Milosevic and the Chain of Command in Kosovo

Backgrounder

Serbian and Yugoslav Forces in the Kosovo Conflict
The two principal military forces in Yugoslavia in 1998 and 1999 were the Yugoslav Army (Vojska Jugoslavije, or VJ) and the Serbian Ministry of Internal Affairs (Ministarstvo Unutrasnjih Poslova, or MUP). The police of the Montenegrin Republic remained loyal to the Montenegrin government and were not active in Kosovo.

From the time he became president of Serbia in 1989, Slobodan Milosevic gradually strengthened and expanded the Serbian police over the federal police and the Yugoslav Army, both of which he viewed as less loyal forces. Friction between the Serbian police and Yugoslav Army occasionally emerged over the increased resources and prestige provided to the former.

Only the Serbian regular police, special police, and possibly state security special forces were active in Kosovo in the first half of 1998. The army, although present in the province, was restricted to maintaining security along the borders with Macedonia and Albania. This changed in April 1998, when the army participated in military actions in southwestern Kosovo along the border with Albania. The army and the police cooperated from that point on, but for the most part, actions against the Kosovo Liberation Army (KLA) remained the responsibility of the Serbian Ministry of Internal Affairs throughout 1998.

The primacy of the MUP began to change in late 1998 and early 1999 when President Milosevic reshuffled some key members of the Serbian police and Yugoslav Army, placing known loyalists in top positions. Among other changes, Gen. Dragoljub Ojdanic replaced Momcilo Perisic as General Chief of Staff of the Yugoslav Army and Col. Gen. Nebojsa Pavkovic was promoted to commander of the VJ's Third Army, which has responsibility for southern Serbia and Kosovo. Radomir Markovic replaced Jovica Stanisic as head of Serbia's security service (secret police). In late March 1999, when faced with attacks by NATO, the police, army, paramilitaries and other irregulars units coordinated their defense against air strikes, attacks on the KLA, and actions against civilians.

Serbian state security played a major role in Kosovo throughout the 1990s, monitoring Kosovar Albanian political circles, especially the KLA. State security also had a special operations unit called the JSO (Jedinica za Specijalne Operacije, or Special Operations Unit), known informally as "Frenki's Boys" (after the group's supposed founder Frenki Simatovic), which was active in Kosovo in 1998 and 1999 and earlier in Bosnia and Croatia. Commander of the unit during the Kosovo war was Milorad Lukovic (formerly Milorad Ulemek), also known as "Legija."

Serbia's state security was also involved in organizing and arming the various paramilitary groups active in the former Yugoslavia and Kosovo, including Arkan's Tigers and the White Eagles. The composition and command structure of the various paramilitary forces and the precise connections they each had to the Serbian and Yugoslav governments remains unclear. But the evidence reveals that they operated in Kosovo with the approval and ongoing political and logistical support of the government, and often in close coordination with regular
forces. Unlike in Bosnia, Serbian paramilitaries fighting in Kosovo were largely integrated into more formal police and army structures.

**Chain of Command**

The chain of command for the Yugoslav Army is transparent. As set out in the attached diagram, local commanders in Kosovo reported to the commanders of the Pristina Corps, led by Maj. Gen. Vladimir Lazarevic. The Pristina Corps reported to the Third Army, commanded by Col. Gen. Nebojsa Pavkovic, who reported to the General Staff, commanded by Gen. Dragoljub Ojdanic. The supreme commander of the VJ was Yugoslav President Slobodan Milosevic, who chaired the Supreme Defense Council.

The structure of the Serbian Ministry of Internal Affairs is more complicated due to the profusion of units and groups within the MUP. Although these groups were clearly coordinated by the Serbian government firmly under the control of Milosevic, their precise relationship to the government and interior ministry remains unclear. The same is true for the paramilitary forces active in Kosovo, most of whom fought within the official structures of the army or police.

According to the Serbian and Yugoslav constitutions, Yugoslav President Milosevic did not have de jure authority over the Serbian police in a time of peace. Milosevic, however, exercised extensive de facto control over the police and other institutions nominally under the competence of Serbia. In addition, under the Yugoslav Law on Defense, during a state of war, the Serbian and federal police come under the command of the Yugoslav Army. A state of war was declared in Yugoslavia on March 24, 1999, which gave Slobodan Milosevic, as supreme commander of the army, both de jure and de facto control of the police.

The MUP's de jure structure as presented in the diagram does not necessarily reflect the de facto reality. Various lines of command and control within and between state security, public security, the paramilitary forces, and the president are still unknown. Various individuals of lesser rank sometimes played more important roles than their formal superiors. Lastly, the methods and structure of cooperation between the MUP and VJ remain unclear, including a possible coordination center in Pristina.

Despite this, some individuals in the ministry during the war were clearly in positions of authority over forces in Kosovo. These include Col. Gen. Radomir Markovic, head of the state security service, and his deputy for Kosovo, David Gajic; Col. Gen. Vlastimir Djordjevic, head of the public security service; Col. Gen. Obrad Stevanovic, head of Serbia's police department, and his deputy for Kosovo, Col. Sreten Lukic (currently Serbia's Assistant Minister of Internal Affairs); Col. Zivko Trajkovic, commander of the Anti-terrorist Forces (SAJ); and Milorad Lukovic, commander of the state security service's Special Operations Unit (JSO).

**Command Responsibility**

The case against the Serbian and Yugoslav leadership is convincing. According to Article 7 of the tribunal's statute, the direct perpetrator of a crime, as well as the military or political leaders who ordered that crime, can be prosecuted. Paragraph three adds that a superior is
accountable for crimes committed if he or she knew or had reason to know about such acts and failed to take steps to prevent such acts or to punish the perpetrators.

The extent and systematic nature of the crimes in Kosovo make it highly implausible that the Serbian and Yugoslav leadership did not know that crimes were being committed. Numerous statements by the Serbian and Yugoslav government or military demonstrate that the top leadership was regularly apprised of the security situation in Kosovo. Well-distributed reports by the media and nongovernmental organizations repeatedly documented abuses by Serbian and Yugoslav forces.

Despite this, there is no evidence to suggest attempts by the Milosevic government to hinder government or paramilitary operations, despite repeated and credible reports that they had committed atrocities. Rather than being held accountable, hundreds of army and police personnel were promoted or given awards after the war, such as the Order of the National Hero and Order of the Yugoslav Flag, including most of the top military and police leadership.

On May 24, 1999, citing war crimes committed in Kosovo, the tribunal indicted Slobodan Milosevic and four other former Serbian or Yugoslav officials who, as of June 30, 2001, remain at large: former Serbian President Milan Milutinovic, former Yugoslav Deputy Prime Minister Nikola Sainovic, former Serbian Minister of Internal Affairs Vlajko Stojiljkovic, and former Yugoslav Army Chief of Staff General Dragoljub Ojdanic. The Kosovo Liberation Army is also under investigation for war crimes committed against Serbs, Roma, and other non ethnic-Albanians, as well as against Kosovar Albanians considered "collaborators" with the Serbian state.

The new Serbian and Yugoslav governments took some initial steps toward accountability after the fall of Milosevic in October 2000. On April 1, 2001, Milosevic was arrested on charges of corruption, although without mention of war crimes or his transfer to the tribunal in The Hague. Under intense pressure from the international community, he was transferred to The Hague on June 28. In May 2001, a Yugoslav Army military court charged 193 VJ soldiers and reservists with criminal offenses against the life and property of the Albanian community in Kosovo, although details of the charges remain unclear. The Serbian Ministry of Internal Affairs announced a similar investigation into abusive police.

Command Responsibility in International Law

The culpability of superior officers for atrocities that their subordinates commit is commonly known as command responsibility. Although the concept originated in military law, it now also embraces the responsibility of civil authorities for the abuses committed by persons under their direct authority.

There are two forms of command responsibility. The first is direct responsibility for orders that are unlawful. When an official authorizes or orders rapes, massacres, deportations or other grave abuses, that individual is criminally responsible for these acts, whether or not the superior who initiated or conveyed the order also carries out the atrocity or has subordinates perform it.
The other form of command responsibility is an imputed responsibility for the crimes of subordinates where those crimes are not based on direct orders. In this case, responsibility pivots on whether the superior had notice of the subordinates’ atrocities. Notice may be direct, either by the commander witnessing the crimes or being informed of them shortly thereafter. It may also be constructive, where the offenses were so numerous or notorious that a reasonable person could come to no other conclusion than that the officer must have known of their commission or of the existence of an understood and acknowledged routine for their commission. Another formulation of constructive notice is that the officer should have known of the offenses, but displayed such serious personal dereliction as to constitute willful and wanton disregard of the possible consequences--an extreme form of negligence. The failure of the officer to take appropriate measures to control the subordinates under his command and prevent atrocities, and the failure to punish offenders, are further elements in showing command responsibility.

An individual found to have command responsibility for a crime committed by a subordinate is deemed culpable to the same degree as the subordinate: that is, if the officer stood by while the subordinate committed murder, the officer is also guilty of murder.

With regard to the crime of rape, some courts have been reluctant to impute command responsibility for what is seen as a random and private crime. However, the requirements of command responsibility do not vary according to the particular crime; the commander is no more permitted to stand by while rape is committed than to stand by while murder is committed.

Thus, if a superior had reason to know that subordinates under his command committed rape (such as news reports, or widespread commission of this abuse), and failed to use all feasible means under his command to prevent and punish it, he too may be found guilty of rape.

Command responsibility is a part of customary international law. In other words, it has become such an accepted feature of international and national criminal law, through usage and inclusion in treaties, that it is now a universally recognized precept. It is also an explicit feature of many treaties, including the statute of the International Criminal Tribunal for former Yugoslavia, which has jurisdiction over any war crimes, crimes against humanity, or genocide committed with regard to the conflict in Kosovo. Article 7(3) of the Tribunal’s statute provides in relevant part:

The fact that any of ... [the listed criminal acts] was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

Subordinates, in turn, may not be absolved of responsibility if it is found that their commanders were responsible, through either direct acts or omission, for the atrocities the subordinates committed. The doctrine of superior orders is not a defense to criminal liability; however, it may be used to mitigate the sentence of a subordinate who acted pursuant to the order of a superior (see, for example, Article 7(4) of the Statute of the International Criminal Tribunal for former Yugoslavia).