



VELEPOSLANIŠTVO REPUBLIKE SLOVENIJE
EMBASSY OF THE REPUBLIC OF SLOVENIA
THE HAGUE, THE NETHERLANDS

No.VHG/173/09

The Hague, 17 April 2009

Dear Mr. Couvreur,

Regarding your letter No. 133310 dated 20 October 2008 I have the honour to submit herewith the written statement of the Republic of Slovenia in the matter of an advisory opinion on the question of 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.

Sincerely,

Leon Marc
Ambassador



Enclosure

Mr. Philippe Couvreur
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 advisory opinion)**

Written Statement by the Republic of Slovenia

By means of resolution 63/03 of 8 October 2008, the United Nations General Assembly requested the International Court of Justice in the Hague (hereinafter: the ICJ) 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?"

On the basis of Article 66, paragraph 2, of the Statute of the International Court of Justice, the ICJ decided that Member States may submit information on this issue. The Court fixed 17 April 2009 as the time limit for submitting written statements by states and organizations. This Statement has been submitted in compliance with the decision of the Court.

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The Republic of Slovenia recognised Kosovo on 5 March 2008 as an independent and sovereign state on the basis of the following: the right of peoples to self-determination; special historical circumstances, including the special constitutional status enjoyed by Kosovo under the 1974 SFRY Constitution; systematic repression of Kosovo Albanians; the special circumstance of a United Nations interim administration established in 1999; the Declaration of Independence of Kosovo; the conclusions of the Council of the EU of 18 February 2008; and to ensure the stability of Kosovo and the wider region, which would have undoubtedly been threatened if Kosovo's previous status had continued.

On 17 February 2008, Kosovo adopted the *Declaration of Independence* of Kosovo, undertaking to respect the commitments under the Comprehensive Proposal for the Kosovo Status Settlement, particularly regarding respect for ethnic groups, the protection of cultural and religious heritage, and the international supervision of Kosovo. With the Declaration of Independence, the new state of Kosovo was founded. Upon the declaration of independence, Kosovo possessed the constitutive elements of a state under international law: territory, population, effective government and – to a more limited extent – sovereignty and the capacity to establish international relations.

The Declaration on the Guidelines on Recognition of New States in Eastern Europe and the Soviet Union adopted by the European Community on 16 December 1991 provided that a State might be recognized if it fulfils the criteria set down therein. These Guidelines go

beyond the four basic criteria defined in the Montevideo Convention¹ of 1933 (a permanent population, a defined territory, government and capacity to enter into relations with other states) and add further requirements, especially with regard to the rule of law, democracy and human rights, including minority rights, as well as respect for the inviolability of all frontiers, disarmament and nuclear non-proliferation, and to state succession. In addition, the Badinter Arbitration Commission of the International Conference for the former Yugoslavia² stated in its Opinion No. 8 of 4 July 1992 that, while the recognition of a State has only declarative value, such recognition [...] bears witness to these States' convictions that the political entity so recognized is a reality and confers on it certain rights and obligations under international law.

Slovenia remains convinced that any deliberation of this matter cannot neglect the context in which Kosovo achieved independence. In this regard, the explanatory memorandum of the decision of the Slovenian National Assembly recognizing the independence of Kosovo is very explicit in mentioning the oppression and systematic discrimination of the majority population of Kosovo before the humanitarian intervention of 1999, as well as the constitutional status that Kosovo enjoyed in the former SFRY.

While the right of all peoples to self-determination is the essence of democracy - democracy being founded on this right - the principle of the territorial integrity of states has no direct link to democracy, even though it is one of the basic principles of international law as well. The preservation of territorial integrity of states is often a reason for gross violations of human rights and the rights of minorities or small nations. It is even an excuse and the cause for war and hotbeds of crisis. However, the experiences of the newly independent states in the last two decades, which are no longer based on decolonization, have been very stimulating for the economic, social and cultural development of their societies. These experiences also have a positive impact on their surroundings and contribute to regional stability.

The right to self-determination is defined by Article 1 of the International Covenant on Civil and Political Rights and by Article 1 of the International Covenant on Economic, Social and Cultural Rights. The concept of the right to self-determination evolved after the period of decolonisation and the Cold War, particularly in confrontation with the principle of respect for the territorial integrity of states. When the "right of a state" to protect its territorial integrity and the "right of people" to decide upon their own destiny are in conflict, the right of people prevails, alongside the peaceful settlement of disputes, in particular through negotiations. In recent decades, the right to self-determination as a human right has been given precedence over the principle of respect for the territorial integrity of states.

Kosovo is in manifold ways a *sui generis* case that does not set any precedent elsewhere. Slovenia recognized Kosovo in the firm belief that its declaration of independence is in conformity with international law, and that it was the best possible solution to end the Kosovo impasse and to ensure sustainable security in the region. Slovenia supports independence out of respect for the right to self-determination, which was clearly demonstrated by the people of Kosovo.

¹ Convention on the Rights and Duties of States signed at Montevideo on 26 December 1933

² According to the 2001 Agreement on Succession Issues, the successor states to the former SFRY are: Bosnia and Herzegovina, Croatia, Macedonia, Slovenia and the FRY.

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On this occasion, Slovenia would like to express its strong support for the work of the International Court of Justice and its contribution to the development and interpretation of international law through the institution of advisory opinions.



Leon Marc

**Ambassador of the Republic of Slovenia to the
Kingdom of the Netherlands**