

International Court of Justice

Accordance with international law of the Unilateral
Declaration of Independence by the Provisional
Institutions of Self-government of Kosovo
(Request for an advisory opinion)

WRITTEN STATEMENT OF THE KINGDOM OF NORWAY

16 April 2009

Introduction

1. By an Order of 17 October 2008, the International Court of Justice 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". By the aforesaid Order, the Court also decided to invite the authors of the above declaration to make written contributions to the Court.

2. The question on which the advisory opinion of the Court has been requested is set forth in resolution 63/3 (A/RES/63/3) adopted by the General Assembly of the United Nations on 8 October 2008 at the 22nd meeting of its Sixty-third Session (A/63/L.2). The terms of the request read as follows:

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

3. Norway voted in favour of resolution 63/3. As was made clear by the Permanent Representative of Norway in his Explanation of Vote in the General Assembly of the United Nations, Norway had chosen to support the proposal by Serbia to request an advisory opinion from the Court. However, it was also underlined that support for the resolution cannot be interpreted as being incompatible with Norway's recognition of the Republic of Kosovo as an independent State. Furthermore, it was stated that Norway trusts that the Court will proceed according to established principles of judicial fairness and will hear and assess all relevant arguments from all sides, including the Government of Kosovo. Norway has subsequently noted that the Court has invited the "authors of the above declaration" to make written contributions to the Court. Norway trusts that this principle of judicial fairness will also be applied to further written proceedings and to any hearings the Court may decide to hold.

Preliminary remarks

4. Before responding to the specific question asked, Norway recalls that the Secretary-General of the United Nations, Mr. Boutros-Ghali, encapsulated, in general terms, in his report *An Agenda for Peace* in 1992 the importance of respect for territorial sovereignty of States, having regard to the parallel importance of protection of human rights and the principle of self-determination of peoples, in the context of maintenance of peace and security and an integrated approach to human security, as follows:¹

¹ A/47/277 - S/24111 17 June 1992 *An Agenda for Peace - Preventive diplomacy, peacemaking and peace-keeping*, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, at paragraphs 17-19.

"The foundation-stone of this work is and must remain the State. Respect for its fundamental sovereignty and integrity are crucial to any common international progress. The time of absolute and exclusive sovereignty, however, has passed; its theory was never matched by reality. It is the task of leaders of States today to understand this and to find a balance between the needs of good internal governance and the requirements of an ever more interdependent world. Commerce, communications and environmental matters transcend administrative borders; but inside those borders is where individuals carry out the first order of their economic, political and social lives. The United Nations has not closed its door. Yet if every ethnic, religious or linguistic group claimed statehood, there would be no limit to fragmentation, and peace, security and economic well-being for all would become ever more difficult to achieve.

One requirement for solutions to these problems lies in commitment to human rights with a special sensitivity to those of minorities, whether ethnic, religious, social or linguistic. (...)

Globalism and nationalism need not be viewed as opposing trends, doomed to spur each other on to extremes of reaction. The healthy globalization of contemporary life requires in the first instance solid identities and fundamental freedoms. The sovereignty, territorial integrity and independence of States within the established international system, and the principle of self-determination for peoples, both of great value and importance, must not be permitted to work against each other in the period ahead. Respect for democratic principles at all levels of social existence is crucial: in communities, within States and within the community of States. Our constant duty should be to maintain the integrity of each while finding a balanced design for all."

5. It is furthermore recalled that, in keeping with this recognition of the crucial importance of democratic principles at all levels of social existence, the Supreme Court of Canada considered in 1998 issues of international law, in the context of questions raised with regard to Quebec. When responding to a question as to whether there may be a positive legal entitlement to secession under international law, it excluded such entitlement, except in "the most extreme of cases and, even then, under carefully defined circumstances",² including possibly where a people has been denied any meaningful access to government to pursue its political, economic, cultural and social development:

"We have also considered whether a positive legal entitlement to secession exists under international law in the factual circumstances (...). ...a right to secession only arises under the principle of self-determination of peoples at

² Supreme Court of Canada, *Reference Re Secession of Quebec* (1998) 161 DLR (4th) 385; 115 ILR 536, at paragraph 126.

international law where 'a people' is governed as part of a colonial empire; where 'a people' is subject to alien subjugation, domination or exploitation; and possibly where 'a people' is denied any meaningful exercise of its right to self-determination within the state of which it forms a part. In other circumstances, peoples are expected to achieve self-determination within the framework of their existing state. A state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its internal arrangements, is entitled to maintain its territorial integrity under international law and to have that territorial integrity recognized by other states. Quebec does not meet the threshold of a colonial people or an oppressed people, nor can it be suggested that Quebecers have been denied meaningful access to government to pursue their political, economic, cultural and social development. (...)”³

It is generally recognised that there are extremely strict constraints with regard to whether there exists any positive legal entitlement to secession under international law (On the opinion of the Supreme Court of Canada, see further James Crawford, *The Creation of States in International Law*, 2nd ed., 2006, pp. 119-120).

6. It is noted that rather than stating conditions of legality of secession, 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. Thus, it has also been held that international law has neither provided for a right to secession nor condemned secession aiming at the acquisition of independence (For such propositions, see Christine Haverland, “Secession”, in *Encyclopedia of Public International Law*, Published under the auspices of the Max Planck Institute for Comparative Public Law and International Law under the direction of Rudolf Bernhardt, 2000, Vol. Four, p. 355).

7. The emergence of a State as a separate international person has often become manifest in the form of a declaration of statehood or of independence (Jennings and Watts, *Oppenheim's International Law*, 9th ed., 1993, p. 1190, note 7). Nevertheless, as regards international law, the existence of statehood is a question of fact relying on an assessment of constitutive elements including a defined territory, permanent population, effective government and legal capacity to enter into relations with the other States.

8. None of the above questions, nor questions of recognition, have, however, been raised by the General Assembly of the United Nations in its request for an advisory opinion from the Court.

³ Ibid., paragraph 154.

Observations concerning the nature of the Declaration of Independence

9. The specific question asked by the General Assembly of the United Nations, and upon which an advisory opinion is requested, concerns whether the issuance of Kosovo's Declaration of Independence of 17 February 2008 constitutes a violation of any applicable rule of international law. Accordingly, Norway will in the following focus on this question.

10. First, it is noted that a declaration of independence is not, as such, the object of regulation by public international law. In so far as it is considered a factual event or a political fact, it has for instance been held that international law largely limits itself to drawing consequences from it should such a declaration result in the establishment of effective and stable state authorities (Nguyen Quoc Dinh, Daillier, Pellet, *Droit international public*, 2002, 7th ed., pp. 526-7).

11. Second, resolution 1244 (1999) of the Security Council of the United Nations does not set out obligations under international law prohibiting the issuance of such a declaration of independence, or making it invalid, as was the case as stated in Security Council resolution 541 (1983) with regard to the declaration by a "Turkish Cypriot Legislative Assembly" on 15 November 1983 of the establishment of a "Turkish Republic of Northern Cyprus".

12. It is noted that in resolution 1244 (1999), the Security Council of the United Nations authorised the Secretary-General, with the assistance of relevant international organisations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions (op.p. 10). Such provisional institutions for democratic and autonomous self-government were to carry out their functions pending a political settlement, including the holding of elections (op.p. 11).

13. The Provisional Institutions of Self-Government of Kosovo were subsequently established pursuant to the Constitutional Framework for Provisional Self-Government promulgated by UNMIK on 15 May 2001 (UNMIK/REG/2001/1/9), which sets out their powers. However, neither the form or content, nor the circumstances or stated background for the adoption of the Declaration of Independence signify that the latter was an enactment by the Assembly of Kosovo, acting in the capacity of a Provisional Institution of Self-Government. Instead, the Declaration has been taken by Norway to be a statement whose explicit purpose was to express the will of democratically elected representatives of the people both with regard to Kosovo's final status and with regard to the protection of human rights and minorities and other guarantees.

14. This view is supported by the fact that the Declaration of Independence was issued on 17 February 2008 in an extraordinary meeting of the Assembly in the presence of President Fatmir Sejdiu and Prime Minister Hashim Thaçi. The Declaration was moreover signed by the President, the Prime Minister and the members of the Assembly. Furthermore, this view is confirmed by the fact that the Declaration was made in the name of "[w]e, the democratically-elected leaders of our people". As such, the Declaration has several characteristics commonly associated e.g. with statements by constituent assemblies. Finally, the practice of distinguishing between acts of particular organs and the statements jointly made by their members is recalled, as exemplified, for instance, by statements to the press made by the President of the Security Council of the United Nations on behalf of its members.

15. The Norwegian authorities have thus not considered the Declaration to have been made either in the name of the Provisional Institutions of Self-Government of Kosovo or in the latter's capacity as referred to in Security Council resolution 1244 (1999) and the Constitutional Framework of 2001.

16. Moreover, Security Council resolution 1244 does not take a position on the question of Kosovo's final status. Neither does it address the question as to whether democratically elected representatives could issue a declaration expressing their will as to the final status of Kosovo. Furthermore, the wording of inter alia Annex 2 of resolution 1244 concerns only the interim period of international administration and not the issue of final status, which was left open. Reference is made to the factual assessments made by the Special Envoy of the Secretary-General in his report referred to below as to the situation relating to the political process designed to determine Kosovo's future status.

17. It is, in this context, also noted that subsequent to the Declaration of Independence, neither the Security Council nor other UN organs have issued any statements pertaining to the validity of the Declaration of Independence within the framework for the Provisional Self-Government of Kosovo.

Analysis of the particular circumstances prevailing in Kosovo

18. Regardless of the above considerations, reference is made to the particular course of events following the extraordinary situation that had arisen with regard to the deadlock in the political process designed to determine Kosovo's future status in accordance with Security Council resolution 1244.

19. In responding to the invitation by the Court to furnish information on the specific question raised, in accordance with Articles 65 and 66 of the Statute of the Court, Norway will not attempt to enumerate or summarise the abundant historical

and legal sources relevant to the situation in Kosovo. Instead, it is deemed appropriate to transmit to the Court documents or other information likely to throw light upon the question submitted for an advisory opinion.

20. Norway has the honour to transmit to the Court for its information the Norwegian Royal Decree adopted by the King in Council on 28 March 2008, based on a proposal formally submitted on 26 March 2008 by the Ministry of Foreign Affairs. Certified copies of the original document (*Annex 1*) and an English translation (*Annex 2*) are enclosed herewith. The Royal Decree contains the assessments made by the Government of Norway in the wake of the Declaration of Independence of 17 February 2008, including as regards questions of international law.

21. Norway's recognition of the Republic of Kosovo was subsequently given in a letter dated 28 March 2008 from the Norwegian Foreign Minister to the President and the Prime Minister of Kosovo. Since this letter also makes references to the Declaration of Independence and expresses interpretations relating thereto, it is herewith transmitted to the Court for its information (*Annex 3*).

22. The purpose of the Royal Decree of 28 March 2008 was twofold. Firstly, it specified the grounds for Norway's recognition of the Republic of Kosovo as an independent State. Secondly, it set out the grounds for Norway's assertion that it considered the letter of 17 February 2008 from the President and the Prime Minister of Kosovo, with the enclosed Declaration of Independence, as a statement that is binding under international law. This applies to the fulfilment of the therein provided guarantees related to community rights and the protection of the Serbian Orthodox Church in Kosovo and the rules of international law referred to in the Declaration of Independence. Such assertion was set out in the aforesaid Norwegian letter of recognition of 28 March 2008.

23. As may be seen from the Royal Decree, the Norwegian Government placed great emphasis on the particular circumstances prevailing in Kosovo, as recognised by the competent international mechanism established in accordance with Security Council resolution 1244 to lead the political process designed to determine Kosovo's future status, bearing in mind its fundamental importance for international peace and security in the region.

24. The Royal Decree was incidentally submitted a year to the day after the Secretary-General of the United Nations had submitted to the President of the Security Council of the United Nations his letter dated 26 March 2007 with recommendations on Kosovo's future status (S/2007/168). Having taken into account the developments in the process designed to determine Kosovo's future status, the Secretary-General had expressed his full support for the recommendation made by his Special Envoy on Kosovo's future status, Mr. Martti Ahtisaari.

25. It was the firm view of the Special Envoy on Kosovo's future status that the negotiations' potential to produce any mutually agreeable outcome had been exhausted (paragraph 3 of the said report). He stated that almost eight years had passed since the Security Council had adopted resolution 1244 (1999), and that Kosovo's current state of limbo could not continue. Pretending otherwise and denying or delaying resolution of Kosovo's status risked, in his view, challenging not only its own stability but the peace and stability of the region as a whole (paragraph 4).

26. The Special Envoy stated in his report that the time had come to resolve Kosovo's status. After careful consideration of Kosovo's recent history, the realities of Kosovo today and taking into account the negotiations with the parties, he had come to the conclusion that the only viable option for Kosovo was independence, to be supervised for an initial period by the international community (paragraph 5). In his view, while UNMIK had made considerable achievements in Kosovo, international administration of Kosovo could not continue (paragraph 8). The report referred to the fact that Kosovo was a unique case that demanded a unique solution, for reasons summarised in its paragraph 15.

27. The Special Envoy on Kosovo's future status asserted moreover that every possible avenue to achieve a negotiated settlement had been exhausted (paragraph 16). In his assessment, the process that should have culminated in a political settlement had reached an impasse. No amount of talks, whatever the format, would overcome this impasse (paragraphs 1 and 3). At the same time, and as referred to above, he stated that Kosovo's state of limbo could not continue. These extremely serious assessments were made by the international mechanism entrusted with the task of leading the process designed to determine Kosovo's future status, in accordance with Security Council resolution 1244. As recalled by the Special Envoy, his mandate also explicitly provided that he determine the pace and duration of the future status process. These assessments were deemed by Norway to be particularly pertinent in the legal and political analysis of subsequent factual events.

28. The Royal Decree of 28 March 2008 also refers to renewed international efforts carried out subsequent to the aforementioned report to the Security Council on 26 March 2007. However, these efforts also failed to break the deadlock between the parties or lead to agreement in the Security Council.

29. Kosovo's Declaration of Independence of 17 February 2008 was swiftly followed by a large number of States formally recognising the Republic of Kosovo. Among these were, at the time of Norway's recognition, 32 States that included key donor countries and major contributors to the international military and civilian presence in Kosovo, as well as to development and the rule of law in the area. Since then, most

European States, including the majority of the former Yugoslav republics, and other States have recognised the Republic of Kosovo.

30. Norway need not recall the details of the prior sequence of events that included the abolishment and long-standing denial of Kosovo's constitutionally guaranteed autonomy and the systematic exclusion of its people from the exercise of fundamental civil rights, as referred to in the Royal Decree of 28 March 2008. Nor will Norway summarise the systematic violations of human rights and international humanitarian law, including crimes against humanity, committed by forces under the control of the Federal Republic of Yugoslavia and Serbian authorities and directed against the Albanian civilian population in 1999. With regard to the latter events, reference is merely made to the comprehensive assessment of evidence carried out by the International Criminal Tribunal for the former Yugoslavia in the *Milutinović et al* case (2009), as exemplified by the following account:⁴

"In spite of these claims, and having made the above findings in relation to each of the 13 municipalities where specific crimes were charged, the Trial Chamber is satisfied 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. The witnesses who testified both about their own experiences and that of their families, friends, and neighbours, in the few weeks between 24 March and the beginning of June 1999, gave a broadly consistent account of the fear that reigned in towns and villages across Kosovo, not because of the NATO bombing, but rather because of the actions of the VJ and MUP forces that accompanied it. In all of the 13 municipalities the Chamber has found that forces of the FRY and Serbia deliberately expelled Kosovo Albanians from their homes, either by ordering them to leave, or by creating an atmosphere of terror in order to effect their departure. As these people left their homes and moved either within Kosovo or towards and across its borders, many of them continued to be threatened, robbed, mistreated, and otherwise abused. In many places men were separated from women and children, their vehicles were stolen or destroyed, their houses were deliberately set on fire, money was extorted from them, and they were forced to relinquish their personal identity documents."

31. In accordance with resolution 1244 of the Security Council, Kosovo had not been controlled or governed by Serbia since 1999. The territory had been under international civil administration for an extended period. Norway is a long-standing contributor to the various international efforts to promote the objectives of Security Council resolution 1244. These include contributions to the NATO-led KFOR, the

⁴ International Criminal Tribunal for the former Yugoslavia, in *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Judgment 26 February 2009, vol. 2, p. 408, paragraph 1156.

Interim Administration Mission in Kosovo (UNMIK), the EU-led EULEX mission, the OSCE Mission in Kosovo, which is the largest field operation of the Organization for Security and Cooperation in Europe. In addition, Norway is a significant donor, contributing NOK 140 million (about EUR 17 million) in assistance to Kosovo in 2008.

32. As set out in the Norwegian Royal Decree of 28 March 2008, Norway took due note of the legal obligations undertaken by the two representatives of Kosovo, by reference to the Declaration of Independence, with regard to the Comprehensive Proposal for the Kosovo Status Settlement presented by the United Nations Special Envoy, comprising assurances for a multi-ethnic, democratic future for Kosovo and protection of the rights of all of Kosovo's communities, including the protection of the Serbian Orthodox Church in Kosovo, and international supervision of Kosovo. The Norwegian Government relies on the assurances provided by the President and the Prime Minister of Kosovo as a binding unilateral declaration containing a clear affirmation of international legal obligations, including as regards the protection of human rights.

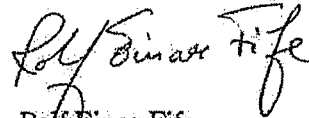
33. Norway respectfully notes that both its Royal Decree of 28 March 2008 and its letter of recognition of the same date show that Norway relied on the Declaration of Independence, in terms of international law, in so far as it was referred to in the statement made by representatives of a State, and as regards their expression of consent to be bound by specified international legal obligations and undertake commitments relating thereto.

34. Norway notes that the Declaration of Independence as such was not considered to constitute any legally binding unilateral declaration under international law. However, in so far as it subsequently was referred to by authoritative representatives of a State, it was considered part of a binding unilateral declaration under international law under the prevailing extraordinary circumstances described. Norway cannot fail to draw the attention of the Court to the importance attached by the Norwegian Government, as documented in the aforesaid Royal Decree and letter from the Foreign Minister of 28 March 2008, to the wording of the text as regards the declared willingness to become bound by important obligations of respect for human rights and other guarantees deemed relevant in the context of preservation of international peace and security, including Security Council resolution 1244. As such, the Declaration of Independence is, in the opinion of Norway, not in contravention of applicable rules of international law. On the contrary, the Declaration expresses commitments with regard to respect for human rights and other important guarantees. Norway considers the Declaration of Independence to have become part of a binding unilateral declaration containing a clear affirmation of international legal obligations that are deemed essential to international peace and security in the region and the promotion of human rights.

Conclusion

35. For the reasons set out in this statement, Norway respectfully requests the Court to find that the Declaration of Independence issued on 17 February 2008 does not contravene any applicable rule of international law.

Oslo, 16 April 2009



Rolf Einar Fife
Director General
Department for Legal Affairs
Ministry of Foreign Affairs
(Representative of the
Kingdom of Norway)

Annexes to the written statement

- Annex 1: Norwegian Royal Decree adopted by the King in Council on 28 March 2008
- Annex 2: Norwegian Royal Decree adopted by the King in Council on 28 March 2008 (English translation)
- Annex 3: Letter dated 28 March 2008 from the Norwegian Foreign Minister to the President and the Prime Minister of Kosovo

Annex 1

**Norwegian Royal Decree adopted by the King in Council on 28 March 2008
(for an English translation – see Annex 2)**

UTENRIKSDEPARTEMENTET
Utenriksminister Jonas Gahr Støre

KONGELIG RESOLUSJON

74

Ref. nr: 53

Saksnr:

Dato: 26. mars 2008

ANERKJENNELSE AV REPUBLIKKEN KOSOVO SOM SELVSTENDIG STAT – NÆRMERE FORUTSETNINGER

1. Bakgrunn

I 1974 ble Kosovo en autonom provins innenfor rammen av den serbiske republikk. Denne status ble fastslått i Den sosialistiske føderative republikk Jugoslavias grunnlov av 1974. Det omfattende selvstyret ble brakt til opphør under president Milošević i 1989, og førte til økende etnisk uro. Som følge av konfliktene i Jugoslavia tidlig på 1990-tallet, gikk den tidligere jugoslaviske føderasjonen i oppløsning. I 1998 ble også situasjonen i Kosovo satt på dagsorden i FNs sikkerhetsråd, som følge av omfattende overgrep mot den kosovo-albanske befolkning. Etter NATO-intervensjonen i 1999 vedtok Sikkerhetsrådet resolusjon 1244. Resolusjonen forutsatte et internasjonalt sivilt nærvær i FNs regi og et internasjonalt militært nærvær under NATOs ledelse (KFOR). Mens sistnevnte skulle ivareta sikkerhet og stabilitet, skulle det sivile nærværet under ledelse av UNMIK i en overgangsperiode arbeide for å utvikle sivile strukturer og kapasitet for et multietnisk Kosovo innenfor rammen av Den føderale republikken Jugoslavia.

Siden 1999 har serbiske myndigheter ikke utøvd myndighet i eller kontroll over territoriet, som har vært helt underlagt internasjonal administrasjon og selvstyreordninger, i påvente av nærmere avklaringer. Kosovos befolkning på ca. 2 millioner, består av over 90 prosent etniske albanere.

I 2005 satte Sikkerhetsrådet en avklaring av Kosovos endelige status på dagsorden, i samsvar med en anbefaling i en rapport skrevet av nordmannen Kai Eide i et oppdrag på vegne av FNs generalsekretær. Finlands tidligere president Martti Ahtisaari ble utnevnt til FNs spesialutsending for dette formål. Etter lange og resultatløse drøftelser med partene fremla han i februar 2007 et løsningsforslag, kjent som Ahtisaari-planen. Denne fikk tilslutning av FNs generalsekretær, og ble oversendt til FNs sikkerhetsråd 26. mars 2007 (FN-dok. S/2007/168). Sikkerhetsrådet kunne imidlertid ikke enes om denne.

2. Planens forslag og forutsetninger

En avklaring av Kosovos status er ansett av grunnleggende betydning for internasjonal fred og sikkerhet i regionen. Fortsatt usikkerhet om områdets status utgjør et hinder for Kosovos demokratiske utvikling, mulighetene for å kunne holde politiske myndigheter til ansvar, økonomisk gjenoppbygging og forsoning. Fortsatt usikkerhet ville lede til ytterligere stagnasjon, polarisering mellom etniske grupper, og sosial og politisk uro.

Dersom man ønsker et politisk stabilt og økonomisk levedyktig Kosovo, er det etter omfattende internasjonale bestrebelse ikke identifisert noe alternativ til uavhengighet for territoriet. Bare innenfor rammen av en selvstendig stat vil demokratiske institusjoner fullt ut kunne holdes til ansvar for godt styresett og effektiv beskyttelse av minoritetene i henhold til grunnlovsgarantier. Særlige minoritetsrettigheter, desentralisering, beskyttelse av den serbisk-ortodokse kirke i Kosovo og grunnleggende rettsstatsprinsipper står sentralt i denne forbindelse. I lys av Kosovos fortsatt begrensede kapasitet til å håndtere alle utfordringene, anses det fortsatt nødvendig med internasjonal støtte og oppsyn, inntil videre gjennom internasjonale sivile og militære nærvær. Internasjonalt oppsyn vil imidlertid ikke frita Kosovos myndigheter for et klart ansvar for gjennomføringen av kravene.

Alle muligheter til å utvirke en gjensidig akseptabel løsning mellom partene gjennom forhandlinger anses uttømt. Etter fornyede drøftelser i Sikkerhetsrådet er det gjennomført ytterligere forhandlinger med partene under ledelse av en troika utgått fra den såkalte kontaktgruppen frem mot utgangen av 2007. Situasjonen viste seg imidlertid fortsatt fastlåst, og det er heller ikke oppnådd enighet i Sikkerhetsrådet.

3. Selvstendighetserklæringen av 17. februar 2008

Den 17. februar 2008 vedtok den folkevalgte kosovarske forsamlingen en selvstendighetserklæring for Republikken Kosovo. Den bygger uttrykkelig på alle forutsetninger i Ahtisaari-planen, og understreker i punkt 3 at den nye staten påtar seg samtlige forpliktelser i denne. Sammen med prinsippene i Den europeiske menneskerettighetskonvensjon skal planen inngå i grunnlaget for en ny grunnlov. Erklæringen uttrykker Kosovos behov for, og ønske om, fortsatt støtte fra det internasjonale samfunn. Den nye staten skal arbeide for medlemskap i EU og euro-atlantisk integrasjon. Selvstendighetserklæringen er oversendt blant annet den norske regjering

av den proklamerte statens statsoverhode og utenriksminister. Ved en anerkjennelse er det i henhold til alminnelig folkerett grunnlag for å anse en slik oversendelse med det bilagte dokument, som en bindende ensidig viljeserklæring.

EUs utenriksministre avga i rådsmøte 18. februar 2008 en felles uttalelse, der de understreket EUs fortsatte ansvar og engasjement for stabilitet på Vest-Balkan og vilje til å spille en ledende rolle i å styrke denne. Erklæringen fra rådsmøtet fremhevet at Kosovos situasjon er et særtilfelle, hensett til konflikten i 1999 og den etterfølgende internasjonale administrasjon av territoriet.

NATOs råd har, på grunnlag av resolusjon 1244, erklært at KFOR-styrkene skal forbli i Kosovo med mindre FNs sikkerhetsråd bestemmer noe annet. Også alliansen understreker sitt ansvar for sikkerheten til Kosovos befolkning, herunder særlig de etniske minoritetene.

Pr. 25. mars 2008 har 32 stater anerkjent Kosovo som selvstendig stat. Disse omfatter blant annet samtlige øvrige nordiske land, og flertallet av EUs og NATOs medlemsland.

4. Vurdering

I mangel av avtalegrunnlag mellom partene, og i mangel av vedtak av FNs sikkerhetsråd som avklarer spørsmålet om endelige status, reiser situasjonen i Kosovo særskilte politiske og folkerettslige spørsmål.

Kosovos selvstyremyndigheter har overfor Norge og verden for øvrig anmodet om anerkjennelse som selvstendig stat. Fra norsk side er det holdt nær kontakt med Serbia og nærstående land i EU og Norden vedrørende spørsmålet om anerkjennelse. Norge ønsker å bevare det gode forholdet og samarbeidet som gjennom mange år er utviklet med Serbia.

Regjeringen legger vesentlig vekt på behovet for en snarlig avklaring av Kosovos status, og for de forutsetninger som ligger til grunn for beskyttelse av minoritetene og den serbisk ortodokse kirken i Kosovo. Videre vises til at det etter behandling i Sikkerhetsrådet er foretatt fornyede, men resultatløse forsøk på å oppnå en forhandlingsløsning mellom partene eller enighet i rådet.

Territoriet har siden 1999 ikke vært kontrollert eller styrt av Serbia. Sikkerhetsrådets resolusjon 1244 tar ikke stilling til spørsmålet om Kosovos endelige folkerettslige status. Det hadde vært ønskelig om FNs sikkerhetsråd hadde kunnet samle seg om en løsning, men fraværet inntil

videre av slikt vedtak fratår ikke FNs medlemsstater fra et ansvar for å bidra til fremme av fred og sikkerhet, demokratisk og økonomisk utvikling og menneskerettighetene, innenfor rammene av resolusjon 1244.

Det er ikke anerkjennelse som folkerettslig skaper en ny statsdannelse. Andre staters anerkjennelse bidrar derimot til rettslig avklaring av forholdet dem imellom. Folkerettens regler i tilknytning til anerkjennelse av stater forutsetter en politisk vurdering av faktiske forhold, knyttet til territorium, befolkning, organisert styre og sistnevntes rettslige handleevne i forhold til andre stater. Det legges vekt på at disse kravene for Kosovos vedkommende er ansett oppfylt av en lang rekke stater. Disse inkluderer sentrale giverland og bidragsyttere til de internasjonale militære og sivile nærvær i området, som lenge har gitt avgjørende bidrag til opprettholdelse og utvikling av fred og sikkerhet i området.

Selv en stat som ennå ikke er opptatt som medlem av FN, er i samsvar med FN-paktens artikkel 2 nr. 6 forpliktet til å respektere prinsippene i FN-pakten av betydning for internasjonal fred og sikkerhet, og må følge Sikkerhetsrådets resolusjoner, inklusive resolusjon 1244. Denne danner grunnlag for fortsatt internasjonalt nærvær, så lenge Sikkerhetsrådet ikke vedtar noe annet. Som ledd i sin helhetsvurdering, legger regjeringen dessuten vesentlig vekt på garantiene som er avgitt i forbindelse med oversendelsen av selvstendighetserklæringen av 17. februar 2008. Disse er formulert som en folkerettslig forpliktende viljeserklæring hva angår konstitusjonelle og andre garantier for beskyttelse av minoriteter og den serbisk ortodokse kirke i Kosovo. Dette må anses å inngå blant forutsetningene for en anerkjennelse.

I en helhetsvurdering legges videre til grunn at situasjonen i tilknytning til Kosovo utgjør et særtilfelle. Konflikten i 1999 og det faktum at Kosovo siden dette har vært under internasjonal administrasjon, utgjør helt særegne omstendigheter.

En anerkjennelse anses ikke å medføre administrative eller økonomiske konsekvenser av betydning, selv med en omlegging av diplomatisk representasjon i området.

Det tilrås på denne bakgrunn at Norge nå anerkjenner Republikken Kosovo som selvstendig stat og oppretter diplomatiske forbindelser med myndighetene i Pristina. Videre tilrås at Norge samtidig erklærer at brev av 17. februar 2008 bilagt selvstendighetserklæringen av samme dato, anses som en forpliktende folkerettslig viljeserklæring med hensyn til etterlevelse av derved avgitte garantier for minoritetsrettigheter, den serbisk ortodokse kirke i Kosovo og folkerettslige regler omtalt i erklæringen.

Utenriksdepartementet

tilrår:

1. Norge anerkjenner republikken Kosovo som selvstendig stat.
2. Ved meddelelse om dette til myndighetene i Kosovo, erklæres at deres brev av 17. februar 2008 bilagt selvstendighetserklæringen av samme dato, anses som en forpliktende folkerettslig viljeserklæring med hensyn til etterlevelse av avgitte garantier for minoritetsrettigheter, beskyttelse av den serbisk ortodokse kirke i Kosovo og folkerettslige regler omtalt i erklæringen.

Statsministerens kontor
Bifalt ved
kongelige resolusjon
27. mars 2008

av statsråd Solheim

Anna Frisak

CERTIFIED COPY
Royal Ministry of Foreign Affairs
OSLO NORWAY
07.04.09 Jcho
Jo Hovik

Annex 2

**Norwegian Royal Decree adopted by the King in Council on 28 March 2008
(English translation)**

Date of submission: 26 March 2008
Date of adoption by King in Council: 28 March 2008
Translation from the Norwegian

RECOGNITION OF THE REPUBLIC OF KOSOVO AS AN INDEPENDENT STATE – SPECIFICATION OF GROUNDS

1. Background

In 1974 Kosovo became an autonomous province within the Republic of Serbia. This status was specified in the constitution of the Socialist Federal Republic of Yugoslavia of the same year. The extensive autonomy it thereby acquired was brought to an end in 1989, under President Milosevic, and this led to an increase in ethnic unrest. The conflicts in Yugoslavia in the early 1990s resulted in the disintegration of the Socialist Federal Republic of Yugoslavia. In 1998 the situation in Kosovo was put on the agenda of the UN Security Council because of widespread violence against the Kosovo Albanian population. Following NATO's intervention in 1999, the Security Council adopted resolution 1244, which required an international civilian presence under the auspices of the UN and an international military presence under NATO leadership (KFOR). Whereas the latter was to ensure security and stability, the civilian presence, led by UNMIK, was to help during a transitional period to develop civilian structures and capacity for a multiethnic Kosovo within the framework of the Federal Republic of Yugoslavia.

Since 1999 the Serbian authorities have not exercised authority or control over the territory of Kosovo, which has been entirely under international administration combined with self-governance arrangements pending further clarification. Kosovo has a population of about 2 million, of which more than 90% are ethnic Albanians.

In 2005 the issue of Kosovo's final status was put on the Security Council's agenda, as recommended in the report produced by the Norwegian Kai Eide on behalf of the UN Secretary-General. Former Finnish President Martti Ahtisaari was appointed as UN Special Envoy for this task. In February 2007, after long, fruitless consultations with the parties, he presented a proposal for a settlement, which is known as the Ahtisaari Plan. It was endorsed by the UN Secretary-General and submitted to the UN Security Council on 26

March 2007 (UN Doc. S/2007/168). The Security Council was, however, unable to reach agreement on the plan.

2. The proposals and conditions set out in the Ahtisaari plan

The clarification of Kosovo's status is considered to be of fundamental importance for international peace and security in the region. Continuing uncertainty about the territory's status is an obstacle to Kosovo's democratic development, political accountability, economic recovery and reconciliation. Continuing uncertainty would lead to further stagnation, polarisation between ethnic groups, and social and political unrest.

In spite of extensive international efforts, no alternative to independence for the territory has been identified if the aim is to ensure a politically stable and economically viable Kosovo. Only within the framework of an independent state can democratic institutions be held fully accountable for good governance and the effective protection of minorities in accordance with constitutional guarantees. Critical areas here are minority rights, decentralisation, the protection of the Serbian Orthodox Church in Kosovo and the principles of the rule of law. In the light of the fact that Kosovo's capacity to deal with all of these challenges remains limited, continued international assistance and supervision is considered necessary, for the time being through an international civilian and military presence. Notwithstanding this international involvement, Kosovo's authorities will ultimately be responsible and accountable for the implementation of the Settlement proposal.

It is considered that every possible means of achieving a negotiated settlement has been exhausted. Following renewed debate in the Security Council, further negotiations between the parties were held towards the end of 2007 under the auspices of a troika originating from the Kosovo Contact Group. However, the situation remained deadlocked, and it has not been possible to reach agreement in the Security Council either.

3. The declaration of independence of 17 February 2008

On 17 February 2008 the democratically elected Assembly of Kosovo adopted a declaration of independence for the Republic of Kosovo. It is explicitly based on all the conditions set out in the Ahtisaari Plan, and it emphasises in Section 3 that the new state fully accepts the obligations for Kosovo contained in the plan. The Ahtisaari Plan, together with the principles set out in the European Convention on Human Rights, will also form the basis for a new constitution. The declaration expresses that Kosovo needs and welcomes the international community's continued support. The

new state declares its intention to take all steps necessary to facilitate membership in the European Union, as well as Euro-Atlantic integration. The declaration of independence was communicated to the Norwegian Government, among others, by the Head of State and Prime Minister [corr. in transl.] of the proclaimed state. Under public international law, there are grounds for considering such a communication, together with the enclosed document, as a binding unilateral declaration in connection with the recognition of a new state.

At a Council meeting on 18 February 2008, the EU Foreign Ministers issued a joint statement, in which they recalled the European Union's longstanding commitment to the stability of the Western Balkans region and reiterated the European Union's readiness to play a leading role in strengthening stability in the region. The statement underlined that in view of the conflict of the 1990s and the extended period of international administration, Kosovo constitutes a *sui generis* case.

On the basis of Security Council resolution 1244, the North Atlantic Council has declared that the KFOR troops are to remain in Kosovo unless otherwise determined by the UN Security Council. The Alliance also underlines its responsibility for safeguarding the security of the people of Kosovo, and of the ethnic minorities in particular.

As of 25 March 2008, 32 states have recognised Kosovo as an independent state. These include all the other Nordic countries and the majority of EU and NATO member states.

4. Assessment

Due to the lack of an agreement between the parties and any decision by the UN Security Council clarifying the question of Kosovo's final status, the situation in Kosovo raises particular political questions as well as questions of international law.

Kosovo's self-government authorities have requested Norway and the rest of the world to recognise Kosovo as an independent state. Norway has remained in close contact with Serbia, like-minded countries in the EU and other Nordic countries regarding the question of recognition. Norway wishes to maintain its close relations and cooperation with Serbia, which have been developed over many years.

The Government considers the need for a prompt clarification of Kosovo's status and the provisions regarding the protection of minorities and of the Serbian Orthodox Church in Kosovo to be of great importance. It should

also be noted that following the Security Council's deliberations, renewed, but fruitless, efforts have been undertaken to reach a negotiated solution between the parties or agreement in the Security Council.

Since 1999 the territory has not been controlled or governed by Serbia. Security Council resolution 1244 does not take a position on the question of Kosovo's final status under international law. It would have been preferable if the Security Council had been able to agree on a solution, but the current lack of such a decision does not relieve the UN member states of responsibility for promoting peace and security, democratic and economic development and respect for human rights, in accordance with Security Council resolution 1244.

Under international law, it is not recognition that creates a new state. However, recognition by another state provides a legal clarification of the relationship between the recognising state and the state it has recognised. The provisions of international law concerning the recognition of states require that an assessment be made of factual circumstances as regards territory, population, governance structure and this government's legal capacity in relation to other states. Emphasis is given to the fact that a large number of states consider these requirements to be fulfilled in Kosovo's case. These include key donor countries and contributors to the international military and civilian presence in the area, which has for a long time played a decisive role in maintaining and promoting peace and security in this area.

According to Article 2(6) of the UN Charter, even a state that is not a member of the UN has the obligation to act in accordance with the principles of the Charter so far as may be necessary for the maintenance of international peace and security, and it must also comply with Security Council resolutions, including resolution 1244. This resolution provides the basis for the international presence in Kosovo until the Security Council decides otherwise. In its overall assessment, the Government places great emphasis on the guarantees provided in connection with the communication of the declaration of independence of 17 February 2008. These guarantees are formulated as a declaration that is binding under international law as regards constitutional and other guarantees related to protection of minorities and of the Serbian Orthodox Church in Kosovo. These guarantees must be considered to be among the grounds for recognition.

The overall assessment is also based on the fact that the situation in Kosovo constitutes a *sui generis* case. The conflict in 1999 and the fact that Kosovo has been under international administration ever since are unique circumstances.

It is not expected that recognition of Kosovo will have any significant administrative or economic consequences, even when a reorganisation of Norway's diplomatic representation in the area is taken into account.

On the basis of the above it is recommended that Norway recognise the Republic of Kosovo as an independent state and establish diplomatic relations with the authorities in Pristina. It is further recommended that Norway declare that the letter of 17 February 2008 and the enclosed declaration of independence of the same date be considered as a declaration that is binding under international law as regards the fulfilment of the therein provided guarantees related to community rights and the protection of the Serbian Orthodox Church in Kosovo and the rules of international law referred to in the declaration of independence.

The Ministry of Foreign Affairs

recommends that:

1. Norway recognise the Republic of Kosovo as an independent state.
2. When the authorities in Kosovo are informed of this, a declaration be made to the effect that their letter of 17 February 2008 and the enclosed declaration of independence of the same date be considered as a declaration that is binding under international law as regards the fulfilment of the therein provided guarantees related to community rights and the protection of the Serbian Orthodox Church in Kosovo and the rules of international law referred to in the declaration of independence.



Certified true and correct translation

Sandra Hamilton

Sandra Hamilton
Head of Translation Section

Annex 3

Letter dated 28 March 2008 from the Norwegian Foreign Minister to the
President and the Prime Minister of Kosovo



ROYAL MINISTRY
OF FOREIGN AFFAIRS

Minister of Foreign Affairs

28 March 2008

Your Excellencies,

I have the pleasure to refer to your letter of 17 February 2008 in which you informed the Government of Norway of the decision taken by the Assembly of Kosovo to declare Kosovo's independence.

Norway takes due note of the legal obligations undertaken by Your Excellencies on behalf of Kosovo with regard to the Comprehensive Proposal for the Kosovo Status Settlement presented by the United Nations Special Envoy. These comprise assurances for a multi-ethnic, democratic future for Kosovo and protection of the rights of all of Kosovo's communities, including the protection of the Serbian Orthodox Church in Kosovo, and international supervision of Kosovo, as detailed in the Comprehensive Proposal.

I have against this background the honour to inform Your Excellencies that the Government of Norway as of today formally recognizes the Republic of Kosovo as a sovereign and independent State.

The Government of Norway relies on the assurances provided in your letter of 17 February 2008 as a clear affirmation of international legal obligations.

In reply to the readiness expressed by the Government of the Republic of Kosovo to establish diplomatic relations between the Republic of Kosovo and the Kingdom of Norway, I can express full agreement.

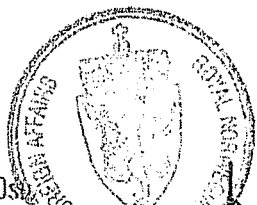
H.E. Fatmir Sejdiu
President
of the Republic of Kosovo

H.E. Hashim Thaçi
Prime Minister
of the Republic of Kosovo

TRUE COPY CERTIFIED

Consular Section

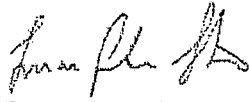
Royal Ministry of Foreign Affairs, Oslo



I have the honour to inform Your Excellencies that it is the intention of the Government of Norway to seek the agrément of the Government of Kosovo for Ambassador Carl Shjøtz Wibye, Skopje, to be accredited as non-resident ambassador Extraordinary and Plenipotentiary of Norway to Kosovo. Norway intends to establish a resident embassy in Pristina, to be headed by Minister Counsellor Sverre Johan Kvale, in the capacity of Chargé d'Affaires a.i.

I look forward to a good and constructive co-operation between our two countries.

I have the honour to convey to Your Excellencies the assurances of my highest consideration.



Jonas Gahr Støre

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