

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case No: IT-05-87-A

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun (Presiding)
Judge Fausto Pocar
Judge Mehmet Güney
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. John Hocking

DATE: 15 February 2011

THE PROSECUTOR

V.

NIKOLA SAINOVIC
DRAGOLJUB OJDANIC
NEBOJSA PAVKOVIC
VLADIMIR LAZAREVIC
SRETEN LUKIC

PUBLIC

***SRETEN LUKIC'S THIRD MOTION TO PRESENT ADDITIONAL EVIDENCE
BEFORE APPEALS CHAMBER***

The Office of the Prosecutor:
Mr. Paul Rogers

Counsel for the Accused:
Mr. Toma Fila and Mr. Vladimir Petrovic for Nikola Sainovic
Mr. Tomislav Visnjic and Mr. Peter Robinson for Dragoljub Ojdanic
Mr. John Ackerman and Mr. Aleksandar Aleksic for Nebojsa Pavkovic
Mr. Mihailo Bakrac and Mr. Djuro Cepic for Vladimir Lazarevic
Mr. Branko Lukic and Mr. Dragan Ivetic for Sreten Lukic

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NOW COMES the Appellant, Sreten Lukic, by and through his Defense Counsel of Record, Branko Lukic and Dragan Ivetic, and hereby submits this ***THIRD MOTION TO PRESENT ADDITIONAL EVIDENCE BEFORE APPEALS CHAMBER:***

I. INTRODUCTION

1. Since the conclusion of the trial and the filing of the Appeals Briefs in the instant matter, certain developments have taken place in regards to matters dating from the time period of the Indictment, and the activities of the KLA in Kosovo-Metohia, which have a direct bearing on the Trial Judgment and errors alleged by the defense in the conviction of Appellant within that Judgment. The documents that are presented in this motion have all come into existence and been publicized in the recent weeks, and thus were neither in existence during the trial, nor otherwise available so as to permit the defense to have utilized them at that time.

2. Specifically, the documents Appellant seeks to introduce by way of the instant motion include: a) Document 12462, Adopted text of Council of Europe Parliamentary Assembly (hereinafter "PACE") Report by Dick Marty entitled "Inhuman treatment of people and illicit trafficking in human organs in Kosovo"; [proposed 6DA1] b) PACE resolution 1782; [proposed 6DA2] c) PACE resolution 1784 [proposed 6DA3]. These documents are attached hereto in "Annex A."

3. The instant motion is filed publicly insofar as the materials sought to be admitted were publicly disclosed and made available by the Council of Europe in December 2010 and January 2011.

II. LEGAL BASIS

4. The admission of additional evidence by the Appeals Chamber is regulated by Rule 115 of the Rules of Procedure and Evidence (hereinafter “Rules”).

5. For additional evidence to be admissible under Rule 115, it must be shown the additional evidence was not available to appellant at trial, in any form, or discoverable through the exercise of due diligence.¹

6. The applicant must then show that the evidence is both relevant to a material issue and credible.² Evidence is relevant if it relates to findings material to the conviction or sentence, in the sense that those findings were crucial or instrumental to the conviction or sentence.³ Evidence is credible if it appears to be reasonably capable of belief or reliance.⁴

7. The applicant must further demonstrate that the evidence could have had an impact on the verdict, in other words, the evidence is such that, if considered in the context of the evidence given at trial, it could show that the verdict was unsafe.⁵ A decision will be considered unsafe if the Appeals Chamber ascertains that there is a realistic possibility that the Trial Chamber’s verdict might have been different if the new evidence had been admitted.⁶

8. As for the last of the criteria mentioned above, the Appeals Chamber in the *Kupreskic* case set out the following test:

The test to be applied by the Appeals Chamber in deciding whether or not to uphold a conviction where additional evidence has been admitted before the Chamber is: has the appellant established that no reasonable tribunal of fact could have reached a conclusion of guilt based upon the evidence before the Trial Chamber together with the additional evidence admitted during the appellate proceedings.⁷

¹ Decision on Sreten Lukic’s First Motion to Admit Additional Evidence on Appeal, 11 March 2010, para. 5

² Decision on Sreten Lukic’s First Motion to Admit Additional Evidence on Appeal, 11 March 2010, para. 6

³ Decision on Sreten Lukic’s First Motion to Admit Additional Evidence on Appeal, 11 March 2010, para. 6

⁴ Decision on Sreten Lukic’s First Motion to Admit Additional Evidence on Appeal, 11 March 2010, para. 6

⁵ Decision on Sreten Lukic’s First Motion to Admit Additional Evidence on Appeal, 11 March 2010, para. 7

⁶ Decision on Sreten Lukic’s First Motion to Admit Additional Evidence on Appeal, 11 March 2010, para. 7

⁷ *The Prosecutor v. Kupreskic et al.*, Appeal Judgment, 23 October 2001, paras 75-76; See also *The Prosecutor v. Kvocka et al.*, Appeal Judgment, 28 February 2005, para. 426; *The Prosecutor v. Blaskic*, Appeal Judgment, 29 July 2004, para 22

III. THE ADDITIONAL EVIDENCE SOUGHT TO BE ADMITTED

9. 6DA1 is a report authored by Dick Marty in his capacity as Rapporteur for the PACE, following an investigation under the Auspices of the Council of Europe Parliamentary Assembly into allegations of misconduct in Kosovo-Metohia by the KLA, which were first alluded to by the Former ICTY Prosecutor, Carla Del Ponte, once she left her position at the ICTY and published her book in 2008. According to the report, among other things of interest, the following conclusions were reached after the PACE investigation:

- a) The evidence uncovered “often contradicts the much touted image of the Kosovo Liberation Army as a guerilla army that fought valiantly to defend the rights of its people to inhabit the territory of Kosovo.”⁸
- b) The KLA in Kosovo-Metohia engaged in a organized campaign where it abducted and committed crimes against residents of Kosovo-Metohia, including both ethnic Serbs and ethnic Albanians during the relevant time period. There is even evidence that ethnic Albanians were often singled out as putative “collaborators” with the Serbian government, often on baseless accusations of members of rival clans or persons who held long-standing vendettas against them.
- c) During the war the KLA implemented a policy whereby all persons having the slightest knowledge of acts of the Serb authorities were suspected as “collaborators” and subjected to “interrogation.”
- d) These crimes by the KLA were concealed by international actors (including, but not limited to NATO, and the United States of America) who turned a blind eye to the same in favor of establishing short term stability in the region and working with their *de facto* allies on the ground, high ranking KLA.

⁸ 6DA1, para. 31

- e) During 1998 and 1999 the KLA existed as divided splinter groups loyal to factional leaders rather than as a cohesive whole. The KLA fought “just as hard, and devoted arguably more of its resources” against ethnic Albanian rival factions as it did against Serb/Yugoslav forces during the relevant time period.
- f) An illicit organized criminal network existed in the region headed by the “Drenica Group” of Hasim Thaqi. This criminal group exercised “violent control” over the trade of heroin and other narcotics in the region during the relevant time period.
- g) The international community in Kosovo-Metohia, including the governments of the United States and other allied Western Powers as well as EU backed justice organs have known of the foregoing crimes by the KLA and have failed to act.
- h) Several factors affect the ability to gain evidence from ethnic Albanians as to KLA crimes, including – i) an entrenched sense of strong loyalty to clan affiliations and clan members; ii) disappearances of and killings of witnesses against the KLA. The lack of witness protective measures in place has added to this.

10. 6DA2 is a resolution adopted by the PACE, following Assembly debate on 25 January 2011 (3rd and 4th sittings) adopting the recommendations in the aforesaid report authored by Dick Marty, and calling upon EULEX and member states to undertake to further investigate crimes by KLA members and bring perpetrators to justice.

11. 6DA3 is a resolution adopted by the PACE, following Assembly debate on 25 January 2011 (5th and 6th sittings) calling upon member states to institute proposed witness protective measures as set forth in the aforesaid Marty Report. In pertinent part the resolution notes that “The Assembly is appalled to note that, in the region of the Former Yugoslavia, several witnesses have been killed and numerous others have been intimidated, threatened or have had their identity revealed by people determined to obstruct the course of justice and conceal truth. The Assembly regrets that, due to

these threats, many witnesses finally decide not to testify because they fear for their lives or those of their families.”⁹

IV. THE ADDITIONAL EVIDENCE WAS UNAVAILABLE AT TRIAL

12. All of the documents being proposed by way of this motion date from December 2010 or January 2011, at which time the Council of Europe considered the activities of the KLA in Kosovo-Metohia (said activities accruing concurrently and after the time period of the Indictment in this case). As such these documents were only created and made public long after the trial had ended, after the Judgment was issued, and the Appeal Briefs filed. It is respectfully submitted that since the dramatic nature of these documents and the revelations contained therein arose only after the expiry of the traditional period for filing of Rule 115 submissions,¹⁰ good cause exists and the interests of justice support consideration of this motion at this time, even though it is outside the normal time frame of Rule 115.

13. Specifically, as to each of the documents the defense avers additionally as follows:

- a) 6DA1 – The Draft Report was issued on 12 December 2010, and made public at that time. The official text, dated 7 January 2011, was only adopted by the PACE on 25 January 2011 as an official document of that governmental body. The defense acted diligently to obtain a copy of the report and obtain additional information arising out of the same with an impact on these proceedings, and to draw the attention of this Appeal Chamber to the same. The text of said report draws upon a variety of sources, and makes reference¹¹ to secret intelligence reports of NATO and 4 governments, which certainly as such were not the type of material available to the defense at trial or obtainable through reasonable means. Indeed, apparently it took the resources of the Council of Europe a decade to obtain access to the same.

⁹ See. 6DA2, para. 4

¹⁰ See, Rule 115(A)

¹¹ See, para. 67 of 6DA1.

- b) 6DA2 & 6DA3 – The Resolutions were issued on 25 January 2011, and the defense acted diligently to obtain copies from the PACE.

14. Based on the foregoing, it is abundantly clear that the aforesaid documents were neither in the possession of the defense, nor could they have been obtained by the diligent efforts of the defense during trial or prior to the expiry of the time period of Rule 115(A). Likewise, based upon the date of their publication, and the date of filing of this motion, the defense has acted diligently to seek admission of these documents when put on notice of the existence and availability of the same. Accordingly, it is respectfully submitted that the instant motion meets the first prong of the test for admission.

V. IT IS IN THE INTERESTS OF JUSTICE FOR THE ADDITIONAL EVIDENCE TO BE ADMITTED

A. *The Additional Evidence is Relevant*

1. Document 6DA1 – PACE Report

15. The Judgment is based upon events that occurred on the territory of the province of Kosovo-Metohia during 1998-1999, arising out of the actions of state authorities of Serbia and Federal Yugoslavia, including Appellant, Sreten Lukic (who during the relevant time period was Head of the Ministry of Interior Staff for Kosovo-Metohia). These events did not occur in a vacuum, as during the same time period and upon the same geographic area, International Organizations (such as NATO, KVM, KDOM etc) were also acting, and the Kosovo Liberation Army (KLA) was acting. Indeed the acts of Appellant and others were directly related to the presence and activities of the KLA on the territory, and the perceived threats of the KLA to residents, and the criminal actions and terrorism inflicted by the KLA.

16. 6DA1 consists of a verification of the criminal activities of the KLA on the same territory, during the same time period, as well as after the conflict. Said activities targeted both Serbs and Albanians. These activities are relevant to understand the environment that existed in 1998 and 1999, especially at the time when population movements were underway. They also are relevant to understand pressures existing upon witnesses who testified in these proceedings, particularly those that denied or

downplayed the presence and activities of the KLA and the impact this had on persons leaving their homes during the conflict.

17. 6DA1 likewise consists of verification of ulterior motives on the parts of Western Powers and governments, as well as organizations (such as NATO) to conceal crimes committed by the KLA and turn a blind eye to the same, so as to be able to work with KLA members and to fulfill short term stability concerns in the region. This has a direct impact and relevance on the testimony of international witnesses who testified in these proceedings.

18. Relevant items from 6DA1 that render the Conviction of Appellant unsafe are discussed specifically elsewhere herein (in subsection V.C.), however, for purposes of illustration of the relevance of items in this Report for assessing the acts and conduct of Appellant in Kosovo in 1998-1999 (as found in the Judgment), we would like to highlight the following:

- a) Conclusions verifying that KLA members committed crimes against and targeted both Serbs and Albanians in Kosovo-Metohia during the relevant time period – e.g. paragraphs 4, 20, 37 to 167.
- b) Conclusions verifying that members of the International Community, including NATO, United States, etc. knew of crimes committed by the KLA but turned a blind eye to the same and acted to conceal the same for the interests of short term stability in the region and because they had to continue to work with their KLA allies. – e.g. paragraphs 3, 5, 7, 60, 71, 176.
- c) Conclusions verifying Fear on the part of witnesses, due to the power wielded by KLA leaders on the society, in terms of political and clan structure, as well as crime, leading to fears of witnesses for their safety, unwillingness of witnesses to talk openly, witness intimidation, killings, abductions, etc. – e.g. paragraphs 3, 21, 25, 26,

- d) Conclusions verifying KLA Factionalism and Nexus to Crime, including fighting internally for power, wealth. – e.g. paragraphs 37 to 92
- e) Conclusions verifying KLA operation of detention facilities and inhumane treatment of detained persons. – e.g. paragraphs 93 to 167

19. Most importantly, both in terms of relevance and probability that the Additional evidence renders the conviction unsafe; the aforesaid report confirms the testimony of witnesses and evidence that, although presented by the Defense, was ignored or discounted by the Trial Chamber as having been unreliable. Said witnesses and evidence include but are not limited to: a) Saban Fazliu; b) Ljubivoje Joksic; c) 6D1; d) 6D2; e) Danica Marinkovic; f) Branislav Debeljkovic; g) Dusan Gavranic; h) Radovan Paponjak; i) Milos Vojnovic; j) K25; k) Momir Pantic; l) Nebojsa Bogunovic, m) Radojca Nikcevic, among others.

20. Both in terms of relevance and probability that the additional evidence renders the conviction unsafe; the aforesaid report confirms that witnesses from Kosovo came from a climate of fear where the KLA in power politically, and through the clan structures, and by sheer brute force and criminal threats, would be influenced to testify untruthfully to the benefit of the KLA agenda. This is of importance and relevance as multiple Prosecution witnesses relied upon in the Judgment denied or downplayed the existence of the KLA and its activities. Even the Trial Judgment at several places acknowledged the “irrational” refusal of Kosovo Albanian witnesses to acknowledge the extent of KLA activities.¹² In light of this report, the credibility and veracity of their remaining testimony, and its treatment in the Judgment is put in serious doubt.

21. Both in terms of relevance and probability that the additional evidence renders the conviction unsafe; the aforesaid report confirms that witnesses from NATO or with ties to the governments of the NATO countries could potentially be testifying in a tainted manner to conceal KLA crimes, do to the ongoing working relationship of their employers/commanding officers with the KLA. Said witnesses include: a) General DZ; b) Colonel Ciaglinski; c) Col. Phillips; d) General Naumann; e) Shawn Byrnes; f) Col.

¹² e.g. Trial Judgment I/55; II/30

Crosland. Likewise many exhibits that originated from NATO, or the KVM, or other international sources must likewise be re-evaluated in light of this report.

22. The conclusions of this report as to problems with witnesses who cannot testify against the KLA and must change their testimony, out of fear for their safety or of family safety is corroborative of the testimony heard during trial (and not mentioned in the judgment).¹³

23. It is respectfully submitted that the foregoing establishes that the additional evidence being offered meets the criteria of being relevant and germane to the proceedings. The impact of the document to the verdict is discussed in greater detail below.

2. 6DA2 & 6DA3

24. 6DA2 is the resolution adopted by PACE as a result of adopting the foregoing report. It is relevant for the same reasons set forth hereinabove.

25. 6DA3 is a resolution calling for witness protective measures being required for those wanting to testify against the KLA. Accordingly, it is relevant to the points raised in regard to the aforementioned report, and especially the problems with Kosovo Albanian witnesses who downplayed the KLA. That such guarantees and protections were not in place at the time these witnesses testified before the Trial Chamber is of great importance in understanding and weighing their testimony.

26. It is respectfully submitted that the foregoing establishes that the additional evidence being offered meets the criteria of being relevant and germane to the proceedings. The impact of the document to the verdict is discussed in greater detail below.

B. The Additional Evidence is Credible and Reliable

27. All the documents sought to be admitted by way of this instant motion are obtained from the official web-site archives of the Parliamentary Assembly of the Council

¹³ e.g. Fazliji (T.25227/1-25228/5)

of Europe, and were adopted as official texts of this Parliamentary Assembly. Their adoption was after due consideration and parliamentary debate.

28. 6DA1, the report prepared by Dick Marty on behalf of the PACE, itself is based upon a 2+ year study of a variety of credible and knowledgeable sources of information. The report identifies the following sources consulted and upon which it is being drafted:

a) Testimonial and documentary accounts from several dozen primary sources:

“[...] including combatants and affiliates of various armed factions that participated in the hostilities in Kosovo; direct victims of violent crimes committed in Kosovo and the surrounding territories; family members of missing or deceased persons; current and former representatives of international justice institutions with jurisdiction over the events in Kosovo [primarily the United Nations Mission in Kosovo (UNMIK), the European Union Rule of Law Mission (EULEX), and the International Criminal Tribunal for the former Yugoslavia (ICTY)]; representatives of national justice systems, including prosecutors with jurisdiction over events related to Kosovo [Office of the War Crimes Prosecutor in Belgrade; Office of the General Prosecutor in Tirana; prosecutors, police officers and state security officials in Pristina and in three surrounding states]; humanitarian agencies [including the International Committee of the Red Cross (ICRC) and the International Commission on Missing Persons (ICMP)]; and various members of civil society and human rights monitoring bodies who have investigated and reported on events related to Kosovo in the material period [including the Humanitarian Law Centre]”¹⁴

b) Well-substantiated intelligence reports.¹⁵ Including secret reports prepared by intelligence analysts working for NATO, the German (BND), Italian (SISMI), British (MI6) and Greek (EYP) intelligence services.¹⁶

c) First hand sources.¹⁷

d) KLA insider witnesses.¹⁸

¹⁴ See, 6DA1, para. 23

¹⁵ See, 6DA1, para. 61

¹⁶ See, 6DA1, para. 67

¹⁷ See, 6DA1, para. 72

¹⁸ See, 6DA1, para. 44, 80

e) European Law Enforcement Agencies.¹⁹

29. It is respectfully submitted that the foregoing adequately demonstrates that the additional documentary evidence sought to be admitted by this instant motion is of a credible nature that can be relied upon by the Appeals Chamber.

C. The Additional Evidence is Probable to Show that Sreten Lukic's Conviction is Unsafe

1. *Alternative Possible causes for movement of civilians*

30. The Trial Chamber reached the conviction of Appellant Lukic by determining that actions of the Serbian and Yugoslav authorities (Lukic included) were part of a JCE with a common purpose of deporting ethnic Albanians from their homes to maintain control over Kosovo-Metohia. In doing so the Trial Chamber determined persons fled their homes as a result of the actions of Serb/Yugoslav forces, and discounted any legitimate alternative reasons for the departure, including among others, any acts of the KLA causing the same.²⁰ Central to reaching this conclusion was the Chamber's finding that the KLA was an organized armed force that fought by legally acceptable means that complied with the laws or customs of war²¹; as well as their findings that the KLA was not active, as well as by ignoring of evidence the KLA performed crimes against Albanians.²²

31. The additional evidence being offered explicitly rebuts the foregoing central conclusion of the Trial Chamber as to the KLA and its tactics, as well as its activities and targeting of Kosovo Albanians. Likewise, in highlighting the fractionalization of the KLA and the in-fighting between rival criminal clans (described as more intense than activities against the Serb forces) the foregoing report demonstrates another reasonable cause for population movements, namely perceived attacks and actual attacks between rival clans, by the KLA. The additional evidence also demonstrates very serious pressure applied by the KLA, and heinous criminal behavior of the KLA, directed at civilians, and including ethnic Albanians, which could rightly be reasonably concluded to have legitimately caused the flight of civilians from their homes, rather than the actions of state forces.

¹⁹ See, 6DA1, para. 54

²⁰ e.g. Judgment II/48, 68, 69, 147, 229-238, 333-335, 380-382, 432-433, 534-543, 726-729, 795-800, 885-889, 943-948, 997-1003, 1067-1077, 1099, 1116-1117, 1137, 1150, 1262; And III/92, 94, 95,96, 1117, 1121, 1130

²¹ Judgment I/812,813,814,815,819,821,827,840,841

²² for instance Saban Fazliju is barely mentioned.

2. Knowledge and Intent of Appellant

32. Central to the conviction of Sreten Lukic, is the Chamber's finding that Appellant shared the intent of a JCE. Specifically the Trial Chamber convicted Appellant based on finding "Lukić shared the intent to ensure continued control by the FRY and Serbian authorities over Kosovo through the crimes of forcible displacement of the Kosovo Albanian population".²³ In doing so the Trial Chamber disregarded any other reasonable, legitimate, and non-criminal understanding Lukic could have held as to what was happening in the Province of Kosovo-Metohia. Rather the Trial Chamber concludes that Lukic "after the Tribunal Prosecutor Arbour sent a letter of warning to Milošević, Milutinović, Šainović, and Ojdanić continued to instruct the MUP to engage in joint operations with the VJ in Kosovo, despite his knowledge of crimes being committed against Kosovo Albanians during previous joint operations."²⁴ In order to comply with the principle of *in dubio pro reo*, the Trial Chamber had to find the foregoing was the only reasonable conclusion under the evidence, taking all doubt in favor of the Appellant.

33. Evidence had been presented by the defense that Appellant genuinely believed that the acts of himself and others were legitimate law-enforcement actions aimed at a terrorist, criminal organization (KLA); and that the KLA was engaged in a campaign of terror, using abductions, killings, and attacks against Albanians and Serbs to maintain its hold on Kosovo-Metohia territory for its criminal purposes. In terrorizing the population, the KLA sought to pressure all to submit to and support their criminal goals on fear of death. The additional evidence being offered as part of this motion confirms that, such a position was reasonable under the factual circumstances, and the Trial Chamber erred in dismissing the same, without due consideration.

34. Likewise evidence was presented by the defense (and disregarded by the Trial Chamber), that the information available to the Appellant, was that persons were leaving their homes as a result of a myriad of reasons, including due to acts of NATO and criminal acts of the KLA directed against all inhabitants. In dismissing this line of defense, the Trial Chamber concluded that the KLA was not active and essentially minimized the effect any KLA activities would have had upon the civilian population. The additional evidence being offered confirms that such a position on the part of Appellant was reasonable, and that the Trial Chamber erred in dismissing same.

²³ Judgment III/1117

²⁴ Judgment III/1201

3. Witnesses Testifying under duress from KLA

35. The Trial Chamber in reaching its Judgment and convicting Appellant relied on testimony of Kosovo Albanian Witnesses who almost uniformly denied the existence of the KLA or downplayed its presence and activities. Even the Trial Chamber remarked that such denials of Kosovo Albanian witnesses border upon the irrational.²⁵ In some instances the Trial Chamber even went so far as to label witnesses who evaded the truth,²⁶ but still relied on these same witnesses to convict Lukic, saying that the KLA was not present or not active in areas where persons left their homes, or relying on these same witnesses to place blame for departures of civilians on the acts of state forces.

36. The additional evidence being offered sheds light on the various factors that would cause witnesses from the region to testify “irrationally” – namely:

- a. Killings of witnesses who testify against the KLA.²⁷
- b. Loyalty to clan allegiances²⁸
- c. Threats to well-being of witnesses or family members in Kosovo.²⁹

37. 6DA1 and 6DA3 demonstrates that insofar as witness protection measures are not in place, it is impossible to get witnesses to testify fully about the KLA crimes. Inasmuch as such measures were not in place in Kosovo-Metohia when these witnesses testified at trial, they could not be insulated or protected from the above-mentioned pressures and threats posed by the KLA. Such threats to the safety of witnesses existing in 2010-2011 could only have been more strongly felt during the conflict in 1999 or thereafter when the criminal conduct of the KLA was directly in process against civilians, or during the time of our trial (2006-2008), when witnesses against the KLA were being disposed of and killed by the KLA, who then was at a position of ultimate power within Kosovo-Metohia, comprising the government of the same (according to the Marty Report).

38. The Marty Report (6DA1) implicates the Prime Minister of Kosovo-Metohia (Hasim Thaqi) and those around him as being at the top of the criminal activities. The foregoing factors were not taken into account by the Trial Chamber in reaching its

²⁵ Judgment I/55

²⁶ Judgment II/30; II/244

²⁷ See, 6DA1 para. 21, 24, 25

²⁸ See, 6DA1 para. 3, 25, 26

²⁹ See, 6DA1 para. 3, 13, 21, 24

Judgment, and had the Chamber been aware of the foregoing, it would have had a more logical explanation for the “irrational” testimony of Kosovo Albanian witnesses and would not have relied upon their testimony as the only testimony to convict Appellant.

4. NATO Military/Diplomatic Witnesses

39. As discussed in para. 21, above, the Judgment relies on the testimony of key NATO Military or Diplomatic witnesses (Including those of the US and others now tied to covering for the KLA) and documents to convict Appellant.

40. In addition to relying upon NATO witnesses to ascertain that Sreten Lukic had a commanding role in the Serbian MUP over ALL police units in Kosovo³⁰ the Judgment also relied on NATO witnesses as critical witnesses in terms of reaching other conclusions central to the conclusions on the existence of a JCE and the individually criminal liability of the Appellant as per that JCE. By way of example, some of the key NATO witnesses relied upon by the Trial Chamber included, but were not limited to:

a) Col. Richard Ciaglinski (*British, NATO and KVM intelligence officer*)

- Paragraph I/985 (Denial of cooperation between KLA and NATO)
- Paragraph I/402 (KVM Left because of Security Situation)
- Paragraph III/39 (Large pile of Albanian ID documents burning outside the MUP headquarters in Pristina)

b) Gen. Klaus Naumann (*NATO Chairman*)

- Paragraph I/940 (FRY forces not withdrawing in accord with October Agreements)
- Paragraph I/963 (Disproportionate use of force by Serbian/FRY forces)
- Paragraph I/973 (Neither NATO nor KVM could control KLA)
- Paragraph I/983 (MUP had 500 extra policemen, violating Agreement; 10 distinct violations of the October Agreements)
- Paragraph I/1206 (“Heavy handed” response of State to KLA provocations)
- Paragraph II/1009 (Trial Chamber relying on Naumann to determine the general situation in Kacanik Municipality)
- Paragraph III/449 (Violations of Peace Agreements by VJ and MUP)

³⁰ see, e.g Judgment, Book III, Sec. H(5)(b) “Lukic’s Interaction with International Observers” (pages 420-423)

- Paragraph III/1069 (MUP violated peace agreements – also 500 more policeman in Kosovo than permitted)

c) Col. John Crosland (*British, NATO officer, KDOM diplomat*)

- Paragraph I/734 (JSO carried out some operations in PJP uniforms)
- Paragraph I/822 (Only 400 KLA fighters in 1998)
- Paragraph I/848 (Critical to OTP's Description of Actions of VJ/MUP)
- Paragraph I/862 (Junik "razed" by State forces)
- Paragraph I/865 ("Heavy handed" PJP and JSO patrols)
- Paragraph I/878 (Prilep "bulldozed flat" by State forces)
- Paragraph I/881 (Trial Chamber satisfied based on Crosland testimony that FRY and Serbian forces violated IHL)
- Paragraph I/882 (Wanton destruction by State forces)
- Paragraph I/883 (Heavy handed force and Malisevo "razed")
- Paragraph I/886 (Trial Chamber convinced by Crosland testimony as to excessive force by VJ/MUP)
- Paragraph I/892 (Villages wantonly destroyed; MUP celebrating "glorious victory")
- Paragraph I/895 (KLA lacked equipment to respond to attacks in Suva Reka)
- Paragraph I/896 and II/474 ("Heavy" VJ and MUP presence in Suva Reka)
- Paragraph I/915 (Displacement of civilians from Drenica³¹ caused by Serbian/FRY forces)
- Paragraph II/51 (Decani an area over with State forces wanted to maintain control)
- Paragraph II/103 (Paramilitaries present in Djakovica)

d) Shaun Byrnes (*US KDOM official, and diplomat*)

- Paragraph I/360 (No US promises to KLA)
- Paragraph III/1082 (PJP and other police units daily burning villages, killing animals, intimidating Kosovo Albanians, driving them from their homes; Byrnes brought this information to the attention of Lukic; Defense submission of a fierce firefight between KLA and forces immediately prior dismissed.)

³¹ It should be noted in this regard that the "Drenica Group" that figures so prominently in the Marty Report's information on KLA criminal activity, hails from this same "Drenica" region.

e) Gen. Karol John Drewienkiewicz (*British, NATO, and KVM officer*)

- Paragraph I/881 (Trial Chamber is convinced based on his testimony that MUP and VJ violated IHL)
- Paragraph I/813 (KLA initially respected October Peace Agreements)
- Paragraph I/822 (KLA numbered only several hundred fighters)
- Paragraph I/880 (Houses intentionally fired upon by Serbian/FRY forces)
- Paragraph I/952 (KVM access blocked by Serbian MUP Road-Blocks)
- Paragraph II/1010 (Trial Chamber relies on his testimony for general situation in Kacanik Municipality; His testimony more reliable than that of Kotur)
- Paragraph III/447 (Authorities advised of mistreatment by MUP of Albanians in Malisevo)
- Paragraph III/515 (State forces were acting to provoke the KLA)
- Paragraph III/567 (Widespread crimes of MUP/VJ including deportations)
- Paragraph III/754 (Looting of Homes by VJ/MUP)
- Paragraph III/853 (Deportations from Pec done by Serbs in an organized manner)
- Paragraph III/855 (VJ and MUP responsible for deportations of Albanians)

f) Col. Michael Phillips (*US, NATO officer*)

- Paragraph III/1047 (Sreten Lukic informed that actions of forces were disproportionate)
- Paragraph I/944 (Sainovic and Lukic informed of concerns that "heavy handed" tactics being used; Their response that only were responding to KLA attacks dismissed)
- Paragraph I/948 (Serb authorities failed to live up to their undertakings)
- Paragraph I/951 (MUP never gave baseline figures to the KVM for forces)

40. 6DA1 now reveals that NATO and NATO nations concealed evidence of KLA crimes in order to impose stability and insofar as they were looking to the future when they had to work with the same persons from the KLA. As a result, the testimony of these same witnesses becomes suspect, as they had an incentive to minimize KLA crimes and testify untruthfully about Appellant and others, in an effort to pass blame for KLA actions

onto them. The extent to which the Trial Chamber relied upon witnesses with a link to NATO or diplomats of the NATO countries (demonstrated above) means that the Trial Judgment is cast into serious doubt and the verdict rendered unsafe. This is due to the significant probability (arising from the Marty Report) that said witnesses were acting under the auspices of the policy detailed therein on the part of NATO and NATO countries, to conceal the crimes and heinous conduct of the KLA, for the short term goal of providing stability and due to their need to continue their cooperation with the KLA.

VI. CONCLUSIONS AND RELIEF REQUESTED

41. The documents that Appellant seeks to admit could have been a decisive factor in the Trial Judgment had they been available and considered by the trial chamber. The proposed documents which the Appellant seeks to admit are both relevant to material issues and credible, and their impact is such that they could demonstrate that the conviction is unsafe.

Wherefore, for the foregoing reasons, Sreten Lukic hereby respectfully requests this Appeals Chamber to GRANT this Motion and to admit these documents as evidence in the Appeal, pursuant to Rule 115 of the Rules of Procedure and Evidence, and thus consider this evidence alongside his filed Appeal.

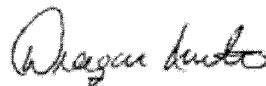
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RESPECTFULLY SUBMITTED

On the 15th of February 2011



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**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case No: IT-05-87-A

IN THE APPEALS CHAMBER

THE PROSECUTOR

V.

**NIKOLA SAINOVIC
DRAGOLJUB OJDANIC
NEBOJSA PAVKOVIC
VLADIMIR LAZAREVIC
SRETEN LUKIC**

PUBLIC

Annex A

6DA1

Doc. 12462

7 January 2011

Inhuman treatment of people and illicit trafficking in human organs in Kosovo¹

Report²

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Dick MARTY, Switzerland, Alliance of Liberals and Democrats for Europe

Summary

According to the information gathered, numerous concrete and convergent indications confirm that some Serbians and some Albanian Kosovars were held prisoner in secret places of detention under KLA control in northern Albania and were subjected to inhuman and degrading treatment, before ultimately disappearing. Numerous indications seem to confirm that, during the period immediately after the end of the armed conflict, before international forces had been able to take control of the region and re-establish law and order, organs were removed from some prisoners at a clinic on Albanian territory, near Fushë-Krujë, to be taken abroad for transplantation. Although some concrete evidence of such trafficking already existed at the beginning of the decade, the international authorities in charge of the region did not consider it necessary to conduct a detailed examination of these circumstances, or did so incompletely and superficially.

The international organisations in place in Kosovo favoured a pragmatic political approach, taking the view that they needed to promote short-term stability at any price, thereby sacrificing some important principles of justice. Insufficient investigation has been carried out into the connection of KLA members with war crimes committed against Serbians and Albanian Kosovars. The team of international prosecutors and investigators within EULEX which is responsible for investigating allegations of inhuman treatment, including those relating to possible organ trafficking, has made progress, particularly in respect of proving the existence of secret KLA places of detention in northern Albania where inhuman treatment and even murders are said to have been committed.

We must fight uncompromisingly against impunity for the perpetrators of serious human rights violations. The fact that these were committed in the context of a violent conflict could never justify a decision to refrain from prosecuting anyone who has committed such acts. There cannot and must not be one justice for the winners and another for the losers.

The member states of the European Union and the other contributing states should set EULEX a clear objective and give it the necessary political support to combat organised crime uncompromisingly, to ensure that justice is done, without any considerations of political expediency; Albania and the Kosovo administration should co-operate unreservedly with ongoing and future investigations.

A. Draft resolution³

1. The Parliamentary Assembly was extremely concerned to learn of the revelations by the former Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY), who alleged that serious crimes had been committed during the conflict in Kosovo, including trafficking in human organs, crimes which had hitherto gone unpunished and had not been the subject of any serious investigation.

2. In addition, according to the former Chief Prosecutor, these acts had been committed by members of the "Kosovo Liberation Army" (KLA) militia against Serbian nationals who had remained in Kosovo at the end of the armed conflict and been taken prisoner.
3. According to the information gathered by the Assembly and to the criminal investigations now under way, numerous concrete and convergent indications confirm that some Serbians and some Albanian Kosovars were held prisoner in secret places of detention under KLA control in northern Albania and were subjected to inhuman and degrading treatment, before ultimately disappearing.
4. Numerous indications seem to confirm that, during the period immediately after the end of the armed conflict, before international forces had really been able to take control of the region and re-establish a semblance of law and order, organs were removed from some prisoners at a clinic on Albanian territory, near Fushë-Krujë, to be taken abroad for transplantation.
5. This criminal activity, which developed with the benefit of the chaos prevailing in the region, at the initiative of certain KLA militia leaders linked to organised crime, has continued, albeit in other forms, until today, as demonstrated by an investigation being carried out by the European Union Rule of Law Mission in Kosovo (EULEX) relating to the Medicus clinic in Pristina.
6. Although some concrete evidence of such trafficking already existed at the beginning of the decade, the international authorities in charge of the region did not consider it necessary to conduct a detailed examination of these circumstances, or did so incompletely and superficially.
7. Particularly during the first years of their presence in Kosovo, the international organisations responsible for security and the rule of law (KFOR and UNMIK) had to cope with major structural problems and serious shortages of staff with the skills to take on the tasks they were entrusted with, all this being aggravated by rapid and constant staff rotation.
8. The ICTY, which had started to conduct an initial examination on the spot to establish the existence of traces of possible organ trafficking, dropped the investigation. The elements of proof taken in Rripe, in Albania, have been destroyed and cannot therefore be used for more detailed analyses. No subsequent investigation has been carried out into a case nevertheless considered sufficiently serious by the former ICTY Prosecutor for her to see the need to bring it to public attention through her book.
9. During the decisive phase of the armed conflict, NATO took action in the form of air strikes, while land operations were conducted by the KLA, *de facto* allies of the international forces. Following the departure of the Serbian authorities, the international bodies responsible for security in Kosovo very much relied on the political forces in power in Kosovo, most of them former KLA leaders.
10. The international organisations in place in Kosovo favoured a pragmatic political approach, taking the view that they needed to promote short-term stability at any price, thereby sacrificing some important principles of justice. For a long time little was done to follow up evidence implicating KLA members in crimes against the Serbian population and against certain Albanian Kosovars. Immediately after the conflict ended, in effect when the KLA had virtually exclusive control on the ground, many scores were settled between different factions and against those considered, without any kind of trial, to be traitors because they were suspected of having collaborated with the Serbian authorities previously in place.
11. EULEX, which took over certain functions in the justice sector previously fulfilled by United Nations structures (UNMIK) at the end of 2008, inherited a difficult and sensitive situation, particularly in the sphere of combating serious crime: incomplete records, lost documents, uncollected witness testimony. Consequently, a large number of crimes may well continue to go unpunished. Little or no detailed investigation has been carried out into organised crime and its connections with representatives of political institutions or in respect of war crimes committed against Serbians and Albanian Kosovars regarded as collaborators or as rivals of the dominant factions. This last-named subject is still truly taboo in Kosovo today, although everybody talks about it in private, very cautiously. EULEX seems very recently to have made some progress in this field, and it is very much to be hoped that political considerations will not impede this commitment.
12. The team of international prosecutors and investigators within EULEX which is responsible for investigating allegations of inhuman treatment, including those relating to possible organ trafficking, has made progress, particularly in respect of proving the existence of secret KLA places of detention in northern Albania where inhuman treatment and even murders are said to have been committed. The investigation does not, however, benefit from the desirable co-operation of the Albanian authorities.

13. The appalling crimes committed by Serbian forces, which stirred up very strong feelings worldwide, gave rise to a mood also reflected in the attitude of certain international agencies, based on the assumption that it was invariably one side which were the perpetrators of crimes and the other side the victims, thus necessarily innocent. The reality is less clear-cut and more complex.

14. The Assembly strongly reaffirms the need for an absolutely uncompromising fight against impunity for the perpetrators of serious human rights violations, and wishes to point out that the fact that these were committed in the context of a violent conflict could never justify a decision to refrain from prosecuting anyone who has committed such acts (see [Resolution 1675](#) (2009)).

15. There cannot and must not be one justice for the winners and another for the losers. Whenever a conflict has occurred, all criminals must be prosecuted and held responsible for their illegal acts, whichever side they belonged to and irrespective of their political role.

16. The question which, from the humanitarian viewpoint, remains the most acute and sensitive is that of missing persons. Of more than 6 000 disappearances on which the International Committee of the Red Cross has opened files, approximately 1 400 individuals have been found alive and 2 500 corpses have been found and identified. For the most part, these were Albanian Kosovar victims found in mass graves in regions under Serbian control and in Kosovo.

17. Co-operation between international agencies on the one hand and the Kosovar and Albanian authorities on the other to find out the fate of the missing persons is still clearly insufficient. Whereas Serbia ultimately co-operated, it has proved far more complicated to carry out excavations on the territory of Kosovo, and has been impossible, at least so far, on Albanian territory. Co-operation by the Kosovar authorities is particularly lacking in respect of the search for the almost 500 persons who officially disappeared after the end of the conflict.

18. The working group on missing persons, chaired by the International Committee of the Red Cross and the EULEX Office on Missing Persons, needs the full and wholehearted support of the international community in order for the reluctance on both sides to be overcome. Knowing the truth and enabling victims' families to mourn at last is a vital precondition for reconciliation between the communities and a peaceful future in this region of the Balkans.

19. The Assembly therefore invites:

19.1. the member states of the European Union and the other contributing states to:

19.1.1. allocate to EULEX the resources that it needs, in terms of logistics and highly skilled staff, to deal with the extraordinarily complex and important role entrusted to it;

19.1.2. set EULEX a clear objective and give it political support at the highest level to combat organised crime uncompromisingly, and to ensure that justice is done, without any considerations of political expediency;

19.1.3. commit all the resources needed to set up effective witness protection programmes;

19.2. EULEX to:

19.2.1. persevere with its investigative work, without taking any account of the offices held by possible suspects or of the origin of the victims, doing everything it can to cast light on the criminal disappearances, the indications of organ trafficking, corruption and the collusion so often complained of between organised criminal groups and political circles;

19.2.2. take every measure necessary to ensure effective protection for witnesses and gain their trust;

19.3. the ICTY to co-operate fully with EULEX, particularly by making available to it the information and elements of proof in its possession likely to help EULEX to prosecute those responsible for crimes within its jurisdiction;

19.4. the Serbian authorities to:

19.4.1. make every effort to capture the persons still wanted by the ICTY for war crimes, particularly General Ratko Mladic and Goran Hadzic, whose impunity still constitutes a serious

obstacle to the process of reconciliation and is often referred to by the authorities of other countries to justify their lack of enthusiasm about taking judicial action themselves;

19.4.2. co-operate closely with EULEX, particularly by passing on any information which may help to clear up crimes committed during and after the conflict in Kosovo;

19.4.3. take the necessary measures to prevent leaks to the press of information about investigations concerning Kosovo, leaks which are prejudicial to co-operation with other authorities and to the credibility of the investigative work;

19.5. the Albanian authorities and the Kosovo administration to:

19.5.1. co-operate unreservedly with EULEX and the Serbian authorities in the framework of procedures intended to find out the truth about crimes committed in Kosovo, irrespective of the known or assumed origin of the suspects and the victims;

19.5.2. in particular, take action on the requests for judicial assistance made by EULEX concerning criminal acts alleged to have occurred in a KLA camp in northern Albania;

19.5.3. start a serious and independent investigation in order to find out the whole truth about the allegations, sometimes concrete and specific, of the existence of secret detention centres where inhuman treatment was purportedly inflicted on prisoners from Kosovo, of Serbian or Albanian origin, during and immediately after the conflict; the investigation must also be extended to a verification of the equally specific allegations about organ trafficking said to have taken place during the same period, some of it on Albanian territory;

19.6. all the Council of Europe member and observer states concerned to:

19.6.1. respond without undue delay to the requests for judicial co-operation addressed to them by EULEX and by the Serbian authorities in the framework of their current investigations concerning war crimes and organ trafficking; the delayed response to these requests is incomprehensible and intolerable in view of the importance and urgency of international co-operation to deal with such serious and dangerous crime problems;

19.6.2. co-operate with EULEX in its efforts to protect witnesses, especially when the persons concerned can no longer continue to live in the region and must therefore adopt a new identity and find a new country of residence.

20. The Assembly, aware that trafficking of human organs is now an extremely serious problem worldwide, manifestly contravening the most basic standards in terms of human rights and dignity, welcomes and concurs with the conclusions of the joint study published in 2009 by the Council of Europe and the United Nations. It agrees, in particular, with the conclusion that it is necessary to draft an international legal instrument which lays down definitions of human organ, tissue and cell trafficking and stipulates the action to be taken in order to prevent such trafficking and to protect its victims, as well as criminal law measures to prosecute the perpetrators.

B. Explanatory memorandum by Mr Marty, rapporteur

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1. Introductory remarks – an overview

1. In April 2008, Ms Carla Del Ponte, the former Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY), published a set of memoirs, co-authored with Chuck Sudetic, on her experiences within the Tribunal. The book was initially published in Italian (*"La caccia – Io e i criminali di guerra"*), then in translation, notably in French (*"La traque, les criminels de guerre et moi"*). In the book, almost ten years after the end of the war in Kosovo, there appeared revelations of trafficking in human organs taken from Serb prisoners, reportedly carried out by leading commanders of the Kosovo Liberation Army (KLA). These claims were surprising in several respects and have provoked a host of strong reactions. They were surprising, in the first place, because they emanated from someone who exercised the highest official responsibilities, at the very heart of the judicial system tasked with prosecuting the crimes committed during the conflicts that ravaged the former Yugoslavia. Furthermore, and above all, they were surprising because they revealed an apparent absence of official follow-up in respect of allegations that were nevertheless deemed serious enough to warrant inclusion in the memoirs of the former Chief Prosecutor who could hardly have been unaware of the grave and far-reaching nature of the allegations she had decided to make public.

2. Having before it a motion for a resolution ([Doc. 11574](#)) which asked for a thorough investigation into the acts mentioned by Ms Del Ponte and their consequences, in order to ascertain their veracity, deliver justice to the victims and apprehend the culprits of the crimes, the Committee on Legal Affairs and Human Rights appointed me as rapporteur and accordingly instructed me to draw up a report.

3. The extraordinary challenges of this assignment were immediately clear. The acts alleged – by a former prosecutor of international standing, let us remember – purportedly took place a decade ago and were not properly investigated by any of the national and international authorities with jurisdiction over the territories concerned. All the indications are that efforts to establish the facts and punish the attendant war crimes had primarily been concentrated in one direction, based on an implicit presumption that one side were the victims and the other side were the perpetrators. As we shall see, the reality seems to have been more complex. The structure of Kosovar Albanian society, still very much clan-orientated, and the absence of a true civil society have made it extremely difficult to set up contacts with local sources. This is compounded by fear, often to the point of genuine terror, which we have observed in some of our informants as soon as the subject of our inquiry was broached. Even certain representatives of international institutions did not conceal their reluctance to grapple with these facts: "The past is the past", we were told; "we must now look to the future". The Albanian authorities intimated that their territory had not been affected by the conflict and that they had no reason to open an inquiry. The Serbian authorities did react, albeit rather belatedly, but so far without having achieved any significant results. For its part, the ICTY carried out an exploratory mission to the site of the notorious

"Yellow House", though proceeding in a fairly superficial way and with a standard of professionalism that prompts some bewilderment. In addition, the ICTY's mandate was restricted to a clearly defined timeframe and territory: the ICTY was enjoined to try those suspected of crimes committed only up to June 1999, marking the end of the Kosovo conflict, and its jurisdiction does not extend to Albania, except in instances where Albania expressly authorises investigations to take place on its territory.

4. The acts with which we are presently concerned are alleged to have occurred for the most part from the summer of 1999 onwards, against a background of great confusion throughout the region. The Serbian security forces had abandoned Kosovo, and the troops of KFOR (NATO's international Kosovo Stabilisation Force) were making a rather slow start in establishing themselves; while tens of thousands of Kosovar Albanian refugees were first trying to reach Albania and then to return home, with ethnic Serbs in turn seeking refuge in the territories controlled by the Serbian Army. It was chaos: there was no functioning administration on the part of the Kosovars, and KFOR took quite some time to gain control of the situation, evidently not possessing the know-how needed to cope with such extreme situations. The NATO intervention had essentially taken the form of an aerial campaign, with bombing in Kosovo and in Serbia – operations thought by some to have infringed international law, as they were not authorised by the United Nations Security Council – while on the ground NATO's *de facto* ally was the KLA. Thus, during the critical period that is the focus of our inquiry, the KLA had effective control over an expansive territorial area, encompassing Kosovo as well as some of the border regions in the North of Albania. KLA control should not be understood as a structured exercise of power, and it was certainly far from assuming the contours of a state. It was in the course of this critical period that numerous crimes were committed both against Serbs who had stayed in the region and against Kosovar Albanians suspected of having been "traitors" or "collaborators", or who fell victim to internal rivalries within the KLA. These crimes have largely gone unpunished and it is only years later that a rather diffident start has been made to deal with them.

5. During this chaotic phase, the border between Kosovo and Albania effectively ceased to exist. There was no form of control in effect, and it would hardly have been possible to enforce rules anyway, considering the heavy flow of refugees towards Albania and their return in similar numbers after the end of the hostilities. During a field mission on behalf of the Swiss Parliament in 1999, I was able to witness for myself the scale of this phenomenon; I noted above all the singular solidarity shown by the Albanian population and authorities in receiving the Kosovar refugees. It was in this context that KLA militia factions moved freely on either side of the border, which, as pointed out, had by then become little more than a token dividing line. So it is clear that the KLA held effective control in the region during that critical period, both in Kosovo and in the northern part of Albania near the border. The international forces co-operated with the KLA as the local authority in military operations and the restoration of order. It was as a result of this situation that certain crimes committed by members of the KLA, including some top KLA leaders, were effectively concealed and have remained unpunished.

6. The crimes committed by the Serb forces have been documented, denounced and, to the extent possible, tried in courts of law. The frightful nature of these crimes hardly needs to be further illustrated. They stemmed from a wicked policy ordered by Milosevic over a lengthy period, including at times when he was simultaneously being accorded full diplomatic honours in the capitals of many democratic states. These crimes claimed tens of thousands of victims and disrupted a whole region of our continent. In the Kosovo conflict, the ethnic Albanian population suffered horrendous violence as the result of an insane ethnic cleansing policy on the part of the dictator then in power in Belgrade. None of these historical events could be cast in doubt today. However, what emerged in parallel was a climate and a tendency to view these events and acts through a lens that depicted everything as rather too clear-cut: on one side the Serbs, who were seen as the evil oppressors, and on the other side the Kosovar Albanians, who were seen as the innocent victims. In the horror and perpetration of crimes there can be no principle of compensation. The basic essence of justice demands that everyone be treated in the same way. Moreover, the duty to find the truth and administer justice must be discharged in order for genuine peace to be restored, and for the different communities to be reconciled and begin living and working together.

7. Yet in the case of Kosovo, the prevailing logic appears to have been rather short-sighted: restore a semblance of order as quickly as possible, while avoiding anything that might be liable to destabilise a region still in a state of very fragile equilibrium. The result has been a form of justice that can only be defined as selective, with impunity attaching to many of the crimes that appear, based on credible indications, to have been directly or indirectly the work of top KLA leaders. The Western countries that engaged themselves in Kosovo had refrained from a direct intervention on the ground, preferring recourse to air strikes, and had thus taken on the KLA as their indispensable ally for ground operations. The international actors chose to turn a blind eye to the war crimes of the KLA, placing a premium instead on achieving some degree of short-term stability. In effect, the new Kosovo has been built on the existing structures of the Kosovar Albanian homeland movement. It follows that the successive international administrations put in place, as well as the United States Government, which is generally regarded as playing an important role in the affairs of the new Kosovo,⁴ have had to maintain good relations with their *de facto* allies on the ground, as the latter have become the new masters of the local political scene. This situation, as we emphasised above, has ultimately foiled the prospect of our getting to the bottom of the crimes committed, at least in cases where there is every indication that they were the misdeeds of persons in positions of power or close to those in power. An added problem is that the resources of the international administration under UNMIK were insufficient, both in quantity and in quality, for the task of prosecuting the crimes committed in an effective and impartial manner. The posting of most international staff to UNMIK on limited-term contracts, and the resultant perpetual rotation, was a major hindrance to the administration of justice.

International officials told us that it had been impossible to maintain confidentiality of their sources – an element considered essential to the success of a criminal investigation – in particular because of their reliance on local interpreters who would often pass on information to the persons being investigated. As a result, the European Union Rule of Law Mission in Kosovo (EULEX) has had to bring in interpreters from other countries in order to conduct its most sensitive inquiries securely. The same sources told us that the approach of the international community could be aptly encapsulated in the notion of “stability and peace at any cost”. Obviously such an approach implied not falling out with the local actors in power.

8. The EULEX mission, operational since the end of 2008, thus inherited an extremely difficult situation. Numerous files on war crimes, notably those in which KLA combatants were listed as suspects, were turned over by UNMIK in a deplorable condition (mislaidd evidence and witness statements, long time lapses in following up on incomplete investigative steps), to the extent that EULEX officials stated their fears in quite explicit terms during our fact-finding visits that many files would simply have to be abandoned.⁵ Some of our contacts representing Kosovo’s nascent civil society did not hold back in criticising EULEX itself: it had been widely expected that EULEX would at last go after the “untouchables”, whose more than murky past was common knowledge. Yet these expectations were in vain: there had been many announcements and promises, but the tangible results remained to be seen. The case of Nazim Bllaca, the “whistle-blower” who publicly admitted to having carried out murders upon the orders of some of today’s high-ranking politicians, is emblematic. Four days elapsed before the man was arrested and placed under protection. The way in which EULEX deals with his case will be an important test of how far it is prepared to go in pursuing its mission to promote justice.

9. One must nevertheless commend the remarkable dedication of many EULEX staff – at the time of writing, some 1 600 international executives and 1 100 local employees – and their determination to confront the extraordinary challenge handed to them. Their efforts are beginning to yield tangible results, notably with regard to the cases of the detention camp at Kukës and the Medicus Clinic in Pristina. Yet it is imperative that EULEX is given more explicit and more resolute support from the highest levels of European politics. There can be no lingering ambiguity as to the need to pursue all those suspected of crimes, even in cases where the suspects hold important institutional and political positions. Similarly, EULEX must urgently be given access to the complete sets of records compiled by international agencies that previously operated in Kosovo, including KFOR files that have since been returned to the troop-contributing countries,⁶ and files compiled by the ICTY.⁷ According to the key practitioners working on the ground, there ought to be a common, unified database comprising the archives of all the international actors, readily accessible to EULEX investigators. One is left to wonder what might possibly be the reasons put forward for failing to fulfil such a basic demand.

10. The Kosovo Police, multiethnic in its make-up, is professionally trained, well equipped and apparently effective in fighting petty crime or less serious forms of criminality. With over 7 200 uniformed officers and more than 1 100 support staff, the Kosovo Police comprises representatives of 13 ethnic groups, including 10% of ethnic Serbs. According to recent surveys, it is second only to KFOR among all the institutions in Kosovo in the high levels of public trust it enjoys. Senior international officials have also confirmed that the police are “decent”, whereas the judges are “problematic” – in the sense of being subject to intimidation, under political influence, or corrupt. Assessments of the police nevertheless varied among the observers whom we met. The Kosovo Police still has to prove itself and to win the full confidence of its international partners, including its counterparts in the EULEX mission. We sensed lingering doubts among internationals as to whether or not all the leaders of the police force share the necessary political resolve to go after all forms of crime in the most robust fashion possible, especially where the police are called upon to combat organised crime, and/or crimes in which highly placed political figures are implicated, and notably in ensuring truly effective protection of witnesses, a very sensitive and vital tool in the prosecution of the most notorious and dangerous criminals.

11. Corruption and organised crime constitute a major problem in the region, as several international studies have shown. The problem is aggravated by the fact that criminality, corruption and politics are so closely intertwined. The massive presence of international staff does not appear to have made things any better, and indeed has given rise to some rather perverse anomalies; for example, a driver or a cleaner working for an international organisation or a foreign Embassy invariably earns appreciably more than a police officer or a judge, which is bound to upset the scales of societal values.

12. The most pressing priority from a humanitarian perspective is to account for the fate of missing persons in relation to the Kosovo conflict. The number of disappearances is extremely high when one considers the modest size of Kosovo’s population. Out of a total of 6 005 cases of missing persons opened by the International Committee of the Red Cross (ICRC), some 1 400 persons have been found alive and it has been possible to discover and identify 2 500 bodies. Most of the deceased victims were identified as Kosovar Albanians, half of whom were exhumed from mass graves discovered on Serbian territory and the other half in Kosovo. In addition, there are 1 869 missing persons who remain unaccounted for, about two thirds of whom are Kosovar Albanians. Some 470 missing persons disappeared after the arrival of KFOR troops on 12 June 1999, 95 of whom were Kosovar Albanians and 375 non-Albanians, mainly Serbs.⁸

13. In assessing these disappearances, it should be noted that many Kosovar Albanian families who lost a relative after 12 June 1999 reportedly declared an earlier date of disappearance, before this “cut-off date”, out of fear that their

loved ones might be deemed to have been "traitors" to the cause, punished by the KLA. It is significant that Kosovo's law on compensation for the families of "martyrs" expressly excludes persons who died after the arrival of KFOR. As to the law on compensation for the families of missing persons, which is still under discussion, the stated position of the Kosovo authorities is that the law should cover only those disappearances that occurred after 1 January 1999 and before 12 June 1999. This position serves to demonstrate just how sensitive the matter of the missing Kosovar Albanians remains to the present day. According to several of our informants, the matter is still considered utterly taboo and continues to form a serious impediment to the discovery of the truth. The hunt for "traitors" has often overshadowed the bloody feuding between factions of the KLA, and served to cover up the crimes committed by KLA members and affiliates.

14. The current Office for Missing Persons and Forensics⁹ has cited great difficulties in working with the often poor-quality documentation handed down by its predecessors;¹⁰ it also apparently has trouble motivating and retaining its staff, who are said to be underpaid considering the qualifications required. Efforts to determine the fate of missing persons have also suffered from a clear deficit in co-operation between the various international agencies and the Kosovo authorities, not to mention with the competent authorities of Albania. While Serbia did co-operate, albeit not without initial misgivings, in efforts to excavate suspected mass graves in its territory, such investigative steps have proved far more complicated in the territory of Kosovo,¹¹ and up to now have been impossible on the territory of Albania.¹² The co-operation of the Kosovo authorities has been especially lacking in relation to the 470 cases of disappearances that officially occurred after the end of the conflict.¹³ The lack of co-operation by the authorities of Kosovo and Albania in determining the fate of the missing Serbs, and even Kosovar Albanians thought to have fallen victim to crimes committed by members of the KLA, raises grave doubts about the current level of political will to establish the whole truth concerning these events.

15. The Working Group on Missing Persons chaired by the ICRC needs the wholehearted support of the international community to overcome the reluctance that exists on all sides. Such support should be offered not least in the interests of the missing persons' surviving relatives, whose anguish continues to form a significant obstacle to reconciliation.

16. We have already recalled the manner in which the allegations of organ trafficking were made public, assumed international dimensions, and prompted the Parliamentary Assembly to call for the preparation of this report. There was extensive discussion around the so-called "Yellow House" located in Rripe, near Burrel, in central Albania – to the point where this house appeared to have monopolised the public's attention. However, upon reflection, the house was merely one element among many in a far larger and more complex episode. It is true that the whole story seems to have begun with the revelations about the "Yellow House". In February 2004, an exploratory visit to the site was organised jointly by the ICTY and UNMIK, with the participation of a journalist. This visit cannot in fact be regarded as a proper forensic examination according to all the technical rules. Participants in the visit whom we interviewed explicitly condemned a certain lack of professionalism, particularly regarding the taking of samples and the recording of scientific observations. Nonetheless, the demeanour of some members of the K. family, who inhabit the house, raised a number of questions, notably about the differing and contradictory explanations they offered, one after the other, as to the presence of bloodstains (detected by use of Luminol) in the vicinity of a table in the main room. The family patriarch stated originally that farm animals had been slaughtered and cut up there. Another explanation given was that one of the women in the household had given birth to one of her children in the same place.

17. Neither the ICTY nor UNMIK, nor indeed the Albanian Public Prosecutor's Office, followed up this visit by conducting more thorough inquiries. Moreover, the Albanian investigator who took part in this site visit hastened to assert publicly that no leads of any kind had been found. The physical samples collected at the scene were subsequently destroyed by the ICTY, after being photographed, as the current Chief Prosecutor of the ICTY confirmed to me in a letter.¹⁴ We must permit ourselves to express astonishment that such a step was taken.

18. Nor did the team of the Special Prosecutor for War Crimes in Belgrade come up with very concrete results in this matter, notwithstanding their considerable efforts. The media whirlwind that surrounded the inquiry certainly did nothing to enhance its effectiveness. We thank the special prosecutor for his co-operation and readiness to assist.

19. The teams of international prosecutors and investigators in the EULEX mission charged with investigating the allegations of inhuman treatment, including those relating to possible instances of organ trafficking, have made some progress, notably towards proving the existence of secret KLA detention facilities in northern Albania, where murders are also alleged to have been committed. However, EULEX's inquiries have so far been hampered by a lack of co-operation on the part of the Albanian authorities, who have failed to respond to the specific, detailed requests for judicial assistance submitted to them. At the time of writing, EULEX has still not had access to the complete set of records compiled by the ICTY in this area of investigation.

20. A further investigation, also carried out by EULEX, into the case of the Medicus Clinic in Pristina, has been made similarly difficult by the delays on the part of the authorities of several Council of Europe member and observer countries in responding to EULEX requests for legal assistance.¹⁵ Considering the gravity of the acts alleged – trafficking in human organs, no less – such delays are incomprehensible and unconscionable. It should be recalled that the initial investigation had led to several arrests of suspects in November 2008. Arrest warrants have since been issued in respect

of other suspects currently at large.¹⁶ This investigation serves as further proof of the existence in the region of criminal structures and networks, in which medical practitioners are also implicated, operating in the region as part of an international traffic in human organs, notwithstanding the presence of international forces. We believe that there are sufficiently serious and substantial indications to demonstrate that that this form of trafficking long pre-dates the Medicus case, and that certain KLA leaders and affiliates have been implicated in it previously. Certainly the indications are too strong to countenance any failure, at long last, to conduct a serious, independent and thorough inquiry.

21. We have learned at first hand how very difficult it is to reconstruct events in Kosovo during the troubled and chaotic period of 1999-2000. With the exception of a few EULEX investigators, there has been and remains a lack of resolve to ascertain the truth of what happened during that period, and assign responsibilities accordingly. The raft of evidence that exists against certain top KLA leaders appears largely to account for this reluctance. There were witnesses to the events who were eliminated, and others too terrified by the mere fact of being questioned on these events. Such witnesses have no confidence whatsoever in the protective measures that they might be granted. We ourselves had to take meticulous precautions in respect of certain interlocutors to assure them of the strictest anonymity. We nevertheless found them trustworthy and were able to establish that their statements were confirmed by objectively verifiable facts. Our aim was not, however, to conduct a criminal investigation. But we can claim to have gathered evidence compelling enough to demand forcefully that the international bodies and the states concerned finally take every step to ensure that the truth is ascertained and the culprits clearly identified and called to account for their acts. The signs of collusion between the criminal class and high political and institutional office bearers are too numerous and too serious to be ignored. It is a fundamental right of Kosovo's citizens to know the truth, the whole truth, and also an indispensable condition for reconciliation between the communities and the country's prosperous future.

22. Before going into further detail regarding our investigations, I should like to express my appreciation to all those who helped me in carrying out this difficult and delicate assignment. First and foremost, I thank the committee secretariat, assisted by an outside expert, as well as the authorities of the states we visited, and the able, courageous investigative journalists who shared certain information with us. I also owe special gratitude to the persons who have trusted in our professionalism, not least in our earnest duty to protect their identities so as not to place them in any danger.

2. Introductory commentary on sources

23. In the course of our inquiry, we have obtained testimonial and documentary accounts from several dozen primary sources, notably including: combatants and affiliates of various armed factions that participated in the hostilities in Kosovo; direct victims of violent crimes committed in Kosovo and the surrounding territories; family members of missing or deceased persons; current and former representatives of international justice institutions with jurisdiction over the events in Kosovo [primarily the United Nations Mission in Kosovo (UNMIK), the European Union Rule of Law Mission (EULEX), and the International Criminal Tribunal for the former Yugoslavia (ICTY)]; representatives of national justice systems, including prosecutors with jurisdiction over events related to Kosovo [Office of the War Crimes Prosecutor in Belgrade; Office of the General Prosecutor in Tirana; prosecutors, police officers and state security officials in Pristina and in three surrounding states]; humanitarian agencies [including the International Committee of the Red Cross (ICRC)¹⁷ and the International Commission on Missing Persons (ICMP)]; and various members of civil society and human rights monitoring bodies who have investigated and reported on events related to Kosovo in the material period [including the Humanitarian Law Centre].

24. Naturally we have tried wherever possible to take these testimonies directly ourselves, either through on-the-record meetings or through confidential interviews, in the course of visiting Pristina, Tirana, Belgrade and other parts of the Balkan region. However, for a variety of reasons – including their “disappearance”, for security reasons, their relocation overseas, and the constraints of our official programme of meetings while on mission in the region – some of the sources who provided these testimonies have not been available to meet with us in person.

25. Moreover, we have faced the same obstacles when trying to obtain truthful testimony about the alleged crimes of Kosovar Albanians, as have other investigative bodies throughout the past decade. The entrenched sense of loyalty to one's clansmen, and the concept of honour that was perhaps best captured in expert reporting to the ICTY in its deliberations in the case of Limaj et al.,¹⁸ rendered most ethnic Albanian witnesses unreachable for us. Having seen two prominent prosecutions undertaken by the ICTY leading to the deaths of so many witnesses, and ultimately a failure to deliver justice,¹⁹ a Parliamentary Assembly rapporteur with only paltry resources in comparison was hardly likely to overturn the odds of such witnesses speaking to us directly.

26. Numerous persons who have worked for many years in Kosovo, and who have become among the most respected commentators on justice in the region, counselled us that organised criminal networks of Albanians (“the Albanian mafia”) in Albania itself, in neighbouring territories including Kosovo and “the former Yugoslav Republic of Macedonia”, and in the Diaspora, were probably more difficult to penetrate than the *Cosa Nostra*; even low-level operatives would rather take a prison sentence of several decades, or a conviction for contempt, than turn in their clansmen.

27. Thus, out of necessity and only where appropriate, we have relied on audio and video recordings of interviews with key sources conducted by others. In such instances, we have undertaken every possible step to establish the identity, authenticity and credibility of the sources for ourselves; we have compared their testimonies with information from separate, independent sources of which they could have had no knowledge; and we have gained first-hand insights from the interviewees into the circumstances and conditions in which the interviews were conducted.

28. The interviewees who conducted these interviews include representatives of law enforcement authorities in several different countries, academic researchers, and investigative journalists of recognised repute and credibility. We have always insisted on corroboration of testimony.

3. Detailed findings of our inquiry

3.1. The overall picture

29. The overall picture that emerges from our inquiry differs dramatically in several respects from the conventional portrayal of the Kosovo conflict. Indeed, while there was certainly an intensely fought battle for the destiny of the territory of Kosovo, there were very few instances in which opposing armed factions confronted one another on any kind of military frontlines.

30. The abhorrent abuses of the Serb military and police structures in trying to subjugate and ultimately to expel the ethnic Albanian population of Kosovo are well known and documented.

31. The evidence we have uncovered is perhaps most significant in that it often contradicts the much-touted image of the Kosovo Liberation Army as a guerrilla army that fought valiantly to defend the right of its people to inhabit the territory of Kosovo.

32. While there were undoubtedly numerous brave soldiers in the KLA ranks who were willing to go to the warfront in the face of considerable adversity, and if necessary die for the cause of an independent Kosovar Albanian motherland, these fighters were not necessarily in the majority.

33. From the testimony we have managed to amass, the policy and strategy of some KLA leaders were much more complex than a simple agenda to overpower their Serb oppressors.

34. On the one hand, the KLA leadership coveted recognition and support from foreign partners including, notably, the United States Government. Towards this end, the KLA's internationally well-connected "spokesmen" had to fulfil certain promises to their partners and sponsors, and/or adhere to particular terms of engagement that were the *de facto* conditions of their receiving support from overseas.

35. On the other hand, though, a number of the senior commanders of the KLA have reportedly not failed to profit from the war, including by securing material and personal benefits for themselves. They wanted to secure access to resources for themselves and their family/clan members, notably through positions of power in political office or in lucrative industries such as petroleum, construction and real estate. They wanted to avenge what they perceived as historical injustices perpetrated against the Albanian population in the former Yugoslavia. And many of them were seemingly bent on profiteering to the maximum of their potential while they had operational control of certain lawless territories (namely in parts of southern and western Kosovo), and leverage – especially in terms of financial resources – with which to negotiate footholds for themselves in other territories (for example in Albania).

36. The reality is that the most significant operational activities undertaken by members of the KLA – prior to, during, and in the immediate aftermath of the conflict – took place on the territory of Albania, where the Serb security forces were never deployed.

3.2. KLA factionalism and the nexus with organised crime

37. For more than two years after its initial emergence in 1996, the KLA was regarded as a marginal, loosely organised insurgency, whose attacks on the Yugoslav state were held by Western observers to amount to acts of "terrorism".

38. Our sources close to the KLA, along with the testimonies of captured KLA members gathered by Serb police, confirm that the main locations at which KLA recruits congregated and trained were in northern Albania.

39. It is well established that weapons and ammunition were smuggled into parts of Kosovo, often on horseback, through clandestine, mountainous routes from northern Albania. Serb police attributed these events to criminal raids on

the part of bandits who wanted to carry out terrorist acts against Serbian security forces. The Albanian Kosovars and Albanian citizens who were involved in the smuggling operations presented them as heroic acts of resistance in the face of Serb oppression.

40. The domestic strengthening of the KLA, in terms of its fighting capability as well as its credibility among the Kosovo Albanian population, seemed to play out, especially in the course of 1998, along the same trajectory as the escalating brutality of the Serb military and police.

41. Yet only in the second half of 1998, through explicit endorsements from Western powers, founded on lobbying from the United States, did the KLA secure its pre-eminence in international perception as the vanguard of the Kosovar Albanian liberation struggle.

42. This perceived pre-eminence was the KLA's most valuable, indispensable asset. It spurred the wealthiest donors in the Albanian Diaspora to channel significant funds to the KLA. It bestowed individual KLA representatives with an enhanced authority to speak and act on behalf of the Kosovar Albanians as a whole. And it cast the KLA's leading personalities as the most likely power brokers in the Kosovo that would emerge from the war.

43. Indeed, the perception of KLA pre-eminence – largely created by the Americans – was a self-fulfilling prophecy, the bedrock upon which the KLA achieved actual ascendancy over other Kosovar Albanian political forces with designs on power, such as Ibrahim Rugova's Democratic League of Kosovo (LDK) and Bujar Bukoshi's "Government-in-exile".

44. According to our insider sources, the KLA fought just as hard, and devoted arguably more of its resources and political capital, to maintain its advantage over its ethnic Albanian rival factions as it did to carry out co-ordinated military actions against the Serbs.

45. At the same time, it should be restated, for emphasis, that the KLA was not a single, unitary combatant faction in the manner of a conventional Army. There was no formally appointed overall leader, or "commander-in-chief", whose authority was universally recognised by the other commanders and whose orders were met with compliance among all the rank and file.

46. Rather, as the struggle over Kosovo's future governance evolved and a full-blown conflict approached, the KLA was divided by a deep-rooted internal factionalism.

47. Important sources of division included divergent political ambitions, as well as disparate notions of the acceptable parameters of violent resistance, on the part of the KLA's most prominent personalities and leadership contenders.

48. Thus there emerged in 1998 and 1999, and particularly in the wake of the death of the KLA's celebrated peasant commander Adem Jashari,²⁰ several different KLA "splinter groups".

49. Each of these splinter groups was led by one of the KLA's self-proclaimed founder members. Each group comprised a loyal core of recruits and supporters, often drawn from among a few closely affiliated clans or families, and/or concentrated in an identifiable geographical territory of Kosovo. Each group identified their own leader as the brightest hope to lead the KLA's fight against the Serbs, and by extension, to achieve self-determination for the Kosovar Albanian people, whilst co-operating with the other KLA commanders on the basis of expediency.

50. Evidently it is the composition and leadership of these KLA "splinter groups", along with the pre-existing popularity of the Democratic League of Kosovo, which carried over beyond the liberation struggle and have essentially shaped the post-conflict political landscape of Kosovo.²¹

51. Incumbency of the highest executive offices in Kosovo has been shared among former leading KLA commanders for the last decade and most electoral political campaigns have been contested on the basis of the candidates' respective contributions to the liberation struggle, as well as their ability to promote the interests of the Kosovar Albanian people on an ongoing basis against known and unknown adversaries.

52. The various KLA "splinter groups" have been found to have developed and maintained their own intelligence structures, among other forms of self-preservation. Through whatever means available to them, and clearly on the fringes of the legal and regulatory systems, the keenest purveyors of this *de facto* form of continued KLA warfare have conducted surveillance of, and often sought to sabotage, the activities of their opponents and those who might jeopardise their political or business interests.²²

53. Furthermore, we found²³ that the structures of KLA units had been shaped, to a significant degree, according to the hierarchies, allegiances and codes of honour that prevail among the ethnic Albanian clans, or extended families, and which form a *de facto* set of laws, known as the Kanun, in the regions of Kosovo from which their commanders originated.

54. Based on analytical information we received from several international monitoring missions, corroborated by our own sources in European law enforcement agencies and among former KLA fighters, we found that the main KLA units and their respective zones of operational command corresponded in an almost perfect mirror image to the structures that controlled the various forms of organised crime in the territories in which the KLA was active.

55. Put simply, establishing which circle of KLA commanders and affiliates was in charge of a particular region where the KLA operated in Kosovo, and indeed in certain parts of the Albania, was the key to understanding who was running the bulk of the particular trafficking or smuggling activity that flourished there.

56. Most pertinent to our research, we found that a small but inestimably powerful group of KLA personalities apparently wrested control of most of the illicit criminal enterprises in which Kosovar Albanians were involved in the Republic of Albania, beginning at the latest in 1998.

57. This group of prominent KLA personalities styled itself as the "Drenica Group", evoking connections with the Drenica Valley in Kosovo,²⁴ a traditional heartland of ethnic Albanian resistance to Serb oppression under Milosevic, and the birthplace of the KLA.

58. We found that the "Drenica Group" had as its chief – or, to use the terminology of organised crime networks, its "boss" – the renowned political operator and perhaps most internationally recognised personality of the KLA, Hashim Thaqi.²⁵

59. Thaqi can be seen to have spearheaded the KLA's rise to pre-eminence in the lead-up to the Rambouillet negotiations, both on the ground in Kosovo, and overseas. He also did much to foment the bitter internal factionalism that characterised the KLA throughout 1998 and 1999.

60. On the one hand, Thaqi undoubtedly owed his personal elevation to having secured political and diplomatic endorsement²⁶ from the United States and other Western powers, as the preferred domestic partner in their foreign policy project in Kosovo. This form of political support bestowed upon Thaqi, not least in his own mind, a sense of being "untouchable" and an unparalleled viability as Kosovo's post-war leader-in-waiting.

61. On the other hand, according to well-substantiated intelligence reports that we have examined thoroughly and corroborated through interviews in the course of our inquiry, Thaqi's "Drenica Group" built a formidable power base in the organised criminal enterprises that were flourishing in Kosovo and Albania at the time.

62. In this regard, Thaqi reportedly operated with support and complicity not only from Albania's formal governance structures, including the Socialist Government in power at the time, but also from Albania's secret services and from the formidable Albanian mafia.

63. Many KLA commanders remained on Albanian territory, some even operating out of the Albanian capital Tirana, throughout the ensuing hostilities and beyond.

64. During the period of the NATO aerial bombardment, which lasted several weeks, perhaps the principal shift in the balance of power in Kosovo occurred as a result of the influx of foreigners into the region, in both overt and implicit support of the KLA cause. Unable to gain access directly to the territory of Kosovo, most of this foreign support was channelled through Albania.

65. In tacit acknowledgement of the safe harbour afforded to them by the sympathetic Albanian authorities, but also because it was more practical and more convenient for them to continue operating on the terrain with which they were familiar, several of the KLA's key commanders allegedly established protection rackets in the areas where their own clansmen were prevalent in Albania, or where they could find common cause with established organised criminals involved in such activities as human trafficking, sale of stolen motor vehicles, and the sex trade.

66. Notably, in confidential reports spanning more than a decade, agencies dedicated to combating drug smuggling in at least five countries have named Hashim Thaqi and other members of his "Drenica Group" as having exerted violent control over the trade in heroin and other narcotics.²⁷

67. Similarly, intelligence analysts working for NATO, as well as those in the service of at least four independent foreign governments,²⁸ made compelling findings through their intelligence-gathering related to the immediate aftermath of the conflict in 1999. Thaqi was commonly identified, and cited in secret intelligence reports, as the most dangerous of the KLA's "criminal bosses".²⁹

68. Several further known members of Thaqi's "Drenica Group" have been indicated to us in the course of our research to have played vital roles as co-conspirators in various categories of criminal activity. They include Xhavit Haliti, Kadri Veseli, Azem Sylja and Fatmir Limaj. All of these men have been investigated repeatedly in the last decade as suspects in war crimes or organised criminal enterprises, including in major cases led by prosecutors under UNMIK, the ICTY³⁰ and EULEX. To the present day, however, all of them have evaded effective justice.

69. Everything leads us to believe that all of these men would have been convicted of serious crimes and would by now be serving lengthy prison sentences, but for two shocking dynamics that have consolidated their impunity: first, they appear to have succeeded in eliminating, or intimidating into silence, the majority of the potential and actual witnesses against them (both enemies and erstwhile allies), using violence, threats, blackmail and protection rackets; and second, there has been faltering political will on the part of the international community to effectively prosecute the former leaders of the KLA. This also seems to have allowed Thaqi – and by extension the other members of the "Drenica Group" – to exploit their position in order to accrue personal wealth totally out of proportion with their declared activities.

70. Thaqi and these other "Drenica Group" members are consistently named as "key players" in intelligence reports on Kosovo's mafia-like structures of organised crime.³¹ I have examined these diverse, voluminous reports with consternation and a sense of moral outrage.

71. What is particularly confounding is that all of the international community in Kosovo – from the Governments of the United States and other allied Western powers, to the European Union-backed justice authorities – undoubtedly possesses the same, overwhelming documentation of the full extent of the Drenica Group's crimes,³² but none seems prepared to react in the face of such a situation and to hold the perpetrators to account.

72. Our first-hand sources alone have credibly implicated Haliti, Veseli, Sylja and Limaj, alongside Thaqi and other members of his inner circle, in having ordered – and in some cases personally overseen – assassinations, detentions, beatings and interrogations in various parts of Kosovo and, of particular interest to our work, in the context of KLA-led operations on the territory of Albania, between 1998 and 2000.

73. Members of the "Drenica Group" are also said to have asserted control of substantial funds placed at the disposal of the KLA to support its war effort.³³ In several instances, this group was allegedly able to strike deals with established international networks of organised criminals, enabling expansion and diversification into new areas of "business", and the opening of new smuggling routes into other parts of Europe.

74. Specifically, in our determination, the leaders of the "Drenica Group" seem to bear the greatest responsibility for two sets of unacknowledged crimes described in this report: for running the KLA's ad hoc network of detention facilities on the territory of Albania;³⁴ and for determining the fate of the prisoners who were held in those facilities, including the many abducted civilians brought over the border into Albania from Kosovo.

75. In understanding how these crimes descended into a further form of inhumanity, namely the forcible extraction of human organs for the purposes of trafficking, we have identified another KLA personality who apparently belongs to the leading co-conspirators: Shaip Muja.

76. Up to a point, Shaip Muja's personal biography in the liberation struggle of the Kosovar Albanians resembles those of other "Drenica Group" members, including Hashim Thaqi himself: from student activist in the early 1990s,³⁵ to one of an elite group of KLA "co-ordinators" based in Albania,³⁶ to Cabinet member of the Provisional Government of Kosovo, and leading commander in the post-war Kosovo Protection Corps (KPC),³⁷ reinvented as a civilian politician in the Democratic Party of Kosovo (PDK) and, finally, becoming an influential office holder in the current Kosovo authorities.³⁸

77. The common thread running through all of Muja's roles is his involvement in the medical sector. We do not take it lightly that he presents himself, and is accepted in many quarters, as "Dr Shaip Muja": purportedly not only a medical doctor and general surgeon, but also a humanitarian and progressive practitioner.³⁹

78. We have uncovered numerous convergent indications of Muja's central role for more than a decade in far less laudable international networks, comprising human traffickers, brokers of illicit surgical procedures and other

perpetrators of organised crime.

79. These indications and elements of proof have prompted us to suspect that Muja has derived much of his access, his cover and his impunity as an organised criminal from having maintained an apparently legitimate medical "career" in parallel. There is an analogy to be drawn here with the way that Thaqi and other "Drenica Group" members have used their own roles in public office, and often in international diplomacy. The difference in Muja's case is that his profile in organised crime is scarcely known outside of the criminal networks he has worked with and the few investigators who have tracked them.

80. According to the testimonies of our sources who were party to KLA operations in Albania, as well as other military and political compatriots who know Shaip Muja intimately, Muja managed to acquire and retain crucial behind-the-scenes influence over the affairs of the KLA in the defining period in the late 1990s when it was garnering international support.

81. Then, in the period of hostilities in northern Albania and around the Kosovo border, coinciding with the NATO intervention in 1999, Muja, in common with most of his fellow KLA commanders, reportedly stayed well clear of the frontlines, maintaining the KLA's operational power base in Tirana.

82. Together with Haliti and Veseli, in particular, Muja became involved in finding innovative ways to make use of, and to invest, the millions of dollars of "war funds" that had been donated to the KLA cause from overseas. Muja and Veseli reportedly also began, on behalf of the "Drenica Group", to make connections with foreign private military and private security companies.⁴⁰

83. We found it particularly relevant that Thaqi's "Drenica Group" can be seen to have seized such advantage from two principal changes in circumstances after 12 June 1999.

84. First, the withdrawal of the Serb security forces from Kosovo had ceded into the hands of various KLA splinter groups, including Thaqi's "Drenica Group", effectively unfettered control of an expanded territorial area in which to carry out various forms of smuggling and trafficking.

85. KFOR and UNMIK were incapable of administering Kosovo's law enforcement, movement of peoples, or border control, in the aftermath of the NATO bombardment in 1999. KLA factions and splinter groups that had control of distinct areas of Kosovo (villages, stretches of road, sometimes even individual buildings) were able to run organised criminal enterprises almost at will, including in disposing of the trophies of their perceived victory over the Serbs.

86. Second, Thaqi's acquisition of a greater degree of political authority (Thaqi having appointed himself Prime Minister of the Provisional Government of Kosovo) had seemingly emboldened the "Drenica Group" to strike out all the more aggressively at perceived rivals, traitors, and persons suspected of being "collaborators" with the Serbs.

87. Our sources told us that both KLA commanders and rank-and-file members were exasperated by the heavy toll inflicted on the ethnic Albanian population of Kosovo, particularly in 1998 and early 1999 before and during the NATO intervention. As the Serb police and paramilitary forces retreated from Kosovo in June 1999, KLA units from northern Albania were deployed into Kosovo with the ostensible objective of "securing the territory", but fuelled by an irrepressible anger, and even vengeance, towards anyone whom they believed had contributed towards the oppression of the ethnic Albanian people.

88. Serb inhabitants of predominantly ethnic Albanian communities quickly became targets for revenge. Other targets included anybody suspected – even upon the basis of baseless accusations by members of rival clans or persons who held long-standing vendettas against them – of having "collaborated with" or served Serb officialdom. In a door-to-door campaign of intimidation, KLA foot soldiers were ordered to collect names of persons who had worked for the ousted authorities of the Federal Republic of Yugoslavia (in however trivial an administrative function), or whose relatives or associates had done so. Into this category of putative "collaborators" fell large numbers of ethnic Albanians, as well as Roma and other minorities.

89. Against this background, our account of abuses committed by KLA members and affiliates in Albania goes well beyond one-off aberrations on the part of rogue or renegade elements within an otherwise disciplined fighting force. On the contrary, we find these abuses widespread enough to constitute a pattern.

90. While certain acts speak to a particular brutality or disregard for the victims on the part of individual perpetrators, we find that in their general character these abuses were seemingly co-ordinated and covered up according to a premeditated, albeit evolving, overarching strategy on the part of the leadership of the "Drenica Group".

91. In general terms, the abuses were symptomatic of the prevalence of organised criminality inside the KLA's dominant internal faction. Holding persons captive in makeshift places of detention, outside the knowledge or reach of authority, and contriving ways of silencing anyone who might have found out about the true nature of the illicit activities in which the captors are engaged, count as tried and trusted methodologies of most mafia structures – and the "Drenica Group" was no different.

92. The "Drenica Group" itself apparently evolved from being part of an armed force, the KLA (ostensibly engaged in a war of liberation), into a conspicuously powerful band of criminal entrepreneurs (albeit one with designs on a form of "state capture"). In parallel, we have detected a transformation in the Group members' activities in one particular area of operations: detention facilities and the inhuman treatment of captives.

3.3. Detention facilities and inhuman treatment of captives

93. In the course of our inquiry, we have identified at least six separate detention facilities on the territory of the Republic of Albania, situated across a territory that spans from Cahan at the foot of Mount Pashtrik, almost at the northernmost tip of Albania, to the beachfront road in Durres, on the Mediterranean coast in the West of Albania.

94. The KLA did not have outright, permanent control of any part of this territory during the relevant time, but nor did any other agency or entity that might have been willing, or able, to enforce the law.

95. In particular, the lacuna in law enforcement was a reflection on the failure of the Albanian police and intelligence services to curb the mafia-like banditry and impunity of certain KLA units that had stationed themselves in northern and central Albania around the period of the conflict. The KLA's senior regional commanders were, in their respective areas of control, a law unto themselves.

96. The locations of the detention facilities about which we received testimony directly from our sources – corroborated by elements of proof gathered through the efforts of investigative journalists (some of which dates back ten years or more), and more recently through the efforts of EULEX investigators and prosecutors – included: Cahan, Kukës, Bicaj (vicinity), Burrel, Rripe (a village south-west of Burrel in Mat District), Durres and, perhaps most important of all for the purposes of our specific mandate, Fushë-Krujë.

97. We were able to undertake visits to the sites of two such KLA detention facilities in Albania in the course of our inquiry, although we did not enter the facilities themselves. Additionally, in respect of at least four other such facilities that we know to have existed, we have heard first-hand testimony from multiple persons whom we have confirmed as having visited one or more of the facilities in person, either at the time that they were actively being used by the KLA or on monitoring missions since.

98. The detention facilities in question were not resorted to independently or as self-standing entities. Rather, these detention facilities existed as elements of a well-established, co-ordinated and joined-up network of unlawful activity, of which certain senior KLA commanders maintained control and oversight. The common denominator between all of the facilities was that civilians were held captive therein, on Albanian territory, in the hands of members and affiliates of the KLA.

99. The graphic map included in this report depicts the locations at which we know such detention facilities existed, along with the transport routes connecting them.

100. There were, nonetheless, considerable differences in the periods and purposes for which each of these detention facilities was used. Indeed, it is evident that each detention facility had its own distinct "operational profile", including with regard to: the manner of the relationships formed or deals made to enable detentions and related operations to take place there at different times, the character and composition of the groups of captives held there, the means by which the captives arrived there, and the fates awaiting those captives during and at the end of their respective periods of detention.

101. We shall begin by describing some of the general characteristics of KLA detentions in wartime (some of which seem to meet the threshold for war crimes) and post-conflict detentions carried out by KLA members and affiliates (which appear to constitute an organised criminal enterprise). Thereafter, we will examine more closely what happened at each of the detention facilities on the territory of Albania.

3.3.1. KLA detentions in wartime – First subset of captives: the "prisoners of war"

102. In the period between April and June 1999, KLA detentions on Albanian territory were discernibly based on the perceived strategic imperatives of fighting a guerrilla war.

103. During the time of war and the attendant mass movements of refugees into Albania, the KLA reportedly implemented a policy under which all persons suspected of having the slightest knowledge about the acts of Serb authorities, particularly those who were suspected of having been "collaborators", should be subjected to "interrogation".

104. We were told that this policy was supported actively on the territory of Albania by powerful elements within the Albanian national intelligence apparatus, including SHIK (now SHISH) and military intelligence, some of whose members even participated in asking questions of captives held at KLA detention camps. However, the driving force behind the policy was Kadri Veseli (alias Luli), a lynchpin of the "Drenica Group".

105. The detention facilities at which the "interrogations" purportedly took place – particularly those closer to the border with Kosovo – doubled as military "bases" or "camps" at which training exercises were performed and from which frontline troops were dispatched, or re-supplied with arms and ammunition. They included disused or appropriated commercial properties (including a hotel and a factory) in or on the outskirts of larger provincial towns, which had essentially been given over to the KLA by sympathetic Albanians who supported the patriotic cause.

106. At times these wartime camps were used simultaneously as detention facilities and other purposes, such as: parking vehicles or storing caches of military hardware, stockpiling of logistics or supplies like uniforms and rifles, conducting repairs on broken-down vehicles, treating injured comrades or for holding meetings between different KLA commanders.

107. For the most part, however, the captives were purportedly kept separate from what might have been considered as conventional "wartime" activities, and indeed the captives were largely insulated from exposure to most KLA fighters or external observers who might have visited the KLA's bases.

108. If all of the captives detained in KLA facilities on the territory of Albania were divided into subsets of the overall group according to the fates they met, then in our understanding the smallest subset of all comprises the "prisoners of war": those who were held purely for the duration of the Kosovo conflict, many of whom escaped or were released from Albania, returned home safely to Kosovo, and are alive today.

109. We are aware of there being "survivors" in this category, who have gone on to bear witness to the crimes of individual KLA commanders, who were held in facilities at one or more of the following three detention locations:

- Cahan: KLA camp close to the Kosovo warfront, also used as a "jump station" from which to deploy troops;
- Kukes: former metal factory converted into a multi-purpose KLA facility, including at least two "cellblocks" to house detainees;
- Durres: KLA interrogation site at the back of the Hotel Drenica, the KLA's headquarters and recruitment centre.

110. Based on source testimonies, along with material contained in indictments issued by the Office of the Special Prosecutor for the Republic of Kosovo, we estimate that a cumulative total of at least 40 persons, each held in one or more of the three above-named detention locations, were detained by the KLA⁴¹ and have survived to the present day.

111. This subset comprised mostly ethnic Albanian civilians – as well as some KLA recruits – suspected of being "collaborators" or traitors, either on the premise that they had spied for the Serbs or because they were thought to have belonged to, or supported, the KLA's political and military rivals, especially the LDK and the emergent Armed Forces of the Republic of Kosovo (FARK).⁴²

112. Persons in this subset were targeted primarily for interrogation and several have described being asked questions while being treated roughly by KLA and Albanian intelligence officers. However, during further periods of detention that went on to last from a few days to more than a month, most of these captives were ultimately beaten and mistreated gratuitously by their captors, in what appeared to be measures of punishment, intimidation and terror.

113. The KLA commanders accused of having been in charge of these detention locations included Sabit Geqi, Riza Alija (alias "Commander Hoxhaj") and Xhemshit Krasniqi. All three men featured prominently in previous UNMIK investigations into war crimes in northern Albania; all three have now been named in indictments of the Office of the Special Prosecutor of Kosovo and should soon stand trial in the Kosovo District Court;⁴³ their properties have been extensively searched.

114. The evidence gathered in the course of these processes seem to indicate that these KLA operatives – along with their Regional Commander for northern Albania, the now deceased Xheladin Gashi – were aligned with the "Drenica Group", under the direction of Hashim Thaqi, and were acting in concert with, among others, Kadri Veseli.

3.3.1.1. Case study on the nature of the facilities: Cahan

115. The camp in Cahan was the furthest north of all the facilities in Albania used by the KLA, and was accordingly most closely tied to activities at the warfront.⁴⁴ We have found no indication that captives were taken out of Cahan to other detention facilities in Albania, although we cannot rule it out.

116. It seems that the deeper into Albanian territory a facility's physical location, the less directly it related to the KLA's war effort and the more entrenched its connection proved to be with the underworld of organised crime.

117. We found it telling that persons who described having been held captive and mistreated at Cahan had largely been apprehended in an arbitrary and relatively spontaneous fashion, often in the course of KLA patrols in the vicinity of the camp itself or at checkpoints on the border crossing between Kosovo and Albania.

118. The persons in this first subset were apparently mostly released when warfront hostilities ceased and the Serb security forces had withdrawn from their positions inside Kosovo, in June 1999. The survival of these captives in significant numbers is demonstrated not least by the listing of more than a dozen named persons with the status of "injured parties/witnesses" in criminal proceedings against the commanders of the Cahan and Kukës sites.

3.3.1.2. Case study on the nature of the facilities: Kukës

119. Among the specific sites at which civilian captives were secretly detained in the custody of the KLA, we obtained extensive details about a KLA base at a disused factory building on the outskirts of the northern Albanian town of Kukës.

120. Two first-hand witnesses explained to us how prisoners had been brought to the Kukës site, where they were thrown into makeshift cellblocks, left in insanitary conditions without food and water, and were visited periodically by KLA soldiers to be questioned under harsh treatment, or indiscriminately beaten.

121. The extent of the ill-treatment suffered by prisoners at this facility has been meticulously documented, *inter alia*, by Kosovar and international personnel working in the Office of the Special Prosecutor of Kosovo. In statements given to prosecutors in 2009 and 2010, more than ten individuals – almost all of them ethnic Albanians – described having been detained indefinitely, struck brutally with sticks and other objects, and subjected to various forms of inhuman treatment at the Kukës site. Several witnesses stated that screams of agony from persons held in separate sets of cellblocks could be heard filtering through the corridors.

122. The Government of Albania has stated that there are no bodies of deceased persons related to the Kosovo conflict buried on the territory of Albania, and indeed that there never were. The case of Kukës proves that this claim is manifestly untrue.

123. First, there are bodies that were cast into rivers in Kosovo and have been carried downstream over the border into Albania. The exhumation of such bodies and the recovery of their remains by representatives of the Office of Missing Persons and Forensics in Kosovo would be relatively "uncontroversial" – but even intervention on these cases has been strongly resisted by the Albanian authorities.

124. Second, there are known individual cases in which the bodies of murdered Kosovars have been identified as having been interred in Albania. These cases have led – in instances documented by both Albanian and international journalists, and made known to us – to prolonged, albeit discreet, negotiations between the families of these Kosovars and the authorities administering the cemetery site(s) in Albania. Ultimately, and of particular note, in one case explained to us in detail by a first-hand source, bodies have been exhumed and repatriated to Kosovo for a proper burial by the families. The Albanian authorities told us that they knew of no such cases.

125. Third, there are allegations of the existence of mass grave sites on Albanian territory. The Serbian War Crimes Prosecutors' Office stated to us that they have in their possession satellite photographs of the areas in which these mass graves are located – but up to now, the sites themselves have not yet been found, despite a formal request made by the Serbian authorities to the Albanian authorities to carry out searches.

126. We obtained records from the local cemetery in Kukës, which seem to carry a significant confirmation: bodies of persons from Kosovo had indeed been buried in northern Albania. The most important document was a five-page "List of deceased immigrants from Kosovo, 28 March 1999 – 17 June 1999", which was prepared by the Supervisor of Public Services in the Municipality of Kukës, northern Albania.

127. The document has subsequently been admitted as evidence in the District Court of Mitrovica, Kosovo, upon

submission of the Special Prosecutors' Office of Kosovo. One of the deceased persons on the list – Anton Bisaku, featured at No. 138 – was found to have been among the known victims of secret detention and inhuman treatment at the KLA facility located in Kukes, Albania.

128. According to an indictment issued in August 2010, Bisaku and an unspecified number of other civilians held in detention in Kukes were "repeatedly beaten and struck with sticks and batons, kicked, verbally abused and tortured". In charging the defendant Sabit Geci with "War Crimes Against Civilian Population", including "the killing of a civilian at Kukes, one Anton Bisaku who was beaten and shot", the EULEX Special Prosecutor stated that Bisaku was "killed as a result of gunfire directed at him during a session of inhuman treatment, beating and torture which occurred on or about 4 June 1999".

3.3.2. Post-conflict detentions carried out by KLA members and affiliates

129. After 12 June 1999, Kosovar Albanians continued to detain persons for a variety of motives, including revenge, punishment and profit. The perpetrators – all of whom were, according to our sources, KLA members and affiliates – thereafter fashioned their own novel means of apprehending and abusing civilians, and transporting them out of Kosovo to new detention facilities in Albania, distinct from those that had been operated by the KLA in wartime.

130. In the months directly after the declared end of the Kosovo conflict in June 1999, members and affiliates of the KLA purportedly delivered scores of persons they had abducted into secret detention on Albanian territory.

131. It is of grave concern to us, and should be a priority for investigation and resolution on the part of the Albanian authorities, that the vast majority of the persons whom we found to have been so treated remain unaccounted for to the present day, including numerous ethnic Albanians.

132. According to our information, there was not just one facility in Albania at which this post-conflict form of secret detention took place – there was a whole ad hoc network of such facilities, joined up by frequent journeys between them on Albania's provincial roads, and across the porous, chaotic (especially at the time of the mass refugee movements in mid-1999) border between Kosovo and Albania.

133. We were able to access corroborated, first-hand testimony from former KLA fighters and auxiliaries who carried out multiple transports into and between the facilities named in our report, as well as transports of captives out of most of them.

134. On these journeys, KLA recruits and affiliates reportedly drove unmarked private vehicles, including trucks and vans, sometimes in convoys, between one facility and the next. They transported KLA personnel and logistics, provisions of food, alcohol or cigarettes, and groups of women who would be exploited for sex. Most significantly, in the months from July 1999 until as late as August 2000, they also transported captives.

135. The facilities in which captives were detained in the post-conflict period differed in character from the wartime facilities: we have found that they were primarily rustic private residences in rural or suburban areas, including traditional Albanian farmhouses and their storage barns.

136. There was, in addition, at least one custom-built element to the post-conflict network of detention facilities, which was unique in appearance and purpose. It constituted a state-of-the-art reception centre for the organised crime of organ trafficking. It was styled as a makeshift operating clinic, and it was the site at which some of the captives held by KLA members and affiliates had their kidneys removed against their will. According to our sources, the ringleaders of this criminal enterprise then shipped the human organs out of Albania and sold them to private clinics overseas as part of the international "black market" of organ-trafficking for transplantation.

3.3.2.1. Second subset of captives: the "disappeared"

137. The captives in this subset were victims of enforced disappearance: none has been seen, heard of or accounted for, since being abducted from Kosovo, in the weeks and months directly after 12 June 1999.

138. The orchestrators of this post-conflict criminal enterprise had apparently put in place a process of filtering, whereby a smaller number of captives was picked out selectively from each larger group and moved on to somewhere else. The evidence suggests that the rationale behind the process of filtering captives in this manner was linked to a determination of the suitability of the chosen captives for the use that awaited them.

139. Factors thought to have played into the filtering process, as recounted to us by multiple sources, included age, sex, state of health, and indeed the ethnic origin of the captives, ethnic Serbs having been targeted primarily.

140. We heard numerous references to captives not merely having been handed over, but also having been "bought" and "sold". It was as a result of these references that we tried to understand more clearly the intersection between the abductions and undeclared detentions in the context of the conflict, and the activities of organised crime, which was and still is prevalent in many sectors of daily life in the region.

3.3.2.1.1. Case study on the nature of the facilities: Rripe

141. In the course of our inquiry, we established that at least three sources whose testimonies we obtained were unquestionably physically present at the house of the K. family in Rripe near Burrel (the much-cited "yellow house") in the context of KLA criminal enterprises.

142. Each of these sources was able to recount unique and specific details regarding the precise location and appearance of the house, the background of its proprietor, the KLA personnel posted there, and the character and commandship of the illegal activities that took place in the house in the period from 1999 to 2000.

143. Based upon these source testimonies, it can be concluded that the K. house was occupied by, and under the control of the KLA, which was part of a network that operated throughout most of the northern half of Albania.

144. A small group of KLA commanders reportedly ordered and oversaw multiple deliveries of civilian captives to the K. house over a period of up to a year, from July 1999 until mid-2000. Most of these captives had been abducted from the provincial areas of southern Kosovo and brought into Albania using the methods of transportation described in this report. Unlike those held in Kukes, the captives brought to Rripe were predominantly ethnic Serbs.

145. In addition, sources close to the KLA spoke of a large number of trafficked women and girls being brought to the K. house, where they were exploited for sex not only by the KLA personnel, but also by some of the menfolk in the Rripe community.

146. During the period in which the KLA maintained a presence at the K. house, the silence of the inhabitants of Rripe as to the presence of KLA units and their activities was obtained by threats, but also by "pay-offs", including significant sums of money, as well as free access to alcohol, drugs and prostitutes.

147. There are substantial elements of proof that a small number of KLA captives, including some of the abducted ethnic Serbs, met their death in Rripe, at or in the vicinity of the K. house. We have learned about these deaths not only through the testimonies of former KLA soldiers who said they had participated in detaining and transporting the captives while they were alive, but also through the testimonies of persons who independently witnessed the burial, disinterment, movement and reburial of the captives' corpses, both while the KLA was occupying the K. house, and in the period after the KLA had vacated the K. house and the family inhabitants had returned.

148. Our findings in relation to the K. house appear to corroborate, to a large extent, the findings made by a team of investigative journalists working for the United States-based documentary producers "American Radio Works". These findings were summed up in a confidential internal memo submitted to UNMIK in 2003, which in turn gave rise to the investigative mission to the K. house referred to above.

149. Yet, the testimonies we gathered also revealed a dimension to the KLA's operations at the K. house that had not previously been reported, either by the American Radio Works team, or in the memoirs of former ICTY Chief Prosecutor Carla Del Ponte, or in the successive "revelations" in the media.

150. KLA operatives in fact not only dropped off captives at Rripe, but apparently also picked up captives from Rripe, for transportation onwards to different detention facilities. According to the testimonies of drivers involved in transporting the captives, some of the persons they picked up at Rripe were the same persons they had brought from Kosovo, while others had arrived at Rripe from a different and unknown provenance, which the drivers never found out.

151. The K. house was therefore not the endpoint, or ultimate destination, in this joined-up network of detention facilities and captive transports. Its precise role, its importance to the whole operation, was perhaps previously misconstrued.

152. The K. house appears in fact to have had the character of more of a "way station", at which captives were held in transit to their ultimate fate, and according to certain sources, subjected to apparently strange forms of "processing"/"filtering", including the testing of their blood and physical condition.

3.3.2.1.2. Observations on the conditions of detention and transport

153. Captives were reportedly held incommunicado under constant armed guard at these detention facilities, either in rooms that were part of the main buildings, or in barns, garages, warehouses or other adjoining structures designed for storage.

154. During the transport between these buildings, captives were routinely bundled into vans and trucks, restrained by binding their hands behind their backs, and tied to internal fixtures of the vehicle.

155. The drivers of these vans and trucks – several of whom would become crucial witnesses to the patterns of abuse described – saw and heard captives suffering greatly during the transports, notably due to the lack of a proper air supply in their compartment of the vehicle, or due to the psychological torment of the fate that they supposed awaited them.

3.3.2.2. *Third subset of captives: the "victims of organised crime"*

156. The last and most conspicuous subset of captives in the post-conflict period, not least because its fate has been greatly sensationalised and widely misunderstood, comprises the captives we regard as having been the "victims of organised crime". Among this subset are a handful of persons whom we found were taken into central Albania to be murdered immediately before having their kidneys removed in a makeshift operating clinic.

157. The captives in this subset undoubtedly endured a most horrifying ordeal in the custody of their KLA captors. According to source testimonies, the captives "filtered" into this final subset were initially kept alive, fed well and allowed to sleep, and treated with relative restraint by KLA guards and henchmen who would otherwise have beaten them up indiscriminately.

158. The captives were, as we were told, each moved through at least two transitory detention facilities, or "way stations", before being delivered to the operating clinic. These "way stations", apparently controlled by KLA operatives and affiliates aligned to the "Drenica Group", were situated *inter alia* in the following detention locations:

- Bicaj (vicinity): an apparently privately-owned house in a small village south of Bicaj, in a rural setting not far removed from the main road towards Peshkopi;
- Burrel: on the outskirts of the town of Burrel, a compound containing at least two individual structures in which captives were locked up, as well as a house in which operatives congregated and rested;
- Rripe: the two-storey, self-standing farmhouse referred to as the K. house, or the "Yellow House", which was subject to a combined UNMIK/ICTY forensic site visit in 2004 after being identified by investigative journalists;
- Fushë-Krujë: another detached, two-storey farmhouse removed from the main roads and enclosed within a large compound, which reportedly served as a "safe house" not only for KLA affiliates, but for other groups of organised criminals involved in smuggling drugs and trafficking in human beings.

3.3.2.2.1. *Case study on the nature of the facilities: Fushë-Krujë*

159. It was in the last of the locations discovered in our investigations, Fushë-Krujë, that the process of "filtering" purportedly reached its end point, and the small, select group of KLA captives who were brought this far met their death.

160. There are strong indications, from source testimonies we have obtained, that in the process of being moved through the transitory sites, at least some of these captives became aware of the ultimate fate that awaited them. In detention facilities where they were held in earshot of other trafficked persons, and in the course of being transported, some of these captives are said to have pleaded with their captors to be spared the fate of being "chopped into pieces".⁴⁵

161. At the latest, when their blood was drawn by syringe for testing (a step that appears to have been akin to "tissue typing", or determining levels of organ transplantation compatibility), or when they were physically examined by men referred to as "doctors", the captives must have been put on notice that they were being treated as some form of medical commodity. Sources described such tests and examinations having been undertaken in both Rripe and Fushë-Krujë.

162. The testimonies on which we based our findings spoke credibly and consistently of a methodology by which all of the captives were killed, usually by a gunshot to the head, before being operated on to remove one or more of their organs. We learned that this was principally a trade in "cadaver kidneys", that is to say the kidneys were extracted posthumously; it was not a set of advanced surgical procedures requiring controlled clinical conditions and, for example,

the extensive use of anaesthetic.

163. We learned from distinct and independent KLA insider sources about diverse elements and perspectives of the organ-trafficking ring in action: on the one hand, from the perspective of drivers, bodyguards and other "fixers" who performed logistical and practical tasks aimed at delivering the human bodies to the operating clinic; and on the other hand, from the perspective of the "organisers", the criminal ringleaders who, as alleged, entered business deals to provide human organs for transplantation purposes in return for handsome financial rewards.

164. The practical dimension of the trafficking enterprise was relatively simple. Captives brought as far as the Fushë-Krujë area (which entailed an arduous drive of several hours onwards from Rripe or Burrel) were first held in the "safe house" facility. The proprietor of this property was an ethnic Albanian who allegedly shared both clan ties and organised criminal connections with members of the "Drenica Group".⁴⁶

165. As and when the transplant surgeons were confirmed to be in position and ready to operate, the captives were brought out of the "safe house" individually, summarily executed by a KLA gunman, and their corpses transported swiftly to the operating clinic.

166. The surgical procedures thereupon performed – cadaver kidney extractions, rather than surgeries on live donors – are the most common means through which donor organs and tissues are acquired for transplant purposes, except for the criminal method of obtaining the cadavers. Eminent organ transplantation experts whom we have consulted during our inquiry described these procedures to us as efficient and low risk.⁴⁷

167. Sources stated that the Fushë-Krujë axis was chosen to host these facilities because of its proximity to the main airport servicing Tirana. The facilities at the hub of this organ-trafficking ring – the "safe house" and the operating clinic – therefore offered accessibility for incoming international visitors and outgoing shipments alike.

4. Medicus clinic

168. In the course of our inquiry we have uncovered certain items of information that go some way beyond our findings as presently reported. This information appears to depict a broader, more complex organised criminal conspiracy to source human organs for illicit transplant, involving co-conspirators in at least three different foreign countries besides Kosovo, enduring over more than a decade. In particular, we found a number of credible, convergent indications that the organ-trafficking component of the post-conflict detentions described in our report is closely related to the contemporary case of the Medicus Clinic, not least through prominent Kosovar Albanian and international personalities who feature as co-conspirators in both. However, out of respect for the ongoing investigations and judicial proceedings being led by EULEX/the Office of the Special Prosecutor of Kosovo, we feel obliged at this moment to refrain from publishing our findings in this regard. Suffice to say, we encourage all the countries whose nationals appear in the indictment regarding Medicus to do their utmost to halt this shameful activity and assist in bringing its orchestrators and co-conspirators to justice.

5. Reflections on the "glass ceiling of accountability" in Kosovo

169. Our inquiry has found that there exists a "glass ceiling of accountability" with regard to the investigations currently being undertaken, and the indictments thus far issued, under the auspices of the Special Prosecutor's Office in Kosovo.

170. There seem to be two principal impediments to the quest for justice on behalf of the Kosovo people, as it is being led by the Special Prosecutor's Office of the Republic of Kosovo. The first problem is that the de facto reach of the investigations is carefully managed and restricted by the Kosovo authorities; their collaboration with EULEX therefore suffers from a profound lack of confidence.⁴⁸

171. Second, these men would apparently rather accept justice in the courts for their alleged roles in the running of illicit detention camps and the trafficking of human organs, respectively, than implicate their former senior KLA commanders, upon whose authority they acted and who are now senior political figures.

172. The central impediment to achieving true justice for many Kosovars, therefore, seems to be the ancestral custom, which still prevails in some parts of society, of entrenched clan loyalty, or its equivalent in the sphere of organised crime. Even where the conspirators in question are not themselves members of the same clans or extended families, the allegiances they feel towards their criminal "bosses" are as unbreakable as any family bonds.

173. Therefore, Sabit Geqi will resolutely avoid implicating those truly responsible for the torture of civilian prisoners at Kukes, who have now become respectable public figures. Equally, Ilir Rrecaj will continue to accept the consequences

of being a scapegoat for the irregular licensing and funding practices in respect of the Medicus clinic in Pristina, rather than point the finger at those who are truly responsible for this organised criminal activity in Kosovo's health sector.

174. The result is that political leaders can plausibly dismiss the allegations relating to KLA involvement in detention, torture and murder in Albania – serious allegations that deserve to be investigated, as we have seen, much more seriously than has been the case so far – as little more than a “spectacle” created by Serbian political propagandists.

6. Some concluding remarks

175. In concluding, we should once again recall that that this report has been drawn up in the wake of the revelations that appeared in the memoirs of the former Chief Prosecutor of the ICTY. Shocked by those disclosures, the Parliamentary Assembly entrusted us with the task of looking more closely into the allegations and the human rights violations said to have been committed in Kosovo in the material period. The elements reported in the former Prosecutor's book primarily concerned the alleged trafficking of human organs. Our difficult, sensitive investigations enabled us not only to substantiate those elements, but also to shed light on further, related allegations and to draw a very sombre, worrying picture of what took place, and is to some extent continuing to take place, in Kosovo. Our task was not to conduct a criminal investigation – we are not empowered to do so, and above all we lack the necessary resources – let alone to pronounce judgments of guilt or innocence.

176. The information we have gathered nonetheless concerns extremely grave events that took place in the very heart of Europe. The Council of Europe and its member states cannot remain indifferent to such a situation. We have shown that organised crime is a significant phenomenon in Kosovo. This is nothing new, and it is admittedly not exclusive to Kosovo. Organised crime is a dreadful problem in the region and also affects Serbia, Montenegro and Albania, to name but a few examples. There are also worrying, surprising links and affinities between the different groups involved. Moreover, such criminal groups seem to co-operate with each other far more effectively than the responsible national and international judicial authorities. We have highlighted and documented the shady, and in some cases open, connections between organised crime and politics, including representatives of the authorities; that too is nothing new, at least for those who have not sought to close their eyes and ears at all costs. The silence and the failure to react in the face of such a scandal is just as serious and unacceptable. We have not engaged in mere rumour-mongering, but have rather described events on the basis of multiple testimonies, documents and objective evidence. What we have uncovered is, of course, not completely unheard-of. The same or similar findings have long been detailed and condemned in reports by key intelligence and police agencies, albeit without having been properly followed up, because the authors' respective political masters have preferred to keep a low profile and say nothing, purportedly for reasons of “political expediency”. But we must ask what interests could possibly justify such an attitude of disdain for all the values that are invariably invoked in public? Everyone in Kosovo is aware of what happened and of the current situation, but people do not talk about it, except in private; they have been waiting for years for the truth – the whole truth, rather than the official version – to be laid bare. Our sole aim today is to serve as spokespersons for those men and women from Kosovo, as well as those from Serbia and Albania, who, regardless of their ethnic or religious backgrounds, simply aspire to the truth and to an end to scandalous impunity, with no greater wish than to be able to live in peace. Truth and accountability are absolute necessities if there is to be genuine reconciliation and lasting stability in the region. In the course of our mission we met with persons of great valour – both local and international actors – who are fighting to overcome indifference and build a fairer society. They deserve not only our expressions of solidarity, but also our full and active support.

Appendix

Detention facilities in Albania used by KLA members and affiliates for inhuman treatment and illicit trafficking in human organs

Parliamentary Assembly
Committee on Legal Affairs and Human Rights
Rapporteur: Dick Marty, Switzerland, ALDE



KLA DETENTIONS IN WARTIME

At these locations, "prisoners of war" were detained, interrogated and inhumanely treated, up to the end of the Kosovo war in June 1999 (see section 3.3.1. of Report).

POST-CONFLICT DETENTIONS

From July 1999 to mid-2000, scores of "disappeared" persons were held in a separate ad hoc network of locations. All are presumed to have been killed. A small number became "victims of organized crime", their kidneys extracted for use by an international organ-trafficking ring (see section 3.3.2. of Report).

MOVEMENT OF CAPTIVES

Captives abducted from Kosovo were brought over the porous border. Gradually smaller numbers were "filtered" for onward transportation, including by ethnicity and health condition. Some captives passed through several "waystations" before being delivered to the end point operating clinic.

* All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

Graphic Design by Once Where Farmers

- ¹ All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council [Resolution 1244](#) and without prejudice to the status of Kosovo.
- ² Reference to Committee: [Doc. 11574](#), Reference 3446 of 29 May 2008.
- ³ Draft resolution adopted unanimously by the committee on 16 December 2010.
- ⁴ The United States of America has an Embassy endowed with impressive resources and a military base, Camp Bondsteel, of a scale and significance that clearly transcends regional considerations.
- ⁵ The "UNMIK legacy" was described to us in the form of a vivid image that scarcely requires further comment, as "300 000 pages in disarray".
- ⁶ We learned that certain KFOR contributors (for example the United Kingdom) took all their records away with them; and that these records were subsequently made accessible to EULEX investigators only on the basis of reasoned case-by-case applications, a complex procedure which considerably slows down the work of justice.
- ⁷ At the time of our visit in January 2010, EULEX investigators were not always able to access the ICTY's files, but the ICTY Prosecutor is more recently reported to have assured EULEX that access would be granted imminently.
- ⁸ The figures quoted here were provided by the Office of Missing Persons and Forensics (OMPF), with regard to cases still unresolved at the beginning of 2010.
- ⁹ The OMPF is currently co-headed by a EULEX official and a Kosovar official; it was created, we were told, "to clean up the mess left behind by UNMIK and the ICTY".
- ¹⁰ This difficulty was said to be most acute with regard to cases that arose during the period of "chaos" from June to late October 1999. KFOR soldiers were evidently unqualified to carry out police work and their crime scene reports were said to be mostly unusable.
- ¹¹ An example with which we were confronted during our fact-finding visit to Pristina concerned excavations in a mineshaft where some thirty bodies of deceased Serbs were said to be buried. The local construction companies employed to do the work were threatened by members of the local community, which caused considerable delay in carrying out the explorations. According to what we have been told, the prevailing attitude among the Kosovar population is to regard as a "traitor" anyone who provides information regarding mass graves containing Serb victims.
- ¹² EULEX investigators informed us that the level of co-operation from the Albanian authorities was "nil". The reply, after several months, to a request for international legal assistance (concerning the camp at Kukës) was that the requested investigations were "delayed by a natural disaster". Other international officials also confirmed the "strong resistance" of the Kosovar authorities to co-operating in efforts to solve cases of missing Serbs or alleged Kosovar Albanian "traitors". Other international officials have confirmed that Albania never allowed exhumations in its territory: "There was no war here, so there are no graves to look for."
- ¹³ There is said to exist some degree of reluctance even within the OMPF concerning the disappearances that occurred after 12 June 1999.
- ¹⁴ Serge Brammertz, ICTY Chief Prosecutor, in a letter to me dated 17 December 2009. In an interview I had with Ms Carla Del Ponte in 2009, the former Chief Prosecutor assured me that the materials in question should be stored in the ICTY's archives and that their destruction was simply inconceivable.
- ¹⁵ Such requests were made in March 2009 to the following countries: Belarus, Canada, Germany, Israel, Moldova, Poland, Russian Federation and Turkey. At the time of writing, only Canada was said to have provided a satisfactory response.
- ¹⁶ See the EULEX press release of 15 October 2010: www.eulex-kosovo.eu/en/pressreleases/0098.php; and the report by Nebi Qena (AP), 12 November 2010: http://news.yahoo.com/s/ap/20101112/ap_on_re_eu/eu_kosovo_organ_trafficking/print.

¹⁷ The ICRC provided only non-confidential information on missing persons.

¹⁸ See Expert Report quoted in the Limaj judgement.

¹⁹ Carla Del Ponte herself said of the Limaj trial that "the impunity that feeds upon fear was allowed to prevail": see Del Ponte and Sudetic, *The Hunt*, Chapter 11: Confronting Kosovo, p. 26.

²⁰ The KLA had grown domestically throughout most of the 1990s by rallying the support of volunteer fighters – men of all ages in their respective villages – to coalesce around leaders like Adem Jashari and form small armed units, or "brigades" across the territory of Kosovo. Many of the recruits to this "homeland KLA", effectively a peasant army, undertook guerrilla warfare training at camps in northern Albania, and smuggled arms into Kosovo with which to undertake acts of violent resistance. Our inquiry received more than a dozen testimonies of ethnic Albanian males who had taken part in this campaign of "resistance". With the killing of Jashari and scores of his family members and associates in a clampdown by Serb security forces in 1998, this initial incarnation of the KLA was effectively ended, and has gravitated into folklore as a romantic notion of Kosovar liberation, with Jashari as its martyr.

²¹ The main rival political parties in recent election cycles have included the Democratic Party of Kosovo (*Partia Demokratike e Kosovës*, or PDK) and the Alliance for the Future of Kosovo (*Aleanca për Ardhmërinë e Kosovës*, or AAK), both of which are led by commanders of former KLA "splinter groups" and count large number of former KLA operatives among their members.

²² We have noted the remarkable confessions of a man named Nazim Bllaca, who came forward last year and testified as to the use of these intelligence structures in targeted killings and different forms of racketeering; Bllaca's depiction of this secret underworld is one we recognise from our own research.

²³ In this regard, our findings correspond with those of international representatives of military and intelligence monitoring missions – from NATO's Kosovo Stabilisation Force (KFOR), to the Organisation for Security and Cooperation in Europe (OSCE), to the United States Central Intelligence Agency (CIA) – in reports published at various points over the last fifteen years.

²⁴ In Kosovo itself, the area of influence of the Drenica Group and its affiliates went on to extend far beyond that particular locale, however: they exercised firm control over criminal cartels active in municipalities including, but not limited to, Istok, Srbica, Skenderaj, Klina, Prizren and Pristina.

²⁵ See *Le Monde*, 11 December 2010. "Hashim Thaçi, l'homme fort du Kosovo en quête de reconnaissance".

²⁶ Thaqi was, for example, named as head delegate of the Kosovar Albanians to the Rambouillet Summit.

²⁷ For example, the United States Drug Enforcement Administration said in a report in spring 1999 that drug smuggling organisations composed of Kosovo's ethnic Albanians were considered "second only to Turkish gangs as the predominant heroin smugglers along the Balkan route".

²⁸ These are the German (BND), Italian (Sismi), British (MI6) and Greek (EYP) intelligence services.

²⁹ See, for example, the report of the *Institut für Europäische Politik*, Berlin, of 9 January 2007 prepared for the German Federal Ministry of Defence ("*Operationalisierung von Security Sector Reform (SSR) auf dem Westlichen Balkan – intelligente/kreative Ansätze für eine langfristig positive Gestaltung dieser Region*"); document classified as secret and yet accessible on Internet; at page 57 the authors indicate that "Thaqi is considered, in security circles, as much more dangerous than Haradinaj, who as former head of KLA possesses a wider international network." (my own translation) Another report of the German secret service (Bundesnachrichtendienst/BND), similarly available on Internet (BND Analyse vom 22 February 2005), names Messrs Haliti, Thaqi, Lluka and Haradinaj as key personalities of organised crime in Kosovo and explores in particular, in 27 pages of thorough analysis, the ramifications of the "Drenica Group". We did not limit ourselves to the study of these reports, and other sources, but we interviewed a number of persons who had been involved, at ground level, in the preparation of these reports.

³⁰ Fatmir Limaj, a former senior-ranking KLA commander, was indicted, tried and ultimately acquitted by the ICTY in a trial that encountered many problems with the integrity of evidence.

³¹ In the course of the last ten years, intelligence services from several Western European countries, law enforcement

agencies, including the Federal Bureau of Investigation (FBI) in the United States, and analysts of several nationalities working within NATO structures have prepared authoritative, well-sourced, corroborated reports on the unlawful activities of this "Drenica Group".

³² At a minimum, there is solid documentary evidence to demonstrate the involvement of this group, and its financial sponsors, in money laundering, smuggling of drugs and cigarettes, human trafficking, prostitution, and the violent monopolisation of Kosovo's largest economic sectors including vehicle fuel and construction.

³³ Primarily these funds had been generated through contributions from the Kosovo Diaspora and were held in foreign bank accounts, including in Germany and Switzerland. The finances available to Thaqi and his inner circle increased dramatically with the creation of a dedicated KLA fund known as *Atdheu Thërret* ("Homeland Calls").

³⁴ It is apt that I should acknowledge the excellent journalistic investigation of the Balkan Insight Reporters' Network (BIRN), which reported on elements of the KLA's network of detention camps in Albania in April 2009 (Altin Raxhimi, Vladimir Karaj and Michael Montgomery).

³⁵ While Thaqi attended the University of Pristina and became identified as a leader in the Kosovar Albanian student movement, Muja studied cardiology at the University of Tirana and associated himself with the more militant elements of the Albanian resistance to Serb oppression in Kosovo.

³⁶ Muja was the overall "Medical Co-ordinator" for the KLA General Staff, a post in which he oversaw the provision of medical treatment for wounded KLA soldiers, as well as other emergency cases in KLA operational zones. Muja notably made use of the Military Hospital in Tirana, Albania, and administered extensive supplies and equipment acquired by the KLA through foreign donations. During 1998 and 1999, as the official representative of the KLA, supported by elements in the Albanian Army and the Albanian secret services, Muja also administered a diverse array of other infrastructure: at least one helicopter, several well-funded construction projects and makeshift accommodation arrangements – including private houses and apartments – for KLA commanders, recruits and affiliates who travelled into Albania from overseas, including those *en route* to Kosovo.

³⁷ Muja acted both as the Health/Medical Co-ordinator for the Provisional Government of Kosovo, under provisional Prime Minister Thaqi, and as Commander of the 40th Medical Battalion of the Kosovo Protection Corps (KPC).

³⁸ At the time of writing, in December 2010, Shaip Muja serves in the administration of Hashim Thaqi as a senior Political Advisor in the Office of the Prime Minister, with responsibility, *inter alia*, for the health portfolio.

³⁹ Muja is widely credited with having played a role in the introduction of a "telemedicine" system in Kosovo whereby health and surgical services can be administered with the assistance of doctors in remote locations, using Internet technology to link the participants.

⁴⁰ The combined influence of Muja and Veseli in this regard endured through the transitional phase of the Kosovo Protection Corps; both men were central to the design of the intelligence structures and strategic decision-making mechanisms inside the PDK party. Among the external parties they are reported to have engaged are members of the Albanian secret services and American private military and security companies.

⁴¹ The estimated 40 persons does not include persons who were held at Durrës on a basis so fleeting that their detention lasted only as long as it took KLA intelligence officers to conduct an interrogation.

⁴² The military grouping styled as *Forcat e Armatosura të Republikës së Kosovës*, or FARK ("Armed Forces of the Republic of Kosovo"), was nominally fighting for the same cause of liberation as the KLA, but was treated by KLA commanders as an adversary, with contempt and suspicion. FARK was politically aligned with the LDK, and envisaged as the defence arm of the Government-in-exile of Bujar Bukoshi. Unlike the KLA, FARK was built around a core of experienced military officers, ethnic Albanians who had served in the Army of the Federal Republic of Yugoslavia. KLA commanders were highly suspicious of FARK and sought to suppress its recruitment of new fighters and supplies of arms and ammunitions. The KLA detained numerous persons, especially civilians in northern Albania close to the Kosovo border, on the accusation that they supported FARK and were therefore disloyal to the KLA cause.

⁴³ Geqi and Alija were arrested in May and June 2010 respectively, and have been indicted for war crimes against the civilian population. While there is also substantial evidence against the third suspect in this regard, Krasniqi, he remains a fugitive at the time of writing and therefore cannot be subject to charges under Kosovo criminal procedure. Pending Krasniqi's apprehension and the efficient administration of justice, the trial of all three men should take place either in the District Court of Pristina or the District Court of Mitrovica in early 2011.

⁴⁴ Our KLA sources told us that Cahan was in fact an operational staging point for KLA advances over the mountainous border into Kosovo. KLA fighters stationed at Cahan are renowned for having launched "Operation Aero", a rare incursion into Serb-held territory in late May 1999.

⁴⁵ In the interests of balance, I should point out that some reporting of this fear on the part of the captives has tended to dramatise the facts unduly. For example, we have found no basis for the allegation that certain victims had one kidney removed before being "sewn up" again, detained for another period, and then finally having the second kidney removed.

⁴⁶ The proprietor's collusion with networks who trafficked sex workers, illegal immigrants to Europe and contraband items, including drugs and weapons, eventually led him to be arrested by Albanian law enforcement officials; although there does not appear to have been any connection with crimes carried out in the KLA network.

⁴⁷ Contrary to the widespread scepticism as to whether the underlying operations involved in organ trafficking could have been performed in Albania in the period 1999-2000, our experts whom we consulted directly not only found it perfectly plausible that this methodology had been used, but were aware of analogous, similarly illicit enterprises in which cadaver extractions were found to have been performed.

⁴⁸ One example in the realm of information management is the limited access granted to EULEX police investigators to the criminal databases operated by their Kosovo counterparts. The local leadership grudgingly granted EULEX officers access to the Kosovo Police Information System (KPIS), but only via a handful of user names and passwords, each one of which had to be attached to the login of a known and named EULEX official. The searches conducted by each of these usernames could then be directly kept under surveillance by the Kosovo Police liaison officers, who would necessarily know how often, and when, EULEX searches had been performed and also precisely whom EULEX had been checking up on. Even against this background, there are just as many occasions on which simple technology foils a modern-day police investigator, because KPIS regularly breaks down. The equivalent system for motor vehicle registration, the KVIS, was also opened to EULEX investigators after a period of barely co-operative negotiation with the Kosovo Police. However, the version of the database made available (unlike the original prototype that had been jointly developed under UNMIK) was exclusively in the Albanian language. MMA (Monitoring, Mentoring and Advising), the abbreviation summing up the relationship between EULEX and the Kosovo police, does not count for much when the Kosovar partners do exactly what they want – the only remedial action the international liaisons can take is to write a report that goes up the chain of responsibility, and probably lands on a desk somewhere in Brussels and is treated with minimal urgency and a premium on political correctness.

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Provisional edition

Investigation of allegations of inhuman treatment of people and illicit trafficking in human organs in Kosovo¹

Resolution 1782 (2011)²

1. The Parliamentary Assembly was extremely concerned to learn of the revelations by the former Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY), who alleged that serious crimes had been committed during the conflict in Kosovo, including trafficking in human organs, crimes which had hitherto gone unpunished and had not been the subject of any serious investigation.

2. In addition, according to the former Chief Prosecutor, these acts had been committed by members of the "Kosovo Liberation Army" (KLA) militia against Serbian nationals who had remained in Kosovo at the end of the armed conflict and been taken prisoner.

3. According to the information gathered on behalf of the Assembly and to the criminal investigations now under way, numerous concrete and convergent indications confirm that some Serbians and some Albanian Kosovars were held prisoner in secret places of detention under KLA control in northern Albania and were subjected to inhuman and degrading treatment, before ultimately disappearing.

4. Numerous indications seem to confirm that, during the period immediately after the end of the armed conflict, before international forces had really been able to take control of the region and re-establish a semblance of law and order, organs were removed from some prisoners at a clinic on Albanian territory, near Fushë-Krujë, to be taken abroad for transplantation.

5. This criminal activity, which developed with the benefit of the chaos prevailing in the region, at the initiative of certain KLA militia leaders linked to organised crime, may have continued, albeit in other forms, until today, as demonstrated by an investigation being carried out by the European Union Rule of Law Mission in Kosovo (EULEX) relating to the Medicus clinic in Pristina.

6. Although some concrete evidence of such trafficking already existed at the beginning of the decade, the international authorities in charge of the region did not consider it necessary to conduct a detailed examination of these circumstances, or did so incompletely and superficially.

7. Particularly during the first years of their presence in Kosovo, the international organisations responsible for security and the rule of law (KFOR and UNMIK) had to cope with major structural problems and serious shortages of staff with the skills to take on the tasks they were entrusted with, all this being aggravated by rapid and constant staff rotation.

8. The ICTY, which had started to conduct an initial examination on the spot to establish the existence of traces of possible organ trafficking, dropped the investigation. The elements of proof taken in Rripe, in Albania, have been destroyed and cannot therefore be used for more detailed analyses. No subsequent investigation has been carried out into a case nevertheless considered sufficiently serious by the

former ICTY Prosecutor for her to see the need to bring it to public attention through her book.

9. During the decisive phase of the armed conflict, NATO took action in the form of air strikes, while land operations were conducted by the KLA, *de facto* allies of the international forces. Following the departure of the Serbian authorities, the international bodies responsible for security in Kosovo very much relied on the political forces in power in Kosovo, most of them former KLA leaders.

10. The international organisations in place in Kosovo favoured a pragmatic political approach, taking the view that they needed to promote short-term stability at any price, thereby sacrificing some important principles of justice. For a long time little was done to follow up evidence implicating KLA members in crimes against the Serbian population and against certain Albanian Kosovars. Immediately after the conflict ended, in effect when the KLA had virtually exclusive control on the ground, many scores were settled between different factions and against those considered, without any kind of trial, to be traitors because they were suspected of having collaborated with the Serbian authorities previously in place.

11. EULEX, which took over certain functions in the justice sector previously fulfilled by United Nations structures (UNMIK) at the end of 2008, inherited a difficult and sensitive situation, particularly in the sphere of combating serious crime: incomplete records, lost documents, uncollected witness testimony. Consequently, a large number of crimes may well continue to go unpunished. Little or no detailed investigation has been carried out into organised crime and its connections with representatives of political institutions or in respect of war crimes committed against Serbians and Albanian Kosovars regarded as collaborators or as rivals of the dominant factions. This last-named subject is still truly taboo in Kosovo today, although everybody talks about it in private, very cautiously. EULEX seems very recently to have made some progress in this field, and it is very much to be hoped that political considerations will not impede this commitment.

12. The team of international prosecutors and investigators within EULEX which is responsible for investigating allegations of inhuman treatment, including those relating to possible organ trafficking, has made progress, particularly in respect of proving the existence of secret KLA places of detention in northern Albania where inhuman treatment and even murders are said to have been committed. The investigation does not, however, benefit from the desirable co-operation of the Albanian authorities.

13. The appalling crimes committed by Serbian forces, which stirred up very strong feelings worldwide, gave rise to a mood also reflected in the attitude of certain international agencies, based on the assumption that it was invariably one side which were the perpetrators of crimes and the other side the victims, thus necessarily innocent. The reality is less clear-cut and more complex.

14. The Assembly strongly reaffirms the need for an absolutely uncompromising fight against impunity for the perpetrators of serious human rights violations, and wishes to point out that the fact that these were committed in the context of a violent conflict could never justify a decision to refrain from prosecuting anyone who has committed such acts (see [Resolution 1675](#) (2009)).

15. There cannot and must not be one justice for the winners and another for the losers. Whenever a conflict has occurred, all criminals must be prosecuted and held responsible for their illegal acts, whichever side they belonged to and irrespective of their political role.

16. The question which, from the humanitarian viewpoint, remains the most acute and sensitive is that of missing persons. Of more than 6 000 disappearances on which the International Committee of the Red Cross has opened files, approximately 1 400 individuals have been found alive and 2 500 corpses have been found and identified. For the most part, these were Albanian Kosovar victims found in mass graves in regions under Serbian control and in Kosovo.

17. Co-operation between international agencies on the one hand and the Kosovar and Albanian authorities on the other to find out the fate of the missing persons is still clearly insufficient. Whereas Serbia ultimately co-operated, it has proved far more complicated to carry out excavations on the territory of Kosovo, and has been impossible, at least so far, on Albanian territory. Co-operation by the Kosovar authorities is particularly lacking in respect of the search for the almost 500 persons who officially disappeared after the end of the conflict.

18. The working group on missing persons, chaired by the International

Committee of the Red Cross and the EULEX Office on Missing Persons, needs the full and wholehearted support of the international community in order for the reluctance on both sides to be overcome. Knowing the truth and enabling victims' families to mourn at last is a vital precondition for reconciliation between the communities and a peaceful future in this region of the Balkans.

19. The Assembly therefore invites:

19.1. the member states of the European Union and the other contributing states to:

19.1.1. clarify the competences of EULEX and/or any other international judicial bodies mandated to conduct follow-up investigations, such that their territorial and temporal jurisdiction is recognised as encompassing all criminal acts linked to the conflict in Kosovo;

19.1.2. allocate to EULEX the resources that it needs, in terms of logistics and highly skilled staff, to deal with the extraordinarily complex and important role entrusted to it;

19.1.3. set EULEX a clear objective and give it political support at the highest level to combat organised crime uncompromisingly, and to ensure that justice is done, without any considerations of political expediency;

19.1.4. commit all the resources needed to set up effective witness protection programmes;

19.2. EULEX to:

19.2.1. persevere with its investigative work, without taking any account of the offices held by possible suspects or of the origin of the victims, doing everything it can to cast light on the criminal disappearances, the indications of organ trafficking, corruption and the collusion so often complained of between organised criminal groups and political circles;

19.2.2. take every measure necessary to ensure effective protection for witnesses and gain their trust;

19.3. the ICTY to co-operate fully with EULEX, particularly by making available to it the information and elements of proof in its possession likely to help EULEX to prosecute those responsible for crimes within its jurisdiction;

19.4. the Serbian authorities to:

19.4.1. make every effort to capture the persons still wanted by the ICTY for war crimes, particularly General Ratko Mladic and Goran Hadzic, whose impunity still constitutes a serious obstacle to the process of reconciliation and is often referred to by the authorities of other countries to justify their lack of enthusiasm about taking judicial action themselves;

19.4.2. co-operate closely with EULEX, particularly by passing on any information which may help to clear up crimes committed during and after the conflict in Kosovo;

19.4.3. take the necessary measures to prevent leaks to the press of information about investigations concerning Kosovo, leaks which are prejudicial to co-operation with other authorities and to the credibility of the investigative work;

19.5. the Albanian authorities to:

19.5.1. co-operate unreservedly with EULEX and the Serbian authorities in the framework of procedures intended to find out the truth about crimes linked to the conflict in Kosovo, irrespective of the known or assumed origin of the suspects and the victims;

19.5.2. in particular, take action on the requests for judicial assistance made by EULEX concerning criminal acts alleged to have occurred in a KLA camp in northern Albania;

19.5.3. start a serious and independent investigation in order to

find out the whole truth about the allegations, sometimes concrete and specific, of the existence of secret detention centres where inhuman treatment was purportedly inflicted on prisoners from Kosovo, of Serbian or Albanian origin, during and immediately after the conflict; the investigation must also be extended to a verification of the equally specific allegations about organ trafficking said to have taken place during the same period, some of it on Albanian territory;

19.6. the Kosovo administration to co-operate unreservedly with EULEX and/or any other international judicial body mandated to conduct follow-up investigations and in the framework of any other procedures intended to find out the truth about crimes linked to the conflict in Kosovo, irrespective of the known or assumed origin of the suspects and the victims;

19.7. all the Council of Europe member and observer states concerned to:

19.7.1. respond without undue delay to the requests for judicial co-operation addressed to them by EULEX and by the Serbian authorities in the framework of their current investigations concerning war crimes and organ trafficking; the delayed response to these requests is incomprehensible and intolerable in view of the importance and urgency of international co-operation to deal with such serious and dangerous crime problems;

19.7.2. co-operate with EULEX in its efforts to protect witnesses, especially when the persons concerned can no longer continue to live in the region and must therefore adopt a new identity and find a new country of residence.

20. The Assembly, aware that trafficking of human organs is now an extremely serious problem worldwide, manifestly contravening the most basic standards in terms of human rights and dignity, welcomes and concurs with the conclusions of the joint study published in 2009 by the Council of Europe and the United Nations. It agrees, in particular, with the conclusion that it is necessary to draft an international legal instrument which lays down definitions of human organ, tissue and cell trafficking and stipulates the action to be taken in order to prevent such trafficking and to protect its victims, as well as criminal law measures to prosecute the perpetrators.

¹ All reference to Kosovo in this text, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council [Resolution 1244](#) and without prejudice to the status of Kosovo.

² *Assembly debate* on 25 January 2011 (3rd and 4th Sittings) (see [Doc. 12462](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Marty). *Text adopted by the Assembly* on 25 January 2011 (4th Sitting).

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Provisional edition

The protection of witnesses as a cornerstone for justice and reconciliation in the Balkans

Resolution 1784 (2011)¹

1. Nearly two decades have elapsed since the start of the conflicts in the former Yugoslavia, which were marked by gross violations of international humanitarian law, including crimes against humanity and genocide. The United Nations Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) to bring to justice those who have committed serious violations of international humanitarian law in the former Yugoslavia since 1991.

2. The Parliamentary Assembly is aware that the ICTY's mandate will soon expire and welcomes the fact that the majority of war crime cases are now being tried in the national courts of the countries concerned.

3. While recalling its [Resolution 1564](#) (2007) on the prosecution of offences falling within the jurisdiction of the ICTY, the Assembly underlines the urgency of protecting witnesses, since testimonies – and with them a part of the truth – are lost forever when witnesses are no longer alive. Witnesses who stand up for truth and justice are owed reliable and durable protection. Without the protection and support that witnesses need to be able to testify, justice and reconciliation cannot be achieved.

4. The Assembly is appalled to note that, in the region of the former Yugoslavia, several witnesses have been killed and numerous others have been intimidated, threatened or have had their identity revealed by people determined to obstruct the course of justice and conceal the truth. The Assembly regrets that, due to these threats, many witnesses finally decide not to testify because they fear for their lives or those of their families.

5. For many witnesses, testifying is a daunting experience, which implies reliving traumatic events. The Assembly is concerned that many witnesses do not testify because they do not receive adequate support from the authorities. It is also aware that many potential witnesses still believe that they will be perceived as traitors if they testify in war crime cases.

6. The Assembly furthermore underlines the specific difficulties encountered by so-called 'insider witnesses', especially those who have served in the armed forces or the police, and stresses the need to guarantee that the witness protection teams are truly impartial and have no vested interest whatsoever in the trials.

7. The Assembly believes that witnesses have the right to be physically protected so that they can deliver their testimonies safely and free from fear. Furthermore, it considers that witnesses should be given support – including legal and psychological support – before, during and after the trial. While acknowledging the work undertaken by certain NGOs in this respect, the Assembly regrets that witness support is often neglected in the countries concerned and urges the relevant authorities to provide witness support either through state programmes or in collaboration with qualified staff working for NGOs.

8. At the international level, while acknowledging the important and pioneering work of the ICTY in developing procedural measures and precedents for witness protection in war crime cases and the essential role of the ICTY's Victims and Witnesses Section, the Assembly is disturbed to note that the Rules of Procedure and Evidence of the ICTY foresee – with a view to guaranteeing the rights of the defence – that the Prosecutor has a duty to disclose the identity of an anonymous witness to the parties 30 days prior to the trial.

9. The Assembly considers that it cannot be seen to be in the interest of justice for the identity of all anonymous witnesses to be systematically revealed to the defence. In cases where revealing the identity of a witness puts that person at a disproportionately high risk, the Assembly considers that the ICTY might envisage the use of a "special advocate", independent of both the prosecution and the defence, in compliance with the case law of the European Court of Human Rights.

10. Also, as already stated in [Resolution 1564](#) (2007), the Assembly is convinced that "[c]onsidering that ICTY's long-term (and moral) commitment towards its own witnesses, a residual mechanism, with a view to continuing to maintain witness protection after its mandate ends, should also be established". It considers that once the mandate has expired, it would be more economical and efficient to hand over the residual mechanism to the International Criminal Court.

11. At the national level, the Assembly recognises that the countries concerned have brought in legislation and regulations on witness protection and acknowledges that many witnesses have been protected in the region as a result of these measures.

12. However, the Assembly is concerned to note that, in practice, the level of witness protection varies greatly across the region as well as within the countries concerned and that – no doubt for financial reasons – witness support and protection programmes seem to be used less than the safety of witnesses requires. Too often, the capacities of the existing systems remain limited and suffer from lack of trust on the part of the population, of a proper legal framework, of adequate funding, facilities and technical equipment, as well as from a lack of co-ordination and co-operation between the relevant actors.

13. The Assembly is pleased to note that increased co-operation between the states concerned has enabled witnesses to continue to be protected as they travel from one state to another and that the use of video-link technology has allowed witnesses to testify without having to travel to the country trying the case and therefore putting themselves in danger.

14. The Assembly welcomes the contribution of the international community in providing funding and training on witness protection in the countries concerned. It particularly acknowledges the important role of the Organization for Security and Cooperation in Europe (OSCE) in the region, in particular its monitoring activity in war crime trials and as regards the training and awareness raising on witness protection in national courts. It encourages the OSCE to pursue this important task.

15. The Assembly further acknowledges the work of the United Nations Development Programme in Croatia in establishing witness support programmes which provide support and advice for witnesses in four pilot courts. It welcomes the fact that the Croatian authorities have taken over responsibility for these programmes. It regrets, however, that these kinds of programmes have not yet been institutionalised in the majority of courts in the region and encourages the authorities of the countries concerned to extend these programmes to all courts trying serious crimes.

16. The Assembly therefore calls on:

16.1. the competent authorities in the states and territories concerned to:

16.1.1. fully implement Committee of Ministers Recommendations R(97)13 on intimidation of witnesses and rights of the defence and Rec(2005)9 on the protection of witnesses and collaborators of justice;

16.1.2. if necessary, modify their national legislation, in order that in extreme cases the identity of witnesses may be kept secret, even from the defence, according to the case law of the European Court of Human Rights;

16.1.3. increase the resources allocated to witness protection programmes, adequately equip the courts with the necessary

facilities and technical equipment and establish an autonomous authority, separate from the police or those investigating the crimes, to oversee the programmes and allocate funds;

16.1.4. take steps to ensure that all judges, prosecutors, police officers and any other agents that come into contact with witnesses in serious crime cases are fully trained in witness protection and measures that are available to them to protect witnesses;

16.1.5. encourage the judiciary and prosecutors to investigate speedily and effectively all allegations of witness intimidation and threats and ensure that those people who put witnesses in danger are sanctioned;

16.1.6. make efforts to ensure that witnesses know what protection and support measures are available to them, before, during and after the trial;

16.1.7. provide funding for and establish witness support programmes, using those that have been set up by the United Nations Development Programme in Croatia as a model, in all courts dealing with witnesses in serious crimes;

16.1.8. ensure that witness support measures, including gender sensitive witness protection for the victims of war crimes involving sexual violence, are available from the beginning of the investigation, for instance by setting up support sections employing social workers and psychologists, in particular in the offices of the specialised prosecutors, where they exist, and in the police units responsible for the investigation of crimes under international law;

16.1.9. define the regulations and criteria with respect to the role that of NGOs or social welfare centres with regard to witnesses, and ensure adequate funding to perpetuate their service and expertise, and monitor their work to ensure that the service provided is consistent with these regulations and criteria;

16.1.10. continue and improve co-operation with one another in the prosecution of war crime cases;

16.2. the authorities of Bosnia and Herzegovina to:

16.2.1. implement without delay the proposals made in the National Strategy for War crimes cases;

16.2.2. enact legislation to enable the State Agency for Investigations and Protection to provide witness protection programmes in all courts across the country and ensure that this Agency has adequate resources, both financial and human, to support witnesses during the investigation phase as well as during the trial and post-trial phase. Similar legislation should be enacted and adequate resources should be made available, in order to provide witness protection in criminal proceedings before the courts in all entities;

16.2.3. ensure the harmonisation of case law, consider setting up a supreme court or grant the powers of a supreme court to an existing jurisdiction so as to guarantee legal certainty by harmonising the interpretation of the law;

16.3. the authorities of Croatia to:

16.3.1. in circumstances where witnesses may be at risk, use one of the four principal courts which were granted special jurisdiction to hear war crime cases or cases of organised crime;

16.3.2. extend the witness support programmes established by the United Nations Development Programme to all courts dealing with serious crime in Croatia;

16.4. the authorities of Montenegro to thoroughly investigate all cases of intimidation, threats and attacks against witnesses and to protect them before,

during and after they deliver their testimony in serious crime cases;

16.5. the authorities of Serbia to:

16.5.1. create and implement a procedure to organise the operation of the Witness Protection Unit, ensuring that the new unit is established according to professional standards, with suitably qualified and trained staff, in order to ensure the impartial operation of the unit, free of political or other interference, allocate adequate resources for its proper functioning and adapt legislation so that all courts dealing with serious crimes outside the War Crimes Chamber can benefit from this unit and from the Victim and Witness Support Unit;

16.5.2. consider the transfer of responsibility for the Witness Protection Unit to the Ministry of Justice, in order to avoid any conflict of interest between the members of this unit and the witnesses they are supposed to protect;

16.6. the authorities in Kosovo² to:

16.6.1. seriously tackle problems encountered by witnesses, given the acute difficulties they are faced with, which have resulted in several of them being killed;

16.6.2. enact legislation that provides for the protection of witnesses that testify in war crimes and serious crime cases, during the investigation proceedings, the judgment and after the trial, including the creation and functioning of witness protection and support units, and implement it fully;

16.7. the European Union to continue to make effective witness protection an essential criterion for the setting up of a partnership with the countries concerned, as well as to provide more manpower to EULEX's Witness Protection Unit;

16.8. all member states to:

16.8.1. accept and organise the relocation of endangered witnesses on their territories, especially those from Kosovo;

16.8.2. consider financing witness protection plans and adequate training for staff in charge of carrying through this task, as well as consider the possibility of bearing part of the living costs of witnesses relocated in their country;

16.9. the international community to continue to provide funding, expertise and training in witness protection and witness support in the region;

16.10. the ICTY to:

16.10.1. consider amending the Rules of Procedure and Evidence, so that, in extreme cases, the identity of a witness can remain anonymous even to the defence, in line with case law of the European Court of Human Rights;

16.10.2. set up a residual mechanism with a view to maintaining witness protection after its mandate ends, for example by handing over this mission to the International Criminal Court.

¹ *Assembly debate* on 26 January 2011 (5th and 6th Sittings) (see [Doc. 12440](#) rev., report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Gardetto). *Text adopted by the Assembly* on 26 January 2011 (6th Sitting).

See also [Recommendation 1952](#) (2011).

² All references to Kosovo in this text, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council [Resolution 1244](#) and without prejudice to the status of Kosovo.