Embassy of the Islamic Republic of Iran
Duinweg 20, The Hague

In the name of God

The Embassy of the Islamic Republic of Iran presents its compliments to the International Court of Justice and, with reference to the letter of 10th October 2009 from the Court's Registrar on the request for an advisory opinion by the United Nations' General Assembly concerning "Accordance with international law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-government of Kosovo" and within the time-limit set in the Court's order of 17 October 2008, has the honour to submit enclosed the written statement of the Islamic Republic of Iran.

Due to time constraints the statement is submitted in English only. The Embassy of the Islamic Republic of Iran avails itself of this opportunity to renew to the International Court of Justice the assurances of its highest consideration.

The Hague, 17 April 2009

EMBASSY OF THE ISLAMIC REPUBLIC OF IRAN
سفارت جمهوری اسلامی ایران
لاهه
THE HAGUE

Majid Ghahremani
Chargé d'Affairs ad interim

Registry of the International Court of Justice

Islamic Republic of Iran

Written Statement of The Islamic Republic of Iran

In the case concerning

Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo

before

The International Court of Justice

17 April 2009

In the name of God

Introduction

At the outset, the Islamic Republic of Iran would like to reaffirm its strong commitment to and high respect for the principles of pacific settlement of disputes and the rule of law at the international level as embodied in the United Nations Charter.

Government of the Islamic Republic of Iran is pleased to submit to the International Court of Justice (I.C.J.) its written observations with regard to the case concerning ***"Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo",*** according to Article 66 of the Court Statute and Article 104 of the Rules of the Court. This statement is provided in reply to the Court's Order dated 17 October 2009 and the letter of the Court's Registrar of 10th October 2009 in which the UN Member States are permitted to furnish information on all aspects related to the mentioned case.

This written statement will briefly deal with the question of jurisdiction of the Court to entertain the present case and it will generally comment on certain legal issues related to the question of the United Nations General Assembly as specified in Resolution A/RES/63/3 dated 8 October 2008), namely:

> "Is the unilateral declaration of independence by the Provisional Institution of Self-Government of Kosovo in accordance with international law?"

1. The ICJ has jurisdiction to render an advisory opinion as requested by the GA of the U.N.

1.1. As to the validity of any requests for the advisory opinion of the Court, reference shall be made to Article 96 of the Charter of the United Nations which permits the General Assembly, the Security Council and other organs of the United Nations or authorized specialized agencies to request the Court to render an advisory opinion on any legal

question. The Islamic Republic of Iran is of the view that the General Assembly was duly authorized to request the present advisory opinion and the relevant resolution[1] has been adopted according to the rules of procedure of the Assembly.

1.2. The consideration of the issues related to Kosovo before other organs of the United Nations, in particular the Security Council, is not a legal impediment for the General Assembly to request an advisory opinion. Although in accordance with Article 24 of the United Nations Charter "the primary responsibility" for the maintenance of international peace and security has been conferred on the Security Council, but the General Assembly has a clear role in this regard in accordance with the United Nations Charter too. As the practice of the United Nations shows[2], the Security Council and the General Assembly according to Article 12 of the Charter, could deal in parallel with the same matter concerning the maintenance of international peace and security.

1.3. The request of the General Assembly seeking the Court's opinion on the legality of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo needs the Court to consider the relevant rules and principles of international law, in particular the relevant customary rules. In this respect, the Court shall consider the state practices and practice of the Security Council and General Assembly on relevant questions. Therefore, the question has been "framed in terms of law and raises problems of international law" and is "susceptible of a reply based on law".[3] The issues that shall be considered by the Court could be qualified as "legal" in the meaning intended in Article 96 of the United Nations.

1.4. The political aspects of the question or political purposes of the Drafters of the Resolution are not legitimate grounds for the Court to decline to exercise its advisory jurisdiction in the present case. It is true that the Court possesses a judicial discretion in giving any advisory opinion[4], but it could not apply such discretion in an arbitrary manner. According to the established practice of the Court, only "compelling reasons" might be considered as reasonable ground to decline to respond to a request for an advisory opinion. The Islamic Republic of Iran is of the view that no such ground is available in the present case.

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[1] - A/RES/63/3, 8 October 2008.
[2] - *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* I.C.J. Reports 2004, pp. 149-150.
[3] - I.C.J. Reports 1975, p. 18.
[4] - Paragraph 1, Article 65 of the Statute of the Court.

1.5. In light of what is stated above, the Islamic Republic of Iran requests the Court to conclude that it has the competence to deliver its opinion on the question posed by the General Assembly. The Court through rendering its opinion will definitely contribute to the maintenance of international peace and security and strengthen the rule of law at the international level.

2. The principle of Territorial Integrity is recognized as a peremptory norm (*Jus Cogens*) in International Law

2.1 International Law places great importance on the "territorial integrity" of nation-states. Principle of territorial integrity shall be treated as a "norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted."[5] The principle of territorial integrity can be described as the cornerstone of the United Nations Charter, and the main goal and raison d'être of the concept of collective security enshrined in the Charter. The highly respected nature and status of this principle in international law indicates that no derogation from this principle is acceptable.[6]

2.2. This principle has been repeatedly confirmed by international instruments and decisions of international bodies both at international and regional levels. There can be found numerous referrals to this principle in many international[7] and regional[8] instruments and documents.

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[5] - Vienna Convention on the Law of Treaties 1969, Article 53, done at Vienna on 23 May 1969, entered into force on 27 January 1980, United Nations, *Treaty Series*, vol. 1155, p. 331.

[6] - Paragraph 2, Article 41 of the International Law Report (ILC) draft articles on Responsibility of States for International Wrongful Acts stipulates that "no State shall recognize as lawful a situation created by serious breach [of an obligation arising under a peremptory norm of general international law] … , nor render aid or assistance in maintaining that situation."
Report of the International Law Commission, 2001, A/56/10, p. at 286.

[7] - See: UN Charter, Article 2, paragraph 4; Declaration on Principles of International Law concerning Friendly Relations and cooperation among states in accordance with United Nations Charter, Annex to the General Assembly Resolution 2625, 24th October 1970; UN Millennium Declaration, General Assembly Resolution 55/2, 18 September 2000; the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, General Assembly Resolution 50/6, 9th November 1995; resolution on "Maintenance of International Security - Prevention of the Violent disintegration of states, General Assembly Resolution 53/71, 4th December 1998; Vienna declaration and Program of Action, Adopted by consensus by the representatives of 171 states at the end of the World Conference on Human Rights, Vienna, 14-25 June 1993;

3. The Principle of Territorial Integrity also applies within states

3.1. The Islamic Republic of Iran believes that the principle of territorial integrity prevails both between and within states. It might falsely be argued that the principle of territorial integrity applies solely *between states* in their relations, i.e. only *states* are obliged to respect territorial integrity of the other states and not to encroach on the territory of their neighbors and other states. In other words, the principle of territorial integrity does not apply *within* states and therefore *secession* does not violate the principle of territorial integrity and secessionist activities have nothing to do with the aforesaid principle.

3.2. In many international legal instruments, one can find examples of the strong belief of the international society in the principle of territorial integrity, even during a non-international armed conflict and in relation between the government and the rebellion. Some exemplary instances of this approach can be found in the practice of international organizations. For instance, the Security Council practice shows the great degree of importance that this council attaches to the principle of territorial integrity of states even in time of non-international armed conflicts.[9]

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[8] - See: Declaration on Principles Guiding Relations Between Participating States, Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 30 July to 1 August 1975 under the auspices of the Organization for Security and Co-operation in Europe, Principle IV; Charter of Paris for a New Europe, 21st November 1990, section Friendly Relations among Participating States (with the participation of the U.S. and Soviet Union).

[9] - See for example Resolution 688 dated 5 April 1991 about Iraq. The Security Council in this resolution while the Security Council *"Gravely concerned by the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, which led to a massive flow of refugees towards and across international frontiers and to cross-border incursions, which threaten international peace and security in the region, Deeply disturbed by the magnitude of the human suffering involved…"*, it Reaffirmed *"the commitment of all Member States to the sovereignty, territorial integrity and political independence of Iraq and of all States in the area"*. The same position taken in the Security Council Resolution dated 1287 dated 31 January 2000 about Georgia. The Council in the resolution reiterated *"its call for the parties to the conflict to deepen their commitment to the United Nations-led peace process, continue to expand their dialogue, and display without delay the necessary will to achieve substantial results on the key issues of the negotiations, in particular on the distribution of constitutional competences between Tbilisi and Sukhumi as part of a comprehensive settlement, with full respect for the sovereignty and territorial integrity of Georgia within its internationally recognized borders;"*. See also Security Council Resolution 794 dated 3 December 1992 about

3.3. The General Assembly has taken the same approach with respect to the principle of territorial integrity as well.[10] For instance in the case concerning Comorian Island of Mayotte, although there was a non-international armed conflict going on within Comoros aiming at separation of the island of Mayotte, and a referendum was held in Mayotte the result of which was the will of the majority of inhabitants of the island not to join the newly independent state of Comoros, the General Assembly of the United Nations in many resolutions for nearly two decades affirmed the unity and territorial integrity of the Comoros, and the sovereignty of the Islamic Federal Republic of Comoros over the Mayotte island.

3.4. Even the Rome Statute of the International Criminal Court, which is the first international instrument qualifying serious violation of humanitarian law during non-international armed conflicts as war crimes, upholds that the principle of territorial integrity of states can be invoked against subversion during a non-international armed conflict. The Statute of the Court, in concluding the definition of war crimes affirms that *"Nothing in paragraphs 2 (c) and (d) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means."*[11] The reason behind the inclusion of this safeguard clause was to prevent any misperception that the fight against impunity might undermine the principle of territorial integrity of the states facing internal crises.

3.5. Furthermore, in all regional arrangements, the issue of territorial integrity has been of paramount importance for the participating countries. There are many examples of this approach taken

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Somalia; Security Council Resolution 1484 dated 30 May 2003; and Resolution 1501 dated 26 August 2003 about Democratic Republic of Congo.

[10] - See for example these resolutions about the Comorian Island of Mayotte: 3161 of December 14th 1973, 3291 of December 13th 1974, 31/4 of October 21st 1976, 32/7 of November 1st 1977, 34/69 of December 6th 1979, 35/43 of November 28th 1980, 36/105 of December 1981, 37/65 of December 3rd 1982, 38/13 of November 21st 1983, 39/48 of December 11th 1984, 40/62 of December 9th 1985, 41/30 of October 26th 1988, 44/9 of October 1989, 45/11 of November 1990, 46/9 of October 1991, and 47/9 of October 28th 1992.

[11]- Rome Statute of the International Criminal Court, Article 8, Paragraph 3.

by regional forums and organizations in the constitutive instruments.[12] Practice of European countries regarding the dissolution of the former Yugoslavia is another example of the importance of the principle of territorial integrity in time of non-international armed conflicts. Members of the European Communities in their Statement of Principles in London Conference regarding the conflict in Bosnia – Herzegovina stated that "*a Political settlement in Bosnia Herzegovina must include respect for the integrity of present frontiers unless changes by mutual agreement."*[13]

3.6. Additionally, after the Proclamation of Independence of Republika Srpska by Serb minority living in Bosnia-Herzegovina, the EC's Arbitration Commission (Badinter Commission) on 11th January 1992 in its Opinion No. 2 specifically addressed the right to self-determination of the Serbs within Bosnia Herzegovina. In response to the question that "Does the Serbian population in Croatia and Bosnia and Herzegovina, as one of the constituent peoples of Yugoslavia, have the right to self-determination?" The Commission concluded that "the Serbian population in Bosnia and Herzegovina and Croatia is entitled to all the rights concerned to minorities and ethnic groups..." and "that the Republics must afford the members of those minorities and ethnic groups all the human rights and fundamental freedoms recognized in international law, including, where appropriate, the right to choose their nationality." The Commission considers them as a *minority* and denied that they had any right to form an independent state and secede from Bosnia-Herzegovina (external self-determination was denied). On the other hand, it affirmed that the Serbs had the right of self-determination at the internal level (enjoying full rights granted to minorities by international law).

4. Inviolability of the principle of Territorial Integrity even in case of serious violations of Human Rights and Humanitarian Law

4.1. Even a large scale and systematic violation of international humanitarian law and human rights law in some parts of the territory of the state concerned, does not create a right of unilateral secession for the victims. It might be argued that the safeguard clause to the Declaration on Principles of International Law concerning Friendly Relations and cooperation among states in accordance with United Nations Charter

[12] - Cf: Constitutive Act of the African Union, Article 3 (b); Constitutive Act of the African Union, Article 4 (h); Constitutive Act of the African Union, Article 4 (b); the Pact of the Arab League of states (Arab League).

[13]- Statement of Principles, London Conference regarding the conflict in Bosnia – Herzegovina, 28th August 1992, point VIII.

(1970) restricts the principle of territorial integrity of states to observance of certain criteria:

> "*…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."*

Some might argue that the above mentioned phrase authorizes a minority which is subject to large-scale violation of human rights and humanitarian law to exercise the right to self-determination and secede. But we believe that even in that case, the principle of territorial integrity must be respected, and has been respected in all similar occasions. In other words, the right to self-determination for minorities is an internal one and means their entitlement to democracy and human rights and does not involve any right to secession. This means that the right of self-determination is not a principle of exclusion or separation but a principle of inclusion.

4.2. In this regard, some explicit examples of the practice of the international community towards the situations in which, during a non-international armed conflict, the magnitude of the violations of human rights and humanitarian law was a real concern can be observed. In all these examples, the international community though strongly condemned the violations and endeavored to stop them, never gave up the principle of territorial integrity.[14]

[14] - See for example the state practice with respect to the Chechnya declaration of independence on 2 November 1991. The Security Council also has repeatedly reaffirmed *"its commitment to the sovereignty, unity, independence and territorial integrity of Sudan…"* in the case of Darfur. See the Security Council Resolutions 1841 of October 15th 2008; 1828 of 31 July 2008; 1779 of 28 September 2007; 1769 of 31 July 2007; 1713 of 29 September 2006; 1672 of 25 April 2006; 1665 of 29 March 2006; 1651 of 21 December 2005; 1591 of 29 March 2005; 1574 of 19 November 2004; 1564 of 18 September 2004; 1556 of 30 July 2004 and 1547 of 11 June 2004. The practice of the United Nations in case of the non-international armed conflict in Kosovo itself is another good proof to show that not only the principle of territorial integrity extends beyond the relations between states and includes situations of secessionism, but also even grave violations of human rights cannot cause any flaw in the application of the principle of territorial integrity. See the Security Council resolutions 1203 of 24th October 1998; 1239 of May 14th 1999 and 1244 of 10th June 1999. The same attitude has been followed by the Council in other resolutions on the non-international armed conflict between the Yugoslavia/Serbia government and the Kosovo Liberation Army, such as resolution 1160 of 31st March 1998 and 1199 of 23rd September 1998.

5. Territorial Integrity and a clear difference between "minorities' rights" and "right to secession":

5.1. Sometimes it is argued that common article 1 of the human rights covenants which states that "*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*" paves the way for the minorities to secede. In this regard, there needs to be a clear understanding of the difference between right to self-determination, minorities' rights and secession. In international law and international practice, all states are under the obligation to observe and respect all rights of the minorities as affirmed in article 27 of the International Covenant on Civil and Political Rights[15], but this obligation in no way contradicts the principle of territorial integrity.

5.2. As stated in various instruments and declarations of competent international authorities, there is no right to unilateral secession by minorities recognized by international law. As quoted before, the EC Arbitration Commission in its opinion on the question on Serb minorities of Croatia and Bosnia Herzegovina, (Republika Srpska) denying any right to secession for them, affirmed their rights as a minority. The Commission stated that:

> *"the Republics must afford the members of those minorities and ethnic groups all the human rights and fundamental freedoms recognized in international law, including, where appropriate, the right to choose their nationality."*

The same line has been followed in the United Nations Agenda for Peace:

> "*…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.*"
>
> And

[15]- Article 27: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

"*One requirement for solutions to these problems lies in commitment to human rights with a special sensitivity to those of minorities, whether ethnic, religious, social or linguistic.*" [16]

5.3. To guarantee the minorities rights doesn't imply a right to secede and the distinction between minority rights and the right of peoples to self-determination should be kept in mind, the latter does not apply to the groups and minorities within states. In this regard, reference has to be made to general comment n. 23 of Human Rights Committee in which the Committee states that:

"…In some communications submitted to the Committee under the Optional Protocol, the right protected under article 27 has been confused with the right of peoples to self-determination proclaimed in article 1 of the Covenant…

…the Covenant draws a distinction between the right to self-determination and the rights protected under article 27…

… The enjoyment of the rights to which article 27 relates does not prejudice the sovereignty and territorial integrity of a State party."[17]

5.4. The same pattern was followed by the United Nations Security Council when dealing with the situation of ethnic Albanian minorities in Kosovo. The solution envisaged by Resolution 1244 regarding the situation in Kosovo though providing for a substantial self-government for Kosovo, takes full account of the principle of sovereignty and territorial integrity of Serbia.

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[16]- Paragraph 17 Agenda for Peace – 30th 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. See also: International Law as a Langue for International Relations, United Nations Proceedings of the United Nations Congress on Public International Law, New York, 13-17 March 1995, p. 596.

[17]- General Comment No. 23: The rights of minorities, Art. 27, 08/04/94, CCPR/C/21/Rev.1/Add.5, General Comment No. 23. (General Comments)

Conclusion

Principle of territorial integrity has a great position in international law. The practice of states and international organizations indicates that no derogation is permitted from this principle. States practice since 1945 shows very clearly the opposition of states to recognition or accepting unilateral secession outside the colonial context. In fact, the only exceptions in this general rule are either dissolution of a federation or consensual secession, i.e. with the consent of mother-state.

One of the former Secretary Generals of the United Nations, in his declaration of 9th January 1970 articulates the same:

> "*…as an international organization the U.N. has never accepted and does not believe that it will ever accept the principle of secession of a part of its member states.*"[18]

Finally, the Islamic Republic of Iran would like to stress that the International Court of Justice, as the principal judicial organ of the United Nations, has the duty to guarantee the integrity of the United Nations Charter, Article 2 paragraph 4 of which considers the principle of territorial integrity as one of the main objects and purposes of the UN Charter.

The case-law of the International Court of Justice manifests that the Court, through its comprehensive legal attitude towards the cases, has always played an important role in maintaining international peace and security. This was the main reason the Islamic Republic of Iran voted in favor of the General Assembly's resolution requesting an advisory opinion from the Court.

The response by the International Court of Justice in this case to the question raised by the General Assembly should not send a wrong signal. To neglect the principle of territorial integrity of states by the Court might rather encourage some separatist groups to act violently so to provoke the government authorities to respond violently in return in order to cause and then take advantage of a situation of humanitarian law violations. This vicious circle of violence will not only endanger the territorial integrity of states, but also will threaten the international peace and security.

[18]- U Thant, Interview on 9 January 1970, UN Monthly Chronicle, Feb 1970

At the end, the famous remarks by the then Secretary General of the United Nations in closing session of the United Nations Congress on International Law seems to be of relevance today:

> *"…On peut respecter les minorités, comprendre les particularités, accepter la diversité sans céder pour autant a l'émiettement et au fractionnisme. Ce serait la une interprétation fort perverse du droit des peuples a disposer d'eux mêmes qui de considérer que chaque entité sociale ou ethnique qui s'estime différente de son voisin pour des raisons souvent ambiguës et parfois condamnables peut accéder a la reconnaissance internationale."*[19]

[19]- Boutros Boutros Ghali, March 13th 1995, United Nations Headquarters, New York.