

STATISTICAL ANALYSIS OF VIOLATIONS

Between March and December 1999, Human Rights Watch conducted more than 600 interviews with victims and witnesses to international humanitarian law violations in Kosovo. The information from these interviews is presented in other chapters of this book in testimony cited from interviews and case studies. This chapter uses statistics derived from the interviews to examine the trends and patterns of the crimes committed that may not be evident from narrative information. The numbers and graphs will deal in a systematic and substantive way with the reports of who was killed, when, where, and by whom.

The chapter, prepared in conjunction with the Science and Human Rights Program of the American Association for the Advancement of Science (AAAS), is the first large-scale data project conducted by Human Rights Watch.¹ It hopefully contributes to the growing field of human rights and statistical analysis.²

The interviews were conducted by Human Rights Watch researchers, usually with a interpreter, in Albania and Macedonia between March 28 and June 12, 1999, and in Kosovo between June 12 and December 31, 1999. Interviewees were selected for their knowledge of specific abuses inside the province. All interviews were conducted with a view to eliciting open narratives of what the interviewee had seen or experienced inside Kosovo between March 20 and June 12, 1999, rather than through standardized questionnaires. On return to New York, the interview documents were coded by trained volunteers for violation types, time and place of violations, victims, and perpetrators. A database was created, which is available for public use at <http://hrdata.aaas.org>.

Executions by Municipality Reported to Human Rights Watch



Credit: All maps, graphs, and charts designed by Matt Zimmerman. © Human Rights Watch

LIMITATIONS OF THE DATA

The statistics presented in this chapter shed light on the nature of war crimes in Kosovo, but they do have limitations. Most importantly, Human Rights Watch did *not* randomly sample the interviewees. On the contrary, researchers purposefully sought out not only the victims and witnesses of violations, but specifically those with knowledge of the most serious violations, such as torture, sexual violence, and executions. Therefore, these data cannot be extrapolated to general findings for Kosovo as a whole. Nor can these data provide information about the total number of persons killed, or give a complete picture of violations throughout the province.

Human Rights Watch activities were largely in the municipalities in Kosovo that were known to have been hardest hit by the war, such as Glogovac, Orahovac, Djakovica, Prizren, and Srbica. However, additional focus was directed to municipalities in the southwest, such as Djakovica and Orahovac, because researchers in North Albania during the war documented a heavy flow of refugees from those areas. Some northeastern and central municipalities, specifically Podujevo and Kosovo Polje, where many killings took place, are under-reported in this chapter and in the report as a whole.

Lastly, the process of coding and database creation is imperfect, particularly when dealing with complex narratives, as is the case with many war crimes in Kosovo. In complicated scenarios, it is not always easy to prepare statistical data that records accurately what occurred, where, and when. Kosovo is further complicated by confusion and ambiguity concerning place names in Serbian and Albanian, as well the fact that some of the same village names appear in up to four different municipalities.

Because of concerns like these, the Human Rights Watch Kosovo database was repeatedly checked and adjusted to eliminate errors, a process that is ongoing. To reduce errors, all instances for which the number of execution victims was over ten but considered imprecise were dropped from the total number of reported executions. In addition, the top five municipalities for executions, as well as some of the other municipalities, were carefully reviewed an additional time to eliminate faulty entries or records that counted the same execution violation more than once.

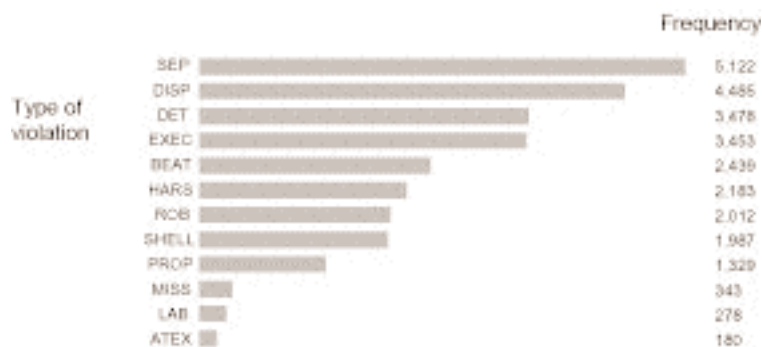
Like the report in general, these data only deal with violations committed between March 20 (when the OSCE withdrew from Kosovo) and June 12, 1999 (when NATO entered Kosovo). Note that for clarity, all percentages have been rounded to the nearest integer.

GENERAL FINDINGS

From the large body of Human Rights Watch interviews, 577 interviews were coded because the interviewee had direct knowledge of a human rights or humanitarian law violation. From these 577 interviews, Human Rights Watch recorded more than 35,000 unduplicated violations, although many were suffered in succession by the same individuals.³ It must be noted that a violation may involve one or more victims. In many cases, for instance, the populations of whole villages or cities were expelled, such as the village of Ade or Pec city, or entire households were killed, like the Berisha household in Suva Reka. Again, the number of violations reported to Human Rights Watch cannot be extrapolated to suggest how many violations were committed in Kosovo as a whole.

The main violations reported to Human Rights Watch are depicted in Graph 1 below. Only those violations reported more than one hundred times are shown.

Graph 1: number of violations reported to Human Rights Watch, by type, for number in excess of 100.



Note: This graph should not be construed to suggest the frequency or relative frequency of violations in Kosovo, since Human Rights Watch tried to document the worst of the abuses. Executions, for example, are likely to be overrepresented in comparison to indiscriminate shelling since researchers purposefully sought out evidence of individual cases of such killings. The figures for the violations, and their full names are: separations of men, women and children (5,122), forced displacement (4,485), detentions (3,478), executions (3,453), beatings (2,439), harassment (2,183), robbery (2,012), indiscriminate shelling (1,987), private property destruction (1,329), missing persons (343), forced labor (278), and attempted execution (180).

With 5,122 reported violations, the forced separation of men, women and children⁴ was the most commonly reported violation. Displacement,⁵ with 4,485 reported violations, was the second most common, which is understandable given that it was a dominant violation of the conflict—more than 850,000 Kosovar Albanians were expelled from Kosovo, according to UNHCR, and thousands more were internally displaced. The third most frequent violation was detention⁶ with 3,478 reported violations, followed by extrajudicial executions with 3,453 violations.

Future reports by Human Rights Watch and others may focus on the patterns of these violations: when and where they occurred over time, and in what circumstances. Also of interest is whether certain violations tended to take place in isolation or together with other violations. For the sake of simplicity, however, this report focuses on only one of the violation types, albeit the most serious of the crimes: executions.

An Analysis of Extrajudicial Executions

It should be noted that extrajudicial executions by state actors—deliberate killings with no judicial process—may be over-reported in relation to other violations in this chapter since Human Rights Watch researchers actively sought to document such deliberate killings as a priority. At the same time, many extrajudicial executions committed in Kosovo are clearly not included in the 3,453 cases; just as an example, information on large-scale killings in Beleg, Goden, Kacanik, and Podujevo were not included in these data or the geographic chapters. In addition, the bodies of some people reported missing to Human Rights Watch during the data collection period have since been discovered. Despite these concerns, the body of information on executions collected by Human Rights Watch is large enough to draw some significant conclusions about the pattern of killings by Serbian and Yugoslav forces.

In the 3,453 documented executions, Human Rights Watch obtained the names of 916 people, or 27 percent of the victims. The rest of the victims were unidentified by witnesses.

The Gender of Execution Victims

As is clear from the cases documented in other chapters of this report, Serbian and Yugoslav forces summarily executed males at a much higher rate than females.

Of the 3,453 execution victims reported to Human Rights Watch, the gender of the victim was known for 2,232 people (65 percent). Of these 2,232 victims, 2,055 of the people were male (92 percent) and 177 were female (8 percent). This breakdown is depicted in Graph 2 at right.

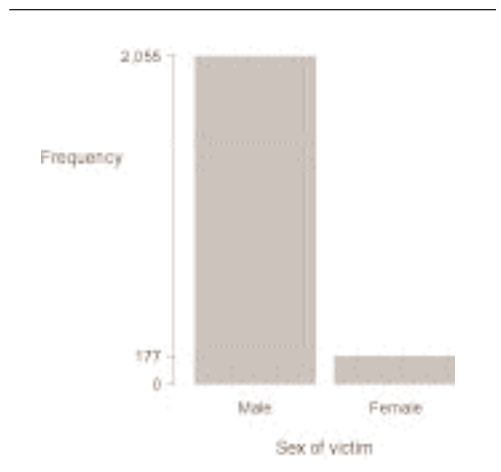
These findings would be expected if the data dealt with deaths in combat or even summary executions of combatants, since the KLA's forces were predominantly male. But, as the case studies in other chapters make clear, the vast majority of summary execution victims were civilians who did not participate in combat. Take, for example, the killings of approximately ninety prisoners in the Dubrava prison or the roughly 300 men taken from refugee convoys and killed in Meja.

Clearly this represents a targeting of Kosovar Albanian males. This finding is reinforced by the fact that, during the NATO bombing, many males were either in hiding within Kosovo, fighting with the KLA, or living abroad, while women were more likely to have stayed at home during the war, where they were susceptible to abuse.

The Ages of Execution Victims

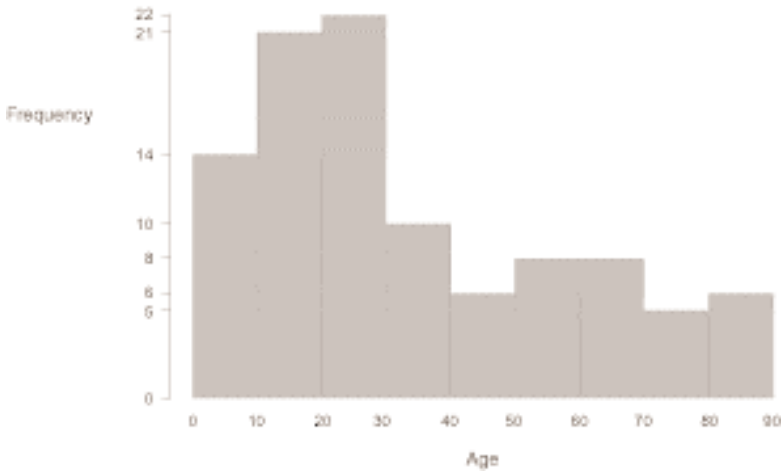
Of the 3,453 known victims of summary execution, Human Rights Watch obtained the age of 630 people (18 percent). Of the victims for whom age was known, 530 were males (84 percent) and one hundred were females (16 percent). The fact that the age of victims was known in only 18 percent

Graph 2: Gender of Execution Victims

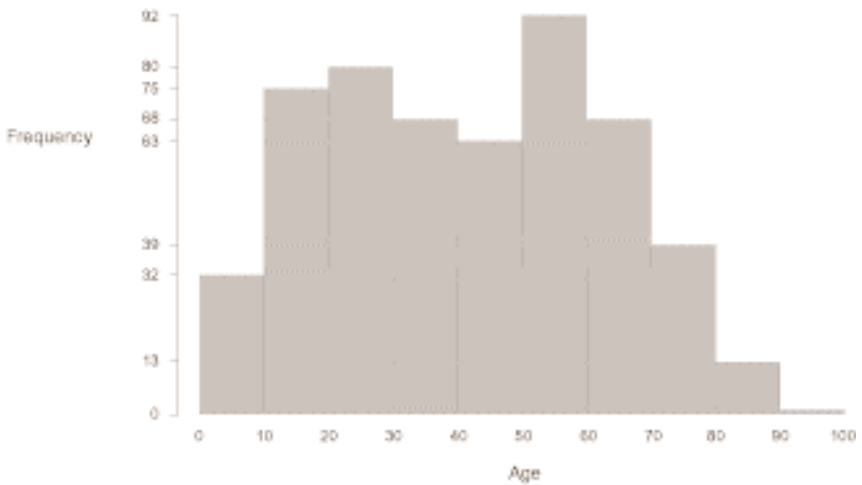


of the cases should be considered when conducting an analysis, since bias may have been introduced. Witnesses might have only provided ages for the youngest or oldest of the victims, for example, in order to emphasize the

Graph 3: Ages of male execution victims



Graph 4: Ages of female execution victims



seriousness of the crimes. Even given this possibility, however, these data reflect some interesting results that deserve mention.

Notably, the ages of summary execution victims differ for men and women. For male execution victims, the average age was 40.3 years. For female victims, the average age was 32.7 years. Graphs 3 and 4 depict the age distributions for male and female summary execution victims.

It is clear that the pattern of violation is different for male and female. The killings of men and boys tended to target equally males between the ages of 10 and 70, with a falloff at higher ages. The summary executions of females were high for ages 10–30, then fell off to a uniform level for those over 30.

In both cases, the murder of children below ten were lower. However, female children in that age group were proportionately more likely to be killed than males. These qualitative comments based on Graphs 3 and 4 are reflected in the summary comparison statistics in Figure 1 below.

As Figure 1 shows, 75 percent of the male execution victims were below 56 years of age, while 75 percent of female execution victims were under 50. The “average” age for males was 40.3 and for females was 32.7. Similarly, 25 percent of the female victims were below 14.5, whereas 25 percent of the male victims were below 22.

At first glance, the results are counter-intuitive. Most notably, based on the case studies, one would expect to see a rise in executions of military age

Figure 1: Comparison of summary statistics for age

NAME	MEANING	ALL	MALE	FEMALE
Maximum	Largest Value	90	90	87
Third Quartile	75% of the values are less than this value	56	56	50
Median	50% of the values are less than this value	38	40	24
First Quartile	25% of the values are less than this value	20	22	14.5
Minimum	Smallest value	0	0	3
Mean	“average”	39.1	40.3	32.7
n	how many values	630	530	100

men, who were targeted for killing during village sweeps, such as in the villages of Cuska, Bela Crkva, and Meja. In numerous cases, men between the ages of 18 and 50 were separated from women and children and killed. However, there are a number of plausible explanations for the discrepancies in the victims' ages.

First, as mentioned above, there were relatively fewer fighting age males in the villages during the NATO bombing. Many men between the ages of 20 and 50 were either hiding in the hills (fearful of being targeted), fighting with the insurgency, or living abroad. In many villages, women and children were left behind with a smaller number of older men. So, while the case studies provide testimonial evidence that military age males were targeted for execution, this is not reflected in these data since military age men were relatively less present in the areas susceptible to attack.

Second, the case studies show how men were frequently killed by government security forces after having been separated from women and children, such as in Bela Crkva or Izbica. Executions of females, however, more often took place in group killings (such as the execution of an entire family) and not from the deliberate targeting of women. The killing of twelve members of the Gerxhaliu family on May 31 in Gornja Sudimlja⁷ or the Berisha family in Suva Reka⁸ on March 25 are examples where a family—men, women and children—was killed together. In other words, women were more likely to be killed in groups for which the killers did not distinguish between gender or ages, thereby including some younger female victims.

A third possibility is that executions of women were related to sexual violence which involved younger female victims. Unfortunately, it is impossible to prove this theory with the data collected. Although Human Rights Watch coded for rape and sexual violence in the database, which would theoretically allow an analysis of whether female executions and sexual violence tended to occur at the same time, the sensitive nature of sexual violence in Kosovar Albanian society rendered the data on those crimes unreliable, in the opinion of Human Rights Watch. In other words, sexual violence was under-reported both in testimony and in the database.

One point to consider with these data on ages is the *rate* of killing. For example, it looks as though government forces were not summarily executing older men and women at a high rate. However, given the fact that there are fewer older people in the population than middle-aged or younger adults, then the elderly were being killed at a relatively higher rate. The opposite is true for children under age ten. Since it is likely that there are

more children of that age in the population than adults or elderly, then the rate of children being killed is less than that of adults.⁹

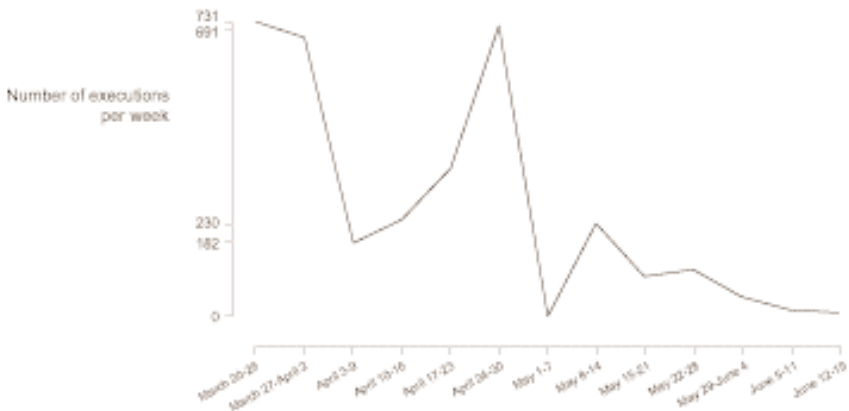
Executions Over Time

Plotting the total extrajudicial executions reported to Human Rights Watch over time reveals a great deal about the systematic and coordinated nature of the violations in Kosovo. As Graph 5 demonstrates, total summary executions took place in three very distinct waves.

From the beginning of the offensive on March 20, there was a clear and rapid spike in extrajudicial executions, culminating around March 25–27, just after the commencement of NATO bombing. This was followed by a significant drop off, with a low point around April 5–6. A second wave of extrajudicial executions peaked around April 27–28. A third but significantly smaller wave of executions reached its zenith around May 10–11, followed by a precipitous drop-off that peters out by June 12, with the exception of a minor bump around May 30–31.

The three distinct surges in executions suggest that the killings were not the result of random violence by government forces. Rather, that data supports other evidence that they were carefully planned and implemented strikes that fit into the government's larger strategic aims.

Graph 5: Reported Executions Over Time



Of course, Graph 5 summarizes only those executions reported to Human Rights Watch and not the total number of executions committed in Kosovo. However, the pronounced nature of the three waves, based on 3,453 executions, strongly suggests the purposeful and coordinated nature of the violations. Although not all executions are represented, the findings based on partial data are strong and clear.

Executions by Municipality

Of the 3,453 extrajudicial executions reported to Human Rights Watch, 66 percent of the executions for which we have municipality identification occurred in the following five municipalities: Djakovica, Orahovac, Srbica, Glogovac, and Suva Reka. With the exception of Podujevo, where Human Rights Watch conducted little research, this clearly reflects the municipalities that were most impacted by the war and associated security operations from 1998 to 1999. Thirty-five percent of the reported executions took place in Djakovica and Orahovac municipalities alone, as shown in Figure 2 below.

Again, Figure 2 should not be interpreted as a representation of total extrajudicial executions in the municipalities or in Kosovo as a whole since it reflects only those executions reported to Human Rights Watch. Two municipalities in particular stand out as having been undercounted due to only partial research in those areas: Podujevo and Kosovo Polje. With these

Figure 2: Top municipalities of reported extrajudicial executions

MUNICIPALITY	REPORTED EXECUTIONS	PERCENT	CUMULATIVE PERCENT
1. Djakovica	645	18%	18%
2. Orahovac	583	17%	35%
3. Srbica	431	12%	47%
4. Glogovac	368	11%	58%
5. Suva Reka	248	7%	65%

Note: The other municipalities where Human Rights Watch gathered reports of executions, in descending order, are: Pec, Kacanik, Prizren, Vucitrn, Istok, Lipljan, Pristina, Kosovoska Mitrovica, Decan, Gnjilane, Obilic, Urosevac, Podujevo, Leposavic, Stimlje, Strpce, Kosovo Polje, Klina, Kosovoska Kamenica, Zvecan, Novo Brdo, Gora, Vitina and Zubin Potok.

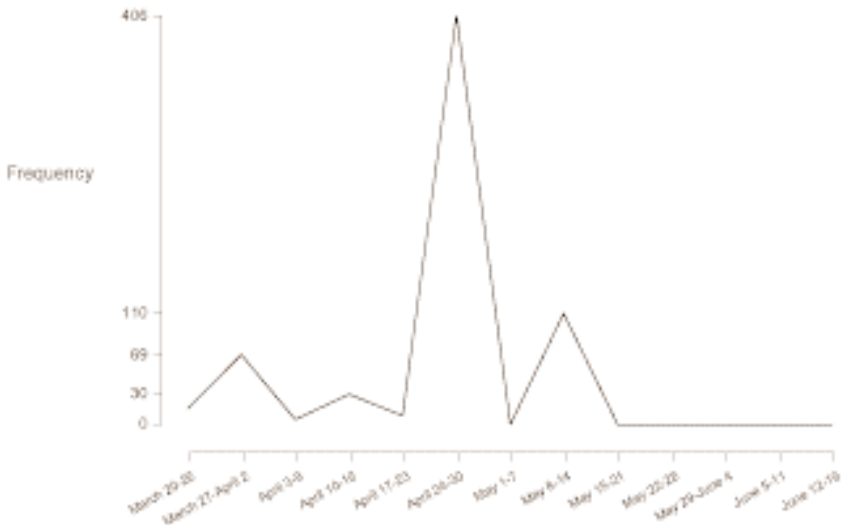
notable exceptions, the data can be taken as a relatively fair reflection since Human Rights Watch documented a high percentage of the major killing sites across Kosovo. These data were collected in Albania and Macedonia during the war, as well as inside Kosovo after the war, so that all geographic areas were covered.¹⁰

Intense killing “sprees” tended to occur in municipalities over short periods of times.

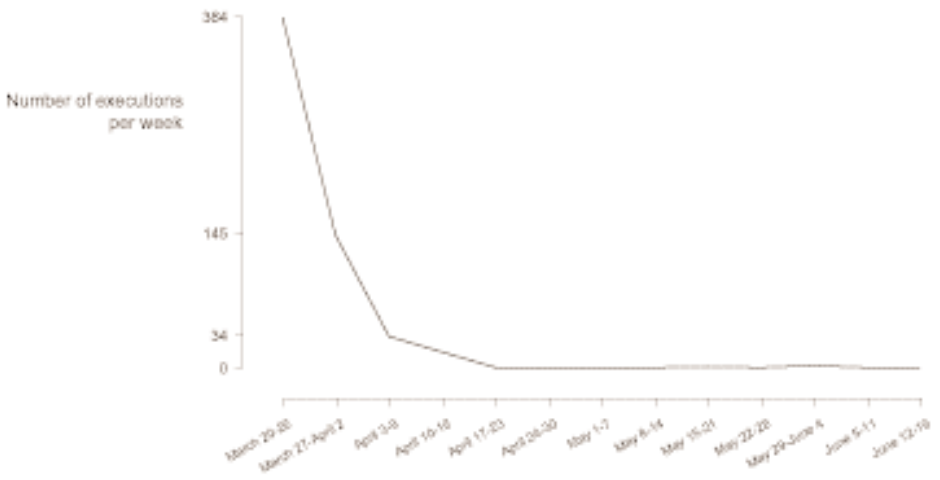
The coordinated nature of extrajudicial executions in Kosovo is further revealed when the killings are examined by municipality. As the graphs below reveal, intense killing “sprees” tended to occur in municipalities over short periods of times, suggesting a strategic order to commit executions in certain areas or, in the least, the deployment of forces known for brutality and disregard with orders to terrorize the civilian population without legal constraints. More sporadic executions in the municipalities may not be reflected in the graphs since Human Rights Watch tended to focus on the larger-scale incidents.

The intensity of executions in any given municipality over a short period suggests that, as in Graph 5, the killings were not random events. Rather,

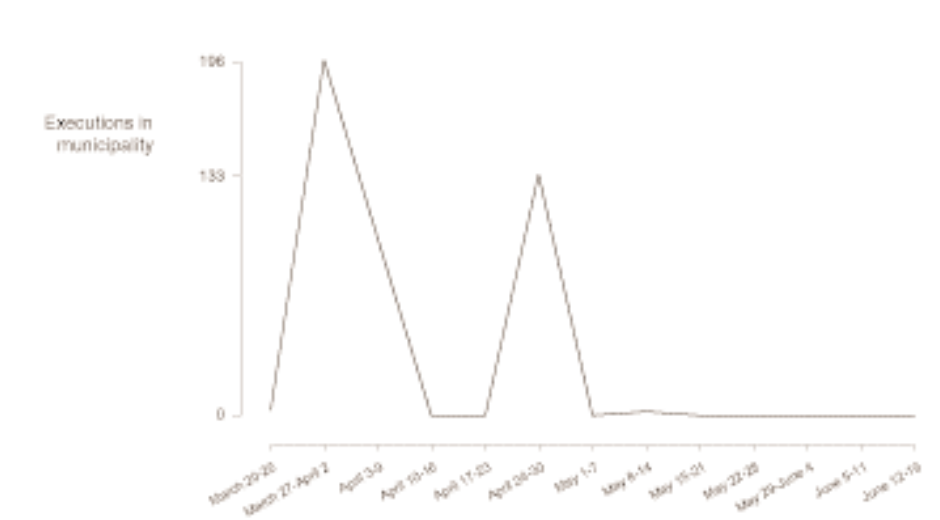
Graph 6: Extrajudicial Executions in Djakovica over time



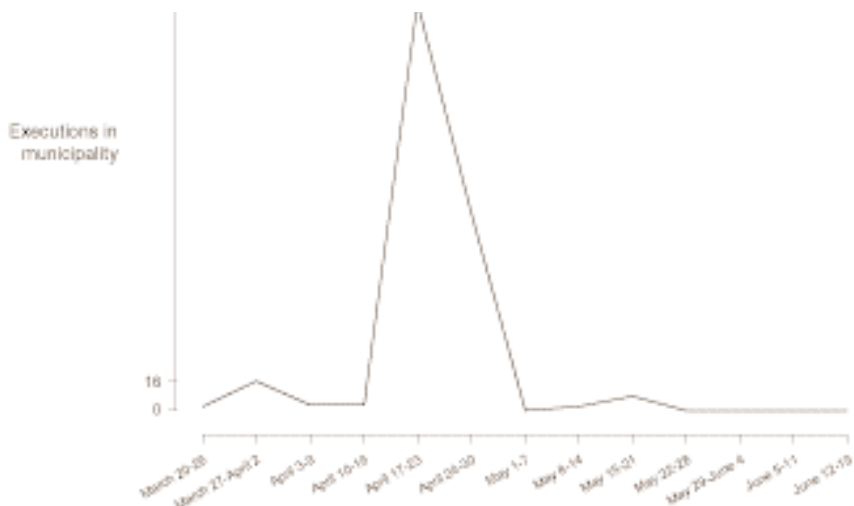
Graph 7: Extrajudicial Executions in Orahovac over time



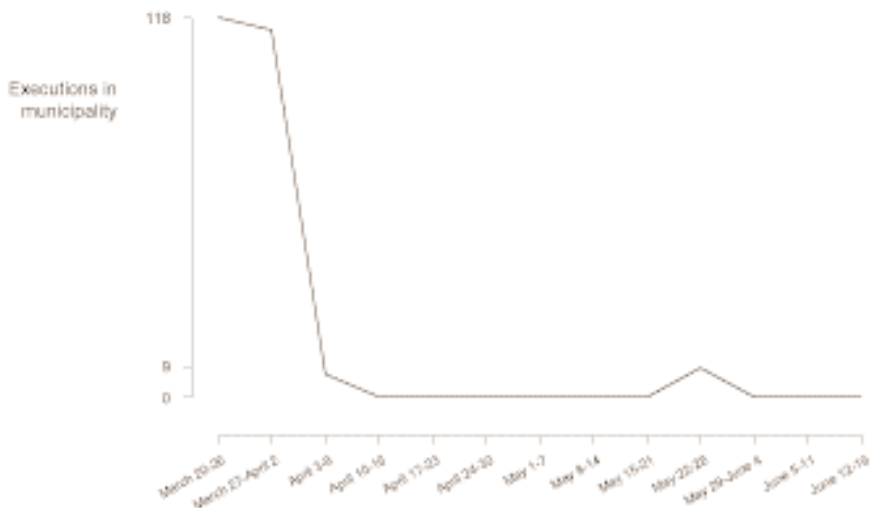
Graph 8: Extrajudicial Executions in Srbica over time



Graph 9: Extrajudicial Executions in Glogovac over time



Graph 10: Extrajudicial Executions in Suva Reka over time



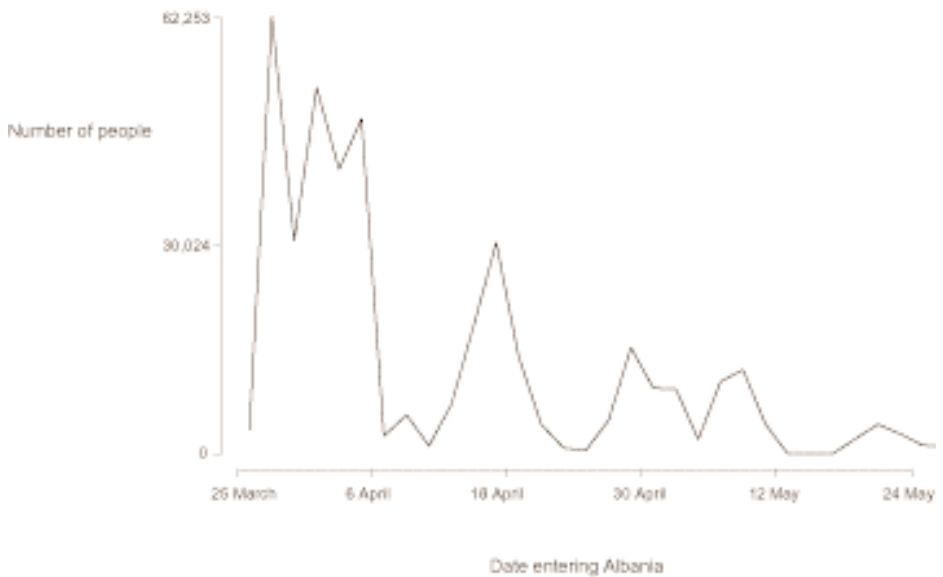
there were distinct periods when killings were intense, suggesting they were the result of a premeditated and coordinated policy of violence. Our anecdotal research also supports the conclusion that executions in each municipality were specific and purposeful.

Executions and Expulsions: a Correlation

Evidence of a centrally coordinated attack on Kosovar Albanians is strengthened by another statistical study on the outflow of refugees from Kosovo to Albania. The April 2000 study conducted by the AAAS found that the refugee flows into Albania occurred in three separate waves.¹¹ From late March to late May 1999, the report said, 95 percent of the Kosovar Albanian refugees who entered Albania did so during one of three “distinct phases,” as shown in Graph 11.

To explain the graph, the report concluded:

Graph 11: Number of Kosovar Albanians entering Albania at Morina border crossing, by two-day period, from the AAAS report “Policy or Panic”



It is our conclusion that the evictions were not spontaneous: mass migration on this scale and in this pattern could only have been driven by a centralized policy, not by individual decisions or emotions of either Kosovar Albanians or local Yugoslav military or police officials . . .

The coherence of the phases, and their apparent coordination across broad regions of Kosovo suggests that Yugoslav authorities devised and implemented a policy to attempt to clear at least certain regions of ethnic Albanians.¹²

As may be evident from Graph 11, the timing of the three refugee waves to Albania documented by AAAS coincides closely with the three waves of executions documented by Human Rights Watch (Graph 5).¹³ This is made even more clear when the AAAS data on expulsions and the Human Rights Watch data on executions are compared more directly in Graph 12.

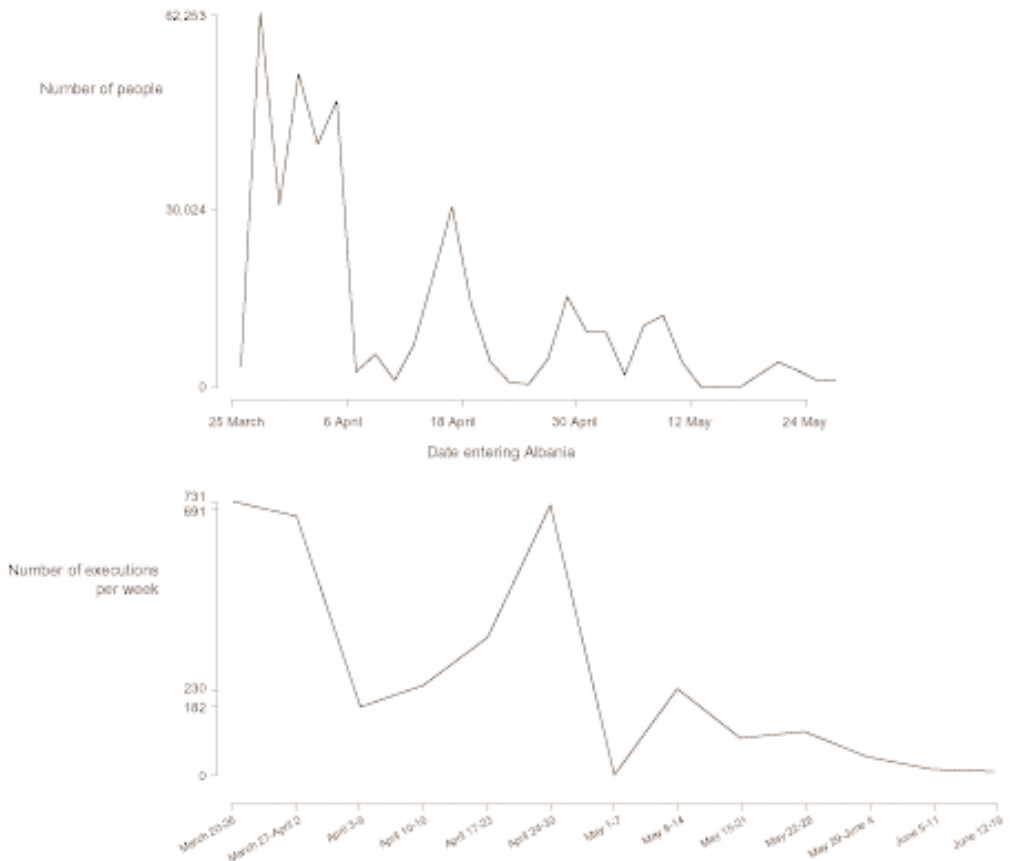
As Graph 12 shows, the peaks and valleys of the three phases, and even the final bump, closely match for both executions reported to Human Rights Watch and refugee outflows to Albania. In other words, the executions in Kosovo over time appear to parallel expulsions.¹⁴ The difference in magnitude for the second wave could be attributable to the fact that most of the executions documented by Human Rights Watch in that time frame occurred in the north and central municipalities, particularly Srbica and Glogovac. A large percentage of those expelled from these municipalities went to Macedonia, where they would not have been picked up by the AAAS data.

This strong relationship further suggests that there was a centrally devised and implemented strategy to target Kosovar Albanians. The three phases of killings and expulsions seem tied to the strategic objectives of the military and political leadership in Belgrade.

One explanation is that government forces committed executions in order to expedite the expulsions—a theory that is supported by some case studies. In many villages documented in this report, such as Celina and Korenica, police, army, or paramilitary forces committed executions before, or in the process of, expelling the civilian population from a village or city. It is also understandable that killings would rise along with executions since government forces were unleashed on an area to be “cleansed.” Often these were areas of KLA activity where policemen and soldiers had been killed, giving the government forces a justification, in their own mind, for violence.

The three waves of expulsions and executions can be further analyzed by municipality. AAAS found that the three phases of expulsions (Graph 11) related to different regions of Kosovo. Specifically, in the first phase of expulsions, most of the refugees came from western and southwestern Kosovo. In the second phase, most of the refugees came from the northern and central municipalities. In the final phase, refugees came largely from the western and southern municipalities. This geographic distribution is represented in Graph 13, taken from the AAAS report, which shows the propor-

Graph 12: AAAS data on expulsions (top) and Human Rights watch data on executions (bottom) over time



tion of refugees to Albania that came from the southwestern Kosovo municipalities (Suva Reka, Orahovac, Prizren, and Djakovica).

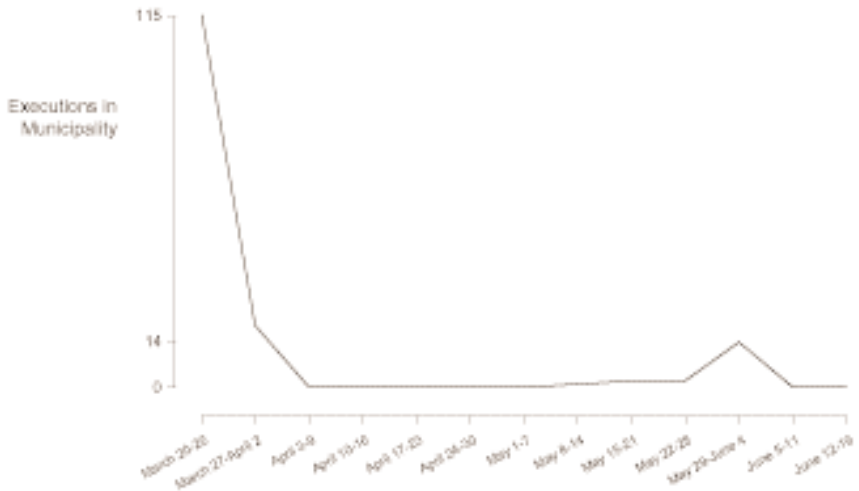
The Human Rights Watch data shown in Graph 6 through 10 are consistent with these findings. Namely, the municipalities in Kosovo's southwest, like Djakovica, Orahovac, Suva Reka and Prizren (see Graph 14), have large numbers of killings in the first time period. The northern municipalities like Glogovac were more likely to see executions in the second phase. In the third phase, the executions reported to Human Rights Watch were again mostly in the southwestern municipalities of Djakovica and Prizren.

Naturally, there are some exceptions. The killings in the north-central municipality of Srbica, for example (Graph 8), fall more neatly into the first and third phases rather than the second. The first phase is explained by the March 28 killing of between 146 and 166 men in Izbica, a former stronghold of the KLA that was attacked early on by government forces. The third phase surge is due to the killings in Rezala and Cirez as part of the government's offensive in Drenica.

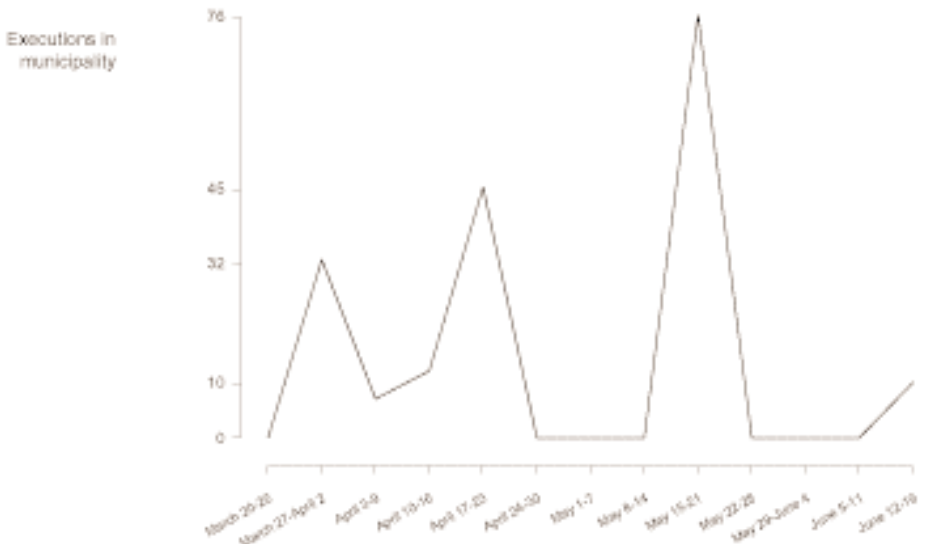
Graph 13: Proportion of Kosovar Albanians entering Albania who originated from municipalities in the south and west, by two-day period. From AAAS' "Policy or Panic."



Graph 14: Extrajudicial Executions in Prizren over time



Graph 15: Extrajudicial Executions in Pec over time



Likewise, the killings in Pec (see Graph 15) tend to mirror the first and second phase. The surge around May 14 represents the killing of seventy people in the villages of Cuska, Zahac and Pavlan. As mentioned in the detailed section on these villages in the chapter on Pec, it remains unclear why these three villages were attacked at this time, since they had remained intact throughout the war and were apparently devoid of any KLA presence. Possibilities range from revenge (KLA General Agim Ceku's family is from Cuska) to local paramilitaries plundering the three untouched villages in the area.

The three phases of expulsions closely match the three phases of executions.

This correlation between executions and expulsions was also studied by the AAAS, which conducted a second study on killings in Kosovo, *Political Killings in Kosova/Kosovo*, published in September 2000, in conjunction with the American Bar Associations's Central and East European Law Initiative (ABA/CEELI). The report's analysis of killings across Kosovo was based on 3,353 interviews collected by Human Rights Watch, ABA/CEELI, the Center for Peace Through Justice, and Physicians for Human Rights. The study concluded that approximately 10,500 Kosovar Albanians were killed between March 20 and June 12, 1999, with a 95 percent confidence interval from 7,449 to 13,627.¹⁵

The study compared the executions documented by these four organizations with the original AAAS report on expulsions and found very similar results to those presented by Human Rights Watch in Graph 12; namely, the three phases of expulsions closely match the three phases of executions. Similarly, as the AAAS-ABA/CEELI report states, "the pattern of killings by municipality closely follows that of refugee flows."

The strikingly similar conclusions reached by Human Rights Watch and the AAAS-ABA/CEELI report is in part due to the fact that Human Rights Watch provided its interview data for the AAAS-ABA/CEELI report. However, Human Rights Watch interviews accounted for only 577 of the 3,353 total interviews (17 percent). The similar findings should, therefore, be taken as independent confirmation of the results.

Perpetrators of Executions

Human Rights Watch asked all witnesses and victims of violations whether they could identify the type of perpetrator involved in the abuse: Serbian police, Yugoslav Army, paramilitary, or “other,” for example, local Serbs, NATO, or the KLA. The results for the perpetrators of executions are presented below, but they must be taken only as an indication of perpetrator trends rather than definitive statements.

The main reason for this was Kosovar Albanians’ difficulty in identifying Serbian and Yugoslav forces. While some witnesses and victims were confident in their identifications, many others, due to lack of knowledge about the forces and the generally stressful environment, were unable to distinguish between the police, army, and paramilitaries.

This was made more difficult by the large array of government forces used in the campaign, such as military police in the army, special antiterrorist forces in the police, paramilitaries, and local armed groups (see Forces of the Conflict). There were few standard uniforms and badges and insignia were not always displayed.

In addition, the scenarios in which these abuses took place were complex: one type of force might have shelled a village, another invaded it, and a third committed executions. Human Rights Watch asked witnesses which type of government force was “present” at the scene of a violation. This does not necessarily mean that it was that government force which actually committed the particular killings, but it can corroborate the testimonial evidence that most large-scale operations involved combined military and police or paramilitary forces.

Of the 3,453 extrajudicial executions reported to Human Rights Watch, witnesses claimed to have identified the Serbian police in 1,768 executions (51 percent), the Yugoslav Army in 1,173 cases (34 percent), and paramilitaries in 1,154 cases (33 percent). More than one perpetrator type may have been present at any execution.

The results are counterintuitive since the narrative chapters in this report suggest that paramilitaries were responsible for much of the worst killing, although the police and army were hardly exempt. Again, the fact that witnesses had difficulty identifying the different forces and that larger operations often involved a mix of forces probably account for the contradictory results.

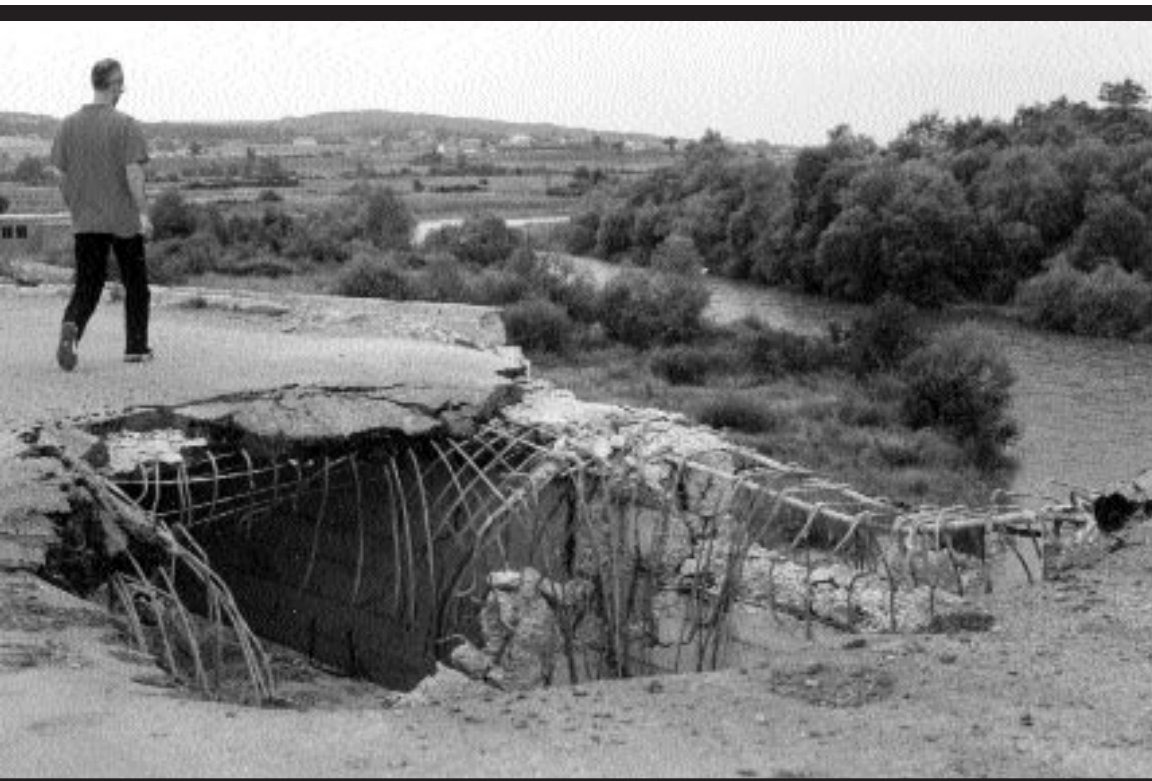
When identifying perpetrators, it is easier to identify those with command responsibility for a notorious unit or a region where largescale killings took place. Given the intensity of the deliberate and unlawful killings in certain areas of Kosovo over short periods of time, as depicted in Graphs 6 through 10, as well as Graphs 14 and 15, it is highly likely that the various commanders in charge of the given municipalities were aware of the killings that took place in their respective areas of responsibility. Despite this, there is no evidence that military or political leaders took any steps to punish those responsible for the killings, or to minimize further such killings taking place as the conflict continued.

THE NATO AIR CAMPAIGN

From the beginning of Operation Allied Force—NATO’s bombing campaign against the Federal Republic of Yugoslavia—NATO and allied government and military officials stressed their intent to limit civilian casualties and other harm to the civilian population. The practical fulfillment of this legal obligation and political imperative turned upon a range of decisions relating to targeting, weapons selection, and the means of attack. Despite precautions, including the use of a higher percentage of precision-guided munitions than in any other major conflict in history, civilian casualties occurred.

Human Rights Watch conducted a thorough investigation of civilian deaths as a result of NATO’s bombing campaign in the Federal Republic of Yugoslavia. On the basis of this investigation (detailed in a February 2000 report, “Civilian Deaths in the NATO Air Campaign”), Human Rights Watch found that there were ninety separate incidents involving civilian deaths throughout the Federal Republic of Yugoslavia during the seventy-eight day bombing campaign. Some 500 Yugoslav civilians are known to have died in these incidents. Between 278 and 317 of the dead—between 56 and 60 percent of the total number of deaths—were in Kosovo.¹

Thirty-two of these incidents with civilian deaths occurred in Kosovo, the majority involving attacks on mobile targets or military forces in the field.² Attacks in Kosovo overall were more deadly for civilians than those elsewhere in the Federal Republic of Yugoslavia—a third of the incidents (thirty-two out of ninety) account for more than half of the civilian deaths in the country. Seven incidents of civilian deaths that were particularly deadly were a result of attacks on convoys or transportation links. Because



Damage from a NATO bomb along the Pristina-Pec highway.

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pilots' ability to identify these mobile targets properly was so important in avoiding civilian casualties, these incidents raise the question whether flying at high altitudes precluded proper target identification and caused unnecessary loss of life. Insufficient evidence exists to answer that question conclusively at this point.

Another factor in assessing the higher level of civilian deaths in Kosovo is the possible government use of ethnic Albanian civilians as "human shields." There is some evidence that Serbian and Yugoslav forces used internally displaced civilians as human shields in the village of Korisa on May 13, and may thus share the blame for the eighty-seven deaths there. (For further discussion on the use of "human shields" by government forces, see March-June 1999: An Overview.)

There were ninety separate incidents involving civilian deaths throughout the Federal Republic of Yugoslavia during the seventy-eight day bombing campaign. Some 500 Yugoslav civilians are known to have died.

INTERNATIONAL HUMANITARIAN LAW AND ACCOUNTABILITY

Rules of international humanitarian law arise from international agreements such as the Geneva Conventions, or develop as international customary law. States have an obligation to ensure compliance with all provisions of international humanitarian law, and to suppress all violations. War crimes constitute some of the most serious violations of international humanitarian law, known as grave breaches, and are generally intentional or deliberate acts. These violations give rise to the specific obligation to search for and punish those responsible, regardless of the nationality of the perpetrator or the place where the crime was committed. Examples of war crimes are wilful killing, torture or inhuman treatment of noncombatants, wilfully causing great suffering or serious injury to body or health of noncombatants, or launching an indiscriminate attack in the knowledge that the attack will cause excessive loss of life or injury to civilians.

Human Rights Watch found no evidence of war crimes in its investigation of NATO bombing in Kosovo. The investigation did conclude, how-

ever, that NATO violated international humanitarian law. Human Rights Watch has called on NATO governments to establish an independent and impartial commission, competent to receive confidential information, that would investigate violations of international humanitarian law and the extent of these violations, and would consider the need to alter targeting and bombing doctrine to ensure compliance with international humanitarian law. Such a commission should issue its findings publicly. Human Rights Watch also called for NATO to alter its targeting and bombing doctrine in order to bring it into compliance with international humanitarian law.

With respect to NATO violations of international humanitarian law in Kosovo, Human Rights Watch was concerned about a number of cases in which NATO forces:

- took insufficient precautions identifying the presence of civilians when attacking convoys and other mobile targets; and
- caused excessive civilian casualties by not taking sufficient measures to verify that military targets did not have concentrations of civilians (such as at Korisa).

THE STANDARDS APPLIED

The conduct of warfare is restricted by international humanitarian law—the laws of war. International humanitarian law applies expressly and uniquely to armed conflict situations, with distinct provisions to regulate international and non-international (internal) armed conflicts. In evaluating NATO's use of military force in the Federal Republic of Yugoslavia, the laws of war provide the most relevant standards.

As explained in the chapter on Legal Standards in the Kosovo Conflict, beginning February 28, 1998, the conflict in Kosovo could be characterized as an internal armed conflict, which obliged both government forces and the KLA to respect basic protections of international humanitarian law—the rules of war—in particular, Article 3 common to the four Geneva Conventions of 1949, Protocol II to those conventions, and the customary rules of war. With the initiation of the NATO bombing on March 24, 1999, the

conflict in Kosovo and all of the Federal Republic of Yugoslavia, to the extent that it involved NATO and Serbian and Yugoslav forces, became an international armed conflict to which the full body of international humanitarian law applied.

Protocol I additional to the Geneva Conventions of 1949 provides the basis for the evaluation here of NATO's bombing. This protocol has been ratified by most NATO members, and the U.S. government, while not a party, has declared that it accepts all of the relevant standards. The basic principle of Protocol I, and of the laws of war generally, is that the civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. This turns in large part on the requirement that attackers must distinguish between civilians and combatants and between military objectives and civilian objects. They must take all feasible precautions to avoid or minimize harm to civilians, and to this end may not attack civilians directly, or combatants and civilians indiscriminately.

Damage to civilian objects and civilian casualties that are incidental to lawful attacks on military objectives are known in military terminology as "collateral damage." The legality of an attack turns upon various factors. First, the attackers must do everything feasible to verify that they are aiming at something specific—they cannot lash out blindly. Second, the attackers must establish that the objective to be attacked is a legitimate military objective. And third, the attackers must establish whether an attack would endanger civilians and civilian objects, and must weigh this risk against the military advantage to be gained. Attacks which may be expected to cause incidental loss of life or injuries to civilians, or to cause damage to civilian objectives *are indiscriminate* if this harm to civilians is "excessive in relation to the concrete and direct military advantage anticipated" (Protocol I, article 57 (2)). The International Committee of the Red Cross (ICRC), the principal authority on the interpretation of international humanitarian law, has cautioned that the argument of proportionality can never justify very high civilian casualties and damage, whatever the military advantage envisioned.

In researching each of the incidents involving civilian deaths in Kosovo, Human Rights Watch sought to gather the facts that can enable analysts to assess the legitimacy of the real or perceived military objectives targeted; the care taken and procedures and criteria employed to confirm the military nature of the targets; the proportionality of the civilian deaths and the

means employed in the attack in relation to the military objectives, where these were known; the correlation of civilian deaths to the location and nature of the targets selected; the timing of target selection as a factor in its appropriateness and the minimization of civilian harm; the methods and conditions under which distinct weapons systems were employed; and, the potentially indiscriminate nature of some weapons systems in general and under certain conditions.

In assessing specific attacks, with a view to general observations on the conduct of the air war, the primary issue is whether due care was taken for the protection of civilians. Was the prospect of civilian deaths sufficiently taken into account in the targeting, the weaponry employed, and the means and conditions under which weapons were employed? This involves a review of the selection of targets, and the procedures through which these were determined, matters beyond the scope of the present report. So too is the larger question of whether the military objectives identified and targeted by NATO forces were wholly within what is permissible under humanitarian law. The following analysis addresses those aspects of the air war conducted in Kosovo only through the cost in civilian lives, as a factor in assessing the larger picture of compliance with international humanitarian law.

CASE STUDIES OF CIVILIAN DEATHS IN KOSOVO

The incidents in Kosovo involving civilian deaths provide a part of the picture from which to consider NATO's conduct of the war.³ At issue is whether NATO effectively adhered to the humanitarian law imperative that the civilian population be protected against dangers arising from military operations. At the core is the principle of civilian immunity from attack and its complementary principle requiring the parties to a conflict to do everything feasible to distinguish civilians from combatants at all times. Several incidents, which accounted for a large proportion of civilian deaths, clearly illustrate troubling aspects of NATO actions, and are presented below.

The most dramatic losses of civilian life from the NATO offensive in Kosovo came from attacks on fleeing or traveling refugees mistaken for mil-

itary forces. Repeated attacks on refugees over a twelve-mile stretch of the Djakovica-Decan road in Kosovo took the lives of seventy-three civilians; attacks near Korisa in Kosovo killed as many as eighty-seven displaced persons and refugees; and two incidents involving attacks on civilian buses, at Luzane and Savine Vode, caused additional civilian losses. An estimated nineteen civilians died in the two attacks on Dubrava prison.

In all of these incidents, the principal concern is whether every feasible precaution was taken to accurately distinguish civilians from combatants. At the same time, there are questions as to whether the decisions to attack might have been made on the basis of incomplete and/or seriously flawed information. The public statements by NATO concerning particular attacks, and the changes in the way attacks were characterized, also bear some analysis, in particular insofar as such statements may show an intent to justify clearly unlawful attacks in which civilian casualties were clearly excessive.

Moreover, there is a question as to whether NATO's determined effort to avoid pilot casualties precluded low-flying operations that might have helped to identify targets more accurately. This was and continues to be a major issue in the public debate about Operation Allied Force. For many weeks in the initial stages of the war, NATO airplanes were not flying below 15,000 feet. If the height at which the NATO pilots flew had little effect on with identification of and attacks upon targets, then the issue is irrelevant. But if precision would have been greater (and civilian casualties lessened) had NATO pilots flown lower, it could be argued that there may have been a point at which NATO was "obligated" to have its pilots fly lower.⁴ In the case of attacks such as those at Djakovica-Decan, described below, in which flying at a higher altitude seems to have been a factor in a pilot's failure to properly identify a target, the conclusion again is that inadequate precautions were taken to avoid civilian casualties.

The incident at Korisa, described below, also raises important questions of Yugoslav responsibility for some of the civilian deaths attributed to NATO bombing. In this case, NATO did not apply adequate precautions in executing its airstrikes. But Yugoslav military forces may share the blame for

The most dramatic losses of civilian life from the NATO offensive in Kosovo came from attacks on fleeing or traveling refugees mistaken for military forces.

the eighty-seven civilian deaths at Korisa: there is some evidence that displaced Kosovar civilians were forcibly concentrated within a military camp there as human shields.

Direct Yugoslav responsibility has been shown for killings at the Dubrava prison that Yugoslav authorities attributed to NATO bombing. Human Rights Watch researchers in Kosovo found that some eighty-six prisoners there were victims of extrajudicial executions—cold-blooded murder—by Yugoslav forces in the days after NATO bombed the prison. The NATO attack on May 21 was, however, responsible for nineteen deaths at the facility prior to the massacre of prisoners; an earlier NATO attack killed four civilians at the prison.⁵

Seven of the thirty-two incidents in Kosovo in which civilians died occurred as a result of attacks on targets in densely populated urban areas. Three incidents occurred in Djakovica, two in Pristina, and two in Prizren. The targets in almost all of these attacks were military/police barracks, headquarters, and other facilities, or factories. In these cases there was little doubt as to the apparent objective of the attack, or that these locations constituted lawful military objectives.

A discussion of the major legal and policy issues raised in selected incidents in Kosovo follows:

Refugees on the Djakovica-Decan Road

On April 14, during daylight hours, NATO aircraft repeatedly bombed refugees over a twelve-mile stretch of road between Djakovica and Decan in western Kosovo, injuring thirty-six and killing seventy-three civilians—deaths Human Rights Watch was able to document. The attacks began around 1:30 p.m. and persisted for about two hours, causing civilian deaths in numerous locations on the convoy route near the villages of Bistrazin, Gradis, Madanaj, and Meja. NATO and U.S. spokespersons initially claimed the target was an exclusively military convoy and that Serb forces may have been responsible for the attacks on civilians. Pentagon spokesman Ken Bacon said that NATO commander Gen. Wesley Clark had received reports that “after the convoy was hit, military people got out and attacked civilians.” “The pilots state they attacked only military vehicles,” NATO said, adding that the “reported incident will be

fully investigated once all mission details have been reviewed.” There are also various NATO reports of Serbian deception in placing dead civilians at the site of the bombing. German Defense Minister Rudolf Scharping, in particular, put the blame for civilian casualties on Yugoslav forces.⁶

On April 15, NATO began to backtrack. It said one plane had “apparently” dropped a bomb on a civilian vehicle traveling with a military convoy. The reference to a strictly military convoy was modified: “Serbian police or army vehicles might have been in or near the convoy.” NATO acknowledged that it had bombed civilian vehicles by mistake: “Following a preliminary investigation, NATO confirmed that apparently one of its planes dropped a bomb on a civilian vehicle traveling with a convoy yesterday.”

Reporters from U.S. media went to the scene on April 15. They interviewed refugee survivors and observed shattered farm tractors, burned bodies identified as refugees, bomb craters, shrapnel, and bomb remnants with U.S. markings. The refugee column had apparently been divided in two main groups. Over the next few days, NATO wavered from insisting its forces

attacked only military vehicles to an explanation that two convoys had been targeted, that the refugees had been at the rear of military columns, and that the civilian death toll was limited. On April 16, NATO spokesman Jamie Shea and Gen. Giuseppe Marini declared that “in one case and one only, we have proof of civilian loss of life. Otherwise, we are sure that we targeted military vehicles.”

NATO finally admitted that the pilot of a U.S. F-16 mistakenly fired on what he believed to be military trucks, and



Seventy-three civilians died and thirty-six were injured, including this ethnic Albanian man, when NATO bombed a convoy of internally displaced persons on the road between Djakovica and Decan on April 14. “In my tractor fourteen people died,” he said.

expressed “deep regret.” Later, on April 19, NATO modified its account of a single pilot’s error, declaring that about a dozen planes had been involved in numerous attacks on the two convoys, dropping a total of nine bombs. Con-

The reported change in NATO rules of engagement would indicate that the alliance recognized it had taken insufficient precautions in mounting this attack.

voluted explanations continued for a number of days after the incident; NATO and the United States seemed incapable of reconstructing what had occurred. There were widespread press reports of the use of cluster bombs, which the United States denied.⁷

In addition to the press reporting of this incident and the endless damage control by NATO and U.S. spokespersons, Human Rights Watch obtained extensive forensic details of the incident from the Yugoslav government.⁸ No evi-

dence whatsoever was ever produced to indicate Serb responsibility for any of the deaths, though Tanjug reported the deaths of three Serbian “police-men” in the bombings who it said “were securing the safe passage for the convoy.”⁹ This tends to suggest that military or police were present among the refugee vehicles, but Human Rights Watch found no basis to support the claim that the convoys themselves were primarily composed of military vehicles.¹⁰

General Clark stated in September that NATO consistently observed Yugoslav military vehicles moving on roads “intermixed with civilian convoys.” After the Djakovica-Decan incident, General Clark said, “we got to be very, very cautious about striking objects moving on the roads.”¹¹ Another NATO officer, Col. Ed Boyle, said: “Because we were so concerned with collateral damage, the CFAC [Combined Forces Air Component Commander] at the time, General [Michael] Short, put out the guidance that if military vehicles were intermingled with civilian vehicles, they were not to be attacked, due to the collateral damage.”¹² When this directive was actually issued, and why it may not have served to avoid the subsequent three incidents, remains an important question. Nevertheless, the reported change in NATO rules of engagement would indicate that the alliance recognized it had taken insufficient precautions in mounting this attack, in not identifying civilians present, and in assuming that the intended targets were legitimate military objectives.

Displaced Civilians in the Korisa Woods

On May 13, almost a month after the Djakovica-Decan incidents, as many as eighty-seven displaced Kosovar civilians were killed and sixty wounded when bombs were dropped during the night on a refugee camp in a wooded area on the Prizren-Suva Reka road, near the village of Korisa. There have been various conflicting reports of the number of dead, from 48 to 87.¹³ The Yugoslav government claimed the attackers used cluster bombs, and the *White Book* published by the Ministry of Foreign Affairs includes photographs of the remains of tactical munitions dispensers (TMDs) it says are from the site. NATO spokespersons vociferously denied the use of cluster bombs,¹⁴ and Human Rights Watch has been unable independently to confirm that cluster bombs were indeed used in this attack.

In an official statement on May 15, NATO spokesman Maj. Gen. Walter Jertz acknowledged the attack, deeply regretting any “accidental civilian casualties.” He insisted, nonetheless, that the attack was against Yugoslav army forces in the field:

This was a legitimate military target. The Serb claims of an attack involving cluster bombs against a non-military target are both false. NATO identified Korisa as a military camp and command post. Military equipment including an armored personnel carrier and more than ten pieces of artillery were observed at this location. The aircraft observed dug-in military positions at the target before executing the attack. NATO cannot confirm the casualty figures given by the Serbian authorities, nor the reasons why civilians were at this location at the time of the attack.¹⁵

The NATO statement further stressed that military positions had been positively identified and that the bombs employed included laser-guided precision guided missiles and non-guided gravity bombs:

Immediately prior to the attack at 23:30—11:30 p.m.—local time Thursday night an airborne forward air controller confirmed the target, so the identification and attack system of his aircraft, having positively identified the target as what looked like dug in military reveted positions, he dropped two laser guided bombs. Following his attack, he cleared his wingman to also attack the same target using two more laser guided bombs. Approximately

10 minutes later, the third aircraft engaged the target with . . . six gravity bombs. A total of 10 bombs were dropped on the target.¹⁶

The same day, Pentagon spokesman Kenneth Bacon said at a news briefing that the incident would be reviewed, but that major changes in operations should not be expected:

This accident at Korisa did not shake NATO's resolve in any way. . . . NATO deeply regrets civilian casualties. . . . We try very hard to avoid these casualties, but combat is inherently dangerous and accidents cannot be avoided. . . . this mission, like every other, will be reviewed, and the airmen and their commanders will learn what they can from it and continue. But I don't anticipate that there will be a sweeping change. We can't cross legitimate military targets off the list, and we won't.¹⁷

On May 16, a Kosovar refugee who witnessed the NATO strike on Korisa reported to Deutsche Welle that FRY police forced some 600 displaced Kosovars to serve as human shields there before the attack. "We were told something bad would happen to us if we left the place," said the eyewitness, interviewed by the station's Albanian service. He said Serbian police hinted at what was about to happen. "Now you'll see what a NATO attack looks like," the refugee quoted one policeman as saying. The refugee said he finally went to sleep underneath a tractor only to be woken up by explosions and the cries of children and adults. He said he and others managed to scale a two-meter wall surrounding the plot and fled in the direction of the village as Serbian paramilitaries fired bullets around them.¹⁸ On the basis of available evidence it is not possible to determine positively that Serbian police or Yugoslav army troops deliberately forced civilians to group near them, nor to establish the motive for such action.

The laws of war expressly forbid shielding. Article 28 of the Geneva Convention IV stipulates that "The presence of a protected person may not be used to render certain points or areas immune from military operations." Protocol I, article 51(7), elaborates:

The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from

attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.

The protocol stresses, however, in art. 51(8), that such violations of the laws of war do not in any way release an adversary from obligations to respect civilian immunity. An authoritative new commentary on humanitarian law states: "If one party to a conflict breaks this rule, this does not exempt the other side from the regulations applicable in military attacks. . . . The military commander must therefore take into account the column of refugees used by the adversary as a shield."¹⁹

For NATO, then, the question is whether its target designation was made with the knowledge that hundreds of displaced civilians were present in this wooded area—there is no evidence to this effect—and secondly, whether sufficient measures were taken to verify that the target had no such concentrations of civilians. On this score, the excessive civilian death toll in what NATO has itself described as a lamentable accident suggests that verification was inadequate.

Bombing of Dubrava Prison

Another case of Yugoslav deception involves civilian deaths and NATO bombing that damaged the large Dubrava prison complex near Istok. According to NATO and former Dubrava prisoners interviewed by Human Rights Watch, Yugoslav Army and Serbian police forces were based adjacent to the penitentiary, which was fully operational well into the NATO air campaign, housing common criminal offenders and political detainees serving out their terms.

The Penitentiary Institute Istok, as it was officially called, was hit twice by NATO, causing civilian deaths among both prisoners and guards. In the first attack, at 1:15 p.m. on May 19, three prisoners and a guard were reported killed. The second attack occurred on May 21, in which at least nineteen prisoners were killed. An investigation undertaken by Human Rights Watch, based on eyewitness testimony, found that prisoners were lined up and fired upon by Serb police and prison guards inside the penitentiary

walls after the May 21 attack, and some eighty or so prisoners were killed. (For detailed documentation of the killings, see the section on Dubrava prison in Istok Municipality).

The Yugoslav government initially reported that nineteen people were killed in the Dubrava Penitentiary as a result of the May 21 attack.²⁰ However, four days later, the Yugoslav press reported from the official Tanjug agency that “in days-long bombardment of the Penitentiary Institute Istok, some 100 prisoners died, and some 200 were wounded.” On May 27, Tanjug quoted Vladan Bojic, a judge in Pec’s District Court, saying that ninety-six corpses had been pulled from the ruins. On May 29, the Yugoslav government stated that “The number of casualties in the Correctional Institution in Istok is increasing.”²¹ On May 30, Tanjug reported a total of ninety-three killed.²² In July, the Yugoslav government claimed that NATO bombs killed ninety-five inmates and injured 196.²³

While NATO readily acknowledged the air strikes at Istok and justified the attacks on the grounds that it had targeted military objectives “in the vicinity of a prison,”²⁴ Human Rights Watch has determined that Yugoslav forces were likely responsible for the majority of the deaths which occurred after the bombing. On May 22, according to eyewitnesses, prison officials ordered approximately 1,000 prisoners to line up in the prison yard. After a few minutes, they were fired upon, and grenades were thrown at them from the prison walls and guard towers, killing at least seventy people. Over the next twenty-four hours, prison guards, special police, and possibly paramilitaries attacked prisoners who were hiding in the prison’s buildings, basements, and sewers, killing at least another twelve people.

Journalists who visited the Dubrava prison on May 21, just after the morning bombing, reported seeing between ten and twenty bodies.²⁵ Serb authorities again opened the prison for journalists on May 24. Reporting for the BBC, Jacky Rowland said it was unclear how the victims in the prison had died, but that three days after the first journalists’ tour, the dead numbered forty-four. The condition of the prisoners’ bodies viewed there did not conform with the government’s claim that they had died in the bombing. Post-war visits to the prison by journalists confirmed that prisoners had been killed execution-style after the bombing.²⁶

Given the degree of civilian casualties in the two attacks on the Dubrava prison, it appears that NATO did not apply adequate precautions in executing its airstrikes on nearby military objectives, and therefore must be held

accountable for the civilian deaths that occurred as a direct result of those attacks. But Yugoslav forces must be held fully responsible for approximately eighty-six of the ninety-five deaths Yugoslav authorities acknowledged at Dubrava, as these were prisoners who were executed extrajudicially well after the NATO strikes.

NATO's Use of Cluster Bombs

One of the issues of most intense public interest that has emerged from Operation Allied Force is NATO's use of cluster bombs. There are seven confirmed and five likely incidents involving civilian deaths from cluster bomb use by the United States and Britain. Altogether, some ninety to 150 civilians throughout Yugoslavia died from NATO cluster bombs.

The most serious incident involving civilian deaths and the use of cluster bombs occurred on May 7 in Nis, Serbia. The mid-day attack on Nis airfield, which is located inside the urban zone, killed fourteen civilians and injured twenty-eight. NATO confirmed the attack on Nis airfield,²⁷ and on May 8, NATO Secretary General Solana confirmed NATO responsibility for the attack, stating that "NATO has confirmed that the damage to the market and clinic was caused by a NATO weapon which missed its target."²⁸ According to U.S. Air Force sources, the CBU-87 cluster bomb container failed to open over the airfield but opened right after release from the attacking airplane, projecting submunitions at a great distance into the city.²⁹

After the incident in Nis, the White House quietly issued a directive to the Pentagon to restrict cluster bomb use (at least by U.S. forces).³⁰ Human Rights Watch considers this to have been the right move, but is concerned, given these risks, that cluster bombs were being used in attacks on urban targets in the first place. The mid-May prohibition against the further use of cluster bombs clearly had an impact on the level of civilian deaths as the war continued, particularly as bombing with unguided weapons (which would otherwise include cluster bombs) significantly intensified towards the end of the month. Nevertheless, the British air force continued to drop cluster bombs (official chronologies show use at least on May 17, May 31, June 3, and June 4),³¹ indicating the need for universal, not national, norms regarding cluster bomb use.



Elderly Serb woman waiting to depart Prizren in a convoy of fleeing Serb civilians on June 14, 1999.

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ABUSES AFTER JUNE 12, 1999

INTRODUCTION

The adoption of Security Council Resolution 1244 on June 10, 1999, and the conclusion of the Military Technical Agreement between NATO and the Governments of Serbia and the Federal Republic of Yugoslavia brought an end both to the NATO bombing and mass expulsions and killings by Serbian and Yugoslav security forces. In accordance with the terms of the agreement, the NATO-led Kosovo Force (KFOR) entered the province on June 12, and the Yugoslav Army and Serbian police (and paramilitaries) began a phased withdrawal from Kosovo, followed by a suspension of NATO air strikes. By June 20, all Serbian and Yugoslav security forces had withdrawn, leaving Kosovo under the control of KFOR.

The departure of Yugoslav and Serbian security forces brought an end to more than a decade of increasingly bloody and systematic persecution of Kosovar Albanians. But it did not bring an end to violence or gross violations of human rights in Kosovo. The province's Serb and Roma minorities—who many ethnic Albanians collectively regarded as active or complicit in atrocities by government forces—were immediately targeted for revenge. Thousands had already departed with the government's forces. Those who remained were forced to leave the province or concentrated in enclaves after widespread and systematic arson of Serb and Roma homes, beatings, detentions, and murders. As of July 2001, an estimated 1,000 Kosovo Serbs and Roma were missing and unaccounted for.¹

Violence soon spread to include attacks on other minorities, particularly Muslims who spoke Slavic languages rather than Albanian, Croats, and ethnic Turks. Kosovar Albanians regarded as collaborators with the Serbian or

Yugoslav state and their families were also attacked. At the same time, political violence between Kosovar Albanian political parties and factions and rivalries among former Kosovo Liberation Army officers (both sometimes linked to economic issues and corruption) led to some high-profile killings, even after the October 28, 2000, municipal elections.

ATTACKS ON MINORITIES

The KLA and ethnic Albanian civilians carried out widespread burning and looting of homes belonging to Serbs, Roma and other minorities, and destroyed many Orthodox churches and monasteries in the immediate aftermath of KFOR's arrival in Kosovo. Attackers combined this destruction with killings, harassment and intimidation designed to force people from their homes and communities, a pattern which continues today. Members of minority groups in Kosovo have been detained, beaten, and sometimes tortured, with as many as 1,000 Serbs and Roma reported unaccounted for after abductions since the end of the conflict. The elderly and infirm who remained in their homes have frequently borne the brunt of this violence and intimidation, and many now live as virtual prisoners in their homes. The demographic consequences have been profound: At least

Members of minority groups in Kosovo have been detained, beaten, and sometimes tortured, with as many as 1,000 Serbs and Roma reported unaccounted for.

150,000 members of Kosovo's minorities fled the province for Serbia and Montenegro, most within the first six weeks of KFOR's initial deployment.² In addition to those non-Albanians who fled the province, there has been substantial internal displacement inside Kosovo, with the majority of Serbs and other minorities concentrated into enclaves like Northern Mitrovica or Kosovo Polje.

Although a desire for revenge and retaliation provides some of the explanation for the violence, especially in the cases of arson and looting of property, Human Rights Watch's research suggests that a great deal of the violence is politically motivated; namely, the removal from Kosovo of non-ethnic Albanians in order to better justify an independent state. There is also clear evidence that some KLA units were responsible for violence against minorities beginning in the

summer of 1999, and continuing throughout 2000 and early 2001. Human Rights Watch has no evidence, however, of a coordinated policy to this end of the political or military leadership of the former KLA, which has made public statements condemning attacks against minorities.³

The willingness of almost all Kosovar Albanians to remain silent about such attacks, either from fear of speaking out or because of a belief in the collective guilt of Serbs and Roma, has created a permissive environment for violence against minorities. Human Rights Watch interviews with Kosovar Albanians from all walks of life suggest a widespread acceptance of the view that wartime atrocities now mean that Serbs have forfeited the right to remain in Kosovo and to retain their property and goods, irrespective of their involvement in abuses. On the other hand, many of the same respondents privately expressed their revulsion at the violence perpetrated against minorities.

A great deal of the violence is politically motivated; namely, the removal from Kosovo of non-ethnic Albanians.

No estimates exist for the number of minority homes destroyed in the postwar period, but Human Rights Watch researchers visiting formerly mixed communities throughout Kosovo during the summer of 1999 observed wide-spread arson and looting of homes. Seventy-six Orthodox churches, monasteries, or religious sites have been damaged or destroyed since June 1999 according to the Serbian Orthodox Church in Kosovo.⁴ Human Rights Watch researchers visited a number of the sites.

The intent behind many of the killings and abductions that have occurred in the province since June 1999 appears to be the expulsion of Kosovo's Serb and Roma population rather than a desire for revenge alone. In numerous cases, direct and systematic efforts were made to force Serbs and Roma to leave their homes.⁵ Human Rights Watch documented the harassment of elderly Serb women in formerly mixed communities in Prizren and Gnjilane municipalities, for example, and received reports of widespread efforts to remove Serbs from their homes in Pristina and Lipljan. Roma have been driven from their homes in Pristina and elsewhere by intimidation and other harassment.

Grenade and rocket attacks on minority homes are another method of "persuading" residents to leave. Such attacks against Serbs have been reported in the municipalities of Lipljan, Vitina, Gnjilane, Obilic, Oraho-

vac, Kosovo Polje, Pec, Prizren, and Vucitrn. Attacks against Roma have been reported in Stimlje, Pristina, and Pec municipalities. The homes of the Gorani, another ethnic group of Slavic Muslims, have been subjected to grenade attacks in Gora municipality and other Muslim Slavs (Bosniaks) have suffered grenade attacks in Prizren, Pec, and Istok. In Pristina, Serbs and Roma have received threatening telephone calls and visits by armed men in civilian clothing and KLA uniforms in which they are flatly told to leave. The double grenade attack on a marketplace full of Serb civilians in the town of Kosovo Polje in September 1999, which killed two and left forty-seven wounded, can be understood in the same context. Even those who do choose to leave are not immune from violence: in October 1999 a KFOR-escorted convoy of 150 Serbs leaving Kosovo was attacked in Pec. Vehicles were stoned and their occupants pulled out and beaten before the vehicles were set on fire. At least fifteen Serbs were wounded during the attack.

According to a survey carried out by UNHCR, more than 150,000 of the 210,000 displaced persons from Kosovo in Serbia and Montenegro fled after June 12.⁶ Approximately 143,000 of the 210,000 displaced persons from Kosovo in Serbia and Montenegro are Serbs and more than 25,000 are Roma. Several thousand Roma and Serbs also entered Macedonia during the same period, and an unknown number fled to other third countries. In addition, as noted, there has been substantial displacement of the remaining minority populations within Kosovo into mono-ethnic enclaves (sometimes consisting of a single apartment building), generally under KFOR protection. Significant numbers of minority populations not associated with abuses against Albanians, including Gorani, Muslim Slavs, and Croats have also been displaced from their homes by harassment and intimidation, including violent attacks. The explanation as to why those not implicated in attacks against Albanians should be targeted is complex: part of the explanation appears to be that, as speakers of Slavic languages, these minorities are associated with Yugoslavia in general and with Serbia in particular. In addition, such minorities may also be perceived to have had a privileged status in Kosovo, notably during the crackdown against Albanians in the 1990s.

Most of the Serb populations in the municipalities of Pristina, Pec, Prizren, Urosevac, and Istok have fled their homes, as have large numbers from the town of Gnjilane. According to a February 2000 report of the inter-agency Ad-Hoc Task Force on Minorities, only 700 to 800 Serbs remain in

Pristina, compared to an estimated 20,000 in 1998.⁷ The Task Force also reported that only 120 Serbs remain in the town of Prizren and twenty-three in the town of Urosevac. Those Serbs displaced inside Kosovo are mostly concentrated in towns and villages which had an historic Serb majority and which were fairly quickly assigned KFOR protection, including Kosovo Polje, Babin Most (Babimoc), Plemetina (Plementine), Strpce, Gracanica (Pristina municipality), Velika Hoca (Orahovac municipality), Dobrotin and elsewhere in Lipljan municipality (where the Serbs population is estimated at 9,500), Gnjilane municipality (estimated at 12,500), the northern part of Kosovska Mitrovica, and the northern municipalities of Leposavic and Zubin Potok.⁸ In addition, only a few hundred of the 6,000 Serb refugees from Croatia resettled in Kosovo remain, according to UNHCR, after two collective centers for such refugees were burned.

As noted above, there are at least 25,000 Roma displaced from Kosovo in Serbia and Montenegro, as well as several thousand in camps in Macedonia.



Serb children leaving Prizren with their families on June 14, 1999. Most of the Serbian population in the municipalities of Prizren, Pristina, Pec, Urosevac, and Istok fled their homes after the war due to revenge attacks.

There has also been substantial internal displacement, but the size of the remaining population is unknown.⁹ The European Roma Rights Center (ERRC), a Budapest-based Roma rights organization, reported in July 1999 that none of the Roma communities it had visited held more than half of their pre-conflict Roma population. February 2000 estimates from the Ad Hoc Task Force on Minorities indicated that between 115 and 140 Roma remained in Pristina town. The November 1999 report from the Task Force estimated that there were a further 300–600 Roma elsewhere in Pristina municipality at that time.¹⁰ Other areas with significant Roma populations as of early 2000 included Kosovo Polje (between 1,700 and 2,800), Obilic (around 1,200), Lipljan (around 1,500), Urosevac (4,200), and Prizren (4–5000).¹¹

Violence against the Albanian-speaking Ashkali Roma continued after the October 28, 2000, municipal elections. On November 8, four Ahkali men were murdered execution-style by unknown assailants outside the village of Dosevac (Dashevc) near Srbica. The men, living in tents, had just returned to their homes with the assistance of UNHCR.¹² In response to the killings, Head of UNMIK Bernard Kouchner said “Somewhere in Kosovo, extremists want to undermine the return of decent people to their homes.”¹³

Members of other minorities have also been displaced inside Kosovo or have left the province altogether. In November 1999, 293 ethnic Croats were evacuated from Kosovo to Zagreb, after they complained of harassment, arson, and not being permitted to speak Croatian.¹⁴ The ethnic Croat population in Janjevo was placed under heavy KFOR protection and appeared stable. Attacks against the Croat and Roma communities in the village intensified in March 2000 however, following the removal of the permanent KFOR guard, and decreased only after the permanent protection was renewed.

The Muslim Slav population of Kosovo (sometimes referred to as Bosniaks) have also fled Pristina in significant numbers, mainly for Bosnia, leaving around 1,600 to 1,800 out of a pre-war population between 3,500 and 4,000.¹⁵ The estimated 23,000 to 25,000 Muslim Slavs in Prizren municipality (who sometimes refer to themselves as Torbesh) have come under significant pressure to leave, including grenade attacks and the murder of a Torbesh family of four in January and of a Muslim Slav man in February, which led to some departures.¹⁶ The Muslim Slav population in Pec appears relatively secure but members of the community have nevertheless come

under attack: in April, a group of fifteen Albanian men attacked and beat a seventy-year-old Bosniak woman. (The woman had reportedly been mistaken for a Serb.) There have also been attacks on the homes of Gorani, who are distinct from the Muslim Slav/Bosniak community.

Generally unidentified groups of armed ethnic Albanians have carried out abductions of Serbs and Roma throughout Kosovo since early June 1999. In some cases, these forces have detained, questioned, beaten, and then released those abducted. However, according to the International Committee of the Red Cross (ICRC), as of April 2001, approximately more than 500 of those abducted remain unaccounted for.¹⁷

According to Ranko DjinoVIC, president of the Association of the Families of the Missing and Kidnapped in Kosovo and Metohija, 1,230 non-Albanians went missing in Kosovo between January 1998 and November 2000. Twenty percent of these people went missing before the NATO intervention, DjinoVIC said, 5 percent during the air war, and 75 percent after NATO's entry into Kosovo.¹⁸ This number may be too high, however, as some names on the association's list are reported twice and others who were reported missing were in detention and have been subsequently released.

In May 2000, the ICRC published a book listing missing persons from Kosovo registered up to that point. According to the ICRC, 450 persons went missing between June 10, 1999, and March 31, 2000. Human Rights Watch reviewed the ICRC list and, according to the names, at least 309 of these people were clearly members of minorities (non-Albanian.)¹⁹ This matches closely with figures from the Humanitarian Law Center which, between March 24 and August 10, 1999, registered 318 missing non-Albanians.²⁰ The ICRC figure of total missing as of April 2001 was 3,525, but no ethnic breakdown was available.²¹

The rape of women from minorities has also been reported since June 1999. Roma women have suffered in particular. The European Roma Rights Center has documented three incidents of rape of Roma women by persons in KLA uniform. The center interviewed an eyewitness who reported that his sister and wife had been raped by four uniformed men in Djakovica on June 29, 1999. They also interviewed the relative of a woman from Kosovska Mitrovica who had been raped on June 20, 1999 by six men in KLA uniforms.²²

On July 26, 1999, KFOR received a report from a middle-aged Serb woman in Gnjilane that she had been raped by two Kosovar Albanian

men.²³ Two Kosovar Albanian woman witnessed the two men entering the woman's apartment. The OSCE recorded the rape of a Roma woman in Prizren in October 1999 by several Albanian men.²⁴ One of the perpetrators, who was subsequently arrested by KFOR, had allegedly raped another Roma woman in the area. The February Task Force on Minorities report also documented the rape of a pregnant Ashkali woman in Urosevac in November 1999, and the rape and attempted rape of several Roma women that same month in the Djakovica area.²⁵

According to KFOR statistics, in the approximately five months between KFOR's arrival on June 12 and early November 1999 there were 379 murders in Kosovo, with 135 victims of the Serbs. No separate figures were kept for persons from other minorities, but the figures underscore both the scale of the lawlessness in post-war Kosovo and the violence between Albanians and Serb paramilitaries and civilians that continued in Kosovska Kamenica, Kosovska Mitrovica, and several other areas over the summer. Between January 30 and May 27, 2000, KFOR reported ninety-five murders in Kosovo.²⁶ Twenty-six of the victims were Serbs, seven were Roma, two were Muslim Slavs, fifty-two were Albanians, and eight were of unknown ethnicity. Although, the statistics show a steep decline in the murder rate, it is important to emphasize that murder (together with other serious crimes such as aggravated assault, arson and kidnapping) still disproportionately affect minorities, who now comprise far less than 10 percent of Kosovo's resident population.²⁷

Some of the worst violence against minorities has occurred in and around the divided city of Kosovska Mitrovica, which has also been the scene of extensive internal displacement. Following the wartime displacement of around 8,000 Albanians from the (now predominantly Serb) northern side of the Ibar river, more than 2,000 Serbs have been displaced from the (now predominantly Albanian) southern side of the river. Between 8,000 and 10,000 Roma have also been forced from the southern side of the river. Despite the somewhat belated efforts of KFOR and U.N. police to secure the city, incidents of harassment and intimidation have reduced the minority populations on both sides of the Ibar.

The city has been effectively partitioned, with a heavy deployment of KFOR peacekeepers designed to keep communities apart and to protect isolated pockets of Serbs and Roma in the southern part of the city and Albanians, Muslim Slavs, and Turks in the northern part (most of them

concentrated in the so-called “Bosniak” quarter). Some of the worst violence in Mitrovica followed a February 2, 2000, rocket attack on a UNHCR bus under KFOR escort traveling from a Serb enclave, the village of Banja, to Kosovska Mitrovica. The attack left an elderly Serb man and woman dead and three others wounded, and sparked a wave of tit-for-tat violence in northern Mitrovica that left eight non-Serbs dead and forced more than 1,700 Albanians, Muslim Slavs, and Turks to flee to the southern part of the city. UNHCR bus lines connecting minority enclaves were suspended for two months after the attack.

After the events of the spring of 2000 minorities remained a target, with much of the violence designed to force them to leave Kosovo. The Ad Hoc Task Force on Minorities report from May stated that “the last remaining Serb in Klobukar [a village in Novo Brdo municipality] was stabbed in the chest on 14 February, and her body was discovered the next day in her burning house.”²⁸ On February 26, Josip Vasic, a prominent doctor and member of the Serb National Council was shot dead on the street in Gnjilane.²⁹ A twenty-nine-year-old Serb man was shot dead on March 11 while working in his fields in the village of Donja Brnjica (Bernica e Poshteme), near Pristina. On March 27, a Roma man was found strangled in Istok. On March 28, an elderly Serb woman was beaten in her home in Prizren. The woman subsequently died of her wounds. On April 3, 2000, Metodije Halauska, an eighty-six-year-old ethnic Czech was kidnapped from his home in Pristina, beaten and shot in the back of the head. On April 8, the body of an unidentified elderly woman was found in the burned remains of a Serb house in Pec.³⁰ Two Roma teenage boys aged seventeen and eighteen and a forty-eight-year-old Roma woman were also found shot dead in Pec on the same day. On April 9, a Serb man was shot dead in a restaurant in Gnjilane. Three other Serbs were also killed during that same week.

The weeks surrounding the first anniversary of NATO’s entry into Kosovo were particularly bloody with a series of grenade and landmine attacks and “drive-by” shootings targeting Serbs that left eleven dead and more than a dozen wounded. On May 22, a seventy-year-old Serb farmer was shot dead in Gojbulja (Gojbuja) village (Vucitrn municipality).³¹ Two days later a fifty-one-year-old Serb man was shot dead in the town of Vitina. On May 28, two men and a four-year-old boy were killed and two men were wounded in a “drive-by” shooting in Cernica (Gnjilane municipality).³² A May 31 “drive-by” shooting in Babin Most village left one Serb man dead

and another wounded. On June 1, a group of Serbs returning from a funeral were fired upon by ethnic Albanians in the village of Klokot (Gnjilane municipality), killing one woman and wounding three men.³³ On June 2, two Serb men driving on a road connecting two Serb villages were killed after their car hit a landmine. A woman and two children in the car were wounded. The road had previously been cleared of mines, the mine.³⁴ A grenade attack in the Serb enclave of Gracanica on June 6 left a further five wounded.³⁵ On June 15, two Serb men were killed and another man was wounded after their vehicle drove over a landmine near the village of Lepina (Lipljan municipality) in what a KFOR spokesperson described as a “deliberate, carefully planned, attack.”³⁶

Service with an international organization has not been sufficient to provide minorities with immunity from violence. In October 1999, a U.N. official from Bulgaria was shot dead on Pristina’s main street, after reportedly being mistaken for a Serb. The same month, a grenade was thrown into the Pristina apartment of a Serb interpreter working for the U.N., slightly wounding her. She had earlier been forced to move apartments because of harassment. On May 15, the body of twenty-five-year-old Petar Topoljski, a Serb UNMIK translator, was found in the village of Rimaniste, near Pristina.³⁷ Topoljski had not appeared for work for the previous week, after his name, photograph, and address were published in the Kosovo daily newspaper *Dita*, together with allegations that he was a Serb paramilitary who had participated in the mass expulsions of Albanians from the province. (The newspaper was temporarily shut down by UNMIK for eight days after the paper’s editor refused to apologize for publishing the story, print a retraction, or agree to refrain from making similar accusations in the future. The paper also reprinted the article when the ban was lifted.)

VIOLENCE AGAINST ETHNIC ALBANIANS

As the events in Mitrovica and the murder statistics make clear, violence has not been confined to non-Albanians. On June 12, 2000, two ethnic Albanians were killed and a third injured in an attack by Serb assailants in the village of Cubrelj (Qubrel). As noted above, the violence in northern Mitrovica that followed the February rocket attack on a UNHCR bus left eight non-Serbs dead and forced almost two thousand

others to flee their homes. In addition to Serbian attacks on Albanians in Mitrovica, there has also been considerable Albanian-on-Albanian violence. Albanians accused of “collaboration” with Serbian authorities have been beaten and forced from their homes, notably in the municipalities of Prizren, Djakovica, and Klina. Albanian Catholics and the families of Albanians who worked for the Serbian state have encountered particular difficulties.³⁸

Albanian political moderates have also been threatened. In October 1999, Veton Surroi and Baton Haxhiu, the publisher and editor of a leading Albanian language daily, *Koha Ditore*, were accused of being “pro-Serb vampires” who “should not have a place in free Kosovo” by KosovaPress, the official news agency of the KLA. The article stated that “it would not be surprising if they become victims of possible and understandable revenge acts”—a clear incitement to violence against the two journalists. The attack followed the publication of editorials in *Koha Ditore* and a strong commentary by Surroi condemning attacks against minorities, which concluded that the climate created by such attacks was likely to have profound and negative consequences for democracy in Kosovo, and would affect all of its inhabitants, minority and Albanian.

Albanians accused of “collaboration” with Serbian authorities have been beaten and forced from their homes.

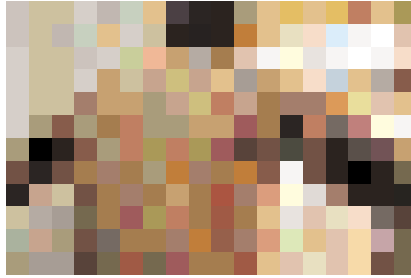
The struggle for primacy among the factions of the former Kosovo Liberation Army and Ibrahim Rugova’s Democratic League of Kosovo (LDK) have also led to violence. The murder of an LDK politician and the kidnapping and interrogation of another in the Drenica region in November 1999 was followed by a spate of execution-style murders of prominent KLA fighters.³⁹ According to the *New York Times*, twenty-three KLA members were killed between June 1999 and May 2000.⁴⁰ Although the killings are frequently attributed to rivalries within organized crime, some of the murders, including the killing in May of political moderate and prominent former-KLA leader Ekrem Rexha (known as Commander “Drini”), have a clear political dimension.⁴¹ On June 15, 2000, gunmen wearing the KLA insignia killed Alil Dresaj, a senior LDK politician.⁴²

Violence against members of political parties continued after the October 28, 2000, municipal elections, although it was not always clear whether the killings were politically motivated. A member of the LDK in Klina, Hazir

Raci, was killed three days after the elections.⁴³ On November 16, an LDK member of Pec's new Municipal Council, Shkelzen Hyseni, was attacked and wounded in his home.⁴⁴ On November 23, a founding member of the LDK and advisor to Ibrahim Rugova, Xhemail Mustafa, was killed by two unknown gunmen at 3:00 p.m. outside his apartment in the Dardania neighborhood of Pristina.⁴⁵

RESPONSE OF THE INTERNATIONAL COMMUNITY

Statements by the leaders of NATO countries and the U.N. in the crucial first months after NATO entered Kosovo asserted that what was happening there was different than the violence in the spring; that the world was witnessing individual acts of revenge; that there was no equivalence between Serbia's persecution of its Albanian minority and the post-war per-



This Kosovar Albanian man was held for two days in Prizren by the KLA and severely beaten. German KFOR troops freed him and numerous other captives on June 18, 1999.

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secution of minorities in Kosovo. In his introduction to a 400-page OSCE report detailing postwar abuses against minorities in Kosovo, Bernard Kouchner, the head of UNMIK wrote, "It is not fair to make comparisons with the situation before or during the war. . . . it is no longer a matter of a policy . . . the crimes we see are the acts of individuals."⁴⁶ Condemnation of attacks on minorities was frequently equivocal. During a July 29, 1999, visit to Kosovo, U.S. Secretary of State Madeline Albright was asked about the killing of fourteen Serb farmers in the village of Gracko. Her response was that it "was obviously a dreadful incident. We can't forget that there were some pretty disgusting things that took place before, but the system is set up in order to protect them. They should stay."⁴⁷ The ambiguity of her response typified the ambivalent reaction of Western leaders to violence against minorities in Kosovo.

NATO failed to take decisive action to curb the forced displacement and killings of Kosovo's minorities in the first months.

NATO failed to take decisive action to curb the forced displacement and killings of Kosovo's minorities in the first months. Initially, KFOR was solely responsible for security, but it balked at civilian policing tasks and detained few suspects. Most were released quickly, their freeing justified by the absence of a legal framework to warrant their continued detention. Thus, from the earliest days of the U.N. and NATO presence in Kosovo, violence and criminality (including attacks on minorities) were effectively undeterred. More recent efforts by U.N. police have been hampered by a flawed local judiciary that is reluctant to detain or convict Albanian defendants, particularly in cases involving violence against minorities. The inevitable result has been a climate of impunity in the province.

The issue of violence against minorities has commanded considerable attention among international actors in Kosovo. The creation of the UNHCR and OSCE-led Ad Hoc Task Force on July 14, 1999, has undoubtedly played a crucial role in the development of these humanitarian initiatives and in advocating better protection of minorities. A report of the task force from November 1999 listed a variety of measures designed to improve the security for at-risk populations in Kosovo, including: "reinforcement of doors, installation of emergency calling devices in homes, and the establishment of a hotline between lead agencies and KFOR."⁴⁸ The report also notes that "UNHCR has designed a special humanitarian distribution net-

work for needy minority groups, and interim systems for providing medical care to minority groups who are otherwise denied access.”⁴⁹ There is also little doubt that without KFOR protection, minority enclaves in Ora-hovac, Gracanica, and Prizren would no longer exist.

Nevertheless, the overall response of the international community to abuses against minorities has been belated and inadequate, particularly in the area of security. The withdrawal of Serbian police and Yugoslav military units, while bringing a welcome end to widespread abuses against Kosovar Albanians, left a security vacuum for Serb and other minority civilians that has only been partially filled by KFOR peacekeepers and U.N. police. In the crucial first two months of the international intervention, there were no more than a handful of U.N. police, leaving KFOR troops to perform civilian policing functions. In order to bridge the gap, France and Italy deployed paramilitary police units and other contingents utilized military police to perform civilian policing functions, including investigations of complaints.

KFOR's response to attacks and threats against minorities during the first months of the operation was uneven, with minorities receiving round-the-clock protection in some areas, while those in others were forced from their homes. KFOR's overall record on preventing the abduction, detention, and murder of Serbs and Roma during that crucial period was poor. A KFOR officer in eastern Kosovo told Human Rights Watch at the end of June 1999 that his unit did not even try to keep track of the abductions because of their frequency. In many cases, KFOR officers from all contingents expressed the view that the commission of such crimes was inevitable. Efforts by a Human Rights Watch researcher to report an incident of harassment in Ljubizda village on June 30, 1999, to the German KFOR contingent required multiple visits to local posts, and then to the contingent headquarters in Prizren, where a civilian-military implementation cell (CMIC) officer appeared uninterested in the details of the case.

KFOR's lack of consistency and frequently inadequate response can be explained in part by concern about protecting its own forces, differing interpretations of the mandate by each national contingent, and lack of experience in civilian policing. It is also important to recall that prior to its entry into Kosovo on June 12, 1999, KFOR was prepared to encounter resistance from armed Serb military and civilians. This is evidenced by the preponderance of heavy weapons, including tanks and artillery, that NATO amassed on the Macedonian and Albanian borders, and that were later

deployed throughout Kosovo. It is reasonable to assume that such a fighting force was not psychologically prepared immediately to protect the population they had expected to have to subdue, and which they regarded as responsible for creating the refugee crisis. In addition, with much of the initial force consisting of heavy armor, KFOR was not initially equipped to perform small patrols in villages with a mixed population, nor to respond quickly to violent protests or other civil unrest.

Civilian policing resources were not provided by U.N. member governments during the crucial first months of the operation. At the end of July 1999, there were only around 200 international police in Kosovo, most of them engaged in establishing a headquarters and training procedures. While the failure to deploy police quickly may have been partly the result of logistical constraints on the part of contributing governments, the failure to arrest and prosecute criminal acts against minorities and others during the first few months of the international civilian mission created a culture of impunity for such violence. As of October 19, 2000, UNMIK had deployed 4,162 civilian police officers, including border police, just below the authorized strength of 4,718.⁵⁰ On December 16, 2000, the OSCE-administered police academy (an eight-week basic training course) graduated its eleventh class of trainees for the Kosovo Police Service (KPS), raising the total number of graduates to 2,851. Forty-five percent of the new class' 312 cadets are non-Albanian. Fifty-nine members of the graduating class are women.⁵¹



As the United Nations police and Kosovo Police Service have belatedly begun to carry out their duties, their efforts have been frustrated by delays in establishing an effective judiciary. Part of the delays was due to UNMIK's wrangling with Albanian judges over which legal system should apply.

Ethnic Albanian children scramble atop the ruins of a Serbian Orthodox Church in Djakovica that was blown up in July 1999.

NATO and U.N. officials are well aware that persons linked to the former KLA and the KLA's successor, the Kosovo Protection Corps are implicated in violence against minorities.

Although several hundred local judges have now been appointed, the inability of the United Nations to persuade minority judges to take up their positions, and pressures on ethnic-Albanian judges have resulted in a nascent court system that is reluctant to detain or pass guilty verdicts on Albanian defendants, no matter how serious the charges or strong the evidence. On the other hand, Serb and other minority defendants frequently find themselves in pre-trial detention and eventually convicted even where cases are very weak.⁵² Some U.N. officials in Kosovo now admit that just as the Kosovo Police Service requires a high-degree of international control and supervision, the courts system also demands international judges and prosecutors to ensure equal access to justice for all plaintiffs and due process for all defendants. At present, the flawed functioning of the judiciary is doing little to check Kosovo's cycle of impunity and insecurity.⁵³

The familiar refrain from the United Nations is that the poor security situation is the result of a lack of resources. It is true that there is still a shortfall of civilian police and insufficient funds to pay judges and prosecutors adequately. But the United Nations and OSCE have hundreds of personnel in their Pristina headquarters, and KFOR maintains the presence of more than 42,000 troops, including 32,000 from NATO countries. The more fundamental shortcoming is the lack of political will. Senior NATO and U.N. officials are well aware that persons linked to the former KLA and the KLA's successor, the Kosovo Protection Corps⁵⁴ are implicated in violence against minorities and in criminal activities, but have chosen to do little about it.⁵⁵ NATO officials have been at pains to avoid accusing former members of the KLA of such violence. Indeed, General Wesley Clark, the Supreme Allied Commander of NATO forces in Europe, went so far as to state in August 1999 that there was no evidence of KLA involvement in attacks, saying "I'm not going to point fingers at the KLA."⁵⁶

Notwithstanding General Clark's exoneration of the KLA, NATO officers on the ground told Human Rights Watch that their intelligence revealed precisely the opposite. United Nations police have also gathered ample evidence of abuses by persons linked to the KLA and KPC, which

were compiled in an internal UNMIK report in February 2000.⁵⁷ Despite this evidence, few people have been arrested or charged for their role in such activities, nor has significant pressure been brought to bear on the political leadership of the former KLA or the KPC to curb such abuses in their ranks.

With the exception of concerns about ongoing attacks by Albanian armed groups in southern Serbia and Macedonia,⁵⁸ NATO governments are generally unwilling to confront the ambiguous role played by elements of the former KLA in Kosovo since June 1999. It took almost a year before international officials, including U.N. Secretary-General Kofi Annan, NATO Secretary-General Lord Robertson and U.S. State Department special envoy James O'Brien were finally willing to concede that attacks against minorities in Kosovo were systematic in nature.⁵⁹ The unwillingness of the world's most powerful military alliance even to suggest that local KLA units might be involved, and its failure to take action against those units, strongly suggests that its political leaders in Washington, London, Paris, Berlin, and elsewhere, as well as those in the United Nations, wish to avoid any confrontation with the political and military leadership of the former KLA. Their failure to do so is especially striking given that the Security Council authorized the U.N. and NATO to administer and secure Kosovo. Unless NATO governments are prepared to hold all persons accountable for acts of violence and crime in Kosovo, irrespective of their political connections, the cycle of impunity and insecurity looks set to continue.

KOSOVAR ALBANIAN PRISONERS IN SERBIA SINCE WAR'S END

On June 10, 1999, just after NATO and the Yugoslav Army signed the Military Technical Agreement that ended the war, an estimated 2,000 Kosovar Albanians were transferred from prisons in Kosovo to prisons in Serbia proper, notably in Sremska Mitrovica, Nis, Prokuplje, and Pozarevac.⁶⁰ The majority of the prisoners were civilians unlawfully arrested by Serbian security forces during the war. According to the Serbian press, the Serbian Ministry of Justice ordered the prisoners' transfer "for their own safety."⁶¹

As of March, 2001, approximately 1,400 of these Kosovar Albanian prisoners had been released, an estimated 150 of them under a Yugoslav

Amnesty Law passed in February 2001.⁶² The remaining detainees registered and visited by the International Committee of the Red Cross—approximately 480 people— were in different stages of their legal proceedings.

Some of the Kosovar Albanians in Serbian prisons on political charges may have been involved with the Kosovo Liberation Army. But the vast majority were picked up in sweep actions by the Serbian police who were clearly on orders to arrest large numbers of Albanian men. As emerged in the Spring 2000 trial of the 143 men from Djakovica, the police arrested people who were hiding in their houses.⁶³ Beatings at the time of arrest were common, including during the April 27, 1999, arrest of former student activist and KLA spokesman Albin Kurti, although later treatment in the Serbian prisons was better.⁶⁴

Prisoners transferred to Serbia from Lipljan prison on June 10 told Human Rights Watch how prison guards tied their hands and loaded them onto buses, beating those who moved. One prisoner said:

They tied us with ropes and put us in groups of fifty. We could not sit. They started withdrawing and shooting in the air. We were afraid they would kill us there. At 6:00 a.m., June 10, they held us until 12:00 p.m. without food or water. Then they put us onto buses with our heads down. Half of us were on the floor. It was cold. They beat those who moved.⁶⁵

The Serbian government sporadically released some of the prisoners throughout 1999 and 2000, usually after they had been found innocent at trial. On June 25, 1999, 166 men were released and brought back to Kosovo by the ICRC.⁶⁶ Another fifty-four men were released from Sremska Mitrovica prison on October 4.⁶⁷ Between January 27 and 29, forty-nine men were released, after seventeen or more months in custody, among them the author and journalist Halil Matoshi.⁶⁸

On the other hand, convictions in Serbian courts continued throughout 1999 and 2000. On May 22, 2000, the 143 men from Djakovica were convicted and sentenced to a combined 1,632 years in prison for conspiracy against the state and terrorism in a trial that failed to meet international standards, according to human rights groups based in Serbia.⁶⁹ (On April 23, 2001, the Serbian Supreme Court released the defendants pending a review of the case by the district court.) On July 10, 2000, five Kosovar

Albanian students from Belgrade University were sentenced to prison terms ranging from six to twelve years for terrorist acts, despite court testimony that they had been tortured to extract confessions.⁷⁰ Human Rights Watch monitored three days of the trial and observed numerous procedural violations, such as collusion between the prosecution and the chief judge, the admission of dubious evidence, and the broadcast on state television of taped confessions.⁷¹ On the third day of the trial, November 25, 1999, after one of the defendants gave a detailed and graphic account of the torture inflicted upon him in detention, president of the chamber, Judge Dragisa Slijepcevic responded: “Since the public is at this trial, I would like to say: Do you think that the police in European countries deal with detainees any differently?”

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—Judge Dragisa Slijepcevic

The political prisoners were routinely denied the right to a fair trial. Courts sentenced Kosovar Albanians on the basis of forced confessions, and judges frequently refused to allow the introduction of evidence that could have disproved the charges. The prosecution’s primary evidence against those convicted was often the highly unreliable and discredited “paraffin test,” which checks for traces of gunpowder on defendants’ hands.

Two Belgrade-based organizations, the Humanitarian Law Center (HLC) and Group 484, conducted extensive monitoring of the trials that continued throughout the spring and summer of 2000. In a press statement demanding the release of Kosovar Albanians unlawfully detained during the Kosovo conflict, the HLC highlighted:

[G]rave violations of due process by Serbian judicial bodies and correctional institutions against ethnic Albanians who were arrested in the 24 March–10 June period this year on charges of terrorism and other criminal acts against the constitutional order of FR Yugoslavia . . .⁷²

The HLC reported that, in many cases it monitored, detention periods were excessive, lawyers were denied access to their clients, and trials were scheduled before the defense had even seen the indictment. The HLC also appealed for the release of twenty-five minors, eleven women, approxi-

mately 200 wounded, and fifty ailing prisoners among the Kosovar Albanians who were in Serbian prisons at the end of 1999.⁷³

Some prominent cases were also tried in Serbian courts. On December 9, 1999, a well-known Albanian pediatrician and poet, Dr. Flora Brovina, was sentenced to twelve years in prison by a Nis court for anti-state activities.⁷⁴ She was accused of providing food, clothing, and medical supplies to the KLA, as well as planning terrorist acts. In June, the Serbian Supreme Court ruled that her case should be retried by the Nis municipal court, and a retrial began on September 14, 2000. On November 2, 2000, newly elected Yugoslav President Vojislav Kostunica granted her an amnesty, and she returned to Kosovo.

Dr. Brovina, founder and head of the League of Albanian Women, was arrested by Serbian police in civilian clothes in front of her Pristina apartment on April 20, 1999. Originally held in Kosovo's Lipljan prison, Brovina was transferred to Pozarevac prison on June 10. She was allowed visits by the ICRC, her lawyers, and her husband, but meetings had to be held in the Serbian language.⁷⁵ Her trial was also reported to have numerous procedural irregularities.⁷⁶

Reports have also emerged of Kosovar Albanian families paying bribes for the release of family members in Serbian prisons. An article in the *Washington Post* claimed that families had paid more than \$10,000 per prisoner.⁷⁷ A report on prisoners by the International Crisis Group (ICG) claims that Serbian lawyers have promised to secure the release of Kosovar Albanians for fees ranging between 10,000 and 50,000 DM.⁷⁸

Some lawyers in Serbia who represent Kosovar Albanian defendants encountered threats and physical violence. On December 3, 1999, an ethnic Albanian lawyer working with the Humanitarian Law Center, Teki Bokshi, was abducted from the highway near Belgrade as he drove back from visiting Kosovar Albanian clients in Sremska Mitrovica prison. According to the Humanitarian Law Center, Bokshi was stopped along with two colleagues by police in civilian clothes in a gray Mercedes car with official plates.⁷⁹ He was released after one week.

On March 16, another Humanitarian Law Center lawyer, Husnije Bytyqi, and his wife were seriously beaten by unknown assailants in their Belgrade apartment. Bytyqi, who was scheduled to defend six Kosovar Albanians facing terrorism charges the following day, required surgery due to his head injuries. Bytyqi had reportedly received threats from Serbian lawyers in

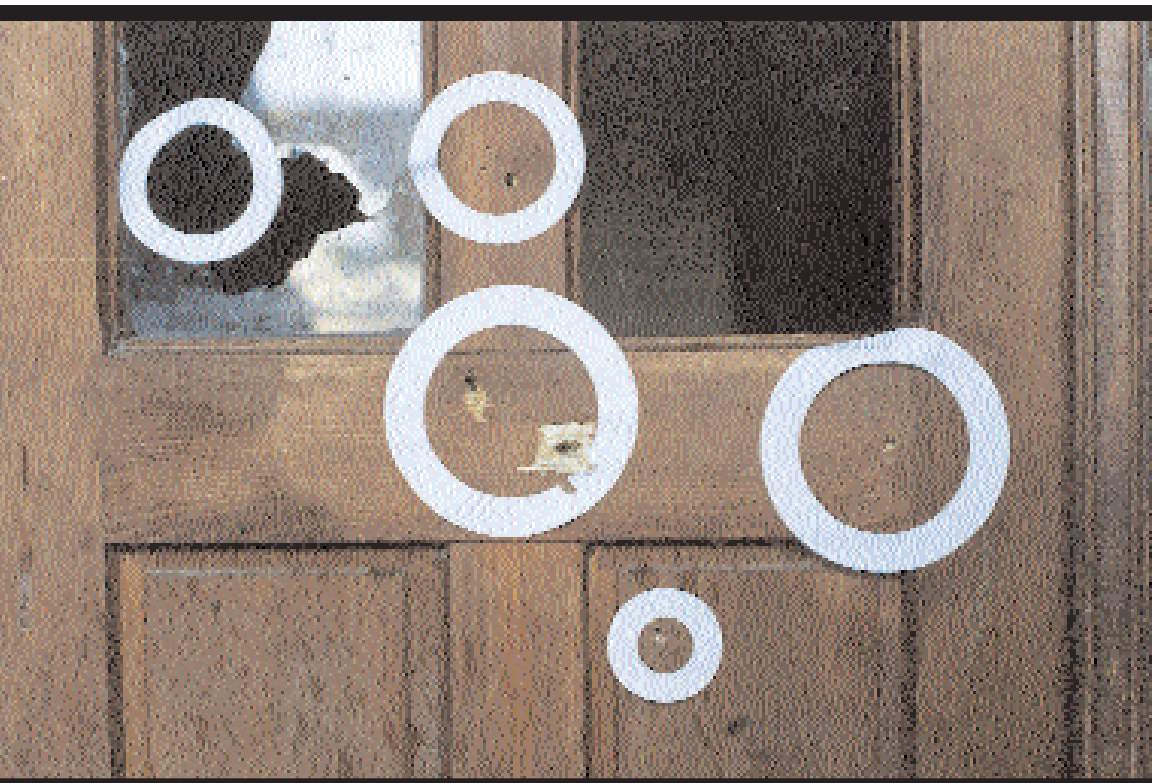
Kosovo, whom he had accused of taking bribes to secure the release of Albanian prisoners.⁸⁰

In February 2001 the newly elected Yugoslav parliament passed an Amnesty Law to allow for political prisoners to be released, although the law did not apply to those accused of having committed terrorist acts. By mid-March 2001, 157 Kosovar Albanians had been released under the law.⁸¹

Despite these releases, the issue of Kosovar Albanian prisoners in Serbia remains a highly sensitive issue in Kosovo, especially among the families of detainees. According to the International Crisis Group report, their continued imprisonment has “a corrosive effect on both international and local peace-building efforts in Kosovo.”

Clearly, Milosevic tried to use the prisoners as a bargaining chip and as a means to undermine the international administration in Kosovo. Throughout 1999 and 2000, Albanians became increasingly frustrated with the international community’s inability to secure the prisoners’ release.

After his election in October 2000, Yugoslav President Vojislav Kostunica pledged to respect human rights and reestablish the rule of law in Yugoslavia. Correcting miscarriages of justice such as those perpetrated against Kosovo Albanian political prisoners is an essential part of upholding that pledge. According to the Yugoslav constitution and federal law, the Yugoslav president is empowered to pardon those indicted or convicted of federal crimes, such as hostile activity against the state and terrorism.



ICTY investigators marked bullet holes in the village of Cuska.

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WORK OF THE WAR CRIMES TRIBUNAL

The International Criminal Tribunal for the former Yugoslavia was founded in May 1993 to prosecute war crimes committed on the territory of the former Yugoslavia since 1991.¹ As of March 15, 2001, sixty-two individuals were under public indictment, thirty-six of whom were in custody. Twenty people had been convicted and two had been acquitted.²

The tribunal's first public reference to Kosovo was on March 10, 1998, just after the Serbian government's first large-scale attack in the Drenica region, when the tribunal's prosecutor stated that its jurisdiction "is ongoing and covers the recent violence in Kosovo."³ Three days later, the U.S. government announced that it was providing \$1,075,000 to support the Tribunal's investigations in Kosovo.

On June 12, 1998, the Contact Group meeting in London urged the tribunal to undertake a "rapid and thorough investigation" of possible humanitarian law violations in Kosovo.⁴ On July 7, then-chief prosecutor of the tribunal Justice Louise Arbour, wrote a letter to the Contact Group in which she reaffirmed the tribunal's mandate and intentions in Kosovo:

The prosecutor believes that the nature and scale of the fighting indicate that an "armed conflict," within the meaning of international law, exists in Kosovo. As a consequence, she intends to bring charges for crimes against humanity or war crimes, if evidence of such crimes is established.⁵

Throughout 1998, a number of top western politicians and political bodies publicly supported the tribunal's work on Kosovo. On August 31, the U.S.

ambassador-at-large for war crimes issues, David Scheffer, announced that he was not able to visit Belgrade and Kosovo because he had been denied a Yugoslav visa. He told a press conference in Zagreb, Croatia:

The United States is cooperating fully with the Tribunal as it investigates the conflict in Kosovo. We are ensuring that relevant information is provided to the Tribunal in a timely manner so that its investigations can proceed efficiently. We urge other governments to cooperate with and provide information to the War Crimes Tribunal regarding the conflict in Kosovo.⁶

In early July, the tribunal sent its first team of investigators to the Federal Republic of Yugoslavia and into Kosovo itself to investigate the conflict. Small teams followed up for brief periods in September.

The Yugoslav authorities refused to accept the jurisdiction of the tribunal, and frustrated the work of investigators by denying them visas or forbidding them from carrying out investigations in Kosovo. Only a few tribunal investigators were able to gain access to the province in 1998 and early 1999, and they were officially prohibited by the Yugoslav authorities from interviewing persons or gathering evidence. The Yugoslav authorities based their refusal to cooperate with the tribunal on their view that the conflict in Kosovo was an internal dispute with “terrorists,” a view repeatedly rejected by the tribunal, the U.N. Security Council, and other international actors, including Human Rights Watch.⁷

In October 1998, a Finnish forensic team sponsored by the European Union was granted permission by Yugoslav authorities and the local Kosovo courts to exhume bodies from six sites in Kosovo: Gornje Obrinje, Orahovac, Golubovac (Golubofc), Glodjane, Klecka, and Volujak. The first three burial sites contained the bodies of victims of alleged crimes by Serbian and Yugoslav forces; the later three burial sites were expected to hold the bodies of victims of crimes by the KLA.⁸

The Finnish team was allowed to conduct investigations into the sites at Klecka and Volujak—both sites of alleged KLA crimes. However, while attempting to reach Gornje Obrinje on December 10, where Human Rights Watch concluded that Serbian forces killed twenty-one members of one ethnic Albanian family in September 1998,⁹ the Finnish team was blocked by a convoy of Serbian police. About ten armored personnel carriers manned by heavily armed police forces insisted on accompanying the

forensic team to Gornje Obrinje, which was located deep within territory under the partial control of the KLA.¹⁰

The Serbian police insisted that the team be accompanied by a Serbian court official and members of a Belgrade-based forensic team, and refused to allow the team to proceed without police escort, which the leaders of the forensic team opposed, out of fear of provoking a confrontation with the KLA. During a two-hour negotiation session between the forensic team and the Serbian police, a plainclothes policeman violated the diplomatic immunity of Finnish ambassador Timothy Lahelma by opening the doors of his diplomatic vehicle, grabbing his camera, and removing the film from the camera. According to members of the forensic team interviewed by Human Rights Watch, police repeatedly attempted to shelter their armored vehicles from KLA attack by moving them behind diplomatic vehicles belonging to the E.U. contingent of the Kosovo Diplomatic Observer Mission (KDOM). Anticipating a confrontation between the KLA and the Serbian police, the forensic team decided to abandon its attempt to reach Gornje Obrinje.

On January 18, 1999, three days after the killing of forty-five ethnic Albanians in Racak (see Background), Chief Prosecutor Arbour attempted to enter Kosovo through Macedonia in order to investigate the reported atrocities in Racak. She did not have a Yugoslav visa, having been denied one by the authorities, and was refused entry into the country. Back in The Hague, Arbour stated unequivocally that she would investigate the Racak massacre “with or without access to the territory.” Regarding the fears of evidence tampering, she said:

Evidence of tampering—should such evidence become available, is, in fact, excellent circumstantial evidence of guilt. If one can trace where the order to tamper came from, it permits a pretty strong inference that it was done for the purpose of hiding the truth, which demonstrates consciences of guilt.¹¹

Ten days after the killings, the Finnish forensic team was allowed to conduct autopsies on forty of the Racak victims along with teams from Yugoslavia and Belarus. Their report, released March 17, 1999, provided no details on post-mortem findings. The report did conclude that “there were no indications of the people being other than unarmed civilians.”¹²

During the NATO bombing of Yugoslavia, the tribunal set up an office in Tirana, Albania, to interview refugees, and it worked closely with govern-

mental and nongovernmental organizations collecting information on international humanitarian law violations from Albania and Macedonia.

On April 7, the U.S. State Department issued a statement that named nine commanders in the Yugoslav Army, placing them on notice that “VJ and MUP forces are committing war crimes and crimes against humanity in Kosovo”—crimes for which commanders can be indicted by the Tribunal.¹³ The statement added:

No commander of the VJ or MUP is immune from prosecution, now or in the future. Any commander of the VJ or MUP who plans, instigates, orders, or even aids or abets in a war crime, crimes against humanity, or genocide, is individually responsible for crimes committed in Kosovo. There is no statute of limitations for war crimes, crimes against humanity, or genocide within the jurisdiction of the International Tribunal.¹⁴

The statement identified the following individuals as commanders in Kosovo:

- Colonel Milos Mandic, Commander, 252nd Armored Brigade, deployed central Kosovo (Home Garrison: Kraljevo, Serbia);
- Major General Vladimir Lazarevic, Commander, Pristina Corps;
- Colonel Mladen Cirkovic, Commander, 15th Armored Brigade, HQ Pristina;
- Colonel Dragan Zivanovic, Commander, 125th Motorized Brigade, HQ Kosovska Mitrovica and Pec;
- Colonel Krsman Jelic, Commander, 243rd Mechanized Brigade, HQ Urosevac;
- Colonel Bozidar Delic, Commander, 549th Motorized Brigade, HQ Prizren and Djakovica;
- Colonel Radojko Stefanovic, Commander, 52nd Mixed Artillery Brigade, HQ Gnjilane;
- Colonel Milos Djosan, Commander, 52nd Light Air Defense Artillery-Rocket Regiment, HQ Djakovica;
- Major Zeljko Pekovic, Commander, 52nd Military Police Battalion, HQ, Pristina.

On May 27, 1999, the tribunal announced its highest level indictments to

date: that of Yugoslav President Slobodan Milosevic and four other top officials for “murder, persecution, and deportation in Kosovo” between January 1 and late May 1999. The indictees are:

- Slobodan Milosevic, President of the FRY, Supreme Commander of the Yugoslav Army, and President of the Supreme Defense Council;
- Milan Milutinovic, President of Serbia and member of the Supreme Defense Council;
- Dragoljub Ojdanic, Chief of Staff of the Yugoslav Army;
- Nikola Sainovic, Deputy Prime Minister of the FRY;
- Vljako Stojiljkovic, Minister of Internal Affairs of Serbia.



TOP ROW, LEFT TO RIGHT: *Former Yugoslav President Slobodan Milosevic, Former Serbian Minister of Internal Affairs Vljako Stojiljkovic, Former Yugoslav Deputy Prime Minister Nikola Sainovic.* BOTTOM ROW, LEFT TO RIGHT: *Former Chief of the Yugoslav Army General Staff Dragoljub Ojdanic, Serbian President Milan Milutinovic (as of July 2001).*

Slobodan Milosevic, Milan Milutinovic, Dragoljub Ojdanic, and Vljako Stojilkovic were charged with violating the laws or customs of war (murder and persecutions on political, racial, or religious grounds) and crimes against humanity (deportation and murder). Nikola Sainovic was charged on the basis of individual criminal responsibility for these same crimes.¹⁵ The initial indictment did not relate to crimes committed in Bosnia or Croatia, only to crimes committed in Kosovo during the first five months of 1999.

The tribunal established an office in Pristina shortly after NATO's entry into Kosovo in June 1999 to better deal with the formidable task of investigations. The first exhumation season lasted from June to October 1, 1999. Six weeks later, the newly appointed Chief Prosecutor, Carla Del Ponte, presented her preliminary findings to the U.N. Security Council in New York. As of November 10, 1999, she reported, the tribunal had completed work at 195 of 529 reported grave sites in Kosovo, exhuming 2,108 bodies. Del Ponte pointed out, however, that this did not represent the total number of bodies. Exhumations were ongoing, and the tribunal had also "discovered evidence of tampering."¹⁶ The next exhumation round lasted from April to October 2000. According to Del Ponte's November 2000 address to the Security Council, tribunal teams examined an additional 325 sites, exhuming 1,577 bodies and the partial remains of 258 others. Del Ponte stated that the provisional total of exhumed bodies over two years is "almost 4,000 bodies or parts of bodies." She added that an accurate figure will never be possible "because of deliberate attempts to burn the bodies or to conceal them in other ways."¹⁷

On September 29, 1999, Del Ponte made the tribunal's work in Kosovo a top priority.¹⁸ The main focus, she announced, was the investigation and prosecution of Milosevic and the other leaders indicted in May. Thereafter, indictments of other individuals in positions of political and military authority may follow. In addition, the tribunal is investigating perpetrators of particularly egregious crimes—so-called "notorious offenders." This would include those who committed rape or sexual violence during the conflict.

The tribunal also recognized that it "has neither the mandate nor the resources" to be the main investigatory and prosecutorial agency in Kosovo.¹⁹ The vast majority of crimes committed during the armed conflict will have to be dealt with by the local Kosovo police and judiciary, currently under the mandate of the United Nations Mission in Kosovo (UNMIK).

In her November 2000 address to the Security Council, Del Ponte also stressed the need to arrest Slobodon Milosevic, who lost his reelection bid in September and was then forcibly removed from office on October 5, 2000. Del Ponte urged the U.N. to pressure the new Yugoslav authorities to cooperate in Milosevic's arrest and extradition to The Hague, stating that "it would be inconceivable to allow Milosevic to walk away from the consequences of his actions."²⁰ She also called on the Security Council to modify the tribunal's statute so that it might deal with post-war abuses against Serbs and other minorities in Kosovo. According to the current statute, with the exception of genocide, the tribunal only has jurisdiction over crimes committed in armed conflict.

The vast majority of crimes committed during the armed conflict will have to be dealt with by the local Kosovo police and judiciary.

After coming to power in October 2000, new Yugoslav President Vojislav Kostunica stated that cooperating with the tribunal was "not a priority." In November, however, he agreed that the tribunal could reopen its office in Belgrade. Newly-appointed Foreign Minister Goran Svilanovic said, "We cannot and should not avoid facing the consequences of war and responsibility of crimes."²¹ Although several Serbian government representatives have spoken out in favor of cooperation with the tribunal, Kostunica himself repeatedly denigrated the international body as an anti-Serb institution. His negative position on the tribunal changed somewhat after strong pressure from the U. S. government.

In October 2000, the U.S. Congress laid down strict guidelines in the 2001 Foreign Operations Assistance Act, prohibiting the U.S. government from continuing aid to Belgrade unless Yugoslavia cooperates with the tribunal, including "the surrender and transfer of indictees or assistance in their apprehension." According to the legislation, the Bush administration had to decide by March 31, 2001, whether to halt U.S. aid, effectively blocking approximately \$50 million allocated for Yugoslavia.

In late January 2001, del Ponte visited Belgrade to meet with the new Yugoslav government. In a press conference after her return to The Hague, the prosecutor said she was disappointed with the level of cooperation she had received, although she remained "cautiously hopeful." Her meeting with President Kostunica, she said, "did not lead to any meaningful dialogue."²²

The Yugoslav government's cooperation with the tribunal improved slightly before the March 31 deadline imposed by the U.S. government. The Yugoslav government began debate on a new law to allow for full cooperation with the tribunal and the surrender of indictees, and the tribunal was granted permission to conduct investigations inside Yugoslavia, including the hearing of witnesses and access to documents and archives.²³ In addition, two Bosnian Serb indictees ended up in the custody of the tribunal. The first such person, Blagoje Simic, former mayor of Samac, turned himself over to the tribunal on March 12, 2001. Ten days later, Milomir Stakic, former mayor of Prijedor, was arrested by the Serbian police and handed over to the tribunal.²⁴

On April 1, Serbian police and special police arrested former President Milosevic on charges of corruption. The government made no commitment to transfer him to the tribunal. At least publicly, as of late April, none of the investigations involved his role in war crimes or crimes against humanity committed during the wars of Yugoslav succession.

On April 2, the U.S. government certified that conditions had been met for continued economic assistance to Yugoslavia. Full U.S. support for a future international donors' conference, however, was withheld, pending continued cooperation with the tribunal. State Department spokesman Richard Boucher said that the U.S. government "would expect" Yugoslavia to deliver Milosevic to the tribunal but that support for continued aid would not be "based on a single step alone."²⁵ As of April 2001, at least eight persons indicted by the tribunal were believed to be living in Serbia, including the four former Serbian and Yugoslav officials indicted along with Milosevic and three Yugoslav Army officials indicted on charges relating to the capture of Vukovar, Croatia, in November 1991.

On June 28, under strong international pressure, the Serbian government transferred Milosevic to the tribunal in The Hague. He appeared before the court for his arraignment on July 2, refused defense counsel, and denounced the proceedings as a political trial.

DOMESTIC WAR CRIMES TRIALS

Although the vast majority of those accused of having committed war crimes left Kosovo after the war, a few suspects remained in the

province. These individuals have been investigated and prosecuted locally before domestic Kosovar courts. Approximately forty individuals accused of war crimes were in custody in Kosovo as of August 2000. The precise number of detainees was unknown since some individuals had been released and others had escaped hospitals or detention facilities, including thirteen people who escaped from the detention facility in Northern Mitrovica in September 2000 and one person who escaped from the U.S. military's Camp Bondsteel.²⁶ At least three of the accused were Roma, and the rest were Serbs. According to police statistics reported in the press, as of December 2000, the local judiciary had indicted twenty-two people for war crimes and nine for genocide.²⁷

In June 2000, UNMIK announced the establishment of the Kosovo War and Ethnic Crimes Court (KWECC) to deal with the prosecution of war crimes committed during the conflict. The court's mandate was to cover events from January 1999 on and to include ethnically motivated crimes committed after the NATO bombing, but the idea was scrapped.

Throughout 2000 and 2001, some war crimes trials were proceeding through the local court sometimes with the participation of international judges. One war crimes trial was completed on September 20, 2000, resulting in a twenty-year sentence for Milos Jokic for killing one man and ordering another to be killed. In June 2001, courts with international judges sentenced three Serbian men to prison terms for their roles in crimes against ethnic Albanians. Zoran Stanojevic, a former policeman, received fifteen years imprisonment for taking part in the Racak massacre, Cedomir Jovanovic, an alleged member of a paramilitary group, received twenty years imprisonment for crimes committed in Orahovac municipality, and Andjelko Kolasinac, former mayor of Orahovac town, received a five-year sentence for the same. All three verdicts were heavily criticized by human rights monitors for the lack of due process during the proceedings.

UNMIK is at odds on how to deal with the local war crimes prosecutions. On the one hand, the international administration wants the justice system to begin functioning, and there is pressure from the Albanian community to hold criminals accountable. On the other hand, the local courts are plagued by underfunding, poor organization, and political

The local courts are plagued by underfunding, poor organization, and political manipulation.

manipulation, and there is little chance of Serbian war crimes defendants receiving a fair trial in the Albanian-dominated system.²⁸ A January 2000 OSCE report on the Kosovo judiciary concluded that, regarding war crimes trials against Serbs, there are “real concerns as to the actual bias of the courts.”²⁹

After the war, some trials for crimes committed during the armed conflict had also begun in Serbian courts. Two Kosovar Albanians, Bekim and Luan Mazreku, were charged with joining the KLA, raping Serbian women, and then executing Serbian civilians in the Kosovo village of Klecka in 1998 (see Background, Abuses by the KLA).³⁰ On April 18, 2001, after a year-long trial, both men were found guilty of terrorism and sentenced to the maximum twenty years in prison. Citing a biased court, a limited right to defense, and the use of force to extract a confession, the Humanitarian Law Center, which monitored the trial, concluded that the court “presented no evidence to prove that the Mazrekus had committed these crimes.”³¹

On July 19, 2000, a court in Pozarevac, Serbia, convicted two Serbian policemen of the murder of three ethnic Albanians in Kosovo in 1999.³² Boban Petkovic from Velika Hoca was sentenced to four years and nine months in prison for the May 9, 1999, murder of Ismail Durguti, Sezair Miftari, and Miftari’s wife Sefkija. Djordje Simic was sentenced to one year in prison for being an accessory to the murders.

On December 20, 2000, a military court in Nis sentenced two Yugoslav Army reservists, Nenad Stamenkovic and Tomica Jovic, to four and a half years in prison for murdering two Kosovar Albanian civilians in Susica village. Army Captain Dragisa Petrovic was found guilty of incitement to murder and sentenced to four years and ten months. In a review of the case, the Humanitarian Law Center welcomed the verdict but criticized the sentence as “too mild.” The defendants were found guilty of murder rather than a war crime, the organization said, as is allowed under Article 142 of the Yugoslav Criminal Code.³³ The presiding judge, Col. Radenko Miladinovic, said that the sentence was lenient because the soldiers were suffering from “war psychosis” at the time of the crime.³⁴

On April 19, 2001, the Yugoslav Army announced that military courts had begun twenty-four proceedings against soldiers suspected of having committed war crimes in Kosovo.³⁵ On April 24, the army stated that the military prosecutor had ordered investigations against, “soldiers, noncommissioned officers and officers . . . for crimes resulting in deaths and injuries

of civilians as well as deprivation of their basic human rights during combat activities in the province of Kosovo in 1998 and 1999.”³⁶

According to Radio B92, on May 24, 2001, Serbia’s new head of police Sreten Lukic, who was head of the Kosovo police in 1998 and 1999, announced that sixty-six police officers were under investigation for crimes allegedly committed against ethnic Albanians during the NATO bombing. On July 14, 2001, Serbian Justice Minister Vladan Batic said war crimes trials of Serbian citizens would begin in the coming weeks.

INVESTIGATIONS OF NATO AND THE KLA

Consistent with its mandate to investigate all sides, on May 14, 2000, the tribunal formed an internal committee to assess the allegations that NATO committed humanitarian law violations during the bombing campaign against Yugoslavia, and to determine whether the tribunal should commence investigations. In a report made public on June 8, the committee recommended against a further investigation into the bombing campaign as a whole or into specific bombing incidents. “[E]ither the law is not sufficiently clear,” the report concluded, “or investigations are unlikely to result in the acquisition of sufficient evidence to substantiate charges against high level accused or against lower accused for particularly heinous offences.”³⁷

As of July 2001, tribunal investigations against the KLA continued. In her September 29, 1999, statement, Carla Del Ponte specified that her office would investigate the civilian and military leaders “of whichever party to the conflict” who may have committed crimes during the armed conflict.³⁸ In a press conference in Pristina on June 21, 2000, Del Ponte stressed that, while her focus was upon the Serbian and Yugoslav leadership, the upper hierarchy of the KLA was also a target of investigation. Breaking from the practice of providing no details about ongoing investigations, she announced that “five episodes” of alleged KLA crimes were under investigation, although she refused to specify the incidents.

Del Ponte stressed that the upper hierarchy of the KLA was also a target of investigation.

Del Ponte has also criticized the post-conflict abuses against Serbs and Roma in Kosovo, calling them “the seeds of future revenge and lasting insta-

bility in the region.”³⁹ In her November 2000 address to the U.N. Security Council, she asked that the tribunal’s statute be amended so that her office could prosecute the ongoing crimes taking place after the armed conflict.

Four months later, with the outbreak of armed conflict in the Presevo valley of southern Serbia and the northern regions of Macedonia, Del Ponte announced that the tribunal’s mandate did indeed cover on-going events in the former Yugoslavia, specifically Kosovo, southern Serbia and Macedonia. In a press conference in The Hague on March 21, 2001, the chief prosecutor said that “the continuing violence in each area [Kosovo, southern Serbia and Macedonia] does indeed satisfy the legal criteria for the definition of “armed conflict” for the purposes of crimes set out in the statute of the tribunal.” She also announced that her office had opened two investigations: the first into activities against Serbs and other minorities in Kosovo by unidentified Albanian armed groups from June 1999 until the present; and a second investigation into the activities of the Liberation Army of Presevo, Medvedja and Bujanovac (UCPMB) in southern Serbia from November 1999 until the present.⁴⁰

LEGAL STANDARDS IN THE KOSOVO CONFLICT

INTRODUCTION

Human Rights Watch reported extensively on human rights abuses in Kosovo from 1990, the year Kosovo's autonomy was revoked, through 1997.¹ The police abuses, arbitrary arrests, and violations of due process that characterized the state's treatment of ethnic Albanians during that period were violations of the International Covenant on Civil and Political Rights, to which the Federal Republic of Yugoslavia is a party, and were additionally prohibited under Yugoslav domestic law. The growth of armed opposition to abusive direct rule from Belgrade, in the form of the Kosovo Liberation Army, and the intensification of fighting between government forces and this armed insurgency from the spring of 1998, altered the nature of the conflict, the types of abuses committed, and the applicable law.

From February 28, 1998, fighting between the various Serbian and Yugoslav security forces and the KLA could be characterized as a non-international (internal) armed conflict under international humanitarian law (the laws of war). The law applicable during this period includes Article 3 common to the four Geneva Conventions of 1949, Protocol II to those conventions, and the customary laws of war—all of which apply to both government forces and armed insurgents. Documented violations of international humanitarian law during this period included the execution of non-combatants, the use of disproportionate military force, indiscriminate attacks against civilians, and the systematic destruction of civilian property by the Serbian special police and the Yugoslav army, as well as serious violations by the KLA, such as forced expulsions, hostage-taking, and summary executions.

With the initiation of NATO bombing on March 24, 1999, the conflict in



Kosovar Albanian refugees entering Albania.

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Kosovo and in all of the Federal Republic of Yugoslavia, to the extent it involved NATO and Serbian or Yugoslav forces, became an international armed conflict to which the full body of international humanitarian law applied. During this period, NATO committed violations of humanitarian law in its bombing campaign in the Federal Republic of Yugoslavia (see The NATO Air Campaign). Serbian and Yugoslav security forces were responsible during this period for the mass deportations and widespread killing of ethnic Albanian civilians between March and June 1999. The withdrawal of Serbian and Yugoslav forces from Kosovo and the cessation of the NATO bombing campaign on June 12, 1999, ended the state of armed conflict in Kosovo. Protocol I provides that application of the Geneva Conventions shall cease on the close of military operations.

KOSOVO AS AN INTERNAL ARMED CONFLICT

International humanitarian law makes an important distinction between international and non-international (internal) armed conflicts, which determines the applicable law. Article 2, common to the four Geneva Conventions of 1949, states that an international armed conflict must involve a declared war or any other armed conflict which may arise “between two or more of the High Contracting Parties” to the convention. The official commentary to the 1949 Geneva Conventions broadly defines “armed conflict” as any difference between two states leading to the intervention of armed forces.³

An internal armed conflict is more difficult to define, since it is sometimes debatable whether hostilities within a state have reached the level of an armed conflict, in contrast to internal tensions, disturbances, riots, or isolated acts of violence. The official commentary to Common Article 3 of the Geneva Conventions, which regulates internal armed conflicts, lists a series of conditions that, although not obligatory, provide some pertinent guidelines. First and foremost among these is whether the party in revolt against the *de jure* government, in this case the KLA, “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.”⁴

Other conditions outlined in the convention’s commentary deal with the

government's response to the insurgency. Another indication that there is an internal armed conflict is the government's recognition that it is obliged to use its regular military forces against an insurgency.⁵

Internal armed conflicts that reach a higher level of hostilities are governed by the 1977 Protocol II to the Geneva Conventions, which is more elaborate than Common Article 3 in its protection of civilians (see below). Protocol II is invoked when armed conflicts:

[T]ake place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.⁶

Finally, internal armed conflicts are also governed by customary international law, such as the customary international norms enunciated in United Nations General Assembly Resolution 2444.⁷ Adopted by unanimous vote on December 19, 1969, this resolution expressly recognizes the customary law principle of civilian immunity and its complementary principle requiring the warring parties to distinguish civilians from combatants at all times. The preamble to this resolution states that these fundamental humanitarian law principles apply "in all armed conflicts," meaning both international and internal armed conflicts.⁸

Interpreting its jurisdiction over violations of customs of war committed in the territory of the former Yugoslavia, the ICTY has held that this jurisdiction includes "violations of Common Article 3 and other customary rules on internal conflict" and "violations of agreements binding upon the parties to the conflict, considered *qua* treaty law, i.e. agreements which have not turned into customary international law," such as Protocol II to the Geneva Convention.⁹

THE APPLICABILITY OF COMMON ARTICLE 3 AND PROTOCOL II

As of February 28, 1998, the hostilities between the KLA and government forces had reached a level of conflict to which the obligations of Common Article 3 apply. Given the subsequent intensity of the conflict

until June 1999, Human Rights Watch is also evaluating the conduct of the KLA and government forces based on the standards enshrined in Protocol II to the Geneva Convention.¹⁰

On February 28, Serbian special police forces launched their first large-scale, military attack on the Drenica villages Likosane and Cirez which were suspected of harboring KLA members (see “Background”). Between that date and the withdrawal of Serbian and Yugoslav forces from Kosovo in June 1999, the KLA and the government were engaged in ongoing hostilities involving military offensives, front lines, and the use of attack helicopters and heavy artillery (the latter two exclusively by the government). The KLA possessed small arms and light artillery.

Although the KLA was primarily a guerrilla army without a strong centralized hierarchy and with strong regional divisions, the insurgency was an organized military force for the purposes of international humanitarian law. The KLA had seven “operational zones,” each with a commander, chief of staff, brigades, and battalions. The General Staff (“Shtabi i Pergjishme”), albeit without total control over the regional commanders, coordinated military actions and political activities, a structure which allowed decisions to be transmitted down to the fighters.

During 1998, seasoned war correspondents, as well as Human Rights Watch researchers who encountered the KLA, at times observed discipline among KLA fighters manning checkpoints and their tendency to apply similar policies and procedures (for example, with regard to granting journalists access to areas under KLA control). Such discipline was an indication that the fighters were receiving orders regarding policy and that the fighters were answerable at least to regional commanders. There were also cases, however, when a clear lack of discipline and training was observed, which points to some structural weaknesses within the KLA. Despite this, it was clear by mid-1998 that the KLA leadership was able to organize systematic attacks throughout large parts of Kosovo. It also coordinated logistical and financial support from the Albanian diaspora in Western Europe and the United States. Arms flowed regularly from Albania’s north. This coordination only increased as the war progressed, although the KLA always maintained a distinctly regional character.

As of February 28, 1998, the hostilities between the KLA and government forces had reached a level of conflict to which the obligations of Common Article 3 apply.

From April until mid-July, 1998, the KLA tenuously held as much as 40 percent of the territory of Kosovo, although most of that territory was retaken by government forces by August 1998. Until then, however, the KLA had held a number of strategic towns and villages, and manned checkpoints along some of Kosovo's important roads; by September 1998 their area of control had been reduced to some parts of Drenica and a few scattered pockets in the west, especially at night.¹¹

Although the KLA's command structure was damaged as a result of the government's summer offensive, the nucleus of the organization continued to exist. A separate armed Albanian organization known as FARK (Forcat Armatosur e Republikes se Kosoves—Armed Forces of the Republic of Kosova), which had a separate base in Northern Albania and was mostly present in the Metohija (Dukagjin) region of Kosovo, was an added complication. By September 1998, it was clear that this alternative group, comprised mostly of ethnic Albanians with past experience in the Yugoslav Army and Serbian police, did not agree with the KLA's military strategy, criticizing its lack of professionalism. However, FARK and the KLA never engaged in hostilities against one another.

As mentioned in the chapter *Forces of the Conflict*, KLA spokesmen repeatedly expressed the organization's willingness to respect the rules of war, which is one of the factors to be considered in determining whether an internal armed conflict exists that would invoke Protocol II standards.¹² In an interview given to the Albanian-language newspaper *Koha Ditore* in July 1998, KLA spokesman Jakup Krasniqi said:

From the start, we had our own internal rules for our operations. These clearly lay down that the KLA recognizes the Geneva Conventions and the conventions governing the conduct of war.¹³

KLA Communique number 51, issued by the KLA General Staff on August 26, stated that, "The KLA as an institutionalized and organized Army, is getting increasingly professional and ready to fight to victory."¹⁴

In November 1998, Human Rights Watch researchers had a meeting with two KLA representatives, Hashim Thaci and Fatmir Limaj, to discuss the KLA's commitment to the laws of war. The KLA representatives admitted that, in a war situation, "problems" did occur. But they stressed that the KLA was committed to the Geneva Conventions and respected international humanitarian law. Despite repeated requests, however, the representatives

refused to provide any evidence of the KLA's stated commitment. The KLA has a soldiers' code of conduct, they said, but it could not be viewed. Disciplinary measures for abusive soldiers were in place, they claimed, but no details were provided. Detainees were treated humanely, they emphasized, but they could not be visited due to "security reasons."

There were reported but unconfirmed cases of KLA soldiers being disciplined by their own commanders for having harassed or shot at foreign journalists, but there are no reported cases of KLA combatants being punished for targeting ethnic Serb or Albanian civilians for murder, abusing those in detention, or any other violation of Common Article 3 or Protocol II.

Finally, through its words and actions, the Yugoslav government clearly recognized the KLA as an organized armed force. In addition to the Serbian regular and special police, which operate similar to a military organization, the government was obliged to use its regular military forces, the Yugoslav Army, against the insurgents. During the period between February 28, 1998, and June 12, 1999, the conditions of article 3 and Protocol II were satisfied. Human Rights Watch is, therefore, evaluating the conduct of both the government and the KLA based on the principles outlined in Common Article 3 and Protocol II.

"The KLA recognizes the Geneva Conventions and the conventions governing the conduct of war."

—KLA spokesman Jakup Krasniqi

Common Article 3 and the Protection of Noncombatants

Article 3 common to the four Geneva Conventions has been called a convention within a convention. It is the only provision of the Geneva Conventions that directly applies to internal (as opposed to international) armed conflicts.

Common Article 3, Section 1, states:

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 had 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.

Common Article 3 thus imposes fixed legal obligations on the parties to an internal armed conflict to ensure humane treatment of persons not, or no longer taking an active role in the hostilities.

Common Article 3 applies when a situation of internal armed conflict objectively exists in the territory of a State Party; it expressly binds all parties to the internal conflict, including insurgents, although they do not have the legal capacity to sign the Geneva Conventions. In Yugoslavia, the government and the KLA forces were parties to the conflict and therefore bound by Common Article 3's provisions.

The obligation to apply article 3 is absolute for all parties to the conflict and independent of the opposing party's obligation. That means that the Yugoslav government cannot excuse itself from complying with article 3 on the grounds that the KLA is violating article 3, and vice versa.

The application of article 3 does not confer any status upon the insurgent party, from which recognition of additional legal obligations beyond common article 3 would flow. Nor is it necessary for any government to recognize the KLA's belligerent status for article 3 to apply.

In contrast to international conflicts, the law governing internal armed conflicts does not recognize the combatant's privilege¹⁵ and therefore does

not provide any special status for combatants, even when captured. Thus, the Yugoslav government was not obliged to grant captured members of the KLA prisoner of war status. Similarly, government combatants who were captured by the KLA need not be accorded this status. Any party can agree to treat its captives as prisoners of war, however, and all parties were required to treat captured combatants—and civilians—humanely. Summary executions, whether of combatants or civilians, violated the prohibition on “murder of all kind.”

Because the KLA forces were not “privileged combatants,” they could be tried and punished by the Yugoslav courts for treason, sedition, and the commission of other crimes under domestic laws.

Common Article 3 thus imposes fixed legal obligations on the parties to an internal armed conflict to ensure humane treatment of persons not, or no longer taking an active role in the hostilities.

Protocol II and the Protection of Noncombatants

Protocol II elaborates upon Common Article 3’s injunction of humane treatment and provides a more comprehensive list of protections for civilians in internal armed conflicts. While not an all-inclusive list, the following practices, orders, and actions are prohibited:

- Orders that there shall be no survivors, such threats to combatants, or direction to conduct hostilities on this basis.
- Acts of violence against all persons, including combatants who are captured, surrender, or are placed *hors de combat*.
- Torture, any form of corporal punishment, or other cruel treatment of persons under any circumstances.
- Pillage and destruction of civilian property. This prohibition is designed to spare civilians the suffering resulting from the destruction of their real and personal property: houses, furniture, clothing,

provisions, tools, and so forth. Pillage includes organized acts as well as individual acts without the consent of the military authorities.¹⁶

- Hostage taking.¹⁷
- Desecration of corpses.¹⁸ Mutilation of the dead is never permissible and violates the rules of war.

Protocol II also states that children should be provided with care and aid as required. Article 4, paragraph 3 states that no children under the age of fifteen shall be “recruited by the armed forces or groups.”

Protection of the Civilian Population

The distinction between civilians and combatants is fundamental to the laws governing both internal and international armed conflicts. In situations of internal armed conflict, generally speaking, a civilian is anyone who is not a member of the armed forces or of an organized armed group of a party to the conflict. Accordingly, “the civilian population comprises all persons who do not actively participate in the hostilities.”¹⁹

Full-time members of the Serbian or Yugoslav governments’ armed forces and KLA combatants are legitimate military targets and subject to attack, individually or collectively, until such time as they become hors de combat, that is, surrender or are wounded or captured.²⁰

Policemen without combat duties are not legitimate military targets, nor are certain other government personnel authorized to bear arms such as customs agents.²¹ Policemen with combat duties, however, would be proper military targets, subject to direct attack.

Civilians may not be subject to deliberate individualized attack since they pose no immediate threat to the adversary.²² The term “civilian” also includes some employees of the military establishment who are not members of the armed forces but assist them.²³ While as civilians they may not be targeted, these civilian employees of military establishments or those who indirectly assist combatants assume the risk of death or injury incidental to attacks against legitimate military targets while they are at or in the immediate vicinity of military targets.

In addition, both sides may utilize as combatants persons who are other-

wise engaged in civilian occupations. These civilians lose their immunity from attack for as long as they directly participate in hostilities.²⁴ “[D]irect participation [in hostilities] means acts of war which by their nature and purpose are likely to cause actual harm to the personnel and equipment of enemy armed forces,” and includes acts of defense.²⁵

“Hostilities” not only covers the time when the civilian actually makes use of a weapon but also the time that he is carrying it, as well as situations in which he undertakes hostile acts without using a weapon.²⁶ Examples are provided in an United States Army Field Manual cited by the ICRC, which lists some hostile acts as including:

sabotage, destruction of communication facilities, intentional misleading of troops by guides, and liberation of prisoners of war. . . . This is also the case of a person acting as a member of a weapons crew, or one providing target information for weapons systems intended for immediate use against the enemy such as artillery spotters or members of ground observer teams. [It] would include direct logistic support for units engaged directly in battle such as the delivery of ammunition to a firing position. On the other hand civilians providing only indirect support to the armed forces, such as workers in defense plants or those engaged in distribution or storage of military supplies in rear areas, do not pose an immediate threat to the adversary and therefore would not be subject to deliberate individual attack.²⁷

Persons protected by Common Article 3 include members of both government and KLA forces who surrender, are wounded, sick or unarmed, or are captured. They are *hors de combat*, literally, out of combat.

Designation of Military Objectives

The fundamental distinction between civilians and the military also applies to the nature of facilities that may be legitimate objects of attack. To constitute a legitimate military objective, the object or target, selected by its nature, location, purpose, or use, must contribute effectively to the enemy’s

The distinction between civilians and combatants is fundamental to the laws governing both internal and international armed conflicts.

military capability or activity, and its total or partial destruction or neutralization must offer a definite military advantage in the circumstances.²⁸

Legitimate military objectives are combatants' weapons, convoys, installations, and supplies. In addition:

an object generally used for civilian purposes, such as a dwelling, a bus, a fleet of taxicabs, or a civilian airfield or railroad siding, can become a military objective if its location or use meets [the criteria in Protocol I, art. 52(2)].²⁹

To constitute a legitimate military object, the target must 1) contribute effectively to the enemy's military capability or activity, and 2) its total or partial destruction or neutralization must offer a definite military advantage in the circumstances.

The laws of war characterize all objects as civilian unless they satisfy this two-fold test. Objects normally dedicated to civilian use, such as churches, houses and schools, are presumed not to be military objectives. If they in fact do assist the enemy's military action, they can lose their immunity from direct attack. The presumption that an object is civilian in nature would not include objects such as transportation and communications systems that can have a military purpose. In such circumstances, it is necessary to analyze whether the facility or utility meets the two-part test, above.

The attacker also must do everything "feasible" to verify that the objectives to be attacked are not civilian. "Feasible" means "that which is practical or practically possible taking into account all the circumstances at the time, including those relevant to the success of military operations."³⁰

Prohibition of Indiscriminate Attacks and the Principle of Proportionality

Even attacks on legitimate military targets, however, are limited by the principle of proportionality. This principle places a duty on combatants to choose means of attack that avoid or minimize damage to civilians. In particular, the attacker should refrain from launching an attack if the expected civilian casualties would outweigh the importance of the military target to the attacker. The principle of proportionality is codified in Protocol I, article 51 (5):

Among others, the following types of attacks are to be considered as indiscriminate: . . .

- (b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

If an attack can be expected to cause incidental civilian casualties or damage, two requirements must be met before that attack is launched. First, there must be an anticipated “concrete and direct” military advantage. “Direct” means “without intervening condition of agency . . . A remote advantage to be gained at some unknown time in the future would not be a proper consideration to weigh against civilian losses.”³¹

Creating conditions “conducive to surrender by means of attacks which incidentally harm the civilian population”³² is too remote and insufficiently military to qualify as a “concrete and direct” military advantage. “A military advantage can only consist in ground gained and in annihilating or weakening the enemy armed forces.”³³

The second requirement of the principle of proportionality is that the foreseeable injury to civilians and damage to civilian objects not be disproportionate, that is, “excessive” in comparison to the expected “concrete and definite military advantage.”

Excessive damage is a relative concept. For instance, the presence of a soldier on leave cannot serve as a justification to destroy the entire village. If the destruction of a bridge is of paramount importance for the occupation of a strategic zone, “it is understood that some houses may be hit, but not that a whole urban area be leveled.”³⁴ There is never a justification for excessive civilian casualties, no matter how valuable the military target.³⁵

The attacker should refrain from launching an attack if the expected civilian casualties would outweigh the importance of the military target to the attacker.

Indiscriminate attacks are defined in Protocol I, article 51 (4), as:

- a) those which are not directed at a specific military objective;
- b) those which employ a method or means of combat which cannot be directed at a specific military objective; or

- c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

The Protection of Civilians from Displacement

There are only two exceptions to the prohibition on displacement, for war-related reasons, of civilians: their security or imperative military reasons. Article 17 of Protocol II states:

The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

The term “imperative military reasons” usually refers to evacuation because of imminent military operations. The provisional measure of evacuation is appropriate if an area is in danger as a result of military operations or is liable to be subjected to intense bombing. It may also be permitted when the presence of protected persons in an area hampers military operations. The prompt return of the evacuees to their homes is required as soon as hostilities in the area have ceased. The evacuating authority bears the burden of proving that its forcible relocation conforms to these conditions.

Displacement or capture of civilians solely to deny a social base to the enemy has nothing to do with the security of the civilians. Nor is it justified by “imperative military reasons,” which require “the most meticulous assessment of the circumstances”³⁶ because such reasons are so capable of abuse. As the ICRC commentary to Protocol II states:

Clearly, imperative military reasons cannot be justified by political motives. For example, it would be prohibited to move a population in order to exercise more effective control over a dissident ethnic group.³⁷

Mass relocation or displacement of civilians for the purpose of denying a

willing social base to the opposing force is prohibited as it responds to such a wholly political motive.

Even if the government were to show that the displacement were necessary, it still has the independent obligation to take “all possible measures” to receive the civilian population “under satisfactory conditions of shelter, hygiene, health, safety, and nutrition.”

Displacement or capture of civilians solely to deny a social base to the enemy has nothing to do with the security of the civilians.

YUGOSLAV DOMESTIC LAW

The federal constitution of Yugoslavia, promulgated in 1992, established Yugoslavia as a democratic state “founded on the rule of law.”³⁸ The forty-nine articles of the section on rights and freedoms guarantee all Yugoslav citizens basic civil and political rights, such as free speech, free association, and the right to a fair trial.

Yugoslav laws guarantee all defendants the right to due process. Article 23 of the federal constitution forbids arbitrary detention and obliges the authorities to inform a detainee immediately of the reason for his or her detention and grant that person access to a lawyer. Article 24 obliges the authorities to inform the detainee in writing of the reason for his or her arrest within twenty-four hours. Pre-trial detention ordered by a lower court may not exceed three months, unless extended by a higher court to a maximum of six months. Article 25 outlaws torture, as well as any coercion of confessions or statements. The use of force against a detainee is also a criminal offence.

Section 1, Article 11 of the constitution guarantees the rights of minorities to “preserve, foster and express their ethnic, cultural, linguistic and other attributes, as well as to use their national symbols, in accordance with international law.” Section 1, Article 20 states that: “Citizens shall be equal irrespective of their nationality, race, sex, language, faith, political or other beliefs, education, social origin, property, or other personal status.”

Articles 46 and 47 guarantee minorities the right to education and media in their mother tongue, as well as the right to establish educational and cultural associations. Article 48, however, places restrictions on free association for minorities that are susceptible to a broad and arbitrary interpretation.

Members of national minorities have the right to establish and foster unhindered relations with co-nationals within the Republic of Yugoslavia and outside its borders with co-nationals in other states, and to take part in international nongovernmental organizations, *provided these relations are not detrimental to the Federal Republic of Yugoslavia or to a member republic.* [Emphasis added.]

The federal constitution of Yugoslavia, promulgated in 1992, established Yugoslavia as a democratic state “founded on the rule of law.”

The Yugoslav constitution also guarantees that the government will respect international law. Article 10 states: “The Federal Republic of Yugoslavia shall recognize and guarantee the rights and freedoms of man and the citizen recognized under international law.” Article 16 adds:

The Federal Republic of Yugoslavia shall fulfill in good faith the obligations contained in international treaties to which it is a contracting party. International treaties which have been ratified and promulgated in conformity with the present Constitution and generally accepted rules of international law shall be a constituent part of the

internal legal order.

Regarding combatants’ respect for international humanitarian law, Yugoslav law is also very clear. The Yugoslav Law on Defense, article 19, obliges soldiers to respect international law dealing with the wounded, prisoners, and civilians. The article says:

Members of the Yugoslav Army participating in an armed conflict are obliged under all circumstances to abide by the rules of international humanitarian law and other rules on humane treatment of wounded and prisoners, and on the protection of civilians.³⁹

Serbia’s Law on Internal Affairs also addressed the behavior of the police. Article 33 states that employees of the Ministry of Internal Affairs are obliged to carry out all orders by the minister or their superior, “with the exception of the ones ordering performance of a deed that constitutes a criminal act.”⁴⁰