



*EMBASSY OF BOLIVIA
THE HAGUE*

EBPB-V- 82-09

The Hague, July 17th 2009

Mr. Registrar,

I have the honour to refer to your note No. 134141 of April 21, 2009 regarding the request for an advisory opinion submitted to the Court by the General Assembly to the question of the Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo.

In this regard and on behalf of the Government of the Plurinational of Bolivia, I hereby submit a written statement on the above mentioned question to be presented by 17 July 2009. Following your recommendation, please find attached to this letter thirty (30) bound paper copies of the statement and one (1) CD-ROM containing its electronic version.

Finally, Bolivia looks forward to consider closer, all statements of other States, as well as the final advisory opinion of the International Court of Justice.

Please accept the assurances of my highest consideration.



Roberto Calzadilla S.
Embajador

Mr. Philippe COUVREUR
Registrar of the International Court of Justice
The Hague .-



**WRITTEN COMMENTARY BY THE PLURINATIONAL STATE OF BOLIVIA
TO REQUEST FOR AN ADVISORY OPINION OF THE INTERNATIONAL
COURT OF JUSTICE ON WHETHER THE UNILATERAL DECLARATION OF
INDEPENDENCE OF KOSOVO IS IN ACCORDANCE WITH
INTERNATIONAL LAW**

1. In light of the initial statements submitted by several States, Bolivia considers it necessary to stress in the first instance that the question that has been referred to Court arises from the particular factual circumstances that pertain to the situation of Kosovo. In addressing the question, and in preparing these Written Comments, Bolivia invites the Court to have careful regard to the potentially far-reaching normative consequences for international law of pronouncing on the legality of a unilateral declaration of independence by a constituent part of a sovereign and independent State such as Serbia.

I. PRELIMINARY FACTS.

2. The Plurinational State of Bolivia voted in favor of Resolution 63/3, approved by the General Assembly (“GA”), request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law. In such Resolution the following question was render:

“¿ Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?”

3. The position of the Plurinational State of Bolivia, sent by the Bolivian Embassy on April 17th, 2009, was within the respect that there should be to such Resolution 1244, approved by the Security Council on its 4011th Sessions held on Jun 10th, 1999.



4. In addition, the principles of international law were considered along with the jurisprudence of the Court and the concerned States positions in this case, taking into account that from such positions the ICJ will begin the final face of the legal analysis of the documentation.
5. By request of the ICJ, the Plurinational Bolivian State, among other States, must submit its written commentaries on the other State's commentaries, having as the time limit July 17th, 2009.

II. LEGAL CONSIDERATIONS.

6. Regarding the written commentaries submitted by several States, the Plurinational State of Bolivia considers that one of the United Nations purposes is the international security and peace maintenance.
7. The United Nations Charter restricted the right of self-determination, in the form of secession and independence, solely to the circumstances of "Non-Self-Governing Territories" or colonial territories that had not yet attained independence. By contrast, the right to self-determination of peoples living within sovereign and independent States is exercised through democratic participation in State institutions and, where appropriate, varying degrees of autonomy within the territorial boundaries of the State. There is no right in general international law for peoples to unilaterally declare their independence and to secede from the State of which they form a part without the consent of that State. Since very few States are ethnically homogeneous, recognition of any right to unilateral secession is liable to have potentially catastrophic consequences for the protection of human rights and international peace and security. In the event that the Court decides to engage with the merits of the question presented by the General Assembly, therefore, its approach should take into account the highly significant implications for the most fundamental principles of the international legal order of recognizing any exception to respect for the territorial integrity of States.



8. The Court has already had occasion to address issues of self-determination. In its Advisory Opinions in Namibia,¹ Western Sahara,² and Construction of a Wall,³ the Court has confirmed that the right of self-determination up to and including independence applies only to peoples under colonial rule or foreign occupation. This is consistent with the approach taken by the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples, which states in relevant part that:

“1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.

2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

9. The Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations also clarifies the legal situation, stating that:

“The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.”

10. In other words, the exercise of self-determination by a people under colonial rule, up to and including unilateral secession and independence, does not constitute a violation of the territorial integrity of a State because, under the United Nations Charter, a colonial or Non-Self-Governing Territory enjoys “a

¹ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) Advisory Opinion*, 1971 ICJ Rep., p. 16.

² *Western Sahara Advisory Opinion*, 1975 ICJ Rep., p. 12.

³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory Advisory Opinion*, 2004 ICJ Rep., p. 136



status separate and distinct from the territory of the State administering it". The application of the right of unilateral secession and independence solely to colonial territories is expressly stipulated in the Declaration on Friendly Relations:

"Nothing in the foregoing 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 principle 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."

11. The potential abuse of a right of unilateral secession outside of the colonial context and its grave consequences on human rights and international peace and security is indeed reflected in the Declaration on Friendly Relations, which recognises that:

"Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country."

12. The conclusion to be drawn, therefore, is that in all territories other than those that are colonies or that are Non-Self Governing, or that are under foreign occupation, the right of self-determination is to be exercised within the territorial boundaries of the State, and not by violating those boundaries through unilateral secession or declaration of independence. The fact that a State pursues a discriminatory policy against an ethnic group cannot, as such, give rise to a right to unilateral secession. The remedy, to the extent that one may be needed, is to be found in the law of human rights or in particular rules of international law that protect the rights of minorities.
13. Consistent with this principle, in its General Recommendation No. 21 on the Rights to Self-Determination, the Committee established under the International



Convention on the Elimination of All Forms of Racial Discrimination (CERD) has expressed the view that:

“International law has not recognized a general right of peoples unilaterally to declare secession from a State. In this respect, the Committee follows the views expressed in An Agenda for Peace (paras. 17 and following), namely, that a fragmentation of States may be detrimental to the protection of human rights, as well as to the preservation of peace and security.”

14. Bolivia considers it pertinent in view of the status of Kosovo as a constituent entity within Serbia to recall the 1998 judgment of the Supreme Court of Canada in *Reference re Secession of Quebec*, where the Court was asked to address the question, amongst others:

“¿Does international law gives the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self determination under international law that would give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?”

15. In addressing that question, the Court had little difficulty in reaching the following conclusion:

“It is clear that international law does not specifically grant component parts of sovereign states the legal right to secede unilaterally from their ‘parent’ state.”

16. The Court clarified the scope of the right to self-determination, stating that:

“The recognized sources of international law establish that the right to self-determination of a people is normally fulfilled through internal self-determination -- a people’s pursuit of its political, economic, social and cultural development within the framework of an existing state. A right to external self-determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises in only the most extreme of cases and, even then, under carefully defined circumstances.”



17. Applying the jurisprudence of the Court, and the conclusion of Canada's Supreme Court, Bolivia submits that international law does not grant Kosovo the legal right to secede unilaterally from Serbia.
18. Kosovo is neither a colony nor a Self-Governing Territory; nor is it occupied by a foreign State. Bolivia recognizes that during the Government of President Slobodan Milosevic in the Federal Republic of Yugoslavia, the ethnic Albanian population of Kosovo suffered systematic discrimination and large-scale ethnic cleansing. These facts have been established in the proceedings of the International Criminal Tribunal for the former Yugoslavia.
19. Following the military intervention of NATO, which began on March 24th 1999, the Security Council of the United Nations adopted Resolution 1244 of June 10th, in accordance to the purposes and principles of the Charter of the United Nations, and the primary responsibility of the Security Council for the maintenance of international peace and security, being the juridical and political basis for the treatment of the Kosovo Statute question, with recognized authority by the international community.
20. The Security Council Resolution 1244, clearly establish the legal and political standards for a solution in Kosovo's situation in Serbia, former Federative Republic of Yugoslavia.
21. The Plurinational State of Bolivia, adheres to such political and legal parameters, taking into account that the referred Resolution 1244 establish on its 10th paragraph:

“Authorizes the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial



autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo.” [own underlining]

22. Also, the sixth paragraph of Annex 1 of Resolution 1244, Statement by the Chairman on the conclusion of the meeting of the G-8 Foreign Ministers held at the Petersberg Centre on 6 May 1999, ordain:

“political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region...” [own underlined]

23. For its part, Annex 2 of the Resolution 1244 notes on its fifth paragraph as follows:

“Establishment of an interim administration for Kosovo as a part of the international civil presence under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, to be decided by the Security Council of the United Nations. The interim administration to provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.” [own underlined]

24. In addition, paragraph 8 of the referred Annex 2 of the la Resolution 1244, indicates:

“A political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region ...” [own underlined]



25. The sovereignty and territorial integrity are guiding principles of the United Nation's Charter. Both are fundamental principles of international law, therefore, should be respected and observed by the international community.
26. According to the doctrine, State's sovereignty and territorial integrity has in international law three main features: plenitude, exclusivity and inviolability.
 - **Plenitude:** the territorial sovereignty's function is to, indeed, let the State's fulfillment of its objectives. Consisting this on the insurance of the permanent and general interests of the human community, it is understood that the territorial sovereignty is full and that the limitations to it are not presumed.
 - **Exclusivity:** the territorial sovereignty is exclusive, in the way that in the territory of a State the exercise of territorial competences by other State is not allowed, unless there is an express consent to it by the first one.
 - **Inviolability:** on international law there is an obligation to respect sovereignty and territorial integrity of other States. As the Court of The Hague stated in the Corfu case "between independent States, the respect of territorial sovereignty is one of the fundamentals of international relations. In addition, this principle is present in the Charter of the United Nations Organization and the Declaration of the of the Principles of the International Right which rule the cooperation and friendship relations between states, adopted by the General Assembly on the 25 of October of 1970. It is the Resolution 2625(XXV) and in the Helsinky Act of 1st of August of 1975, concluded in the framework of the Conference of Security and Cooperation in Europe, which formulates the principles of inviolability of frontiers and territorial integrity of States".



27. In this context, the Court, in accordance with the rules and principles of international law and relevant jurisprudence, found that the principle of territorial integrity is the protection of an essential element of the State –*the territory*–, where any modification to the territorial integrity of the State should be conducted in accordance to international law, this is, mainly through the consent of the concerned State.
28. Similarly, Resolution 55/2 United Nations Millennium Declaration, approved by the GA at United Nations Headquarters in New York, fifty fifth sessions carried out from 6 to 8 September 2000, on paragraphs 3 and 4 provide:

“3. We reaffirm our commitment to the purposes and principles of the Charter of the United Nations, which have proved timeless and universal. Indeed, their relevance and capacity to inspire have increased, as nations and peoples have become increasingly interconnected and interdependent.

4. We are determined to establish a just and lasting peace all over the world in accordance with the purposes and principles of the Charter. We rededicate ourselves to support all efforts to uphold the sovereign equality of all States, respect for their territorial integrity and political independence, resolution of disputes by peaceful means and in conformity with the principles of justice and international law, the right to self-determination of peoples which remain under colonial domination and foreign occupation, non-interference in the internal affairs of States, respect for human rights and fundamental freedoms, respect for the equal rights of all without distinction as to race, sex, language or religion and international cooperation in solving international problems of an economic, social, cultural or humanitarian character.” [own underlined]

III. CONCLUSIONS AND RECOMMENDATIONS.

29. The actions and efforts toward a solution on Kosovo’s regard should be within the principles and purposes of the United Nation’s Charter and related instruments, including relevant requirements of Resolution 1244 that guarantee and preserve the sovereignty and territorial integrity of States.



30. Therefore, to adopt unilateral measures of secession or independence must be considered as contrary to international law.
31. In view of the above, the Plurinational State of Bolivia request the International Court of Justice the following:
32. That the International Court of Justice, to the question on Resolution 63/3, approved by the General Assembly, about the request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law, declares that:
 - (1) General international law does *not* grant Kosovo the legal right to secede unilaterally from Serbia.
 - (2) the right to self-determination may *not* be exercised by the Provisional Institutions of Self-Government of Kosovo so as to justify the unilateral declaration of independence under international law; and
 - (3) There are no other grounds in international law which would allow the Provisional Institutions of Self-Government of Kosovo to unilaterally declare independence.

The Hague, July 2009