



# Advisory Opinion: Accordance with International Law of the Unilateral Declaration of Independence In Respect of Kosovo (Islamic Republic of Iran, Ireland, Kosovo, Serbia)

ARGUED: 18 November 2018

DECIDED: 19 November 2018

1 The Majority Opinion was signed and agreed to by Justice Mach, Justice Chirumamilla, Justice Rodell,  
2 Justice Ayensah, Justice Johannes, Justice Miranda, Justice Smallwood, Justice Ray, and Justice Tiller.

3 The Court was asked to deliver an advisory opinion on the question, *Is the unilateral declaration of indepen-*  
4 *dence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?* set forth  
5 by the United Nations General Assembly in A/RES/63/3.

6 The Court has jurisdiction over this case based on Article 96(1) of the UN Charter which states, The General  
7 Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any  
8 legal question. Jurisdiction is also established in Article 65(1) of the Statute of the International Court of Justice,  
9 which states that the Court may give an advisory opinion on any legal question at the request of whatever body may  
10 be authorized by or in accordance with the Charter of the United Nations to make such a request. The Court has  
11 determined that the question is a legal one. There is contention within international law on the rights of states to  
12 secede when there are claims of territorial integrity involved as well. The Court believes that the question provided  
13 by the General Assembly is a legal question which they have jurisdiction to provide an opinion on.

14 The advocates from the Republic of Kosovo have demonstrated conclusive evidence surrounding the legality  
15 of a unilateral declaration of independence and secession. The Republic of Kosovo argues for the right of self  
16 determination of the Republic of Kosovo under the United Nations Charter, Chapter 1, Article 1, Part 2, to develop  
17 friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples,  
18 and to take other appropriate measures to strengthen universal peace. They argued that because the Republic of  
19 Serbia did not take action regarding S/RES/1244 in respecting Kosovos autonomy within the region, the Republic  
20 of Kosovo has a right to secede. Furthermore, the Republic of Serbia has not adhered to the Ahtisaari plan in full  
21 with the Republic of Kosovo. They also shed light on the violence and repression that Serbian police forces have  
22 perpetrated within Kosovo, such as the killings of ethnic Albanians within Kosovo, and the forced removal of ethnic  
23 Albanians from their homes within Kosovo.

24 The advocates from the Republic of Serbia argued that the secession of the Republic of Kosovo violates  
25 the territorial integrity of Serbia under Article 2, Paragraph 4 of the Charter of the United Nations, All Members  
26 shall refrain in their international relations from the threat or use of force against the territorial integrity or political  
27 independence of any state, or in any other manner inconsistent with the Purposes of the United Nations,. Serbia  
28 further argued such under A/RES/1514 (1960) which states any attempt aimed at the partial or total disruption  
29 of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the  
30 Charter of the United Nations.

31 The advocates from the Islamic Republic of Iran argued that the unilateral declaration of independence from  
32 the Republic of Kosovo is a violation of the territorial integrity of Serbia under Article 2, Paragraph 4 of the Charter  
33 of the United Nations as stated above and that under S/RES/1244, Kosovo is an autonomous region that already  
34 governs itself. The Islamic Republic of Iran also argued that because Albanians are a minority in Serbia, they should  
35 not be granted independence in Kosovo, based on a 1992 ruling that because Serbs were a minority, they could not  
36 claim independence for the Republika Srpska.

37 The advocate from the Republic of Ireland requested the Court to submit an opinion in favor of Kosovos

38 unilateral declaration with respect to whether there was any breach of international law. The Republic of Ireland  
39 also reminded the Court that because it is a small body, it needs to remember that it is making a decision for a large  
40 international community.

41 The opinion and explanation of reasons of the court is as follows:

42 First, the court considers the present international law surrounding the principle of unilateral secession.  
43 Cited in contention to the legality of Unilateral Declaration of Independence was S/RES/1244 (1999), which placed  
44 Kosovo under the administration of the United Nations, establishing the United Nations Mission in Kosovo (UNMIK).  
45 Further, S/RES/1244 calls for a settlement between the parties on a final status of Kosovo. The Court determines  
46 the purpose of S/RES/1244 was to create a temporary administrative territory pending a final settlement. The  
47 Court further finds a failure on the part of Serbia to attempt to reach a settlement with Kosovo. Furthermore, there  
48 is no provision within the resolution that expressly prohibits Kosovo from declaring its independence. Nor is this  
49 Court able to find evidence of any other explicit prohibitions on declarations of independence in additional bodies  
50 of international law. Therefore, the Court determines there was no legal violation of S/RES/1244 by the unilateral  
51 declaration of independence of Kosovo.

52 Second, the Court finds that The Republic of Kosovo has the right to declare itself as a sovereign nation.  
53 The reasoning behind this finding is that per the Montevideo Convention of 1933, the Republic of Kosovo may be  
54 defined as a sovereign nation because the regions status quo fulfills the requirements for sovereignty as provided in  
55 the Convention. The criteria for a sovereign state as provided by the Montevideo Convention of 1933 is as follows:

- 56 1. Territory
- 57 2. Population
- 58 3. Government
- 59 4. Capacity to conduct international relations

60 The Montevideo Convention also explicitly recognizes the fundamental rights that are associated with  
61 sovereign statehood including, but not limited to:

- 62 1. Existence
- 63 2. Legal Equality
- 64 3. External Independence
- 65 4. Self-defense
- 66 5. Territorial Sovereignty

67 Under this Convention, the Court concludes that The Republic of Kosovo has provided substantial evidence  
68 to entitle them to the right of sovereignty and the fundamental rights of a sovereign state as outlined in the Montevideo  
69 Convention as well as the UN Charter.

70 It has also been brought to the courts notice that the Republic of Serbia does not provide any source of  
71 financial aid to The Republic of Kosovo, and that Serbia merely seeks to hold on to The Republic of Kosovo because  
72 of the historical and political benefits that Kosovo brings to Serbia. Since Serbia does not support Kosovo as it  
73 would any other region under its territory, Serbia cannot rightfully lay claim to The Republic of Kosovo.

74 The Republic of Serbia has sanctioned violence from the state against the people of Kosovo to coerce the  
75 Kosovar people into halting their movements for independence. The Republic of Kosovo specifically cited numerous  
76 instances of Serbian police brutality against Albanians in Kosovo. It is under international law that no people should  
77 be subject to imposed violence from their own government.

78 We the United Nations International Court of Justice advise:

79 First, the Court would like to remind States that the opinion of the Court is advisory and not a binding  
80 decision on the independence of Kosovo.

81 Second, it encourages the Republic of Serbia and the Republic of Kosovo to engage in direct negotiations  
82 regarding the process of Kosovos independence. This way both states can make the transition to independence as  
83 peaceful and diplomatic as possible.

84 Third, the Court would like to underline the inherent dangers involved in disputes of ethnicity and wishes  
85 to remind the international community that making any region or state ethnically pure is a very dangerous pursuit,  
86 as this often leads to ethnic cleansing. Bearing this in mind, the Court wishes to remind parties of their explicit  
87 obligations under the Charter of the United Nations.

88 Finally, the Court condemns the use of force, violence, or threat thereof in an attempt to initiate the process  
89 of gaining sovereignty as the Republic of Kosovo, specifically targeting illegal acts of ethnic cleansing committed by  
90 the Kosovo Liberation Army.

91 Therefore, the Court rules that the unilateral declaration of independence by the Provisional Institutions of  
92 Self-Government of Kosovo is in accordance with international law.

*Signed By*

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Justice Audrey Johannes

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Justice Pravallika Chirumamilla

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Justice Hannah Ray

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Justice Trey Smallwood

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Justice Raegan Mach

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Justice Jacqueline Miranda

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Justice Hope Rodell

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Justice Nadia Ayensah

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Justice Alex Tiller