

**Reply of the French Republic to questions posed by Judges Koroma
and Cançado Trindade at the close of the oral proceedings**

[Translation]

**Reply of the French Republic to the question
posed by Judge Cançado Trindade**

1. Judge Cançado Trindade's question relates to two sets of problems, one of which, for the reasons already mentioned by France in its written and oral pleadings, has nothing to do with the question submitted to the Court by the General Assembly: the point as to whether Kosovo is a State is not at issue in this case¹ whereas, as France has already pointed out², it is superfluous to consider whether the people of Kosovo had a right to self-determination since it is sufficient to observe that the declaration of independence was not contrary to international law.

2. The aspects of Judge Cançado Trindade's question relating to the reference to the Rambouillet Accords contained in Security Council resolution 1244 (1999) call for the following two observations.

3. *First*, the fact that the Rambouillet Accords³ laid down interim rules governing an autonomous status for Kosovo and made provision, to that end, for the establishment of the "institutions of democratic self-government in Kosovo"⁴ confirms that the people of Kosovo (whatever international rights they may have possessed) were in fact democratically represented by the above-mentioned institutions. This explains why Chapter 8 of the Accords, for its part, also refers to the "will of the people" of Kosovo. In this connection, there is a link between the provisions relating to the interim status and those relating to the final status of Kosovo, which concern the same entity.

4. Notwithstanding, that does not mean that the interim régime and the final status rested on identical principles. *Secondly*, in fact, if paragraph 11 (*a*) of resolution 1244 (1999) referred, like paragraph 11 (*e*), to the Rambouillet Accords, it was on the basis of the distinction made in those Accords between the precisely defined solutions adopted for the interim régime and the options left open for final status, framed solely in terms of the reference to respect for the "will of the people" of Kosovo and the "opinions" of the relevant authorities.

5. With regard to the interim régime, paragraph 11 (*a*) of resolution 1244 (1999) has to be understood as referring only to the provisions of the Rambouillet Accords that relate to the interim status of Kosovo. This reference is qualified by the words "pending a final settlement", and it specifically relates only to a régime of autonomy, for which reason the Security Council simultaneously referred in this context both to the Accords and to Annex 2 of the resolution. The relevant provisions of the Rambouillet Accords in this connection are contained in Chapter 1 establishing an "*interim* Constitution" for Kosovo, while Chapters 2 to 7 are concerned with the powers of the international authorities that are to be responsible for monitoring the proper

¹Written Statement, p. 19, para. 1.14; Written Comments, pp. 4-5, paras. 10-11; CR 2009/31, p. 10, para. 6 and p. 15, para. 17 (Belliard).

²Written Comments, p. 13, para. 31; CR 2009/31, p. 16, para. 20 (Belliard) and p. 18, para. 5 (Forteau).

³Accords reproduced in S/1999/648.

⁴*Ibid.*, Chap. 1, preamble to the "Interim Constitution".

implementation of the Rambouillet Accords and organizing the interim régime (cessation of hostilities, elections, role of KFOR, the OSCE and the Security Council in particular). Details of all these aspects are set forth in no fewer than 64 pages.

6. On the other hand, as far as the final status of Kosovo is concerned, it is clear that the Rambouillet Accords did not seek to prejudge the outcome. Only Article 1, paragraph 3, of Chapter 8 of the Accords (containing final clauses) deals with the matter, which is left totally open, subject to account being taken of the “will of the people” of Kosovo. The Security Council drew the necessary consequences in paragraph 11 (*e*) of resolution 1244 (1999) by referring to the Rambouillet Accords — and necessarily to Chapter 8 thereof since the final status of Kosovo is at issue — solely in connection with a “political process” to be “facilitated”, without any mention being made in this instance of the single option of “substantial autonomy and self-government” and without any reference being made to Annex 2 of the resolution.

7. The stark difference in the approach adopted to the question of interim status, on the one hand, and final status, on the other, confirms the total neutrality of resolution 1244 (1999) regarding the question put to the Court.

Reply of the French Republic to the question posed by Judge Koroma

1. As France has argued in its written and oral pleadings⁵, international law tolerates secession, within the literal and precise meaning of this verb: although international law does not prohibit secession, save in cases where it is accompanied by the violation of fundamental principles of international law such as the prohibition of the use of force in international relations in accordance with the United Nations Charter, or again the prohibition of apartheid, the right to independence and, hence, the right to secession, also does not exist in international law, outside the context of decolonization.

2. The absence of a rule authorizing secession does not in any sense mean that such secession would contravene international law; on the contrary, the absence of such a permissive rule attests to the fact that international law exhibits complete neutrality in the matter. This neutrality of international law is the consequence of the very nature of the process whereby States are formed: as the creation of a new State is a question of fact, international law can only record the existence of the new State and draw the necessary legal consequences in terms of rights and obligations henceforward attached to its status as a State.

3. In view of this lack of a rule of international law — be it prohibitive or permissive — regarding the accession of a State to independence by means of secession from a pre-existing State, a declaration of independence cannot, *a fortiori*, be deemed in itself not to accord with international law.

⁵Written Statement, pp. 25-27, paras. 2.2-2.10; CR 2009/31, p. 15, para. 18 (Belliard).