



American Model United Nations
International Court of Justice

**IN THE
INTERNATIONAL COURT OF JUSTICE
OF THE
AMERICAN MODEL UNITED NATIONS**

ADVISORY OPINION

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

ARGUED: November 25, 2013
DECIDED: November 26, 2013

The Majority opinion was signed and agreed to by Justice Bell, Justice Burns, Justice Faler, Justice Gronli, Justice Jackson, Justice Lanczak, Justice Rettig, Justice Walsh, Justice White, and Justice Williams.

This Court has been asked to address the validity of “the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law” within Resolution 63/3 of the General Assembly (GA). Under Article 96, Paragraph 1 of the Charter of the United Nations, the GA “may request the International Court of Justice (ICJ) to give an advisory opinion on any legal question.” Therefore, this Court finds that jurisdiction has been established.

Recalling the Court’s earlier decision in the Case Concerning East Timor (Portugal v. Australia) of June 30, 1995, the Court considers that “the principle of self-determination of peoples has been recognized by the Charter and in the jurisprudence of the Court; it is one of the essential principles of contemporary international law.” Therefore, the Republic of Kosovo is, through self-determination, legally permitted to declare independence.

Further, the Montevideo Convention of December 26, 1933, has established four criteria, under Article 1, for the establishment of statehood, and was referenced within the decisions of this body to allow for the legality of independence in the cases of Slovenia and Croatia.

Additionally, the Court refers to the Comprehensive Proposal for the Kosovo Status Settlement of March 26, 2007, in which the general principles outlined for the establishment of the independence of Kosovo were provided by the Secretary-General under the auspices of the Security Council. These principles emulate the criteria outlined within the earlier Montevideo Convention, and are as follows:

According to the Convention, the first requirement of statehood is “a permanent population.” The satisfaction of this requirement is referenced in Article 3 of the Comprehensive Proposal, which listed, in detail, a description of said population.

According to the Convention, the second requirement of statehood is “a defined territory.” While the satisfaction of this requirement is not specifically referenced in the Comprehensive Proposal, this Court finds that the United Nations Interim Administration Mission in Kosovo (UNMIK) Mandate provides for “the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo.” This Court deems the Declaration of Independence of the Republic of Kosovo as said “final settlement.”

According to the Convention, the third requirement of statehood is “government.” The satisfaction of this requirement is referenced in Article 1.3 of the Comprehensive Proposal, which describes the adoption of a Kosovar Constitution, as well as Article 10, which describes, in detail, the formation of a Constitutional Commission.

According to the Convention, the fourth requirement of statehood is “capacity to enter into relations with the other states.” The satisfaction of this requirement is referenced in Article 1.5 of the Comprehensive Proposal, which describes rights and responsibilities of the Republic of Kosovo insofar as international relations are concerned.

The opinion and explanation of reasons of the Court is as follows:

In the cases of the independence of Slovenia and Croatia following the break-up of the Socialist Federal Republic of Yugoslavia, the international community accepted their unilateral declarations of independence because of their abilities to satisfy the same types of requirements as were established in the Montevideo Convention. Therefore, the Court finds this pattern of behavior a compelling precedent for the acceptance of the Declaration of Independence of the Republic of Kosovo in line with those same requirements. While these states were formerly entirely independent republics within Yugoslavia, and therefore materially different in their composition, we posit that Kosovo proves to be enough of a specifically defined population and territory to satisfy the same requirements for statehood as were expected of Slovenia and Croatia.

In Chapter 1, Article 2 of the Constitution of the Federative People’s Republic of Yugoslavia of 1946, “the People’s Republic of Serbia includes . . . the autonomous Kosovo-Metohijan region.” This clearly shows the acknowledgment on the part of the Yugoslavian government of the autonomy of Kosovo. The validity of this autonomy was re-affirmed by the subsequent Constitution of the Socialist Federal Republic of Yugoslavia of 1963, when Kosovo was described as an “autonomous province” in Article 111. Because of the history of recognition of the autonomy of the Kosovar region, this Court finds that this history of autonomy is a compelling factor in deciding the satisfaction of the criteria outlined in the Montevideo Convention and the Comprehensive Proposal.

It is the Court’s opinion that misgovernance, constituted in this case by the failure to appropriately and adequately provide the security of “legislative, executive, judicial, and

other institutions” as well as the expectations to be derived of a civil society, such as human rights expected under the auspices of the Rambouillet Accords; as well as the political empowerment also denoted in said government; compounded with the historically ongoing military presence within the state of Kosovo and engagements therein; is conspicuously present and culminates by effect the prohibition of full participation within the scope of citizenship. This, in our estimation, can be construed as gross misgovernance and significant reason to consider the question of validity with regards the Declaration of Independence of the Republic of Kosovo.

It is the Majority Opinion of this Court that sovereignty and self-determination claims must be granted equal weight and protection under international law. The former empowers each state to determine its own domestic and international policy. The latter provides for the protection of sovereign rights through legal norms with regard to a people who wish to exercise said right. The Court finds that, although the Republic of Serbia wishes to assert its territorial sovereignty over the region of Kosovo, the legal ability for the Republic of Kosovo to declare its own independence is within the bounds of international law.

Therefore, the Court advises the following:

That the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo is in accordance with international law.

Justice Bell

Justice Burns

Justice Faler

Justice Gronli

Justice Jackson

Justice Lanczak

Justice Rettig

Justice Walsh

Justice White

Justice Williams

A DISSENTING OPINION was written, signed, and agreed to by Justice Clark, Justice Dabbs, Justice Kalupa, Justice Mueller, and Justice Seabert.

While we agree with the Majority Opinion of the Court that Kosovo meets the four requirements of statehood as specified in Article 1 of the 1933 Montevideo Convention, stipulating that “a state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states,” we are concerned by the weight that is being given to this Convention as a framework for guidance in this case. The 1933 Montevideo Convention is a nonbinding document that was proposed by a number of states from the Americas that were party to this specific convention. Not only is this convention nonbinding, any weight that it does hold would only fall to the states who are party to this Convention, and thus is irrelevant for the reasoning in this case.

Furthermore, we express concern that the Majority Opinion is willing to cite agreed upon international social norms, rather than focus on international law, as a basis for their Advisory Opinion. While we recognize there is no agreed upon international law for the issue at hand, we have reservations in regards to the Majority’s use of the principle of *carance de souverainete*, or lack of sovereignty. This is defined as recognizing “the secession of a territory when that territory is misgoverned to the extent that self-determination within an existing state is not possible.” We take issue with the utilization of this principle on two counts. First, as mentioned earlier, this statement is international custom, and while we recognize the importance of custom and norms in the framework of the international system, we fear that not having further support from established international statutes reduces the legitimacy of their argument. Second, we find that the definition of “misgovernance” is too vague to use as a justification for declaring independence. Furthermore, the Majority cites the unwillingness of the Serbian government to resolve the conflict diplomatically as a demonstration for misgovernance. We believe this is essentially eluding to human rights violations, which is not only outside of the purview of this Court, but also an insufficient argument for misgovernance. We argue that citing human rights abuses as proof of misgovernance could set a dangerous precedent for future cases regarding declarations for independence, as it is difficult to define the extent of such violations and to specify them as the source of misgovernance. It is impossible to determine what would be the threshold of human rights abuses that would be sufficient to justify a declaration of independence.

Based on the available legal principles of territorial integrity and sovereignty, we believe that Kosovo’s declaration of independence is illegal. We find that territorial integrity “is the principle under international law that nation-states should not attempt to promote secessionist movements or to promote border changes in other nation-states.” Territorial integrity is further supported by the concept of sovereignty established in the UN Charter, specifically Article II, Section 7, which states, “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.” We find that the UN Charter supports the acceptance of sovereign rights as the basis for territorial security.

While the Majority argues that self-determination is a basis for the legality of Kosovo’s declaration of independence, we disagree based on the argument that in order to claim rights to self-determination, one must possess sovereignty. It is in the opinion of the

dissenting justices that Kosovo ceded its autonomy in March 1989 when Kosovo's parliament approved the amendments to the Serbian Constitution. Therefore, Kosovo lacks autonomy to establish sovereignty and in turn assert self-determination.

We recognize this case requests an Advisory Opinion and thus *should not* be setting an international precedent as it is meant to apply solely to the situation at hand. Each case involving secession and claims for independence has unique circumstances that cannot be universally generalized. We fear that the Majority Opinion oversteps the limitations and purpose of an Advisory Opinion, as well as the requests of the parties in this case by establishing dangerous precedents through their decision.

In light of our interpretation, we advise the following:

1. Both parties should consult the ICC for proper submission of complaint of human rights violations
2. We strongly urge that each member of the General Assembly consider the long term implications for allowing such declarations of independence in the promotion of global unity
3. Member states of the General Assembly should work on establishing statutes and treaties between member nations to define when secession would be acceptable without violating sovereignty.

We reiterate that the purpose of this Body is to interpret, not make law, and therefore ask that the General Assembly stay actively seized of the matter.

Justice Clark

Justice Dabbs

Justice Kalupa

Justice Mueller

Justice Seabert