



American Model United Nations
International Court of Justice

IN THE INTERNATIONAL COURT OF JUSTICE

REQUEST FOR ADVISORY OPINION

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

MEMORIAL OF THE ISLAMIC REPUBLIC OF IRAN

COMES NOW the Islamic Republic of Iran and for their Memorial to the Court states the following:

STATEMENT OF FACT:

Even before the establishment of the Socialist Federal Republic of Yugoslavia in 1945, Kosovo was considered to be of Serbia, despite that territory's increasing Albanian majority. In 1974, Kosovo was made an autonomous province and federal unit within Yugoslavia, equal to Serbia.

In 1989 Serbia ratified, with the consent of Kosovo, amendments to its constitution which decreased Kosovo's autonomy. In 1999, after the failure of the Rambouillet Accords to provide for a Kosovar peace settlement, the North Atlantic Treaty Organization (NATO) began military campaigns against Serbia. These NATO attacks ended after agreements were made between NATO and Yugoslavia. Soon after the United Nations Security Council formalized this agreement with the passage of Resolution 1244, which reaffirmed the territorial integrity of Yugoslavia and established a basis for a Kosovo solution in the form of a United Nations mission to Kosovo. This mission was called the United Nations Mission in Kosovo (UNMIK).

In 2001, Serbia declared that NATO had failed to properly enforce Resolution 1244 and Kosovo rejected a proposal for unification with Serbia.

On February 17, 2008 Kosovo unilaterally declared independence from Serbia and ratified its own constitution in June of that year. Serbia then sponsored a resolution in the United Nations General Assembly (UNGA), which asked for the International Court of Justice (ICJ) to render an advisory opinion on the legality of Kosovo's unilateral declaration of independence and determine whether or not that declaration violated international law.

STATEMENT OF JURISDICTION:

- (a) According to Article 96 of the United Nations Charter, various organs of the United Nations, including both the Security Council and General Assembly, are authorized to request this Court to render an advisory opinion on an international legal matter.
- (b) Although Article 24 of the United Nations charter vests the "primary responsibility" for the maintenance of global peace with the Security Council,

the General Assembly also has a duty to consider similar issues. Indeed, Article 12 stipulates that the General Assembly and the Security Council can consider similar issues at the same time.

STATEMENT OF LAW:

- a) Security Resolution 1244 states that there is to be a settlement to the Kosovo question. However, that resolution provides for a clearly defined process, which is the UN Mission in Kosovo. By abrogating and unilaterally exceeding the UNMIK agreement, Kosovo violated international law by declaring its independence separate of the UN mandated procedure.
- b) The Vienna Convention on the Law of Treaties of 1969 refers to the international legal norms concerning territorial integrity explaining that territorial integrity is a “norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted.”
- c) Paragraph 2, Article 41 of the International Law Report of the International Law Commission on Responsibility of States for Internationally Wrongful Acts states 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.
- d) Of the United Nations charter, Article II, Section 1 states that “the organization is based on the principle of the sovereign equality of all its members. Moreover, Article II, Section 7 explains that “nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.” Even within the UN Charter there is desire for states to be secure in their territorial integrity.
- e) The European Community Arbitration Commission elucidated in its opinion on the issue of Serb minorities in Croatia and Bosnia and Herzegovina that those Serbs were an ethnic minority due the rights of minorities but not provided for the right to secede. The opinion states 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.”

ARGUMENTS:

- a) States are to be secure in their territorial sovereignty and possess a fundamental right, stipulated in Article II, Section 4 of the UN Charter, to be able to maintain territorial integrity. Indeed, this right to territorial integrity is integral to the functioning and survival of the state itself. To ignore that right is to undermine the validity of the state and empower any group or entity to become equal to the state itself. Such a notion is blatantly repugnant to the very foundations of the UN.
- b) Moreover, the principle of territorial integrity also applies within states. Invasion is not the only means of depriving a state of its territorial integrity. Secession too can serve that purpose and is in similar violation of international law. For example, although the Comorian Island of Mayotte voted to become independent from the rest of Comoros, the UN General Assembly held, more over twenty years, that such a vote was invalid and that Comoros held complete control over

- its territory including Mayotte.
- c) Finally, international law reflects the difference between minority rights and the right to secession. These are two fundamentally different rights and for good reason. Within states, minorities are to be accorded the same rights as citizens. This does not, however, mean that all minorities possess the right to secede from their parent state. If such was the case, there would be no limit the fragmentation that would occur within states. The United Nations Agenda for Peace has powerfully and cogently noted that "...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."

SUMMARY AND REQUESTS:

In summation, Iran believes that territorial integrity, both against foreign invasion and domestic disturbance, is the prime directive that the United Nations as a peace-seeking body must uphold. In accordance with these beliefs, the Islamic Republic of Iran strongly urges the International Court of Justice to examine thoroughly the plentiful evidence opposing the unilateral independence of Kosovo, and present its ruling to the international community.