

AMBASSADOR
OF THE CZECH REPUBLIC

The Hague, 14 April 2009
Ref no: 235/2009-Haag

Dear Sir,

I have the honor to enclose herewith the written statement of the Czech Republic (in English) in response to the Court's Order of 17 October 2008 in connection with a request from the General Assembly of the United Nations for an Advisory Opinion on the accordance with international law of the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo.

Please accept, Sir, the assurances of my highest consideration.

Yours sincerely,


Petr, Mareš

*His Excellency
Mr. Philippe Cuvreur
Registrar
International Court of Justice*

**Accordance with International Law of the Unilateral
Declaration of Independence by the Provisional
Institutions of Self-Government of Kosovo**

(Request for an advisory opinion by the United Nations General Assembly)

Written Statement of the Czech Republic

April 2009

I. INTRODUCTION

On 8 October 2008, the General Assembly of the United Nations (UNGA) decided in resolution A/RES/63/3 to request the International Court of Justice to 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?”

In its order of 17 October 2008, the Court invited UN Member States and the Provisional Institutions of Self-Government of Kosovo, as the authors of the unilateral declaration of independence, to submit written statements.

The Czech Republic is of the view that this request has to be seen in the larger context of an ongoing political process. The ultimate goal of that process is to ensure lasting peace, stability and economic prosperity in the Western Balkans. For that purpose, the EU has repeatedly expressed its full support for the European perspective of the Western Balkans countries.¹ The Czech Republic, therefore, warmly welcomes the Stabilization and Association Process, and hopes for substantial progress on the way to EU membership. At the same time, the Czech Republic believes that, after the failure of the status negotiations, an independent Kosovo, initially under international supervision, is the only viable way to realize peace, stability and economic prosperity for the whole region.

For this reason, and on the basis of the conclusion that Kosovo fulfills the criteria for statehood, the Czech Republic recognized Kosovo as an independent State on 21 May 2008. In the view of the Czech Republic, the request for, and the issuance of, an advisory opinion in this particular situation has adverse effects on the democratic and economic development of Kosovo and on the peace and stability of the whole region. Therefore, the Czech Republic, while strongly committed to the rule of law and the use of advisory opinions where appropriate, abstained in voting on the above-mentioned resolution.

The Czech Republic decided to submit a written statement in order to draw the Court's attention to the adverse effects of an advisory opinion in this particular case. The written statement will, therefore, deal firstly with issues of judicial propriety (part II). The Czech Republic further decided to also include in its written statement considerations relating to substantive issues, in case the Court should decide not to decline giving the opinion. It is to recall that the Court is limited to those legal issues that are necessary to answer the question of the UNGA resolution A/RES/63/3. In view of the Czech Republic, it is sufficient to identify and deal only with those rules of international law that might conflict with the unilateral declaration of independence (part III).

¹ See, e.g., EU Council Conclusions on the Western Balkans, Brussels, 8 and 9 December 2008.

II. ISSUES OF JUDICIAL PROPRIETY

The Czech Republic greatly values the role of the International Court of Justice as the principal judicial body of the United Nations and is fully committed to supporting the Court. As such, the advisory opinions are an important instrument, which should be made use of whenever necessary and appropriate. "The purpose of the advisory function is not to settle - at least directly - disputes between States, but to offer legal advice to the organs and institutions requesting the opinion."² The Czech Republic fully recognizes the legal nature of the requested question, which the Court is undoubtedly competent to answer, but in the light of all the circumstances, the Czech Republic sees compelling reasons why the Court should decline to answer the requested question.

The Court has repeatedly made clear that Article 65 (1) of its Statute, according to which "[t]he Court *may* give an advisory opinion [...]" (emphasis added), "leaves a discretion as to whether or not it will give an advisory opinion that has been requested of it, once it has established its competence to do so."³ At the same time, the Court has always highlighted that its answer to a request for an advisory opinion "represents its participation in the activities of the Organization, and, in principle, should not be refused."⁴ Only if there are "compelling reasons"⁵, the Court will decline to give the requested advisory opinion. Although the Court has so far never⁶ exercised its discretionary power under Article 65 (1) of the Statute, its jurisprudence sheds light on what such "compelling reasons" could be. Of particular interest for the present case is the argument that the advisory opinion has adverse effects on a political solution of the problem.⁷

The request for an advisory opinion and the preceding unilateral declaration of independence has to be seen against the background of the developments during the past 20 years. The situation in Kosovo is ultimately the result of the events related to the dissolution of the former Socialist Federal Republic of Yugoslavia and its violent consequences. Kosovo was an autonomous province within the Republic of Serbia, one of the constituent republics of the former Socialist Federal Republic of Yugoslavia, and lost this status in 1989. During the following decade, Kosovar Albanians became increasingly subject to repressions, which led to the NATO intervention in 1999.

Following the intervention, on 10 June 1999, the United Nations Security Council (UNSC) adopted resolution 1244 (hereinafter "UNSCR 1244"), which placed Kosovo under the provisional administration of United Nations Interim Administration Mission in Kosovo (hereinafter the "UNMIK"). The resolution denied the Federal Republic of Yugoslavia (hereinafter the "FRY") a role in the governance of Kosovo, and provided for a political

² *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, ICJ Reports 1996, p 236.

³ *Idem*, p 234.

⁴ *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase*, Advisory Opinion of 30 March 1950, ICJ Reports 1950, p 71, and following advisory opinions.

⁵ *Certain Expenses of the United Nations (Article 17, paragraph 2 of the Charter)*, Advisory Opinion of 20 July 1962, ICJ Reports 1962, p 155, and following advisory opinions.

⁶ Only the Permanent Court of International Justice once declined an opinion because the question directly concerned an already existing dispute, and one of the parties was not a party to the Covenant or the PCIJ statute and objected to the proceedings (*Status of Eastern Carelia*, Advisory Opinion, 1923, PCIJ, Series B, No 5).

⁷ *Nuclear Weapons* advisory opinion, ICJ Reports 1996, p 237; *Legal consequences of the construction of a wall in the occupied Palestinian territory*, Advisory Opinion of 9 July 2003, ICJ Reports 2003, p 159-160.

process designed to determine Kosovo's future status. A comprehensive review of the situation in Kosovo in 2005 led to the conclusion that, while the standards' implementation had been uneven, the final status process has now to be started.⁸

In November 2005, the UN Secretary-General appointed Martti Ahtisaari as his Special Envoy on Kosovo's future status. The Special Envoy held extensive consultations and explored all possibilities for a negotiated settlement of the status issue. Despite these efforts and several rounds of talks between Kosovar Albanians and Serbia, the final status negotiations failed due to the irreconcilable positions of the parties. The Special Envoy concluded in his report, transmitted to the UNSC on 26 March 2007, that a reintegration of Kosovo into Serbia is not a viable option and that a continued international administration is not sustainable either.⁹ He thus recommended that Kosovo's status should be independence, supervised by the international community, and presented the Comprehensive Proposal for the Kosovo Status Settlement¹⁰ for the implementation of such supervised independence. The Special Envoy's recommendation, including the Comprehensive Proposal, was fully supported by the Secretary-General.¹¹ The Special Envoy based his conclusions on the following findings, with which the Czech Republic fully concurs:¹²

"Uncertainty over its future status has become a major obstacle to Kosovo's democratic development, accountability, economic recovery and inter-ethnic reconciliation. Such uncertainty only leads to further stagnation, polarizing its communities and resulting in social and political unrest. Pretending otherwise and denying or delaying resolution of Kosovo's status risks challenging not only its own stability but the peace and stability of the region as a whole."¹³

Due to the specific situation in the UNSC, the approval of the Special Envoy's recommendation was not possible. Another effort by a troika of the Contact Group, consisting of the European Union, the United States and the Russian Federation, to facilitate an agreement between Belgrade and Pristina failed. In early December 2007, the troika concluded that the parties were unable to reach an agreement on the final status of Kosovo.¹⁴ After more than two years of intensive negotiations, it had become clear that a negotiated settlement was not possible. On 17 February 2008, the Provisional Institutions of Self-Government declared the independence of Kosovo and accepted the Special Envoy's Comprehensive Proposal for the Kosovo Status Settlement as binding.¹⁵

Following the declaration of independence, the authorities of Kosovo continuously took steps towards asserting Kosovo's statehood. The Assembly of Kosovo passed a constitution that entered into force on 15 June 2008, and a Foreign Ministry, as well as a Ministry for Security

⁸ See the report of Kai Eide in the annex to the Letter dated 7 October 2005 from the Secretary-General to the President of the Security Council, UNDoc S/2005/635 (2005). Approval of the conclusions by the UNSC followed on 24 October 2005, UNDoc S/PRST/2005/51 (2005).

⁹ Report of the Special Envoy of the Secretary-General on Kosovo's future status, annex to the Letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council, UNDoc S/2007/168.

¹⁰ Comprehensive Proposal for the Kosovo Status Settlement, UNDoc S/2007/168/Add.1.

¹¹ UNDoc S/2007/168.

¹² Statement of the Ministry of Foreign Affairs of the Czech Republic on the Proposal of the Final Status of Kosovo, 6 February 2007.

¹³ UNDoc S/2007/168, para 4.

¹⁴ Report of the European Union/United States/Russian Federation Troika on Kosovo, enclosure to the Letter dated 10 December 2007 from the Secretary-General to the President of the Security Council, UNDoc S/2007/723.

¹⁵ Declaration of Independence of 17 February 2008, in particular paras 1, 3, and 12.

Forces, was established; furthermore, the Kosovo authorities announced the opening of diplomatic missions abroad and applied for membership in some international organizations.¹⁶ More than a quarter of UN Member States, including the Czech Republic, recognized Kosovo as an independent State. Despite these developments, there are still many States that have not yet recognized Kosovo, some of them actively opposing Kosovo's independence.

The Czech Republic, however, believes that there is no other option than to accept the independence of Kosovo as a political reality. The status negotiations have clearly shown that a return to any *status quo ante* is not realistic. At the same time, the absence of a final settlement of the status issue would constitute a serious threat for peace and stability in the region, as has been pointed out by the Special Envoy.

In this particular situation, the request for an advisory opinion has adverse effects, as it artificially casts doubt on Kosovo's status as an independent State. A decision by the Court to proceed to the substance of the question posed and to render an advisory opinion would contribute to this protraction, as the factual and legal issues involved need appropriate time for consideration. No matter what the Court's decision will be, the status of Kosovo will not change.¹⁷ In addition, the Court cannot decide on Kosovo's status through an advisory opinion since advisory opinions are not legally binding.

The Czech Republic believes, therefore, that the request for, and the issuance of, an advisory opinion has adverse effects on the democratic and economic development of Kosovo and on the peace and stability of the whole region,¹⁸ and that this constitutes a compelling reason for the Court to decline to give an answer to the question posed.

Finally, regardless whether or not the unilateral declaration of independence of Kosovo is in accordance with international law, such concrete determination will have no legal effect either on the status of Kosovo or generally in international law. The Czech Republic is of the view that an opinion by the Court would provide no practical assistance to the UNGA in carrying out its functions under the Charter.

¹⁶ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo of 24 November 2008, UNDoc S/2008/692; see also the Report of 18 March 2009, UNDoc S/2009/149.

¹⁷ As the US and UK delegates put it in the UNGA debate, "Kosovo's independence is irreversible" and "will remain a reality" (Official Records of the United Nations General Assembly, 63rd session, 22nd plenary meeting, 8 October 2008, UNDoc A/63/PV.22, p 5 and 2 respectively).

¹⁸ In the UNGA debate before and after the adoption of resolution A/RES/63/3, States abstaining or voting against the resolution have voiced similar views on adverse effects on the democratic and economic development of Kosovo and on the peace and stability of the whole region as the Czech Republic in this written statement, while those States in favor did not present substantive arguments (UNDoc A/63/PV.22). References of a general kind to the need for legal clarity, the peaceful settlement of disputes, and the rule of law are far from sufficient to counter the specific arguments on adverse effects put forward in the UNGA debate and in this written statement.

III. ISSUES OF SUBSTANCE

Should the Court, in spite of the above-stated arguments, decide to issue an advisory opinion on the question asked by the UNGA, the Czech Republic would like the Court to consider the following points.

At the outset, it is necessary to identify the legal issues involved. The Court has made clear in its jurisprudence that, notwithstanding the specific formulation of the request, it must ascertain "the legal questions really in issue" and take into consideration "all the pertinent legal issues involved."¹⁹ This implies, however, that the Court may not go beyond these pertinent legal issues. The Court itself affirmed that its considerations are confined to the question as formulated by the requesting organ, and further held that it "would only examine other issues to the extent that they might be necessary to its consideration of the question put to it."²⁰

Although the unique case of Kosovo involves many legal questions, the UNGA decided to confine its request to whether or not the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo is in accordance with international law. It was highlighted in the UNGA debate that the question as formulated "represents the lowest common denominator of the positions of the Member States [...] and hence there is no need for any changes or additions."²¹ Consequently, the considerations of the Court are strictly limited to this precise question as set out in resolution A/RES/63/3.

According to that question, only the declaration of independence is at issue. It is thus necessary first to examine the nature of such a declaration. Any declaration of independence is an expression of will of a people or merely of a group, and, as such, of a political nature. The declaration alone cannot violate international law; any possible violation would rather stem from actions relating to the realization or putting into practice of the declaration, such as the use of force. It is not necessary to examine whether any such action is related to the declaration of independence at issue in the present case, as the question put to the Court is confined to the declaration itself. In that sense, the Czech Republic contends that the declaration of independence by the Provisional Institutions of Self-Government of Kosovo, by its very essence, cannot violate international law, and, thus, the Court may end its examination at this point.

If the Court does not follow this argument and sees the declaration of independence itself as potentially capable of violating international law, the Czech Republic would like to point out the limits imposed by the particular question asked by the UNGA. The question is put positively, as it asks for accordance with international law of the declaration of independence. This, however, does not imply that any positive rule in international law allowing for the declaration of independence has to be found. The task is rather to ask whether there is any

¹⁹ *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion of 20 December 1980, ICJ Reports 1980, p 88-89, with references to previous jurisprudence. For legal issues prejudicial to the reply to the question see *Legal consequences for States of the continued presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970)*, Advisory Opinion of 21 June 1971, ICJ Reports 1971, p 45.

²⁰ *Construction of a wall advisory opinion*, ICJ Reports 2003, p 160.

²¹ Introduction of the draft resolution by the representative of the Republic of Serbia, UNDoc A/63/PV.22, p 2.

rule in international law prohibiting the declaration of independence. The Czech Republic, thus, believes that the Court is strictly limited to identifying those international legal norms that could have been violated by the declaration of independence, and to deciding whether such norms were in fact violated.

It has to be examined, therefore, whether there is any norm in general international law prohibiting a declaration of independence, and whether the declaration violated any other existing specific international norms applicable to the case of Kosovo. Regarding the latter, the UNSCR 1244 is the most relevant norm to be analyzed.

General International Law

It is widely recognized in doctrine that contemporary international law does not know any rule prohibiting a declaration of independence or, more generally, a secession. International law neither prohibits nor promotes secession; it does, however, take new factual situations into account and accepts the political reality of a successful secession. In that sense, secession is considered “a legally neutral act the consequences of which are regulated internationally.”²²

Since the declaration of independence, which alone is at issue here, is a part in the process of secession and secession is not prohibited by international law, the Czech Republic concludes that the declaration of independence by the Provisional Institutions of Self-Government of Kosovo does not violate international law.

As the Republic of Serbia contended, specifically, that the “unilateral secession” is a violation of its territorial integrity²³, the Czech Republic sees the need to make two remarks in that respect:

First, the principle of territorial integrity is an essential element of state sovereignty, but it is not an absolute rule and should be understood in the light of recent developments in international law.²⁴

Second, the principle of territorial integrity protects the territory and international borders of independent States, particularly against the threat or use of force and intervention by other States. This principle is well established in international law and, *inter alia*, reflected in Article 2 (4) of the UN Charter as well as in several landmark UNGA resolutions²⁵, and in the Final Act of the Conference on Security and Co-operation in Europe. But in the case of secession, the events leading thereto develop primarily within the frontiers of the original

²² J. Crawford, *The Creation of States in International Law*, Second Edition, Oxford 2006, p 390. In the same sense see C. Haverland, *Secession*, in *EPIL* vol IV, p 354-359. For national jurisprudence see in particular *Reference in re Secession of Quebec*, 1998, 2 SCR 217.

²³ Letter dated 17 February 2008 from the Permanent Representative of Serbia to the United Nations addressed to the Secretary-General, UNDoc A/62/703-S/2008/111.

²⁴ E.g., 2005 World Summit Outcome (A/RES/60/1), para 138-139; Implementing the responsibility to protect. Report of the Secretary-General of 12 January 2009, UNDoc A/63/677.

²⁵ E.g. the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (resolution 2625 (XXV)), the Definition of Aggression (resolution 3314 (XXIX)), the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty (resolution 2131 (XX)), and the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States (A/RES/36/103).

State. Unless there is a use of force against or an intervention by another State into the affairs of the original State, secession cannot be a breach of the latter's territorial integrity.

In conclusion, the declaration of independence by the Provisional Institutions of Self-Government of Kosovo did not and does not violate any rule of general international law, including the principle of territorial integrity.

United Nations Security Council Resolution 1244 (1999)

The events leading to secession, in the specific case of Kosovo, must be seen in a broader international context, in particular with regard to the involvement of the international community. The UNSC considered the situation in Kosovo to be a threat to international peace and security in UNSCR 1160 (1998) and, after the NATO-intervention, established an international administration by UNSCR 1244. In the present case, it is, therefore, necessary to examine whether the unilateral declaration of independence is in conflict with the pertinent UNSC resolutions, in particular UNSCR 1244.

With respect to the question asked by the UNGA, the following parts of the UNSCR 1244 are relevant:

“The Security Council, ...

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2, ...

1. Decides that a political solution to the Kosovo crisis shall be based on the general principles in annex 1 and as further elaborated in the principles and other required elements in annex 2; ...

3. Demands in particular that the Federal Republic of Yugoslavia put an immediate and verifiable end to violence and repression in Kosovo, and begin and complete verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable, with which the deployment of the international security presence in Kosovo will be synchronized; ...

11. Decides that the main responsibilities of the international civil presence will include:

a. Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords (S/1999/648); ...

e. Facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords (S/1999/648);”

In order to determine whether the unilateral declaration of independence is in violation of UNSCR 1244, a thorough interpretation of the resolution is necessary. For that purpose, the rules of interpretation as laid down in Articles 31 to 33 of the Vienna Convention on the Law of Treaties (hereinafter the “Vienna Convention”), accepted by this Court as reflecting

customary international law,²⁶ may be applied *mutatis mutandis*. Such analogical application of the Vienna Convention to the interpretation of UNSC resolutions has been suggested by leading experts of international law.²⁷ Furthermore, this approach has also been taken by the International Criminal Tribunal for the former Yugoslavia in the interpretation of its Statute.²⁸

The general rule of interpretation stipulated in Article 31 (1) of the Vienna Convention sets out four basic interpretative methods: interpretation in good faith, textual interpretation, systematic interpretation and teleological interpretation. Article 31 (3) of the Vienna Convention contains three additional criteria that should be taken into account when a treaty is interpreted. Although not all these criteria can be fully applied in case of interpretation of a UNSC resolution, the subsequent practice test may be used in this case as well.

First, the good faith principle, which is also a “general principle of law recognized by the civilized nations,” is quite elusive. According to the jurisprudence, the interpretation in good faith should not lead to “a result which would be manifestly absurd or unreasonable.”²⁹ In this respect, the interpretation, that UNSCR 1244 does not prohibit the Provisional Institutions of Self-Government of Kosovo from unilaterally declaring the independence, is – in the Czech Republic’s view – neither manifestly absurd, nor unreasonable.

Second, the textual interpretation is focused on the “ordinary meaning to be given to the terms of the treaty”, in this case UNSCR 1244. In this regard, it should be pointed out that in the preambular part of UNSCR 1244, the UNSC was “[r]eaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia”. While this sentence constitutes a mere declarative statement, in the core provisions of UNSCR 1244, the UNSC used much more categorical expressions. The UNSC, e.g., in paragraph 1, “[d]ecides” what the basis for a political solution should be, and, in paragraph 3, “[d]emands” the FRY to end violence and repression in Kosovo and to withdraw its forces from Kosovo. As such, the preambular part of UNSCR 1244 does not create any new obligations under international law for the Member States or the Provisional Institutions of Self-Government of Kosovo. Furthermore, the UNSCR 1244 reaffirms the sovereignty and territorial integrity of the FRY - a State which, meanwhile, ceased to exist - and it is now Serbia that claims sovereignty over the territory of Kosovo. Finally, the UNSC does not contain in any other paragraph of the UNSCR 1244 a stronger wording that would, e.g., guarantee the sovereignty and territorial integrity of the FRY over Kosovo for any situation that may occur in the future.

Third, according to the systematic interpretation, the terms of UNSCR 1244 should be interpreted “in their context”. By the context, the Vienna Convention understands in Article 31 (2), *inter alia*, the text of a treaty, including its preamble and annexes. In the case of UNSCR 1244, it is crucial to read the declaration reaffirming the sovereignty and territorial integrity of the FRY together with paragraph 1, that provides for the principles on which “a political solution to the Kosovo crisis” shall be based on, paragraph 11(a), that regulates the powers of the international civil presence “pending a final settlement,” and paragraph 11(e),

²⁶ *The Territorial Dispute Case*, Libyan Arab Jamahiriya v. Chad, Judgment of 3 February 1994, ICJ Reports 1994, p 21-22 at para 41.

²⁷ M. C. Wood, *The Interpretation of Security Council Resolutions*, Max Planck Yearbook of United Nations Law, 1998, p 85-86.

²⁸ Prosecutor v. D. Tadić, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, paras 71-93.

²⁹ A. Aust, *Modern Treaty Law and Practice*, Second Edition, Cambridge 2007, p 234.

which gives to this presence the responsibility to facilitate “a political process designed to determine Kosovo's future status“. In the context of these provisions, it is clear that the UNSC confirmed the sovereignty and territorial integrity to the FRY only for the duration of the political process between its Government and the Provisional Institutions of Self-Government of Kosovo. Therefore, until 17 February 2008, the UNSCR 1244 provided to both parties almost nine years to agree on a negotiated solution. This political process was definitely over at the end of 2007. UNSCR 1244 does not impose on the parties of the dispute an obligation to negotiate for an indefinite period of time without any prospect of an agreed solution. As the political process ended, the declaration reaffirming the sovereignty and territorial integrity of the FRY is no longer relevant for answering the question asked by the UNGA.

Fourth, the teleological interpretation is based on the “object and purpose” of the terms of the treaty, in this case UNSCR 1244. One of the objectives of UNSCR 1244 was to create an international legal framework for the political process between the authorities in Belgrade and Pristina, rather than to decide on the final solution of the Kosovo status. If the UNSC had wanted to decide on the matter and eliminate one of the solutions, such as the independence of Kosovo, the UNSC would have surely included a specific provision into UNSCR 1244, as it did, e.g., in its resolutions related to the situation in Cyprus. On 29 June 1999, just a few days after the adoption of the UNSCR 1244, the UNSC approved UNSCR 1251 including a clear-cut position on a Cyprus settlement.³⁰ This wording has been repeatedly used by the UNSC in other resolutions on the situation in Cyprus before and after the adoption of UNSCR 1251. Nevertheless, in the case of UNSCR 1244, the UNSC did not approve a similar paragraph excluding a unilateral solution, even though the members of the UNSC did probably not consider this option as the preferred one.

Fifth, the subsequent practice by UNMIK and some Member States in the region is important also for understanding UNSCR 1244. Even before 17 February 2008, the sovereignty of the FRY and its successor States was understood restrictively, e.g., with respect to the conclusion of international agreements applicable on the territory of Kosovo. It has been UNMIK's consistently held position that, pursuant to UNSCR 1244, the situation of Kosovo, under interim administration, is *sui generis* and that treaties to which Serbia is a party are not automatically binding in Kosovo, the applicability of such treaties in respect of Kosovo being a matter for the UNMIK to determine. The only treaties that were binding in Kosovo were the human rights instruments listed in Chapter 3 of Regulation No. 2001/9 on a Constitutional Framework for Provisional Self-Government in Kosovo promulgated by the Special Representative of the Secretary-General. In fact, the UNMIK even concluded agreements on the transfer of sentenced persons with Albania, FYROM and the FRY. It seems, therefore, that in practice, the reaffirmation of the Yugoslav sovereignty over Kosovo, as stated in UNSCR 1244, was understood as a mere declaration by some Member States, including the FRY itself.

As the meaning of UNSCR 1244, resulting from the basic interpretative methods set out in the Vienna Convention, neither “leaves the meaning ambiguous or obscure,” nor “leads to a result

³⁰ The relevant part of the UNSCR 1251 reads as follows: “The Security Council ... 11. Reaffirms its position that a Cyprus settlement must be based on a State of Cyprus with a single sovereignty and international personality and a single citizenship, with its independence and territorial integrity safeguarded, and comprising two politically equal communities as described in the relevant Security Council resolutions, in a bi-communal and bi-zonal federation, and that such a settlement must exclude union in whole or in part with any other country or any form of partition or secession;“

which is manifestly absurd or unreasonable,”³¹ the Czech Republic does not consider it necessary to enter into the analysis of the *travaux préparatoires* of this resolution.

The Czech Republic believes, therefore, that a thorough interpretation of UNSCR 1244 on the basis of the methods set out in the Vienna Convention has to lead to the conclusion that UNSCR 1244 does not prohibit the Provisional Institutions of Self-Government of Kosovo to unilaterally declare independence without the consent of the Republic of Serbia.

While UNSCR 1244 remains the main legal basis for answering the question asked by the UNGA, it should also be taken into account that the relevant developments of international law did not end by 17 February 2008, when the unilateral declaration of independence was made. In this context, the Czech Republic would like to draw the attention of the Court to the fact that the UNSC has not passed any resolution on the legality of this act, as it did before in the cases of Katanga, Rhodesia and the Turkish Republic of Northern Cyprus.

First, when Katanga attempted to break away from the Republic of Congo, the UNSC passed the resolution 169 (1961) of 24 November 1961 by which it “[d]eclares that all secessionist activities against the Republic of Congo are contrary to the *Loi fondamentale* and Security Council decisions and specifically demands that such activities which are now taking place in Katanga shall cease forthwith.”

With regard to the second case, after the Government of Ian Smith issued its unilateral declaration of independence of Rhodesia on 11 November 1965, the UNSC reacted on the very next day. The UNSC, by its resolution 216 (1965) of 12 November 1965, decided not only to “condemn the unilateral declaration of independence made by a racist minority in Southern Rhodesia,” but also to “call upon all States not to recognize this illegal racist minority régime”.

Third, when the Turkish Republic of Northern Cyprus unilaterally declared its independence on 15 November 1983, the UNSC responded by its resolution 541 (1983) of 18 November 1983. According to this resolution, the UNSC, *inter alia*, “[c]onsiders the declaration referred to above as legally invalid and calls for its withdrawal” and, furthermore, “[c]alls upon all States not to recognize any Cypriot State other than the Republic of Cyprus”.

Until April 2009, when the Czech Republic finalized its written statement to the Court, the UNSC has not, however, taken any action in relation to the unilateral declaration of independence issued by the Provisional Institutions of Self-Government of Kosovo. This is, in view of the Czech Republic, a clear signal that the UNSC does not consider this unilateral declaration of independence to be a violation of international law.

³¹ Vienna Convention on the Law of Treaties, signed at Vienna, 23 May 1969, Article 32.

IV. CONCLUSIONS

In conclusion, the Czech Republic is of the view that the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo does not violate any existing rule of international law.

The Czech Republic believes that, after the failure of the status negotiations, an independent Kosovo, initially under international supervision, is the only viable way to realize peace, stability and economic prosperity for the whole region. Any delays in this regard should be avoided. In that sense, the Czech Republic respectfully asks the Court to exercise its discretion and decline to give an advisory opinion.

Finally, the Czech Republic would like to stress again the importance of achieving lasting peace, stability and economic prosperity in the Western Balkans, a region that has been tormented by conflict for almost two decades. It further reaffirms its support for a European perspective for all countries of the region.