



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

THE MEMORIAL OF THE REPUBLIC OF KOSOVO

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

STATEMENT OF FACT:

When the Constitution of the Socialist Federal Republic of Yugoslavia was rewritten in 1974 Kosovo was established as an autonomous province within Serbia and federal unit accorded the same rights and privileges as the six republics. In 1989 amendments were made to the Serbian Constitution that stripped Kosovo of its autonomy. Following this was the violent dissolution of the Socialist Federal Republic of Yugoslavia and the attempts of Serbia and President Slobodan Milosevic to dominate Yugoslavia. These attempts included violence against ethnic Albanians, as well as human rights violations and the policy of ethnic cleansing. The North Atlantic Treaty Organization attempted to negotiate an end to the violence and establish Kosovar self-governance with the Rambouillet Accords in 1999, but their failure led to a NATO bombing campaign that forced Yugoslavia to sign a peace agreement with NATO. This agreement was cemented by the Security Council in Resolution 1244. In 2001 Yugoslavia and Serbia issued a declaration that NATO had failed to enforce Resolution 1244 and began drafting a new constitution. The 2006 Constitution of the Republic of Serbia rejected Kosovar autonomy and self-governance. This led Kosovo to claim that all negotiations had reached a stalemate and that a Kosovar Declaration of Independence was the best solution for the stability of the region. On 17 February 2008 Kosovo signed a Declaration of Independence.

STATEMENT OF JURISDICTION:

1. Resolution 63/3 passed by the General Assembly seeks the advisory opinion of the Court. And under Article 96, paragraph 1, of the Charter, the General Assembly has the power to request an opinion on any legal question.
2. However, the Court should keep in mind that the question presented in resolution 63/3, while narrow, it is inherently biased. The resolution was sponsored by Serbia and passed with little debate in the General Assembly.
3. Additionally, under Article 92, of the Charter the Court is the judicial organ of the Organization, not member states. The request was made not to assist the General Assembly, but as “legal advice” for member states and is further more

inherently biased. The Court should be sure to only advise the Organization, not member states.

4. The Court only has jurisdiction over the original question. The Court is only asked to answer the question in its original meaning. The Court may not rule on the consequences of the Declaration's conformity or violation of international law, nor may it rule on the legal status of the Republic of Kosovo.

STATEMENT OF LAW:

(a) Resolution 1244, passed by the Security Council in 1999, reaffirmed the commitment of all Member States to the territorial and sovereign integrity of Yugoslavia, guaranteed refugees the right of return, established the basis for a Kosovo solution, and established the United Nations Interim Administration Mission in Kosovo. This resolution further reaffirmed the United Nations commitment to "substantial autonomy and meaningful self-administration for Kosovo."

(b) The Rambouillet Accords established Kosovo as an autonomous province within Yugoslavia and represent a consensus that Kosovo should have substantial autonomy, including mechanisms for elections, governance, and a judicial system.

(c) The principle of *carance de souverainete*, or lack of sovereignty, is an international custom that recognizes the secession of a territory when that territory is misgoverned to the extent that self-determination within an existing state is not possible.

ARGUMENTS:

a) There is no applicable international law prohibiting the Declaration of Independence. It was a factual event that is not regulated by general international law. Since all proceedings start from an assumption of permissibility, if there is no law prohibiting the act it is not in violation of international law. Additionally, there are several historical examples of states issuing declarations of independence and not being found to be violating international law. The declarations of Slovenia and Croatia are further regional examples of declarations of independence not condemned by international law.

b) The Declaration of Independence did not violate Security Council Resolution 1244. Resolution 1244 did not determine what the outcome of the settlement should be or require that the settlement be approved by Serbia or the Federal Republic of Yugoslavia. The Declaration was not declared null and void by the Secretary-General's Special Representative, the person authorized to monitor the implementation of 1244. Additionally, the preambular reference to "sovereignty and territorial integrity" is non-binding and cannot be constructed to create an obligation not to declare independence.

c) The long history of abuses suffered by the Albanian people provides enough impetus for the Declaration of Independence and it cannot be denied that it is the "will of the people" that Kosovo be autonomous.

SUMMARY AND REQUESTS:

Reminding the Court that a long history of abuse and desire for self determination prompted the issuing of a Declaration of Independence, and that this Declaration does not

violate Security Council Resolution 1244 or international law, the Republic of Kosovo respectfully requests that the Court find the Declaration of Independence of 17 February 2008 not in violation of any applicable international law.