



*Embassy of
the Arab Republic of Egypt
The Hague*

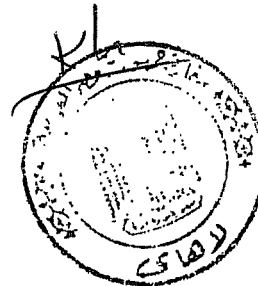
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The Hague, April 16th, 2009

The Embassy of the Arab Republic of Egypt in The Hague presents its compliments to the International Court of Justice and with reference to the Court's note no. 1333310, dated October 20th, 2008, concerning the request for "the advisory opinion made by the General Assembly of the United Nations on the question of the Accordance with International law of the Unilateral Declaration of Independence by the Provisional Institutions of self-Government of Kosovo," and in accordance with Article 66, paragraph 2, of the Court Statute, that the United Nations and its Member States are likely to be able to furnish information on the question and with reference to the Court fixed date of 17 April , 2009 as the time limit for submission of written statements, has the honour to enclose herewith the written statement of the Government of the Arabic Republic of Egypt in this regard.

The Embassy of the Arab Republic of Egypt avails itself of this opportunity to renew to the International Court of Justice in the Kingdom of the Netherlands the assurances of its consideration.

International Court of Justice
Peace palace
2517 KJ
The Netherlands



INTERNATIONAL COURT OF JUSTICE

**ACCORDANCE WITH INTERNATIONAL LAW OF
THE UNILATERAL DECLARATION OF INDEPENDENCE BY THE PROVISIONAL
INSTITUTIONS OF SELF-GOVERNMENT OF KOSOVO**

(REQUEST FOR AN ADVISORY OPINION)

(ORDER OF 17 OCTOBER 2008)

**WRITTEN STATEMENT
OF THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT**

APRIL 2009

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PART I
INTRODUCTION

A. Overview

1. In resolution 63/3 of 8 October 2008, the General Assembly of the United Nations requested the advisory opinion of the International Court of Justice on the legality of the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo under international law.
2. The Registrar of the International Court of Justice notified the Arab Republic of Egypt (hereinafter 'Egypt') of the Court's Order of 17 October 2008 concerning the request for an advisory opinion made by the General Assembly, and that the Court decided that the United Nations and its Member States are considered likely to be able to furnish information on the question submitted to the Court. The Court fixed 17 April 2009 as the time-limit for the submission of written statements and 17 July 2009 as the time-limit for the submission of written comments on the Written Statements of other states.
3. This Written Statement is filed in accordance with the Court's Order.

B. Scope of the request

4. The purpose behind the General Assembly's request is that the Court, through its advisory opinion, determines the extent to which the unilateral declaration of independence is in conformity with international law.
5. In resolution 63/3, the General Assembly decided, in accordance with Article 96 of the Charter of the United Nations (hereinafter 'the UN Charter'), to request the Court, pursuant to Article 65 of the Statute of the International Court of Justice to deliver an advisory opinion on the following question:

Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?¹

6. The General Assembly was "[m]indful of the purposes and principles of the United Nations"² and was also aware of the "varied reactions by the Members of the United Nations [...]"³ following such a declaration.
7. Accordingly, this request for an advisory opinion is limited to legal issues relevant to the lawfulness of the unilateral declaration, under the rules and principles applicable under international law. In this context, The Court formerly indicated that it "[...]

¹ See UN Doc. A/RES/63/3.

² *Id.*

³ *Id.*

must identify the existing principles and rules, interpret them and apply them .. thus offering a reply to the question posed based on law"⁴.

C. Interests of the Arab Republic of Egypt in the present request

8. Egypt is a founding member of the United Nations, The League of Arab States (hereinafter 'Arab League'), the Organization of the African Unity (hereinafter 'OAU'), which was succeeded in 2000 by the African Union (hereinafter 'AU'), and the Organization of Islamic Conference (hereinafter 'OIC'), and actively takes part in peace processes and political settlements at both regional and international levels.
9. Due to the particular facts pertaining to the the subject matter of the present request, and the application of the principle of territorial integrity in light of the right to self-determination, Egypt attaches the highest value to the Court's determination on the scope and limit of application of such principles on the issues relevant to the particularities of the circumstances surrounding the question on the lawfulness of the unilateral declaration of independence of Kosovo.

D. Structure, organization and basis of this Written Statement:

10. This Written Statement is made in response to communications received from the Registrar of the Court pursuant to Article 66 (1) of the Statute of the Court.
11. For the purpose of preparing this statement, due consideration was given to the provisions laid down in Article 38 (1) of the Statute of the Court.
12. In addition to this introduction, the Statement is divided into four parts. Part II of the Written Statement supports the competence of both the General Assembly and the Court, and the admissibility of the present request. Part III expresses the respect for territorial integrity as a norm of international law, affirmed in several international treaties, including the UN Charter, in addition to some basic standards relevant to this norm in light of practices frequently emphasized by the international community. Part IV deals with the right to self-determination, and discusses the various aspects related to it. Part V summarizes and concludes.

⁴ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 ICJ Rep. 234

PART II
COMPETENCE AND ADMISSIBILITY

A. The General Assembly of the United Nations is Competent to request an Advisory Opinion on the Present Question.

13. Pursuant to paragraph 1 of Article 96 of the UN Charter "[t]he General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question". The General Assembly, as per article 96, requested an advisory opinion from the court on a legal question.
14. The advisory opinion, as requested, relates to the conformity of the unilateral declaration of independence with international law, which is, by definition, a 'legal question'.
15. The General Assembly's request, therefore, satisfies both the conditions of '*ratione personae*'⁵ and '*ratione materiae*'⁶, as prescribed by Article 96 (1) of the Charter of the United Nations.
16. Consequently, the General Assembly is competent to request an advisory opinion on the present question, and has thus acted *intra vires*.

B. The Court is Competent to render its Advisory Opinion on the Present Question.

17. Article 65(1) of the Statute of the Court stipulates that:

The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.
18. In this regard, the Court set forth criteria and repeatedly indicated, on several occasions, that:

It is [...] a precondition of the Court's competence that the advisory opinion be requested by an organ duly authorized to seek it under the Charter, that it be requested on a legal question, and that, except in the case of the General Assembly or the Security Council, that question should be one arising within the scope of the activities of the requesting organ.⁷

⁵ The General Assembly is authorized to make a request.

⁶ The request is on a legal question.

⁷ Application for Review of Judgment No.273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. 1982 Rep. 333 *et seq.*

19. Even where a contention against the clarity of the question put to it has been raised, the Court declared that:

[I]ack of clarity in the drafting of a question does not deprive the Court of jurisdiction. Rather, such uncertainty will require clarification in interpretation, and such necessary clarifications of interpretation have frequently been given by the Court.⁸

20. It is at the discretion of the Court to render advisory opinions on legal questions forwarded to it by duly "authorized" organs of the United Nations or international organizations. In the present question, the two conditions of 'legal question' and an 'authorized body' are met.

21. However, the Court summarized its practice in granting advisory opinions as follows:

[T]he Court has repeatedly stated that a reply to a request for an advisory opinion should not, in principle, be refused and that only compelling reasons would justify such a refusal.⁹

22. The fact that the question may entail political considerations shall not prevent the Court from rendering its advisory opinion. The Court affirmed that:

in institutions in which political considerations are prominent it may be particularly necessary for an international organization to obtain an advisory opinion from the Court as to the legal principles applicable with respect to the matter under debate [...].¹⁰

Furthermore, the Court stated that:

[I]t has been argued that the question put to the Court is intertwined with political questions, and that for this reason the Court should refuse to give an opinion. It is true that most interpretations of the Charter of the United Nations will have political significance, great or small. In the nature of things it could not be otherwise. The Court, however, cannot attribute a political character to a request which invites it to undertake an essentially judicial task [...].¹¹

⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 ICJ Rep. 159 *et seq.*

⁹ *Application for Review of Judgment No. 158 of the United Nations Administrative Tribunal*, Advisory Opinion, 1973 ICJ Rep. 183.

¹⁰ *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, 1980 ICJ Rep. 87.

¹¹ *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, Advisory Opinion, 1962 ICJ Rep. 155.

23. The advisory opinion of the Court will be of great value in furthering the understanding of the principles of international law related to concepts that might appear to conflict with them, particularly in light of the subject-matter concerned, and would result in limiting controversy over issues relevant to the present request. The Court has declared that:

[T]he function of the Court is to give an opinion based on law, once it has come to the conclusion that the questions put to it are relevant and have a practical and contemporary effect and, consequently, are not devoid of object and purpose.¹²

24. In light of its dictum, the Court should entertain the request made by the General Assembly for its advisory opinion, as the question put to it in resolution 63/3 is relevant and has practical and contemporary effect.

C. Conclusion

25. On the basis of the combined effect of Articles 96(1) of the UN Charter and 65 of the Statute of the Court, and for the reasons pointed out in this part, it is submitted that the General Assembly of the United Nations is competent to request an advisory opinion from the Court on the subject-matter of the request, and that the Court is competent to give its advisory opinion on the question addressed to it.

¹² Western Sahara, Advisory Opinion, 1975 1CI Rep. 37.

PART III
THE PRINCIPLE OF THE TERRITORIAL INTEGRITY OF STATES

A. Overview

26. The fact that territory is one of the criteria of statehood has been established,¹³ however, it is of a challenging nature to determine.¹⁴ In this regard, territory constitutes, without prejudice to the other two elements of statehood, an integral element that determines the sphere of influence where states exercise their exclusive jurisdiction.¹⁵
27. The International Court of Justice has addressed issues pertaining to territories, in direct relevance to territorial integrity. It is noted that territories, on which the State exercises its exclusive jurisdiction were the subject of a number of judgements of the Court. The Court stated that “[t]he fact that a state cannot prove display of sovereignty as regards such a portion of territory cannot forthwith be interpreted as showing that sovereignty is inexistent.”¹⁶ Furthermore, there is no homogeneity in circumstances, in all cases and situations that may provide unified standards to this extent,¹⁷ and “international law is satisfied with varying degrees in the display of State authority, depending on the specific circumstances of each case”¹⁸, as expressed by the Court.
28. Following from this, the principle of the territorial integrity of states has been established as a core principle of customary international law, and with the advent of the UN Charter, all member states of the UN became bound to respect it.¹⁹ It follows therefore that this principle is a cornerstone of international relations.²⁰
29. Consequently, the international community has always affirmed, through legal instruments, resolutions and practices, its commitment to maintain and respect the sovereignty, territorial integrity, national unity and independence of states.

¹³ See Article 1 of Montevideo Convention on Rights and Duties of States, 26 December 1933, available at www.e-competitions.com

¹⁴ See, generally, J. Crawford, *The Creation of States in International Law*, 2nd ed. (2006).

¹⁵ See, generally, R. Y. Jennings and A. D. Watts (eds.), *Oppenheim's International Law*, 9th ed. (1992)

¹⁶ Case Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia v. Singapore), “(not yet published)”, para. 67 at 24, available at <http://www.icj-cij.org/docket/files/130/14492.pdf>

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See Article 53 of Vienna Convention on the Law of Treaties, 1969.

²⁰ See D. W. Bowett, *Self-Defence in International Law* 29 *et seq.* (1958).

30. Nonetheless, it shall also be noted that there are exceptional circumstances, where intervention by the international community would be authorized; namely matters that fall within the competence of the Security Council, which has a primary responsibility towards maintaining and restoring international peace and security.²¹ While exercising its competence, whether under Chapters VI, VII or VIII of the UN Charter, the Security Council can not assume its role *ultra vires* in violation of intrinsic principles laid down in the Charter. Therefore, any measure can not *ipso jure* result in consequences *ex post* other than those, for which it was founded, *ex ante*. In other words, any mandate for operations shall remain, on the ground, within its scope and limits.

B. Charters of International Organizations

31. Since the era of the League of Nations, the principle has found its place in treaties establishing international organizations. Within the Covenant of the League of Nations, the principles of territorial integrity and independence principles received due attention. Article 10 of the Covenant reads as follows:

[t]he Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League.

32. It is pertinent to note that the United Nations Charter includes "the principle of the sovereign equality of all its Members", as well as an obligation that "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State [...]"²², which is a key principle of the organization.
33. Even before the advent of the United Nations, Article V of the Pact of the League of Arab States, provides that:

[a]ny resort to force in order to resolve disputes between two or more member-states of the League is prohibited. (i) If there should arise among them a difference which does not concern a state's independence, sovereignty, or territorial integrity [...].²³

²¹ See note 35 and the accompanying text, *infra*.

²² See Article 2(4) of the UN Charter.

²³ See full text available at www.mqfa.gov.eg

This clearly reflects that the member states committed themselves to fully respect independence, sovereignty and territorial integrity; given the indisputability of such principles.

34. Other regional organizations' charters also contain articles that explicitly reflect the respect for territorial integrity; such as, the OAU Charter,²⁴ which was succeeded by the AU in 2000 and the OIC Charter.²⁵

C. Relevant Resolutions and Documents of the General Assembly

35. In dealing with the process of decolonization, the United Nations valued the need for respect for the territorial integrity of States.²⁶ To this end, the Declaration on the Granting of Independence to Colonial Countries and Peoples plainly stated that :

[a]ny attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations [...].²⁷

36. In its resolution 2625 (XXV), the General Assembly emphasized the respect for territorial integrity as follows:

[e]very State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.²⁸

37. In dealing with the Right to Development, the General Assembly adopted a resolution to a similar effect:

[s]tates shall take resolute steps to eliminate [...] threats against national sovereignty, national unity and territorial integrity [...].²⁹

²⁴ Article III of the OAU Charter stipulated that:

[t]he Member States, in pursuit of the purposes ... solemnly affirm and declare their adherence to the following principles:

[...]

3. Respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence.

²⁵ See Articles 1 and 2 of the Charter of the Organization

²⁶ See, e.g., Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly resolution 1514 (XV) (hereinafter 'Declaration on decolonization'); Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, General Assembly resolution 2625 (XXV) (hereinafter 'Declaration on Friendly Relations').

²⁷ *Id.*

²⁸ See Declaration on Friendly Relations.

²⁹ See The Declaration on the Right to Development, General Assembly resolution 41/128, article 5.

38. While adopting a resolution within the framework of Action for the International Decade for Natural Disaster Reduction, the General Assembly, in the relevant resolution, clearly stated that:

*[t]he sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations [...].*³⁰

39. The World Conference on Human Rights held in Vienna adopted a declaration³¹ containing fundamental principles of international law. Although, the aim was the promotion of human rights, it was clearly provided that the process should be "conducted in conformity with the purposes and principles of the Charter of the United Nations, and international law".³²
40. In the United Nations Millennium Declaration, Heads of States and Governments rededicated themselves to support "[a]ll efforts to uphold the sovereign equality of all States, [and] respect for their territorial integrity and political independence".³³ The 2005 World Summit followed the same lines in its outcome.³⁴
41. It is therefore apparent that the General Assembly, in its documents and practices, affirms the respect for the territorial integrity of States.

D. Security Council's adopted measures:

42. The UN Charter explicitly declares that the Security Council has a major role in the pursuit of maintaining peace and security, and it reads as follows:

*[i]n order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security [...].*³⁵

43. In fulfilling its responsibilities, the Council may deem it necessary to adopt resolutions that involve intervention in domestic jurisdictions of any state or region, consistent with the principles enshrined in article 2(7) of the Charter, which stipulates that:

[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially

³⁰ See Strengthening of the coordination of humanitarian emergency assistance of the United Nations, UN Doc. A/RES/46/182. [emphasts added]

³¹ Vienna Declaration and Programme of Action, UN Doc. A/CONF.157/23 (hereinafter "Vienna Declaration")

³² See *id.*, para 7

³³ See United Nations Millennium Declaration, UN Doc. A/RES/55/2, para. 4. (hereinafter "Millennium Declaration")

³⁴ See 2005 World Summit Outcome, UN Doc. A/RES/60/1, para. 5.

³⁵ Article 24 of the UN Charter.

within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter, but this principle shall not prejudice the application of enforcement measures under Chapter VII.³⁶

44. Nevertheless, any intervention, where the Council acts *intra vires*,³⁷ should be in conformity with the Charter and international law.
45. The Council, whenever exercising its role of maintaining and restoring international peace and security, demonstrated its commitment to the respect for the territorial integrity of the States. In the same vein, it has been noted that nothing in the Charter, particularly a *lex specialis*, may lead to different results. This is consistent with the clear understanding that missions authorized by UN organs, including the Security Council, are *bona fide* parties working in a neutral manner.³⁸
46. The situation in Darfur, as part of the territory of Sudan, was subject to extensive deliberations and was addressed by several resolutions, each of which includes a clear reference to the importance of the respect for territorial integrity, as in resolution 1556 (2004), the resolution that, *inter alia*, endorsed the deployment of international monitors. Similarly, most of its resolutions relevant to the situation in Darfur include a strong commitment to the respect for the territorial integrity of Sudan, as well as the determination to work with the Government of Sudan in full respect of its sovereignty.³⁹
47. As far as the situations in the Democratic Republic of Congo (hereinafter 'DRC') and the Great Lakes region are concerned, the Council, in several resolutions, reaffirmed "its commitment to respect the sovereignty, territorial integrity and political independence" of DRC and all the States in the region.⁴⁰ The Council's resolutions dealing with the deployment of the United Nations Mission to the DRC (MONUC) did not omit a clear commitment to the respect for these principles.⁴¹
48. The Council's resolutions on Iraq have demonstrated substantial emphasis on the territorial integrity of the state.⁴²

³⁶ See Article 2(7) of the Charter of the United Nations.

³⁷ See Articles 41 and 42 of the Charter of the United Nations.

³⁸ See UN Doc. S/RES/1134 (1997).

³⁹ See, e.g., UN Doc. S/RES/1590 (2005); UN Doc. S/RES/1769 (2007); UN Doc. S/RES/1828 (2008); UN Doc. S/RES/1841 (2008).

⁴⁰ See, e.g., UN Doc. S/RES/1756 (2007); UN Doc. S/RES/1771 (2007); See also UN Doc. S/RES/1316 (2000); UN Doc. S/RES/1493 (2003); UN Doc. S/RES/1565 (2004); UN Doc. S/RES/1711 (2006).

⁴¹ See, e.g., UN Doc. S/RES/1804 (2008).

⁴² See UN Doc. S/RES/1500 (2003), UN Doc. S/RES/1546 (2004), UN Doc. S/RES/1557 (2004), UN Doc. S/RES/1619 (2005), UN Doc. S/RES/1700 (2006), UN Doc. S/RES/1770 (2007), UN Doc. S/RES/1790 (2007) and UN Doc. S/RES/1830 (2008).

49. On issues related to Afghanistan, the Council reaffirmed "its strong commitment to the sovereignty, independence, territorial integrity and national unity" of the country,⁴³ even on the occasions where it authorized international presence.⁴⁴
50. In its resolutions on Lebanon, the Security Council reiterated its "strong support ... for the territorial integrity, sovereignty and political independence"⁴⁵ of the country "within its internationally recognized borders [...]"⁴⁶.

D. Conclusion

51. It is undoubtedly true that the respect for territorial integrity is an inviolable principle of international law, and is indivisible from state sovereignty and independence. However, the recognition of state territories shall be subject to careful examination. In this regard, it must be noted, as the International Court of Justice already stated on a number of cases, that "[e]ach case must be appreciated in accordance with the particular circumstances".⁴⁷

⁴³ See UN Doc. S/RES/1267 (1999).

⁴⁴ See, e.g., UN Doc. S/RES/1386 (2001), UN Doc. S/RES/1510 (2003), UN Doc. S/RES/1707 (2006), UN Doc. S/RES/1746 (2007) and UN Doc. S/RES/1776 (2007).

⁴⁵ See, e.g., UN Doc. S/RES/1701 (2006)

⁴⁶ *Id.* [emphasis added]

⁴⁷ See notes 16-18 and the accompanying text, *supra*.

PART IV
THE RIGHT TO SELF DETERMINATION

A. Overview

52. The right to self-determination finds its roots in international instruments in the aftermath of the First World War. The Treaty of Versailles might be considered the first step towards the codification of this principle,⁴⁸ fulfilling the aspirations to self-determination held by the peoples of the world.
53. The differing views on the principle gave rise to disagreements on its implementation, and the breadth of its scope.
54. With the advent of the UN Charter, the right to self-determination became one of the principles upon which the United Nations was founded. In this context, the Charter clearly reflects the obligation, as it stipulates that:

*[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples [...].*⁴⁹

In the same vein, the respect for this principle became essential in the course of the economic and social cooperation within the United Nations system, for which the UN Charter clearly states that:

*[t]he creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples [...].*⁵⁰

55. The UN Charter also provides a basis for the protection of the rights of those living in territories that have not yet attained a full measure of self government; it lays the foundation for the protection of the human rights of the inhabitants of these territories, whether individually or collectively.⁵¹
56. The preamble of the Universal Declaration on Human Rights states that:

Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental

⁴⁸ Article 22 of the Treaty of Versailles provided a primitive version of what was to develop into the full right to self-determination at a later stage.

⁴⁹ See Article 1(2) of the UN Charter. [emphasis added]

⁵⁰ See Article 55 of the UN Charter. [emphasis added]

⁵¹ Article 73 of the UN Charter.

freedoms [...] a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge.⁵²

57. Although, the principle of the right to self-determination evolved within the international legal arena to attain the status of customary international law,⁵³ it has not been free of limitations and conditions. The International Covenant on Civil and Political Rights (hereinafter "ICCPR"), as one of the instruments codifying customary international law, contains provisions to protect the rights of peoples or minorities in various fields.⁵⁴ In this regard, right to self-determination overlaps with other rights, both on the individual human rights level,⁵⁵ and on the broader societal level, encompassing the rights of a 'people'.⁵⁶ Therefore, the right to self-determination is now a 'principle of inclusion'⁵⁷ within the society; it is the right of participation in society, whether in political or other areas.⁵⁸
58. The Final Act of the Conference on Security and Cooperation in Europe also reflected the commitment to the right to self-determination when it declared that:
- (t)he participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States.⁵⁹
59. The right to self-determination is "unquestionable and inalienable"⁶⁰ and accepted as such by the international community.⁶¹ The exercise of the right however is dynamic and encompasses a variety of options that take into consideration other principles of customary international law and uphold them.
60. At the international level, it has been noted that the right to self-determination diverges from the interpretation of the principle as an automatic guarantor of rights to

⁵² See Universal Declaration on Human Rights, General Assembly resolution 217 (III). It is clearly indicated that recognition and observance of the rights and freedoms shall not only be among the peoples of Member States themselves but also among the peoples of territories under the jurisdiction of each of the states.

⁵³ Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), 1971 ICJ Rep. (Judge Amoumou, Separate Opinion).

⁵⁴ See Article 27 of the ICCPR.

⁵⁵ *Id.*

⁵⁶ Article 1(3) of the ICCPR is identical to an article with the same number in the International Covenant on Economic, Cultural and Social Rights.

⁵⁷ T.M. Franck, *The Emerging Right to Democratic Governance*, 86 *American Journal of International Law* 59 (1992).

⁵⁸ *Id.*

⁵⁹ See Declaration on Principles Guiding Relations between Participating States, Conference on Security and Cooperation in Europe Final Act, Helsinki 1975.

⁶⁰ African Charter on Human Rights art. 20.

⁶¹ See note 53, *supra*.

statehood, and tends towards a broader interpretation that encompasses the rights of peoples and states.⁶²

B. Relevant Resolutions and Documents within the United Nations System

61. Through several resolutions, the UN General Assembly underlined the importance of the right to self-determination.

62. The Declaration on decolonization declared that:

{a}ll peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.⁶³

Nevertheless, the declaration emphasized that the exercise of the right shall be in conformity with the purposes and principles of the UN Charter.⁶⁴

63. To a similar effect, the Declaration on Friendly Relations underscores and elaborates on the right to self-determination and makes it clear that every state has the duty to promote the realization of this right, as well as respect for human rights and fundamental freedoms.⁶⁵ However, it clearly states that:

{n}othing [...] 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 rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed, or color.⁶⁶

64. While addressing issues pertaining to the rights of minorities in connection with responsibilities of states, the General Assembly's relevant resolutions maintain balance between the right to self-determination and territorial integrity in accordance with the UN Charter, and the principles of international law.⁶⁷ In this regard, it also addresses the exercise of the right to self-determination internally through

⁶² See, generally, note 26, *supra*; see also, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UN Doc. A/RES/47/135 (hereinafter 'Declaration on Minorities'); Human Rights Committee General Comment No. 23: The rights of minorities (Art. 27), UN Doc. CCPR/C/21/Rev.1/Add.5.

⁶³ Declaration on Decolonization.

⁶⁴ See notes 26-27 and the accompanying text, *supra*.

⁶⁵ See note 28 and accompanying text, *supra*. (emphasis added)

⁶⁶ *Id*

⁶⁷ See Declaration on Minorities, at Article 8(4) of the Annex.

- legislative, educational, cultural and religious arrangements, which should be compatible with national legislation.⁶⁸
65. The development of this balanced approach has significantly contributed to states' acceptance of the right to self-determination⁶⁹ because of the wider array of options afforded by flexible interpretations.⁷⁰
66. The Vienna Declaration states that the effective and full exercise of human rights by members of minorities contributes to and protects the political and social stability of the states in which they live.⁷¹ In this particular case, the right to self-determination, as expressed as the full and effective exercise of human rights,⁷² is used as a tool to strengthen the territorial integrity, national unity and political independence of a state through strengthening societal ties rather than weakening them; this is true irrespective of whether constituents of a society are a minority or not. Such an approach would be considered a constructive and beneficial exercise of fundamental human rights.
67. Finally, it is pertinent to mention that the Human Rights Committee elaborated on the distinction between the right to self-determination and the rights protected by article 27 of the ICCPR; specifically that the rights protected by article 27 are exclusively exercised by individuals rather than peoples.⁷³ In the context of a community, the exercise of these rights is by its very nature practiced on a wider scale, and therefore, by protecting the exercise of the rights contained in article 27 the state takes a positive step towards protecting the right to self-determination of a people. Therefore, article 27, when read in conjunction with article 1(3) of the ICCPR, the Declaration on decolonization, and the Declaration on Friendly Relations, would provide for a well rounded approach that protects the exercise of human rights in such a way that does not infringe the principle of territorial integrity.

⁶⁸ *Id.*, at Article 2(3) of the Annex.

⁶⁹ E.g. The General Assembly and other organs of the United Nations addressed issues relevant to the right to self-determination in connection to human rights. See, generally, documents cited at note 26, *supra*; see, also, *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, General comment No. 23: Article 27 (Rights of minorities), UN Doc. HRI/GEN/1/Rev.9 (Vol.1), at 207 *et seq.*

⁷⁰ It has been evidenced by the options available for self-determination through participation within the democratic process of a state; see, also, *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, General comment No. 12: Article 1 (Right to self-determination), UN Doc. HRI/GEN/1/Rev.9 (Vol.1), at 183 *et seq.*

⁷¹ See note 31 *supra*, at para. 19.

⁷² Self-determination within the context of International Human Rights Law is codified in the first instance in Article 1(3) of the ICCPR.

⁷³ *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, General comment No. 23: Article 27 (Rights of minorities), UN Doc. HRI/GEN/1/Rev.9 (Vol.1) (2008), at 207 *et seq.*

C. Judicial treatment of the right to self-determination

68. Matters relevant to the right to self-determination have been also raised before national courts of law. In 1996, questions referred to the Supreme Court of Canada (hereinafter 'the Supreme Court'), by the Governor in Council, on the legality of 'Secession of Quebec'.⁷⁴

69. In its review, the Supreme Court addressed issues relevant to the right to self-determination. In this context, the scope of the right to self-determination has been defined as either internal self-determination or external self-determination. Regarding the former, the Supreme Court stated that:

[t]he recognized sources of international law establish that the right to self-determination of a people is normally fulfilled through internal self-determination -- a people's pursuit of its political, economic, social and cultural development within the framework of an existing state.⁷⁵

The Supreme Court added that:

[t]he existence of a people's right to self-determination also contain parallel statements supportive of the conclusion that the exercise of such a right must be sufficiently limited to prevent threats to an existing state's territorial integrity [...].⁷⁶

Further, the Supreme Court stressed that the right to self-determination and territorial integrity are not necessarily incompatible so long as the government of a state represents all its people or peoples without discrimination.⁷⁷

70. As for external self-determination, the Supreme Court has recognized that it is exercisable "in certain defined contexts".⁷⁸ Such contexts, other than the colonial domination context, are exclusively those circumstances "where a people is subject to alien subjugation, domination or exploitation [...]".⁷⁹

71. Finally, the Supreme Court deemed it unnecessary to determine whether the denial of practicing the right to self-determination internally suffices, under international law, to justify exercising the same right externally.⁸⁰

⁷⁴ [1998] 2 S.C.R. 217, 37 L.L.M. 1340, *re* Secession of Quebec.

⁷⁵ *Id.* at para. 126.

⁷⁶ *Id.* at para. 127.

⁷⁷ *Id.* at para. 130.

⁷⁸ *Id.* at para. 131.

⁷⁹ *Id.* at para. 133.

⁸⁰ *Id.* at para. 134-135.

D. Conclusion

72. The right to self-determination within the context of colonial domination is recognized by international law.
73. Similarly, the right to internal self-determination, in accordance with national legislation, might be established in certain circumstances in line with human rights norms.
74. Nothing, so far, in international law would clearly lend assistance to accommodate arguments contending that the right to self-determination can only be exercised externally, as long as there are adequate safeguards against discrimination. Also, the adoption of generalized criteria would be detrimental and pose genuine threats to international peace and security, which would be an undesired result as per the UN Charter.

PART V
SUMMARY AND SUBMISSION

A. Summary

75. There shall be no contention that the respect for the principle of territorial integrity of States is inviolable. It is the duty of all parties, involved in taking measures towards the fulfillment of the purposes of the UN Charter, including the UN organs, to strictly observe this principle.
76. By the same token, the right to self-determination has evolved under customary international law, and become legally respected as a treaty-bound obligation after its inclusion in the UN Charter. Its application, however, should not lead to situations threatening international peace and security.

B. Submissions

77. As far as the competence and admissibility are concerned, it is submitted that:
- (i) The General Assembly is competent to request the advisory opinion on the subject-matter of the present request; and
 - (ii) The Court is competent to give its advisory opinion on the question addressed to it.

Ambassador of EGYPT.



16/4/2009.