

INTERNATIONAL COURT OF JUSTICE

Request for an Advisory Opinion

***“Is the Unilateral Declaration of Independence by the Provisional
Institutions of Self-Government of Kosovo in accordance with
international law?”***

**REPLY OF THE GOVERNMENT OF AUSTRIA TO ADDITIONAL
QUESTIONS BY THE COURT**

Vienna, December 2009

With reference to the Registrar's note of 11 December 2009 Austria would like to submit the following reply to the questions addressed by Judge Cançado Trindade to all participants in the oral proceedings, while referring to its previous written and oral statements:

The first question put by Judge Cançado Trindade relates to the reference by United Nations Security Council Resolution 1244 (1999), in its paragraph 11 (a), to "substantial autonomy and self-government in Kosovo, taking full account ... of the Rambouillet accords". In particular, it asks for the meaning of this renvoi to the Rambouillet Accords.

Austria wishes to reply to this question by referring to the meeting records of the Security Council relating to the preparation and adoption of Resolution 1244, which help to clarify the meaning of the reference to the Rambouillet Accords. For example, in his statement after the adoption of the Resolution, the representative of France, Alain Dejammet, explained the relevance of the Rambouillet Accords which, despite Belgrade's rejection "laid out a future for Kosovo"¹. Although the Rambouillet Accords did not enter into force as an autonomous treaty because of Belgrade's rejection, they did acquire legal effect for the purposes of Resolution 1244 through the reference to the Accords in paragraph 11 (a) of the Resolution. The renvoi to the Rambouillet Accords, therefore, expresses that the establishment of substantial autonomy and self-government, pending a final settlement for Kosovo, shall take full account of these Accords, notwithstanding any opposition to this agreement existing at the time. Apart from the principles of cessation of hostilities and of democratic self government, the Accords refer to the "the will of the people"², which is to be respected in a final settlement, irrespective of any other requirement set out in Article I paragraph 3 of Chapter 8 of these Accords. During the negotiations of the Rambouillet Accords the phrase "the will of the people" which was subsequently included, was proposed by the delegation from Kosovo.³ Given the impossibility of interpreting the meaning of this phrase in the light of object and purpose in accordance with Art. 31 of the Vienna Convention on the Law of Treaties (VCLT), one has to resort to Art. 32 VCLT, according to which the preparatory work and circumstances of conclusion of a treaty serve as supplementary means of interpretation. For these reasons, the phrase "the will of the people" is to be interpreted as the will of the Kosovar people, which must be respected in a final settlement.

Judge Cançado Trindade further asked whether the renvoi to the Rambouillet Accords has a bearing on the issues of self-determination and/or secession. With regard to this question, it is important to keep in mind that neither the Rambouillet Accords nor Security Council Resolution 1244 contain a reference to self-determination or secession (apart from a preambular reference in Resolution 1244 to the Helsinki Final Act, which refers to the Principle of self-determination alongside with other principles). In view of the silence of the Rambouillet Accords with regard to secession or self-determination, the renvoi to these Accords in Resolution 1244 cannot have any effect on these two issues. However, neither silence with regard to self-determination and secession nor the absence of any effect on these two elements can delegitimize a declaration of independence by the representatives of the Kosovar people.

¹ Verbatim Record of the 4011th meeting of the Security Council of 10 June 1999, UN Doc. S/PV.4011, p.11.

² Chapter 8, Article I paragraph 3 of the Interim Agreement for Peace and Self-Government in Kosovo, UN Doc. S/1999/648, 7 June 1999.

³ Cf. Weller, M., The Rambouillet Conference on Kosovo, 75 International Affairs 1999/ 2, 211-251.

A further question of Judge Cançado Trindade raised the issue of the prerequisites for a people's eligibility into statehood in the framework of Resolution 1244. Austria holds the view that this Resolution does not specify any such prerequisites.

As to the last question of Judge Cançado Trindade concerning the factual preconditions for the configurations of a people, and of its eligibility into statehood, under general international law, Austria recalls that a general definition of a people has not been agreed in international law. Nevertheless, the Court may find relevant a passage of the UNMIK Constitutional Framework for Kosovo which reads: "Kosovo is an entity ... which, with its people, has unique historical, legal, cultural and linguistic attributes."⁴ This reference to historical, legal, cultural and linguistic criteria could serve as a means to clarify the UN approach to the specific question at hand.



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⁴ UNMIK/REG/2001/9, 15 May 2001, paragraph 1.1.