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SITUATION OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA, THE
REPUBLIC OF CROATIA AND THE FEDERAL REPUBLIC OF YUGOSLAVIA
(SERBIA AND MONTENEGRO)

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the periodic report submitted by Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Croatia and Bosnia and Herzegovina, in accordance with General Assembly resolution 53/163 of 9 December 1998 and Economic and Social Council decision 1999/232 of 27 July 1999. Pursuant to the requests of the Commission on Human Rights and the Council, the report will also be made available to the members of the Security Council and the Organization for Security and Cooperation in Europe.

PERIODIC REPORT ON THE SITUATION OF HUMAN RIGHTS IN THE FEDERAL
REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO), THE REPUBLIC OF
CROATIA AND BOSNIA AND HERZEGOVINA, SUBMITTED BY THE SPECIAL
RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS

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I. INTRODUCTION

1. This is the third comprehensive report on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) submitted by the Special Rapporteur of the Commission on Human Rights, Mr. Jiri Dienstbier. The last report of the Special Rapporteur was completed in December 1998 and submitted to the fifty-fifth session of the Commission on Human Rights (E/CN.4/1999/42). The present report considers human rights developments in the countries of the Special Rapporteur's mandate through mid-August 1999. The Special Rapporteur once again notes with regret the United Nations practice of requiring early submission of reports for the purposes of editing and translation, resulting in the official dissemination of outdated reports.

2. The Special Rapporteur would like to extend his appreciation to the Office of the United Nations High Commissioner for Human Rights, and especially to the field officers of the Office of the High Commissioner in the countries of his mandate, for the support which they have provided to him, often under very difficult circumstances.

II. GENERAL OBSERVATIONS

3. The Special Rapporteur believes that it continues to be essential to consider the situations in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) from a regional perspective. The Kosovo crisis which erupted in 1999 is another problem which is best viewed in the overall context of the violent disintegration of the former Yugoslavia. Major issues such as the question of refugees and internally displaced persons are most effectively addressed on the level of all three countries of the Special Rapporteur's mandate, and the same applies to other issues including the development of civil society and democratic structures, good governance, and the problems of trafficking in human beings and other international criminal activities.

4. Indeed, if the international community wishes to succeed it must pursue a comprehensive political, economic and humanitarian strategy for all of south-eastern Europe. The current international presence in Kosovo cannot be merely a "holding operation" but must be linked to a peace strategy for the entire Balkan region. To this end the Special Rapporteur welcomes the newly-created Stability Pact of the European Union for south-eastern Europe, which outlines a comprehensive approach to the region and promises the States of south-eastern Europe international assistance and eventual integration into European political and economic structures in return for ongoing progress towards democracy, respect for human rights, and regional cooperation. He believes that it is important that civil society actors are given an active role in the implementation of the Stability Pact, especially with respect to democratization and human rights. The wide support for including opposition parties and civil society and making women's issues a priority concern is encouraging. However, some deficiencies may already be seen in the Stability Pact's implementation, such as the tendency to isolate Serbia, which is the geographical and economic

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centre of the region. The Special Rapporteur believes that embargoes and similar policies of the international community can only help to strengthen anti-democratic regimes in the region, and are themselves a major violation of human rights.

III. BOSNIA AND HERZEGOVINA

5. The Special Rapporteur visited Bosnia and Herzegovina from 15 to 20 May 1999 and travelled mainly in the Republika Srpska entity, where he stopped in Banja Luka, Brcko, Bijeljina and other towns in order to assess the impact of the Kosovo crisis on human rights. He met with local authorities, civil society representatives and officials of human rights institutions, as well as representatives of international organizations, in order to get a full picture of the human rights situation. He also briefly visited Bosnia and Herzegovina in April 1999 and discussed the impact of the Kosovo crisis with representatives of civil society and international organizations in Sarajevo.

A. Political context

6. The last year has been dominated by events in the Republika Srpska which followed the dismissal of the entity's President, Nikola Poplasen, by the High Representative and the announcement of the Brcko Arbitration Award on 5 March 1999. The response of the Republika Srpska National Assembly to these decisions was to call for the withdrawal of Republika Srpska representatives from joint government institutions. Some violence and demonstrations followed, mainly targeting representatives of the international community. The military operation of the North Atlantic Treaty Organization (NATO) against the Federal Republic of Yugoslavia, which commenced on 24 March, increased tensions in Bosnia and Herzegovina and caused serious damage to the economic and social situations, particularly in the Republika Srpska, as some 75 per cent of Republika Srpska exports had been to the Federal Republic of Yugoslavia. The influx of persons seeking protection in Bosnia and Herzegovina at its peak reached some 100,000 persons including Kosovo Albanians, Muslims from Sandzak and Montenegro, and Serbs and Croatian Serbs from Serbia and Kosovo. Some concerns were expressed that the arrival of refugees would slow down the return process in Bosnia and Herzegovina itself. Owing to security concerns, minority returns, in particular to the Republika Srpska, had already been decreasing in any event. Overall, however, the situation in the country remained relatively calm through this difficult period and has somewhat improved since the end of the NATO operation.

7. In the entity of the Federation of Bosnia and Herzegovina, institutions have functioned only with great difficulty. There is clearly a lack of political will to make these institutions work, and parallel institutions continue to exist and pose problems. On 16 March 1999, a car bomb exploded in the centre of Sarajevo, fatally injuring the (Bosnian Croat) Federation Deputy Minister of the Interior, Jozo Leutar. Bosnian Croats reacted with a boycott of Federation institutions, and the assassination fuelled demands for the formation of a third entity in the country to protect the rights of Bosnian Croats. The perpetrators of the killing have not been found.

V. FEDERAL REPUBLIC OF YUGOSLAVIA

86. The present report focuses on the period from mid-March 1999 through mid-August 1999, including the period of the NATO air campaign against the Federal Republic of Yugoslavia from 24 March through the signing of the military agreement on 9 June 1999, and subsequent developments. Since his most recent report to the Commission on Human Rights in April 1999, the Special Rapporteur has conducted three additional missions, together with staff of the Office of the United Nations High Commissioner for Human Rights, to the country:

(a) 26-30 April 1999 to Montenegro, including part of Sandzak;
(b) 8-12 June 1999 to Vojvodina and central Serbia; and (c) 7-12 July 1999 throughout Kosovo. In April 1999, the Special Rapporteur conducted a special mission to the former Yugoslav Republic of Macedonia to inquire into the situation of Kosovo refugees, which drew on the work of the Office of the United Nations High Commissioner for Human Rights Kosovo Emergency Operation.

A. Sources of information

87. The Special Rapporteur bases this report on first-hand observations during wartime, immediately after the signing of the military agreement, and shortly after the arrival of troops of the international security force in Kosovo (KFOR) and the establishment of the United Nations mission in Kosovo. He directly experienced the air campaign; NATO's heaviest strikes on Podgorica during the entire war dramatically interrupted the Special Rapporteur's meetings there. He visited at length with Serb, Roma and Albanian IDPs from Kosovo in Serbia and Montenegro and with Kosovo Albanian refugees in the former Yugoslav Republic of Macedonia. He spoke with representatives of NGOs, political, intellectual and religious leaders, and independent media representatives. The Special Rapporteur also visited sites of civilian casualties of armed action. Among other officials, he met with the Minister for Foreign Affairs of the Federal Republic of Yugoslavia, the President of Montenegro, and the Special Representative of the Secretary-General. The Special Rapporteur's missions to the Federal Republic of Yugoslavia are supported by the Office of the United Nations High Commissioner for Human Rights, which continued its operations inside the Federal Republic of Yugoslavia during the war and mounted an additional Kosovo Emergency Operation to monitor and report on the situation of Kosovo Albanian refugees and IDPs.

B. Relations with the Federal Republic of Yugoslavia

88. Since his appointment, the Special Rapporteur has enjoyed the cooperation of the Federal Ministry for Foreign Affairs in carrying out his visits to the Federal Republic of Yugoslavia. The Foreign Ministry itself was damaged in an air strike, and Ministry officials working in difficult circumstances supported the Special Rapporteur's June mission. However, he notes with grave concern that despite that history of cooperation, the following incidents took place during the period covered by this report, all of which impeded the Special Rapporteur's missions: (a) denial of access to the Office of the United Nations High Commissioner for Human Rights office in Belgrade, a diplomatic mission, by federal and Serbian police; (b) seizure by Federal Republic of Yugoslavia

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authorities of all three Office of the United Nations High Commissioner for Human Rights vehicles in Serbia, only one of which had been returned as of this writing; and (c) repeated violations by federal and republic police of the Office of the United Nations High Commissioner for Human Rights's status agreement and the privileges and immunities accorded thereunder. The Special Rapporteur recalls with equally grave concern that his first mission to the Federal Republic of Yugoslavia during wartime was imperilled when Yugoslav army reservists under the jurisdiction of the Second Army searched and seized under force of arms the vehicle of the Office of the United Nations High Commissioner for Human Rights Chief of Mission and detained for nearly three hours under repeated threats of violence the Chief of Mission and its legal adviser, who were en route to meet the Special Rapporteur.

89. The Special Rapporteur expresses particular gratitude to the Government of the Republic of Montenegro, particularly the Office of the President and the Ministry of the Interior, for special efforts undertaken to facilitate his travel and that of the Office of the United Nations High Commissioner for Human Rights staff accompanying him, to support his missions and, in particular, to safeguard the personnel and property of the Office of the United Nations High Commissioner for Human Rights. The Special Rapporteur also expresses his appreciation to the Ministry for Protection of the Rights of National Minorities of Montenegro for the ongoing support it has provided to his work.

C. General observations

90. The scope of the human and material tragedy sparked by the crisis in Kosovo, but caused by systemic failures to respect or protect human rights throughout the Federal Republic of Yugoslavia, is still being calculated. Seen from the perspective of accomplishments in the field of human rights, however, it is difficult to assess what 78 days of war achieved.

91. The litany of tragedy is overwhelming: mass expulsion and ethnic cleansing of hundreds of thousands of Kosovo Albanians; killings of as-yet-untold numbers of civilians as new mass graves continue to be discovered in Kosovo; arrest and arbitrary detention of several thousand Kosovo Albanians, now held in prisons in Serbia; systematic destruction of whole villages, neighbourhoods, means of livelihood and the homes of selected individuals; rape as an instrument of terror; use of landmines and depleted uranium ammunition; "collateral damage" to civilians, caused in particular by cluster bombs; forced mobilization; destruction of civilian transport, communications and public utilities infrastructure; mass unemployment and impoverishment; suppression of civil freedoms, including freedom of expression; targeted killings of journalists; martial law; deliberate destruction of religious and cultural monuments; murder and abduction of hundreds of individuals; and the ethnic cleansing of nearly 200,000 non-Albanians from Kosovo. Of the thousands of deaths since 24 March, including those of human rights proponents, community activists and religious leaders, three activists whose company the Special Rapporteur had himself shared on many occasions - attorney Bajram Kelmendi, editor Slavko Curuvija, and scholar and political leader Fehmi Agani - were murdered.

92. In mid-March, the Special Rapporteur completed his fifth mission to the Federal Republic of Yugoslavia. His conclusions serve as a baseline against which the situation of human rights in mid-August can be measured. At that time, the Special Rapporteur observed that incidents involving substantial violations of human rights had increased dramatically, not only in total number of incidents, but in severity and types of violations. Infrastructure that could support protection of human rights through rule of law, democracy and freedom of expression not only had not developed, but had deteriorated in most regions of the country. Relations between Serbia and Montenegro were more strained than at any point since the establishment of a Yugoslav State. Internationally brokered support for autonomy for Kosovo was affecting relations between national communities in Montenegro and Serbia, particularly in Vojvodina and Sandzak. International efforts had failed to produce a political agreement in Kosovo. Without a political agreement among the parties or even minimal progress towards an agreement, it was unclear what institutions would ultimately provide the framework for the realization of fundamental social, political and human rights in Kosovo. At the fundamental level of interaction between Government and individual, the residents of Kosovo, regardless of national identification, did not know how they would ultimately be governed. During spring 1999, field interviews conducted by the Special Rapporteur and the Office of the United Nations High Commissioner for Human Rights suggested that the residents of Kosovo believed that virtually every institution affecting their daily life was under scrutiny and that existing arrangements, even the most minute dealings with administration, were likely to change in some way. At that time, the Special Rapporteur expressed his concern over growing lawlessness and licence.

93. In mid-August, the Special Rapporteur observes that those fundamental conclusions are still applicable to the situation of human rights in the Federal Republic of Yugoslavia.

D. Casualties

94. As of mid-March 1999, using public sources and tabulating daily reports, the Office of the United Nations High Commissioner for Human Rights had registered approximately 1,818 violent deaths in Kosovo since February 1998, a figure that includes persons identified in State sources as belonging to the police or army and in Kosovo Albanian sources as members of the Kosovo Liberation Army (KLA). Subject to a margin of error, the figure corresponds with data released independently by several sources and generally accepted at the time. As of mid-August, the exact number of casualties of the Kosovo conflict is unknown. In Provisional assessment of destruction and damages caused by the NATO aggression on the Federal Republic of Yugoslavia (July 1999), Federal Republic of Yugoslavia official sources cite the deaths of "several thousand" civilians, 30 per cent of whom were children, and over 6,000 injuries, 40 per cent of them suffered by children. The assessment notes the deaths of 462 members of the Yugoslav army and 114 members of the Serbian Ministry of the Interior. The Government of the Federal Republic of Yugoslavia has released NATO Crimes in Yugoslavia, a compendium of documentary evidence on deaths and damages caused by air strikes, including at sites directly observed by the Special Rapporteur and/or the Office of the United Nations High Commissioner for

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Human Rights. These are discussed in greater detail below. However, the compendium does not fully address the scope of destruction inside Kosovo.

95. Given the magnitude of the Federal Republic of Yugoslavia and Serbian operations, and NATO's uninterrupted massive bombing of Kosovo, the number of persons killed within Kosovo during the war is unlikely ever to be accurately known. The Special Rapporteur has heard testimony and seen evidence of deliberate burning of bodies, as well as the incineration of bodies at high temperature due to their proximity to exploding ordnance. More victims of violent death are discovered every day in Kosovo, so routinely that the daily discovery of "old bodies" is not even publicly reported by KFOR unless they are discovered in large mass graves. The United Nations Mission in Kosovo has yet to establish a standard procedure for identifying bodies or recording recent deaths, much less establishing a register of deaths that occurred during the war. As a result, it is not possible at this time even to estimate how many persons died as a result of violence inside Kosovo.

1. During the war

(a) Ground activity

96. During missions inside Kosovo during and after the war, the Special Rapporteur and the Office of the United Nations High Commissioner for Human Rights observed first-hand the situation on the ground, including repeated NATO air strikes in progress. Inside and outside the Federal Republic of Yugoslavia, they spoke with many Kosovo Albanian, Serb and other refugees and IDPs, including IDPs inside Kosovo during the war. They spoke with local officials, including those inside Kosovo. As a result of these inquiries, the Special Rapporteur concludes that most of the deaths and damage inside Kosovo resulted from a systematic campaign of ethnic cleansing and terror waged on the ground by Federal Republic of Yugoslavia and Serbian forces against Kosovo Albanians. While many from Kosovo expressed fear of NATO air strikes, they expressed more fear of the activity of the Yugoslav army, Serbian police, special police, State security and paramilitaries. The International Tribunal for the former Yugoslavia has concluded that it has evidence sufficient to support an indictment for crimes against humanity against the President of the Federal Republic of Yugoslavia, the President of the Republic of Serbia, the Minister of the Interior of Serbia, the chief of staff of the Yugoslav army, and other officials.

97. Before the war, violations of human rights, including forced disappearances and summary executions, had been attributed to the KLA. Since the war, the KLA has also been charged with organizing forced disappearances, the victims of which have been found in mass graves. In his effort to assess the effect of the war on civilians, the Special Rapporteur notes an almost complete lack of available information on the activity of the KLA inside Kosovo during the war. While describing the positions of Federal Republic of Yugoslavia and Serbian forces, NATO briefings were noticeably silent on the matter of KLA positions inside Kosovo and shed no light on KLA activity there. Official Federal Republic of Yugoslavia sources, which actively circulated accounts of actions

attributed to Kosovo Albanian paramilitaries before the war and reports on crimes attributed to the KLA after the war, do not describe the activity of the KLA during the war. Even the KLA itself is silent: its commander has yet to respond to the Special Rapporteur's request for copies of all KLA public communiqués. The Special Rapporteur notes that for the sake of accuracy in analysing the pattern of human rights violations inside Kosovo, information on armed encounters on the ground is essential.

98. A report of this nature is insufficient to recount the detail, nature and scale of violations, which range from discriminatory treatment and harassment to summary execution, forced disappearances and killings. The Special Rapporteur does not contend that NATO air strikes caused the massive violations of human rights in Kosovo. He does contend, however, that NATO air strikes not only failed to prevent humanitarian catastrophe, as evidenced by the hundreds of thousands of persons who fled the province, but did not prevent Federal Republic of Yugoslavia and Serbian forces from conducting a systematic campaign of terror that quantitatively differed from the armed activity in the months immediately preceding the war and that began in full ferocity with the start of the NATO campaign.

99. Throughout the Federal Republic of Yugoslavia, in each republic and province without exception, all who communicated with the Special Rapporteur or the Office of the United Nations High Commissioner for Human Rights expressed fear for survival and fear for the future. Regardless of ethnic group, political affiliation, socioeconomic status, gender or age, all interlocutors described how they had come to cope with terror and uncertainty. From the perspective of the civilian population, the territory of the Federal Republic of Yugoslavia during the war was a killing field, the victims depending on what different men in different uniforms determined on different days.

(b) Rule of law

100. The first casualty of the war was the rule of law. During the war, the Federal Minister of Justice reminded the Special Rapporteur of the need to uphold international legal obligations to which the Federal Republic of Yugoslavia and the NATO countries were parties. Within the Federal Republic of Yugoslavia, formal declaration of martial law gave officials of the Ministry of the Interior and the Yugoslav army vast powers over most areas of civil activity. Moreover, even in substantive areas where such power had not been formally extended to the military by the civil authorities, the Special Rapporteur noted that the Yugoslav army and Serbian police either took or were granted effective control. The Republic of Montenegro did not recognize the declaration of martial law, but actions by the Yugoslav army on the territory of Montenegro challenged and threatened civil authority in that republic. Federal authorities denied the immunity of elected or appointed officials by attempting to mobilize them, and the army moved to arrest several officials in Serbia and in Montenegro for refusing mobilization notices. Charges were brought against the elected mayor of Cacak for disturbing public order, based on statements the mayor had made attributing responsibility for the social dislocation caused by the war. Changes to the Law on Criminal Procedure removed many legal protections of the accused and substituted expedited procedures that allowed,

for example, for searches without prior warrants and police investigations without prior request of the court or State prosecutor.

(c) Freedom of expression

101. Other casualties of the war were freedom of expression and access to information. Journalism and journalists suffered disproportionately in the conflict. Within the Federal Republic of Yugoslavia, restrictions on information inherent in martial law placed the army in control of public information management. Outside the Federal Republic of Yugoslavia, EUTELSAT did not permit satellite broadcast of Serbian State television. Radio and television towers were bombed, as were the Belgrade headquarters of Radio Television Serbia on 23 April, resulting in the deaths of 16 employees. The editor of an independent newspaper, Slavko Curuvija, was assassinated in Belgrade shortly after he was accused in the State-affiliated media of being a traitor. Journalists were among the casualties of NATO's bombing of the Chinese embassy on 7/8 May. Throughout Serbia and Montenegro, foreign and domestic journalists were brought to "informative talks", detained, imprisoned, and charged in proceedings before military courts. In Montenegro, the Yugoslav army attempted forcibly to conscript journalists from independent media, and republic authorities interrogated the Podgorica bureau chief of Belgrade's official Politika newspaper. In many parts of Serbia, there were no newspapers to be bought, and no radio or television coverage. NATO's attacks on communications infrastructure severely damaged telephone service to many areas of the country. According to the Decree on Internal Affairs During the State of War, even private correspondence and other communications were opened and accessed in the interest of security and national defence.

(d) Effects of air strikes

102. Outside Kosovo, the NATO air campaign was especially intensive in the densely populated centres of Vojvodina, southern Serbia, and in Belgrade itself. This report is insufficient to list all the losses suffered by civilians, and the Special Rapporteur mentions here some of the sites he and the Office of the United Nations High Commissioner for Human Rights have themselves visited. The repeated bombing of industrial facilities in Pancevo, including a petrochemical plant, a fertilizer plant and an oil refinery, caused fumes and fires that were smouldering during the Special Rapporteur's visit. The damage done in and around industrial centres in Pancevo, where large quantities of mercury were stored on site; Kragujevac, where high levels of PCBs were used in production; Bor and Pristina, as well as biodamage to selected national parks, is the subject of continuing concern and ecological study by the United Nations and environmental groups. Several city centres suffered from missile or cluster bomb attacks. Repeated attacks on Nis resulted not only in the destruction of that city's industrial capacity but, on 7 May, in the deaths of 15 civilians when cluster bombs exploded over the city market and central hospital. In Aleksinac, 12 civilians were killed and more than 40 wounded when bombs struck downtown housing blocks and commercial premises on 5 April. In Novi Pazar, 13 were killed and 35 wounded in an attack that destroyed 25 buildings in the city's residential centre. Many civilians, including 27 children, died in repeated strikes on Surdulica and Kursumlija.

103. NATO's rules of engagement, notably the height at which bombers flew, continue to spark controversy. Strikes on bridges and means of transportation resulted in the deaths of 55 persons on a passenger train in Grdelica gorge (12 April); 60 persons were killed when a bus was hit on a bridge near Luzani, (1 May); 20 persons were killed when a bus travelling between Pec and Rozaje was hit (3/4 May). Large convoys moving through Kosovo were attacked by air, resulting in the deaths of 87 IDPs at Korisa on 14 May; one month earlier, 75 persons, including 19 children, died when missiles struck refugee columns on the Djakovica-Prizren road. All three bridges in Novi Sad were destroyed, as well as the water pipes that supplied potable water to nearly half the city. The strikes led as-yet-uncalculated numbers of persons to seek shelter in what were perceived to be "safe" locations outside cities. Children, in particular, were sent away from their parents and in Serbia did not resume the school year. Parents in Belgrade and Stimlje complained of the effects on their children of unhygienic and psychologically unhealthy conditions in air raid shelters. In Belgrade, parents and children spent an average of 10 hours per day in basement shelters. Following NATO attacks on fuel reserves, severe restrictions on fuel imposed by authorities effectively brought civilian Serbia to a standstill. At this writing, fuel is rationed in Serbia. Many parts of the country were often without electricity and water, and restrictions and shortages continue. Throughout the Federal Republic of Yugoslavia, damage done to the infrastructure of public utilities threatens a catastrophic winter. Few countries have offered humanitarian aid or assistance with winterization to persons not in Kosovo who suffered the consequences of war.

(e) Yugoslav army and reservists in Montenegro

104. In Montenegro, the large number and pervasive presence of the Yugoslav army, army reservists and military police gave rise to internal tensions and human rights violations. On 18 April, eight persons were killed by Yugoslav army reservists in Kaluderski Laz, near Rozaje. Among the dead were an elderly woman and a 13-year-old boy. The event sparked fears in that region of Montenegro, through which most Kosovo IDPs passed, and prompted some IDPs from Kosovo and many of the region's native Muslim population to move to Bosnia and Herzegovina.

105. The Special Rapporteur received several reports of military police and reservists in or near northern Montenegro stopping civilian buses and taking away large groups of men before permitting women and children to continue. He was able to interview witnesses to one such removal. On 15 May, between Serbia and Montenegro, 102 men were removed by Federal Republic of Yugoslavia military police from public buses travelling from Kosovska Mitrovica to Rozaje. The men were transported to Rozaje by military police who, according to the witnesses, stripped them of all valuables. In Rozaje, the military police were replaced by army reservists, who in turn were replaced by a new group of reservists, this time masked, on the road to Tutin. Both groups of reservists beat the passengers throughout the journey. Witnesses told the Special Rapporteur that outside Tutin, a group of ten were forced to engage in sexual acts while others were forced to watch. On arriving in Tutin, the passengers were forced through a gauntlet of masked reservists who beat, kicked and truncheoned them. Afterwards, they were turned over to the custody of the civil police, who did not allow the reservists further access to the passengers; at the police station

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the passengers encountered another group of 56 men. After interventions by the Office of the United Nations High Commissioner for Human Rights, UNHCR, and the Ministries of the Interior and National Minorities of Montenegro, all 158 men were released the next day and returned by civilian bus to Rozaje.

(f) Kosovo

106. The human rights violation in Kosovo most often described to the Special Rapporteur was forced expulsion. Many persons described families expelled house-by-house from villages or neighbourhoods, seeing columns of people herded through the streets of cities by men in uniform, being forced to walk for days, fearing men in masks or men in uniform. Accounts by refugees in the former Yugoslav Republic of Macedonia and Albania conform to accounts by IDPs in Montenegro and those within Kosovo with whom the Special Rapporteur and Office of the United Nations High Commissioner for Human Rights spoke during the war. They differ in the amount of time a family was given when being ordered from their home; whether those giving the order were masked or unmasked, personally known or unknown to the family, in uniform or in civilian clothing; whether identity documents were requested or destroyed; whether family members were killed or detained as they fled; whether persons were permitted to leave in vehicles or ordered to leave on foot. IDPs travelling in columns said that valuables were extorted from them by army and police en route and at checkpoints.

107. A full account of what happened in villages and cities of Kosovo from 24 March through 10 June remains to be written. Parts of the story will emerge with the ongoing work of the ICTY, as well as the work of the Office of the United Nations High Commissioner for Human Rights, UNHCR, OSCE, and domestic and international NGOs. The Special Rapporteur has made a particular effort to gather information from persons who remained in Kosovo during the war. As noted above, the Special Rapporteur and the Office of the United Nations High Commissioner for Human Rights spoke with representatives of many ethnic groups, different political parties, internally displaced persons, returned residents, and residents who remained in their homes. Some interlocutors were intellectuals or members of the middle class; others could not read or write. Their accounts agree that the period roughly from 24 March to 10 April was a rampage of killing, burning, looting, forced expulsion and terror. Residents of some cities described isolated exchanges of fire between Serbian security forces and the KLA who had entered urban areas during that period. After the first 10-15 days of NATO attacks, the pace and intensity of developments differed from village to village. In Pristina, local authorities moved to control the scope of the rampage after the first 10-15 days and after one police officer shot another police officer, whereupon the city forbade the sale of alcohol. Large-scale arrests of criminal perpetrators followed. Authorities acknowledge that capital crimes did not end in Pristina after that time, but were attributed to "unknown perpetrators". During the war, the Office of the United Nations High Commissioner for Human Rights witnessed on different occasions the burning and looting of property in Pristina municipality. One factor in the violence appears to have been whether a neighbourhood, city or village was controlled by local police or locally mobilized military, or by police and military from other parts of the Federal Republic of Yugoslavia. All civilian accounts agree that paramilitaries often accompanied police and army forces.

108. In mid-May, the larger cities of Kosovo saw sweeping mass arrests of men of military age. Family members and witnesses in Pristina, Pec, Djakovica, Mitrovica, Gnjilane, Prizren and surrounding villages have described these arrests. In many cities, the mass arrests were followed by large-scale campaigns to register residents, who were required at all times to carry registration cards issued by the police. Throughout the war and afterwards, the Special Rapporteur and the Office of the United Nations High Commissioner for Human Rights inquired with federal and republic authorities into the status and whereabouts of the nearly 2,000 detainees who were in various phases of court proceedings on charges of anti-State activity as of 24 March. During the period 19-24 May, NATO repeatedly attacked the Dubrava court detention centre at Istok on at least three separate occasions. The pattern of repeated, consecutive attacks on different days on the same location followed a pattern observed on many previous occasions during the war, including NATO's attacks on the federal and republic Ministries of the Interior in Belgrade. Casualties reportedly rose with each attack on the Istok detention centre: in the first attack, 3 persons were reported killed; in the next, 19; in the next, "over 100".

(g) Refugees

109. The Federal Republic of Yugoslavia has the largest refugee caseload in Europe, conservatively estimated before the war at 500,000 persons from Bosnia and Herzegovina and the Republic of Croatia. The war slowed or completely stopped the process of refugee returns to Croatia, halted the integration of refugees into Yugoslav society, interrupted the resettlement of refugees to third countries, and prevented the regular flow of humanitarian aid on which refugees in the Federal Republic of Yugoslavia depend. Several collective centres were the targets of attack. In early April, NATO bombed two bridges connecting the Federal Republic of Yugoslavia to Croatia; the bridges linked refugee and minority communities in Vojvodina and Croatia. The relevance of the Backa Palanka-Ilok and Bogojevo-Erdut bridges to the conflict in Kosovo or to Federal Republic of Yugoslavia military supply lines remains unclear to the Special Rapporteur.

(h) Individual cases

110. Among the many individual cases followed closely by the Special Rapporteur, he notes the following:

During and after the war, the Special Rapporteur and the Office of the United Nations High Commissioner for Human Rights repeatedly inquired with federal, republic and local officials into the fate and whereabouts of Ukqim Hoti who, after completing a five-year sentence served largely in Sremska Mitrovica, was transferred from prison in Vojvodina to Dubrava prison in Kosovo during the war. Since the date of his scheduled release from prison, there has been no word of Mr. Hoti's whereabouts.

On 29 May, three Australian CARE workers - two internationals, arrested at the Croatian border, and Branko Jelem, arrested later at his home in Nis - were convicted by the Military Court in Belgrade on charges of espionage. The sentences for the humanitarian aid workers, originally set by the court

quarter" was partially destroyed and seriously damaged. Since the war, approximately 10 Bosniaks, mostly elderly persons, have been killed by Albanians, some reportedly in KLA uniforms, in the vicinity of Pec. Reportedly, at least one of these persons was kidnapped and held in prolonged detention before the discovery of his dead body. There are also reports that Bosniaks have gone missing in Prizren and Klina.

119. Neither the Kumanovo agreement nor the undertaking with the KLA makes any mention of prisoners or detainees. The failure of military actors to address this question has created human rights crises that have become major political issues. The situation of persons transferred from Kosovo to prisons further north in Serbia is the subject of frequent demonstrations by family members. In late June, without answering direct or prior appeals for information from the Office of the United Nations High Commissioner for Human Rights or the Special Rapporteur, Serbian authorities released a list of 2,071 detainees being held in prisons throughout Serbia. The list did not specify the criminal basis for detention. Some names on the list were those of persons known to the International Committee of the Red Cross (ICRC) and the Office of the United Nations High Commissioner for Human Rights as having been detained before 24 March; others appear to have been detained after 24 March. By late July, ICRC had visited 2,095 detainees whose names appeared on a list provided by the Government of Serbia, as well as 200 not on the list but previously seen by the ICRC and 100 not on the list and not previously seen or known about. Groups representing the detainees contend that there are many more persons who were last seen in the custody of Serbian police than are named on the list. Some family members who have travelled to visit detainees reported being denied access because the case involving their relative was in the investigative stage. Others who have visited relatives expressed concern about conditions in Sremska Mitrovica and Pozarevac. Groups representing detainees have called for their release or, at a minimum, their transfer to UNMIK custody in Kosovo.

120. The lack of attention to prisoners and detainees within the text of the undertaking may well have fuelled the further taking of prisoners and the continued existence of detention centres maintained and controlled by the KLA and Kosovo Albanian paramilitaries. In conversation with the Special Rapporteur, the commander of the KLA denied the continued existence of detention centres. KFOR, however, has located several within Kosovo, including at least two - in Prizren and Gnjilane - described as containing instruments of torture. The Special Rapporteur notes that KFOR has not aggressively prosecuted KLA commanders in regions where it has located detention centres. Not only has it failed to locate and arrest KLA "police" and "military police" associated with detentions and abductions, but there are reliable reports that KFOR officers have relied and continue to rely on information provided by KLA on persons whom KFOR should itself arrest. American units in KFOR candidly informed the Special Rapporteur that, in the first days of its mission, it detained persons who, despite their showing obvious signs of mistreatment, were delivered as "war criminals" to KFOR by KLA "police". Asked by family members to enquire into the whereabouts of a Montenegrin police officer reported as abducted during the war in the Italian sector, the Special Rapporteur was told by a KFOR official in Pec that "there are no police who are not guilty of crimes". The Special Rapporteur suggests that such reasoning not only subverts the rule of law and the

fundamental principle of presumption of innocence, but erodes the authority of KFOR and civilian police.

121. At the time of writing, with few people in the field, UNMIK is engaged in a struggle to establish effective control over local governance, while the KLA inserts itself into the vacuum. NGOs and other international actors dealing with KLA "local authorities" legitimize their unsanctioned seizure of power. In the interim, the KLA, which has moved into government and commercial buildings not occupied by the United Nations and KFOR, has begun levying taxes and collecting revenues.

E. Concluding observations

22. During the war, the Special Rapporteur met with representatives of independent media, human rights activists and independent intellectuals from all over the Federal Republic of Yugoslavia. On those occasions, he was told that NATO by bombing the Federal Republic of Yugoslavia had betrayed and decimated the civil society that had looked outside the country for inspiration. In the first few weeks after the bombing ended, there was hope inside and outside Kosovo that the international community would, if it could not immediately impose civil society on Kosovo, at least enforce respect for the human rights and humanitarian values which it claimed had justified the war. Some believed that perhaps Kosovo, under KFOR/UNMIK administration, could be a different model of domestic politics. When judging why UNMIK has been unable so far to establish a civil administration, or why KFOR has been unable to guarantee security, the Special Rapporteur asks why the international actors who made the war and crafted the military agreement have yet to make the peace. He notes that, at this writing, there have been no initiatives for a political settlement. The elaborate formulations of the various plans proposed by United States Ambassador Christopher Hill in an attempt to achieve a political settlement and of the Rambouillet agreement for executive, legislative and judicial structures within Kosovo now serve no purpose among any of the parties that once sat at the negotiating table. The international community has asked the United Nations to administer despite the absence of a political agreement and KFOR to ensure security despite the absence of an agreed-upon peace. Once again the civilians of Kosovo, and of all the Federal Republic of Yugoslavia, are paying the price in violence and uncertainty. With no purchasing power, high unemployment, damaged infrastructure, rising prices and food shortages, civil society anticipates a cold and difficult winter.

F. Recommendations

123. In addition to continuing its investigations into gross violations of human rights and humanitarian law committed during the pre-war and war time periods, the ICTY should investigate violations that have occurred in Kosovo after the signing of the Kumanovo agreement and the undertaking with the KLA in June 1999.

124. Under the leadership of United Nations agencies, the international community should launch winterization programmes for the whole of the Federal

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Republic of Yugoslavia, which is threatened with another humanitarian catastrophe.

125. Under the leadership of United Nations agencies, studies should continue of the long-term consequences for public health of damage done by NATO bombing of industrial centres. Similarly, a public health and ecological assessment should be made of the effects of the use of depleted uranium, particularly in Kosovo. The Government of the Federal Republic of Yugoslavia should ensure that workers already engaged in repair and reconstruction activities have adequate protection from toxic materials on site.

126. The Government of the Federal Republic of Yugoslavia should provide the ICRC and the Office of the United Nations High Commissioner for Human Rights with the names, whereabouts and status of charges against persons arrested in Kosovo and transferred to detention centres or prisons in the Federal Republic of Yugoslavia. Persons held in detention outside Kosovo should be guaranteed access to defense counsel of their choice, as well as visits by family and physicians as specified by international standards.

127. UNMIK and the Government of the Federal Republic of Yugoslavia should initiate discussions with a view to returning persons held in detention outside Kosovo back to Kosovo and to UNMIK.

128. The KLA should release information and dossiers on all persons detained starting in March 1998 through to the present. It should release persons still being held to UNMIK and shut down all of its arrest and detention operations.

129. UNMIK should establish a full, permanent court system in Kosovo, including appeals, juvenile, civil and misdemeanour courts, which ensures the right to a fair trial.

130. UNMIK and KFOR should take all necessary steps adequately to protect the rights of all citizens in Kosovo against violence, threats, intimidation and other unlawful acts by members of the same or other ethnic groups.

131. Particular attention should be paid to the social rights of the weaker sectors of society, such as the elderly, the handicapped and children. Any reports of trafficking of women or children should be promptly and thoroughly investigated.
