



Republika e Kosovës
Republika Kosova - Republic of Kosovo
Qeveria -Vlada - Government

Ministria e Punëve të Jashtme - Ministarstvo Inostranih Poslova - Ministry of Foreign Affairs

17 April 2009

Sir,

With reference to the request for an advisory opinion submitted to the Court 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*, I have the honour to submit herewith, in accordance with Article 66 of the Statute of the Court and the Court's Order of 17 October 2008, the Written Contribution of the Republic of Kosovo.

The Government of the Republic of Kosovo transmits thirty copies of its Written Contribution and annexes, as well as an electronic copy.

I also transmit, for deposit in the Registry, a full-scale photographic reproduction of the Declaration of Independence of Kosovo as signed on 17 February 2008.

Accept, Sir, the assurances of my highest consideration,

A handwritten signature in black ink, appearing to read "Skender Hyseni".

Skender Hyseni
Minister of Foreign Affairs
Representative of the Republic of Kosovo before
the International Court of Justice

H.E. Mr. Philippe Couvreur
Registrar
International Court of Justice
Peace Palace
2517 KJ The Hague
The Netherlands

A handwritten signature in black ink, appearing to read "Philippe Couvreur".

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 ADVISORY OPINION)

WRITTEN CONTRIBUTION OF THE REPUBLIC OF KOSOVO

17 APRIL 2009

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ABBREVIATIONS

Ahtisaari Plan	Comprehensive Proposal for the Kosovo Status Settlement (S/2007/168/Add.1) (also referred to as “Ahtisaari Settlement” or “CSP”)
Ahtisaari Report.....	Report of the Special Envoy of the Secretary-General on Kosovo’s Future Status (S/2007/168)
Contact Group	France, Germany, Italy, Russian Federation, United Kingdom, United States of America
Dossier.....	Dossier submitted on behalf of the Secretary-General pursuant to Article 65, paragraph 2, of the Statute of the International Court of Justice
EU.....	European Union
EULEX	European Union Rule of Law Mission in Kosovo
EUSR	European Union Special Representative
FRY	Federal Republic of Yugoslavia
G-7 (Group of Seven)....	Canada, France, Germany, Italy, Japan, United Kingdom, United States of America
G-8 (Group of Eight).....	Canada, France, Germany, Italy, Japan, Russian Federation, United Kingdom, United States of America
ICO	International Civilian Office
ICR	International Civilian Representative
ICTY	International Criminal Tribunal for the Former Yugoslavia
ISG.....	International Steering Group
JIAS	Joint Interim Administrative Structure
KFOR	Kosovo Force (international military presence in Kosovo)
KLA	Kosovo Liberation Army (see also UÇK)
KP	Kosovo Police
KPC	Kosovo Protection Corps
KPS.....	Kosovo Police Service

KSC Kosovo Security Council

KSF Kosovo Security Force

KVM Kosovo Verification Mission

MUP Ministarstvo Unutrašnjih Poslova (Ministry of Internal Affairs of Serbia)

OSCE Organization for Security and Co-operation in Europe

PISG Provisional Institutions of Self-Government of Kosovo

Quint France, Germany, Italy, United Kingdom, United States of America

SFRY Socialist Federal Republic of Yugoslavia

SRSG Special Representative of the Secretary-General

Troika European Union/United States of America/Russian Federation Troika on Kosovo

UÇK Ushtria Çlirimtare e Kosovës (Albanian for KLA)

UNMIK United Nations Interim Administration Mission in Kosovo

UNOSEK United Nations Office of the Special Envoy for the Future Status Process for Kosovo

VJ Vojska Jugoslavije (Yugoslav Army)

NOTE ON LANGUAGES, PLACE-NAMES AND OTHER USAGES

Article 5 of the 2008 Constitution of the Republic of Kosovo provides that the official languages of the Republic are Albanian and Serbian; and that the Turkish, Bosnian and Roma languages have the status of official languages at the municipal level or will be in official use at all levels as provided by law.

In this Written Contribution, names are usually given using both the Albanian and Serbian names. Occasionally, the most common use in English is employed. For example, the English term “Kosovo” is used rather than the Albanian forms “Kosovë”/“Kosova”; and “Pristina” is used rather than the Albanian “Prishtinë”/“Prishtina” or the Serbian “Priština”.

The word “Kosovo” is used to refer to the sovereign and independent State of Kosovo (whose formal name is “Republic of Kosovo”), or, before 17 February 2008, to Kosovo as under Security Council resolution 1244 (1999), the Autonomous Province within the SFRY/FRY/Republic of Serbia, or before that to the territory now within the borders of Kosovo.

Officials from the Republic of Serbia refer to Kosovo as “Kosovo and Metohija” or, in abbreviated form, “Kosmet”. These terms are not used in Kosovo.

As the Court is well aware, the name of the State now known as the Republic of Serbia has changed over the years, as has its claim to be or not to be the continuing State of the Socialist Federal Republic of Serbia (SFRY). From 2000, when it applied for, and was granted, admission to the United Nations, it was known as “Federal Republic of Yugoslavia”. This State changed its name to the (State Union of) Serbia and Montenegro in 2003. When the Republic of Montenegro seceded in May 2006, the remainder of the State became known as the “Republic of Serbia”*.

* *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Preliminary Objections, Judgment*, paras. 23-34.

The ethnic groups in Kosovo are referred to as “Kosovo Albanians”, “Kosovo Serbs”, “Turks”, “Bosnians”, “Roma”, “Ashkali”, and “Egyptians”.

The adjective for “Kosovo” is “Kosovo”, but sometimes “Kosovar” is used.

“Albanian” generally refers to the language or to the citizens of the Republic of Albania. “Kosovo Albanians” is used for the Albanian speaking citizens of Kosovo.

It is a convenient usage to distinguish between the terms “Serbian” (meaning of Serbia) and “Serb” (referring to ethnicity). The name of the language, however, is Serbian.

The aim of the above usage is convenience and clarity. It is not intended to have political significance.

PART I

INTRODUCTION

CHAPTER I

INTRODUCTION

1.01. The Republic of Kosovo submits this Written Contribution in accordance with paragraph 4 of the Order made by the International Court of Justice on 17 October 2008.

1.02. By resolution 63/3 of 8 October 2008, the General Assembly of the United Nations requested the Court to render 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?”

1.03. The Declaration of Independence was adopted by the representatives of the people of Kosovo on 17 February 2008. A reproduction of the Declaration, as signed, is at **Annex 1**, together with a type-written text in Albanian, with English and French translations. A verbatim transcript of the meeting at which the Declaration of Independence was signed is at **Annex 2**. As will be seen, the Declaration was signed by the President of the Republic, Dr. Fatmir Sejdiu, and by 109 representatives, including the Prime Minister, Mr. Hashim Thaçi, and the President of the Assembly, Mr. Jakup Krasniqi.

1.04. In its Order of 17 October 2008, the Court decided that the United Nations and its Member States were likely to be able to furnish information on the question submitted to the Court for an advisory opinion, and fixed 17 April and 17 July 2009 as the time-limits within which written statements and comments might be submitted to the Court. Paragraph 4 of the Order reads as follows:

“The International Court of Justice,

.....

4. *Decides* further that, taking account of the fact that the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo of 17 February 2008 is the subject of the question submitted to the Court for an advisory opinion, the authors of the above declaration are considered likely to be able to furnish information on the question; and *decides* therefore to invite them to make written contributions to the Court within the above time-limits.”

1.05. The Republic of Kosovo is grateful to the Court for this invitation, which enables it to participate in the proceedings on an equal footing. Doing so is in the interests of fairness and the proper administration of justice, a point made by a number of States during the meeting of the General Assembly at which resolution 63/3 was adopted¹.

I. Adoption of General Assembly Resolution 63/3

1.06. In a letter dated 15 August 2008, the Minister for Foreign Affairs of the Republic of Serbia requested the inclusion in the agenda of the General Assembly of a supplementary item entitled “Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law”². The General Committee considered this request on 17 September 2008. After a short debate, during which the usefulness of the request for an advisory opinion was questioned, and the need for a full airing of the legal and political considerations was stressed³, the Committee decided, without a vote, to recommend to the General Assembly the inclusion of the item on its agenda. On 19 September 2008, acting on this recommendation, the General Assembly decided, without a vote⁴, to include the item in its agenda, referring it direct to plenary⁵. In due course, the Republic of Serbia (as sole sponsor) submitted a draft resolution, which was circulated on 23 September 2008⁶.

1.07. On 8 October 2008, the General Assembly held a brief debate on the item, and proceeded immediately to vote on the draft resolution submitted by Serbia⁷. There were no

¹ United Nations, *Official Records of the General Assembly, Sixty-third Session*, 22nd plenary meeting, 8 October 2008 (A/63/PV.22), p. 3 (United Kingdom); p. 5 (United States of America); p. 7 (Panama); p. 12 (Canada, Peru, Germany); p. 13 (Finland, Australia); p. 14 (Denmark, Norway) [Dossier No. 6].

² A/63/195 [Dossier No. 1].

³ United Nations, *Official Records of the General Assembly, Sixty-third Session*, General Committee, 1st Meeting, 17 September 2008, Summary Records (A/BUR/63/SR.1), para. 101 (France), paras. 103-104 (United Kingdom), paras. 105-106 (United States of America).

⁴ *Ibid.*, 2nd plenary meeting, 19 September 2008 (A/63/PV.2), p. 4 [Dossier No. 3]. As it had done in the General Committee, the United States of America expressed “serious reservations about the appropriateness of the General Assembly considering this item”, and dissociated itself from the consensus (*ibid.*).

⁵ *Ibid.*, pp. 4-6.

⁶ A/63/L.2 [Dossier No. 4].

⁷ United Nations, *Official Records of the General Assembly, Sixty-third Session*, 22nd plenary meeting, 8 October 2008 (A/63/PV.22) [Dossier No. 6].

co-sponsors. Resolution 63/3 was adopted by a vote of 77 in favour, six against, 74 abstentions and 35 Members not participating in the vote. The request for an advisory opinion was supported by barely 40 % of the total membership of the United Nations. Those voting against or abstaining on the resolution expressed strong doubts about its propriety or usefulness and criticized the formulation of the question. They noted, among other things, that the question was being asked out of context, that the Declaration of Independence had to be considered as part of a much broader background⁸, that it raised “highly political” matters that are unsuitable for judicial review⁹, that it represented a “manipulative attempt to stall the process of recognition”¹⁰, and that it would not promote peace and stability in the region¹¹. Moreover, no implication can be drawn that States which voted for the resolution opposed the Declaration of Independence. Indeed, several of those voting for resolution 63/3 had or have recognized Kosovo as a sovereign and independent State¹².

1.08. As was pointed out during the General Assembly debate, and notwithstanding the wishes of many States, resolution 63/3 requesting the advisory opinion was adopted without serious consideration being given to its usefulness for the Assembly’s work, to the terms of the resolution, or to the formulation of the question. Many States pointed out that the question was not well worded, and that the resolution failed to place the request in context¹³.

II. Summary of Kosovo’s Written Contribution

1.09. This Written Contribution is divided into five parts comprising ten chapters.

⁸ United Nations, *Official Records of the General Assembly, Sixty-third Session*, 22nd plenary meeting, 8 October 2008 (A/63/PV.22), p. 3 (United Kingdom), p. 4 (Albania) [Dossier No. 6].

⁹ *Ibid.*, p. 11 (Canada).

¹⁰ *Ibid.*, p. 4 (Albania); see also p. 2 (United Kingdom).

¹¹ *Ibid.*, p. 4 (Turkey), p. 12 (Germany), p. 13 (Australia).

¹² Costa Rica, Iceland, Liechtenstein, Montenegro, Norway and Panama. Panama expressly said that its support for the resolution did “not affect or predetermine the political decision that Panama may or may not take to recognize the independence of Kosovo” (*ibid.*, p. 7). Panama recognized Kosovo on 17 January 2009.

¹³ See paras. 7.04-7.10 and paras. 7.27-7.34 below.

1.10. **Part I** contains, besides this introductory chapter, in **Chapter II**, a description of the Republic of Kosovo today and of developments since the Declaration of Independence.

1.11. **Part II** concentrates on the recent history of Kosovo and the final status negotiations, which provide the immediate context for the Declaration of Independence. **Chapter III** covers briefly the history of Kosovo up to 1999, in so far as this may be useful to the Court’s consideration of the question put to it. In particular, it describes Kosovo’s position under the 1974 SFRY Constitution, the unlawful removal of Kosovo’s autonomy, and the massive human rights abuses, crimes against humanity and war crimes perpetrated by the FRY and Serbian authorities against the people of Kosovo. This led to Security Council resolution 1244 (1999), the exclusion of the FRY and Serbian authorities from Kosovo, and almost a decade of United Nations administration during which there was a transfer of extensive powers to self-governing institutions in Kosovo, as explained in **Chapter IV**. **Chapter V** describes the final status process that took place between May 2005 and December 2007, ending with President Ahtisaari’s recommendation in favour of independence, which was supported by the United Nations Secretary-General.

1.12. **Part III** consists of **Chapter VI**, which describes the Declaration of Independence of 17 February 2008, the circumstances surrounding its signing, its authors, and its contents.

1.13. **Part IV** addresses the legal aspects of the question contained in General Assembly resolution 63/3. **Chapter VII** opens the legal analysis by addressing in detail the question that has been asked to the Court. It shows that the question is narrow in scope, but contains – brief as it is – prejudicial and argumentative assumptions. It also points out that General Assembly resolution 63/3 did not indicate whether or how an answer to the question would assist the General Assembly in its work.

1.14. **Chapter VIII** explains why the Declaration cannot be regarded as not “in accordance with international law”. It shows that international law contains no prohibition concerning the issuance of declarations of independence; rather, long-standing State practice, as well as practice that occurred in the context of the break-up of the former

Yugoslavia itself, confirms that the issuance of a declaration of independence is a factual event not regulated by international law.

1.15. **Chapter IX** concludes the legal argument by explaining why the Declaration cannot be seen as contravening Security Council resolution 1244 (1999). It shows that, rather than prohibiting the issuance of the Declaration of Independence, resolution 1244 (1999) established a framework that fully contemplated the possibility of a declaration of independence occurring. This is further supported by the fact that the Special Representative of the Secretary-General (SRSG), having had the power to declare the Declaration null and void in the event it was not in accordance with Security Council resolution 1244 (1999), did not do so.

1.16. The Written Contribution of the Republic of Kosovo concludes with **Part V**. **Chapter X** contains a summary of key contextual elements and of the legal arguments. By way of conclusion, Kosovo requests the Court, in the event that it deems it appropriate to respond to the request in General Assembly resolution 63/3, to find that the Declaration of Independence of 17 February 2008 did not contravene any applicable rule of international law.

CHAPTER II

KOSOVO TODAY

2.01. Developments in Kosovo since 17 February 2008, the date of the Declaration of Independence, are not directly relevant to the question before the Court, which concerns the legality under international law of the Declaration itself. Nevertheless, it may assist the Court to give, at the outset, an overview of developments in the Republic of Kosovo as of the date of this Written Contribution, 14 months on from the Declaration of Independence. Much has been achieved in terms of state-building over this period. The Security Council's objective of "a multi-ethnic and democratic Kosovo, which must reinforce regional stability"¹⁴, is well on the way to being achieved.

2.02. After a brief overview (**Section I**), the present chapter describes the territory of Kosovo (**Section II**), its people (**Section III**), Constitution (**Section IV**), international relations (**Section V**), internal developments (**Section VI**) and the current international presence in Kosovo (**Section VII**). Finally, Serbia's continuing uncooperative attitude will briefly be mentioned (**Section VIII**).

I. Overview

2.03. The Republic of Kosovo is one of seven sovereign and independent States¹⁵ to emerge from the break-up of the Socialist Federal Republic of Yugoslavia (SFRY)¹⁶. Like the other six new States, Kosovo had been one of eight constituent parts of

¹⁴ Statement by the President of the Security Council, 24 October 2005, S/PRST/2005/51, p. 2 [Dossier No. 195].

¹⁵ Bosnia and Herzegovina, Republic of Croatia, Republic of Kosovo, Republic of Macedonia (referred to for all purposes within the United Nations under the designation "the former Yugoslav Republic of Macedonia"), Republic of Montenegro, Republic of Serbia, and Republic of Slovenia.

¹⁶ The Court has had occasion to refer to the dissolution/break-up and disappearance of the SFRY on a number of occasions (see, most recently, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Preliminary Objections, Judgment, para. 75 (citing *Legality of Use of Force (Serbia and Montenegro v. Belgium)*, Preliminary Objections, Judgment, I.C.J. Reports 2004, pp. 310-311, para. 78)).

the SFRY¹⁷. The Kosovo settlement was “the last major issue related to Yugoslavia’s collapse”¹⁸.

2.04. The Republic of Kosovo is today a “democratic and secular, multi-ethnic republic, guided by the principles of non-discrimination and equal protection under the law”¹⁹. There have been many positive developments since the Declaration of Independence on 17 February 2008. While it is neither practical nor necessary to give a comprehensive account²⁰, the Republic of Kosovo has taken its place as a sovereign and independent State and a responsible member of the international community. Further, the Republic of Kosovo is fully implementing its commitments under the Ahtisaari Plan, in particular its commitments to human rights and fundamental freedoms and the rights of the Communities and their members, as well as to good relations with its neighbours.

2.05. Important developments since the Declaration of Independence include the adoption on 9 April 2008 of the Constitution of the Republic of Kosovo, its entry into force on 15 June 2008, and its implementation; the adoption and implementation by the Republic of Kosovo of the many laws envisaged in the Ahtisaari Plan; the recognition of Kosovo by 56 States; and the continuing support of the international community, including the International Steering Group (ISG) and the International Civilian Representative/Office (ICR/ICO), as well as the successful deployment throughout Kosovo of the European Union’s Rule of Law mission (EULEX).

2.06. In exercise of its sovereignty, and upon the invitation of the Republic of Kosovo, the implementation of Kosovo’s commitments to the international community under the Ahtisaari Plan is supervised by the ISG and the ICR/ICO, who also assist with

¹⁷ The constitutional history of Kosovo within the former Yugoslavia, including its position as an Autonomous Province on an equal footing with the six Republics, as well as the dissolution of the former SFRY, is considered in Chapter III below.

¹⁸ Report of the European Union/United States/Russian Federation Troika on Kosovo, S/2007/723, 10 December 2007, Annex, para. 3 [Dossier No. 209]. Special Envoy Ahtisaari in his report referred to “this last episode in the dissolution of the former Yugoslavia” (Report of the Special Envoy of the Secretary-General on Kosovo’s future status, S/2007/168, 26 March 2007, Annex, para. 16 [Dossier No. 203]).

¹⁹ Declaration of Independence, paragraph 2 (Annex 1).

²⁰ An extensive account of developments in 2008 is given in the *Annual Government Report 2008*, presented by the Prime Minister to the Assembly on 29 January 2009 (available on the Kosovo Government website <<http://ks-gov.net/pm>>).

implementation in many ways, as do other international partners, including international and non-governmental organizations.

2.07. The Foreign Minister of the Republic of Kosovo, addressing the Security Council on 26 November 2008, referred to the progress made since the Declaration of Independence, saying “we have laid the foundations for a democratic and multi-ethnic State at peace with all its neighbours and firmly established on its path towards integration into Euro-Atlantic structures”²¹. In the debate of Security Council meeting on 23 March 2009, the Foreign Minister described recent achievements, including the adoption of further laws and the launching of the Kosovo Security Force²².

2.08. Assessing the position on the first anniversary of the Declaration of Independence, at a special meeting of the Assembly of the Republic of Kosovo held on 17 February 2009, the President of the Republic, Dr. Fatmir Sejdiu, said:

“One year after the declaration of an independent and sovereign state, Kosovo has made cautious steps forward, but vital for building democratic institutions and full confirmation that our state strongly helps peace and stability in the region.”²³

And Prime Minister Hashim Thaçi said:

“The year which passed was a year of achievements and pride, a historic year of success for Kosovo.

Within one year, we constructed and made functional all of the state institutions of the Republic of Kosovo.

Working together, we have created a new feeling of optimism; a new feeling of faith; of strength and unity; that there is no challenge which the citizens of Kosovo cannot deal with and overcome.”²³

2.09. In its report to the International Steering Group of 27 February 2009, reviewing the first year of independence, the International Civilian Office noted that

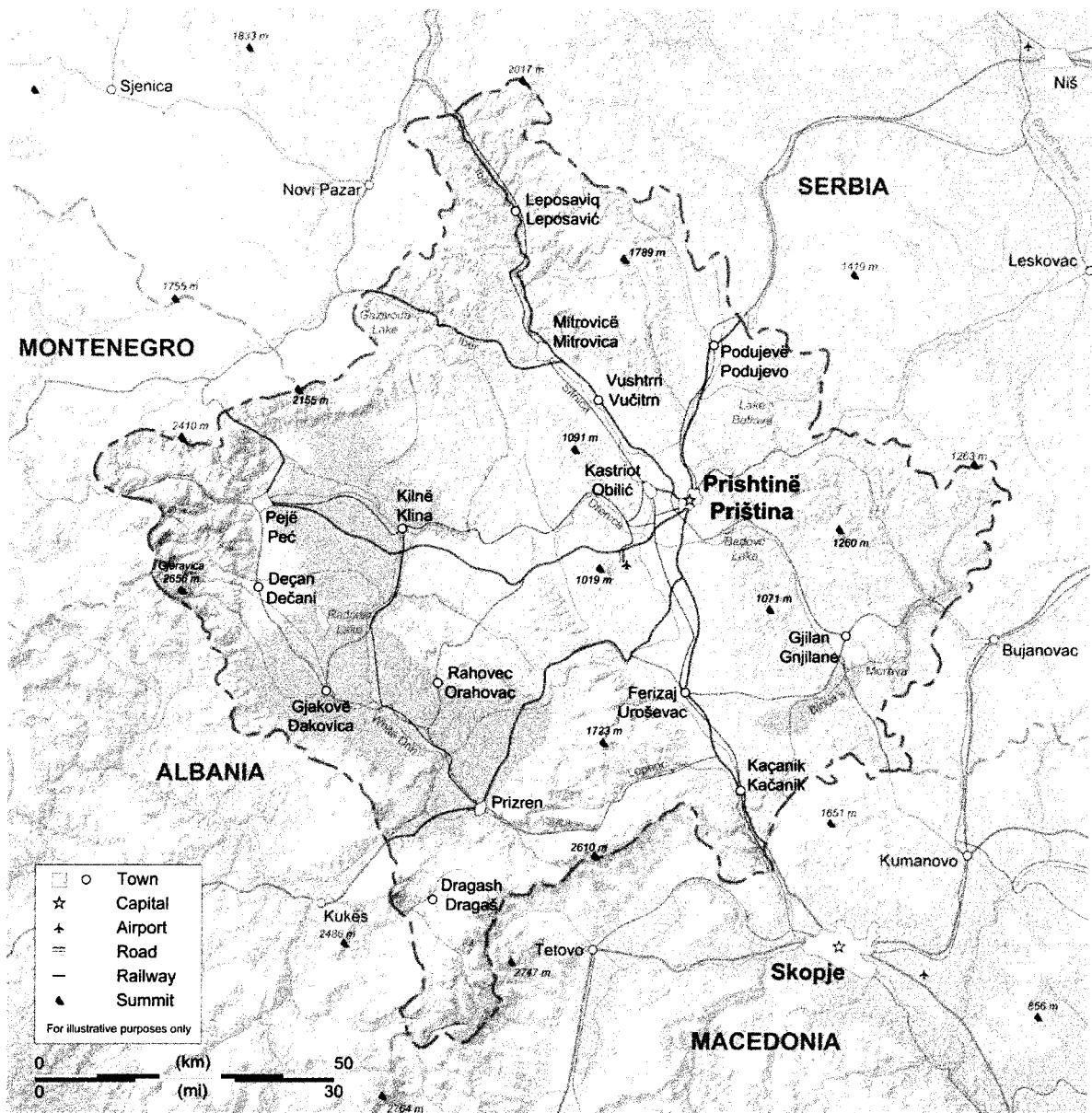
²¹ Security Council, provisional verbatim record, sixty-third year, 6025th meeting, 26 November 2008, S/PV.6025, p. 7 [Dossier No. 124].

²² Security Council, provisional verbatim record, sixty-fourth year, 6097th meeting, 23 March 2009, S/PV.6097, pp. 7-9.

²³ Assembly of the Republic of Kosovo, meeting of 17 February 2009, Transcript (available on the website of the Assembly of the Republic of Kosovo <<http://www.kuvendikosoves.org/>>).

Map 1

THE REPUBLIC OF KOSOVO



“The past year witnessed much progress in Kosovo, progress in building institutions, anchoring Rule of Law, in the creating and consolidating of the elements of statehood, and in taking its place in the community of nations as a multi-ethnic democracy. Through all its actions the state of Kosovo has proven its independence and shown that independence is irreversible. Kosovo has also made strides, in partnership with the International Civilian Office (ICO), in fulfilling the promises made to its citizens and to the world when, in its Declaration of Independence, it committed itself to full implementation of the Comprehensive Proposal for the Kosovo Status Settlement (CSP)”.

And looking forward, the ICO said that

“Through continued effort and vigilance, we believe that 2009 will be a year of progress for Kosovo – progress in meeting its commitments to itself and to its international partners to implement the CSP, and progress toward the destiny foreseen in its Constitution, ‘as a free democratic, and peace-loving country that will be a homeland for all of its citizens’.”²⁴

II. The Territory of Kosovo

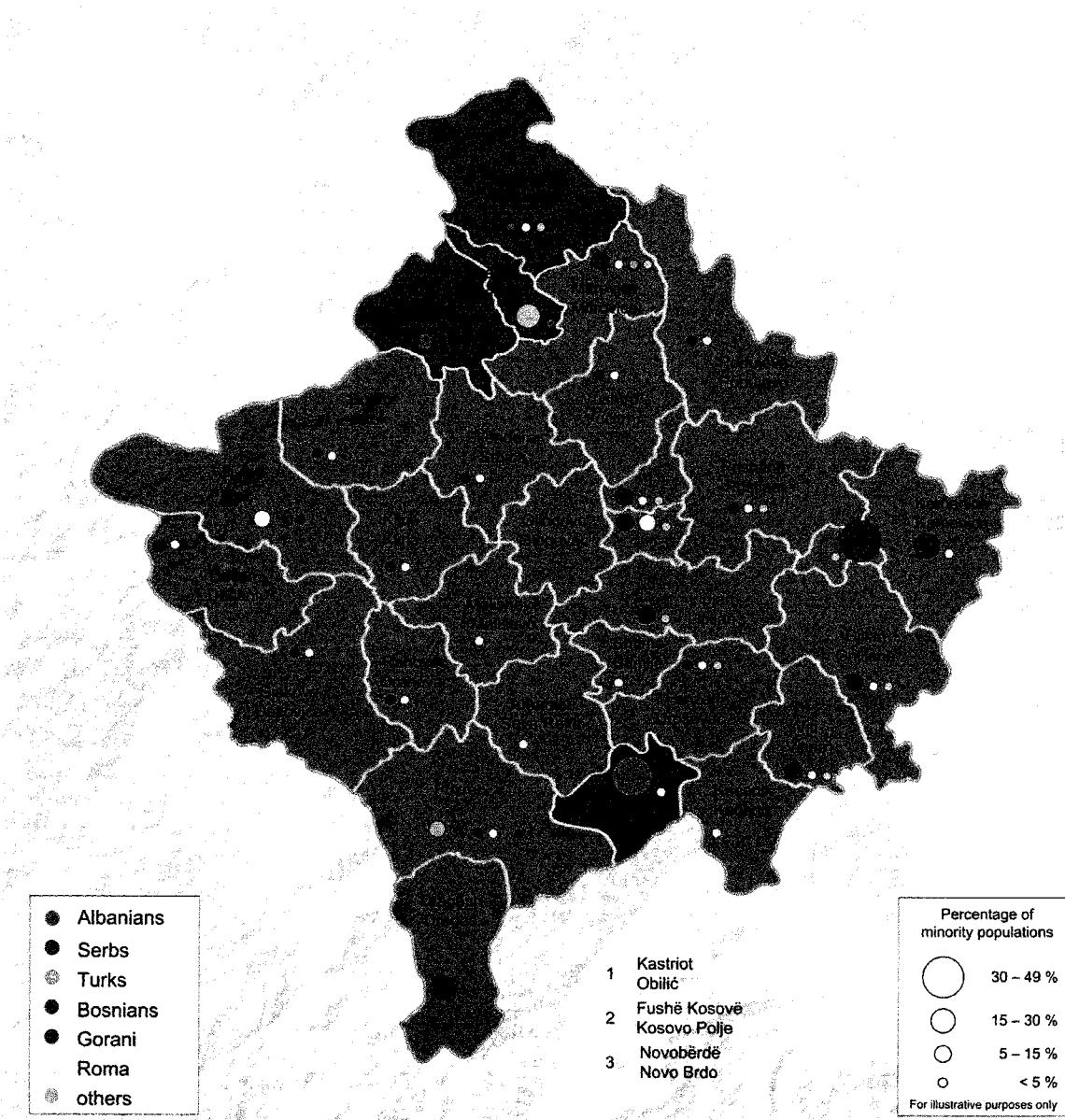
2.10. Kosovo has a total area of 10,887 square kilometres. It has well-established borders with each of its four neighbours: Macedonia (to the south); Albania (to the south and west); Montenegro (to the north-west); and Serbia (to the north and east). Along some of its borders, Kosovo is divided from its neighbours by high mountain ranges with elevations of 2,000 to 2,500 metres. The central part of Kosovo is an extensive plain with an elevation of 400-700 metres.

2.11. The capital of the Republic is Pristina (Prishtina/Priština), with an estimated population of 500,000. Other main towns include Prizren in the south-west, with over 200,000 inhabitants, Ferizaj/Uroševac in the south with approximately 160,000, Mitrovica in the north with approximately 130,000, Gjilan/Gnjilane in the south-east with over 130,000, Gjakovë/Đakovica in the southwest with 90,000, and Pejë/Peć in the west with 80,000.

2.12. Map 1 (p. 12) gives a general overview of the Republic of Kosovo.

²⁴ Report of the International Civilian Office, Vienna, 27 February 2009 (Annex 3) (hereafter “ICO Report”), opening and closing paragraphs.

Map 2
ETHNIC COMPOSITION OF KOSOVO



2.13. Kosovo has no direct access to the sea, but negotiations are foreseen with Albania concerning the use of the harbour of Shëngjin located on the northern part of the Albanian coast.

2.14. The Ahtisaari Plan provided that

“[t]he territory of Kosovo shall be defined by the frontiers of the Socialist Autonomous Province of Kosovo within the Socialist Federal Republic of Yugoslavia as these frontiers stood on 31 December 1988, except as amended by the border demarcation agreement between the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia on 23 February 2001”²⁵,

and went on to say that Kosovo shall engage with Macedonia to establish a technical commission “to physically demarcate the border and address other issues arising from the implementation of the 2001 agreement”²⁶. A Joint Kosovo-Macedonian Commission for Demarcation and Marking the State Border was established in April 2008, and in June 2008 a tripartite Protocol was signed with Albania concerning the placing of a border marker at the Kosovo/Macedonia/Albania tri-point. In October/November 2008, the Joint Commission signed protocols concerning main and auxiliary border columns along the Kosovo-Macedonia border.

III. The People of Kosovo

2.15. According to the assessment of the Statistical Office of Kosovo (December 2008), the number of habitual residents is 2.1 million. 92 % of the inhabitants are Kosovo Albanians; 8 % are from other communities, including Serbs, Turks, Bosnians, Gorani, Roma, Ashkali and Egyptians. Map 2 (p. 14) shows the ethnic composition of Kosovo.

2.16. Kosovo Serb inhabitants are scattered throughout the territory of Kosovo. About one third live in the area of Kosovo north of the Ibar River (which flows through the

²⁵ Comprehensive Proposal for the Kosovo Status Settlement, S/2007/168/Add.1, 26 March 2007, Annex VIII, Article 3.2 [Dossier No. 204]; see also Statement by the President of the Security Council, S/PRST/2001/7, 12 March 2001 [Dossier No. 177].

²⁶ Comprehensive Proposal for the Kosovo Status Settlement, S/2007/168/Add.1, 26 March 2007, Annex VIII, Article 3.3 [Dossier No. 204].

town of Mitrovica). There are other Kosovo Serb-majority areas south of the River Ibar. About two thirds of Kosovo Serbs live south of the Ibar, including a sizeable number near the southern border with Macedonia.

IV. Constitution of the Republic of Kosovo

2.17. The first 120 days after the Declaration of Independence, from 17 February to 14 June 2008, were a transition period, as foreseen in the Ahtisaari Plan. On 15 June 2008, the Constitution of the Republic of Kosovo entered into force.

2.18. In the Declaration of Independence, the democratically-elected representatives of the people of Kosovo undertook to

“adopt as soon as possible a Constitution that enshrines our commitment to respect the human rights and fundamental freedoms of all our citizens, particularly as defined by the European Convention on Human Rights. The Constitution shall incorporate all relevant principles of the Ahtisaari Plan and be adopted through a democratic and deliberative process.”²⁷

2.19. The Ahtisaari Plan contained much of relevance to the drafting of the Constitution, including general principles and provisions on human rights, protection of the rights of communities, decentralization, the justice system, and a continued international civilian and military presence.

2.20. A draft of the Constitution was published in February 2008. There followed an intense period of informing members of the public and consultation, by Internet and at meetings throughout Kosovo. Following the consultations, the Commission reviewed and revised the draft, adopting it on 1 April 2008. On 2 April, the International Civilian Representative (ICR), Ambassador Peter Feith, reviewed the revised draft, and certified it as in accordance with the terms of the Ahtisaari Settlement. The Constitution was then adopted by the Assembly on 9 April 2008, and entered into force on 15 June 2008²⁸.

²⁷ Declaration of Independence of Kosovo, 17 February 2008, paragraph 4 (Annex 1).

²⁸ The text of the Constitution is available on the Assembly’s website, in Albanian, Serbian and English (<http://www.assembly-kosova.org/common/docs/Kushtetuta_sh.pdf> (Albanian), <http://www.assembly-kosova.org/common/docs/Ustav1_Republike_Kosovo_Srpski.pdf> (Serbian), and <http://www.assembly-kosova.org/common/docs/Ustav1_Republike_Kosovo_Srpski.pdf> (Serbian), and <http://www.assembly-kosova.org/common/docs/Ustav1_Republike_Kosovo_Srpski.pdf> (Serbian)).

2.21. The Constitution makes provision for the institutions of the Republic: a unicameral Assembly with 120 members²⁹, a Head of State (President of the Republic)³⁰, a Government consisting of a Prime Minister, one or more deputy prime ministers, and ministers³¹, and judicial institutions (Constitutional Court, Supreme Court, district courts, municipal courts)³².

2.22. Kosovo is a multi-party democracy. General elections have taken place in 2001, 2004 and 2007 and were found by the OSCE and the Council of Europe to be free and fair.

2.23. The Constitution makes provision for the highest standards of human rights. In addition to an extensive catalogue of rights and freedoms³³, the Constitution provides for the direct applicability of eight international human rights instruments: Universal Declaration of Human Rights; European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; International Covenant on Civil and Political Rights and its Protocols; Council of Europe Framework Convention for the Protection of National Minorities; Convention on the Elimination of All Forms of Racial Discrimination; Convention for the Elimination of All Forms of Discrimination Against Women; Convention on the Rights of the Child; Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment³⁴.

2.24. The Constitution contains special provisions for the benefit of Communities which are not in the majority. An important matter in this regard is decentralization, that is local self-government at the level of municipalities³⁵.

kosova.org/common/docs/Constitution1 of the Republic of Kosovo.pdf (English)). The preamble and table of contents, together with an informal summary of its principal provisions, are at Annex 4.

²⁹ Constitution of the Republic of Kosovo, Chapter IV (Articles 63-82).

³⁰ *Ibid.*, Chapter V (Articles 83-91).

³¹ *Ibid.*, Chapter VI (Articles 92-101).

³² *Ibid.*, Chapters VII and VIII (Articles 102-118).

³³ *Ibid.*, Articles 23-54.

³⁴ *Ibid.*, Articles 22.

³⁵ *Ibid.*, Chapter III (Articles 57-62).

2.25. The official languages of the Republic are Albanian and Serbian. Turkish, Bosnian and Roma languages have the status of official languages at the municipal level or will be in official use at all levels as provided by law³⁶.

2.26. Kosovo has adopted its state symbols (flag, seal and anthem), all of which reflect its multi-ethnic character³⁷. For example, the Flag of the Republic bears the geographical shape of Kosovo in gold on a dark blue field, surmounted by six white, five-pointed stars³⁸.

V. International Relations

2.27. The Republic of Kosovo seeks good relations with all of its neighbours, including Serbia. As provided in its Constitution, it has no territorial claims against, and shall seek no union with, any State or part of any State³⁹. During the final status negotiations, the Kosovo side proposed a Treaty of Friendship and Cooperation⁴⁰, but this was not accepted by the Serbian side.

2.28. Under the Constitution, the President of the Republic leads the foreign policy of Kosovo⁴¹, assisted by the Minister for Foreign Affairs⁴². Since the Declaration of Independence, the President and Foreign Minister have represented Kosovo in numerous international meetings, bilateral and multilateral, including meetings of the United Nations General Assembly and Security Council. The Foreign Minister participated in the EU-Western Balkans Forum meeting at Hluboká nad Vltavou (Czech Republic) on 28 March 2009. Other Ministers have also been active internationally. The Assembly of

³⁶ Constitution of the Republic of Kosovo, Article 5.

³⁷ *Ibid.*, Article 6.

³⁸ *Ibid.*, Article 6; Law No. 03/L-038 on the Use of State Symbols of the Republic of Kosovo, 20 February 2008, *Official Gazette of the Republic of Kosova*, No. 26, 2 June 2008, pp. 35-40.

³⁹ Constitution of the Republic of Kosovo, Article 1 (3).

⁴⁰ Annex 6.

⁴¹ Constitution of the Republic of Kosovo, Article 84 (10).

⁴² The Foreign Ministry is organised in accordance with the Law on the Ministry of Foreign Affairs and Diplomatic Service of the Republic of Kosovo (Law No. 03/L-044, 13 March 2008, *Official Gazette of the Republic of Kosova*, No. 26, 2 June 2008, pp. 50-53).

the Republic of Kosovo is also involved in international relations, both in its day-to-day activities⁴³ and through contacts with the parliaments of other States⁴⁴.

Recognition

2.29. As of the date of completion of this Written Contribution, Kosovo had been recognized as a sovereign and independent State by 56 States, from all geographical regions:

Africa

Burkina Faso
Liberia
Senegal
Sierra Leone

Asia

Afghanistan
Japan
Malaysia
Maldives
Marshall Islands
Micronesia
Nauru
Palau
Republic of Korea
Samoa
United Arab Emirates

Eastern Europe

Albania
Bulgaria
Croatia
Czech Republic
Estonia
Hungary
Latvia
Lithuania
Macedonia
Montenegro
Poland
Slovenia

Latin America and Caribbean

Belize
Colombia
Costa Rica

⁴³ In addition to legislating in the field of foreign affairs and its role in relation to treaties, the Assembly may adopt resolutions on foreign policy matters, such as the Resolution for Millennium Declaration adopted on 17 October 2008 (available on the website of the Assembly of the Republic of Kosovo <<http://www.kuvendikosoves.org/>>).

⁴⁴ For example, on 6 January 2009, the President of the Assembly, Mr. Jakup Krasniqi, signed a Memorandum of Understanding with the Speaker of the Turkish Assembly, on co-operation between the two Assemblies.

<i>Latin America and Caribbean (continued)</i>	Ireland
Panama	Italy
Peru	Liechtenstein
	Luxembourg
<i>Western Europe and Others</i>	Malta
Australia	Monaco
Austria	Netherlands
Belgium	Norway
Canada	Portugal
Denmark	San Marino
Finland	Sweden
France	Switzerland
Germany	Turkey
Iceland	United Kingdom
	United States of America

2.30. It will be seen that the recognizing States come from all parts of the world. They include all of Kosovo's neighbours other than Serbia. Four of the other six States to emerge from the disintegration of the SFRY (Croatia, Macedonia, Montenegro, and Slovenia) have recognized Kosovo. The recognizing States include a majority of the members of the Security Council in both 2008 (8 members) and 2009 (as of April, 9 members), as well as all of the Group of Seven (G-7) States, 22 of the 27 Members of the European Union⁴⁵, 24 of the 28 NATO Member States, 33 of the 47 Council of Europe Member States, 35 of the 56 OSCE Member States. The recognizing States represent two thirds of world Gross Domestic Product.

2.31. In addition, there have been practical moves by certain States which have not yet formally recognized Kosovo. For example, among the five EU Member States that

⁴⁵ In paragraph 3 of its resolution of 5 February 2009 on Kosovo and the role of the EU, the European Parliament “[e]ncourages those EU Member States which have not already done so to recognise the independence of Kosovo” (available at <<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2009-0052&language=EN&ring=B6-2009-0063>>).

have not yet recognized Kosovo, Greece and Slovakia nevertheless accept passports issued by the Republic of Kosovo, as do other States, such as Saudi Arabia.

2.32. The fact that some States have not yet recognized the Republic of Kosovo in no way indicates that they have adopted a position opposed to recognition. In most cases, especially with States that are distant from the region, recognition is likely to be simply a matter of time. It is noteworthy that most States in Europe have recognized. The number of States that have taken a positive decision not to recognize at the present time seems to be rather limited. In addition, some States appear not to have a practice of according recognition⁴⁶.

Diplomatic Relations and the Establishment of Embassies

2.33. Since independence, Kosovo has enacted various laws in the field of international relations:

- Law on the Status, Immunities, and Privileges of Diplomatic and Consular Missions and Personnel in Kosovo and of the International Military Presence and its Personnel⁴⁷,
- Law on the Foreign Service of the Republic of Kosovo⁴⁸,
- Law on Consular Services of Diplomatic and Consular Missions of the Republic of Kosovo⁴⁹.

2.34. The Law on Status, Privileges and Immunities gives effect to the express commitment in the Declaration of Independence to continue to be bound by the Vienna Conventions on diplomatic and consular relations⁵⁰. In addition to diplomatic missions in

⁴⁶ This is the case with New Zealand. The Foreign Ministry is in contact with the Ministry of Foreign Affairs and Trade of New Zealand, through standard diplomatic channels, over the modalities of establishing diplomatic and consular relations.

⁴⁷ Law No. 03/L-033, 20 February 2008, *Official Gazette of the Republic of Kosova*, No. 26, 2 June 2008, pp. 46-49.

⁴⁸ Law No. 03/L-122, 16 December 2008, *ibid.*, No. 46, 15 January 2009, pp. 31-39.

⁴⁹ Law No. 03/L-125, 16 December 2008, *ibid.*, pp. 45-48.

⁵⁰ Declaration of Independence of Kosovo, paragraph 9 (Annex 1).

Kosovo, the law applies to the ICR and EUSR, EULEX, the United Nations and its specialized agencies, the OSCE, and “any other international intergovernmental organization as the Minister for Foreign Affairs may deem appropriate”⁵¹. Some States still maintain liaison offices, which are accorded by law the same privileges and immunities as diplomatic missions.

2.35. As of the date of this Written Contribution, 17 States have Embassies in Pristina (Albania, Austria, Croatia, Czech Republic, Bulgaria, Finland, France, Germany, Hungary, Italy, Netherlands, Norway, Slovenia, Switzerland, Turkey, United Kingdom, and the United States of America). Seven States have accredited non-resident Ambassadors (Canada, Belgium, Denmark, Estonia, Ireland, Japan, and Sweden). The Republic of Kosovo has diplomatic missions in Ankara, Berlin, Bern, Brussels, London, Paris, Rome, Tirana, Vienna, and Washington, D.C. Another eight diplomatic missions have been recently decreed by the President of the Republic of Kosovo (Budapest, Ljubljana, Prague, Sofia, Stockholm, Tokyo, The Hague, and Zagreb). In addition, high officials of the Republic of Kosovo have engaged in extensive bilateral diplomacy with many other States.

Treaties and International Law

2.36. The Constitution of the Republic of Kosovo provides that the Republic of Kosovo shall respect international law⁵², and that the Republic concludes international agreements and becomes a member of international organizations⁵³. International agreements relating to certain subjects are ratified by a two-thirds vote of all the deputies of the Assembly. These include territory, peace, alliances, political and military issues, as well as fundamental rights and freedoms and the participation of Kosovo in international organizations. Other international agreements are ratified upon signature of the President of the Republic⁵⁴. International agreements become part of the internal legal system upon

⁵¹ Law No. 03/L-033 on the Status, Immunities, and Privileges of Diplomatic and Consular Missions and Personnel in Kosovo and of the International Military Presence and its Personnel, Article 3.2, *Official Gazette of the Republic of Kosovo*, No. 26, 2 June 2008, pp. 46-49.

⁵² Constitution of the Republic of Kosovo, Article 16 (3).

⁵³ *Ibid.*, Article 17 (1).

⁵⁴ *Ibid.*, Article 18.

publication in the *Official Gazette*. They are directly applied except where application requires the promulgation of a law⁵⁵. International agreements and legally-binding norms of international law have superiority over the laws of the Republic⁵⁶.

2.37. In the Declaration of Independence, the democratically-elected representatives of the people of Kosovo gave the following commitment:

“We hereby undertake the international obligations of Kosovo, including those concluded on our behalf by the United Nations Interim Administration Mission in Kosovo (UNMIK) and treaty and other obligations of the former Socialist Federal Republic of Yugoslavia to which we are bound as a former constituent part, including the Vienna Conventions on diplomatic and consular relations. We shall cooperate fully with the International Criminal Tribunal for the Former Yugoslavia. We intend to seek membership in international organisations, in which Kosovo shall seek to contribute to the pursuit of international peace and stability.”⁵⁷

2.38. Article 145 (1) of the Constitution provides:

“International agreements and other acts relating to international cooperation that are in effect on the day this Constitution enters into force will continue to be respected until such agreements or acts are renegotiated or withdrawn from in accordance with their terms or until they are superseded by new international agreements or acts covering the same subject areas and adopted pursuant to this Constitution.”

2.39. Kosovo is in the process of establishing with its treaty partners the status of treaties to which Kosovo was bound as a former constituent part of the SFRY. On 7 October 2008, the Ministry of Foreign Affairs addressed a Note Verbal to all Embassies, Liaison and Diplomatic Offices accredited in the Republic of Kosovo asking for a list and the texts of the treaties concerned. Replies have been received from a number of States, and are being studied by the Ministry. Even before 7 October 2008, there had already been contacts with certain States about treaty succession.

2.40. Kosovo is also beginning to enter into new bilateral treaties. Thus, for example, on 13 January 2009, Kosovo and Turkey signed an Agreement on the Mutual Abolition of Visas. Another important treaty under negotiation concerns the State border

⁵⁵ Constitution of the Republic of Kosovo, Article 19 (1).

⁵⁶ *Ibid.*, Article 19 (2).

⁵⁷ Declaration of Independence, paragraph 9 (Annex 1).

between the Republic of Kosovo and the Republic of Macedonia⁵⁸. Three bilateral agreements are currently under negotiation with Albania (on travel of citizens; on readmission; and on cooperation between the two foreign ministries). Negotiations of bilateral agreements in different areas are also under way with other European countries.

International Monetary Fund, World Bank

2.41. The procedure is in train for the Republic of Kosovo to join the International Monetary Fund and the International Bank for Reconstruction and Development, as well as the other organizations in the World Bank Group – International Finance Corporation (IFC), International Development Agency (IDA), and Multilateral Investment Guarantee Agency (MIGA). IMF staff visits to Kosovo have taken place regularly. A draft Law on Membership of the Republic of Kosovo in the International Monetary Fund and the World Bank Group Organizations has been finalized, approved by the Government, and sent for final approval to the Assembly.

2.42. In early March 2009, the IMF sent a formal “quota letter” to Kosovo. The Government sent a positive reply on 17 March 2009. Kosovo’s membership applications will be submitted to the executive bodies of the organizations, and with their approval to the respective boards of governors.

European Union

2.43. The Foreign Minister of the Republic of Kosovo, Mr. Skender Hyseni, stated in the United Nations Security Council on 23 March 2009:

“We are committed also to pursuing the goal of full membership in the European Union (EU) as soon as feasible and are implementing the reforms required. ... The future of all nations of the Western Balkans lies in European integration, and Kosovo intends to pursue that goal very vigorously.”⁵⁹

⁵⁸ See para. 2.14 above.

⁵⁹ Security Council, provisional verbatim record, sixty-fourth year, 6097th meeting, 23 March 2009, S/PV.6097, p. 9.

2.44. In a Communication on Enlargement Strategy of 5 November 2008, the European Commission concluded:

“Kosovo has a clear European perspective, in line with the rest of the Western Balkans. In the autumn of 2009, the Commission will present a feasibility study evaluating means to further Kosovo’s political and socio-economic development, and examining how best Kosovo can progress as part of the region towards integration with the EU in the context of the Stabilization and Association Process.”⁶⁰

2.45. Among other things, the Commission’s Communication noted that “[t]he constitution adopted by Kosovo is in line with European standards and a considerable amount of key legislation has been adopted”⁶¹.

2.46. The EU Presidency Press Statement issued at the end of the EU-Western Balkans Forum meeting at Hluboká nad Vltavou (Czech Republic) on 28 March 2009 included the following paragraph on Kosovo:

“The participants discussed ways of assisting the economic and political development of Kosovo through a clear European perspective, in line with the European perspective of the region. In this respect, they welcome the Commission’s intention to present, in the autumn of 2009, a study. Kosovo’s full involvement in regional initiatives needs to be ensured in a constructive manner.”⁶²

2.47. The Agency for European Integration within the Office of the Prime Minister has formulated proposals to reform reporting, implementation and coordination mechanisms in relation to integration within the EU.

VI. Internal Developments

2.48. Important steps have been taken since 17 February 2008, and especially since 15 June 2008, to establish the institutions foreseen in the Constitution⁶³. These include in particular security sector reform and the development of institutions connected with the

⁶⁰ Communication from the Commission to the Council and the European Parliament, Enlargement Strategy and Main Challenges 2008-2009, 5 November 2008, COM(2008)674 final, p. 14.

⁶¹ *Ibid.*, p. 5.

⁶² Para. 7 (available at the EU Presidency website <<http://www.eu2009.cz/>>).

⁶³ ICO Report, section II (Annex 3).

rule of law. Kosovo has begun to issue its own passports, which are recognised in many countries.

Adoption of laws

2.49. The ICO has certified that the draft laws in the “Ahtisaari package” are in accordance with the Ahtisaari Plan. Among the 41 such laws that came into force on 15 June 2008 were Laws on Diplomatic Privileges and Immunities⁶⁴; on Kosovo Police⁶⁵; on Citizenship⁶⁶; on the Rights of Communities and their Members⁶⁷; on Travel Documents⁶⁸; on the Ministry of Foreign Affairs⁶⁹; on General Elections⁷⁰; and on the Central Bank⁷¹. Further “Ahtisaari package” laws were adopted in December 2008.

2.50. A table of laws adopted and published in the *Gazette* since Independence is at **Annex 5**.

Economic developments

2.51. The laws concerning the economy foreseen in the Ahtisaari Plan have been enacted, including legislation on publicly owned enterprises⁷², the Privatization Agency of Kosovo⁷³, the Kosovo Property Agency, and the various independent economic regulators of Kosovo. These laws and their ongoing implementation assure a comprehensive

⁶⁴ Law No. 03/L-033 on the Status, Immunities and Privileges of Diplomatic and Consular Missions and Personnel in Republic of Kosova and of the International Military Presence and its Personnel, *Official Gazette of the Republic of Kosova*, No. 26, 2 June 2008, pp. 46-49.

⁶⁵ Law No. 03/L-035 on Police, *ibid.*, No. 28, 4 June 2008, pp. 29-46.

⁶⁶ Law No. 03/L-034 on Citizenship of Kosova, *ibid.*, No. 26, 2 June 2008, pp. 28-34.

⁶⁷ Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, *ibid.*, No. 28, 4 June 2008, pp. 65-73.

⁶⁸ Law No. 03/L-037 on Travel Documents, *ibid.*, No. 27, 3 June 2008, pp. 69-75.

⁶⁹ Law No. 03/L-044 on Ministry for Foreign Affairs and Diplomatic Service of Republic of Kosovo, *ibid.*, No. 26, 2 June 2008, pp. 50-53.

⁷⁰ Law No. 03/L-073 on General Elections in the Republic of Kosovo, *ibid.*, No. 31, 15 June 2008, pp. 1-38.

⁷¹ Law No. 03/L-074 on the Central Bank of the Republic of Kosovo, *ibid.*, No. 32, 15 June 2008, pp. 15-27.

⁷² Law No. 03/L-087, *ibid.*, No. 31, 15 June 2008, pp. 39-57.

⁷³ Law No. 03/L-067, *ibid.*, No. 30, 15 June 2008, pp. 30-43.

framework for rapid and sustainable economic growth. On 19 December 2008, the Assembly adopted the budget for 2009 amounting to Euro 1.43 billion⁷⁴.

2.52. In a recent article, the Minister of Economy and Finance wrote:

“For a decade now, Kosovo has been at peace, working with the support of the international community to build a modern, investment-friendly framework for sustainable economic development.

Over these years, as a consequence of newfound freedom and extraordinary efforts, a great deal has been achieved. A modern legal framework has been constructed, consistent with EU directives and international best practices. Liberal market policies have been implemented, including low tariffs, duties, and taxes. Progressive government institutions have been built. A sound banking sector has developed under the regulation and supervision of the Central Bank of Kosovo. Contemporary public sector financial management systems have been implemented, which many consider amongst ‘the best in the Balkans.’”⁷⁵

2.53. In his introduction to the 2008 End of Mission Report on UNMIK’s Pillar IV (European Union Pillar), the Deputy SRSG EU Pillar, Mr. Paul Acda, summarised the economic progress in the following terms:

“Today Kosovo has the legal framework that a modern market economy needs: laws favourable to business creation, an investor friendly tax system, and rules and regulations that protect the entrepreneur as well as the consumer. Banking and insurance supervision has been established. The private sector has received a boost from a successful privatisation process. Market regulators are in place and public utilities are on the sometimes painful path of modernisation. Kosovo can be proud of one of the most modern and efficient Customs services in South East Europe. And a number of agreements have integrated Kosovo’s economy into the region’s, thus paving the way for a common European future.”⁷⁶

Constitutional Court

2.54. The Law on the Constitutional Court⁷⁷ was adopted by the Assembly in December 2008, and promulgated by the President at the end of that month. It entered into

⁷⁴ Law No. 03/L-105 on Budget of the Republic of Kosovo for the Year 2009.

⁷⁵ *The Economist*, 14 February 2009.

⁷⁶ UNMIK, *European Union Pillar, The 10 Key Achievements, End of Mission Report, 1999-2008*, p. 3 (published September 2008, available on the UNMIK website <<http://www.unmikonline.org/>>).

⁷⁷ Law No. 03/L-121, *Official Gazette of the Republic of Kosova*, No. 46, 15 January 2009, pp. 20-30.

force on 19 January 2009. 41 candidates responded to the invitation to apply to become a judge on the Court. The Special Committee to Review Candidates for Appointment to the Constitutional Court has conducted interviews, and is expected to select a short-list of candidates for submission to the Assembly for its approval in April or May 2009. In the meantime, the Interim Secretariat of the Court has begun registering cases.

Security sector

2.55. A series of important measures have been taken in the security sector. The Kosovo Police Service is highly regarded as one of the best in the region. The Kosovo Security Council had its first meeting in February 2009. Also in February 2009, the Assembly confirmed the first Director of the Kosovo Intelligence Agency, who is charged with developing an agency that is multi-ethnic and apolitical. As foreseen in the Ahtisaari Plan, and with guidance and support from KFOR, the Kosovo Security Force (KSF) became operational in January 2009. The Kosovo Protection Corps (KPC) has been disbanded.

Decentralization

2.56. An important matter for the protection of the rights of minority communities and their members is the decentralization programme. The Assembly has adopted the Law on Local Self-Government⁷⁸ and the Law on Municipal Administrative Borders⁷⁹ in accordance with the Ahtisaari Plan. The second of these provides for the establishment of five new municipalities, as well as extension of the Municipality of Novobërdë/Novo Brdo. According to this Law, out of 38 municipalities, ten will have a Serb majority, meaning that over 95 % of the members of the Serb community will be able to govern themselves, including competences in education, health, police, urban and economic planning, etc. The Law on Local Self-Government provides that in those municipalities where at least 10 % of the population comes from a minority community there will be an additional vice-president position for minorities. Education is guaranteed in the language of the

⁷⁸ Law No. 03/L-040, 20 February 2008, *Official Gazette of the Republic of Kosova*, No. 28, 4 June 2008, pp. 47-64.

⁷⁹ Law No. 03/L-041, 20 February 2008, *ibid.*, No. 26, 2 June 2008, pp. 1-17.

community. There are already excellent cases of cohabitation in several municipalities, for example in the municipalities of Kamenicë/Kamenica, Novobërdë/Novo Brdo and Gjilan/Gnjilane.

2.57. Also vital is the protection of religious and cultural heritage. The Assembly has passed the Law on the Establishment of Special Protective Zones⁸⁰, which sets up a mechanism to protect Kosovo's religious and cultural patrimony, including the sites of the Serbian Orthodox Church. In February 2009, the Kosovo Police assumed responsibility for a 24-hour protection of these sites⁸¹.

VII. Presence of the International Community

2.58. As was foreseen in the Declaration of Independence⁸², in accordance with the provisions of the Constitution of the Republic of Kosovo⁸³, and at its invitation, an international civilian presence and an international military presence are in Kosovo for the time being to supervise and support implementation of various aspects of Ahtisaari Plan.

2.59. In addition to the international bodies in Kosovo, many States (including some that have not yet recognised Kosovo) are generously and actively assisting Kosovo on a bilateral and multilateral basis. For example, international donors pledged a total of 1.2 billion Euros at the Kosovo Donors Conference in Brussels on 11 July 2008.

2.60. As provided in the Ahtisaari Report, the powers of the international presences are focused in critical areas such as community rights, decentralization, the protection of

⁸⁰ Law No. 03/L-039 on Special Protective Zones, *Official Gazette of the Republic of Kosova*, No. 28, 4 June 2008, pp. 74-76.

⁸¹ ICO Report, section II.3 (Annex 3).

⁸² Annex 1. Paragraph 5 of the Declaration read: "We welcome the international community's continued support of our democratic development through international presences established in Kosovo on the basis of UN Security Council resolution 1244 (1999). We invite and welcome an international civilian presence to supervise our implementation of the Ahtisaari Plan, and a European Union-led rule of law mission. We also invite and welcome the North Atlantic Treaty Organization to retain the leadership role of the international military presence in Kosovo and to implement responsibilities assigned to it under UN Security Council resolution 1244 (1999) and the Ahtisaari Plan, until such time as Kosovo institutions are capable of assuming these responsibilities. We shall cooperate fully with these presences to ensure Kosovo's future peace, prosperity and stability."

⁸³ Constitution of the Republic of Kosovo, Chapter XIV, especially Articles 146, 147 and 153.

the Orthodox Churches in Kosovo and the rule of law, but at the same time “Kosovo’s authorities are ultimately responsible and accountable for the implementation of the Settlement proposal”⁸⁴.

2.61. Central elements of the international civilian presence are the International Civilian Representative (ICR), supported by the International Steering Group (ISG), and the European Union’s Rule of Law mission, EULEX. Other international bodies, including the OSCE, continue to play a role. KFOR remains as the international military presence. Details of the activities of these various bodies may be found in their publications, including their websites. The following is only a brief introduction.

2.62. The **International Steering Group (ISG)**, foreseen in the Ahtisaari Plan, has been established comprising key international stakeholders⁸⁵. The principal tasks of the ISG are to appoint the International Civilian Representative (ICR), to support and give guidance to the ICR, to determine in due course that Kosovo has implemented the terms of the Ahtisaari Plan, to provide direction on the ultimate phase-out of the ICR, and to conduct one or more reviews of the mandate of the ICR, on the basis of the state of implementation of the Ahtisaari Plan⁸⁶.

2.63. The ISG meets regularly to discuss matters relevant to implementation of the Plan. It has issued a series of statements⁸⁷.

2.64. As noted above, Kosovo is responsible for managing its own affairs. For an initial period, an **International Civilian Representative (ICR)**, supported by an **International Civilian Office (ICO)**, supervises the implementation of the Ahtisaari Plan

⁸⁴ Report of the Special Envoy of the Secretary-General on Kosovo’s future status, S/2007/168, 26 March 2007, paras. 13-14 [Dossier No. 203].

⁸⁵ The ISG currently comprises 25 States: Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Slovenia, Switzerland, Sweden, Turkey, United Kingdom, United States of America.

⁸⁶ Comprehensive Proposal for the Kosovo Status Settlement, S/2007/168/Add.1, 26 March 2007, Article 12 [Dossier No. 204].

⁸⁷ Available on the website of the ICO (<<http://www.ico-kos.org/?id=3>>).

and supports the relevant efforts of the Kosovo authorities⁸⁸. The ICR's role is set out in the Ahtisaari Plan *inter alia* at Article 12 (General Principles) and Annex IX. It is summarized in the Ahtisaari Report as follows:

"The International Civilian Representative, who shall be double-hatted as the European Union Special Representative and who shall be appointed by an International Steering Group, shall be the ultimate supervisory authority over implementation of the Settlement. The International Civilian Representative shall have no direct role in the administration of Kosovo, but shall have strong corrective powers to ensure successful implementation of the Settlement. Among his/her powers is the ability to annul decisions or laws adopted by Kosovo authorities and sanction and remove public officials whose actions he/she determines to be inconsistent with the Settlement. The mandate of the International Civilian Representative shall continue until the International Steering Group determines that Kosovo has implemented the terms of the Settlement."⁸⁹

2.65. **EULEX-Kosovo (EULEX)** is the European Security and Defence Policy (ESDP) mission envisaged in the Ahtisaari Plan⁹⁰. The basis for the presence of EULEX in Kosovo is the mandate foreseen in the Declaration of Independence, the Ahtisaari Plan, the Constitution, the invitation from the institutions of the Republic of Kosovo, and the EU Joint Action of 4 February 2008⁹¹.

2.66. EULEX was set up by a Joint Action of the Council of the European Union. Its Mission Statement is set out in Article 2, paragraph 1, of the Joint Action, as follows:

"EULEX KOSOVO shall assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices."⁹²

⁸⁸ Comprehensive Proposal for the Kosovo Status Settlement, S/2007/168/Add.1, 26 March 2007, Annex IX, Article 1 [Dossier No. 204].

⁸⁹ Report of the Special Envoy of the Secretary-General on Kosovo's future status, S/2007/168, 26 March 2007, Annex, p. 8 [Dossier No. 203]. For the ICO Report, see Annex 3.

⁹⁰ Comprehensive Proposal for the Kosovo Status Settlement, S/2007/168/Add.1, 26 March 2007, Articles 12.4 and 13; Annex IX, Article 2.3; and Annex X [Dossier No. 204].

⁹¹ See point 3 of Kosovo's four points (Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2008/692, 24 November 2008, Annex I [Dossier No. 90]).

⁹² Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo, *Official Journal of the European Union*, L 42/92, 16.02.2008.

2.67. EULEX thus has an operational role in the field of police and the courts, with judges and prosecutors, but in other areas its function is to monitor, mentor and advise. In relation to the courts, basic provisions are the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo⁹³ and the Law on Special Prosecution Office of the Republic of Kosovo⁹⁴ (both adopted by the Assembly of Kosovo as part of the “Ahtisaari package”). EULEX deployed throughout Kosovo with effect from 9 December 2008. A report by EULEX is annexed to the Secretary-General’s latest report on UNMIK.

2.68. The Ahtisaari Plan envisaged that an international military presence would be established by NATO. KFOR, originally established pursuant to Security Council resolution 1244 (1999), remained in Kosovo after independence in accordance with the Declaration of Independence and the Constitution of the Republic of Kosovo⁹⁵, upon the invitation of Kosovo and with its agreement. It carries out functions consistent with the Ahtisaari Plan⁹⁶.

2.69. In the light of the changed circumstances following the Declaration of Independence, UNMIK has been reconfigured by the Secretary-General (with the support of the Security Council) and now has a much reduced role. Its chief remaining functions (rule of law) came to an end in December 2008. It is foreseen that the number of persons working for UNMIK will be reduced to around 500 by July 2009.

2.70. Following the Declaration of Independence, the Secretary-General informed the Security Council “that UNMIK would continue to implement its mandate in the light of the evolving circumstances”⁹⁷. A debate took place in the Security Council on 18 February 2008, the day after the Declaration of Independence, at the request of Serbia and the Russian Federation. The Council took no action at that stage or indeed at any time

⁹³ Law No. 03/L-053, *Official Gazette of the Republic of Kosovo*, No. 27, 3 June 2008, p. 59.

⁹⁴ Law No. 03/L-052, *ibid.*, p. 47.

⁹⁵ Constitution of the Republic of Kosovo, Article 153.

⁹⁶ On 17 February 2008, the President of the Republic wrote to NATO on behalf of the institutions to invite NATO to maintain KFOR in Kosovo.

⁹⁷ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2008/354, 12 June 2008, para. 2 [Dossier No. 88].

before 26 November 2008⁹⁸. In his report on UNMIK for the period 16 December 2007 to 1 March 2008, the Secretary-General said that UNMIK “has acted, and will continue to act, in a realistic and practical manner and in the light of the changed circumstances”⁹⁹.

2.71. In his special report of 12 June 2008, the Secretary-General said that, on the basis of extensive consultations and pending guidance from the Security Council, he intended “to adjust operational aspects of the civilian presence in Kosovo”¹⁰⁰. The Secretary-General’s report on UNMIK of 24 November 2008¹⁰¹ described the current political situation in Kosovo, including the actions of the Kosovo institutions under the Constitution of the Republic of Kosovo¹⁰². The Secretary-General further described progress with reconfiguration of UNMIK, the relationship between UNMIK and EULEX¹⁰³, and how “UNMIK has begun to adapt its structure and profile in response to the profoundly changed reality in Kosovo following Kosovo’s declaration of independence and the adoption of a Constitution”¹⁰⁴. He noted that “reconfiguration is both timely and necessary, and is being accelerated in order to adapt it fully to the prevailing circumstances on the ground. It is taking place in a transparent manner with respect to all stakeholders and is consistent with the United Nations position of strict neutrality on the question of Kosovo’s status.”¹⁰⁵ The report described “a dialogue with the Government of Serbia” conducted by the SRSG, but further recorded that the institutions of Kosovo “have clearly expressed that they do not accept the results of the arrangements set out in the present report”. The Secretary-General was nevertheless “encouraged by Pristina’s indication that

⁹⁸ Security Council, provisional verbatim record, sixty-third year, 5839th meeting, 18 February 2008, S/PV.5839 [Dossier No. 119]. Further debates were held in the Security Council, without action being taken, on 30 March 2008 (S/PV.5850 [Dossier No. 120]); 21 April 2008 (closed meeting, S/PV.5871); 20 June 2008 (S/PV.5917 [Dossier No. 122]); and 25 July 2008 (S/PV.5944 [Dossier No. 123]).

⁹⁹ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2008/211, 28 March 2008, para. 30 [Dossier No. 86]; see also paras. 31-33. See also the Secretary-General’s report on UNMIK for the period 1 March to 25 June 2008 (S/2008/458, 15 July 2008 [Dossier No. 89]).

¹⁰⁰ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2008/354, 12 June 2008 [Dossier No. 88].

¹⁰¹ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2008/692, 24 November 2008 [Dossier No. 90].

¹⁰² *Ibid.*, para. 2.

¹⁰³ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2008/692, 24 November 2008, paras. 21-25 [Dossier No. 90].

¹⁰⁴ *Ibid.*, para. 48.

¹⁰⁵ *Ibid.*, para. 49.

it is willing to cooperate with EULEX, and, inter alia, with the European Union and NATO”¹⁰⁶.

2.72. On 26 November 2008, the Security Council held a debate on the Secretary-General’s report on UNMIK¹⁰⁷. At the end of the debate, the Council, in a Presidential statement¹⁰⁸, welcomed the report and

“taking into account the positions of Belgrade and Pristina on the report which were reflected in their respective statements, welcomes their intentions to cooperate with the international community”.

The statement continued:

“The Security Council welcomes the cooperation between the UN and other international actors, within the framework of Security Council Resolution 1244 (1999), and also welcomes the continuing efforts of the European Union to advance the European perspective of the whole of the Western Balkans, thereby making a decisive contribution to regional stability and prosperity.”

2.73. The Security Council raised no objection to the developments on the ground in Kosovo described in the Secretary-General’s reports, and in particular the role of the institutions of Kosovo and of the international community, as well as the Secretary-General’s proposals for the “umbrella” role of UNMIK. In so doing, the Security Council took into account the position of the Republic of Kosovo. That position was reflected in the statement of its Foreign Minister, Mr. Skender Hyseni, in the Security Council debate on 26 November 2008, in the following terms:

“We are ... committed to the early deployment of EULEX throughout Kosovo, in accordance with the mandate that derives from the Kosovo Declaration of Independence, the Ahtisaari package, the Constitution of the Republic of Kosovo, the laws of the Republic of Kosovo, the European Union joint action plan of 4 February 2008, and the invitations of 17 February and 8 August 2008 for EULEX deployment.

¹⁰⁶ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2008/692, 24 November 2008, para. 52 [Dossier No. 90].

¹⁰⁷ Security Council, provisional verbatim record, sixty-third year, 6025th meeting, 26 November 2008, S/PV.6025 [Dossier No. 124].

¹⁰⁸ Statement by the President of the Security Council, S/PRST/2008/44, 26 November 2008 [Dossier No. 91].

In a declaration of 18 November, the institutions of the Republic of Kosovo made very clear their rejection in its entirety of the six-point proposal contained in the Secretary-General's report (S/2008/354). Our position and response to the report remains the same. We cannot permit any action that infringes upon the sovereignty and territorial integrity of the Republic of Kosovo. We will cooperate with EULEX on its deployment throughout Kosovo on the basis of the mandate deriving from the aforementioned documents, fully respecting the sovereignty, territorial integrity and unitary character of the Republic of Kosovo.”¹⁰⁹

2.74. The Security Council held a further debate on 23 March 2009, on the Secretary-General's latest report on UNMIK¹¹⁰. That report indicated that UNMIK had accelerated the process of reconfiguration¹¹¹, and annexed the first report of EULEX¹¹².

VIII. Serbia's Attitude towards Kosovo

2.75. Serbia does not accept the independence of Kosovo. Indeed, Serbian officials, including President Boris Tadić, the current Foreign Minister, Mr. Vuk Jeremić and “Minister for Kosmet”, Mr. Goran Bogdanović, repeatedly say that Serbia will “never” recognize the independence of “Kosmet”. The 2006 Constitution of the Republic of Serbia, promulgated in an act of extraordinary bad faith in the middle of the final status process, institutionalizes Serbian obstructionism, by referring to the “constitutional obligations of all state bodies to uphold and protect the state interests of Serbia in Kosovo and Metohija in all internal and foreign political relations”¹¹³.

2.76. In adopting this negative line on Kosovo, the Serbian leadership is out of line with its public opinion. There is widespread acknowledgment in Serbia that the future lies in Europe, not in fighting old and lost battles over Kosovo. But that is not acknowledged by high officials of that country.

¹⁰⁹ Security Council, provisional verbatim record, sixty-third year, 6025th meeting, 26 November 2008, S/PV.6025, pp. 8-9 [Dossier No. 124]; see also Security Council, provisional verbatim record, sixty-fourth year, 6097th meeting, 23 March 2009, S/PV.6097, p. 8

¹¹⁰ Report of the Secretary-General on the United Nations Interim Mission in Kosovo, S/2009/149, 17 March 2009.

¹¹¹ *Ibid.*, para. 35.

¹¹² *Ibid.*, annex 1.

¹¹³ Constitution of the Republic of Serbia (2006), preamble; see paras. 5.16-5.17 below.

2.77. Serbia constantly seeks to obstruct the development of Kosovo's international relations. Serbia does whatever it can to discourage States from recognizing Kosovo, and to block Kosovo's admission to international and regional organizations. Serbia's initiative in pursuing the present advisory proceedings seems to be motivated, at least in part, by the hope that States will delay recognizing Kosovo or admitting it to international institutions while the proceedings are pending. The President of Serbia, Mr. Boris Tadić, said in the Security Council debate on 23 March 2009:

“I believe that all United Nations Member States should respect the fact that the International Court of Justice will decide the issue, and that no one should in any way prejudge its deliberations. Therefore, we expect no encouragement for further recognitions. I call on all United Nations Member States that have not recognized the unilateral declaration of independence to stay the course while the Court conducts its work.”¹¹⁴

2.78. Serbia refuses to cooperate with efforts to integrate Kosovo Serbs into Kosovo structures. It actively discourages Kosovo Serbs from participating at all levels. It has ordered Kosovo Serbs to withdraw from the Kosovo Police. Such actions are potentially highly detrimental to the interests of the Serb community and its members in Kosovo. (Some Kosovo Serbs nevertheless do continue to participate in the institutions of the Republic of Kosovo, including as Government Ministers.) Serbia engages in deliberately provocative actions in the north of Kosovo. A particularly flagrant example was the meeting of Serbian parliamentarians with the members of the so-called “Assembly of the Association of Serb Municipalities” held at Zvečan/Zvečan on 17 February 2009¹¹⁵.

2.79. As the Foreign Minister of the Republic of Kosovo said in the Security Council debate on 23 March 2009,

“the Republic of Serbia ... has continued to encourage and support the illegal and criminal structures in the north of Kosovo. Serbia is working actively to prevent Serb citizens of Kosovo from cooperating with institutions that are seeking to protect their rights and to help them solve their problems and improve their lives. The Serbian

¹¹⁴ Security Council, provisional verbatim record, sixty-fourth year, 6097th meeting, 23 March 2009, S/PV.6097, p. 6

¹¹⁵ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 17 March 2009, S/2009/149, para. 3.

Government supports illegal parallel structures that exploit our Serb citizens but never deliver appropriate assistance or any solutions to their problems.”¹¹⁶

2.80. Serbia continues to interfere in the north of Kosovo and elsewhere in areas inhabited by members of the Kosovo Serb Community, in an effort to obstruct the implementation of the Constitution and the Ahtisaari Plan in those areas (including provisions which are for the benefit of the Serb community). This has a detrimental effect on the well-being of the inhabitants. For their part, the institutions of Kosovo are doing what they can, with the support of the international community, to ensure that the Constitution and the laws of Kosovo, including those flowing from the Ahtisaari Plan, are respected and applied throughout Kosovo.

2.81. The Republic of Kosovo looks forward to good neighbourly relations with the Republic of Serbia. Its Foreign Minister, Mr. Hyseni, assured the Security Council on 23 March 2009:

“My Government stands ready to engage in talks with Serbia, as two independent and sovereign States, on a wide range of issues of mutual interest. Dialogue would help to ease tensions and normalize relations between our two countries.”¹¹⁷

¹¹⁶ Security Council, provisional verbatim record, sixty-fourth year, 6097th meeting, 23 March 2009, S/PV.6097, p. 8.

¹¹⁷ *Ibid.*, p. 9.

PART II

HISTORY AND CONTEXT

CHAPTER III

FROM AUTONOMY TO ETHNIC CLEANSING

3.01. This Chapter describes the main historical developments in Kosovo leading up to the deployment of UNMIK in June 1999. Chapter IV addresses governance in Kosovo from June 1999 onward, while Chapter V focuses on the final status process launched by the United Nations in 2005. These three chapters set the historical context relevant to the Court’s consideration of the specific question before it. The period following 1974, when Kosovo enjoyed a high degree of autonomy within the Socialist Federal Republic of Yugoslavia (SFRY), and the period between 1988 and 1999, when Kosovo Albanians suffered severe human rights violations, crimes against humanity and war crimes at the hands of the FRY and Serbian authorities, are the most relevant to the eventual Declaration of Independence of 17 February 2008, the subject of these proceedings¹¹⁸.

3.02. The present Chapter deals briefly with Kosovo before its occupation by Serbia in 1912, and then its existence within the Kingdom of Serbs, Croats and Slovenes, the Yugoslav state formed in 1918 (**Section I**). Next, it describes Kosovo’s dual constitutional position under the 1974 SFRY Constitution, whereby Kosovo as a Federal unit was on essentially the same footing within the Federation as the six Republics, with a balance of political power within the Federation that in principle should have protected Kosovo from Serbian domination (**Section II**). However, in 1989, Serbia under President Slobodan Milošević illegally and brutally terminated Kosovo’s dual constitutional position by stripping it of the rights it had at the Federal level, and dismantling the extensive autonomy Kosovo enjoyed within Serbia (**Section III**). At the same time, discriminatory measures were taken which severely restricted the rights of the Kosovo Albanians to education, work and political representation (**Section IV**). This spurred several of the other SFRY Republics to move to independence, sparking armed conflicts that raged in the former Yugoslavia throughout the first half of the 1990s. After the conclusion and implementation of the Dayton Accords (1995), FRY and Serbian attention turned back to

¹¹⁸ For greater detail on this and subsequent periods of Kosovo’s history, see N. Malcolm, *Kosovo. A Short History* (1998). For an account of more recent events, see M. Weller, *Contested Statehood, Kosovo’s Struggle for Independence* (2009).

Kosovo, leading to the tragic events of 1998-1999. Diplomatic efforts by the United Nations, OSCE and NATO sought to forestall FRY and Serbian human rights violations against the people of Kosovo, but did not succeed (**Section V**). Throughout the 1990s, there were large-scale human rights abuses against the Kosovo Albanian majority, culminating in the crimes against humanity, ethnic cleansing, war crimes and destruction of 1998-1999, which saw over 1.45 million Kosovo Albanians (over 90 % of the population) fleeing or forced from their homes, many driven across the borders into neighbouring countries (**Section VI**).

I. Kosovo before 1974

3.03. For over four and a half centuries before 1912, Kosovo, like much of the Balkan peninsula, was part of the Ottoman Empire, governed not by Serbian authorities but by the Porte. In the second half of the nineteenth century Kosovo was at the heart of the Albanian national movement (*Rilindja Kombëtare*, or “national renaissance”).

3.04. Serbia’s independence from the Ottoman Empire was confirmed at the Congress of Berlin in 1878. Kosovo was not part of Serbia at that time, and remained within the Ottoman Empire. Serbia did, however, include an Albanian-inhabited area around Niš, which still today remains within Serbia. In that area, in the nineteenth century, in scenes reminiscent of more recent events, Serbian troops proceeded to burn villages and expel more than 100,000 ethnic Albanians, many of whom fled to Kosovo.

3.05. Kosovo was first occupied by Serbia in the First Balkan War (October 1912), some thirty-five years after Serbia’s independence in 1878. In the course of this first occupation, Serbia began to implement a programme of colonization; and Serbian paramilitaries and elements of the Serbian army committed large-scale atrocities and massacres, burning villages and forcing conversions to Orthodoxy in an effort to change the ethnic composition of the territory¹¹⁹. An international commission of enquiry set up by the Carnegie Foundation reported that

¹¹⁹ N. Malcolm, *op. cit.* (fn. 118), pp. 253-256, who quotes an eye-witness, the journalist Lev Bronshtein (later known as Leon Trotsky): “The Serbs in Old Serbia, in their national endeavour to correct data in the ethnographical statistics that are not quite favourable to them, are engaged quite simply in systematic

“Houses and whole villages reduced to ashes, unarmed and innocent populations massacred ... such were the means which were employed and are still being employed by the Serb-Montenegrin soldiery, with a view to the entire transformation of the ethnic character of regions inhabited exclusively by Albanians.”¹²⁰

3.06. The territory of Kosovo was fought over and changed hands a number of times during the Second Balkan War (1913) and World War I (1914-1918). It was absorbed into the Kingdom of Serbs, Croats and Slovenes (later known as the Kingdom of Yugoslavia) in December 1918; but, prior to that the territory of Kosovo had never been lawfully incorporated into the Kingdom of Serbia, having merely been occupied territory. It should therefore be noted that when Kosovo first entered a modern Yugoslav State, it did not do so as an integral part of any Serbian State. Serbia itself ceased to exist as a political entity, though the policies of successive governments of the new Kingdom were dominated by Serb interests.

3.07. Under a Treaty for the Protection of Minorities, the new Kingdom undertook to provide primary education in the local language in all areas where a considerable proportion of the population had a language other than Serbo-Croat, and to allow other educational and language rights. The Kingdom ignored these undertakings in respect of Kosovo. The Albanian language was suppressed. In the period 1918-1941, Belgrade continued Serbia’s policy of colonization in Kosovo, with the forced emigration of Kosovo Albanians to Turkey and other countries¹²¹. In response to the colonization programme and to other oppressive measures, there was widespread popular resistance by Kosovo Albanians, especially in the years 1918 to 1927, when police and military actions are estimated to have caused the deaths of more than 12,000 people and the imprisonment of more than 22,000.

3.08. During World War II, Kosovo was again occupied by warring parties, with the north under direct German control, the eastern districts allotted to Bulgaria, and the rest of Kosovo attached to Italian-occupied Albania. Resistance movements of Communist

extermination of the Muslim population.” (*ibid.*, p. 253). (“Old Serbia” was a term used by some Serbs to refer to Kosovo.)

¹²⁰ Carnegie Endowment for International Peace, *Report of the International Commission of Enquiry into the Causes and Conduct of the Balkan Wars* (1914), p. 151, quoted in N. Malcolm, *op. cit.* (fn. 118), p. 254.

¹²¹ N. Malcolm, *op. cit.* (fn. 118), pp. 267-269 (languages and schools), pp. 278-282 (colonization), pp. 283-286 (forced emigration).

“Partisans” became active in both Yugoslavia and Albania. At the Bujan Conference (December 1943 – January 1944) local representatives of the Communist movement from Kosovo agreed on their policy for the future of the region, issuing a formal “Declaration” which said that the Albanians of Kosovo should have “the possibility of deciding on their own destiny, with the right to self-determination”. This Declaration displeased the Partisan leader, Joseph Broz “Tito”, whose policy was to keep the territory within a Yugoslav State, regardless of the wishes of the majority of its inhabitants; nevertheless, recognising that any promise of self-determination would gain much support, he later wrote, in March 1944, that “the question of which federal unit [Kosovo is] joined to will depend on the people themselves, through their representatives, when the issue is decided by a definitive ruling after the war”¹²².

3.09. In July 1945, as World War II came to a close, a so-called “Regional People’s Council of Kosovo” (an unelected body representing the members of the Communist Party in Kosovo) met in Prizren under conditions of military administration, imposed on Kosovo in February of that year. Though its name suggests otherwise, this Council represented only the 2,250 members of the Communist Party in Kosovo, with only 33 of its 142 members being Albanian¹²². At this meeting, it was agreed that Kosovo should become a constituent unit within a “federal Serbia” (that is, a Serbia which was to be part of a Yugoslav Federation). On the basis of this decision, the Presidency of the “People’s Assembly of Serbia” passed a law on 3 September 1945 establishing the “Autonomous Region of Kosovo-Metohija” and declaring that it was a constituent part of Serbia.

3.10. There are three points to note about the events of 1943-1945. First, even as recently as 1943, it was by no means clear that Kosovo would be part of Yugoslavia, for its history was one of connections with various empires and States. Second, while the future of Kosovo within Yugoslavia was said by Tito, who would become the SFRY’s leader, to depend on the will of the people, the question of that future was never actually put to the people of Kosovo, but instead to an unelected and unrepresentative body, the “Regional People’s Council of Kosovo”, speaking for a tiny fraction of the population. As such, any idea that the annexation of Kosovo by Serbia was based on the will of the people is a myth. Yet this history demonstrates the importance of the *idea* that Kosovo’s destiny should be

¹²² N. Malcolm, *op. cit.* (fn. 118), p. 315.

decided by its own people, even if in fact they were not allowed to do so. Nevertheless, any claim that the people of Kosovo had in fact freely chosen to join Serbia was spurious at the time and remains so today. Third, the decision of the “Regional People’s Council” stated that Kosovo was to be part of a *federal* Serbia – that is, a Serbia which was a part of the Yugoslav Federation – in which Serbian power would be balanced by the powers of the other Republics and the Federation. Thus the acceptance by the “People’s Council” of Kosovo as a part of Serbia was predicated and conditioned upon Serbia itself being within the Yugoslav Federation.

3.11. In August 1945, an organization known as the “Anti-Fascist Council for the National Liberation of Yugoslavia” met to discuss Yugoslavia’s future. This organisation was formed as the collective of the various National Liberation Councils in Yugoslavia, and ultimately became the constitutive body of the Federal People’s Republic of Yugoslavia formed the following year. For present purposes, it is important to note that Kosovo was directly represented at this meeting – and was not represented by Serbia. Thus, at this key stage in the formation of the new Yugoslav Federation, Kosovo acted not as a part of Serbia, but as a political unit in its own right.

3.12. Under the 1946 Constitution of the Federal People’s Republic of Yugoslavia¹²³, Yugoslavia was “a community of peoples equal in rights who, on the basis of the right of self-determination, including the right of separation, have expressed their will to live together in a federative state”¹²⁴. It was a federation, composed of six republics. One of these, Serbia, included the autonomous provinces¹²⁵. The position was not much changed under the 1953 Constitution of the Federal People’s Republic of Yugoslavia, which provided that “[t]he self-governance of the autonomous province Vojvodina and of the autonomous region of Kosovo is guaranteed”¹²⁶.

¹²³ Constitution of the Federal People’s Republic of Yugoslavia (1946). An English translation of the 1946 Constitution is at <http://www.worldstatesmen.org/Yugoslavia_1946.txt>.

¹²⁴ *Ibid.*, Article 1.1.

¹²⁵ *Ibid.*, Article 2.

¹²⁶ Constitution of the Federal People’s Republic of Yugoslavia (1953), Article 113.

3.13. The 1950s and 1960s saw continued Serb persecution of Kosovo Albanians combined with a policy of coercing the removal of Kosovo Albanians to Turkey, whilst encouraging Serbs to settle in Kosovo. According to the London *Times*:

“The almost daily disclosures of brutal acts of repression, murder and torture by members of Rankovic’s police against the Albanian minority there ... to intimidate that minority, are astonishingly frank.”¹²⁷

3.14. The 1963 Constitution of the Socialist Federal Republic of Yugoslavia¹²⁸ provided that the SFRY was “a federal state of voluntarily united and equal peoples”¹²⁹. Articles 111 and 112 concerned the autonomous provinces, Article 112 providing that their rights would be determined by the relevant republic’s constitution. The competences of the autonomous provinces were set out in the 1963 Constitution of the Republic of Serbia (Article 129), which further provided that “Republican law overrules provincial regulation” (Article 131).

3.15. The year 1966 saw a policy change at the federal level, beginning with the removal from power of Ranković. Following Tito’s visit to Kosovo in 1967, under constitutional amendments adopted in 1968, legislative and judicial authority was transferred to Kosovo, which was given direct representation in the Federal Parliament. Kosovo passed its own Constitutional Law in 1969. Far from being merely a part of Serbia, Kosovo was also a “fully fledged constituent element of the federation”¹³⁰, a “legal entity at the federal level”¹³¹, with Amendment VII of the Constitution stating that Kosovo was both part of Serbia and part of the Federation. This fact that Kosovo was a federal unit was of crucial constitutional importance, as a protection to Kosovo as against Serbian encroachment on its very extensive autonomy.

¹²⁷ *The Times*, 22 September 1966, cited in M. Vickers, *Between Serb and Albanian. A History of Kosovo* (1999), p. 164. Aleksandar Ranković was the Serbian Vice-President of the SFRY.

¹²⁸ Constitution of the Socialist Federal Republic of Yugoslavia (1963), *Official Gazette of the Socialist Federal Republic of Yugoslavia*, No. 14/1963.

¹²⁹ *Ibid.*, Article 1.

¹³⁰ M. Vickers, *op. cit.* (fn. 127), p. 170.

¹³¹ N. Malcolm, *op. cit.* (fn. 118), p. 324.

II. Kosovo under the 1974 SFRY Constitution

A. OVERVIEW OF CONSTITUTIONAL DEVELOPMENTS

3.16. In considering the particular constitutional position of Kosovo within the SFRY under the 1974 Constitution of the Socialist Federal Republic of Yugoslavia¹³², five points should be borne in mind:

- (a) From 1944 onwards, Kosovo's participation in federal Yugoslavia (like that of the other federal units) was, in theory at least, based on the will of its people. In 1945, Kosovo's decision to become part of Serbia – although taken by an unrepresentative body – purported to be based on the will of the people, with all subsequent Constitutions describing the SFRY as a voluntarily formed federation.
- (b) Since 1944, and particularly under the 1974 SFRY Constitution, Kosovo had a substantial degree of autonomy. This was not just autonomy within Serbia but, crucially, autonomy within the SFRY, in all areas, including social, economic and national policy. The various Constitutions refer consistently to Kosovo being a part of Serbia within the framework of the federal state of Yugoslavia, not as a part of Serbia outside that framework.
- (c) Under the 1974 SFRY Constitution, Kosovo's constitutional position was virtually the same as the six republics - Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia, and Slovenia. (It was sometimes suggested that the only difference was that the republics had a constitutional right of secession, which Kosovo did not. Even here, in reality there was no significant difference between Kosovo and the six republics¹³³.)
- (d) Kosovo had special rights and protections vis-à-vis Serbia under the 1974 SFRY Constitution. For example, it was for the Federation, including the Federal Constitutional Court, to resolve disputes between Serbia and Kosovo, just as that Court did between republics. These special rights and protections were illegally

¹³² Constitution of the Socialist Federal Republic of Yugoslavia (1974), *Official Gazette of the Socialist Federal Republic of Yugoslavia*, No. 9/1974.

¹³³ See paras. 3.18-3.20 below.

removed in 1989-1990, and could not be re-established once the SFRY had disintegrated. Once that happened, there was no longer any framework within which to ensure Kosovo's rights as against Serbia.

- (e) The position of Kosovo under the 1974 SFRY Constitution was cancelled in 1989-1990 by the forcible and illegal actions of Serbia and the Serbia-dominated SFRY.

B. THE 1974 SFRY CONSTITUTION

3.17. As an autonomous province, Kosovo's autonomy prior to the 1974 SFRY Constitution depended upon the Serbian Constitution, and came under the authority of Serbia (within the constitutional structure of the federal State of Yugoslavia). Under the 1974 Constitution of the SFRY, however, this changed radically. The statement of Fundamental Principles referred to

“the principles of agreement among the Republics and Autonomous Provinces, solidarity and reciprocity, equal participation by the Republics and Autonomous Provinces in federal agencies, in line with the present constitution, and according to the principle of responsibility of the Republics and Autonomous Provinces for their own development and for the development of the socialist community as a whole”.

3.18. The 1974 Constitution provided that the SFRY was “a federal state having the form of a state community of voluntarily united nations and their Socialist Republics, and of the Socialist Autonomous Provinces of Vojvodina and Kosovo, which are constituent parts of the Socialist Republic of Serbia”¹³⁴. Like the Republics, Kosovo issued its own Constitution¹³⁵, and had its own Constitutional Court. The territory of an Autonomous

¹³⁴ Constitution of the Socialist Federal Republic of Yugoslavia (1974), *Official Gazette of the Socialist Federal Republic of Yugoslavia*, No. 9/1974, Article 1. For a brief but authoritative description of the constitutional position of Kosovo, see the article by Stjepan Mesić, “Kosovo – problem koji ne trpi odgadjanje” [Kosovo – a problem which cannot be postponed], *Večernji List*, 16 February 2008 (see also the website of the Presidency of Croatia <<http://www.predsjednik.hr/default.asp?ru=143&gl=200802200000002&sid=&jezik=1>>). Mesić, the President of Croatia, had been a member of the Presidency of the former Yugoslavia. He emphasises that “the Provinces were constitutive elements of the federation”, and that “the Republics and Provinces voluntarily united themselves with Yugoslavia, from which there follows the clear conclusion that they cannot be kept within those state frameworks against their will. In the case of the Provinces, that applies in the same way both to the framework of the federation and to the framework of a federal unit [*sc. Serbia*].”

¹³⁵ See para. 3.22 below.

Province, like the territories of the Republics, could not be altered without its consent¹³⁶. Article 281 provided that “[t]he Federation shall through its agencies … regulate matters concerning the settlement of conflict of law between Republics and/or Autonomous Provinces”. The Constitutional Court of Yugoslavia decided disputes between the Federation and the Republics and/or the Autonomous Provinces, between the Republics, and between the Republics and the Autonomous Provinces¹³⁷. The Autonomous Provinces were represented in both chambers of the SFRY Assembly, alongside representatives of the Republics¹³⁸. The Federal Presidency was composed of one member from each of the Republics and Autonomous Provinces¹³⁹. Most amendments to the SFRY Constitution required the agreement of the Assemblies of the Autonomous Provinces¹⁴⁰.

3.19. In other words, the 1974 SFRY Constitution confirmed the dual status of Kosovo – part of Serbia but at the same time also a constituent unit of the SFRY. Under it, Kosovo had a status equivalent to that of the six republics, with direct representation in the main federal bodies. Kosovo had equal status with the republics in economic and social policy. It was also separately represented in the Federal Court and the Constitutional Court. The 1974 Constitution prohibited Serbia from intervening in provincial affairs against the will of the Kosovo Assembly. Kosovo had its own National Bank, Supreme Court, and independent administration under the supervision of the Kosovo Executive Council and Presidency, and the right to adopt its own Constitution¹⁴¹. As it was

¹³⁶ Constitution of the Socialist Federal Republic of Yugoslavia (1974), *op. cit.* (fn. 134), Article 5.

¹³⁷ *Ibid.*, Article 375.

¹³⁸ *Ibid.*, Articles 291 and 292.

¹³⁹ *Ibid.*, Article 321.

¹⁴⁰ *Ibid.*, Article 398.

¹⁴¹ It has been suggested that, under the 1974 Constitution, the Republics had the right to secede whereas the autonomous provinces did not. (This, indeed, is sometimes said to have been the only constitutional difference between republics and autonomous provinces.) The suggestion seems to be based on one of the preambular “Basic Principles”, which stated that “[t]he nations of Yugoslavia, proceeding from the right of every nation to self-determination, including the right to secession, on the basis of their freely expressed will.” Earlier Constitutions (1946, 1953, and 1963) had referred to “peoples” rather than “nations” having the right to self-determination, including the right to secede. Nevertheless, neither “nations” nor “peoples” had any operational right to secede under any of these constitutions. There was no provision in the various Constitutions, including in that of 1974, for the actual exercise of the “right” mentioned in the preamble (compare the Constitution of Serbia and Montenegro (2003), which set out the procedure for secession). In any case, the 1974 SFRY Constitution described Yugoslavia as a federation of “free and equal nations and nationalities” (“equal” here translates “ravnopravnih”, which means “having equal rights”), and declared that “the working people, the nations and the nationalities implement their sovereign rights in the Socialist Republics and in the Autonomous Provinces” (Fundamental Principles, Article 1). Thus, whatever these ill-defined “sovereign” rights might have been, they were

represented in both Chambers of the SFRY Assembly, Kosovo also participated, alongside the other Republics, in the formation and ratification of international agreements. International agreements which affected individual federal units (Republics and Autonomous Provinces) required the explicit consent of the units concerned. Article 301 of Kosovo's own 1974 Constitution stated: "The Assembly of Kosovo ratifies agreements which the Province concludes with organs and organizations of other states and international organs and organizations."

3.20. In its judgment of 26 February 2009 in the *Milutinović et al.* case¹⁴², a Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY), summarised the position of Kosovo under the 1974 Constitution in the following terms:

"213. Under the Constitution of the Socialist Federal Republic of Yugoslavia ('SFRY'), promulgated in February 1974, the SFRY comprised six republics and two autonomous provinces. Both of these provinces – Kosovo and Vojvodina – formed part of the Socialist Republic of Serbia. This Constitution gave the provinces a significant degree of autonomy, which included the power to draft their own constitutions, to have their own constitutional courts, to have a representative in the SFRY Presidency in Belgrade, and the right to initiate proceedings before the Constitutional Courts of Yugoslavia and Serbia. In addition, they were represented, along with the republics, in the SFRY Chamber of Republics and Provinces and the Federal Chamber, which was a legislative body with the power to amend the SFRY Constitution."¹⁴³

3.21. The 1974 Constitution of the Socialist Republic of Serbia¹⁴⁴ was adopted at the same time as the 1974 SFRY Constitution. The preamble to the Constitution of Serbia noted that the Autonomous Provinces "had united, on the basis of the freely expressed will of the population, nations and nationalities of the provinces and Serbia, in the Socialist Republic of Serbia within the SFRY". The Constitution laid down the respective competences of the Republic and the Autonomous Provinces and provided that any

also attributed on an equal basis to the "nationalities" and to the Autonomous Provinces. Moreover, Article 5 of the 1974 Constitution provided that "[t]he frontiers of the Socialist Federal Republic of Yugoslavia may not be altered without the consent of all Republics and Autonomous Provinces".

¹⁴² *Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, Sreten Lukić (IT-05-87-T), Judgement*, 26 February 2009 (available on the ICTY website: <http://www.icty.org/case/milutinovic/4#jug>). The Chamber was composed of Judge Iain Bonomy, presiding, Judge Ali Nawaz Chowhan and Judge Tsvetana Kamenova.

¹⁴³ *Ibid.*, vol. 1, paras. 213-216 (footnotes omitted here and in subsequent citations from the Judgment).

¹⁴⁴ Constitution of the Socialist Federal Republic of Yugoslavia (1974), *op. cit.* (fn. 134).

amendment related to questions of interest to the Republic as a whole, the consent of the Assemblies of the Autonomous Provinces was required¹⁴⁵.

3.22. The 1974 Constitution of the Autonomous Socialist Province of Kosovo was adopted at the same time as the 1974 SFRY Constitution. It provided that Kosovo,

“proceeding from the freely expressed will of the population, the nations and nationalities of Kosovo and the freely expressed will of the people of Serbia, has associated itself with the Socialist Republic of Serbia within the framework of the SFRY”¹⁴⁶.

III. Illegal Removal of Autonomy (1989)

3.23. Following Tito’s death in 1980, the anti-Albanian policy pursued by Serbia gradually led to general inter-ethnic conflict within the Federation as a whole, with Croatia and Slovenia in particular voicing concerns at Serbia’s hegemony and domination. After Slobodan Milošević’s provocative speech in Kosovo on 24 April 1987, Serbia edged closer to confrontation not only with Kosovo, but also with the other Yugoslav republics. From 1987 onwards, following Milošević’s rise to power in Serbia and seizure of power in the provinces, Serbian domination of the Federal Presidency allowed Serbia to pursue its nationalistic and confrontational policies.

3.24. In 1989 Serbia, under Milošević, set out to destroy the autonomy of Kosovo as part of the campaign to secure Serbia’s domination over the Federation. At the same time as removing the autonomy of Kosovo, Milošević sought political change in the Republics, especially in Montenegro, to ensure his and Serbia’s control of the Federation. These developments led to the break-up of the Federation.

3.25. Early in 1989, the Serbian Assembly began passing amendments to the Serbian Constitution attempting to restrict Kosovo’s powers, which were guaranteed by the 1974 SFRY Constitution. However, while such amendments could be proposed by Serbia,

¹⁴⁵ Constitution of the Socialist Federal Republic of Yugoslavia (1974), *op. cit.* (fn. 134), Article 427. See *Milutinović et al.*, *op. cit.* (fn. 142), vol. 1, paras. 215-216.

¹⁴⁶ Constitution of the Socialist Autonomous Province of Kosovo (1974), Article 1, *Official Gazette of the Autonomous Socialist Province of Kosovo*, No. 4/1974.

they required acceptance by the Kosovo Assembly before they could be considered as having been adopted.

3.26. To obtain that acceptance, Serbia coerced widespread resignations of the Kosovo leadership. Through pressure and intimidation, on 23 March 1989 Serbia forced the Kosovo Assembly to accept changes to its Constitution, removing its autonomy. Representatives hand-picked by Serbia accepted the changes to the Serbian Constitution, and further approved changes to the Kosovo Constitution, initiating the disintegration of the SFRY, and a sustained period of Serbian oppression and brutality in Kosovo.

3.27. The ICTY Trial Chamber's judgement in *Milutinović et al.* describes the extraordinary circumstances leading to the "approval" of the constitutional amendments by the Assembly of Kosovo on 23 March 1989, sometimes referred to as the "Assembly of the Tanks":

"217. This state of affairs [i.e., the position of Kosovo under the 1974 Constitution] resulted in dissatisfaction amongst some constitutional experts in Serbia. They wrote a confidential document in 1977, commissioned by the Presidency of Serbia, which criticised the 1974 constitutional arrangement of the republic for giving an excessive degree of power to the autonomous provinces.

218. Later, in the early 1980s, following the death of SFRY President Josip Broz 'Tito', demonstrations took place as the Kosovo Albanians sought full recognition for Kosovo as a republic within the SFRY. Some of these demonstrations turned violent, and the police and the Yugoslav Army were deployed. On the other hand, there were increasing calls by the Serbs for reduction of the autonomy of Kosovo. By March 1989 these calls led to approval from the SFRY Assembly for amendment of the Serbian Constitution in terms of 'conclusions' that identified a need to 'normalise' the 'deteriorated situation' in Kosovo, and to *inter alia* 'take measures immediately for establishing the criminal and other responsibility of those who have inspired or organised counter-revolutionary activities in Kosovo,' and to stem the emigration of Serbs and Montenegrins from Kosovo. These conclusions referred to 'special measures' that had already been put in place in Kosovo, which were also described by Human Rights Watch researcher Frederick Abrahams, who stated that the federal authorities had assumed responsibility for security within the province. The SFRY Assembly further concluded that the process for amending the Serbian Constitution 'should be finalised as soon as possible.'

219. Prior to their adoption by the Serbian Assembly, the proposed amendments to the Serbian Constitution required approval from the Kosovo Assembly itself, which met on 23 March 1989. Both Veton Surroi, a Kosovo Albanian journalist, and Frederick Abrahams testified that this session of the Kosovo Assembly was held while the Assembly building in Priština/Prishtina was surrounded by police and military

vehicles, although Abrahams was not present at the time. Surroi also stated that he had seen a photograph indicating that one person who participated in the vote was not in fact a member of the Assembly. He further stated that he had heard that pressure to support the measures was put on members of the Assembly prior to the vote, although he had not spoken to any member of the Assembly who claimed to have voted in favour of the amendments due to such pressure. The Chamber also received evidence – by way of a witness statement and the transcript of his testimony in the Milošević trial of the deceased leader of the Democratic League of Kosovo (*Lidhja Demokratike e Kosovës*, ‘LDK’), Ibrahim Rugova – that pressure was exerted to influence the voting, and that the ten members of the Assembly who voted against the amendments were later subjected to reprisals.

220. After receiving approval from the SFRY Assembly and positive votes in the provincial assemblies, on 28 March 1989 the Serbian Assembly adopted the proposed constitutional amendments. Ratko Marković asserted throughout his evidence that the amendments did not affect the autonomous status of the two provinces, as provided by the SFRY Constitution, but rather simply effected a ‘redistribution of competencies’. Similarly Lukić, while accepting that these amendments changed the position of the province of Kosovo within the republic by conferring power on the republican organs to legislate and exert judicial control over laws in the province, and by removing several powers from the provinces, also asserted that Kosovo’s autonomy was not reduced by the changes. However, Lukić conceded that, following the constitutional amendments of 1990, Kosovo no longer had full judicial autonomy because it did not have legislative authority, but only an executive organ and it no longer had its own Supreme Court or Constitutional Court.

221. The Chamber is in no doubt that the Kosovo Albanians perceived the amendments as removing the substantial autonomy previously enjoyed by Kosovo and Vojvodina, and that, in fact, that was their effect. For example, the regulation of education and the taxation system was placed within the jurisdiction of the Government of Serbia, and responsibility for the public security services was placed under republican control. All were previously within the exclusive competence of the provincial authorities. Two amendments were of particular significance: the removal of the need for the consent of the provincial assemblies to further constitutional amendments affecting the whole republic; and the greater power of the Serbian Presidency to use MUP forces in Kosovo to ‘protect the constitutional order’.¹⁴⁷

3.28. Thus, through a process of violence and intimidation, Serbia unconstitutionally and illegally removed Kosovo’s autonomy, both within Serbia and within the SFRY.

¹⁴⁷ *Milutinović et al., op. cit.* (fn. 142), vol. 1, paras. 217-221. See also the ICTY Trial Chamber’s judgment of 30 November 2005 in *Prosecutor v. Limaj et al.*, paras. 40-42. The Kosovo Constitutional Court subsequently considered the events of 23 March 1989, and, on 27 June 1990, decided “to initiate a procedure for verification of the constitutionality of the decision” by the Assembly. The initiative for the Constitutional Court proceedings referred among many irregularities to the fact that “unprecedented pressure was exercised on the Assembly of the SAP of Kosovo to declare itself in favour of Amendments”, as well as to the fact that the votes were not recorded properly (so it could not be known whether the two-thirds majority required by the Constitution had been achieved, that non-members of the Assembly took part in the voting, and that the Assembly’s Decision was not published in the *Official Gazette* and so could not enter into force). Before the Court reached a substantive decision, in a further act of illegality, Serbia dissolved it.

IV. Persecution and Repression through the 1990s

3.29. Serbia's tactics against Kosovo were noted by the other Republics, who feared that they too would fall prey to Serbian efforts at political dominance. Consequently, in 1991 the Republics began issuing declarations of independence, sparking further aggressive acts by Serbia that would plunge the former Yugoslavia into a series of armed conflicts. The significance of these declarations of independence to the question now before the Court is considered in Chapter VIII below¹⁴⁸.

3.30. The removal of Kosovo's autonomy in March 1989 provoked widespread public demonstrations and protests in Kosovo; martial law was declared, and at least 20 demonstrators were killed. The main demand of the demonstrators was the full restoration of Kosovo's status under the 1974 Constitution. This demand was also expressed by the Albanian members of the Assembly of Kosovo, who met on 2 July 1990 in front of the Assembly building (the doors having been locked by the Serbian authorities), and passed a resolution declaring Kosovo "an equal and independent entity within the framework of the Yugoslav Federation". But when, with the declarations of independence by Slovenia and Croatia, it became clear that the Federation was disintegrating, this demand for the restoration of the 1974 status became unrealistic, and, crucially, the continuation of Kosovo within Serbia became unsustainable.

3.31. As explained above¹⁴⁹, under the 1974 SFRY Constitution, Kosovo had a dual constitutional status. It was part of Serbia and at the same time it was a federal unit within the SFRY. Kosovo was never, and was never intended to be, a part of an independent Serbia existing outside the framework of the SFRY. This is clear in the 1974 SFRY Constitution itself, in that it was the Federation that was to act as the arbiter of any disputes between Serbia and Kosovo. It was the Federation that was to act as the protection for Kosovo from Serbia. Thus, following the disintegration of the SFRY, Kosovo could not simply be incorporated within Serbia. The actions of Serbia aimed at doing just that were illegal and contrary to the 1974 SFRY Constitution, contrary to the founding principles of the SFRY, and contrary to the will of the people of Kosovo.

¹⁴⁸ See paras. 8.22-8.37 below.

¹⁴⁹ See paras. 3.17-3.22 above.

3.32. After Serbia dissolved the Kosovo Assembly and Government in July 1990, a majority of the Assembly representatives met in the town of Kaçanik/Kaçanik, and issued a resolution demanding status as an equal member in the Federation. When war broke out in the former Yugoslavia, and the other Republics began declaring independence, the Kaçanik resolution was revised on 22 September 1991, and a subsequent resolution on the Independence and Sovereignty of Kosovo was put to popular vote between 26 and 30 September 1991. The referendum demonstrated overwhelming support of the people of Kosovo for independence, which was declared on 19 October 1991.

3.33. The ICTY Trial Chamber described these events in its judgement of 26 February 2009 in *Milutinović et al.*, as well as the situation in Kosovo in the 1990s:

“223. During 1990 the crisis in Kosovo intensified. On 26 June the Serbian Assembly declared that ‘special circumstances’ existed in Kosovo due to ‘activities directed at overthrowing the constitutional order and the territorial integrity’. On 2 July the members of the Kosovo Assembly were prevented from entering the Assembly building and dramatically issued a ‘constitutional statement’ declaring Kosovo an independent republic. The Serbian Assembly formally suspended the Kosovo Assembly on 5 July. The unsanctioned Assembly proceeded to draft a new ‘Kosovo Constitution’, which was subsequently endorsed in a local referendum. In September 1990 a new Serbian Constitution further restricted the limited autonomy exercised by Kosovo. The Kosovo Constitutional Court was later effectively abolished by decree of the Serbian Assembly.

224. Frederick Abrahams characterised Kosovo at this time as like a ‘police state’. In a 1992 report the United Nations Special Rapporteur on human rights in the former Yugoslavia expressed concern about discrimination against the Albanian population, allegations of torture and mistreatment in detention, and restrictions on the freedom of information. According to Veton Surroi and Ibrahim Rugova, Albanian radio and television was restricted and newspapers were closed. The Special Rapporteur also described how, from the early 1990s, Kosovo Albanians employed in public enterprises and institutions, including banks, hospitals, the post office, and schools, were sacked in large numbers.

225. The Chamber has heard from several witnesses that Kosovo Albanian teachers refused to implement a new school curriculum introduced in 1990 or 1991, leading to the dismissal of many. ... Kosovo Albanian pupils, who wished to be schooled in the Albanian language, were unable to attend classes. As a result, the LDK and other Kosovo Albanian political parties developed an unofficial education system using private dwellings to hold classes for Kosovo Albanian children. In June 1991 the Serbian Assembly issued a decision which removed a number of officials and professors at the University of Priština/Prishtina, and replaced them with non-Albanians. The University’s assembly and several faculty councils were dissolved and replaced by provisional organs staffed predominantly by Serbs. ... Kosovo Albanian

students were unable to attend classes at the University at that time, and so a parallel university education system was organised by the Kosovo Albanians, holding classes in private homes.

.....

227. The Serbian authorities continued to encourage immigration or return to Kosovo by Serbs and Montenegrins, while Kosovo Albanians began to leave the province in large numbers. In November 1992 the Serbian Assembly issued a Declaration on the Rights of National Minorities ... The tone of the entire Declaration seems designed to inspire fear amongst the Serb population of Kosovo of their Kosovo Albanian neighbours, who were portrayed as an ideologically homogeneous and dangerous group.

228. The Chamber has heard evidence of a system of discrimination against Kosovo Albanian workers through the 1990s. Some witnesses testified about mass dismissals of Kosovo Albanians from positions in industry and the public sector and their replacement by Serbs. Others stated that Kosovo Albanian workers were presented with a document to sign to indicate their loyalty to the state authorities, and that those who did not sign were dismissed ...

229. Several official documents support these accounts of organised, state-sanctioned discrimination in the workplace. In July 1991, several Decisions from the Serbian Assembly were adopted pertaining to the removal of predominantly Kosovo Albanian officials in various business enterprises across Kosovo and their replacement by non-Albanians.”¹⁵⁰

3.34. It is misleading to suggest, as does the United Nations Dossier¹⁵¹, that “the starting point for the UN’s engagement in Kosovo” was March 1998. The discrimination and human rights violations perpetrated against Kosovo Albanians attracted widespread international condemnation, including from United Nations organs, from the early 1990s. The General Assembly, the Security Council, the Commission on Human Rights and its Sub-Commission, and the Committee under the Convention for the Elimination of All Forms of Racial Discrimination, all took up the human rights abuses perpetrated in Kosovo by Serbia. These bodies documented the openly discriminatory legislation applied by Serbia in Kosovo, including in relation to property; programmes for resettlement and demographic manipulation; the removal of Kosovo Albanians from public office and from commercial enterprises; interference with the judiciary; the removal of press freedoms; arbitrary arrests; torture and mistreatment; impunity for perpetrators; and the disproportionate use of force, resulting in numerous violations of the right to life,

¹⁵⁰ Milutinović et al., *op. cit.* (fn. 142), vol. 1, paras. 223-229.

¹⁵¹ Dossier, Introductory Note, para. 4.

destruction of property and the displacement of large numbers of people, many of whom were women and children¹⁵².

3.35. As the ICTY Trial Chamber noted, the United Nations Special Rapporteur for human rights in the former Yugoslavia had described many of these abuses in his report of 17 November 1992¹⁵³. The General Assembly adopted annual resolutions on the “Situation of human rights in Kosovo” between 1993 and 1999¹⁵⁴.

3.36. The FRY Prime Minister from 1992-1993, Milan Panić, himself wrote to the Security Council in August 1992 stating that his Government was “conducting its own investigation into human rights violations of its citizens, particularly in Kosovo” and promised careful and urgent examination of all laws, regulations and administrative practices to ensure that human rights violations in Kosovo would cease¹⁵⁵. But nothing came of these promises.

3.37. In its resolution 855 (1993) of 9 August 1993, the Security Council expressed its deep concern “at the refusal of the authorities in the Federal Republic of Yugoslavia (Serbia and Montenegro) to allow the CSCE missions of long duration to continue their activities”, bore in mind that these missions had “greatly contributed to promoting stability and counteracting the risk of violence in Kosovo”, and attached “great importance to ... the continued ability of the international community to monitor the situation in Kosovo”¹⁵⁶. The Council then called upon “the authorities in the Federal Republic of Yugoslavia (Serbia and Montenegro) to reconsider their refusal to allow the continuation of the activities of the CSCE missions in Kosovo ...”¹⁵⁷.

¹⁵² M. Weller, *op. cit.* (fn. 118), pp. 59-64 (with further references).

¹⁵³ Milutinović et al., *op. cit.* (fn. 142), vol. 1, para. 230.

¹⁵⁴ General Assembly resolutions 48/153, 20 December 1993; 49/204, 23 December 1994; 50/190, 22 December 1995; 51/111, 12 December 1996; 52/139, 12 December 1997; 53/164, 9 December 1998; and 54/183, 17 December 1999. In 1992, the situation of human rights in Kosovo was dealt with in the Assembly’s resolution 47/147 on the “Situation of human rights in the territory of the former Yugoslavia” (18 December 1992, para. 14).

¹⁵⁵ Letter dated 17 August 1992 of the Prime Minister of the FRY to the President of the Security Council, S/24454-A/46/960, Annex.

¹⁵⁶ Security Council resolution 855 (1993), 6 August 1993, third, fourth and sixth preambular paragraphs.

¹⁵⁷ *Ibid.*, para. 2.

V. Diplomatic Efforts to Resolve the Crisis

3.38. Efforts by the international community to resolve the crisis in Kosovo began early in the 1990s¹⁵⁸. In 1992, the Helsinki Summit of the Conference on Security and Co-operation in Europe (CSCE) urged the Belgrade authorities “to refrain from further repression”. In August 1992, the CSCE established a mission in Kosovo to monitor the situation. In its report of December 1992, the mission expressed deep concern over the increasing violence in Kosovo. In June 1993, the FRY refused to agree to a renewed mandate for the mission. As noted in the previous section, the Security Council in its resolution 855 (1993) of 9 August 1993 called on the authorities of the FRY to reconsider, but to no avail.

3.39. At Dayton the international community dealt with the situation in Bosnia and Herzegovina, but not with the deteriorating situation in Kosovo. After the conclusion of the Dayton Accords in 1995, Serbia turned its attention back to Kosovo, continuing a policy of oppression that deliberately and deeply aggravated relations between Kosovo Serbs and Kosovo Albanians.

3.40. From the time when Serbia abolished Kosovo’s autonomy in 1989, the existence of “parallel” institutions organized by the Kosovo Albanians clearly demonstrated their rejection of the FRY and its illegal occupation. Throughout the 1990s, the Kosovo Albanian population continued in their attempts to resist Serbian occupation and persecution, leading eventually to the armed struggle by the Kosovo Liberation Army (KLA/UÇK), which “developed in organisation and capacity from early 1998”¹⁵⁹. The KLA’s “evolution and growth in this period was linked to increasing perceptions within the Kosovo Albanian community that it needed to protect itself from increasing attacks by forces of the FRY and Serbia”¹⁶⁰.

3.41. Thus, despite the clear imbalance of power between the FRY and the Kosovo Albanians, the Kosovo Albanians resisted the occupation and persecution. The “parallel”

¹⁵⁸ *Milutinović et al., op. cit.* (fn. 142), vol. 1, paras. 231-236.

¹⁵⁹ *Ibid.*, para. 822.

¹⁶⁰ *Ibid.*, para. 794.

institutions established by the Kosovo Albanians, the armed struggle of 1998-1999, and intervention by NATO, were a clear reaction to the massive human rights violations and crimes against humanity committed by the FRY/Serbia.

3.42. As the crisis in Kosovo worsened in 1998, diplomatic efforts to resolve it intensified. The diplomatic efforts are dealt with at length in the ICTY Trial Chamber's judgement of 26 February 2009, in *Milutinović et al.*¹⁶¹, and are not repeated in detail here.

3.43. The principal international body involved in the negotiations was the Contact Group (France, Germany, Italy, Russian Federation, United Kingdom, United States of America). US Ambassadors Christopher Hill and Richard Holbrooke spearheaded unsuccessful efforts at mediation. A Kosovo Diplomatic Observer Mission (KDOM) established from among diplomats stationed in Belgrade, with powers to observe and monitor what was happening on the ground in Kosovo, was endorsed by Security Council resolution 1199 (1998) of 27 September 1998¹⁶².

3.44. Efforts to ensure FRY and Serbian compliance with Security Council resolutions 1160 (1998) and 1199 (1998) led to the Holbrooke-Milošević agreement of October 1998, which provided for some FRY and Serbian forces (including MUP special police) to be withdrawn from Kosovo, and for the OSCE to send a Kosovo Verification Mission (KVM) to Kosovo¹⁶³. The principal purpose of the KVM was to verify compliance by all parties with Security Council resolution 1199 (1998).

3.45. These diplomatic efforts eventually led to the Rambouillet Conference in February/March 1999, co-chaired by the British and French Foreign Ministers. Two and a half weeks of negotiations culminated in the "Rambouillet accords", entitled "Interim Agreement for Peace and Self-Government in Kosovo", which were endorsed by Contact Group Foreign Ministers on 23 February 1999. When the second round of talks took place at Paris, the FRY/Serbian delegation submitted very substantial proposals to amend the

¹⁶¹ *Milutinović et al.*, *op. cit.* (fn. 142), vol. 1, paras. 312-412.

¹⁶² Dossier No. 17.

¹⁶³ Dossier No. 19. For further details, see M. Weller, *op. cit.* (fn. 118), pp. 95-106.

accords¹⁶⁴. In response, the EU, Russian, and US negotiators emphasised in a letter to the FRY/Serbian delegation that “the unanimous view of the Contact Group” was that only technical adjustments to the agreement endorsed at Rambouillet could be agreed¹⁶⁵. The Interim Agreement was signed by the Kosovo party on 18 March 1999, at the resumed Conference in Paris, but not by the FRY or Serbia¹⁶⁶.

3.46. The Rambouillet Interim Agreement only dealt with the arrangements for a three-year interim period, with the exception of a single provision, Chapter 8, Article I, paragraph 3, which touched on the question of the final settlement following the interim period. This provision read:

“Three years after the entry into force of this Agreement, an international meeting shall be convened to determine a mechanism for a final settlement for Kosovo, on the basis of the will of the people, opinions of relevant authorities, each Party’s efforts regarding the implementation of this Agreement, and the Helsinki Final Act, and to undertake a comprehensive assessment of the implementation of this Agreement and to consider proposals by any Party for additional measures.”

VI. Crimes Against Humanity, War Crimes and Human Rights Violations Committed Against Kosovo Albanians in 1998-1999

3.47. It has been estimated that, by 9 June 1999, over 90 % of the Kosovo Albanian population – over 1.45 million people – were forcibly displaced¹⁶⁷. In the period 1998-1999, numerous United Nations and other international agencies expressed dismay at the atrocities being committed by Serbia in Kosovo and demanded that they cease immediately. It should be noted that the mass expulsions of Albanian civilians from their homes in Kosovo, involving the threat of force and the actual use of force (including artillery bombardment and arson), began long before the start of the NATO military action in March 1999. Figures compiled by the UNHCR showed that by August 1998, there were

¹⁶⁴ H. Krieger, *The Kosovo Conflict and International Law* (2001), p. 149.

¹⁶⁵ M. Weller, *The Crisis in Kosovo* (1999), p. 470.

¹⁶⁶ The Interim Agreement was transmitted to the United Nations Secretary-General and is reproduced in S/1999/648, Annex [Dossier No. 30]. For an account of Rambouillet/Paris Conference, see M. Weller, *op. cit.* (fn. 118), pp. 107-154.

¹⁶⁷ *Kosovo/Kosova. As Seen, As Told*, Executive Summary (available on the OSCE website <http://www.osce.org/publications/odihr/1999/11/17755_506_en.pdf>). As the KVM report explained “Suffering in Kosovo in the period monitored by the OSCE-KVM [i.e., from October/December 1998-June 1999] was overwhelmingly Kosovo Albanian, at the hands of Yugoslav and Serbian state military and security apparatus” (Executive Summary).

260,000 internally displaced people inside Kosovo and 200,000 refugees outside Kosovo; again, the UNHCR noted that between 150,000 and 200,000 new refugees were driven from their homes in Kosovo between the beginning of January 1999 and mid-March 1999. The Court itself had occasion to express its concern in the *Legality of Use of Force* cases:

“Whereas the Court is deeply concerned with the human tragedy, the loss of life, and the enormous suffering in Kosovo which form the background of the present dispute, and with the continuing loss of life and human suffering in all parts of Yugoslavia”¹⁶⁸.

3.48. The ICTY Trial Chamber, in its judgement in *Milutinović et al.*¹⁶⁹, found five of the six accused guilty. It found that there was a common purpose to modify the ethnic balance in Kosovo in order to ensure continued control by the FRY and Serbian authorities over the province. The five convicted were high-level officials: Nikola Šainović was a FRY Deputy Prime Minister; Dragoljub Ojdanić, Chief of the General Staff of the Yugoslav Army (VJ); Nebojša Pavković, Commander of the VJ 3rd Army; Vladimir Lazarević, Commander of the VJ Pristina Corps; and Sreten Lukić, Head of the Serbian Ministry of the Interior Staff for Kosovo (MUP Staff).

3.49. Referring to the flight of hundreds of thousands of Kosovo Albanians between March and June 1999, the Trial Chamber found that

“there was a broad campaign of violence directed against the Kosovo Albanian civilian population during the course of the NATO air-strikes, conducted by forces under the control of the FRY and Serbian authorities. ... In all of the 13 municipalities the Chamber has found that forces of the FRY and Serbia deliberately expelled Kosovo Albanians from their homes, either by ordering them to leave, or by creating an atmosphere of terror in order to effect their departure. As these people left their homes and moved either within Kosovo or towards and across its borders, many of

¹⁶⁸ *Legality of Use of Force (Yugoslavia v. Belgium)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, p. 131, para. 16; *Legality of Use of Force (Yugoslavia v. Canada)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, p. 265, para. 15; *Legality of Use of Force (Yugoslavia v. France)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, p. 369-370, para. 15; *Legality of Use of Force (Yugoslavia v. Germany)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, p. 428, para. 15; *Legality of Use of Force (Yugoslavia v. Italy)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, p. 488, para. 15; *Legality of Use of Force (Yugoslavia v. Netherlands)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, p. 549, para. 16; *Legality of Use of Force (Yugoslavia v. Portugal)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, p. 663, para. 15; *Legality of Use of Force (Yugoslavia v. Spain)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, p. 768, para. 15; *Legality of Use of Force (Yugoslavia v. United Kingdom)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, p. 833, para. 15; *Legality of Use of Force (Yugoslavia v. United States of America)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, p. 922, para. 15.

¹⁶⁹ *Milutinović et al.*, op. cit. (fn. 142).

them continued to be threatened, robbed, mistreated, and otherwise abused. In many places men were separated from women and children, their vehicles were stolen or destroyed, their houses were deliberately set on fire, money was extorted from them, and they were forced to relinquish their personal identity documents.”¹⁷⁰

3.50. The Trial Chamber made detailed findings about each of the various crime sites mentioned in the Indictment, including Peja/Peć, Dečan/Dečani, Gjakova/Đjakovica, Prizren, Suhareka/Suva Reka, Rahovec/Orahovac, Ferizaj/Uroševac, Kačanik/Kačanik and Pristina¹⁷¹. For example, on 26 March 1999 MUP personnel in Suhareka/Suva Reka targeted members of the Berisha family, killing 45 men, women and children. The bodies of most of these people were found in a mass grave near Belgrade. In the following days many of the remaining Kosovo Albanian residents of Suhareka/Suva Reka left their homes as the police set fire to houses, stole money and valuables and ordered them to go to Albania¹⁷². In Pristina, many people were directly evicted from their homes, while others fled out of fear of the violence around them caused by the FRY and Serbian forces. The expulsion from Pristina was carried out in an organized manner, with hundreds of Kosovo Albanians channelled to the train station and onto overcrowded trains that took them to the Macedonian border¹⁷³.

3.51. In concluding a section on “the overall pattern of events”, the Trial Chamber said:

“The manner in which the VJ and MUP dealt with the KLA was often heavy-handed and involved indiscriminate violence and damage to civilian persons and property, further exacerbating rather than ameliorating the situation in Kosovo. The consistent eye-witness accounts of the systematic terrorisation of Kosovo Albanian civilians by the forces of the FRY and Serbia, their removal from their homes, and the looting and deliberate destruction of their property, satisfies the Chamber that there was a campaign of violence directed against the Kosovo Albanian civilian population, during which there were incidents of killing, sexual assault, and the intentional destruction of mosques. It was the deliberate actions of these forces during this campaign that caused the departure of at least 700,000 Kosovo Albanians from Kosovo in the short period of time between the end of March and beginning of June 1999. Efforts by the MUP to conceal the killing of Kosovo Albanians, by transporting the bodies to other

¹⁷⁰ Milutinović *et al.*, *op. cit.* (fn. 142), vol. 2, para. 1156.

¹⁷¹ *Ibid.*, vol. 2, *passim*.

¹⁷² *Ibid.*, vol. 2, paras. 534-555.

¹⁷³ *Ibid.*, vol. 2, paras. 885-890.

areas of Serbia, as discussed in greater detail below, also suggest that such incidents were criminal in nature.”¹⁷⁴

3.52. And the Trial Chamber concluded:

“The crimes that have been proved by the Prosecution and for which the Accused are responsible include hundreds of murders, several sexual assaults, and the forcible transfer and deportation of hundreds of thousands of people.”¹⁷⁵

3.53. The findings of the ICTY Trial Chamber in its judgement of 26 February 2009 are based upon a great deal of carefully examined witness evidence¹⁷⁶. In addition, there are numerous findings of United Nations principal and subsidiary organs, and the many authoritative reports by international governmental and non-governmental bodies, which have been taken into account by the Chamber, that attest to the crimes against humanity, war crimes and massive violations of human rights committed by FRY and Serbian forces in Kosovo between 1998 and June 1999 (when those forces were expelled following NATO’s intervention). Some of them are recalled briefly here.

3.54. The Security Council adopted a series of resolutions and Presidential statements addressing the atrocities in 1998-1999¹⁷⁷. In resolution 1160 (1998) of 31 March 1998¹⁷⁸, the Council condemned “the use of excessive force by Serbian police forces against civilians and peaceful demonstrators in Kosovo”. In a Presidential statement of 24 August 1998¹⁷⁹, the Council expressed its grave concern at the recent intense fighting in Kosovo, particularly the numbers of displaced persons. And in its resolution 1199 (1998) the Council expressed itself to be

¹⁷⁴ *Milutinović et al.*, *op. cit.* (fn. 142), vol. 2, para. 1178.

¹⁷⁵ *Ibid.*, vol. 3, para. 1172.

¹⁷⁶ In the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, the Court stated that “it should in principle accept as highly persuasive relevant findings of fact made by the Tribunal at trial, unless of course they have been upset on appeal” (*Merits, Judgment*, para. 22).

¹⁷⁷ Security Council resolution 1160 (1998), 23 March 1998 [Dossier No. 9]; Statement of the President of the Security Council, S/PRST/1998/25, 24 August 1998 [Dossier No. 14]; Security Council resolutions 1199 (1998), 23 September 1998 [Dossier No. 17]; 1203 (1998), 24 October 1998 [Dossier No. 20]; Statements of the President of the Security Council, S/PRST/1999/2, 19 January 1999 [Dossier No. 24]; S/PRST/1999/5, 29 January 1999 [Dossier No. 25]; Security Council resolution 1239 (1999), 14 May 1999 [Dossier No. 28].

¹⁷⁸ Dossier No. 9.

¹⁷⁹ S/PRST/1998/25, 24 August 1998 [Dossier No. 14].

"Gravely concerned at the recent intense fighting in Kosovo and in particular the excessive and indiscriminate use of force by Serbian security forces and the Yugoslav Army which have resulted in numerous civilian casualties and, according to the estimate of the Secretary-General, the displacement of over 230,000 persons from their homes,

Deeply concerned by the flow of refugees into northern Albania, Bosnia and Herzegovina and other European countries as a result of the use of force in Kosovo, as well as by the increasing numbers of displaced persons within Kosovo, and other parts of the Federal Republic of Yugoslavia, up to 50,000 of whom the United Nations High Commissioner for Refugees has estimated are without shelter and other basic necessities,

.....

Deeply concerned at the rapid deterioration in the humanitarian situation throughout Kosovo, alarmed at the impending humanitarian catastrophe as described in the report of the Secretary-General, and emphasising the need to prevent this from happening,

Deeply concerned also by reports of increasing violations of human rights and of international humanitarian law, and emphasising the need to ensure the rights of all inhabitants of Kosovo are respected"¹⁸⁰.

3.55. In its resolution 54/183 of 17 December 1999, the General Assembly condemned

"the grave violations of human rights in Kosovo that affected ethnic Albanians ..., as demonstrated in the many reports of torture, indiscriminate and widespread shelling, mass forced displacement of civilians, summary executions and illegal detention of ethnic Albanians in Kosovo by the Yugoslav police and military"¹⁸¹.

3.56. The Special Rapporteur of the Commission on Human Rights, Mr. Jiri Dienstbier, documented the atrocities in Kosovo in a series of letters and reports¹⁸².

¹⁸⁰ Dossier No. 17. The Secretary-General had described the dire situation in Kosovo in a series of reports presented to the Security Council (see for example Report of the Secretary-General prepared pursuant to resolution 1160 (1998) of the Security Council, S/1998/712, 5 August 1998 [Dossier No. 13]; Report of the Secretary-General prepared pursuant to resolution 1160 (1998) of the Security Council, S/1998/834, 4 September 1998, paras. 6-17, and Add.1, 21 September 1998 [Dossier Nos. 15 and 16]).

¹⁸¹ Sixth preambular paragraph.

¹⁸² Report on the situation of human rights in Bosnia and Herzegovina prepared by the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia, A/53/322, Annex, and A/53/322, Add.1, Annex; Report of Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia, E/CN.4/1999/42, 20 January 1999, paras. 79-119, esp. paras. 83-96.

3.57. The Commission on Human Rights, in its resolution 1999/2 of 13 April 1999¹⁸³, strongly condemned

“the policy of ethnic cleansing against the Kosovars being perpetrated by the Belgrade and Serbian authorities”

and condemned

“the massive military operations launched by the Serbian authorities against unarmed civilians in Kosovo, resulting in large-scale killings, systematic and planned massacres, destruction of homes and property, and forced mass exoduses to neighbouring countries, as well as internal displacement”¹⁸⁴.

3.58. In May 1999, the United Nations High Commissioner for Human Rights reported that

“[a]ccounts received by the High Commissioner and OHCHR staff... provide substantial evidence of gross human rights violations, ... including summary executions, forcible displacement, rape, physical abuse, and the destruction of property and identity documents”¹⁸⁵.

As regards forcible expulsions, she wrote:

“13. Forced displacement and expulsions of ethnic Albanians have increased dramatically in scale, swiftness and brutality.

14. A large number of corroborating reports from the field indicate that Serbian military and police forces and paramilitary units have conducted a well planned and implemented programme of forcible expulsion of ethnic Albanians from Kosovo. More than 750,000 Kosovars are refugees or displaced persons in neighbouring countries and territories, while according to various sources there are hundreds of thousands of internally displaced persons (IDPs) inside Kosovo. This displacement seems to have affected virtually all areas of Kosovo as well as villages in southern Serbia, including places never targeted by NATO air strikes or in which the so-called Kosovo Liberation Army (KLA) has never been present.

15. This last fact strengthens indications that refugees are not fleeing NATO air strikes, as is often alleged by the Yugoslav authorities. The deliberateness of the programme to expel ethnic Albanians from Kosovo is further supported by statements made by the Serbian authorities and paramilitaries at the time of eviction, such as

¹⁸³ E/CN.4/RES/1999/2.

¹⁸⁴ See also Commission on Human Rights resolution 2000/26, E/CN.4/RES/2000/26, 18 April 2000.

¹⁸⁵ Report by the High Commissioner for Human Rights on the situation of human rights in Kosovo, Federal Republic of Yugoslavia, E/CN.4/2000/7, 31 May 1999, para. 12.

telling people to go to Albania or to have a last look at their land because they will never see it again.

.....

18. Villages were emptied in house-to-house operations. Accounts indicate that, in many cases, populations were grouped together or driven to certain assembly points where transport had been pre-arranged, or from which they were escorted out of the area ...”¹⁸⁶

3.59. The OSCE’s Kosovo Verification Mission (OSCE-KVM), although withdrawn from Kosovo on 19 March 1999, was nevertheless able to prepare an impressive report, based on many interviews, including with those forced to flee Kosovo. The report

“reveals a pattern of human rights and humanitarian law violations on a staggering scale, often committed with extreme and appalling violence. The organized and systematic nature of the violations is compellingly described ... It is evident that human rights violations unfolded in Kosovo according to a well-rehearsed strategy”.

The findings summarised in report include:

”Summary and arbitrary killing of civilian non-combatants occurred at the hands of both parties to the conflict in the period up to 20 March [1999]. On the part of the Yugoslav and Serbian forces their intent to apply mass killing as an instrument of terror, coercion or punishment against Kosovo Albanians was already in evidence in 1998, and was shockingly demonstrated by incidents in January 1999 (including the Racak mass killing) and beyond. Arbitrary killing of civilians was both a tactic in the campaign to expel Kosovo Albanians, and an objective in itself.

Arbitrary arrest and detention, and the violation of the right to a fair trial, became increasingly the tools of the law enforcement agencies in the suppression of Kosovo Albanian civil rights and – accompanied by torture and ill-treatment – were applied as a means to intimidate the entire Kosovo Albanian society.

Rape and other forms of sexual violence were applied sometimes as a weapon of war.

Forced expulsion carried out by Yugoslav and Serbian forces took place on a massive scale, with evident strategic planning and in clear violation of the laws and customs of war. It was often accompanied by deliberate destruction of property, and looting. Opportunities for extortion of money were often a prime motivator for Yugoslav and Serbian perpetrators of human rights violations.”¹⁸⁷

¹⁸⁶ Report by the High Commissioner for Human Rights on the situation of human rights in Kosovo, Federal Republic of Yugoslavia, E/CN.4/2000/7, 31 May 1999.

¹⁸⁷ *Kosovo/Kosova: As Seen, As Told, op. cit.* (fn. 167), Executive Summary.

3.60. The United Nations Secretary-General, addressing the High-level meeting on the Balkans in Geneva on 14 May 1999, said:

“Before there was a humanitarian catastrophe in Kosovo, there was a human rights catastrophe. Before there was a human rights catastrophe, there was a political catastrophe: the deliberate, systematic and violent disenfranchisement of the Kosovar Albanian people.”¹⁸⁸

¹⁸⁸ Cited by Malaysia in the Security Council on 10 June 1999 (provisional verbatim record, fifty-fourth year, 4011th meeting, S/PV.4011, p. 16 [Dossier No. 33]).

CHAPTER IV

RESOLUTION 1244 (1999) AND THE INTERIM PERIOD

4.01. This Chapter deals with the adoption of Security Council resolution 1244 (1999) (**Section I**), the interim period, which began in June 1999 and involved extensive transfer of powers and responsibilities to Kosovo political institutions (**Section II**), and the transition to independence in 2008 (**Section III**). The final status process (May 2005–December 2007) is covered in Chapter V.

4.02. Resolution 1244 (1999)¹⁸⁹ provided for an interim period, during which the United Nations would establish an international civil presence in Kosovo (UNMIK) headed by a Special Representative of the Secretary-General (SRSG). The purpose of that presence was to provide for an interim administration for Kosovo “under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia”, with gradual transfer of powers and responsibilities to Kosovo institutions of self-government. Following the period of interim administration, governance would be assumed by the institutions under the final status settlement, for which independence was one clear option.

4.03. For the initial period following June 1999, the efforts of the international community, including the United Nations, the OSCE and the European Union, concentrated first on the return to Kosovo of the refugees and displaced persons and the rebuilding of their lives, and then on developing provisional institutions of self-government. It was only at a later stage, from 2004 onwards, that attention turned to the political process for Kosovo’s final status. As at Rambouillet, all options for final status were open, though it was generally acknowledged that the will of the Kosovo people was a fundamental premise of the status negotiations. These options ranged from the continuation of substantial autonomy (already provided for during the interim period without any FRY or Serbian presence in Kosovo) to the emergence of a sovereign and independent State. Nothing was ruled in, nothing ruled out, though it was provided that the

¹⁸⁹ Dossier No. 34.

process would be political in nature and that it would be overseen by the Secretary-General and his representatives. Nothing in Security Council resolution 1244 (1999), or in its implementation, was intended to prejudge the eventual final status, though it did indicate that it must take into account the Rambouillet accords.

I. Resolution 1244 (1999)

4.04. Efforts to guarantee that the FRY's repression in Kosovo would end, and not return, began while the NATO intervention was ongoing, and were a condition for termination of the armed conflict between NATO and Serbia.¹⁹⁰ On 6 May 1999, at a meeting at the Petersberg Centre near Bonn, the Group of Eight (G-8) Foreign Ministers adopted general principles on the political solution to the Kosovo crisis (which became annex 1 to resolution 1244). One of these principles called for

"[a] political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of the KLA."¹⁹⁰

Neither this nor any other principle in the Petersberg principles addressed the final status process, nor did any other principle address the territorial integrity of the FRY.

4.05. In resolution 1239 (1999), adopted during the conflict on 14 May 1999¹⁹¹, the Security Council expressed "grave concern at the humanitarian crisis in and around Kosovo", and urged all concerned to work towards the aim of a political solution consistent with the principles adopted by the G-8.

4.06. On 3 June 1999, the FRY Government and the Serbian Assembly agreed to the principles (peace plan) presented on 2 June by the President of Finland, Martti Ahtisaari, representing the European Union, and Viktor Chernomyrdin, Special Representative of the

¹⁹⁰ Statement by the Chairman on the conclusion of the meeting of the G-8 Foreign Ministers held at the Petersberg Centre on 6 May 1999, S/1999/516, Annex [Dossier No. 29].

¹⁹¹ Dossier No. 28.

Russian Federation¹⁹² (which became annex 2 to resolution 1244 (1999)). Principle 8 was virtually identical to the G-8 principle cited above and was likewise only concerned with an “interim political framework agreement”¹⁹³. It read:

“A political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of UCK. Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions.”

Neither this nor any other principle in the peace plan addressed the final status process, nor did any other principle address the territorial integrity of the FRY.

4.07. Thus the references to sovereignty and territorial integrity in what became annex 1 (G-8 general principles) and annex 2 (Chernomydin/Ahtisaari peace plan) to resolution 1244 (1999) were solely in the context of an interim political settlement.

4.08. On 9 June 1999, a Military Technical Agreement (MTA) was signed at Kumanovo (Macedonia) between the international security presence (Kosovo Force – KFOR) and the FRY and Serbian Governments. In accordance with the MTA and resolution 1244(1999), the withdrawal of FRY and Serbian forces from Kosovo began on 10 June 1999 and was completed by 20June 1999¹⁹⁴.

4.09. On 10 June 1999, the Security Council adopted resolution 1244 (1999) by 14 votes in favour, none against, and one abstention (China). As was also the case with the G-8 principles and the Ahtisaari/Chernomyrdin peace plan, both of which were annexed, the resolution addressed in detail the immediate issues and the governance of Kosovo in an interim period. But, as is clear from its text, and from the debate that took place in the Security Council when it was adopted¹⁹⁵, the resolution provided only limited guidance on

¹⁹² S/1999/649, Annex [Dossier No. 31].

¹⁹³ It will be recalled that the Rambouillet accords principally addressed the notion of an interim agreement, as indicated by its title [Dossier No. 30].

¹⁹⁴ Dossier No. 32. See *Milutinović et al., op. cit.* (fn. 142), vol. 1, paras. 1215-1217.

¹⁹⁵ Security Council, provisional verbatim record, fifty-fourth year, 4011th meeting, 10 June 1999, S/PV.4011 and S/PV.4011 (Resumption 1) [Dossier No. 33].

the process for determining the final status of Kosovo. The resolution itself did not seek to fix the timing or form of the process leading to future status, still less the substance of an eventual solution. These matters were left largely open. Importantly, however, the resolution characterized the process as “political” in nature, indicated that the process must take into account the Rambouillet accords, decided that the international civil presence would oversee the process of transferring authority to the final status institutions, and requested that the Secretary-General appoint his Special Representative (SRSG) so as “to control the implementation of the international civil presence”.

4.10. In the preamble to resolution 1244 (1999), the Security Council recalled its previous resolutions on Kosovo¹⁹⁶, resolutions 1160 (1998), 1199 (1998), 1203 (1999) and 1239 (1999), and welcomed “the general principles on a political solution of the Kosovo crisis adopted on 6 May 1999” and the FRY’s acceptance of and agreement with “the principles set forth in points 1 to 9 of the paper presented in Belgrade on 2 June 1999”¹⁹⁷.

4.11. The Council reaffirmed, in the preamble, “the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2 [to the resolution]”¹⁹⁸, while at the same time reaffirming the call in its previous resolutions for “substantial autonomy and meaningful self-government for Kosovo”¹⁹⁹. As is explained in more detail in Chapter IX below²⁰⁰, the preambular reference to the FRY’s territorial integrity is conditioned by reference to an annex concerned solely with the interim period, a change from such references in prior resolutions. As such, the preamble to resolution 1244 (1999) was entirely without prejudice to the arrangements and terms of the eventual final status of Kosovo. All possible solutions for final status were open; none was excluded *a priori*, particularly not independence, which was known to be the demand of the overwhelming majority of the people of Kosovo.

¹⁹⁶ Security Council resolution 1244 (1999), 10 June 1999, second preambular paragraph [Dossier No. 34].

¹⁹⁷ *Ibid.*, ninth preambular paragraph.

¹⁹⁸ *Ibid.*, tenth preambular paragraph.

¹⁹⁹ *Ibid.*, eleventh preambular paragraph.

²⁰⁰ See paras. 9.29-9.36 below.

4.12. The operative part of the resolution begins with a Council decision that “a political solution to the Kosovo crisis shall be based on the general principles in annex 1 [i.e., the G-8 Petersberg principles of 6 May 1999] and as further elaborated in the principles and other required elements in annex 2 [i.e., those presented in Belgrade on 2 June 1999 and agreed to by the FRY]”. Again, the Council here is indicating that the initial concern in resolving the crisis was to establish an interim period, built on the principles set forth in the annexes, which would allow for the end of violence and repression in Kosovo, the removal of all FRY and Serbian military and paramilitary forces, and the deployment of international presences that would allow for the establishment of peace, the return of refugees, and a move toward substantial self-government for Kosovo. Neither the preamble nor the overall thrust of the resolution (as signaled in its paragraph 1) establish FRY (or Serbian) territorial integrity as a condition for Kosovo’s final status. The principles in annexes 1 and 2 did not touch on the content of the final status.

4.13. In the further operative paragraphs of resolution 1244 (1999), the Security Council provided both for KFOR and for UNMIK, headed by the SRSG²⁰¹. The detailed responsibilities of each were set out in paragraphs 9 and 11 respectively.

4.14. Specifically, the Security Council authorized Member States and relevant international organizations to establish the international security presence in Kosovo²⁰², and decided that its responsibilities were to include:

- “(a) Deterring renewed hostilities, maintaining and where necessary enforcing a ceasefire, and ensuring the withdrawal and preventing the return into Kosovo of Federal and Republic military, police and paramilitary forces ...;
- “(b) Demilitarization of the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups ...;

²⁰¹ Security Council resolution 1244 (1999), 10 June 1999, paragraphs 5-11 [Dossier No. 34].

²⁰² *Ibid.*, paragraph 7. The composition of KFOR has varied over time. It currently includes troops from 25 States: Belgium, Bulgaria, Canada, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, United Kingdom and United States of America. KFOR has submitted monthly report on its activities, a representative selection of which is included in the Dossier submitted by the United Nations Secretariat (Dossier, p. 12, and Nos. 133-146).

(c) Establishing a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered;

(h) Ensuring the protection and freedom of movement of itself, the international civil presence, and other international organizations.”²⁰³

4.15. The United Nations Secretary-General was to appoint, in consultation with the Security Council, the SRSG “to control the implementation of the international civilian presence”²⁰⁴. The Security Council authorized the Secretary-General to establish, “with the assistance of relevant international organizations”, the international civil presence

“in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions”²⁰⁵.

4.16. The Security Council decided in paragraph 11 of resolution 1244 (1999) that the main responsibilities of the international security presence would include:

“(a) Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords ...;

(b) Performing basic civilian administrative functions where and as long as required;

(c) Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections;

(d) Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo’s local provisional institutions ...;

(e) Facilitating a political process designed to determine Kosovo’s future status, taking into account the Rambouillet accords;

(f) In a final stage, overseeing the transfer of authority from Kosovo’s provisional institutions to institutions established under a political settlement”²⁰⁶.

²⁰³ Security Council resolution 1244 (1999), 10 June 1999, paragraph 9 [Dossier No. 34].

²⁰⁴ *Ibid.*, paragraph 6.

²⁰⁵ *Ibid.*, paragraph 10.

²⁰⁶ *Ibid.*, paragraph 11.

4.17. Paragraph 11 (e) refers to a “political process” to determine final status, taking into account the Rambouillet accords²⁰⁷. It will be recalled that the only provision in those accords that concerned final status envisaged a final settlement “on the basis of the will of the people”, and made no reference to approval by either the FRY or Serbia²⁰⁸. As noted in paragraph 3.46 above, Chapter 8, Article I, paragraph 3, of the Rambouillet accords provided that the final settlement would be “on the basis of the will of the people, opinions of relevant authorities, each Party’s efforts regarding the implementation of this Agreement, and the Helsinki Final Act ...”.

4.18. Moreover, as discussed in Chapter IX, this provision of the Rambouillet accords consciously dropped any reference to “mutual consent” of the FRY and Kosovo, which had existed in the analogous provision of the peace proposals drafted by Ambassador Christopher Hill in the period immediately preceding Rambouillet²⁰⁹.

4.19. Otherwise, resolution 1244 (1999) is silent on the form that the political process would take, including whether it would conclude with a decision of the United Nations, and if so which United Nations body, and on the content of final status. However, paragraph 11 (e) clearly states that the political process is one of the “main responsibilities” of UNMIK, headed and controlled by the SRSG. After adoption of the resolution, the Secretary-General would regularly report to the Security Council on developments as they unfolded in Kosovo, and on the appointment both of the SRSG and of special envoys relating to the final status negotiations.

4.20. Paragraph 11 of resolution 1244 (1999) concluded by identifying further responsibilities of the international civil presence: support for reconstruction; maintenance of civil law and order; protection and promotion of human rights; and assurance of the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo²¹⁰. Given the placement of these responsibilities after the sub-paragraphs (e) and (f) relating to final status, it is clear that the role of UNMIK was envisaged as potentially straddling the

²⁰⁷ S/1999/648, Annex [Dossier No. 30].

²⁰⁸ See paras. 3.45-3.46 above.

²⁰⁹ See paras. 9.13-9.14 below.

²¹⁰ Security Council resolution 1244 (1999), paragraph 11 (g), (h), (i), (j) and (k) [Dossier No. 34].

interim and post-interim periods, depending on whether there existed continuing needs that the international civil presence could address.

4.21. The Security Council went on to demand “that all States in the region cooperate fully in the implementation of all aspects of this resolution”²¹¹. It decided that the international civil and security presences would continue “until the Security Council decides otherwise”²¹². As described in Chapter II, those presences continue today in Kosovo, with Kosovo’s agreement. Further, the Council requested the Secretary-General to report at regular intervals²¹³, as he continues to do.

4.22. Some important points emerged in the course of the Security Council meeting at which resolution 1244 (1999) was adopted²¹⁴:

(a) The FRY representative (Mr. Jovanović), opening the debate and speaking before the draft resolution was put to the vote, objected strongly to many of the terms of the draft (which was nevertheless adopted unchanged). He said that the draft “should contain … a firm and unequivocal reaffirmation of full respect for the territorial integrity and sovereignty of the Federal Republic of Yugoslavia”²¹⁵ (thus acknowledging that it did not). He said that it should contain a provision for “a political solution to the situation in Kosovo and Metohija that would be based on broad autonomy”²¹⁶ (again acknowledging that the draft language, which was then adopted by the Council, did not). He continued: “The solution for Kosovo and Metohija must fall within the legal frameworks of the Republic of Serbia and the Federal Republic of Yugoslavia, which implies that all State and public services in the province, including the organs of law and order, should function according to the Constitutions and laws of the Federal Republic of Yugoslavia and the Republic of

²¹¹ Security Council resolution 1244 (1999), paragraph 18 [Dossier No. 34].

²¹² *Ibid.*, paragraph 19.

²¹³ *Ibid.*, paragraph 20. The Secretary-General’s reports are included in Part II.C of the Dossier.

²¹⁴ Security Council, provisional verbatim record, fifty-fourth year, 4011th meeting, 10 June 1999, S/PV.4011 and S/PV.4011 (Resumption 1) [Dossier No. 33].

²¹⁵ *Ibid.*, p. 5. As the United Kingdom representative said, “[t]he interpretation and conditions which the delegation of the Federal Republic of Yugoslavia has attempted to propose have been rejected” (*ibid.*, p. 18).

²¹⁶ *Ibid.*, p. 5.

“Serbia”²¹⁷. Perhaps most importantly for the matter now before the Court, the FRY representative stated that “operative paragraph 11 … opens up the possibility of the secession of Kosovo and Metohija from Serbia and the Federal Republic of Yugoslavia”²¹⁸. He thus acknowledged that resolution 1244 (1999), as adopted, permitted the very outcome that Serbia now claims the resolution prohibits.

- (b) Some States attached importance to the resolution’s reaffirmation of Member States’ commitment to the sovereignty and territorial integrity of the FRY (especially China²¹⁹). Others, however, spoke of the shift from absolute State sovereignty to recognition of the importance of human rights²²⁰.
- (c) Most speakers focused on the immediate steps envisaged by resolution 1244 (1999). Just as the resolution itself contained rather little about the final status negotiations, so few speakers dwelt on what was then a rather distant aspect of resolving the Kosovo crisis. No one (except perhaps the FRY representative) suggested that Kosovo would have to remain within the FRY in any future settlement (as opposed to during the interim period). Indeed, it is clear that to rule out that option would have been unacceptable to many Council members. The representative of Malaysia, echoing the resolution’s reference to the Rambouillet accords, referred to

“the need to ensure one very fundamental element in the peace settlement: the fulfilment of the legitimate aspirations and expectations of the Kosovar Albanian people, the majority inhabitants of Kosovo”²²¹.

²¹⁷ Security Council, provisional verbatim record, fifty-fourth year, 4011th meeting, 10 June 1999, S/PV.4011 and S/PV.4011 (Resumption 1), p. 5 [Dossier No. 33].

²¹⁸ *Ibid.*, p. 6.

²¹⁹ *Ibid.*, p. 9.

²²⁰ *Ibid.*, pp. 12-13 (Netherlands), pp. 13-14 (Canada).

²²¹ *Ibid.*, p. 16.

II. The Promotion of Kosovo Self-Governance

4.23. A comprehensive account of the establishment of UNMIK, its activities, and events in Kosovo from June 1999 to February 2008 is set out in the quarterly reports of the Secretary-General under paragraph 20 of Security Council resolution 1244 (1999)²²². Its functions included the promotion of democracy, rule of law, human rights, multi-ethnic relations, and institution building. Its mandate enabled it to develop institutions of local self-government to which functions would be gradually transferred. While UNMIK is still present in Kosovo, its principal functions have now either been fulfilled or been assumed by others, notably by the institutions of the Republic of Kosovo and EULEX-Kosovo²²³.

UNMIK pillars

4.24. UNMIK initially consisted of four “Pillars”: Pillar I (Humanitarian Affairs), with UNHCR in charge; Pillar II (Civil Administration), run by the United Nations; Pillar III (Democratization and Institution-Building), under the OSCE; and Pillar IV (Reconstruction), under the EU. UNHCR left the structure in June 2000, and in May 2001 a “new Pillar I” (Law Enforcement and Justice) was established, under the United Nations. The SRSG was the head of UNMIK, and there were four Deputy SRSGs, one in charge of each Pillar.

4.25. Successive SRSGs²²⁴ ensured the transfer of powers and responsibilities to self-government institutions. There was a gradual transition from direct international

²²² Dossier, Part II.C. The reports “provide a detailed description of the full breadth of UNMIK’s activities, the structure of the Mission, its powers and competences, concept of operation and the relationship between UNMIK and the international organizations that played a lead role in UNMIK’s four Pillars, namely the United Nations, the European Union and the Organization for Security and Cooperation in Europe. These reports provide regular updates on, and assessments of, the security, political, economic, and humanitarian situation, as well as on capacity and institution-building, in particular, the establishment of a Constitutional Framework for Provisional Self-Government for Kosovo, the establishment and functioning of Provisional Institutions of Self-Government of Kosovo (PISG) and other administrative structures established pursuant to the Constitutional Framework, transfer of competences to the PISG, municipal and Kosovo-wide elections, dialogue between Pristina and Belgrade and technical assessments on the implementation of the ‘Standards for Kosovo’.” [Introductory Note, Dossier, p. 6]

²²³ See paras. 2.69-2.74 above.

²²⁴ Sérgio Vieira de Mello of Brazil (Acting SRSG, 13 June-15 July 1999); Bernard Kouchner of France (15 July 1999-15 January 2001); Hans Haekkerup of Denmark (15 January-31 December 2001); Michael Steiner of Germany (14 February 2002-8 July 2003); Harri Holkeri of Finland (25 August 2003-

administration by UNMIK to governance by democratic institutions representing the people of Kosovo, namely the President, the Government (consisting of a Prime Minister and other Ministers) and the Assembly of Kosovo.

UNMIK authority and applicable law

4.26. UNMIK had unprecedented authority in terms of the international administration of territory²²⁵. As foreshadowed in the Secretary-General's report to the Security Council on its establishment²²⁶, UNMIK Regulation No. 1999/1, adopted on 25 July 1999, provided that

“All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the Special Representative of the Secretary-General.”²²⁷

Section 3 of UNMIK Regulation No. 1999/1 made provision for the domestic law applicable in Kosovo in the following terms:

“The laws applicable in the territory of Kosovo prior to 24 March 1999 shall continue to apply in Kosovo insofar as they do not conflict with the standards referred to in section 2 [internationally recognized human rights standards and non-discrimination], the fulfilment of the mandate given to UNMIK under United Nations Security Council resolution 1244 (1999), or the present or any other regulation issued by UNMIK.”

4.27. However, the application of laws enacted after the unlawful removal of Kosovo’s autonomy in 1989 was unacceptable to the people of Kosovo. The SRSG therefore, on 12 December 1999, adopted UNMIK Regulation No. 1999/24²²⁸, which replaced the reference to the law applicable prior to 24 March 1999 with a reference to the law in force in Kosovo on 22 March 1989, that is, the law in force immediately preceding

²²⁵ 11 June 2006); Søren Jessen-Petersen of Denmark (16 August 2004-30 June 2004); Joachim Rücker of Germany (1 September 2006-20 June 2008); Lamberto Zannier of Italy (since June 2008).

²²⁶ Though it was rapidly followed by UNTAET in East Timor.

²²⁷ Report of the Secretary-General Pursuant to Paragraph 10 of Security Council Resolution 1244 (1999), S/1999/779, 12 July 1999, para. 35 [Dossier No. 37].

²²⁸ Regulation No. 1999/1 on the Authority of the Interim Administration in Kosovo, Section 1.1 [Dossier No. 138].

²²⁹ Dossier No. 146. By section 3, Regulation No. 1999/24 was deemed to have entered into force as of 10 June 1999.

the unlawful and forceful abolition of Kosovo's autonomy on 23 March 1989²²⁹. Section 1.1 of Regulation No. 1999/24 read:

“The law applicable in Kosovo shall be:

- (a) The regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments issued thereunder; and
- (b) The law in force in Kosovo on 22 March 1989.

In case of a conflict, the regulations and subsidiary instruments issued thereunder shall take precedence.”²³⁰

4.28. UNMIK Regulation No. 1999/1 was further amended, also with effect from 10 June 1999, by UNMIK Regulation No. 2000/54, which included a consolidated text of the regulation²³¹.

Early and far-reaching UNMIK legislation

4.29. The SRSG enacted a number of important regulations in the first few months of the interim administration, which formed part of the domestic law of Kosovo and which reinforced Kosovo's position as a territory no longer under the rule of the FRY or Serbia. These included regulations “for the purpose of establishing customs and other related services at the inland customs houses and international borders of Kosovo”²³²; on the currency permitted to be used in Kosovo²³³; and on the establishment of a court of final appeal and the office of the public prosecutor “for the purpose of enhancing the

²²⁹ See paras. 3.23-3.28 above.

²³⁰ UNMIK Regulation No. 1999/24 of 12 December 1999 on the Applicable Law in Kosovo [Dossier No. 146]. On the same date, section 3 of Regulation No. 1999/1 was repealed by Regulation No. 1999/25 [Dossier No. 139].

²³¹ Dossier No. 140. Another regulation on applicable law was Regulation No. 1999/10 on the Repeal of Discriminatory Legislation Affecting Housing and Rights in Property [Dossier No. 141].

²³² UNMIK Regulation No. 1999/3 of 31 August 1999 on the Establishment of the Customs and Other Related Services in Kosovo, *Official Gazette of the United Nations Interim Mission in Kosovo* (available on the UNMIK website <<http://www.unmikonline.org>>). The citation is from the preamble to the Regulation.

²³³ UNMIK Regulation No. 1999/4 of 2 September 1999 on the Currency to be used in Kosovo, *Official Gazette of the United Nations Interim Mission in Kosovo* (available on the UNMIK website <<http://www.unmikonline.org>>).

administration of justice in Kosovo pending a more thorough review”²³⁴. The FRY/Serbia made repeated protests about these and other “unlawful” regulations, saying that in adopting them the SRSG had “violated the mandate established under Security Council resolution 1244 (1999) and the related documents, in particular the principle of the territorial integrity and sovereignty of the FR of Yugoslavia ...”²³⁵. Neither the SRSG/Secretary-General nor the Security Council took any action following these protests²³⁶.

External relations

4.30. UNMIK’s powers also included the conduct of external relations on behalf of Kosovo and to the exclusion of the FRY/Serbia. To this end, UNMIK concluded a number of international agreements on behalf of Kosovo²³⁷. The position was described in a March 2004 Note Verbale of the United Nations Office of Legal Affairs in the following terms:

“While not expressly vested with treaty-making power, the power to conclude bilateral agreements with third States and Organizations on behalf of Kosovo has in practice been assumed by UNMIK with regard to matters falling within the scope of its responsibilities under Security Council resolution 1244, and to the extent necessary for the administration of the territory. A number of agreements have thus been concluded over the years on a variety of practical matters relating to economic development assistance and cooperation, road transport and police cooperation with the Republic of Albania, Italy, the United States, Switzerland, Iceland, and the former Yugoslav Republic of Macedonia, among others. Bilateral Agreements have also been concluded between UNMIK and international organizations, and notably ICAO and INTERPOL.”²³⁸

²³⁴ UNMIK Regulation No. 1999/5 of 4 September 1999 on the Establishment of an Ad Hoc Court of Final Appeal and an Ad Hoc Office of the Public Prosecutor, *Official Gazette of the United Nations Interim Mission in Kosovo* (available on the UNMIK website <<http://www.unmikonline.org>>). The citation is from the preamble to the regulation.

²³⁵ Memorandum of the Government of the FRY on the UN Security Council resolution 1244 (1999) of 5 November 1999, Part 2, (available on <<http://www.arhiva.serbia.sr.gov.yu/news/1999-11/05/15429.html>>).

²³⁶ Such measures were in areas which, according to the FRY itself, went to the heart of sovereignty. The FRY again protested, describing the SRSG’s decision as “the so-called transformation of the terrorist KLA into an allegedly civilian organization” and asserting that “a core of some future Albanian army in Kosovo has thus been created” (*ibid.*, Part 3, point 3 (available on <<http://www.arhiva.serbia.sr.gov.yu/news/1999-11/05/15431.html>>).

²³⁷ Dossier, Section II.G, includes a selection of such international agreements, bilateral and multilateral.

²³⁸ Note Verbale from the United Nations Office of Legal Affairs, 12 March 2004 [Dossier No. 168].

Institution building

4.31. There were early efforts to involve the people of Kosovo in governance. Joint civilian commissions (JCCs) were formed in areas such as health, universities, education and culture, municipalities and governance, post and telecommunications, and power²³⁹. A Kosovo Transitional Council (KTC) was established in July 1999²⁴⁰. This initially included 12 representatives of political parties and communities, and could make recommendations to UNMIK²⁴¹. At about the same time, a Judicial Advisory Council, with 20 national and international legal experts, was established to review and comment on draft legislation and to propose new legislation. A local Advisory Judicial Commission advised the SRSG on the appointment of judges and was consulted on the removal of judges and prosecutors.

4.32. UNMIK then moved quickly to establish a Joint Interim Administrative Structure (JIAS)²⁴², pursuant to an Agreement on a Kosovo-UNMIK Joint Interim Administrative Structure (JIAS), signed on 15 December 1999 by three Kosovo political leaders²⁴³. This provided for the transformation and progressive integration of existing “Kosovo structures”²⁴⁴, to the extent possible, into the JIAS. There was a high-level eight-member Interim Administrative Council, composed of the four Deputy SRSG’s and four members from Kosovo, including one Serb, to “make recommendations to the SRSG for amendments to the applicable law and for new regulations”, and to “propose policy guidelines for Administrative Departments”²⁴⁵. In addition, there were 20 Administrative Departments, responsible for civil administration, jointly led by a Kosovo and UNMIK Co-

²³⁹ Report of the Secretary-General pursuant to paragraph 10 of Security Council resolution 1244 (1999), S/1999/779, 12 July 1999, para. 19 [Dossier No. 37].

²⁴⁰ *Ibid.*, para. 20.

²⁴¹ Its enlargement and integration into the JIAS was foreseen in UNMIK Regulation No. 2000/1 on the Kosovo Joint Interim Administrative Structure, 14 January 2000, section 2 [Dossier No. 148].

²⁴² UNMIK Regulation No. 2000/1 on the Kosovo Joint Interim Administrative Structure, 14 January 2000, section 2 [Dossier No. 148].

²⁴³ Report of the Secretary-General on the United Nations Interim Mission in Kosovo, S/1999/1250, 23 December 1999, paras. 5-6 [Dossier No. 40].

²⁴⁴ UNMIK Regulation No. 2000/1, 14 January 2000, Section 1 (c) of which refers to “[c]urrent Kosovo structures, be they executive, legislative or judicial (such as the ‘Provisional Government of Kosovo’, ‘Presidency of the Republic of Kosovo’)” [Dossier No. 148].

²⁴⁵ *Ibid.*, Sections 3-6.

Head of Department²⁴⁶. Provision was also made for Municipal Administrative Boards, headed by an UNMIK official but including Kosovo members.

The Constitutional Framework

4.33. The next stage was to develop a basic document providing for “meaningful self-government in Kosovo pending a final settlement”²⁴⁷. The Constitutional Framework for Provisional Self-Government in Kosovo (hereafter “Constitutional Framework”) was promulgated by the SRSG on 15 May 2001²⁴⁸. Just like any other UNMIK regulation, it formed part of the domestic law applicable in Kosovo. It was not a constitution for Kosovo, and had no greater formal status than any other UNMIK regulation. It could, for example, be amended at any time by the SRSG²⁴⁹. The Constitutional Framework was nevertheless seen as important, because it created a framework within which the people of Kosovo could govern themselves during the interim period. It was described by the SRSG as follows:

“It is a truly historic document. It will guide the people of Kosovo toward the establishment of democratic structures, and its successful implementation will greatly assist the process of determining Kosovo’s final status.”²⁵⁰

4.34. The Constitutional Framework included the following preambular paragraph, setting out the SRSG’s basic understanding of the position then pertaining in Kosovo:

“Acknowledging Kosovo’s historical, legal and constitutional development; and taking into account the legitimate aspirations of the people of Kosovo to live in freedom, in peace, and in friendly relations with other people in the region”²⁵¹.

Also in the preamble, the SRSG referred to the final status process, stressing the importance of the will of the people. He said that responsibilities would be transferred to

²⁴⁶ UNMIK Regulation No. 2000/1, 14 January 2000, Section 7 [Dossier No. 148].

²⁴⁷ UNMIK Regulation No. 2001/9, 15 May 2001, preamble [Dossier No. 156].

²⁴⁸ *Ibid.* The Constitutional Framework was attached to Regulation No. 2001/9. It was later amended by UNMIK Regulation No. 2002/9, 3 May 2002, [Dossier No. 157].

²⁴⁹ Constitutional Framework, Chapter 14.3.

²⁵⁰ UNMIK, *Constitutional Framework for Provisional Self-Government in Kosovo*, Introduction (available on the UNMIK website <http://www.unmikonline.org/pub/misc/FrameworkPocket_ENG_Dec2002.pdf>).

²⁵¹ Constitutional Framework, third preambular paragraph [Dossier No. 156].

the PISG “which shall work … with a view to facilitating the determination of Kosovo’s future status through a process at an appropriate future stage which shall, in accordance with UNSCR 1244 (1999), take full account of all relevant factors including the will of the people”²⁵².

Transfer of powers and responsibilities to the PISG

4.35. As part of the domestic law of Kosovo, the Constitutional Framework made provision for “Provisional Institutions of Self-Government” (PISG). These were the Assembly, the President of Kosovo, the Government, the Courts, and other bodies and institutions set forth in the Framework²⁵³. The PISG were to have extensive and open-ended responsibilities, set out in Chapters 5.1 (broad fields of domestic and foreign policy²⁵⁴), 5.2 (local administration), 5.3 (judicial affairs), 5.4 (mass media), 5.5 (emergency preparedness), 5.6 (external relations), 5.7 (aligning legislation and practices with European and international standards) and 5.8 (such other responsibilities as are specified in the Constitutional Framework or in other legal instruments).

4.36. The Constitutional Framework contained detailed provisions on the institutions of self-government, including on the procedure for the adoption of laws, which required two or three readings. If approved by the Assembly, the laws were submitted to the President of Kosovo for signature, who in turn submitted them to the SRSG for promulgation. The Assembly could also adopt resolutions, which were non-binding declarations²⁵⁵.

4.37. By the time of the Declaration of Independence by the democratically-elected leaders of Kosovo, Kosovo had “successfully held five sets of elections since UNMIK was

²⁵² Constitutional Framework, sixth preambular paragraph [Dossier No. 156].

²⁵³ *Ibid.*, Chapter 1.5.

²⁵⁴ Including, by way of example, economic and financial policy, fiscal and budgetary issues, customs, education, health, environmental protection, labour and social welfare, transport, telecommunications, agriculture, good governance and human rights.

²⁵⁵ Constitutional Framework, Chapter 9 [Dossier No. 156].

established”²⁵⁶. Pursuant to the Constitutional Framework, free and fair elections were successfully held on several occasions for the Assembly of Kosovo and at the local level. The first general election was held on 17 November 2001, and following somewhat protracted coalition discussions a Government was formed by February 2002. A further general election was held in 2004. A third was held on 17 November 2007²⁵⁷.

4.38. The Constitutional Framework provided that

“The SRSG shall take the necessary measures to facilitate the transfer of powers and responsibilities to the Provisional Institutions of Self-Government.”²⁵⁸

4.39. Pursuant to this provision, from 2002 onwards, powers and responsibilities were gradually transferred to the PISG and new ministries and bodies were formed, as is fully described the reports of the SRSG under resolution 1244 (1999)²⁵⁹.

4.40. Following the adoption the Constitutional Framework, “UNMIK made internal adjustments for the handover of significant powers to the provisional institutions of self-government”²⁶⁰. Chapter 5 of the Constitutional Framework set out those unreserved powers and responsibilities which would gradually be transferred to the PISG, with Chapter 8 listing those powers and responsibilities that were reserved to the SRSG. The transfer of additional competencies from UNMIK to the PISG was a gradual one, continuing and accelerating during the years subsequent to the establishment of the PISG in order to create, build and consolidate self-governing institutions, in preparation for the determination of the final status of Kosovo.

4.41. UNMIK completed the transfer of responsibilities under Chapter 5 of the Constitutional Framework to the Provisional Institutions at the end of 2003²⁶¹. Discussions

²⁵⁶ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2007/768, 3 January 2008, para. 3 [Dossier No. 84].

²⁵⁷ See para. 4.55 below.

²⁵⁸ Constitutional Framework, Chapter 14 (2) [Dossier No. 156].

²⁵⁹ Dossier, Section II.C.

²⁶⁰ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2002/62, 15 January 2002, para. 2 [Dossier No. 53].

²⁶¹ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2004/71, 26 January 2004, para. 5 [Dossier No. 66].

ensued in order to determine whether additional competencies could be handed over to the PISG. By 2004, UNMIK sought to “involve the Provisional Institutions in an advisory and consultative capacity within the specific areas reserved for [the] Special Representative in chapter 8 of the Constitutional Framework”²⁶², and in addition “identified a number of responsibilities that [did] not impinge on sovereignty and [could] be transferred to the Provisional Institutions”²⁶³. During this period, UNMIK continued to examine the “ways in which the functional engagement in reserved areas of the Provisional Institutions [could] be further developed”²⁶⁴.

4.42. In the early years, the PISG had relatively few competencies and it was felt that Kosovo still had “some way to go in establishing representative and functioning institutions”²⁶⁵. But four years into UNMIK’s mandate, Kosovo had made “significant progress”²⁶⁶, with the Secretary-General reporting in 2003 that of the non-reserved responsibilities in Chapter 5 of the Constitutional Framework, 19 had been transferred, 17 had been identified for transfer in a gradual and controlled manner, and it was anticipated that the remaining eight would be transferred by the end of 2003²⁶⁷. By his report of 29 June 2007, the Secretary-General was able to state that

“[i]n eight years of interim administration by the United Nations, Kosovo has made significant strides in the establishment and consolidation of democratic and accountable Provisional Institutions of Self-Government and in creating the foundations for a functioning economy. The Provisional Institutions have laid the basis for a peaceful and normal life for all the people of Kosovo.”²⁶⁸

²⁶² Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2004/71, 26 January 2004, para. 5 [Dossier No. 66].

²⁶³ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2004/907, 17 November 2004, para. 11 [Dossier No. 70].

²⁶⁴ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2005/335, 23 May 2005, para. 12 [Dossier No. 73].

²⁶⁵ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2003/421, 14 April 2003, para. 4 [Dossier No. 62].

²⁶⁶ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2003/675, 26 June 2003, para. 60 [Dossier No. 63].

²⁶⁷ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2003/996, 15 October 2003, para. 3 [Dossier No. 64].

²⁶⁸ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2007/395, 29 June 2007, para. 30 [Dossier No. 80].

4.43. Over the course of its mission, UNMIK thus created, developed and nurtured the Kosovo institutions through a process of gradual and increasing transfer of competencies in order to prepare it for the final status. This process is shown by having regard to the developments within the institutions themselves.

4.44. Throughout 2002 the Assembly, with the assistance of UNMIK, “formed the rudimentary structures needed for a functioning parliament” with the formation of 18 committees²⁶⁹, such that by 2006 the Secretary-General described the Assembly as showing “political maturity”²⁷⁰. UNMIK was central in forming the nine original ministries²⁷¹ in 2002, with the promulgation in December 2005 of an UNMIK regulation establishing the new Ministries of Justice and Internal Affairs, marking “a key step forward”²⁷². According to the Secretary-General’s report to the Security Council of 25 January 2006, “[i]n this first stage, the ministries are given legal, technical, financial and administrative responsibilities in relation to police and justice. Transfer of more important responsibilities, such as operational control over the Kosovo Police Service and the Kosovo Correctional Service, will only take place after, and conditional upon, a positive assessment by my Special Representative of the performance by the new ministries in the first three months of their existence.”²⁷² The Ministry of Internal Affairs “continued to make generally satisfactory progress towards full establishment”²⁷³, creating the Department of Borders, Boundaries, Asylum and Migration by 2007²⁷⁴.

²⁶⁹ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2003/113, 29 January 2003, para. 11 [Dossier No. 60].

²⁷⁰ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2005/88, 14 February 2005, para. 3 [Dossier No. 72].

²⁷¹ The nine original ministries were: Agriculture, Forestry and Rural Development; Culture, Youth and Sports; Education, Science and Technology; Labour and Social Welfare; Health, Environment and Spatial Planning (which was subsequently split into two separate Ministries, for Health and for Environment and Spatial Planning); Transport and Communications; Public Services; Trade and Industry; Finance and Economy.

²⁷² Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2006/45, 25 January 2006, para. 13 [Dossier No. 75].

²⁷³ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2006/707, 1 September 2006, para. 17 [Dossier No. 77].

²⁷⁴ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2007/395, 29 June 2007, para. 17 [Dossier No. 80].

4.45. UNMIK “moved ahead with the transfer of further competencies to the Provisional Institutions, particularly in the field of rule of law and security”²⁷⁵. In relation to policing activities, whilst retaining overall authority, UNMIK’s role “shifted increasingly to mentoring and monitoring the Kosovo Police Service as it assume[d] additional operational functions”²⁷⁶.

4.46. Summarising the position in 2007, the Secretary General stated:

“UNMIK has largely achieved what is achievable under resolution 1244 (1999). At this stage, further progress depends on a timely resolution of the future status of Kosovo. A further prolongation of the future-status process puts at risk the achievements of the United Nations in Kosovo since June of 1999”²⁷⁷.

Authority of the SRSG

4.47. Chapter IX of this Written Contribution addresses in some detail the authority of the SRSG under the Constitutional Framework²⁷⁸. His general authority was acknowledged in Chapter 12 of the Constitutional Framework, which provided as follows:

“The existence of the responsibilities of the Provisional Institutions of Self-Government under this Constitutional Framework shall not affect or diminish the authority of the SRSG to ensure full implementation of UNSCR 1244(1999), including overseeing the Provisional Institutions of Self-Government, its officials and its agencies, and taking appropriate measures whenever their actions are inconsistent with UNSCR 1244 (1999) or this Constitutional Framework.”

4.48. As discussed in Chapter IX²⁷⁹, on several occasions the SRSG made use of his power under Chapter 12 to strike down acts of the PISG, and in particular of the Assembly. For example on 23 May 2002 the SRSG made a Determination in the following terms:

²⁷⁵ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2006/45, 25 January 2006, para. 13 [Dossier No. 75].

²⁷⁶ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2006/707, 1 September 2006, para. 16 [Dossier No. 77].

²⁷⁷ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2007/582, 28 September 2007, para. 28 [Dossier No. 82].

²⁷⁸ See paras. 9.21-9.22 below.

²⁷⁹ See paras. 9.24-9.26 below.

“By the powers vested in me by Security Council Resolution 1244 (1999) and the Constitutional Framework I hereby declare null and void the ‘resolution on the protection of the territorial integrity of Kosovo’ adopted by the Assembly of Kosovo today.”²⁸⁰

4.49. On a more routine level, it was not uncommon for the SRSG to exercise his power to make changes in legislation adopted by the Assembly before promulgating it in the *Official Gazette of UNMIK*.

Standards for Kosovo

4.50. In his April 2002 report to the Security Council, the Secretary-General said that he had asked the SRSG “to develop benchmarks against which progress can be measured in the critical areas of the rule of law, functioning democratic institutions, the economy, freedom of movement, the return of internally displaced persons and refugees and contributions to regional stability”²⁸¹. For a time, the policy of the international community was encapsulated in the term “Standards before Status”²⁸². In December 2003 UNMIK published a document entitled “Standards for Kosovo”²⁸³, and in March 2004 a further more elaborate document was published²⁸⁴. Pressures from within Kosovo, however, were such that it soon became apparent that the policy of “Standards before Status” was unsustainable in the longer term, leading the Secretary-General to request a review from Ambassador Kai Eide of Norway²⁸⁵.

²⁸⁰ Dossier No. 179. For reactions from the Republic of Macedonia, a State that has now recognized the Republic of Kosovo, see Dossier Nos. 180 and 181. For further examples of action by the SRSG, see paras. 9.24-9.26.

²⁸¹ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2002/436, 22 April 2002, para. 54 [Dossier No. 54].

²⁸² On 24 April 2002, the SRSG expressed the view in the Security Council that “[t]hese benchmarks should be achieved before launching a discussion on status” (Security Council, provisional verbatim record, fifty-seventh year, 4518th meeting, 24 April 2002, S/PV.4518, p. 4 [Dossier No. 103]). The Security Council endorsed this approach (Statement by the President of the Security Council, S/PRST/2002/11, 24 April 2002 [Dossier No. 55]). See also Statement by the President of the Security Council, S/PRST/2003/1, 6 February 2003 [Dossier No. 61].

²⁸³ UNMIK Press Release, *Standards for Kosovo*, 10 December 2003 [Dossier No. 59].

²⁸⁴ Kosovo Standards Implementation Plan, 31 March 2004 (available on the UNMIK website <http://www.unmikononline.org/standards/docs/ksip_eng.pdf>)

²⁸⁵ The Eide review, which in effect initiated the final status process, is described in Chapter V (paras. 5.06 and 5.07 below).

4.51. In his mid-2005 report, Ambassador Eide, who had been requested by the Secretary-General to conduct a general review of the Kosovo operation²⁸⁶, summarised progress in the following terms:

“After the end of the conflict in 1999, there was a total institutional vacuum in Kosovo. Today [i.e., 2005], a comprehensive set of institutions has been established which includes executive, legislative and judicial bodies at the central as well as at the local levels. Much progress has also been achieved in the development of a sustainable legal framework. The legislative work of the Assembly, the Government and UNMIK has been ambitious, covering essential areas of public life and the economy. Systems providing public services have been put in place across most of Kosovo. A civil service is taking shape. Over the recent period, a significant transfer of competences has occurred.”²⁸⁷

III. The Transition to Independence

4.52. In 2005, after the political process to determine Kosovo’s final status had commenced, UNMIK started to plan for its future transition of authority to the Kosovo institutions that would exist under a final status and to successor international authorities. The presentation of the Status Settlement Proposal by the United Nations Special Envoy Martti Ahtisaari served as an important milestone in the transition planning process. Indeed, the Ahtisaari Plan soon became a guiding tool for substantive transition planning.

4.53. Beginning in September 2006, preparations for transition became a priority for UNMIK. A mission-wide Transition Planning and Implementation (TPI) team was established. The TPI included all UNMIK departments and was chaired by the Strategy Coordinator. The work was carried out in coordination with Kosovo’s Unity Team and with Kosovo’s international partners. A comprehensive system of working groups was set up covering all aspects of transition planning: elections, drafting of the constitution, security, rule of law, legislation, property and economy, governance and civil administration.

4.54. The working groups prepared detailed transition action plans for each field, proposing amendments to existing legislation and drafting new laws. The groups also

²⁸⁶ See paras. 5.06 and 5.07 below.

²⁸⁷ “A comprehensive review of the situation in Kosovo”, S/2005/635, 7 October 2005, p. 2 (Summary) [Dossier No. 193]; see also *ibid.*, p. 9, paras. 17-18.

discussed a range of very practical matters, such as future issuance of identification cards and travel documents, and the transfer of archives, UNMIK premises and assets.

4.55. Elections were held in Kosovo on 17 November 2007 for the Assembly of Kosovo, the 30 municipal assemblies, and the position of mayor of each of the 30 municipalities²⁸⁸. The elections “took place without incident following a generally fair and calm campaign period, and were confirmed by the Council of Europe to have been in compliance with international and European standards”²⁸⁹. However, the participation of Kosovo Serbs was “disappointingly very low”. The authorities in Belgrade had called for a boycott; there were reports of intimidation of candidates and voters, and several political entities representing established political parties in Serbia withdrew, reportedly under pressure. The SRSG’s assessment was that “these incidents played a major part in ensuring a low Kosovo Serb voter turnout”²⁹⁰.

4.56. Following the elections, the Assembly of Kosovo met on 9 January 2008, re-elected Dr. Fatmir Sejdiu as President of Kosovo, and voted into office a new coalition government, led by Prime Minister Hashim Thaçi (PDK).

4.57. It was clear during the election campaign that a date for a declaration of independence would be set quickly after 10 December 2008, the deadline for the Troika’s report. As the Secretary-General noted in his report to the Security Council covering the period in question, “[p]ublic pressure on the new Government and Assembly to act swiftly to declare independence following the period of engagement is high”²⁹¹. Neither the Security Council nor the Secretary-General (or the SRSG) took any steps to prohibit such action.

²⁸⁸ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2007/768, 3 January 2008, paras. 3-8 [Dossier No. 84].

²⁸⁹ *Ibid.*, para. 3.

²⁹⁰ *Ibid.*, para. 5.

²⁹¹ *Ibid.*, para. 8.

4.58. On 17 February 2008, the representatives of the people of Kosovo adopted the Declaration of Independence²⁹². The next day, the United Nations Secretary-General summarized the United Nations' achievements in Kosovo in the following terms:

“The United Nations has been instrumental in moving Kosovo away from the humanitarian and emergency phase to peace consolidation and the establishment of functional local self-government and administration. Since 1999, the United Nations has overseen the creation and consolidation of Provisional Institutions of Self-Government at the central and municipal levels, with minority representation. The United Nations has created a functional justice system and a multi-ethnic police force, and has successfully organized and overseen five elections. Kosovo now has a vibrant and diversified political party scene. Freedom of movement has improved, and inter-ethnic crimes have been reduced. Kosovo has made considerable progress through the years on the implementation of standards, and the standards implementation process is now fully integrated into the European approximation process.”²⁹³

²⁹² See Chapter VI below.

²⁹³ Security Council, provisional verbatim record, sixty-third year, 5839th meeting, 18 February 2008, S/PV.5839, p. 3 [Dossier No. 119].

CHAPTER V

FINAL STATUS PROCESS

5.01. This Chapter describes the political process that took place between May 2005 and December 2007, led by the United Nations Secretary-General, with – in the words of the Security Council – “the objective of a multi-ethnic and democratic Kosovo, which must reinforce regional stability”²⁹⁴. **Section I** deals with the Eide review and report (May-August 2005). **Section II** describes the Ahtisaari talks (November 2005-March 2007). **Section III** deals with the Security Council mission to Kosovo (April 2006). **Section IV** covers the efforts of the Troika (August-December 2007).

5.02. It is important to recall that, by contrast with the 1999 Rambouillet Conference or the negotiations leading to Security Council resolution 1244 (1999), the United Nations-led process of 2005-2007 was not concerned with an interim period, but with the final status of Kosovo. Some matters discussed in the final status process, such as the protection of communities, were for good reason also considered in connection with the interim period. But the distinction between the interim arrangements and the final status was clear throughout. It was clear during the Hill negotiations of 1998, at Rambouillet in 1999, during the negotiation of Security Council resolution 1244 (1999), and when the time came, in 2005, to move on to settle the final status of Kosovo.

5.03. The United Nations Secretary-General, with the support of the Security Council led the final status process. There was strong support, and indeed active participation, from the Contact Group (France, Germany, Italy, Russian Federation, United Kingdom and United States of America). Despite intense and prolonged efforts, the positions of Belgrade and Pristina proved to be irreconcilable²⁹⁵. The Secretary-General’s Special Envoy, President Ahtisaari, recommended independence as the only viable option, and this recommendation was endorsed by the Secretary-General.

²⁹⁴ Statement by the President of the Security Council, S/PRST/2005/51, 24 October 2005 [Dossier No. 195].

²⁹⁵ Ahtisaari put it bluntly, “Belgrade demands Kosovo’s autonomy within Serbia, while Pristina will accept nothing short of independence” (Report of the Special Envoy of the Secretary-General on Kosovo’s future status, S/2007/168, 26 March 2007, Annex, para. 2 [Dossier No. 203]).

5.04. By December 2007, there was widespread acceptance that all efforts to achieve an agreed settlement between Belgrade and Pristina had been exhausted. At the same time, it did not prove possible to secure a decision of the Security Council on the way forward. It was, nevertheless, clear that independence, as recommended by the Special Envoy and endorsed by the Secretary-General, was the only outcome acceptable to the overwhelming majority of the people of Kosovo; and that to prolong the process would not bring results but would merely serve to destabilise Kosovo and the entire Balkans region. Attention therefore turned to the need to entrench protections for all of the people of Kosovo, especially the Serb community, within the context of independence. This was accomplished in the first half of 2008, on the basis of the Ahtisaari Plan and in close coordination with interested members of the international community, through the Declaration of Independence of 17 February 2008 and in the Constitution of the Republic of Kosovo, which was adopted on 9 April 2008 and came into force on 15 June 2008.

5.05. Some important themes run through the final status process:

- (a) There was agreement among all major participants that the *status quo* in Kosovo was unsustainable²⁹⁶.
- (b) There could be no return to the pre-March 1999 situation in Kosovo²⁹⁷.
- (c) Once the process had started, it could not be blocked and would have to be brought to a conclusion²⁹⁸. In other words, the process could not continue indefinitely and might lead to a settlement in the absence of the consent of one of the parties.

²⁹⁶ See, among many such statements, the second Eide Report (“A comprehensive review of the situation in Kosovo”, S/2005/635, 7 October 2005, Annex, para. 63 [Dossier No. 193]); the Report of the Security Council Mission (“the current status quo was not sustainable”, S/2007/256, 4 May 2007, para. 59 [Dossier No. 207]); the Contact Group Ministers on 27 September 2007, who “endorsed fully the United Nations Secretary-General’s assessment that the status quo is not sustainable” (Statement on Kosovo by the Contact Group Ministers, New York, 27 September 2007, S/2007/723, 10 December 2007, Annex III [Dossier No. 209]). Ahtisaari said in his report, “Kosovo’s current state of limbo cannot continue” (Report of the Special Envoy of the Secretary-General on Kosovo’s future status, S/2007/168, 26 March 2007, Annex, para. 4 [Dossier No. 203]).

²⁹⁷ Contact Group Statement, London, 31 January 2006 (available on <http://www.unosek.org/docref/fevrier/STATEMENT_BY_THE_CONTACT_GROUP_ON_THE_FUTURE_OF_KOSOVO - Eng.pdf>).

²⁹⁸ “A comprehensive review of the situation in Kosovo”, S/2005/635, 7 October 2005, Annex, para. 70 [Dossier No. 193]; Guiding principles of the Contact Group for a settlement of the status of Kosovo, S/2005/709, 10 November 2005, Annex [Dossier No. 197]; Contact Group Statement, Vienna, 24 July 2006 (available on <http://www.unosek.org/docref/Statement_of_the_Contact_Group_after_first_>).

- (d) The Contact Group's guiding principles of November 2005²⁹⁹ set the framework for the final status process, which was based on Security Council resolution 1244 (1999)³⁰⁰.
- (e) Any settlement needed to be acceptable to the people of Kosovo³⁰¹, ensure implementation of standards with regard to Kosovo's multi-ethnic character, and promote the future stability of the region³⁰².

I. Eide Reviews and Reports (2004-2005)

5.06. Following the March 2004 riots, the Secretary-General requested Ambassador Kai Eide of Norway to conduct a general review of the Kosovo operation. Until that time, the policy had been "Standards before Status"³⁰³, but this now came under question. Eide presented an initial report in August 2004, in which he suggested that "[r]aising the future status question soon seems – on balance – to be the better option"³⁰⁴. In mid-2005 Eide was requested by the Secretary-General to conduct a further comprehensive review of the situation in Kosovo, in order to determine whether the conditions were in place to enter into "a political process designed to determine the future status of Kosovo, in accordance with Security Council resolution 1244 (1999) and relevant Presidential Statements"³⁰⁵. In his second report, transmitted to the Security Council on 7 October 2005, Ambassador Eide said that "an overall assessment leads to the conclusion that the time has come to

Pristina-Belgrade_High-level_meeting_held_in_Vienna.pdf>); Statement on Kosovo by the Contact Group Ministers, New York, 27 September 2007, S/2007/723, 10 December 2007, Annex III [Dossier No. 209].

²⁹⁹ Guiding principles of the Contact Group for a settlement of the status of Kosovo, S/2005/709, 10 November 2005, Annex [Dossier No. 197].

³⁰⁰ Statement on Kosovo by the Contact Group Ministers, New York, 27 September 2007, S/2007/723, 10 December 2007, Annex III [Dossier No. 209].

³⁰¹ Or, as it was put at Rambouillet, in Security Council resolution 1244 (1999), and in the preamble to the Constitutional Framework of 2001, the final settlement would have to be on the basis of/take full account of "the will of the people".

³⁰² Statement on Kosovo by the Contact Group Ministers, New York, 27 September 2007, S/2007/723, 10 December 2007, Annex III [Dossier No. 209].

³⁰³ See paras. 4.50 above.

³⁰⁴ Report on the situation in Kosovo, S/2004/932, 30 November 2004, Enclosure [Dossier No. 71].

³⁰⁵ Letter dated 7 October 2005 from the Secretary-General addressed to the President of the Security Council, S/2005/635, 7 October 2005 [Dossier No. 193].

commence [the final status] process”³⁰⁶. As he put it, “Kosovo will either move forward or slide backwards – having moved from stagnation to expectation, stagnation cannot again be allowed to take hold there”³⁰⁷.

5.07. In a Presidential statement of 24 October 2005, the Security Council agreed with Ambassador Eide’s assessment, welcomed the Secretary-General’s readiness to appoint a Special Envoy to lead the process, and reaffirmed “its commitment to the objective of a multi-ethnic and democratic Kosovo, which must reinforce regional stability”³⁰⁸.

II. Final Status Process Led by Martti Ahtisaari (November 2005-March 2007)³⁰⁹

5.08. On 14 November 2005, Martti Ahtisaari, former President of Finland, was appointed by the Secretary-General as his Special Envoy to lead the final status process for Kosovo. He was assisted by a deputy, Albert Rohan of Austria, and a Secretariat (UNOSEK). Other international actors were involved, including from the OSCE High Commissioner for National Minorities and the Venice Commission of the Council of Europe.

5.09. The Secretary-General’s letter of 14 November 2005 appointing President Ahtisaari as his Special Envoy stated that Ahtisaari would “lead the political process to determine the future status of Kosovo in the context of resolution 1244 (1999) and the relevant Presidential Statements of the Security Council”³¹⁰. The Terms of Reference attached to the letter emphasised that the Special Envoy “will lead this process on behalf of the Secretary-General”. They went on to say that the Special Envoy would work closely with the parties and also with Security Council members and other key players. They further said that “[t]he pace and duration of the future status process will be determined by

³⁰⁶ “A comprehensive review of the situation in Kosovo”, S/2005/635, 7 October 2005, Annex, para. 62 [Dossier No. 193].

³⁰⁷ *Ibid.*, para. 63.

³⁰⁸ Statement by the President of the Security Council, S/PRST/2005/51, 24 October 2005 [Dossier No. 195].

³⁰⁹ M. Weller, *op. cit.* (fn. 118), Chapter 12.

³¹⁰ Letter from Secretary-General Kofi Annan to Mr. Martti Ahtisaari, 14 November 2005 [Dossier No. 198].

the Special Envoy on the basis of consultations with the Secretary-General, taking into account the cooperation of parties and the situation on the ground”. The Special Envoy was to have “maximum leeway in order to undertake his task” and was “expected to revert to the Secretary-General at all stages of the process”.

5.10. It is clear from the Terms of Reference that the Special Envoy was acting directly for the Secretary-General, and that he had very broad discretion as to the modalities and timing of the final status process. There is no indication in the letter, or in the Terms of Reference, that the settlement of the final status for Kosovo would only occur if it had the consent of Serbia or if there were a further decision of the Security Council.

5.11. In anticipation of the commencement of the political process led by Martti Ahtisaari, the Contact Group agreed upon “Guiding Principles”, which were transmitted by the President of the Security Council to the Secretary-General on 10 November 2005 “for your reference”³¹¹. Among other things, the Contact Group’s Guiding Principles repeated that “[o]nce the process [to determine the final status of Kosovo] has started, it cannot be blocked and must be brought to a conclusion”. The Principles also stated that the settlement should “ensure that Kosovo can develop in a sustainable way both economically and politically and that it can cooperate effectively with international organizations and international financial institutions”.

5.12. In a further statement, dated 31 January 2006, the six-member Contact Group recalled

“that the character of the Kosovo problem, shaped by the disintegration of Yugoslavia and consequent conflicts, ethnic cleansing and the events of 1999, and the extended period of international administration under UNSCR 1224, must be fully taken into account in settling Kosovo’s status”³¹².

The Contact Group once again made clear that there should be “no return to the pre-1999 situation”. They concluded that “[t]he disastrous policies of the past lie at the heart of the

³¹¹ Guiding principles of the Contact Group for a settlement of the status of Kosovo, S/2005/709, 10 November 2005, Annex [Dossier No. 197].

³¹² Contact Group Statement, London, 31 January 2006, para. 2 (available on <<http://www.unosek.org/docref/fevrier/STATEMENT BY THE CONTACT GROUP ON THE FUTURE OF KOSOVO - Eng.pdf>>).

current problems”. While emphasising “that a negotiated settlement is the best way forward”, the Contact Group did not exclude other routes.

5.13. There were fifteen rounds of negotiations in the course of 2006, held in Vienna. Belgrade’s position throughout was that independence was unacceptable. Belgrade even made the wholly untenable claim that international law precluded a settlement involving independence³¹³. Belgrade said that it was prepared to offer autonomy, but nothing more. Kosovo’s position was also clear. Pristina insisted that the settlement should result in the independence of Kosovo. Within the framework of independence, there could be far-reaching protections for minority communities (including within the system of governance of Kosovo), religious and historic monuments, and human rights. A high-level meeting involving both sides was held in Vienna on 24 July 2006, but positions remained far apart. The ensuing Contact Group statement stressed that “Belgrade needs to demonstrate much greater flexibility in the talks than it has done so far”, and reiterated that

“once negotiations are underway, they can not be allowed to be blocked. The process must be brought to a close, not least to minimise the destabilising political and economic effects of continuing uncertainty over Kosovo’s future status.”³¹⁴

5.14. In their Statement of 20 September 2006, Contact Group Ministers said:

“Striving for a negotiated settlement should not obscure the fact that neither party can unilaterally block the status process from advancing. Ministers encouraged the Special Envoy to prepare a comprehensive proposal for a status settlement and on this basis to engage the parties in moving the negotiating process forward.”³¹⁵

In the same statement, Contact Group Ministers renewed “their call to Belgrade to cease its obstruction of Kosovo Serb participation in Kosovo’s institutions”³¹⁶.

³¹³ See Serbia’s opening “platform”, 5 January 2006 (cited in M. Weller, *op. cit.* (fn. 118), p. 200); a line repeated in the Assembly of Serbia’s resolution of 14 February 2007 (see note 323 below).

³¹⁴ High-level meeting on the future status of Kosovo, Contact Group Statement, Vienna, 24 July 2006, (available at <http://www.unosek.org/docref/Statement_of_the_Contact_Group_after_first_Pristina-Belgrade_High-level_meeting_held_in_Vienna.pdf>).

³¹⁵ Contact Group Ministerial Statement, New York, 20 September 2006, para. 4 (available on <http://www.unosek.org/docref/2006-09-20_-_CG_Ministerial_Statement_New_York.pdf>).

³¹⁶ *Ibid.*, para. 5.

5.15. Belgrade's approach continued to be unconstructive. Belgrade arranged the suspension of cooperation between municipal authorities in northern Kosovo and UNMIK³¹⁷.

5.16. On 30 September 2006, in an act of extraordinary bad faith in the middle of the final status talks, Serbia adopted a new Constitution. The revealing preamble focused almost exclusively on Kosovo. It consisted of just two paragraphs:

“Considering the state tradition of the Serbian people and equality of all citizens and ethnic communities in Serbia,

Considering also that the province of Kosovo and Metohija is an integral part of the territory of Serbia, that it has the status of a substantial autonomy within the sovereign state of Serbia and that from such status of the Province of Kosovo and Metohija follow constitutional obligations of all state bodies to uphold and protect the state interests of Serbia in Kosovo and Metohija in all internal and foreign political relations”.³¹⁸

5.17. This Constitution (replacing the Milošević one of 1990) was drafted and adopted in haste, without any involvement of the institutions or people of Kosovo. The Venice Commission reported that “the Constitution itself does not at all guarantee substantial autonomy to Kosovo, for it entirely depends on the willingness of the National Assembly of the Republic of Serbia whether self-government will be realised or not”³¹⁹. It has been suggested that “[t]he main purpose of the new constitution was to demonstrate Serbian hostility to and create further legal barriers against, Kosovo independence”³²⁰.

³¹⁷ This led to the Contact Group Statement on the Situation in Northern Kosovo, 4 August 2006 (available on <http://www.unosek.org/docref/2006-08-04_-_CG_Statement_on_the_situation_in_Northern_Kosovo-english.pdf>).

³¹⁸ Constitution of the Republic of Serbia, preamble. The Presidential oath commences with the words: “I do solemnly swear that I will devote all my efforts to preserve the sovereignty and integrity of the territory of Serbia, including Kosovo and Metohija as its constituent part...” (Constitution, Article 114). The Constitution was narrowly approved by a referendum held on 28-29 October 2006, in which Kosovo Albanians were ineligible to participate.

³¹⁹ European Commission for Democracy through Law (Venice Commission), *Opinion No. 405/2006 on the Constitution of Serbia*, 19 March 2007, para. 8 (available at the Venice Commission’s website <[http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)004-e.pdf](http://www.venice.coe.int/docs/2007/CDL-AD(2007)004-e.pdf)>). Article 182, para. 2, of the Constitution provides: “The substantial autonomy of ... the Autonomous Province of Kosovo and Metohija shall be regulated by the special law which shall be adopted in accordance with the proceedings envisaged for amending the Constitution.”

³²⁰ International Crisis Group, Europe Briefing No. 44, 8 November 2006, *Serbia’s New Constitution: Democracy Going Backwards*, p. 1. The referendum campaign “emphasised that defending Kosovo was

5.18. Kosovo's approach, by contrast, was forward-looking and positive. Among other things, Kosovo proposed in the course of the negotiations a Treaty of Friendship and Cooperation between Kosovo and Serbia³²¹, which recognized "that unique historical circumstances and common interests will require an extremely close and friendly relationship between Kosovo and Serbia for many years to come", included commitments to Euro-Atlantic integration, and provided for far-reaching cooperation, including through working groups and a Kosovo-Serbia Permanent Cooperation Council to meet regularly at the highest level.

5.19. Special Envoy Ahtisaari presented his draft comprehensive proposal to Belgrade and Pristina on 2 February 2007. On that day, the Contact Group issued a statement encouraging both parties "to engage fully and constructively with the Special Envoy in this phase of the process"³²². The National Assembly of the Republic of Serbia rejected Ahtisaari's Proposal on 15 February 2007, in terms reminiscent of the 2005 "platform":

"The National Assembly of the Republic of Serbia concludes that the Proposal of UN Secretary-General's Special Envoy Martti Ahtisaari breaches the fundamental principles of international law since it does not take into consideration the sovereignty and territorial integrity of the Republic of Serbia in relation to Kosovo-Metohija."³²³

5.20. Further direct negotiations took place, in the course of which Kosovo essentially accepted the draft Proposal, while Serbia presented a whole new version of the document, among other things referring to Kosovo throughout as "the Autonomous Province of Kosovo and Metohija", which was to be governed in accordance with the Constitution of the Republic of Serbia and within its sovereignty³²⁴, and hence in a manner that left Kosovo exposed to future changes in Serbian national law. Serbia even claimed

the main point of the constitution" (*ibid.*, p. 4), as did Party leaders when urging the Assembly to adopt the constitution on 30 September (*ibid.*).

³²¹ Annex 6.

³²² Joint Contact Group Statement, 2 February 2007 (available on <[http://www.unosek.org/docref/Joint Contact Group Statement 2nd february 2007.doc](http://www.unosek.org/docref/Joint%20Contact%20Group%20Statement%202nd%20February%202007.doc)>).

³²³ Republic of Serbia, Assembly Resolution following UN Special Envoy Martti Ahtisaari's "Comprehensive proposal for the Kosovo status settlement" and continuation of negotiations on the future status of Kosovo-Metohija, 14 February 2007 (available at <http://www.mfa.gov.yu/Policy/Priorities/KIM/resolution_kim_e.html>).

³²⁴ M. Weller, *op. cit.* (fn. 118), pp. 210-211.

that the negotiations had not yet taken place, and should now commence³²⁵. At the final meeting on 10 March 2007, both President Tadić and Prime Minister Kostunica rejected the Special Envoy's Proposal³²⁶.

5.21. The Secretary-General presented President Ahtisaari's Report on Kosovo's Future Status, together with his Comprehensive Proposal for the Kosovo Status Settlement, to the Security Council on 26 March 2007³²⁷. The Special Envoy's recommendation was as follows:

"Kosovo's status should be independence, supervised by the international community."³²⁸

5.22. In his report, President Ahtisaari said, "[i]t is my firm view that the negotiations' potential to produce any mutually agreeable outcome on Kosovo's status is exhausted. No amount of additional talks, whatever the format, will overcome this impasse"³²⁹. He was also of the view that

"Kosovo's current state of limbo cannot continue. ... Pretending otherwise and denying or delaying resolution of Kosovo's status risks challenging not only its own stability but the peace and stability of the region as a whole."³³⁰

5.23. Ahtisaari explained that reintegration into Serbia was not a viable option³³¹, and that continued international administration was not sustainable³³². He concluded that independence with international supervision was the only viable option³³³:

³²⁵ M. Weller, *op. cit.* (fn. 118), p. 211.

³²⁶ Statement by the President of the Republic of Serbia, 10 March 2007; Statement by the Prime Minister of the Republic of Serbia, 10 March 2007 (cited in *ibid.*, p. 211).

³²⁷ S/2007/168 and Add.1 [Dossier Nos. 203 and 204]. Addendum 2 consists of a note about the availability of certain maps.

³²⁸ Report of the Special Envoy of the Secretary-General on Kosovo's future status, S/2007/168, 26 March 2007, heading [Dossier No. 203].

³²⁹ *Ibid.*, para. 3.

³³⁰ *Ibid.*, para. 4. Ahtisaari introduced his report at a closed meeting of the Security Council on 3 April 2007 (S/PV.5654).

³³¹ *Ibid.*, paras. 6-7.

³³² *Ibid.*, paras. 8-9.

³³³ *Ibid.*, paras. 10-14.

“5. Upon careful consideration of Kosovo’s recent history, the realities of Kosovo today and taking into account the negotiations with the parties, I have come to the conclusion that the only viable option for Kosovo is independence, to be supervised for an initial period by the international community. My Comprehensive Proposal for the Kosovo Status Settlement, which sets forth these international supervisory structures, provides the foundations for a future independent Kosovo that is viable, sustainable and stable, and in which all communities and their members can live a peaceful and dignified existence.

.....

10. Independence is the only option for a politically stable and economically viable Kosovo. Only in an independent Kosovo will its democratic institutions be fully responsible and accountable for their actions. This will be crucial to ensure respect for the rule of law and the effective protection of minorities. With continued political ambiguity, the peace and stability of Kosovo and the region remains at risk. Independence is the best safeguard against this risk. It is also the best chance for a sustainable long-term partnership between Kosovo and Serbia.”

5.24. Ahtisaari continued:

“Kosovo is a unique case that demands a unique solution. It does not create a precedent for other unresolved conflicts. In unanimously adopting resolution 1244 (1999), the Security Council responded to Milosevic’s actions in Kosovo by denying Serbia a role in its governance, placing Kosovo under temporary United Nations administration and envisaging a political process designed to determine Kosovo’s future. The combination of these factors makes Kosovo’s circumstances extraordinary.”³³⁴

5.25. In his covering letter transmitting the Ahtisaari Settlement to the President of the Security Council, Secretary-General Ban Ki-moon said:

“Having taken into account the developments in the process designed to determine Kosovo’s future status, I fully support both the recommendation made by my Special Envoy in his report on Kosovo’s future status³³⁵ and the Comprehensive Proposal for the Kosovo Status Settlement.”

5.26. Thus by May 2007, the position was that “Pristina accepted the Ahtisaari Settlement in its entirety; Belgrade rejected it”³³⁶.

³³⁴ S/PV.5654, para. 15.

³³⁵ I.e., “Kosovo’s status should be independence, supervised by the international community”.

³³⁶ Report of the European Union/United States/Russian Federation Troika on Kosovo, S/2007/723, 10 December 2007, Annex, para. 5 [Dossier No. 209].

5.27. The main provisions of the President Ahtisaari's Settlement³³⁷ are summarized in the annex to his Report³³⁸. This describes the aim of the Settlement as:

"to define the provisions necessary for a future Kosovo that is viable, sustainable and stable. It includes detailed measures to ensure the promotion and protection of the rights of communities and their members, the effective decentralization of government, and the preservation and protection of cultural and religious heritage in Kosovo. In addition, the Settlement prescribes constitutional, economic and security provisions, all of which are aimed at contributing to the development of a multi-ethnic, democratic and prosperous Kosovo."³³⁹

5.28. The Settlement, which is very detailed (some 60 pages, plus a map section) consists of 15 Articles, which in turn refer to 12 Annexes and to the maps. The Settlement covers a wide range of subjects, indicated by the headings of the 15 Articles: General Principles; Human Rights and Fundamental Freedoms; Rights of Communities and Their Members; Rights of Refugees and Internally Displaced Persons; Missing Persons; Local Self-Government and Decentralization; Religious and Cultural Heritage; Economic and Property Issues; Security Sector; Constitutional Commission; Elections; International Civilian Representative; International Support in the Area of Rule of Law; International Military Presence; and Transitional Arrangements and Final Provisions.

III. Security Council Mission to Kosovo (April 2007)

5.29. Following the submission of Ahtisaari's proposal, at the Russian Federation's suggestion, a Security Council mission visited Kosovo between 25 and 28 April 2007³⁴⁰. After a full round of briefings in Brussels, Belgrade and Pristina, and a series of visits, the mission concluded that:

"The positions of the sides on the Kosovo settlement proposal remain far apart. The Belgrade authorities and the Kosovo Serb interlocutors who expressed themselves on this issue ... rejected a solution that would entail any form of independence. ... There was recognition, however, that the current status quo was not sustainable. Kosovo

³³⁷ Comprehensive Proposal for the Kosovo Status Settlement, S/2007/168/Add.1, 26 March 2007 [Dossier No. 204].

³³⁸ Report of the Special Envoy of the Secretary-General on Kosovo's future status, S/20007/168, 26 March 2007, pp. 6-9 [Dossier No. 203].

³³⁹ *Ibid.*, p. 6.

³⁴⁰ For the composition and terms of reference of the mission, see Letter dated 19 April 2007 from the President of the Security Council to the Secretary-General, S/2007/220, Annex [Dossier No. 206].

Albanian representatives and representatives of non-Serb communities, on the other hand, expressed clear and unambiguous support for the Kosovo settlement proposal and recommendation on Kosovo's future status. Expectations among the majority Kosovo Albanian population for an early resolution of Kosovo's future status were very high.”³⁴¹

5.30. The Security Council considered the mission’s report on 10 May 2007³⁴². The head of the mission, Ambassador Verbeke of Belgium, described the assessment in the report³⁴³. France noted that “the positions of the parties are irreconcilable. That was clear during the entire mission. Unfortunately, that inescapable fact will not change with time.”³⁴⁴ The United Kingdom likewise noted that “there is no prospect of an agreement between Belgrade and Pristina, as the mission demonstrated”³⁴⁵. The United States representative said

“there is no potential for the passage of time to change the polarization in the foreseeable future. Therefore, delay, I believe, has no potential to help the situation. I think, on the other hand, that delay has great potential to destabilize Kosovo and the Balkans.”³⁴⁶

5.31. In July 2007, six co-sponsors, Belgium, France, Germany, Italy, United Kingdom, and the United States of America circulated a draft Security Council resolution³⁴⁷. Among other things, echoing the Contact Group statement of 31 January 2006, the resolution would have recognized

“the specific circumstances that make Kosovo a case that is *sui generis* resulting from the disintegration of the former Yugoslavia, including the historical context of Yugoslavia’s violent break-up, as well as the massive violence and repression that took place in Kosovo in the period up to and including 1999, the extended period of international administration under resolution 1244, and the UN-led process to determine status, and that this case shall not be taken as a precedent”.

³⁴¹ Report of the Security Council mission on the Kosovo issue, S/2007/256, 4 May 2007, para. 59 [Dossier No. 207].

³⁴² Security Council, provisional verbatim record, sixty-second year, 5673rd meeting, 10 May 2007, S/PV.5673 [Dossier No. 114]. The head of the Mission had already briefed the Security Council on 2 May 2007 (*ibid.*, S/PV.5672 [Dossier No. 113]).

³⁴³ *Ibid.*, S/PV.5673, pp. 2-3 [Dossier No. 114].

³⁴⁴ *Ibid.*, p. 6.

³⁴⁵ *Ibid.*, p. 12.

³⁴⁶ *Ibid.*, p. 13.

³⁴⁷ The draft resolution was provisionally assigned the number S/2007/437, with a date of 17 July 2001. That number was reassigned to a different document after the resolution was withdrawn.

Further, the resolution would have acknowledged that the status quo in Kosovo was not sustainable. While the resolution received broad support among Council members, it was not possible to secure its adoption in the face of Russian opposition, so it was not put to a vote³⁴⁸.

IV. European Union/United States/Russian Federation Troika on Kosovo (August-December 2007)³⁴⁹

5.32. A final attempt to reach agreement on a settlement was made between August and December 2007. The Contact Group proposed the establishment of a “Troika” of representatives of the European Union (Wolfgang Ischinger), the United States of America (Frank Wisner), and the Russian Federation (Alexander Botsan-Harchenko). The Secretary-General welcomed this initiative on 1 August 2007, restating his belief that the status quo was unsustainable and requesting a report on these efforts by 10 December 2007³⁵⁰.

5.33. Between August and December 2007, the Troika undertook an intense schedule of meetings with the parties, who were represented at the highest possible level. They were fully supported by Contact Group Ministers, who reiterated that “striving for a negotiated settlement should not obscure the fact that neither party can unilaterally block the status process from advancing”³⁵¹. But the Troika could not achieve an agreed settlement. In their report, presented to the Security Council on 4 December 2007, they concluded that

“the parties were unable to reach an agreement on the final status of Kosovo. Neither party was willing to cede its position on the fundamental question of sovereignty over Kosovo.”³⁵²

³⁴⁸ Statement issued on 20 July 2007, Belgium, France, Germany, Italy, UK and USA.

³⁴⁹ M. Weller, *op. cit.* (fn. 118), Chapter 13.

³⁵⁰ Available on <<http://www.un.org/apps/sg/sgstats.asp?nid=2692>>.

³⁵¹ Statement on Kosovo by Contact Group Ministers, 27 September 2007, S/2007/723, 10 December 2007, Annex III [Dossier No. 209].

³⁵² Report of the European Union/United States/Russian Federation Troika on Kosovo, S/2007/723, 10 December 2007, para. 2.

5.34. It was thus widely accepted, by December 2007, that all efforts to achieve an agreed settlement had been exhausted, that the status quo was not sustainable, and that independence was inevitable³⁵³. Only thus could the Council's objective be met – “a multi-ethnic and democratic Kosovo, which must reinforce regional stability”³⁵⁴.

³⁵³ Security Council, provisional verbatim record, sixty-third year, 5839th meeting, 18 February 2008, S/PV.5839, pp. 9-10 (Italy) [Dossier No. 119].

³⁵⁴ Statement by the President of the Security Council, S/PRST/2005/51, 24 October 2005, p. 2 [Dossier No. 195].

PART III

THE DECLARATION OF INDEPENDENCE

CHAPTER VI

THE DECLARATION OF INDEPENDENCE

6.01. On 17 February 2008, the representatives of the people of Kosovo declared Kosovo to be an independent and sovereign State. Contrary to the misleading language in the question put to the Court, the Declaration of Independence was not an act of the Provisional Institutions of Self-Government of Kosovo (PISG). According to the Constitutional Framework, the PISG were the Assembly, the President of Kosovo, the Government, the Courts, and other bodies and institutions set forth in the Constitutional Framework³⁵⁵. These institutions, however, did not issue the Declaration of Independence. As the circumstances surrounding the approval of the Declaration indicate (**Section I**), the Declaration was an act of the democratically-elected representatives of the people of Kosovo meeting as a constituent body to establish a new State (**Section II**).

6.02. The content of the Declaration was not limited to affirming to the public the independence of the Republic of Kosovo. It included obligations and commitments publicly assumed by the people of Kosovo in the name of their newly independent State before the entire international community (**Section III**).

I. The Circumstances Surrounding the Signing of the Declaration

6.03. The Declaration of Independence of Kosovo of 17 February 2008 was described by the sole sponsor of General Assembly resolution 63/3, the Republic of Serbia, as having been made by “the Provisional Institutions of Self-Government of Kosovo”. This is incorrect, as is demonstrated by the text and the circumstances of its approval.

6.04. Once all efforts to achieve an agreed settlement had been exhausted³⁵⁶, the option of independence in accordance with the Ahtisaari Plan was the only viable outcome. The likelihood of a declaration of independence was no secret. Indeed, on

³⁵⁵ Constitutional Framework, Chapter 1.5 [Dossier No. 156]; see also *ibid.*, Chapter 9.

³⁵⁶ See para. 5.34 above.

12 February 2008, five days before the Declaration of Independence was issued, the Permanent Representative of Serbia to the United Nations requested, upon instructions of his Government,

“an urgent meeting of the Security Council to consider an extremely grave situation in the Serbian province of Kosovo and Metohija, where we are witnessing the final preparatory activities for a unilateral declaration of independence by the Provisional Institutions of Self-Government”³⁵⁷.

In Kosovo, the people were gathering in the streets of Pristina, and in front of the Government and Assembly buildings, calling for independence on 15, 16 and 17 February.

6.05. Early on Sunday, 17 February 2008, President Dr. Fatmir Sejdiu and Prime Minister Hashim Thaçi requested the convening of an extraordinary meeting of the Assembly in order to consider urgently the matter of declaring independence.

6.06. As demonstrated by the particular and exceptional circumstances of this meeting, the Assembly was not convened and did not meet as one of the PISG undertaking its responsibilities under the Constitutional Framework. Indeed, the Assembly, as one of the PISG, could be convened under its Rules, but those rules were not followed on 17 February 2008. The request to the President of the Assembly, Mr. Jakup Krasniqi, was made jointly by the President of Kosovo and the Prime Minister despite the fact that the power to convene an extraordinary session was assigned, under Rule 23 (6) of the Rules of Procedure of the Assembly, to the Presidency of the Assembly only upon its own initiative or upon a request of the Prime Minister or at least 40 members of the Assembly³⁵⁸.

³⁵⁷ Letter dated 12 February 2008 from the Permanent Representative of Serbia to the United Nations addressed to the President of the Security Council, S/2008/92 [Dossier No. 116]. See also letter dated 4 January 2008 from the Permanent Representative of Serbia to the United Nations addressed to the President of the Security Council, S/2008/7, Annex, in particular para. 4 [Dossier No. 85].

³⁵⁸ Article 23 (6) of the Rules of Procedure of the Assembly provides:

“The Presidency shall, upon its own initiative or in response to a request by the Prime Minister or by one or more parliamentary groups representing not less than one-third, respectively 40 (forty) Members of the Assembly, convene the Assembly for an extraordinary session in order to deal with an urgent matter. The request shall state the matter or matters to be considered, and the reasons why they are considered urgent and important in such a way as to justify recalling the Assembly. In such cases, only the items of business that form the basis of the request shall be considered.” (available on the website of the Assembly of the

6.07. The extraordinary session took place from 3 p.m. in the presence of the President of Kosovo, the Prime Minister, 109 out of the 120 members of the Assembly (including those from all the communities, except the Serb community whose members chose not to attend), and guests, including those representing the international community.

6.08. The President of the Assembly, the President of Kosovo and the Prime Minister each addressed the meeting. All of the speakers underlined that the 17 February 2008 meeting was more than a “usual” meeting of the Assembly. President of Kosovo, Dr. Fatmir Sejdiu, underlined that it was a “historical session of the Kosovo Assembly”³⁵⁹ and that that “day separate[d] the history of Kosovo in two: the times before and after independence”³⁶⁰. Prime Minister Thaçi described it as an “historical day”³⁶¹ which “br[ought] the end of a long process”³⁶², “the day of a new beginning”³⁶². President of the Assembly Krasniqi said that these were “historical moments for the future of the people of Kosovo”³⁶³.

6.09. The Declaration of Independence was read out to the assembled representatives by the Prime Minister, voted upon and then signed by the President of Kosovo, the Prime Minister and all the representatives present³⁶⁴.

6.10. The procedure for the presentation of the text, the voting, and the signing ceremony confirm the special nature of the 17 February 2008 meeting and the Declaration of Independence. It does not constitute an act of the PISG or of one of the PISG, given that, contrary to the usual decision-making process established in the Assembly under the Constitutional Framework³⁶⁵,

Republic of Kosovo <http://www.assembly-kosova.org/common/docs/Z-Rregullore_e_punes-anglisht-20_maj_2005-me_ndryshime.pdf>).

³⁵⁹ Assembly of Kosovo, Special Plenary Session on the Declaration of Independence, 17 February 2008, Transcript, p. 9 (Annex 2).

³⁶⁰ *Ibid.*, p. 8.

³⁶¹ *Ibid.*, p. 5.

³⁶² *Ibid.*, p. 6.

³⁶³ *Ibid.*, p. 3.

³⁶⁴ *Ibid.*, p. 14.

³⁶⁵ Constitutional Framework, Chapters 9.1.34-9.1.45 [Dossier No. 156].

- the Declaration of Independence was not submitted to a first and second reading, nor was it considered by the relevant main or functional committees as was the case when the Assembly acted as one of the PISG under the Constitutional Framework³⁶⁶. It was directly voted upon.
- the Declaration of Independence was voted on by raising hands and subsequently signed in a solemn procedure by the President of Kosovo, the Prime Minister and the President of the Assembly, the members of the Presidency, the heads of the different parliamentary groups, and all other members of the Assembly present, called one by one by name to sign the Declaration³⁶⁷. Under the Constitutional Framework, only the President of the Assembly signed the texts approved by the Assembly³⁶⁸.
- the Declaration of Independence was signed immediately after the voting and not after waiting for the expiration of the usual 48 hours time-frame within which a motion against an approved text could be lodged³⁶⁹. No such motion was lodged.
- the Declaration of Independence was not transmitted to the SRSG as was the case with all acts adopted by the Assembly acting as one of the PISG³⁶⁸.
- the Declaration of Independence was not published in the *Official Gazette of the Provisional Institutions of Self-Government of Kosovo*, as were acts of the Assembly acting as one of the PISG.

6.11. All these elements demonstrate that the issuance of the Declaration of Independence of 17 February 2008 was not an act of the PISG, and was wholly different in nature from the normal business and procedure of the Assembly acting as one of the PISG. The Declaration of Independence was a particular act voted upon and signed by the participants gathered together in a very special meeting.

6.12. The understanding that this event was special was shared by the people of Kosovo. Once the holding of the extraordinary session was publicly announced by Prime

³⁶⁶ Constitutional Framework, Chapters 9.1.34-9.1.36 [Dossier No. 156].

³⁶⁷ Assembly of Kosovo, Special Plenary Session on the Declaration of Independence, 17 February 2008, Transcript, pp. 15-21 (Annex 2). See also the photographic reproduction at Annex 1.

³⁶⁸ Constitutional Framework, Chapter 9.1.44 [Dossier No. 156].

³⁶⁹ *Ibid.*, Chapters 9.1.39 ff.

Minister Thaçi, the people of Kosovo came together in the streets of Pristina and all over the country to celebrate their Independence Day. The next day, the United Nations Secretary-General commented on the celebrations in the following words:

“In much of Kosovo, there have been peaceful celebrations by tens of thousands welcoming the declaration.”³⁷⁰

II. The Declaration of Independence was made by the Democratically-Elected Leaders of the People of Kosovo

6.13. The exceptional nature of the Declaration of Independence is not only shown by the special circumstances of its adoption. The text and form of the Declaration also indicate that it was not “the Provisional Institutions of Self-Government” that made the Declaration, as suggested by the question contained in General Assembly resolution 63/3, but the democratically-elected representatives of the people of Kosovo.

6.14. The English and French translations of the Declaration of Independence included by the United Nations Secretariat in its Dossier³⁷¹ do not reflect the actual wording of the Declaration of Independence as read out (in Albanian), voted upon, and signed on 17 February 2008. In particular, the words “The Assembly of Kosovo ... Approves ...” (“*L’Assemblée du Kosovo ... Approuve ...*”) do not appear in the original text. The Republic of Kosovo draws the attention of the Court to the photographic reproduction of the original Declaration of Independence reproduced as **Annex 1** and its translation into English and French. This is the Declaration actually read out, voted upon, and signed during the extraordinary session of the Assembly on 17 February 2008³⁷².

6.15. As stated in its paragraph 1, the Declaration of Independence was an act of the “democratically-elected leaders of our people” (“*les représentants de notre peuple*,

³⁷⁰ Security Council, provisional verbatim record, sixty-third year, 5839th meeting, 18 February 2008, S/PV.5839, p. 2 [Dossier No. 119].

³⁷¹ Dossier No. 192.

³⁷² Assembly of Kosovo, Special Plenary Session on the Declaration of Independence, 17 February 2008, Transcript, pp. 11-14 (Annex 2). For a time, an incorrectly edited version of the Declaration appeared on the Assembly’s website, which now contains the correct version. The BBC had reproduced a correct English translation from the Albanian version, as read out, on its website as from 17 February 2008 (see <<http://news.bbc.co.uk/2/hi/europe/7249677.stm>>).

démocratiquement élus”), i.e., the people of Kosovo, in the name of the people. The preamble further made clear that these representatives acted in order to answer “the call of the people to build a society that honors human dignity and affirms the pride and purposes of its citizens”. Paragraph 1 of the Declaration stated in the same sense that “[t]his declaration reflects the will of our people”. This understanding was also confirmed by the representatives who addressed the meeting on 17 February 2008. The President of Kosovo affirmed in his speech that “[t]he declaration of independence is the will of the people”³⁷³. The people were indeed present in the streets and in front of the Assembly building days before the extraordinary meeting, calling for independence³⁷⁴.

6.16. Moreover, the entire Declaration was formulated in the first person plural showing that the Declaration was not made by the Assembly acting as one of the PISG, but by the representatives of the people of Kosovo. The first person plural was used consistently throughout the text, in the preamble as well as in the operative part of Declaration. Thus, the participles used in the preamble were in the plural³⁷⁵, not in the third person singular as would have been the case if the subject had been the Assembly and not the “democratically-elected leaders of our people”³⁷⁶. Similarly, the consistent use of the possessive adjective “*tonë*” or “*tanë*”³⁷⁷ and of the first person plural tense for the verbs in the main part of the Declaration³⁷⁸ shows that this act was drafted as a declaration of the representatives of the people, referred to in paragraph 1 of the Declaration as

³⁷³ Assembly of Kosovo, Special Plenary Session on the Declaration of Independence, 17 February 2008, Transcript, p. 8 (Annex 2).

³⁷⁴ See para. 6.04 above.

³⁷⁵ Contrary to the English language, the Albanian language distinguishes between the singular and plural of participles.

³⁷⁶ In the Declaration the following plural forms were used in the Albanian language: “*të mbledhur*” (first preambular paragraph) (convened), “*të zotuar*” (third preambular paragraph) (committed), “*të përkushtuar*” (fourth preambular paragraph) (dedicated) and “*të vendosur*” (thirteenth preambular paragraph) (determined). In addition, the Albanian original text uses the plural of the past participle “*krenarë*” (ninth preambular paragraph) (proud), a difference which is apparent in the French translation rendering the original by “*fiers*” instead of “*fière*” as it would have been grammatically correct if the subject had been the Assembly.

³⁷⁷ The possessive adjectives “*tonë*” and “*tanë*” are rendered in English by “our” and in French by “*notre*” ou “*nos*”: “*popullit tonë*” (fourth and thirteenth preambular paragraphs, and paragraph 1 of the Declaration) (“our people”/“*notre peuple*”), “*dëshirën tonë*” (fifth preambular paragraph and paragraph 11 of the Declaration) (“our wish/desire”/“*notre souhait*”), “*qytetarëve tanë*” (ninth preambular paragraph and paragraph 4 of the Declaration) (“our citizens”/“*nos citoyens*”), “*udhëheqësve tanë*” (eleventh preambular paragraph) (“our leaders”/“*nos représentants*”), “*zotimin tonë*” (Paragraph 4 of the Declaration) (“our commitment”/“*notre engagement*”), etc.

³⁷⁸ The original Albanian text consistently used the personal pronoun “*ne*” (“we” or “*nous*”).

“ne, udhëheqësit e popullit tonë, të zgjedhur në mënyrë demokratike” (“we, the democratically-elected leaders of our people”)/*“nous, les représentants de notre peuple, démocratiquement élus”*).

6.17. The text of the Declaration thus confirms that the Declaration was made by the representatives of the people of Kosovo, gathered together in a special and extraordinary meeting, and not by the PISG.

6.18. The special form of the Declaration also demonstrates that it was not an act of the PISG. As the photographic reproduction of the original Declaration shows clearly, it is hand-written on two large sheets of papyrus³⁷⁹. The Declaration bears more than 100 signatures, i.e., the signatures of the political leaders and all members of the Assembly present³⁸⁰. It is unlike anything that might have been issued by the PISG.

6.19. All these elements confirm that the representatives of the people who gathered together in the extraordinary meeting did not perceive themselves as acting that day as “the Provisional Institutions of Self-Government” under the Constitutional Framework. Instead, they met in order to express the will of the people they were elected to represent and by whom they were empowered to articulate such will. Even if in some respects they physically were not distinguishable from the “normal” PISG Assembly, they acted this day in a different way, in a different political and legal framework, as a constituent body giving voice to the will of the people to be independent.

6.20. Contrary to what may be thought from the terms of the question put to the Court, the Declaration of Independence was made in the name of the people of Kosovo, by their representatives meeting in an extraordinary session, as a constituent body in Pristina.

³⁷⁹ Annex 1 (pp. 207 and 209).

³⁸⁰ See para. 6.10 above.

III. The Content of the Declaration

6.21. The primary purpose of the Declaration of Independence was to express the will of the people of Kosovo to attain independence and to declare an independent and sovereign State. This was clearly expressed in paragraph 1 of the Declaration, which unequivocally states:

“We, the democratically-elected leaders of our people, hereby declare Kosovo to be an independent and sovereign state.”

6.22. However, the content of the Declaration of Independence was not limited to this proclamation. It also recalled the special historical circumstances that led to the Declaration. Furthermore, the people of Kosovo committed, through this Declaration, to core principles concerning the political and legal organization of the new Republic of Kosovo. Finally, by this Declaration, the people of Kosovo assumed full responsibility within the international community of States and undertook to fulfil their duties as one of its members.

A. THE HISTORICAL ELEMENTS OF THE DECLARATION

6.23. The Declaration underlined the specific circumstances which made independence inevitable. The preamble recalled that

“Kosovo is a special case arising from Yugoslavia’s non-consensual breakup and is not a precedent for any other situation”³⁸¹.

And the Declaration continued:

“Recalling the years of strife and violence in Kosovo, that disturbed the conscience of all civilized people,

.....

Honoring all the men and women who made great sacrifices to build a better future for Kosovo”³⁸²,

³⁸¹ Sixth preambular paragraph, Annex 1.

³⁸² Seventh and fourteenth preambular paragraphs.

and

“Recalling the years of internationally-sponsored negotiations between Belgrade and Pristina over the question of our future political status,

Regretting that no mutually-acceptable status outcome was possible, in spite of the good-faith engagement of our leaders”³⁸³.

6.24. In order to move forward and to overcome this tragic and painful past, the representatives of the people of Kosovo decided to declare independence “[d]etermined to see our status resolved in order to give our people clarity about their future, move beyond the conflicts of the past and realise the full democratic potential of our society”³⁸⁴. This solution is clearly seen by the people and in the terms of the Declaration as a step forward, and not as a mere punishment of the former rulers of Kosovo who had brought so much pain. Indeed, the representatives of the people committed themselves to “to confront the painful legacy of the recent past in a spirit of reconciliation and forgiveness”³⁸⁵.

B. COMMITMENT TO CORE PRINCIPLES CONCERNING THE POLITICAL AND LEGAL ORGANIZATION OF THE FUTURE STATE OF KOSOVO

6.25. One of the principal elements of the Declaration was the commitment of the people to core principles for the political and legal organization of the new State of Kosovo. As recalled in the preamble, the Declaration was issued in order to respond to “the call of the people to build a society that honors human dignity and affirms the pride and purpose of its citizens”³⁸⁶, a people “[d]edicated to protecting, promoting and honoring [its] diversity”³⁸⁷.

6.26. Consequently, paragraphs 2, 3 and 4 of the Declaration contained detailed and substantial commitments of the people of Kosovo concerning its future political and legal organization:

³⁸³ Tenth and eleventh preambular paragraphs.

³⁸⁴ Thirteenth preambular paragraph.

³⁸⁵ Third preambular paragraph.

³⁸⁶ Second preambular paragraph.

³⁸⁷ Fourth preambular paragraph.

- According to paragraph 2, the newly created State was to take the form of a “democratic, secular and multi-ethnic republic, guided by the principles of non-discrimination and equal protection under the law”. It should respect and promote the rights of all communities.
- Under paragraph 3, the people of Kosovo accepted fully, with regard to its internal political and legal organization, the Ahtisaari Plan which should be fully implemented.
- Finally, under paragraph 4, as under the Ahtisaari Plan, a constitution was to be adopted “as soon as possible” and “through a democratic and deliberative process”. This constitution was to lay down the commitment of the people of Kosovo to the respect for human rights as defined in the European Convention on Human Rights, as well as all relevant principles of the Ahtisaari Plan.

C. COMMITMENTS UNDER INTERNATIONAL LAW AS AN EQUAL MEMBER OF THE INTERNATIONAL COMMUNITY

6.27. The last set of provisions of the Declaration concerned the position of the people of Kosovo and of the newly independent State with regard to the international community.

6.28. The international community greatly assisted the people of Kosovo in recent years. The representatives were aware of this fact and thankful for this assistance:

“Grateful that in 1999 the world intervened, thereby removing Belgrade’s governance over Kosovo and placing Kosovo under United Nations interim administration”³⁸⁸.

6.29. It is not surprising that through the Declaration and in accordance with the Ahtisaari Plan, the people of Kosovo invited the international community to continue to exercise its various mandates in order to supervise the creation of the new State and the implementation of its objectives. They accepted this continuing international presence in the name of the newly sovereign State, the Republic of Kosovo, exercising its sovereignty by accepting commitments:

³⁸⁸ Eighth preambular paragraph.

“We welcome the international community’s continued support of our democratic development through international presences established in Kosovo on the basis of UN Security Council resolution 1244 (1999). We invite and welcome an international civilian presence to supervise our implementation of the Ahtisaari Plan, and a European Union-led rule of law mission. We also invite and welcome the North Atlantic Treaty Organization to retain the leadership role of the international military presence in Kosovo and to implement responsibilities assigned to it under UN Security Council resolution 1244 (1999) and the Ahtisaari Plan, until such time as Kosovo institutions are capable of assuming these responsibilities. We shall cooperate fully with these presences to ensure Kosovo’s future peace, prosperity and stability.”³⁸⁹

6.30. It was the declared objective, under paragraphs 6 and 7 of the Declaration, for Kosovo to integrate into the European family of democracies, through membership in the European Union and through Euro-Atlantic integration, as well as to participate in and to collaborate constructively with the United Nations.

6.31. The representatives of the people also called for the Republic of Kosovo to become a member of the international community as a fully sovereign State by assuming international obligations and responsibilities. Under paragraphs 8 to 11, the people of Kosovo committed to key international obligations, such as

- to abide by the principles of the United Nations Charter, the Helsinki Final Act and other acts and instruments of the OSCE³⁹⁰;
- to abide by international obligations concerning relations among States³⁹⁰;
- to respect its international boundaries (as enshrined in the Ahtisaari Plan), and the territorial integrity of all its neighbors³⁹⁰;
- to respect and honour the international obligations concluded on behalf of Kosovo by UNMIK and those resulting from the principles of State succession³⁹¹;
- to cooperate fully with the ICTY³⁹¹;

³⁸⁹ Paragraph 5 of the Declaration.

³⁹⁰ Paragraph 8 of the Declaration.

³⁹¹ Paragraph 9 of the Declaration.

- to participate actively as part of the international community through membership in international organizations in order to contribute to the pursuit of international peace and stability³⁹²;
- to commit to peace and stability in southeast Europe³⁹³ and, in particular, in its relations with the Republic of Serbia³⁹⁴, on the basis of reconciliation and good-neighbourliness.

6.32. All these commitments constitute key obligations under international law and demonstrate the firm will of the people of Kosovo to honour them as an independent and sovereign State. Indeed, “with independence comes the duty of responsible membership in the international community”³⁹⁵. This is underlined in paragraph 12 of the Declaration, which provides:

“We hereby affirm, clearly, specifically, and irrevocably, that Kosovo shall be legally bound to comply with the provisions contained in this Declaration, including, especially, the obligations for it under the Ahtisaari Plan. In all of these matters, we shall act consistent with principles of international law and resolutions of the Security Council of the United Nations, including resolution 1244 (1999). We declare publicly that all states are entitled to rely upon this declaration, and appeal to them to extend to us their support and friendship.”

6.33. As a result, the people of Kosovo, through their representatives, expressed their intention to create a sovereign and independent State bound by specific commitments, concerning the internal structure of the State as well as its international obligations. One cannot express more clearly the intent to assume such international obligations vis-à-vis the international community, and, by so doing, to join this community as an equal member. As the President of Assembly, Jakup Krasniqi, proclaimed after the Declaration of Independence was voted upon and signed:

³⁹² Paragraph 9 of the Declaration.

³⁹³ Paragraph 10 of the Declaration.

³⁹⁴ Paragraph 11 of the Declaration.

³⁹⁵ Paragraph 8 of the Declaration.

“And from this point on, the political position of Kosovo has changed. Kosovo is:
A REPUBLIC, AN INDEPENDENT, DEMOCRATIC AND SOVEREIGN STATE.”³⁹⁶

³⁹⁶ Assembly of Kosovo, Special Plenary Session on the Declaration of Independence, 17 February 2008, Transcript, p. 14 (Annex 2).

PART IV

THE LAW

CHAPTER VII

THE QUESTION IN THE REQUEST FOR AN ADVISORY OPINION

7.01. In resolution 63/3 of 8 October 2008, the General Assembly requested the Court to respond to the following question:

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

7.02. The resolution containing the request and the question was adopted virtually without debate in the General Assembly³⁹⁷, though there were contrary views expressed in the General Committee and in the plenary³⁹⁸. Serbia “declined to seek a consensual way forward”³⁹⁹ and refused to countenance any amendments. The Foreign Minister of Serbia, Mr. Jeremić, asserted that “[t]he question posed is amply clear and refrains from taking political positions on the Kosovo issue”. The draft resolution, he claimed, “is entirely non-controversial” and represented “the lowest common denominator of the positions of the Member States”. He even seemed to suggest that the drafting hardly mattered since “[w]e are confident that the Court will know what to do”⁴⁰⁰. In these circumstances, it is unsurprising that the drafting of the question is defective in a number of respects (**Section I**).

7.03. Despite being drafted in a prejudicial and argumentative manner, it is clear that the question addressed to the Court was designed to be and is a narrow one (**Section II**). The function of the Court, as a court of law and as the principal judicial organ of the United Nations, is to respond to the question posed (**Section III**) taking into account the context of the issuance of the Declaration (**Section IV**).

³⁹⁷ See paras. 1.06-1.08 above.

³⁹⁸ United Nations, *Official Records of the General Assembly, Sixty-third Session*, General Committee, 1st meeting, 17 September 2008, Summary Records (A/BUR/63/SR.1), para. 101 (France), paras. 103-104 (United Kingdom), paras. 105-106 (United States of America); *ibid.*, 22nd plenary meeting, 8 October 2008 (A/63/PV.22), p. 3 (United Kingdom) [Dossier No. 6]. See also *ibid.*, pp. 3-4 (Albania).

³⁹⁹ *Ibid.*, p. 3 (United Kingdom).

⁴⁰⁰ *Ibid.*, pp. 1-2.

I. The Prejudicial and Argumentative Formulation of the Question

7.04. The question as presented by the sole sponsor of resolution 63/3, i.e., the Republic of Serbia⁴⁰¹, presents a prejudicial and argumentative approach to the legal issue at the centre of these advisory proceedings. It contains several elements apparently intended to advance Serbia's own viewpoint, such as:

- the characterization of the Declaration of Independence as “unilateral”;
- the suggestion that the Declaration was made by “the Provisional Institutions of Self-Government of Kosovo”; and
- the unnecessary, and unjustified, implication that there are rules of international law governing the issuance of declarations of independence.

7.05. On the first point, the qualification of the declaration of independence as “unilateral” is superfluous and may have been intended to be prejudicial. Given the openly asserted position of the Republic of Serbia on the status of Kosovo, the adjective “unilateral” appears to have been intended to be merely a synonym for “illegal”⁴⁰². As the Representative of Albania said in the General Assembly:

“On another technical matter, the wording ‘unilaterally declared independence’: the word ‘unilateral’ is not a factual representation, but a biased interpretation. The legal act of declaration of independence may have different qualifiers. As the General Assembly is discussing an issue to be referred to the ICJ, biased rhetoric that deviates from a factual representation of the circumstances on the ground is not a good reflection on the competence of the General Assembly.”⁴⁰³

7.06. Furthermore, the adjective “unilateral” is particularly misleading in the present circumstances. The Declaration of Independence was made by the democratically-elected leaders of the people of Kosovo after extensive consultations and an extended process

⁴⁰¹ A/63/L.2 [Dossier No. 4]

⁴⁰² Republic of Serbia, Assembly Resolution following UN Special Envoy Martti Ahtisaari’s “Comprehensive proposal for the Kosovo status settlement” and continuation of negotiations on the future status of Kosovo-Metohija, 14 February 2007 (available at <http://www.mfa.gov.yu/Policy/Priorities/KIM/resolution_kim_e.html>).

⁴⁰³ United Nations, *Official Records of the General Assembly, Sixty-third Session*, 22nd plenary meeting, 8 October 2008 (A/63/PV.22), p. 4 (Albania) [Dossier No. 6].

involving States, international institutions and multilateral initiatives, which reached the conclusion that independence was the only viable option to resolve the status problem and to secure peace and stability in the region⁴⁰⁴.

7.07. Second, in so far as the question refers to the “declaration of independence by the Provisional Institutions of Self-Government of Kosovo”⁴⁰⁵, it is argumentative in its characterization of those who issued the Declaration of Independence of Kosovo. The Declaration of Independence was not an act of the Provisional Institutions of Self-Government of Kosovo, i.e., the Assembly, the President of Kosovo, the Government, courts, and other bodies and institutions set forth in the Constitutional Framework⁴⁰⁶, but, as the text, the form and the circumstances of its adoption make clear, was an act of the representatives of the people of Kosovo⁴⁰⁷.

7.08. Despite the wording of the question, it is clear that only the Declaration of Independence of 17 February 2008 is at issue in the proceedings now before the Court. First, only this declaration of independence exists as a matter of fact. Second, in the letter of the Permanent Representative of Serbia to the United Nations Secretary-General dated 15 August 2008⁴⁰⁸, the sponsor of the resolution actually requested inclusion on the agenda of the sixty-third session of the General Assembly of an item entitled “Request for an advisory opinion of the International Court of Justice on whether the unilateral *declaration of independence of Kosovo* is in accordance with international law”⁴⁰⁹. The item was included under this title in the General Assembly’s agenda (item 71) and discussed under this denomination⁴¹⁰. The argumentative description of those who issued the Declaration was only introduced later in the draft resolution presented by Serbia⁴¹¹,

⁴⁰⁴ See paras. 4.52-4.58 and 5.01-5.34 above. See also paras. 9.15-9.19 below.

⁴⁰⁵ Emphasis added.

⁴⁰⁶ Constitutional Framework, Chapter 1.5 and Chapter 9 [Dossier No. 156]. See also para. 6.01 above.

⁴⁰⁷ See paras. 6.03-6.20 above.

⁴⁰⁸ A/63/195 [Dossier No. 1].

⁴⁰⁹ Emphasis added.

⁴¹⁰ See United Nations, *Official Records of the General Assembly, Sixty-third Session*, 22nd plenary meeting, 8 October 2008 (A/63/PV.22) [Dossier No. 6].

⁴¹¹ See fn. 401 above.

apparently in order to advance Serbia's own arguments about the illegality of the Declaration.

7.09. Concerning the third point, the question as formulated by the sponsor seems to imply, wrongly, that there are rules of international law governing declarations of independence. To ask whether such a declaration is "in accordance" with international law appears to assume that international law regulates such declarations. This is not the case as will be explained in Chapter VIII below. It is for the Court to "identify the existing principles and rules"⁴¹². If there are none, then the question of conformity becomes moot.

7.10. These three points show that the question as drafted is far from being "entirely non-controversial" as was suggested by the Serbian Representative in the General Assembly⁴¹³. Contrary to Serbia's assertions, the question does not "refrain[] from taking political positions on the Kosovo issue"⁴¹³. It is respectfully submitted that these prejudicial and argumentative elements should not affect the Court's approach to these proceedings.

II. The Meaning of the Question

7.11. It is well established that the Court has the power, when facing lack of clarity in the drafting of a question, to interpret the request or to provide the necessary modifications⁴¹⁴ in order to "guide the United Nations in respect of its own action"⁴¹⁵ in a useful manner. However, the question formulated in General Assembly resolution 63/3 does not need to be reinterpreted, broadened or reformulated, as the Court has sometimes done⁴¹⁶. It is not, "on the face of it, at once infelicitously expressed and vague", as was the

⁴¹² *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 234, para. 13.

⁴¹³ United Nations, *Official Records of the General Assembly, Sixty-third Session*, 22nd plenary meeting, 8 October 2008 (A/63/PV.22), p. 2 (Serbia) [Dossier No. 6].

⁴¹⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, pp. 153-154, para. 38.

⁴¹⁵ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 19; *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 27, para. 41.

⁴¹⁶ *Jaworzina, Advisory Opinion, 1923, P.C.I.J., Series B, No. 8*, p. 19; *Interpretation of the Greco-Turkish Agreement of 1 December 1926 (Final Protocol, Article IV), Advisory Opinion, 1928, P.C.I.J., Series B*,

case of the question in the advisory proceedings concerning the *Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal*⁴¹⁷.

7.12. The question set forth in General Assembly resolution 63/3 is a narrow one. The General Assembly requested the Court to advise on whether the Declaration of Independence voted upon and signed on 17 February 2008 was “in accordance with international law”, whether it is “*conforme au droit international*”. It is clear that the Court is called to respond to the limited question whether the Declaration of Independence of 17 February 2008 contravened any applicable rule of international law⁴¹⁸. This is the ordinary meaning to be given to the terms of the question forth in General Assembly resolution 63/3.

7.13. In 1995, facing a comparable question of conformity with international law, i.e., the compatibility of the threat or use of nuclear weapons with the relevant principles and rules of international law, the Court explained that it

“must identify the existing principles and rules, interpret them and apply them to the threat or use of nuclear weapons, thus offering a reply to the question posed based on law”⁴¹⁹.

7.14. Concerning the present request, the Court’s task is identical. It has been asked to rule on the compatibility of the Declaration of Independence of Kosovo with international law. Accordingly, it is for the Court to “identify the existing principles and rules” of international law and, in case such rules exist, to “interpret them and to apply them” to the Declaration of Independence, being mindful of context⁴²⁰.

No. 16, pp. 15-16; *Admissibility of Hearings of Petitioners by the Committee on South West Africa, Advisory Opinion*, I.C.J. Reports 1956, p. 25; *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, *Advisory Opinion*, I.C.J. Reports 1962, pp. 157-162; *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, *Advisory Opinion*, I.C.J. Reports 1980, pp. 87-89, para. 34-36; *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal*, *Advisory Opinion*, I.C.J. Reports 1982, p. 348, para. 46.

⁴¹⁷ I.C.J. Reports 1982, p. 348, para. 46. See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion*, I.C.J. Reports 2004, p. 154, para. 38.

⁴¹⁸ See paras. 8.03-8.06 below.

⁴¹⁹ *Legality of the Threat or Use of Nuclear Weapons*, *Advisory Opinion*, I.C.J. Reports 1996, p. 234, para. 13.

⁴²⁰ See paras. 7.27-7.34 below.

7.15. As such, and subject to the three points noted in Section I above⁴²¹, there is no need to interpret the question.

III. The Power of the Court to Respond to this Question

7.16. As a court of justice and as the principal judicial organ of the United Nations, the Court, when exercising its advisory function, shall “guide the United Nations in respect of its own action”⁴²². This “represents [the Court’s] participation in the activities of the Organization”⁴²³.

7.17. Resolution 63/3 did not specify in what respect the question put to the Court would be useful to guide the General Assembly’s actions⁴²⁴. It merely asserts in its preamble that the Declaration of Independence of 17 February 2008 “has been received with varied reactions by the Members of the United Nations as to its compatibility with the existing international legal order”. Nor was the intention of the sponsor of resolution 63/3, the Republic of Serbia, expressed clearly.

7.18. In this regard, it is noteworthy that the sole sponsor of the resolution had previously tried to have the Declaration of Independence of Kosovo declared invalid by the political organs of the United Nations, in particular by the Security Council⁴²⁵. Only once

⁴²¹ See para. 7.04.

⁴²² *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 19; *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 27, para. 41.

⁴²³ *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71; *Difference relating to Immunity from Legal Process if a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, p. 78, para. 29.

⁴²⁴ See also the statements of the United Kingdom (Letter dated 1 October 2008 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the General Assembly, A/63/461, Annex, para. 4 [Dossier No. 5]; United Nations, *Official Records of the General Assembly, Sixty-third Session*, 22nd plenary meeting, 8 October 2008 (A/63/PV.22), p. 11 [Dossier No. 6]) and Germany (*ibid.*, p. 12). See also Australia (*ibid.*, p. 13) and Denmark (*ibid.*, p. 14).

⁴²⁵ See, e.g., Letter dated 12 February 2008 from the Permanent Representative of Serbia to the United Nations addressed to the President of the Security Council, S/2008/92 [Dossier No. 116] and Letter dated 17 February 2008 from the Permanent Representative of Serbia to the United Nations addressed to the President of the Security Council, S/2008/103 [Dossier No. 117]. See also Serbia’s intervention in the Security Council meetings (5839th meeting, 18 February 2008, S/PV.5839, pp. 4-6 [Dossier No. 119], 5850th meeting, 11 March 2008, S/PV.5850, pp. 2-5 [Dossier No. 120], 5917th meeting, 20 June 2008,

these attempts failed, did the Republic of Serbia decide to adopt an alternative route, “to transfer the issue from the political to the juridical arena”⁴²⁶.

7.19. The Republic of Serbia has chosen the way of advisory proceedings in order to influence the actions of Member States rather than the activities of the General Assembly. According to its Permanent Representative:

“The Republic of Serbia believes that an advisory opinion of the principal judicial organ of the United Nations — the International Court of Justice — would be particularly appropriate in the specific case of determining whether Kosovo’s unilateral declaration of independence is in accordance with international law.

.....

Many Member States would benefit from the legal guidance an advisory opinion of the International Court of Justice would confer. It would enable them to make a more thorough judgment on the issue.”⁴²⁷

7.20. The Court is certainly not a – or the – legal adviser of United Nations Member States. It is, according to Article 92 of the United Nations Charter, the principal *judicial* organ of the Organization, not of its Members. Describing its special function under the advisory jurisdiction, the Court pointed out in 1950:

“The Court’s Opinion is given not to the States, but to the organ which is entitled to request it; the reply of the Court, itself an ‘organ of the United Nations’, represents its participation in the activities of the Organization ...”⁴²⁸.

7.21. Even if the General Assembly has, under Article 96, paragraph 1, of the Charter, the power to request an opinion on “any” legal question, the Court needs to consider whether, in the circumstances of the present request, it should exercise its discretionary power to accede to the request, considering, in particular, that the request was

S/PV.5917, pp. 4-6 [Dossier No. 122], 5944th meeting, 25 July 2008, S/PV.5944, pp. 5-7 [Dossier No. 123].

⁴²⁶ Explanatory Memorandum, A/63/195, Annex [Dossier No. 1].

⁴²⁷ Letter dated 15 August 2008 from the Permanent Representative of Serbia to the United Nations addressed to the Secretary-General, A/63/195, Annex [Dossier No. 1].

⁴²⁸ *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71; *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, I.C.J. Reports 1989*, p. 188, para. 31; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 158, para. 47.

not made to assist the General Assembly in its work but as “legal advice” for Member States.

7.22. In the event the Court deems it appropriate to accede to the request of the General Assembly, it needs to bear in mind the specific and limited terms of the question. It is solely directed at the conformity of the Declaration of Independence with international law and cannot be used to broaden the issue before the Court, such as to submit, through the General Assembly, a dispute of the Republic of Serbia with the Republic of Kosovo or with each and every State that has recognized the Republic of Kosovo since 17 February 2008, that is, at the time this submission was completed, 56 States⁴²⁹.

7.23. Moreover, the General Assembly did not consider it appropriate to ask the Court to resolve a pending dispute, to rule on any *consequences* of the conformity or the absence of conformity of the Declaration with international law, still less to consider the question, which has been put to the Court in other advisory proceedings⁴³⁰, of the consequences for Member States of the lack of conformity of certain actions with international law.

7.24. The Court is equally not asked to advise on the legal status of the Republic of Kosovo as it exists at the time of the request, or at the time of the delivery of the advisory opinion. The General Assembly did not ask the Court whether the Republic of Kosovo was a State and if so when it became a State, or whether any of the subsequent recognitions (made on various dates from 18 February 2008 to the present) were contrary to international law. These are all different questions, which are not before the Court.

7.25. While the Court has the power to reformulate the question it is called to answer in advisory proceedings, it can only respond to the actual question put. The Court is not empowered, either under the United Nations Charter or under its own Statute, to pronounce itself, *proprio motu*, on any legal question it considers “interesting” or “relevant” for the

⁴²⁹ See para. 2.29.

⁴³⁰ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136.

conduct of international relations, nor to issue political advice such as calling for negotiations of one kind or another. The Court is not a general advisory body, and “being a Court of Justice, cannot, even in giving advisory opinions, depart from the essential rules guiding their activity as a Court”⁴³¹.

7.26. It follows that if, despite doubts relating to the propriety of the exercise of its advisory function in the present case⁴³², the Court accedes to the request of the General Assembly, it can only answer the question in its ordinary meaning as formulated by the General Assembly, the requesting body, in resolution 63/3.

IV. The Necessity to Take into Account the Context of the Declaration of Independence

7.27. In the General Assembly debate on the draft resolution proposed by the Republic of Serbia, several delegations expressed concerns related to the succinct formulation of the request and the lack of reference to the factual circumstances that led to the Declaration of Independence of 17 February 2008. The representative of Albania suggested in this regard:

“The intentional reduction of the complex issue of Kosovo into a simple aspect, namely, the legal one, is an attempt to establish a situation outside of its context, cutting it away from its root causes. In other words, it attempts to establish a false connection between cause and effect.”⁴³³

7.28. Canada also submitted that

“the referral put before us in resolution 63/3 and the frame of reference it purports to set for the International Court of Justice are unlikely to result in an advisory opinion that could usefully contribute to fostering stability in the region. At a minimum, the resolution would have benefited from the inclusion of additional context to reflect the unique circumstances of the case.”⁴³⁴

⁴³¹ *Status of Eastern Carelia, Advisory Opinion*, 1923, P.C.I.J. Series B, No. 5, p. 29. See also *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion*, I.C.J. Reports 1962, p. 155.

⁴³² See para. 7.21 above.

⁴³³ United Nations, *Official Records of the General Assembly, Sixty-third Session*, 22nd plenary meeting, 8 October 2008 (A/63/PV.22), p. 3 (Albania) [Dossier No. 6].

⁴³⁴ *Ibid.*, p. 11 (Canada).

7.29. The sponsor of resolution 63/3, the Republic of Serbia, however, did not consider it necessary to include any further explanations or guidance in the text of the request. Its Foreign Minister claimed during the debate that

“[t]he question posed is amply clear and refrains from taking political positions on the Kosovo issue”.

And the Foreign Minister continued:

“We believe that the draft resolution in its present form is entirely non-controversial. It represents the lowest common denominator of the positions of the Member States on this question, and hence there is no need for any changes or additions. Let us adopt it and allow the Court to act freely and impartially within the framework of its competencies. We are confident that the Court will know what to do, and that it will take into account the opinions of all interested Member States and international organizations. We hold that the most prudent way to proceed today is to adopt our draft resolution without opposition, in the same way that it was decided at the General Committee to include this item in the agenda.”⁴³⁵

7.30. However, the question formulated by the General Assembly is not an abstract one. The General Assembly asks the Court to evaluate the conformity with international law of the Declaration of Independence of Kosovo made on 17 February 2008, and not, abstractly, of any declaration of independence voiced by whatever entity. The present proceedings consequently do not involve an exercise of legal doctrine or a theoretical examination of legal rules and principles. If any relevant rules concerning declarations of independence exist, they will have to be applied to the particular factual and political situation of Kosovo, which led to the Declaration of Independence of 17 February 2008.

7.31. In its 1962 Advisory Opinion on *Certain Expenses of the United Nations*, the Court itself considered that the absence of certain elements in the request of the General Assembly, despite the wording of Article 65, paragraph 2, of the Statute, did not necessarily mean that the Court could not or must not take into account the context. On the contrary,

“[i]t is not to be assumed that the General Assembly would thus seek to fetter or hamper the Court in the discharge of its judicial functions; the Court must have full

⁴³⁵ United Nations, *Official Records of the General Assembly, Sixty-third Session*, 22nd plenary meeting, 8 October 2008 (A/63/PV.22), p. 2 (Serbia) [Dossier No. 6].

liberty to consider all relevant data available to it in forming an opinion on a question posed to it for an advisory opinion.”⁴³⁶

7.32. In its 2005 judgment in the *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* case, the Court pointed out that even if its task “must be to respond, on the basis of international law” to the legal dispute, in contentious proceedings, or to the question put by the General Assembly, in these advisory proceedings, “[a]s it interprets and applies the law, it will be mindful of context”⁴³⁷.

7.33. Consequently, the Court will need to address the question, as the representative of the United Kingdom emphasized in the General Assembly,

“against the background of the full context of the dissolution of Yugoslavia in so far as it affects Kosovo, starting with Belgrade’s unilateral decision in 1989 to remove Kosovo’s autonomy through to events of the present day”⁴³⁸.

7.34. The representative of the United States of America stressed that

“the Court will, understandably, have to look at the referred question with extreme care, taking into account the particular context in which the events leading to Kosovo’s declaration occurred. Kosovo must be viewed within the context of the violent dissolution of the former Yugoslavia in the 1990s. The policies of that period led the Security Council to adopt resolution 1244 (1999), which authorized the United Nations to administer Kosovo and called for a political process to determine Kosovo’s status. After intensive negotiations, the United Nations Special Envoy recommended to the Secretary-General that Kosovo become an independent State.”⁴³⁹

7.35. In summary, the question contained in General Assembly resolution 63/3 is in some important respects prejudicial and argumentative in its drafting, and was intended by the sole sponsor to present a one-sided view of the underlying legal issues. This should be disregarded by the Court. Nevertheless, the question is clear, and limited in scope:

⁴³⁶ *I.C.J. Reports 1962*, p. 156.

⁴³⁷ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, *I.C.J. Reports 2005*, p. 190, para. 26.

⁴³⁸ United Nations, *Official Records of the General Assembly, Sixty-third Session*, 22nd plenary meeting, 8 October 2008 (A/63/PV.22), p. 3 [Dossier No. 6]. See also Letter dated 1 October 2008 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the General Assembly, A/63/461, Annex, para. 6 [Dossier No. 5].

⁴³⁹ United Nations, *Official Records of the General Assembly, Sixty-third Session*, 22nd plenary meeting, 8 October 2008 (A/63/PV.22), p. 5 [Dossier No. 6].

whether the Declaration of Independence of 17 February 2008 contravened any applicable rule of international law. The Court has the power to respond to this question as it has been formulated, if it considers it proper to do so. In so doing, it should assess the conformity of the Declaration of Independence mindful of the context that led to the issuance of the Declaration.

CHAPTER VIII

THE DECLARATION OF INDEPENDENCE DID NOT CONTRAVENE ANY APPLICABLE RULE OF GENERAL INTERNATIONAL LAW

8.01. Chapter VII demonstrated that the question asked by the General Assembly is directed at the action of a particular entity on a particular day – the Declaration of Independence voted upon and signed by the representatives of Kosovo on 17 February 2008. The question put to the Court asks whether the Declaration was “in accordance with international law”, meaning whether the act of declaring independence is in violation of any applicable rule of international law.

8.02. As a threshold matter, the Court should conclude that for Kosovo’s Declaration to be not “in accordance with international law”, there would have to be a rule of international law *prohibiting* the issuance of a declaration of independence (**Section I**). Yet international law contains no such prohibition; rather, long-standing State practice, as well as practice in the context of the break-up of the former Yugoslavia itself, confirms that the issuance of a declaration of independence is viewed by States as a factual event not regulated by international law (**Section II**). That factual event, in combination with other events and factors may or may not over time result in the emergence of a new State. Given that international law contains no prohibition on the issuance of a declaration of independence, the Court need not reach the issue of whether the Declaration of Independence by the representatives of the people of Kosovo reflects an exercise of the internationally-protected right of self-determination, for there is no need to determine whether international law has *authorized* the people to seek independence (**Section III**).

I. For Kosovo’s Declaration of Independence to be not “in Accordance with International Law”, there must Exist a Rule of International Law *Prohibiting* its Issuance

8.03. The presumption is that conduct is permissible unless it is prohibited by a rule of international law. In answering the question now before the Court, it is thus necessary to identify a prohibition in international law against the issuance of a declaration of

independence; in the absence of such a prohibition, it cannot be said the Declaration of Independence of 17 February 2008 is not “in accordance with international law”.

8.04. From the *Lotus* case⁴⁴⁰ to the present, the Court’s jurisprudence indicates that when assessing the international legality of a contested action, the starting point is a presumption of permissibility, overcome only if it can be shown that the action is prohibited by treaty or customary international law. The Court reaffirmed this basic principle in the context of obligations imposed by the United Nations Charter, when it stated in the *Certain Expenses* advisory opinion that the purposes of the United Nations “are broad indeed, but neither they nor the powers conferred to effectuate them are unlimited. Save as they have entrusted the Organization with the attainment of these common ends, the Member States retain their freedom of action.”⁴⁴¹ In the *Nicaragua* case, the Court reaffirmed this principle in the context of whether international law regulated a State’s possession of armaments. There, the Court stated:

“in international law there are no rules, other than such rules as may be accepted by the State concerned, by treaty or otherwise, whereby the level of armaments of a sovereign State can be limited, and this principle is valid for all States without exception”⁴⁴².

8.05. Similarly, in the *Nuclear Weapons* advisory opinion, even though the General Assembly asked the Court whether the threat or use of nuclear weapons was “permitted” under international law, the Court conducted an analysis that principally looked for a prohibition, not an authorization, to possess or use nuclear weapons. Among other things, the Court noted that “State practice shows that the illegality of the use of certain weapons as such does not result from an absence of authorization but, on the contrary, is formulated in terms of prohibition”⁴⁴³. The Court’s conclusion that the threat or use of nuclear weapons would generally be contrary to international law did not turn on the lack of an authorization in international law; rather, it turned on “strict requirements” concerning the

⁴⁴⁰ S.S. “*Lotus*” (*France/Turkey*), 1927, *P.C.I.J., Series A*, No. 10, p. 18.

⁴⁴¹ *Certain Expenses of the United Nations (Article 17, Paragraph 2 of the Charter)*, *Advisory Opinion, I.C.J. Reports 1962*, p. 168.

⁴⁴² *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, *Merits, Judgment, I.C.J. Reports 1986*, p. 135, para. 269.

⁴⁴³ *Legality of the Threat or Use of Nuclear Weapons*, *Advisory Opinion, I.C.J. Reports 1996*, p. 247, para. 52.

conduct of warfare emanating from conventional and customary rules of international humanitarian law. Such reasoning is in accord with the general attitude of States. For example, in the *Nuclear Weapons* advisory opinion proceedings, the Russian Federation observed that “in virtue of the principle of sovereignty, we treat as generally admitted the presumption that the State may accomplish any acts which are not prohibited under international law. Basically, international law is a system of limitations, rather than permissions.”⁴⁴⁴

8.06. While such precedents speak principally to the residual freedom of States to act in the absence of a prohibition under international law, the same applies *a fortiori* to those that are not States, since the system of international law is primarily directed at the regulation of State activity. Indeed, it would be quite extraordinary to assert that a permissive rule of international law must be found before acts by individuals, corporations, non-governmental organizations, international organizations, or other non-State entities can be regarded as internationally lawful. International law simply does not seek to regulate most of the countless acts or omissions of non-State entities that occur on a daily basis, either directly or by judging the scope of their authority under national law. The Court itself acknowledged this in the *Barcelona Traction* case when addressing the conduct of the shareholders of a company, finding that “[i]nternational law may not, in some fields, provide specific rules in particular cases”⁴⁴⁵. Consequently, for the Court to find that the Declaration of Independence of 17 February 2008 was “not in accordance with international law”, it would be necessary for the Court to identify a prohibition in international law, applicable to and binding on the authors of the Declaration, that the issuance of the Declaration contravened.

⁴⁴⁴ Written Comments of the Russian Federation (19 June 1995), *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, p. 5. The views of scholars are also in accordance with this principle. For instance, Kelsen stated that “[i]f there is no norm of conventional or customary international law imposing upon the state ... the obligation to behave in a certain way, the subject is under international law legally free to behave as it so pleases; and by a decision to this effect existing international law is applied.” (H. Kelsen, *Principles of International Law* (2nd ed., 1966), pp. 438-439).

⁴⁴⁵ *Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970*, p. 38, para. 52.

II. There Is No Rule of International Law Prohibiting the Issuance of a Declaration of Independence

8.07. General international law does not prohibit the issuance of a declaration of independence, regardless of the circumstances under which that declaration occurs⁴⁴⁶. Numerous declarations of independence have been issued over hundreds of years, even in circumstances where a group is seeking to separate from the State to which it belongs without its consent, without those declarations being qualified as violations of international law. Indeed, State practice in the context of the Balkans during the 1990s confirms that international law generally does not prohibit the issuance of a declaration of independence, even in the face of a disapproving central government. There have been very rare and specific cases in which a declaration of independence was part of a broader effort to systematically deny fundamental rights, leading to condemnation by the Security Council or the General Assembly, but such circumstances are not present with respect to the 17 February 2008 Declaration of Independence now before this Court. Consequently, the Declaration did not contravene any applicable rule of international law and was in that sense “in accordance” with international law, since international law generally is not concerned with the legality of such a declaration.

A. THE ISSUANCE OF A DECLARATION OF INDEPENDENCE IS A FACTUAL EVENT NOT REGULATED BY GENERAL INTERNATIONAL LAW

8.08. International law on the creation of States regards an entity as meeting the requirements of statehood when certain factual conditions have been met, but does not contain any rule prohibiting persons or entities from seeking independence, nor from issuing a declaration of independence. Rather, international law identifies factual predicates by which an entity can become a State; it does not impose obligations until statehood is achieved. The factual conditions relating to the persons or entities prior

⁴⁴⁶ An entity may become independent from a predecessor State in many ways: by operation of national law allowing separation, sometimes referred to as “devolution”; by dissolution or dismemberment of a predecessor State, resulting in the establishment of two or more new States; or by departure of the entity from the parent State without the latter’s consent, sometimes referred to as “secession”.

to State formation, including a declaration of independence, are, in essence, pre-international law⁴⁴⁷.

8.09. The factual criteria for statehood are a defined territory, a permanent population, an effective government, and a capacity to enter into international relations⁴⁴⁸. An important component is the desire to be regarded as a State, often expressed through a declaration of independence or other act signifying a move toward statehood, one that may occur before, as, or after the “Montevideo” criteria are satisfied. The reactions of other States through the process of “recognition” are an important part of this process of State formation; other factors (a commitment to democracy, human rights, and the rule of law) have in recent times been regarded as significant for many States when considering whether, as a matter of political appreciation, to recognize a new State or not.

8.10. It is clear from the circumstances of Kosovo today that the Republic of Kosovo satisfies the factual criteria required for statehood⁴⁴⁹. But the Court is not called upon in these advisory proceedings to confirm Kosovo’s statehood, nor to advise more generally on the nature and scope of the factual conditions considered important when assessing a claim to statehood. As explained in Chapter VII, the question before the Court is directed exclusively at the issuance of the Declaration of Independence of 17 February 2008. Likewise, the Court is not asked to pass upon the legality of the Declaration of Independence under applicable national law. Rather, the question put to the Court is focused on the international legality of a non-State entity declaring independence, which may be answered by noting that a declaration of independence is one of many factual events along a factual continuum that can lead to State formation – an event which is not, by itself, regarded as lawful or unlawful under international law. Just as the extra-constitutional formation of a new government is generally neither prohibited nor

⁴⁴⁷ See, e.g., Conference of Yugoslavia, Arbitration Commission, Opinion No. 1, 29 November 1991, para. 1 (a) [Dossier No. 233] (“the existence or disappearance of the State is a question of fact.”); G. Abi-Saab, “Conclusion”, in M. Kohen (ed.), *Secession. International Law Perspectives* (2006), p. 471 (“the creation of the State from the standpoint of international law is always a legal fact and not a legal act, even when this fact is based on a legal act such as a treaty”).

⁴⁴⁸ Inter-American Convention on the Rights and Duties of States, 26 December 1933, Article 1, League of Nations, *Treaty Series (LNTS)*, vol. 165, p. 19 (“Montevideo Convention”).

⁴⁴⁹ See Chapter II above.

authorized by international law⁴⁵⁰, so too a declaration of independence is not prohibited by, and therefore does not contravene, general international law.

B. LONGSTANDING STATE PRACTICE CONFIRMS THAT THE ISSUANCE OF A DECLARATION OF INDEPENDENCE IS NOT REGULATED BY GENERAL INTERNATIONAL LAW

8.11. State practice confirms that there is no rule of international law prohibiting the issuance of a declaration of independence. Historically, numerous bodies have declared independence as a means of signaling their intention to create a new State. Some declarations of independence have succeeded over time, while others have failed. Yet the issuance of such declarations generally have not been regarded as either violating or not violating international law; they are instead treated as a factual development that, in conjunction with other circumstances, may or may not result in the emergence of a new State.

8.12. Thus, when the Second Continental Congress of the thirteen American colonies declared independence from Britain in July 1776, that act was not regarded by States, including Britain, as a violation of the law of nations⁴⁵¹. Rather, it was the fact of the declaration in conjunction with other facts, such as the colonial victories at Saratoga and Yorktown, that over time led to the conditions by which a State was formed and recognized as such by other States, thus conferring upon the United States rights and obligations under the law of nations. Other States, such as France in 1778, ultimately began recognizing the new State, as Britain did some seven years after the event upon conclusion of the Revolutionary War with the 1783 Treaty of Paris⁴⁵². Had the facts developed differently after the issuance of the declaration, the American move toward

⁴⁵⁰ See, e.g., *Tinoco Claims Arbitration (Great Britain v. Costa Rica)*, United Nations, *Reports of International Arbitral Awards (RIAA)*, vol. I, p. 381 (1923) (sole arbitrator William Howard Taft) (“To hold that a government which establishes itself and maintains a peaceful administration, with the acquiescence of the people for a substantial period of time, does not become a *de facto* government unless it conforms to a previous constitution would be to hold that within the rules of international law a revolution contrary to the fundamental law of the existing government cannot establish a new government. This cannot be, and is not, true.”)

⁴⁵¹ In lieu of an official response, the British Government secretly commissioned a lawyer and pamphleteer, John Lind, to publish a response entitled *Answer to the Declaration of the American Congress* (1776), which makes no argument that the declaration violated international law.

⁴⁵² D. Armitage, “The Declaration of Independence and International Law”, *William and Mary Quarterly*, vol. 59, January 2002, p. 60.

statehood might have been no different than other failed independence movements of the late eighteenth century.

8.13. Throughout the nineteenth century, other declarations of independence were also not seen as regulated by international law. For example, in September 1810, Hidalgo y Costilla declared independence for Mexico from Spanish rule. Though the declaration sparked a decade of war, the reaction by Spain and other States evinces no evidence that the declaration as such was regarded as violating international law. Instead, as was the case with the United States, other States began recognizing the new State of Mexico, including Spain by the 1821 Treaty of Córdoba⁴⁵³. Likewise, when the Brazilian regent-prince Pedro declared Brazil's independence from Portugal in September 1822, and thereafter established a constitutional monarchy, that declaration was also not regarded by other States as violating international law. Other States proceeded to recognize the new State of Brazil, including Portugal itself by treaty in 1825⁴⁵⁴. New Zealand's independence from Britain occurred over an extended period, but for present purposes the point is that the 1835 declaration of the independence, signed by the United Tribes of New Zealand, was not regarded as an unlawful act under international law by either Britain or other States⁴⁵⁵. Likewise, the 1847 Liberian declaration of independence, proclaiming that the Republic of Liberia was "a free, sovereign, and independent state", was not regarded as unlawful, marking the emergence of one of the earliest States in Africa⁴⁵⁶.

8.14. The same reactions to declarations of independence, in terms of their relationship to international law, may be seen in State practice throughout the twentieth century. For example, the 1918 declaration of independence of the Czechoslovak Nation⁴⁵⁷ was not seen by States as a violation of international law. Similarly, in April 1959, the Republic of the Mali Federation was formed by a union

⁴⁵³ See A.H. Chávez, *Mexico: A Brief History* (2006), pp. 104-16; B. Kirkwood, *The History of Mexico* (2000), pp. 80-88.

⁴⁵⁴ See R.J. Barman, *Brazil: The Forging of a Nation, 1798-1852* (1988), pp. 96-129; R. Cavaliero, *The Independence of Brazil* (1993), pp. 145-155.

⁴⁵⁵ K. Sinclair, *A History of New Zealand* (4th ed., 2000), pp. 53-58.

⁴⁵⁶ Ch.H. Huberich, *The Political and Legislative History of Liberia*, vol. I (1947), pp. 828-832; N. Azikiwe, *Liberia in World Politics* (1934), p. 67 ("Great Britain was the first great power to recognize ... [o]ther nations followed suit.")

⁴⁵⁷ G.J. Kovtun, *The Czechoslovak Declaration of Independence: A History of the Document* (1985), pp. 46-48.

between Senegal and French Sudan, which then achieved independence as a State from France in June 1960. In August of that year, authorities in Senegal declared their independence, thus seceding from the Federation and creating the Republic of Senegal⁴⁵⁸. Other States did not regard Senegal's declaration of independence as a violation of international law; instead, Senegal was ultimately admitted to the United Nations in 1960. Similarly, in March 1971, Sheikh Mujibur Rahman, a Bengali politician and leader of the Awami League (the largest East Pakistani political party), signed a declaration stating that: "Today Bangladesh is a sovereign and independent country". Although Pakistan viewed the declaration as unlawful under Pakistani law, States generally did not view this declaration as a violation of international law. The armed conflict that ensued, however, was of considerable concern to other States; the General Assembly adopted a resolution calling for an "immediate cease-fire and withdrawal of... armed forces", but issued no statement that the declaration of independence was not in accordance with international law⁴⁵⁹. Ultimately, the People's Republic of Bangladesh was recognized by many other States and admitted to the United Nations in September 1974.

8.15. More recently, in July 1992, the Slovak National Council declared Slovakia a sovereign State, beginning with the words: "We, the democratically elected Slovak National Council, hereby solemnly declare that the 1,000-year efforts of the Slovak nation are herewith successfully accomplished. In this historic moment, we declare the natural right of the Slovak nation to its own self-determination ..."⁴⁶⁰ That declaration was issued before the conclusion of negotiations with officials of the Czech and Slovak Federal Republic concerning the dissolution of the Federation. Indeed, only in November of 1992 did the Federal Parliament vote to dissolve the country, which occurred on 31 December 1992. During the period between the issuance of the Slovak National Council's declaration of independence and the conclusion of the "velvet divorce", no State regarded the Council's declaration as being unlawful under international law⁴⁶¹.

⁴⁵⁸ R. Higgins, "Legal Problems Arising From the Dissolution of the Mali Federation", in *Themes and Theories: Selected Essays, Speeches, and Writings in International Law* (2009), vol. 2, p. 747. One month later, Mali declared its own independence as the Republic of Mali.

⁴⁵⁹ General Assembly resolution 2793 (1971); see also J. Crawford, *The Creation of States in International Law* (2006), pp. 140-143.

⁴⁶⁰ CCPR/C/81/Add.9 (1996), para. 12.

⁴⁶¹ See S.K. Kirschbaum, *A History of Slovakia: The Struggle for Survival* (2005), pp. 269-270.

8.16. In short, in many instances, declarations of independence have been issued, even without the consent of existing governmental authorities, and such an act was not regarded by other States or the United Nations political organs as having violated international law. Rather, in such circumstances, over time and based on a sometimes lengthy continuum of facts, the entity was often established as an independent State if the relevant factual conditions were fulfilled.

8.17. Some of the examples mentioned above occurred in the context of “secession,” in which a State is formed by breaking away from a parent State without the latter’s consent. Though the circumstances under which other States will accept such a claim to statehood may be contentious, it remains the case that the attempt at secession, including any issuance of a declaration of independence, is simply not regulated by international law. As Professor Hersh Lauterpacht observed: “International law does not condemn rebellion or secession aiming at the acquisition of independence”⁴⁶². More recently, Professor James Crawford noted that “secession is neither legal nor illegal in international law, but a legally neutral act the consequences of which are regulated internationally”⁴⁶³. According to Professor Georges Abi-Saab, “if international law does not recognise a right of secession outside the context of self-determination …, this does not mean that it prohibits secession. Secession thus remains basically a phenomenon not regulated by international law.”⁴⁶⁴ The Supreme Court of Canada stated in its *Succession of Quebec* decision, “[i]nternational law contains neither a right of unilateral secession nor the explicit denial of such a right”⁴⁶⁵.

8.18. In very rare circumstances the Security Council or the General Assembly may condemn a broad effort aimed at State creation when it involves a systematic denial of fundamental rights or other egregious behavior, such as creating a State based upon

⁴⁶² H. Lauterpacht, *Recognition in International Law* (1947), p. 8.

⁴⁶³ J. Crawford, *op. cit.* (fn. 459), p. 390.

⁴⁶⁴ G. Abi-Saab, *op. cit.* (fn. 447), p. 474; see also T. Franck, “Opinion Directed at Question 2 of the Reference”, in *Commission d’étude des questions afférentes à l’accession du Québec à la souveraineté, Projet de Rapport* (1992), reprinted in, *Self-Determination in International Law: Quebec and Lessons Learned* (2000), p. 78, para. 2.9 (“while there may ordinarily be no *right* to secede, international law has long recognized a *privilege* of secession and has not in any way *prohibited* secession …”), and p. 79, para. 2.11 (“It cannot seriously be argued today that international law *prohibits* secession.”)

⁴⁶⁵ Secession of Quebec, [1998] 2 S.C.R. 217 (Can.), para. 112, reprinted in *I.L.M.*, vol. 37, 1998, p. 1340. Though a national tribunal, the Supreme Court was also construing international law.

apartheid or racial discrimination⁴⁶⁶. In the course of doing so, the political organs may denounce a declaration of independence as one part of that broad effort⁴⁶⁷. In those exceptional circumstances, the political organs may determine that the declaration is regarded by the United Nations as having no legal effect and may call upon other States not to recognize the emergence of a new State. The circumstances surrounding these rare incidents, however, bear no relationship to the circumstances of the 17 February 2008 Declaration of Independence, which provoked no condemnation from either the General Assembly or the Security Council. As discussed in detail in Chapters IV, V, and IX, Kosovo's Declaration occurred in the context of a lengthy period of United Nations administration of Kosovo and the UN-led final settlement process, which contemplated as one possibility the emergence of an independent State of Kosovo.

8.19. Given the lack of State practice supporting any prohibition in international law on the issuance of a declaration of independence, it is no surprise that relevant global and regional treaties contain no such prohibition. For example, there is no explicit or implied prohibition on the issuance of a declaration of independence in the United Nations Charter. While Article 2 (4) of the Charter prohibits Member States from using force against the territorial integrity of other Member States, that prohibition by both its ordinary meaning and its context is not addressing the issuance of a declaration of independence by a non-State entity. Likewise, the constituent instruments of the European Union, the African Union, the Organization of American States, and the League of Arab States contain no provisions prohibiting declarations of independence. Indeed, treaties generally do not seek to regulate non-State entities in such fashion; rather, they set out the rights and obligations of States that are parties to the treaty.

⁴⁶⁶ See, e.g., General Assembly resolution 2024 (1965), Security Council resolution 216 (1965) and Security Council resolution 217 (1965) (condemning efforts of a “racist minority” in southern Rhodesia); General Assembly resolution 31/6 (A) (1976); and Security Council resolution 402 (1976) (condemning efforts to create ten ethnically and linguistically divided homelands (bantustans) for black South Africans, as a means of implementing a policy of apartheid).

⁴⁶⁷ Even in these circumstances, the political organs do not find that the declaration of independence itself violated or was not in accordance with international law, nor are they required to do so. As Rosalyn Higgins has observed, the political organs react to a variety of circumstances that may threaten peace, but that do not necessarily entail a violation of the United Nations Charter, customary international law, or even general international law (R. Higgins, *The Development of International Law Through the Political Organs of the United Nations* (1963), p. 204; see also J.E. Alvarez, *International Organizations as Law-makers* (2005), p. 187 (“The Charter leaves its enforcement arm with considerable discretion to act whenever the ‘international peace’ is threatened, regardless of whether the threatening act violates international law . . .”)).

8.20. Similarly, non-binding instruments, such as the Helsinki Final Act, do not identify a commitment, legal or political, to permanent, unchanging territorial boundaries. Rather, the principles expressed in the Helsinki Final Act on “inviolability of frontiers” and “territorial integrity of States” are expressed in terms of States not “assaulting” each other’s frontiers and not using, or threatening to use, force against each other’s territory⁴⁶⁸. The principles are silent on the issue of whether and under what circumstances an entity within a member of the CSCE (now OSCE) might seek and acquire independence. Indeed, to the extent that the Helsinki Final Act speaks to the issue of Kosovo’s Declaration of Independence, the salient language is found in Principle VIII, which reads in part:

“By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.

The participating States reaffirm the universal significance of respect for and effective exercise of equal rights and self-determination of peoples for the development of friendly relations among themselves as among all States; they also recall the importance of the elimination of any form of violation of this principle.”

Thus, the principles expressed within the Helsinki Final Act recognize a variety of competing concepts – ones that seek to protect territory from external uses of force, but that also seek to promote human rights and the rule of law. As such, it is not possible to ascribe to the Helsinki Final Act a single fixed notion disfavoring the legality of a declaration of independence.

8.21. In sum, while rare circumstances can arise involving condemnation of heinous behaviour one part of which is an issuance of a declaration of independence, as a general matter States view declarations of independence as simply one fact in a series of factual circumstances, the totality of which over time may or may not result in the creation of a new State under international law. No individual fact in this continuum is generally regarded as being either authorized or prohibited by international law. Hence, a declaration of independence, such as that issued by the representatives of Kosovo on 17 February 2008, cannot be regarded as contravening international law.

⁴⁶⁸ Helsinki Final Act, Declaration on Principles Guiding Relations between Participating States, principles III and IV [Dossier No. 217].

**C. STATE PRACTICE RELATING TO THE BREAK-UP OF THE FORMER YUGOSLAVIA
CONFIRMS THAT THE ISSUANCE OF A DECLARATION OF INDEPENDENCE
IS NOT REGULATED BY GENERAL INTERNATIONAL LAW**

8.22. As discussed in Chapter V, the Declaration of Independence by the democratically-elected representatives of Kosovo and the emergence of Kosovo as a State was the final step in the process of break-up of the Socialist Federal Republic of Yugoslavia (SFRY). The Contact Group recognized in 2006 that Kosovo represents “the last major issue related to the breakup of Yugoslavia”⁴⁶⁹. Further, it found that the “character of the Kosovo problem” was shaped in part “by the disintegration of Yugoslavia”, and hence “must be fully taken into account in settling Kosovo’s status”⁴⁷⁰. That break-up resulted in the issuance of a series of declarations, none of which were regarded by other States or by this Court as inconsistent with international law, notwithstanding the claim by Serbia (or, depending on the relevant date, by the Belgrade-based SFRY or the FRY) that such entities remained a part of the SFRY.

8.23. Chapter III recounted how Slobodan Milošević, who had served as the Chairman of the Central Committee of the League of Communists of Serbia since 1986, in 1989 became President of Serbia. Milošević adhered to centralism and one party rule through the Yugoslav Communist Party, and he effectively ended the autonomy of the Kosovo and Vojvodina provinces. That action, in turn, served as the catalyst for the disintegration of the SFRY, since the other Republics regarded themselves as now clearly threatened by Serbian efforts to dominate the SFRY. When Belgrade began repressing Kosovo Albanian’s political and cultural rights, dismissing them from public positions, closing down their Albanian-speaking schools, and changing street signs into the Serbian Cyrillic alphabet – all as a part of abolishing Kosovo’s autonomous status and removing the rights of the people forming the majority – the other parts of the SFRY glimpsed their own future under Serbian dominance. Moreover, seizing control of Kosovo’s political institutions in 1989 was an important element in Serbia securing dominance over half the SFRY Federal Presidency’s eight votes (Serbia, Kosovo, Montenegro, and Vojvodina).

⁴⁶⁹ Contact Group Ministerial Statement, New York, 20 September 2006, para. 2 (available on <http://www.unosek.org/doctref/2006-09-20_-CG_Ministerial_Statement_New_York.pdf>).

⁴⁷⁰ Contact Group Statement, London, 31 January 2006, para. 2 (available on <http://www.unosek.org/doctref/fevrier/STATEMENT_BY_THE_CONTACT_GROUP_ON_THE_FUTURE_OF_KOSOVO - Eng.pdf>). See also para. 2.03 above.

8.24. As a direct consequence of these actions against Kosovo, Slovenia proposed amendments to the SFRY Constitution so as to secure greater autonomy from Belgrade, including an amendment that would expressly grant Slovenia the right to secede from the SFRY. When such proposals foundered, both Slovenia and Croatia moved instead toward independence.

8.25. On 25 June 1991, the Slovenian Assembly, meeting in Ljubljana, adopted “The Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia”, which in Article I stated: “The Constitution of the SFRY is no longer in force in the Republic of Slovenia.”⁴⁷¹ Further, the Assembly issued a declaration of independence, which began as follows:

“On the basis of the right of the Slovene nation to self-determination, of the principles of international law and the Constitution of the former SFRY and of the Republic of Slovenia, and on the basis of the absolute majority vote in the plebiscite held on December 23, 1990, the people of the Republic of Slovenia have decided to establish an independent state, the Republic of Slovenia, which will no longer be part of the Socialist Federal Republic of Yugoslavia.

On the basis of an unanimous proposal of all parliamentary parties and groups of delegates and in compliance with the plebiscitary outcome, the Assembly of the Republic of Slovenia has adopted the Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia at the sessions of all its chambers held on June 25, 1991.”⁴⁷²

The next day, 26 June 1991, President Milan Kučan declared Slovenia to be an independent State at a ceremony held in Trg Revolucije square, Ljubljana. The Serbian-dominated SFRY government then moved units of the Yugoslav People’s Army (JNA) against Slovenia, resulting in a ten-day war between the JNA and Slovenian military and paramilitary forces.

8.26. In similar fashion, on 25 June 1991, the newly-reorganized Parliament in Croatia adopted a “Constitutional Decision on the Sovereignty and Independence of the Republic of Croatia”, which established that by “this act, the Republic of Croatia initiates proceedings for disassociation from the other republics and from the SFRY. The Republic

⁴⁷¹ S. Trifunovska (ed.), *Yugoslavia Through Documents: From its Creation to its Dissolution* (1994), p. 291.

⁴⁷² *Ibid.*, p. 286.

of Croatia is initiating proceedings for international recognition.”⁴⁷³ At the same session of all the three chambers, the Parliament also passed the declaration of independence, entitled “Declaration on the Establishment of the Sovereign and Independent Republic of Croatia”⁴⁷⁴. In response, the Belgrade-based SFRY government moved its forces against Croatia, with full-scale fighting continuing until November 1991, when the United Nations Protection Force (UNPROFOR) deployed to Croatia.

8.27. The Serbian-dominated SFRY declared that the two declarations of independence violated both the law of the SFRY and its “territorial integrity”⁴⁷⁵, a pattern that would repeat itself with respect to declarations issued by the other parts of the former Yugoslavia, including ultimately Kosovo. Specifically, the SFRY Presidency stated

“that the Republics of Slovenia and Croatia declared independence and sovereignty by unilateral unconstitutional acts that cannot produce immediate constitutional-legal consequences. These acts constitute a flagrant violation of the territorial integrity of the SFR of Yugoslavia and its State borders and as such are liable to all the consequences envisaged in the constitutional-legal system of the protection of the territorial integrity. . . .

By their secessionist acts Slovenia and Croatia pose a direct threat to the territorial integrity of Yugoslavia, which is the only subject recognized in international law, the constituent parts of which are these Republics.

The Presidency of the SFR of Yugoslavia therefore warns that the SFR of Yugoslavia will consider every attempt to recognize these acts of Slovenia and Croatia as flagrant interference into its internal affairs, as an act directed against its international subjectivity and territorial integrity. In such a case it will resort to all available means recognized in international law.”⁴⁷⁶

Thus, from Belgrade’s perspective, these declarations were “secessionist” acts that threatened the SFRY as a territorial unit “recognized under international law.” Yet other States did not react to the declarations of independence by condemning them as violations of the SFRY’s territorial integrity or as violations of international law generally. This confirms the practice of States in not regarding such declarations *per se* as violating international law.

⁴⁷³ S. Trifunovska, *op. cit.* (fn. 471), p. 300.

⁴⁷⁴ *Ibid.*, p. 301.

⁴⁷⁵ *Ibid.*, p. 353.

⁴⁷⁶ *Ibid.*, pp. 353-354; see also *ibid.*, p. 305 (SFRY Presidency statement that the two declarations of independence directly threaten SFRY’s “territorial integrity” and “its sovereignty according to international law”).

8.28. Further confirmation that international law does not generally speak to the legality of such declarations may be seen in the circumstances surrounding the conclusion of the 7 July 1991 Joint Declaration at Brioni (Brioni Agreement)⁴⁷⁷, a result of negotiations sponsored by the European Union and involving representatives from Slovenia, Croatia, and the SFRY. The Brioni Agreement was successful in ending armed conflict between the SFRY forces and Slovenia. Though it also sought to secure the withdrawal of SFRY forces from Croatia, the Agreement failed in that respect. However, in exchange for the SFRY's promises to remove its forces from both Slovenia and Croatia, the Brioni Agreement adopted a three-month suspension of the Slovenian and Croatian declarations of independence. Nothing in the Agreement characterizes these declarations as unlawful under international law. When the three-month period of negotiations envisaged by the Brioni Agreement came to an end, Slovenia and Croatia announced the reassertion of their independence. Again, instead of asserting the illegality under international law of such declarations, States viewed the resumed declarations as factual events that needed to be assessed in conjunction with other events and factors in order to determine whether in fact two new States existed.

8.29. A similar reaction occurred with respect to Macedonia's declaration of independence on 18 September 1991⁴⁷⁸ and Bosnia and Herzegovina's declaration of "sovereignty" of October 1991 (followed by its declaration of independence of March 1992). Here, too, issuance of these declarations was opposed by the SFRY and Serbia. Indeed, before this Court, the FRY argued in 1995 that Bosnia and Herzegovina was not qualified to become a party to the Genocide Convention because it had not obtained its independence in conformity with an "imperative rule of international law" – the "principle of equal rights and self-determination of peoples"⁴⁷⁹. Rather, the FRY stated to the Court that it "believes that the acts whereby the Applicant State was constituted as an indepent (*sic*) state are in contravention of the rules of international law"⁴⁸⁰. Yet other

⁴⁷⁷ S. Trifunovska, *op. cit.* (fn. 471), p. 311.

⁴⁷⁸ *Ibid.*, p. 345.

⁴⁷⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections of the Federal Republic of Yugoslavia*, June 1995, p. 4.

⁴⁸⁰ *Ibid.*, p. 111.

States did not regard the declarations as violating international law, instead seeing them as factual events to be assessed in conjunction with other events and factors.

8.30. The reaction of European States to these declarations by Bosnia and Herzegovina, Croatia, Macedonia, and Slovenia is instructive. Rather than regarding the declarations of independence as *per se* unlawful under international law (or even the issuance of such a declaration as an event that must be determined as either lawful or unlawful), European States instead initiated a political process for assessing whether new States should be recognized. On 16 December 1991, the European Council adopted Guidelines to be applied in considering the emergence of new States in Eastern Europe and in the Soviet Union⁴⁸¹ and issued a Declaration on Yugoslavia⁴⁸². Neither instrument indicated any belief that the existing declarations of independence by the Republics were unlawful; instead, they demonstrate a belief that the declarations were simply factual events that must now be considered as a political matter by European States. Under the political process established by the Declaration, “all Yugoslav Republics” were invited to file “applications” by 23 December 1991, to indicate whether they wished to be regarded as independent States, and to state whether they accepted the commitments contained in the EC Guidelines. Notably, the EC Guidelines made reference to the provisions of the United Nations Charter, the Helsinki Final Act, and the Charter of Paris, but those references did not indicate a rigid adherence to pre-existing international boundaries, let alone a prohibition on declarations of independence. Rather, the reference to those instruments expressed a range of European concerns, including promoting the rule of law, democracy, human rights, and stability of borders. Indeed, such principles ultimately were not the basis for denying statehood to new entities, but the touchstone for those entities in expressing their commitment to international legal principles as part of their passage into statehood.

8.31. This process unfolded under the direction of the European Community Conference on Yugoslavia (ECCY) (which in August 1992 became the International Conference on the Former Yugoslavia (ICFY)), under the chairmanship of Lord

⁴⁸¹ European Community, Declaration of the European Council on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, 16 December 1991 [Dossier No. 232].

⁴⁸² European Community, Declaration on Yugoslavia, 16 December 1991, reprinted in M. Weller, *op. cit.* (fn. 165), p. 81; *E.J.I.L.*, vol. 4, 1993, p. 73.

Carrington. Over the course of time, European (and non-European) States came to a political judgment that Bosnia and Herzegovina, Croatia, Macedonia, and Slovenia were entities that had emerged as new States. The paths of these new States in consolidating their statehood and securing admission to the United Nations were not identical, but the overall proposition – that their declarations of independence were viewed as factual events and not as actions regulated by international law – was true for each of them. For example, the first recognitions of Slovenia and Croatia came from Germany, Iceland, Ukraine, and the Vatican in late 1991, followed in mid-January 2002 by the recognition of some thirty other countries in Europe. In April 1992, the United States recognized the two new States, and ultimately they were admitted to the United Nations in May 1992.

8.32. In short, during the period between the issuance of Slovenia's and Croatia's declarations of independence in June 1991 and their admission to the United Nations almost a year later, there was no suggestion in the practice of States that those declarations and their issuance constituted a violation of international law, nor that they were even acts that international law sought to regulate. Rather, taking into account the fact of the declarations, in conjunction with other facts, States over time viewed Slovenia and Croatia as having emerged as independent States. A similar overall result occurred with respect to Bosnia-Herzegovina and Macedonia.

8.33. The representatives in the Kosovo Assembly issued a declaration in September 1991 proclaiming Kosovo “as a sovereign and independent state, with the right to participate as a constituent republic in Yugoslavia, on a basis of freedom and equality”⁴⁸³. The 16 December European Council Declaration on Yugoslavia, however, indicated a political decision on the part of European States only to invite “Yugoslav Republics” to apply for recognition as independent States, given the focus at that time on the armed conflict that had occurred in Croatia and Slovenia, and that would soon break out in Bosnia and Herzegovina. Consequently, when the Kosovo Assembly in December 1991 requested that Lord Carrington include Kosovo in the European political process for recognition⁴⁸⁴, he did not act upon that request. As noted, the European

⁴⁸³ Resolution of the Assembly of the Republic of Kosova on Independence, 22 September 1991, in M. Weller, *op. cit.* (fn. 165), p. 72. That factual event was also not regulated by international law.

⁴⁸⁴ Letter from Dr. Rugova to Lord Carrington, Peace Conference on Yugoslavia, 22 December 1999, in M. Weller, *op. cit.* (fn. 165), p. 81.

Council Declaration had limited the political process to applications by existing republics, of which Kosovo was not one. Of course, the vast array of commitments that have now been made by Kosovo in its Declaration of Independence of 17 February 2008⁴⁸⁵ and the Constitution of the Republic of Kosovo in fulfillment of the Ahtisaari Plan⁴⁸⁶ fully meet the standards set in the European Council Guidelines, as evidenced by the recognition that Kosovo has received from most European Union Member States.

8.34. To assist in the political process of determining whether new States had emerged, European States in 1991 established a commission composed of the presidents of some of their Constitutional Courts, under the chairmanship of Robert Badinter (commonly referred to as the “Badinter Commission”). Over the course of many months, the ICFY asked the Badinter Commission a series of specific questions, resulting in several opinions from the Commission providing legal guidance on the formation of States in the former Yugoslavia. For the reason indicated above⁴⁸⁷, none of the questions asked by the ICFY to the Commission related to Kosovo and consequently the Commission issued no opinions on Kosovo’s status. Nevertheless, two key elements of the Badinter Commission opinions may be of assistance to the Court when answering the question currently before it.

8.35. First, in Badinter Commission Opinion 1, issued in November 1991, the Commission’s advice on the nature of the changes in sovereignty that were occurring in the SFRY did not view the declarations of independence as acts capable of being internationally wrongful. The Commission noted that it was informed of the positions of Bosnia and Herzegovina, Croatia, Macedonia, Slovenia, Serbia, and the SFRY, and that the Commission’s advice “should be based on the principles of public international law which serve to define the conditions on which an entity constitutes a state ...”⁴⁸⁸. The Commission noted that “the Republics have expressed their desire for independence”, and expressly listed the declarations of independence as part of the acts conveying that desire:

⁴⁸⁵ See paras. 6.25-6.33 above.

⁴⁸⁶ See paras. 2.17-2.57 above.

⁴⁸⁷ See para. 8.33 above.

⁴⁸⁸ Conference of Yugoslavia, Arbitration Commission, Opinion No. 1, 29 November 1991, preamble and para. 1 (a) [Dossier No. 233].

- “– in Slovenia, by a referendum in December 1990, followed by a declaration of independence on 25 June 1991, which was suspended for three months and confirmed on 8 October 1991;
- in Croatia, by a referendum held in May 1991, followed by a declaration of independence on 25 June 1991, which was suspended for three months and confirmed on 8 October 1991;
- in Macedonia, by a referendum held in September 1991 in favour of a sovereign and independent Macedonia within an association of Yugoslav States;
- in Bosnia and Herzegovina, by a sovereignty resolution adopted by Parliament on 14 October 1991 ...”⁴⁸⁹

Although the Belgrade-based SFRY had maintained that such declarations of independence violated international law, the Badinter Commission made no such finding, nor even saw the declarations as acts that might be found wrongful under international law. Instead, the Commission took the approach that “in this respect, the existence or disappearance of the State *is a question of fact*”, one that other States would acknowledge through the process of recognition⁴⁹⁰. The Commission essentially reiterated this point in Opinion 3, when it stated that “Croatia and Bosnia-Herzegovina, *inter alia*, have sought international recognition as independent States” and that this fact was part of “a fluid and changing situation”⁴⁹¹. Ultimately, in making its recommendations as to whether these entities should be recognized by States, the Commission issued a series of opinions which in no respect characterized the declarations of independence as acts that *per se* might be internationally wrongful⁴⁹².

8.36. Second, the Commission’s unwillingness to view the declarations of independence as capable of being internationally wrongful cannot be explained on the basis that the SFRY had dissolved, since at the time of Opinions 1 to 3, the Commission did not regard the SFRY as having dissolved (nor did the SFRY authorities in Belgrade). Rather, the Commission regarded the SFRY as *still existing*, since it “has until now

⁴⁸⁹ Conference of Yugoslavia, Arbitration Commission, Opinion No. 1, 29 November 1991, para. 2 (a) [Dossier No. 233].

⁴⁹⁰ *Ibid.*, para. 1 (a) (emphasis added).

⁴⁹¹ Conference of Yugoslavia, Arbitration Commission, Opinion No. 3, 11 January 1992, para. 1, *I.L.M.*, vol. 31, 1992, p. 1499; *E.J.I.L.*, vol. 3, 1992, p. 185.

⁴⁹² Those opinions – Opinion No. 4 (Bosnia and Herzegovina), Opinion No. 5 (Croatia), Opinion No. 6 (Macedonia), and Opinion No. 7 (Slovenia) – were published on 11 January 1992, and appear at *I.L.M.*, vol. 31, 1992, p. 1501; *E.J.I.L.*, vol. 4, 1993, p. 74.

retained its international personality”⁴⁹³. Though the SFRY was “in the process of dissolution”, it was still possible for “those Republics that so wish, to work together to form a new association endowed with the democratic institutions of their choice”⁴⁹⁴. Hence, even though the SFRY was not yet dissolved, there was still no consideration that the declarations of independence might be unlawful under the “principles of public international law” being applied by the Commission. Instead there was an implicit acceptance by the Commission that there existed an ongoing continuum of facts that had to develop in order, eventually, to resolve issues of statehood.

8.37. The practice of States in assessing the declarations of independence in the early 1990s by the Republics of the former Yugoslavia confirms the overall proposition that general international law does not prohibit the issuance of a declaration of independence. Kosovo’s Declaration of Independence represents the final stage in this series of declarations of independence by the constituent units of the SFRY. As discussed in Chapter III, Kosovo’s status under the 1974 Constitution of the SFRY was one in which Kosovo as a Federal unit had the same fundamental governance rights as the several republics—such as the ability to veto constitutional amendments, the right for its territory not to be altered without its consent, the right to be represented in the SFRY Assembly, and the right to have a member on and preside over the Federal Presidency on a rotating basis. The extraordinary events from 1988 onward led those Republics to declare independence, just as those events in conjunction with the catastrophe of 1998-1999 and its aftermath ultimately led Kosovo to declare independence as well. In none of these instances was the declaration of independence an act the legality of which was regulated by international law. International law provided a framework for considering whether certain factual conditions were present for the creation of a State, and provided certain important principles relating to democracy, rule of law, and human rights that guided other States in recognizing the new entities, but international law was not seen as specifically addressing the legality of the declarations of independence. Such practice confirms that, in the matter now before this Court, Kosovo’s Declaration of Independence did not contravene international law.

⁴⁹³ Conference of Yugoslavia, Arbitration Commission, Opinion No. 1, 29 November 1991, para. 2 (a) [Dossier No. 233].

⁴⁹⁴ *Ibid.*, para. 3.

III. The Court Need Not Reach the Issue of the Right of Self-Determination in this Proceeding

8.38. The Court is not obliged to reach the issue of whether the Declaration of Independence by the representatives of the people of Kosovo reflected an exercise of the internationally-protected right of self-determination, for there is no need to determine whether international law authorized Kosovo to seek independence.

8.39. The right of self-determination has been articulated in various United Nations resolutions and human rights treaties⁴⁹⁵. In its jurisprudence, this Court has acknowledged the existence of a right of self-determination⁴⁹⁶, including in situations unrelated to decolonization⁴⁹⁷. Other international bodies have also acknowledged the existence of such a right in appropriate circumstances⁴⁹⁸. None of these sources views a declaration of independence as *per se* a violation of international law.

8.40. While the exact contours of any right of self-determination have not been articulated by this Court, the authorities noted above may be read as identifying two key components that permit the exercise of the right: the existence of a “people”; and the demonstrated inability of that people to be protected within a particular State, given prior abuses and oppression by that State’s government. The people of Kosovo are distinct, being a group of which 90 percent are Kosovo Albanians, who speak the Albanian

⁴⁹⁵ See, e.g., General Assembly resolution 2625 (1970), “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations” (principle of equal rights and self-determination of all peoples) [Dossier No. 226]; International Covenant on Civil and Political Rights, 1966, Article 1 (1) [Dossier No. 211]; International Covenant on Economic, Social and Cultural Rights, 1966, Article 1 (1) [Dossier No. 212].

⁴⁹⁶ See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, I.C.J. Reports 1971, p. 31; *Western Sahara*, *Advisory Opinion*, I.C.J. Reports 1975, pp. 31-35; *East Timor (Portugal v. Australia)*, *Judgment*, I.C.J. Reports 1995, p. 102, para. 29.

⁴⁹⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion*, I.C.J. Reports 2004, pp. 182-183, para. 118; see also *Separate Opinion of Judge Higgins*, *ibid.*, p. 214, para. 29 (referring to the “substantial body of doctrine and practice on ‘self-determination beyond colonialism’.”)

⁴⁹⁸ See, e.g., Report of the International Committee of Jurists upon the Legal Aspects of the Åland Islands Question, League of Nations, *O.J. Spec. Supp.* 3, p. 5 (1920); African Commission on Human and Peoples’ Rights, *Communication 75/92, Katangese Peoples’ Congress v. Zaire*, para. 26 (1995); Secession of Quebec, [1998] 2 S.C.R. 217 (Can.), paras. 122, 126, 133, 134 and 138 (finding a right of “external self-determination” in situations “where a definable group is denied meaningful access to government to pursue their political, economic, social, and cultural development.”)

language, and who mostly share a Muslim religious identity. The Security Council itself has referred to the “people of Kosovo”⁴⁹⁹. Further, the prior infliction of massive human rights abuses and crimes against humanity by the Serbian authorities upon the people of Kosovo, are well-known and well-documented, as demonstrated by the February 2009 ICTY Judgment in *Milutinović et al.*⁵⁰⁰, and have been condemned by the General Assembly⁵⁰¹, the Security Council⁵⁰², and many other international bodies⁵⁰³. The continued denial by Serbia of representative government to Kosovo was recently demonstrated by the failure of Serbia to invite Kosovo-Albanian representatives to the drafting of the 2006 Constitution of Serbia, nor to give them a chance to express themselves upon it (only Kosovo Serbs were allowed to participate in the referendum). In these circumstances there can be no doubt that the people of Kosovo were entitled to the right of self-determination.

8.41. Yet, as indicated above, to answer the General Assembly’s question, it is sufficient for the Court to confirm that international law does not prohibit the issuance of a declaration of independence, and instead leaves the emergence of statehood to certain factual developments. Consequently, the General Assembly’s question may be answered by finding that Kosovo’s Declaration did not contravene international law, without passing upon whether the people of Kosovo were authorized by international law to exercise a right of self-determination by seeking independence.

IV. Kosovo’s Ability to Exercise Inter-State Relations Is Now Part of a *Political Process of Recognition and Membership in International Organizations, a Process to Which the Court Has Previously Deferred*

8.42. The Declaration of Independence of 17 February 2008 is a fact that, standing alone, is neither lawful nor unlawful under international law. As noted in Chapter VII above, the Declaration and only the Declaration is the subject of the question addressed to the Court. The political process of recognitions and other developments since the

⁴⁹⁹ Security Council resolution 1244 (1999), para. 10 [Dossier No. 34].

⁵⁰⁰ See paras. 3.29-3.37 and paras. 3.47-3.60 above.

⁵⁰¹ See, e.g., General Assembly resolutions 49/204, 23 December 1994, and 50/190, 22 December 1995.

⁵⁰² See, e.g., Security Council resolutions 1160 (1998) [Dossier No. 9] and 1199 (1998) [Dossier No. 17].

⁵⁰³ See paras. 3.34, 3.55-3.60 above.

Declaration, outlined in Chapter II above, are not before the Court in these proceedings. States individually and through international organizations are now in the process of deciding what further legal effect to give to Kosovo's claim to statehood. This Court has previously extended considerable deference to such processes, seeing them as political ones that are left by international law to the individual judgment of States and international organizations, not one that calls for judicial intervention. Thus, in the Court's Advisory Opinion on *Admission of States*, the Court spoke of the Charter entrusting to the political organs the ability to make judgments on matters of admission, subject to the conditions laid down in the Charter⁵⁰⁴.

8.43. Indeed, even in the context of declarations of independence in the Balkans, the Court has previously stated that the political decision of admitting a State to membership in the United Nations in essence *cures* any possible prior defects in the declaration. In Section II (C) above⁵⁰⁵, it was noted that in 1995 the FRY argued before this Court that Bosnia and Herzegovina had not obtained its independence in conformity with an "imperative rule of international law" – the "principle of equal rights and self-determination of peoples" – all for the purpose of establishing that Bosnia and Herzegovina was not qualified to become a party to the Genocide Convention⁵⁰⁶. The Court considered the FRY's position, but then found that since Bosnia and Herzegovina had been admitted to the United Nations, "the circumstances of its accession to independence are of little consequence"⁵⁰⁷. This finding is consistent with the views of the Supreme Court of Canada, which stated that a unilateral secession, even if it were regarded as illegal, could be successful if recognized by the international community⁵⁰⁸.

8.44. In sum, rather than viewing a declaration of independence as a single moment of either legality or illegality, the Court has allowed subsequent political processes to

⁵⁰⁴ *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*, *Advisory Opinion*, I.C.J. Reports 1948, p. 57.

⁵⁰⁵ See para. 8.29.

⁵⁰⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Preliminary Objections of the Federal Republic of Yugoslavia, June 1995, pp. 4, 81-82, 89 and 103-116.

⁵⁰⁷ I.C.J. Reports 1996, p. 611, para. 19.

⁵⁰⁸ Secession of Quebec, [1998] 2 S.C.R. 217 (Can.), para. 141, reprinted in *I.L.M.*, vol. 37, 1998, p. 1340.

unfold, in which States and international organizations investigate, assess, and react to factual claims of statehood, and thereby through those processes determine the long-term legal effects of such a declaration. The Court should follow the same approach here.

CHAPTER IX

THE DECLARATION OF INDEPENDENCE DID NOT CONTRAVENE SECURITY COUNCIL RESOLUTION 1244 (1999)

9.01. In various public statements, the Government of Serbia has asserted that the Declaration of Independence of 17 February 2008 by the democratically elected representatives of Kosovo contravened Security Council resolution 1244 (1999) of 10 June 1999. Yet there is no language within either the preamble or the operative paragraphs of resolution 1244 that prohibits the issuance of such a declaration; rather, the resolution envisages the unfolding of a political process in which *either* Kosovo's independence *or* autonomy within Serbia might result.

9.02. That resolution 1244 (1999) did not prohibit the issuance of a declaration of independence is understandable given that the Security Council, in exercising its Chapter VII powers, normally issues resolutions that impose obligations upon *States*⁵⁰⁹. On some occasions, the Security Council has turned its attention to the conduct of persons or non-state entities, but it always does so in express and clear terms, and even then, as a legal matter, the resolution imposes obligations not directly upon the person or entity, but upon States to take steps against or impose sanctions upon those concerned⁵¹⁰.

9.03. The Court need look no further than the Security Council's practice with respect to the Balkans in the 1990s to see that resolution 1244 (1999) did not address itself to, let alone prohibit, the issuance of a declaration of independence. In 1992, the Security Council issued a decision in the context of Bosnia and Herzegovina in which it directly and expressly addressed the possibility of the issuance of a declaration of independence that would promote an independent state of Republika Srpska. Specifically, Security Council resolution 787 (1992) provided that the Security Council "strongly reaffirms its call on all

⁵⁰⁹ See United Nations Charter, Article 25 ("The *Members of the United Nations* agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.") (emphasis added). By way of contrast, European Community law provides for a "decision" (defined in Article 249 EC) as a means by which Community institutions directly bind the particular addressee, which can include an individual.

⁵¹⁰ See, e.g., Security Council resolutions 1373 (2001), 28 September 2001, and 1540 (2004), 28 April 2004.

parties and others concerned to respect strictly the territorial integrity of the Republic of Bosnia and Herzegovina, and affirms that *any entities unilaterally declared* or arrangements imposed *in contravention thereof will not be accepted*⁵¹¹. Even in this context, the Security Council did not assume the power of rendering such a declaration unlawful but, rather, simply indicated that the Security Council would not accept such an act.

9.04. The Security Council adopted no such language just seven years later, in resolution 1244 (1999), even though resolution 787 (1992) was well known to the members of the Council, especially in the context of state formation in the Balkans. Resolution 1244 makes no reference of any kind to the possibility of a “unilateral declaration” by an “entity” within the Federal Republic of Yugoslavia (FRY), even though the hope for independence by the leaders and people of Kosovo would have been well known to Council members. Had the Council intended to declare unacceptable a Kosovo declaration of independence, or the issuance of such a declaration without FRY, Serbian, or Security Council consent, the Council was fully capable of saying as much. Yet it did not.

9.05. Drawing upon the factual background set forth in Chapters IV and V, this Chapter explains that, rather than prohibit the issuance of a declaration of independence, resolution 1244 (1999) established a framework that included the possibility of a declaration of independence occurring. The resolution accorded very broad powers to the United Nations Secretary-General and his Special Representative (SRSG) to establish an United Nations interim administration in Kosovo, so as to foster extensive Kosovo self-governance without FRY or Serbian military, police or other interference. Moreover, the resolution accorded to the Secretary-General and his representatives broad power to pursue political negotiations toward a final settlement (and to determine the pace and duration of those negotiations), without in any fashion predetermining the outcome of that settlement or requiring that the settlement be approved by the FRY, by Serbia, or by the Security Council itself (**Section I**). Those negotiations then culminated with a determination by the SRSG, endorsed by the Secretary-General, that the “potential to produce any mutually agreeable outcome on Kosovo’s status is exhausted” and that “the only viable

⁵¹¹ Security Council resolution 787 (1992), 16 November 1992, para. 3 (emphasis added).

option for Kosovo is independence” (**Section II**). Thereafter, the democratically elected representatives of the people of Kosovo declared independence, a step that was not declared null and void by the SRSG, though he had previously taken steps to avert moves by Kosovo toward independence (**Section III**). Though Serbia at times points to resolution 1244’s preambular reference to “sovereignty and territorial integrity” as a basis for finding a violation of international law, that non-binding clause on its face and in context cannot be construed as prohibiting the issuance of a declaration of independence (**Section IV**). All told, given the terms of resolution 1244, the process that unfolded based on those terms, and the reaction of the SRSG after the issuance of Kosovo’s Declaration of Independence, there is no basis for concluding that the February 2008 Declaration contravened resolution 1244.

I. Security Council Resolution 1244 Did Not Dictate the Terms of the Final Political Settlement, Nor Accord the FRY or Serbia a Veto

9.06. Resolution 1244 established an interim administration in Kosovo to promote a transition to a final status, and launched a political process for resolving the Kosovo crisis, one likely outcome of which was Kosovo’s independence. As such, the resolution was crafted to create conditions of interim stability in which Kosovo institutions could emerge, and could lead to a final political outcome, but not to dictate as a legal matter what that outcome should be. Four key elements of the resolution clarify its purpose.

9.07. First, the resolution identified the FRY and especially Serbia as a threat to the people of Kosovo. The preamble of resolution 1244 recalls earlier Security Council resolutions in which the Council had condemned “the use of excessive force by Serbian police forces against civilians and peaceful demonstrators in Kosovo”, expressed grave concern at “the excessive and indiscriminate use of force by Serbian security forces and the Yugoslav army which have resulted in numerous civilian casualties and, according to the estimate of the Security Council, the displacement of over 230,000 persons from their homes”, and expressed deep concern at the closure by FRY authorities of independent media outlets⁵¹². Resolution 1244 itself then noted in its preamble the “grave humanitarian

⁵¹² See Security Council resolution 1160 (1998), preamble [Dossier No. 9]; resolution 1199 (1998), preamble [Dossier No. 17]; and resolution 1203 (1998), preamble [Dossier No. 20]. For further discussion of these resolutions, see para. 3.54 above.

situation” in Kosovo and condemned “all acts of violence against the Kosovo population”. In the operative part of the resolution, the Council demanded “that the Federal Republic of Yugoslavia put an immediate and verifiable end to violence and repression in Kosovo ...”⁵¹³.

9.08. Second, the resolution incorporated general principles to guide an *interim* administration of Kosovo. Paragraph 1 of the resolution provides that a “political solution shall be based on the general principles” set forth in annex 1 (statement of the G-8 Foreign Ministers adopted at the Petersberg Centre on 6 May 1999) and annex 2 (the list of principles agreed by the Serbian Parliament and Belgrade Government on 3 June 1999, known as the “Kosovo Peace Accords”). Those principles envisaged an “interim administration for Kosovo” designed to permit a return to “peaceful and normal life for all inhabitants in Kosovo”, but did not indicate the terms of a final political resolution⁵¹⁴. Under this period of interim administration, Kosovo would enjoy substantial self-government within the FRY, but without prejudice to whether a final political solution would continue that status or result in Kosovo as an independent State. Consistent with the reference to those principles, the Security Council in paragraph 10 of the resolution authorized the Secretary-General to establish an international civil presence to provide an “interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy” within the FRY, a presence that commenced in June 1999, as discussed in detail in Chapter IV above.

9.09. Third, the resolution denied to the FRY and Serbia governmental authority in Kosovo during the interim period. In paragraph 3 of the resolution, the Council demanded the “complete verifiable phased withdrawal from Kosovo of all military, police and

⁵¹³ Security Council resolution 1244 (1999), preamble and para. 3 [Dossier No. 34].

⁵¹⁴ See, e.g., A. Zimmerman and C. Stahn, “Yugoslav Territory, United Nations Trusteeship or Sovereign State? Reflections on the Current and Future Legal Status of Kosovo”, *Nordic Journal of International Law*, vol. 70, 2001, pp. 452-453 (“it is a common feature of the G-8 statement, the Kosovo Peace Accords and the Rambouillet Accords that they only refer to the conclusion of ‘an interim agreement’ between the FRY and the international community leaving room for a variety of solutions concerning Kosovo’s final status.”); W. Benedek, “Implications of the Independence of Kosovo for International Law”, in *International Law between Universalism and Fragmentation: Festschrift in Honour of Gerhard Hafner* (2008), p. 394 (in resolution 1244, “the final status was not pre-determined in any way. In particular, Resolution 1244 did not say that Kosovo had to remain under Serb sovereignty.”)

paramilitary forces according to a rapid timetable”⁵¹⁵. As such, from June 1999 until the Declaration of Independence of 17 February 2008, Serbian governmental authority was completely absent from Kosovo pending a political solution. Such an approach strongly implies the possibility of an ultimate political solution in which Kosovo would obtain independence, for resolution 1244 envisaged wide-ranging Kosovo legislative, executive and judicial institutions being established, nourished, and protected by the United Nations without any FRY or Serbian involvement.

9.10. Fourth, the resolution called for a “political process” to determine Kosovo’s final status, without specifying the modalities of that process or prejudicing its outcome. Nor did it grant to the FRY or Serbia a veto over the terms of any settlement. Specifically, the resolution states that the tasks of the international civil presence established under the direction of the Secretary-General included “[f]acilitating a political process designed to determine Kosovo’s future status” and “[i]n a final stage, overseeing the transfer of authority from Kosovo’s provisional institutions to institutions established under a political settlement”⁵¹⁶. There was no legal requirement in either the resolution itself or its annexes that at the end of the process, Kosovo authorities must refrain from issuing a declaration of independence. Further, there was no legal requirement that Kosovo remain a part of the FRY or of Serbia. Lastly, there was no legal requirement that the final political settlement must be approved through any particular process, such as after obtaining the consent of Serbia or further decision by the Security Council. While a further Security Council decision was doubtless viewed as politically desirable, resolution 1244 (1999) did not require any such decision. Indeed, the process and substance identified in the resolution for guiding this process were consciously open-ended and identified as “political” in nature⁵¹⁷.

⁵¹⁵ While the resolution contemplated the possibility of a return of “Yugoslav and Serbian personnel” for activities such as clearing minefields (Security Council resolution 1244 (1999), annex 2, para. 6 [Dossier No. 34]), full resumption of control in Kosovo by Yugoslav or Serbian military, police, or paramilitary forces is nowhere mentioned or implicated in any part of the resolution.

⁵¹⁶ Security Council resolution 1244 (1999), paras. 11 (e) and (f) [Dossier No. 34].

⁵¹⁷ See, e.g., Zimmerman and Stahn, *op. cit.* (fn. 514), p. 451 (“Perhaps the most difficult problem that remains to be solved is the question of the final status of Kosovo. Any discussion of this problem must necessarily begin with an analysis of Security Council Resolution 1244. This Resolution, however, is remarkable vague on this important issue.”)

9.11. By contrast, in the same time frame that resolution 1244 (1999) was adopted, the Security Council adopted resolutions relating to Georgia that were quite explicit about the need for a mutual agreement of the two parties to the conflict and about the essential outcome expected in that agreement. In Security Council resolutions 1225 (1999) and 1255 (1999), which were adopted, respectively, five months before and one month after resolution 1244, the Council underlined in the operative part of the resolutions the “necessity for the parties to achieve an early and comprehensive political settlement, which includes a settlement on the political status of Abkhazia within the State of Georgia ...”⁵¹⁸. In resolution 1244, the same members of the Council did not specify that Kosovo and the FRY must be parties to a final status settlement, nor indicate that the settlement should be based upon a status of Kosovo within the State of the FRY.

9.12. Resolution 1244, however, contained an important component that did speak to the process by which the final status would be determined – the resolution calls for “[f]acilitating a political process designed to determine Kosovo’s future status, taking into account the Rambouillet accords”⁵¹⁹. As discussed at paragraph 3.46 above, those accords state that “[t]hree years after the entry into force of this Agreement, an international meeting shall be convened to determine a mechanism for a final settlement for Kosovo, *on the basis of the will of the people*, opinions of relevant authorities, each Party’s efforts regarding the implementation of this Agreement, and the Helsinki Final Act”⁵²⁰. At a minimum, this reference to the Rambouillet accords shows that resolution 1244 (1999) did not envisage that Kosovo would necessarily remain a part of the FRY or Serbia in the final settlement. Yet more importantly for the task of this Court, the reference to the Rambouillet accords demonstrates that the final political settlement was to be driven by the “will of the people”. Indeed, even after the adoption of the resolution, the members of Contact Group, including the Russian Federation, continued to regard as a key principle that any settlement “be acceptable to the people of Kosovo”⁵²¹. Given that the 17 February 2008 Declaration of Independence, which was voted upon and signed by

⁵¹⁸ Security Council resolution 1225 (1999), 28 January 1999, para. 3; Security Council resolution 1255 (1999), 30 July 1999, para. 5.

⁵¹⁹ Security Council resolution 1244 (1999), para. 11 (e) [Dossier No. 34].

⁵²⁰ Rambouillet accords, Chapter 8, Article I, para. 3 (emphasis added), S/1999/648 [Dossier No. 30].

⁵²¹ Contact Group Statement, London, 31 January 2006 (available on <http://www.unosek.org/doctref/fevrier/STATEMENT_BY_THE_CONTACT_GROUP_ON_THE_FUTURE_OF_KOSOVO - Eng.pdf>).

the democratically-elected representatives of Kosovo, was an expression of “the will of the people”, the Declaration was entirely consistent with the terms of resolution 1244, not a contravention thereof.

9.13. Further, the reference to the Rambouillet accords is significant because of what those accords do not say. The negotiating process that preceded the Rambouillet Conference was conducted under the leadership of US Ambassador Christopher Hill. The terms of Hill’s proposals provide insight into the meaning of the Rambouillet accords. At the outset of the Hill negotiations, direct negotiations with Milošević resulted in Belgrade agreeing on 2 September 1998 to pursuit of

“an agreement on the basis of which it would be possible to establish [an] adequate level of self-governance, which presumes equality of all citizens and national communities living in Kosovo and Metohija. Being committed to mutual understanding and tolerance, the participants of the dialogue, i.e., the state delegation as well as representatives of all national communities living in Kosovo and Metohija, should express their readiness to make [an] assessment after a certain period, e.g., three to five years, of the implementation of the achieved agreement and to achieve improvement, about which mutual agreement would be reached.”⁵²²

9.14. This statement began the process of viewing the solution to the Kosovo crisis as two-step in nature: an interim agreement with considerable detail about self-governance in Kosovo and protections for minorities, to be followed at a later time by a second stage at which a final resolution of Kosovo’s status could be achieved. Ambassador Hill’s first draft Agreement for a Settlement of the Crisis in Kosovo on 1 October 1998⁵²³, second draft on 1 November 1998⁵²⁴, and third draft on 2 December 1998⁵²⁵ all followed this basic structure; their principal focus was on the details of the interim period. A particularly salient feature of each of these drafts was a final clause stating: “In three years, the sides will undertake a comprehensive assessment of the Agreement, with the aim of improving its implementation and considering proposals by either side for additional steps, *which will require mutual agreement for adoption*”⁵²⁶. As such, it was anticipated in these drafts that

⁵²² Reprinted in W. Petritsch, K. Kaser and R. Pichler, *Kosovo, Kosova* (1999), p. 229.

⁵²³ First [Hill] Draft Agreement for a Settlement of the Crisis in Kosovo, 1 October 1998, in M. Weller, *op. cit.* (fn. 165), p. 356.

⁵²⁴ Revised Hill Proposal, 1 November 1998, *ibid.*, p. 362.

⁵²⁵ Third Hill Draft Proposal for a Settlement of the Crisis in Kosovo, 2 December 1998, *ibid.*, p. 376.

⁵²⁶ Emphasis added.

the shift to a final resolution of the crisis would require “mutual” agreement of the FRY, Serbia, and Kosovo. By the final Hill proposal on 27 January 1999⁵²⁷, this language appears in brackets, and in the comparable language of the Rambouillet accords – “[t]hree years after the entry into force of this Agreement, an international meeting shall be convened to determine a mechanism for a final settlement for Kosovo, on the basis of the will of the people, …” – the language of “mutual consent”, by which the FRY, Serbia and indeed Kosovo would be able to veto a final resolution of Kosovo’s status, has been completely dropped. Hence, the reference in resolution 1244 to the Rambouillet accords was important not just for what those accords say, but for what they did not say.

II. Resolution 1244 Launched a Political Process that Concluded When Negotiations were Exhausted, the Status Quo Was No Longer Sustainable, and the only Viable Option for Kosovo Was Independence

9.15. Instead of indicating a particular legal outcome, resolution 1244 (1999) placed extensive authority in the Secretary-General to oversee a process designed to determine Kosovo’s final status, a process that ultimately determined that the only viable option for Kosovo was independence. As recounted in greater detail in Chapter V, in May 2005 the Secretary-General first appointed Ambassador Kai Eide as his Special Envoy for the Comprehensive Review of the Situation in Kosovo. Eide conducted a review and reported in October 2005 that the situation in Kosovo was no longer sustainable⁵²⁸, a conclusion with which the Security Council agreed, stating:

“The Security Council agrees with Ambassador Eide’s overall assessment that, notwithstanding the challenges still facing Kosovo and the wider region, the time has come to move to the next phase of the political process. The Council therefore supports the Secretary-General’s intention to start a political process to determine Kosovo’s Future Status, as foreseen in Security Council resolution 1244 (1999). The Council reaffirms the framework of the resolution, and welcomes the Secretary-General’s readiness to appoint a Special Envoy to lead the Future Status process.”⁵²⁹

⁵²⁷ Final Hill Proposal, 27 January 1999, in M. Weller, *op. cit.* (fn. 165), p. 383.

⁵²⁸ Letter dated 7 October 2005 from the Secretary-General addressed to the President of the Security Council, S/2005/635, 7 October 2005, Annex [Dossier No. 193].

⁵²⁹ Statement by the President of the Security Council, S/PRST/2005/51, 24 October 2005 [Dossier No. 195].

9.16. The Secretary-General then proposed the appointment of President Martti Ahtisaari as his Special Envoy for negotiation of a final status for Kosovo, stating that the “future status process will be carried out in the context of resolution 1244 (1999) and the relevant presidential statements of the Security Council”⁵³⁰. The President of the Security Council welcomed this proposal⁵³¹, and in doing so provided to the Secretary-General “for your reference” certain “guiding principles” for the final status talks that had been developed by the Contact Group, including the Russian Federation. Those principles called for the “launch” of a “process to determine the future status of Kosovo in accordance with Security Council resolution 1244”, a process that the Special Envoy would “lead”, and that “[o]nce the process has started, it cannot be blocked and must be brought to a conclusion”⁵³². The Secretary-General then appointed President Ahtisaari, conveying to him Terms of Reference stating that the Special Envoy would lead the process for determining Kosovo’s final status, and in the course of doing so “will consult closely with inter alia Security Council members, Contact Group Members, relevant regional organizations, relevant regional actors, and other key players”⁵³³. Further, the Terms of Reference indicated that the “pace and duration” of the process “will be determined by the Special Envoy on the basis of consultations with the Secretary-General, taking into account the cooperation of the parties and the situation on the ground”⁵³³. Most importantly, the Terms of Reference stated that the process “should culminate in a political settlement that determines the future status of Kosovo”⁵³³. Nowhere in the Secretary-General’s recommendation and appointment of the Special Envoy, or in his Terms of Reference, is it stated that the final status could only be determined with the approval of Serbia and Montenegro (now Serbia) or by a further decision of the Security Council⁵³⁴.

⁵³⁰ Letter dated 31 October from the Secretary-General addressed to the President of the Security Council, S/2005/708, 10 November 2005 [Dossier No. 196].

⁵³¹ Letter dated 10 November 2005 from the President of the Security Council addressed to the Secretary-General, S/2005/709, 10 November 2005 [Dossier No. 197].

⁵³² *Ibid.*, Annex. While those Contract Group principles welcomed an endorsement of a final decision on status by the Security Council, it did not envisage the final decision itself being taken by the Security Council.

⁵³³ Letter of Appointment, Annex [Dossier No. 198].

⁵³⁴ The Contact Group’s Guiding Principles, transmitted to the Secretary-General by the President of the Security Council solely for his “reference”, also did not require a Security Council decision on final status, although these guidelines did note the Contract Group’s view that, as a political matter, the final status decision reached outside the Council “should” be “endorsed” by the Council. The Council itself, however, was silent on this issue, both in resolution 1244 (1999) and at the time of launching the Ahtisaari process.

9.17. President Ahtisaari conducted extensive negotiations with all relevant parties, culminating in 2007 when he determined: “It is my firm view that the negotiations’ potential to produce any mutually agreeable outcome on Kosovo’s status is exhausted. No amount of additional talks, whatever the format, will overcome this impasse”⁵³⁵. Further:

“Upon careful consideration of Kosovo’s recent history, the reality of Kosovo today and taking into account the negotiations with the parties, I have come to the conclusion that the only viable option for Kosovo is independence, to be supervised for an initial period by the international community.”⁵³⁶

To that end, he advanced a Comprehensive Proposal for the Kosovo Status Settlement for achieving Kosovo’s independence (the Ahtisaari Plan)⁵³⁷. After reviewing the report and recommendation, the Secretary-General stated that “[h]aving taken into account the developments in the process designed to determine Kosovo’s future status, I fully support both the recommendation made by my Special Envoy in his report on Kosovo’s future status and the Comprehensive Proposal for the Kosovo Status Settlement”. Efforts thereafter to secure Serbian cooperation failed, notwithstanding extensive efforts by the Security Council and through the European Union/United States/Russian Federation Troika.

9.18. Only then, in the face of the Secretary-General’s acknowledgment that the status quo could not be sustained⁵³⁸ and that independence was the only viable option, did Kosovo almost a year later (and after further efforts by the Troika) declare independence on 17 February 2008. As explained in Chapter VI, the authors of the declaration of independence were not the Provisional Institutions of Self-Government (PISG) but, rather, the democratically-elected representatives of Kosovo, expressing the will of the people of Kosovo. As such, the authors of the Declaration were not even an entity subject to the

⁵³⁵ Report of the Special Envoy of the Secretary-General on Kosovo’s future status, S/2007/168, 26 March 2007, para. 3 [Dossier No. 203].

⁵³⁶ *Ibid.*, para. 5.

⁵³⁷ Comprehensive Proposal for the Kosovo Status Settlement, S/2007/168/Add.1, 26 March 2007 [Dossier No. 204].

⁵³⁸ In addition to endorsing the President Ahtisaari’s conclusion that the status quo was no longer sustainable, the Secretary-General reported in September 2007 to the Council that “there is real risk of progress beginning to unravel and of instability in Kosovo and the region” (Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2007/582 (2007), 28 September 2007, para. 29 [Dossier No. 82]).

direction and control of UNMIK, and were not operating under the Constitutional Framework enacted by UNMIK as part of the applicable law in Kosovo. Yet even if the entity declaring independence were to be seen as one of the PISG, *quod non*, its conduct was fully in accordance with the political process initiated under Security Council resolution 1244 (1999).

9.19. In sum, when adopting resolution 1244 (1999), the Security Council called upon the Secretary-General, directly and through his representatives, to facilitate a political process for Kosovo's final status. The outcome of that political process was a recommendation by the United Nations Special Envoy appointed by the Secretary-General that independence was the only viable option. That recommendation provided for a detailed settlement, one that accommodated the concerns expressed by Serbia during the negotiations (e.g., Serbian demands for decentralization and for the protection of cultural heritage). Given the acceptance by the Secretary-General that the status quo was unsustainable, that further negotiations would be fruitless and that independence was the only viable option, it is not the case that the Declaration of Independence voted upon and signed by the democratically elected representatives of Kosovo contravened resolution 1244. Rather, the Declaration was an obvious and necessary next step in the process of achieving a final settlement of Kosovo's status, one that flowed directly from the conclusions by the very authorities (the Secretary-General and his Special Envoy) charged by the Security Council with leading the final status process.

III. Kosovo's Declaration of Independence Was Not Declared Null and Void, or Without Legal Effect, by the Secretary-General's Special Representative, the Authorized Person Responsible for Monitoring Implementation of Resolution 1244

9.20. Resolution 1244 (1999) called upon the Secretary-General to appoint, in consultation with the Security Council, "a Special Representative to control the implementation of the international civil presence ..." ⁵³⁹. As recounted in Chapter V, the SRSG was responsible for overseeing the United Nations Mission in Kosovo (UNMIK). Further, resolution 1244 stated that the main responsibilities of the international civil presence included "in a final stage, overseeing the transfer of authority from Kosovo's

⁵³⁹ Security Council resolution 1244 (1999), para. 6 [Dossier No. 34].

provisional institutions to institutions established under a political settlement”⁵⁴⁰. In pursuance of this mandate, the SRSG has promulgated a wide range of regulations as applicable law in Kosovo, allowing for UNMIK’s administration of Kosovo, including its powers and competencies, and the means by which authority would be transferred to Kosovo legislative, executive, and judicial institutions⁵⁴¹.

9.21. On 15 May 2001, the SRSG promulgated a regulation establishing the Constitutional Framework for Provisional Self-Government “for the purposes of developing meaningful self-government in Kosovo pending a final settlement, and establishing provisional institutions of self-government in the legislative, executive and judicial fields through the participation of the people of Kosovo in free and fair elections”⁵⁴². Based on this regulation, the PISG were established⁵⁴³. As is made clear in the preamble to the Constitutional Framework, the PISG would be given responsibilities “within the limits defined by UNSCR 1244 (1999)” and “shall work constructively towards ensuring conditions for a peaceful and normal life for all inhabitants of Kosovo, with a view to facilitating the determination of Kosovo’s future status through a process at an appropriate future stage which shall, in accordance with UNSCR 1244 (1999), take full account of all relevant factors including the will of the people”⁵⁴⁴. Moreover, the SRSG would supervise this transfer of authority to ensure consistency with resolution 1244; the preamble to the Constitutional Framework stated “that the exercise of the responsibilities of the Provisional Institutions of Self-Government in Kosovo shall not in any way affect or diminish the ultimate authority of the SRSG for the implementation of UNSCR 1244 (1999)”⁵⁴⁵.

9.22. In its operative provisions, the Constitutional Framework stated that the SRSG had the exclusive power to dissolve the Kosovo Assembly “in circumstances where the Provisional Institutions of Self-Government are deemed to act in a manner which is not in

⁵⁴⁰ Security Council resolution 1244 (1999), para. 11 (f) [Dossier No. 34].

⁵⁴¹ For a compendium of UNMIK regulations, see Dossier Nos. 138-167. For a discussion of selected regulations, see paras. 4.23-4.46 above.

⁵⁴² UNMIK Regulation No. 2001/9, 15 May 2001, preamble [Dossier No. 156].

⁵⁴³ Constitutional Framework, para. 1.5 [Dossier No. 156].

⁵⁴⁴ *Ibid.*, preamble; see also *ibid.*, Chapter 2 (a).

⁵⁴⁵ *Ibid.*, preamble.

conformity with UNSCR 1244 (1999), or in the exercise of the SRSG's responsibilities under that Resolution”⁵⁴⁶. Further, the Constitutional Framework reiterated that the SRSG was empowered to oversee “the Provisional Institutions of Self-Government, its officials and its agencies” and to take “appropriate measures whenever their actions are inconsistent with UNSCR 1244 (1999) or this Constitutional Framework”⁵⁴⁷. In his report to the Security Council after promulgation of the Constitutional Framework, the Secretary-General stated that it contained “broad authority for my Special Representative to intervene and correct any actions of the provisional institutions of self-government that are inconsistent with Security Council resolution 1244 (1999), including the power to veto Assembly legislation, where necessary”⁵⁴⁸. Several members of the Council then expressed support for the Constitutional Framework and the role of the SRSG⁵⁴⁹.

9.23. As such, it would be expected that in implementing resolution 1244, the SRSG would declare null and void acts by the PISG, including the Kosovo Assembly, that were regarded as inconsistent with resolution 1244, in particular during the interim period but also with respect to transition to a final status. Any mission deployed under the direction of the Secretary-General is expected faithfully to execute the tasks assigned to it, in close consultation with United Nations officials in New York if important issues of interpretation arise. As such, the SRSG would have been expected to annul the Declaration of Independence of 17 February 2008 if it had been regarded as breaching resolution 1244.

9.24. On several occasions, the SRSG did declare as having no legal effect acts by the PISG that he regarded as inconsistent with resolution 1244⁵⁵⁰. Moreover, prior to the

⁵⁴⁶ *Ibid.*, para. 8.1.

⁵⁴⁷ Constitutional Framework, Chapter 12 [Dossier No. 156].

⁵⁴⁸ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2001/565, 7 June 2001 [Dossier No. 49].

⁵⁴⁹ For example, speaking on behalf of the European Union, Sweden endorsed the Constitutional Framework as “a landmark step in the implementation of resolution 1244 ...” (Security Council, provisional verbatim record, fifty-sixth year, 4335th meeting, 22 June 2001, S/PV.4335, p. 21 [Dossier No. 99]). Similarly, a Security Council mission to Kosovo commended the SRSG’s action, noting that the Constitutional Framework was “an important step in the implementation of resolution 1244” (Report of the Security Council Mission on the implementation of Security Council resolution 1244 (1999), S/2001/600, 19 June 2001, para. 30 [Dossier No. 50]).

⁵⁵⁰ See B. Knoll, “Kosovo’s Endgame and its Wider Implications in Public International Law”, *Finnish Yearbook of International Law*, vol. 20, 2009 (forthcoming) (“In practice, it has not been uncommon for [the SRSG] to intervene in the legislative process of the PISG and refuse to promulgate laws that, upon advice from UN Headquarters in New York, were deemed to be in violation of the Constitutional

launching of the Ahtisaari process, the SRSG took such action with respect to resolutions by the Kosovo Assembly that he regarded as inconsistent with resolution 1244 because they called for or implied Kosovo's independence. Thus, on 22 May 2002, the SRSG expressed concerns to the Assembly relating to a proposed resolution objecting a FRY/Macedonia border agreement that purported to protect "the territorial integrity of Kosovo"⁵⁵¹. When on 23 May, the Assembly nevertheless adopted the resolution, the SRSG immediately declared the resolution null and void because in his view it exceeded the powers of the Assembly under resolution 1244.

9.25. Similarly, in November 2002, the SRSG again became aware that the Kosovo Assembly had drafted a resolution rejecting language contained in a draft Serbia and Montenegro Constitution, which indicated that Kosovo was a part of Serbia⁵⁵². When, on 7 November, the Kosovo Assembly nevertheless adopted the resolution⁵⁵³, the SRSG declared that this unilateral statement "has no legal effect"⁵⁵⁴. Clearly, at this point in the interim period, the SRSG viewed acts oriented toward Kosovo independence as premature under and therefore inconsistent with resolution 1244, and that a further step by the Security Council, such as launching what would become the Ahtisaari final status process, must first occur.

9.26. In February 2003, a draft "Declaration on Kosovo Independence" was prepared within the Kosovo Assembly⁵⁵⁵, but intervention by the SRSG precluded further action⁵⁵⁶.

Framework and thus Resolution 1244. Powers of intervention were also exercised through executive decisions to set aside inter-ministerial agreements with other states as well as decisions of municipalities and decisions of the local executive taken within the scope of their competence. ... Furthermore, the SRSG has also nullified 'statements' and 'resolutions' of the Kosovo Assembly – political pronouncements which would not have had any direct legal consequences within Kosovo's legal order – which he considered to have been passed *ultra vires.*"

⁵⁵¹ Letter dated 22 May 2002 from the Special Representative of the Secretary-General to the President of the Assembly of Kosovo [Dossier No. 184].

⁵⁵² Letter dated 6 November 2002 from the Special Representative of the Secretary-General to the President of the Assembly of Kosovo [Dossier No. 185].

⁵⁵³ Resolution of the Assembly of Kosovo, 7 November 2002 [Dossier No. 186].

⁵⁵⁴ Pronouncement by the Special Representative of the Secretary-General, 7 November 2002 [Dossier No. 187].

⁵⁵⁵ Declaration on Kosovo – A Sovereign and Independent State, draft declaration by the Assembly of Kosovo, 3 February 2003 [Dossier No. 188].

⁵⁵⁶ Letter dated 7 February 2003 from the Principal Deputy Special Representative of the Secretary-General to the President of the Assembly of Kosovo [Dossier No. 189]. Leaders of the Assembly decided to keep the matter under review (Common Declaration, Kosovo Assembly, 13 February 2003 [Dossier No. 190]).

Likewise, in November 2005, the Kosovo Assembly contemplated a declaration of independence, but again the SRSG intervened and succeeded in having the matter held back, indicating to the Assembly that the resolution would have been contrary to resolution 1244⁵⁵⁷. At the same time, the SRSG found acceptable a modified version of the resolution – entitled “Resolution on Reconfirmation of the Political Will of Kosova People for Kosova an Independent and Sovereign State”⁵⁵⁸ – because it took the form of guidelines for the Kosovo negotiating team that would participate in the Ahtisaari final status talks⁵⁵⁹. This shows already the beginnings of a shift in the SRSG’s understanding of what types of action by the Kosovo Assembly were viewed as consistent with the political process contemplated by resolution 1244.

9.27. By contrast with these earlier incidents, after completion of the Ahtisaari process in 2007, which found that Kosovo’s independence was the only feasible option, and that maintaining the *status quo* was impossible, the SRSG issued no statement of any kind setting aside or declaring null and void, or of no legal effect, the Declaration of Independence of 17 February 2008. The SRSG was certainly aware that the Declaration had been voted upon and signed by the democratically elected representatives of Kosovo since he immediately informed and sought guidance from Secretary-General⁵⁶⁰. Serbia immediately asked the Secretary-General to take steps to have the declaration set aside since it allegedly contravened resolution 1244. Specifically, Serbia requested:

“the Secretary-General, Mr. Ban Ki-Moon, to issue, in pursuance of the previous decisions of the Security Council, including resolution 1244 (1999), a clear and unequivocal instruction to his Special Representative for Kosovo, Joachim Rücker, to use his powers within the shortest possible period of time and declare the unilateral and illegal act of the secession of Kosovo from the Republic of Serbia null and void. We also request that Special Representative Rücker dissolve the Kosovo Assembly, because it declared independence contrary to Security Council resolution 1244 (1999).

⁵⁵⁷ See UNMIK Press Briefing, 16 November 2005, pp. 4-5.

⁵⁵⁸ Kosovo Assembly, Resolution “On Reconfirmation of Political Will of Kosova People for Kosova an Independent and Sovereign State”, 17 November 2005 [Dossier No. 200].

⁵⁵⁹ Special Representative of the Secretary-General’s Statement on the resolution passed by the Assembly of Kosovo, UNMIK Press Release UNMIK/PR/1445, 17 November 2005 [Dossier No. 199].

⁵⁶⁰ See Security Council, provisional verbatim record, sixty-third year, 5839th meeting, 18 February 2008, S/PV.5839, p. 2 [Dossier No. 119].

The Special Representative has binding powers, and they have been used before. I request that he use them again.”⁵⁶¹

Yet, despite this request from Serbia, at no time did the Secretary-General take any steps to instruct the SRSG to set aside or declare null and void, or of no legal effect, the February 2008 Declaration of Independence. Instead, the Secretary-General noted in the Security Council that “recent developments are likely to have significant operational implications for UNMIK,” and urged all parties to cooperate to ensure peace and stability in the region⁵⁶². Nor did the Security Council, either by resolution or through a statement of its President, take any steps to instruct the Secretary-General or his representative to set aside the Declaration.

9.28. In sum, the issuance of the Declaration of Independence was fully consistent with the political process that was contemplated by resolution 1244 (1999), launched in 2005 with the appointment of President Ahtisaari, and concluded in 2007 with President Ahtisaari’s determination that further negotiations were fruitless and the only viable option was independence for Kosovo. Further, given that the declaration was not even an act of the PISG but, rather, a constituent act of the people of Kosovo expressed through their democratically elected representatives, the Declaration was not even capable of violating resolution 1244. Finally, the fact that the SRSG did not take any action to declare the Declaration as null and void, or otherwise inconsistent with resolution 1244 – especially in light of prior occasions where acts of the Kosovo Assembly had been set aside by the SRSG and in light of the SRSG’s duty to faithfully execute his mandate under resolution 1244 – demonstrates that the Declaration did not contravene resolution 1244⁵⁶³.

⁵⁶¹ Security Council, provisional verbatim record, sixty-third year, 5839th meeting, 18 February 2008, S/PV.5839, p. 5 [Dossier No. 119].

⁵⁶² Security Council, provisional verbatim record, sixty-third year, 5839th meeting, 18 February 2008, S/PV.5839, p. 3 [Dossier No. 119].

⁵⁶³ See, e.g., W. Benedek, *op. cit.* (fn. 514), p. 403 (“The Special Representative of the Secretary-General did not use his powers to declare the Declaration of Independence null and void, which can only be interpreted as acquiescence in or tacit consent given to the declaration. Again, legally relevant practice has to be taken into account in a current interpretation of international instruments.”); B. Knoll, *op. cit.* (fn. 550) (“Since the only authority that could have declared, within Kosovo’s normative order, the Declaration null and void remained silent on the issue—despite the formal request of Serbia to the UN Secretary-General—, its omission of annulment can be interpreted as tacit consent to or, at a minimum, acquiescence of, the course of action taken by Kosovo’s legislature. It may therefore be presumed that the Declaration was passed in line with Resolution 1244.”)

Rather, the implication and effect of the SRSG's not acting leads to the opposite conclusion: the Declaration of Independence was not in contravention of resolution 1244.

IV. Resolution 1244's Preambular Reference to “Sovereignty and Territorial Integrity” Cannot Be Construed as an Obligation Not to Declare Independence

9.29. In its arguments against Kosovo's declaration of independence, Serbia has at times noted the tenth preambular paragraph of resolution 1244, which “reaffirmed” the commitment of all United Nations “Member States” to the “sovereignty and territorial integrity” of the “Federal Republic of Yugoslavia”, “as set out in the Helsinki Final Act and Annex 2”. According to Serbia, this reaffirmation of an existing commitment of Member States to sovereignty and territorial integrity, in some manner imposed a legal obligation upon the Kosovo authorities to refrain from issuing a declaration of independence. For various reasons, Serbia is wrong.

9.30. First, aside from the fact that it is a preambular reference to a pre-existing commitment of Member States (without any reference to other persons or entities), the most distinguishing feature of this clause is the qualification “as set out in the Helsinki Final Act and annex 2”. Whatever meaning might otherwise be ascribed to a clause of this type in any other Security Council resolution, this particular clause is unique in its incorporation by reference to annex 2 to the resolution (the so-called Ahtisaari-Chernomyrdin principles). The issue of territorial integrity is addressed in annex 2 of the resolution *solely* in the context of a principle that should apply during the period of the “interim political framework”, existing prior to the point of a final status⁵⁶⁴. Annex 2 focuses on the conditions that must exist during the interim period and contains no provisions setting the terms for a final status, including within the one principle in annex 2 (no. 8) that mentions territorial integrity. As such, and unlike resolutions that preceded resolution 1244 and that addressed territorial integrity, the preambular reference in resolution 1244 marked a clear shift in the position of the Security Council, one that now

⁵⁶⁴ Security Council resolution 1244 (1999), Annex 2, Principle 8 [Dossier No. 34]. The one reference in resolution 1244, Annex 1 (in the sixth principle) to “territorial integrity” is also focused exclusively on the interim period. By contrast, in resolutions relating to Georgia adopted within the same time frame as resolution 1244 (1999), the Security Council adopted language that clearly associated with a “comprehensive” political settlement “full respect for the sovereignty and territorial integrity of Georgia within its internationally recognized borders” (Security Council resolution 1225 (1999), para. 3; Security Council resolution 1255 (1999), para. 5).

contemplated the possibility that a final status for Kosovo would not entail maintenance of FRY territorial borders. As such, it cannot be said that the preambular reference precludes or prohibits the issuance of a declaration of independence. Similarly, the reference's referral to the Helsinki Final Act⁵⁶⁵ does not establish a prohibition on the issuance of a declaration of independence. That non-binding instrument does not identify a commitment, legal or political, to permanent, unchanging territorial boundaries⁵⁶⁶.

9.31. Second, viewing this reference as a blanket protection of FRY (or Serbian) "sovereignty and territorial integrity" is especially unwarranted, given that resolution 1244 (1999) represented an unprecedented intrusion into the FRY's sovereignty and territorial integrity. In resolution 1244, the Security Council decided to shape actively the system of political governance within the FRY, denying all FRY government authority over the people of Kosovo and creating the conditions for establishing new government authorities there. All the references in resolution 1244 to the need for Kosovo self-governance and the extensive framework built toward that end, envisaged either very significant constitutional change in the FRY or Kosovo independence. To assist in creating these conditions, resolution 1244 allowed for the deployment of both military forces (KFOR) and civilian personnel (UNMIK) into Kosovo, thus establishing a highly intrusive regime of international administration. This included the power not just to administer Kosovo internally, but to represent Kosovo externally, such as by UNMIK's conclusion during the interim period of international agreements with Kosovo's neighbouring States in the field of economic cooperation, as well as agreements with third parties on repatriation of Kosovars⁵⁶⁷. Immediately after the adoption of resolution 1244, many States and international organizations opened liaison offices in Pristina. In doing so, they did not seek FRY consent. Further, UNMIK Regulation No. 2000/42 granted those offices a status functionally identical to that of embassies under the Vienna Convention on Diplomatic Relations. Taken as a whole, resolution 1244 cannot be seen as directed at protecting the sovereignty and territorial integrity of the FRY.

⁵⁶⁵ Dossier No. 217.

⁵⁶⁶ See para. 8.11 above.

⁵⁶⁷ Constitutional Framework, Chapter 8, para. 8.1, confirmed this external role by providing that the SRSG remains exclusively responsible for "[c]oncluding agreements with states and international organizations in all matters within the scope of UNSCR 1244 (1999)" [Dossier No. 156].

9.32. Third, any reference to sovereignty and territorial integrity of the Federal Republic of Yugoslavia in 1999 is simply not speaking to the issue of the Declaration of Independence by Kosovo from Serbia in 2008, for the preambular language is addressing a State that underwent significant changes over the course of a decade. As the Court is well aware, the name of “Federal Republic of Yugoslavia” was changed in 2003 to “Serbia and Montenegro”. When Serbia and Montenegro broke apart in 2006, the name of the predecessor State was changed to “Republic of Serbia”. More importantly, the territory in 1999 of the State named the “Federal Republic of Yugoslavia” was no longer the same territory of any State as of 2008 and, above all, its Federal nature, which had been so important, had disappeared with the 2006 secession of Montenegro from Serbia. While Montenegro may have agreed, for purposes of international rights and obligations, that Serbia would be the continuation of Serbia and Montenegro, that alone is not sufficient for imputing any commitment in 1999 of Member States (or of the Security Council) to very different circumstances of February 2008. Even if the preambular language of resolution 1244 were construed (incorrectly) as a binding commitment to maintain in 1999 a single State consisting of Serbia, Montenegro, and Kosovo, that is not the same as a commitment in 2008 to maintain a single State consisting solely of Serbia and Kosovo. Indeed, an expression of support for a territorial unit that would comprise Serbia, Montenegro, and Kosovo as single State, with the political authorities of each able to participate in, and balance each other over, the governance of the FRY, is quite different from supporting a territorial unit in which Montenegro and the federal structure are absent.

9.33. The preambular language itself supports the proposition above, given its reference to annex 2 to the resolution. That annex calls for the establishment during the interim period of conditions “under which the people of Kosovo can enjoy *substantial autonomy within the Federal Republic of Yugoslavia*”⁵⁶⁸. The resolution did not call for substantial autonomy for Kosovo *within Serbia*, thereby confirming that the resolution was focused upon the status of the FRY as a whole and Kosovo’s position as a federal unit within the FRY. Given that the FRY radically changed in nature, it cannot be assumed that commitments existing in 1999 stayed the same. Further, these changed circumstances arose not just with respect to the FRY, but also from activities pursued by the United

⁵⁶⁸ Security Council resolution 1244 (1999), annex 2, para. 5 (emphasis added) [Dossier No. 34]. The same language appears in paragraph 10 of the resolution, also solely in the context of the interim period.

Nations itself in Kosovo, which saw in the period after resolution 1244 a rapid movement toward Kosovo self-government, without any Serbian involvement⁵⁶⁹. There is simply no basis for assuming that any position taken in 1999 with respect to the FRY remained the same in 2008 with respect to Serbia, given the fundamentally changed circumstances that arose from the FRY's fragmentation and the extensive UN-sponsored creation of institutions of self-governance in Kosovo.

9.34. Finally, the context in which references of this sort arose in the Balkans during the 1990s should be kept in mind, for they do not support the categorical position now being pressed upon this Court by Serbia. For example, the 1992 Brioni Agreement contained a similar reference to "territorial integrity" and to the Helsinki Final Act as guiding the negotiations over the future status of Slovenia and Croatia. Yet the reference there was not viewed as a basis for finding the declarations of Slovenia and Croatia contrary to international law; indeed, those Republics ultimately emerged as States notwithstanding the SFRY's resistance. Specifically, in the context of negotiations on whether those declarations should or should not remain suspended, the Brioni Agreement stated that

"negotiations should begin urgently, no later than August 1st 1991, on all aspects of the future of Yugoslavia without preconditions and on the basis of the principles of the Helsinki Final Act and the Paris Charter for a new Europe (in particular respect for Human Rights, including the rights of peoples self-determination in conformity with the Charter of the United Nations and with the relevant norms of international law, including these relating to territorial integrity of States")⁵⁷⁰.

Notably, these references to the Helsinki Final Act, the Paris Charter, and "territorial integrity" occur at a time when Slovenia and Croatia have already declared independence; yet there is no indication in the Brioni Agreement, or in any of the discussions between States at Brioni, that these international instruments or principles forbade such declarations of independence, let alone any requirement that such declarations be terminated. Rather,

⁵⁶⁹ See, e.g., W. Benedek, *op. cit.* (fn. 514), p. 403 ("the UN-led process of determination of the future status of Kosovo has resulted in a clear recommendation: 'supervised independence.' Therefore, to go back to the original text of Resolution 1244 to prove that Kosovo could only realize its right to self-determination in the form of internal self-determination as part of Serbia, neglects the entire status process, conducted under the aegis of the United Nations and the Contact Group. This is not to say that UNMIK deliberately prepared Kosovo for separation from Serbia, but rather that fulfilling its mandate, including legal and institutional reforms as well as provided for a democratic process, eventually had this effect.")

⁵⁷⁰ Brioni Agreement, 7 July 1991, in S. Trifunovska, *op. cit.* (fn. 471), p. 312.

the Brioni Agreement calls for negotiations to move forward *based on those principles while allowing the two declarations of independence to remain in force*, albeit suspended for a period of time.

9.35. As such, even at this early stage in the break-up of the SFRY, references to principles existing in the Helsinki Final Act or relating to “territorial integrity” are not regarded by any of the relevant actors as necessarily precluding a declaration of independence. Instead, such principles were regarded as providing guideposts for negotiations that might lead to independence or to a reconfigured SFRY, ones that emphasized not just the importance of the stability of existing borders, but also the importance of respecting human rights and other factors.

9.36. In sum, the tenth preambular paragraph of resolution 1244 – like all the other provisions of the resolution – simply does not support the proposition that the Security Council had prohibited a declaration of independence. Rather, by resolution 1244 the Security Council established an interim administration of Kosovo for the duration of which territorial borders would be retained, but also created the means for a political process that would result in a final status for Kosovo that contemplated the possibility of a new and independent State of Kosovo. That final status process was entrusted by the Security Council to the Secretary-General and his Special Envoy, who ultimately concluded in 2007 that the status quo in Kosovo was no longer sustainable and that the only viable option was for Kosovo to be an independent State. The democratically elected representatives of the Kosovo people thereafter declared independence, an act that was fully consistent with the process that unfolded based on resolution 1244 and the further decisions reached by the Security Council, the Secretary-General and his special representatives. That declaration was not declared null or void, or without legal effect, by the authority charged by the Security Council and the Secretary-General with monitoring the implementation of resolution 1244 in Kosovo, the SRSG. The SRSG had intervened prior to the completion of the Ahtisaari process to set aside acts of the Assembly that he considered inconsistent with resolution 1244. In the aftermath of the Declaration of Independence of 17 February 2008, however, he did not do so. For all these reasons, the Declaration of Independence of 17 February 2008 cannot be regarded as having contravened resolution 1244.

PART V

SUMMARY AND CONCLUSION

CHAPTER X

SUMMARY

10.01. This concluding Chapter begins by drawing together key elements that emerge from earlier chapters that help to illuminate the context in which the representatives of the people of Kosovo signed the Declaration of Independence on 17 February 2008 (**Section I**). These elements include the following: the final status of Kosovo was the last major issue related to the non-consensual dissolution of the Socialist Federal Republic of Yugoslavia (SFRY); Kosovo's position within the former Yugoslavia was for all practical purposes the same as that of the republics of the SFRY, until it was unlawfully changed in 1989; by the end of 2007, the final status negotiations had reached the end of the road and prolongation would have been highly destabilising, in Kosovo and in the region; the aspiration of the people of Kosovo to independence was strong and of long-standing, and was reinforced by the events of 1998-1999; today, Kosovo has been recognized as a sovereign and independent State by a large section of the international community; the commitments in the Declaration of Independence are being implemented and honoured; and the future of Kosovo and other States in the region lies in Europe.

10.02. The Chapter then draws together the conclusions of the legal arguments set out in Chapters VII, VIII and IX (**Section II**).

I. Key elements

Final Status for Kosovo was the Last Part of the Dissolution of the SFRY

10.03. Kosovo's Declaration of Independence needs to be seen in the context of the non-consensual dissolution of the SFRY, which began in the early 1990s. The final status of Kosovo was rightly described by the Troika as “the last major issue related to Yugoslavia’s collapse”⁵⁷¹. Serbia’s destruction of Kosovo’s autonomy in 1989, as part of a

⁵⁷¹ Letter dated 10 December 2007 from the Secretary-General to the President of the Security Council, S/2007/723, 10 December 2007, Annex, para. 3 [Dossier No. 209]. The Contact Group had earlier spoken of “the last major issue related to the break-up of Yugoslavia” (Contact Group Statement, New York, 20 September 2006 (available on <http://www.unosek.org/docref/2006-09-20_-CG_Ministerial_Statement>).

concerted effort to dominate the SFRY, was an important element in the chain of events leading to Yugoslavia's collapse. The break-up of the Federation, which had consisted of eight federal units, fundamentally undermined the basis for Kosovo's autonomy within Serbia. Before the break-up, Kosovo had had a dual nature: it was a constituent unit of the Federation (in all but name on an equal footing with the six republics), and it was an autonomous province within Serbia. With the disintegration of the SFRY, the constitutional safeguards could not be re-established. The unacceptability of any solution other than independence was confirmed by the brutal way in which Serbia destroyed Kosovo's autonomy in 1989, by the events of the 1990s, and by the terms of the 2006 Constitution of the Republic of Serbia.

Kosovo's constitutional position under the SFRY Constitution of 1974, until it was removed illegally, was in all but name identical to that of the six republics

10.04. As explained in Chapter III, under the 1974 Constitution of the SFRY, Kosovo's status as an autonomous province accorded to it the same rights as the six republics. As a constituent unit of the SFRY, like the republics, Kosovo was entitled to appoint a member to the Federal Presidency, who, based on a rotation system, was able to assume the office of Federal President. Kosovo was directly represented in the Federal Assembly, and protected by a right of recourse to the Federal Constitutional Court when disputes arose with the other Republics, including Serbia. There was no legal reason (though in the early 1990s some may have considered there were reasons of policy) to treat Kosovo any differently from other constituent units of the Federation.

The people of Kosovo have long made clear their overwhelming desire for independence

10.05. The desire of the people of Kosovo for an independent State of their own goes back for many years⁵⁷². This desire was clear to all the participants in the 1999 Rambouillet Conference, which is why the "will of the people" clause appears in the

New_York.pdf>). And President Ahtisaari, in his report, referred to "this last episode in the dissolution of the former Yugoslavia" (Report of the Special Envoy of the Secretary-General on Kosovo's future status, S/2007/168, 26 March 2007, Annex, para. 16 [Dossier No. 203]).

⁵⁷² As was acknowledged by the President of Serbia in the Security Council on 23 March 2009 (S/PV.6097, p. 25).

Rambouillet accords as the key element in resolving Kosovo's final status. It was clear immediately after the 1999 conflict when resolution 1244 (1999) expressly referred to the Rambouillet accords, was clear throughout the period of UNMIK administration, and was fully discussed and considered throughout the final status negotiations. Key participants in those negotiations, such as the Contact Group, repeatedly said that the final status must be acceptable to the people of Kosovo.

The crimes against humanity and human right abuses suffered by the people of Kosovo in 1998/1999 reinforced their demands for independence, and their unwillingness to return to Serbia

10.06. By 1999, as a result of widespread and large-scale crimes against humanity and war crimes, over half of the Kosovo Albanians had been driven from their homes or fled the onslaught from Serbia. They had suffered human rights abuses in 1912, in the 1920s and 1930s, between 1945 and 1966, and even worse throughout the 1980s and 1990s, culminating in the 1998-1999 ethnic cleansing, and the massive refugee and IDP crisis. All this suffering was the result of a deliberate policy of the authorities of Serbia, as was confirmed by the Trial Chamber in its 26 February 2009 judgment in *Milutinović et al.*

Final status negotiations had reached an impasse by the end of 2007; prolongation would have been highly destabilising for Kosovo and the region

10.07. The Minister for Foreign Affairs of the Republic of Serbia, Mr. Vuk Jeremić, has repeatedly and publicly suggested that the outcome of the present advisory proceedings should be a resumption of final status negotiations between Kosovo and Serbia⁵⁷³. Yet it is wholly unrealistic to suggest that final status negotiations should be resumed. By December 2007, at the latest, these negotiations had reached a dead-end, and it was

⁵⁷³ By way of example, the following is taken from an interview given by Mr. Jeremić to *The Economist* of 16 January 2009: "We believe that, after the court states its opinion in a manner that we expect, it will be clear that the path which institutions in Priština chose on February 17th cannot bring a sustainable solution. With the verdict from the International Court of Justice, which stipulates that the unilateral proclamation of independence was in disproportion to the international law, we expect that Kosovo will not be recognized by any other country and that it will be relatively simple to prevent that the so-called state of Kosovo joining any international institutions. Kosovo will find itself in a semi-defined state, "not here or there", and by that it will be forced to return to the negotiation table with Belgrade, in order to find a compromise, which both Belgrade and Priština will accept and which will be confirmed at the UN Security Council."

clear that their continuation would serve no purpose. This was the considered position of those most closely involved in the negotiations, including Special Envoy Ahtisaari⁵⁷⁴, the Troika⁵⁷⁵, and the United Nations Secretary-General⁵⁷⁶. It was also the considered view of many in the international community that to prolong the uncertainty caused by the protracted negotiations would be destabilising within Kosovo, given the expectations of the people of Kosovo, and within the region⁵⁷⁷. There can be no obligation to negotiate in such circumstances⁵⁷⁸. More than one year later, there can be no question of resuming final status negotiations. This would be pointless and destabilizing, and doomed to failure. The Declaration of Independence of 17 February 2008, the adoption, entry into force and implementation of the Constitution of the Republic of Kosovo, and above all the will of the people of Kosovo make clear that Kosovo's independence is irreversible.

10.08. In any event, in these proceedings for an advisory opinion, it would not be appropriate for the Court to call upon the two States to resume final status negotiations. In fact, were the issue before the Court to be seen as essentially a bilateral dispute over which the Court does not have contentious jurisdiction, then the Court should decline to address the matter through these advisory proceedings.

10.09. The Republic of Kosovo hereby reaffirms its wish for good neighbourly relations with the Republic of Serbia. It repeats that it would welcome talks with the Republic of Serbia on practical issues of mutual concern, such as those foreseen in the Ahtisaari Plan. Such talks would be normal between neighbouring sovereign and independent States but must be held on an equal basis, between two sovereign States. On the other hand, the Republic of Kosovo is not willing to enter into negotiations that could bring into question its status as a sovereign and independent State. Given the past history, status issues cannot be papered over by formulae such as "sovereignty umbrella" or "status neutrality".

⁵⁷⁴ See para. 5.22 above.

⁵⁷⁵ See para. 5.33 above.

⁵⁷⁶ See para. 5.34 above.

⁵⁷⁷ See paras. 5.11-5.14 above.

⁵⁷⁸ It will, for example, be recalled that the Badinter Arbitration Commission did not suggest, despite Serbia's insistence, that Slovenia, Croatia, Bosnia and Herzegovina, or Macedonia should negotiate their independence with Serbia.

Kosovo has been recognized as a sovereign and independent State by many States, including almost all States in the region

10.10. Since 17 February 2008, the day on which the representatives of the people of Kosovo voted upon and signed the Declaration of Independence, many States have recognized Kosovo as a sovereign and independent State. Indeed, most European States have recognized the Republic of Kosovo, including all of its immediate neighbours, with the exception of Serbia. Within Europe, it is widely agreed that Kosovo's status as an sovereign and independent State is an important factor for peace and security in the region.

10.11. Since the Declaration of Independence, many steps have been taken by Kosovo to implement the commitments made to the international community regarding protections for communities, rule of law, respect for international agreements, and cooperation with international institutions. Importantly, these steps include the adoption and entry into force of the Constitution of the Republic of Kosovo, with its strong protections of human rights and the rights of communities and their members.

10.12. Kosovo has received much help from the international community, including from many States that have not yet taken the step of recognising it. They thus make important contributions to Kosovo's future, and clearly do not feel inhibited by the current proceedings in this Court.

The situation of Kosovo entailed special characteristics that are unlikely to be replicated in other cases

10.13. The emergence into statehood of the Republic of Kosovo occurred under circumstances that are most unlikely to be replicated elsewhere. Kosovo is best seen not as an example of secession, but as the final step in the process of a disintegrating Federation (the former SFRY). Other former units of that Federation have become independent States, and their independence is universally accepted. Within that Federation, Kosovo had a dual status: it was a constituent unit of the Federation and a province within Serbia. Kosovo's status within the Federation gave Kosovo important protections against unilateral actions by Serbia. Those protections, however, could not survive the dissolution of

the SFRY, as was amply demonstrated throughout the 1990s, culminating in Serbia's devastating crimes against the Kosovo Albanian population in 1998 and 1999, 90 percent of whom were forced from or fled their homes. The crimes against humanity and massive human rights violations of the 1998-1999 resulted ultimately in the intervention of the international community. Under Security Council resolution 1244 (1999), Serbia was excluded from any role in the governance of Kosovo, replaced instead by UNMIK and institutions established and nurtured by UNMIK beginning in 1999. The political process on final status was led by the United Nations Secretary-General and his Special Envoy. The process was based upon the will of the people. So it is understandable why any return of Kosovo to Serbia would be wholly unacceptable.

The common future for the States of the Western Balkans lies in Europe

10.14. In its Presidential statement of 26 November 2008, the Security Council welcomed "the continuing efforts of the European Union to advance the European perspective of the whole of the Western Balkans, thereby making a decisive contribution to regional peace and stability"⁵⁷⁹.

10.15. The common future for Kosovo and Serbia lies in eventual membership in the European Union. As described in Chapter II, the European Commission is preparing a study to examine and evaluate how Kosovo can progress towards integration in the European Union. In the meantime, the development of good-neighbourly relations, as is normal between neighbouring States⁵⁸⁰, should proceed hand-in-hand with progress towards full integration within European institutions, including the EU and the Council of Europe. This is a positive prospect, one looking toward the future, not rooted in the past.

⁵⁷⁹ Statement by the President of the Security Council, S/PRST/2008/44, 26 November 2008 [Dossier No. 91].

⁵⁸⁰ Kosovo's proposal for a Treaty of Friendship and Cooperation between Kosovo and Serbia was described in Chapter V, para. 5.18, above.

II. Summary of Kosovo's Legal Arguments

The question posed to the Court is narrow in scope, but does not indicate how an answer would assist the General Assembly in its work, and consequently may not be proper

10.16. The question that has been put to the Court is narrow in scope, with a focus on the issuance of a particular statement – a declaration of independence – by particular persons on a particular day. Nevertheless, despite its brevity and specificity, there are certain problems with the question.

10.17. First, the process by which the question was formulated, considered, and then adopted provides no indication as to how the Court's opinion will assist the General Assembly in its work. Rather, the purpose of the question appears to be part of a strategy by Serbia to influence States in their political decision whether to recognize the Republic of Kosovo. Yet in the course of exercising its advisory jurisdiction, the Court is not charged with providing general legal advice on any question of international law to whoever might solicit it; the Court is charged with providing advice to the political organs of the United Nations and the specialized agencies on matters within their competence. To the extent that answering this question is intended as a vehicle for giving legal advice to Serbia, or to resolve a dispute between Serbia and Kosovo, or even to provide legal advice to States considering whether to recognize Kosovo, that function is not properly to be exercised in advisory proceedings.

The question asked to the Court is argumentative and prejudicial: it needs to be approached in an objective manner

10.18. Second, because the question was sponsored by a single State that declined to entertain any modifications, the question – brief as it is – contains prejudicial and argumentative assumptions. The question is argumentative by characterizing the Declaration of Independence as “unilateral”, a term that at best is superfluous and at worst intended as a synonym for “illegal”. In fact, the Declaration was the end product of an extensive multilateral process involving the Security Council, the Secretary-General, their representatives, a massive deployment of multinational personnel to Kosovo for almost a

decade from the United Nations, NATO, and other organizations, and painstaking efforts by numerous States, groups of States and international organizations, including the European Union, the Contact Group, and the Troika.

10.19. Further, the question incorrectly suggests that the Declaration was adopted by the “Provisional Institutions of Self-Government of Kosovo”, when it was an act voted upon and signed by the democratically elected representatives of the people of Kosovo, acting in a manner wholly different from the PISG.

10.20. Finally, the question appears unjustifiably to assume that there are rules of international law governing the issuance of declarations of independence, when in fact general international law does not regulate such declarations.

There is no rule of international law prohibiting the issuance of a declaration of independence

10.21. International law contains no prohibition on the issuance of declarations of independence. Rather, the issuance of a declaration of independence is understood as a *factual* event that, in combination with other events and factors over time, may or may not result in the emergence of a new State. Only at that point do those who formed the new State become exposed to rights and obligations cognizable under international law. Numerous declarations of independence have been issued for over two hundred years, often in circumstances where a group is seeking to separate from a State without its consent, without those declarations being regarded as violations of international law.

10.22. State practice in the context of the Balkans during the 1990s confirms that international law does not prohibit the issuance of a declaration of independence, even in the face of a disapproving central government. Slovenia, Croatia, Bosnia and Herzegovina, and Macedonia all declared independence in the face of opposition by the SFRY, and yet other States (and this Court, with respect to Bosnia and Herzegovina) did not view those declarations as contrary to international law. Rather, over time and in conjunction with other factors, those States were ultimately recognized and admitted to membership in international organizations.

10.23. Consequently, the Declaration of Independence of 17 February 2008 did not contravene any applicable rule of international law and in that sense was “in accordance” with international law. Given that international law contains no prohibition on the issuance of a declaration of independence, the Court need not reach the issue of whether the declaration of independence by the people of Kosovo reflected an exercise of the internationally-protected right of self-determination (though it clearly did), for there is no need to determine whether international law has authorized Kosovo to seek independence.

The Declaration did not contravene Security Council resolution 1244 (1999), which envisaged a political process that included the possibility of Kosovo’s independence if it was the “will of the people”

10.24. The Declaration of Independence of 17 February 2008 also cannot be seen as having contravened Security Council resolution 1244 (1999). Rather than prohibit the issuance of a declaration of independence, resolution 1244 established a framework that fully contemplated the possibility of Kosovo’s emergence as an independent State. The resolution accorded very broad powers to the United Nations Secretary-General and his Special Representative (SRSG) to establish a United Nations interim administration in Kosovo, so as to foster Kosovo self-governance without FRY or Serbian interference. Moreover, the resolution accorded to the Secretary-General and his representatives broad power to pursue political negotiations toward a final settlement (and to determine the pace and duration of those negotiations), without in any fashion predetermining the outcome of that settlement or requiring that the settlement be approved by the FRY, by Serbia, or by the Security Council itself.

10.25. On the issue of Kosovo’s final status, the resolution called for “[f]acilitating a political process designed to determine Kosovo’s future status, taking into account the Rambouillet accords”. Those accords stated that the final settlement for Kosovo should be achieved “on the basis of the will of the people”, a reference that clearly did not require that Kosovo remains a part of the FRY or Serbia. Yet more importantly for the work of this Court, the reference to Rambouillet demonstrates that the final political settlement was to be driven, in the first instance, by the “will of the people”. While a further Security Council decision was no doubt viewed as politically desirable, resolution 1244 did not

require any such decision. Indeed, the process and substance identified in the resolution for guiding this process were consciously open-ended and identified as “political” in nature.

The political process envisaged by resolution 1244 (1999) ended in 2007 when the authorized representatives of the United Nations determined that independence was the only viable option

10.26. In 2005, the Secretary-General, after consulting the Security Council, launched the political process for the determination of Kosovo’s final status. The outcome of that process was a determination by the United Nations Special Envoy appointed by the Secretary-General, President Ahtisaari, that the “potential to produce any mutually agreeable outcome on Kosovo’s status is exhausted”⁵⁸¹ and that “the only viable option for Kosovo is independence”⁵⁸². Thereafter, the democratically elected representatives of Kosovo declared independence on behalf of the people of Kosovo. Given the acceptance by the Secretary-General that further negotiations would be fruitless and that independence was the only viable option, it cannot be said that a declaration of independence by the democratically elected representatives of Kosovo contravened resolution 1244 (1999). Rather, the declaration was an obvious and necessary next step in the process of achieving a final settlement of Kosovo’s status, one that flowed directly from the conclusions by the very persons (the Secretary-General and his Special Envoy) charged by the Security Council with leading the final status process.

The Declaration was not declared unlawful by the SRSG, the United Nations official authorized to monitor implementation of resolution 1244 (1999)

10.27. Under the mandate assigned to the SRSG by resolution 1244 (1999), as well as the terms of the Constitutional Framework promulgated by the SRSG, it would be expected that the SRSG would declare null and void any acts of the Kosovo Assembly that were regarded as inconsistent with resolution 1244 (1999). Any United Nations mission

⁵⁸¹ Report of the Special Envoy of the Secretary-General on Kosovo’s future status, S/2007/168, 26 March 2007, para. 3 [Dossier No. 203].

⁵⁸² *Ibid.*, para. 5.

deployed under the direction of the Secretary-General is expected faithfully to execute the tasks assigned to it, in close consultation with United Nations officials in New York if important issues of interpreting that mandate arise. As such, the SRSG would have been expected to annul a declaration of independence if it was regarded as being contrary to resolution 1244 (1999), just as he had taken steps at earlier stages against actions of that nature prior to the completion of the Ahtisaari process. The fact that the SRSG did not do so demonstrates that the Declaration did not contravene resolution 1244 (1999).

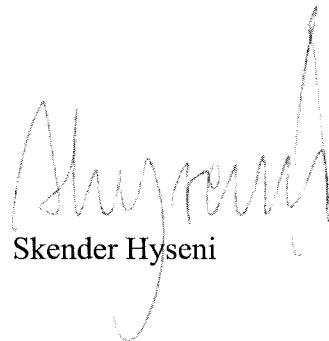
Resolution 1244's preambular reference to "sovereignty and territorial integrity" cannot be construed as an obligation not to declare independence

10.28. Though Serbia at times points to resolution 1244's preambular reference to "sovereignty and territorial integrity" as a basis for finding a violation of international law, that non-binding clause on its face and in context cannot be construed as prohibiting the issuance of a declaration of independence by the democratically elected representatives of Kosovo. While there are several reasons why this is the case, the most distinguishing feature of that clause is the qualification "as set out in the Helsinki Final Act and annex 2". Whatever meaning might otherwise be ascribed to a clause of this type in any other Security Council resolution, this particular clause is unique in its incorporation by reference of Annex 2, which addresses "territorial integrity" solely in the context of a principle that should apply during the period of the "interim political framework", not with respect to Kosovo's final status. Similarly, the reference in annex 2 and in paragraph 10 of the resolution itself to Kosovo being "within the Federal Republic of Yugoslavia" was expressly in the context of the interim period.

10.29. In short, given the terms of resolution 1244 (1999), the process that unfolded based on those terms, and the reaction of the SRSG after the issuance of Kosovo's declaration of independence, there is no basis for concluding that the February 2008 declaration contravened resolution 1244 (1999) or any other any applicable rule of international law.

CONCLUSION

For the reasons set out in this Written Contribution, the Republic of Kosovo respectfully requests the Court, in the event that it deems it appropriate to respond to the request for an advisory opinion contained in General Assembly resolution 63/3, to find that the Declaration of Independence of 17 February 2008 did not contravene any applicable rule of international law.



A handwritten signature in black ink, appearing to read "Skender Hyseni".

Skender Hyseni

Minister of Foreign Affairs of the Republic of Kosovo
Representative of the Republic of Kosovo before the
International Court of Justice

Pristina, 17 April 2009

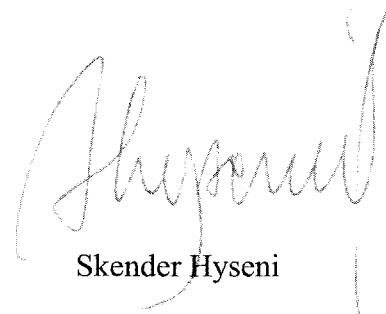
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ANNEXES

CERTIFICATION

I hereby certify that the documents annexed to this Written Contribution are true copies of and conform to the original documents and that the English and French translations provided by the Republic of Kosovo are accurate.

A handwritten signature in black ink, appearing to read "Skender Hyseni".

Skender Hyseni

Pristina, 17 April 2009

Minister of Foreign Affairs of the Republic of Kosovo
Representative of the Republic of Kosovo before the
International Court of Justice

Annex 1

DECLARATION OF INDEPENDENCE OF KOSOVO

Photographic Reproduction, Albanian Original,
English and French Translations

Deklarata e Pavarejësisé se Kosovës

Té měsíčník ne měl dle této rezoluce žádat o konání meziříčského referenda.

Kognat i Kvinneedit til Rosene

*Julie Remond
Montgomery*

BIBLIOTECAS NACIONAIS

The following is a sketch
of George Smith.

Report of Director of Bureau

Deklarata e Pavarësisë së Kosovës

Të mbledhur në mbledhje të jashtëzakonshme më 17 shkurt 2008, në kryeqytetin e Kosovës, në Prishtinë,

Duke iu përgjigjur thirrjes së popullit për të ndërtuar një shoqëri që respekton dinjitetin njerëzor dhe afirmon krenarinë dhe synimet e qytetarëve të saj,

Të zotuar për t'u përballur më trashëgiminë e dhembshme të së kaluarës së afërt në fryshtëzim, të pajtimit dhe faljes,

Të përkushtuar ndaj mbrojtjes, promovimit dhe respektimit të diversitetit të popullit tonë,

Duke riafirmuar dëshirën tonë për t'u integruar plotësisht në familjen euroatlantike të demokrative,

Duke vërejtur se Kosova është një rast special që del nga shpërbërja jokonsensuale e Jugosllavisë dhe nuk është presedan për cilëndo situatë tjetër,

Duke rikujtuar vitet e konfliktit dhe dhunës në Kosovë që shqetësuan ndërgjegjen e të gjithë popujve të civilizuar,

Mirënjojës që bota intervenoi më 1999 duke hequr në këtë mënyrë qeverisjen e Beogradit mbi Kosovën, dhe vendosur Kosovën nën administrimin e përkohshëm të Kombeve të Bashkuara,

Krenarë që Kosova që atëherë ka zhvilluar institucione funksionale, multietnike të demokracisë që shprehin lirisht vullnetin e qytetarëve tanë,

Duke rikujtuar vitet e negociatave të sponsorizuara ndërkombëtarisht ndërmjet Beogradit dhe Prishtinës mbi çështjen e statusit tonë të ardhshëm politik,

Duke shprehur keqardhje që nuk u arrit asnjë rezultat i pranueshëm për të dyja palët përkundër angazhimit të mirëfilltë të udhëheqësve tanë,

Duke konfirmuar se rekomandimet e të Dërguarit Special të Kombeve të Bashkuara, Martti Ahtisaari, i ofrojnë Kosovës një kornizë gjithëpërfsirëse për zhvillimin e saj të ardhshëm, dhe janë në vijë me standartet më të larta europiane për të drejtat të njeriut dhe qeverisjen e mirë,

Të vendosur që ta shohim statusin tonë të zgjidhur në mënyrë që t'i jipet popullit tonë qartësi mbi të ardhmen e vet, të shkohet përtej konflikteve të së kaluarës dhe të realizohet potenciali i plotë demokratik i shoqërisë sonë,

Duke nderuar të gjithë burrat dhe gratë që bënë sakrifica të mëdha për të ndërtuar një të ardhme më të mirë për Kosovën,

1. Ne, udhëheqësit e popullit tonë, të zgjedhur në mënyrë demokratike, nëpërmjet kësaj Deklarate shpallim Kosovën shtet të pavarur dhe sovran. Kjo shpallje pasqyron vullnetin e popullit tonë dhe është në pajtueshmëri të plotë me rekomandimet e të Dërguarit Special të Kombeve të Bashkuara, Martti Ahtisaari, dhe Propozimin e tij Gjithëpërfshirës për Zgjidhjen e Statusit të Kosovës.
2. Ne shpallim Kosovën një republikë demokratike, laike dhe multietnike, të udhëhequr nga parimet e jodiskriminimit dhe mbrojtës së barabartë sipas ligjit. Ne do të mbrojmë dhe promovojmë të drejtat e të gjitha komuniteteve në Kosovë dhe krijojmë kushtet e nevojshme për pjesëmarrjen e tyre efektive në proceset politike dhe vendimmarrëse.
3. Ne pranojmë plotësisht obligimet për Kosovën të përbajtura në Planin e Ahtisarit, dhe mirëpresim kornizën që ai propozon për të udhëhequr Kosovën në vitet në vijim. Ne do të zbatojmë plotësisht ato obligime, përfshirë miratimin prioritar të legjislacionit të përfshirë në Aneksin XII të tij, veçanërisht atë që mbron dhe promovon të drejtat e komuniteteve dhe pjesëtarëve të tyre.
4. Ne do të miratojmë sa më shpejt që të jetë e mundshme një kushtetutë që mishëron zotimin tonë për të respektuar të drejtat e njeriut dhe liritë themelore të të gjithë qytetarëve tanë, posaçërisht ashtu siç definoohen me Konventën Europiane për të Drejtat e Njeriut. Kushtetuta do të inkorporojë të gjitha parimet relevante të Planit të Ahtisarit dhe do të miratohet nëpërmjet një procesi demokratik dhe të kujdeshshëm.
5. Ne mirëpresim mbështetjen e vazhdueshme të bashkësisë ndërkombëtare për zhvillimin tonë demokratik nëpërmjet të pranive ndërkombëtare të themeluara në Kosovë në bazë të Rezolutës 1244 të Këshillit të Sigurimit të Kombeve të Bashkuara (1999). Ne ftojmë dhe mirëpresim një prani ndërkombëtare civile për të mbikëqyrur zbatimin e Planit të Ahtisarit dhe një mision të sundimit të ligjit të udhëhequr nga Bashkimi European. Ne, po ashtu, ftojmë dhe mirëpresim NATO-n që të mbajë rolin udhëheqës në praninë ndërkombëtare ushtarake dhe të zbatojë përgjegjësitë që i janë dhënë sipas Rezolutës 1244 të Këshillit të Sigurimit të Kombeve të Bashkuara (1999) dhe Planit të Ahtisarit, deri në atë kohë kur institucionet e Kosovës do të jenë në gjendje të marrin këto përgjegjësi. Ne do të bashkëpunojmë plotësisht më këto prani në Kosovë për të siguruar paqen, prosperitetin dhe stabilitetin në të ardhmen në Kosovë.
6. Për arsyet kulturës, gjeografisë dhe historisë, ne besojmë se e ardhmja jonë është në familjen europiane. Për këtë arsy, ne shpallim synimin tonë për të marrë të gjitha hapat e nevojshëm për të siguruar anëtarësim të plotë në Bashkimin European saq që të jetë e mundshme dhe për të zbatuar reformat e kërkua të përbahemi parimeve të integrimit europian dhe euroatlantik.
7. Ne i shprehim mirënjojje Organizatës së Kombeve të Bashkuara për punën që ka bërë për të na ndihmuar në rimëkëmbjen dhe rindërtimin pas lufte dhe ndërtimin e institucioneve të demokracisë. Ne jemi të përkushtuar të punojmë në mënyrë konstruktive me Organizatën e Kombeve të Bashkuara gjersa ajo vazhdon punën e saj në periudhën në vijim.
8. Me pavarësinë vie detyra e anëtarësisë së përgjegjishme në bashkësinë ndërkombëtare. Ne e pranojmë plotësisht këtë detyrë dhe do t'i përbahemi parimeve të Kartës së Kombeve të Bashkuara, Aktin Final të Helsinkit, akteve tjera të Organizatës për Siguri dhe Bashkëpunim në Europë, obligimeve ligjore ndërkombëtare dhe parimeve të

marrëdhënieve të mira ndërkombëtare që shënojnë marrëdhëniet ndërmjet shteteve. Kosova do të ketë kufijtë e saj ndërkombëtarë ashtu siç janë paraparë në Aneksin VIII të Planit të Ahtisaarit, dhe do të respektojë plotësisht sovranitetin dhe integritetin territorial të të gjithë fqinjve tanë. Kosova, po ashtu, do të përmbahet nga kërcënimi apo përdorimi i forcës në cilëndo mënyrë që është jokonsistente me qëllimet e Kombeve të Bashkuara.

9. Ne, nëpërmjet kësaj Deklarate, marrim obligimet ndërkombëtare të Kosovës, përfshirë ato të arritura në emrin tonë nga Misioni i Administratës së Përkohshme të Kombeve të Bashkuara në Kosovë (UNMIK), si dhe obligimet e traktateve dhe obligimet tjera të ish-Republikës Socialiste Federative të Jugosllavisë ndaj të cilave obligohemi si ish-pjesë konstitutive, përfshirë konventat e Vjenës për marrëdhëniet diplomatike dhe konsullore. Ne do të bashkëpunojmë plotësisht me Tribunalin Penal Ndërkombëtar për ish-Jugosllavinë. Ne synojmë të kërkojmë anëtarësim në organizatat ndërkombëtare, në të cilat Kosova do të synojë të kontribuojë për qëllime të paqes dhe stabilitetit ndërkombëtar.

10. Kosova shpall zotimin e saj ndaj paqes dhe stabilitetit në rajonin tonë të Europës Juglindore. Pavarësia jonë e sjell në fund procesin e shpërbërjes së dhunshme të Jugosllavisë. Gjersa ky proces ka qenë i dhembshëm, ne do të punojmë pa pushim për t'i kontribuar një pajtimi që do të lejonte Europën Juglindore të shkojë përtëj konflikteve të së kaluarës dhe të farkojë lidhje të reja rjonale të bashkëpunimit. Për këtë arsy, do të punojmë së bashku me fqinjtë tanë për të avansuar të ardhmen tonë të përbashkët europiane.

11. Ne shprehim, në veçanti, dëshirën tonë për të vendosur marrëdhënie të mira me të gjithë fqinjtë tanë, përfshirë Republikën e Serbisë, me të cilën kemi marrëdhënie historike, tregtare dhe shoqërore, të cilat synojmë t'i zhvillojmë më tej në të ardhmen e afërt. Ne do të vazhdojmë përpjekjet tona për t'i kontribuar marrëdhënieve të fqinjësisë dhe bashkëpunimit me Republikën e Serbisë duke promovuar pajtimin ndërmjet popujve tanë.

12. Ne, nëpërmjet kësaj, afirmojmë në mënyrë të qartë, specifike dhe të parevokueshme se Kosova do të jetë ligjërisht e obliguar të plotësojë dispozitatat e përmbajtura në këtë Deklaratë, përshirë këtu veçanërisht obligimet e saj nga Plani i Ahtisaarit. Në të gjitha këto çështje, ne do të veprojmë në pajtueshmëri në parimet e së drejtës ndërkombëtare dhe rezolutat e Këshillit të Sigurimit të Kombeve të Bashkuara, përfshirë Rezolutën 1244 (1999). Ne shpallim publikisht se të gjitha shtetet kanë të drejtën të mbështeten në këtë Deklaratë, dhe i bëjmë apel të na ofrojnë përkrahjen dhe mbështetjen e tyre.

Kosovo Declaration of Independence

Convened in an extraordinary meeting on February 17, 2008, in Pristina, the capital of Kosovo,

Answering the call of the people to build a society that honours human dignity and affirms the pride and purpose of its citizens,

Committed to confront the painful legacy of the recent past in a spirit of reconciliation and forgiveness,

Dedicated to protecting, promoting and honouring the diversity of our people,

Reaffirming our wish to become fully integrated into the Euro-Atlantic family of democracies,

Observing that Kosovo is a special case arising from Yugoslavia's non-consensual breakup and is not a precedent for any other situation,

Recalling the years of strife and violence in Kosovo, that disturbed the conscience of all civilised people,

Grateful that in 1999 the world intervened, thereby removing Belgrade's governance over Kosovo and placing Kosovo under United Nations interim administration,

Proud that Kosovo has since developed functional, multi-ethnic institutions of democracy that express freely the will of our citizens,

Recalling the years of internationally-sponsored negotiations between Belgrade and Pristina over the question of our future political status,

Regretting that no mutually-acceptable status outcome was possible, in spite of the good-faith engagement of our leaders,

Confirming that the recommendations of UN Special Envoy Martti Ahtisaari provide Kosovo with a comprehensive framework for its future development and are in line with the highest European standards of human rights and good governance,

Determined to see our status resolved in order to give our people clarity about their future, move beyond the conflicts of the past and realise the full democratic potential of our society,

Honouring all the men and women who made great sacrifices to build a better future for Kosovo,

1. We, the democratically-elected leaders of our people, hereby declare Kosovo to be an independent and sovereign state. This declaration reflects the will of our people and it is in full accordance with the recommendations of UN Special Envoy Martti Ahtisaari and his Comprehensive Proposal for the Kosovo Status Settlement.
2. We declare Kosovo to be a democratic, secular and multi-ethnic republic, guided by the principles of non-discrimination and equal protection under the law. We shall protect and promote the rights of all communities in Kosovo and create the conditions necessary for their effective participation in political and decision-making processes.
3. We accept fully the obligations for Kosovo contained in the Ahtisaari Plan, and welcome the framework it proposes to guide Kosovo in the years ahead. We shall implement in full those obligations including through priority adoption of the legislation included in its Annex XII, particularly those that protect and promote the rights of communities and their members.
4. We shall adopt as soon as possible a Constitution that enshrines our commitment to respect the human rights and fundamental freedoms of all our citizens, particularly as defined by the European Convention on Human Rights. The Constitution shall incorporate all relevant principles of the Ahtisaari Plan and be adopted through a democratic and deliberative process.
5. We welcome the international community's continued support of our democratic development through international presences established in Kosovo on the basis of UN Security Council resolution 1244 (1999). We invite and welcome an international civilian presence to supervise our implementation of the Ahtisaari Plan, and a European Union-led rule of law mission. We also invite and welcome the North Atlantic Treaty Organization to retain the leadership role of the international military presence in Kosovo and to implement responsibilities assigned to it under UN Security Council resolution 1244 (1999) and the Ahtisaari Plan, until such time as Kosovo institutions are capable of assuming these responsibilities. We shall cooperate fully with these presences to ensure Kosovo's future peace, prosperity and stability.
6. For reasons of culture, geography and history, we believe our future lies with the European family. We therefore declare our intention to take all steps necessary to facilitate full membership in the European Union as soon as feasible and implement the reforms required for European and Euro-Atlantic integration.
7. We express our deep gratitude to the United Nations for the work it has done to help us recover and rebuild from war and build institutions of democracy. We are committed to working constructively with the United Nations as it continues its work in the period ahead.
8. With independence comes the duty of responsible membership in the international community. We accept fully this duty and shall abide by the principles of the United Nations Charter, the Helsinki Final Act, other acts of the Organization on Security and Cooperation in Europe, and the international legal obligations and principles of international comity that mark the relations among states. Kosovo shall have its international borders as set forth in Annex VIII of the Ahtisaari Plan, and shall fully respect the sovereignty and territorial integrity of all our neighbors. Kosovo shall also

refrain from the threat or use of force in any manner inconsistent with the purposes of the United Nations.

9. We hereby undertake the international obligations of Kosovo, including those concluded on our behalf by the United Nations Interim Administration Mission in Kosovo (UNMIK) and treaty and other obligations of the former Socialist Federal Republic of Yugoslavia to which we are bound as a former constituent part, including the Vienna Conventions on diplomatic and consular relations. We shall cooperate fully with the International Criminal Tribunal for the Former Yugoslavia. We intend to seek membership in international organisations, in which Kosovo shall seek to contribute to the pursuit of international peace and stability.

10. Kosovo declares its commitment to peace and stability in our region of southeast Europe. Our independence brings to an end the process of Yugoslavia's violent dissolution. While this process has been a painful one, we shall work tirelessly to contribute to a reconciliation that would allow southeast Europe to move beyond the conflicts of our past and forge new links of regional cooperation. We shall therefore work together with our neighbours to advance a common European future.

11. We express, in particular, our desire to establish good relations with all our neighbours, including the Republic of Serbia with whom we have deep historical, commercial and social ties that we seek to develop further in the near future. We shall continue our efforts to contribute to relations of friendship and cooperation with the Republic of Serbia, while promoting reconciliation among our people.

12. We hereby affirm, clearly, specifically, and irrevocably, that Kosovo shall be legally bound to comply with the provisions contained in this Declaration, including, especially, the obligations for it under the Ahtisaari Plan. In all of these matters, we shall act consistent with principles of international law and resolutions of the Security Council of the United Nations, including resolution 1244 (1999). We declare publicly that all states are entitled to rely upon this declaration, and appeal to them to extend to us their support and friendship.

Déclaration d'indépendance du Kosovo

Réunis en session extraordinaire le 17 février 2008, à Pristina, capitale du Kosovo,

Répondant aux vœux du peuple de bâtir une société qui respecte la dignité de l'homme et garantit la fierté et la volonté de ses citoyens,

Résolus à affronter l'héritage douloureux du passé récent dans un esprit de réconciliation et de pardon,

Résolus à protéger, à favoriser et à respecter la diversité de notre peuple,

Réaffirmant notre souhait de nous intégrer pleinement dans la famille euro-atlantique des démocraties,

Observant que le Kosovo est un cas spécifique résultant de l'éclatement non consensuel de la Yougoslavie et ne constitue aucunement un précédent pour une quelconque autre situation,

Rappelant les années de conflit et de violence au Kosovo, qui ont troublé la conscience de tous les peuples civilisés,

Exprimant notre gratitude envers la communauté internationale qui est intervenue en 1999, mettant ainsi fin à la gouvernance de Belgrade sur le Kosovo et plaçant le Kosovo sous l'administration intérimaire des Nations Unies,

Fiers que, depuis lors, le Kosovo ait développé des institutions démocratiques à la fois multiethniques et opérationnelles qui expriment librement la volonté de nos citoyens,

Rappelant les années de négociations sous l'égide de la communauté internationale entre Belgrade et Pristina sur la question de notre futur statut politique,

Déplorant qu'aucun accord n'ait pu être trouvé concernant un statut acceptable pour les deux parties, en dépit de l'engagement de bonne foi de nos représentants,

Confirmant que les recommandations de l'Envoyé spécial des Nations unies, Martti Ahtisaari, offrent au Kosovo un cadre complet pour son développement futur et sont conformes aux normes européennes les plus élevées en matière de droits de l'homme et de bonne gouvernance,

Résolus à trouver un règlement à notre statut afin de donner à notre peuple une vision claire de son avenir, de dépasser les conflits du passé et de réaliser pleinement le potentiel démocratique de notre société,

Rendant hommage à tous les hommes et femmes qui ont fait de grands sacrifices pour bâtir un avenir meilleur pour le Kosovo,

1. Nous, les représentants de notre peuple, démocratiquement élus, déclarons par la présente que le Kosovo est un État indépendant et souverain. Cette déclaration reflète la volonté du peuple et est en pleine conformité avec les recommandations de l'Envoyé spécial des Nations unies, Martti Ahtisaari, et avec sa Proposition globale de Règlement portant statut du Kosovo.

2. Nous déclarons que le Kosovo est une république démocratique, laïque et multiethnique, guidée par les principes de non-discrimination et de protection égale devant la loi. Nous protégerons et promouvrons les droits de toutes les communautés du Kosovo et créerons les conditions nécessaires à leur participation effective aux processus politique et de prise de décisions.

3. Nous acceptons intégralement les obligations du Kosovo découlant du plan Ahtisaari et approuvons le cadre qu'il propose pour guider le Kosovo dans les années à venir. Nous mettrons pleinement en œuvre ces obligations y compris l'adoption prioritaire des lois figurant dans son annexe XII, notamment celles qui protègent et promeuvent les droits des communautés et de leurs membres.

4. Nous adopterons dès que possible une constitution qui proclame notre engagement à respecter les droits de l'homme et les libertés fondamentales de tous nos citoyens, tels qu'ils sont définis notamment par la Convention européenne des droits de l'homme. La Constitution intégrera tous les principes pertinents du plan Ahtisaari et sera adoptée dans le cadre d'un processus démocratique réfléchi.

5. Nous saluons le soutien continu à notre développement démocratique manifesté par la communauté internationale par le biais des présences internationales établies au Kosovo sur la base de la résolution 1244 (1999) du Conseil de sécurité de l'Organisation des Nations unies. Nous invitons et accueillons une présence internationale civile chargée de superviser la mise en œuvre du plan Ahtisaari et une mission pour l'État de droit menée par l'Union européenne. Nous invitons et accueillons également l'OTAN à garder un rôle dirigeant dans la présence militaire internationale et à assumer les responsabilités qui lui ont été confiées par la résolution 1244 (1999) du Conseil de sécurité de l'Organisation des Nations Unies et le plan Ahtisaari jusqu'à ce que les institutions du Kosovo soient capables d'assumer ces responsabilités. Nous coopérerons pleinement avec ces présences au Kosovo pour assurer la paix, la prospérité et la stabilité à venir au Kosovo.

6. Pour des raisons culturelles, géographiques et historiques, nous sommes convaincus que notre avenir ne se conçoit que dans la famille européenne. Par conséquent, nous proclamons notre intention de prendre toutes les mesures nécessaires pour assurer notre adhésion à l'Union européenne dès que possible et mettre en application les réformes requises pour l'intégration européenne et euro-atlantique.

7. Nous exprimons notre profonde gratitude envers l'Organisation des Nations Unies qui nous a aidés à rétablir et à reconstruire le pays après la guerre et à bâtir des institutions fondées sur la démocratie. Nous sommes résolus à coopérer utilement avec l'Organisation des Nations Unies pour assurer la poursuite de sa mission dans les années à venir.

8. L'indépendance implique les devoirs inhérents à notre appartenance responsable à la communauté internationale. Nous acceptons pleinement ces devoirs et nous respecterons les principes de la Charte des Nations Unies, l'Acte final d'Helsinki, les autres actes de l'Organisation pour la sécurité et la coopération en Europe (OSCE), les obligations

juridiques internationales et les principes de courtoisie internationale inhérents aux relations entre États. Le Kosovo aura comme frontières internationales celles que fixe l'annexe VIII du plan Ahtisaari et respectera pleinement la souveraineté et l'intégrité territoriale de tous nos voisins. Le Kosovo s'abstiendra de tout usage ou menace de la force incompatible avec les buts des Nations Unies.

9. Nous assumons par la présente les obligations internationales du Kosovo, y compris celles conclues pour notre compte par la Mission d'administration intérimaire des Nations unies au Kosovo (MINUK) et les traités et autres obligations de l'ex-République socialiste fédérale de Yougoslavie auxquels nous sommes liés en tant qu'ancienne partie constituante, y compris les Conventions de Vienne sur les relations diplomatiques et consulaires. Nous coopérerons pleinement avec le Tribunal pénal international pour l'ex-Yougoslavie. Nous entendons adhérer aux organisations internationales, au sein desquelles le Kosovo s'efforcera de contribuer à la poursuite de la paix et de la stabilité dans le monde.

10. Le Kosovo déclare être attaché à la paix et à la stabilité dans notre région de l'Europe du Sud-est. Notre indépendance met un terme au processus de dissolution violente de la Yougoslavie. Bien que ce processus ait été douloureux, le Kosovo s'efforcera inlassablement de contribuer à une réconciliation qui permettrait à l'Europe du Sud-est de dépasser les conflits du passé et de bâtir de nouvelles relations de coopération régionale. Nous œuvrerons avec nos voisins pour avancer vers un avenir européen commun.

11. Nous exprimons, en particulier, notre souhait d'établir de bonnes relations avec tous nos voisins, y compris la République de Serbie, avec laquelle nous avons des liens historiques, commerciaux et sociaux que nous chercherons à développer davantage dans un proche avenir. Nous poursuivrons nos efforts visant à établir des relations d'amitié et de coopération avec la République de Serbie, tout en favorisant la réconciliation entre nos peuples.

12. Nous affirmons clairement, explicitement et de manière irrévocable, par la présente, que le Kosovo sera tenu juridiquement de respecter les dispositions contenues dans cette déclaration, y compris en particulier les obligations qui lui incombent aux termes du plan Ahtisaari. Dans tous ces domaines, nous agirons en accord avec les principes du droit international et avec les résolutions du Conseil de sécurité de l'Organisation des Nations Unies, y compris la résolution 1244 (1999). Nous déclarons publiquement que tous les États sont en droit de se prévaloir de cette déclaration et nous les invitons à nous offrir leur soutien et leur amitié.

Annex 2

**EXTRAORDINARY SESSION OF THE ASSEMBLY OF KOSOVO,
HELD ON 17 FEBRUARY 2008
(TRANSCRIPT)**

English Translation*

* The Albanian Original is available on the website of the Assembly of the Republic of Kosovo (<http://www.assembly-kosova.org/common/docs/proc/trans_s_2008_02_17_al.pdf>).

Legislature III

TRANSCRIPT

**OF THE SPECIAL PLENARY SESSION OF THE ASSEMBLY OF KOSOVO
ON THE DECLARATION OF INDEPENDENCE
HELD ON 17 FEBRUARY 2008**

FEBRUARY 2008

Session opened at 15.00.

Session is chaired by Mr. Jakup Krasniqi, President of the Kosovo Assembly

Co-chairs were Mr. Xhavit Haliti and Mr. Sabri Hamiti, members of the Assembly Chairmanship
(applause)

PRESIDENT OF THE ASSEMBLY, JAKUP KRASNIQI:

Today, Kosovo is opening a new page in history, and is changing the political map of Europe

Leaving behind bitter memories of hatred and tragic strife we went through, we are now entering the age of independence, peace and prosperity of our country.

There can be real peace and freedom only between equals. An independent Kosovo will be the homeland of equal and happy citizens, building upon foundations of the best values of its tradition as well as principles of modern democracy.

It is a special privilege for the present generation in Kosovo to experience this great historical turn, an honor for them, but also a great responsibility for the democratic and European development of the home country and the generations that will succeed us.

Our solemn oath for Kosovo, a democratic country, is a contract with its citizens and a partnership with the international community; it is the promise for lifelong dedication towards the most prosperous underlying values of today's society.

Kosovo has never in its life had as many friends as today. However, tomorrow there will be even more. A democratic culture and society, rule of law, peacemaking commitment, friendly neighborhood and the spirit of dialogue, respect and good faith – will be the basis for expanding friendships and cooperation and partnership.

I will take this solemn opportunity to express feelings of the people of Kosovo who humbly bow before the ones who were sacrificed on the altar of freedom for Kosovo.

With special respect, I thank all our friends, who with great commitment helped Kosovo in its historical and decisive moments.

The Albanian people and the citizens of Kosovo will be grateful forever.

On this special day, I feel honored to welcome the representative of the great family Jashari – Mr Rifat Jashari.

(applause)

The Jashari family represents all sacrifices for freedom of the Albanian people, it is the institution of morals for Kosovo now and forever.

Honorable Mr. President of Kosovo
Honorable Mr. Prime Minister of Kosovo
Honorable Members of the Assembly of Kosovo
Honorable representatives of the international presence in Kosovo
Honorable friends and guests
Honorable citizens of Kosovo and compatriots, wherever you are
Ladies and Gentlemen,

It is with great pleasure that on behalf of the Assembly of Kosovo and on my personal behalf, I welcome and thank you all, and those who are following us anywhere in the world, on these historical moments for the future of the people of Kosovo!

(applause)

Honorable Assembly Members,

Welcome to the special solemn plenary session on this day, February 17th, 2008, at 15.00 hours

It is an honor for me to present to you today's agenda

The first item on our agenda is:

DECLARATION OF INDEPENDENCE

(applause)

The second item on our agenda is:

APPROVAL OF STATE SYMBOLS

104 Assembly members are present,

I ask the assembly members, to cast their vote on the approval of this proposed agenda.

Thank you!

Any votes "against"? None.

I declare that the Assembly has approved the agenda by unanimous vote

109 assembly members are now present

I would like to invite the Prime Minister of Kosovo, Mr. Hashim Thaçi, to provide justification for the request for the special and solemn Assembly session.

THE PRIME MINISTER OF KOSOVO, HASHIM THAÇI:

Honorable Mr. Chairman,
President of Kosovo,
Honorable ministers,
Honorable Assembly Members,
Leaders of Political Parties,
Honorable guests – internationals, locals
Honorable Jashari Family,
Honorable representatives, guests from religious communities,
Honorable contributors to the agenda for the present special Assembly session,

Today, the President of Kosovo and myself, as the Prime Minister of Kosovo, have officially requested from the President of the Assembly, Mr Krasniqi; to call for a special session with two agenda items,

This invitation for a special session is extended in accordance with the Kosovo Constitutional Framework, whereby we present two items on the agenda:

1. DECLARATION OF INDEPENDENCE FOR KOSOVO, and
2. PRESENTATION OF KOSOVO STATE SYMBOLS

Mr. Chairman, thank you for calling this urgent session and for prompt approval by the Chairmanship of the Assembly, as well as for the approval of this agenda. Let us continue.

Honorable Assembly President,
Honorable Assembly Members
Honorable President,
Honorable guests, citizens of Kosovo,

We have waited too long for this day. Many people gave so much to make this a reality, this big day – the Day of Kosovo Independence.

Today, we honor those who have honored us with their sacrifice for freedom and state. We forever remember and respect their names and their deeds. We keep their memory forever in our hearts.

We are deeply grateful to our friends and allies in the country and beyond, who have assisted us to jointly reach this point.

I welcome all of those who are with us today, and I express my deepest gratitude, my highest respect to those who are following us on these moments, on behalf of my institutions and my people.

This day has come! From now on, Kosovo is proud, independent, sovereign and free!

My family, as well as your family and all families throughout Kosovo, never hesitated and never lost faith in us, we never lost faith in God, in justice and in power.

Let me mention the brother who left his family to go to war, the farmer who left his land a waste, the women and men who opened their doors to teach our children, and the students, who as always, raised and said – enough!

To all of those who came back to build a better life for their children, we never lost faith on a dream that one day, we will be among free and independent countries of the democratic world.

All of us together, brought Kosovo to this moment and we all need to be proud, very proud.

As my parents and my grandparents, who taught me about sacrifice and what it means to be free, I ask you to talk to your children, to your nephews and nieces and to explain to them the meaning of today's day. It was a long, difficult road, a road of sacrifice, but also a road of victory.

Carry on this story to the next generations, the story about the joy and pride we feel today, and never forget to remind them to remember great sacrifice of the generations before us.

Kosovo will face many challenges in the coming years

However, no challenge will make us surrender our way forward, with one joint spirit as one united people, with a clear, pro-western political vision.

Our challenges, including economy, education and health, infrastructure and European integration, are important challenges, but they cannot resist the positive spirit of our citizens and our fate.

Kosovo, both people and territory are united today in a historical moment, to improve the lives of each citizen within our borders, regardless of ethnic origin.

Our hopes have never been higher. Our faith has never been bigger. The people of Kosovo have never been more united. Our dreams know no limit. Kosovo has never had more international support.

The challenges before us are great, but nothing can stop us from moving forward – towards new historical moments, which a new history will give us and we are jointly making the new history.

Today, the whole world is with us, and we are becoming an equal part of the democratic world. We are becoming an equal part of a world we deserve.

Until now, we did a great deal to guarantee our commitment towards communities

On this historical day, honorable assembly members, I wish to reaffirm our political will to create the necessary conditions for respecting and protecting the communities and for further improving relationships between them in a new Kosovo.

Our constitution and our laws will reflect this, together with an inter-institutional strategy at all levels of our new country.

Our commitments will be embodied in three main elements:

The first, a strong and irreversible guarantee by law of equal rights of all communities in Kosovo

The second, establishment of permanent mechanisms to guarantee that the communities play a complete and active role in developing the future of our country, and

The third, is our responsibility to take effective and immediate measures to ensure that our commitments result with positive change, for all those living in Kosovo, especially members of minority communities

Our Constitution states that Kosovo is a state of all its citizens. There is no place for fear, discrimination or unequal treatment for anyone. We are building Kosovo with equal rights for everyone, with equal opportunities for everyone.

Each discriminatory practice will be eradicated from our state institutions. Each discriminatory practice will be eradicated from our society. In Kosovo, there will only be tolerance, understanding, living together, solidarity and progress.

We all agree that diversity brings positive benefits for all

Honorable Assembly Members,

[in Serbian language] Honorable co-citizens,

Today's day brings the end of a long process

This is the end of the last threats and blunders that Belgrade will ever rule Kosovo again,

Kosovars themselves, of all ethnic, religious and language origins will together carry their responsibility for their country.

We make Kosovo independent, aiming that all citizens enjoy the freedom and other benefits of our country.

Let this day be the day of a new beginning!

Let this day mark a beginning of a better future for all citizens of the state of Kosovo

[continues in Albanian language]

Honorable President of the Assembly

Honorable President

Honorable Assembly members

Honorable guests

Honorable citizens of Kosovo, wherever you are, in the Diaspora,

Kosovo is bringing a historical decision. Kosovo is declaring its independence in accordance with the comprehensive proposal of President Ahtisaari.

The independence of Kosovo marks the end of the dissolution of former Yugoslavia. Implementation of the Ahtisaari provisions, which are incorporated in the Kosovo Constitution, are a national priority to us

all, to the institutions and to the people of Kosovo. The Assembly of Kosovo will soon adopt all the main laws resulting from the Ahtisaari document, in the coming days.

Honorable Assembly Members,

Kosovo highly appreciates the role played by the United Nations Organization in reconstructing Kosovo and in building our democratic institutions. We expect to work with the United Nations Organization to promote our joint efforts for peace, security and democratic development.

In addition, we welcome the new international mission, led by the European Union, which will assist us in our democratic development and supervise the implementation of Ahtisaari plan, which is already a Kosovo plan.

On this occasion, I would like to assure all of you, through the voice of Kosovo institutions, and I would like to send this message and to assure our neighbors that Kosovo will do the best possible to establish and maintain good relationships with all neighboring countries. We aspire to have good mutual relationships at a mutual interest with Serbia as well, having faith that this is in our common interest and that of investment of our friends for peace and stability in the region.

From today on, Kosovo will be a democratic and multi-ethnic country of all of its citizens, in its fast journey towards Euro-Atlantic integrations. Thank you!

Thank you Mr. Chairman!

(applause)

PRESIDENT OF THE ASSEMBLY, JAKUP KRASNIQI:

Thank you, Mr. Prime Minister! I give the floor to the President of Kosovo, Mr. Fatmir Sejdiu

PRESIDENT OF KOSOVO, FATMIR SEJDIU:

Honorable President of the Assembly of Kosovo,

Honorable Chairmanship

Honorable Mr. Prime Minister, Hashim Thaçi,

Honorable Assembly Members and Ministers

Honorable family of President Rugova

Honorable Jashari family,

(applause)

Honorable representatives of Kosovo institutions

Representatives of Diplomatic missions

Representatives of science, culture, cults

Honorable citizens of Kosovo

[in Serbian language]

Honorable ministers,

Honorable citizens of Kosovo,

[continues in Albanian language]

Ladies and Gentlemen,

Today's day separates the history of Kosovo in two: the times before and after independence

The independence of Kosovo was created by generations, with their works of life, with hard work and the sacrifice they have made.

We are declaring our independence before the world, and with the blessing of the world, among friends who stood by us through decades, especially one decade ago, when the atrocities had spread in this part of the Balkans. The same friends stood by us during recovery after the war, during reconstruction after destruction caused by war and occupation. They stand by us today; they will stand by us tomorrow.

Today, we remember the sacrifices which led to this extraordinary day. We remember the mothers and fathers, who went through hardship that cannot be described so that their sons and daughters can live in freedom. Today, we remember President Ibrahim Rugova, the great leader and establisher of our country, who brought Kosovo out of chaos into a democratic order. Today, we remember Adem Jashari and the Kosovo Liberation Army who brought forward the will of the people to live in freedom. We also remember our neighbors of all ethnic, ideological and religious backgrounds who helped us during the years of repression and war. We remember all of this, not as a token of revenge for our violent past, but to build a future full of trust, which will offer an environment for reconciliation and forgiveness.

These great events of our history, our sacrifices and the hopes and achievements, have brought us here to declare our independence. The declaration of independence is the will of the people. It is a moral and logical consequence of our history and it is in full accordance with recommendations of the Special Envoy – President Martti Ahtisaari.

The independence for Kosovo is the end of a long process of dissolution of Yugoslavia. After two years of engagement in negotiations over status with Belgrade, and despite serious and constructive engagement of the Kosovo Unity Team, achieving an acceptable solution for both parties was not possible. Therefore, we had to act to offer our people a clear perspective with the aim of advancing our political, social and economic development.

Our vision for Kosovo is very clear. We wish to build Kosovo on fundamental democratic principles. This means that Kosovo will be a democratic, multi-ethnic state, well integrated in the region, with good relationships with its neighboring countries, a state that moves fast towards full membership in the Euro-Atlantic community. The people of Kosovo are determined and desire a European future for their country.

The comprehensive proposal on a status settlement for Kosovo in March of last year has been supported by the Assembly of Kosovo. This package gives the Serbs, as well as other minorities: Turks, Bosniaks, Roma, Ashkali and Egyptians, a strong guarantee on the protection of their political and cultural rights, which in many points even exceed the most advanced international standards on rights of the minorities.

The Constitution of the Republic of Kosovo guarantees multi-faceted and meaningful participation of minorities in the decision making process.

Honorable participants of this historical session of the Kosovo Assembly,

A national priority for the Kosovo Republic in the coming weeks and months is the full implementation of the Ahtisaari plan. Very soon, we aim to adopt the laws and the new Constitution of Kosovo, which also embodies Ahtisaari principles. All this will be followed with actual actions in the field in terms of implementation of provisions contained in the Ahtisaari plan.

With today's act, Kosovo also assumes responsibilities as a state. At the same time, Kosovo reaffirms its dedication for close cooperation with the international community to build a country in accordance with the most advanced norms and principles of democracy. For this reason, Kosovo welcomes the deployment of an international civilian presence, which will support further democratic development of our country, as well as supervise the implementation of the Ahtisaari plan. Specifically, we value the willingness of the European Community to assume a greater role in Kosovo. In addition, we welcome the continuous military presence of the NATO troops. We are committed to cooperating closely with the civilian and military representatives in Kosovo.

We are aware that members of minority communities in Kosovo see independence with a degree of fear and skepticism. We will do all that is possible to ensure that the rights, the culture and their property are strictly honored in the independent Kosovo.

[in Serbian language]

Honorable citizens of Kosovo,

Honorable representatives,

I would once again like to take this solemn opportunity to again invite all citizens of Kosovo, above all the citizens of the Serb community in Kosovo, to give their contribution in a common building of a European Kosovo, where each citizen will feel like home. Kosovo is equally your home and your homeland. Your rights and the rights of members of other communities in an independent Kosovo will be a continuous obligation of our state institutions. Serb cultural and religious heritage will be entirely protected. Your ethnic and language identity will be entirely honored, and we will achieve this by working together in our daily lives and in the institutions of Kosovo.

[continues in Albanian language]

Honorable Assembly Members

We want to strongly point out that Kosovo wishes to have good neighboring relations with Serbia as well, on a basis of mutual respect. We hope that our aim to normalize relations with Belgrade as soon as possible will be supported by Serbia.

We are grateful for the role and the work done by the Organization of United Nations in reconstructing post-war Kosovo. The United Nations Organization shall continue to have a role in Kosovo, for as long as

UN Resolution 1244 will be in force. We will continue to cooperate with the UN in order to make progress in our common goals of peace, security and democratic development for Kosovo, until full membership of Kosovo in this prestigious organization.

Our integration will flow naturally, as with its values, Kosovo has always culturally belonged to this family, but now, under new circumstances, Kosovo needs political integration to create new opportunities, such that human and natural resources are put at the service of overall social and economic development of our country.

Ladies and Gentlemen

The Republic of Kosovo today asks for the world's embrace. As we await recognition by many countries of the world, with a special piety we remember many worldly personalities who stood by the people of Kosovo through decades, especially in its most difficult hours

Our people will be eternally grateful to the United States of America, the countries of the European Union, NATO and other countries of the democratic world for the extraordinary support to our dear country – Kosovo.

God bless Kosovo and its people!

God bless the Republic of Kosovo!

God bless all friends of Kosovo!

(applause)

PRESIDENT OF THE ASSEMBLY, JAKUP KRASNIQI:

Thank you, Mr. President!

I invite the Prime Minister of Kosovo, Mr. Hashim Thaçi, to present the Draft Declaration of Independence

(applause)

I invite the participants to stand up!

PRIME MINISTER OF KOSOVO, HASHIM THAÇI:

Honorable President of the Assembly

Honorable President,

Honorable Members of the Assembly

Honorable guests,

Honorable Jashari family

Honorable Rugova family

Thank you, United States of America, European Union and NATO! Respect!

Now allow me to, by feeling the heartbeats of our ancestors, with the highest honor and privilege, read the Declaration of Independence of Kosovo

(applause)

DECLARATION
OF INDEPENDENCE OF KOSOVO

Convened in a solemn extraordinary plenary session, on February 17, 2008, in the capital of Kosovo,

Answering the call of the people to build a society that honors human dignity and affirms pride and purpose of its citizens;

Committed to confront the painful legacy of the recent past and in the spirit of forgiveness and reconciliation;

Dedicated to protection, promotion and honoring the diversity of our people;

Reaffirming our wish to be fully integrated in the Euro-Atlantic family of democracies;

Observing that Kosovo is a special case arising from the non-consensual dissolution of Yugoslavia and is no precedent to any other situation;

Recalling the years of strife and violence in Kosovo, that disturbed the conscience of all civilized people;

Grateful to the whole world that intervened in 1999, thereby removing Belgrade's governance over Kosovo and placing Kosovo under interim administration of the United Nations;

Proud that Kosovo has since developed functional multi-ethnic institutions of democracy, which freely express the will of our citizens;

Recalling the years of negotiations sponsored by internationals between Belgrade and Prishtina over the question of our future political status;

Regretting that no mutually acceptable outcome was possible, in spite of the good-faith engagement of Kosovar leadership and the important international role;

Confirming that recommendations of the Special Envoy of the United Nations, President Martti Ahtisaari, provide a comprehensive framework for its future development, are in line with the highest European standards on human rights and good governance;

Determined to see our status resolved in such a way as to provide to our people clarity about their future and to move beyond conflicts of the past, and to achieve full democratic potential of our society;

Honoring all the men and women who made great sacrifice to build a better future for Kosovo

1. We, the democratically elected leaders of our people, through this

DECLARATION

HEREBY DECLARE KOSOVO AN INDEPENDENT AND DEMOCRATIC STATE

(applause)

This declaration reflects the will of our people and is in full accordance with recommendations of the Special Envoy of the United Nations, Martti Ahtisaari, and his comprehensive proposal for the Kosovo Status Settlement.

We declare Kosovo to be a democratic, secular and multiethnic republic, guided by the principles of non-discrimination and equal protection under the law.

We shall protect and promote the rights of all communities in Kosovo and create the conditions necessary for their effective participation in political and decision-making processes.

We fully accept the obligations for Kosovo contained in the Ahtisaari Plan, and welcome the framework it proposes to guide Kosovo in the years ahead.

We shall implement those obligations in full, including through priority adoption of the legislation included in its Annex XII, particularly those that protect and promote the rights of communities and their members.

We shall adopt as soon as possible a Constitution that enshrines our commitment to respect the human rights and fundamental freedoms of all our citizens, particularly as defined by the European Convention on Human Rights.

The Constitution shall incorporate all relevant principles of the Ahtisaari Plan and be adopted through a democratic and deliberative process.

We welcome the international community's continued support of our democratic development through international presences established in Kosovo on the basis of UN Security Council Resolution 1244 in 1999.

We invite and welcome an international civilian presence to supervise our implementation of the Ahtisaari Plan, and a European Union-led rule of law mission.

We also invite and welcome the NATO to retain the leadership role of the international military presence in Kosovo and to implement responsibilities assigned to it under UN Security Council resolution 1244 from year 1999 and the Ahtisaari Plan, until such time as Kosovo institutions are capable of assuming these responsibilities.

We shall cooperate fully with these presences to ensure Kosovo's future peace, prosperity and stability

For reasons of culture, geography and history, we believe our future lies with the European family.

We therefore declare our intention to take all steps necessary to facilitate full membership in the European Union as soon as feasible and implement the reforms required for European and Euro-Atlantic integration.

We express our deep gratitude to the United Nations for the work it has done to help us recover and rebuild from war and build institutions of democracy.

We are committed to working constructively with the United Nations as it continues its work in the period ahead.

With independence comes the duty of responsible membership in the international community. We fully accept this duty and shall abide by the principles of the United Nations Charter, the Helsinki Final Act, other acts of the Organization on Security and Cooperation in Europe, and the international legal obligations and principles of international comity that mark the relations among states.

Kosovo shall have its international borders as set forth in Annex VIII of the Ahtisaari Plan, and shall fully respect the sovereignty and territorial integrity of all our neighbors.

Kosovo shall also refrain from the threat or use of force in any manner inconsistent with the purposes of the United Nations.

We hereby undertake the international obligations of Kosovo, including those concluded on our behalf by the United Nations Interim Administration Mission in Kosovo (UNMIK) and treaty and other obligations of the former Socialist Federal Republic of Yugoslavia to which we are bound as a former constituent part, including the Vienna Conventions on diplomatic and consular relations.

We shall cooperate fully with the International Criminal Tribunal for the Former Yugoslavia.

We intend to seek membership in international organizations, in which Kosovo shall seek to contribute to the pursuit of international peace and stability.

Kosovo declares its commitment to peace and stability in our region of southeast Europe.

Our independence brings to an end the process of Yugoslavia's violent dissolution. While this process has been a painful one, we shall work tirelessly to contribute to a reconciliation that would allow southeast Europe to move beyond the conflicts of our past and forge new links of regional cooperation.

We shall therefore work together with our neighbors to advance a common European future.

We express, in particular, our desire to establish good relations with all our neighbors, including the Republic of Serbia with whom we have deep historical, commercial and social ties that we seek to develop further in the near future.

We shall continue our efforts to contribute to relations of friendship and cooperation with the Republic of Serbia, while promoting reconciliation among our people.

We hereby affirm, clearly, specifically, and irrevocably, that Kosovo shall be legally bound to comply with the provisions contained in this Declaration, including, especially, the obligations for it under the

Ahtisaari Plan.

In all of these matters, we shall act consistent with principles of international law and resolutions of the Security Council of the United Nations, including resolution 1244 (1999).

We declare publicly that all states are entitled to rely upon this declaration, and appeal to them to extend to us their support and friendship.

Thank you! Thank you very much!

(frenetic applause)

PRESIDENT OF THE ASSEMBLY, JAKUP KRASNIQI:

Thank you, Mr. Prime Minister!

Honorable Assembly Members,

I inform you that the vote will be cast electronically, thus I propose we proceed.

I declare that 109 assembly members are present.

Are there any members who do not have their cards with you?

If any of you have no cards, you may vote by raising your hand.

I ask you, shall we vote electronically, or by raising our hand.

(from the hall: Let us vote by raising hand)

Who is “in favor”? Thank you!

This was the explanation on the voting method.

Who is in favor of the Declaration presented by the Prime Minister of Kosovo?

Thank you!

Any votes “against”? None.

(applause)

I state that with all votes “in favor” of the present members, Members of the Assembly of Kosovo, today, on February 17, 2008, have expressed their will and the will of the citizens of Kosovo, for Kosovo an independent, sovereign and democratic state.

(applause)

And from this point on, the political position of Kosovo has changed. Kosovo is:

A REPUBLIC, AN INDEPENDENT, DEMOCRATIC AND SOVEREIGN STATE

(applause)

Congratulations to you and all of those who are watching us!

(applause)

CHAIRMAN, XHAVIT HALITI:

Honorable Assembly Members, please take your seats so we can proceed.

We proceed with solemn signature of the Declaration.

I invite the President of Kosovo, Mr. Fatmir Sejdiu, to sign the Declaration of Independence!

I invite the Assembly President and the Prime Minister of Kosovo, to sign the Declaration of Independence together!

(the invitees sign the declaration)

(applause)

CHAIRMAN, IBRAHIM GASHI:

I invite members of the Chairmanship, Mr. Xhavit Haliti and Mr. Sabri Hamiti to sign the Declaration of Independence.

(signature follows)

I invite the member of Chairmanship, Mr. Eqrem Kryeziu, to sign the Declaration.

(signature follows)

CHAIRMAN, XHAVIT HALITI:

I invite the member of Chairmanship, Mr. Ibrahim Gashi, to sign the Declaration.

(signature follows)

I invite the member of Chairmanship, Mr. Nexhat Daci, to sign the Declaration

(signature follows)

I invite the member of Chairmanship, Naim Maloku.

(signature follows)

I invite the member of Chairmanship, Xhezair Murati.

(signature follows)

I invite the member of Chairmanship, Slobodan Petrovic. Absent.

I invite the Head of the Kosovo Democratic Party Parliamentary Group, Rame Buja

(signature follows)

I invite the Head of New Kosova Alliance Parliamentary Group, Ibrahim Makolli

(signature follows)

I invite the Head of Dardania Democratic League Parliamentary Group, Lulzim Zeneli

(signature follows)

I invite the Head of Kosovo Future Alliance Parliamentary Group, Ardian Gjini

(signature follows)

I invite the Head of “7+” Parliamentary Group, Zylfi Merxha
(signature follows)

I invite the Head of SLS Parliamentary Group, Bojan Stojanovic. Not present!

I invite the member of Kosovo Assembly, Adem Grabovci.
(signature follows)

I invite the member of Kosovo Assembly, Adem Hajdaraj.
(signature follows)

I invite the member of Kosovo Assembly, Adem Salihaj.
(signature follows)

I invite the member of Kosovo Assembly, Agim Veliu.
(signature follows)

I invite the member of Kosovo Assembly, Ahmet Isufi.
(signature follows)

I invite the member of Kosovo Assembly, Ali Lajçi.
(signature follows)

I invite the member of Kosovo Assembly, Alush Gashi.
(signature follows)

I invite the member of Kosovo Assembly, Anita Morina-Saraçi.
(signature follows)

I invite the member of Kosovo Assembly, Armend Zemaj.
(signature follows)

I invite the member of Kosovo Assembly, Arsim Bajrami.
(signature follows)

I invite the member of Kosovo Assembly, Arsim Rexhepi.
(signature follows)

I invite the member of Kosovo Assembly, Bahri Hyseni.
(signature follows)

I invite the member of Kosovo Assembly, Bajram Kosumi.
(signature follows)

I invite the member of Kosovo Assembly, Behxhet Pacolli.
(signature follows)

I invite the member of Kosovo Assembly, Berat Luzha.
(signature follows)

I invite the member of Kosovo Assembly, Berim Ramosaj.
(signature follows)

I invite the member of Kosovo Assembly, Besa Gaxherri.
(signature follows)

I invite the member of Kosovo Assembly, Branislav Grbić. Not present!

I invite the member of Kosovo Assembly, Bujar Bukoshi.
(signature follows)

I invite the member of Kosovo Assembly, Donika Kadaj.
(signature follows)

I invite the member of Kosovo Assembly, Dragiša Mirić. Not present!

I invite the member of Kosovo Assembly, Drita Kadriu.
(signature follows)

I invite the member of Kosovo Assembly, Drita Maliqi.
(signature follows)

I invite the member of Kosovo Assembly, Driton Tali.

(signature follows)

I invite the member of Kosovo Assembly, Edita Tahiri.

(signature follows)

I invite the member of Kosovo Assembly, Elheme Hetemi.

(signature follows)

I invite the member of Kosovo Assembly, Emrush Xhemajli.

(signature follows)

I invite the member of Kosovo Assembly, Enis Kervan.

(signature follows)

I invite the member of Kosovo Assembly, Enver Hoxhaj.

(signature follows)

I invite the member of Kosovo Assembly, Esat Brajshori.

(signature follows)

I invite the member of Kosovo Assembly, Etem Arifi.

(signature follows)

I invite the member of Kosovo Assembly, Ethem Çeku.

(signature follows)

I invite the member of Kosovo Assembly, Fatmir Limaj.

(signature follows)

I invite the member of Kosovo Assembly, Fatmir Rexhepi.

(signature follows)

I invite the member of Kosovo Assembly, Fatmire Berisha.

(signature follows)

I invite the member of Kosovo Assembly, Fehmi Mujota.

(signature follows)

I invite the member of Kosovo Assembly, Flora Brovina.

(signature follows)

I invite the member of Kosovo Assembly, Gani Buçinca.

(signature follows)

I invite the member of Kosovo Assembly, Gani Geci.

(signature follows)

I invite the member of Kosovo Assembly, Gani Koci.

(signature follows)

I invite the member of Kosovo Assembly, Gjylnaze Syla.

(signature follows)

I invite the member of Kosovo Assembly, Hafize Hajdini.

(signature follows)

CHAIRMAN, IBRAHIM GASHI:

I invite the member of Kosovo Assembly, Hajdin Abazi.

(signature follows)

I invite the member of Kosovo Assembly, Hajredin Hyseni.

(signature follows)

I invite the member of Kosovo Assembly, Hajredin Kuçi.

(signature follows)

I invite the member of Kosovo Assembly, Haki Shatri.

(signature follows)

I invite the member of Kosovo Assembly, Heset Cakolli.

(signature follows)

I invite the member of Kosovo Assembly, Hydajet Hyseni.
(signature follows)

I invite the member of Kosovo Assembly, Ibrahim Selmanaj.
(signature follows)

I invite the member of Kosovo Assembly, Ismet Beqiri.
(signature follows)

I invite the member of Kosovo Assembly, Kaçusha Jashari.
(signature follows)

I invite the member of Kosovo Assembly, Kolë Berisha.
(signature follows)

CHAIRMAN, XHAVIT HALITI:

I invite the member of Kosovo Assembly, Kosara Nikolić. Absent!

I invite the member of Kosovo Assembly, Ljubiša Zivić. Absent!

I invite the member of Kosovo Assembly, Luljeta Shehu.
(signature follows)

I invite the member of Kosovo Assembly, Lutfi Haziri.
(signature follows)

I invite the member of Kosovo Assembly, Mahir Yagcilar.
(signature follows)

I invite the member of Kosovo Assembly, Mark Krasniqi.
(signature follows)

I invite the member of Kosovo Assembly, Melihate Tërmkollı.
(signature follows)

I invite the member of Kosovo Assembly, Memli Krasniqi.
(signature follows)

I invite the member of Kosovo Assembly, Mihajlo Ščepanović. Absent!

I invite the member of Kosovo Assembly, Mimoza Ahmetaj.
(signature follows)

I invite the member of Kosovo Assembly, Mursel Halili. Absent!

I invite the member of Kosovo Assembly, Mufera Shinik.
(signature follows)

I invite the member of Kosovo Assembly, Myrvete Pantina.
(signature follows)

I invite the member of Kosovo Assembly, Myzejene Selmani.
(signature follows)

I invite the member of Kosovo Assembly, Naim Rrustemi.
(signature follows)

I invite the member of Kosovo Assembly, Nait Hasani.
(signature follows)

I invite the member of Kosovo Assembly, Naser Osmani.
(signature follows)

I invite the member of Kosovo Assembly, Naser Rugova.
(signature follows)

I invite the member of Kosovo Assembly, Nekibe Kelmendi.
(signature follows)

I invite the member of Kosovo Assembly, Nerxhvane Dauti.
(signature follows)

I invite the member of Kosovo Assembly, Numan Balić.
(signature follows)

I invite the member of Kosovo Assembly, Nurishahe Hulaj.
(signature follows)

I invite the member of Kosovo Assembly, Njomza Emini.
(signature follows)

I invite the member of Kosovo Assembly, Qamile Morina.
(signature follows)

I invite the member of Kosovo Assembly, Radmila Vujović. Absent!

I invite the member of Kosovo Assembly, Ramadan Avdiu.
(signature follows)

I invite the member of Kosovo Assembly, Ramadan Gashi.
(signature follows)

I invite the member of Kosovo Assembly, Ramë Manaj.
(signature follows)

I invite the member of Kosovo Assembly, Rasim Selmanaj.
(signature follows)

I invite the member of Kosovo Assembly, Rita Hajzeraj.
(signature follows)

I invite the member of Kosovo Assembly, Riza Smaka.

(signature follows)

I invite the member of Kosovo Assembly, Rrustem Mustafa.

(signature follows)

I invite the member of Kosovo Assembly, Sabit Rahmani.

(signature follows)

I invite the member of Kosovo Assembly, Sadik Idriz.

(signature follows)

I invite the member of Kosovo Assembly, Safete Hadërgjonaj.

(signature follows)

I invite the member of Kosovo Assembly, Sala Berisha-Shala.

(signature follows)

I invite the member of Kosovo Assembly, Sanje Aliaj.

(signature follows)

I invite the member of Kosovo Assembly, Selvije Halimi.

(signature follows)

I invite the member of Kosovo Assembly, Skender Hyseni.

(signature follows)

I invite the member of Kosovo Assembly, Slaviša Petković. Absent!

I invite the member of Kosovo Assembly, Suzan Novobërdaliu.

(signature follows)

I invite the member of Kosovo Assembly, Synavere Rysha.

(signature follows)

I invite the member of Kosovo Assembly, Shkumbin Demalijaj.

(signature follows)

I invite the member of Kosovo Assembly, Shpresa Murati.

(signature follows)

I invite the member of Kosovo Assembly, Teuta Hadri.

(signature follows)

I invite the member of Kosovo Assembly, Vezira Emrush.

(signature follows)

I invite the member of Kosovo Assembly, Vladimir Todorović. Absent!

I invite the member of Kosovo Assembly, Vlora Çitaku.

(signature follows)

I invite the member of Kosovo Assembly, Xhevdet Neziraj.

(signature follows)

I invite the member of Kosovo Assembly, Zafir Berisha.

(signature follows)

I invite the member of Kosovo Assembly, Zef Morina.

(signature follows)

I invite the member of Kosovo Assembly, Zylfije Hundozi.

(signature follows)

Honorable Ladies and Gentlemen,

I declare that we have fulfilled our obligation by each of us signing the Declaration of Independence.

I invite the Chairman of the Parliament to resume chairmanship of the Assembly.

(applause)

PRESIDENT OF THE ASSEMBLY, JAKUP KRASNIQI:

Honorable Assembly members,

Let us continue with the second item on the agenda:

ADOPTION OF KOSOVO STATE SYMBOLS – THE FLAG AND SEAL

You, honorable assembly members, have before you the symbols – Flag and Seal

To shorten the procedure, let us immediately proceed with voting

As we agreed to vote by hand, I invite you to vote.

Who is “in favor”? Thank you!

(applause)

(At this point the flag is brought and placed in the hall)

(applause)

Honorable assembly members,

This is the flag of the youngest state in Europe and the world, of the state of Kosovo!

May we all enjoy it! Congratulations!

(applause)

Honorable assembly members

By congratulating you again on the Republic of Kosovo, independent and sovereign, and on the approval of the flag of Kosovo, I hereby declare the session adjourned.

(applause)

Prepared by:

The Transcript Unit within the Assembly of Republic of Kosovo

Annex 3

**REPORT OF THE INTERNATIONAL CIVILIAN OFFICE (ICO),
VIENNA, 27 FEBURARY 2009**

Source: <http://www.ico-kos.org/d/ISG report finalENG.pdf>



International Civilian Office

Report of the International Civilian Office

27 February 2009

Vienna, Austria

Report of the International Civilian Office

27 February 2009

- I. Introduction
- II. Meeting its Commitments – Kosovo’s Progress in CSP Implementation
- III. The Republic of Kosovo’s Growing Network of International Relations
- IV. The Year Ahead

Report of the International Civilian Office

27 February 2009

I. INTRODUCTION

February 2009 marks several significant milestones for the Republic of Kosovo and its international partners. Just days ago, Kosovo completed its first year as an independent, sovereign state, and 27 February, marks the completion of the first year of the mandate of the International Civilian Representative (ICR). The past year witnessed much progress in Kosovo, progress in building institutions, anchoring Rule of Law, in the creating and consolidating of the elements of statehood, and in taking its place in the community of nations as a multi-ethnic democracy. Through all its actions the state of Kosovo has proven its independence and shown that independence is irreversible. Kosovo has also made strides, in partnership with the International Civilian Office (ICO), in fulfilling the promises made to its citizens and to the world when, in its Declaration of Independence, it committed itself to full implementation of the Comprehensive Proposal for the Kosovo Status Settlement (CSP).

The ICO has successfully assumed the role assigned to it by the CSP and enshrined in Kosovo's Constitution. We have forged strong ties with a range of Kosovo's leaders, both in the capital and in the municipalities. To supervise and support CSP implementation, we work closely with them as they prepare decisions. A spirit of cooperation prevails. Our approach is to hold frank and confidential talks early on, rather than to pass judgment after they act.

Several moments stand out in the ICR's exercise of his responsibilities: his certification in April 2008 of the Constitution as in accordance with the terms of the CSP; his certification, over a period of months, of some 50 Ahtisaari-related laws as consistent with the CSP; his endorsement of the President's decision in January 2009 to allow Assembly mandates to continue and not to terminate them to force new elections this year; and his speech in the Assembly in February 2009 reflecting on the first anniversary of Kosovo's independence. These moments illustrate the range of ICR activities, including political and ceremonial aspects.

The member states of the International Steering Group (ISG) have invested and continue to invest significant resources, both financial and human capital, in Kosovo's future, directly and through the ICO and other international organizations. Moreover, the ISG and ICO share an ambitious vision for a rapid and thorough implementation of the CSP. Such a vision conforms to the CSP itself, which requires a review of the ICR's powers and mandate within two years of the CSP's entry into force, with a view toward "reducing the scope of the powers of the ICR and the frequency of intervention." Cognizant of this ambitious time horizon and grateful for the

resources that ISG states have committed, the ICO offers this report to apprise ISG member states both of the progress that has been achieved and the challenges that lie ahead.

II. MEETING ITS COMMITMENTS – KOSOVO’S PROGRESS IN CSP IMPLEMENTATION

When on 17 February 2008 the democratically-elected leaders of the people of Kosovo took the step of declaring Kosovo an independent and sovereign state, they committed themselves without reservation to the implementation of the CSP, embedding these commitments into the Declaration of Independence itself. By doing so, they reflected the will of the people of Kosovo.

“We accept fully the obligations for Kosovo contained in the Ahtisaari Plan, and welcome the framework it proposes to guide Kosovo in the years ahead. We shall implement in full those obligations including through priority adoption of the legislation included in its Annex XII, particularly those that protect and promote the rights of communities and their members.”

Declaration of Independence of the Republic of Kosovo

Just weeks after independence, on 1 April, the Constitutional Commission of Kosovo adopted a draft constitution, which incorporated, *inter alia*, Kosovo’s obligations to comply with the CSP as well as the authority of the ICR as the final interpreter of the CSP into the domestic legal sphere. One day after its approval by the Commission, the ICR certified that the draft text was in accordance with the terms of the CSP and on 9 April 2008 it was adopted by the Assembly of Kosovo. The Constitution of Kosovo entered into force 15 June 2008 together with 41 laws promulgated by the President of the Republic the same day.

In the first ten months of its existence as the supreme legislative body, the Assembly of Kosovo passed over 50 laws directly related to the implementation of the provisions of the CSP. Included among these legislative provisions were acts to decentralize governing authority to Kosovo’s municipalities; to build Kosovo’s governing capacity; and to safeguard the rights and freedoms of Kosovo’s communities, including through the protection of religious and cultural heritage.

1. Decentralization

Among the earliest CSP implementing laws were those concerning the vitally important process of decentralization. Laws on Local Self-Government, Boundaries of Municipalities, Local Government Finance, Local Education and Local Health not only establish the framework for the new municipalities to be formed under the CSP, but just as importantly codify the central principle of decentralization itself – that the interests of democracy and efficacy are best served by moving governing capacity closer to citizens. Consistent with these laws, EUR 3.9 million has been set aside for the expenses of the new municipalities to be formed according to the CSP; the Ministry of Local Self-Government has led a nationwide publicity campaign on the benefits of decentralization; and the ICO is working closely with the Government of Kosovo’s Inter-Ministerial Working Group on Decentralization to determine the modalities for the formation of

the Municipal Preparation Teams that will be tasked with building the governing infrastructure of the new municipalities. The first transfer of competencies took place in January 2009. The ICO has worked closely with both the Government and the Assembly in order to ensure the timely adoption of relevant legislation and its implementation.

Establishing a Mitrovica North municipality, as foreseen by the CSP, still remains a challenge for the overall perception of the decentralization process.

2. Institution Building

- Security Sector Reform

Another set of CSP-implementing legislation passed early on by the Assembly concerned laws designed to establish the institutions needed to exercise the full measure of sovereignty. The Law on the Kosovo Security Council, the Law on the Ministry for the Kosovo Security Force, the Law on Service in the Kosovo Security Force, the Law on the Civil Aviation Authority, and the Law on the Establishment of the Kosovo Intelligence Agency are just a few that have been passed in the framework of a coherent reform of the security sector, according to the principles and provisions of the CSP.

Minister Fehmi Mujota was named Kosovo's first Minister for the Kosovo Security Force (KSF); he has played an important role – consistent with his position and the principle of civilian control of security bodies – in the selection of the KSF commander and KSF officers. Though not without difficulties, this process permitted the deactivation of the Kosovo Protection Corps on 20 January 2009, and the beginning of KSF training.

In September 2008, the Government of Kosovo named Driton Gjonbaljaj as the Director General of Kosovo's Civil Aviation Authority. The KCAA has taken the lead in assuring the safety of civil aviation in Kosovo and represented Kosovo in regional civil aviation fora.

On 6 February 2009, the Assembly of Kosovo confirmed Bashkim Smakaj as the first Director of the Kosovo Intelligence Agency, and he has been charged with the development of an agency that is multi-ethnic and apolitical. The Kosovo Security Council held its first meeting 11 February 2009 and efforts are underway to build a KSC Secretariat that will permit this body to take its proper role in coordinating Kosovo's national security and safety policy, while not duplicating the functions of government ministries.

In accordance with provisions of the CSP, the Republic of Kosovo has undertaken to demarcate its border with the former Yugoslav Republic of Macedonia. Both countries named representatives to a Joint Technical Commission (JTC), which has held numerous sessions. Together, the JTC has agreed on the location of the placement of all of the primary border stones. A small section of the border, near the villages of Debelde/Debelde and Tanusevci,

remains to be demarcated. The ICO has been closely involved in the process of border demarcation, both in the JTC and along the border.

- Rule of Law

One major element for the future development of a functioning Rule of Law sector was to deploy the largest ESDP mission to date, EULEX, throughout the country in late 2008. Its police, judges, prosecutors and customs officials will provide indispensable support to Kosovo's efforts to strengthen the rule of law. Efforts to establish a Constitutional Court also made important progress in the course of the last twelve months. A Law on the Constitutional Court was adopted in late 2008, and an interim mechanism for registering prospective cases for this court has been established. The process of the selection of judges, both international and national, is now underway. International judges will be appointed in coordination with the President of the European Court of Human Rights.

The Constitution of Kosovo has established the Kosovo Judicial Council (KJC), an independent body responsible, inter alia, for all decisions on the proposal of candidates for judicial office. Kosovo has, since then, adopted implementing legislation in order to regulate further the composition and organization of the KJC.

Efforts are also underway regarding the comprehensive Kosovo-wide review and reappointment process of all judges and prosecutors foreseen by Annex IV of the CSP and the Constitution. The President of the Republic of Kosovo has appointed all members on the Independent Judicial and Prosecutorial Commission in January (IJPC). The IJPC has recently launched the reappointment process for all judges and prosecutors.

- Economy

A comprehensive set of CSP-implementing legislation passed by the Assembly concerned laws designed to establish the institutions needed to define the legal framework for the economy as defined and prescribed by CSP. This included legislation on publicly-owned enterprises; on the Privatization Agency of Kosovo (PAK); the Kosovo Property Agency (KPA); and on the various independent economic regulators of Kosovo. Following the adoption of the laws, the PAK successfully started to work last summer and KPA accelerated the settlement of claims. Furthermore the ICR made key appointments in the area of economics as foreseen by the CSP, including the Auditor-General of Kosovo, a member of the board of the Kosovo Pensions Savings Trust (KPST) and members of the Board of PAK.

3. Community Rights and Religious and Cultural Heritage

The protection of community rights and of religious and cultural heritage are at the very heart of the CSP and central to the Kosovo Constitution's inclusion of rights for this multi-ethnic, secular, democratic state. Among the first of such laws passed by the Kosovo Assembly was the

Law on the Protection and Promotion of Rights of Communities and their Members and the Law on the Establishment of Special Protective Zones. The first piece of legislation provides the legal framework for community rights in the constitution, including in the realms of education, identity and the use of Kosovo's official languages. The rights of communities and their members, and their inclusion in Kosovo's public life are also the work of the Communities Consultative Council (CCC). The CCC was established in accordance with the Kosovo Constitution and was formed by a decree of the President of Kosovo. It held its first session in December 2008.

The Law on the Establishment of Special Protective Zones sets up a mechanism to protect Kosovo's rich religious and cultural patrimony, including but not limited to the sites of the Serbian Orthodox Church (SOC). These protections aim to prohibit land use that would detract from the character or appearance of the sites or disturb the monastic life of the clergy. While Special Protective Zones are designed to protect some SOC sites from development, the Kosovo authorities have taken practical steps to support the physical protection of SOC sites and the economic sustainability of the Church. The Government of Kosovo, through its Ministry of Culture Youth and Sport, contracted a private security firm to provide round-the-clock protection to SOC sites considered to be in the greatest danger. In February 2009, this contract was suspended and the Kosovo Police assumed its responsibility with a 24-hour-a-day protection of these sites.

The Kosovo Police's implementation of their Operational Order for protection of SOC holy sites will permit international partners, like KFOR, to proceed with plans to withdraw from such tasks, without placing these churches and monasteries in additional danger. The implementation of the Operational Order is done in close collaboration with the ICO. As for the economic sustainability of the SOC, the Kosovo Customs Code, passed in late 2008, included CSP-related provisions exempting the SOC from the payment of certain customs duties. Similar exemptions will have to be adopted to implement other CSP provisions on SOC self-sustainability.

It has been a challenge for the Government of Kosovo to address the needs of the Kosovo Serb community appropriately due to lack of dialogue between the majority community and the Kosovo Serb community. The ICR, primarily in his capacity as EUSR, is facilitating a Round Table between key government ministers and Kosovo Serb representatives. Its goal is to discuss an effective implementation of the CSP with regard to the needs of the Kosovo Serb community.

For a complete picture of the progress made to date on CSP implementation, please refer to the most recent version of ICO's CSP Implementation Matrix.

III. THE REPUBLIC OF KOSOVO'S GROWING NETWORK OF INTERNATIONAL RELATIONS

17 February 2008 witnessed the declaration of Kosovo's independence, and hence its entry into the family of independent, sovereign states; the year that followed has seen Kosovo's leadership, together with its international partners, consolidate its statehood through the establishment of a growing network of international relations.

Since its Declaration of Independence, 55 states have formally recognized Kosovo's statehood, including 22 of the 27 member states of the European Union, and states from every continent. It has also been recognized by three of the four states with which it shares common borders.

Kosovo has issued its citizens with identity documents, including passports. These passports have been recognized as valid for travel by other states.

In March 2008, the Assembly of Kosovo passed a Law on the Ministry of Foreign Affairs and Diplomatic Service of Kosovo. Skender Hyseni was named Kosovo's first Foreign Minister and was charged with building both his ministry and Kosovo's diplomatic representations abroad. Laudable efforts are underway on both fronts. The initial legislation was followed by a Law on the Foreign Service of the Republic of Kosovo and a Law on the Consular Service in Diplomatic and Consular Missions of the Republic of Kosovo. These laws provided the legal basis for the establishment of Kosovo's first diplomatic and consular presences abroad. Kosovo's first foreign missions, to be headed by ten Chargés d'affaires, were announced in August 2008. The ICO has supported the build-up of the Ministry of Foreign Affairs by establishing the External Relations Working Group, which includes officials from the Ministry and ISG representatives.

The Government of Kosovo has received numerous diplomatic delegations including several Heads of State and Government, and numerous ministers including ministers of foreign affairs. The Kosovo Prime Minister, Foreign Minister and other Ministers have also been invited abroad to further cooperation.

In July 2008, the Republic of Kosovo submitted official applications for membership in the International Monetary Fund and the World Bank. These applications have the full support of the ICO, and the ICR has lobbied for their acceptance. The IMF membership committee has been formed and is about to start its work.

IV. THE YEAR AHEAD

Kosovo and the ICO now enter their second year. ICO's partnership with the Kosovo Government and institutions remains strong. It would be irresponsible, however, to assume that the progress achieved to date ensures a successful conclusion. Much work lies ahead, particularly in monitoring the implementation of CSP laws.

Our strategic priorities for the coming months are to:

- help ensure a successful completion of the reform of the security sector;
- keep our focus on decentralization;
- help strengthen the rule of law, in close cooperation with EULEX;
- attend to good governance and economic reform.

Of all sectors, that involving public security and safety has seen the most institutional progress over recent months. All security institutions set forth in Annex VIII of the CSP and Chapter XI of the Constitution are now moving ahead. But some are untried in practice and incomplete in personnel. Resource needs will continue. The ICO and the international community will have to offer steady support to ensure that the fledgling institutions, given their central role in society, will develop.

As in 2008, ICO will continue its work with the Government of Kosovo to advance the process of decentralization, both the creation of the five-plus-one municipalities foreseen in the CSP and the transfer of competencies to all of Kosovo's local governments. A successful decentralization process, which will allow all communities to determine their own affairs on the local and municipal level, will be a key element for a sustainable reconciliation in Kosovo.

Further efforts to enhance good governance and the Rule of Law are needed. The ICO will continue to work closely with the EULEX mission, in order to foster the rule of law in Kosovo. The challenges range from enabling the operations of Customs throughout the territory; efficient, fair and competent courts; as well as a competent multiethnic police throughout the entire territory of Kosovo.

Finally, the accelerated reform of the economy must include several elements, all of which touch on CSP responsibilities. The ICO will continue to encourage fiscal responsibility from the Government of Kosovo, mainly by enhancing the sustainability and the quality of the budget, through CSP-mandated budget consultations. ICO will also encourage its Kosovo partners to keep their pledge to complete quickly, through the Privatization Agency of Kosovo, the privatization of socially-owned enterprises and the assessment of creditor and ownership claims over them. Kosovo also needs to start privatizing large publicly owned enterprises in a

transparent manner, as well as to improve standards of the governance of all publicly-owned enterprises, with a view toward their eventual privatization. The ICO will work together closely with the Kosovo authorities to push for a transparent and objective process of selecting and appointing members of boards and other key positions, as foreseen in the CSP. The ICR will also support the reform of the energy sector in order to help establishing a viable economic development.

Through continued effort and vigilance, we believe that 2009 will be a year of progress for Kosovo -- progress in meeting its commitments to itself and to its international partners to implement the CSP, and progress toward the destiny foreseen in its Constitution, "as a free democratic, and peace-loving country that will be a homeland to all of its citizens."

Annex 4

CONSTITUTION OF THE REPUBLIC OF KOSOVO

Preamble, Table of Contents (English translations), and
Summary of Principal Provisions (unofficial)*

* The full Albanian and Serbian text of the Constitution of the Republic of Kosovo and an English Translation are available on the website of the Assembly of the Republic of Kosovo (http://www.assembly-kosova.org/common/docs/Kushtetuta_sh.pdf (in Albanian), <http://www.assembly-kosova.org/common/docs/Ustav1 Republike Kosovo Srpski.pdf> (in Serbian) and <http://www.assembly-kosova.org/common/docs/Constitution1 of the Republic of Kosovo.pdf> (in English)).

CONSTITUTION OF THE REPUBLIC OF KOSOVO

We, the people of Kosovo,

Determined to build a future of Kosovo as a free, democratic and peace-loving country that will be a homeland to all of its citizens;

Committed to the creation of a state of free citizens that will guarantee the rights of every citizen, civil freedoms and equality of all citizens before the law;

Committed to the state of Kosovo as a state of economic wellbeing and social prosperity;

Convinced that the state of Kosovo will contribute to the stability of the region and entire Europe by creating relations of good neighborliness and cooperation with all neighboring countries;

Convinced that the state of Kosovo will be a dignified member of the family of peace-loving states in the world;

With the intention of having the state of Kosovo fully participating in the processes of Euro-Atlantic integration;

In a solemn manner, we approve the Constitution of the Republic of Kosovo.

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Principal Provisions of the Constitution (Summary)

This informal summary describes the principal provisions of the Constitution of the Republic of Kosovo that may be of particular interest in the present proceedings.

CHAPTER I: BASIC PROVISIONS

The Republic of Kosovo is an independent, sovereign, democratic, unique and indivisible State (art. 1(1)). It shall have no territorial claims against, and shall seek no union with, any State or part of any State (art. 1(3)). The Republic of Kosovo is a secular State (art. 8).

The Constitution is the highest legal act of the Republic of Kosovo (art. 16 (1)). The Republic of Kosovo shall respect international law (art. 16 (3)). The Republic of Kosovo concludes international agreements and becomes a member of international organizations (art. 17 (1)). International agreements relating to certain subjects are ratified by two thirds vote of all Deputies of the Assembly (art. 18 (1)). Other international agreements are ratified upon signature of the President of the Republic (art. 18 (2)). International agreements become part of the internal legal system upon publication in the *Official Gazette*. They are directly applied except where application requires the promulgation of a law (art. 19 (1)). International agreements and norms of international law have superiority over the laws of the Republic (art. 19 (2)).

CHAPTER II: FUNDAMENTAL RIGHTS AND FREEDOMS

Various provisions of the Constitution emphasise the commitment to human rights. In addition to the catalogue of rights and freedoms in Chapter II (articles 23 to 52), these include articles 1 (2) (respect for human rights and freedoms), 3 (Equality Before the Law), 5 (Languages), 7 (Values), 9 (Cultural and Religious Heritage), and 144 (3) (constitutional amendments may not diminish rights and freedoms).

The opening provisions of Chapter II include General Principles (art. 21), and provision for the direct applicability of eight international human rights instruments, including the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols and the International Covenant on Civil and Political Rights and its Protocols (art. 22).

The catalogue of fundamental rights and freedoms goes beyond those contained in the European Convention and the International Covenant. It includes, for example, Right of Access to Public Documents (art. 41), Freedom of Art and Science (art. 48), Right to Work and Exercise Profession (art. 49), Health and Social Protection (art. 51) and Responsibility for the Environment (art. 52).

Human rights and fundamental freedoms shall be interpreted consistent with the decisions of the European Court of Human Rights (art. 53).

Provision is made for the judicial protection of rights (art. 54) and for limitations on rights only in accordance with law and to the extent necessary for the fulfilment of the purpose of the limitation in an open and democratic society (art. 55). Many of the rights are non-derogable even during a State of Emergency (art. 56).

CHAPTER III: RIGHTS OF COMMUNITIES AND THEIR MEMBERS

Chapter III contains specific provisions relating to the rights of the various Communities in the Republic (art. 57 (1)), based on the principle of non-discrimination (art. 57 (2)). It is the duty of the State to ensure appropriate conditions enabling members of Communities to preserve, protect and promote their identities (art. 58 (1)).

Provision is made for the establishment of a Consultative Council for Communities containing representatives of all Communities to reflect their various interests (art. 60). In addition, Communities are to be represented in Local Government (art. 62).

CHAPTER IV: ASSEMBLY OF THE REPUBLIC OF KOSOVO

The Assembly consists of 120 Deputies elected by secret ballot on the basis of open lists (art. 64 (1)), with ten seats guaranteed for candidates representing the Kosovo Serb Community (art. 64 (2) (1)), and another ten reserved for other Communities (art. 64 (2) (2)).

The Assembly can make constitutional amendments only with a two-thirds majority vote of all its Deputies, including a two-thirds majority of all Deputies who hold reserved seats as representatives of Communities (art. 65 (2)).

The Assembly elects, and may dismiss, the President of the Republic (art. 65 (7)) and the Government (art. 65 (8)), and proposes judges for the Constitutional Court (art. 65 (11)).

The Assembly is elected for a mandate of four years (art. 66(1)), which may only be extended in a State of Emergency (art. 66(4)).

Legislation is adopted by a majority vote of Deputies present and voting (art. 80 (1)), unless it is of vital interest, which includes legislation concerning municipalities, implementing the rights of Communities and their members, the use of language, local elections, protection of cultural heritage, religious freedom, education or use of symbols. Such legislation requires both the majority of Deputies present and voting, and the majority of Deputies present and voting holding seats reserved or guaranteed for representatives of Communities that are not in the majority (art. 81 (1)).

CHAPTER V: PRESIDENT OF THE REPUBLIC OF KOSOVO

The President is the head of state and represents the unity of the people of the Republic of Kosovo (art. 83).

His competencies include: guaranteeing the constitutional functioning of the institutions set out in the Constitution (art. 84 (2)); leading foreign policy (art. 84 (10)); being the Commander-in-Chief of the Kosovo Security Force (art. 84 (12)); appointing judges to the Constitutional Court upon the proposal of the Assembly (art. 84 (19)); and declaring a State of Emergency (art. 84 (22)).

The President is elected by the Assembly in a secret ballot (art. 86 (1)), by a two-thirds majority of Deputies (art. 86 (4)). The term of office is five years (art. 87 (2)), and re-electable only once (art. 87 (3)).

CHAPTER VI: GOVERNMENT OF THE REPUBLIC OF KOSOVO

The Government consists of the Prime Minister, Deputy Prime Minister(s) and Ministers (art. 92 (1)).

The competencies of the Government include: proposing and implementing internal and foreign policy (art. 93 (1)) and proposing laws to the Assembly (art. 93 (3)).

The President of the Republic proposes to the Assembly a candidate for Prime Minister, who then presents the composition of the Government to the Assembly for approval (art. 95 (1) and (2)).

At least one Minister and two Deputy Ministers must be from the Kosovo Serb Community, and at least one Minister and two Deputy Ministers must be from other Kosovo non-majority Communities (art. 96).

The Government is accountable to the Assembly regarding its work (art. 97 (1)).

The composition of the civil service shall reflect the diversity of the people of Kosovo and take into account internationally recognized principles of gender equality (art. 101 (1)).

CHAPTER VII: JUSTICE SYSTEM

Judicial power is unique, independent, fair, apolitical and impartial and ensures equal access to the courts (art. 102 (2)).

The Supreme Court of Kosovo is the highest judicial authority (art. 103 (2)). At least 15 % of judges, but no fewer than three, shall be from non-majority Communities (art. 103 (3)).

The President of the Republic shall appoint, reappoint and dismiss judges upon the proposal of the Kosovo Judicial Council (art. 104 (1)).

The composition of the judiciary shall reflect the ethnic diversity of Kosovo and the internationally recognized principles of gender equality (art. 104 (2)), and the composition of the courts shall reflect the ethnic composition of the territorial jurisdiction of the respective court (art. 103 (3)).

The Kosovo Judicial Council shall ensure that the Kosovo courts are independent, professional and impartial and fully reflect the multi-ethnic nature of Kosovo and follow the principles of gender equality (art. 108 (2)). It is responsible for recruiting and proposing candidates for appointment and reappointment to judicial office (art. 108 (3)), and the general administration of the judiciary (art. 108 (5)). It is to be composed of 13 members: five elected by members of the judiciary, four elected by the Deputies of the Assembly, two elected by Deputies of the Assembly holding guaranteed seats for the Kosovo Serb community, and two elected by Deputies of the Assembly holding guaranteed seats for other Communities (art. 108 (6)).

CHAPTER VIII: CONSTITUTIONAL COURT

The Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution (art. 112 (1)).

Judges are appointed by the President of the Republic upon the proposal of the Assembly and serve for a non-renewable mandate of nine years (art. 114 (2)).

Seven of the nine judges are proposed with a two-thirds majority of the Deputies present and voting in the Assembly. The remaining two are proposed with a majority vote of the Assembly, but only upon the consent of the majority of the Deputies holding seats guaranteed for the representatives of the Communities not in the majority in Kosovo (art. 114 (3)).

CHAPTER IX: ECONOMIC RELATIONS

The Republic is to ensure a market economy, freedom of economic activity and safeguards for public and private property (art. 119 (1)).

Equal rights are ensured for all domestic and foreign investors and enterprises (art. 119 (2)), with foreign investors entitled to freely transfer profit and invested capital outside the country (art. 119 (6)).

Public expenditure and the collection of public revenue shall be based on the principles of accountability, effectiveness, efficiency and transparency (art. 120 (1)).

CHAPTER X: LOCAL GOVERNMENT AND TERRITORIAL ORGANIZATION

The right to local self-government is guaranteed (art. 123 (1)), with local self-government exercised by representative bodies (art. 123 (2)). The Republic shall observe

and implement the European Charter on Local Self-Government to the same extent as that required of a signatory State (art. 123 (3)).

CHAPTER XI: SECURITY SECTOR

Security institutions in the Republic are to protect public safety and the rights of all people in the Republic. Security institutions are to reflect the ethnic diversity of the population of the Republic (art. 125 (2)).

The Kosovo Security Force is the national security force and may send members abroad in full conformity with its international responsibilities (art. 126 (1)).

The Police of the Republic are responsible for the preservation of public order and safety throughout the territory of the Republic (art. 128 (1)), and shall reflect the ethnic diversity of the Republic (art. 128 (2)). The Police of the Republic are responsible for border control in direct cooperation with local and international authorities (art. 128 (5)).

The President of the Republic may declare a State of Emergency when: there is a need for emergency defence measures; there is internal danger to the constitutional order or to public security; or there is a natural disaster affecting all or part of the territory of the Republic (art. 131 (1)). During the State of Emergency, the Constitution is not suspended (art. 131 (1)). Detailed provisions are included concerning a State of Emergency

CHAPTER XII: INDEPENDENT INSTITUTIONS

An independent Ombudsperson monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities (art. 132 (1)).

Provisions is made for the Auditor-General (art. 136), the Central Election Committee (art. 139), the Central Bank of Kosovo (art. 140), the Independent Media Commission (art. 141), and other independent agencies (art. 142).

CHAPTER XIII: FINAL PROVISIONS

All authorities in the Republic of Kosovo shall abide by all of Kosovo's obligations under the Ahtisaari Settlement, and take all necessary actions for their implementation (art.143 (1)). The provisions of the Settlement take precedence over all other legal provisions in Kosovo (art. 143 (2)). The Constitution, laws and other legal acts shall be interpreted in compliance with the Settlement; if there are inconsistencies the provisions of the Settlement prevail (art. 143 (3)).

Amendments to the Constitution require the approval of two thirds of all Deputies, including two thirds of all Deputies holding reserved or guaranteed seats for representatives of non-majority Communities (art. 144 (2)). Before adoption, the

Constitutional Court has to assess that the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II (art.144 (3)).

Article 145 provides for the continuity of international agreements and applicable legislation.

CHAPTER XIV: TRANSITIONAL PROVISIONS

The Constitution provides that the International Civilian Representative and other international organizations and actors mandated under the Ahtisaari Settlement have the mandate and powers set forth under the Settlement; and all authorities in Kosovo shall cooperate fully with them, and shall give effect to their decisions or acts (art. 146).

The International Civilian Representative is the final authority in Kosovo regarding interpretation of the civilian aspects of the Settlement (art. 147).

The international military presence (KFOR) has the mandate and powers set forth under the relevant international instruments including Security Council resolution 1244 (1999) and the Ahtisaari Settlement. The Head of the international military presence is the final authority in theatre regarding the interpretation of those aspects of the Settlement that refer to the international military presence (art. 153).

All legal residents of the Republic as the date of the adoption of the Constitution have the right to citizenship (art. 155 (1)). The Republic recognizes the right of all citizens of the former Federal Republic of Yugoslavia habitually residing in Kosovo on 1 January 1998 and their direct descendants to Republic of Kosovo citizenship regardless of their current residence and of any other citizenship they may hold (art. 155 (2)).

The Republic of Kosovo shall promote and facilitate the safe and dignified return of refugees and internally displaced persons and assist them in recovering their property and possession (art. 156).

Annex 5

TABLE OF LAWS ADOPTED BY THE ASSEMBLY OF THE REPUBLIC OF KOSOVO

Laws Adopted by the Assembly of the Republic of Kosovo

No.	Name	Date of approval	Publication
03/L-033	Law on the Status, Immunities, and Privileges of Diplomatic and Consular Missions and Personnel in Kosovo and of the International Military Presence and its Personnel	20.02.2008	<i>Official Gazette of the Republic of Kosova</i> , No. 26, 2 June 2008, p. 46
03/L-034	Law on Citizenship of Kosova	20.02.2008	<i>Ibid.</i> , No. 26, 2 June 2008, p. 28
03/L-035	Law on Police	20.02.2008	<i>Ibid.</i> , No. 28, 4 June 2008, p. 29
03/L-036	Law on Kosova Police Inspektorate	20.02.2008	<i>Ibid.</i> , No. 26, 2 June 2008, p. 18
03/L-037	Law on Travel Documents	20.02.2008	<i>Ibid.</i> , No. 27, 3 June 2008, p. 69
03/L-038	Law on the Use of Kosovo State Symbols	20.02.2008	<i>Ibid.</i> , No. 26, 2 June 2008, p. 35
03/L-039	Law on Special Protective Zones	20.02.2008	<i>Ibid.</i> , No. 28, 4 June 2008, p. 74
03/L-040	Law on Local Self Government	20.02.2008	<i>Ibid.</i> , No. 28, 4 June 2008, p. 47
03/L-041	Law on Administrative Municipal Boundaries	20.02.2008	<i>Ibid.</i> , No. 26, 2 June 2008, p. 1
03/L-044	Law on Ministry for Foreign Affairs and Diplomatic Service of Republic of Kosovo	13.03.2008	<i>Ibid.</i> , No. 26, 2 June 2008, p. 50
03/L-045	Law on Ministry for the Kosovo Security Force	13.03.2008	<i>Ibid.</i> , No. 26, 2 June 2008, p. 54
03/L-046	Law on the Kosovo Security Force	13.03.2008	<i>Ibid.</i> , No. 27, 3 June 2008, p. 76
03/L-047	Law on The Protection and Promotion of the Rights of Communities and their Members in Republic of Kosovo	13.03.2008	<i>Ibid.</i> , No. 28, 4 June 2008, p. 65
03/L-048	Law on Public Financial Management and Accountability	13.03.2008	<i>Ibid.</i> , No. 27, 3 June 2008, p. 1
03/L-049	Law on Local Government Finance	13.03.2008	<i>Ibid.</i> , No. 27, 3 June 2008, p. 34
03/L-050	Law on Establishment of the Kosovo Security Council	13.03.2008	<i>Ibid.</i> , No. 26, 2 June 2008, p. 41
03/L-051	Law on Civil Aviation	13.03.2008	<i>Ibid.</i> , No. 28, 4 June 2008, p. 1
03/L-052	Law on Special Prosecution Office of the Republic of Kosovo	13.03.2008	<i>Ibid.</i> , No. 27, 3 June 2008, p. 47
03/L-053	Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo	13.03.2008	<i>Ibid.</i> , No. 27, 3 June 2008, p. 59
03/L-005	Law on Civil Use of Explosives	16.05.2008	<i>Ibid.</i> , No. 33, 15 Jul. 2008, p. 56
03/L-063	Law on the Kosovo Intelligence Agency	21.05.2008	<i>Ibid.</i> , No. 30, 15 June 2008, p. 17

No.	Name	Date of approval	Publication
03/L-065	Law on Integrated Management and Control of the State Border	21.05.2008	<i>Ibid.</i> , No. 30, 15 June 2008, p. 44
03/L-066	Law on Asylum	21.05.2008	<i>Ibid.</i> , No. 30, 15 June 2008, p. 1
03/L-067	Law on the Privatization Agency of Kosovo	21.05.2008	<i>Ibid.</i> , No. 30, 15 June 2008, p. 30
03/L-068	Law on Education in the Municipalities of the Republic of Kosovo	21.05.2008	<i>Ibid.</i> , No. 30, 15 June 2008, p. 51
03/L-064	Law on Official Holidays in Republic of Kosovo	23.05.2008	<i>Ibid.</i> , No. 30, 15 June 2008, p. 56
03/L-008	Law on Executive Procedure	02.06. 2008	<i>Ibid.</i> , No. 33, 15 July 2008, p. 1
03/L-072	Law on Local Elections in the Republic of Kosovo	05.06.2008	<i>Ibid.</i> , No. 32, 15 June 2008, p. 35
03/L-073	Law on General Elections in the Republic of Kosovo	05.06.2008	<i>Ibid.</i> , No. 31, 15 June 2008, p. 1
03/L-074	Law on the Central Bank of the Republic of Kosovo	05.06.2008	<i>Ibid.</i> , No. 32, 15 June 2008, p. 15
03/L-075	Law on the Establishment of the Office of the Auditor General of Kosovo and the Audit Office of Kosovo	05.06.2008	<i>Ibid.</i> , No. 32, 15 June 2008, p. 42
03/L-076	Law on Railways in the Republic of Kosovo	05.06.2008	<i>Ibid.</i> , No. 32, 15 June 2008, p. 1
03/L-079	Law on amending UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property	13.06.2008	<i>Ibid.</i> , No. 32, 15 June 2008, p. 47
03/L-080	Law on Amending Kosovo Assembly Law No. 2004/9 on the Energy Regulator	13.06.2008	<i>Ibid.</i> , No. 32, 15 June 2008, p. 55
03/L-081	Law on Amending UNMIK Regulation No. 2005/2 on the Establishment of the Independent Commission for Mines and Minerals	13.06.2008	<i>Ibid.</i> , No. 32, 15 June 2008, p. 59
03/L-082	Law on Service in the Kosovo Security Force	13.06.2008	<i>Ibid.</i> , No. 32, 15 June 2008, p. 28
03/L-083	Law on Dissolution of the Kosovo Protection Corps	13.06.2008	<i>Ibid.</i> , No. 31, 15 June 2008, p. 58
03/L-084	Law on Amending UNMIK Regulation 2005/20 Amending UNMIK Regulation 2001/35 on Kosovo Pensions Trust	13.06.2008	<i>Ibid.</i> , No. 32, 15 June 2008, p. 50
03/L-085	Law on Amending UNMIK Regulation No. 2003/16 on the Promulgation of a Law adopted by the Assembly of Kosovo on Telecommunications	13.06.2008	<i>Ibid.</i> , No. 32, 15 June 2008, p. 53

No.	Name	Date of approval	Publication
03/L-086	Law on Amending UNMIK Regulation 2004/49 on the Activities of Water, Wastewater and Waste Services Providers	13.06.2008	<i>Ibid.</i> , No. 31, 15 June 2008, p. 61
03/L-087	Law on Publicity Owned Enterprises	13.06.2008	<i>Ibid.</i> , No. 31, 15 June 2008, p. 39
03/L-088	Law on Amendment of UNMIK Regulation No. 2008/13 on the approval of the Kosovo Consolidated Budget and Authorizing Expenditures for the period 1 January to 31 December 2008	13.06.2008	<i>Ibid.</i> , No. 32, 15 June 2008, p. 57
03/L-089	Law on Amendments to the Law on Administrative Municipal Boundaries, Law on the Privatization Agency of Kosovo, Law on Education in the Municipalities of the Republic of Kosovo, Law on Official Holidays in Republic of Kosovo, Law on the Kosovo Intelligence Agency, Law on Asylum and Law on Integrated Management And Control of the State Border	13.06.2008	<i>Ibid.</i> , No. 31, 15 June 2008, p. 63
03/L-001	Law on Benefits to Former High Officials	19.06.2008	<i>Ibid.</i> , No. 33, 15 July 2008, p. 67
03/L-006	Law on Contentious Procedure	30.06.2008	<i>Ibid.</i> , No. 38, 20 Sep.. 2008, p. 1
03/L-054	Law on Stamps of the Republic of Kosovo Institutions	30.07.2008	<i>Ibid.</i> , No. 38, 20 Sep. 2008, p. 77
03/L-093	Law on Amendment to Law No. 03/L-088 on the Approval of the Kosovo Consolidated Budget and Authorizing Expenditures for the period from 1 January to 31 December 2008	30.07.2008	
03/L-057	Law on Mediation	18.09.2008	<i>Ibid.</i> , No. 41, 1 Nov. 2008, p. 6
03/L-099	Law on Identity Card	03.10.2008	<i>Ibid.</i> , No. 41, 1 Nov. 2008, p. 1
03/L-004	Law on the Amending and Supplementing and of the Law No. 2003/9 on Farmer's Cooperatives	03.10.2008	<i>Ibid.</i> , No. 41, 1 Nov. 2008, p. 12
03/L-100	Law on the pensions for Kosovo Protection Corps members	10.10.2008	<i>Ibid.</i> , No. 41, 1 Nov. 2008, p. 13
03/L-010	Law on Notary	17.10.2008	<i>Ibid.</i> , No. 42, 25 Nov. 2008, p. 5
03/L-031	Law on Amending and Supplementing Law No. 02/L-5 on Supporting the Small and Medium Enterprises	17.10.2008	<i>Ibid.</i> , No. 42, 25 Nov. 2008, p. 1
03/L-002	Law on Supplementing and Amending of the Criminal Code of Kosovo	06.11.2008	<i>Ibid.</i> , No. 44, 22 Dec. 2008, p. 4
03/L-003	Law on Supplementing and Amending of the Kosovo Code of Criminal Procedure	06.11.2008	<i>Ibid.</i> , No. 44, 22 Dec. 2008, p. 1
03/L-018	Law on Final and State Matura Exam	06.11.2008	<i>Ibid.</i> , No. 44, 22 Dec. 2008, p. 5

No.	Name	Date of approval	Publication
03/L-056	Law on National State Song and Dance Ensemble "Shota" and other Ensembles	06.11.2008	<i>Ibid.</i> , No. 44, 22 Dec. 2008, p. 40
03/L-110	Law on Termination of Pregnancy	06.11.2008	<i>Ibid.</i> , No. 48, 6 Feb. 2009, p. 1
03/L-060	Law on National Qualifications	07.11.2008	<i>Ibid.</i> , No. 44, 22 Dec. 2008, p. 33
03/L-077	Law on Amendments and Supplementing of the Law No. 2003/7 on Archives and Archive Materials	07.11.2008	<i>Ibid.</i> , No. 44, 22 Dec. 2008, p. 46
03/L-042	Law on Protection Products	07.11.2008	<i>Ibid.</i> , No. 44, 22 Dec. 2008, p. 13
03/L-106	Law Amending the Law on Spatial Planning No. 2003/14	10.11.2008	<i>Ibid.</i> , No. 42, 25 Nov. 2008, p. 35
03/L-107	Law Amending the Law on the Ministry of the Kosovo Security Force No. 03/L-045	10.11.2008	<i>Ibid.</i> , No. 42, 25 Nov. 2008, p. 34
03/L-108	Law Amending the Law on the Kosovo Security Force No. 03/L-046	10.11.2008	<i>Ibid.</i> , No. 42, 25 Nov. 2008, p. 33
03/L-109	Customs and Excise Draft Code of Kosovo	10.11.2008	<i>Ibid.</i> , No. 43, 11 Nov. 2008, p. 1
03/L-007	Law on Out Contentious Procedure	20.11.2008	<i>Ibid.</i> , No. 45, 12 Jan. 2009, p. 21
03/L-029	Law on Agriculture Inspection	20.11.2008	<i>Ibid.</i> , No. 45, 12 Jan. 2009, p. 1
03/L-116	Law on Central Heating	20.11.2008	<i>Ibid.</i> , No. 45, 12 Jan. 2009, p. 7
03/L-117	Law on the Bar	20.11.2008	<i>Ibid.</i> , No. 49, 25 Mar. 2009, p. 37
03/L-069	Law on Accreditation	20.11.2008	<i>Ibid.</i> , No. 45, 12 Jan. 2009, p. 17
03/L-118	Law on Public Gatherings	04.12.2008	
03/L-071	Law on Amendments and Supplements to the Law No. 2004/48 on Tax Administration and Procedures	04.12.2008	<i>Ibid.</i> , No. 47, 25 Jan. 2009, p. 18
03/L-101	Law on Pardon	12.12.2008	<i>Ibid.</i> , No. 46, 15 Jan. 2009, p. 57
03/L-120	Law for Amending and Supplementing the Law No. 2003/11 on Roads	12.12.2008	<i>Ibid.</i> , No. 46, 15 Jan. 2009, p. 51
03/L-121	Law on the Constitutional Court of the Republic of Kosovo	16.12.2008	<i>Ibid.</i> , No. 46, 15 Jan. 2009, p. 20
03/L-122	Law on Foreign Service of the Republic of Kosovo	16.12.2008	<i>Ibid.</i> , No. 46, 15 Jan. 2009, p. 31
03/L-123	Law on the Temporary Composition of the Republic of Kosovo Judicial Council	16.12.2008	<i>Ibid.</i> , No. 46, 15 Jan. 2009, p. 40
03/L-124	Law on Amending the Law on Health	16.12.2008	<i>Ibid.</i> , No. 46, 15 Jan. 2009, p. 49
03/L-125	Law on Consular Services of Diplomatic and Consular Missions of the Republic of Kosovo	16.12.2008	<i>Ibid.</i> , No. 46, 15 Jan. 2009, p. 45

No.	Name	Date of approval	Publication
03/L-126	Law on Foreigners	16.12.2008	<i>Ibid.</i> , No. 46, 15 Jan. 2009, p. 1
03/L-019	Law on Vocational Ability, Rehabilitation and Employment of People with Disabilities	18.12.2008	<i>Ibid.</i> , No. 47, 25 Jan. 2009, p. 9
03/L-027	Law on Accommodation Tax in Hotel-Tourist Facilities	18.12.2008	<i>Ibid.</i> , No. 47, 25 Jan. 2009, p. 7
03/L-112	Law on Excise Tax Rate in Kosova	18.12.2008	
03/L-113	Law on Corporate Income Tax	18.12.2008	
03/L-114	Law on Value Added Tax	18.12.2008	
03/L-115	Law on Personal Income Tax	18.12.2008	
03/L-105	Law on Republic of Kosovo Budget for 2009	19.12.2008	
03/L-094	Law on the President of the Republic of Kosovo	19.12.2008	<i>Ibid.</i> , No. 47, 25 Jan. 2009, p. 1
03/L-015	Law on Environmental Strategic Assessment	12.02.2009	<i>Ibid.</i> , No. 49, 25 Mar. 2009, p. 9
03/L-016	Law on Food	12.02.2009	<i>Ibid.</i> , No. 49, 25 Mar. 2009, p. 19
03/L-092	Law for Replenishment and Amendment of Law No. 02/L-20 Technical Demands for Products and Valuation of Conformation	12.02.2009	<i>Ibid.</i> , No. 49, 25 Mar. 2009, p. 35
03/L-134	Law on Freedom of Association in Non-Governmental Organizations	12.02.2009	<i>Ibid.</i> , No. 49, 25 Mar. 2009, p. 1
03/L-024	Law on Environmental Impact Assessment	26.02.2009	
03/L-025	Law on Environmental Protection	26.02.2009	
03/L-091	Law on Use Management and Maintenance of Building Joint Ownership	12.03.2009	
03/L-131	Law on Amendment and Supplementation of Law No. 2004/17 on Consumer Protection	12.03.2009	
03/L-043	Law on Integrated Prevention Pollution Control	26.03.2009	
03/L-139	Law on Expropriation of Immovable Property	26.03.2009	

Annex 6

DRAFT TREATY OF FRIENDSHIP AND COOPERATION

(proposed by Kosovo during the Final Status talks)



DRAFT TREATY OF FRIENDSHIP AND COOPERATION BETWEEN KOSOVO AND SERBIA

The Contracting Parties of Kosovo and Serbia:

Acknowledging the deep ties between the peoples of Kosovo and Serbia, including long-standing historic, cultural, ethnic and economic bonds;

Regretting the periods of conflict and war that have divided us, especially the tragic events related to the violent collapse of Yugoslavia in the 1990s;

Declaring a sincere desire to confront the legacy of the recent past in a spirit of reconciliation and forgiveness, even as we bring to justice those who have committed crimes in warfare;

Believing that both Kosovo and Serbia share the common destiny of closer integration into the Euro-Atlantic community of democracies, which will lead to a more secure, democratic and prosperous future for all;

Hoping that the process of Euro-Atlantic integration will bring all the peoples of southeast Europe closer together and will continue to eliminate the barriers that have divided our nations;

Recognizing that unique historical circumstances and common interests will require an extremely close and friendly relationship between Kosovo and Serbia for many years to come;

Convinced that regular, institutionalised mechanisms of cooperation and dialogue on issues of mutual concern can help reduce tensions, enhance regional stability and advance the common interests of both Kosovo and Serbia;

Solemnly agree to enter into a Treaty of Friendship and Cooperation as follows:

CHAPTER I PURPOSE AND PRINCIPLES

ARTICLE 1

The purpose of this Treaty is to promote peace, friendship and cooperation between Kosovo and Serbia in order to promote stability, democracy and prosperity for all.

ARTICLE 2

In their relations with one another, the Parties shall be guided by the following principles:

- a) Mutual respect for each other's sovereignty and territorial integrity;
- b) Renunciation of the use or threat of use of force in solving disputes;
- c) Respect for human rights and fundamental freedom of all citizens without discrimination of any kind, including, in particular the full protection of the national or

ethnic, linguistic, cultural, and religious identity of all minority communities and their members;

- d)* The free movement of people, goods and capital;
- e)* Cooperation and dialogue on issues of mutual concern.

CHAPTER II COMMITMENT TO EURO-ATLANTIC INTEGRATION

ARTICLE 3

The Parties confirm their desire to integrate their societies and economies fully into the Euro-Atlantic community of democracies, in particular to take all measures necessary to achieve membership in the European Union and NATO at the earliest possible date.

ARTICLE 4

The Parties shall collaborate and assist each other wherever possible in the achievement of the high standards and other requirements for integration into the EU and NATO. The Parties shall take no actions that would undermine the achievement of these requirements.

CHAPTER III SECURITY AND THE PEACEFUL SETTLEMENT OF DISPUTES

ARTICLE 5

In line with the principles of the UN Charter, the Parties affirm their commitment to the peaceful settlement of all disputes between them, and shall not use or threaten to use force in their relations in any manner inconsistent with the Purposes of the United Nations.

ARTICLE 6

The Parties shall undertake measures to enhance security cooperation, including the development of new confidence- and security-building measures across their common border. The Parties shall request the assistance of NATO and the Organization for Security and Cooperation in Europe (OSCE) to develop and implement such measures as soon as feasible. The Parties shall strive for maximum transparency in the placement and operations of their security personnel, especially along their common border.

CHAPTER IV COOPERATION ON PRIORITY ISSUES OF MUTUAL CONCERN

ARTICLE 7

The Parties shall undertake to intensify and deepen cooperation on all issues of mutual concern. The Parties shall initially focus their efforts on the following priority areas:

- a)* Economic issues, including energy, trade and harmonization with EU standards and development of a joint economic growth and development strategy in line with regional economic initiatives;

- b) Anti-crime efforts, particularly in the areas of terrorism, narcotics, trafficking in persons, weapons smuggling, organized crime and ethnic crime;
- c) Protection and preservation of religious and other cultural heritage;
- d) The health and welfare of our minority communities, including the implementation of special measures to protect and promote their rights, security and livelihood;
- e) The fate of all persons missing from the war of the 1990s;
- f) Public health;
- g) Transportation;
- h) Facilitation of cross-border movement of people and goods;
- i) The return of refugees and displaced persons of all ethnicities;
- j) Environmental issues.

ARTICLE 8

The Parties shall form issue-specific working groups, composed of both political and technical specialists, to develop and advance common priorities in all of these priority issues of mutual concern. Where appropriate, these working groups shall include representatives of civil society groups and relevant international organizations.

CHAPTER V KOSOVO-SERBIA PERMANENT COOPERATION COUNCIL

ARTICLE 9

Within six months of this Treaty entering into force the Parties shall establish a Kosovo-Serbia Permanent Cooperation Council. This Council shall consist of ten members, five of whom shall be appointed by Serbia and five of whom shall be appointed by Kosovo. This Council shall operate by consensus and have responsibilities to:

- a) Oversee and facilitate cooperation in all areas of mutual concern;
- b) Meet regularly to exchange information and consult on all matters that may affect the interests of either Party;
- c) Support, as required, the regular meeting of the working groups referred to in Article 8, including assistance in setting the meeting agenda and providing logistics aid as required;
- d) Assess the results of cooperation initiatives and recommend new areas for enhanced cooperation between Kosovo and Serbia;
- e) Request and facilitate third-party mediation on particularly sensitive issues of mutual concern, such as missing persons or the return of refugees and displaced persons.

ARTICLE 10

The Council shall convene a High-Level Meeting of the Parties at least every six months, which shall include the Presidents, Prime Ministers and Foreign Ministers of Kosovo and Serbia. Either Party may propose any matter for consideration or action at the High-Level Meeting.

ARTICLE 11

The Council shall explore the possibility of establishing a secretariat to facilitate cooperation and dialogue between Kosovo and Serbia.

ARTICLE 12

The Council shall facilitate dialogue among members of the Parliament of Serbia and the Kosovo Assembly, including the creation of inter-parliamentary working groups to enhance legislative cooperation.

CHAPTER VI **REQUEST OF WITNESSING STATES**

ARTICLE 13

In the event of any dispute between the Parties, the Parties request that France, Germany, Italy, the Russian Federation, the United Kingdom and the United States provide neutral mediation and make other efforts to assist in the peaceful settlement of the dispute.

CHAPTER VII **FINAL PROVISIONS**

ARTICLE 14

This Treaty shall be signed by leaders of Kosovo and Serbia and ratified in accordance with the constitutional procedures of each state. It shall enter into force upon ratification by both Parties and be deposited with the United Nations.

ARTICLE 15

This Treaty shall be translated into Albanian, Serbian and English. The English version shall be authoritative.