

**CASE CONCERNING**

**ACCORDANCE WITH INTERNATIONAL LAW OF THE UNILATERAL  
DECLARATION OF INDEPENDENCE BY THE PROVISIONAL  
INSTITUTIONS OF SELF-GOVERNMENT OF KOSOVO**

**REQUEST BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS  
FOR AN ADVISORY OPINION**

**WRITTEN STATEMENT**

**OF THE REPUBLIC OF AZERBAIJAN**

“17” April 2009

## I. Introduction

1. The Provisional Institutions of Self-Government of Kosovo – part of the Republic of Serbia under the United Nations administration pursuant to resolution 1244 (1999) of 10 June 1999 of the United Nations Security Council (hereinafter referred to as the “Security Council”) – unilaterally declared independence on 17 February 2008.

2. On 8 October 2008 the United Nations General Assembly (hereinafter referred to as the “General Assembly”) adopted resolution A/RES/63/3 in which, referring to Article 65 of the Statute of the International Court of Justice (hereinafter referred to as the “Court”), it requested the Court to render an advisory opinion on the following question:

“Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?”

3. This resolution was approved by recorded vote of 77 in favour, including the Republic of Azerbaijan (hereinafter referred to as “Azerbaijan”), to 6 against, with 74 abstentions.

4. In its Order dated 17 October 2008, the Court decided that “the United Nations and its Member States are considered likely to be able to furnish information on the question submitted to the Court for an advisory opinion”. The Court has fixed 17 April 2009 as the time-limit within which written statements on the question may be presented to the Court and 17 July 2009 as the time-limit within which States and organizations having presented written statements may submit written comments on the other statements.

5. Azerbaijan, having regard to the aforementioned Order of the Court of 17 October 2008 and to the fact that it is a Member State of the United Nations and by virtue of Article 93, paragraph 1, of the United Nations Charter (hereinafter referred to as the “Charter”) is *ipso facto* a party to the Statute of the Court, submits the present written statement.

## II. Competence of the Court

6. In accordance with Article 96, paragraph 1, of the Charter, the General Assembly “may request the International Court of Justice to give an advisory opinion on any legal question”.

7. On this basis the General Assembly was duly authorized to request the present advisory opinion on the legal question which clearly falls within the scope of its activities under the Charter.

8. The question on which an advisory opinion has been requested is clearly a legal question formulated in accordance with Article 96, paragraph 1, of the Charter and article 65 of the Statute of the Court. The question is “framed in terms of law and raise[s] problems of international law” and is “susceptible of a reply based on law”.<sup>1</sup>

9. Therefore, the Court has jurisdiction to render an advisory opinion on the question that is put before it. Furthermore, Azerbaijan considers that there are no “compelling reasons” exist for the Court to decline to give the requested opinion. At the same time, “[b]y lending its assistance in the solution of a problem confronting the General Assembly, the Court would discharge its functions as the principal judicial organ of the United Nations”.<sup>2</sup>

### III. Applicable legal principles

10. The Security Council, acting under Chapter VII of the Charter, adopted on 10 June 1999 resolution 1244 (1999), according to which Kosovo is administered by an international civil presence (UNMIK), while security is provided by an international security presence (KFOR).

11. The resolution outlined explicit guidelines and future steps for determining the final status of Kosovo on the basis of a political settlement, in a political process and through negotiations.

12. According to the resolution, the Security Council decided that the main responsibilities of the international civil presence would include, *inter alia*, “promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo” (para. 11 (c)).

13. While deciding on the international administration of Kosovo, the Security Council reaffirmed “the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia[/Republic of Serbia] and the other States of the region” (preamble para. 10 of resolution 1244 (1999) and Annexes 1 and 2 thereto).

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<sup>1</sup> Advisory Opinion on *Western Sahara*, ICJ Reports, 1975, p. 18, para. 15.

<sup>2</sup> *Ibid.*, p. 21, para. 23.

14. There are divergent interpretations of resolution 1244 (1999) and there is no unanimity within the Security Council and among Member States of the United Nations in general as to the issue under the examination by the Court.

15. However, it is the view of Azerbaijan that the relevant legal regime established for Kosovo by resolution 1244 (1999) can only be modified or terminated by the Security Council.

16. Both the divergences pertaining to the interpretation of resolution 1244 (1999) and the lack of progress in political negotiations between the parties concerned cannot be introduced as justifying unilateral actions.

17. Furthermore, neither the specific circumstances which obviously make Kosovo a case *sui generis* or, in other words, unique, nor resolution 1244 (1999) provide any ground for actions that are not based on a mutually-acceptable settlement.

18. It is essential to emphasize that States are at the heart of the international legal system and the prime subjects of international law, while the principle of the protection of the integrity of the territorial expression of States is bound to assume major importance.<sup>3</sup>

19. Territorial integrity and State sovereignty are inextricably linked concepts in international law. They are foundational principles. Unlike many other norms of international law, they can only be amended as a result of a conceptual shift in the classical and contemporary understanding of international law.

20. The Court clearly underlined that “[b]etween independent States, respect for territorial sovereignty is an essential foundation of international relations”.<sup>4</sup>

21. The juridical requirement, therefore, placed upon States is to respect the territorial integrity of other States. It is an obligation flowing from the sovereignty of States and from the equality of States.

22. It is, of course, important to note that this obligation is not simply to protect territory as such or the right to exercise jurisdiction over territory or even territorial

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<sup>3</sup> See, generally, J.Castellino and S.Allen, *Title to Territory in International Law: A Temporal Analysis*, Aldershot, 2002; G.Distefano, *L'Ordre International entre Légalité et Effectivité: Le Titre Juridique dans le Contentieux Territorial*, Paris, 2002; R.Y.Jennings, *The Acquisition of Territory in International Law*, Manchester, 1963; M.N.Shaw, “Territory in International Law”, 13 *Netherlands YIL*, 1982, p. 61; N.Hill, *Claims to Territory in International Law and Relations*, London, 1945; J.Gottman, *The Significance of Territory*, Charlottesville, 1973; and S.P.Sharma, *Territorial Acquisition, Disputes and International Law*, The Hague, 1997.

<sup>4</sup> *Corfu Channel case*, ICJ Reports, 1949, p. 35.

sovereignty, the norm of respect for the territorial integrity of States imports an additional requirement and this is to sustain the territorial wholeness or definition or delineation of particular States. It is a duty placed on all States to recognise that the very territorial structure and configuration of a State must be respected.

23. The principle of respect for the territorial integrity of States constitutes a foundational norm in international law buttressed by a vast array of international, regional and bilateral practice. This norm is enshrined in international instruments, binding and non-binding, ranging from United Nations resolutions of a general and a specific character to international multilateral, regional and bilateral agreements.

24. International law is unambiguous in not providing for a right of secession from independent States. Otherwise, such a fundamental norm as the territorial integrity of States would be of little value were a right to secession under international law be recognised as applying to independent States.

25. International law does not create grounds and conditions for legitimizing unilateral or non-consensual secession in any sense. Such secession from an existing sovereign State does not involve the exercise of any right conferred in international law and hence has no place within the generally accepted international legal norms and principles which apply within precisely identified limits.

26. The United Nations has always strenuously opposed any attempt at partial or total disruption of the national unity and territorial integrity of a State. The United Nations Secretary-General has emphasised that “as an international organisation, the United Nations has never accepted and does not accept and I do not believe it will ever accept the principle of secession of a part of a member State”.<sup>5</sup> As one leading author has written, “[s]ince 1945 the international community has been extremely reluctant to accept unilateral secession of parts of independent states if the secession is opposed by the government of that state. In such cases the principle of territorial integrity has been a significant limitation. Since 1945 no state which has been created by unilateral secession has been admitted to the United Nations against the declared wishes of the predecessor state”.<sup>6</sup>

27. Against this background, one should be seriously concerned about the attempted unilateral solution of the Kosovo problem through the declaration of independence by its Provisional Institutions of Self-Government.

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<sup>5</sup> *UN Monthly Chronicle* (February 1970), p. 36.

<sup>6</sup> J.Crawford, *Creation of States in International Law*, Oxford, 2<sup>nd</sup> ed., 2006, p. 390.

28. All States are bound by the generally accepted norms and principles of international law, including in particular those related to respect for the sovereignty and territorial integrity of States, inviolability of their internationally recognized borders and non-interference in their internal affairs.

29. Azerbaijan believes that faithful observance of the generally accepted norms and principles of international law concerning friendly relations and cooperation among States and the fulfillment in good faith of the obligations assumed by States are of the greatest importance for the maintenance of international peace and security.

Azerbaijan reserves the right to supplement this written statement as necessary and to participate in the further proceedings.

“17” April 2009

A handwritten signature in black ink, appearing to read 'F. Iskandarov', with a large, sweeping flourish at the end.

Dr. Fuad Iskandarov

Ambassador of the Republic of Azerbaijan  
to the Kingdom of the Netherlands