



Botschaft  
der Bundesrepublik Deutschland  
Den Haag

Gz.: Re-10 502.30  
(Bitte bei Antwort angeben)

Verbalnote Nr. 54

The Embassy of the Federal Republic of Germany presents its compliments to the International Court of Justice and with reference to the Order of the Court of 17 October 2008 inviting the UN and its Member States to submit written statements regarding the request for an advisory opinion transmits the statement of the Federal Republic of Germany.

The Embassy of the Federal Republic of Germany avails itself of this opportunity to renew to the International Court of Justice the assurances of its highest consideration.

Den Haag, 15 April 2009



International Court of Justice  
Peace Palace  
Carnegieplein 2  
2517 KJ The Hague

**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)**

***STATEMENT OF THE FEDERAL REPUBLIC OF GERMANY***

April 2009

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## **I. Introduction**

In its Order of 17 October 2008 the Court invited the United Nations and its Member States to submit written statements regarding the request for an advisory opinion on the “Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo”. The Court, by the same Order, further invited “the authors of the above declaration” to make “written contributions” to the Court.

The terms of the request made by the General Assembly of the United Nations in resolution 63/3 (A/63/L.2), adopted on 8 October 2008, are as follows:

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

Germany abstained in the vote on resolution 63/3. As was made clear by the Permanent Representative of Germany in his Explanation of Vote, Germany – while being a strong supporter of the International Court of Justice - did not believe that the resolution would contribute to advancing a stable and just settlement for Kosovo and the Western Balkans.

General Assembly resolution 63/3 was adopted by a recorded vote of 77 in favour to 6 against, with 74 abstentions. A significant number of Member States of the United Nations did not participate in the vote.

Germany has noted that the Court has invited “the authors” of the Declaration of Independence to make written contributions on the question before the Court. Germany would trust that the Court will also apply this principle of fairness to any hearings it may wish to hold.

## II. Background to the Request

On 17 February 2008 Kosovo declared its independence from Serbia and became the Republic of Kosovo.

Kosovo's independence has been recognized by more than 50 States from all regions of the world, including three of its four neighbouring States (Albania, Former Yugoslav Republic of Macedonia and Montenegro), and 22 of the 27 Member States of the European Union. Kosovo's independence is and will remain a reality.

Serbia's initiative to seek an advisory opinion from the Court follows attempts to have Kosovo's Declaration of Independence declared null and void by other organs of the United Nations. A Note ("Pro-Memoria") issued on 17 February 2008 by the Ministry of Foreign Affairs of the Republic of Serbia contains the following exhortation:

"[T]he Republic of Serbia insists that the UN Security Council reacts firmly and resolutely, and safeguards the sovereignty and territorial integrity of the Republic of Serbia, in compliance with the UN Charter. We also expect the UN Security Council to take effective measures against the express violation of its own decisions – its resolution 1244 (1999) and other resolutions relating to Kosovo and Metohija, and the Special Representative of the UN Secretary General, in line with his powers, to immediately annul the unlawful decision on the unilateral declaration of independence and to dissolve the Kosovo Assembly." [Annex 1]

This call was repeated when the President of the Republic of Serbia, on 18 February 2008, addressed the UN Security Council in the following terms:

"My country requests that the Security Council take effective measures in order to ensure that all the provisions of the Charter of the United Nations and of Council resolution 1244 (1999) are fully respected.

We request 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 Rucker,

to use his powers within the shortest 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 Rucker dissolve the Kosovo Assembly, because it declared independence contrary to Security Council resolution 1244 (1999). The Special Representative has binding powers, and they have been used before. I request that he use them again.” (S/PV.5839, p. 5)

Neither the UN Security Council, nor the UN Secretary-General or his Special Representative for Kosovo have heeded these requests. The UN Secretary-General, in letters to the Presidents of the Republic of Serbia and the Republic of Kosovo has emphasized that the position of the United Nations with respect of the status of Kosovo is one of “strict neutrality” (cf. letters dated 12 June 2008, S/2008/354, Annexes I and II). The UN Secretary-General has acknowledged that the declaration of independence of Kosovo, together with subsequent events, have led to a “substantially changed situation in Kosovo” and a “profoundly changed reality in Kosovo” (Security Council, 20 June 2008, S/PV.5917, p. 22). These events have led the Secretary-General to carry out a “reconfiguration” of the United Nations Interim Administration Mission in Kosovo (UNMIK), “in order to adapt UNMIK to a changed reality and address current and emerging operational requirements in Kosovo” (Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 15 July 2008, S/2008/458, p. 2). This reconfiguration has paved the way for an enhanced role of the European Union mission EULEX in Kosovo. The Security Council has welcomed the cooperation between the UN and other international actors, within the framework of Security Council resolution 1244 (1999), and 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 (Presidential Statement of 26 November 2008, S/PRST/2008/44).

Having failed to have Kosovo’s Declaration of Independence declared “null and void” by other United Nation organs, the Republic of Serbia turned to the General Assembly in order to request it to seek an advisory opinion from the Court. Serbia herself has admitted that the aim of that request “is to transfer the issue from the political to the juridical arena” (Letter dated 15 August 2008 from the Permanent Representative of Serbia to the United Nations addressed to the Secretary-General, Explanatory Memorandum, A/63/195).

### III. The Wording of the Request

#### 1. The Court should only respond to the question asked by the General Assembly

In the past, the Court has observed in some cases that the wording of a request for an advisory opinion did not accurately state the question on which the Court's opinion was being sought. Consequently, the Court has in some instances been required to broaden, interpret and even reformulate the questions put to it.

In the present case, however, such a need does not arise, and, indeed, broadening, interpreting or even reformulating the question would run counter the request itself. The framers of the question have chosen the wording with great care:

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

The narrowness of the request before the Court is reinforced if read together with the preamble of General Assembly resolution 63/3:

“*Recalling* that on 17 February 2008 the Provisional Institutions of Self-Government of Kosovo declared independence from Serbia”, (preambular paragraph 3)

and:

“*Aware* that this act has been received with varied reactions by the Members of the United Nations as to its compatibility with the existing international legal order”. (preambular paragraph 4)

There can thus be no doubt that the request only refers to the Declaration of Independence and to its accordance with international law. As Serbia's Minister for Foreign Affairs stated when introducing the draft resolution in the General Assembly, “the question posed is amply clear and refrains from taking political positions on the Kosovo issue” (General Assembly,

8 October 2008, A/63/PV.22, p. 2). What is more, Serbia emphatically ruled out any reformulation of the question:

“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.” (A/63/PV.22, p. 2)

Thus, the question put to the Court does not relate to Kosovo’s present or future status or to the issue of recognition. What is more, an advisory opinion on the “legality” of the Declaration of Independence could not by itself be determinative of Kosovo’s present or future status or on the effect of recognition of Kosovo’s independence by other States.

## **2. The question’s underlying assumptions**

The wording of the question suggests that the Declaration of Independence was one of the “Provisional Institutions of Self-Government of Kosovo”. Whether this was in fact the case will have to be established by the Court.

While it is true that the Declaration of Independence was adopted at a special session of the Assembly of Kosovo, one of the Provisional Institutions of Kosovo, it might be asked whether the Assembly of Kosovo was in fact acting in that capacity. Certainly, this was no ordinary act, but a constituent moment for the people of Kosovo. As those addressing the Assembly said, Kosovo was “opening a new page of history” (Assembly President Krasniqi); this was a “historical moment” and “the end of a long process” (Prime Minister Thaci), a day that “separates the history of Kosovo in two: the times before and after independence” (President Sejdiu).

The Declaration of Independence itself does not carry as its author the “Provisional Institutions of Self-Government”, or the “Assembly of Kosovo”. The text of the “Kosovo Declaration of Independence”, as it was communicated to Germany in a letter by President Sejdiu to President Köhler on 17 February 2008, does not even mention the Assembly of



Kosovo (or the Provisional Institutions of Self-Government)<sup>1</sup>. Rather, the first operative paragraph of the Declaration makes it very clear who the authors were:

“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 ...”

When reading out the Declaration in the special session of the Assembly of Kosovo of 17 February 2008, Prime Minister Thaci, said:

“We, the democratically elected leaders of our people, through this declaration hereby declare Kosovo an independent and democratic state. This declaration reflects the will of our people...”

There certainly can be no doubt that those who voted upon and signed the Declaration did so not in their capacity as organs of the Provisional Institutions of Self-Government, but as the representatives of the people of Kosovo and expressing the will of the people of Kosovo.

The framers of the question on which the Court is asked to respond have used the expression “*unilateral* declaration of independence” (emphasis added). This is no accident. In fact, this expression is evocative of the infamous “UDI” of 1965 by the Ian Smith regime in Southern Rhodesia, and a calculated move designed to prejudge the outcome of the proceedings before this Court.

Of course, a declaration of independence, by its very nature, is “unilateral” in the sense that it represents a single expression or manifestation of will. The Declaration of Independence of Kosovo – as any declaration of independence – was not dependent on it being accepted by Serbia. However, as will be explained below, the Declaration of Independence of Kosovo did meet the support of the international community.

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<sup>1</sup> Germany has noted that the Dossier prepared by the Office of Legal Affairs contains as „Dossier No. 192” a “Kosova Declaration of Independence by the Assembly of Kosovo, 17 February 2008”. That document is at variance with the text of the declaration of independence that was included in President Sejdiu’s letter to President Köhler of 17 February 2008. [Annex 2]

Germany, in its present statement, thus refers to the “Declaration of Independence” of Kosovo and would invite the Court to reject the notion of bias that the wording “unilateral declaration of independence” carries.

The Court is asked to find whether the Declaration of Independence of Kosovo “is in accordance with international law”. This wording would appear to invite the Court to positively establish a rule *allowing* Kosovo’s Declaration of Independence. However, as Germany will explain in point VI. 1 below, there is considerable authority for the proposition that international law in general is silent on Kosovo’s Declaration of Independence. In any event, Germany respectfully submits that the Court adopt the approach taken by the Permanent Court of International Justice in the *Lotus* Case (P.C.I.J., Judgment No. 9 of 7 September 1927, Ser. A., No.10, p.21): In that case, the Court took the approach that anything not prohibited by international law is deemed to be permitted. Thus, it would suffice for the Court to establish that Kosovo’s Declaration of Independence did not contravene any applicable rule of international law in order to answer the question posed.

Finally the use of the word “is” – instead of the word “was” - at the beginning of the question may suggest that the Declaration of Independence is an act having a continuing character. However, a declaration of independence is an act completed at the moment it is made.

#### **IV. Historical Background**

Kosovo’s Declaration of Independence of 17 February 2008 has to be assessed against the background of the historical dispute between Serbs and Albanians over who is the rightful owner of Kosovo, the full context of the dissolution of Yugoslavia, the humanitarian crisis which led to the conflict of 1999, the long period of international administration under United Nations Security Council resolution 1244 (1999) and the unprecedented efforts of the international community to facilitate a negotiated settlement between Serbia and Kosovo.

##### **1. Kosovo up to 1998/99**

During much of the Middle Ages, Kosovo Polje (the “field of the blackbirds”) formed part of the Greater Serbian Empire, which in the early 14<sup>th</sup> century extended south far into today’s Greece. Following the Serbian defeat by an Ottoman army on Kosovo Polje in 1389, Kosovo

became a part of the Ottoman Empire, which it remained until the First Balkan War of 1912. In the late 17<sup>th</sup> and early 18<sup>th</sup> centuries, a considerable part of its Serb Orthodox population emigrated and settled further north, while Albanians (many of whom had accepted Islam following the Ottoman conquest) settled in Kosovo. As a result of the Balkan Wars of 1912-3, Serbia annexed Kosovo. During part of both world wars, Kosovo was occupied by the troops of Germany and her allies, but each time the occupation was ended, Serbia reasserted her sovereignty over Kosovo. From 1945 Kosovo was an autonomous territory and from 1963 an autonomous province. Under the Yugoslav Constitution of 1974 Kosovo continued to enjoy the status of an autonomous province, which according to the explanation given in Article 4 was an "autonomous, socialist, self-managing democratic socio-political community". Within Serbia, Kosovo was given considerable autonomy including control of its educational systems, judiciary, and police. It enjoyed a status equivalent in most ways to that of the six republics (Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Serbia, Slovenia), with its own representation at the main Yugoslav bodies.

Gradually, however, this status was abolished. In 1989, the Constitution was amended for the first time to confer increased powers on central authorities in Belgrade. Use of the Albanian language for official purposes was forbidden. With the imposition of a state of emergency, Kosovo's autonomy came *de facto* to an end.

In 1990, this *de facto* situation was quickly formalized. The Government of the Serbian Republic first dissolved the Assembly and the Executive Council of Kosovo, and with the adoption of a new Constitution of that Republic in September of that year the status of autonomy of Kosovo lost all of its substance. Serbia assumed total control over the province. When, after the disintegration of the Socialist Federal Republic of Yugoslavia, a new Constitution was adopted in April 1992, any hint at a status of autonomy for certain provinces was deleted. In the terms of that Constitution Kosovo simply formed part of the Republic of Serbia without any special rights.

In September 1991, Kosovo Albanians held an unofficial referendum in which they overwhelmingly voted for independence. In May 1992, Kosovo Albanians held unofficial elections for an assembly and president for the "Republic of Kosovo".

Throughout late 1990 and 1991 thousands of Kosovo Albanian doctors, teachers, professors, workers, police and civil servants were dismissed, and many judges were removed from their posts.

Reports on the repressive measures of Serbian authorities reached international institutions, which from then on continually expressed their dismay at what they had learned about serious human rights violations in Kosovo.

In July 1992, at its Helsinki summit, the then Conference on Security and Cooperation in Europe adopted a Declaration on the Yugoslav crisis, in which it specifically addressed the situation in Kosovo (para. 3):

“The situation in Kosovo remains extremely dangerous and requires immediate preventive action. We strongly urge the authorities in Belgrade to refrain from further repression and to engage in serious dialogue with representatives of Kosovo, in the presence of a third party”. (Document CSCE/HS/1, 10 July 1992)

A few months later, out of growing fears that the ethnic conflict might escalate, it decided to send a long-term mission to Kosovo.

In August 1993, however, this mission had to be withdrawn since the competent authorities of the Federal Republic of Yugoslavia (FRY) refused to give their consent to the continuance of its activities. The Security Council, in resolution 855 (1993), called upon them to reconsider their refusal and to cooperate with the CSCE by taking the practical steps needed to the resumption of the activities of the mission (op. para. 2). However, the FRY did not comply with this call.

As from 1992, the General Assembly expressed its “grave concern” regarding the handling of the situation in Kosovo. In resolution 47/147 of 18 December 1992 it urged all parties there (op. para. 14):

“to act with utmost restraint and to settle disputes in full compliance with human rights and fundamental freedoms, and calls upon the Serbian authorities to refrain from the

use of force, to stop immediately the practice of 'ethnic cleansing' and to respect fully the rights of persons belonging to ethnic communities or minorities ..."

The text shows that already at this early stage, 'ethnic cleansing' was a charge brought against the Serbian authorities.

In 1993, the accusations on gross human rights violations held against the Government in Belgrade became even more specific. In resolution 48/153 of 20 December 1993, the General Assembly had this to say:

"17. *Expresses its grave concern* at the deteriorating human rights situation in the Federal Republic of Yugoslavia (Serbia and Montenegro), particularly in Kosovo, as described in the reports of the Special Rapporteur, and strongly condemns the violations of human rights occurring there;

18. *Strongly condemns* in particular the measures and practices of discrimination and the violations of the human rights of the ethnic Albanians of Kosovo, as well as the large-scale repression committed by the Serbian authorities, including:

(a) Police brutality against ethnic Albanians, arbitrary searches, seizures and arrests, torture and ill-treatment during detention and discrimination in the administration of justice, which leads to a climate of lawlessness in which criminal acts, particularly against ethnic Albanians, take place with impunity;

(b) The discriminatory removal of ethnic Albanian officials, especially from the police and judiciary, the mass dismissal of ethnic Albanians from professional, administrative and other skilled positions in State-owned enterprises and public institutions, including teachers from the Serb-run school system, and the closure of Albanian high schools and universities;

(c) Arbitrary imprisonment of ethnic Albanian journalists, the closure of Albanian-language mass media and the discriminatory removal of ethnic Albanian staff from local radio and television stations;

(d) Repression by the Serbian police and military;

19. Urges the authorities in the Federal Republic of Yugoslavia (Serbia and Montenegro):

- (a) To take all necessary measures to bring to an immediate end the human rights violations inflicted on the ethnic-Albanians in Kosovo, including, in particular, discriminatory measures and practices, arbitrary detention and the use of torture and other cruel, inhuman or degrading treatment and the occurrence of summary executions;
- (b) to revoke all discriminatory legislation, in particular that which has entered into force since 1989;
- (c) to re-establish the democratic institutions of Kosovo, including the parliament and the judiciary;
- (d) To resume dialogue with the ethnic Albanians in Kosovo, including under the auspices of the International Conference on the Former Yugoslavia;

20. *Also urges* the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) to respect the human rights and fundamental freedoms of ethnic Albanians in Kosovo, and expresses the view that the best means to safeguard human rights in Kosovo is to restore its autonomy.”

Similar appeals to the FRY were made by resolutions 49/196 of 23 December 1994 (op. para. 19), 50/193 of 22 December 1995 (op. paras. 16-18), 51/116 of 12 December 1996 (op. paras. 10-12) and 52/147 of 12 December 1997 (op. paras. 15-17).

In June 1991, the Socialist Federal Republic of Yugoslavia began to disintegrate in a succession of wars fought in the Republic of Slovenia, the Republic of Croatia, and Bosnia and Herzegovina. Slovenia and Croatia declared their independence from the SFRY on 25 June 1991, followed by Macedonia on 17 September 1991 and Bosnia and Herzegovina on 6 March 1992. Active hostilities between forces of the Federal Republic of Yugoslavia and forces under the command of the Government of Bosnia and Herzegovina and the “Croat Defense Council” only ceased with the signing of the Dayton peace agreement of 15 December 1995.

As this Court is painfully aware, unspeakable crimes were committed during the violent break up of the former Yugoslavia. Most significantly, the Court has found that Serbia violated its obligation under the Genocide Convention of 1948 to prevent genocide in Srebrenica

*(Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007).*

## 2. The events of 1998/99

Beginning in late February 1998, the conflict between forces of the Federal Republic of Yugoslavia and Serbia on the one hand, and a faction of Kosovo Albanians organized in the “Kosovo Liberation Army”, on the other hand, intensified. In response to these developments, the Security Council, in resolution 1160 (1998) of 31 March 1998 condemned the use of excessive force by Serbian police forces against civilians and peaceful demonstrators in Kosovo, as well as all acts of terrorism by the Kosovo Liberation Army. According to its judgment, both sides had contributed to the spiral of violence.

In September and October 1998 the United Nations Secretary-General submitted two reports to the Security Council in which he expressed serious concern over the deteriorating conditions in the province. In his first report of 4 September 1998 (Report of the Secretary-General Prepared Pursuant to resolution 1160 (1998) of the Security Council, S/1998/834, 4 September 1998), which was complemented by an addendum on 21 September 1998 (S/1998/834/Add.1), he drew attention to the increasing number of persons displaced from their homes, estimating that out of 230,000 such persons 170,000 were still living within Kosovo.

This first report together with its addendum led the Security Council, acting under Chapter VII of the Charter, to adopt, on 23 September 1998, resolution 1199 (1998), in which it stated (preamb. para. 10) that it was

*“deeply concerned by 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 emphasizing the need to prevent this from happening,”*

and demanded (op. para. 2) that

“the authorities of the Federal Republic of Yugoslavia and the Kosovo Albanian leadership take immediate steps to improve the humanitarian situation and to avert the impending humanitarian catastrophe”.

In addition, it demanded (op. para. 4) that the FRY

- “(a) cease all action by the security forces affecting the civilian population and order the withdrawal of security units used for civilian repression;
- (b) enable effective and continuous international monitoring in Kosovo by the European Community Monitoring Mission and diplomatic mission accredited to the Federal Republic of Yugoslavia, including access and complete freedom of movement of such monitors to, from and within Kosovo unimpeded by government authorities, and expeditious issuance of appropriate travel documents to international personnel contributing to the monitoring;
- (c) facilitate, in agreement with the UNHCR and the International Committee of the Red Cross (ICRC), the safe return of refugees and displaced persons to their homes and allow free and unimpeded access for humanitarian organizations and supplies to Kosovo;
- (d) make rapid progress to a clear timetable, in the dialogue referred to in paragraph 3 with the Kosovo Albanian community called for in resolution 1160 (1998), with the aim of agreeing confidence-building measures and finding a political solution to the problems of Kosovo.”

The second report was issued by the Secretary-General on 3 October 1998 (Report of the Secretary-General Prepared Pursuant to resolutions 1160 (1998) and 1199 (1998) of the Security Council, S/1998/912, 3 October 1998). In that report, he stated *inter alia*:

“7. The desperate situation of the civilian population remains the most disturbing aspect of the hostilities in Kosovo. I am particularly concerned that civilians increasingly have become the main target in the conflict. Fighting in Kosovo has resulted in a mass displacement of civilian populations, the extensive destruction of villages and means of livelihood and the deep trauma and despair of displaced populations. Many villages have been destroyed by shelling and burning following



operations conducted by federal and Serbian government forces. There are concerns that the disproportionate use of force and actions of the security forces are designed to terrorize and subjugate the population, a collective punishment to teach them that the price of supporting the Kosovo Albanian paramilitary units is too high and will be even higher in future. The Serbian security forces have demanded the surrender of weapons and have been reported to use terror and violence against civilians to force people to flee their homes or the places where they had sought refuge, under the guise of separating them from fighters of the Kosovo Albanian paramilitary units. The tactics include shelling, detentions and threats to life, and finally short-notice demands to leave or face the consequences. There have been disruptions in electricity and other services, and empty dwellings have been burned and looted, abandoned farm vehicles have been destroyed, and farm animals have been burned in their barns or shot in the fields....

...

9. I am outraged by reports of mass killings of civilians in Kosovo, which recall the atrocities committed in Bosnia and Herzegovina ...

...

11. The pattern of displacement is fast-changing and unpredictable as people flee in response to the actions and real or perceived threats of the security forces. Even though there have been some returns, the Office of the United Nations High Commissioner for Refugees (UNHCR) estimates that more than 200,000 persons remain displaced in Kosovo and some 80,000 are in neighbouring countries and other parts of Serbia..."

It was on the strength of these alarming reports that the NATO Council authorized, on 13 October 1998, activation orders for air strikes against Yugoslavia in an attempt to induce President Milosevic to withdraw his forces from Kosovo and to co-operate in bringing an end to the violence.

Speaking of a "humanitarian catastrophe" was no hollow formula. What this meant in real terms was clearly expressed in the report of the Secretary-General of 3 October 1998 (para. 17):

“With only a few weeks before the onset of winter, the issue of the return of displaced persons and refugees remains one of the most pressing issues. Some 50,000 internally displaced persons currently lack shelter or any support network, and are ill-prepared for inclement winter weather that may arrive as early as next month. The priority of any humanitarian strategy should be to assist these people. Children and the elderly will almost certainly risk death from exposure if they remain at their current locations — especially the ones at higher elevations — into the winter.”

Massive killings were perpetrated by Serbian forces even during the presence of the Kosovo Verification Mission led by the Organization for Security and Co-operation in Europe (OSCE) and endorsed by the Security Council in resolution 1203 (1998) of 24 October 1998. In particular, at Racak on 15 January 1999 45 civilians were murdered. This atrocity led to clearly worded reactions on the part of the international community. The Security Council “strongly condemn(ed)” that massacre (Statement by the President of the Security Council, 19 January 1999, S/PRST/1992/2).

At that time, the situation in Kosovo raised indeed most serious concerns. As indicated by the UN High Commissioner for Refugees in February 2000, there were approximately 260,000 internally displaced persons before the launching of the NATO operation, and some 35,000 persons had fled to countries bordering the former Yugoslavia (The Kosovo refugee crisis: an independent evaluation of UNHCR’s emergency preparedness and response, [www.unhcr.ch/evaluate/kosovo/toc.htm](http://www.unhcr.ch/evaluate/kosovo/toc.htm), February 2000, paras. 80, 81).

The most detailed information on the situation was provided by the Kosovo Verification Mission, deployed in the Yugoslav province from October 1998 to 20 March 1999. The OSCE has submitted a detailed report (Kosovo/Kosova. As Seen, as Told. An analysis of the human rights findings of the OSCE Kosovo Verification Mission, October 1998 to June 1999, [www.osce.org/kosovo/reports/hr/part1/index.htm](http://www.osce.org/kosovo/reports/hr/part1/index.htm) (undated)) on the atrocities committed by Serbian security forces during that period of roughly six months, well before military conflict began between NATO and the FRY, covering at the same time, however, the period up to 9 June 1999, the day when the military conflict ended. The general lesson to be drawn from this report may be summarized in a few words. The Yugoslav Government had created a climate of absolute lawlessness in the region. Abundant information demonstrates that the responsible authorities not only failed to protect the life and physical integrity of their citizens of Albanian

ethnicity, but that these citizens had become objects of constant persecution, subjected to the most complete arbitrariness. Generally it was clearly conveyed to all ethnic Albanians that their presence was undesirable in Kosovo and that they would do better to leave the region for good. In the first place, it may be worthwhile to quote a "Background paper" which contains a general summary of the report:

"The conclusions of the report's analysis are that clear strategies lay behind the human rights violations committed by Serbian forces; that paramilitaries and armed civilians committed acts of extreme lawlessness with the tolerance and collusion of military and security forces whose own actions were generally highly organized and systematic; and that the violations inflicted on the Kosovo Albanian population on a massive scale after 20 March were a continuation of actions by Serbian forces that were well-rehearsed, insofar as they were taking place in many locations well before that date. While both parties to the conflict committed human rights violations, there was no balance or equivalence in the nature or scale of those violations – overwhelmingly it was the Kosovo Albanian population who suffered. The report also notes that persistent human rights violations lay behind the security breakdown which plunged Kosovo into armed conflict and a human rights and humanitarian catastrophe." (OSCE, Background Paper – Human Rights in Kosovo, 1999, p. 2)

Forced expulsion was perhaps the most disturbing phenomenon of the somber human rights situation. The OSCE report referred to above contains information to the effect that systematic and widespread expulsions were carried out as soon as the OSCE Mission had left the province on 20 March 1999, increasing in intensity after the start of the NATO operation against the FRY.

"...Once the OSCE-KVM left on 20 March 1999 and in particular after the start of the NATO bombing on 24 March, Serbian police and/or VJ, often accompanied by paramilitaries, went from village to village and, in the towns, from area to area threatening and expelling the Kosovo Albanian population. Those who had avoided this first expulsion or had managed to return were then expelled in repeat operations some days or weeks later. Others who were not directly forcibly expelled fled as a result of the climate of terror created by the systematic beatings, harassment, arrests,

killings, shelling and looting carried out across the province.” (Kosovo/Kosova. As Seen, as Told. An analysis of the human rights findings of the OSCE Kosovo Verification Mission, October 1998 to June 1999, [www.osce.org/kosovo/reports/hr/part1/index.htm](http://www.osce.org/kosovo/reports/hr/part1/index.htm) (undated), Chapter 14, p.1)

In sum, at the end of March 1999 the humanitarian catastrophe, which had been referred to as an impending event during many months, had fully materialized. The Albanian population in Kosovo lacked the most elementary guarantees which any civilized State must provide to its citizens.

The disastrous wave of violence and crime unleashed by the Serbian security forces continued on a massive scale during NATO’s air operations, as evidenced by independent reports published during or after the armed conflict.

Thus, the UN High Commissioner for Human Rights, in a Report on the Situation of Human Rights in Kosovo of 31 May 1999, wrote with regard to forcible displacement:

“13. Forced displacement and expulsions of ethnic Albanians from Kosovo 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 program 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 appears 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 Yugoslav authorities. The deliberateness of the programme to expel ethnic Albanians from Kosovo is further supported by statements made by Serbian authorities and paramilitaries at the time of eviction, such as telling

people to go to Albania or to have a last look at their land because they would never see it again. However, in the light of the deteriorating security situation, some persons have apparently decided to flee before being ordered to leave. A number of refugees, particularly intellectuals, fled after receiving threatening phone calls from unidentified persons with detailed knowledge of their activities.” (Report by the High Commissioner for Human Rights on the Situation of Human Rights in Kosovo, Federal Republic of Yugoslavia, 31 May 1999, UN doc. E/CN.4/2000/7, paras. 13-15)

In a later report of 27 September 1999 the High Commissioner for Human Rights states quite bluntly (para. 7):

“Human rights violation were among the root causes of the mass exodus of more than 1 million ethnic Albanians from Kosovo. Out of 273 refugees interviewed, only 1 reportedly left his village out of fear of North Atlantic Treaty Organization (NATO) bombs, while all the others described how they were compelled, either by direct violence or by intimidation, to leave their homes.” (Report by the High Commissioner for Human Rights on the Situation of Human Rights in Kosovo, Federal Republic of Yugoslavia, 27 September, UN doc. E/CN.4/2000/10)

It is estimated by the OSCE that over 90 per cent of the Kosovo Albanian population had been displaced by the end of the military operations in June 1999 (Kosovo/Kosova. As Seen, As Told, Chapter 14, Forced Expulsion, p. 1). Such a tremendous dimension in the flow of refugees, inside Kosovo and across its borders, would not have been possible had the Yugoslav Government not drawn up beforehand an elaborate strategy to make Kosovo free of Albanians.

There is no need to provide further details of the facts carefully assembled in the OSCE report and the relevant UN reports. These facts, of which only a summary account is given here, speak for themselves. They fully confirm that at the beginning of 1999 there indeed existed, as observed and documented by knowledgeable and impartial third-party institutions, a humanitarian emergency, caused by serious crimes deliberately and purposefully committed by the security and military forces of the FRY, and that the criminal strategy gained unprecedented momentum when the KVM Observer Mission was withdrawn, continuing almost to the end of NATO's air operations.

These crimes marked the tragic climax of more than a decade of systematic violations of the human rights of the Albanian population in Kosovo.

On 26 February 2009, the International Criminal Tribunal for the former Yugoslavia convicted former FRY Deputy Prime Minister Sainovic, former Serbian Interior Minister Stojilkovic, former Chief of the General Staff of the Yugoslav Army, General Ojdanic, and three other high ranking Serbian officials for crimes against humanity committed in Kosovo in 1999. In the summary of the judgment, read out by Judge Bonamy, it is stated:

“The Trial Chamber therefore finds 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, 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.”

The Serbia of today is not the Serbia of 1998/99. It was Serbia that arrested former President Milosevic and other ICTY indictees. Serbia is a potential candidate for EU membership and is participating in the EU's Stabilisation and Association Process. A stable and prosperous Serbia fully integrated into the family of European nations is important for the stability of the region. However, there can be no doubt that the events of 1998/99 have left an indelible mark on the collective memory of the Kosovo Albanians.

### **3. Kosovo under Security Council resolution 1244 (1999)**

On 10 June 1999, the Security Council adopted resolution 1244 (1999), and NATO operations against the Federal Republic of Yugoslavia ceased. The Council authorized the Secretary-General, with the assistance of the relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo could enjoy substantial autonomy. Once established under resolution 1244 (1999), and pursuant to that resolution, the United Nations

Mission in Kosovo (UNMIK) assumed all legislative, executive and judiciary authority throughout Kosovo.

Under resolution 1244 (1999), and up to the present day, Kosovo and Serbia have been governed in complete separation. Serbia has not exercised any governing authority over Kosovo since June, 1999.

Under UNMIK authority, Kosovo institutions were created and developed and increasingly took on the responsibility of managing Kosovo's affairs.

In May 2000, UNMIK established the Joint Interim Administrative Structure (JIAS), comprising, i.a. an Interim Advisory Council and a Kosovo Transitional Council. In May 2001, UNMIK promulgated a Constitutional Framework for Provisional Self-Government in Kosovo which established the Provisional Institutions of Self-Government (PISG). These institutions of self-government in the legislative, executive and judicial fields were put in the hands of Kosovo's leaders and civil servants after Kosovo-wide elections were held in November, 2001. The PISG comprised the President of Kosovo, the Assembly of Kosovo, which elected the President of Kosovo, the Government of Kosovo, headed by a Prime Minister, nominated by the President and endorsed by the Assembly, and the Judicial System of Kosovo.

Since 2001, UNMIK had been gradually transferring increased administrative competencies to the PISG. In the course of 2002, a set of UN-endorsed benchmarks for the democratic development of Kosovo were adopted (Standards for Kosovo). In 2003, the international community, with the full support of the Security Council, articulated a policy of "Standards before Status". The Standards covered eight key areas: functioning of the democratic institutions, the rule of law, freedom of movement, the return of refugees and IDPs, economy, property rights, dialogue with Belgrade, and the Kosovo Protection Corps. Meeting these Standards was declared to be essential to commencing a political process designed to determine Kosovo's future, in accordance with resolution 1244 (1999).

The work on the Standards for Kosovo was later complemented by an even more demanding process of meeting standards for European integration as part of the EU's Stabilization and Association Process Tracking Mechanism.

In June 2005, the Secretary-General appointed Mr. Kai Eide as his Special Envoy in order to undertake a comprehensive review of the situation in Kosovo and to assess whether the conditions were in place to enter into a political process designed to determine the future status of Kosovo. In his report (S/2005/635, Annex), Mr. Eide recommended that the time had come to move to the next phase of the political process. The Security Council welcomed Mr. Eide's report (S/PRST/2005/51).

In November 2005, the Secretary-General appointed Mr. Martti Ahtisaari as his Special Envoy for the future status process for Kosovo.

While Mr. Ahtisaari was conducting talks, Serbia brought forward a new Constitution that unilaterally re-asserted control over Kosovo, in effect tying the hands of the Serbian negotiators. The new Constitution, which was adopted by the National Assembly of the Republic of Serbia on 30 September 2006 and endorsed by a referendum on 28 and 29 October 2006, in its Preamble, does consider the "Province of Kosovo and Metohija" as an integral part of the territory of Serbia enjoying the status of substantial autonomy. However, as was pointed out by the Council of Europe's advisory body on constitutional matters, the European Commission for Democracy Through Law (Venice Commission),

"in contrast with what the preamble announces, 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." (Opinion on the Constitution of Serbia, adopted by the Commission at its 70<sup>th</sup> plenary session (Venice, 17-18 March 2007), CDL-AD(2007)004, para. 8)

After more than one year of direct talks, bilateral negotiations and expert consultations, the Special Envoy concluded that Kosovo and Serbia were not able to reach an agreement on Kosovo's future status:

"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." (S/2007/168, para. 3)



The Special Envoy continued:

“The time has come to resolve Kosovo’s status. 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.” (para. 5)

Mr. Ahtisaari’s recommendation for “supervised independence” was accompanied by a 63-page “Comprehensive Proposal for the Kosovo Status Settlement” (“Ahtisaari Plan”), consisting of a series of “General Principles” and twelve annexes detailing measures to ensure a “viable, sustainable and stable” Kosovo. Pristina accepted the Ahtisaari Plan in its entirety, while Belgrade rejected it.

The Secretary-General conveyed these documents to the Security Council on 26 March 2007 with his support of both the recommendation made by his Special Envoy and the Ahtisaari Plan (S/2007/168 and S/2007/168/Add.1). The Security Council, however failed to agree on a resolution that would have endorsed the Ahtisaari Plan (see the draft resolution introduced by Belgium, France, Germany, Italy, the United Kingdom and the United States, S/2007/437 Provisional [Annex 3]).

After a period of discussions in the Security Council, and a mission of the Security Council to Belgrade and Kosovo, the Contact Group (France, Germany, Italy, Russia, the United Kingdom and the United States) proposed that a “Troika” of officials from the European Union, the United States and Russia undertake yet another period of negotiations with the goal of achieving a negotiated settlement between Kosovo and Serbia. On 1 August 2007, the Secretary-General welcomed this initiative, restated his assessment that the status quo was unsustainable and requested a report from the Contact Group on these efforts by 10 December 2007.

During the four month of its mandate, the Troika undertook an intense schedule of meetings with the parties. The parties reviewed outcomes ranging from independence to autonomy, as well as alternate models such as confederal arrangements, and even a model based on an “agreement to disagree” based on the German “Grundlagenvertrag” of 1972 in which neither

party would be expected to renounce its position but would nonetheless pursue practical arrangements designed to facilitate cooperation and consultation between them. Other international models, such as Hong Kong, the Aland Islands and the Commonwealth of Independent States, were discussed. None of these models proved to be an adequate basis for compromise between the parties (cf. Report of the European Union/United States/Russian Federation Troika on Kosovo, S/2007/723, Enclosure, para. 10).

In a letter dated 5 December 2007 and addressed to EU High Representative Solana, the European Union representative within the Troika, Ambassador Ischinger, gave his summary of the Troika process:

“The Troika has, as promised, left no stone unturned in trying to achieve a negotiated settlement of the Kosovo status question. The positions of both parties on status have, however, remained diametrically opposed. The potential to reach a negotiated settlement is now exhausted. It is my view that the parties would not be capable of reaching agreement on the issue if negotiations were to be continued, whether in the Troika format, or in some other form.” [Annex 4]

The Foreign Ministers of France, Germany, Italy and the United Kingdom, shared this view:

“[It] has not proved possible to achieve sufficient common ground between the parties.

This is not because of lack of time or energy in the Troika Process. During the Troika Process one or other of the parties rejected options including confederation, autonomy and a status neutral way forward. This underlines the irreconcilable gap between the positions of the two parties. We share Ambassador Ischinger’s firm view that further status negotiations between Belgrade and Pristina would offer no prospect of reaching an agreement. Indeed, they might even lead to a further hardening of positions on both sides” (Letter of 7 December 2007 addressed to the Portuguese EU Presidency).

[Annex 5]

A similar sentiment was expressed by the Secretary General. In his periodic UNMIK report of 3 January 2008, he made the following observation:

“Expectations in Kosovo remain high that a solution to Kosovo’s future status must be found rapidly. As such the status quo is not likely to be sustainable. Should the impasse continue, events on the ground could take on a momentum of their own, putting at serious risk the achievements and legacy of the United Nations in Kosovo. (...) Uncertainty and a loss of forward dynamic in the future status process could create a risk of instability, both in Kosovo and in the wider region; as well as a potential risk to the safety of the United Nations staff”. (S/2007/768, paras 33, 34)

The Security Council met on 19 December 2007 in closed session to discuss the end of the Troika Process. However, it could - once again – not agree on a way forward for Kosovo. Further meetings on 16 January and 14 February 2008 failed to resolve the deadlock within the Security Council.

On 17 February 2008 the democratically elected Assembly of Kosovo adopted a Declaration of Independence for the Republic of Kosovo. It accepted the principles of the Ahtisaari Plan and welcomed the continued support of the international community on the basis of resolution 1244 (1999). In its final clause, the Declaration says:

“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 consistently with the principles of international law and resolutions of the Security Council, including resolution 1244. We declare publicly that all States are entitled to rely upon this Declaration, and appeal to them to extend us their support and friendship.”

On 15 June 2008, the new Kosovo constitution came into force, again in conformity with the Ahtisaari Plan. The Assembly of Kosovo has passed a comprehensive set of new laws, including laws to establish new state institutions, such as a security force, intelligence agency and diplomatic service, laws on citizenship and on the protection and promotion of the rights of communities.

## V. The Independence of Kosovo: A Case *sui generis*

The *sui-generis* character of the Kosovo question is a recurring theme in the debate on Kosovo's Declaration of Independence. Indeed the Declaration of Independence itself, in one of its preambular paragraphs, underlines the specificity of the Kosovo situation:

“Observing that Kosovo is a special case arising from Yugoslavia's non-consensual break-up and is not a precedent for any other situation, ...” (Kosovo Declaration of Independence of 17 February 2008, preamb. para. 6)

The Special Envoy of the Secretary-General for the future status of Kosovo, Martti Ahtisaari, in his report of March 2007, expressed himself in the following terms:

“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, the Security Council responded to Milosevic's action in Kosovo by denying Serbs a role in its governance, placing Kosovo under temporary UN administration, and envisaging a political process designed to determine Kosovo's future. The combination of these factors makes Kosovo's circumstances extraordinary.” (S/2007/168, para. 15)

In fact, it would seem that the uniqueness of the Kosovo situation is a feature that unites proponents and detractors of Kosovo's independence alike. Thus, EU Foreign Ministers, while not being able to agree on recognition of Kosovo, did agree on the *sui generis* character of the Kosovo issue:

“[The Council] underlines its conviction that in view of the conflict of the 1990s and the extended period of international administration under SCR 1244, Kosovo constitutes a *sui generis* case (...)” (Council Conclusions on Kosovo, 18 February 2008, final para.). [Annex 6]

Several aspects combine to make Kosovo a truly unique *sui generis* case, as previously laid out in Part IV of this statement (“Historical Background”):

- the antecedents of the conflict of the 1990s, possibly as far back as 1912, but in particular those of the late 1990s, as documented in relevant UN and other documents;
- the nature and scope of what happened in 1998-99 (as documented): massacres and pillaging, mass ethnic cleansing, necessity of international community intervention to prevent, or rather put an end to this;
- the involvement of the international community and in particular its most universal institution, the UN: before and after 1999;
- the earnest and intense, but ultimately unsuccessful search for a negotiated solution in this framework (in other words: no other avenue left open, unilateral action is *ultima ratio*).

## VI. Legal Aspects

### 1. International law might be silent on Kosovo's Declaration of Independence

There is considerable authority for the proposition that a declaration of independence leading to a secession and secession itself are of an entirely factual nature and that international law in general is silent as to their legality:

“International law has traditionally acknowledged secession subsequent to a factual state of events which has led to a situation in which the constitutive elements of a State are present rather than stating conditions of its legality.” (Chr. Haverland, “Secession”, in: R. Bernhardt (ed.), *Encyclopaedia of Public International Law*, Volume 4, pp. 354 et seq., at p. 355; see also Chr. Schaller, *Die Sezession des Kosovo und der völkerrechtliche Status der internationalen Präsenz*, in: *Archiv des Völkerrechts*, vol. 46 (2008), pp. 131 et seq., at p. 134.; P. Hilpold, *Die Sezession – zum Versuch der Verrechtlichung eines faktischen Phänomens*, in: *Zeitschrift für öffentliches Recht*, vol. 63 (2008), pp. 117 et seq., at p. 123-4.).

Indeed, it is striking that the international law experts from around the world whose opinions were sought in the Supreme Court of Canada case *Reference re Secession of Quebec*, while differing on many of the legal issues raised, seemed to agree on this one particular point.

In his report prepared for the Attorney General of Canada, James Crawford wrote:

“International law has been prepared to acknowledge political realities once the independence of a seceding entity was firmly established and in relation to the territory effectively controlled by it.” (A.F. Bayefsky (ed.), *Self-Determination in International Law: Quebec and Lessons Learned* (2000), pp. 31 et seq., at p. 36)

Later, Professor Crawford held:

“It is true that international law does not prohibit secession of any group whatever within a state... The question of secession is a matter within the jurisdiction of the metropolitan state... For international law specifically to prohibit secession, it would need to address the seceding entity as such, and this it generally does not do.” (Bayefsky, *op. cit.*, at pp. 160-161)

Professor Abi-Saab, in his expert opinion prepared for the *Amicus Curiae* acting on behalf of the Quebec sovereigntists, wrote:

“While international law does not recognize a right to secession, neither does it prohibit secession, unless the latter results from a violation of one of the fundamental principles of contemporary international law and perpetuates the effects of such a violation.” (Bayefsky, *op. cit.*, pp. 69 et seq., at p. 74)

In the same expert opinion, he maintained that

“[Secession] is basically a phenomenon not regulated by international law.” (Bayefsky, *op. cit.*, at p. 72).

Professor Thomas Franck, also writing for the *Amicus Curiae*, emphasized this very same point:

“The correct conclusion to be drawn from the vast repertory of state practice... is that international law maintains neutrality towards the secessionist impulse but recognizes

it when it succeeds... Quite simply, the law is neutral. It permits, and certainly does not prohibit secession.” (Bayefsky, op. cit., pp. 75 et seq., at p. 83)

The same position was expressed by Professor Malcom Shaw:

“[A]s a matter of law the international legal system neither authorises nor condemns [secessionist] attempts, but rather stands neutral. Secession as such, therefore, is not contrary to international law.” (Bayefsky, op. cit., pp. 125 et seq., at p. 136)

Professor Alain Pellet wrote:

“[N]o principle of international law excludes the right of a people to secede, and when such is the case, the law of nations simply takes notice of the existence of the new state.” (Bayefsky, op. cit., pp. 85 et seq., at p. 106)

In a further expert opinion prepared upon request of the Government of Quebec prior to the proceedings before the Supreme Court of Canada, Professors Thomas Franck, Rosalyn Higgins, Alain Pellet, Malcom Shaw and Christian Tomuschat held:

“[T]here is no legal rule precluding secession... Secession also appears to be a political fact from which international law is content to draw conclusions when it leads to the establishment of effective and stable authorities.” (Bayefsky, op. cit., pp. 241 et seq., at p. 284)

The issue of the legality of a declaration of independence may very well arise under *domestic* (not *international*) law. This, however, is a question that cannot be properly answered by the Court, as international law is the only basis for its decision (cf. Article 38 para. 1, Article 68 of the Statute of the Court).

In international practice, declarations of independence have only been held to violate *international* law if conjoined with some other violation.

This has notably been the case when a declaration of independence has been brought about by the illegal use of force by another state or in violation of an international agreement. A case in

point would be Security Council resolution 541 (1983) of 18 November 1983, in which the UN Security Council considered the declaration of independence by the Turkish Cypriot authorities as “legally invalid” and called “for its withdrawal”.

International law distinguishes clearly between a change in territory brought about by the illegal use of force by another State (in particular, an annexation), and a move by part of the population in a State to secede from that State where such an element is lacking. An annexation is universally admitted to be contrary to international law; moreover, international law even forbids other States from recognizing the result of an annexation (see, e.g., International Law Commission, Draft Articles on Rights and Duties of States, draft article 18, which reads: “Every State has the duty to refrain from recognizing any territorial acquisition made by another State through force or the threat of force.”, Yearbook of the ILC 1949, p. 113). The ILC discussed whether or not to deal with changes in territory brought about by secession in the same way, but decided with a clear majority not to do so (*loc. cit.*, at p. 112). Thus, it would appear that while annexation is prohibited by international law, secession is neither encouraged nor forbidden.

In the case of Katanga, Security Council condemnation of the “secessionist activities illegally carried out by the provincial administration of Katanga” was clearly predicated by the fact that these activities were carried out “with the aid of external resources and manned by foreign mercenaries” (Security Council resolution 169 (1961) of 24 November 1961, para. 1). Interestingly enough, while the Security Council declared (in para. 8 of resolution 169 (1961)) that “all secessionist activities against the Republic of the Congo are contrary to the *Loi fondamentale*” (and Security Council decisions), it did not hold “all secessionist activities” to be contrary to international law

The case of Southern Rhodesia is another example where a declaration of independence was declared “as having no legal validity” because it was conjoined with another violation, namely racial discrimination. Thus, resolution 216 (1965) of 12 November 1965 makes reference to “a racist minority” and an “illegal racist minority regime” in Southern Rhodesia; similarly, resolution 217 (1965) of 20 November 1965 speaks of “a racist settler minority in Southern Rhodesia.” It is quite clear that the condemnation of the unilateral declaration of independence of Southern Rhodesia by the UN Security Council was motivated by



considerations other than those normally attached to a mere declaration of independence or secession.

This does not mean that international law is not relevant in the context as a whole. Thus, international law sets certain conditions that must be present before a newly self-declared State may be recognized by other States, viz., the presence of the three elements of statehood: a territory, a people, and effective government. It is indeed in the context of recognition that international law comes into play. The most recent case of Abkhazia and South Ossetia perfectly illustrates this point. When States and international organizations reacted to the declaration of independence of these entities, it was invariably Russia's act of recognition that was held to be in violation of international law, leaving aside the question of the "legality" of the declaration of independence itself.

Thus, the French Presidency of the Council of the European Union declared:

"La Présidence du Conseil de l'Union européenne prend note de la décision prise par les autorités russes de reconnaître l'indépendance de l'Abkhazie et de l'Ossétie du Sud. Elle condamne fermement cette décision. Celle-ci est contraire aux principes d'indépendance, de souveraineté et d'intégrité territoriale de la Géorgie, reconnus par la Charte des Nations Unies, l'Acte final de la conférence sur la sécurité et la coopération en Europe et les Résolutions pertinentes du Conseil de sécurité."

[Annex 7]

The OSCE Chairman-in-Office, Finnish Foreign Minister Alexander Stubb, reacted in a similar vein :

"The recognition of independence for South Ossetia and Abkhazia violates fundamental OSCE principles... Russia should follow OSCE principles by respecting the territorial integrity and sovereignty of Georgia." [Annex 8]

United States President Bush stated:

"The United States condemns the decision by the Russian President to recognize as independent states the Georgian regions of South Abkhazia and Ossetia. This decision

is inconsistent with numerous United Nations Security Council resolutions that Russia has voted for in the past..." [Annex 9]

A G7 joint statement of 27 August 2008 held:

"We, the Foreign Ministers of Canada, France, Germany, Italy, Japan, the United States and the United Kingdom, condemn the action of our fellow G8 member. Russia's recognition of the independence of South Ossetia and Abkhazia violates the territorial integrity and sovereignty of Georgia and is contrary to UN Security Council resolutions supported by Russia." [Annex 10]

What follows from international practice is that international law neither expressly allows nor condemns a declaration of independence, but is silent on the question of its legality. It is, however, *only* the compatibility of the Declaration of Independence of Kosovo with international law that the Court has been asked to determine.

**2. In any event, and given the very special situation of Kosovo, international law would not object to Kosovo's independence**

The principle of sovereignty and, as one of several aspects of sovereignty, territorial integrity is an important, but not the only important principle of international law. Another principle of equal force is that of self-determination.

The right of self-determination of peoples as such is well recognized in international law. It forms part of the Charter of the United Nations (article 1 para. 2; article 55) and is firmly entrenched in customary international law.

Of particular relevance in this context are the "Friendly Relations Declaration" of 1970 and the Helsinki Final Act of 1975. It clearly emerges from both these documents that the principle of self-determination is recognized as being on the same level as, and by no means subservient to, the principle of the sovereignty, the sovereign equality and the territorial integrity of States.

The General Assembly's Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (resolution 2625 (XXV) of 24 October 1970) states:

“By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.”

The relationship between territorial integrity and self-determination also become evident when looking at Part VIII of the Final Act of the Conference on Security and Co-operation in Europe:

“The participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States.

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.”

Self-determination may be exercised internally and externally. Internal self-determination means enjoying a degree of autonomy inside a larger entity, not leaving it altogether but, as a rule, deciding issues of local relevance on a local level. External self-determination means the right of a group freely to determine its own political and constitutional status on the international level. This would include the right to leave a bigger constitutional entity altogether. While most scholars agree that internal self-determination is an essential part of this concept, opinion is divided as to the external form of self-determination.

There are those who say that – outside a colonial context, which is not at issue here - a right to secession never exists. This, however, would also render the internal right of self-

determination meaningless in practice. There would be no remedy for a group which is not granted the self-determination that may be due to it under international law. The majority in the State could easily and with impunity oppress the minority, without any recourse being open to that minority.

On the other hand, no-one claims that any group which is able to show some difference (of an ethnic, religious, historical or other nature) between itself and the majority has the right to secede, i.e. to declare its independence as a new State. Such a broad right of secession would clearly endanger international peace by encouraging groups of all kinds and sizes, whether enjoying autonomy and participation or not, to break away from their mother States. While fear of secession is principally politically motivated, avoidance of the dangers created by a liberal right of secession is also a legitimate objective of international law.

It follows that international law neither totally excludes secession, nor does it give a liberal right of secession to all and every group. While self-determination should, for the sake of the stability of the international system, normally be enjoyed and exercised inside the existing framework of States, it may exceptionally legitimize secession if this can be shown to be the only remedy against a prolonged and rigorous refusal of internal self-determination. This kind of remedial right of secession would not endanger international stability, as it would come into play only under circumstances where the situation inside a State has deteriorated to a point where it might be considered to endanger international peace and stability in itself.

It would, on the contrary, help to put meaning into the principle of self-determination as a whole. The development of international law as a whole since the end of the Second World War demonstrates that certain limitations to the sovereignty of States have become generally acceptable. The very development of human rights (which every State owes to all men and women, including its own citizens), the concept of the "responsibility to protect", and the enormous progress made by international criminal law in establishing criminal responsibility even of holders of high office and thus pushing back impunity may serve to illustrate this point.

It is therefore submitted that the right to self-determination prevails, and turns into a right of external self-determination, under two conditions, which must be met cumulatively.

The first condition is an exceptionally severe and long-lasting refusal of internal self-determination by the State in which a group is living. This is not identical, but will often coincide with severe violations of human rights, such as the right to life and freedom, but also the rights of association and assembly. For this condition to be met, it is required that the authorities of the State in which a certain, distinct group is living consistently and over a considerable period of time deny to this group any right to have a say in matters directly concerning it, by denying it any decisional autonomy as well as any meaningful participation in the deliberations on the central level. While this will usually – as in the case of Kosovo – go hand in hand with severe human rights violations, such as suppression of demonstrations of political opposition, arbitrary arrests and imprisonments, torture and maltreatment, it is really the denial of internal self-determination which counts for this argument. As the Supreme Court of Canada has put it, “the underlying proposition is that, when a people is blocked from the meaningful exercise of its right to self-determination internally, it is entitled, as a last resort, to exercise it by secession” (*Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, para. 134).

The facts preceding the Kosovo Declaration of Independence have been set out above. They reveal a clear case of prolonged and severe repression and denial of all internal self-determination.

The second condition is that no other avenue exists for resolving the resulting conflict. It follows from the nature of external self-determination as the ultimate remedy to the persistent denial of internal self-determination that it may be exercised only as an *ultima ratio*. This means in practice that other possible ways of remedying the situation must first be exhausted. These other ways may consist in, e.g., negotiations (direct or indirect, with the assistance of facilitators, mediators, or otherwise), or recourse to relevant international organizations and bodies, such as the United Nations. Only when all other possible routes to internal self-determination can be shown to be blocked, the route to external self-determination opens. In the case of Kosovo, this condition, too, is met. As has been set out in detail above, there have been negotiations in several formats over a considerable period of time, the Security Council has been called upon to impose a solution – all in vain.

If, under the rules just laid out, a right of external self-determination comes into being, this does not mean that it will exist for a limitless future. A situation may change, repression may

cease, the constitutional structure of the State in which the group in question is living may change and, for example, federalize or decentralize, and so on. Whether or not such changes make the right to external self-determination disappear must be judged on the merits of each case, taking into account the severity of the situation prior to those changes.

Two considerations appear particularly important in this context.

First, if it is true that a right of external self-determination came into being because prolonged and persistent denial of internal self-determination destroyed the basis on which the State claimed its sovereignty over the group in question, then only the prospect of a safe and better future can re-establish this basis. In other words, only if circumstances show over a certain period of time that change for the better is permanent and reliable, the right of external self-determination may be said to have disappeared again.

As has been said previously, the Serbia of today is not the Serbia of the past. However, the reality is that the very legacy of the conflict, in particular the atrocities of the late 1990s, make a return of Serb rule in Kosovo unthinkable. Certainly, in the eyes of the Kosovars, if not in the eyes of the international community, the viability of a solution that would maintain Serb sovereignty over Kosovo could not be established. To quote, once again, from the Report of the Special Envoy of the Secretary-General on Kosovo's future status, Martti Ahtisaari, a "return of Serbian rule over Kosovo would not be acceptable to the overwhelming majority of the people of Kosovo. Belgrade could not regain its authority without provoking violent opposition. Autonomy of Kosovo within the borders of Serbia – however notional such autonomy may be – is simply not tenable." In any event, Serbia did not offer Kosovo a prospect for a better future, as evidenced by the adoption of the new Constitution of Serbia in 2006. As already pointed out, that 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.

Second, it has been said that other, lesser means of resolving the conflict must be tried and exhausted before a group may have recourse to its right of external self-determination. It would, however, be both illogical and unjust to hold the time needed for these attempts against the group by holding that this lapse of time made the right of external self-determination disappear before it could even be used. In other words, the fact that over several

years, while they were already under UN administration and outside the scope of Serb State-generated violence, the Kosovars attempted to arrive at a consensual solution cannot now serve as a basis for the argument that during this time the Kosovars have lost their right of external self-determination by this very lapse of time.

### 3. Security Council resolution 1244 (1999) did not prohibit the Declaration of Independence of Kosovo

Security Council resolution 1244 (1999) does mention “the sovereignty and territorial integrity of the Federal Republic of Yugoslavia” several times. As the FRY no longer exists, this reference must now indeed be taken as a reference to Serbia. These references are in

preambular paragraph 10: “Reaffirming 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,*” (emphasis added)

and in

Annex 1 (sixth item): “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;” (emphasis added)

and

Annex 2 (para. 8): “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 the UCK. Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions.” (emphasis added)

Both annexes (which reproduce documents antedating the resolution by a few days or weeks respectively (cf. preambular paragraph 9 of the resolution) are incorporated into the operative part of resolution 1244 (1999) by operative paragraph 1.

Finally, operative paragraph 11 (a), which deals with the international civilian presence, again refers to Annex 2.

A closer look at the words or groups of words set in italics in the fragments of resolution 1244 (1999) reproduced above demonstrates, however, that all these references to the protection of the Yugoslav (read today: Serb) sovereignty and territorial integrity appear in the context of an interim framework for a transitional period. None of them can be found to refer to the permanent and definitive solution to the status of Kosovo.

This interim framework, protected by an international civilian presence (UNMIK) and an international security presence (KFOR), was set up in order to allow a political process to take place, at whose end a definitive solution to the Kosovo status issue was to be found. The fact that all references to Yugoslavia's territorial integrity occur in the context of the interim framework, and not in that of any final settlement, clearly indicates the intentions of the Security Council in June 1999: It wanted an end to violence and conflict, it wanted a political process with a definitive status solution at its end, and it wanted some kind of "status moratorium" while that political process was going on, in order to protect the process from violent disturbances and to eliminate temptation to all parties to present this process with a *fait accompli*. Seen this way, imposing such a moratorium on unilateral *faits accomplis* was simply a necessary counterpart to the ouster of Serb military, paramilitary and police from Kosovo provided for in operative paragraph 3 of the resolution, and to the establishment of a UN-led civil administration in Kosovo (UNMIK).

It follows what was not the intention of the Security Council: It was not its intention to impose any specified status as a final settlement. As to how the final settlement at the end of the political process should look like, resolution 1244 (1999) is entirely silent. It does not ask for complete independence, but neither does it exclude it.

This is confirmed by operative paragraph 11 (a) of resolution 1244 (1999), which reads:



“11. Decides that the main responsibilities of the international civil presence will 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 (S/1999/648);”

By way of incorporating annex 2, this operative paragraph once more incorporates the call for respect for Yugoslav territorial integrity into the resolution. Moreover, and more importantly, it expressly requires the establishment of “substantial autonomy and self-government in Kosovo”, but not more, i.e., not its complete independence and Kosovo’s own sovereignty. It is crucial to note, however, that this autonomy is to be established “pending a final settlement”. Autonomy, under this operative paragraph, is to be established as a transitory state, not as a final settlement.

Resolution 1244 (1999) does not say how exactly the “political process” established and secured by the various provisions of the resolution was to look like itself. It was always clear, however, that it should endeavour to find a mutually acceptable solution to the issue of the definitive status of Kosovo, in other words, by way of negotiations of some kind.

It was also clear that any final settlement had to be arrived at on the basis of the will of the people of Kosovo, as was expressly foreseen in Article I para. 3 of Chapter 8 of the Rambouillet accords,

“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” (S/1999/648, emphasis added),

to which operative paragraph 11 (e) of resolution 1244 (1999)

“(e) Facilitating a political process designed to determine Kosovo’s future status, taking into account the Rambouillet accords (S/1999/648)”,

refers.

This “future status” process finally began in autumn 2005. It encompassed prolonged talks of a Special Envoy of the United Nations Secretary-General (Martti Ahtisaari), who finally prepared a settlement package which in his view struck a compromise that should be acceptable to both sides. When Serbia refused, the Security Council took up the matter but was itself unable to make a decision. As a last resort, the Secretary-General mandated a Troika consisting of the US, Russia and the EU to hold talks with the parties. The Troika pursued its work from August to early December 2007 in an extremely intensive way, attempting to find common ground by presenting the parties with a number of model relationships. None of those, however, found the agreement of both parties. The political process envisaged by resolution 1244 (1999) had thus been engaged in various fora and under various angles, but it had definitely failed.

The process having failed, the question arises whether resolution 1244 (1999) continues to prohibit any unilateral solution. This question must be answered in the negative. Answering it in the affirmative would mean that the Security Council would have blocked any possible solution for all time to come, once it became clear that the parties were unable to find agreement. It cannot be imputed to the Security Council that it contemplated and, indeed, intended such a solution, which would permanently lock the parties in a frozen conflict. Such an approach would indeed have been incompatible with the “will of the people” clause contained in the Rambouillet accords, to which reference has already been made.

It must therefore be assumed that resolution 1244 (1999) prohibited unilateral steps of either side regarding the status of Kosovo before the beginning of the political process and while the political process was on-going and had still some prospect of success. This prohibition on unilateral steps ceased, however, the moment it became clear that the political process had definitely and clearly failed.

It is against this background that certain decisions of the Special Representative of the Secretary-General concerning attempts by Kosovo institutions to declare independence in 2002 and 2003 make perfect sense. Thus, in a "Pronouncement" of 7 November 2002, Special Representative Michael Steiner reacted to a resolution of the Kosovo Assembly on a "Serbia and Montenegro Union" prejudging the determination of the "final and judicial status of Kosovo" in the following terms:

"Kosovo is under the authority of UN Security Council Resolution 1244 (1999). Neither Belgrade nor Pristina can prejudge the future status of Kosovo. Its future status is open and will be decided by the UN Security Council. Any unilateral statement in whatever form which is not endorsed by the Security Council has no legal effect on the future status of Kosovo." [OLA Dossier No. 187]

Some months earlier, another resolution of the Assembly of Kosovo "on the protection of the territorial integrity of Kosovo" had been declared "null and void" by the same Special Representative:

"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" (Determination by the SRSG of 23 May 2002). [OLA Dossier No. 185]

The Security Council, in a Presidential Statement of 24 May 2002, concurred with the finding of the Special Representative:

"The Security Council deplores the adoption by the Assembly of Kosovo, in its session of 23 May 2002, of a "resolution on the protection of the territorial integrity of Kosovo". It concurs with the Special Representative of the Secretary-General that such resolutions and decisions by the Assembly on matters which do not fall within its field and competence are null and void." (S/PRST/2002/16)

In the year 2002, discussions on the final status had not begun. Neither had these discussions started in the year 2003. Yet, when the Assembly of Kosovo, in February 2003, again took up

the question of a “Declaration of Independence”, UNMIK’s response already contained an important *caveat*:

“The principle of “Standards before status” received continued support, affirming that moves to address the issue of final status for Kosovo are not supported *at this time* by the International Community. Action contrary to this view by the Kosovo Assembly and beyond the scope of its competencies would have negative consequences for the accomplishment of our important common objectives.” (Letter by the Principle Deputy Special Representative Charley Brayshaw of 7 February 2003 addressed to the President of the Kosovo Assembly, Dr. Nexhat Daci, *emphasis added*) [OLA Dossier No. 189]

Then, in the year 2005, when the Assembly of Kosovo passed a resolution on the “Reconfirmation of the Political Will of the Kosova People for Kosova as an Independent and Sovereign State” as the “platform” for the Kosovo delegation for the final status talks, the Special Representative did not declare this resolution null and void, but instead issued the following statement:

“SRSG Søren Jessen-Petersen has taken note of the resolution passed today by the Assembly of Kosovo providing a mandate to the Delegation of Kosovo as the basis for its platform for the upcoming status talks. As such, “the Assembly has appropriately assumed its responsibility”, said the SRSG.” (UNMIK Press Release of 17 November 2005, UNMIK/PR/1445) [OLA Dossier No. 199]

Finally, when Kosovo declared its independence on 17 February 2008, the Secretary-General’s Special Representative did at no time declare that act invalid, or null and void, despite repeated calls by Serbia to that effect, and despite the fact that prior efforts by the Kosovo Assembly had been set aside.

This only confirms the proposition that the prohibition of unilateral steps towards independence, contained in resolution 1244 (1999) for the interim framework, ended when the political process foreseen by that resolution had finally collapsed.

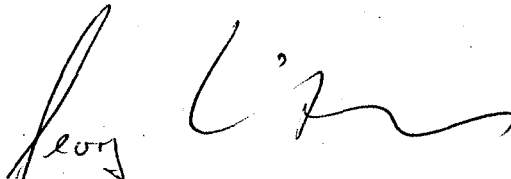
## VII. Conclusion

For the reasons set out in this Statement, Germany respectfully requests the Court to find that the Declaration of Independence of Kosovo of 17 February 2008 did not contravene any applicable rule of international law, including Security Council resolution 1244 (1999).

Kosovo is a unique case, 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 Security Council resolution 1244 (1999), and the UN-led process that left no stone unturned in order to find a negotiated solution on future status. As Martti Ahtisaari, the UN Special Envoy and 2008 Nobel Peace Prize Laureate, has said, "the only viable option for Kosovo is independence, to be supervised for an initial period by the international community".

Kosovo independence is essential for stability in the Balkans. Over the past year, the people and the Government of Kosovo have worked cooperatively across ethnic and religious lines to develop a secure and prosperous future for Kosovo and the region. Re-introducing uncertainty over the territory's status would be an obstacle to Kosovo's democratic development, economic recovery and reconciliation. There can be no turning back for Kosovo.

The Security Council, upon returning from its mission to Kosovo in May 2007, noted the importance of promoting a European perspective for the region, including for Kosovo (Report of the Security Council mission on the Kosovo issue, S/2007/256, para. 60). Germany actively supports the European Union's leading role in strengthening stability in the region and in offering a European perspective for the Western Balkans.



Dr. Georg Witschel

*Legal Adviser and Director General of the Legal Department  
Federal Foreign Office*



**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)**

***STATEMENT OF THE FEDERAL REPUBLIC OF GERMANY***

**ANNEXES**

April 2009

## **Annexes to the Statement of the Federal Republic of Germany**

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**Annex 1**  
“Pro-Memoria” of the Ministry of Foreign Affairs of the Republic of Serbia,  
17 February 2008

MINISTRY OF FOREIGN AFFAIRS  
OF THE REPUBLIC OF SERBIA

PRO-MEMORIA

The Provisional Institutions of Self-government in Kosovo and Metohija have adopted today their illegal decision on unilateral declaration of independence of Kosovo and Metohija, a province of the Republic of Serbia under interim UN administration. They have thus grossly violated United Nations Security Council resolution 1244 (1999) and all other Council's resolutions on Kosovo and Metohija (S/RES/1160 (1998), S/RES/1199 (1998), S/RES/1203 (1998), S/RES/1239 (1999)) explicitly reaffirming the sovereignty and territorial integrity of the Republic of Serbia over Kosovo and Metohija.

- This decision is an outright violation of the sovereignty and territorial integrity of the Republic of Serbia and directly contravenes the United Nations Charter, the Helsinki Final Act and international law. Furthermore, the territorial integrity and the borders of States that have emerged following the break-up of the former Yugoslavia have also been guaranteed by other international documents, such as the Opinions of the Arbitration Commission of the International Conference on the Former Yugoslavia.
- This unilateral declaration of independence is an attempt at imposing, outside the UN Security Council, a solution for the status of Kosovo and Metohija by unilateral action, in flagrant violation of UNSC resolution 1244 (1999) which provides that one of the principles on which the question of Kosovo and Metohija should be settled is "a political process towards the establishment of an interim political framework agreement providing for substantial self-government in Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia..." (now the Republic of Serbia).
- Unacceptability of unilateral solutions for Kosovo and Metohija has been unequivocally stated also in paragraph 6 of the Guiding principles of the Contact Group for a settlement of the status of Kosovo of November 2005 (S/2005/709).
- A political settlement reached in accordance with the principles laid down in UNSC resolution 1244 (1999) must be endorsed by the UN Security Council. Therefore, attempt at imposing a solution by a *fait accompli* seriously undermines the authority of the UN Security Council.
- This illegal act could also cause damage to the entire international order. If, in the case of the Republic of Serbia, the UN Charter and the principles of international law are allowed to be breached, such infringements would gradually become a practice, and the will of the stronger would become the sole principle to apply.

- This attempt to take away from a sovereign State, a member of the United Nations, against its will and in time of peace, a part of its territory, can have serious consequences for peace and security in the world. If such a dangerous precedent were to be set, that would lead to the resurgence of breakaway claims and resulting tensions throughout the region of South East Europe and the world at large. There can be no doubt that numerous separatist movements worldwide would invoke the case of Kosovo and Metohija as the basis for their own aspirations, which would, in turn, create new and reignite existing conflicts.
- The Republic of Serbia insists that the UN Security Council reacts firmly and resolutely, and safeguards the sovereignty and territorial integrity of the Republic of Serbia, in compliance with the UN Charter. We also expect the UN Security Council to take effective measures against the express violation of its own decisions – its resolution 1244 (1999) and other resolutions relating to Kosovo and Metohija, and the Special Representative of the UN Secretary General, in line with his powers, to immediately annul the unlawful decision on the unilateral declaration of independence and to dissolve the Kosovo Assembly.
- We further expect the OSCE and other international organizations to react adequately and raise their voice against this unlawful attempt at secession.
- The Republic of Serbia calls upon all States, in line with their obligations under international law, UN Charter and resolution 1244 (1999), to fully respect its sovereignty and territorial integrity and to reject the illegal unilateral declaration of independence of Kosovo and Metohija.

Belgrade, 17 February 2008

**Annex 2**  
Letter of President Sejdiu to President Köhler,  
17 February 2008



The President of Kosovo



17 February 2008

Dear President Köhler:

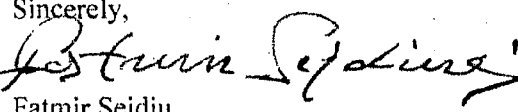
You will know that on 17 February, 2008 the Assembly of Kosovo declared Kosovo's independence. I attach a copy of the full text of that declaration. I want to underline personally to you that with this declaration we have irrevocably committed Kosovo to the full implementation of all obligations contained in the Comprehensive Proposal of the UN Special Envoy, including of course a multi-ethnic, democratic future for Kosovo, protection of the rights of all Kosovo's communities and to all provisions concerning the international supervision of Kosovo.

Once a period of public consultation has taken place we shall enact our new Constitution, but I can assure you unequivocally that this will fully and faithfully reflect the Comprehensive Proposal of UN Special Envoy. We are glad to be working closely with the International Civilian Office Planning Team as the Constitution text is finalized.

We reaffirm clearly, specifically and irrevocably that Kosovo shall be legally bound to comply with the provisions contained in our Declaration, and that your government is entitled to rely upon this affirmation.

The Government of Kosovo looks forward to close and beneficial links with all our neighbors and all EU Member States. With this letter I am formally inviting the Government of the Federal Republic of Germany to recognize the Republic of Kosovo as an independent state and to establish full diplomatic relations, and diplomatic mission, on the basis of the Vienna Convention on Diplomatic Relations. I should be grateful if you would confirm whether these proposals are acceptable to the Government of the Federal Republic of Germany.

On behalf of the people of Kosovo, I respectfully extend this request to you, Mr. President, and to the people of the Federal Republic of Germany who have been so supportive of Kosovo, to recognize our new state and to establish full diplomatic relations with us on the basis of these assurances.

Sincerely,  
  
Fatmir Sejdiu  
President of Kosovo

Enclosure: Declaration of Independence

His Excellency  
Horst Köhler,  
President of the Federal Republic of Germany

## **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 honoring 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.

**Annex 3**

Belgium, France, Germany, Italy, United Kingdom, United States:  
draft resolution of 17 July 2007, S/2007/437 Provisional

**Security Council**

Provisional

17 July 2007

Original: English

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**Belgium, France, Germany, Italy, United Kingdom of Great Britain and Northern Ireland and United States of America:  
draft resolution**

*The Security Council,*

*Bearing in mind* the purposes and principles of the Charter of the United Nations, and the primary responsibility of the Security Council for the maintenance of international peace and security,

*Recalling* its resolutions 1160 (1998) of 31 March 1998, 1199 (1998) of 23 September 1998, 1203 (1998) of 24 October 1998, 1239 (1999) of 14 May 1999, and 1244 (1999) of 10 June 1999, and the relevant Statements of its President, in particular its statement of 24 October 2005 (S/PRST/2005/51),

*Recalling* the Security Council's missions on the Kosovo issue, particularly the mission undertaken from 25 to 28 April 2007, which provided the Security Council with an opportunity to gain first-hand information on the situation in Kosovo, and its report of 4 May 2007 (S/2007/256),

*Recognizing* 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 by the Security Council,

*Reaffirming* its commitment to a multi-ethnic and democratic Kosovo, which will reinforce regional stability,

*Recalling* the Guiding Principles of the Contact Group,

*Recognizing* the progress that has been achieved in the implementation of the standards for Kosovo, and calling for their continued implementation in accordance with the European Partnership and the Comprehensive Proposal for the Kosovo Status Settlement (S/2007/168/Add.1),

*Reaffirming* the urgent necessity for more progress on the return of internally displaced persons and refugees,

*Underscoring* its determination not to tolerate violence, provocation or intimidation,

*Recalling* the jurisdiction and mandate of the International Criminal Tribunal for the Former Yugoslavia, and the need for full cooperation with it,

*Underlining the importance* of the EU-Western Balkans Summit Declaration adopted in Thessaloniki in June 2003, and welcoming the reaffirmation by the European Union of its commitment to providing the countries of the region a concrete, tangible European perspective,

*Reaffirming* the important role of women in the prevention and resolution of conflicts and peacebuilding, as reflected in its resolution 1325 (2000) of 31 October 2000,

*Acknowledging* that the status quo in Kosovo is not sustainable,

*Determining* that the unresolved situation in Kosovo continues to constitute a threat to international peace and security,

*Acting* under chapter VII of the Charter of the United Nations,

1. *Expresses its appreciation* to the Secretary-General's Special Envoy for his Report on Kosovo's Future Status (S/2007/168) and his Comprehensive Proposal for the Kosovo Status Settlement (S/2007/168/Add.1);

2. *Takes note* of the declaration of the Kosovo Assembly of 5 April 2007, concerning the Special Envoy's proposals, and *recalls* the commitments therein to the rights of communities and their members;

3. *Welcomes* the willingness of participants in the Contact Group, including the European Union, to encourage and facilitate a further 120-day period of negotiations following adoption of this resolution, in support of the Secretary-General and his Special Envoy, to determine whether common ground can be found, *calls upon* the parties to engage constructively, *requests* the Member States referred to above to brief the Council on developments, and *affirms* its readiness to review the situation further in light of those negotiations;

4. *Welcomes* the willingness of interested parties to appoint an International Civilian Representative ("ICR"), who shall be the same person as the Special Representative of the European Union; of the European Union to establish a European Security and Defense Policy Rule of Law mission ("ESDP Mission"); and of NATO to continue leading an International Military Presence ("IMP");

5. *Expresses its appreciation* to the international civil presence in Kosovo for its efforts during the period of interim administration of Kosovo under resolution 1244 (1999), and *decides* that the mandate of the international civil presence shall terminate at the end of a 120-day transition period following adoption of this resolution and that the existing international civil presence shall implement with the ICR and ESDP during this period all appropriate arrangements for the details and modalities of the transition;

6. *Decides* that the powers and authorities of the ICR shall include powers and authorities to advance democratic, effective and inclusive governance and institutions, the rights of Communities and their members, decentralization of local government, justice and the rule of law, protection of religious and cultural heritage, protection of property rights and the general welfare of the people, and to supervise the decisions of the relevant authorities in Kosovo in this regard and ensure full respect for these principles, *calls upon* the ICR to establish appropriate mechanisms

to help coordinate the activities of other international actors, and also *calls upon* other international actors to support the ICR's efforts, particularly by providing information relevant to the exercise of the ICR's functions;

7. *Authorizes* the establishment of a European Union ESDP Mission and decides that the Mission shall have powers and authorities set forth in Annex I of this resolution after the end of the transition period referred to in paragraph 5;

8. *Notes* that the international security presence established under resolution 1244 shall continue to be authorized to carry out its responsibilities for a 120-day transition period following the adoption of this resolution, and *decides* that after completion of this period its powers and authorities shall be those of the IMP and that it shall have the powers and authorities set forth in Annex II to this resolution, and that it shall be authorized to use all necessary means to carry out its responsibilities;

9. *Urges* the ESDP Mission and the IMP to provide mutual support and, together with the ICR, to coordinate closely on security-related issues in Kosovo;

10. *Decides* that the ICR and the ESDP Mission, and their personnel (and their families), premises, archives and other property, shall have the same privileges and immunities as are enjoyed by a diplomatic mission and its personnel (and their families), premises, archives and other property under the Vienna Convention on Diplomatic Relations, and that the IMP shall have the status, privileges and immunities currently provided to the international security presence under UNMIK Regulation 2000/47;

11. *Requests* the ICR to report periodically to the Council, beginning with the first report three months following the adoption of this resolution;

12. *Urges* the Secretary-General to appoint promptly a separate Special Envoy to provide a report to the Secretary-General and the Security Council on the situation concerning refugees and internally displaced persons in the region, and on issues related to missing persons;

13. *Requests* the Organization for Security and Cooperation in Europe to continue to maintain a Mission in Kosovo, including a comprehensive field presence, to support the democratic development of Kosovo and the work of the ICR;

14. *Decides* to remain actively seized of the matter.

## Annex I

### ESDP Mission

1. The ESDP Mission shall assist Kosovo authorities in their progress towards sustainability and accountability and in further developing and strengthening an independent judiciary and police, ensuring that these institutions are free from political interference and in accordance with internationally recognized standards and European best practices. It shall provide mentoring, monitoring and advice in the area of the rule of law generally, while retaining certain powers, in particular, with respect to the judiciary, police, customs and correctional services, under modalities and for a duration to be determined by the Council of the European Union.

2. The ESDP Mission shall, under the direction of the European Union Special Representative (EUSR), be authorized to:

(a) Ensure that cases of war crimes, terrorism, organized crime, corruption, inter-ethnic crimes, financial/economic crimes, and other serious crimes are properly investigated according to the law, including, where appropriate, by international investigators acting with Kosovo authorities or independently;

(b) Ensure that cases described in paragraph (a) are properly prosecuted including, where appropriate, by international prosecutors acting jointly with Kosovo prosecutors or independently. Case selection for international prosecutors shall be based upon objective criteria and procedural safeguards, as determined by the Head of the ESDP Mission. International prosecutors shall serve in accordance with Kosovo law;

(c) Ensure that cases described in paragraph (a) and property related civil cases are properly adjudicated, including, where appropriate, by international judges sitting independently or on panels with Kosovo judges in the court which has jurisdiction over the case. Case selection for adjudication involving international judges shall be based upon objective criteria and procedural safeguards, as determined by the Head of the ESDP Mission. International judges shall enjoy full independence in the discharge of their judicial duties and shall serve within the Kosovo judicial system in accordance with the law;

(d) Ensure that decisions of cases described in paragraph (a) are properly enforced according to the law by the competent Kosovo authorities;

(e) Assume other responsibilities independently or with the competent Kosovo authorities to ensure the maintenance and promotion of the rule of law, public order and security;

(f) In consultation with the ICR, reverse or annul operational decisions taken by the competent Kosovo authorities, as necessary, to ensure the maintenance and promotion of the rule of law, public order and security;

(g) Monitor, mentor and advise on all areas related to the rule of law, and the Kosovo authorities shall facilitate such efforts and grant immediate and complete access to any site, person, activity, proceeding, document, or other item or event in Kosovo;

(h) Appoint ESDP mission personnel to perform the functions accorded to the ESDP Mission.

3. The Head of the ESDP Mission shall be appointed by the Council of the European Union.

4. The Head of the ESDP Mission may establish whatever presence he or she deems necessary, at a central and/or local level, to ensure full implementation of the tasks set out in section 2 of this Annex.

5. The ESDP Mission shall have a unified chain of command.

6. Kosovo shall facilitate all appropriate assistance to the ESDP Mission necessary for the efficient and effective discharge of its duties, including the provision of logistical and administrative support as necessary.

## Annex II

### International Military Presence

1. The International Military Presence (IMP) shall be authorized to:

(a) Ensure the security of Kosovo from external threats until Kosovo institutions can take responsibility;

(b) Provide a safe and secure environment throughout the territory of Kosovo, in conjunction with the ICR and in support of the Kosovo institutions until such time as Kosovo's institutions are capable of assuming responsibility, on a case-by-case basis, for the security tasks performed by the IMP;

(c) Supervise and support, with the assistance of others, the establishment and training of the Kosovo Security Force (KSF); this would include vetting potential members to ensure professionalism; striving to achieve appropriate ethnic representation, and, the right of sanction for inappropriate conduct of members of the KSF in coordination with the ICR;

(d) Support, and coordinate closely with the work of the ICR, as well as providing military advice to the ICR;

(e) Assist and advise with respect to the process of integration in Euro-Atlantic structures;

(f) Within means and capabilities, and until tasks can be relinquished to others under programmes to be agreed, assist local authorities and the ICR in:

(i) Responding to violent extremists;

(ii) Ensuring freedom of movement;

(iii) Facilitating refugee return;

(iv) Removing, safeguarding and destroying unauthorized weapons;

(v) Protecting designated religious and cultural sites;

(vi) Conducting border monitoring duties as required; and

(vii) Providing support, on a case-by-case basis, to the international community and key civil implementation organizations, in the fulfilment of their respective mandates;

(g) Supervise, monitor and have executive authority over the KSF until the Force is judged by the IMP, in coordination with the ICR, to be self-sustaining and capable of fulfilling its assigned tasks in accordance with international standards;

(h) In consultation with the ICR and Kosovo, have executive authority over the KPC, and to decide on the timing of the KPC's dissolution;

(i) Continue the established practice of the current Joint Implementation Commission with the Republic of Serbia. Over time, the activities of the Joint Implementation Commission will be subsumed by a new Joint Military Commission with authorities from Kosovo and the Republic of Serbia to address military security issues of common concern;



(j) Establish confidence-building measures between the KSF and defence institutions of the Republic of Serbia, in coordination with the ICR;

(k) In the longer term, remain engaged with the KSF to provide advice aimed at Kosovo's further integration into Euro-Atlantic security structures and the involvement of elements from the security force in internationally mandated missions;

(l) Support the development of structures and expertise in Kosovo to ensure the effective civilian control and management over the KSF, in particular in the areas of strategy development, force planning, personnel management, Planning, Programming and Budgeting (PPBS), exercise planning and procurement.

2. The IMP will operate under the authority and be subject to the direction and political control of the North Atlantic Council through the NATO Chain of Command. The IMP shall have a unified chain of command.

3. In fulfilling the IMP's responsibilities, the Head of the IMP shall have the authority, without interference or permission, to do all that he/she judges necessary and proper, including the use of military force, to protect the IMP and other designated personnel and to carry out its responsibilities. The Head of the IMP is the final authority in theatre regarding military tasks of the IMP.

4. The IMP will have the following authorities:

(a) The right to carry out its responsibilities as it deems appropriate, including the use of all necessary force where required and without further sanction, interference or permission;

(b) The right to exercise complete and unimpeded freedom of movement throughout Kosovo, by any means;

(c) The right to re-establish immediate and full military control of the airspace (or parts thereof) should military requirements so dictate. The Head of the IMP will ensure that Civil Aviation Authority of Kosovo is fully informed about any such decision;

(d) The right to conduct inspections of premises and facilities in connection with the fulfilment of its tasks;

(e) The right to approve and supervise, in coordination with the ICR, the establishment of all non-police, security-related forces proposed by Kosovo;

(f) The right to take action as it deems appropriate in support of its mandate.

5. In all cases, the authorities of the IMP will be kept under review and, after consultation with the relevant parties and decision by the NAC, adjusted accordingly, on a case-by-case basis, as Kosovo institutions develop capacity and increase ownership and responsibility.

**Annex 4**  
Letter of Ambassador Ischinger to European Union High Representative Solana,  
5 December 2007

Ambassador Wolfgang Ischinger

London, 5 December 2007

Dear Javier:

As the Troika process on Kosovo concludes, I have the privilege to transmit to you a copy of the report which the Troika prepared and which will be submitted by the Contact Group to the Secretary-General of the United Nations by 10 December. This report offers an account of the negotiation process which the Troika has conducted during the last four months between Belgrade and Pristina about the future status of Kosovo.

Throughout this process, I have made every effort to keep you personally, the Presidency, and European Union member states informed about the ongoing negotiations, including through repeated briefings of Ministers and of the PSC. In addition, I visited a number of EU capitals for bilateral consultations, and maintained close contact, at various levels, with member governments. I am very grateful indeed for the guidance and support which I have received from you personally, from the Presidency, and from member states throughout this process.

In the course of the Troika process, we met with both parties in ten major sessions, including a final three-day conference in Baden, Austria. I travelled several times to Belgrade and Pristina, both with the Troika and separately, to explore in-depth the positions of the parties, most recently on 3 December, 2007.

Under the Troika's guidance, the parties reviewed the widest possible range of options for the status of Kosovo, as listed in our report. Regrettably, all of these status options were rejected by one or both sides. In addition, the idea of a status-silent agreement of cooperation between Serbia and Kosovo was elaborated by the Troika. This would have allowed both sides to maintain their respective position on Kosovo's status, but would have created a "community" between Belgrade and Pristina, established common bodies designed to facilitate cooperation, and created mutually binding obligations and consultation arrangements, including asymmetrical ones, on issues of common concern. Although it could not be presented as an official Troika proposal when Russia decided that it could not endorse

the presentation of this text as an official document, the draft text of such an agreement was made available to both parties. This "agree to disagree" option was, however, also rejected by Belgrade.

Regardless of their inability to agree on the fundamental question of status, the Troika process was an important opportunity for both parties to build trust and identify common interests. Most notably, both share the determination to eventually become members of the European Union. In addition, the Troika has been able to secure commitments from the parties regarding the security situation: both parties reaffirmed the importance of maintaining peace and pledged to refrain from actions that might jeopardize the security situation in the region. They made these commitments unconditionally, without prejudice to their positions on status or any future developments. We should express our firm expectation that these commitments will be fully and unconditionally respected and implemented by both sides.

Allow me to summarize the Troika process as follows:

- The Troika has, as promised, left no stone unturned in trying to achieve a negotiated settlement of the Kosovo status question. The positions of both parties on status have, however, remained diametrically opposed. The potential to reach a negotiated settlement is now exhausted. It is my view that the parties would not be capable of reaching agreement on this issue if negotiations were to be continued, whether in the Troika format, or in some other form.
- Belgrade engaged actively and on a high level in the Troika process. In the course of this process, Belgrade presented various versions of its offer of substantial autonomy, but displayed no flexibility on the core issue of Serbia's territorial integrity and sovereignty.
- The Kosovo Unity Team has fully participated in the negotiation process that started in the fall of 2005, and it has continued to be engaged throughout the Troika process. But Pristina's ability to participate in an internationally-supervised negotiation process is, however, now coming to an end.

In my view, the international community will need to be prepared to take decisions with respect to Kosovo's status in the very near future. Further delays would, in my view, not tend to reduce, but rather to enhance potential risks of instability. Today, even more so than on 1 August, the status quo is not sustainable.

In my personal view, the question of Kosovo's future status is, first and foremost, an issue for which the European Union carries responsibility. The European Union should not relinquish the leading role which it has played throughout the last period, in particular during the Troika process. Instead, the European Union should seek to retain initiative and to demonstrate continued leadership by rapidly establishing and coordinating a managed international process on Kosovo in order to enhance stability and to minimize risks in the days and weeks ahead. While a continued common approach with regard to Kosovo has to be our most immediate concern, in my view this issue cannot be addressed in isolation from our relationship with Serbia, and our relations with the region as a whole, on the basis of the commitment at the European Council of Thessaloniki in June 2003.

Such a process, to be launched immediately, could, in my view, take the following elements, i.a., into account:

- A message to Pristina setting out the European Union's expectations that Pristina will act in close coordination with its international partners and will continue to demonstrate its commitment to a democratic and multiethnic Kosovo, in which minorities and religious and cultural heritage will be fully protected.

- Reaching agreement within the European Union on how to handle, and react to, possible and expected developments on Kosovo's status. A joint EU approach is the *conditio sine qua non* to ensure that the European Union will lead this managed process and determine its parameters. Such a common approach should also enable the European Union to allow rapid deployment of the envisaged ESDP Mission as well as the contribution to the International Civilian Office (ICO) as part of the international presence.

- An additional element might focus on the region north of the Ibar, taking into account the special situation on the ground in this part of Kosovo, and aiming to minimize

security risks in the weeks ahead, i.a., by endorsing and supporting the positions established by UNMIK and KFOR.

- In parallel to the message to Pristina, a message could be addressed to Belgrade. We might wish to stress that our relationship with Serbia remains a matter of the highest priority for us, regardless of decisions which might be taken with respect to Kosovo. We might also address the wider issue of Serbia's path towards the EU, as well as study options that could allow for more direct inter-action of its citizens with those in the European Union.

- Finally, a message addressed to the countries of the region, taking into account their concerns about regional stability and prosperity, as well as their European aspirations. In this connection, we might also wish to stress the uniqueness of the case of Kosovo which can therefore not serve as a precedent.

I am copying this letter to the Presidency and to Commissioner Olli Rehn, and would be grateful if it could be made available to member states, along with the Troika Report, in preparation of the discussion on Kosovo at the GAERC on 10 December. May I suggest that the Troika Report be treated as a confidential document, because it has not yet been presented to the Secretary-General of the United Nations by the Contact Group.

Yours sincerely

**Annex 5**

Letter of the Foreign Ministers of France, Germany, Italy and the United Kingdom to the Portuguese Presidency of the Council of the European Union, 7 December 2007

7 December 2007

His Excellency Dr Luis Filipe Marques Amado

The Contact Group is submitting to the UN Secretary General its report on the work of the EU/Russia/US Troika aimed at achieving a negotiated settlement for Kosovo's future status. We welcome the fact that the EU as a whole – which will ultimately have to take responsibility in Kosovo – was represented directly in the Troika. Ambassador Ischinger, the EU representative on the Troika, has written to Secretary General and High Representative Javier Solana setting out his conclusions and recommendations from the Troika Process. As the Foreign Ministers of the four European Union countries represented in the Contact Group, we agree fully with Ambassador Ischinger's views. We would like to offer our thoughts on the Troika Process and on the way forward.

The Troika was tasked with exploring all avenues in order to identify common ground for an agreement on Kosovo's future status. We are grateful for the extraordinary level of commitment, application and creativity shown by the Troika. The Troika both facilitated discussions and proactively developed possible elements for a negotiated solution. They worked intensively and employed a variety of methods – direct talks, proximity meetings, trips to the region and a conference.

Nevertheless, it has not proved possible to achieve sufficient common ground between the parties.

This is not because of lack of time or energy in the Troika Process. During the Troika Process one or other of the parties rejected options including confederation, autonomy and a status neutral way forward. This underlines the irreconcilable gap between the positions of the two parties. We share Ambassador Ischinger's firm view that further status negotiations between Belgrade and Pristina would offer no prospect of reaching an agreement. Indeed, they might even lead to a further hardening of positions on both sides.

Against this background, it is now essential that the EU demonstrates its readiness to meet its responsibilities and objectives in respect of stability and security in Europe, in the spirit of unity, solidarity and cohesion. Like Ambassador Ischinger, we believe the question of Kosovo's future status is a major responsibility for the EU. Kosovo is part of Europe and situated less than 50 kilometres from the existing borders of the European Union. Securing a viable and sustainable future for Kosovo and the region is an EU responsibility. The effectiveness and cohesiveness of our Common Foreign and Security Policy will be judged against our ability to deliver on this responsibility.

We therefore believe that the forthcoming European Council should send a clear message on Kosovo. In our view, the European Council should, as the Presidency has proposed, indicate in its conclusions that:

- the Troika has fully explored all options for achieving a negotiated settlement without an agreement having been found;



- Kosovo's status now needs to be urgently resolved;
- we are firmly resolved to play a leading role in bringing the status process through to completion and in implementing a settlement;
- and that we are intensively engaged in the necessary preparations to meet these responsibilities.

Our preference is that such a settlement should be supported by the passage of a resolution of the UN Security Council. We believe there should be further rapid consultations in New York to this end before the end of the year. However in the absence of an agreement between the parties, we need to be realistic about the slim prospects of securing the necessary level of consensus in the Security Council.

In such circumstances, regional stability will depend crucially on the EU's capacity in the beginning of 2008 rapidly to establish and coordinate an international process in order to manage expected developments on Kosovo's status. We must ensure that Kosovo is supervised by international presences and that it is firmly and effectively bound to the protections and safeguards for all Kosovo's communities set out in the Comprehensive Proposal of the UN Special Envoy. The provisions of the Comprehensive Proposal for the internal governance of Kosovo, and the allocation of responsibilities they contain, must be the foundation for how we deliver security and help Kosovo improve its ability to meet European standards.

We therefore believe that the European Union should be ready, in cooperation with the UN Secretary General, to provide an ESDP policing/rule of law mission which would draw upon the authority provided by UNSCR 1244's authorisation of international police personnel to maintain civil law and order. Similarly, and again in cooperation with the UN Secretary General, the European Union should be ready to make a major contribution to an International Civilian Office in Kosovo, drawing authority from UNSCR 1244's wide ranging mandate for an International Civil Presence. As part of this new international architecture in Kosovo, the EU should also be ready to contribute with an EUSR and an intensified role for the Commission. We should signal to the United Nations Secretary General that this is our intention.

The goal should be to achieve certainty and permanence in respect of Kosovo's future status. While respecting national prerogatives, it will be important to have a common EU approach to establish clarity on Kosovo's future identity. This is a requirement for regional stability and for the long-term prospects for the region's European integration.

We recognise that moving through this phase will be difficult for Serbia, as well as for other countries in the region. We must be clear and far-sighted in our commitment to helping them meet European standards and so move further towards eventual accession. In particular, if the necessary conditions are met, we believe the European Union should be aiming to achieve Serbia's rapid progress towards the prospect of candidate status. However, all of the countries of the region stand to lose if we are unable to chart a clear way forward. The status quo is unsustainable for Kosovo and for the region as a whole.

We are copying this letter to other Ministerial colleagues, to Javier Solana and to Olli Rehn.

Massimo D'Alema Bernard Kouchner David Miliband Frank-Walter Steinmeier

**Annex 6**  
Council of the European Union, Conclusions on Kosovo,  
18 February 2008



**COUNCIL OF  
THE EUROPEAN UNION**



## **Council Conclusions on Kosovo**

*2851st EXTERNAL RELATIONS Council meeting  
Brussels, 18 February 2008*

The Council adopted the following conclusions:

"On 17 February 2008 the Kosovo Assembly adopted a resolution which declares Kosovo to be independent. The Council takes note that the resolution commits Kosovo to the principles of democracy and equality of all its citizens, the protection of the Serb and other minorities, the protection of the cultural and religious heritage and international supervision. The Council welcomes the continued presence of the international community based on UN Security Council resolution 1244.

The Council notes that Member States will decide, in accordance with national practice and international law, on their relations with Kosovo.

The Council recalls the European Union's longstanding commitment to the stability of the Western Balkans region. The Council reiterates the European Union's readiness to play a leading role in strengthening stability in the region, and recalls the European Union's commitments contained in the conclusions of the European Council of 14 December 2007, as well as the agreement to Joint Actions establishing an ESDP Police and Rule of Law mission and appointing an EU Special Representative in Kosovo. The European Union will continue to cooperate with the UN, KFOR, OSCE and other international actors in order to preserve stability in the region.

The Council reaffirms its commitment to fully and effectively support the European perspective for the Western Balkans. It asks the Commission to use community instruments to promote economic and political development and to propose to the broader region concrete measures in order to advance in that direction.

# **P R E S S**

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The Council reiterates the EU's adherence to the principles of the UN Charter and the Helsinki Final Act, *inter alia* the principles of sovereignty and territorial integrity and all UN Security Council resolutions. It underlines its conviction that in view of the conflict of the 1990s and the extended period of international administration under SCR 1244, Kosovo constitutes a *sui generis* case which does not call into question these principles and resolutions."

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**Annex 7**  
**Declaration of the French Presidency of the Council of the European Union,**  
**26 August 2008**



# **La présidence du Conseil de l'UE condamne fermement la reconnaissance par les autorités russes de l'indépendance de l'Abkhazie et de l'Ossétie du Sud (26 août 2008)**

## **Déclaration de la présidence du Conseil de l'UE**

La Présidence du Conseil de l'Union européenne prend note de la décision prise par les autorités russes de reconnaître l'indépendance de l'Abkhazie et de l'Ossétie du Sud.

Elle condamne fermement cette décision. Celle-ci est contraire aux principes d'indépendance, de souveraineté et d'intégrité territoriale de la Géorgie, reconnus par la Charte des Nations Unies, l'Acte final de la conférence sur la sécurité et la coopération en Europe et les Résolutions pertinentes du Conseil de sécurité.

Dans ce contexte, la présidence du Conseil de l'Union rappelle avec force son attachement au principe d'intégrité territoriale de la Géorgie dans ses frontières internationalement reconnues.

Elle appelle de ses vœux une solution politique des conflits en Géorgie. Elle examinera de ce point de vue les conséquences de la décision de la Russie.

**Le site officiel de la présidence française du Conseil de l'UE**

**Annex 8**  
Statement of the OSCE Chairman-in-Office,  
26 August 2008





## Press release

### **OSCE Chairman condemns Russia's recognition of South Ossetia, Abkhazia independence**

HELSINKI, 26 August 2008 - The OSCE Chairman-in-Office, Finnish Foreign Minister Alexander Stubb, today condemned the decision by Russia to recognize the independence of the breakaway Georgian regions of South Ossetia and Abkhazia.

"The recognition of independence for South Ossetia and Abkhazia violates fundamental OSCE principles. As all OSCE participating States, Russia is committed to respecting the sovereignty and territorial integrity of others."

"Russia should follow OSCE principles by respecting the territorial integrity and sovereignty of Georgia. Russia should immediately withdraw all troops from Georgia and implement the ceasefire agreement, including the modalities defined in the 16 August letter of French President Nicolas Sarkozy. The international community cannot accept unilaterally established buffer zones," said Stubb.

The OSCE will continue to monitor the implementation of the ceasefire agreement. It stands ready to further assist in stabilizing the situation.

## Contacts

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**Annex 9**  
Statement of the President of the United States,  
26 August 2008



THE WHITE HOUSE  
PRESIDENT  
GEORGE W. BUSH

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For Immediate Release  
Office of the Press Secretary  
August 26, 2008

## President Bush Condemns Actions Taken by Russian President in Regards to Georgia

The United States condemns the decision by the Russian President to recognize as independent states the Georgian regions of South Ossetia and Abkhazia. This decision is inconsistent with numerous United Nations Security Council Resolutions that Russia has voted for in the past, and is also inconsistent with the French-brokered six-point ceasefire agreement which President Medvedev signed on August 12, 2008.\* The six-point agreement offered a peaceful way forward to resolve the conflict. We expect Russia to live up to its international commitments, reconsider this irresponsible decision, and follow the approach set out in the six-point agreement.

[White House News](#)

[En Español](#)

The territorial integrity and borders of Georgia must be respected, just as those of Russia or any other country. Russia's action only exacerbates tensions and complicates diplomatic negotiations. In accordance with United Nations Security Council Resolutions that remain in force, Abkhazia and South Ossetia are within the internationally recognized borders of Georgia, and they must remain so.

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\* August 16, 2008

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Return to this article at:

<http://www.whitehouse.gov/news/releases/2008/08/20080826-2.html>

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**Annex 10**  
Statement on Georgia of Foreign Ministers of  
Canada, France, Germany, Italy, Japan, the United States and the United Kingdom,  
27 August 2008

## **Statement on Georgia of Foreign Ministers of Canada, France, Germany, Italy, Japan, the United States and the United Kingdom**

27.08.2008

We, the Foreign Ministers of Canada, France, Germany, Italy, Japan, the United States and the United Kingdom, condemn the action of our fellow G8 member. Russia's recognition of the independence of South Ossetia and Abkhazia violates the territorial integrity and sovereignty of Georgia and is contrary to UN Security Council Resolutions supported by Russia. Russia's decision has called into question its commitment to peace and security in the Caucasus.

We deplore Russia's excessive use of military force in Georgia and its continued occupation of parts of Georgia. We call unanimously on the Russian government to implement in full the six point peace plan brokered by President Sarkozy on behalf of the EU, in particular to withdraw its forces behind the pre-conflict lines. We reassert our strong and continued support for Georgia's sovereignty within its internationally recognized borders and underline our respect and support for the democratic and legitimate government of Georgia as we pursue a peaceful, durable solution to this conflict.

August 27, 2008