

The Hague, April 16 2009

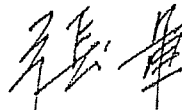
Your Excellency,

With reference to your letter dated 20 October 2008, by which you invited Member States of the United Nations to present their Written Statements on the question of the Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo to the International Court of Justice, which had been requested to give an advisory opinion on the above-mentioned question by the United Nations General Assembly through its Resolution A/RES/63/3 adopted on 8 October 2008, I am instructed by my Government to forward herewith the *Written Statement of the People's Republic of China to the International Court of Justice on the Issue of Kosovo*.

Please find attached one hard copy and one electronic copy of the above-mentioned Written Statement in English language.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

ZHANG Jun



Ambassador Extraordinary and Plenipotentiary
of the People's Republic of China to
the Kingdom of the Netherlands

H.E. Mr. Philippe Cuvreur,
Registrar
International Court of Justice
Peace Palace
The Hague

**Written Statement of the People's Republic of China to the
International Court of Justice on the Issue of Kosovo**

The Chinese Government,

Recalling Resolution A/RES/63/3 adopted by the United Nations General Assembly on 8 October 2008, which requests that the International Court of Justice (ICJ) render an advisory opinion on the following question: “Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?”;

Taking note of the order issued by ICJ on 17 October 2008 inviting the United Nations and its Member States to present written statements on the above-mentioned question to ICJ before 17 April 2009;

Acknowledging receipt of the letter dated 20 October 2008 from ICJ Registrar to the Chinese Ambassador to the Kingdom of the Netherlands on the above-mentioned matter;

Wishes to make the following written statement:

I. UN Security Council Resolution 1244 (1999) has been an authoritative basis recognized by the international community for the handling of the issue of Kosovo’s status. Security Council resolutions should be complied with.

(a) UN Security Council Resolution 1244 (1999) sets out a political solution to the Kosovo issue and explicitly indicates that the goal of the Resolution is to enable Kosovo to “enjoy substantial autonomy within the

Federal Republic of Yugoslavia”¹. The Resolution reaffirms, in several places, the commitment to the “sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region”². This Resolution serves as the political and legal basis for handling the issue of Kosovo’s status.

(b) UN Security Council Resolution 1244 (1999) was adopted in accordance with Chapter VII of the Charter of the United Nations. Article 49 of the Charter stipulates that “the Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council”. Given the important status of UN Security Council resolutions, China has maintained that Parties concerned should reach agreement on a negotiated solution acceptable to all sides within the framework of Resolution 1244 (1999). All efforts and actions aimed at solving the issue of Kosovo’s status should comply with the relevant requirements of Resolution 1244 (1999), unless a new resolution is adopted by the Security Council in this regard. Any attempt to take unilateral moves or impose a solution will only do more harm to the efforts to bring a smooth solution to the relevant issue.

II. Respect for State sovereignty and territorial integrity is a fundamental principle of international law.

(a) The principle of State sovereignty is a fundamental principle of international law upon which other principles of international law rest. It is also the primary principle of the Charter of the United Nations, which provides that “the Organization is based on the principle of the sovereign equality of all its Members”³. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations adopted by the United Nations General Assembly on 24 October 1970 also sets forth the “principle of sovereign equality of States” and states that “in particular, sovereign equality includes the following elements...(d) the territorial integrity and political independence of the State are inviolable”⁴. All countries should respect sovereignty and territorial integrity of one another in international relations.

(b) The principle of respect for State sovereignty and territorial integrity has been extensively and repeatedly invoked by the United

¹ Resolution 1244 (1999), para. 10 and Annex 2, para.5.

² The Preamble of the Resolution, para. 10, Annex 1, para. 6 and Annex 2, para. 8.

³ The Charter of the United Nations, Article 2.

⁴ Resolution A/RES/2625 (XXV) adopted by the United Nations General Assembly, the Section on “The principle of sovereign equality of States”, para. 2.

Nations and other international and regional organizations and in multilateral and bilateral exchanges of States, and has constituted the most important principle of international law and the basic norm governing international relations.⁵

(c) International courts have reaffirmed and invoked the principle of respect for State sovereignty and territorial integrity on many occasions. The Permanent Court of Arbitration stated in its award on the *Island of Palmas Case (or Miangas) (United States of America v. The Netherlands)* that, the principle of territorial sovereignty is “the point of departure in settling most questions that concern international relations ...with which almost all international relations are bound up.”⁶ ICJ stated in its judgment on the *Corfu Channel Case (United Kingdom of Great Britain and Northern Ireland v. Albania)* that “between independent States, respect for territorial sovereignty is an essential foundation of international relations.”⁷ This was reaffirmed in the ICJ judgment on the *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, which referred to “the duty of every State to respect the territorial sovereignty of others” and “...the fundamental principle of State sovereignty, on which the whole of international law rests...”⁸

(d) The Five Principles of Peaceful Coexistence, which were jointly initiated by China, India and Myanmar(formerly Burma) in 1954 and have ever since been consistently upheld, also contain mutual respect for sovereignty and territorial integrity.⁹

III. The principle of self-determination of peoples has specifically defined contents and scope of application.

Although the principle of self-determination has become a basic principle of international law, it applies within specific limits, primarily restricted to situations of colonial rule or foreign occupation. This has been accepted by States as, *opinio juris*, legally binding international law and there have been numerous evidential international practices to that effect since World War II. The right to self-determination is different in

⁵ See footnotes 4, 9, 19, 20, 21, 22, 23 and 24, and a large number of other UN documents and multilateral and bilateral treaties and declarations.

⁶ *Reports of International Arbitral Awards, United Nations, Volume II*, pp. 838 and 839.

⁷ *Reports of Judgments, Advisory Opinions and Orders, I.C.J. 1949*, p. 35.

⁸ *Reports of Judgments, Advisory Opinions and Orders, I.C.J. 1986*, p. 106, para. 202; p. 111, para. 213; and p. 133, para. 263.

⁹ *The Agreement between the People's Republic of China and the Republic of India on Trade and Intercourse between Tibet Region of China and India*, Preamble; see also the *Joint Statement of the Prime Ministers of China and India* issued on 28 June 1954, para. 3, and the *Joint Statement of the Prime Ministers of China and Myanmar* issued on the next day, para. 3.

nature from the so-called right of secession. The exercise of the right of self-determination shall not undermine the sovereignty and territorial integrity of the State concerned.

(a) The principle of self-determination became a principle of international law in the course of decolonization movement. It was against such a historical background that the right to self-determination was written into the Charter of the United Nations¹⁰, and then the Declaration on the Granting of Independence to Colonial Countries and Peoples¹¹ and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations¹² adopted by the United Nations General Assembly on 14 December 1960 and 24 October 1970 respectively. The right to self-determination has always been applied to situations of colonial rule or foreign occupation. Cases where such a right was exercised and endorsed by the United Nations were all related to territories under colonial rule or foreign occupation, such as Southern Rhodesia, Namibia, Western Sahara, East Timor, African Territories under Portuguese administration, Palestine and Pacific islands (Trust Territory).¹³

ICJ applied or invoked the right to self-determination in several cases, including "*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion*", "*Western Sahara, Advisory Opinion*", "*Case Concerning East Timor (Portugal v. Australia), Judgment*," and "*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*". In the above-mentioned cases, the Court recognized the right to self-determination of the peoples of Namibia, Western Sahara, East Timor and Palestine, who were then under colonial rule or foreign occupation. In the *Namibia Case*, the Court stated that "the subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them".¹⁴ That was reiterated many times by the Court in the *Western Sahara Case*¹⁵, *East Timor Case*¹⁶, and *Construction of a Wall Case*¹⁷. The Court further stated in the *Western Sahara Case* that "the principle of self-

¹⁰ The Charter of the United Nations, Article 1, para. 2 and Article 55.

¹¹ Adopted in A/RES/1514 (XV).

¹² See footnote 4.

¹³ See A/RES/1755 (XVII), A/RES/2138 (XXI), A/RES/2151 (XXI), A/RES/2379 (XXIII), A/RES/2383 (XXIII), A/RES/2795 (XXVI), A/RES/3236 (XXIX), A/RES/3292 (XXIX), A/RES/58/163, S/RES/180 (1963), S/RES/218 (1965), S/RES/183 (1963), S/RES/301 (1971), S/RES/384 (1975), S/RES/621 (1988) and S/RES/683 (1990).

¹⁴ *Reports of Judgments, Advisory Opinions and Orders, I.C.J. 1971*, p.31, para. 52.

¹⁵ *Reports of Judgments, Advisory Opinions and Orders, I.C.J. 1975*, p.31, para. 54.

¹⁶ *Reports of Judgments, Advisory Opinions and Orders, I.C.J. 1995*, p.102, para. 29.

¹⁷ *Reports of Judgments, Advisory Opinions and Orders, I.C.J. 2004*, pp. 171 and 172, para. 88.

determination as a right of peoples, and its application for the purpose of bringing all colonial situations to a speedy end, were enunciated in the Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly Resolution 1514 (XV).”¹⁸

(b) Even after colonial rule ended in the world, the scope of application of the principle of self-determination has not changed. This can be seen in some important documents adopted by the United Nations in recent years.

The United Nations Millennium Declaration adopted by the General Assembly on 8 September 2000 states that “we rededicate ourselves to support all efforts to uphold the sovereign equality of all States, respect for their territorial integrity and political independence, ... the right to self-determination of peoples which remain under colonial domination and foreign occupation, non-interference in the internal affairs of States ...”¹⁹

The World Summit Outcome adopted by the United Nations General Assembly on 24 October 2005 states that “we rededicate ourselves to support all efforts to uphold the sovereign equality of all States, respect their territorial integrity and political independence, ... the right to self-determination of peoples which remain under colonial domination and foreign occupation ...”²⁰

(c) In the exercise of the right to self-determination, the territorial integrity of a sovereign State should be respected rather than undermined. A series of important international and regional documents, while affirming the right to self-determination, all provide for respect for State sovereignty and territorial integrity. The above principle is also reflected in State practices.

The Declaration on the Granting of Independence to Colonial Countries and Peoples states that “any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.”²¹

The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations states that “nothing in the forgoing

¹⁸ *Reports of Judgments, Advisory Opinions and Orders, I.C.J. 1975*, p. 31, para. 55.

¹⁹ UN General Assembly Resolution A/RES/55/2, sec. 1, para. 4.

²⁰ UN General Assembly Resolution A/RES/60/1, sec. 1, para. 5.

²¹ See footnote 11, para. 6.

paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principles of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.”²²

The Helsinki Final Act passed by the Conference on Security and Co-operation in Europe in 1975 states that the participating States “will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States.”²³ The Charter of Paris for a New Europe adopted by the Conference in 1990 has similar provisions.²⁴

In addition, the judgment of the Supreme Court of Canada on the *Secession of Quebec* stated that “the international law principle of self-determination has evolved within a framework of respect for the territorial integrity of existing states. The various international documents that support the existence of a people’s right to self-determination also contain parallel statements supportive of the conclusion that the exercise of such a right must be sufficiently limited to prevent threats to an existing state’s territorial integrity or the stability of relations between sovereign states.”²⁵

(d) The self-determination in international law is different in nature from secession from a sovereign State by its part. Secession is not recognized by international law and has always been opposed by the international community of States.

United Nations Secretary-General U Thant said, when addressing the secession of Katanga from the Congo and of Biafra from Nigeria, at a press conference in Dakar, Senegal, on 4 January 1970 that “as far as the question of secession of a particular section of a Member State is concerned, the United Nations’ attitude is unequivocal. As an international organization, the United Nations has never accepted and does not accept and I do not believe it will ever accept the principle of

²² See footnote 4, the Section on “The principle of equal rights and self-determination of peoples”, para. 7.

²³ See “VIII: Equal rights and self-determination of peoples” of the above document. Available at http://www.osce.org/documents/mcs/1975/08/4044_en.pdf.

²⁴ Available at http://www.osce.org/documents/mcs/1990/11/4045_en.pdf.

²⁵ The Supreme Court of Canada judgment on the “*Secession of Quebec*”, para. 127. Available at <http://scc.lexum.umontreal.ca/en/1998/1998rcs2-217/1998rcs2-217.html>.

secession of a part of its Member State.”²⁶

In a written answer to the Upper House on the question of self-determination for Somalis in Ethiopia as a right to which they are entitled dated 12 December 1983, the Minister of State from the UK Foreign and Commonwealth Office said that “it has been widely accepted at the United Nations that the right of self-determination does not give every distinct group or territorial sub-division within a state the right to secede from it and thereby dismember the territorial integrity or political unity of sovereign independent states.”²⁷

²⁶ UN Monthly Chronicle, United Nations Office of Public Information, Volume. VII, Number 2, February 1970, p.36.

²⁷ Records of UK House of Lords debate (HL, Deb, vol 446, cc94WA). Available at http://hansard.millbanksystems.com/written_answers/1983/dec/12/somalis-and-self-determination#S5LV0446P0_19831212_LWA_34.