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# JUDGEMENT SUMMARY

(Exclusively for the use of the media. Not an official document)

CHAMBERS

The Hague, 26 February 2009

## Judgement Summary For Milutinović et al.

*Please find below the summary of the Judgement read out today by Judge Bonomy:*

The Trial Chamber is sitting today to deliver its Judgement in the case of *Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, and Sreten Lukić*. What I am about to read is a summary of the Chamber's findings in that Judgement. However, the authoritative account of those findings is contained in the written Judgement, which will be made available after this hearing.

At the outset the Chamber wishes to express its gratitude to counsel, the Registry staff, the interpreters and court reporters, the Chamber's own staff, and all others who have contributed to the smooth and efficient conduct of this trial.

The Judgement is a lengthy document, reflecting the size and complexity of this case. The trial proceedings began on 10 July 2006, and concluded on 27 August 2008. During their course the Chamber heard oral testimony from a total of 235 witnesses, and admitted over 4,300 exhibits.

The length of the trial, and volume of evidence, as well as the size of the Judgement, are in large part a consequence of the number and nature of the charges in the Indictment. The Accused are charged under every form of responsibility set out in Articles 7(1) and 7(3) of the Statute of the Tribunal for their alleged role in crimes said to have been committed between 1 January and 20 June 1999 in Kosovo by forces of the Federal Republic of Yugoslavia and the Republic of Serbia, referred to as the forces of the FRY and Serbia. Specifically, the Accused are alleged to be responsible for deportation, a crime against humanity (count 1); forcible transfer as "other inhumane acts," a crime against humanity (count 2); murder, a crime against humanity and a violation of the laws or customs of war (counts 3 and 4); and persecution, a crime against humanity (count 5). According to the Indictment, the Accused participated, along with others, in a joint criminal enterprise to modify the ethnic balance in Kosovo in order to ensure continued control by the FRY and Serbian authorities over the province. The Prosecution further alleges that the purpose of the joint criminal enterprise was to be achieved through a widespread or systematic campaign of terror or violence against the Kosovo Albanian population, including the various crimes specified in each of the counts of the Indictment.

Under count 1, the Indictment sets out how the deportation of Kosovo Albanians was carried out in early 1999 from 13 municipalities across Kosovo, and particular towns and villages in those municipalities. It should be noted that these descriptions also contain information about killings, property destruction, theft, sexual assaults, beatings, and other forms of violence, which the Prosecution alleges contributed to an atmosphere of fear and oppression created by the FRY and Serbian forces to facilitate the expulsion of the Kosovo Albanian population. Under counts 3 and 4, a number of killings are alleged in various locations in Kosovo. Finally, under the fifth count, the Indictment avers that the forces of

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the FRY and Serbia executed a campaign of persecution against the Kosovo Albanian population, including by way of murder, sexual assault, and wanton destruction or damage of religious sites. However, the specific acts of deportation and forcible transfer described under counts 1 and 2 are not included in count 5 as forms of persecution, as the Chamber has pointed out to the parties during the course of the trial proceedings.

At the time of the alleged crimes, Milan Milutinović was the President of the Republic of Serbia; Nikola Šainović was a Deputy Prime Minister of the Federal Republic of Yugoslavia, or FRY; Dragoljub Ojdanić was the Chief of the General Staff of the Yugoslav Army, or VJ; Nebojša Pavković was the Commander of the VJ 3<sup>rd</sup> Army; Vladimir Lazarević was the Commander of the VJ Priština Corps; and Sreten Lukić was the Head of the Serbian Ministry of Interior Staff for Kosovo, referred to as the MUP Staff. The Indictment alleges that each of the Accused participated in the joint criminal enterprise, and that in these roles they exercised command authority and/or effective control over VJ and MUP forces involved in the commission of the alleged crimes. They are also said to have planned, instigated, ordered, or otherwise to have aided and abetted these crimes.

Following the pre-trial conference held on 7 July 2006, the Chamber issued an order pursuant to Rule 73 *bis* of the Tribunal's Rules of Procedure and Evidence, which had the effect of preventing the Prosecution from leading evidence with regard to three of the crime sites alleged in the Indictment. The parties are ordered, at the end of the Judgement, to make appropriate submissions in writing, within two weeks, regarding how to proceed in relation to these charges.

The Judgement is divided into four volumes. The first volume sets out the law applicable to this case and the Chamber's findings upon the political and constitutional structures of the FRY and Serbia, the armed conflict that is the subject of the Indictment and the various forces involved, and the diplomatic efforts to resolve that conflict. In volume 2 the Chamber sets forth its findings in relation to the crimes alleged to have been committed from March to June 1999 in Kosovo by the forces of the FRY and Serbia. In volume 3 the Chamber makes findings as to the individual criminal responsibility of the six Accused. Volume 4 contains annexes to the Judgement, including an analysis of the evidence in relation to the more than 800 named murder victims listed in Schedules to the Indictment.

I will start by discussing the Chamber's findings in relation to the commission of the crimes alleged by forces of the FRY and Serbia. I note that in the Judgement the Chamber refers to place-names in Kosovo both in their Serbian and Albanian versions. However, I will only use the Serbian version while reading this summary.

The Chamber finds that a political crisis developed in Kosovo in the late 1980s and through the 1990s, culminating in an armed conflict involving forces of the FRY and Serbia and forces of the Kosovo Liberation Army, or KLA, from mid-1998. During that armed conflict, there were incidents where excessive and indiscriminate force was used by the VJ and MUP, resulting in damage to civilian property, population displacement, and civilian deaths. Despite efforts to bring the crisis to an end, which included the introduction into Kosovo of an international verification mission, the conflict continued through to and beyond 24 March 1999, when NATO forces began an aerial bombardment campaign against targets in the FRY. That campaign ended on 10 June 1999, and the forces of the FRY and Serbia were withdrawn from Kosovo. Sections of the Judgement analyse the evidence in relation to the ostensible efforts to negotiate between the Kosovo Albanians and the FRY and Serbian authorities in 1998 and 1999, various international agreements concluded in October 1998, and the situation as it developed thereafter, as well as the involvement of international interlocutors to resolve the crisis, which led to a conference in Rambouillet, France, in February 1999.

It is largely uncontested that significant numbers of people from Kosovo left their homes during the NATO bombing, many of whom crossed the borders into Albania and

Macedonia. Documentary evidence and witnesses brought by both the Prosecution and Defence confirmed this swift movement, primarily of Kosovo Albanians. For example, a series of reports sent by the MUP Staff to the MUP Headquarters in Belgrade, from 24 March to 1 May 1999, record the numbers of Kosovo Albanians crossing the borders in that period. According to these reports, in the first week of the NATO bombing, over 300,000 Kosovo Albanians crossed into Albania or Macedonia. By 6 April that number doubled, and by 1 May it had reached 715,158.

The Prosecution case is that these hundreds of thousands of Kosovo Albanians fled the province because of the violent and coercive actions of the forces of the FRY and Serbia, which engaged in a campaign of terror and violence against the Kosovo Albanian population in order to expel them from their homes and force them across the borders. This case was supported by the consistent evidence of many Kosovo Albanian witnesses, along with some of the former VJ and MUP personnel brought by the Prosecution. However, witnesses brought by the Defence consistently denied that there was any organised expulsion of Kosovo Albanians from their homes, and many of them gave other reasons for the mass movement of Kosovo Albanians across the borders into Albania and Macedonia, including the NATO bombing itself, and the actions of the KLA.

The Trial Chamber is mindful of the fact that in some parts of Kosovo, both within the 13 municipalities discussed in this Judgement and elsewhere, people may have left their homes for different reasons, such as instructions from the KLA, the desire to avoid being present while combat between the KLA and forces of the FRY and Serbia was taking place, or indeed the fact that NATO was bombing targets close to where they lived. However, despite the arguments by the Defence that these were the primary reasons for the massive movement of people within Kosovo and across the borders with Albania and Macedonia, none of the Kosovo Albanians who testified cited the NATO bombing as among the reasons for their departure, and in only one area of Vučitrn municipality and another area of Suva Reka municipality did the Chamber find that people were moving as a consequence of the actions of the KLA. The Kosovo Albanian witnesses who testified about their own expulsion and that of many others came from a broad cross-section of that community, generally with no connection to one another beyond their victimisation, and it is inconceivable that they could or would all have concocted such detailed and consistent accounts of the events that they experienced and witnessed.

Furthermore, NATO bombs struck targets across the FRY, with Belgrade suffering the most destruction, according to the former Commander of the VJ Air Force and Air Defence, and yet people did not leave Belgrade, or other parts of the FRY, in the massive numbers which fled Kosovo. The Chamber finds, therefore, that the NATO bombing was not the reason for the mass displacement of Kosovo Albanians from Kosovo.

While there was a continuing armed conflict between the KLA and the forces of the FRY and Serbia, at the same time as the NATO air campaign, the Chamber also does not consider that this conflict was the cause of the flight of hundreds of thousands of Kosovo Albanians from late March to early June 1999. The conflict between the KLA and the VJ and MUP commenced in mid-1998 and intensified through July, August, and September of that year. While many Kosovo Albanians were displaced at that time, most stayed within the boundaries of Kosovo, and there was not the massive flood of people across the borders that began on 24 March 1999. The Chamber further recalls that, while the KLA was, at various times and in various locations, a force to be reckoned with, its numbers were small in comparison to the quantity of VJ and MUP personnel deployed to Kosovo in March to June 1999, nor did it have the kinds of heavy equipment that the state forces had access to.

The Kosovo Albanian witnesses who testified both about their own experiences and that of their families, friends, and neighbours, in the few weeks between 24 March and the beginning of June 1999, gave a broadly consistent account of the fear that reigned in towns and villages across Kosovo, not because of the NATO bombing, but rather because of the actions of the VJ and MUP, and associated forces, that accompanied it. In all of the 13

municipalities specified in the Indictment as sites of deportation and forcible transfer, the Chamber finds that forces of the FRY and Serbia deliberately expelled Kosovo Albanians from their homes, either by ordering them to leave, or by creating an atmosphere of terror in order to effect their departure. As these people left their homes and moved either within Kosovo or towards and across its borders, many of them continued to be threatened, robbed, mistreated, and otherwise abused. In numerous places men were separated from women and children, their vehicles were stolen or destroyed, their houses were deliberately set on fire, money was extorted from them, and they were forced to relinquish their personal identity documents.

The Trial Chamber therefore finds that there was a broad campaign of violence directed against the Kosovo Albanian civilian population during the course of the NATO air-strikes, conducted by forces under the control of the FRY and Serbian authorities, during which there were incidents of killing, sexual assault, and the intentional destruction of mosques. It was the deliberate actions of these forces during this campaign that caused the departure of at least 700,000 Kosovo Albanians from Kosovo in the short period of time between the end of March and beginning of June 1999. Efforts by the MUP to conceal the killing of Kosovo Albanians, by transporting the bodies to other areas of Serbia, as discussed in detail in the Judgement, also suggest that such killings were criminal in nature.

I will briefly mention some of the Chamber's factual findings in relation to the various crime sites.

At the end of March 1999 an extremely threatening and violent environment was created in Peć town, in western Kosovo, by police and military forces burning houses, firing weapons, and abusing the local Kosovo Albanian population. A significant number of the town's residents thus fled or were ordered out of their homes, some of them being directed to go to Montenegro and others being sent to the centre of the town where they were put on buses and driven to the Albanian border. When these Kosovo Albanians returned to Peć after the conflict, they found that many of their houses had been burned, although the houses belonging to Serb residents of the town were undamaged.

In Dečani municipality, immediately to the south of Peć, similar events transpired in the village of Beleg at the end of March 1999. There the Kosovo Albanian residents were rounded up by police and VJ personnel, including reservists, in the course of which some men were killed. A large group of predominantly Kosovo Albanian women and children was detained and mistreated: some of the women were sexually assaulted; and some men were physically abused. The next day most of the people from the group were ordered to go to Albania, and those who remained have not been heard from since.

South of Dečani, in Đakovica town, a prevailing atmosphere of terror was created by police and VJ forces from the commencement of the NATO bombing campaign. These forces engaged in the selective looting and burning of buildings, and MUP forces killed Kosovo Albanian residents of the town, including a group of 20 women and children in a basement in Miloš Gilić Street at the beginning of April. As a consequence, a large number of Kosovo Albanians fled the town and travelled to and across the Albanian border. During their journey their personal identity documents were taken from them by VJ and MUP forces. Kosovo Albanian residents of villages in Đakovica municipality were also expelled from their homes by army and police forces in April 1999, in particular during a joint operation in the area known as the Reka or Caragoj valley at the end of the month. In the course of that operation, a number of Kosovo Albanians were killed by members of the police and VJ, and the bodies of at least 287 people who went missing from Meja and the surrounding area at that time were subsequently found in mass graves at Batajnica, close to Belgrade.

It is uncontested that a broad operation was conducted by the VJ and MUP at the end of March 1999 in an area covering parts of Prizren, Suva Reka, and Orahovac municipalities, in south-western Kosovo. During the course of that operation, on 25 March

1999, Kosovo Albanian villagers from Pirane, in Prizren municipality, fled their homes as a consequence of the shelling of the village and the torching of houses by VJ and MUP forces. The same day, MUP and VJ forces attacked the village of Celina in Orahovac municipality, looting and setting the majority of houses on fire. These forces terrorised the inhabitants of the village, killing a number of people. People from Celina who had fled their homes and taken shelter in nearby woods were later rounded up and robbed of their valuables and identity documents. Some of them were physically abused and they were sent towards the Albanian border. MUP personnel also deliberately destroyed the local mosque on 28 March 1999, a Muslim holiday.

The same day as Celina and Pirane were attacked, nearby Bela Crkva in Orahovac municipality was also targeted by VJ and MUP forces, which shelled the village and burned houses, causing the inhabitants to flee. During the course of this attack, police forces brutally killed a number of men, women, and children who were hiding in groups in a river-bed. The village of Mala Kruša, to the south of Celina and Bela Crkva, and to the north of Pirane, was also surrounded by VJ and MUP forces on 25 March 1999, and the MUP then entered the village, looting and setting houses on fire with the assistance of some local Serbs. The Kosovo Albanian residents of the village went to hide in a wooded area and were later rounded up, the women and children being told to go to Albania. More than 110 men were robbed of their valuables and identity documents, mistreated, and then shut in a barn and shot by local members of the police, after which the barn was set on fire. Only eight of them survived.

Around the same time, the residents of Dušanovo, a neighbourhood of Prizren town, were expelled from their homes, beaten, threatened, and robbed, and directed towards Albania. Later, in April 1999, people who had been displaced from Pirane during the operation and who were sheltering in nearby Srbica, were also ordered to leave the village and go to Albania.

In the course of the operation at the end of March 1999, special police forces were engaged in and around Suva Reka town. On 26 March local MUP personnel targeted members of the Berisha family in the town, killing 45 men, women, and children near their homes, as they fled past a bus station, and after they had taken shelter inside a local pizzeria. The bodies of the majority of these people were also later found in a mass grave in Batajnica, near Belgrade. In the days following the killings, the Suva Reka mosque was damaged and many of the remaining Kosovo Albanian residents of the town left their homes as the police set fire to houses, stole money and valuables, and ordered them to go to Albania.

Kosovo Albanian civilians were forcibly displaced from villages in Srbica municipality, in central Kosovo, at the end of March and in April 1999. On 26 March Turićevac village was shelled, and its inhabitants formed a convoy and left in the direction of Tušilje to the east. MUP and VJ forces then arrived in Tušilje, and another convoy was formed, which started moving towards Klina. Around this time a large number of displaced people gathered in a field on the outskirts of the village of Izbica. Police forces surrounded the group, ordering the women and children to go to Albania, and detaining the men. They then lined up and shot the men in two groups, killing at least 89 of them. Around mid-April, a group of women held by VJ or MUP forces in the village of Kozica after it had been shelled, was taken to Ćirez. At least four of these women were sexually assaulted, and eight of them were then killed by being thrown into three wells. At the end of April another offensive took place near Baks, close to Ćirez. In the course of this attack a large group of Kosovo Albanian men were detained and mistreated.

As soon as the NATO campaign began, prominent Kosovo Albanians in Kosovska Mitrovica town in the north of the province were targeted, and some killed, by the police. Kosovo Albanian houses were also burned by the police, and a large number of Kosovo Albanians were expelled from parts of the town. Some subsequently returned to the town, and then left again at the beginning of April, travelling on buses to Montenegro. In mid-

April 1999 many Kosovo Albanians living or temporarily sheltering in Žabare and other nearby villages were forced to form convoys and leave Kosovo by MUP and VJ forces which began to burn houses in the villages. Many of these people had to make their way on foot across Kosovo and south to the Albanian border, and they were robbed and further mistreated along the way.

On 27 March 1999 VJ and MUP forces burned houses and at least one mosque in Vučitrn town, and expelled Kosovo Albanian residents from the town. MUP forces also robbed and mistreated Kosovo Albanians in a large convoy moving from villages in Vučitrn municipality towards the south. On the night of 2 May 1999 MUP forces killed at least two people in the convoy, which was then directed to some nearby buildings, where its members were held overnight. The following day one other person from the group was killed and the MUP directed the women, children, and elderly people to continue on to Albania. They detained and mistreated the Kosovo Albanian men of military age for approximately three weeks in Smrekovnica prison, before forcing them to cross the border into Albania.

In Priština town, the administrative centre of Kosovo, the pattern of expulsion of Kosovo Albanians was repeated. Many people were directly evicted from their homes, while others fled out of fear of the violence around them caused by forces of the FRY and Serbia. The expulsion from Priština was carried out in an organised manner, with hundreds of Kosovo Albanians channelled to the train station and on to overcrowded trains that took them to the Macedonian border. In the course of this operation at least three Kosovo Albanian women were sexually assaulted by VJ and MUP personnel.

Villagers from Žegra and Prilepnica, in Gnjilane municipality, were also forcibly removed from their homes. In Žegra, the VJ, MUP, and other irregular forces, including local Serb civilians, drove out the Kosovo Albanian residents by way of threats, beatings, and killings, at the end of March 1999. Many of the displaced people made their way to Macedonia. When they returned to their homes at the end of the conflict, they found that most of the Kosovo Albanian houses in the village had been burned and damaged to some degree, whereas the house of the Serb residents remained untouched. Around the same time the mosque in nearby Vlačica was burned down by the VJ and local MUP reservists; while in Vladovo, houses were looted and burned, and its residents also fled and travelled to Macedonia, escorted by MUP and VJ forces. The residents of Prilepnica were ordered to leave the village first on 6 April and again on 13 April 1999.

In Uroševac municipality, south-west of Gnjilane, villages were also attacked in late March and during April 1999. In Sojevo, VJ, police, and other armed individuals working together with them, burned houses and killed several people, while the local residents were forced to travel in convoys towards Uroševac town. Some of these people continued on by bus to the Macedonian border. At the beginning of April approximately 1,000 displaced people arrived in Miroslavlje. When military forces then approached Miroslavlje, its inhabitants and the others sheltering there formed convoys and travelled towards Uroševac town, passing destroyed vehicles and burning houses. Some eventually left Uroševac by bus and travelled south to and across the Macedonian border. Also at the beginning of April, the village of Staro Selo was occupied by VJ forces, who stayed for a few days and then left, burning houses as they departed. Shortly thereafter, a group of VJ volunteers arrived in the village and ordered local men to dig trenches, confiscated vehicles, and extorted money from the inhabitants. The villagers left their homes out of fear, and walked to Uroševac town. Many later boarded trains that took them to the Macedonian border.

Finally, in Kačanik municipality, in the south of Kosovo bordering Macedonia, Kosovo Albanians were expelled from the town and surrounding villages from the beginning of the NATO air campaign. VJ and MUP forces attacked Kottina on 24 March, sending the local women and children by truck and on foot towards Kačanik town. Other villagers who escaped detection fled towards Macedonia at the time of the attack. A few days later, VJ and MUP forces entered Kačanik town and fired towards some houses from positions in a

local factory. The following day, the residents of this part of the town decided to leave their homes out of fear of the MUP forces, and travelled on foot to Macedonia. In April 1999 VJ and MUP units entered the village of Vata and looted houses there. On 21 May 1999, VJ and MUP forces attacked Stagovo, and on 25 May Dubrava. The residents of Dubrava decided to go to Macedonia, because they knew and feared what had happened in other villages. The women, old men, and children formed a convoy, while the younger men hid in the woods nearby. Several people were shot near Reka close to Dubrava at the time of this attack, including a girl who died, and a 12 year-old boy who was seriously injured. In addition to the evidence pertaining to the specific crime sites set out in the Indictment, the Chamber heard evidence going to the broad pattern of violence and intimidation of the Kosovo Albanian population from witnesses who were members of the VJ and MUP forces in Kosovo at that time. For example, three former members of the VJ, who testified under protective measures, admitted that they were involved in the expulsion of Kosovo Albanians from their homes during the NATO campaign. Other witnesses from the VJ and MUP described their own participation in the killing of Kosovo Albanian civilians and other criminal acts.

Applying the legal elements of the crimes charged in the Indictment to the facts found proved in relation to each of the 13 municipalities, the Trial Chamber finds that the crimes of: deportation, a crime against humanity; other inhumane acts (forcible transfer), a crime against humanity; murder, a violation of the laws or customs of war, and a crime against humanity; and murder, sexual assault, and wanton destruction of or damage to religious property, as forms of persecution on ethnic grounds, were committed by VJ and MUP forces in many of the locations alleged in the Indictment. However, there were a number of allegations that were not proved on the facts, or did not satisfy one or more of the requisite legal elements, such as the execution of at least 17 people in Kotlina on or about 24 March 1999, and the deliberate destruction of several mosques, and these charges are dismissed. The Chamber also notes that, for some crime sites where there was a large number of murder charges and the Indictment listed the alleged victims by name in a Schedule, the Prosecution did not provide convincing evidence that all the particular named victims were in fact among the dead, although the Chamber was satisfied that the killing of a significant group of people by VJ and/or MUP forces took place as alleged.

I will now briefly set out the Chamber's findings in respect of each of the Accused.

Milan Milutinović was the President of Serbia throughout 1998 and 1999, and much of the evidence brought by the Prosecution and his Defence concerned the nature and extent of his powers in that position. The Judgement sets out the Chamber's analysis of the pertinent provisions of the Serbian Constitution, and other relevant legislation, as well as of the witness testimony in relation to those provisions. The Chamber finds that, as President of Serbia, Milutinović did not have direct individual control over the VJ, a federal institution. His formal role in relation to the VJ was as an *ex officio* member of the Supreme Defence Council, or SDC, which comprised FRY President Slobodan Milošević, along with the Presidents of Serbia and Montenegro, and which made strategic decisions with respect to the VJ. However, analysis of the records of SDC sessions in evidence does not indicate the formulation or implementation of the common plan alleged in the Indictment. Moreover, there is no direct evidence of SDC meetings after 23 March 1999, the eve of the NATO air campaign, although the Chamber is convinced that Milutinović and FRY President Milošević continued to meet during the NATO bombing, and retained formal command over the VJ through the SDC or a similar body known as the Supreme Command. The evidence does not indicate, however, that Milutinović took part in the exercise of command over the VJ after 23 March 1999. The Chamber also finds that, in practice, it was Milošević, sometimes termed the "Supreme Commander", who exercised actual command authority over the VJ during the NATO campaign.

In 1998 and early 1999 Milutinović was involved in the negotiations involving representatives of the Kosovo Albanian community, and those brokered by the international community, to seek to resolve the Kosovo crisis. Having analysed the voluminous evidence

in relation to all these negotiations, the Chamber is not satisfied that that evidence establishes that Milutinović had an obstructive attitude aimed at ensuring their failure, as submitted by the Prosecution. The evidence led by the Prosecution also did not convince the Chamber that Milutinović had a close personal or professional relationship with Milošević, or that he held a position of significant influence in the Socialist Party of Serbia, the dominant political party at that time. These allegations are among several made by the Prosecution about Milutinović's involvement in events that have not been proved.

Milutinović attended a number of meetings in 1998 and early 1999 during which the situation in Kosovo was discussed, some of them in Kosovo itself. The Chamber finds that he was relatively well informed about that situation, and that he was aware that criminal acts had been committed by VJ and MUP forces in Kosovo both in 1998 and early 1999, mainly through his dealings with foreign diplomats, negotiators, and observers. However, he was also told by state officials that any crimes that had been committed in Kosovo were being dealt with.

The Chamber finds that, as the President of Serbia, Milutinović had powers that potentially could allow for significant oversight of the work of the Serbian Government Ministries, most importantly the Ministry of Interior. But the evidence does not establish extensive interaction between Milutinović and the MUP in the relevant period, and his *de facto* powers over the MUP were not significant. He issued several decrees during the state of emergency that came into force on 23 March 1999. However, for the reasons set out in detail in the Judgement, the Chamber is unable to draw any inferences adverse to him from the evidence surrounding these decrees.

In addition to being a Deputy Prime Minister of the FRY, Nikola Šainović was the Chairman of the FRY Commission for Co-operation with the OSCE Kosovo Verification Mission, a body set up following the various agreements concluded in October 1998 by the FRY and Serbian authorities and the international community. The Indictment alleges that he was FRY President Milošević's personal representative for Kosovo, and that he was the head of a body called the Joint Command, which had authority over the VJ and MUP forces deployed in Kosovo in 1998 and early 1999 until the end of the NATO air campaign.

A significant amount of time during the trial proceedings was devoted by the Prosecution and the Šainović Defence to the issue of the existence, powers, and functioning of the Joint Command. This evidence is discussed in detail in Volume 1 of the Judgement. The Chamber finds that a body known by some as the Joint Command did come into existence in mid-1998, in order to co-ordinate the activities of the VJ and MUP and other state bodies involved in the Kosovo conflict. Notes of meetings of the Joint Command held between July and October 1998, taken by one of the participants, were entered into evidence, and gave insight into the nature of the body. These Notes reveal that Šainović was an active participant in Joint Command meetings, as were the Accused Pavković and Lukić, and, on occasion, Lazarević. Indeed, Šainović issued instructions at the meetings, including in relation to matters concerning the activities of the VJ and MUP. There is direct evidence of only one Joint Command meeting in 1999, in June, but military orders were issued with a Joint Command heading, in order to ensure the co-operation and co-ordination of MUP forces with the VJ.

Šainović also attended a number of other high-level meetings concerning the situation in Kosovo in 1998 and 1999, and was often present in Kosovo both in 1998 and during the NATO air campaign. FRY President Milošević was instrumental in sending him to Kosovo from the summer of 1998, and in his appointment as the Chairman of the Commission for Co-operation with the Kosovo Verification Mission in October 1998, which enabled him to continue liaising with VJ and MUP personnel in Kosovo, as well as the international observers there. His dealings with and influence over the Accused Pavković, from the VJ, and Lukić, from the MUP, therefore continued without interruption.

Šainović met with Milošević frequently during 1998 and early 1999, as well as speaking with him by telephone, and a number of witnesses gave evidence about the nature of the relationship between the two men. On the basis of this evidence the Chamber finds that Šainović was one of the closest and most trusted associates of Milošević, which led to him taking a leading role in both the Joint Command, and the Commission for Co-operation with the KVM. He was a powerful official in the FRY Government, who not only relayed information to Milošević and conveyed Milošević's instructions to those in Kosovo, but also had a great deal of influence over events in the province and was empowered to make decisions.

Šainović met with former Kosovo Albanian political leader Ibrahim Rugova during the NATO air strikes, in a period when Rugova was effectively being held under house arrest. The Chamber does not consider these meetings to have been a genuine attempt to negotiate a solution to the Kosovo situation, but rather a campaign which involved threats to the personal safety of Rugova and his associates, designed to show that the FRY and Serbian authorities were meeting with Kosovo Albanians, in the hope that this would lead to cessation of the NATO bombing. Šainović knowingly and wilfully participated in this campaign.

The Chamber also finds that Šainović was very well informed about events in Kosovo, both in 1998 and 1999, and that he was aware that criminal acts had been committed by VJ and MUP forces in Kosovo both in 1998 and 1999, including during the NATO air strikes. Šainović failed to use his extensive authority in Kosovo, and his own initiative, to ensure the cessation of such criminal conduct.

Dragoljub Ojdanić became the Chief of the General Staff, the highest position within the VJ, at the end of 1998, replacing Momčilo Perišić who was removed by Milošević. Prior to this elevation, he had been the Deputy Chief of the General Staff. As Chief of the General Staff, Ojdanić was only subordinate to the civilian authorities in which overall command of the VJ was vested, namely the Supreme Defence Council. The Chamber is convinced that, as Chief of the General Staff, Ojdanić exercised command and control over all units and organs of the VJ. He worked closely with the FRY President before and during the NATO air campaign, and exercised *de facto*, as well as *de jure*, authority over the VJ. He did not, however, have direct control over MUP forces engaged in Kosovo, despite orders for the resubordination of the MUP to the VJ issued in April 1999.

As Chief of the General Staff, Ojdanić attended SDC meetings and was an active participant in the discussions held. The evidence does not establish that he participated in the body known as the Joint Command, but he was aware of it and accepted its operation. The Chamber finds that Ojdanić was aware and approved of the breaches of the October Agreements that occurred in late 1998 and early 1999. In addition, he was aware of VJ involvement in the arming of the non-Albanian civilian population in Kosovo. He also supported the appointment of VJ personnel to high-level posts who either supported the activities of the VJ in Kosovo, such as the Accused Pavković, or else simply raised no objection thereto, and was aware of the removal of high-level VJ officers who objected to the use being made of the VJ in Kosovo.

Leading up to and during the NATO air campaign, Ojdanić issued orders for the VJ to carry out operations throughout Kosovo, including in support of the MUP. He also mobilised extra VJ units for deployment in Kosovo during the time-period when the majority of crimes found by the Chamber to have been committed took place.

Through the VJ reporting system, Ojdanić was kept well-informed on a daily basis of the situation on the ground in Kosovo both before and during the NATO air strikes. Specific information about the use of excessive or indiscriminate force by VJ and MUP units was conveyed to him in 1998 and 1999. He was also aware that volunteers incorporated into the ranks of the VJ during the NATO bombing had been involved in the commission of criminal acts. He did take some action in response to the reports that he was receiving, such as

issuing orders for adherence to international humanitarian law, mobilising the military justice system, and dispatching senior officers from the Security Administration to investigate. Nonetheless, he continued to order the VJ to participate in military operations with the MUP in Kosovo.

In 1998 Nebojša Pavković was the Commander of the VJ Priština Corps, which had responsibility for the territory of Kosovo. At the end of that year he was made Commander of the 3<sup>rd</sup> Army, which encompassed both the Priština Corps and the Niš Corps. In both positions he had *de jure* and *de facto* control over the units subordinated to him, and a central role in the planning and implementation of the activities of the VJ in Kosovo, in coordination with the MUP. Indeed, the Chamber heard convincing evidence that in 1998 he advocated a greater role for the VJ in Kosovo and took the lead in proposing specific activities by the VJ and MUP. He had direct access to FRY President Milošević, who supported and adopted his proposals, despite protestations from others in the VJ. When he was Commander of the Priština Corps, Pavković clashed with his direct superior, the then Commander of the 3<sup>rd</sup> Army, and clearly had his differences with the then Chief of the General Staff over the use of the VJ in Kosovo, both of whom were later removed from their positions and Pavković made 3<sup>rd</sup> Army Commander.

The Chamber finds that in 1998 Pavković was involved in the arming of the non-Albanian civilian population in Kosovo, and simultaneous disarming of the Kosovo Albanians, despite his knowledge of the divisions and animosity in Kosovo along ethnic lines.

As Commander of the Priština Corps in 1998, Pavković issued numerous orders for the deployment of VJ units, often in joint operations with the MUP. He was informed of allegations of excessive or indiscriminate force by the VJ and MUP in Kosovo, including through his frequent participation in Joint Command meetings where the situation in Kosovo was discussed in detail, and yet continued to engage his units.

The Chamber also finds that, as Priština Corps Commander and then Commander of the 3<sup>rd</sup> Army, Pavković was directly involved in breaching the October Agreements at the end of 1998 and into early 1999. Once Commander of the 3<sup>rd</sup> Army, he brought extra units into Kosovo to augment the VJ, despite these Agreements, and sent one particular brigade into the interior of Kosovo in the face of a direct instruction from Ojdanić not to.

In the lead up to and during the NATO bombing, Pavković continued to issue orders, as 3<sup>rd</sup> Army Commander, for the engagement of VJ units in Kosovo, including in areas where the Chamber has found that crimes were committed by VJ and MUP forces. He also continued to work closely with FRY President Milošević in this period. He did not, however, have direct control over MUP forces engaged in Kosovo, despite orders for the resubordination of the MUP to the VJ issued in April 1999.

In 1998 and 1999, Pavković was present in Kosovo the majority of the time. Through his presence in Joint Command and other meetings in 1998, the regular VJ reporting system, and his tours of VJ units deployed across Kosovo, he had a detailed knowledge and understanding of the situation on the ground and the activities of his and the MUP forces. This knowledge extended to the commission of crimes by both the VJ and MUP, including the forcible displacement of Kosovo Albanians, murder, and sexual assaults. Indeed, the Chamber finds that, while Pavković knew about criminal acts committed by VJ members in Kosovo, he sometimes under-reported and minimised the serious criminal wrongdoing in his reports sent up to the Supreme Command Staff. Although he issued some orders calling for adherence to international humanitarian law in the course of these operations, the Chamber does not consider these to have been genuine measures to limit the commission of crimes in Kosovo.

When Pavković became the 3<sup>rd</sup> Army Commander at the end of 1998, his former Chief of Staff in the Priština Corps, Vladimir Lazarević, was appointed to replace him as Commander of the Priština Corps. While he held these positions, Lazarević was based in

Kosovo, first in Đakovica, and later in and around Priština. One of his duties when Chief of Staff of the Priština Corps was monitoring the state border between Kosovo and Albania. He also contributed to the implementation of joint VJ and MUP operations in that area in the second half of 1998.

The Chamber finds that, in 1998, Lazarević was aware of the fact that criminal acts were being committed against civilians and civilian property during VJ and MUP operations in Kosovo. He also knew that this had resulted in the displacement of a significant number of civilians.

Following his appointment to the position of Commander of the Priština Corps, Lazarević had *de jure* and *de facto* control over the units subordinated to him, including regular VJ units and, from early April 1999, military territorial detachments. He did not have direct control over MUP units engaged in Kosovo. The evidence proves that Lazarević significantly participated in the planning and execution of joint VJ and MUP operations conducted from March to June 1999 in Kosovo, including in places where the Chamber has found that crimes were committed. He continued to do so, despite his knowledge of the commission of such crimes. However, unlike Pavković, Lazarević was not involved in or necessarily aware of all the political decision-making that generally took place in Belgrade, and did not participate in high-level meetings there.

The central issue of contention during the trial concerning the alleged criminal responsibility of Sreten Lukić related to the nature and powers of the body called the MUP Staff for Kosovo, of which Lukić was the head. The Lukić Defence brought a number of witnesses who testified that the MUP Staff was a body with logistical functions, and no real power or authority over MUP forces deployed in Kosovo in 1998 and 1999. This evidence starkly contrasted both the content of the decisions establishing the body, which set out its tasks, and many other documents in evidence which revealed the role played by the MUP Staff in 1998 and the first half of 1999. Some witnesses also ascribed a greater degree of responsibility for the various MUP forces in Kosovo to the MUP Staff and to Lukić as its head, than suggested by the Lukić Defence.

In the Judgement the Chamber sets out in detail its analysis of all the evidence pertaining to the MUP Staff, and finds that it indeed had a significant role in the planning, organising, controlling, and directing of actions by various MUP forces in Kosovo. The Chamber is convinced that the MUP Staff was a key body in both 1998 and 1999, with substantial authority over units falling under the MUP Public Security Department, including special police units when they were deployed to Kosovo, although it did not replace the chains of command within the various MUP units and secretariats. The MUP Staff liaised with the VJ to ensure full co-ordination of MUP and VJ activities in Kosovo, and had an important role in the planning of joint VJ and MUP operations. It also provided a link to the MUP headquarters in Belgrade, to which it regularly reported.

The Chamber is satisfied that, as head of the MUP Staff, Lukić was endowed with significant authority over the MUP forces answering to the MUP Staff. Indeed, he was understood to be the commander of MUP forces in Kosovo by the foreign diplomats and observers with whom he interacted in Kosovo, and he attended meetings with them on behalf of the MUP. He also regularly attended and participated in meetings of the Joint Command and other high-level meetings, including in Belgrade. The Chamber finds, therefore, that Lukić was a *de facto* commander of MUP forces in Kosovo from mid-1998 to mid-1999, as well as being the bridge between the actions of the MUP on the ground in Kosovo and the overarching policies and plans decided in Belgrade. The evidence establishes that Lukić had detailed knowledge of events in Kosovo, as they developed, as well as being informed of allegations of criminal conduct by MUP personnel there. However, the Chamber is not convinced by the evidence brought that Lukić was involved in the concealment of these crimes through the clandestine transportation of civilian bodies from Kosovo to other parts of Serbia.

Having briefly described the Chamber's conclusions concerning each of the Accused, I shall now turn to our findings in relation to the joint criminal enterprise set out in the Indictment, and the Accused's alleged participation therein.

The most compelling evidence in support of the allegation that there was a common purpose to modify the ethnic balance in Kosovo in order to ensure continued control by the FRY and Serbian authorities over the province is the evidence establishing the widespread campaign of violence that was directed against the Kosovo Albanian population between March and June 1999, and the resulting massive displacement of that population. This campaign was conducted in an organised manner, utilising significant state resources, and the Chamber heard evidence from numerous witnesses about the fact that they were directed to leave Kosovo for Albania or Macedonia, and that they were forced to relinquish their personal identity documents, either as they began their departure, *en route*, or at the border. These documents were never returned to them.

Other factors which the Chamber has taken into account in reaching the conclusion that there was indeed a common purpose to use violence and terror to force a significant number of Kosovo Albanians from their homes and across the borders, in order for the state authorities to maintain control over Kosovo, are: the events leading up to the conflict; the arming of non-Albanian civilians in Kosovo and simultaneous disarming of Kosovo Albanians; the breakdown of negotiations to end the Kosovo crisis at the same time as the October Agreements were being breached by the FRY and Serbian authorities; and the concealment of bodies of Kosovo Albanians killed by VJ and MUP forces. The Chamber is not, however, convinced that murder, sexual assault, or the destruction or damage of religious property was within the common purpose, and only considers whether these crimes were reasonably foreseeable in the execution of the common purpose when addressing each of the Accused.

Being satisfied that there was such a common purpose among high-level officials in the FRY and Serbia who were in a position to execute it through the various forces under their control, the Chamber has analysed whether or not each of the Accused participated voluntarily in the joint criminal enterprise, made a significant contribution to it, and shared the intent to commit the crimes or underlying offences that were the object of the enterprise.

The Chamber is not satisfied beyond reasonable doubt that Milan Milutinović made a significant contribution to the joint criminal enterprise. The Chamber does not accept that Milutinović had a legal duty to act to prevent the events that transpired in Kosovo, arising from his oath of office alone in the absence of significant *de jure* and *de facto* powers. In addition, it is not prepared to accept that his contribution by omission was significant, given Milutinović's lack of authority over the forces that were committing the crimes in question. Moreover, the Chamber is unconvinced that Milutinović shared the intent to use criminal means, namely deportation and forcible transfer, to retain control over Kosovo by the state authorities.

The Chamber is satisfied that Nikola Šainović had substantial *de facto* powers over both the MUP and the VJ operating in Kosovo, and that he was the political co-ordinator of these forces. It is convinced that he made a significant contribution to the joint criminal enterprise and that, indeed, he was one of the most crucial members of that common enterprise. From all of the evidence, the Chamber finds that it is the only reasonable inference that Šainović had the intent to forcibly displace part of the Kosovo Albanian population, both within and without Kosovo, and thereby to change the ethnic balance in the province and ensure continued control by the state authorities over it. The Chamber also finds that the murder of Kosovo Albanian civilians by VJ and MUP forces executing the common criminal plan was reasonably foreseeable to Šainović, as was the destruction of or damage to religious property, namely mosques. However, by majority, the Chamber does not find that the commission of sexual assault was foreseeable to him.

The Chamber finds that, although there is considerable evidence supporting the Prosecution's allegation that Dragoljub Ojdanić was supportive of the commission of crimes throughout Kosovo by VJ and MUP forces in a widespread and systematic attack targeting Kosovo Albanians, it has not been proved beyond reasonable doubt that he shared the intent to ensure continued state control over the province by way of deportation and forcible transfer of a significant proportion of the Kosovo Albanian population. However, by his continued actions in command of the VJ forces subordinated to him, the Chamber finds that Ojdanić provided practical assistance, encouragement, or moral support to members of the VJ who he knew intended to commit deportation and forcible transfer. His conduct had a substantial effect on the actual commission of these crimes by VJ forces in some of the locations charged in the Indictment. However, the Chamber finds that Ojdanić did not have knowledge that VJ forces had the intent to kill or sexually assault Kosovo Albanian civilians, or to damage or destroy religious property.

The Chamber has found that Nebojša Pavković had substantial *de jure* and *de facto* command authority over VJ forces in Kosovo in 1998 and 1999, and that he was in a position of influence, including through his participation in the Joint Command. There is no doubt that his contribution to the joint criminal enterprise was significant, as he utilised the VJ forces at his disposal to terrorise and violently expel Kosovo Albanian civilians from their homes. The Chamber also finds that the only reasonable inference from all of the evidence is that Pavković had the intent to forcibly displace the Kosovo Albanian population in order to ensure continued control by the state authorities over the province. Moreover, the Chamber considers that, in the circumstances, the commission of murder, sexual assault, and the deliberate destruction of or damage to mosques, by the VJ and MUP forces executing his orders, were reasonably foreseeable to Pavković.

The Chamber finds that, although there is considerable evidence supporting the Prosecution's allegation that Vladimir Lazarević was supportive of the commission of crimes throughout Kosovo by VJ and MUP forces in a widespread and systematic attack targeting Kosovo Albanians, it has not been proved beyond reasonable doubt that he shared the intent to ensure continued state control over the province by way of deportation and forcible transfer of a significant proportion of the Kosovo Albanian population. However, by his continued actions in command of the VJ forces subordinated to him, the Chamber finds that Lazarević provided practical assistance, encouragement, or moral support to members of the VJ who he knew intended to commit deportation and forcible transfer. His conduct had a substantial effect on the actual commission of these crimes by VJ forces in some of the locations charged in the Indictment. However, the Chamber finds that Lazarević did not have knowledge that VJ forces had the intent to kill or sexually assault Kosovo Albanian civilians, or to damage or destroy religious property.

The Chamber has found that Sreten Lukić had substantial authority over MUP units deployed in Kosovo in 1998 and 1999, and that he was responsible for planning, organising, controlling, and directing the activities of the MUP in the province. He also worked closely with the leadership of the VJ and other state bodies, and participated in high-level meetings to discuss the situation in Kosovo. On the basis of all of the evidence, the Chamber finds that Lukić was indeed an important participant in the joint criminal enterprise, and made a significant contribution through his control of the MUP forces involved in its execution. The Chamber also finds that the only reasonable inference is that Lukić shared the intent to forcibly displace the Kosovo Albanian population, to ensure continued control over the province by the state authorities. It further finds that the murder of Kosovo Albanian civilians by VJ and MUP forces executing the common plan was reasonably foreseeable to Lukić, as was the destruction of or damage to religious property, namely mosques. However, by majority, the Chamber does not find that the commission of sexual assault was foreseeable to him.

Judge Chowhan has dissented on the issue of the foreseeability of sexual assault to both Šainović and Lukić.

Will the Accused Milutinović please rise.

For all the reasons I have summarised, the Trial Chamber finds you, Milan Milutinović, to be **NOT GUILTY**, pursuant to Articles 7(1) and 7(3) of the Statute, of counts 1 to 5 of the Indictment. Pursuant to Rule 99(A) of the Rules, the Chamber orders that you be released from the United Nations Detention Unit immediately upon the completion of the necessary modalities, without prejudice to any further proceedings that may follow Trial Chamber III's determination under the final paragraph of the Judgement in relation to the three outstanding crime sites in the Indictment.

Will the Accused Šainović please rise.

For all the reasons I have summarised, the Trial Chamber finds you, Nikola Šainović, to be **GUILTY** of counts 1 to 5 of the Indictment, by commission as a member of a joint criminal enterprise pursuant to Article 7(1) of the Statute. The Trial Chamber hereby sentences you to a single sentence of **22 years** of imprisonment, with credit for the time you have already served in detention. Pursuant to Rule 103(C) of the Rules, you shall remain in the custody of the Tribunal pending the finalisation of arrangements for your transfer to the state where you shall serve your sentence.

Will the Accused Ojdanić please rise.

For all the reasons I have summarised, the Trial Chamber finds you, Dragoljub Ojdanić, to be **GUILTY** of counts 1 and 2 of the Indictment, by aiding and abetting pursuant to Article 7(1) of the Statute, and **NOT GUILTY** of counts 3 to 5 of the Indictment, pursuant to Articles 7(1) and 7(3) of the Statute. The Trial Chamber hereby sentences you to a single sentence of **15 years** of imprisonment, with credit for the time you have already served in detention. Pursuant to Rule 103(C) of the Rules, you shall remain in the custody of the Tribunal pending the finalisation of arrangements for your transfer to the state where you shall serve your sentence.

Will the Accused Pavković please rise.

For all the reasons I have summarised, the Trial Chamber finds you, Nebojša Pavković, to be **GUILTY** of counts 1 to 5 of the Indictment, by commission as a member of a joint criminal enterprise pursuant to Article 7(1) of the Statute. The Trial Chamber hereby sentences you to a single sentence of **22 years** of imprisonment, with credit for the time you have already served in detention. Pursuant to Rule 103(C) of the Rules, you shall remain in the custody of the Tribunal pending the finalisation of arrangements for your transfer to the state where you shall serve your sentence.

Will the Accused Lazarević please rise.

For all the reasons I have summarised, the Trial Chamber finds you, Vladimir Lazarević, to be **GUILTY** of counts 1 and 2 of the Indictment, by aiding and abetting pursuant to Article 7(1) of the Statute, and **NOT GUILTY** of counts 3 to 5 of the Indictment, pursuant to Articles 7(1) and 7(3) of the Statute. The Trial Chamber hereby sentences you to a single sentence of **15 years** of imprisonment, with credit for the time you have already served in detention. Pursuant to Rule 103(C) of the Rules, you shall remain in the custody of the Tribunal pending the finalisation of arrangements for your transfer to the state where you shall serve your sentence.

Will the Accused Lukić please rise.

For all the reasons I have summarised, the Trial Chamber finds you, Sreten Lukić, to be **GUILTY** of counts 1 to 5 of the Indictment, by commission as a member of a joint criminal enterprise pursuant to Article 7(1) of the Statute. The Trial Chamber hereby sentences you to a single sentence of **22 years** of imprisonment, with credit for the time

you have already served in detention. Pursuant to Rule 103(C) of the Rules, you shall remain in the custody of the Tribunal pending the finalisation of arrangements for your transfer to the state where you shall serve your sentence.

The hearing is now adjourned.

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