applying Article 7 of the Statute to persons who are in a position to “undermine international public order” rather than those who merely followed orders.

“The Tribunal has particularly valid grounds for exercising its jurisdiction over persons who, through their position of political or military authority, are able to order the commission of crimes falling within its competence *ratione materiae* or who knowingly refrain from preventing or punishing the perpetrators of such crimes. ... Since the criminal intent is formulated at a high level of the administrative hierarchy, the violation of the norm of international humanitarian law is part of a system of criminality specifically justifying the intervention of the Tribunal.”

Such statements illustrate the fundamental importance of the International Tribunal’s role in contributing to the restoration and maintenance of peace in the former Yugoslavia and the fostering of reconciliation through justice, by emphasising that individuals, and not groups, are responsible for crimes and that often those individuals are in positions of high authority in the State or military apparatus. Indeed, while particular acts of violence and destruction are perpetrated by individual members of the military or security forces on the ground, their superiors, who plan, order, instigate, or acquiesce in such atrocities, must bear at least an equal responsibility. Moreover, when atrocities are committed on a widespread scale, or systematically as part of an overall policy, those persons who conceive of and instigate the policy are culpable at the most basic of levels for violating fundamental principles of humanity, and should be punished accordingly. The view has often been expressed that the International Tribunal, as well as the ICTR, should concentrate its efforts on prosecuting persons in positions of authority responsible for such crimes against humanity, rather than so-called “small fry” who could easily be subject to domestic prosecution mechanisms.

In relation to violations of the laws or customs of war, the “widespread or systematic” element, central to the concept of crimes against humanity and indicating an overall policy, is absent. Thus, responsibility falls on the direct perpetrator of an offence (direct perpetrator responsibility under Article 7(1)) and his superior, if that superior directly ordered, instigated, or aided and abetted in the planning, preparation or execution of the offence (direct superior responsibility under Article 7(1)), or if he knew or had reason to know that the subordinate was about to commit or had committed such an offence and yet failed to take the necessary and reasonable steps to prevent or repress the commission of the crime or to punish the subordinate who had committed it (indirect superior responsibility under Article 7(3)).

There are also three levels at which criminal responsibility may be attributed for a crime against humanity: first, to the perpetrator himself, who directly commits the unlawful act as part of a widespread or systematic sequence (direct perpetrator responsibility under Article 7(1)); secondly, to the military or political superior who planned, instigated, or ordered, or who aided and abetted in the planning, preparation or execution of unlawful acts on a widespread or systematic scale (direct superior responsibility for policy and instigation under Article 7(1)); and thirdly, to the military or political superior who knew or had reason to

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<sup>42</sup> *Prosecutor v Milan Martić*, Review of the Indictment pursuant to Rule 61, 6 March 1996, IT-95-11-R61.

know that his subordinates were about to commit or had committed crimes against humanity and yet failed to take the necessary and reasonable steps to prevent or repress the commission of such crimes or to punish those who had committed them (indirect superior responsibility under Article 7(3)).

The two forms of superior responsibility, in relation to violations of the laws or customs of war or crimes against humanity, are themselves fundamentally different. This difference was concisely stated by Trial Chamber II in its Judgement in the *Delalic et al.* case, thus:

“The distinct legal character of the two types of superior responsibility must be noted. While the criminal liability of a superior for positive acts follows from general principles of accomplice liability, ... the criminal responsibility of superiors for failing to take measures to prevent or repress the unlawful conduct of their subordinates is best understood when seen against the principle that criminal responsibility for omissions is incurred only where there exists a legal obligation to act. As is most clearly evidenced in the case of military commanders by article 87 of Additional Protocol I, international law imposes an affirmative duty on superiors to prevent persons under their control from committing violations of international humanitarian law, and it is ultimately this duty that provides the basis for, and defines the contours of, the imputed criminal responsibility under Article 7(3) of the Statute.”  
(footnote omitted)

The distinction between the two categories of crimes should also be noted, for while a superior may be responsible for planning, ordering, instigating, etc. a violation of the laws or customs of war, there is a qualitative difference between this and the conceiving of a criminal policy, the execution of which requires the planning, ordering, instigation, etc. of unlawful acts on a widespread or systematic scale.

The present report is not concerned with attributing responsibility to the direct perpetrators of individual criminal acts during the Kosovo conflict but instead focuses on superior responsibility, under both Articles 7(1) and 7(3) of the Statute. The above chronology of the campaign mounted by the Serbian/FRY forces in 1998 demonstrates a clear pattern, and the specific examples chosen as illustrative of the campaign cannot, therefore, be regarded as isolated events. The intent of the Serbian/FRY authorities was to crush the forces of the Kosovo Liberation Army, both by direct engagement on the field and by destroying their support network among the Kosovar population as a whole. While an armed conflict necessarily involves violence and results in death and destruction on either side, the methods utilised by each party to a conflict must conform with the requirements of international law. Thus, a policy which requires the deliberate targeting of a civilian population through terrorisation and the widespread looting and destruction of property, is in itself an unlawful policy and those persons in positions of authority who plan and instigate its execution must be held accountable.

As previously stated, the events described above fall within the jurisdiction of the International Tribunal as crimes against humanity, constituting persecution of the Kosovar population, as well as murder, torture, and other inhumane acts. In addition, there can be no doubt that many violations of the laws or customs of war were committed by the

Serbian/FRY forces during the course of the campaign, particularly the wanton destruction of towns or villages and devastation not justified by military necessity, the attack and bombardment of undefended towns, villages, dwellings, and buildings, and the plunder of private property. For each of these crimes, individual criminal responsibility can be attributed under Article 7(1) of the Statute for their planning, ordering and instigation by persons in positions of authority within the Republic of Serbia and the FRY.

In its Rule 61 Decision in the *Karadzic and Mladic* case, of 11 July 1996,<sup>43</sup> Trial Chamber I similarly addressed the issue of the responsibility of military and political leaders for planning, ordering and instigating crimes on a widespread and systematic scale in Bosnia and Herzegovina. The Trial Chamber stated,

“The above-mentioned consistent criminal acts, all targeting the same type of population and manifesting the same desire to annihilate its culture and religious sites, coupled with the effect of criminality on such a massive scale, properly gives rise to the question: what is the appropriate hierarchical level at which to analyse the concept, planning and organisation i.e. the concerted project and the execution i.e. the accomplishment of the desired result. This analysis of the conflict in the former Yugoslavia should, without however exonerating those more directly responsible, converge upon a political responsibility in the highest sense of the term. Pre-eminently, this entails individual criminal command responsibility and, in this case, that of political and military leaders. Historical precedence (such as that of the International Tribunals at Nuremberg and Tokyo) furnishes no example where the historical responsibility at the highest level for planning, preparing or executing the criminal design of a conflict has not been discovered.”

The Trial Chamber thus examined the policy of ethnic cleansing during the conflict in Bosnia and Herzegovina and assessed the individual criminal responsibility of Radovan Karadzic and Ratko Mladic. The Trial Chamber took the view that,

“The description of the offences has demonstrated that those committing them were part of an institutional, political and military organisation whose purpose was to establish a territory with a homogeneous population and which covered all of the regions of Bosnia and Herzegovina held by the Bosnian Serb Administration.

According to the two indictments, the offences charged were committed by the military and police personnel obeying the orders of the Bosnian Serb administration. Both indictments indicate that the perpetrators were acting under the control, command and direction of Radovan KARADZIC and Ratko MLADIC. All of the charges would therefore involve the individual criminal responsibility of those in superior authority.”

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<sup>43</sup> *Prosecutor v Radovan Karadzic and Ratko Mladic*, Review of the Indictment pursuant to Rule 61, 11 July 1996, IT-95-5-R61 and IT-95-18-R61.

On the basis of the evidence presented by the Prosecution, the Trial Chamber was in no doubt that a prima facie case against Karadzic and Mladic had been established on the basis of their superior authority.

“Radovan KARADZIC’s central role in the political and military preparation of the take-over by the Serbs of Bosnia and Herzegovina appears clearly. All of the evidence and testimony tendered by the Prosecutor shows that since July 1990 Radovan KARADZIC has been the unchallenged leader of the Bosnian Serbs. His actions and statements demonstrate not only that he was aware of his subordinates’ doings, but also, and above all, that he endorsed their behaviour, that he participated from the first moment on in the planning of the policy of “ethnic cleansing” in Bosnia and Herzegovina and that he himself was in a position to order the Bosnian Serbs’ operations which led to the commission of offences charged.

...

His [Ratko MLADIC] knowledge of and involvement in the offences in the indictments have been sufficiently proven at this stage of the proceedings. ... His knowledge of the obligations under international humanitarian law and generally speaking of the prohibited acts committed, as well as the absence of any disciplinary measure to punish the serious violations perpetrated by his subordinates, have been sufficiently proven at this stage of the proceedings.”

The assembly and co-ordination of the various Serbian/FRY forces which were present on the ground in Kosovo indicates a sophisticated level of planning and instruction for the campaign to be thus orchestrated and, consequently, a considerable degree of power within the Serbian/FRY State hierarchy. At this time, all power within the FRY emanates from one source, the President, Slobodan Milosevic, and it cannot be doubted that he has, since the beginning, been intimately connected with the entire course of the conflict. Since 1989, President Milosevic has closely controlled all aspects of life within Serbia and has carefully organised the structure of the Republic, as well as of the FRY, in a manner which ensures his domination. As Chief of the Supreme Defence Council, Milosevic ordered the utilisation of the VJ in Kosovo, despite the objections of the Montenegrin premier.<sup>44</sup> At the same time, he favoured the deployment of huge numbers of police forces, whom he was able to control through his national security adviser and head of Serbian State security, Jovica Stanisic, and through the head of the Serbian public security department, Vladimir Djordevic. Since the involvement of the international community in attempts to resolve the Kosovo conflict,

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<sup>44</sup> According to the Constitution of the FRY, the President is the chief of the Supreme Defence council, in control of the Yugoslav Army. Article 135 thus reads:

In wartime and peacetime, the Army of Yugoslavia shall be under the command of the President of the Republic, pursuant to decisions by the Supreme Defense Council.

The Supreme Defense Council shall be made up of the President of the Republic and presidents of the member republics.

The President of the Republic shall preside over the Supreme Defense Council.

Article 136 then reads:

The President of the Republic shall appoint promote and dismiss from service officers of the Army of Yugoslavia stipulated by federal law; shall appoint and dismiss the president, judges and judge assessors of military tribunals and military prosecutors.

President Milosevic has been the principal protagonist on the side of the FRY, clearly exhibiting his control of the situation and all of the actors involved on the Serbian side. There can be no question that he is in direct contact with the police/military commanders in the field – Stanisic and Djordevic on the one hand, and General Pavkovic on the other – and has directed their activities from Belgrade.

Nonetheless, for a case to be brought to trial before the International Tribunal, it is imperative that further information be gathered on the orders and communication which passed between President Milosevic and his functionaries. Access to this type of information should be available through methods of co-operation and exchange established between the Office of the Prosecutor and those national governments who have the necessary capabilities and resources.

The attribution of criminal responsibility by way of Article 7(3) of the Statute is subject to rather different considerations, resting as it does on the concept of guilt by omission. Nonetheless, the indictments issued by the Tribunal Prosecutor often posit responsibility by way of Article 7(3) in addition, or alternatively, to Article 7(1)<sup>45</sup> and, thus, the present report also briefly addresses this “indirect superior responsibility”.

In this situation, the offences committed by the military/security forces in Kosovo are attributed to their superiors on the basis that these superiors did not exercise due diligence in the control of persons under their command and thus did not prevent the commission of the offences, nor punish the perpetrators thereof. Rather than ordering or planning and instigating violations of international humanitarian law, such superiors merely acquiesce in such violations and hence become responsible along with the perpetrators.

Thus far, the concept of superior responsibility under Article 7(3) has been elaborated by the judges of the International Tribunal primarily through the Judgement rendered in the *Delalic et al.* case and certain elements have been clarified. First, there must exist a relationship of superiority and subordination between the accused and the perpetrator of the offence in question, be it *de facto* or *de jure*;<sup>46</sup> second, the superior must have known or had reason to

<sup>45</sup> See, e.g. the indictment against Dario Kordic and Mario Cerkez, dated 2 December 1998 (IT-95-14/2-PT).

<sup>46</sup> The Trial Chamber stated that

“persons effectively in command of such more informal structures, with power to prevent and punish the crimes of persons who are in fact under their control, may under certain circumstances be held responsible for their failure to do so.... [N]o express limitation is made restricting the scope of this type of responsibility to military commanders or situations arising under a military command. In contrast, the use of the generic term “superior” in this provision, together with its juxtaposition to the affirmation of the individual criminal responsibility of “Head[s] of State or Government” or “responsible Government official[s]” in Article 7(2), clearly indicates that its applicability extends beyond the responsibility of military commanders also to encompass political leaders and other civilian superiors in positions of authority. ... [I]n order for the principle of superior responsibility to be applicable, it is necessary that the superior have effective control over the persons committing the underlying violations of international humanitarian law, in the sense of having the material ability to prevent and punish the commission of these offences. With the caveat that such authority can have a *de facto* as well as a *de jure* character, the Trial Chamber accordingly shares the view expressed by the International Law Commission that the doctrine of superior responsibility extends to civilian superiors only to the extent that

know of the offence committed by his subordinate;<sup>47</sup> and, third, the superior must have failed to take all measures reasonably within his power to prevent the commission of the offence, or to punish the perpetrator thereof.

While civilian as well as military leaders may be held responsible under Article 7(3), the link of command and control between such leaders and the perpetrators of the crimes must be clearly demonstrated. As eloquently stated by Trial Chamber II in its Judgement in the *Delalic et al.* case,

“While the Trial Chamber must at all times be alive to the realities of any given situation and be prepared to pierce such veils of formalism that may shield those individuals carrying the greatest responsibility for heinous acts, great care must be taken lest an injustice be committed in holding individuals responsible for the acts of others in situations where the link of control is absent or too remote.”

Thus, once again, the Prosecutor must request further information and material from national governments, as well as gain access to the relevant documentary evidence from the FRY, in order to conclusively demonstrate the extent of command, control and co-ordination of the forces on the ground in Kosovo.

It is, nonetheless, possible at this stage to posit the responsibility of General Lukic, on the basis of Article 7(3), for he was in overall command of the MUP forces at the relevant time and bore the duty of ensuring that all MUP operations were conducted in accordance with the laws of armed conflict. Additionally, on the side of the VJ forces, General Pavkovic was in command of the Pristina Corps and thus formally controlled all VJ formations in Kosovo. He therefore bore the duty of ensuring that his troops respected the provisions of international humanitarian law. At this level, there can be no doubt that these two commanders knew or had reason to know of the unlawful actions of their subordinates. Indeed, it is here submitted that superior responsibility under Article 7(3) can also be imputed to President Milosevic, as well as the heads of the public and state security departments of the Serbian Ministry of Interior. Once again, these individuals closely controlled the operations of all forces on the ground in Kosovo and were in positions to prevent or punish the violations of international humanitarian law which they unquestionably knew were being committed. As previously mentioned, Stanisic and Djordevic were themselves present in Kosovo, ensuring the success of the campaign, along with President Milosevic’s representative, Nikola Sainovic, a deputy prime minister of the

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they exercise a degree of control over their subordinates which is similar to that of military commanders.”

<sup>47</sup> In the view of the Trial Chamber,

“a superior may possess the mens rea required to incur criminal liability where (1) he had actual knowledge, established through direct or circumstantial evidence, that his subordinates were committing or about to commit crimes referred to under Article 2 to 5 of the Statute, or (2) where he had in his possession information of a nature, at a minimum, to put him on notice of the risk of such offences by indicating the need for additional investigation in order to ascertain whether such crimes were committed or were about to be committed by his subordinates.”

FRY.

It should, however, be noted that in the context of the Rule 61 Decision in the *Karadzic and Mladic* case, Trial Chamber I found that the evidence before it indicated a sufficient basis for applying Article 7(1) in preference to Article 7(3). The Trial Chamber stated,

“The conditions for the responsibility of superiors under Article 7(3) of the Statute, that is those constituting criminal negligence of superiors, have unquestionably been fulfilled:

- The Bosnian Serb military and police forces committing the offences alleged were under the control, command and direction of Radovan KARADZIC and Ratko MLADIC during the whole period covered in the indictment;

- through their position in the Bosnian Serb Administration, Radovan KARADZIC and Ratko MLADIC knew or had reasons to know that their subordinates committed or were about to commit the offences in question;

- lastly, it has been established that Radovan KARADZIC and Ratko MLADIC failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

The Trial Chamber does consider, however, that the type of responsibility incurred is better characterised by Article 7(1) of the Statute. The evidence and testimony tendered all concur in demonstrating that Radovan KARADZIC and Ratko MLADIC would not only have been informed of the crimes allegedly committed under their authority, but also and, in particular, that they exercised their power in order to plan, instigate, order or otherwise aid and abet in the planning, preparation or execution of the said crimes.”

It is submitted that this aspect of the *Karadzic and Mladic* case bears remarkable similarity to the present discussion of the responsibility of President Milosevic, Jovica Stanisic and Vlastimir Djordevic in the Kosovo context.

## VI. SUMMING UP

The provisions of the Statute of the International Tribunal and the existence of an armed conflict in Kosovo render the violations of international humanitarian law which have been, and continue to be, committed during its course appropriate subject-matter for investigation and indictment by the Office of the Prosecutor. The present report demonstrates that such violations have been committed on a widespread basis as part of a policy to destroy the aspirations of the Kosovar people for independence. This policy was implemented through methods of violence, intimidation and destruction, intended to terrorise the Kosovar population into submission. That such methods have been and are being utilised is widely known and reported. Indeed, on 3 October 1998, the UN Secretary-General stated,

“I am particularly concerned that civilians increasingly have become the main target in the conflict. Fighting in Kosovo has resulted in a mass displacement of civilian populations, the extensive destruction of villages and means of livelihood and the deep trauma and despair of displaced populations. Many villages have been destroyed by shelling and burning following operations conducted by federal and Serbian government forces. There are concerns that the disproportionate use of force and actions of the security forces are designed to terrorize and subjugate the population, a collective punishment to teach them that the price of supporting the Kosovo Albanian paramilitary units is too high and will be even higher in future. The Serbian security forces have demanded the surrender of weapons and have been reported to use terror and violence against civilians to force people to flee their homes or the places where they had sought refuge, under the guise of separating them from fighters of the Kosovo Albanian paramilitary units. The tactics include shelling, detentions and threats to life, and finally shortnotice demands to leave or face the consequences. There have been disruptions in electricity and other services, and empty dwellings have been burned and looted, abandoned farm vehicles have been destroyed, and farm animals have been burned in their barns or shot in the fields.

The level of destruction points clearly to an indiscriminate and disproportionate use of force against civilian populations.”<sup>48</sup>

The ICTY Statute provides for two different forms of superior responsibility – under Article 7(1) and Article 7(3) – which are incurred by those persons who directed the Serbian/FRY campaign and controlled the forces involved in the commission of crimes against humanity and violations of the laws or customs of war. Such responsibility must be placed at the highest level in order to satisfy the mandate of the International Tribunal to contribute to the maintenance of peace and the achievement of reconciliation in the former Yugoslavia.

It would be wholly artificial to seek to address the crimes committed in the Kosovo conflict without recognising that the primary actor, involved at all levels in the planning, ordering,

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<sup>48</sup> Report of the Secretary-General prepared pursuant to Resolutions 1160 (1998) and 1199 (1998) of the Security Council, 3 October 1998, S/1998/912.



instigation and execution of these crimes, was indeed the President of the Federal Republic of Yugoslavia, Slobodan Milosevic. President Milosevic carefully selected those forces that were to be used in Kosovo and directly communicated his instructions and expectations to their commanders in the field.

The Prosecutor of the International Tribunal is thus called upon to focus the efforts of her staff on establishing the criminal responsibility of the following individuals for the violations of international humanitarian law committed in Kosovo in 1998:

**SLOBODAN MILOSEVIC** – President of the Federal Republic of Yugoslavia (Serbia and Montenegro)

**JOVICA STANISIC** – (former) Chief of State security of the Republic of Serbia and National Security Adviser to President Milosevic

**VLADIMIR DJORDEVIC** – Chief of public security of the Republic of Serbia

**NEBOJSA PAVKOVIC** – (former) General in command of the Pristina Corps of the Yugoslav Army

**SRETEN LUKIC** – Commander of Ministry of Interior police forces in Kosovo

**FRANKI SIMATOVIC** – Commander of State security special operations units in Kosovo