



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

STATEMENT OF THE GOVERNMENT OF THE REPUBLIC OF IRELAND

COMES NOW in consensus with the Republic of Ireland and for their Memorial to the Court states the following:

STATEMENT OF FACT:

On 26 March 2007, the Republic Kosovo committed itself to implement the fully the Ahtisaari plan, which was supported by the United States and the European Union, with the exception of a few nations.

On 17 February 2008, a resolution declaring Kosovo as “a democratic, secular and multi-ethnic republic, guided by the principles of non-discrimination and equal protection under the law,” was adopted by the Kosovo Assembly. On 28 February 2008, the independence of the Republic of Kosovo was recognized by Ireland, and was the twenty first member of the UN out of 69 (by 10 May 2010) to do so. In response to this action by Ireland, the Minister for Foreign affairs verified that 90% of the population of Kosovo wanted independence.

At the General Affairs and External Relations Council (GAERC), EU foreign ministers stressed in 18 February that through the turmoil in the 1990’s, Kosovo followed the UN Security Council Resolution 1244 since 1999 to be under international administration.

STATEMENT OF JURISDICTION:

a) *East Timor (Portugal v. Australia)* Opinion 30 June 1995, ICJ Reports 1995, 90, at paragraph 28, where the Court held, “that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable. ... it is one of the essential principles of contemporary international law.”

b) The ruling of the International Committee of Jurists in the 1920 - 1921 Åland Islands arbitration found that “there was no right to secede absent ‘a manifest and continued abuse of sovereign power to the detriment of a section of population.’”

c) UN Security Council Report 1244, adopted on 10 June 1999, prompting principles on the solution to Kosovo’s crisis, such as, “immediate and verifiable end of violence ... withdrawal of military, police and paramilitary forces ... establishment of interim administration and political framework ... the safe and free return of refugees.”

STATEMENT OF LAW:

(a) Under the Constitution of the Socialist Federal Republic of Yugoslavia of 1974, Kosovo is considered a fully autonomous province with its own legal federal government within Yugoslavia. The Constitution also establishes Kosovo's right to full representation within the Yugoslav government on all federal decisions.

(b) The Constitution of the Socialist Federal Republic of Yugoslavia of 1974 states that Kosovo retains "full equality... in regard to [Kosovo's] participation in the federation, by determining that federal decisions were to be made 'according to the principles of agreement among the republics and autonomous provinces.'" This includes Kosovo's rights in participation of federal changes to autonomous provinces' territories and borders, as well as rights in agreeing to maintain or revoke an autonomous province's autonomy.

(c) The principle of international law of *carance de souveraineté* affirms situations "where a territory is so misgoverned by a state that secession is permitted," such as cultural rights of self-determination violations or human rights violations aimed at a certain group of peoples within the sovereign nation.

ARGUMENTS:

1. The Constitution of the Socialist Federalist Republic of Yugoslavia of 1974 gives full autonomy to Kosovo, and grants Kosovo equal participation in federal decisions, as well as equal rights in determining the status of its autonomy and the status of its territory. Included in these rights is Kosovo's right to end participation in federal decisions if it judges that federal decisions are not in agreement with Kosovo's.

2. The 1989 - 1990 amendments of the Serbia Assembly made to the Constitution, which removed Kosovo's autonomy, blatantly violates the Yugoslav legal framework established by the 1974 Constitution as the amendments were made without the agreement of the autonomous Kosovic government. They were made to exclude the population of Kosovar Albanians from participating in the Yugoslav federal government.

3. As stated in UN Security Council Report 1244 on human rights violations in Kosovo, Serbian authorities performed multiple ethnic abuses on Kosovar Albanians, including "torture, indiscriminate and widespread shelling, mass forced displacement of civilians, summary executions and illegal detention of ethnic Albanians in Kosovo by the Yugoslav police and military."

4. Kosovo's unilateral declaration of independence is also not illegal due to the lack of international law dictated over such unilateral secession.

SUMMARY AND REQUESTS:

The Republic of Ireland finds that Kosovo's unilateral declaration of independence is legal. Ireland's decision is based on the legality of Kosovo's actions based on Yugoslavia's Constitution as well as the rulings of past jurisdictions of self-determination and human rights violations. Also, the Republic of Ireland reminds the Court that Kosovo's actions are by nature legal due to a lack of international law determining the legality of unilateral secession.

Confirming that Kosovo deserves the right for self-determination, and has proven itself worthy through its efforts to abide by UN Security Council Resolution 1244 as well as the Ahtisaari plan, the Republic of Ireland stands by our decision to recognize

Kosovo's declaration of independence. The Republic of Ireland also hopes the Court approves of Kosovo's independence, and aids them in a smooth transition into nationhood. Should the legality of Kosovo's declaration of independence be found lacking, the Republic of Ireland advises the Court to use discretion in forming the final opinion due to a lack of international framework.