

Comments of the Bolivarian Republic of Venezuela to the questions submitted by Judges Koroma and Cançado Trindade on December 11, 2009 with respect to the request of an advisory opinion on the “Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo”

At the end of the public hearing held on December 11, 2009, to meet the request of an advisory opinion submitted by the General Assembly of the United Nations to the International Court of Justice on the question of the “Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo”, Judges Koroma, Bennouna and Cançado Trindade conveyed three questions to the participants of the oral proceedings who may wish to respond.

Through this document, the Bolivarian Republic of Venezuela shall state its position with respect to two of the three questions in the following terms:

1. The first question was posed by Judge Koroma in the following terms:

“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?”

With respect to the first question, the Bolivarian Republic of Venezuela considers secession as one of the possible consequences –but not the only one- of the exercise of the right to self-determination of peoples. In this sense, for the Government of the Bolivarian Republic of Venezuela, international law does not recognize other causes that might motivate the secession of a territory from a sovereign State different from those provided for the case of “external self-determination”, which were sufficiently explained by the Supreme Court of

Canada in its judgment of the year 1999 on the question of the *Secession of Quebec*.

Such decision, apart from recognizing the rights of the peoples bound to colonialism, extends such possibility, in accordance to resolution 2625 (XXV) of the General Assembly of the United Nations, dated October 24, 1970, only to those people that are bound to foreign subjugation, domination or foreign exploitation off the colonial context, since such imperialistic behaviors constitute a flagrant violation of the principles of equality of rights and self-determination of the peoples.

Additionally, the aforementioned Supreme Court, based on resolution 2625 (XXV), recognized, besides the situation of the colonial context, a second situation that might lead a people to legally favor the secession of a territory from a sovereign State.

The aforementioned resolution 2625 (XXV) refers that: "Nothing in the foregoing paragraph 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 right and self-determination of people 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**".

Thus, when a people is clearly unable to exercise its internal self-determination, that is, when it does not have the possibility to access in equal circumstances and without any discrimination to the exercise of the *res publica* within the State to which it belongs, in such a case, one may deem that that people acquires the right to activate its external self-determination.

It is only under those circumstances that the Bolivarian Republic of Venezuela considers the possibility of secession of a territory from a sovereign State to be in accordance with international law,. On the contrary, if we assume

that international law does not prohibit secession but it implicitly permit it, means that such secession can only take place within the framework of the principle of self-determination of peoples and full respect of the principle of sovereignty and territorial integrity of the States, as stated and recognized both in the Charter of the United Nations and the resolution 2625 (XXV) of the General Assembly of the United Nations.

2. The question submitted by Judge Cançado Trindade is the following:

“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 regime 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?”

With respect to the aforementioned question, the Bolivarian Republic of Venezuela considers that while paragraph 11 (a) of resolution 1244 (1999) establishes as one of the main responsibilities of the international civil presence the promotion of the establishment of “*substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords*”, the reference to the Rambouillet accords in the Resolution is aimed at providing the international civil presence the appropriate legal framework for the compliance of its obligation of establishing “substantial autonomy and self-government in Kosovo”; that is, in order to define the legal regime regulating both the proceeding and the basis and limits to develop the mandate of promoting the establishment of autonomy and self-government.

In this sense, the Bolivarian Republic of Venezuela wants to stress the fact that, although the Interim Agreement for Peace and Self-Government in Kosovo never entered into force, several paragraphs and articles in its text confirmed the principle of respect for sovereignty and territorial integrity of the Federal Republic of Yugoslavia, as the basis upon which the system of self-government of Kosovo should be built.

In this regard, it is necessary to highlight the statements included in the preamble of the aforementioned Interim Agreement in which the Parties recall *“the commitment of the International community to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia”*. Likewise, Article I.2 of the Agreement’s Framework states: *“National communities and their members shall have additional rights specified in Chapter 1. Kosovo, Federal, and Republic authorities shall not interfere with the exercise of these additional rights. The national communities shall be legally equal as specified herein, and shall not use their additional rights to endanger the rights of other national communities or the rights of citizens, the sovereignty and territorial integrity of the Federal Republic of Yugoslavia, or the functioning of representative democratic government in Kosovo”*.

At the same time, it is worthy to recall that respect for the sovereignty and territorial integrity of Yugoslavia is specifically expressed in the Rambouillet Accords in relation with the respect for and control over the borders of the Federal Republic of Yugoslavia. Indeed, Article VI.1 of Chapter 2 states that *“the Government of the Federal Republic of Yugoslavia will maintain official border crossings on its international borders (Albania and the FYROM)”*, and article I.4 of Chapter 4 sets forth that the Federal Republic of Yugoslavia *“shall be responsible for the collection of all customs duties at international borders in Kosovo”*.

As a result of the previous arguments, the Bolivarian Republic of Venezuela concludes that the *renvoi* made in paragraph 11(a) of resolution 1244 (1999) to the Rambouillet accords, does not constitute itself a connecting element between them and the issues of self-determination or secession, but

only an orientation for the international civil presence on the legal regime encompassing both the procedures and the basis and limits to comply the mandate of promoting the establishment of "substantial autonomy and self-government in Kosovo". Thus, such *renvoi* does not constitute a legal basis to justify a process of secession or independence by the provisional institutions of self-government of Kosovo.