

QUESTIONS FROM THE COURT – WRITTEN REPLY BY THE REPUBLIC OF CYPRUS

1. "It has been contended that international law does not prohibit the secession of a territory from a sovereign State. Could participants in these proceedings address the Court on the principles and rules of international law, if any, which, outside the colonial context, permit the secession of a territory from a sovereign State without the latter's consent?" [Judge Koroma]

1.1. "Sovereign equality" is the fundamental principle of public international law and the first of the legal principles mentioned in the UN Charter. As was declared in UN General Assembly Resolution 2625, the principle of "sovereign equality" entails the principles, inter alia, (a) that "each State enjoys the rights inherent in full sovereignty" and (b) that "the territorial integrity and political independence of the State are inviolable". Territory is an essential attribute and characteristic of Statehood; and one of the rights inherent in the sovereignty of each and every State is that State's prerogative to decide if and how to dispose of its territory.

1.2. The making of a unilateral declaration of independence is by definition the act of an entity that, immediately prior to the making of the declaration, is neither a sovereign State nor a body (such as a government) entitled to act on behalf of a sovereign State. That entity claims the status of a sovereign State by the making of the declaration.

1.3. International law does not purport to forbid an individual or group of individuals from actually *making* such unilateral declarations – from the act of making the proclamation. This is in contrast to the position in domestic law, which may prohibit the making of such declarations because they constitute offences such as treason or crimes against the security of the State. The legal significance of a unilateral declaration of independence is, however, regulated by international law.

1.4. The distinction drawn in the previous paragraph is essentially that drawn by the Court in the *Anglo-Norwegian Fisheries* case:

"The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law." *ICJ Reports 1951*, 116 at 132.

1.5. The principle of sovereign equality which lies at the heart of international law is consistent with the absence of a prohibition in international law on the making of

unilateral declarations of independence. They are reconciled, as the passage from *Anglo-Norwegian Fisheries* indicates, by holding that the making of the declaration is necessarily a unilateral act, not prohibited by international law, but that the unilateral act is devoid of legal effect unless it is consistent with international law. The invalidity of a unilateral declaration of independence as *a matter of international law* thus protects the sovereign rights of a State against violations by other States and non-State actors alike.

- 1.6. Accordingly, the purported secession of a territory from a sovereign State without that State's consent is incompatible with international law and with the State's international legal prerogative to decide itself if and how to dispose of its territory. Such a purported unilateral secession is, thus, not in accordance with international law.
  - 1.7. As was explained in its written and oral statements before the Court, the Republic of Cyprus does not consider that declarations of secession have any legal validity in international law except in circumstances of colonial self-determination, unless the parent State has consented to the secession. Indeed, Cyprus considers that a unilateral declaration of secession that purports to break up a State that has itself emerged from colonial rule by self-determination would be incompatible with the right to self-determination of the 'people' of that State.
  - 1.8. Further, Cyprus does not consider the population of Kosovo to constitute a 'people' for the purposes of self-determination: rather, the population of Kosovo includes groups which constituted minorities within Serbia, entitled to the rights of minorities and to human rights in accordance with international law.
  - 1.9. *In light of the above, it is Cyprus' position that, outside the colonial context, international law does not permit the secession of a territory from a sovereign State without the State's consent.*
2. «Est-ce que les auteurs de la déclaration unilatérale d'indépendance des institutions provisoires d'administration autonome du Kosovo ont fait auparavant campagne, lors de l'élection de novembre 2007 de l'assemblée des institutions provisoires d'administration autonome du Kosovo, sur la base de leur volonté de déclarer unilatéralement, une fois élus, l'indépendance du Kosovo, ou bien ont-ils, au moins, présenté à leurs électeurs la déclaration unilatérale d'indépendance du Kosovo comme l'une des alternatives de leur action future ?» [Judge Bennouna]

2.1. This question is addressed primarily to the Authors of the Declaration, and Cyprus offers no comment on it.

3. "United Nations Security Council resolution 1244 (1999) refers, in its paragraph 11 (a), to "substantial autonomy and self-government in Kosovo", taking full account of the Rambouillet Accords. In your understanding, what is the meaning of this *renvoi* to the Rambouillet Accords? Does it have a bearing on the issues of self-determination and/or secession? If so, what would be the prerequisites of a people's eligibility into statehood, in the framework of the legal régime set up by Security Council resolution 1244 (1999)? And what are the factual preconditions for the configurations of a 'people', and of its eligibility into statehood, under general international law?" [Judge Cançado Trindade]

3.1. The significance of the reference to the Rambouillet Accords in UNSC resolution 1244 is evident from the text of the resolution itself.

3.2. The Rambouillet Accords are mentioned four times in UNSC resolution 1244. In Operative paragraph 11 the Council decided that the main responsibilities of the international civil presence included "promoting the establishment, pending a final settlement, of substantial autonomy and self-government for Kosovo, taking full account of annex 2 and of the Rambouillet Accords" and "facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet Accords".

3.3. The third mention appears in Annex 1 to UNSC resolution 1244, which is a statement by G-8 Foreign Ministers of general principles that they wished to be applied in respect of Kosovo. One such principle was "A 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, and the demilitarization of the KLA."

3.4. The fourth mention appears in Annex 2, headed "Agreement should be reached on the following principles to move towards a resolution of the Kosovo crisis." It reads: "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, and the demilitarization of UCK. Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions."

3.5. UNSC resolution 1244 thus defines the objective towards which the "political process" should be directed: ie, the "substantial autonomy and self-government" of Kosovo. "Substantial autonomy and self-government" does not mean

independence. Indeed, the phrase makes no sense if applied to an independent State. Further, the phrase was in any event directed only to the interim status of Kosovo. Resolution 1244 said nothing about the final status of Kosovo.

- 3.6. UNSC resolution 1244 then indicates a number of matters of which "full account" should be taken in the political process. The Rambouillet Accords is one; sovereignty, territorial integrity, and the demilitarization of the KLA/UCK are others.
- 3.7. The references to the Rambouillet Accords were thus directions to those involved in the political process to take the Accords into account, and not to ignore them. The references do not suggest that the Accords had the status of law, any more than it suggests that "demilitarization" was an existing legal obligation. Nor do they suggest that the "agreement" envisaged by Annex 2 must adopt all aspects of the Accords. Any such suggestion would have been incompatible with the notion of an agreed settlement.
- 3.8. As to the meaning of 'people', Cyprus considers that the question is relevant only in the context of self-determination for a 'people' in colonial-type situations, which is not the case here.