

# **KOSOVO AND SERBIA AFTER THE ICJ OPINION**

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## KOSOVO AND SERBIA AFTER THE ICJ OPINION

### EXECUTIVE SUMMARY AND RECOMMENDATIONS

In the wake of the July 2010 International Court of Justice (ICJ) advisory opinion on the legality of Kosovo's declaration of independence, Kosovo and Serbia have an opportunity to resolve differences, establish bilateral relations and unblock their paths to greater European Union (EU) integration. The obstacles are formidable, including mutual suspicion, incompatible agendas and uncertainties about the true goals of each. Failure to negotiate in the next months would probably freeze the conflict for several years, as the parties entered electoral cycles, during which the dispute would likely be used to mobilise nationalist opinion and deflect criticism of domestic corruption and government failures. Enough has changed recently, especially the development of more realistic if not yet fully public attitudes in Belgrade and Pristina, to suggest a win-win solution is possible. Without preconditions and facilitated in particular by the EU, Kosovo and Serbia should promptly open talks with the aim of reaching as comprehensive a compromise settlement as possible.

The draft resolution calling for new talks on Kosovo that Serbia submitted on 28 July is likely to be discussed by the UN General Assembly in September. Kosovo would accept a dialogue that does not question its status or territorial integrity. Facilitating a Kosovo-Serbia rapprochement is a challenge for a divided EU, of whose 27 member states 22 have recognised Kosovo and five have not and whose counsels are likewise split between those who advocate a comprehensive solution and those who caution that only a gradual approach beginning with modest, technical issues is feasible.

The issue of diplomatic recognition of Kosovo's statehood is at the heart of the bilateral impasse. Though 69 states have taken this step, Serbia has vowed to never accept the territory's "unilateral declaration of independence" (UDI). That stand – and their own fears of secession precedents – provide the political justification for the five EU non-recognisers. On the UN Security Council, Russia and China oppose recognition, as do several non-permanent members. Pristina hopes the ICJ's opinion that its 17 February 2008 declaration of independence did not violate international law or Security Council Resolution 1244 (the latter the basis for UN supervision of the terri-

tory since the end of the 1999 war) will provide a strong impetus for more recognitions. But to sway the holdouts in the EU and among the permanent members of the Council, Kosovo still needs Serbia's consent to its independence, at least implicitly via establishment of some form of diplomatic relations, and eventually full and formal recognition.

On the ground, the real dispute is over Kosovo's Northern municipalities. The North has not been under effective authority from Pristina for two decades; its sparse and rural Serb population uniformly rejects integration into Kosovo. This includes the plan named for Martti Ahtisaari, the former president of Finland and Nobel Peace laureate, who developed it as UN Special Envoy in 2007 and which regulates Kosovo's supervised independence, offering substantial self-rule for Serb-majority municipalities and additional competencies for the North in education and healthcare. Serbia still runs municipalities, courts, police, customs and public services, and the EU Rule of Law Mission (EULEX) has been unable to deploy more than a token presence there. Two incidents in Mitrovica in July showed that violence remains a threat.

Three solutions for the North are conceivable: the Ahtisaari plan, expanded autonomy and a land swap. Crisis Group has consistently supported the carefully-conceived Ahtisaari plan since its inception, though so far it has been insufficient to secure the North's integration or Kosovo's international recognition. Pristina might offer additional rights to the North comparable to those enjoyed by various European regions including a regional legislature and executive and local police and courts, as well as agreeing that most customs fees and tax revenue collected in the region could remain there. But there are no signs that Belgrade or the Northern Serbs would accept even this expanded autonomy. Instead they say partition could pave the way for Serbia to recognise the remainder of Kosovo as independent.

Pristina will not accept partition but gives some hints it might consider trading the heavily Serb North for the largely Albanian-populated parts of the Preševo Valley in southern Serbia. That would involve complex calcula-

tions. Some Kosovars worry more about the implications for their state of Northern autonomy, but many internationals fear that border changes could provoke mass migration by Kosovo Serbs now living south of the Ibar, as well as destabilising separatism in neighbouring Macedonia and Bosnia-Herzegovina. Crisis Group has also warned of this in the past, but recent explorations suggest that these concerns are no longer well founded.

Another key issue for Kosovo-Serbia talks – perhaps even more sensitive for Serbian national sentiment than the fate of the North's 45,000 or so brethren – is the status and security of the Serbian Orthodox Church's most venerable monasteries and churches. The Ahtisaari plan provides extensive protection, but the Church, fearful of a repeat of the March 2004 mob violence that left many religious sites in smoking ruins, wants more. No Serbian leader could sustain an overture to Kosovo without the Orthodox Church's strong support. Belgrade accordingly desires to enhance the Church's position by obtaining the substance if not necessarily the form of extra-territoriality, treaty guarantees and protection by an international force after NATO-led peacekeepers (KFOR) leave. There would appear to be scope for the Pristina government, which already made extensive concessions to the Church during the Ahtisaari talks, to consider such measures without prejudice to its sovereignty.

Rather than status, the North and the Church, however, Pristina would like talks to focus on technical issues, such as customs, trade, communications, electricity and transport. The EU and the U.S. also prefer a beginning with these apparently less volatile matters, so as to build mutual confidence. These are also problems which similarly affect the daily lives of Kosovo Albanians and Kosovo Serbs, limiting their access to goods and services. But past EU attempts at shuttle diplomacy on similar issues have largely failed. The status issue would likely block progress also in these areas, unless Belgrade is willing to acknowledge Kosovo's authority at least implicitly.

To exploit the opportunity for serious, comprehensive talks that could bring a compromise final settlement, bilateral dialogue will need to go beyond technical matters. If Serbia really seeks meaningful progress and wants to convince the EU and U.S. that it is negotiating in good faith rather than merely trying to postpone more recognitions, it will have to treat Kosovo as an equal, even if it does not immediately recognise the new state. Crisis Group's soundings suggest grounds for moderate optimism. There is a greater sense of political realism on the Kosovo issue today in the Tadić government than its Kostunica predecessor ever demonstrated, to the point that some officials appear to be looking creatively for ways to free Serbia honourably from the burden Kosovo has become. The government claims to be confident it can deliver its public opinion, but it would need a meaningful

face-saving measure to persuade nationalist elements that it has not sold the interests of the nation. Pristina, too, is becoming more realistic about what it and its international supporters can accomplish in the North.

The international community should facilitate as complete a settlement as is possible, leaving it up to the parties themselves to decide how far and in what direction they can go to achieve the goal of recognition. The most controversial outcome that might emerge from negotiations would be a Northern Kosovo-Preševo Valley swap in the context of mutual recognition and settlement of all other major issues. Neither Pristina nor Belgrade proposes this openly, but officials in both capitals have begun to speak of it quietly in contacts with Crisis Group. Many in the international community would be unhappy with this option. Crisis Group believes that ruling out this or any specific mutually-agreed option from the onset, however, would risk freezing the Kosovo-Serbia conflict, with no guarantee of eventual resolution.

Greater autonomy for the North and self-governing autonomous status for Serbian Orthodox Church sites, as envisaged by the Ahtisaari plan, in exchange for Serb recognition should be acceptable to both sides. But neither Belgrade nor Northern Kosovo Serbs appear ready to sign on, and a divided international community has few levers with which to exert pressure. If a land swap is also unacceptable, and a comprehensive solution proves an illusion, an interim status for the North might be another avenue for the parties to explore.

At a minimum and in order to obtain positive consideration in Brussels for the EU candidacy application it filed in December 2009, Serbia should pledge to work with Pristina to secure the rule of law in the North, establish good neighbourly relations by cooperating on a host of technical issues to improve people's daily lives and stop blocking Kosovo's participation in regional institutions. If the talks fail completely, the EU and the U.S. could try to press greater integration on the North by forcibly extending EULEX and Kosovo law enforcement there, but with decreasing troops, resources and political influence in the area, that prospect seems unlikely.

## **RECOMMENDATIONS**

### **To the European Union (EU), its Member State Governments, and the U.S. Government:**

1. Offer to facilitate Kosovo-Serbia talks on the following basis:
  - a) they should be held at the level of President Boris Tadić for Serbia and Prime Minister Hashim Thaçi for Kosovo;

- b) they should begin promptly and aim to conclude by early summer 2011; and
  - c) the parties themselves should set the agenda, with no topics ruled out from the beginning.
2. Appoint a high-level diplomat to start preparing the talks, including by shuttling between Belgrade and Pristina.
  3. Pledge to support all agreements reached by the parties.
  4. Renew efforts to achieve a compromise in the name dispute between Greece and Macedonia, and take other steps to insulate Macedonia, as well as Bosnia-Herzegovina, from possible negative repercussions of a Kosovo-Serbia rapprochement.
  5. Work with Kosovo to secure more international recognitions.

#### **To the Governments of Serbia and Kosovo:**

6. Accept the facilitation offer and engage in talks as equal parties.
7. Consider a comprehensive settlement, including the following elements:
  - a) recognition of Kosovo within current borders;
  - b) broad autonomy for the region north of the Ibar River consistent with Kosovo's territorial integrity, including a regional legislature and executive, control over most customs duties and local tax revenue and such other matters as may be mutually agreed; and
  - c) self-governing autonomous status for Serbian Orthodox Church sites, including all the components of the Ahtisaari plan, supplemented by international armed protection after the departure of KFOR and guaranteed by treaty or Security Council resolution.
8. Support each other, if a comprehensive agreement is impossible now, in securing the rule of law in the North and establish good neighbourly relations by concluding customs, trade, communications, electricity and transport agreements that can improve people's lives and strengthen both the Serbian and Kosovo economies.
9. Open representation offices immediately in Pristina and Belgrade, without ambassadorial accreditation.
10. Cooperate in ensuring the security and effective functioning of Kosovo's office in North Mitrovica.

#### **To the Government of Serbia:**

11. Build mutual confidence by immediately allowing Kosovo – without a UN chaperone – to participate in a manner that does not prejudice status in such international organisations and arrangements as the International Telecommunication Union, the Central European Free Trade Agreement and regional law enforcement bodies.
12. Work with concerned member states to amend the proposed UN General Assembly resolution on Kosovo to ensure that it serves as a framework for dialogue and receives the widest possible backing.

**Pristina/Belgrade/Brussels, 26 August 2010**

## KOSOVO AND SERBIA AFTER THE ICJ OPINION

### I. INTRODUCTION

Kosovo's secession from Serbia in February 2008 ended most contacts between the two governments and moved their dispute into the field of international law and diplomacy, fought both directly and through proxies.<sup>1</sup> The fear of weakening their positions on the legal battlefield locked both into rigid stances. The advisory opinion the International Court of Justice (ICJ) issued on 22 July 2010 ended this phase. Kosovo and Serbia are now free to speak directly to one another, and the European Union (EU) has offered to facilitate.

By a ten to four majority, the ICJ found that Kosovo's declaration of independence "did not violate general international law, Security Council resolution 1244 (1999) or the Constitutional Framework" imposed by the United Nations Interim Administrative Mission in Kosovo (UNMIK).<sup>2</sup> This was a narrow ruling; the Court concluded only that there was no prohibition on declaring independence, not that Kosovo had permission to do so, or that it enjoyed "the right to separate from a State".<sup>3</sup> Several judges felt the opinion should have gone further and addressed the right to "remedial secession" following grave human rights abuses; and at points the judges hinted at broader implications for "the right to independ-

ence for the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation".<sup>4</sup>

The opinion was a defeat for Serbia but not a victory for Kosovo. It ended Belgrade's hopes of using the ICJ as a springboard to re-open talks on Kosovo's status and makes it more likely that it will accept a formula to sit with Kosovo's leaders as equal partners in a dialogue process. Scrambling to recover the initiative, Belgrade further alienated powerful EU states when it reacted to the opinion by introducing a draft resolution to the UN General Assembly on 28 July that had not been coordinated with Brussels. The ICJ opinion did not immediately convince undecided or outright critical states of Kosovo's right to independence. None of the five EU non-recognisers have shown signs of changing policy, so Brussels will be unable to take a position on Kosovo's status. China and Russia would likewise continue to block Kosovo from UN membership, even if it were to achieve a majority in the General Assembly. The cascade of post-ICJ recognitions Pristina expected has not materialised, and there is little indication that Kosovo's friends are putting great effort into persuading others to accept it as a sovereign state.<sup>5</sup>

In Pristina, the ruling helps offset some of the frustration produced by the slow recognition pace and the "status neutral" approach to the country favoured by the UN and the EU. Kosovo Albanians regard the Ahtisaari plan as a bitter pill they were forced to swallow in exchange for international support for independence.<sup>6</sup> Like several other

<sup>1</sup> In 2008, the UN General Assembly requested the International Court of Justice (ICJ) to produce an advisory opinion on the question, "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law". "Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law", UNGA A/RES/63/3, 8 October 2008. Serbia's foreign minister, Vuk Jeremić, observed that the ICJ opinion "would provide politically neutral, yet judicially authoritative, guidance"; the U.S. and several other governments that recognise Kosovo said they would not change policy in response to the opinion. 22nd plenary meeting of the General Assembly, A/63/PV.22, 8 October 2008.

<sup>2</sup> *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, International Court of Justice, 22 July 2010 (hereinafter "Advisory Opinion"), p. 43, para. 122.

<sup>3</sup> *Ibid.*, p. 31, para. 83. The Court did not address the right to self-determination or the right to secession.

<sup>4</sup> *Ibid.*, p. 30, para. 79; see Declaration of Judge Simma, calling for "a more comprehensive answer" and criticising an "approach [in which] everything which is not expressly prohibited carries with it the same colour of legality; it ignores the possible degrees of non-prohibition, ranging from 'tolerated' to 'permissible' to 'desirable'". See also Separate Opinion of Judge Cançado Trindade.

<sup>5</sup> Senior officials of a neighbouring state told Crisis Group they expected a "limited" number of recognitions after September 2010 and noted that Kosovo suffered from being seen as a U.S. project by many Arab and Asian states; Crisis Group interviews, 27-28 July 2010.

<sup>6</sup> The expressions "plan" and "Ahtisaari plan" are used throughout the text to refer to the overall scheme contained in the Ahtisaari

peoples of the former Yugoslavia, they fought a costly war against Serbian forces. Unlike the others, their republic then endured eight years of UN administration of uneven quality, ending in a protracted negotiation process.<sup>7</sup> It was compelled to accept a constitution largely written by foreigners that incorporates restrictions against unification with Albania; prohibited from having an army; and made to offer Serbs far greater rights and privileges than those enjoyed by comparable minorities elsewhere in the Balkans. Uniquely, its independence is to be “supervised” for an indeterminate period by international officials.<sup>8</sup> Instead of their double-headed black eagle on a red background, they were presented an anodyne, internationally-designed blue, white and yellow national flag beloved by none.

Nevertheless, Kosovo has made progress in the first years of independence. It has a functioning government, is taking steps to strengthen the rule of law<sup>9</sup> and is in a stronger position to negotiate than it was in 2006-2007. It has been recognised by 69 governments, including those of 22 of the EU’s member states and two thirds of the Council of Europe’s. Privately, even some governments that have not recognised acknowledge that independence and statehood are irreversible facts.<sup>10</sup>

Many Serbs feel defeated and humiliated by the events culminating in Kosovo’s independence and accordingly wish to overturn some feature of that process.<sup>11</sup> Their ne-

gotiators complain that the UN-mediated status talks began with independence as a foregone conclusion.<sup>12</sup> Some link this with allegations of international bad faith going back to the 1999 Rambouillet talks on Kosovo, at which NATO had, in Belgrade’s view, already decided to launch air strikes.

Prime Minister Vojislav Koštunica’s government collapsed after Kosovo’s independence. Its successor, which emerged in May 2008, abandoned the old policy of breaking diplomatic relations with recognising governments, in favour of a diplomatic offensive against new recognitions, blocking Kosovo from international bodies and challenging its independence at the ICJ. The aim was to drive Kosovo back to the negotiating table by proving that only Serbia could deliver UN membership and full international legitimacy.

The most pressing issue is still mutual recognition. When Belgrade’s and Pristina’s leaderships finally sit around the same table, they should talk about the circumstances under which Serbia will recognise Kosovo as an independent state and agree to its membership in regional and other international bodies. This will turn on two additional disputed issues, the fate of Kosovo’s Serbian Orthodox monasteries and churches and of its Serb-held North. Kosovo still needs Serbian recognition: without it Russia and China will not agree to its UN membership.<sup>13</sup> At least three of the five non-recognising EU member states<sup>14</sup> likewise take their cue from Serbia, blocking Kosovo’s European perspective and tying EU policy into knots of status neutrality.<sup>15</sup> It is also highly unlikely the EU would admit Serbia until it has, in effect, recognised Kosovo. Once Kosovo and Serbia resolve the recognition issue between themselves, however, others will have to follow suit; whatever its own opposition to independence, no state could plausibly maintain that Kosovo is de jure part of Serbia once the latter has set aside its claims.

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Report and Comprehensive Proposal for the Kosovo Status Settlement (CSP), read together. These were the documents President Ahtisaari, as UN Special Envoy, submitted to the Secretary-General in March 2007, who in turn forwarded them to the Security Council with his full approval.

<sup>7</sup> See Crisis Group Europe Reports N°161, *Kosovo: Toward Final Status*, 24 January 2005; N°177, *Kosovo Status: Delay is Risky*, 10 November 2006; N°182, *Kosovo: No Good Alternatives to the Ahtisaari Plan*, 14 May 2007; N°185, *Breaking the Kosovo Stalemate: Europe’s Responsibility*, 21 August 2007; and N°188, *Kosovo Countdown: A Blueprint for Transition*, 6 December 2007.

<sup>8</sup> Bosnia and Herzegovina is also under international supervision but was not required to accept supervision as a condition of independence; rather, the international community imposed it at a moment when Bosnia’s institutions had largely ceased to function.

<sup>9</sup> See Crisis Group Europe Report N°204, *The Rule of Law in Independent Kosovo*, 19 May 2010.

<sup>10</sup> Crisis Group interviews, EU non-recognising state diplomats and officials, Belgrade, 16 June 2010; Brussels, 23 June 2010; senior EU Council Secretariat officials, Brussels, 23 and 27 July 2010.

<sup>11</sup> Crisis Group interview, prominent Serb journalist, Belgrade, 15 June 2010. A senior Spanish official told Crisis Group “our position on Kosovo is extremely contradictory between our goal to strengthen EU foreign policy on one side and the fact that we contribute to weaken it on the European continent it-

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self. In the government everyone is aware of this contradiction, but we cannot change our position for the moment”, interview, Madrid, 25 February 2010.

<sup>12</sup> This view is not limited to Serbia; Crisis Group interview, UN official involved in the status talks, 3 December 2009. The UN-sponsored talks, led by Special Envoy Martti Ahtisaari, the former president of Finland, took place in 2006, with follow-up rounds held under a U.S., EU and Russian “troika” in 2007.

<sup>13</sup> The General Assembly could give Kosovo observer status by majority vote, but full UN membership requires approval in the Security Council, where Moscow and Beijing have vetoes.

<sup>14</sup> Kosovo is not recognised by Cyprus, Greece, Romania, Slovakia and Spain in the EU.

<sup>15</sup> The ICJ ruling is troubling for Cyprus, and to a lesser extent Slovakia and Romania, countries whose opposition to Kosovo’s independence is related to concerns about potential (or, for Cyprus, actual) secession.

Initially it was expected that the carefully balanced Ahtisaari plan would be formally approved in a UN Security Council resolution that would supersede Resolution 1244 (June 1999), which established an international civil presence to administer Kosovo on an interim basis. This never occurred, and Kosovo Albanians now see the Ahtisaari process as a one-sided one in which they did their part, but the international community failed them. After two years, the republic remains excluded from the UN, with its sovereignty limited; UNMIK is still on the ground, though significantly smaller, an International Civilian Office (ICO) operates, and an EU Rule of Law Mission (EULEX) abides by status neutrality.

The ICJ advisory opinion will not change any of this. Only further diplomacy can. Mutual recognition, the Serb Orthodox religious heritage and the North, as well as technical cooperation, are the strands Kosovo and Serbia (with the help of the EU and the U.S.) must braid together if there is to be a comprehensive settlement. But even a partial settlement, including normalisation with Serbia, is likely to have to go beyond the boundaries that have been indicated by the Ahtisaari plan, accepted by Kosovo and integrated into its legal and constitutional framework.<sup>16</sup>

## II. VIEWS OF THE PROCESS

Apart from the occasional brief encounter at large international meetings, Kosovo and Serbia have had no direct contacts between their leaders since February 2008. Before the start of any talks, both governments have understandably taken care to conceal their negotiating strategies and to present a hard public line, downplaying the value of what the other side has to offer and exaggerating the pain of concessions. Serbia's communications with the U.S. and the EU are marked by mutual suspicion. Kosovo enjoys much support in those quarters but was late starting to prepare and is believed to have a less defined strategy.

Serbia and Kosovo both feel vulnerable. Excluded from the UN and often forced to appear at international forums with a humiliating UNMIK escort, Kosovo's relatively inexperienced officials consider themselves at a disadvantage opposite Serbia's long-established foreign policy apparatus. This feeling is exacerbated by Pristina's inability to assert control over the North. For its part, Serbia fears becoming the target of a U.S.-led campaign on Kosovo's behalf and sees few friends outside the traditionally hospitable UN context. Both sides publicly downplay the stakes: Kosovo claims not to need early UN membership, while Serbia professes EU membership is too distant a prospect to matter.

Yet, both have already stated that they are willing to talk, as part of an internationally facilitated process. Public attitudes in Belgrade and Pristina have become more realistic about what can be obtained from the other. President Tadić and Prime Minister Thaçi both benefit from comfortable majorities and strong popular support. They have an interest to do away with a dispute which is blocking their states from further European integration and largely defining their image abroad. The EU is meanwhile looking for an early foreign policy success to hush critics of the slow pace at which it established its new foreign policy machinery (the European Action Service) and its relative international ineffectiveness while preoccupied with institutional change. At the same time, though the EU, Belgrade and Pristina are all talking about talks, a great deal of uncertainty about modalities, timing and parameters remains.<sup>17</sup>

### A. THE SERBIAN VIEW

The Belgrade position is based on two axioms: non-recognition of Kosovo's declaration of independence, which Serbs call "the UDI" (unilateral declaration of in-

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<sup>16</sup>As the ICJ noted, Kosovo's declaration of independence binds the country "irrevocably ... to comply with the provisions contained in this Declaration, including, especially, the obligations for it under the Ahtisaari Plan"; Advisory Opinion, p. 29, para. 75.

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<sup>17</sup>Crisis Group interview, EU official, Brussels, 6 August 2010.

dependence), and reaching a compromise without absolute winners and losers. Both of these are concerned with the *process* that led to independence. Pristina and the Western press often interpret rhetoric about never recognising “UDI” as refusal to face reality, but this ignores a subtle language shift. Where Serbia’s top leadership once promised never to recognise Kosovo’s independence “directly or indirectly”, they now rule out only recognition of UDI.<sup>18</sup> Recognition of a mutually agreed independence is on the table: a senior Serbian official pointed out that those who consider giving up Kosovo treason have the impossible task of explaining “how to integrate two million people who hate us into our country”.<sup>19</sup>

Government strategy had been built on securing an ICJ opinion that could be used to pressure Kosovo into status negotiations on Serbia’s terms; that is no longer possible.<sup>20</sup> In the draft resolution sent to the UN General Assembly (UNGA) on 28 July 2010, Serbia called for new talks on “all outstanding issues”, not explicitly on Kosovo’s status.<sup>21</sup> Keeping a political process alive, it may be trying to continue to delay recognitions, but Serbian officials have also suggested that they are looking for an honourable way to consent to the permanent loss of Kosovo.<sup>22</sup> With this new approach to the UNGA, officials are asking for an umbrella under which President Boris Tadić could meet with counterparts from Kosovo without being accused of thereby implicitly recognising independence.<sup>23</sup>

Serbia no longer seriously believes it can keep Kosovo. In the words of a diplomat familiar with its views, it is not seeking to save the marriage but rather a “civilised divorce”.<sup>24</sup> Belgrade hopes to force Pristina to give up the claim to the Serb-held North and to grant several medieval Orthodox monasteries extraterritorial status, so it can then muster the popular support needed to win acceptance of a change to Kosovo’s status in a referendum, as mandated in the Serbian constitution.<sup>25</sup>

Under President Tadić and especially after the ICJ opinion, Serbia has come around to the acceptance of consensual separation and mutual recognition. In his address to the Security Council on 6 July, Tadić predicted the General Assembly would “encourage the parties to arrive at consensual solutions on all outstanding issues peacefully and through dialogue”.<sup>26</sup> The same language appeared in Serbia’s proposed UNGA resolution, which “takes note of” the ICJ opinion and “[c]alls on the parties to find a mutually acceptable solution for all outstanding issues through peaceful dialogue”.<sup>27</sup> After consultations with Brussels, Serbia dropped any reference to status, which it understood would be unacceptable to Pristina – but kept a provocative preambular condemnation of “one-sided secession” which “cannot be an acceptable way for resolving territorial issues”.<sup>28</sup> Serbia accepts talks under EU auspices with a minimal UN role, aware that Kosovo will refuse to participate in a UN-led process, but insists on open-ended talks with no topic off-limits. To start, the price Serbia is asking for recognition is the North of Kosovo.

It is a cross-party article of faith in Belgrade that what Kosovo is to Serbia, the North is to Kosovo. Thus, to international offers of broad autonomy for Northern Serbs within Kosovo, Belgrade offers Kosovo autonomy within Serbia – which is simply another way of saying “no”. Likewise, Serbia responds to pressure to recognise the reality of Kosovo’s independence by arguing that “everyone else should recognise that there is a different reality to the north of the Ibar [River]”.<sup>29</sup> Many Northern Serbs

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<sup>18</sup> Serbian President Boris Tadić, in his speech to the UN Security Council on 6 July 2010, said that Serbia would never “under any circumstances, implicitly or explicitly, recognise UDI”, but also called for “a peace process between Serbs and Albanians to begin in earnest, and for it to result in an agreement that everyone can endorse”. UN S/PV.6353, 6 July 2010.

<sup>19</sup> Crisis Group interview, Belgrade, 15 June 2010.

<sup>20</sup> When Serbia asked the UN General Assembly to petition the ICJ for an advisory opinion, nine judges were from states that did not recognise Kosovo and only six from recognising countries, suggesting a favourable opinion might be likely. ICJ judges are independent, however, and several did not vote consistent with national diplomatic positions. Judge Koroma from recognising Sierra Leone dissented, while Judges Cançado Trindade and Sepúlveda-Amor (Brazil and Mexico respectively, neither of which has recognised Kosovo) voted with the majority. Three countries with judges on the ICJ recognised Kosovo before the opinion was handed down (Jordan, New Zealand and Somalia).

<sup>21</sup> It also asked that the General Assembly take into account that “unilateral secession cannot be an acceptable way for resolving territorial issues”. Serbian draft resolution, UNGA A/64/L.65, 27 July 2010.

<sup>22</sup> Crisis Group interviews, Serbian officials, Belgrade, 15-16 June 2010.

<sup>23</sup> Crisis Group interview, Serbian official, Belgrade, 15 June 2010. Senior Serbian foreign ministry officials have made overtures to Albania, seeking backing for a “historic compromise”

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with Kosovo; Crisis Group interviews, senior Albanian officials, Tirana, 27 and 28 July 2010.

<sup>24</sup> Crisis Group interview, Pristina, 19 January 2010.

<sup>25</sup> Crisis Group Europe Briefing N°44, *Serbia’s New Constitution: Democracy Going Backwards*, 8 November 2006.

<sup>26</sup> UN S/PV.6353, 6 July 2010.

<sup>27</sup> Serbian draft resolution, op. cit. The text echoes the EU’s invitation, noting “the aim of achieving peace, security and cooperation in the region”.

<sup>28</sup> Ibid. The preamble was likely designed to appeal to states concerned for their own potential separatist movements; but describing the fundamental dispute as a “territorial issue” implied Serbia’s growing acknowledgement of Kosovo’s statehood.

<sup>29</sup> Crisis Group interview, Serb official, Belgrade, 16 June 2010.

share this view: if Kosovo can be free from Belgrade, they feel, then they should be free from Pristina.<sup>30</sup>

The political landscape in Belgrade has shifted in favour of what Tadić called “a historic compromise” between Serbs and Albanians.<sup>31</sup> The parties with hardline positions on Kosovo, the Democratic Party of Serbia (Demokratska stranka Srbije, DSS) and the Serbian Radical Party (Srpska radikalna stranka, SRS), are weak, hovering just above the 5 per cent electoral support required for seats in the parliament. The strongest opposition party, the Serbian Progressive Party (Srpska napredna stranka, SNS), has been burnishing its pro-Western credentials and privately admits it wants the current government to resolve the Kosovo issue, so that the government it hopes eventually to lead can start with a clean slate.<sup>32</sup> Tadić and his governing Democratic Party (Demokratska stranka, DS) in effect have strong backing for a negotiated solution. On 27 July 2010, parliament approved a government-sponsored resolution repeating the promise never to recognise “UDI” but endorsing an “historic compromise”.

Public opinion in Serbia has also tired of the Kosovo problem and wants closure, though nationalist elements are likely to come out strongly against any recognition of the independent state. Government officials are confident that they would be able to sell a comprehensive deal to a majority of their citizens, as long as they get what they want in the North and for the Church.<sup>33</sup> This is essential, as any deal is likely to require amendment of the constitution and new law and therefore approval by a country-wide referendum.<sup>34</sup>

Important changes have taken place inside the Serbian Orthodox Church. The recently-elected Patriarch Irinej signalled a new, moderate tone in his St. Vitus Day address from the site of the Battle of Kosovo, calling for compromise and noting that Kosovo belongs to Albanians

and Serbs alike.<sup>35</sup> In December 2009, the Church forced Bishop Artemije Radosavljević of Raška-Prizren, the most influential and hard-line Kosovo cleric, into retirement in a Vojvodina monastery. His likely successor, Vicar Bishop Teodosije Šibalić of Lipljan, is widely seen as favouring reconciliation.

## B. THE KOSOVAR VIEW

Kosovo is less keen on talks. Its strategy, guided by the U.S. and other friendly countries, is gradually to accumulate recognitions and consolidate state institutions, leaving its relations with Serbia a relatively low priority. It also wants to reach the end of the supervised independence period stipulated in the Ahtisaari plan, which gives international officials broad oversight and judicial powers until they decide to relinquish them, and move forward with Euro-Atlantic integration.<sup>36</sup> The ICJ opinion was widely expected to usher in a number of new recognitions. Anticipating relations with a majority of UN member states soon, Kosovo’s leaders considered waiting for this wave to crest before embarking on talks with Serbia. But as no new recognitions have materialised, they are likely re-evaluating this strategy.

Prime Minister Thaçi realises that he cannot turn down talks now that they have been offered to him. Even before the ICJ ruling, he stated that he would welcome them, on an equal footing and on a range of technical issues including: solving problems caused by the war; regional cooperation; matters of mutual interest so as to create a safe environment; and economic development. He ruled out dialogue on political status and territorial integrity and issues inconsistent with the Ahtisaari plan and the constitution.<sup>37</sup> Thaçi and the government generally downplay Serbian recognition, instead saying that the time has come for Serbia to facilitate Kosovo’s participation in regional institutions.

Publicly the Kosovo leadership is unwilling to tamper with the Ahtisaari plan. A senior official said that every Albanian believed Kosovo had given up far too much by accepting it.<sup>38</sup> While many Kosovars “hate” it, they also see it as the contract with the world they are determined

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<sup>30</sup> Crisis Group interviews, Northern Serb officials, Mitrovica/Leposavić/Zubin Potok, March-July 2010; Northern Serb opposition figures, Mitrovica, July 2010.

<sup>31</sup> UN S/PV.6353, 6 July 2010.

<sup>32</sup> Crisis Group interview, Belgrade, 24 July 2009.

<sup>33</sup> Crisis Group interviews, Serbian officials, Belgrade, 10 March, 15-16 June 2010.

<sup>34</sup> The preamble of the Serbian Constitution says “Considering also that the Province of Kosovo and Metohija is an integral part of the territory of Serbia, that it has the status of a substantial autonomy within the sovereign state of Serbia and that from such status of the Province of Kosovo and Metohija follow constitutional obligations of all state bodies to uphold and protect the state interests of Serbia in Kosovo and Metohija in all internal and foreign political relations”, and Article 203 specifies that amendments to the preamble must be put to a referendum for endorsement.

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<sup>35</sup> Patriarch’s speech, Vidovdan ceremony, Gračanica, RTS-TV, 28 June 2010. The Battle of Kosovo, in which the Serbian forces were defeated by those of the Ottoman Empire in 1389, came to be seen as the seminal date of Serbian history; see Noel Malcolm, *Kosovo: A Short History* (New York, 1998), pp. 58-80.

<sup>36</sup> Prime Minister Hashim Thaçi, public address, United States Institute for Peace (USIP), 20 July 2010.

<sup>37</sup> *Ibid.*

<sup>38</sup> Crisis Group interview, President Fatmir Sejdiu, Pristina, 15 March 2010.

to keep.<sup>39</sup> Some believe that its decentralisation provisions favouring ethnic Serbs should not have been implemented south of the Ibar until the government had achieved full control in the North.<sup>40</sup> A government minister observed that it was only after Pristina agreed to decentralise that the international community began to raise the issue of additional autonomous rights for the North.<sup>41</sup> But others appreciate that decentralisation in Serb majority areas in the south has been one of Kosovo's notable successes.

In any dialogue with Serbia, the prime minister will be the leading decision maker. His coalition, uniting the Democratic Party of Kosovo (Partia Demokratike e Kosovës, PDK) with President Fatmir Sejdiu's Democratic League of Kosovo (Lidhja Demokratike e Kosovës, LDK), has been in power since early 2008 and is generally respected for managing the transition to independence. It maintains an assembly majority, though it has recently been weakened by allegations of corruption, and high-level arrests may still follow.

The opposition fully supports Ahtisaari plan implementation but is very critical of the inability to integrate the North and calls for greater international efforts to secure territorial integrity. Nevertheless, its three major parties, Ramush Haradinaj's Alliance for Future of Kosovo (Aleanca për Ardhmërinë e Kosovës, AAK), Nexhat Daci's Democratic league of Dardania (Lidhja Demokratike e Dardanisë, LDD) and Behgjet Pacolli's New Kosovo Alliance (Aleanca Kosova e Re, AKR), have not established a common front. New political parties forming to run in the 2011 elections, including the former Vetëvendosje movement, are unlikely to contribute to any Kosovo-Serbia dialogue.

During the last talks with Serbia prior to independence, Kosovo fielded a Unity Team, which included representatives from all major political forces. AAK-led opposition parties are insisting on a similar arrangement now.<sup>42</sup> The government will lead any negotiations but notes that if these go beyond technical issues, cross-party consultation and coordination will be necessary.<sup>43</sup> All local political forces have also agreed to participate in a civil society-led brainstorming to generate common positions,<sup>44</sup> though civil society is if anything less flexible than the opposition. A leader told Crisis Group: "I fought hard for Ahti-

saari implementation. If the North gets autonomy, I will be the one to advocate for the [Ahtisaari] plan's abrogation in the south".<sup>45</sup>

The government's flexibility, however, may have been negatively impacted by the announcement of the International Criminal Tribunal for the former Yugoslavia (ICTY) on 19 July 2010 that it will retry Haradinaj for war crimes.<sup>46</sup> The former prime minister and Kosovo Liberation Army commander is perhaps Thaçi's greatest single opponent. The unpopular action, including the decision to detain him pending trial (though accused are often given provisional release), probably makes it more difficult for the government to accept compromises that are not fully supported by the opposition and so could make rapprochement with Serbia slower and riskier.

### C. THE INTERNATIONAL VIEW

Immediately after the ICJ announced its opinion, the EU offered to "facilitate a process of dialogue ... to promote cooperation, achieve progress on the path to Europe and improve the lives of the people".<sup>47</sup> So far it seems inclined to prefer open-ended talks on technical practical issues.<sup>48</sup> Aware that elections are due in Kosovo by the end of 2011 and in Serbia sometime in 2012, and eager to see progress in the Western Balkans, the EU – and to a lesser degree the U.S. – is willing to start mediation in autumn 2010. The UN has offered to "cooperate and coordinate closely".<sup>49</sup>

To secure its credibility and leadership of the process, the EU must produce a common position on Serbia's draft UNGA resolution by mid-September.<sup>50</sup> In the run up to submission of that draft, senior European and UN officials had warned that Belgrade did not appear to realise it was "on a collision course" with the EU.<sup>51</sup> Serbia botched

<sup>39</sup> Crisis Group interview, senior government official, Pristina, 18 June 2010.

<sup>40</sup> Crisis Group interview, local government ministry official, Pristina, 20 August 2009.

<sup>41</sup> Crisis Group interview, Pristina, 2 July 2010.

<sup>42</sup> Crisis Group interview, opposition leader, Pristina, 14 July 2010.

<sup>43</sup> Crisis Group interview, government official, Pristina, 5 July 2010.

<sup>44</sup> Crisis Group interview, civil society activist, Pristina, 21 July 2010.

<sup>45</sup> Crisis Group interview, Pristina, 19 July 2010.

<sup>46</sup> IT-04-84-A, Prosecutor v. Ramush Haradinaj et al., Judgment, 19 July 2010. He was acquitted at trial on 3 April 2008. The appeals chamber reinstated six of the original 37 charges, including murder, torture, cruel treatment and the unlawful detention of civilians.

<sup>47</sup> "Declaration by High Representative Catherine Ashton on behalf of the European Union on the ICJ advisory opinion", press release, EU, 22 July 2010.

<sup>48</sup> Crisis Group interviews, EU and U.S. officials, Pristina and Brussels, July 2010.

<sup>49</sup> Especially in areas where it has "unique knowledge and experience", Report of the Secretary-General on UNMIK, UNSC S/2010/401, 29 July 2010, p. 10.

<sup>50</sup> Serbia is expected to introduce its resolution formally on or about 14 September. Crisis Group interview, UN official, New York, 17 August 2010.

<sup>51</sup> Crisis Group interviews, EU diplomat, Paris, 5 July 2010; UN official, Belgrade, 22 July 2010.

consultations, first inviting leading EU and U.S. diplomats to suggest amendments, then submitting the text hours later without awaiting a response.<sup>52</sup> Goodwill generated by prior talks with Brussels and the decision to drop explicit reference to status thus went largely for naught, and many in the EU especially were critical.<sup>53</sup>

Nevertheless, the EU still hopes to hammer out a revised text with Serbia and in close coordination with the U.S.<sup>54</sup> Before the ICJ advisory opinion, it had leaned toward a minimalist approach: a terse resolution, “taking note” of the court’s action, “full stop”, and even this only after Serbia and Kosovo publicly accepted an EU invitation to begin dialogue.<sup>55</sup> Brussels now seeks a resolution “welcoming” the opinion and rejects the preamble of Serbia’s draft, with its blunt condemnation of “one-sided secession”.<sup>56</sup>

Neither the parties themselves nor their would-be helpers have formally articulated what should come after the UNGA resolution, how the talks should be conducted and what the goals should be.<sup>57</sup> So far, the EU and U.S. do not believe the parties would be willing to address the recognition problem at any early point in the talks. Instead they regard the “process of dialogue” as a goal in itself that would contribute to “peace, security and stability in the region”.<sup>58</sup> They envisage a lengthy process of Serbia-Kosovo rapprochement starting with technical cooperation, initially avoiding status issues, with any discussion of recognition down the road.<sup>59</sup> The U.S. has gone further, counselling Kosovo against offering expanded autonomy to the North or discussing a land swap and urging it instead to focus on building its own institutions.<sup>60</sup>

Dealing with technical issues first, they believe, might build the confidence necessary to treat the broader political problems and establish the good neighbourly relations

required for European integration. But this approach has largely failed to date: EU shuttle diplomacy to achieve agreements on basic issues between Kosovo and Serbia, such as the courts and police in the North, has had little effect other than to increase tension in Pristina.<sup>61</sup> Real progress requires high-level face-to-face talks between Kosovo and Serbia, with President Tadić meeting Prime Minister Thaçi as an equal. This is unlikely to happen if talks are limited to customs, trade, communications, electricity, transport and similar practical issues.

The terse yet elastic language of the EU invitation is in keeping with the aim of gradual, low-key cooperation but could stretch to cover the fundamental issue of mutual recognition.<sup>62</sup> The mediators should not impose an agenda or foreclose any topics – both matters are properly up to Kosovo and Serbia. The international role should be limited, at this stage, to ensuring that neither party obtains any illegitimate procedural advantage. Just as Serbia fears that appearing at an international forum with Kosovar officials would be used as evidence of implicit recognition, so Kosovo worries that even considering border change would forfeit its territorial integrity. The venue should allow the sides to explore all issues without fear of being tricked.

The would-be facilitators know that for the dialogue to succeed, Serbia and Kosovo will have to pivot from the adversarial public positions they have taken to more flexible and generous ones suitable for compromise. Serbia has not only been rhetorically aggressive but has also damaged Kosovo by keeping it out of regional and other international bodies. A useful confidence-building measure and first step to coincide with the talks’ start would be the opening of consular-type representations, without diplomatic accreditation, in one another’s capitals. The Serb-dominated Federal Republic of Yugoslavia took this step with Zagreb in March 1994, when its armed forces still controlled Croatian territory.<sup>63</sup> The offices helped people resolve personal issues arising from the disintegration of former Yugoslavia, such as property rights, pensions, citizenship documents, visas, and birth and marriage records. Serbia should also ensure the North Mitrovica Serbs welcome the recently-opened Kosovo government office there, which aims to fulfil a similar function.

<sup>52</sup> Crisis Group interview, EU diplomat, Belgrade, 30 July 2010.

<sup>53</sup> Ibid. “Tadic: Serbia Consulted with EU Partners on UN Resolution on Kosovo”, VIP Daily News Report, 2 August, 2010.

<sup>54</sup> Crisis Group interview, EU official, Brussels, 6 August 2010.

<sup>55</sup> Crisis Group interview, EU diplomat, Paris, 5 July 2010.

<sup>56</sup> Crisis Group interview, EU diplomat, Belgrade, 30 July 2010.

<sup>57</sup> Crisis Group interview, EU official, Brussels, 6 August 2010.

<sup>58</sup> “Declaration by High Representative Catherine Ashton”, op. cit. Similar language in the Serbian draft resolution suggests Belgrade accepts this goal, but sees it as more likely to follow, rather than pave the way to, a comprehensive political agreement.

<sup>59</sup> U.S. Assistant Secretary of State Philip Gordon said that Serbia and Kosovo should “put [recognition] aside and show that they can work on issues that matter to the people who live there, and the recognition issue can be dealt with down the road”. Telephonic press conference, 23 July 2010.

<sup>60</sup> Crisis Group interviews, U.S., UN and Kosovo officials, Washington, New York and Pristina, August 2010.

<sup>61</sup> Crisis Group Europe Report N°204, *The Rule of Law in Independent Kosovo*, 19 May 2010, pp. 18-22.

<sup>62</sup> Ibid.

<sup>63</sup> Many states and entities that are not independent, such as Bosnia’s Republika Srpska, and the German federal states, have foreign representations, some of which are larger than their countries’ embassies.

The talks should begin as soon as possible. Kosovo party leaders will not negotiate much past May 2011 lest controversy over the talks infect the pre-election campaign.<sup>64</sup> Serbian politicians will be similarly constrained in 2012. If substantial progress toward a solution remains elusive by spring 2011, Kosovo-Serbia relations are likely to be frozen for at least the next two years. The international context may also become more complex as early as January 2011, when Southern Sudan is to vote in a volatile self-determination referendum. Countries that are still wavering over recognising Kosovo, especially in Africa, may prefer to wait even longer to avoid being seen as favouring secession.<sup>65</sup>

### III. THE NORTH: THREE OPTIONS

Serbia-Kosovo disagreement is focused on the North of Kosovo, a small area of about 1,000 sq km, encompassing three full municipalities (Zubin Potok, Leposavić and Zvečan) and half of another, Mitrovica.<sup>66</sup> Serbia implicitly accepts that the lands south of the Ibar River belong to Kosovo but seeks to retain and formalise its control over the North. This clashes with Pristina's ambition to integrate the area and secure its northern border. If Kosovo and Serbia can agree on the North, they will be well-placed to conclude a comprehensive accord: their remaining disputes are much simpler and less controversial. The opposite is also true. Only an interim agreement is possible without resolving the dispute over the North.

Pristina and Belgrade can choose among three conceivable solutions for the North, or they can maintain the status quo and opt to freeze their conflict. Each solution – the Ahtisaari plan, expanded autonomy and a land swap – has its own challenges and risks. In past reports, Crisis Group has strongly advocated the Ahtisaari plan and warned against border change by partition. That policy was sound and led to Kosovo's successful independence. But circumstances today, including Kosovo's stronger position, a new attitude in Belgrade and ample evidence of the lack of international will to impose a solution, compel a reassessment.

The current approach has not had success in two crucial aspects: it has not given Kosovo the further international legitimacy that a new UN Security Council resolution would signify or facilitated the North's integration. Comprehensive talks could allow the parties to address these inadequacies, focussing on recognition and the North. To get the former, none of the options for the North should be discounted by the parties or the facilitators. Any of the three options, if part of a comprehensive deal including mutual recognition, would be better and less risky than freezing the status quo.

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<sup>64</sup> Crisis Group interview, senior government official, Pristina, 18 June 2010.

<sup>65</sup> Crisis Group interview, foreign minister, EU member state, Brussels, June 2010.

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<sup>66</sup> The Ahtisaari plan envisaged dividing Mitrovica along the Ibar River into two municipalities, North and South, but this has not been implemented due to Northern Serb refusal to accept the outcome of the Ahtisaari process.

## A. THE AHTISAARI PLAN AND THE REALITY OF THE NORTH

Population estimates for the North range from 45,000 to 72,000,<sup>67</sup> Crisis Group tends to give credence to the lower figure, but no firm evidence will be available until the 2011 April census.<sup>68</sup> More than 95 per cent of the population are Serbs, who have little contact with Kosovo Albanians. Large parts of the northern municipality of Leposavić were added from the neighbouring municipality of Raška (Serbia) in 1959 to increase its Serbian population.<sup>69</sup>

Serbian police killed prominent Mitrovica Albanians and deported thousands of others, while “the houses of Kosovo Albanians were systematically burned down”, during the 1999 war.<sup>70</sup> Few Kosovo Albanians have since been able to return to northern Mitrovica. Clashes erupted throughout 1999 and into 2000, when they tried to cross the bridge into the North; at the same time, Kosovo Serbs left Mitrovica South, and Kosovo Albanians fled the North. Kosovo Police estimated in 2009 that 21 Serbs lived in the territory covered by their post in the south of the city, while 2,200 Albanians lived in the northern station’s section,<sup>71</sup> mainly in the neighbourhoods of Bosniak Mahalla, Brdjani/Kroi I Vitakut and Suvi Do.

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<sup>67</sup> Crisis Group interview, former DS parliamentarian, Mitrovica, May 2008 (low estimate); 2009 data from Mitrovica Regional Police Directorate made available to Crisis Group (high estimate). Numerous Crisis Group visits to Northern towns and villages indicate extensive depopulation due to absence of jobs and relatively harsh, infertile land. The 1991 Yugoslav census gave the population of Zvečan, Zubin Potok and Leposavić as 35,021 – in Zvečan, there were 10,030 people, including 7,591 Serbs and 1,934 Albanians; Zubin Potok had 8,700, (7,750 Serbs and 850 Albanians); Leposavić had 16,291 (14,306 Serbs and 1,101 Albanians). The Organisation for Security and Cooperation in Europe’s (OSCE) May 2006 Municipal Profiles estimated that the population in these three municipalities had risen to 46,000. The Mitrovica North population is unknown, although the OSCE’s September 2009 Municipal Profile for the city estimated it at 20,000 (including 17,000 Serbs and up to 7,000 IDP’s). An article estimated the population in the North of Kosovo at 70,000 (66,000 Serbs, 4,000 Bosniaks, Gorani, Albanians and Turks), Batić Bačević, “Kako do podele Kosova” [How to divide Kosovo], *NIN*, 15 July 2010.

<sup>68</sup> Statistical Office of Kosovo – [www.ks-gov.net/ESK/eng](http://www.ks-gov.net/ESK/eng).

<sup>69</sup> The land that was added included settlements such as Lešak, Postenje, Belo Brdo, Dren and Beluće.

<sup>70</sup> *Prosecutor v. Milan Milutinović et al.*, Judgment, International Criminal Tribunal for the former Yugoslavia, IT-05-87, 26 February 2009, vol. 2, pp. 253-266, 430.

<sup>71</sup> Data from Mitrovica Regional Police Directorate made available to Crisis Group.

The Ahtisaari plan offers Serbian areas broad autonomy and formal, including financial, links to Serbia.<sup>72</sup> If implemented, the existing Serbian municipalities would function without much interference from Pristina thanks to the decentralisation process; the newly-formed municipality of North Mitrovica would enjoy extended competencies in secondary healthcare and higher education.<sup>73</sup> Old and new municipalities, on both sides of the Ibar, would have the right to form associations for pursuing mutual interests, as well as links with municipalities and institutions in Serbia.<sup>74</sup>

Despite its considerable merits, the Ahtisaari plan is rejected outright by virtually all northern Kosovo Serbs. Parallel municipality officials claim that “we already have everything that is offered by that plan, and by accepting it, we only give Pristina what they want: legitimacy”.<sup>75</sup> Another common sentiment is that “the Ahtisaari plan means living in the Republic of Kosovo. We live in the Republic of Serbia, and it is not fair to force us to live in the Republic of Kosovo if you refused to push Albanians to live in the Republic of Serbia”.<sup>76</sup> Those who profess interest in the Ahtisaari plan are members of small political parties which participate in Kosovo’s political system, but they lack credibility and effectiveness. Northern Serbs complain that inadequate policing and a blocked courthouse have paralysed criminal proceedings in the Mitrovica district but reject any solution that involves “becoming part of the Republic of Kosovo”.<sup>77</sup>

Yet, Kosovo’s preferred outcome is the North’s full integration into its legal system. The government recognises that this is an almost purely Serbian region and shows little interest in micro managing it but insists the Serbs accept Kosovo sovereignty and respect its borders and unified legal system. Kosovo officials argue that Belgrade is pressuring Serbs not to cooperate and supporting extremists to “terrorise” the local population; if the physical, financial and oral threats stopped, they claim, the Serbs would work with Kosovo institutions.<sup>78</sup> But some Albanian and international officials believe this is wishful thinking; a European diplomat with long experience in the region says expecting the same rules to apply in the North was

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<sup>72</sup> See Crisis Group Europe Report N°200, *Serb Integration in Kosovo: Taking the Plunge*, 12 May 2009.

<sup>73</sup> Comprehensive Proposal for the Kosovo Status Settlement, Annex III, Articles 3, 4.

<sup>74</sup> *Ibid.*, Article 9.

<sup>75</sup> Crisis Group interview, Kosovo Serb official, Zubin Potok, 30 June 2010.

<sup>76</sup> Crisis Group interview, Kosovo Serb official, Leposavić, 1 July 2010.

<sup>77</sup> Crisis Group interview, Kosovo Serb official, Zubin Potok, 30 June 2010.

<sup>78</sup> Crisis Group interviews, high-level Kosovo government officials, Pristina, 13-14 July 2010.

“totally unrealistic” and “the main failure” of the [Ahtisaari] plan.<sup>79</sup>

The North has in effect not been under Pristina’s rule since Yugoslavia adopted Slobodan Milošević’s constitution in 1989.<sup>80</sup> It was loosely linked to the central system during the UNMIK period, with its municipalities, much like its courts and the customs service, under UNMIK supervision, but these links were severed at independence. Parallel Serbian elections on 11 May 2008 produced municipal administrations integrated into Serbia’s government system.<sup>81</sup> Northern Serbs burned the border posts immediately after independence; though they were later rebuilt, they are very soft, with irregular and cursory checks.<sup>82</sup> Serbian judges, often working out of their homes, offer legal services based on Serbian law.<sup>83</sup>

Education has been run by Serbia since 1989. The university now styled “the University of Pristina Temporarily Located in Kosovska Mitrovica” and with about 10,000 students, has grown since 1999, benefiting from an exodus of teachers out of southern Kosovo.<sup>84</sup> This gives North Mitrovica a more youthful look than other Kosovo Serb areas. The expansion of the university, which rivals any campus in Serbia, continues. With special benefits for Kosovo Serb students from the southern enclaves, it helps make the half city very attractive, especially as it is the only Kosovo Serb urban area. North Mitrovica also boasts a regional hospital that easily competes with Serbia’s best. The most visible Kosovo institutions are Pristina-registered banks, which issue euros, even though the Serbian dinar is mostly used.

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<sup>79</sup> Crisis Group interview, UN official, Pristina 10 June 2010.

<sup>80</sup> The constitution did not change the formal position of the North vis-à-vis Pristina but drastically reduced Kosovo’s competencies and in effect imposed Serbian rule on the whole province, eliminating the influence of Albanian-majority Pristina.

<sup>81</sup> Crisis Group observed UNMIK offices in the Northern municipalities with both UNMIK and Serbian flags in front in June 2010. Parallel municipalities in the North, unlike the majority of similar institutions in the enclaves, have a full complement of staff and departments, such as garbage collection, urban planning, urban health, water systems, public works and even environmental protection.

<sup>82</sup> Border gates 1 and 31 near Zubin Potok and Leposavić have few EULEX officials and a barely visible KP presence. Trucks with goods are noted and summoned to the South Mitrovica customs terminal only if they cross the Ibar – otherwise, goods which enter from Serbia and stay in the North are exempt from any taxation.

<sup>83</sup> These courts, which are staffed by Serbian justice ministry personnel, are able only to deal with civil law issues; they have Republic of Serbia stamps which makes their decisions on matters such as marriage, divorce and inheritance valid in Serbia. However, they are unable to handle criminal cases.

<sup>84</sup> It has 1,627 open spaces for the academic year 2010-2011. University of Pristina website: [www.pr.ac.rs](http://www.pr.ac.rs).

Unlike Serbia, the North of Kosovo has no active police presence apart from the ineffective Kosovo Police (KP) and the undercover, plain-clothed Serbian internal affairs ministry (MUP) officers. Since the KP does not cooperate with parallel institutions, law-enforcement is difficult, and compliance in most cases depends on good will. The undercover MUP officers are mostly idle or focused on intelligence work and neither pursue criminals nor enforce local laws.<sup>85</sup> Serbian institutions throughout Kosovo are over-staffed and heavily funded; Belgrade exerts what control it can mostly through regular inspections from relevant ministries. Serious corruption investigations are rare. Thus, while the North is almost completely cut off from central institutions in Pristina, it also enjoys a degree of autonomy from Belgrade, and many consider it a grey zone in which illegal activities, above all smuggling, prosper.<sup>86</sup>

Many attempts to link the North to institutions in Pristina have failed violently. On 17 March 2008, a raid on a courthouse, which had been taken over by striking Serb judicial officials, led to the death of a UN peacekeeper. There were demonstrations at the opening of a Kosovo civil services office in the Bosniak Mahalla on 2 July 2010, and a hand grenade was thrown, killing one person and injuring eleven.<sup>87</sup> Attempts to impose stricter customs controls at Gates 1 and 31<sup>88</sup> have been met with threats of violence. Dissent is rarely tolerated in the North. Members of the teams that were to prepare Kosovo elections in the North were intimidated and have largely dropped from sight. An unknown gunman shot and wounded the single Northern-based Kosovo Serb parliamentarian, Petar Miletić, on 4 July 2010. The unresolved North fuels nation-

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<sup>85</sup> Crisis Group observations, 2007-2010. Although Security Council Resolution 1244 bars Serbian security forces from Kosovo, internal affairs ministry (MUP, Ministarstvo unutrašnjih poslova) officers are present in the majority of Serb inhabited areas. They are perhaps most visible in North Mitrovica; Crisis Group has also observed MUP officials sending documents from their office in the Bosniak Mahalla to Belgrade via bus, usually in late mornings. A public scandal erupted in June 2010, when Dragiša Antić, an undercover MUP officer, fled a KP checkpoint in northern Kosovo, losing his MUP badge in the process. “Policia dokumenton prezencen e MPB-se serbe ne veri” [Police proves the presence of the Serbian MUP in the north], *Koha Ditore*, 11 June 2010. Crisis Group has also noted less official groups observing the Mitrovica bridge.

<sup>86</sup> On smuggling and other illegal activities in the North as well as elsewhere in Kosovo, see Crisis Group Report, *The Rule of Law in Independent Kosovo*, op. cit.

<sup>87</sup> Bojana Barlovac, “One Dead, 11 Injured in Blast in North Mitrovica”, *Balkan Insight*, 2 July 2010. The events had political implications and were manipulated by both Belgrade and Pristina; the investigation carried out by the KP and EULEX is ongoing. No statements about the identity of those responsible for the violence have been released yet.

<sup>88</sup> See fn. 82 above.

alist pressure in Pristina, which may come to blame the EU and EULEX for lack of progress.

## B. STRONGER AUTONOMY?

Kosovo leaders have begun to acknowledge the North is not like the southern Serb enclaves. Instead of replacing the “parallel” Serbian municipalities with official Kosovo municipalities, Pristina has told Crisis Group that it is considering legalising those structures within its own system. In return for “normalised” relations with Serbia – an exchange of diplomatic representatives and lifting of the veto on membership in international institutions – Kosovo might offer the North a separate police command and direct collection of the majority of customs revenues at the Northern border, in addition to the Ahtisaari competencies already due the North. But Belgrade would have to accept Kosovo’s control over the border and support full establishment of a common system of courts and justice in the North. In exchange for full recognition by Serbia and bilateral relations, accompanied by strong EU support for its territorial integrity, Kosovo might be able to go further, allowing the North to elect a regional legislature with competence for specific areas of law and possibly to choose a regional executive.<sup>89</sup>

Serbia and the Northern Serbs reject this. When Crisis Group described the above proposal for broad autonomy, a senior foreign ministry official characterised it as nothing more than a marginally more favourable “version of the Ahtisaari plan”. Another rejected Northern autonomy, observing “we tried that before in Eastern Slavonia, and it didn’t work”.<sup>90</sup> A moderate Northern Serb official dismissed it as mere “cultural autonomy”, which in the Yugoslav context is a byword for second-class citizenship and vulnerability to majority power.<sup>91</sup> The Northern mayors’ objections to the Ahtisaari plan apply likewise to any autonomous status, however broad.

Autonomy for the North beyond the Ahtisaari plan – “Ahtisaari plus” – is also deeply unpopular among Kosovo Albanian leaders. Until recently, almost none would consider it. A member of the parliamentary opposition

said, “it isn’t that I dislike [your] plan – I hate it”.<sup>92</sup> President Fatmir Sejdiu and Prime Minister Hashim Thaçi, who also lead the two largest parliamentary parties, rejected this option in March 2010.<sup>93</sup>

Prime Minister Thaçi’s position has evolved since, and he has indicated publicly that more could be done for the North, saying that “new forms of cooperation, which recognise the special regional nature of Northern Kosovo while maintaining its full integration”, are possible.<sup>94</sup> The Pristina government’s red lines are territorial integrity and status; other matters can be negotiated, with suitable concessions on both sides,<sup>95</sup> but it will only accept such autonomy in exchange for Serbian recognition.

Pressure to go beyond the Ahtisaari plan’s terms in the North causes many Kosovo Albanian leaders to demand its abrogation in part or whole.<sup>96</sup> An opposition leader asked, “why should we keep the same flag”, which signifies a neutral, multi-ethnic state, instead of the forthrightly Albanian one Kosovars prefer, if we are to be coerced into also granting the Serbs special rights in the North?<sup>97</sup> A senior PDK leader asserted that “anything beyond the Ahtisaari plan for the North will kill the plan”.<sup>98</sup> A leader of the parliamentary governing coalition claimed the Serbs were one of the most privileged minorities in the world and rejected any special arrangements for Northern courts or police as infringements on state sovereignty.<sup>99</sup> In interviews, a number of leaders across the political spectrum suggested expanded autonomy might be even worse than a trade of territories.<sup>100</sup>

Many European observers recommended broader autonomy. A diplomat with years in the Balkans believed it “the only possible outcome” and called application of the Ahtisaari decentralisation model to the North “unimaginable”.<sup>101</sup> This is an idea whose current constituency is

<sup>89</sup> Crisis Group interview, senior government official, Pristina, 18 June 2010.

<sup>90</sup> Crisis Group interview, Serb official, Belgrade, 16 June 2010. The comparison is not applicable, however: Eastern Slavonia was part of Croatia and occupied by Serbian forces in the fighting at the time of Yugoslavia’s break-up; in the Erdut Agreement of 12 November 1995, Serbia agreed to its peaceful reintegration into Croatia, without special autonomous status but overseen by a transitional UN administration.

<sup>91</sup> Crisis Group interview, senior Kosovo Serb official, North Mitrovica, 20 January 2010.

<sup>92</sup> Crisis Group interview, AAK member of the assembly, Pristina, 9 February 2010.

<sup>93</sup> Crisis Group interviews, Pristina, 12 March 2010.

<sup>94</sup> Prime Minister Thaçi, public address, *op. cit.*

<sup>95</sup> Crisis Group interview, government official, 23 June 2010.

<sup>96</sup> Crisis Group interviews, senior AAK official, Pristina, 9 June 2010; AAK official, Pristina, 10 June 2010; and LDK official, Pristina, 11 June 2010.

<sup>97</sup> Crisis Group interview, AAK official, Pristina, 10 June 2010.

<sup>98</sup> Crisis Group interview, PDK official and minister, Pristina, 21 June 2010.

<sup>99</sup> Crisis Group interview, LDK official, Pristina, 11 June 2010.

<sup>100</sup> Crisis Group interviews, PDK Minister; AKR official; Senior AAK official, Pristina, June–July 2010. A senior Albanian official described a highly autonomous North as “a bomb with a remote controlled by Belgrade”, Crisis Group interview, Tirana, 27–28 July 2010.

<sup>101</sup> Crisis Group interview, senior EU official, Pristina, 11 June 2010.

largely international.<sup>102</sup> Despite the strong local opposition and the hostility of large parts of the Belgrade and Pristina elites, however, greater autonomy is worth exploring. Since it is a middle ground between Belgrade's preferred partition and Kosovo's grudging embrace of the Ahtisaari plan, its appeal may grow.<sup>103</sup>

No agreement can reconcile the Northern Serbs' preference for staying out of Kosovo with Pristina's defence of its territorial integrity. But an offer of broad autonomy could respect Pristina's red lines, while allowing the North to govern itself (as it does now) without interference and with extensive involvement by Serbia. The details would have to be hammered out by the parties and depend on how much each yielded in other areas; but to satisfy all concerned, autonomy might include most or all of the following:

- The North could have a regional legislature, with full competence over certain areas of law and over implementation of other areas of law. The legislature would be empowered to set the date of regional elections, which could be different from elsewhere in Kosovo. The Kosovo Central Election Commission would monitor elections together with a North Kosovo Regional Commission. The legislature would appoint a regional executive.
- The North could establish a local police force and local courts with civil jurisdiction and criminal jurisdiction for less serious crimes; Kosovo Police would only have jurisdiction over specific serious crimes (such as trafficking and terrorism) in the North, while local police would be required to cooperate with Kosovo Police on joint investigations, provide regular reports and share data. Northern police could cooperate directly with Serbian police, provided Kosovo Police were informed. Appeals from judgments of local courts would be heard by the Kosovo Court of Appeals, which would establish a detached chamber in North Mitrovica.
- The North could collect an agreed, high percentage of customs revenue from traffic to Serbia and Montenegro and receive an agreed share of income tax and VAT collected in the region, as well as all local tax. It would retain the Ahtisaari plan right to additional funds provided by Belgrade. The North would become

the owner of all state property on its territory not required to fulfil Pristina's state obligations. Only assets of national significance, such as Gazivode Lake, would be regulated by the state.

- Serbia and Kosovo would recognise one another and agree to establish a soft border (not only in the North) that citizens of both states would need only ID cards to cross.
- Serbia would agree to recognise Kosovo documents and credentials, notably university degrees (important for youths in its own Preševo Valley, whose Pristina University degrees are presently useless in Serbia). Belgrade would also devolve more authority to the Preševo Valley and to its newly elected National Albanian Minority Council.<sup>104</sup>

### C. TERRITORIAL EXCHANGE?

Discussions in Serbia principally revolve around territorial changes.<sup>105</sup> There is no willingness to consider diplomatic relations with Kosovo in its current borders.<sup>106</sup> Belgrade's preferred outcome is partition, with the North going to (or in its view, staying in) Serbia, which would recognise the rest of Kosovo as an independent country.<sup>107</sup> Sensitive to the poisonous reputation of the term partition, Serbian officials speak instead of "an internal adjustment of administrative boundaries leading to a new external border".<sup>108</sup>

Kosovo would reject a partition limited to its own territory. Suspecting this, Belgrade has begun to float the idea, though not yet in public, of trading a large part of the Preševo Valley for the North of Kosovo, coupled with mutual recognition. Senior officials rationalise that they should

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<sup>102</sup> A U.S. diplomat told Crisis Group that although he thought talk of autonomy for the North was premature, "everyone" involved believed it would happen sooner or later; Crisis Group interview, Pristina, 15 March 2010.

<sup>103</sup> A European diplomat familiar with Belgrade policy told Crisis Group he believed Serbia was using partition as a "bogeyman" to make other demands, including extensive autonomy, appear more reasonable by contrast and that Serbia's overall goals remained fluid; Crisis Group interview, 11 March 2010.

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<sup>104</sup> The national council was constituted in June 2010. It is formed through ordinary elections and aims to facilitate and coordinate projects and initiatives in the interests of local minorities in the areas of education, culture, information and use of the national language and symbols.

<sup>105</sup> The Serbia aspects of this section are based on multiple interviews in 2009 and 2010 with senior officials in the foreign affairs and Kosovo ministries, supplemented by interviews with diplomats stationed in Belgrade, journalists and analysts; the Kosovo aspects are based on multiple interviews with top government officials and opposition leaders in Pristina during the same time period.

<sup>106</sup> A senior official said that Serbia could exchange ambassadors with Kosovo without border changes, but only if the latter gave up its claim to UN membership and agreed to be represented there by a common delegation; Crisis Group interview, Serb official Belgrade, October 2009.

<sup>107</sup> Serbia's other condition for recognising Kosovo involves the Serbian Orthodox Church, discussed in Section IV below.

<sup>108</sup> Crisis Group interview, Serb official, Belgrade, 15 June 2010.

not allow a small tract of undeveloped land, populated largely by Albanians, to scuttle a comprehensive solution to Serbia's foremost domestic and foreign policy problem.<sup>109</sup> Serbia's red lines in the Valley are the newly-built Jug [South] military base at Cepotina, south of Bujanovac town; the highway to Thessaloniki, which passes through Preševo and Bujanovac; and Medvedja municipality.<sup>110</sup>

The Preševo Valley consists of three municipalities, Preševo and Bujanovac in the south and tiny Medvedja, separated from them by Kosovo.<sup>111</sup> Most of Serbia's Albanians live there, some 56,595 according to the 2002 census.<sup>112</sup> From 1999 to May 2001, the Liberation Army of Preševo, Bujanovac and Medvedja (Ushtria Çlirimtare e Preshevës, Medvegjës dhe Bujanocit, UCPMB) waged a campaign of resistance to Serbian rule. For many years the Pristina elite and the Valley's Albanians have considered the area an organic part of Kosovo, to be re-attached sooner or later. During the Ahtisaari process talks, however, the international community successfully pressed Kosovo to give up claims outside its borders.<sup>113</sup>

The Valley's Albanian leaders adjusted to the new reality, calling in 2007 for Albanians in south Serbia to be given a high degree of decentralisation and territorial autonomy, similar to what Belgrade sought for the Serbs in Kosovo, while adding that "in case of eventual change of Kosovo's borders, Albanians would work toward unification of Preševo Valley with Kosovo".<sup>114</sup> Just as Belgrade links the fates of Kosovo and the North, so Albanians insist on equal treatment of the North and the Valley. Like nationalist Serbs who claim all Kosovo as sacred land, national-

ist Albanians hold that Serbia "has nothing to trade; the North and the Preševo Valley are both Kosovo Albanian".<sup>115</sup>

Kosovo's leaders will not publicly discuss territorial change, preferring to try once more to work out a way to integrate the Northern Serbs. A number of senior officials at the ministerial and parliamentary level, however, would consider trading the North for part of the Valley.<sup>116</sup> Kosovo knows its negotiating position depends on strong support from the U.S. and the 22 recognising EU states, most of which firmly oppose border changes; this makes discussions of the issue in Pristina tentative and anxious. Years of bad experiences with Belgrade and fears of a Serbian trick also influence the thinking. Still, an official asserted that if a swap appeared on the negotiating table, "we will have to grab it".<sup>117</sup> The Valley's leaders believe they have a right to join Kosovo but, conscious of their relatively weak position, are content to let Pristina represent them.<sup>118</sup> Some prefer keeping the Valley together as an autonomous unit within Serbia, and many would agree to accept equal status with the Northern Serbs.<sup>119</sup>

About 80 per cent of Preševo and Bujanovac municipalities lie west of the highway, on land that Serbia appears willing to trade. A majority of the Albanian population there is in several large villages (Ternovci i Madh/Veliki Trnovac, Rahovica, Raince and Koncul) that produced many UCPMB fighters. Bujanovac town would likely be fiercely disputed; its population consists of roughly equal Albanian, Roma and Serb communities, and all Albanian parties there insist it must join Kosovo as a whole.<sup>120</sup> Serbia seems willing to consider dividing the town, by analogy with North and South Mitrovica.<sup>121</sup> In that case, several thousand Albanians, plus the 1,816 who live in rural Medvedja, would remain on the Serbian side of the border.

Should Pristina contemplate a land swap, its red line in the North would likely be Gazivode Lake, created by a dam on the Ibar River in Zubin Potok municipality. It is Northern Kosovo's chief water source, but the coal-fired power plants that supply Kosovo's capital cannot function without it. A senior Kosovo official observed that "Preševo is an emotional issue, [but] Gazivode is a vital

<sup>109</sup> Crisis Group interview, Serb official, Belgrade, 15 June 2010.

<sup>110</sup> Crisis Group interviews, Kosovo ministry, Belgrade, 15 June 2010. The military base is Serbia's largest and represents the army's biggest capital expenditure since the break-up of Yugoslavia. The highway is part of Trans-European Corridor Ten, from Gdansk to Thessaloniki; Serbia hopes it will bring large profits from burgeoning European trade with Turkey.

<sup>111</sup> For background, see Crisis Group Europe Reports N°116, *Peace in Presevo: Quick Fix or Long Term Solution*, 10 August 2001; and N°152, *Southern Serbia's Fragile Peace*, 9 December 2003.

<sup>112</sup> The actual figure may be much lower, as many Preševo Albanians work abroad; their remittances are an important source of income for those who remain in the impoverished area.

<sup>113</sup> Kosovo's "Unity Team" came to see Kosovo's Serbs and Serbia's Albanians as a bridge for good relations between the two states; Crisis Group interviews, Unity Team members, April-May 2006; Crisis Group Report, *Kosovo: No Good Alternatives to the Ahtisaari Plan*, op. cit.

<sup>114</sup> "Platforma Politike e Këshilltarëve Shqipëtarë të Luginës" [Political Platform of the Albanian Councilmen of the Valley], Preševo, 14 January 2006.

<sup>115</sup> Crisis Group interview, Albanian municipal official, Bujanovac, 29 June 2010.

<sup>116</sup> Crisis Group interviews, PDK and LDK officials, June 2010.

<sup>117</sup> Crisis Group interview, government official, Pristina, 5 July 2010.

<sup>118</sup> Crisis Group interviews, Albanian municipal officials, Preševo, Bujanovac, 28-29 June 2010.

<sup>119</sup> Crisis Group interview, Albanian leader, Preševo, 28 June 2010.

<sup>120</sup> Crisis Group interviews, Albanian party leaders, Bujanovac, 29 June 2010.

<sup>121</sup> Crisis Group interview, Serbian official, Belgrade, 21 July 2010.

issue for the lives of one million people".<sup>122</sup> An opposition leader described the lake as an "existential issue" for Kosovo, because its loss could render the state unviable.<sup>123</sup> Richly supplied with water itself, Serbia may not appreciate the intensity of concern Gazivode evokes in parched Kosovo. Drawing a border through the lake would guarantee Kosovo access; alternatively or additionally, water rights could be incorporated in a bilateral treaty.<sup>124</sup>

If there is no solution to the problem of the North, Pristina might intervene in Preševo unilaterally. A government minister noted that the Northern municipalities currently refuse to spend the money allocated to them by Pristina, and mused that these funds could be better directed to Albanians in Preševo; Kosovo has the capacity to match Belgrade's very low level of investment in the Valley.<sup>125</sup> It would not be far from that to establishing parallel institutions and reviving the low-grade conflict that shook the Valley from 1999 to 2001.

Territorial change was generally ruled out by the Ahtisaari process and the Contact Group principles that launched it.<sup>126</sup> Crisis Group has consistently warned against partition, focusing on the implications that it could have on the region, as well as for the more numerous Serbs in Kosovo who live south of the Ibar. Now that the territorial swap option is (to take a quote from the Cyprus negotiation concerning the Annan Plan), if not on the table, than on the chair of one of the negotiating sides,<sup>127</sup> however, the arguments against a land swap need to be considered afresh and weighed against the potential benefits of a Serbia-Kosovo settlement.

## 1. Implications for the region

Many fear a land swap could destabilise the region, by provoking ethnic strife in Macedonia or encouraging secessionist options in Bosnia's Republika Srpska.<sup>128</sup> Virtually all Kosovo Albanian leaders who oppose border changes raised this objection.<sup>129</sup> In 2007 Crisis Group warned that "Macedonia's Albanians ... could again question their state arrangement and envisage Tetovo as Kosovo's southern capitol".<sup>130</sup> More recent interviews, however, have revealed no enthusiasm among Macedonian Albanian leaders for such a move.

Talks between Pristina and Belgrade would put pressure on inter-ethnic relations in Macedonia, where the large Albanian minority fought a brief armed struggle in 2001, ended by the Ohrid power-sharing agreement.<sup>131</sup> Yet even faced with the idea of Kosovo partition, few Macedonian Albanian leaders show much inclination to advocate a split from Macedonia. The late Serbian Premier Zoran Djindjić mooted a simultaneous partition of Kosovo and Macedonia to Macedonian leaders Ljupčo Georgijevski and Arben Xhaferi in 2001. That initiative floundered, when the Albanians realised the offer would have left almost half of them on the wrong side of the line.<sup>132</sup>

Many Albanians live in Skopje and its suburbs and other areas the Macedonian majority would not give up. Macedonian Albanian leaders gave cogent reasons why such a partition was "not in the Albanian national interest" and was more appealing to Macedonian nationalists seeking an ethnic state.<sup>133</sup> Among other things, they said, partition might lead to the division of rump Macedonia between Bulgaria, Greece and Serbia, which would leave the remaining Albanians a small minority in larger states.<sup>134</sup>

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<sup>122</sup> Crisis Group interviews, Kosovo government official; former Kosovo prime minister, Pristina, 23 June 2010.

<sup>123</sup> Crisis Group interview, AAK official, Pristina, 9 June 2010.

<sup>124</sup> The several villages south of the lake in Zubin Potok include Brnjak, Dragaljica, Jabuka, Preseka, Mala Kaludra, Velika Kaludra, Gornji Jasenovik and Donji Jasenovik. These are ethnically Serbian, and although small and isolated, several overlook the Zubin Potok town.

<sup>125</sup> Crisis Group interview, government official, Pristina, 2 July 2010.

<sup>126</sup> The Contact Group (France, Germany, Italy, Russia, the U.K. and U.S.) issued ten principles to guide the final status process, including "no changes in the current territory of Kosovo, i.e. no partition of Kosovo and no union of Kosovo with any country or part of any country". "Guiding principles of the Contact Group for a settlement of the status of Kosovo", 7 October 2005. Arguably, this might not exclude a freely entered into bilateral land swap agreement, which would be neither partition nor the union of Kosovo with another country.

<sup>127</sup> Turkish Cypriot leader Mehmet ali Talat quoted in Fatma Demirelli, "Talat warns domestic troubles in Turkey will hurt Cyprus case", *Today's Zaman*, 4 April 2008.

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<sup>128</sup> Crisis Group interview, EU diplomat, Paris, 5 July 2010.

<sup>129</sup> Crisis Group interviews, AAK officials, Pristina, 9-10 June LDK official, 11 June 2010; senior government official, Pristina, 18 June 2010; and other Kosovo party officials, Pristina, 23 June and 14 July 2010.

<sup>130</sup> Crisis Group Report, *Kosovo Countdown*, op. cit., p. 5.

<sup>131</sup> See Crisis Group Europe Briefings N°23, *Macedonia: Filling the Security Vacuum*, 8 September 2001; and N°21, *Macedonia: War on Hold*, 15 August 2001.

<sup>132</sup> The offer reportedly included Tetovo and Gostivar on the border with Albania and parts of Kumanovo in the north; about 250,000 Albanians and 60,000 Macedonians would have been displaced. Crisis Group interview, Macedonian Albanian politician, Tetovo, 8 July 2010.

<sup>133</sup> Crisis Group interview, Macedonian Albanian government official, Skopje, 8 July 2010.

<sup>134</sup> Crisis Group interviews, Macedonian Albanian politician, Tetovo, 8 July 2010; Macedonian Albanian government official, Skopje, 8 July 2010.

A senior Macedonian government official acknowledged the risk that a Kosovo-Serbia land swap could “awaken appetites”, but thought Bosnia at greater risk. Echoing Albanian leaders, he said unidentified and currently marginal “extremists” could become more prominent but estimated the danger as “not a prediction [of trouble] or even a probability; it is a possibility” that would depend on how much support “extremists” received from the established parties.<sup>135</sup> His Albanian colleague noted that he had seen no sign that the majority Macedonian party, the VMRO-DPMNE, supported the country’s partition.<sup>136</sup>

All participants and observers Crisis Group interviewed agreed that the biggest threat to Macedonian stability was the ongoing dispute with Greece over the country’s name, which has blocked NATO membership and the start of EU accession talks for almost two years.<sup>137</sup> Macedonian Albanians urgently desire their country’s Euro-Atlantic integration. An opposition leader and former prime minister put it bluntly: the name dispute should be resolved “not today, but yesterday” because only this – by unblocking NATO membership – would secure national stability.<sup>138</sup> Partition has little to do with the frustrations of Albanians in Macedonia, who feel trapped and nervous in a state that is not making progress, while neighbouring Albania has already joined NATO, and even Kosovo has better development prospects.<sup>139</sup>

According to a senior EU official in Skopje, opening the Kosovo-Serbian border issue while Macedonia is still waiting on NATO’s doorstep would expose the country to serious risks.<sup>140</sup> Membership, however, would provide a sense of security, including U.S. institutional presence; EU membership will in any event take much longer, but starting accession talks would create a sense of progress and hope. In those circumstances, the risks from any deal between Serbia and Kosovo would be more manageable. Alternatively, if the Greek obstacles remain, international actors could be faced with a tough choice: risk obstructing a consensual solution to the Kosovo and Serbia conflict or risk destabilising Macedonia.

Of course, Macedonia’s stability also depends largely on good relations between its Macedonian and Albanian communities and on its own political culture and development.<sup>141</sup> The Ohrid Agreement that ended the 2001 conflict remains imperfectly implemented, notably with regard to language and decentralisation. Albanians likewise resent what they see as unfair allocation of resources to their districts and a still-pervasive tendency to hire them only for low-skill, low-wage jobs.<sup>142</sup> All parties – Skopje, Athens and their international partners – should redouble efforts to support full Ohrid implementation, resolve the name dispute and unblock Macedonia’s path to NATO and the EU. In addition to the other reasons for this, delay now risks scuttling a chance to overcome the bitter Kosovo-Serbia dispute and postponing the European hopes of at least three countries for many years.

Bosnia and Herzegovina is in crisis but unlikely to suffer from a Kosovo-Serbia deal. The ICJ opinion, while carefully crafted to apply to Kosovo’s unique situation, was nonetheless immediately cited as “a good basis for the secession” of Republika Srpska (RS) by one party leader; another, more moderate, was sure the opinion would have a powerful impact on his country.<sup>143</sup> Such reactions quickly petered out, however, suggesting they were little more than pre-election rhetoric. RS Prime Minister Milorad Dodik, who has often speculated about his entity’s eventual independence from Bosnia, struck a conciliatory note this time. RS “still has patience to work with the Dayton structure” and knows that “unilateral acts cannot produce adequate or ideal solutions”, he said, and recalled that the Turkish Republic of Northern Cyprus has failed to win international recognition.<sup>144</sup>

Serbia has strongly supported Bosnia’s territorial integrity, in part to shore up defence of its case against Kosovo. Any comprehensive agreement including mutual recognition between Serbia and Kosovo – whether based on a land swap, expanded autonomy or other models – would give Bosnia a constructive example of two bitter foes resolving their differences through compromise and then moving on. But if negotiations fail, Serbia may be tempted to relax its stance against RS secession. In the worst case, a hard-line coalition could win the 2012 elections and renew old ideas that RS should be allowed

<sup>135</sup> Crisis Group interview, Skopje, 7 July 2010.

<sup>136</sup> Crisis Group interview, Macedonian Albanian government official, Skopje, 8 July 2010. VMRO-DPMNE stands for Internal Macedonian Revolutionary Organisation – Democratic Party for Macedonian National Unity (Внатрешна македонска револуционерна организација – Демократска партија за македонско национално единство).

<sup>137</sup> Crisis Group Europe Briefing N°52, *Macedonia’s Name: Breaking the Deadlock*, 12 January 2009.

<sup>138</sup> Crisis Group interview, Macedonian politician, Skopje, 7 July 2010.

<sup>139</sup> Crisis Group interview, senior Macedonian Albanian politician, Tetovo, 8 July 2010.

<sup>140</sup> Crisis Group interview, senior EU official, Skopje, 7 July 2010.

<sup>141</sup> Crisis Group interview, U.S. diplomat, Skopje, 7 July 2010.

<sup>142</sup> Crisis Group interview, senior Macedonian Albanian politician, Tetovo, 8 July 2010.

<sup>143</sup> “Pavić: Dobra podloga za otejepljenje RS od BiH” [Pavić: A good basis for RS secession from BiH], *Vijesti.ba*, 22 July 2010 (online). “Deklaracija o proglašenju nezavisnosti Kosova doprinos jačanju separatizma” [Ivanić: The declaration on declaring the independence of Kosovo contributes to strengthening separatism], *Ljiljan.ba*, 23 July 2010 (online).

<sup>144</sup> “Dodik: mišljenje MSP razočaravajuće” [Dodik: ICJ opinion disappointing], *Nezavisne novine*, 22 July 2010 (online).

independence or union with Serbia, as compensation for Belgrade having lost Kosovo and obtained nothing in return.

Crisis Group warned in 2005 that with respect to the Western Balkans, Kosovo's partition would "destroy the levers for positive social transformation – toward non-discrimination, multi-ethnicity, and European values – and even throw them into reverse, creating pressures for exchange of populations".<sup>145</sup> In the intervening years, Kosovo adopted the Ahtisaari plan and built those values into its constitutional order. The progressive integration of the southern Serb enclaves has advanced multi-ethnicity. But there has been nothing similar north of the Ibar, in large part due to a lack of international will. Crisis Group cautioned that the North would "not integrate into Kosovo easily or soon, and perhaps ever" and that "the international community would need to invest considerable security, economic and administrative resources; [but] it does not have the appetite".<sup>146</sup> That judgment seems vindicated; EULEX in particular is all but invisible in the North, whose unresolved status is driving the communities farther apart and diverting Pristina and Belgrade from Europe, deeper into narratives of nationalist grievance.

## 2. Implications for the South

Expanding Northern autonomy or exchanging the North for Preševo would strain the position of the approximately two thirds of Kosovo Serbs who live south of the Ibar River and who have been primarily affected by decentralisation.<sup>147</sup> Since local elections in November 2009, four new Serb-majority municipalities (Ranilug/Rani Llug, Parteš/Partesh, Klokot/Kllokot and Gračanica/Grachanicë) have been created, one (Novo Brdo/Novobërde) has been enlarged and one (Štrpce/Shtërpce) has elected a legitimate representative body. Their success varies. Local authorities in Gračanica and Štrpce, both with relatively large populations and some experience in municipal government, operate at full capacity. Potential conflicts with Belgrade-funded parallel municipalities have been largely avoided.<sup>148</sup>

Smaller municipalities, such as Ranilug and Klokot, lacking infrastructure, experienced municipal officials and funding, have struggled to fill positions and carry out projects. Their feuds with parallel municipal structures are deep and divisive.<sup>149</sup> Novo Brdo still waits to be officially enlarged, as most local Serbs boycotted the election, and an Albanian mayor won who is not keen on expansion of its boundaries consistent with the Ahtisaari plan. The Serb officials who did participate and win seats in Novo Brdo's municipal elections also ran and won seats in Serbia's parallel elections in May 2010.

Crisis Group and others have predicted in the past that any territorial changes would have an immediate negative effect on these Kosovo Serbs. This was based on fears of a repeat of the exodus of Serbs from Sarajevo after the Dayton agreement that ended the Bosnia war. Such claims are often repeated by Kosovo Serb political elites, including Rada Trajković<sup>150</sup> and Randel Nojkić.<sup>151</sup> However, inhabitants of the Serb enclaves now say that they will stay as long as they can have a "normal life".<sup>152</sup> Even parallel officials claim that "those who wanted to leave have already left", and "Serbs will not leave unless they are forced out".<sup>153</sup>

The Kosovo Serb population is likely to decline but this is not because of status issues. It is ageing and overwhelmingly rural. While agriculture was once something most families practiced on a small scale to complement factory jobs, it has become one of the few options available.<sup>154</sup>

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government voiced its protest, but there were no demonstrations. In fact, the parallel municipality had already selected an alternative location. In Gračanica, the new municipal authorities based themselves in a motel, and there were no tensions with the parallel structures.

<sup>149</sup> For example, Ranilug Mayor Gradimir Mikić has based the new municipal structures in his home village of Ropotovo, as the parallel structures do not allow him to enter Ranilug. This kind of divide between villages is reflected not only in where local politicians can go freely but also in how investment is allocated, as both sides focus only on "loyal" areas. The municipality of Klokot is being boycotted by the large Serb village of Vrbovec – not only because poor infrastructure makes the 10km between the two seem long, but also because the latter is home to parallel Serb municipal structures.

<sup>150</sup> "Beograd kod Obame lobira za podelu" [Belgrade lobbies Obama for partition], *Press*, 29 May 2010.

<sup>151</sup> "Podelu Kosova zagovaraju Srbi a ne stranci" [Partition raised by Serbs, not foreigners], *Blic*, 4 August 2010.

<sup>152</sup> Crisis Group telephone interview, Kosovo Serb journalist, Gračanica, 5 August 2010.

<sup>153</sup> Crisis Group telephone interviews, Kosovo Serb official, Štrpce, 4 August 2010; Kosovo Serb journalist, Štrpce, 5 August 2010.

<sup>154</sup> The collapse of socialist-era factories has hurt Kosovo, especially the east, where the majority of the new municipalities are based. During socialist times, the area around Gnjilane/Gjilan

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<sup>145</sup> Crisis Group Report, *Kosovo: Toward Final Status*, op. cit., p. 28.

<sup>146</sup> Ibid, p. 19.

<sup>147</sup> Due to lack of census data, population figures are not exact, but according to estimates, half to two thirds of the Kosovo Serbs live in scattered enclaves south of the Ibar, especially in the central and eastern parts of the country. See Crisis Group Report, *Serb Integration in Kosovo*, op. cit.; "Q&A: Kosovo's Future", BBC News, [www.bbc.co.uk/news/world-europe-10725744](http://www.bbc.co.uk/news/world-europe-10725744).

<sup>148</sup> In Štrpce, the municipal building was taken over by the legitimate local government during a public holiday. The parallel

Since 1999, Serbia has paid exceptionally high salaries to keep as many people as possible employed. But many who work in Kosovo have primary homes in Serbia. About half the employees of Ranilug's education system, for example, commute from Serbia, as do about a third of those in the small medical centre. "More than 80 per cent" of the staff of the large medical complex in Gračanica work a "fifteen-fifteen basis" – a fortnight there, then a fortnight off, in Serbia.<sup>155</sup> Once the special benefits for these jobs dry up, the people are likely to leave for Serbia, where they have property and families. Indeed, all key Kosovo Serb leaders base their families in Serbia – including top officials from the Independent Liberal Party (Samostalna Liberalna Stranka, SLS), who are part of the Kosovo government.

The future of the enclaves is also endangered because of the high number of young people who leave each year. Serbian investment in the Mitrovica university means that Serb students from south of the Ibar receive free education and accommodation. Of the 1,627 open spaces for freshmen in 2010, "two thirds will go to students from the enclaves".<sup>156</sup> Once out of the enclaves, few have any motivation to return; they focus instead on jobs in bigger Serbian cities such as Niš. While not different from the pull Pristina has on young people across Kosovo, the trend of migration to Mitrovica is threatening for the small enclaves south of the Ibar.

These trends, however, have little to do with Kosovo's status. Kosovo Serbs have been slowly migrating to and obtaining property in Serbia for decades. Greater local autonomy or land swaps are unlikely to change this. Some relatively large, compact enclaves like Štrpce and Gračanica will be able to survive as functioning municipalities. However, most of the enclaves will struggle, with or without municipal status. What the Kosovo Serbs need in these small, underdeveloped, rural areas is the right to live and work their land in peace; events like the attacks on returnees in Žač/Zilac since March 2010 make them believe that is still impossible.<sup>157</sup> Providing more

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was part of a broader belt of factories which extended to Vranje and Leskovac. Large factories, such as one that made batteries in Gjilan, were major employers in the area but proved unsustainable, leaving the area facing an uncertain economic future.<sup>155</sup> Crisis Group interview, Serb officials, Belgrade, 16 July 2010.

<sup>156</sup> Ibid.

<sup>157</sup> 26 families, and individuals representing their families, spontaneously returned to the village of Žač in western Kosovo in March 2010. This was initially labelled a propaganda ploy, but accusations subsided, and they have been visited by both Kosovo and Serbian government ministers, as well as international officials. Hoping to pressure donors for greater support, the returnees are living in tents provided by the UN High Commissioner for Refugees (UNHCR). Albanians from nearby villages have repeatedly protested that war criminals are among

security and basic rights is important, but ambitious decentralisation projects may have to be reconsidered in light of an honest assessment of the enclaves' true problems.

Ultimately, an exchange of the North for the Valley undertaken by Kosovo and Serbia on an equal basis would favour neither. It could only be countenanced as a contract between two sovereign states and provided Serbia recognised Kosovo's independence beforehand, at least implicitly. Likewise, the residents of the North and the Valley would require a voice in the matter, through free expression of self-determination, even if their preferences seem clear.

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the returnees; Serbs in turn claim that the objections are meant to distract from Albanian usurpation of Serb-owned land. There have been numerous attacks on the returnees, including shootings, since March 2010.

## IV. OTHER ISSUES

### A. THE SERBIAN ORTHODOX CHURCH

Every effort to establish a functional relationship will need to address the position of the Serbian Orthodox Church in Kosovo. Some of the oldest and historically most important Serb religious structures are there and form an integral part of the emotional attachment to Kosovo which has often influenced Serbian state policy. The status of the Church and its holy sites is at least as important as that of the North for Serbia, as it contemplates relinquishing its claims to Kosovo.

According to Church sources, Kosovars have committed more than 150 acts of vandalism against its property since 1999.<sup>158</sup> During the 17 March 2004 riots, medieval Devič (Skenderaj/Srbica) and Holy Archangels (Prizren) were burned to the ground, while Bogorodica Ljeviška (Prizren) was severely damaged.<sup>159</sup> This made protection of the Serbian religious and cultural heritage a key issue during earlier negotiations. Annex 5 of the Ahtisaari plan<sup>160</sup> deals in elaborate detail with such sites and has been incorporated into Kosovo's constitution.<sup>161</sup> It confirms the Serbian character of the churches and monasteries, severely limits access of Kosovo institutions, grants the Church the right to control access, forbids expropriation and establishes special protection zones.<sup>162</sup> Despite rejection of the Ahtisaari plan as a whole, Belgrade supports almost all of Annex 5.<sup>163</sup> Indeed, prominent members of the Church described its provisions as "90 to 99 per cent of what the Church wanted".<sup>164</sup> Yet, the Security Council's failure to adopt the Ahtisaari plan means that Annex 5 lacks international legal authority.

The Serbian government would like to expand on Annex 5, secure extraterritoriality for several key religious sites and ensure that they have international security guarantees. While a deal might be based on Annex 5, it would need to be repackaged to avoid explicit links with the Ahtisaari process. Annex 5 calls for international protection of churches and monasteries for the present but foresees eventual transfer of these duties to Kosovo police

and security services.<sup>165</sup> Both Belgrade and the Church insist on sustained international protection,<sup>166</sup> worrying that once the transitional period ends, little would prevent Kosovo from amending its constitution or relaxing its enforcement of Annex 5.<sup>167</sup> Church officials desire a small force similar to the Vatican's Swiss Guards – third-country nationals with both symbolic presence and real defensive capability.<sup>168</sup> The mandate of a force that might gradually assume responsibility as the NATO mission (KFOR) draws down would have to be incorporated into a Serbia-Kosovo treaty that could only be modified with the Church's consent.

Extraterritoriality in this context might involve something akin to the status of Mount Athos in Greece or the Holy See within Italy.<sup>169</sup> One version, based on a study by the Greek NGO ELIAMEP, envisions establishing the key church sites as a self-governing "Serb Orthodox Monastic Community", with "exercise of executive, legislative and judicial jurisdiction" according to Church law and custom.<sup>170</sup> An elected body of monks would be in charge of interaction on day-to-day issues with the Kosovo authorities. This would be less than true extraterritoriality and involve little practical change from Annex 5.

But Serbia wants actual extraterritorial status for the most important six or seven monasteries. According to a Serb official, "if we reach an agreement along these lines, we would naturally extinguish our claim to sovereignty over the rest of Kosovo, except over areas where some of our most important monasteries are".<sup>171</sup> The nature of extraterritoriality would vary from case to case. Monasteries in the middle of urban settlements, such as Bogorodica Ljeviška in Prizren, would have an unobtrusive marker, perhaps a different kind of stone in the surrounding pave-

<sup>158</sup> "Destruction of Serbian Orthodox Churches and Monasteries, Diocese of Raška and Prizren", [www.kosovo.net/default2.html](http://www.kosovo.net/default2.html).

<sup>159</sup> See Crisis Group Europe Report N°155, *Collapse in Kosovo*, 22 April 2004.

<sup>160</sup> More explicitly, Article 5 of the Comprehensive Proposal for the Kosovo Status Settlement (CSP) document (see fn. 6 above).

<sup>161</sup> Comprehensive Proposal for the Kosovo Status Settlement, Annex 5, 26 March 2007.

<sup>162</sup> Ibid, Annex 5, Article 1.

<sup>163</sup> Crisis Group interviews, Serb officials, Belgrade/Gračanica/Mitrovica, 2008-2010.

<sup>164</sup> Crisis Group interview, Serbian Orthodox priest, 14 June 2010.

<sup>165</sup> Comprehensive Proposal for the Kosovo Status Settlement, Annex 5, Article 3.1.1.

<sup>166</sup> Crisis Group interviews, Serb officials/Serbian Orthodox priest, June-July 2010.

<sup>167</sup> In practice, Serb delegates can block amendments to the Kosovo constitution, which require a concurrent majority of two-thirds of all delegates and two-thirds of the twenty "non-majority" delegates; Serbs are guaranteed ten of the latter seats. Constitution, Articles 64.2.1, 65.2, 144.2. For this reason, lax enforcement and creative interpretation are greater threats than formal amendment.

<sup>168</sup> Crisis Group interviews, Serbian church officials and diplomats, Belgrade and Kosovo, June-July 2010.

<sup>169</sup> Crisis Group interviews, Serb official, Belgrade, 15 June 2010; international official, Belgrade, 18 July 2010; Serbian Orthodox priest, 19 July 2010.

<sup>170</sup> "Establishing a Serbian Orthodox Monastic Community (SOMC) in Kosovo, as an integral part of a comprehensive 'future status' settlement", ELIAMEP non-paper, 1 November 2005.

<sup>171</sup> Crisis Group interview, Serb official, Belgrade, 15 June 2010.

ment, while the extraterritoriality of more isolated monasteries, such as Deviç and Holy Archangels, would extend to their outside walls. High-ranking church authorities argued that extraterritoriality “in substance and form” would be necessary.<sup>172</sup>

The issue is controversial, and agreement would depend in part on details, including how much territory would be extraterritorial and whether the Church or the Serbian state would have sovereignty. Changing the status of a few church buildings would be less intrusive than staking a claim to the much wider territories around them regulated by Annex 5 and including church-owned land. Likewise, ecclesiastical extraterritoriality might be less offensive to Kosovar sentiments than the formal presence of the Serbian state. Local church officials in Kosovo are less keen on formal extraterritoriality, because most important Serbian religious sites are in Albanian areas,<sup>173</sup> which would likely see the new status as an affront that would breed hostility.<sup>174</sup>

The topic is not as widely discussed in Pristina, where officials repeat that they are committed to the Ahtisaari plan in its entirety, including Annex 5. As long as Kosovo’s independence is subject to international monitoring, the Orthodox Church’s special protections are safe. Some Kosovo officials resent these and would like to reduce them to the modest level offered the much larger Islamic community.<sup>175</sup> However, internationals involved in the process believe that chances of this are slim, since Kosovo’s EU path would be blocked if it mistreated the Church.<sup>176</sup> Nevertheless, the Church’s position and way of life could gradually be made less tenable without gross violations or pogroms. Priests and monks fear hostile secular neighbours might industrialise or otherwise disfigure the land adjacent to their monasteries, as communist leaders did in Yugoslav times. More worrying are Albanian nationalist attempts to claim the Serbian Orthodox Church as a Kosovo heritage which the Serbs usurped,<sup>177</sup> an attitude that contributes to mistrust and tension between Pristina and the Church.

Kosovo’s officials reject discussions on extraterritoriality, emphasising that they might lead to a “state within a state”.<sup>178</sup> The concern is especially acute with respect to sites such as Graçanica monastery, which are surrounded by large Serb-majority settlements: Kosovars fear a church entity would try to expand its extraterritoriality to these areas and so cut away at Pristina’s sovereignty.<sup>179</sup> Senior Church officials deny interest in such expansion.<sup>180</sup> The Kosovars are more relaxed, although not enthusiastic, about extraterritoriality that would be largely symbolic and cover only very small areas.<sup>181</sup> They are willing to consider additional guarantees, including a long-term presence of international security forces, practical privileges and free access for visiting Serbian officials.<sup>182</sup> On Church matters, the opposition is flexible; one of its prominent leaders said the Church could get “whatever it wanted”, within reason.<sup>183</sup>

Extraterritoriality for certain religious sites inside Kosovo would go a long way toward selling a deal to the Serbian public, though it would be resented among Kosovo Albanians. Church approval of any agreement would be crucial, given that it is the most trusted institution in Serbia. The extraterritorial label is highly controversial; yet every state has extraterritorial sites, at least in the form of embassies and consulates. In practice, the selected few sites would not be big or powerful enough to meaningfully impinge on either Pristina’s authority or the Albanian way of life.

## B. TECHNICAL ISSUES

Serbia’s refusal to recognise Kosovo has deepened a host of technical problems. Pristina would like to focus on these to start building confidence and good neighbourly relations. There is a sense in Kosovo, shared generally with the EU and the U.S., that cooperation with Serbia can grow to satisfy citizens’ basic needs and interests without outright Serb recognition.

Currently Serbia blocks Kosovo citizens at almost every turn. They cannot travel, study, work or transit through Serbia unless they have documents issued by Belgrade.

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<sup>172</sup> Crisis Group interview, Serbian Orthodox priest, 19 July 2010.

<sup>173</sup> This is especially true for Deçani, Deviç, Bogorodica Ljeviška and the Peç Patriarchate. Only Graçanica, Banjska and the churches of Velika Hoça are in Serb-majority surroundings.

<sup>174</sup> Crisis Group interview, Serbian Orthodox priest, 14 June 2010. Belgrade dismisses this concern, arguing that extraterritoriality would be part of a larger settlement from which Pristina would receive full international legitimacy, thus decreasing tensions. Crisis Group interview, Serb official, Belgrade, 9 July 2010.

<sup>175</sup> Crisis Group interview, Kosovo official, Pristina, 14 July 2010.

<sup>176</sup> Crisis Group interview, international official, Belgrade, 18 July 2010.

<sup>177</sup> Ibid.

<sup>178</sup> Ibid.

<sup>179</sup> Annex 5 refers to special provisions that allow areas like Velika Hoça, in which the secular settlement and church properties are intertwined – the small village contains more than a dozen medieval churches – to discuss a number of issues with the Church.

<sup>180</sup> Crisis Group interview, Serbian Orthodox priest, 18 July 2010.

<sup>181</sup> Crisis Group interview, international official, Belgrade, 18 July 2010.

<sup>182</sup> Crisis Group interviews, government minister and officials, Pristina, July 2010.

<sup>183</sup> Crisis Group interview, AAK official, Pristina, 9 June 2010.

Neither Kosovo nor UNMIK documents are recognised. Serbia refuses to speak with the Kosovo government or private companies on issues related to water, energy, transport, rule of law, displaced or missing persons, trade or any other possible common concerns. At the same time, it tries to maintain control over providers of these goods and services in North Kosovo and blocks Kosovo's participation in international and regional organisations. All this punishes Kosovo Albanians while doing little to benefit Serbs.

International, EU-led efforts to blunt the edge of Serbia's campaign to isolate Kosovo have largely failed. EULEX twice attempted to improve cooperation (on police and the judiciary); both attempts were deferential to Belgrade and achieved little other than to offend Pristina, which was kept at arm's length. EULEX has likewise tread so softly in the North as to be virtually undetectable; an EU member state ambassador said that for Brussels, EULEX's main task was to maintain EU unity, and this trumped any policy goal in Kosovo.<sup>184</sup> EU leaders pulled out of a regional summit meeting on 20 March 2010 once President Tadić reversed an earlier stand and announced he would not attend if Kosovo officials were present.<sup>185</sup> The ICJ opinion is unlikely to have any effect on the EU non-recognisers or on Brussels' ability to talk productively with Belgrade and Pristina, unless the two parties are agreed to deal with each other as equals.

Belgrade shows no intention of doing this for talks on "technical issues", claiming that they would be a fig leaf for recognition.<sup>186</sup> During the post-ICJ parliamentary debate in July 2010, Foreign Minister Jeremić stated that allowing Kosovo to participate in regional or other international forums would mean implicit recognition and send a message to the world that Serbia was more at ease with Kosovo's independence.<sup>187</sup> Serbia thus refuses to contemplate talks limited to technical matters and says that the resolution of these will be the outcome of mutual agreements on the broader questions.<sup>188</sup>

## 1. Customs and trade

Serbia's membership in the Central European Free Trade Agreement (CEFTA), which began in September 2007, was preceded by difficult negotiations over the status of Kosovo in the organisation. The Koštunica government accepted a compromise in which it acknowledged that Kosovo was a separate trade area and agreed to its joining CEFTA as "UNMIK-Kosovo". This held until Kosovo's independence. Thereafter Serbia refused to deal with Kosovo in any way except as UNMIK-Kosovo, while Kosovo insisted on its sovereign presence without a UN chaperone. Ultimately Belgrade blocked Kosovo's full participation, and rather than accept representation under a UN umbrella, Kosovo chose to bear the financial and political costs of having its goods prevented from even transiting Serbia.<sup>189</sup>

Belgrade maintains that it will unblock Kosovo if there is even a "symbolic UNMIK presence",<sup>190</sup> but its unwillingness to compromise more generally makes its position look petty. This is especially true since it twice rejected the legal opinions of the UN Secretary-General's special representative (SRSG), Lamberto Zannier, that "Customs of Kosovo" stamps are in accordance with Security Council Resolution 1244. Zannier is considering using UNMIK-Kosovo's chairmanship of the organisation to request arbitration of CEFTA violations by Serbia toward Kosovo.<sup>191</sup>

Those violations harm not only Kosovo but also third states whose imports from Kosovo are more expensive due to lengthier transit. Kosovo is a strong export market for Serbia, so good economic relations are important. Kosovo could impose higher tariffs or take other steps

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<sup>189</sup> Established in 1992, CEFTA (Central and Eastern European Free Trade Agreement) aims to help non-EU countries integrate into Western European institutions. It was extended to the Western Balkans in 2006, where it is to enter into force at the end of 2010. All Western Balkan countries, including Serbia and Kosovo (as UNMIK-Kosovo) joined in 2007, thus committing to develop a free market economy and free movement of goods for fellow participants that have agreed to eliminate tariffs, quotas and preferences on most goods services traded between them. Since declaring independence, Kosovo has refused further identification as "UNMIK-Kosovo" and wishes to use stamps and documents referring to itself by its proper name. Serbia rejects this and blocks all stamps which do not carry the UNMIK-Kosovo legend. Kosovo officials say this is contrary to CEFTA and a violation of Serbia's commitment to free trade. Serb officials say the dispute shows Kosovo prioritises politics above economics. Lack of cooperation hampers crucial preparations and may mean CEFTA will not be fully operational even after December 2010.

<sup>190</sup> Crisis Group interview, Serb official, Belgrade, 9 March 2010.

<sup>191</sup> Crisis Group interview, senior UNMIK official, Pristina, 10 June 2010.

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<sup>184</sup> Crisis Group interview, Pristina, 24 May 2010.

<sup>185</sup> Crisis Group interviews, EU officials, Paris, Pristina and Sarajevo, March-May 2010. A later EU-sponsored foreign ministerial meeting in Sarajevo did bring Serbian and Kosovo officials together, but at the price of watering down the agenda to meet Serbian concerns.

<sup>186</sup> Crisis Group interview, Serb officials, Belgrade, March-June 2010.

<sup>187</sup> Serbian Parliament Extraordinary session on Kosovo, 26 July 2010.

<sup>188</sup> Crisis Group interview, Serb official, Belgrade, 15 June 2010.

against its goods that could cause Serbia's primacy in the market to be challenged by competitors like Macedonia and Slovenia.

## 2. Communications

Serbian phone operators were in Kosovo before the 1999 conflict and remained largely untouched until recently. The state-controlled operator, Mobilna Telefonija Srbije (MTS), developed and updated its network there, and until 2010 its signal covered most of the territory. Mobtel, owned by Kosovo Serb tycoon Bogoljub Karić before being confiscated by Belgrade and sold to Norwegian operator Telenor, cooperated well with Albanian businesspersons but never registered officially in Kosovo.

Pristina no longer wants to tolerate unregistered Serbian operators, however, in part because of lost tax revenue, and is now doing all it can do to dismantle the 22 network distributors south of the Ibar. In April 2010, the Telecommunication Regulatory Authority (Autoriteti Rregullativ i Telekomunikacionit, ART) switched off several MTS antennas without warning, dramatically reducing the network's capacity, but it is unable to switch off the other ten in the North. Unless Belgrade makes a deal with Pristina, mobile operators will continue to be targeted, though ART has pledged to use caution and avoid provoking local Serbs.<sup>192</sup>

Belgrade should allow all operators to register in Kosovo, and Pristina should permit this under favourable terms, so that the local population's mobile phone use is not affected.<sup>193</sup> Ideally, a single coverage zone might be established across the region, doing away with roaming charges. Serbia should also recognise Kosovo's Vala operator, the mobile division of Post and Telecom of Kosovo (PTK), which was registered by UNMIK.

Even though entities with various kinds of special status such as Taiwan, Martinique and Hong Kong, have their own international dialling codes, Serbia refuses to consider granting one to Kosovo, insisting that it has maintained all land and internet lines to the territory,<sup>194</sup>

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<sup>192</sup> ART is torn between maintaining stability and pressure from two legal mobile operators, VALA and IPKO, which could potentially sue it for the economic losses the presence of illegal operators cause them. The international community supported the ART operation in principle but was critical of implementation and the potential for a violent Serb reaction. ART says it will continue its operation after the summer holidays but only with police consent. Crisis Group interview, senior ART official, Pristina, 1 August 2010.

<sup>193</sup> A precedent exists in the region: MTS and Telenor in Bosnia and Montenegro allow calls to and from Serbia without roaming.

<sup>194</sup> Crisis Group interview, Serb official, Belgrade, 15 June 2010.

## 3. Electricity

Kosovo successfully dealt with non-payment of electricity bills by Kosovo Serbs south of the Ibar in 2009, cutting service and requiring signature of contracts with a fixed monthly household charge of €27 before restoring power. Supported by Belgrade, the Kosovo Serbs initially protested but eventually agreed. In winter 2009, Pristina thought this tactic would also work in the North, whose debt, according to the Energetic Corporation of Kosovo (Korporata Energetike e Kosovës, KEK) reaches €50 million.<sup>195</sup> However, after two days without power, the North was able to supply itself through alternative sources.<sup>196</sup> In effect, KEK lost responsibility for supplying the area, and its property, including the Valaç power station, was usurped by Serbia's Elektrokosmet. By January 2010, that Serbian enterprise was billing Northern consumers.<sup>197</sup>

Rumours of military action to reclaim Valaç have been floated throughout 2010, and the situation is still not resolved. KEK has resumed transferring power towards the North,<sup>198</sup> while Serbia claims not to disrupt any KEK power and is acting cautiously in order not to provoke KFOR or other security forces. Pristina is building a modern power station in the west of the country so that these areas will not be left powerless if cut off by Valaç. However, the two halves of Mitrovica are mutually dependant, and Valaç is the only station in the North through which electricity is provided for the whole region regardless of its source.

The government has presented a project to privatise the KEK energy distribution branch to potential investors, and formal bids are expected in 2011. Privatisation may reduce tensions, as the process will be open to international bidders who will have to go through the regular Kosovo bidding and licensing process. The new owners will be free to decide who supplies the North and will be mainly interested in collecting consumer fees. Residents in the North have tended not to pay anyone for electricity,

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<sup>195</sup> Crisis Group interview, KEK official, Pristina, May 2009. According to him, overall Serb consumers' debt equals €120 million.

<sup>196</sup> The municipality of Zubin Potok obtained its alternative power mostly through the Gazivode dam, while Leposavić, Zvečan and Mitrovica got theirs from Novi Pazar in Serbia via the Valaç power station.

<sup>197</sup> The payment of these bills was in effect largely voluntary, because of the lack of police and criminal courts in the parallel structures. There were several incidents of assault on Elektrokosmet officials who sought to cut power from those who refused to pay.

<sup>198</sup> Serb officials there claim that this power is simply rerouted through Valaç westward to Albanian areas. Crisis Group interview, Kosovo Serb official, Zubin Potok, 30 June 2010.

but they will no longer have a convenient political excuse once a non-Kosovo state operator is in place.

#### 4. Transportation

Despite numerous agreements with UNMIK between 2001 and 2006, the Serbian government refuses to recognise Kosovo license plates, vehicle documents, insurance policies and UNMIK travel documents. This significantly hampers freedom of movement of Kosovo citizens and goods. Neither UNMIK nor the EU has been able to convince Kosovo Serbs to drive with Kosovo plates or Belgrade to allow UNMIK-registered vehicles to circulate in Serbia. Instead UNMIK extends the use of old Serbian plates every six months, a step that is not indefinitely acceptable to the Kosovo government and undermines public order to a degree. Pristina has delayed introduction of new Kosovo plates and is willing to consider a design similar to the UNMIK ones, using KS (Kosovo) instead of RKS (Republic of Kosovo),<sup>199</sup> but it is imperative for Kosovo that its vehicles be able to transit Serbia to reach the EU.<sup>200</sup> Harassment extends to foreigners; those who enter Kosovo over a non-Serbian border (such as by air) are barred from going directly to Serbia; they must first leave Kosovo, then cross a non-Kosovo border.<sup>201</sup>

Following Kosovo's declaration of independence, Serbian Railways laid claim to the train line in northern Kosovo, including three stations, by extending its train service from Serbia to Zvečan, 40km inside Kosovo. In response, Pristina stopped trains from the south, including a line established by UNMIK which had run from the southern enclaves to the North. Neither UNMIK nor KFOR reacted. As a result, while Kosovo Serbs from the North can travel to Serbia, their ethnic kin in the south can no longer go to Mitrovica and Serbia, as they did before control of the line switched. Kosovo demands control of the line but cannot take over on its own, and there is little international appetite to assist it.

Pristina impatiently seeks resolution of these problems. It is willing to keep border-related documentation to a minimum and to allow passage of persons via ID cards rather than passports.<sup>202</sup> On 2 July 2010 and with the hope eventually to introduce its own vehicle registry, it opened a government office in North Mitrovica, so that Kosovo civil documents would be available to the local Serbs;

however, this sparked demonstrations leading to one death and several injuries.<sup>203</sup> If no agreement is reached soon, it is likely to restrict vehicles circulating with Serb plates and introduce high insurance and border-crossing fees.<sup>204</sup> Businesspersons in Kosovo Albanian and Kosovo Serb areas often are already registered with both Kosovar and Serbian authorities and change plates when they drive from the North to the south.

Since July 2009, Serbia has allowed planes to overfly Montenegro into and out of Kosovo – by agreement, Serbia is responsible for Montenegrin air traffic control – but it permits only Russian and military flights to Kosovo over its own territory.<sup>205</sup> Flights in and out of Pristina, many on EU carriers, must accordingly take circuitous routes around Serbia, wasting fuel, exacerbating pollution and raising costs. A relatively simple confidence-building measure would be to permit flights through its airspace; simultaneously, KFOR should allow high-altitude over flights of Kosovo's territory, which are currently barred.<sup>206</sup>

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<sup>199</sup> Crisis Group interview, government official, Pristina, July 2010.

<sup>200</sup> Crisis group interview, President Fatmir Sejdiu, Pristina, 14 July 2010.

<sup>201</sup> In practice, this does not affect holders of Schengen-zone documents, since Serbia admits them with national ID cards that do not show Kosovo stamps.

<sup>202</sup> Crisis Group interviews, PDK and LDK ministers, Pristina, July 2010.

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<sup>203</sup> Crisis Group interviews, government officials, Pristina, July 2010; Bojana Barlovac, "One dead, 11 injured in blast in North Mitrovica", *Balkan Insight*, 2 July 2010 (online).

<sup>204</sup> Crisis Group interviews, government officials, Pristina, July 2010.

<sup>205</sup> Crisis Group interview, UN official, Pristina, 10 June 2010.

<sup>206</sup> Under NATO supervision, Kosovo controls its airspace up to FL290 (about 29,000 feet above sea level); the airspace above FL290 is closed to traffic and controlled by KFOR pursuant to the Kumanovo Military-Technical Agreement of 9 June 1999 with Serbia.

## V. ALTERNATIVES TO COMPREHENSIVE SETTLEMENT

Comprehensive talks – if they can be launched at all – would be complicated and could well fail. For full success, Kosovo and Serbia need to agree on recognition, borders, the situation in the North and the status of religious sites in Kosovo. Of these issues, the North, with its three options – the Ahtisaari plan, expanded autonomy and a land swap – is the most complex and the one on which political leaders are the farthest apart. Instead of letting talks break down, the sides could consider other approaches that would essentially put off resolution on the North for the time being, while moving ahead on other subjects that may be riper for progress. Alternatively, the international community could attempt to force through a resolution on the North, though this would require of it considerably more resources – political capital and even troops – than it has been willing to commit to date.

### A. FREEZE THE NORTH, DEFROST THE REST

An interim accord that involved deferment of the dispute over the North but would represent substantial improvement might include all or most of the following elements:

- ❑ **The Religious Sites.** In a bilateral accord guaranteed by the EU and U.S. and that would come into force on the date of mutual recognition, Kosovo would grant the Serbian Orthodox Church extraterritorial sovereignty over the most important monasteries, while retaining the Ahtisaari plan's provisions for the protected zones and the other religious sites, and invite a third party to provide long-term security for the most vulnerable monasteries.
- ❑ **Serbia's Internal Boundaries.** Serbia would pass legislation redrawing the boundaries of what it claims as the Autonomous Province of Kosovo, to exclude the North, then amend its constitution to permit the remaining entity to become independent.
- ❑ **Recognition without full agreement on borders.** Kosovo and Serbia would recognise one another and exchange diplomatic representatives, without complete acceptance of each other's territorial claims or legal views. The territorial dispute over the North would remain, as both states would claim it. There are two successful European precedents for this: the Grundvertrag (Basic Treaty) of 21 December 1972, which established relations between East and West Germany, though the latter maintained a constitutional commitment to reunification and its legal position that the relationship was not one between foreign states; and the Anglo-Irish relationship, during which the Republic

of Ireland's constitutional claim to Northern Ireland did not prevent diplomatic relations with the UK.<sup>207</sup>

- ❑ **A new Security Council resolution.** Resolution 1244 of 10 June 1999 remains legally in effect, though its provisions are increasingly ignored.<sup>208</sup> Russia and China have ruled out revoking it without Serbia's consent, and the disagreement locks the Security Council into a position of growing irrelevance in Kosovo. With mutual recognition, the Council could replace 1244 with a new resolution, endorsing the Serbia-Kosovo accord and calling for the establishment of a UN or preferably EU interim administrative authority in the disputed North for an open-ended period, pending later agreement.
- ❑ **More cooperation on the Preševo Valley.** Serbia would allow Pristina to fund the Preševo municipalities in agreed categories, such as education and culture.

Progress in the above areas would leave both Kosovo and Serbia uncertain about the status of the North and their borders, while enabling them to move forward in other respects. The issue of the North would continue to complicate and likely defer the EU candidacies of both states for a time. However, based on this scenario Kosovo would gain recognition (but without border demarcation) and Serbia a new UN resolution that legally justified the North's interim status, inherently putting into question Kosovo's sovereignty over the area. An effort to find a permanent solution to the North's status could be attempted once mutual confidence had increased, when EU membership would be a more imminent prospect for both states and EU leverage to facilitate a solution that much more powerful.

If presented with this scenario, neither Kosovars nor Serbs would find it very attractive, since it would involve both difficult compromises and retention of some of the disadvantages of the unsatisfactory status quo. But they would also face the follow-up questions, whether the time is ripe to solve all their problems, and if not, whether some forward movement toward a not completely sure goal is better than stagnation.

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<sup>207</sup> The Republic of Ireland dropped its claim to the northern counties only in 1999, as part of the Belfast or "Good Friday" agreement.

<sup>208</sup> Kosovo's independence is inconsistent with the resolution, and Serbia increasingly ignores its provisions. The May 2010 Serbian elections were contrary to decrees issued by Special Representatives of the Secretary-General Joachim Rucker and Lamberto Zannier; Serbia has also refused to honour repeated rulings by Zannier regarding Kosovo's customs stamps. Crisis Group interviews, Western diplomat, Pristina, 11 June 2010; senior UNMIK official, Pristina, 10 June 2010. Serbian police, barred from Kosovo by 1244, have long been covertly present in the North, see fn. 85 above.

## B. SEND IN THE TROOPS

There is little appetite for the other option that has been discussed in the past decade, namely a heavy-handed approach towards the North. Kosovo Albanians have heavily criticised international peacekeepers and police for not doing more to make their presence there more visible and effective. Serb recalcitrance in the North is blamed on the lack of willingness by everyone, from UNMIK to KFOR and EULEX, to impose the rule of law. The electric power stand-off in the North over the 2009-2010 winter produced fresh calls for military intervention.<sup>209</sup>

Kosovo's leadership says it would like the international community to use force if necessary to deal with extremists sponsored by Belgrade who resist any attempt at integration. It suggests that such force could be targeted and of limited duration, leading to the arrest of a handful of radical politicians with links to illegal activities. Based on extensive interviews and observation in the North, however, Crisis Group believes that resistance to Pristina runs much deeper. Any move to forcefully integrate the North would create a significant popular backlash; a heavy military presence would then be required to maintain the new status quo.

There is general international consensus that the use of force is highly unlikely.<sup>210</sup> KFOR, which is reluctant to expose its personnel to harm and has in the past hung back during such violent episodes in the North, such as the storming of the Mitrovica courthouse in 2008, would resist the scenario. Military intervention is even less likely today, since NATO has reduced KFOR by some one third to about 10,000 troops and plans further reductions.<sup>211</sup>

The Serbs, however, do worry about a move on the North. The expansion of KFOR's small Notting Hill base near Leposavić, for example, concerns local officials.<sup>212</sup> Those on the ground fear something like Operation Storm, in which Croatian troops overran the small Serb-held Kra-

jina territory in 1995.<sup>213</sup> Serbian mass media is also partial to articles implying that a military intervention is likely.<sup>214</sup> Though the situation is presently calm, such fears can too easily lead to incidents or cause them to escalate.

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<sup>209</sup> Crisis Group interview, French KFOR official, Pristina, November 2009.

<sup>210</sup> Morton Abramowitz and James Hooper, "Settling the Balkans", *The National Interest*, 7 July 2010. Ambassador Abramowitz is a member of the Crisis Group Board.

<sup>211</sup> NATO announced its intention to make further reductions in May 2010. During a visit to Kosovo, Secretary General Anders Fogh Rasmussen said KFOR had cut its contingent to 10,000 in January, from a previous 15,000, and that its further goal was to go down to 2,000, when the security situation allowed. Security Council Report, Kosovo, August 2010 (online); "KFOR delays downsizing plans", SETimes.com, 11 June 2010 (online).

<sup>212</sup> Crisis Group interview, Kosovo Serb official, Leposavić, 1 July 2010.

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<sup>213</sup> Crisis Group interviews, Serb officials, Northern Kosovo, June/July 2010.

<sup>214</sup> B. Bojic, "Opasnost od napada Albanskih ekstremista na severu Kosova" [Danger of an attack by Albanian extremists in the North of Kosovo], *Press*, 2 August 2010.

## VI. CONCLUSION

Kosovo's friends and above all its own patient and determined leaders have helped the tiny country achieve viable independence non-violently and, as the ICJ opinion documents, without fracturing the international legal order. Serbia's leaders have resisted this independence with all the diplomatic, economic and legal resources they could muster but increasingly now acknowledge – if not yet in public – that the struggle is lost. Nevertheless, Kosovo's integration into the international community cannot be complete without Belgrade's consent. Likewise, Serbia's membership in key European institutions is blocked until it treats Kosovo as not only a good neighbour but also an equal partner.

During the first years after the 1999 war that ended with the territory under UN supervision, Kosovo and its supporters knew that winning Serbian recognition of an independent status was impossible. They accordingly sought to draw the two sides into at least low-level, tacit acknowledgement of each other. This, it was hoped, would mature over time into more substantial ties and pave the way, once nationalist passions had weakened, for formal recognition years in the future. "Technical dialogue" was the vehicle for this tactic, which Serbia consistently rejected. But Kosovo's friends would be mistaken to press it to settle for such limited dialogue, which is no longer sufficient for a state whose larger goal has come within reach.

Serbia has played its hand badly. Enjoying considerable international sympathy and with many opportunities to reach out to Kosovo for informal, high-level talks, its leadership snubbed the former province and insisted on ever-changing but humiliating conditions. It failed to articulate realistic goals for fear of weakening its tactical position at the ICJ and alarming domestic opinion. The international community consequently is suspicious of Belgrade's intentions and inclined to view its overtures as merely tactical manoeuvres.

At the same time, Kosovo's friends, and notably the EU, have failed to match support for its independence with the political will to secure universally recognised sovereignty and full territorial integrity. Mitrovica's ethnic division hardened under UN and EU aegis, refugees were not permitted to return, and the EU often chose to defer to Serbia's wishes. The Northern Serbs learned that violence and intimidation were rewarded. The prohibition against border changes the international community imposed on the new state, once a valuable defence against Serbian pressure for partition, has protected Kosovo's sovereignty over the North in name only, while arguably becoming an obstacle to Kosovo-Serbia rapprochement on a basis of equality. There is no sign that this dynamic is changing or

that the Northern Serbs will be any more receptive to Pristina in ten or twenty years.

Under any circumstance, EU member states, together with the U.S., should redouble their efforts to persuade countries to recognise Kosovo, and the many states that were waiting for the ICJ opinion should move forward without delay. But now, later, or much later, there is ultimately no alternative to a comprehensive Serbia-Kosovo accord if either country is to have hope of realising its European institutional future. For Kosovo and the region, it would be best if a settlement can be reached without border changes. But the 1975 Helsinki Final Act allows such peaceful changes between states if they are mutually and freely agreed by equals. Here good neighbourly relations and mutual understanding are more important than preserving borders. The best policy for Kosovo's friends is to facilitate an opportunity for the sides to engage in a frank and open dialogue that can lead toward the fullest settlement achievable at the present time, without coercion and without agendas imposed or limited from outside.

**Pristina/Belgrade/Brussels, 26 August 2010**

## APPENDIX A

### MAP OF KOSOVO AND ENVIRONS



Adapted by Crisis Group

## **APPENDIX B**

### **GLOSSARY**

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AAK	Alliance for the Future of Kosovo
AKR	New Kosovo Alliance
ART	(Kosovo) Telecommunication Regulatory Authority
CEFTA	Central European Free Trade Agreement
CSP	Comprehensive Proposal for the Kosovo Status Settlement
DS	Democratic Party
DSS	Democratic Party of Serbia
EU	European Union
EULEX	EU Rule of Law mission in Kosovo
ICJ	International Court of Justice
ICO	International Civilian Office in Kosovo
ICTY	International Criminal Tribunal for the former Yugoslavia
KEK	Energetic Corporation of Kosovo
KFOR	NATO-led peacekeeping mission in Kosovo
KP	Kosovo Police
LDD	Democratic League of Dardania
LDK	Democratic League of Kosovo
MTS	Mobilna Telefonija Srbije
MUP	(Serbian) Ministry of Internal Affairs
NATO	North Atlantic Treaty Organisation
OSCE	Organisation for Security and Cooperation in Europe
PDK	Democratic Party of Kosovo
PTK	Post and Telecommunication of Kosovo
RS	Republika Srpska
SLS	Independent Liberal Party
SNS	Serbian Progressive Party
SRS	Serbian Radical Party
UCPMB	Liberation Army of Preševo, Medvedja and Bujanovac
UN	United Nations
UNGA	UN General Assembly
UNMIK	UN Interim Administrative Mission in Kosovo
VMRO-DPMNE	Internal Macedonian Revolutionary Organisation – Democratic Party for Macedonian National Unity

## APPENDIX C

### ABOUT THE INTERNATIONAL CRISIS GROUP

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The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, [www.crisisgroup.org](http://www.crisisgroup.org). Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is co-chaired by the former European Commissioner for External Relations Christopher Patten and former U.S. Ambassador Thomas Pickering. Its President and Chief Executive since July 2009 has been Louise Arbour, former UN High Commissioner for Human Rights and Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

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**August 2010**

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*Islam and Identity in Germany*, Europe Report N°181, 14 March 2007.

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*Ensuring Bosnia's Future: A New International Engagement Strategy*, Europe Report N°180, 15 February 2007 (also available in Russian).

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