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Coalition for Euro-Atlantic Integration

# WHY INDEPENDENCE FOR KOSOVO?

The Status Issue,  
Political Challenges and the  
Path to European Integration



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PRISHTINË

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# Introduction

This report has been prepared in the current atmosphere of renewed diplomatic and political momentum focused on the question of Kosovo's status, amid growing prospects that Kosovo may in the near future join the EU family of states alongside its regional neighbours. It outlines some key political challenges that the political process will have to address, and provides arguments why the solution, which is important not just for Kosovo itself but for the whole region - must be the recognition of Kosovo as an independent state. Independence is essential for Kosovo's economic and social development, and also in order to create proper foundations for the process of stability and integration that will eventually lead the Balkan states into the European Union.

Accordingly, the report provides arguments from many perspectives as to why independence is the most rightful, pragmatic and sustainable solution - for Kosovo and Serbia alike. It also addresses various concerns and counter-arguments regarding the future of an independent Kosovo, and in this context explains why suggested alternatives to independence would not work. The authors are convinced that uncertainty surrounding Kosovo's future status, if prolonged in any form, would merely serve to perpetuate elements of the current status quo that have already produced, and would continue to produce, all-round negative effects. If the core problems are not addressed, the massive investments the international community has made in Kosovo and the region could be put at risk.

The issue of Kosovo's status is rightly seen by Western diplomats and policy-makers as one of the most complicated problems in the Balkans, but also one that it is crucial to solve if sustainable peace and stability in the region are to be ensured. Nevertheless, after the deployment of NATO troops in Kosovo and the withdrawal

of Serbian forces in 1999, the international community hesitated to address the status issue openly. Their vacillation and lack of resolve (especially in the case of certain EU countries) contrast sharply with the plebiscitary demand for independence of Kosovo's Albanians and non-Serb minorities, representing over 90% of the population. This legitimate demand enjoys support from many Western political centres, influential international organizations and independent political analysts and scholars. In addition, a number of prominent Serbian politicians too have voiced their support for a more realistic position on the part of the Belgrade government, given Serbia's evident inability to re-assert its control over Kosovo.<sup>1</sup>

The assessment of this report is that now is the decisive moment to resolve the question of Kosovo's status, in order to do away with an insecurity and ambiguity that can only produce negative effects upon Kosovo itself, upon Serbia and upon the entire region. The authors are well aware that recognizing Kosovo as an independent state is no simple matter for the international community; but they also believe that no other solution is viable. They further argue that Kosovo's independence would not create any destabilizing precedent in the practice of post-Cold War international relations

This report is organized in five main sections, preceded by this introduction and followed by our conclusions and recommendations.

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Section 2 addresses Kosovo's economic and social problems, linked to its political isolation by the international community over the past six years. It argues that a positive settlement of the status issue would establish the necessary basic conditions for a much more investor-friendly environment; it would also end the social and cultural isolation of Kosovo keenly felt by its young population, which must be offered choices other than unemployment, emigration or political extremism.

Section 3 tackles Kosovo's constitutional position in the former Yugoslav federation, and during the events leading to the latter's dissolution. The fact that within former Yugoslavia Kosovo was a fully self-governing entity, effectively on a par with Bosnia-Herzegovina, Croatia, Macedonia or Slovenia, provides a strong argument in favour of its independence.

Section 4 provides a brief survey of recent and more distant history, moving back from the reasons for Serbia's latest aggression against Kosovo and NATO's intervention to the bitter experience of the Albanian population under Belgrade's direct rule, beginning with the violent annexation of Kosovo in 1912.

Section 5 considers key reservations expressed about Kosovo's independence, and some problematic suggested alternatives to full independence. The report contends that any solution that does not place sovereignty over Kosovo firmly in the hands of the government in Prishtina will lead to domestic and regional instability and derail the process of internal democratization. To leave the issue of who exercises sovereignty in Kosovo ambiguously

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defined, to restore sovereignty to Belgrade, or to delegate it once again however temporarily to some international administrative structure - all of these would merely serve to impede the formation of a politically strong citizenry and an active civil society: ones capable of exercising, not just symbolically but also materially, ownership of and responsibility for their own government.

Section 6 addresses the problem of the Serb minority, which for many diplomatic circles represents the Achilles heel of normal democratic proposals for resolving Kosovo's status. We argue, on the contrary, that precisely only an independent Kosovo with an active civil society will be able to create proper political conditions for the safety and full integration of its minorities, and in particular the Serb one.

In its closing paragraphs (Section 7), we offer a number of summary conclusions, with key recommendations on the future steps that stem from these.

## 2. Status Resolution as a Way Out of Kosovo's Economic Crisis and its Political and Cultural Isolation

Contemporary Kosovo's acute problems are a direct manifestation of the uncertainty of its current status. In addition to the prevailing grave economic crisis, there is also its cultural and political isolation from Europe and the international community, likewise due to the status impasse. This section argues why the settlement of Kosovo's status through independence will create the necessary conditions for resolving its serious economic and social problems.

### Status and the economic situation

Following a rapid revival in 1999-2002, when major investments were made to repair the material and human casualties of war, the economy of Kosovo is now in serious crisis. According to latest estimates by the International Monetary Fund (IMF), Kosovo's GDP growth this year (2005) will be negative (-0.5%), the only such case in Europe. The unemployment rate in Kosovo is 40-45%, the highest in Europe. Most of the unemployed are young people, since 63% of Kosovo's population is under 30. Unemployment and poverty have no ethnic boundaries, and they threaten the most vulnerable groups of society, families victimized by war, the rural population, the elderly, women and the minorities. This implies a need to launch drastic measures to place Kosovo's economy on a track of development and growth. Rapid economic development is the only route to addressing social problems and imbalances in the economic configuration (GDP; consumption; exports and imports; supply and demand in the labour market; budgetary capacities; needs for public capital investment, etc).

Uncertainty over the political future of Kosovo and weaknesses in the dual governing structure - UNMIK's international administration

The two key routes for Kosovo's economic development remain effectively blocked as a result of its unresolved status. The first route is the privatization of former socially owned enterprises (SOEs), while the second is access to loans and assistance from international financial institutions.

and the Provisional Institutions of Self-Government - have impeded the creation of more attractive conditions for local and foreign investors. Some 25-30,000 new jobs need to be created every year, i.e. three times the current estimates, in order to address successfully the problem of unemployment. This requires investment, and full access to and cooperation with international financial institutions - in other words, Kosovo's full integration into the global economy.

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The privatization process in Kosovo began after a three-year delay caused by legal problems surrounding the question of ownership - problems that flowed directly from the uncertainty about who wielded sovereignty over the territory as a whole. The process of privatization started with establishment of the Kosovo Trust Agency (KTA) in June 2002, under the auspices of the EU Pillar. The task of the KTA was to sell the assets of around 500 SOEs, so that these might contribute to economic development and create new jobs. However, the process was blocked repeatedly as a result of legal ownership disputes. It did resume in the first half of this year, but the lengthy impasse has left an uncertain feeling among investors, since a permanent threat of ownership disputes lurks in the background. UNMIK is incapable of resolving this matter, because it is only a provisional administrator of property. The resolution of Kosovo's status through independence could mean recognizing the right of the Kosovo Assembly to adopt laws on property privatization, thus placing property disputes under the jurisdiction of Kosovo's own judicial system. This would be in conformity with the pre-Milošević situation, when Kosovo's Assembly - not Serbia - was the sole legal owner of social property in Kosovo, as a result of which property disputes were handled exclusively by the Kosovar judiciary.

The other route for economic development namely capital investments in infrastructure and the creation of favorable conditions for business loans has likewise been blocked as a result of the status limbo. For in the eyes of the international community Kosovo is not a sovereign entity, so it does not have access to loans from the World Bank (WB) or IMF.

This state of affairs has created a vicious cycle. Economic development is one of the standards laid down by the international community before the status process can be initiated, yet its implementation is impossible since Kosovo lacks the necessary means. Despite numerous improvisations over the past six years, it is clear that only the resolution of status will make it possible to tackle Kosovo's basic economic problems and pave the way for its development and full integration into the European and global economy.

In direct correlation with its political status, sceptics and opponents

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of independence often claim that an independent Kosovo would not be economically viable. This issue can be viewed, however, from a different perspective: who but Kosovors can ensure their country's economic survival? It is clear that resolution of the status issue in favour of independence should ensure greater economic self-reliance and better management of economic resources. At the same time, with regard to human resources, Kosovo - thanks to its young and vital population - could have an advantage over other countries of the region in an open market economy and within regional and EU integration processes. Kosovo proved its capacity for ensuring economic independence even under Milošević's rule, when its underground institutional infrastructure underpinned both an active peaceful as well as an armed resistance during the 1990s. After the war and despite its effects, the institutional structures have since 2003 proved capable of sustaining the Kosovo Consolidated Budget.

## The isolation of Kosovo

The international community has provided considerable assistance for the reconstruction of Kosovo and the establishment of new institutions. Investments in Kosovo by the European Union alone over the past six years have totalled some 2.3 billion. The decision of the international community to delay the resolution of Kosovo's status has nevertheless had serious consequences for development in several areas. It is something of a paradox that the period of international presence since 1999 has also been the period of Kosovo's greatest relative isolation from the rest of the world.

Thus, for example, representatives of the local institutions, government, ministries, national assembly and presidential office have been unable to join their SCG counterparts on visits to international meetings and summits, in order to contribute to diplomatic and other discussions regarding developments in Kosovo. While during most of the 1990s Kosovo's political representatives were regularly received by Western governments, today, when Kosovo's institutions have been established under the auspices of the United Nations, Kosovo's representatives have a much harder time gaining access to diplomatic and political officials throughout the world. It is indeed strange that Kosovo has no liaison offices in foreign countries, and its government no portfolio for foreign affairs. In fact Kosovo is not represented in any regional, European or global organization: neither in the UN, nor in the Stability Pact, the OSCE or the Council of Europe.

Moreover, this isolation is apparent in all areas of life. In the economic sphere, requests by Kosovar leaders for investment have met with a single response from the international representatives, namely that this is impossible due to the unresolved status'. In the field of education, Kosovo has not been admitted into the Bologna Process, despite having a clear policy of higher education reforms, and despite the fact that all European countries (with the exception of Belarus) and many Caucasian states are already part of this process. Experience in the areas of scientific research, culture and sports are similar. With the exception of a few sporadic and largely symbolic actions, Kosovar society

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has been deprived of communication with foreign bodies for the same alleged reason. On the rare occasions when a delegation from Kosovo is invited to attend international meetings, Serbian representatives react by opposing any public presentation by it.

Isolation is both institutional and physical. Kosovo's inhabitants can travel only with documents issued by UNMIK, which they acquire after many difficulties and which expire quickly. Moreover, many countries do not recognize such documents. Kosovors need visas for all countries apart from Albania and Macedonia, a rather difficult requirement given the absence of foreign embassies in Prishtina. Kosovors living abroad, of whom there are considerable numbers due to emigration in the 1970s, 80s and 90s, are not entitled to use the UNMIK documents to establish permanent residence in foreign countries, but instead are forced to obtain passports of the Union of Serbia and Montenegro. This submits them to maltreatment, neglect and blackmail, or in some cases even the denial of consular services. In other words, this population experiences directly Kosovo's lack of political status.

To make matters worse, Kosovo's post-1999 segregation from the world - following a decade of isolation imposed by Serbia through systematic terror - has had grave consequences both for its development and for its communication with international organizations, something that would have helped solve its long-accumulated problems. We are certain that improved communications with international organizations, and Kosovo's integration into the world community, will help place Kosovo on a safe track towards the implementation of European standards of economic growth, democratization and political stability. At the same time, such communication will help to overcome negative phenomena among the new political parties and institutions of Kosovo: corruption, incompetence, inertia and irresponsibility.

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### 3. Kosovo's Constitutional Position in the Former Yugoslav Federation

The international community's protracted maintenance of Kosovo's current ill-defined and uncertain status is all the more strange in view of its self-governing status within the former Yugoslavia. The status issue is habitually treated by international diplomatic and political circles outside the historical context of the construction and dissolution of the former Yugoslav federation, with all its weighty consequences for Kosovo's sovereignty. Keeping to essentials, this section briefly highlights a number of salient historical facts indicating that the problem of Kosovo's status was essentially invented by Milošević.

According to both the federal constitution and its own, Kosovo functioned within the Yugoslav federation as an independent and self-governing unit. The political administration of Kosovo consisted of structures wielding autonomous legislative, executive, and judicial powers.

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The inevitable starting point is the juridical reality that, by virtue of the constitution of the former Yugoslavia, Kosovo, while nominally not enjoying the status of a fully-fledged republic, nonetheless possessed practically all attributes and functions pertaining to the republics of the Socialist Federal Republic of Yugoslavia (SFRY), subsequently recognized as the latter's legal successors.

Thus according to both the federal constitution and its own, Kosovo functioned within the Yugoslav federation as an independent and self-governing unit. The political administration of Kosovo consisted of structures wielding autonomous legislative, executive, and judicial powers. The Assembly was the highest legislative body within the territory of Kosovo, and the Constitutional Court of Kosovo the highest judicial authority. Like the other federal units - the six republics and the province of Vojvodina - Kosovo had its own independent judiciary, while executive power rested in the hands of its own government, which controlled its police and territorial defence forces.

In 1989 the regime of Slobodan Milošević, as part of its efforts to destroy the existing Yugoslav constitutional order, abolished the autonomous status of Kosovo - in contravention of the existing Yugoslav constitution - by resorting to a combination of political pressure and use of force in order to absorb Kosovo into Serbia's legal and political system. At the time of Yugoslavia's collapse, and in line with similar actions in other federal units, its Assembly declared Kosovo a sovereign entity on 2 July 1990. In September 1990 the Assembly adopted the Constitution of the Republic of Kosovo. In the same month the population reaffirmed its will to independence by way of a referendum.

The fact that Kosovo functioned as an independent entity for nearly five decades, half of that time with full self government, challenges the allegation that the Republic of Kosovo had never been a state entity or that it arose out of nothing. Given its former status as one of Yugoslavia's eight self-governing territories, Kosovo is neither politically nor legally comparable to such secessionist creations as Republika Srpska in Bosnia-Herzegovina.

The problem of Kosovo today arose exclusively as a consequence of the political and military aggression waged against it by the Milošević regime in the late 1980s and early 90s, as part of the latter's general onslaught against the Yugoslav federation. The refusal of Kosovo's population to accept their country's violent integration into Serbia was a legal and legitimate act, by contrast with Milošević's aggression which - as is widely recognized - formed merely the initial step in his regime's destruction of the political equilibrium established in the region by the creation of the Yugoslav federation at the end of World War II, and within that federation of the self-governing entity of Kosovo.

In view of these historical, political and constitutional precedents, it is easy to understand the frustration felt by the Kosovar population when faced with the current legal and political reservations against their country's independence. One of the

The political conflict over Kosovo, while indeed often manifested through internal ethnic divisions, is in fact essentially a by-product of Belgrade's policies rather than being rooted in any long-standing intolerance between two rival ethnic communities. Albanians and Serbs in Kosovo have a long history of co-existence, whereas violent confrontations have been episodic and brief. Policies enacted by the Serbian state - and not endogenous factors, or ancient hatreds' between Albanians and Serbs - have been the main motor of the conflict in Kosovo.

frequently mentioned caveats - no border changes - contrary to all legal evidence assumes Kosovo to have been an inseparable part of the former Yugoslav republic of Serbia. Certain circles even talk about a possible domino effect, claiming that recognition of Kosovo's independence would lead to further divisions in the Balkans. Such arguments are frequently voiced also by Serbian parties and governmental circles. But they completely ignore the political context of the wars of the Yugoslav succession, which inevitably came to involve also Kosovo and which motivated Kosovo's demand for independence.

Faced with the dissolution of the Yugoslav federation, the international community in 1992 recognized Slovenia, Croatia, Bosnia-Herzegovina and Macedonia but not Kosovo, accepting - more by default than through any consideration of the legalities - the fact that at the time of Yugoslavia's disintegration in 1991 Serbia had already annexed Kosovo. Yet the criteria governing recognition for the constituent units of the former Yugoslavia relied on the Yugoslav constitution on the one hand, on referendums in which the majority of the populations concerned had declared for independence on the other. It is obvious that the same arguments hold true also for Kosovo.<sup>2</sup>

The issue of Kosovo was set aside at the time when the other successor states were recognized, despite the fact that as a federal unit it met all the same criteria as they did: it had its own constitution, government, assembly, bounded territory, all defined and guaranteed by the Yugoslav federal constitution.<sup>3</sup> The legal and constitutional differences between the status of Kosovo and that of the six republics were minor and non-essential, whereas their similarities in terms of competency were crucial. For example, at the all-Yugoslav level Kosovo exercised a right of veto in legal, political and economic decision-making equal to that of other federal units. Moreover, it is well known that the right to adopt and repeal laws defines the sovereignty of a state. Lastly, in the referendum of 1991 - analogous to those held in other federal units - the majority of Kosovo's population voted for independence.

It is important to recall in this way the legal, constitutional and political status of Kosovo and its people within the former Yugoslav federation, because to do so places the conflict between Serbia and Kosovo over the latter's status into its proper political context, and refutes any over-simplifying approach that seeks to explain the conflict as an ethnic one between the Albanian and Serb communities. The political conflict over Kosovo, while indeed often manifested through internal ethnic divisions, is in fact essentially a by-product of Belgrade's policies rather than being rooted in any long-standing intolerance between two rival ethnic communities. Albanians and Serbs in Kosovo have a long history of co-existence, whereas violent confrontations have been episodic and brief. Policies enacted by the Serbian state - and not endogenous factors, or 'ancient hatreds' between Albanians and Serbs - have been the main motor of the conflict in Kosovo.

## 4. Kosovo as a Colonial Problem: Albanians under Belgrade Rule

Serbia's treatment of Albanians as an oppressed and unwanted people did not begin with the war of 1999, or with Milošević's rise to power in 1989. Ever since Serbia's invasion and annexation of Kosovo in 1912-13 - i.e. of a territory where, according even to Serbian estimates, around 60% of the population was non-Serb - Kosovor Albanians have suffered constant repression and persecution, and have continuously been viewed by Serb nationalists as a threat to the interests of the Serbian state. At the same time, Serbia's expansion into non-Serb territories and the systematic maltreatment of its non-Serb population has had a deleterious effect on its will and capacity to create a democratic polity. The anti-Albanian policy continued after the formation of the Yugoslav kingdom in 1918. Albanians were deprived of the right to education in their mother tongue; their rights as a minority population (rights enjoyed by other minorities such as the Hungarians and Germans in the north) were not recognized; and they were excluded from citizenship. Until 1929 indeed, Belgrade emphatically denied the existence of any Albanian minority in the kingdom, while simultaneously instituting a policy aimed at changing the ethnic structure of the Kosovor population. In the period between the two world wars, Serbia confiscated over 200,000 hectares of land from the local population - nearly half of all arable land - and distributed it to Serb settlers. The number of settlers soon rose to around 60,000, or over 15% of the overall population. There were also plans, only partly realized, to deport most of the Albanian population of Kosovo to Turkey. After the end of World War II and the constitution of Federal Yugoslavia, Kosovo became an autonomous province within the newly constituted Republic of Serbia. Anti-Albanian terror continued, however, under the direction of the Serbian and Yugoslav hard-line leader, interior minister Alexander Ranković.<sup>4</sup> It was only after his removal and the marginalization of dogmatists within the Yugoslav League of Communists in the mid 1960s that it became possible to create a new constitutional arrangement, as a result of which Serbian rule was removed from Kosovo. The latter now became a self-governing federal unit, with rights and responsibilities equal to that of Yugoslavia's six republics and the province of Vojvodina. It remained a self-governing federal entity until 1989, when an orchestrated campaign to revise the Yugoslav constitution was launched by the Communist League of Serbia headed by Slobodan Milošević. Kosovo's autonomy became the first casualty in Milošević's war against Federal Yugoslavia.<sup>5</sup> Following the violent abrogation of Kosovo's autonomy in 1989, Milošević's regime expelled Albanians en masse from state and public employment (around 90% of Albanians working in the administration and 70% of those working in public and socially owned enterprises were dismissed); shut down the University of Prishtina and nearly all high schools; closed down or muzzled Albanian-language media; exerted brutal repression against Albanian political activists; and established a generalized system of apartheid in Kosovo, where the Serb minority now ruled with the military, police, political and economic backing of Belgrade. During the 1990s, Belgrade

tried to return Kosovo to the condition in which it had been in the 1930s. This project was destined to fail, however, because the Albanian population was no longer what it had been at that time, having already enjoyed an improved political position under the advanced autonomy of the former Yugoslav federation and Kosovo's own institutional and state structures. Thus the attempt to bring Kosovo back to a regressive state triggered a mass mobilization of its Albanian inhabitants, initially for resistance and later to fight for the right of self-determination, as with the other entities of the former Yugoslavia.<sup>6</sup> The Albanians' bitter experience under Belgrade's rule during most of the twentieth century, culminating in the mass killings and expulsions of 1999, abolished any Serbian claim to legitimate rule over Kosovo. It is clear, moreover, that the attitude of the Serbian leadership towards Kosovo has undergone no fundamental change despite the removal of Milošević from power.

Faced with systematic Serbian state terror, the Kosovo Albanians maintained a peaceful resistance for several years. At the end of the 1990s, however, when purely political resistance had proved ineffective, the armed resistance of the Kosovo Liberation Army was born. This won the support of the majority of Kosovors. We view these two forms of resistance as complementary rather than exclusive, since each under certain circumstances and at a certain time contributed to fulfilling the aspirations of the people of Kosovo.

NATO's military intervention in 1999 following the unanimous decision of 22 countries and in support of chapter VII of the UN Charter, and the resulting withdrawal of Serbian forces, created conditions for a just settlement of Kosovo's future in the form of international recognition of its independence. This decision should have been made by the Western powers already in 1999, but for various reasons - including pressure from Russia and lack of determination among Western political and diplomatic circles - it was not. The delay further complicated the situation in Kosovo and the Balkans. The international civilian and military presence in Kosovo - KFOR and UNMIK - created conditions for security, reconstruction, and the establishment of the first democratic institutions after the 2001 municipal elections and the subsequent parliamentary ones. However, the fundamental question in Kosovo - the sovereignty over its territory - remained unresolved. Without a definitive solution to this problem, it is illusory to hope for long-lasting stability in Kosovo and the Balkans. As mentioned earlier in this report, the crisis and dissolution of the former Yugoslavia was set into motion by Serbia's violent policy towards the Albanians of Kosovo. The Serbian leadership even now continues to mobilize Serbs in both Kosovo and Serbia on a nationalist platform. In the last couple of years, rather than focusing on Serbia's democratization and its serious economic and social problems, Serbian political parties and opinion makers have preferred to keep the Kosovo issue on the boil. Recent opinion polls and monitoring of the Serbian media show a high level of hatred against Albanians, much higher than against other nations with whom Serbia fought even bloodier wars, such as Croats or Bosnians. At a conference held in Prishtina in June 2005, two of the most prominent Serbian intellectuals and

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political activists, Žarko Korač and Latinka Perović, denounced such attitudes as shameful and racist.<sup>7</sup>

Official Serbia has never admitted the atrocities perpetrated by their forces against the Albanian population of Kosovo during the war of 1999. This aggression, which principally targeted the civilian population, resulted in the killing of nearly 10,000 people; the expulsion of almost half the local Albanian population; the disappearance of thousands; the rape of countless women; the destruction of nearly 150,000 homes; as well as other traumata and sufferings impossible to quantify. It is illusory, if not downright immoral, to believe that after such an experience a population could be forced to live in a union with the state that carried out such aggression, and that has yet to express remorse and accept full responsibility.<sup>8</sup>

The complete and unconditional separation of Kosovo and Serbia would represent both a guarantee to Albanians that they will not face renewed repression, and an opportunity for Serbia seriously to address its past and redefine its political identity. Freeing Serbia from Kosovo would represent an opportunity for it to break once and for all with aggressive nationalism and archaic colonial thinking, and to commit itself to its own democratization. Such a development would provide the basis for a healthy and peaceful cooperation and co-existence between Serbia and Kosovo in the Balkans.

## 5. Why Reservations About Independence are Misplaced

Peace and stability in the Balkans are in the interest of all - the citizens of Balkan countries as well as the entire international community. Some of the reservations expressed about Kosovo's independence rely on claims that recognizing it would trigger off regional instability, including new armed conflicts. Fear of regional destabilization has consequently led various international policy-making circles to seek alternative solutions for Kosovo's status, such as broad autonomy within the Union of Serbia and Montenegro' or independence without sovereignty'.

In this section we rebut claims that recognition of an independent Kosovo would risk regional instability. We argue that, on the contrary, a clear stance on the sovereignty and international legal character of Kosovo are essential precisely for stability in the region.

### Complications arising from delay

The international community's delay in resolving the status of Kosovo has only complicated the political situation there and throughout the region. Negative consequences of delaying a solution include the following: There is widespread uncertainty and fear among Kosovo Albanians regarding their future, especially since until recently a return of Serbian rule was not

firmly and explicitly ruled out by the international community. Similar uncertainty and fear affect also Kosovo Serbs, and are reflected among their political leaders, who in the hope of a re-establishment of Serbian rule over Kosovo have hung back from joining the new Kosovo institutions. Observing the lack of a clear position by the international community on Kosovo's status, Serbian political parties and opinion-makers began manipulating the Kosovo issue for their own internal and external purposes. This has created room for political processes that might once again endanger the fragile stability of the region. It has been harder to achieve agreed political solutions guaranteeing special constitutional and legal rights for the Serb minority. Thus, for example the political context created by Kosovo's unresolved status has overly politicized the issue of decentralization, raising fears among the public that this might lead to a new - ethnically based - territorial division of Kosovo, as a first step towards its partition and even eventually towards annexation by Serbia of Serb-inhabited territories in the north and east.

Delays in resolving Kosovo's status have thus created grave obstacles to Kosovo's institutional and economic reconstruction. It was only after the violent events of 17-18 March 2004, in fact, that the international community's representatives made their first public proposals for addressing the status issue. The violence, which took on an ethnic character and culminated in the burning of Serb houses and churches, exposed the weaknesses of both Kosovar political and civil society and the international organizations, particularly UNMIK and KFOR. Frustration over the lack of a clear future, especially among young Kosovors, was clearly exploited by Albanian extremists and channelled toward ethnically motivated violence.

These tragic events provoked strong reactions both within Kosovar society and among international political circles, highlighted by a sharply critical report from the UN Secretary General's special envoy Kai Eide and by subsequent diplomatic developments. It is ironic that these tragic events had to occur, in order for the international community to focus its attention on the need to address the status question without further delay. The March riots at last made the international community aware of how the status impasse continually generates new dissatisfaction and frustration, inciting tensions and threatening fresh outbursts. Yet it has still not demonstrated the necessary commitment to bring closure to the problem, by completing the process begun with the dissolution of Yugoslavia and recognizing Kosovo as a sovereign state.

## Kosovo's independence and the status of Bosnia and Macedonia

In objecting to Kosovo's independence, Serbian politicians often employ the argument that this could lead to the dissolution of Bosnia-Herzegovina, through the secession of Republika Srpska and its unification with Serbia. The same argument is heard at times from Western analysts and diplomats. But this argument is unfounded for several reasons. First, as indicated above, there is an essential difference between the status of Kosovo and that of Bosnia-Herzegovina's Republika Srpska. While Kosovo was a federal unit of the former Yugoslavia, with similar constitutional competencies to the republics, Republika Srpska was created *ab novo* in the early 1990s, by means of ethnic cleansing and mass crimes committed against the civilian population, including genocide. The international community accepted the Serb entity in Bosnia-Herzegovina for purely pragmatic reasons, whereas Kosovo's right to international recognition rests on its legally and constitutionally validated status within the former Yugoslav federation.

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There is similar confusion over the potential repercussions of Kosovo's independence for Macedonia. Serbian politicians and certain Western diplomats claim that recognizing Kosovo's independence would lead to a division of Macedonia, and to the unification of its mainly Albanian-inhabited western part with Kosovo. Such an assumption, however, is not in accordance with political realities in Macedonia. While that country's Albanian political parties - and its Albanian population generally - do support the demand of Kosovors for independence, they have also made it clear that they want to achieve their own rights within the Republic of Macedonia. Independent studies of the region demonstrate that Kosovo's independence would in fact have a positive impact on the stability and integration of Macedonia, not least because it would establish an internationally recognized border between the two states. The majority of Macedonian politicians too have come to recognize that respecting the political will of the people of Kosovo would have a positive impact on their country's stability. In June 2005 there was a successful meeting between the current Kosovar prime minister and his Macedonian counterpart. The Macedonian government has indeed clearly stated that any democratic solution for Kosovo's status would be acceptable to it. Hence, Kosovo's independence poses no threat to the integrity and stability of Macedonia. On the contrary, we believe that obstructing it could lead to possible revolts not only among the Albanians of Kosovo itself, but also among those of Macedonia - something that could incite wider disintegrative processes in the region.

### Problematic alternatives to full independence

The preliminary positions of the EU and US on Kosovo's status exclude three options: return to the pre-1999 situation; partition; and unification with other states in the region. Exclusion of these

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three options has removed certain threats hanging like dark clouds over Kosovo, but the crucial issues for any final settlement still remain to be resolved.

In their reports this year the International Crisis Group (ICG) and the International Commission on the Balkans (ICB), two of the most prestigious international organizations, announced their support for Kosovo's independence as the best and most realistic option. They argued for an initial phase of conditional independence', in the sense of preserving for a certain period the authority of the international community in protecting human and minority rights. These reports, as well as opinions expressed by the representatives of various Western countries, emphasize the need for a presence of international troops in Kosovo (extension of KFOR's mandate, or deployment of another NATO formation, or EU troops) for an open-ended period, even after the resolution of status.

The vast majority of Kosovo's population will not object to the presence of foreign troops as guarantors of stability and security, provided that Kosovo is granted its merited status within international organizations and institutions, beginning with membership of the United Nations. It is only after Kosovo has acquired real independence and become a proper state that it will be in a position - as a consequence of the declared will of its population - to share elements of its sovereignty, in the sense of allowing international military and civilian missions to provide security for all its citizens and ethnic communities.

EU and US representatives insist that any settlement of Kosovo's status must include negotiations between the Serbian and Kosovar governments. It is difficult to deny the need for such talks, even more so bearing in mind the numerous unresolved technical issues between Serbia and Kosovo. It is understandable too that the international community should wish to proceed with the agreement and consent of Serbia, so that a long-term solution can be reached, and tensions and regional instability avoided. However, this approach involves some difficulties. So far, Serbia's political leadership has ruled out independence as an option, and recently it has been proposing the 'more than autonomy, less than independence' model as what it calls a compromise'. But this formula does not offer conditions for a viable solution, not least because it entails embracing a strange and contradictory set-up unseen in international practice, which would lead only to growing tensions and conflict rather than a stable and long-term solution.

Kosovo's independence, on the other hand, is necessary in order to implement its integration into EU and Atlantic structures. The EU, the US and international committees of experts all support Kosovo's request for integration. But integration implies independence. The fact is that the EU and Atlantic structures are made up of members that are sovereign states, not territories with an experimental status. Therefore, Kosovo cannot be integrated into these structures through the formula of 'more than autonomy, less than independence'.

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There is a real risk that talks between Kosovar and Serbian representatives on the issue of status could drag on indefinitely. An interminable negotiating process is likely to feed into the vacillations and calculations of certain political circles in Europe, particularly those which cannot free themselves from old ways of viewing Balkan problems. Any such delay in reaching a solution could provoke new political tensions both in Kosovo and in Serbia, impeding the implementation of policies addressing the serious economic and social problems of both countries. Any faltering or vacillation in addressing the issue of Kosovo's status in an expedient manner is bound in particular to cause social and political instability within Kosovo itself.

The truth is that Kosovo has had a conditional and dual status for six years now: it is not an independent and internationally recognized state, yet at the same time it is independent from Serbia through an international protectorate. There is no good reason for such dualism and ambiguity to be perpetuated in another shape or form. We strongly believe that whereas no danger will be entailed by the international community's recognition of Kosovo as a sovereign state, an unsustainable compromise imposed by the international community regarding its status - one that avoided specifying the ultimate bearer of sovereignty - would indeed contain great dangers for the stability of the region. Such a solution would be defective first and foremost in that, by conserving uncertainty surrounding Kosovo's international legal character, it would bar it from participation in international institutions, with all the serious consequences for its population that were detailed in Section 2 above.

The international community is perfectly aware of the fact that the Serbian leadership, though aware that it cannot regain direct rule over Kosovo, remains inhibited by Serbia's internal political climate from adopting a more realistic stance regarding Kosovo's full separation from Serbia. It is, therefore, more likely than not that negotiations between representatives of Kosovo and Serbia will indeed take place, but with little chance of reaching an agreement.

We believe that representatives of the international community, having assumed political responsibility by launching military intervention and establishing an international protectorate in Kosovo, should - along with its people - be the ones to have the final say on its status. This would make it easier for the Serbian leadership and public to accept Kosovo's independence, and to interpret it as a realistic and inevitable solution arising from federal Yugoslavia's dissolution.

In addressing the status issue, the diplomatic community cannot treat the Kosovar and Serbian leaderships' claims over Kosovo's future status as symmetrical and of equal legitimacy, for the following reasons:

- a) It is the democratically expressed will of its population that Kosovo should join the international community as an independent state. Polls on the issue show that 93% of Albanians and 87% of non-Serb minorities in Kosovo support independence.
- b) It was not Kosovo that initiated aggression against Serbia, but the other way around. It was Serbia not Kosovo that forced the international community to launch military intervention. (Before attacking Kosovo, indeed, Serbia had precipitated three earlier wars of aggression in the region: against Slovenia, Croatia and Bosnia-Herzegovina.)

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## **Kosovo's independence and democratization of the Western Balkans**

Some people may believe that the project of democratization can be achieved by forcing Kosovo into a union with Serbia, or into the Union of Serbia and Montenegro, but this would never work for the reasons specified above. It is far more efficient and pragmatic to approach the democratic development of these three entities separately, rather than to invest effort in a complicated and ultimately unworkable federal or confederal union of Serbia, Montenegro and Kosovo.

Kosovo's independence is a logical and just conclusion to the international intervention, and will be fully justified when the institutions, procedures and values of a functioning and sustainable democratic system are established not only in Kosovo, but in Serbia and throughout the region as well. Some people may believe that the project of democratization can be achieved by forcing Kosovo into a union with Serbia, or into the Union of Serbia and Montenegro, but this would never work for the reasons specified above. It is far more efficient and pragmatic to approach the democratic development of these three entities separately, rather than to invest effort in a complicated and ultimately unworkable federal or confederal union of Serbia, Montenegro and Kosovo.

We think, moreover, that it would be much easier to establish and guarantee national and political rights for the Serb minority in Kosovo, which numbers around 200,000 (including those yet to return), than to try to convince over two million Kosovor Albanians to join Serbia, a country which they perceive as prejudiced, foreign, and a threat to their freedom. The instruments to guarantee national, political and economic rights for the Serb minority will be much more easily implemented in a democratic Kosovo than similar conditions for Kosovor Albanians would be in a hypothetical common framework with Serbia and Montenegro. This is due not only to the fact that the union of the latter is unlikely to last, given Montenegro's desire to achieve its own independence from Serbia, but also because Kosovo - unlike Serbia and Montenegro - already possesses instruments of direct control and democratic development (UNMIK, OSCE, KFOR and international police forces). Installing such international missions in Serbia would be tantamount to a second intervention, and would constitute an even more serious violation of Serbia's sovereignty.

## **6. Ensuring Minority Rights and Kosovo's Status**

**T**he international community has included guarantees for the security of the Serb minority among the basic conditions for addressing the status of Kosovo. The fact that this issue seems to have become an obstacle to moving forward has aggravated relations between the Albanian majority and the Serb

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minority. The Albanians are frustrated by the fact that the Serb minority appears as the main obstacle to independence. The Serbs, meanwhile, fearful of taking any action that might appear to legitimize Kosovo's separation from Serbia, refuse to join political processes designed to agree their own legal and security position within the political and judicial institutions of Kosovo, in particular through a widespread boycott of parliamentary elections.

Political tensions between the majority and the minority can and should be viewed in a different perspective, however, in relation not just to the issue of sovereignty, but also to the entire corpus of human rights and freedoms that should be guaranteed and implemented in Kosovo (within the framework of European standards, and other conventions for the protection of human and minority rights and freedoms).

The majority in Kosovo must certainly carry the biggest share of responsibility for ensuring a normal life and guaranteeing rights for minorities. The Albanian majority's readiness to accept this responsibility in regard to the rights of most minorities is reflected in its relatively good relations with non-Serb minorities, which play an active role in Kosovo's political institutions. Ethnic tensions present between it and the Serb population derive mainly from the still raw memory of rule by the Serb minority in the 1990's and during the conflict, when most Kosovor Serbs openly supported - or were involved as militants of - the Milošević regime.

Being relatively small in numbers and territorially dispersed, however, the Serb minority objectively lacks the potential to obstruct the resolution of Kosovo's status in the longer term. As soon as Kosovor Serbs are freed from Belgrade's tutelage and influence, they will no longer be considered a threat to Kosovo's territorial integration or political stability, even if they are guaranteed broader political and national rights within a more advanced decentralized system. For their part, however, the Serbs should see their interest in advancing a free and democratic Kosovo by becoming its loyal citizens. By viewing such a Kosovo as the locus of their own democratic rights, Serbs would enable themselves to join its government and society in creating space and infrastructure for a mass return of those who fled during and after the war.

But the key condition for any such turning-point to be reached in relations between Albanians and Serbs in Kosovo is for Serbia to cease fostering the illusion that Kosovo may once again be run from Belgrade. The international community should indeed make it clear to the Serb minority that any return of Serbian rule to Kosovo is a false hope, and that consequently they should seek their individual and collective future within the political and social institutions of Kosovo itself.

With respect to the implementation of returns and minority rights, one highly sensitive obstacle is Belgrade's manipulation of the real numbers of Kosovo Serbs, whether currently residing in Kosovo or living as displaced persons elsewhere. Serbian official

sources claim that over 200,000 Serbs fled Kosovo after the NATO intervention, while approximately 150,000 Serbs are currently living in Kosovo, thus arriving at a total Kosovar Serb population of over 350,000. These numbers are highly exaggerated. Serbian estimates for the prewar period spoke of 200-220,000 Serbs living in Kosovo, 150,000 of whom were long-established residents, while the rest had settled over the past two or three decades as part of the economic migrations that were normal across the former Yugoslav federation.

In order to avoid any possibility of manipulating minority percentages, it would be best for a census to be organized in Kosovo as soon as possible, according to international standards and monitored by neutral parties. A complete census both of the resident population and of the displaced who consider themselves citizens of Kosovo would permit the creation of an invaluable database, which would not just register the ethnic and other backgrounds of Kosovo's citizens, but also provide a more realistic picture of their property and rights.

The Kosovo government, political parties and civil society organizations must as soon as possible prepare awareness-raising programmes for the majority on the need to advance minority rights and freedoms, especially freedom of movement and communication, as well as unimpeded use of property.

So far as the return of displaced persons is concerned, this is an immediate issue for those ready and willing to reintegrate into Kosovar society. In this connection, the pledge by the Kosovo government and UNMIK that the sustainable return of large numbers of Serbs, Roma and other minorities will be pursued needs more determined and transparent support from Kosovar society at large. However, no illusions should be harboured about an immediate return en masse of all displaced people. In the next six-month to one-year period, it would be encouraging and realistic to have a number of returns amounting perhaps to between five and ten thousand. This could change the general climate and rebuild trust between minorities and majority, with a view to achieving sustainable mutual cooperation and understanding. This implies that the process of return would not end with Kosovo's independence, but would remain one of the key obligations of any independence agreement, guaranteed and monitored by the international community. One encouraging fact is that a growing number of Kosovar Albanians now support return of the displaced (70% in June 2005, EWR nr. 10 UNDP/Riinvest).<sup>9</sup>

The Kosovo government, political parties and civil society organizations must as soon as possible prepare awareness-raising programmes for the majority on the need to advance minority rights and freedoms, especially freedom of movement and communication, as well as unimpeded use of property. We strongly believe that after the settlement of Kosovo's status, the majority of our citizens will support all measures designed to ensure protection, security and freedom of speech and movement for minorities, as guaranteed in every democratic society.

Cultural and historical heritage - for instance, Kosovo's monasteries and other mediaeval sites - represents a key area where with even short-term planning considerable progress can be made, achieving a disproportionate symbolic effect. The Serb minority and the Orthodox Church are very concerned about the status and safety of the Peja Patriarchy, the monasteries in

A generous offer on the status of the two monasteries in the Dukagjin valley - the Patriarchy and Decan - could be included in the package of negotiations for creating conditions of trust. This might involve the establishment of some sort of special administration by the Orthodox Church along with civil structures and international guarantors, but involving also representatives of the Kosovo authorities and local institutions.

A workable compromise is less likely, however, in regard to demands linking the solution to the political status of Kosovo Serbs with territorial autonomy. The situation in Kosovo is not conducive to territorial autonomy on an ethnic basis, due to the small number and dispersed pattern of the Serb communities among a dozen enclaves.

Decan and Gracanica, and other historical and cultural sites that are part of the world cultural heritage. Kosovo citizens ought to be convinced that this is not just the property of Serbs and the Orthodox Church, but part of the heritage and cultural wealth of Kosovo. These are historical, cultural and tourist resources that they should neither view with animosity, nor consider as something alien or dangerous for the state of Kosovo. The Orthodox Church of Albania could help in this domain, by conveying the experience of religious tolerance in Albania among Muslims, Catholics and Orthodox. Even in Kosovo, where there is no Albanian Orthodox community, there has historically been inter-religious tolerance and cooperation, as shown by the fact that under Ottoman rule Albanian Muslim notables acted as guardians and protectors of Orthodox monasteries.

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Moreover, the Kosovo government and the majority population should have no problem with the legalization and free functioning of a public university in the Serbian language in Kosovo, either within the University of Prishtina or independently from it. Albanians still have fresh memories of their struggle to open, legalize and expand Albanian-language universities in Prishtina and Tetovo (Macedonia), so they should have nothing against the right of the Serb minority - and other communities (Gorani, Bosniaks and Roma) that speak Serb or similar languages - to be educated in elementary schools and a public or private university of their own.

A workable compromise is less likely, however, in regard to demands linking the solution to the political status of Kosovo Serbs with territorial autonomy. The situation in Kosovo is not conducive to territorial autonomy on an ethnic basis, due to the small number and dispersed pattern of the Serb communities among a dozen enclaves. The model of the Ohrid Agreement in Macedonia seems more promising, in order to guarantee the status and rights of Kosovo Serbs. Instead of a territorial autonomy that would threaten constant tension and even Kosovo's ethnic partition, the model of the Ohrid Agreement would offer the Serbs implementation of their rights within local decentralized government. Through constitutional means they could regulate the protection of their vital political, cultural, religious and economic rights as a minority. Moreover, an international agreement could designate an international monitoring mission, to evaluate in the coming years progress in the implementation of this package of minority rights. The mission would have the power to recommend sanctions and other penalties for the Kosovo government in the event of non-implementation. This would give the Serb minority another guarantee that their future in Kosovo is not at risk.

## Conclusions and Recommendations

The independence of Kosovo is the only historically justified and politically viable solution that will guarantee peace, stability and development in the Balkans. Independence is a realistic solution for Kosovo because:

- Kosovo was an independent administrative and political unit in the former Yugoslav federation. The conflict in Kosovo began as part of the disintegration of the Yugoslav state. Therefore, Kosovo's independence constitutes the final chapter of the dissolution process and the political reorganization of the Balkans.
- As a result of its special status in the Yugoslav federation, the case of Kosovo is not the same as that of other conflict areas such as Republika Srpska (created by ethnic cleansing), the Preševo valley or Macedonia (where the issue at stake was how to advance the political position of the Albanian minorities in Serbia and Macedonia respectively). The resolution of Kosovo's status should not be related to any of these disparate issues, but should instead be based on its own specific history.
- Serbia has historically failed in governing Kosovo. Ever since its annexation of the latter in 1913, there has been a tendency in Serbia to treat Kosovo as a colonial territory. The key generator of conflict in Kosovo was Serbia's aggressive and repressive policy against the local Albanian population, and not any hatred or lack of trust between ethnic communities. With its aggression and campaign of ethnic cleansing in 1999, Serbia lost any legitimacy to rule over Kosovo in any shape or form.
- Independence is the only solution that will pave the way to Kosovo's economic and social development, especially bearing in mind the massive unemployment, the young population and the constant pressure for emigration. Placing sovereignty in Prishtina's hands will finally enable Kosovo's integration into regional, European and global institutions, and allow its emergence from the institutional, political and diplomatic isolation imposed by the international administration of UNMIK, as a result of the unresolved status. Independence is the only path for Kosovo's accession to the EU, since the latter continues to be a union of independent states.
- Independence is the only viable long-term solution. Any other solution - such as an autonomous territory within the Union of Serbia and Montenegro, or independence without sovereignty' - remains unacceptable to the Kosovar population, so will not work. The international community must refrain from treating Kosovo as an area for institutional and diplomatic experimentation, as it is doing with UNMIK. Independent and sovereign states constitute the only historically viable formula for the territorial and political organization of Europe. Kosovo's independence will also create opportunities for healthy and sustainable relations between it and Serbia.
- Kosovo still needs support in institution building, and in monitoring success in the implementation of minority rights. For

this very reason, we believe that a civil international presence will be needed in Kosovo even after status settlement, albeit of a more limited and specific kind than is the case with UNMIK. This implies a monitoring and supporting presence of the UN, EU, OSCE and/or Council of Europe, but without decision-making powers, which should properly reside with the democratically elected assembly and government in Prishtina. Kosovo still needs the military presence of KFOR, for as long as this is required by the domestic and regional security circumstances.

We make the following recommendations to Kosovar leaders and Western diplomats for the intermediate period, during the process of addressing Kosovo's status:

- We recommend that a *referendum* be held in Kosovo, under UN supervision. We believe that consulting the political will of the people of Kosovo on final status is both necessary and vital for a sustainable solution.
- We recommend that in the current provisional period and during the negotiations, the EU should prepare concrete investment projects to reduce unemployment and stimulate economic production. The EU should move from infrastructure assistance to direct support for the export sector and for human capacity development, primarily through investment in education.
- We recommend avoiding any further delay in the decision-making process leading towards Kosovo's final status, in order to prevent an outburst of accumulated popular dissatisfaction with the status quo and the grave social and economic situation. The key risk is that a protracted process of addressing the status issue could exacerbate the current situation. Therefore, the process of status resolution needs to be relatively quick and must resolve the issue in a permanent manner.

## Notes

<sup>1</sup>. We have in mind particularly the Independent International Group led by former Finnish prime minister Marti Ahtisaari and former ICTY judge Richard Goldstone; the International Crisis Group; the Committee for the Western Balkans led by former Italian prime minister Giuliano Amato; Noel Malcolm, Paul Garde, Morton Abramowitz, Janusz Bugajski; the former foreign minister of Serbia - Montenegro Goran Svilanović ; former deputy prime ministers of Serbia Ćedo Jovanović and Žarko Korač; former speaker of the Serbian Parliament Nataša Mičić ; and former Serbian Communist leader Latinka Perović .

<sup>2</sup>.On this issue see Enver Hasani,Self-Determination Under the Terms of the 2002 Union Agreement Between Serbia and Montenegro: Tracing the Origins of Kosovo's Self-Determination', *Chicago-Kent Law Review*, Vol. 80 (2005), pp.305-29.

<sup>3</sup>.This was particularly guaranteed by Article 5 of the SFRY Constitution.

<sup>4</sup>. For more details see Sabrina Ramet, *Nationalism and Federalism in Yugoslavia 1962 - 1991*, Indiana University Press, Bloomington 1992.

<sup>5</sup>. It should not be forgotten that even during the period of Kosovo's self-rule, Albanians continued to provide the bulk of political prisoners in Yugoslavia. According to estimates of the time, in the 1970s and 1980s the number of Albanians imprisoned for political 'offences' in Yugoslavia constituted 90% of the overall number.

<sup>6</sup>. On the resistance and mobilization of Albanians during 1988-92, see Besnik Pula, Emergence of the Kosovo Parallel State, 1988 - 1992', *Nationalities Papers*, Vol. 32, No. 4 (December 2004), pp.797-826.

<sup>7</sup>. 'Žarko Korač spoke openly about prejudices in Serbia against Albanians. I want to say openly that these prejudices are at the limit of racism.' Latinka Perović in her book *Serbian-Albanian dialogue 2005: The Future Status of Kosovo*, Helsinki Committee for Human Rights in Serbia, Belgrade 2005, p.101.

<sup>8</sup>. Despite its gestures of reconciliation toward Croatia and Bosnia, the new regime in Serbia has not made a single symbolic step to admit guilt and responsibility for the aggressive war in Kosovo, instead trying to place the blame for the war on both sides. While Kosovo Albanian leaders have made denunciatory statements against the sporadic postwar violence against Serbs in Kosovo, the new regime in Belgrade has thus far been unwilling to accept responsibility for Serbia's aggression against a civilian population.

<sup>9</sup>. United Nations Development Programme, Human Development Report - Kosovo 2004. <http://www.Kosovo.undp.org/HDR/hdr.htm>.