

**Reply of the Republic of Burundi to the questions posed by Judges Koroma,
Bennouna and Cancado Trindade at the close of the oral proceedings**

[Translation]

The Republic of Burundi thanks the Court for allowing it once again to express its opinion on certain aspects of the questions put to the Court by the General Assembly. The brief comments which follow are intended to provide some elements of a reply to two of the three questions posed by the Court.

Question 1 [question posed by Judge Koroma]:

“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?”

The Republic of Burundi aligns itself with those Members of the Organization which argue that general international law does not prohibit secession. It would add, however, that general international law does not, for that matter, authorize secession. There is no rule of international law, outside the colonial context, which authorizes the secession of a territory forming part of an existing State. In Burundi’s opinion, the fact that international law neither authorizes nor prohibits the secession of an entity does not, however, preclude the establishment of special régimes under which secession could be specifically prohibited. In this case, it seems reasonable to contend that resolution 1244 did indeed establish such a legal régime and prohibits any action, by the different authorities entrusted with certain powers under the special régime, that would lead to the secession of the territory of Kosovo. Even if it could not be established that the legal régime set up by resolution 1244 does not prohibit the authorities to which that resolution entrusted certain powers over the territory of Kosovo from undertaking any action which would contribute to secession, there appears to be no doubt that it does not authorize such action and that the authorities in questions were not empowered to engage in acts contributing to the secession of the territory of Kosovo. Accordingly, secession unquestionably forms no part of the mandate assigned to the different authorities empowered under the special régime created by resolution 1244 to exercise certain powers over the territory of Kosovo.

Burundi is of the opinion, however, that this conclusion has no importance in relation to the question put to the Court unless it is established that the authors of the declaration adopted it *in their capacity as the authority vested, under the resolution, with certain powers over the territory of Kosovo*. The question of the extent of the powers of the authors of the declaration of independence in fact arises only if they acted *in the capacity* of an authority vested, under the resolution, with certain powers over the territory of Kosovo. This at least is the necessary consequence of applying by analogy the law of international State responsibility, under which the question of the extent of the powers of an organ arises only if it is established that it undertook the relevant conduct in its capacity as the organ concerned¹.

Burundi hopes that its comments during the oral proceedings showed sufficiently clearly that, in its opinion, the authors of the declaration of independence, in declaring their independence, *did not act as an authority vested, under resolution 1244, with certain powers over the territory of*

¹See Article 7 of the Articles on State Responsibility which specifies that “the conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity *acts in that capacity*, even if it exceeds its authority or contravenes instructions”; emphasis added.

Kosovo. The question of the extent of the powers of the authors of the declaration of independence in relation to the legal régime established by resolution 1244 does not, therefore, arise. Consequently, there is no need to consider whether the authors of the declaration, in the context of the special régime concerned, acted *ultra vires* and took an action which was not authorized in that framework.

Question 2 [question posed by Judge Bennouna]:

“Did the authors of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo previously campaign, in the elections of November 2007 for the Assembly of the Provisional Institutions of Self-Government of Kosovo, on the basis of their willingness, once elected, to declare Kosovo independent unilaterally, or did they at least present the unilateral declaration of Kosovo’s independence to their electors as one of the alternatives for their future action?”

The Republic of Burundi considers that other participants in the proceedings are in a better position to answer this question. It nevertheless deems it appropriate to point out that the fact that independence could have been one objective of the political programme of the authors of the independence declaration is not a decisive factor in assessing the capacity in which they acted when adopting that declaration.

Question 3 [question posed by Judge Cançado Trindade]:

“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?”

The Republic of Burundi considers that the reference to the Rambouillet Accords in resolution 1244 confirms that the right to self-determination is inapplicable in this case. Indeed, the Rambouillet Accords make no reference to the principle of the right of peoples to self-determination. In Burundi’s opinion, this is a further indication of the fact that the right to self-determination does not apply outside decolonization situations, these being the only situations in which international law recognizes the right of certain entities constituting a people to set up an independent State if such is their freely expressed will. That being said, the Republic of Burundi deems it appropriate to recall that, in its opinion, the inapplicability of the right to self-determination does not in this case prejudice the legality or illegality, within the interpretation given to these terms by Burundi in its comments, of the independence declaration. Moreover, the absence of a right to self-determination in this case is of no consequence for the existence of the entity which invokes that right.

In Burundi’s opinion, the reference to the Rambouillet Accords in resolution 1244 also provides support for the idea that the legal régime established by resolution 1244 does not entitle the authorities vested thereunder with certain powers over the territory of Kosovo to engage in any act whatsoever that could lead to the secession of the territory of Kosovo. Indeed, Burundi takes the view that the Rambouillet Accords very clearly reflect a rejection of the possibility of

independence for the territory of Kosovo². That said, and as was mentioned above, if the special legal régime established by resolution 1244 is considered to prohibit the secession of the territory of Kosovo — which is the impression created by the reference to the Rambouillet Accords — that has no bearing on the legality of the declaration of independence, since the authors thereof did not adopt it in the capacity of an authority vested, under resolution 1244, with certain powers over the territory of Kosovo.

²See *inter alia* the preamble to the Rambouillet Accords and the explicit reference to respect for the territorial integrity of the Federal Republic of Yugoslavia. See also the references to the territorial integrity of the Federal Republic of Yugoslavia in Chapters 1 and 7.