Supervised independence would trade international recognition of statehood for a commitment by the newly independent entity to certain permanent or temporary limitations of its sovereignty or the exercise of its sovereignty. According to the Ahtisaari Comprehensive Proposal, it was foreseen that Kosovo would enshrine in its constitution a number of important provisions established in the proposal. These concerned human and minority rights, the protection of cultural heritage, provisions safeguarding the political participation of minorities and many other requirements. These guarantees were to be permanently assured. This in itself is not unusual. A number of states remove human rights from the danger of ill-advised constitutional change through ‘eternity’ provisions, including for instance Germany.

Another requirement concerned the abandonment of any territorial claims in relation to neighbouring states, including the acceptance of the boundary with Macedonia which was agreed by Belgrade. While it was controversial whether Belgrade still had the power to address that issue at the time, this agreement was ratified by the UN Security Council and could not be easily reopened in any event. Finally, Kosovo was not to seek union with another state. It was not clear whether this requirement was really to be a permanent one according to the new constitution or whether it was supposed to be reflected in a binding Security Council decision, had a resolution been forthcoming.

Provision was also made for continued international supervisory mechanisms. The proposed new institution of the International Civil Representative and the International Steering Group of governments and organisations overseeing the transition would have continued to enjoy certain prerogatives for a period yet to be agreed. Kosovo authorities would have needed to give effect to decisions of the relevant international bodies. However, the package emphasised repeatedly the principle that Kosovo’s
authority to govern ‘its own affairs’ was to be full and complete, subject only to temporary review and supervision in relation to certain specific areas. Such an arrangement would not have been inconsistent with the assumption or preservation of full sovereignty, as international practice, for instance in relation to Bosnia and Herzegovina, has demonstrated.

The failure of the Ahtisaari package to gain acceptance by Serbia, and by the UN Security Council, complicated the application of the scheme of supervised independence. In the end, Kosovo unilaterally declared independence on 17 February 2008. In its Declaration, the Kosovo Assembly noted that Kosovo “is a special case arising from Yugoslavia’s non-consensual breakup and is not a precedent for any other situation”. In substance:

We, the democratically elected leaders of our people, hereby declare Kosovo to be an independent and sovereign state. This declaration reflects the will of our people and it is in full accordance with the recommendations of the UN Special Envoy Martti Ahtisaari and his Comprehensive Proposal of the Kosovo Status Settlement. We declare Kosovo to be a democratic, secular and multi-ethnic republic, guided by the principles of non-discrimination and equal protection under the law. We shall protect and promote the rights of all communities in Kosovo and creation the conditions necessary for their effective participation in political and decision-making process.

…

We hereby affirm, clearly, specifically, and irrevocably, that Kosovo shall be legally bound to comply with the provisions contained in this Declaration, including, especially the obligations for it under the Ahtisaari Plan. In all of these matters, we shall act consistent with principles of international law and resolutions of the Security Council of the United Nations, including resolution 1244 (1999). We declare publicly that all states are entitled to rely upon this declaration, and appeal to them to extend to us their support and friendship.

The Declaration had been adopted unanimously, by 109 votes, including those of virtually all non-Serb minorities. The ten