

III. HISTORICAL BACKGROUND

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

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

A. 1989 CONSTITUTIONAL AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

³⁸⁷ Radomir Lukić, T. 26242–26243 (15 May 2008).

³⁸⁸ Radomir Lukić, T. 26302 (16 May 2008).

³⁸⁹ P1848 (Constitution of the Socialist Republic of Serbia, 1974), article 229.

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

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

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

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

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

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

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

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

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

³⁹⁶ Veton Surroi, T. 4534–4535 (10 October 2006).

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

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

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

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

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

³⁹⁹ Ratko Marković, T. 13085 (8 August 2007).

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

⁴⁰¹ Radomir Lukić, T. 26305 (16 May 2008).

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

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

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

B. DEVELOPMENT OF THE CRISIS

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

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

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

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

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

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

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

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

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

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

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

225. The Chamber has heard from several witnesses that Kosovo Albanian teachers refused to implement a new school curriculum introduced in 1990 or 1991, leading to the dismissal of many.⁴¹⁴ Kosovo Albanian schoolteacher Sabit Kadriu testified that Kosovo Albanian teachers were prevented from entering school premises for the new school year beginning in September 1991.⁴¹⁵ Kosovo Albanian pupils, who wished to be schooled in the Albanian language, were unable to attend classes.⁴¹⁶ As a result, the LDK and other Kosovo Albanian political parties developed an unofficial education system using private dwellings to hold classes for Kosovo Albanian children.⁴¹⁷ In June 1991 the Serbian Assembly issued a decision which removed a number of officials and professors at the University of Priština/Prishtina, and replaced them with non-Albanians. The University's assembly and several faculty councils were dissolved and replaced by provisional organs staffed predominantly by Serbs. These new organs controlled the disbursement of salaries and were obliged to report regularly to the Serbian Ministry of Education.⁴¹⁸ Kosovo Albanian students were unable to attend classes at the University at that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

229. Several official documents support these accounts of organised, state-sanctioned discrimination in the workplace. In July 1991, several Decisions from the Serbian Assembly were adopted pertaining to the removal of predominantly Kosovo Albanian officials in various business enterprises across Kosovo and their replacement by non-Albanians.⁴²⁷ For example, in Vučitrn/Vushtrria the Kosovo Albanian director of the *Polet* company, along with the members of the Workers' Council, the Disciplinary Committee, and the Committee of Self-Managing Workers' Control, were all replaced by non-Albanian individuals. The reasons given for their dismissal included "illegal occurrences" in the enterprise, as well as a petition from "workers of Serbian and Montenegrin nationality", and abuse by the Workers' Council of the predominant position of the Kosovo Albanian workers. Reference was also made to the participation of the Kosovo Albanian workers in a general strike held on 3 September 1990.⁴²⁸ Similar grounds were given for the dismissals of Kosovo Albanian directors and workers' councils in enterprises in *inter alia* Podujevo/Podujeva (claiming that the "Šiptar" workers had damaged inter-ethnic relations), "Gričar" (stating that the *Separacija Bentokos* enterprise had taken on "a large number of unproductive workers of Šiptar nationality which ha[d] exacerbated even more the bad relations and situation in the enterprise"), Vučitrn/Vushtrria (asserting that, in the *Kosovo-Trans* enterprise, the qualifications of the Kosovo Albanian workers were "extremely unsuitable", and noting that they "d[id] not recognise the municipal, provincial and republican bodies nor the constitution and laws of the Republic of Serbia"), Đakovica/Gjakova (accusing the managers of the forestry estate of selling timber and using the proceeds to finance "Albanian separatism"), Dečani/Dečan, Peć/Peja (stating that due to the "director's extremely familiar attitude to the workers of Šiptar nationality,

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

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

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

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

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

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

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

C. ATTEMPTS TO ADDRESS THE CRISIS

231. The Chamber heard evidence about attempts made to negotiate an end to the crisis, primarily from Ratomir Tanić. Tanić testified that by the mid-1990s he had a long-standing working relationship with the Serbian State Security Service, and had also accepted a position as an advisor to the president of the New Democracy political party (at the time part of the coalition government of Serbia) in 1994 or 1995.⁴³¹ He was personally involved, on behalf of New Democracy, in negotiations with the Kosovo Albanians from 1995 to 1997, on instructions from Slobodan Milošević.⁴³² Tanić asserted that Milošević and the Kosovo Albanians agreed that a third-party should be involved in the negotiations, and thus the Bertelsmann Science Foundation and Monsignor Paglia of the Community of San Egidio, a Vatican para-diplomatic organ, were chosen.⁴³³

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

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

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

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

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

⁴³³ Ratomir Tanić, 1D44 (witness statement dated 19 July 2000), para. 12.

⁴³⁴ Ratomir Tanić, T. 6308–6309 (10 November 2006). See generally P704 (*Exploring Futures for Kosovo: Kosovo Albanians and Serbs in Dialogue*, August 1997) (addressing a number of then contemporary issues in Kosovo, and including contributions from politicians and scholars—including Veton Surroi).

who was appointed by Ibrahim Rugova. While the negotiations were conducted “discretely”, they did result in a document that Tanić described as an “agreement” emphasising the need for dialogue, international assistance, and respect for democratic principles and human rights.⁴³⁵ However, according to Tanić, the negotiations foundered when Milošević withdrew his support for them in 1997.⁴³⁶

233. While the Chamber has reservations about some aspects of the evidence given by Ratimir Tanić, his involvement in negotiations with the Kosovo Albanians in the 1995 to 1997 period is confirmed by Veton Surroi and Baton Haxhiu. Surroi described his own participation in negotiations conducted under the auspices of the Bertelsmann Science Foundation, which resulted in a document called “Joint Recommendations on the Kosovo Conflict”, setting out a framework for future talks about the status of Kosovo.⁴³⁷ Haxhiu also testified that he had heard that Fehmi Agani had been involved in negotiations with people from the New Democracy party, including Ratimir Tanić.⁴³⁸ While Surroi expressed doubts about Tanić and his sincerity, particularly with regard to his relationship with Milošević,⁴³⁹ and Haxhiu questioned Tanić’s position and attitude,⁴⁴⁰ the evidence given by both confirms that there were processes being undertaken involving both the Kosovo Albanian and the Serbian sides seeking ways to resolve the situation in Kosovo in the mid-1990s.

234. The involvement of Monsignor Paglia of the Community of San Egidio led to the signing of the San Egidio Agreement. This agreement aspired to the “normalization of the education system for Albanian youth in Kosovo” and the return of Albanian teachers and students to schools. It also established a “mixed group” for its implementation.⁴⁴¹ According to Veton Surroi, this Agreement did not become public knowledge until after its signature by Slobodan Milošević and Ibrahim Rugova on 1 September 1996.⁴⁴² Rugova testified in the *Milošević* case that, as a gesture of good

⁴³⁵ P2481 (undated attachment to Tanić witness statement, headed “Jointly Agreed Positions”).

⁴³⁶ Ratimir Tanić, T. 6312–6314 (10 November 2006).

⁴³⁷ Veton Surroi, P2361 (witness statement dated 27 August 2001), pp. 9–10. *See generally* P712 (Joint Recommendations on the Kosovo Conflict, Bertelsmann Science Foundation, 1997).

⁴³⁸ Baton Haxhiu, P2478 (witness statement dated 22 August 2001), e-court p. 11.

⁴³⁹ Veton Surroi, P2361 (witness statement dated 27 August 2001), p. 9.

⁴⁴⁰ Baton Haxhiu, T. 6135 (8 November 2006).

⁴⁴¹ Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4207, P2613 (witness statement dated 3 November 2001), p. 5.

⁴⁴² Veton Surroi, P2361 (witness statement dated 27 August 2001), p. 9. *See generally* P715 (Milošević-Rugova Education Agreement, 1 September 1996); 1D559 (Milošević-Rugova Education Agreement, 1 September 1996) (providing an alternate translation).

faith, he signed the agreement only in his name, not as President of Kosovo, as this position was not recognised by the FRY/Serbian authorities.⁴⁴³

235. When no concrete steps were taken to realise the agreement, Kosovo Albanian students participated in demonstrations in both 1997 and 1998.⁴⁴⁴ According to Baton Haxhiu these demonstrations were violently quelled by the Serbian police, who used tear gas and beat many of the student demonstrators.⁴⁴⁵ A secondary agreement, contemplating the gradual re-opening of the university and schools and allowing for the sharing of facilities by Albanian and Serb students, was signed on 23 March 1998.⁴⁴⁶ The Institute of Albanology was the first to re-open, on 31 March 1998, but few other faculties followed suit.⁴⁴⁷ In June 1998 Monsignor Paglia, who had been involved in the negotiation of the original agreement, sent a letter to Serbian President Milutinović, expressing dissatisfaction with the implementation process and referring to discussions that he considered to have been “devoid of any result, because of the Serb prejudicial question”, which, he said, opposed the concession of spaces to Albanian students in the University.⁴⁴⁸ He noted that the deadline of 31 May, which had been set for the re-opening of university faculties, had not been met, and stated that the Albanian side was willing to comply with the terms of the agreement.⁴⁴⁹

236. Despite some further developments in mid-1998, the agreement was never fully implemented, and the deepening crisis in that year rendered further steps in the direction of real implementation impossible.⁴⁵⁰

⁴⁴³ Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4209.

⁴⁴⁴ Veljko Odalović, T. 14465–14466 (27 August 2007) (stating that there was great difficulty in negotiating how a text on the implementation of the agreement should be worded, and thus no concrete measures were put in place); Baton Haxhiu, P2478 (witness statement dated 22 August 2001), e-court p. 9.

⁴⁴⁵ Baton Haxhiu, T. 6076–6078 (8 November 2006).

⁴⁴⁶ 2D1 (Agreed measures for the implementation of the accord on education, 23 March 1998); Veton Surroi, T. 4583 (10 October 2006).

⁴⁴⁷ Veton Surroi, T. 4582 (10 October 2006) (stating that two or three colleges were re-opened, along with the faculty of philosophy and the technical faculty); Baton Haxhiu, T. 6076 (8 November 2006) (stating that none of the university colleges were re-opened to Albanian students, and that the only institute that was permitted was the Institute of Albanology); Ibrahim Rugova, P2613 (witness statement dated 3 November 2001), p. 6 (stating that the Institute of Albanology and one faculty were re-opened).

⁴⁴⁸ P2885 (Letter to Milan Milutinović from Monsignor Paglia, 4 June 1998).

⁴⁴⁹ P2885 (Letter to Milan Milutinović from Monsignor Paglia, 4 June 1998). However, Milomir Minić and Zoran Anđelković testified that it was the firm intention of the government to implement the agreement. Milomir Minić, T. 14783 (31 August 2007); Zoran Anđelković, T. 14653–14654 (30 August 2007).

⁴⁵⁰ Veton Surroi, T. 4582–4583 (10 October 2006), P2362 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 3403; Wolfgang Petritsch, T. 10781 (1 March 2007); Ibrahim Rugova, P2612 (transcript from *Prosecutor v. Milošević*, Case No. IT-02-54-T), T. 4211.

D. FINDINGS

237. The Chamber concludes that from around 1989 differences between the aspirations of the majority of the Kosovo Albanian population and the designs of the FRY and Serbian state authorities created a tense and unstable environment. Efforts by the authorities to exert firmer control over the province and to diminish the influence of the Kosovo Albanians on local governance, public services, and economic life polarised the community. Indeed, laws, policies, and practices were instituted that discriminated against the Albanians, feeding into local resentment and feelings of persecution. At the same time, fears among the minority non-Albanian population of Kosovo were heightened by state rhetoric and the actions of the Kosovo Albanians creating their own “parallel” institutions. These fears increased with the emergence of the Kosovo Liberation Army in 1996 and its actions thereafter, as discussed further below. While some efforts were made in the mid-1990s to address the situation in Kosovo, no serious attempts to resolve the deepening crisis were engaged in by either side until the international community became involved. These diplomatic initiatives and the involvement of some of the Accused in them are discussed below.

238. Having set out the background to the conflict in Kosovo that intensified in 1998 and 1999, and before addressing the events of those years in detail, the Chamber next discusses the political and constitutional framework of the FRY and Serbia, and analyses in particular the powers of the Serbian President, who at the time was the Accused Milan Milutinović.