

International Court of Justice

Accordance with international law of the Unilateral
Declaration of Independence by the Provisional
Institutions of Self-government of Kosovo
(Request for an advisory opinion)

WRITTEN COMMENTS OF THE KINGDOM OF NORWAY

6 July 2009

Introduction

1. Pursuant to the Court's Order of 17 October 2008, the Kingdom of Norway offers the following written comments with regard to the written statements submitted to the Court by other States concerning the request for an advisory opinion on the question of the "Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo". By the aforesaid Order, the Court fixed 17 July 2009 as the time-limit within which States and organizations may submit such comments in accordance with Article 66, paragraph 4, of the Statute.

General remarks

2. Several States have provided extensive expositions of their views on questions concerning the principles of territorial integrity and the right to self-determination.

3. In this regard, Norway generally agrees with all those States that have stressed the importance of the two principles, including Egypt.¹ Therefore, under international law, Norway cannot accept the proposition made by the Islamic Republic of Iran, which in effect seems to profess that the principle of territorial sovereignty is the only cornerstone of the Charter of the United Nations and that it has supremacy in all regards over any other principle of international law.²

4. Norway underlines that the principles of sovereignty, territorial integrity and the right to self-determination are principles that have to be considered in parallel, as cogently expressed by Secretary-General of the United Nations, Mr. Boutros-Ghali, in his report *An Agenda for Peace* in 1992.³ Norway recalls, in this regard, the preliminary remarks contained in paragraphs 4 to 8 of its written statement of 16 April 2009.

5. Norway shares the extremely restrictive view expressed in many written statements submitted to the Court with regard to the existence of any right of secession under international law.⁴

¹ Written statement by Egypt, 16 April 2009, p. 13, paragraph 51, and p. 19, paragraphs 72-74.

² Written statement by the Islamic Republic of Iran, 17 April 2009, see in particular p. 3, paragraph 2.1, and pp. 6-7 paragraph 4.1.

³ A/47/277 - S/24111 17 June 1992 *An Agenda for Peace - Preventive diplomacy, peacemaking and peace-keeping*, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, at paragraphs 17-19.

⁴ This view is notably confirmed in the written statement by the Russian Federation, 16 April 2009, pp. 31-32, paragraphs 87-88.

6. Norway does therefore not see any reason to comment on or differ with a number of assessments made *inter alia* by the Republic of Cyprus and Spain that may be particularly pertinent in the context of other situations.

7. However, Norway notes that none of the above questions, nor questions of recognition, have been raised by the General Assembly of the United Nations in its request for an advisory opinion from the Court. As stated in paragraph 9 of Norway's written statement of 16 April 2009, the specific question asked by the General Assembly concerns whether the issuance of Kosovo's Declaration of Independence of 17 February 2008 constitutes a violation of any applicable rule of international law.

8. Norway also notes, in this context, that no general discussion of the principle of self-determination would seem to be called for in responding to the question. Security Council resolution 1244 (1999) sets out in paragraph 1:

"Decides that a political solution to the Kosovo crisis shall be based on the general principles in annex 1 and as further elaborated in the principles and other required elements in annex 2;"

Both of the said annexes refer to a requirement of "taking full account of the Rambouillet accords", as paragraph 11 of the resolution also does.⁵ The Rambouillet accords had explicitly identified the "will of the people" of Kosovo as one of the key relevant factors constituting the basis for considerations of a final settlement for Kosovo:

"Three years after the entry into force of this Agreement, an international meeting shall be convened to determine a mechanism for a final settlement for Kosovo, on the basis of the will of the people, opinions of relevant authorities, each Party's efforts regarding the implementation of this Agreement, and the Helsinki Final Act, and to undertake a comprehensive assessment of the implementation of this Agreement and to consider proposals by any Party for additional measures."⁶

There can therefore be little or no doubt that this express reference to the "will of the people" of Kosovo confirmed a broad spectrum of options. These had to be considered *in casu* by the competent mechanism established in accordance with Security Council resolution 1244 to lead the political process designed to determine Kosovo's future status, bearing in mind its fundamental importance for international peace and security. Against this background, Norway respectfully submits that, while confirming that general issues concerning the principle of self-determination would fall outside the scope of the question put to the Court, this serves at the same time to further underscore the particular context and circumstances prevailing in Kosovo.

⁵ Security Council resolution 1244 (1999), Annex 1 sixth item and Annex 2 paragraph 8.

⁶ Interim Agreement for Peace and Self-Government in Kosovo, Rambouillet, 23 February 1999, Chapter 8, Article I (3) (UN Document S/1999/648, 7 June 1999 p. 85).

Considerations pertaining to the particular circumstances in Kosovo

9. Norway recalls that it does not consider that the Declaration of Independence of 17 February 2008 was issued by the Assembly of Kosovo acting in an organic capacity as a Provisional Institution of Self-Government. This was explained in paragraphs 13-15 of Norway's written statement of 16 April 2009, where reference was made to the particular form, content, circumstances and stated background for the adoption of the declaration. Instead, the declaration has been taken by Norway to be a statement issued by political leaders whose explicit purpose was to reflect the will of their people.

10. Against this background, Norway has taken careful note of the written statement made by Serbia. In referring to the adoption of the Declaration of Independence (UDI), Serbia stated that:

"The 'authors' of the UDI are members of the Assembly of Kosovo who adopted the document on 17 February 2008."⁷

This reference to "members of the Assembly", i.e. an indeterminate number of individuals, is a factual acknowledgement of the above. The declaration was not issued, as such, by the Assembly acting in any organic capacity. Incidentally, it may be noted that the declaration was also signed by other prominent individuals, namely the President and the Prime Minister.

11. Norway also wishes to refer to the written contribution of Kosovo, which contains a photographic reproduction of the original document.⁸ Together with the translations provided, this unequivocally supports the view that neither the authors nor the document purported to enact organic powers of the Provisional Institutions of Self-government of Kosovo, as referred to in Security Council resolution 1244 (1999) and the Constitutional Framework of 2001. Instead, the declaration has a number of characteristics commonly associated e.g. with extraordinary political statements made by constituent assemblies.

12. Norway further recalls that Security Council resolution 1244 does not take a position on the question of Kosovo's final status. This issue was entrusted to the political process designed to determine Kosovo's future status. Reference is here made to the assessments made in the report of the Special Envoy of the Secretary-General, which were analysed in Norway's written statement.⁹ Although the Slovak Republic has suggested that, in its view, resolution 1244 "seems to set forth the framework for self-determination that does not include independence", it

⁷ Written statement by the Government of the Republic of Serbia, 15 April 2009, p. 25, paragraph 17.

⁸ Written contribution of the Republic of Kosovo, 17 April 2009, Annex 1, pp. 207-209.

⁹ Written statement of Norway, 16 April 2009, pp. 7-8, paragraphs 23-27, and Annexes 1-2.

nevertheless acknowledges that “(r)esolution 1244 does not explicitly prohibit secession or prohibit states from recognizing secession”.¹⁰ Neither does resolution 1244 address the question as to whether democratically elected representatives could issue a declaration expressing their will as to the final status of Kosovo.¹¹

13. It could incidentally also be questioned, irrespective of the above considerations, whether resolution 1244 actually could have imposed international legal obligations of this nature on such non-state actors, pursuant to Articles 25 and 103 of the Charter of the United Nations. States remain the primary subjects of international law and have the legal obligations referred to in the said provisions of the Charter. Although individuals may be held responsible for breaches of international humanitarian law, and although certain other international legal rules setting out obligations and responsibilities may apply directly to individuals, the emergence of such direct legal obligations and responsibilities under international law incumbent on non-state actors is carefully circumscribed. Such obligations and responsibilities cannot be assumed without a clear legal basis.

Final remarks

14. In the light of the above background and the interventions made by a considerable number of States that have usefully laid out in more detail historical and legal sources pertaining to the factual events relevant to the situation under consideration, Norway reaffirms the observations made in its written statement of 16 April 2009.

15. Norway trusts that the Court will exercise due caution in considering the issues concerned. One and a half years have passed since the Declaration of independence was issued. The situation in the region is developing in ways that bear a promise of a future of prosperity and peace for all populations in the region.

16. This region was long marked by an impasse that threatened international peace and security. Considerable efforts are being made by the international community to maintain peace and security and promote development and respect for human rights for all. As set out in the Royal Decree of 28 March 2008, which is attached to Norway’s written statement, Norway’s fundamental concerns and approach are solely dictated by the need to contribute to international peace and stability in the region, and the protection of human rights and other guarantees, in accordance with international law.

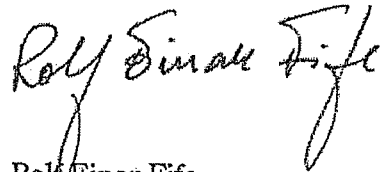
¹⁰ Written statement by the Slovak Republic, 16 April 2009, paragraph 27.

¹¹ Written Statement of Norway, 16 April 2009, p. 6 paragraphs 16-17.

Conclusion

17. For the reasons set out in this statement, Norway respectfully upholds its request that the Court find that the Declaration of Independence issued on 17 February 2008 does not contravene any applicable rule of international law.

Oslo, 6 July 2009



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