



Republic of Poland
Minister of Foreign Affairs
Radosław Sikorski

Warsaw, ¹⁶ April 2009

Sir,

Pursuant to the provisions of Article 66(2) of the Statute of the International Court of Justice and in accordance with the Order of the Court dated October 17th, 2008 I have the honor to submit herewith a written statement of the Republic of Poland on the request by the United Nations General Assembly 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.

Please accept, Sir, the assurances of my highest consideration.

His Excellency
Mr. Philippe Cuvreur
Registrar of the International Court of Justice
Peace Palace
The Hague

INTERNATIONAL COURT OF JUSTICE

**REQUEST BY THE UNITED NATIONS GENERAL ASSEMBLY 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”***

WRITTEN STATEMENT OF THE REPUBLIC OF POLAND

APRIL 2009

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I. Introduction

- 1.1 The International Court of Justice in its Order of 17 October 2008 invites States to submit written statements concerning the request of the General Assembly for an advisory opinion on the question of the *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo*.
- 1.2 The request was referred to the Court by the United Nations General Assembly resolution A/RES/63/3 of 8 October 2008 which was adopted by 77 votes in favour to 6 against, with 74 abstentions.
- 1.3 The Republic of Poland abstained from voting on that resolution as a country that recognized Kosovo as a State. The Republic of Poland has also viewed the Declaration of Independence of 17 February 2008 as an act that has not conflicted with any norm of international law. Nevertheless, the Republic of Poland did not oppose the adoption of the resolution A/RES/63/3, bearing in mind that one of the purposes of the United Nations is *'to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples'* and that the access to the Court, *'the principal judicial organ of the United Nations'*, is an important factor in the development of friendly relations between nations.
- 1.4 In accordance with that resolution, the terms of the request made by the General Assembly of the United Nations are as follows:

„The General Assembly,

...

Decides, in accordance with Article 96 of the Charter of the United Nations to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court to render an advisory opinion on the following question:

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

- 1.5 The Government of the Republic of Poland, in accordance with the Order of the Court of 17 October 2008, decided to present this written statement to the Court. This statement deals with the legal issues pertaining to the General Assembly request.

II. Scope of the Request and Preliminary Considerations

- 2.1 It is to be ascertained that the request is framed in a narrow way as it refers solely to the accordance with international law of the Declaration of Independence as such. Thus, the legal assessment of the statehood of Kosovo or the analysis of accordance with international law of the acts of recognition of Kosovo are beyond the scope of the request posed by General Assembly.
- 2.2 It may be argued that international law does not contain norms that would apply to the question of declaring independence. It is a logical consequence of a stipulation that the existence of the state is a matter of fact, not that of law. As the Conference of Yugoslavia Arbitration Committee, on 29 November 1991, noted:

‘The Committee considers:

- a) *that the answer to the question should be based on the principles of public international law which serve to define the conditions on which an entity constitutes a State; that in this respect, the existence of the State is a question of fact; that the effects of recognition by other States are purely declaratory;*
- b) *that a State is commonly defined as a community which consists of a territory and a population subject to an organized political authority; that such a State is characterized by sovereignty ...”* (Conference of Yugoslavia Arbitration Commission Opinions on Questions Arising From the Dissolution of Yugoslavia, 31 I.L.M., p. 1488 et. seq.; emphasis added).

- 2.3 Thus, a declaration of independence is an act that confirms these factual circumstances and it may be difficult to assess such an act in purely legal terms.

III. Factual and Legal Background to the Request

- 3.1 This part of the statement of the Republic of Poland purports to highlight the position of Kosovo within Socialist Federal Republic of Yugoslavia (SFRY), the context in which United Nations Security Council resolution 1244 (1999) was adopted, as well as the conditions in which the Declaration of Independence of 17 February 2008 was issued.
- 3.2 It is the opinion of the Republic of Poland that the abovementioned Declaration shall be viewed in the light of exceptional, *sui generis* situation that had led to the proclamation of the Kosovo's independence.
- 3.3 The Parliament of Serbia in 1945 recognized the political, ethnical and territorial distinctiveness of Kosovo and established in its territory two autonomous entities, including Kosovo (the Autonomous Kosovo-Metohian Area). That model of autonomy was preserved in the Socialist Federal Republic of Yugoslavia Constitution of 1946 (Article 2), on the basis of which the Autonomous Kosovo-Metohian Area was constituted. That situation did not change under the SFRY Fundamental Constitutional Law of 1953. That Law, however, determined more precisely the status of autonomous units within SFRY. It also provided that those units may establish their own statutes which shall form the basis of their system of government.
- 3.4 The status of autonomous regions was in principle sustained in the framework of 1963 SFRY Constitution. It confirmed the existence of two autonomous regions within the Republic of Serbia, namely the Autonomous Kosovo-Metohian Country and Vojvodina. The 1968 Amendment to the 1963 SFRY Constitution listed the grounds on which autonomous regions could have been established. These were the regions that: (a) were created as a result of common struggle of nations and nationalities during the World War II and socialist revolution; (b) were, in factual terms, created and constituted on the basis of, *inter alia*, freely expressed will of the nations and nationalities of a given region; (c) constituted, due to common and freely expressed will of nations and nationalities of Serbia and given regions, part of Serbia which, in turn, is a part of SFRY.
- 3.5 The SFRY Constitution of 1974 upheld the institution of autonomous regions and a unique status of Kosovo and Vojvodina among them. These two entities enjoyed a 'dual status'. On the one hand, they were the subjects of the Federation (just as

the republics), were represented in the Federation's Presidency and enjoyed full status of self-governance appertaining to the republic, including even their own central banks. On the other hand though, they were subordinated to the Republic of Serbia. (M. Weller, *Negotiating the final status of Kosovo*, Chaillot Paper, no 114, Institute for Security Studies, December 2008). According to the 1974 SFRY Constitution:

Paragraph 6: *'The Socialist Republic of Serbia comprises the Socialist Autonomous Province of Vojvodina and the Socialist Autonomous Province of Kosovo, which originated in the common struggle of nations and nationalities of Yugoslavia in the National Liberation War and socialist revolution and united, on the basis of the freely expressed will of the nations, populations and nationalities of the provinces and Serbia, in the Socialist Republic of Serbia within the Socialist Federal Republic of Yugoslavia.'*

Paragraph 7: *'The provinces are autonomous socialists self-managing democratic socio-political communities with a special ethnic composition and other specificities, in which working people and citizens, nations and nationalities exercise their sovereign rights...'* (H. Krieger, *The Kosovo Conflict and International Law: An Analytical Documentation 1974-1999*, Cambridge University Press, 2001, p. 5; emphasis added).

- 3.6 In 1981 the strive of Kosovars for attaining the status of the republic within SFRY intensified and manifested itself through massive protests that were repressed by central authorities of Yugoslavia. In the aftermath of these events, Serbia demanded that Kosovo shall be integrated into that country. That demand was opposed by other republics, notably Slovenia. (P. Radan, *The Break-up of Yugoslavia and International Law*, Routledge, 2002, p. 154).
- 3.7 One of the first steps taken by Slobodan Milošević after his rise to power in Serbia (1989) was to amend the Constitution of the Republic of Serbia in a way that practically eliminated the autonomy of Kosovo. Through the Amendments of February 1989 and of July 1990 to Serbian Constitution the main competences of Kosovo institutions were transferred to central government in Belgrade and the functioning of the Kosovo's parliament was suspended.

- 3.8 The above-described series of events triggered Croatia and Slovenia (on 25 June 1991) to announce their intention to secede from Yugoslav Federation which, in consequence, led to the dissolution of Yugoslavia. These developments were confirmed in the 1991 Opinion No. 1 of the Conference of Yugoslavia Arbitration Commission (Conference of Yugoslavia Arbitration Commission: Opinions on Questions Arising From the Dissolution of Yugoslavia, 31 I.L.M., pp. 1488 et. seq.): *‘The Arbitration Committee is of the opinion that the Socialist Federal Republic of Yugoslavia is in the process of dissolution’*. Subsequently, both Macedonia (referendum held in September 1991) as well as Bosnia and Herzegovina (resolution adopted by Parliament on October 14th 1991) declared independence. Therefore, at that moment it were only Serbia, autonomous units (Kosovo and Vojvodina) and Montenegro that still found themselves in the framework of the then Yugoslavia.
- 3.9 Initially, two international conferences were convened in order to analyze the situation in the (former) Yugoslavia and to decide upon the next steps of the international community in that respect. One was held (on the initiative of the European Community) under the chairmanship of Lord Carrington in 1991 and, afterwards, the other took place in the period of 26 – 28 August 1992 (London Conference on Yugoslavia). It shall be pointed out that, for political reasons, the question of the status of Kosovo was not discussed during those conferences.
- 3.10 Simultaneously with the process of the dissolution of Yugoslavia, Serbian repressions towards Kosovo intensified. At the same time, Kosovo’s strive for the status of a republic, initially within SFRY, strengthened. This strive manifested itself on 2 July 1990 when the Kosovo Assembly issued a Declaration of Independence in which Kosovo demanded to be recognized as an ‘independent and equal unit within the Yugoslavia’ on the basis of ‘the sovereign right of the people of Kosovo, including the right to self-determination’. On 19 February 1990 Yugoslav Constitutional Court found that Declaration to be inconsistent with the Constitution. The Serbian authorities, on 5 July 1990, dissolved the Kosovo Assembly and government.
- 3.11 September 7, 1990 marks the adoption by the majority of the delegates from the dissolved Kosovo Assembly of the Kačanik Resolution. That document underlined the right of peoples to self-determination and repeated the demands that had been earlier expressed on 2 July 1990 (concerning Kosovo’s status as an equal member

of the Yugoslav Federation). On the same date when the Kačanik Resolution was adopted, the dissolved Kosovo Assembly proclaimed the Constitution of the Republic of Kosovo. According to its provisions, Kosovo seceded from Serbia but still considered itself a part of SFRY. In the period of 26 – 30 September 1991 the referendum concerning the independence of Kosovo was held. As a result, 87% of Kosovars (eligible to vote), by the majority of 99,87%, voted 'yes' in favor of independence. Kosovo declared its independence on 18 October 1991. The only country, however, that then recognized Kosovo was Albania (on 22 October 1991) and – as was mentioned above – the question of Kosovo was not subject to debate during the international conferences convened to deal with the dissolution of the (former) Yugoslavia. Pursuant to the Constitution of the Republic of Kosovo, on 24 May 1992 assembly as well as presidential elections took place and Mr. I. Rugova was elected President of Kosovo.

- 3.12 On the basis of what is stated above, it is possible to conclude that a parallel administration existed in Kosovo – the one of Kosovo and of Yugoslavia (Serbia). It is also of importance that Kosovo exercised such state – related functions, besides conducting elections, as: providing social insurance, education and cultural activities.
- 3.13 Simultaneously with the process of eliminating the (almost half of century long) autonomy and self-governance of Kosovo, the Serbian authorities launched aggressive campaign aimed at the people of the former. It did not take long time that the deteriorating humanitarian situation in Kosovo became the concern of the international community.
- 3.14 United Nations General Assembly (UN GA) in its resolution 47/147 expressed '*its grave concern at the report of the Special Rapporteur on the dangerous situation in Kosovo, Sandjak and Voyvodina*', urged all parties '*to act with utmost restraint and to settle disputes in full compliance with human rights and fundamental freedoms*' and called 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*'. Since that moment onwards, General Assembly in a consequent and strong manner condemned the Serbian authorities with regard to the degrading humanitarian situation in the region (see in particular UN GA resolutions: 48/153, 49/204, 50/190, 51/111, 52/139, 53/163, 53/164, 54/183).

3.15 The United Nations Commission on Human Rights (UNCHR) also repeatedly drew the attention of the international community to the massive violations of human rights in Kosovo. UNCHR, similarly as the General Assembly, already in 1992 condemned the Serbian policy of ethnic cleansing (E/CN.4/1992/S-1/9), as well as deteriorating human rights situation in Serbia, police brutality, torture, ill-treatment of detainees, discriminatory measures and practices (see in particular: Commission resolution 1993/7 of 23 February 1993, Commission resolution 1994/76 of 9 March 1994, Commission resolution 1998/79 of 22 April 1998, Commission resolution 1999/2 of 13 April 1999).

3.16 In the context of the present considerations, it shall also be mentioned that, by the UN SC resolution 827 (1993), International Criminal Tribunal for the former Yugoslavia (ICTY), was established. One of the reasons that prompted the UN Security Council to establish such an international body was:

'grave alarm at continuing reports of widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia (...) including reports of mass killings, massive, organized and systematic detention an rape of women, and the continuance of the practice of "ethnic cleansing", including for the acquisition of and the holding of territory' (emphasis added).

3.17 Since 1998, the situation in Kosovo was included in the agenda of the United Nations Security Council. UN Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999) underlined in particular the indiscriminate use of force by Serbian security forces, numerous civilian casualties, massive flow of refugees and rapid deterioration of humanitarian situation throughout Kosovo. UN Security Council was also alarmed by the spreading humanitarian catastrophe there (SC Res. 1199 (1998) and 1203 (1998)).

3.18 Following the establishment of ICTY, the Security Council in its resolution 1160 (1998) urged the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia *'to begin gathering information related to the violence in Kosovo that may fall within its jurisdiction'*.

3.19 It can be concluded on the basis of the above considerations, that the humanitarian situation in Kosovo, especially in the period of 1998 – 1999, became disastrous.

According to the statistical data contained in the United Nations High Commissioner for Human Rights Report (Report on Situation of Human Rights in Kosovo, HC/K224, 22 April 1999), there were nearly 600 000 refugees from Kosovo and almost 800 000 displaced persons within Kosovo. That report highlights also the instances of ethnic cleansing, forced displacement, arbitrary executions and detentions as well as enforced disappearances, all of which took place in Kosovo.

- 3.20 The detailed information concerning those events is well documented in a report prepared by the Organization for Security and Cooperation in Europe (OSCE) – Kosovo Verification Mission: *Kosovo/Kosova As Seen, As Told. An Analysis of the human rights findings of the OSCE Kosovo Verification Mission, October 1998 to June 1999*. The introductory part of that report, in relevant parts, states:

‘Violations of the right to life feature extensively in this report, from numerous single arbitrary killings to mass killings involving scores of victims. Particularly in the period after 24 March 1999, communities in Kosovo were subjected to a state of lawlessness precisely at the hands of those authorities charged with the maintenance of security and law and order, and those authorities demonstrated a sweeping disregard for human life and dignity. The loss of life by large numbers of Kosovo Albanian civilians was one of the most characteristic features of the conflict of the conflict after 24 March and account for a very high number of reports and witness statements received by OSCE-KVM.

(...)

The mass killing at Racak/Recak (Stimlje/Shtime municipality) on 15 January 1999 was an event both definitive in terms of establishing international recognition that human rights violations were at the core of Kosovo conflict, and (together with two other incidents later that month in Djakovica/Gjakova municipality, at Rogovo/Rogove and Rakovina/Rakovine) indicative of what was to follow in the period from late March.’

- 3.21 Since 1990s the European Parliament in the series of resolutions strongly condemned the Serbian actions in the territory of Kosovo and expressed its deep

regret as far as the humanitarian situation was concerned (see in particular: *Resolution on the situation in Kosovo*, O.J. C 328, 26.10.1998, p. 0182 and *Resolution on the situation in Kosovo*, O.J. C 115, 14.04.1997, p. 0170).

- 3.22 Under the auspices of North Atlantic Treaty Organization (NATO) a special conference was convened in order to stabilize the situation and attain peaceful and political solution in Kosovo. During the negotiations the so called *Rambouillet Accords: Interim Agreement for Peace and Self-Government in Kosovo* (doc. S/1999/648, 7 June 1999) were elaborated, the provisions of which envisaged a broad autonomy for Kosovo. Serbian party did not accept the solutions under the *Rambouillet Accords* and (on 18 March 1999) the negotiations ended with a fiasco.
- 3.22.1 The relevant provision of the *Rambouillet Accords* is Article 1 (under the chapeau of Chapter I of the *Rambouillet Accords: Constitution*) which reads:

‘Kosovo shall govern itself democratically through the legislative, executive, judicial, and other organs and institutions specified herein.’

- 3.22.2 The above-characterized solutions were meant to be of a temporary nature only which is clearly reflected in Chapter VIII 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’. (emphasis added)

- 3.23 On 24 March 1999 NATO commenced its ‘Operation Allied Force’ against Serbia. The campaign was intended to ‘halt the violence and bring an end to the humanitarian catastrophe now unfolding in Kosovo (...). Our objective is to prevent more human suffering and more repression and violence against the civilian population of Kosovo’ (Press release 1999(040), 23 March 1999). It may be noted that already in 1998 NATO Member States reaffirmed that:

'We are deeply concerned by the situation in Kosovo. We deplore the continuing use of violence in suppressing political dissent or in pursuit of political change. The violence and the associated instability risk jeopardising the Peace Agreement in Bosnia and Herzegovina and endangering security and stability in Albania and the former Yugoslav Republic of Macedonia. It is particularly worrying that the recent resurgence of violence has been accompanied by the creation of obstacles denying access by international observers and humanitarian organisations to the affected areas in Kosovo' (NATO Statement on Kosovo: Press Communique M-NAC-1 (98)61 issued at the Ministerial Meeting of the North Atlantic Council held in Luxembourg on 28th May 1998).

3.24 June 10, 1999 marks the adoption by the UN Security Council, acting under Chapter VII of the Charter of United Nations, of the resolution 1244 (1999). At the same time, the NATO Secretary General, after nearly three months of air campaign, decided to suspend 'Operation Allied Force'.

3.25 In the preambular part of the UN SC resolution 1244 (1999), Security Council stated that it was:

'determined to resolve the grave humanitarian situation in Kosovo, Federal Republic of Yugoslavia, and to provide for the safe and free return of all refugees and displaced persons to their homes.'

and that it:

'Condemns all acts of violence against the Kosovo population as well as all terrorist acts by any party'.

3.26 On the basis of that resolution an international civil and security presences, under United Nations auspices, were established. As a result, United Nations Interim Administration Mission in Kosovo (UNMIK) was created, composed of four pillars: Police and justice (led by United Nations), Civil Administration (United Nations), Democratization and institution building (Organization for Security and Co-operation in Europe), Reconstruction and economic development (European Union). It may be noted already at this stage of considerations that the

establishment of UN administration in Kosovo significantly changed its legal status.

- 3.27 On the basis of UNMIK Regulation 1/1999 of 25 July 1999 (UNMIK/REG/1999/1):

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

- 3.28 In May 2000 UNMIK established Joint Interim Administrative Structure (JIAS) that included the following components: Interim Administrative Structure, Kosovo Transitional Council, Administrative departments and Municipal boards.

- 3.29 On 15 May 2001 the Special Representative of the Secretary General signed Regulation No. 2001/9 that promulgated *'A Constitutional Framework for Provisional Self-Government in Kosovo'* (Constitutional Framework). The preamble to that document states:

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

(...)

Determining that, within the limits defined by UNSCR 1244 (1999), responsibilities will be transferred to Provisional Institutions of Self-Government which shall work constructively towards ensuring conditions for a peaceful and normal life for all inhabitants of Kosovo, with a view to facilitating the determination of Kosovo's future status through a process at an appropriate future stage which shall, in accordance with UNSCR 1244(1999), take full account of all relevant factors including the will of the people' (emphasis added).

- 3.30 In accordance with the regulations of the Constitutional Framework, *de facto* all authority over Kosovo was vested in the hands of Special Representative or in the institutions established under the Constitutional Framework, i.e. the Assembly, the President of Kosovo, Government and Courts. As far as the Kosovo's status is

concerned, the relevant provisions of Chapter I of the Constitutional Framework provided that:

'1.1 Kosovo is an entity under interim international administration which, with its people, has unique historical, legal, cultural and linguistic attributes.'

1.2 Kosovo is an undivided territory throughout which the Provisional Institutions of Self-Government established by this Constitutional Framework for Provisional Self-Government (Constitutional Framework) shall exercise their responsibilities.'

1.3 Kosovo is composed of municipalities, which are the basic territorial units of local self-government with responsibilities as set forth in UNMIK legislation in force on local self-government and municipalities in Kosovo.'

It is also necessary to note that according to Chapter XIV of the Constitutional Framework:

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

- 3.31 Mr. M. Steiner, Special Representative of the Secretary – General for Kosovo and Head of the United Nations Interim Administration Mission in Kosovo, in his report of 2002 stated that *'United Nations operation in Kosovo under resolution 1244 (1999) has entered a new phase, allowing us to make new proposals for the way ahead'* (doc. S/PV.4518, 24 April 2002, p. 2). In the very same report, Mr. Steiner informed that he was embarking on a benchmark process. *These benchmarks should be achieved before launching a discussion on status, in accordance with resolution 1244 (1999)* (supra, p. 4). This approach became to be known as 'Standards before Status' policy (see: S/PRST/2003/1, 6 February 2003, p. 2) and the 'benchmarks' referred to above included: (a) existence of effective, representative and functioning institutions; (b) reinforcement of the rule of law; (c) freedom of movement for all; (d) respect for the right of all Kosovans to remain and return; (e) development of a sound basis for a market economy; (f) clarity of property title; (g) normalized dialogue with Belgrade; and (g) reduction and

transformation of the Kosovo Protection Corps in line with its mandate. Thus, the need to consider the future status of Kosovo was explicitly recognized. At the same time, it was thought that before embarking on that debate, certain standards of democracy had to be introduced and implemented in Kosovo.

- 3.32 After the riots that had taken place in Kosovo in March 2004, Ambassador Kai Eide, the then Permanent Representative of Norway to NATO, indicated that *‘standards before status policy lacked credibility and should be replaced by a priority-based and realistic standards policy’*, adding as well that *‘raising a future status question soon seems – on balance – to be better option and is probably inevitable’* (M. Weller, op. cit., p. 20; see also: Letter dated 17 November 2004 from the Secretary – General addressed to the President of the Security Council, S/2004/932, 30 November 2004, Annex).
- 3.33 On 7 October 2005, Ambassador K. Eide, in his capacity as Special Envoy of the UN Secretary – General to undertake a comprehensive review of the situation in Kosovo, reported to the Security Council:

‘The future status process must be moved forward with caution. (...) The end result must be stable and sustainable. Artificial deadlines should not be set. Once the process has started, it cannot be blocked and must be brought to a conclusion’ (Letter dated 7 October 2005 from the Secretary – General addressed to the President of the Security Council, S/2005/635, 7 October 2005, Annex; emphasis added).

- 3.34 The UN Security Council agreed with Ambassador K. Eide’s conclusions and authorized, on 24 October 2005, the commencement of the process concerning the future status of Kosovo (Statement by the President of the Security Council, S/PRST/2005/51, 24 October 2005).
- 3.35 In November 2005 the UN Secretary – General nominated Martti Ahtisaari as his Special Envoy for the Future Status Process for Kosovo. Later on, Mr. Ahtisaari undertook a series of actions in order to settle the issue of the future status of Kosovo, with the agreement of both interested parties.
- 3.36 However, Mr. Ahtisaari in his 2007 report (UN doc. S/2007/168, 26 March 2007) concluded:

'1. But after more than one year of direct talks, bilateral negotiations and expert consultations, it has become clear to me that the parties are not able to reach an agreement on Kosovo's future status.

(...)

3. 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.

(...)

3. 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. My Comprehensive Proposal for the Kosovo Status Settlement, which sets forth these international supervisory structures, provides the foundations for a future independent Kosovo that is viable, sustainable and stable, and in which all communities and their members can live a peaceful and dignified existence (emphasis added).

(...)

6. A history of enmity and mistrust has long antagonized the relationship between Kosovo Albanians and Serbs. This difficult relationship was exacerbated by the actions of the Milosevic regime in the 1990s. After years of peaceful resistance to Milosevic's policies of oppression — the revocation of Kosovo's autonomy, the systematic discrimination against the vast Albanian majority in Kosovo and their effective elimination from public life — Kosovo Albanians eventually responded with armed resistance. Belgrade's reinforced and brutal repression followed, involving the tragic loss of civilian lives and the displacement and expulsion on a massive scale of Kosovo Albanians from their homes, and from Kosovo. The dramatic deterioration of the situation on the ground prompted the intervention of the North Atlantic Treaty Organization (NATO), culminating in the adoption of resolution 1244 (1999) on 10 June 1999.

7. For the past eight years, Kosovo and Serbia have been governed in complete separation. The establishment of the United Nations Mission in Kosovo (UNMIK) pursuant to resolution 1244 (1999), and its assumption of all legislative, executive and judicial authority throughout Kosovo, has created a situation in which Serbia

has not exercised any governing authority over Kosovo. This is a reality one cannot deny; it is irreversible. 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 (emphasis added).

- 3.37 The ‘*Comprehensive Proposal for the Kosovo Status Settlement*’ (so called Ahtisaari’s Plan) was annexed to that report. Its principal assumptions, although not pointing directly at the independence of Kosovo, defined it using the classic state ‘toolbox’ like: authority, population, defined territory and capacity to conclude international agreements.

‘1.1 Kosovo shall be a multi-ethnic society, which shall govern itself democratically, and with full respect for the rule of law, through its legislative, executive, and judicial institutions.

(...)

1.3 Kosovo shall adopt a Constitution (...).

(...)

1.5 Kosovo shall have the right to negotiate and conclude international agreements and the right to seek membership in international organizations.

(...)

Annex IX, Article 1 Kosovo shall be responsible for managing its own affairs, based upon the democratic principles of the rule of law, accountability in government, and the protection and promotion of human rights, the rights of members of all Communities, and the general welfare of all its people. Recognizing that fulfilling Kosovo’s responsibilities under this Settlement will require a wide range of complex and difficult activities, an International Civilian Representative (ICR) shall supervise the implementation of this Settlement and support the relevant efforts of Kosovo’s authorities.’

- 3.38 Since the presentation of the report to the Security Council, it failed to adopt (or find alternatives to) Ahtisaari’s Plan which, in turn, gave rise to further efforts of the international community to find consensual resolution to the question of the

future status of Kosovo. In particular, the Troika (officials from EU, Russia and USA) facilitated a series of negotiation rounds as well as mediated between Serbia and Kosovo. Various options were inquired into, from the full independence of Kosovo, through supervised independence or autonomy to, eventually, ‘agreement to disagree’. In the end though ‘*the parties were unable to reach an agreement on the final status of Kosovo. Neither party was willing to cede its position on the fundamental question of sovereignty over Kosovo*’ (Letter dated 10 December 2007 from the Secretary – General to the President of the Security Council, S/2007/723, 10 December 2007, Enclosure).

- 3.39 In January 2008 the UN Secretary General in his periodical report on the United Nations Interim Administration Mission in Kosovo underlined:

‘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. Moving forward with a process to determine Kosovo’s future status should remain a high priority for the Security Council and for the international community.’ (S/2007/768, 3 January 2008, para. 33; emphasis added)

What was underlined above, as the UN Security Council was not able to find consensus on the question on the status of Kosovo, events on the ground indeed took on momentum of their own.

- 3.40 On 17 February 2008 the Assembly of Kosovo (elected in the democratic elections held on 17 November 2007) adopted the Declaration of Independence that, *inter alia*, underlined the *sui generis* character of Kosovo case as well as confirmed the solutions earlier proposed in the Ahtisaari’s Plan and main principles of the UN SC resolution 1244 (1999):

*‘Observing that Kosovo is a special case arising from Yugoslavia’s non-consensual breakup and is not a precedent for any other situation,
(...)*

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.

(...)

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).'

- 3.41 It is worth noting that the Declaration of Independence derives from the will of people represented by the democratically-elected leaders not from, as it was phrased in the request incorporated in the UN GA 63/3, the decision of Provisional Institutions of Self-Government of Kosovo. In that regard it shall be underlined that the Council of Europe Election Observation Mission in Kosovo (CEEOM V) observed the electoral process leading up to the 17 November 2007 Kosovo Assembly, Municipal Assembly and Mayoral Elections and it concluded that:

'The elections were conducted generally in line with Council of Europe principles, as well as international and European standards for democratic elections, when considering the late call for elections and the particularity of running three elections concurrently in Kosovo's still complex political and social environment.

The elections took place in a peaceful atmosphere, despite the particularly tense political context at the approach of the deadline for the negotiation process on the future status of the province (...).'

IV. Developments since the Declaration of Independence

- 4.1 Since the adoption of the Declaration of Independence, 57 States, including 22 EU Member States, recognized Kosovo as a sovereign and independent State. It shall also be noted that recognizing States represent various geographical regions of the world, as well as multiple legal, cultural and religious traditions (e.g. Albania, Australia, France, Japan, Malaysia Maldives, Panama, South Korea, Turkey, United Arab Emirates, United Kingdom, United States of America).
- 4.2 Moreover, in its resolution of 5 February 2009, European Parliament called upon states, that have not already done so, to recognize the independence of Kosovo (European Parliament resolution of 5 February 2009 on Kosovo and the role of the EU, P_6TA_PROV(2009)0052, B_6-0063/2009).
- 4.3 Several states have established diplomatic relations with Kosovo. Also Kosovo has diplomatic representation in other states and it already concluded some international agreements.
- 4.4 On 9 April 2008 (effective from 15 June 2008) Assembly of Kosovo adopted the Constitution of the Republic of Kosovo, according to which:

'The Republic of Kosovo is an independent, sovereign, democratic, unique and indivisible State.

(...)

The Republic of Kosovo shall have no territorial claims against, and shall seek no union with , any State or Part of any State.

(...)

The sovereignty and territorial integrity of the Republic of Kosovo is intact, inalienable, indivisible and protected by all means provided in this Constitution and the law' (Articles 1 – 2 of the Constitution).

The Constitution also provides that Kosovo *'will abide by all of its obligations under the Comprehensive Proposal for the Kosovo Status Settlement'* (Article 143 (1)) and envisages the international civilian and security presences on its territory (Articles 146, 147, 153).

- 4.5 On 26 February 2009 the Trial Chamber of ICTY found Nikola Šainović, the former Yugoslav Deputy Prime Minister, Nebojša Pavković, a former General of the

Yugoslav Army, and Sreten Lukić, the former Serbian Police General, guilty of crimes against humanity and violation of the laws and customs of war. Also Dragoljub Ojdanić, Chief of the General Staff was found guilty of deportation and forcible transfer as a crime against humanity, and Vladimir Lazarević, the Commander of Pristina Corps was found to have aided and abetted the commission of a number of the charges of deportation and forcible transfer in the Indictment.

4.5.1 ICTY Trial Chamber – with relation to Kosovska Mitrovica/Mitrovica – found that:

‘the events there amounted to attack upon civilian population of the town, that this attack was carried out in a systematic manner, and that it was part of the widespread and systematic attack against Kosovo Albanian civilians in at least 13 municipalities of Kosovo. (...) The chamber finds therefore that in relation to Kosovska Mitrovica/Mitrovica town all the elements of deportations a crime against humanity (...) are satisfied. (...) Consequently the Chamber is convinced that the elements of the crime of other inhumane acts (forcible transfer) (...) are also satisfied. (...) The Chamber thus finds that in the village of Žabare/Zhabar, along with other neighboring villages in Kosovska Mitrovica municipality, all of the elements of deportation, as a crime against humanity (...) are satisfied.’ (ICTY Case No. IT-05-87-T, 26 February 2009; paras. 1225 – 1231).

4.6 It should be also noted that the European Union launched a Rule of Law Mission in Kosovo (Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo; EULEX), indicating that:

‘There is a need to prevent, on humanitarian grounds, possible outbreaks of violence, acts of persecution and intimidation in Kosovo, taking account, as appropriate, of the responsibility towards populations as referred to in Resolution 1674 by the United Nations Security Council on 28 April 2006.’

Moreover, EULEX assumed, under the auspices of UN administration, the majority of responsibilities of the latter. On 18 August 2008 UNMIK and EULEX signed a technical agreement on the sale of UNMIK surplus equipment and vehicles. On 26 June 2008 UNMIK formally announced the start of the reconfiguration process

(Report of the Secretary – General on the United Nations Interim Administration Mission in Kosovo, S/2008/692, 24 November 2008, paras. 21 – 25).

V. *Sui generis* Character of Kosovo Case

5.1 In the opinion of the considerable part of the international community, as well as of prominent representatives of the doctrine of international law, the situation of Kosovo has been exceptional. The Government of the Republic of Poland shares that view. The Declaration of Independence of Kosovo shall be assessed in light of that conclusion. It is to be added that the Declaration itself underlines that '*Kosovo is a special case arising from Yugoslavia's non-consensual breakup and is not a precedent for any other situation*'. Finally, as Martti Ahtisaari, UN Special Envoy of the Secretary General on Kosovo's future status, put it: '*Kosovo is a unique case that demands unique solution*' (Letter dated 26 March 2007 from the Secretary – General addressed to the President of the Security Council, S/2007/168, para. 15).

5.2 The following elements constitute the *sui generis*, exceptional, character of Kosovo case:

5.2.1 **Longstanding autonomy and self – governance of Kosovo**, that dates back to, at least, half of the 20th century. Since the creation of SFRY in 1945, Kosovo enjoyed broad scope of autonomy, guaranteed by subsequent Yugoslav Constitutions (see in particular paras.: 3.3 – 3.12 above).

5.2.1.1 **As a rule, Kosovo and its people enjoyed special rights within both SFRY and Serbia**. It was expressed in particularly clear terms in the 1974 SFRY Constitution, where the will of Kosovo's people to exercise their rights within SFRY and Serbia is highlighted (see para. 3.5 above). After the political changes of 1980s and 1990s (aimed notably at the limitation and, afterwards, the elimination of all forms of Kosovo's autonomy), as well as in the result of deteriorating humanitarian situation in Kosovo, the will of its inhabitants evolved into achieving their own independence (initially, still in the framework of SFRY). Moreover, that will was consequently and repeatedly expressed, which took place against the background of the process of progressive 'autonomization' of Kosovo.

5.2.1.2 Gradually, together with the strengthening of the Serbian repressions against Kosovo, the will of its people to create their own state intensified – since Kosovars were deprived of the possibility to govern themselves autonomously. Notwithstanding the Serbian repressions, Kosovo in 1990s managed to sustain its – parallel to the Serbian ones – institutions (including the Assembly). It should be stressed that those institutions – characteristic for a state – were created entirely outside of Serbian authority and control. At a later stage those national institutions were strengthened and supported under the auspices of United Nations.

5.2.2 Second important feature decisive of Kosovo's *sui generis* character is the fact that **systematic and broad scale violations of human rights and humanitarian law by Serbia took place there.**

5.2.2.1 As indicated, 1980s and 1990s were marked by the spreading of ethnical cleansing, forced displacement, arbitrary executions and detentions as well as enforced disappearances and outbreaks of violence directed also against Kosovo's civilian population (see also ICTY Trial Chamber findings, para. 4.5 above). These events were also the main reason for the commencement of NATO air campaign and, later on, for the adoption of UN SC resolution 1244 (1999).

5.2.3 The third *differentia specifica* of Kosovo is the fact that **its status was 'internationalized'** as a consequence of systematic and broad scale violations of human rights and humanitarian law which have been committed by Serbia there. International community introduced thus *de facto* and *de iure* protection of Kosovars against hostile and violent actions of Serbia.

5.2.3.1 Beginning with the adoption of UN SC resolution 1244 (1999), Kosovo was practically governed and supervised by international institutions – the United Nations, North Atlantic Treaty Organization, Organization for the Security and Co-operation in Europe and the European Union.

5.2.3.2 Under the UN Special Representative for Kosovo legislation was passed concerning a broad range of issues (e.g. customs, currency, taxes, banking system, telecommunication law, penal law or family law). At the same time public and municipal administration, economic, judicial and health care system were further developed, public safety institutions were organized and elections were held.

- 5.2.4 Since the commencement of NATO air campaign and the adoption of the UN SC 1244 (1999) resolution, **Serbia lost effective authority and control over Kosovo** which was assumed in full by the UN administration and Kosovo institutions. That situation existed since 1999 and within the next 9 years Serbia neither exercised nor resumed its control in Kosovo. In that sense, the adoption of the Declaration of Independence in 2008 only confirmed the reality.
- 5.2.5 All the above described factors treated together constitute the *sui generis* character of Kosovo's Declaration of Independence. It is also why the 'Kosovo case' shall not be regarded as setting a general precedence for any other similar situation. If in a particular case only one or a few (but not all) of above mentioned *sui generis* conditions were fulfilled, it could not be legally assessed *per analogiam* to Kosovo's Declaration of Independence.
- 5.2.5.1 It shall also be reminded that the international community, at least since 2007 knew that there was no coming back to the autonomy of Kosovo within Serbia. As Mr. Ahtisaari stated '*independence is the only viable option for Kosovo*' (Letter dated 26 March 2007 from the Secretary – General addressed to the President of the Security Council, S/2007/168, para. 5).
- 5.2.5.2 In the situation where the UN SC was unable to take further steps in determining the future status of Kosovo on behalf of international community as well as after the exhaustion of all diplomatic means, those steps were taken, peacefully, by the people of Kosovo themselves on 17 February 2009.

VI. Principle of Self – determination

6.1 On the basis of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (UN GA resolution 2625 (XXV), 25 October 1970) the following four forms of the right to self – determination may be singled out:

- a) of people under the colonial dependence or under other form of domination;
- b) of people under alien occupation;

- c) of people inhabiting states that infringe the right to self – determination and, thereby, being prevented from effective exercise of that right (which could, in particular, take the form of those people being represented in the host state’s government that would reflect, in a not discriminatory manner, the whole of a given state population);
- d) of people inhabiting states that respect the principle of self – determination and, consequently, those people being adequately represented in the government of the host state.

- 6.2 In the situation (d) above, people of a given territory are not empowered to exercise their right to self – determination (e.g. through secession), unless such a right is guaranteed by a constitutional act and conditions to execute that right are fulfilled.
- 6.3 In the category (c) above, on the other hand, right to self – determination cannot be effectively exercised by people within a given country and, consequently, that right may under certain circumstances entail secession and be vindicated by all legal means.
- 6.4 It is possible to distinguish between the primary and remedial right to secession. (see e.g. A. Buchanan, *Justice, Legitimacy and Self-determination. Moral Foundations for International law*, Oxford University Press 2004, p. 271 and *subseq.*, J. Crawford, *The Creation of States in International Law*, Second Edition, Oxford University Press 2006, pp 119 – 128).
- 6.5 Remedial right to secession is based on a premise that a state gravely violates international human rights and humanitarian law against peoples inhabiting its territory. Those violations may include *inter alia*: genocide, crimes against humanity, war crimes and other massive violations of human rights and humanitarian law.
- 6.6 As the Supreme Court of Canada in Quebec Secession case put it:

‘A right to external self – determination (which in this case potentially takes form of the assertion of a right to unilateral secession) arises in only the most extreme cases and, even the, under carefully defined circumstances. (...) Although this third circumstance [of external self – determination] has been described in several ways, the underlying proposition is that, when a

people is blocked from meaningful exercise of its right to self – determination internally, it is entitled, as a last resort, to exercise it by secession. (...) Clearly, such a circumstance parallels the other two recognized situations in that the ability of a people to exercise its right to self – determination internally is somehow being totally frustrated.’ ([1998] 2 S.C.R. 217, paras 126 - 134; emphasis in original).

- 6.7 Therefore, remedial right to secession may only come into question as a last resort when it is necessary to protect the inhabitants of territories from wrongful acts of their host states (see also *The Implementation of the Right to Self-Determination as a Contribution to Conflict Prevention*, Report of the International UNESCO Conference of Experts held in Barcelona, 21 – 27 November 1998, Dr. Michael C. van Walt van Praag with Onno Seroo (eds), pp. 22 – 28).
- 6.8 It is also the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations itself that states explicitly:

‘Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.’ (emphasis added; similar explanation may be found in: *United Nations World Conference of Human Rights, Vienna Declaration and Programme of Action*, 25 June 1993, 32 I.L.M.(1993), p. 1665).

- 6.9 It may be inferred therefore that the subordination of the principle of self – determination to the principle of territorial integrity is by no means of absolute character. The latter does not always have priority irrespective of the particular conditions of a given situation.
- 6.10 In the light of the considerations presented, *inter alia*, in paras 6.1 – 6.7 and Chapter V of the present statement, the conclusion has to be drawn that Kosovo was entitled to exercise its remedial right to secession.

- 6.11 It shall be underlined once again that the exercise of the right to self – determination of Kosovo’s people in Serbia was not longer possible and unattainable. That conclusion is validated by the scale of violations of human rights and humanitarian law by Serbia. In such a situation Kosovo could legitimately exercise its remedial right of secession from Serbia in order to protect and preserve most fundamental rights and interests of its people.
- 6.12 Therefore, the territorial integrity of Serbia – in the consequence of its own wrongful acts against Kosovo – eroded and was undermined already in 1999. That led to the situation where Serbia lost its effective authority and control over Kosovo and has not regained it within the next years. In the consequence of the Serbian violations of human right and humanitarian law, it may also be argued, that that State could no longer have recourse to the principle of territorial integrity as protecting Serbia from the exercise by the Kosovars of their remedial right to secession.
- 6.13 It is also beyond any doubt that certain norms of international law concerning, *inter alia*, the protection of fundamental human rights as well as self – determination of peoples have special legal value and meaning. These norms have been often referred to as peremptory norms (see e.g. A. Cassese, *International Law*, 2nd Edition, Oxford University Press 2005, pp 64 – 67 and bibliography quoted therein; *Draft Articles on the Law of Treaties with commentaries*, YILC, 1966, Vol. II, p. 248; *Commentaries to the draft articles on Responsibility of States for internationally wrongful acts*, YILC, 2001, Vol. II, pp. 110 *et. seq.*). It corresponds to the view that in case of severe violations of certain fundamental human rights and humanitarian law norms, the principle of self – determination may not be limited to its internal aspect (i.e. self – determination within a ‘host’ state).
- 6.14 The International Court of Justice also affirmed on a number of occasions that certain norms or obligations have special nature. In the *East Timor* case, the Court said that:

‘Portugal’s assertion that the right of peoples to self-determination, as it evolved from the Charter and from the United Nations practice, has an erga omnes character, is irreproachable. The principle of self-determination of peoples has been recognized by the United Nations Charter and in the

jurisprudence of the Court (...); it is one of the essential principles of contemporary international law' (Case concerning East Timor, Portugal v. Australia, Judgment, I.C.J. Reports 1995, p. 102).

That assertion was repeated in the International Court of Justice's advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, where the Court referred also to its judgment in the Barcelona Traction case:

'The Court would observe that the obligations violated by Israel include certain obligations erga omnes. As the Court indicated in the Barcelona Traction case, such obligations are by their very nature 'the concern of all States' and, 'In view of the importance of the rights involved, all States can be held to have a legal interest in their protection' (Barcelona Traction, Light and Power Company, Limited, Second Phase, Judgment, I.C.J. Reports 1970, p. 32, para. 33). The obligations erga omnes violated by Israel are the obligation to respect the right of the Palestinian people to self determination (...).' (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, para. 155).

In the Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide case, the Court also highlighted that:

'The origins of the Convention show that it was the intention of the United Nations to condemn and punish genocide as 'a crime under international law' involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations (Resolution 96 (I) of the General Assembly, December 11th 1946). The first consequence arising from this conception is that the principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation. A second consequence is the universal character both of the condemnation of genocide and of the co-operation required 'in order to liberate mankind from such a odious scourge' (Preamble to the

Convention)’ (*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, I.C.J. Reports 1951, p. 23).

The Court sustained its reasoning in that respect in the Application of the Convention on the Prevention and Punishment of the Crime of Genocide case, where it stated in particular that:

‘The Court affirmed the 1951 and 1996 statements in its Judgment of 3 February 2006 in the case concerning Armed Activities on the Territory of Congo (New Application 2002) (Democratic Republic of Congo v. Rwanda), paragraph 64, when it added that the norm prohibiting genocide was assuredly a peremptory norm of international law (jus cogens).’ (Case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Bosnia and Herzegovina v. Serbia and Montenegro, 26 February 2007, para. 161).

- 6.15 Serbia not only did not provide sufficient guarantees to the protection of fundamental human rights but was the one that violated these rights in Kosovo depriving it at the same time of autonomy. In such a situation people of Kosovo requested execution of their inherit rights that by no means could have been exercised within Serbia.
- 6.16 Finally, international law should be viewed as a dynamic, not as a static system. It is because that system changes and develops through, *inter alia*, the constant practice of states. Therefore the content of norms and principles of that legal system (even the ones of such a significance as territorial integrity and self – determination) are subject to continuous modifications and adjustments. For example, the political and legal system established on the basis of Potsdam and Yalta conferences and arrangements, supplemented by the CSCE/OSCE process, at that time was considered to be of a quasi-permanent nature. However, the so called ‘Spring of Nations’ in the Eastern and Central Europe that commenced in Poland in 1980 brought about significant changes in the international system, including the independence of many states, the German reunification, fall of the Soviet Union or the dissolution of Yugoslavia.

VII. Interpretation of the United Nations Security Council Resolution 1244 (1999)

7.1 It is the view of the Republic of Poland that the Kosovo's Declaration of Independence is not contrary to the UN SC resolution 1244 (1999).

7.2 Though this resolution refers to the territorial integrity and sovereignty of the then SFRY, it does so only in a preambular language, not in the operational one. Moreover, that reference concerns solely the provisional phase of the UN administration in Kosovo. Hence, it does not predetermine the applicability of these principles to the future status of Kosovo. The relevant parts of the UN SC resolution 1244 (1999) read:

- [The Security Council] '*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). (...)*' (op. para. 10; emphasis added).
 - '*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.*' (Annex 1, item 6; emphasis added).

Analogous formulations may be found in Annex 2, para. 8 of the resolution.

7.3 It may be inferred therefore that the Security Council, while deciding that the solution to the 'Kosovo crisis' would be based upon general principles contained in Annex I and elaborated on in Annex II to the resolution, did not take the stance that such a solution may only be attained through its own decisions.

7.4 Consequently, the UN SC resolution 1244 (1999) needs to be interpreted in the light of the above presented considerations, as well as of *sui generis* character of Kosovo case.

- 7.5 As it was already stated above, the international community realized that independence is '*the only viable option*' which is expressed in the most comprehensive way in the Ahtisaari's Plan. The failure to implement that Plan and further development of the situation regarding Kosovo also constitute factors that need to be taken into account while interpreting the UN SC resolution 1244 (1999).
- 7.6 Moreover, the Security Council was not able to execute its functions envisaged in the UN Charter, to '*remain actively seized of the matter*' or to propose viable solutions for the future status of Kosovo that would be acceptable for the parties to a conflict and the international community as a whole.
- 7.7 The political impasse within the UN SC and, thus, the loss of its control over the situation in Kosovo catalyzed the exercise by the people of Kosovo of its remedial right to secession. It shall be also noted that the people of Kosovo only exercised that right after the UN-guided course of action in determining the Kosovo's future status came to a halt.

VIII. General Conclusions

- 8.1 The Government of the Republic of Poland is of the opinion that the Declaration of Independence of 17 February 2008 has not conflicted with any norm of international law.
- 8.2 The Government of the Republic of Poland respectfully asks the Court to respond to the question posed in the General Assembly resolution 63/3 taking into account considerations presented in this statement.