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CR 2009/27

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2009

Public sitting

held on Thursday 3 December 2009, at 10 a.m., at the Peace Palace,

President Owada, presiding,

***on the* Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo**
(Request for advisory opinion submitted by the General Assembly of the United Nations)

VERBATIM RECORD

ANNÉE 2009

Audience publique

tenue le jeudi 3 décembre 2009, à 10 heures, au Palais de la Paix,

sous la présidence de M. Owada, président,

***sur la* Conformité au droit international de la déclaration unilatérale d'indépendance des institutions provisoires d'administration autonome du Kosovo**
(Demande d'avis consultatif soumise par l'Assemblée générale des Nations Unies)

COMPTE RENDU

Present:	President	Owada
	Vice-President	Tomka
	Judges	Shi
		Koroma
		Al-Khasawneh
		Buergenthal
		Abraham
		Keith
		Sepúlveda-Amor
		Bennouna
		Skotnikov
		Cançado Trindade
		Yusuf
		Greenwood
	Registrar	Couvreur

Présents : M. Owada, président
M. Tomka, vice-président
MM. Shi
Koroma
Al-Khasawneh
Buergenthal
Abraham
Keith
Sepúlveda-Amor
Bennouna
Skotnikov
Cançado Trindade
Yusuf
Greenwood, juges

M. Couvreur, greffier

The Republic of Austria is represented by:

H.E. Mr. Helmut Tichy, Ambassador, Deputy Legal Adviser, Federal Ministry of European and International Affairs;

H.E. Mr. Wolfgang Paul, Ambassador of Austria to the Kingdom of the Netherlands;

H.E. Mr. Werner Senfter, Deputy Ambassador of Austria to the Kingdom of the Netherlands.

The Republic of Azerbaijan is represented by:

H.E. Mr. Agshin Mehdiyev, Ambassador and Permanent Representative of Azerbaijan to the United Nations;

Mr. Elchin Bashirov, First Secretary, Embassy of the Republic of Azerbaijan in the Kingdom of the Netherlands;

Mr. Tofig Musayev, Permanent Mission of Azerbaijan to the United Nations,

as Counsellor.

The Republic of Belarus is represented by:

H.E. Ms Elena Gritsenko, Ambassador of the Republic of Belarus to the Kingdom of the Netherlands,

as Head of Delegation;

Mr. Andrei Luchenok, Counsellor of the Embassy of Belarus in the Kingdom of the Netherlands.

For the complete list of delegations of all participants, please refer to CR 2009/24.

La République d'Autriche est représentée par :

S. Exc. M. l'ambassadeur Helmut Tichy, conseiller juridique adjoint au ministère fédéral des affaires européennes et internationales ;

S. Exc. M. Wolfgang Paul, ambassadeur d'Autriche auprès du Royaume des Pays-Bas ;

S. Exc. M. Werner Senfter, ambassadeur adjoint d'Autriche auprès du Royaume des Pays-Bas.

La République d'Azerbaïdjan est représentée par :

S. Exc. M. Agshin Mehdiyev, représentant permanent de l'Azerbaïdjan auprès de l'Organisation des Nations Unies ;

M. Elchin Bashirov, premier secrétaire à l'ambassade de la République d'Azerbaïdjan au Royaume des Pays-Bas ;

M. Tofig Musayev, mission permanente de l'Azerbaïdjan auprès de l'Organisation des Nations Unies,

comme conseiller.

La République du Bélarus est représentée par :

S. Exc. Mme Elena Gritsenko, ambassadeur de la République du Bélarus auprès du Royaume des Pays-Bas,

comme chef de délégation;

M. Andrei Luchenok, conseiller à l'ambassade du Bélarus au Royaume des Pays-Bas.

Pour consulter la liste complète de toutes les délégations, prière de se reporter au CR 2009/24.

The PRESIDENT: Please be seated. The sitting is open. I note that Judge Simma, for reasons explained to me, is unable to attend the oral proceedings today.

The Court meets this morning to hear the following participants on the question submitted to the Court: Austria, Azerbaijan and Belarus. I shall now give the floor to His Excellency Mr. Helmut Tichy.

Mr. TICHY:

I. INTRODUCTORY REMARKS

1. Mr. President, distinguished Members of the Court, Austria is pleased to contribute to the proceedings before this Court.

2. Austria has already expressed its views on the question put to this Court, namely, "Is the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?" in its Written Statement in April. Austria stressed in this Written Statement that it sees the Declaration of Independence of Kosovo as being in conformity with international law. Austria now wishes to elaborate on some particularly important points. It hopes that the solution of the legal issues at stake will contribute to dialogue and co-operation between Serbia and Kosovo as well as to peace and security in the region.

3. In Austria's view the question submitted to this Court is of limited scope: it refers only to the Declaration of Independence and its legality under international law. Accordingly, my statement will focus on the matters directly addressed by this question. In particular, it will show that the Declaration of Independence is in conformity with international law, including Security Council resolution 1244. And, in this regard, the question is not whether there exists a permissive rule of international law enabling declarations of independence to be made, but whether international law prohibits such declarations. Our conclusion is that there is no rule of international law prohibiting declarations of independence.

II. THE DECLARATION OF INDEPENDENCE WAS NOT ISSUED BY A PROVISIONAL INSTITUTION OF SELF-GOVERNMENT

4. The formulation of the question submitted to this Court is obviously based on the assumption that the Declaration of Independence was issued by one of the Provisional Institutions of Self-Government of Kosovo, namely the Assembly. This, however, was not the case. The Declaration of Independence was voted upon and signed by the elected representatives of the people of Kosovo acting in this capacity, expressing the will of the people outside the framework of the Assembly. The Declaration's language, form and method of adoption in an "extraordinary meeting"[3] demonstrate that it was not an act of the Provisional Institutions of Self-Government. One quotation might suffice to confirm this conclusion. Already the first operative paragraph of the Declaration starts with the words "[w]e, the democratically-elected leaders of our people", which indicate that the authors of the Declaration acted not as members of a Provisional Institution of Self-Government but as representatives of the people of Kosovo.

III. DECLARATIONS OF INDEPENDENCE ARE NOT CONTRARY TO INTERNATIONAL LAW

5. Mr. President, distinguished Members of the Court, no rule of international law has been identified which prohibits the population of a certain territory represented by its elected leaders to issue declarations of independence. International law does not address such declarations. A declaration of independence as such does not have legal effects under international law; the possible establishment of a State depends on a variety of facts[4] and their legal assessment — but that is a different question, which was not put to the Court.

IV. THE DECLARATION, EVEN IF CONSIDERED A DECLARATION OF THE ASSEMBLY, IS NOT CONTRARY TO INTERNATIONAL LAW

6. As I have said, Austria is of the view that the authors of the Declaration acted as representatives of the people of Kosovo and not as members of the Assembly. In our view, however, the legal statement that international law does not address declarations of independence applies irrespective of whether the Declaration is regarded as an act of the representatives of the people of Kosovo or, for the sake of argument, as an act of the Assembly or of any other institution.

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[3] Declaration of Independence, 17 Feb. 2008, preambular paragraph 1.

[4] Art. 1, Montevideo Convention on the Rights and Duties of States, 26 Dec. 1933, 156 *LNTS* 19.

7. Moreover, as far as Security Council resolution 1244 is concerned, the Declaration — even if considered as an act of the Assembly — does not contradict this resolution. The resolution provided for increasing powers of the Provisional Institutions, powers which, in a final stage, included also the competence to issue a declaration of independence.

8. Let me explain this in more detail. Resolution 1244 as well as the UNMIK Constitutional Framework provided for the gradual transfer of authority and competences to the Provisional Institutions of Self-Government during the interim period so that in the subsequent final stage these institutions would have all powers necessary for a peaceful solution. According to operative paragraph 11 of the resolution, the international civil presence was tasked to oversee in a final stage the transfer of authority from the Provisional Institutions to institutions established under a political settlement. The UNMIK Constitutional Framework had established that activities of the Assembly falling within the purview of external competences had to be conducted in agreement with the Special Representative of the Secretary-General[5]. In practice, however, the Special Representative ceased to object to the autonomous exercise of competence by the Assembly, as was confirmed by several reports of the Secretary-General indicating that the powers of UNMIK were being adjusted to the changing situation[6].

9. Accordingly, if — contrary to the position of Austria — the Declaration of Independence were to be considered as an act of the Assembly, it would not have constituted an *ultra vires* act and would have been in conformity with resolution 1244.

V. THE DECLARATION OF INDEPENDENCE DOES NOT VIOLATE THE PRINCIPLE OF TERRITORIAL INTEGRITY

10. As already stated, a declaration of independence as such does not have the effect of creating secession or establishing a State. Such declarations serve mainly as manifestations of the will of the people and are not addressed by international law, so that they cannot be measured against the rules of general international law relating to changes of territory. Practice and doctrine

[5]Chap. 8, Sect. 8.1 *(o)*, Constitutional Framework for Provisional Self-Government, UNMIK/REG/2001/9, 15 May 2001.

[6]Reports of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2008/211, 28 Mar. 2008, para. 30; S/2008/254, 12 June 2008, para. 7; S/2008/692, 24 Nov. 2008, para. 21.

of international law are unequivocal in this regard, as already pointed out in the Austrian Written Statement[7].

11. It is certainly true that international law increasingly contains rules regulating activities of non-State actors and even individuals. However, these rules concern other issues such as human rights, humanitarian law or individual criminal responsibility, issues that are not at stake in the present context.

12. Supporters of the view that the Declaration of Independence is contrary to international law have not been able to show in their written statements that there is any rule prohibiting declarations of independence. Nor is there any precedent establishing that the mere act of declaring independence or proclaiming the existence of a State is contrary to international law. Unilateral declarations of independence were found to be illegal only when they were made in combination with a violation of a rule of international law: examples for such violations are the unlawful use of force, the breach of an international agreement (as in the case of Cyprus)[8] or racial discrimination (as in the case of Southern Rhodesia)[9].

13. The argument was made that declarations of independence are contrary to the duty to respect the territorial integrity of States. We believe, however, that this duty does not apply in the present context for at least three reasons.

14. First, Article 2, paragraph 4, of the United Nations Charter declares that this duty applies only to Member States of the United Nations and in their international relations. Therefore it does not apply internally to entities seeking secession. Some have argued that this obligation is of an *erga omnes* nature[10]. However, such an obligation binds only subjects of international law. The authors of the Declaration, as representatives of the people of Kosovo, are consequently not addressed by this rule, as — at the time of the Declaration — they did not represent a subject of international law. Various legal instruments establishing the inviolability of the territorial integrity

[7]See paras. 22 *et seq.*

[8]UN Security Council resolution 541 (1983), 18 Nov. 1983 (Cyprus).

[9]UN Security Council resolutions 216 (1965), 12 Nov. 1965 and 217 (1965), 20 Nov. 1965 (Southern Rhodesia).

[10]Written Statement of Romania, paras. 80, 108; Written Statement of Serbia, paras. 440 *et seq*., 501, Written Statement of Iran, paras. 3.1-3.6.

of States confirm this conclusion. Even resolution 1244 itself mentions territorial integrity only with regard to States when it declares in its preamble:

> "Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2."

15. The commitment to territorial integrity contained in this preambular paragraph was not intended to be absolute: it is qualified by the reference to the Helsinki Final Act, which places the respect for the territorial integrity of States on equal footing with other rights and obligations, including the respect for human rights and fundamental freedoms and the right to self-determination.

16. It is the practice of the Security Council to reaffirm respect for the territorial integrity of the State concerned when it acts under Chapter VII of the Charter. It did so in resolution 1272 (1999) on East Timor[11] while explicitly welcoming the will of the Timorese people for independence[12], which led to the emergence of a new State. This shows that the Security Council sees no contradiction between the respect for territorial integrity and processes leading towards independence. Therefore, the preambular reference in resolution 1244 to the territorial integrity of the Federal Republic of Yugoslavia in no way determines that the future status of Kosovo must be within the borders of Yugoslavia.

17. Second, if the principle of respect for territorial integrity were applicable in this context, other principles such as non-intervention would also have had to apply in the relations between Serbia and Kosovo, even before Kosovo became an independent entity. Any other approach would be selective and is therefore inadmissible.

18. Third, pertinent precedents confirm that declarations of independence do not violate the duty to respect the territorial integrity of States. Several other parts of former Yugoslavia, such as Slovenia, Croatia, the former Yugoslav Republic of Macedonia and Bosnia and Herzegovina, made similar declarations during and after 1991 which did not meet with any objection from the international community. Although the Federal Republic of Yugoslavia originally contested the legality of these declarations under internal as well as under international law, its opposition did not

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[11] Preambular para. 12.

[12] Preambular para. 3.

create a rule prohibiting declarations of independence under international law, especially since no other State concurred with the position of Yugoslavia. All these new States were admitted to the United Nations by consensus[13], which indicates that all United Nations Member States were of the view that these States fulfilled the criteria of Article 4 of the Charter. This would not have been the case had their creation been affected by an unlawful act. Furthermore, the Federal Republic of Yugoslavia did not object to the declarations of independence when it entered into treaty relations with these States. It became a party to the Agreement on Succession Issues signed in 2001 in Vienna[14] by all new States emerging from former Yugoslavia. These facts corroborate the conclusion that declarations of independence cannot be regarded as unlawful under international law.

VI. INTERNATIONAL LAW DOES NOT PROHIBIT SECESSION

19. Mr. President, distinguished Members of the Court, my remarks so far have concentrated on the issuance of the Declaration itself and have established that such issuance is not contrary to international law. Let me now turn to the substance of the Declaration where it is equally clear that no violation of a rule of international law has occurred, in particular since the Declaration alone is incapable of effectuating secession or independence.

20. While the coming into existence of a new State despite opposition by the predecessor State is not taken lightly, no rule of international law prohibiting secession has been ascertained. More precisely, no rule of international law addresses secession. In fact, international law remains neutral concerning the separation of a part of a State. As the late Professor Thomas Franck declared:

> "It cannot seriously be argued today that international law *prohibits* secession. It cannot seriously be denied that international law *permits* secession. There is a *privilege* of secession recognized in international law and the law imposes *no duty* on any people not to secede."[15]

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[13]See General Assembly resolutions A/RES46/236, 22 May 1992, A/RES46/237, 22 May 1992, A/RES46/238, 22 May 1992 and A/RES47/225, 8 Apr. 1993.

[14]Adopted at the Conference on Succession Issues, Vienna, 29 June 2001.

[15]Professor Thomas Franck, Experts Report, para. 2.11, reproduced in A.F. Bayefsky (ed.), *Self-determination in International Law: Quebec and Lessons Learned*, 2000, p. 335.

21. Accordingly, international law does not prohibit secession. While the community of States may not favour secession, there is no rule prohibiting secession, in particular since the principle of territorial integrity applies only in inter-State relations, as I have said before. In fact, secession appears to be a political fact from which conclusions may be drawn under international law when it leads to the establishment of effective and stable State authorities[16].

22. In addition to having established that international law does not prohibit declarations of independence nor secession, allow me to respond to some points which were made in relation to the Arbitration Commission of the Peace Conference of the former Yugoslavia (commonly known as Badinter Arbitration Commission)[17]. It was argued that Opinion No. 9 of 4 July 1992 of the Badinter Commission disqualified the possibility of any further secession on the territory of former Yugoslavia so that the Declaration of Independence of Kosovo would run counter to the opinions of the Commission.

23. However, Opinion No. 9 could not anticipate the future development and the events unfolding several years after the elaboration of this opinion; accordingly, the conclusion expressed therein has no significance for the present question. The Badinter Commission itself had to adjust its views according to the developing events: in 1991, it assumed the continuing existence of the Socialist Federal Republic of Yugoslavia, whereas in 1992 it had to recognize the dissolution of this State. Furthermore, the view of the Commission is phrased in very careful terms since it recognizes only the completion of the specific dissolution process which was addressed in its Opinion No. 1 and does not address any other dissolution or secession processes. So, for instance, the Badinter Commission could not preclude the creation of the State of Montenegro. Montenegro's emergence as an independent State was not contested by any State and corroborates this conclusion. Therefore, the opinions of the Badinter Commission cannot be used as an argument that the Declaration of Independence of Kosovo was illegal.

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[16]See Austrian Written Statement, paras. 37 *et seq.*

[17]See, e.g., Written Statement by Romania, 14 Apr. 2009, paras. 69, 127 *et seq.*; Written Statement by Serbia, 14 July 2009, para. 265.

VII. THE SUBSTANCE OF THE DECLARATION IS IN ACCORDANCE WITH RESOLUTION 1244

24. I will now elaborate on the point that also resolution 1244 does not preclude a declaration of independence. Resolution 1244 defines the further development of the situation of Kosovo in two different stages: the first is the interim period; the second, the situation of the final political settlement. Operative paragraph 11 *(a)* explicitly distinguishes the interim period from the final political settlement when it defines as task of the international civil presence "[p]romoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords".

25. Whereas the organs of Kosovo during the interim period were established by the resolution, the exact substance of the final political settlement was not defined therein. The events leading to the Declaration of Independence demonstrated very convincingly that the interim period had already come to an end and that a further development within this period was no longer possible. All efforts to achieve a solution by agreement had been exhausted.

26. Resolution 1244 likewise did not define the mode for reaching a political settlement, so that the consent of Serbia was not required for a final political settlement to be in conformity with resolution 1244. The requirement which was laid down, however, was the respect for the will of the people of Kosovo, in accordance with the Rambouillet Accords[18].

27. While the resolution did not explicitly indicate that a possible solution could encompass the independence of Kosovo, it nowhere prohibited independence as an option for a final settlement. An attempt to modify the wording of the resolution to rule out independence did not find its way into the final text of the resolution. Therefore, resolution 1244 does not contain a prohibition of secession of Kosovo from Serbia and does not exclude the creation of a new State. In fact, in the absence of a clear definition of the final political settlement in this resolution, any political settlement remains only subject to the limits of general international law.

28. The Declaration's conformity with international law is expressed by the Declaration of Independence itself — in paragraph 12, consistency with the principles of international law, including Security Council resolution 1244, is explicitly declared. Therefore, in accordance with the principle of good faith it cannot be argued that the Declaration of Independence contradicts

[18]Chap. 8, Art. 1, para. 3 of the Interim Agreement for Peace and Self-Government in Kosovo, 23 Feb. 1999.

international law, since the Declaration itself announces conformity with it. Accordingly, the substance of the Declaration of Independence is to be interpreted as being in conformity with international law.

VIII. NO OBJECTION BY UNITED NATIONS ORGANS

29. A further indication that the Declaration of Independence — even if, for the sake of argument, considered as an act of the Assembly — was in accordance with international law, including resolution 1244, is that neither the Special Representative of the Secretary-General nor the Security Council voiced any objection to the Declaration. The Special Representative did not invalidate the Declaration of Independence, despite his power to annul acts of the Provisional Institutions he considered in violation of resolution 1244. The responsibilities of the Special Representative in accordance with operative paragraph 6 of the resolution include control over the implementation of the international civil presence. Had he considered the Declaration as violating resolution 1244 and in particular the UNMIK Constitutional Framework, it would have been his duty to object to the Declaration of Independence either by public statement, in a report to the Secretary-General or directly to the Security Council. However, he obviously abstained from doing so.

30. Generally speaking, the Special Representative was not reluctant to use his powers to invalidate acts which he did consider contrary to resolution 1244. One such occasion was, for example, the Assembly's "Resolution on the Protection of the Territorial Integrity of Kosovo" in 2002 that was immediately declared null and void by the Special Representative[19] and subsequently deplored by the Security Council[20].

31. Like the Special Representative, neither the Security Council nor the Secretary-General objected to the Declaration. The absence of objections signifies that the issuance of the Declaration was accepted as lawful by both the Secretary-General and the Security Council, as has been elaborated in the Austrian Written Statement[21]. Even if this attitude of the United Nations organs

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[19] "Determination" by the Special Representative of the Secretary-General, Michael Steiner, 23 May 2002, UNMIK Press Release, 23 May 2002, PR/740.

[20] Statement by the President of the Security Council, 24 May 2002, S/PRST/2002/16.

[21] Austrian Written Statement, para. 42 *et seq*.

could be considered as taking a neutral stance, it has a legal effect in so far as United Nations organs would have been required to act if they had considered the Declaration unlawful. In giving its advisory opinion, this Court, therefore, may wish to give due consideration to the reactions of United Nations organs, including the fact that they did not raise any objection against Kosovo's Declaration of Independence.

IX. SUBSEQUENT DEVELOPMENTS

32. After having presented the legal arguments speaking in favour of the Declaration of Independence being in accordance with international law, let me now emphasize the relevance of certain factual developments after the issuance of the Declaration, which support our legal conclusions. Such subsequent developments confirm the lawfulness of the Declaration of Independence.

33. Apart from the legal relevance of the absence of any objections by United Nations organs to the Declaration of Independence, the factual transition of effective control over Kosovo from UNMIK to the Kosovo Government[22] illustrates the conformity of this Declaration with international law. This factual transition includes the adoption of a Constitution, which envisages no role for the international administration[23]. This transition has to be seen also in the light of the unsustainability of the situation that existed before the Declaration of Independence.

34. Moreover, it cannot be disregarded that Kosovo has been recognized by 63 States, including Austria, that embassies and other diplomatic missions have been established, that Kosovo has been admitted as a member to the IMF[24] and the World Bank Group institutions[25] and that it has concluded a bilateral border demarcation agreement with the former Yugoslav Republic of Macedonia[26]. Although this Court is not called upon to evaluate the legality of recognitions, the

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[22]Report of the Secretary-General on the United Nations Interim Administration in Kosovo, 24 Nov. 2008, S/2008/692, para. 21.

[23]Constitution of the Republic of Kosovo, adopted 9 April 2008.

[24]IMF Press Release No. 09/240, 29 June 2009. According to Article II of its Articles of Agreement of 22 July 1944, IMF membership is open to countries.

[25]World Bank Group Press Release No. 2009/448/ECA, 29 June 2009.

[26]17 Oct. 2009.

relevance of the substantial degree of international recognition accorded to the Declaration of Independence seems obvious.

X. CONCLUSION

35. In conclusion, Mr. President, distinguished Members of the Court, Austria believes that the answer to the question submitted to this Court is clear: international law does not address the legality of declarations of independence per se and, moreover, there is no rule of international law prohibiting the Declaration of Independence by Kosovo. For these reasons, Austria respectfully requests this Court to declare that Kosovo's Declaration of Independence is in accordance with international law.

Mr. President, Members of the Court, I thank you.

The PRESIDENT: I thank His Excellency Mr. Helmut Tichy for his presentation. Now I call upon His Excellency Mr. Agshin Mehdiyev to take the floor.

Mr. MEHDIYEV:

1. Distinguished President, honourable judges, it is a great privilege for me to address you on behalf of the Republic of Azerbaijan and submit my Government's position on the issue of profound significance for the international community.

2. The General Assembly, in its resolution A/RES/63/3 of 8 October 2008, requested the Court to render an advisory opinion on the question of the "Accordance with International Law of the Unilateral Declaration of Independence (UDI) by the Provisional Institutions of Self-Government of Kosovo". In line with its principled and consistent position pertaining to the consequential issues that potentially arise from the question formulated for the purposes of the present proceedings, Azerbaijan voted in favour of the said resolution.

3. By taking the decision to support the resolution, we proceeded also from the understanding that the General Assembly was duly authorized to request this advisory opinion on the legal question which is "framed in terms of law", "raise[s] problems of international law", is "susceptible of a reply based on law" (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*,

p. 18, para. 15) and clearly falls within the scope of activities of the General Assembly under the Charter of the United Nations.

4. Furthermore, by requesting the Court to render an advisory opinion, the General Assembly has expressed its interest in the question and decided "on the usefulness of an opinion in the light of its own needs" (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 237, para. 16).

5. Azerbaijan believes that the Court is competent to exercise its advisory jurisdiction in the present proceedings and that there are no "compelling reasons" that should lead the Court to decline the present request for an advisory opinion in response to the question submitted by the General Assembly.

6. Distinguished President, honourable judges, the matter before the Court in this request for an advisory opinion is indeed a very important one. Attempts to find a solution to the Kosovo issue have become one of the biggest policy challenges complicated by fundamental disagreement between the parties concerned and, as a consequence, their different perspectives as to the final solution of the problem.

7. Some key powers involved made it clear from the outset that the process leading to independence of Kosovo, even though without the consent of the recognized sovereign, was irreversible and, under the circumstances, was an *ultimo ratio* way to resolve the issue. Such a stance substantially predetermined a unilateral approach and influenced to a considerable extent the willingness of the parties concerned to negotiate in good faith towards finding a consensual solution.

8. Besides, the path to independence raised a number of questions in terms of international law and created a fear of emerging precedent as to the definition, scope and application of the relevant legal norms. Therefore, there is little doubt that the Court's advisory opinion will have important consequences for the international legal order. It is no coincidence that the case before the Court attracts significant interest in view of the total number of States participating in the present proceedings including, for the first time in the history of the Court, all five permanent members of the Security Council.

9. I would like to reiterate the position of Azerbaijan on the issue under consideration laid out in its Written Statement of 17 April 2009. At the same time, having considered the written contributions and statements by other participants of the present proceedings, we decided to dwell upon some questions of significant importance.

10. Several States advanced ideas that international law (leaving aside special cases such as aggression and apartheid) does not address the legality of declarations of independence per se, while the creation of States is only a matter of fact. According to these ideas, the principle of sovereignty and territorial integrity is addressed exclusively to States and is not concerned with the issuance of declarations of independence. Based on this understanding, it is asserted that the UDI is not incompatible with international law.

11. It is essential to clarify in this regard that the declaration of independence in a given case is the expressed intention to create a State by means of unilateral termination of the existing legal régime and non-consensual secession from a sovereign State. The UDI attempts to apply international law and purports to produce concrete legal effects. Should the Court find it justified addressing the UDI not as an isolated act but in a comprehensive manner, then we would expect thorough examination of its various aspects and their legality.

12. The position based on the assumption that international law remains "neutral" with regard to a secessionist attempt does not create conditions for legitimizing secession in any sense, nor does it mean that secession automatically succeeds and the international community accepts its consequences without the consent of the recognized sovereign.

13. As is well known, a secessionist attempt is often accompanied by violation of international law, including its peremptory norms, such as those prohibiting the threat or use of force, racial discrimination and apartheid. International law also applies if a secessionist attempt is in violation of self-determination, as well as if it is controlled from outside or coupled with external aid.

14. Besides, international law does not remain indifferent to situations where an attempt to create a new State through non-consensual secession violates the domestic law of the parent State, the territorial integrity of which is ensured by international law and the government of which is entitled to suppress by legitimate means any attempt to achieve such secession.

15. In other words, the most important issue is the legitimacy of the process by which the *de facto* secession is, or was, being pursued. An entity created in breach of international and domestic law, even if it has all the factual attributes of a State, is not a State.

16. It has been argued that the principle of effectiveness in international law means that *de facto* situations, however brought about, lead to *de jure* situations. This cannot be right and it is not right. International law, if it is to mean anything, means that faits accomplis do not have to be simply accepted. Might is not right. The fact that illegal situations continue because of political circumstances does not mean that they are therefore rendered legal. Law is more important than force.

17. This understanding is supported by international practice and examples are well known. As we have already pointed out in our Written Statement, 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 emphasized that

> "as an international organization, 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" (*United Nations Monthly Chronicle*, Feb. 1970, p. 36).

18. 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." (J. Crawford, *Creation of States in International Law,* 2nd ed., 2006, p. 390.)

19. Distinguished President, honourable judges, the case under consideration regards the scope of the principle of territorial integrity, the right to self-determination and the notion of secession. It is the view of Azerbaijan that there exists no conflict of norms in international law. Most important in addressing the content of norms is their precise scope and application. In this regard, we deem it important to reiterate the following position as supported by comprehensive academic studies and reflected in both our Written Statement and written contributions by other States participating in this proceeding.

20. 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 territorial integrity of States is bound to assume major importance.

21. 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.

22. This Court clearly underlined that "[b]etween independent States, respect for territorial sovereignty is an essential foundation of international relations" (*Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 35).

23. 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. It is essential to note that this obligation is not simply to protect territory as such or the right to exercise jurisdiction over territory or even territorial 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 recognize that the very territorial structure and configuration of a State must be respected.

24. 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 enriched in international instruments, binding and non-binding, ranging from United Nations resolutions of a general and specific character to international multilateral, regional and bilateral agreements.

25. Therefore, the proposition that the explicit reference to the principle of territorial integrity in the preamble of a Security Council resolution is of little effect since the preamble is a "non-binding clause" is curious and gravely disturbing in terms of law. Indeed, it is not unusual for the territorial integrity of States to be reaffirmed in the preamble of Security Council resolutions dealing with specific situations and it would be very strange indeed for this to be seen as weakening the principle. In fact, it would be an interpretation that would threaten a number of

States in practice. In any event, the Council does not decide on the territorial integrity of States since this is a matter of international law, but simply chooses to reaffirm it in particular situations.

26. It has been argued that where the Security Council does not refer to explicit secessions by name, then secessions are not prohibited in international law. This cannot be right. A significant number of resolutions have been adopted by the Council in response to secessionist attempts, all of which reaffirm the territorial integrity of States. Their relevant provisions can only make sense by understanding that they prohibited such attempts. It should not be forgotten that the Security Council is a political organ and the manner in which it reacts to each situation reflects political as well as legal factors.

27. International law is unambiguous in not providing for a right of secession for independent States and in not creating grounds and conditions for legitimizing non-consensual secession in any sense. 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 recognized as applying to independent States.

28. 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 norms and principles of international law which apply within precisely identified limits.

29. Since it is undeniable that the principle of self-determination is a legal norm, the question arises as to its scope and application.

30. Both the textual analysis of the existing provisions on self-determination and the *travaux préparatoires* of international instruments containing such provisions give cause for distinguishing two aspects of self-determination, namely, firstly, the internal aspect, which means that all peoples have the right to pursue freely their economic, social and cultural development without outside interference, and second, the external aspect, which includes the right of peoples to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination and exploitation.

31. As the Committee on the Elimination of Racial Discrimination made it clear, in respect to the internal aspect of self-determination there exists a link with the right of every citizen to take

part in the conduct of public affairs at any level (CERD General Recommendation 21 (48), para. 4). In the light of this understanding, the Human Rights Committee considers it highly desirable that States parties' reports under the International Covenant on Civil and Political Rights describe, with regard to Article 1, paragraph 1, the constitutional and political processes which in practice allow the exercise of the right to self-determination (HRC General Comment No. 12 (21), para. 4). The practice of the Human Rights Committee confirms that it addresses the right of self-determination as providing the overall framework for the consideration of the principles relating to democratic governance. The internal aspect of self-determination applies in a number of contexts, but with the common theme of the recognition of legal rights for communities of persons within the territorial framework of the independent States.

32. As far as the external aspect of self-determination is concerned, the peoples of the colonially defined territorial unit in question and people who find themselves in similar circumstances, i.e., those subjected to alien subjugation, domination and exploitation, including peoples under foreign military occupation, are entitled to the "external" self-determination, the main content of which is to freely determine the political status of the territory as a whole.

33. As one leading author has observed,

> "unlike external self-determination for colonial peoples — which ceases to exist under customary international law once it is implemented — the right to internal self-determination is neither destroyed nor diminished by its already once having been invoked and put into effect" (A. Cassese, *Self-Determination of Peoples*, p. 101).

34. Another leading author has noted in regard to both aspects of self-determination, that

> "external self-determination requires a state to take action in its foreign policy consistent with the attainment of self-determination in the remaining areas of colonial or racist occupation. But internal self-determination is directed to their own peoples." (R. Higgins, *Postmodern Tribalism and the Right to Secession*, p. 31.)

35. International practice demonstrates that self-determination has not been interpreted to mean that any group defining itself as such can decide for itself its own political status up to and including secession from an already independent State. Although the usual formulation contained in international instruments refers to the right of "all peoples" to determine "freely their political status", international practice is clear that not all "peoples" as defined in a political-sociological sense are accepted in international law as able to freely determine their political status up to and

including secession from a recognized independent State. In fact, practice shows that the right has been recognized for "peoples" in strictly defined circumstances.

36. Therefore, a distinction should be made between the notion of a "people" possessing the specific characteristics in a political-sociological sense and the notion of a "people" entitled to the right of self-determination. Irrespective of the findings as to the former notion, the latter one is strictly limited in international law to concrete categories of peoples. The term "people" entitled to the right of self-determination under international law obviously means the whole people, the *demos*, which is to benefit from self-determination, not the separate *ethnoses* or other groups, which at the same time together form the *demos*.

37. The International Covenant on Civil and Political Rights contains both the terms "peoples" and "minorities" and the Human Rights Committee in its General Comment 23 draws a distinction between the rights of persons belonging to minorities on the one hand, and the right to self-determination on the other. The Committee particularly emphasized that the rights under Article 27 of the Covenant did not prejudice the sovereignty and territorial integrity of States (HRC General Comment No. 23 (50), paras. 3.1 and 3.2). The same approach was adopted in the commentary to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN doc. E/CN.4/Sub.2/AC.5/2001/2, para. 15).

38. Consequently, minorities are not entitled in international law to exercise the external right to self-determination, meaning that they cannot unilaterally purport to secede from the State in which they live. Rather, they exercise the internal aspect of this right, together with the rest of the population of the State concerned, as part of this population and within the recognized boundaries of the State. As the United Nations Secretary-General has emphasized in "An Agenda for Peace", "[y]et if every ethnic, religious or linguistic group claimed statehood, there would be no limit to fragmentation, and peace, security and economic well-being for all would become ever more difficult to achieve" (An Agenda for Peace, UN doc. A/47/277-S/24111, p. 5, para. 17).

39. State practice confirms that an entity created on part of the territory of a State without the support of the whole people entitled to self-determination is *a priori* illegal and cannot thus be considered as a State. Hence, the establishment of an ethnically constructed separatist entity, particularly one which survives by virtue of external political, military and economic support, is

illegal both because of the violation of the right to self-determination of the population of the State as a whole and because of the breach of the principle of non-discrimination.

40. We share the view of those States participating in the present proceedings that there is no proof of the existence of secession as a form of sanction or remedy in contemporary international law. This understanding is supported both by the textual analysis of the existing provisions on territorial integrity and self-determination and by State practice demonstrating the absence of any successful application to the so-called "remedial secession".

41. It has been pointed out by some States for the purposes of the present proceedings that the principles laid down in the Final Act of Helsinki of 1975 (Helsinki Declaration) should be applied equally, with "each of them being interpreted taking into account the others". However, the same States pass over in silence the fact that this document is unambiguous in addressing self-determination within its international dimension and in stating that any boundary change must necessarily take place in accordance with international law, by peaceful means and by agreement. Moreover, the emphasis in the Helsinki Declaration and subsequent documents on the principle of the territorial integrity of States, coupled with the lack of any reference to the so-called "remedial secession" doctrine, even gave rise to views, including in the academic community, that the Final Act of Helsinki and its follow-up process created doubts about the continuing commitment of the CSCE and OSCE to the right of self-determination. The Helsinki Final Act's reaffirmation of the status and importance of the principle of territorial integrity cannot be ignored, particularly when subsequent instruments refer explicitly to it.

42. In the follow-up process the participating States placed even greater emphasis on respecting the territorial integrity of States when defining the principle of self-determination. This approach is clearly apparent in the Charter of Paris for a New Europe of 1990 and in the Document of the Moscow Meeting of the Conference on the Human Dimension [of the CSCE] adopted in the following year. Thus, the Charter of Paris reaffirmed "the equal rights of peoples and their right to self-determination in conformity with the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States". In the Document of the Moscow conference

> "the participating States underlined that, in accordance with the Final Act of the Conference on Security and Co-operation in Europe and the Charter of Paris for a New Europe, the equal rights of peoples and their right to self-determination are to be respected in conformity with the Charter of the United Nations and the relevant norms of international law, including those relating to territorial integrity of States".

The list of similar examples can easily be continued. Simply put, this means that any exercise of self-determination (outside of the context of colonial situation or foreign occupation) has to be in conformity with the principle of territorial integrity.

43. We support the view that the Court need not decide whether Kosovo has validly exercised the right of self-determination to respond to the question referred by the General Assembly. Should the Court find it necessary to examine the UDI through the lens of the right of self-determination, then we would request that the aforementioned position be taken into account.

44. Distinguished President, honourable judges, we have witnessed in the course of the written stage and during these hearings that there exist divergent interpretations of resolution 1244 of the Security Council and that there is no unanimity both within the Security Council and among Member States of the United Nations in general as to the issue under the examination by the Court. However, we are of the view that neither such divergences nor the lack of progress in political negotiations between the parties concerned can be introduced as justifying unilateral actions.

45. All States are bound by the generally accepted norms and principles of international law, including in particular those relating to respect for the sovereignty and territorial integrity of States, inviolability of their internationally recognized borders and non-interference in their internal affairs. Azerbaijan believes that faithful observance of the generally accepted norms and principles of international law concerning friendly relations and co-operation among States and the fulfilment in good faith of the obligations assumed by States are of the greatest importance for the maintenance of international peace and security.

46. It is the hope of the Republic of Azerbaijan that the Court, by answering the question referred, will contribute to the strengthening of the international legal order and enhancement of its role and effectiveness in international relations.

47. That concludes my statement. I should like to thank the Court for the courtesy with which it has heard my statement on behalf of the Republic of Azerbaijan.

Thank you very much.

The PRESIDENT: I thank His Excellency Mr. Agshin Mehdiyev for his presentation on behalf of Azerbaijan. I now call upon Her Excellency Ms Elena Gritsenko to the floor.

Ms GRITSENKO: Mr. President, distinguished Members of the Court, the Republic of Belarus attaches great importance to the hearings on the question of the *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo*. The International Court of Justice is the most appropriate institution for the comprehensive and impartial analysis of international legal issues related to this unilateral act.

The Republic of Belarus supported the adoption of the United Nations General Assembly resolution 63/3 on the request to the International Court of Justice for rendering an advisory opinion. Our support follows from the significance of finding actually stable and lasting solutions regarding the status of the territory for the States of the region and international community as a whole.

We believe that an advisory opinion of the United Nations principal judicial organ, composed of the world's foremost international lawyers, will promote the respect for the purposes and principles of the United Nations Charter in contemporary international relations, in general, and the rule of international law in the process of implementation of the right of self-determination, in particular.

The request of an advisory opinion of the International Court of Justice by the General Assembly is made in full compliance with the United Nations Charter, Statute of the Court and Rules of Procedure of the General Assembly.

Article 96 *(a)* of the Charter envisages that the General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question. Article 65 (1) provides that the Court may give an advisory opinion on any legal question at the request of any agency authorized to make such a request by the Charter of the United Nations or under this Charter.

In assessing whether the question is "legal" we are governed by the consistent practice of the Court. The practice regards the question as a legal one if it is formulated in legal terms, concerns

matters of international law and is susceptible to a reply based on law. The request of the General Assembly for an advisory opinion meets these criteria.

Many current acute questions of an international legal nature arise from political circumstances. The International Court of Justice rendered its reasoned advisory opinions under similar conditions more than once. We expect that an advisory opinion concerning the legality of the Unilateral Declaration of Independence of Kosovo will also provide clear guidance for settling the particular situation by virtue of the general perception accepted in international law with respect to correlation of the right of self-determination and principles of sovereign equality and territorial integrity.

Mr. President, distinguished judges, to prepare an advisory opinion the principal international legal sources should include:

— the United Nations Charter of 26 June 1945;

— the Final Act of the Conference on Security and Co-operation in Europe of 1 August 1975;

— the International Covenant on Civil and Political Rights of 16 December 1966;

— the International Covenant on Economic, Social and Cultural Rights of 16 December 1966; and, finally,

— the United Nations Security Council resolution 1244 (1999).

In order to determine and interpret applicable norms of international law, it is necessary to apply the international judicial practice and declarations and resolutions adopted within the framework of the United Nations. In this regard, particular attention is to be given to the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations of 1970 (resolution 2625 (XXV)), which enshrines the normative content of principles of international law.

Distinguished judges, Article 1 (2) of the United Nations Charter proclaims the purpose “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”.

The 1970 Declaration provides:

> "By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter."

The Declaration further spells out that the modes of implementing the right of self-determination can be "[t]he establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people".

The 1975 Helsinki Final Act enshrines interdependent principles of inviolability of frontiers, territorial integrity of States and equal rights and self-determination of peoples. The principle of right to self-determination is unambiguously limited to the "purposes and principles of the Charter of the United Nations and . . . the relevant norms of international law, including those relating to territorial integrity of States".

Article 1 of the 1966 International Covenant on Civil and Political Rights and Article 1 of the 1966 International Covenant on Economic, Social and Cultural Rights contain provisions reading as follows:

> "1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
>
> . . . . . .
>
> 3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."

The Republic of Belarus is highly committed to the right of peoples to self-determination and considers this right as a key principle of contemporary international law. Such perception of the right of peoples to self-determination is shaped by the United Nations practice, which is evidenced, *inter alia*, by the judgments and advisory opinions of the International Court of Justice. The major contribution to the development of the concept of self-determination in international law is made through the Advisory Opinions in the cases on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* (*I.C.J. Reports 1971*, p. 16), and *Western Sahara* (*I.C.J. Reports*

1975, p. 12), as well as Judgments in the cases concerning the *Frontier Dispute (Burkina Faso/Republic of Mali)* (*I.C.J. Reports 1986*, p. 554) and *East Timor (Portugal v. Australia)*, (*I.C.J. Reports 1995*, p. 90).

Two concepts of implementation of the right of self-determination, namely, concepts of internal and external right of self-determination, are established in international law. These two approaches stem from the basic documents regarding the right of self-determination, including the 1970 Declaration, as well as doctrine of international law.

The internal right of self-determination usually means the right of ethnic minorities for self-determination. Such right is implemented within the borders of the existing States and may involve such modes as national-cultural autonomy, territorial autonomy, federation, active participation in the single State's governance, etc.

The right for internal self-determination has evolved through the 1966 International Pacts and the 1970 Declaration on Principles of International Law, Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations.

External self-determination implies the right of the ethnic minority residing on a certain territory within the borders of a State to demand the secession of the said territory and to form a new independent State.

Contemporary international law only generates and accepts the possibility of external self-determination in situations "of former colonies; where a people is oppressed . . .; or where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development". Such a conclusion was made by the Supreme Court of Canada on the case concerning certain questions relating to *Secession of Quebec* from Canada. The Court's findings confirm the interpretation of the right of self-determination which was shaped within the United Nations framework during the second half of 20th century.

In the year 1960 the United Nations General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples, which proclaimed the necessity of "bringing to a speedy and unconditional end colonialism in all its forms and manifestations" (United Nations resolution 1514 (XV) of 14 December 1960). The Declaration proved to be a solid basis for interpretation of the right to self-determination within the context of decolonization. The

situation concerning status of Kosovo is different from that of decolonization and does not meet the traditional notion of the external right of self-determination. A general norm allowing unilateral secession beyond a decolonization context does not exist in international law.

The 1970 Declaration states that the principles of international law are intertwined and interdependent. Pursuant to the provisions of the Declaration, the right to self-determination is to be implemented in conformity with other principles of international law, in particular principles of sovereign equality and territorial integrity. However, the document contains certain elements which might serve as a basis to extend the traditional scope of the external right of self-determination.

According to the Declaration, the right to self-determination cannot be construed as

> "authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour".

Therefore, one may argue that these provisions can be interpreted in a manner allowing ethnic minorities to exercise the right of external self-determination in case of such minorities being deprived of the right of internal self-determination and being unable to take part in State governance together with the prevalent ethnic group. Nevertheless, this reasoning is not universally accepted and does not constitute a broad norm of international law. If central authorities respect the right to self-determination without any discrimination and the territory, notwithstanding this, demands for secession, such secession would be a manifest violation of the principles of self-determination, territorial integrity and inviolability of frontiers. Moreover, even if the discrimination does exist, it does not entail unconditional right of external self-determination. The 1970 Declaration clearly states that "any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter".

If one analyses the situation with Kosovo's Declaration of Independence beyond the traditional decolonization context of external self-determination, we will come to the conclusion

that there are no convincing legal arguments in favour of Kosovo's secession from the Republic of Serbia.

From the retrospective point of view, it is worth noting that the 1974 Socialist Federal Republic of Yugoslavia (SFRY) Constitution granted ample powers to the region in question making it a *de facto* self-dependent subject of the federation. The representatives of Kosovo were members of the common State governance body — Socialist Federal Republic of Yugoslavia Presidium, which enrolled representatives from all the republics of the federation. Kosovo had the right to delegate 28 (out of a total of 308) deputies to the Yugoslavian *Skupschina*, 20 (out of a total of 220) deputies to the Union *Veche*, and 8 (out of a total of 88) deputies to the *Veche* of the republics. Moreover, regional authorities were granted a veto right on the republican level. Kosovo had its own Central Bank, police, education system (including institutions where teaching took place in the Albanian language) and a university. The scale of implementation of Albanians' right to self-determination in Yugoslavia is illustrated by the number of ethnic Albanians holding high offices during different periods.

The authorities of SFRY have thus granted the autonomous region and the republics equal rights except for one — it could not effect secession from Serbia.

The aggravation of the situation with respect to Kosovo in the period 1992-1994 did not legitimize the right of the Kosovo's Albanian population to effect secession from the Federal Republic of Yugoslavia. On the contrary, the United Nations Security Council resolution 1244 (1999) of 10 June 1999 confirms the obligations of the United Nations Member States with respect to sovereignty and territorial integrity of the Federal Republic of Yugoslavia set forward in the Helsinki Final Act. With regard to Kosovo's status, paragraph 11 *(a)* of the resolution stresses the primary necessity of granting a substantial autonomy and meaningful self-governance for the region. All other matters regarding a political process designed to determine Kosovo's status are to be settled with the participation of the United Nations Security Council and the parties concerned, taking into account the Rambouillet Accords.

Resolution 1244 (1999) is a binding instrument, specifically aimed at solution of the Kosovo question. Applicable provisions of the United Nations Charter, the Helsinki Final Act and other international legal instruments are to be interpreted in the light of the said resolution. The

Declaration of Independence of Kosovo directly refers to the resolution as an international instrument in force.

The Republic of Serbia did not refuse to co-operate under resolution 1244 (1999) on the issue of a substantial autonomy and meaningful self-governance. Therefore, even if a broad interpretation of the right to self-determination is invoked, there are no grounds to presume that the authorities of the Republic of Serbia denied the possibilities for Kosovo to implement internal self-determination in conformity with the United Nations Security Council resolution 1244 (1999).

The question to be addressed in the requested advisory opinion refers to the observance of legal requirements for a declaration of independence and secession of territory from a single State. It does not encompass a subject of consequences of recognition of *de facto* independence by the international community.

In the opinion of the Republic of Belarus, the following acts of the recognition of Kosovo as a sovereign State should not prejudice an analysis of legitimacy of the effected declaration of independence under international law.

Mr. President, distinguished judges, in conclusion, we would like to emphasize that self-determination in no case seems to be absolutely synonymous with independence. For attainment of this right which the Covenant on Civil and Political Rights defines as “to freely determine their political status and pursue their economic, social and cultural development”, freedom is more important than independence. Adequate constitutional arrangements within a single State can satisfy the rights of ethnic minorities, including the right to development.

The principles of international law being interpreted in good faith and in a harmonious and systematic manner allow us to arrive at the conclusion that the external self-determination is an extraordinary event, which may take place only under extreme conditions. Historically, only colonial oppression is universally accepted as such an extreme condition constituting a special case for external self-determination. The Republic of Belarus does not perceive such conditions in the Kosovo case.

So, distinguished judges, I thank you very much for your attention.

The PRESIDENT: Thank you very much, Your Excellency Ms Elena Gritsenko, for your presentation.

That concludes the oral statement and comments of Belarus and brings to a close today's hearings. The Court will meet again tomorrow at 10 a.m. when it will hear Bolivia, Brazil, Bulgaria and Burundi. The Court is adjourned.

The Court rose at 11.30 a.m.