



*Embassy of the  
Argentine Republic*

No. OI 48/2009

The Hague, July 15, 2009

Dear Mr. Registrar:

I have the honour to refer to your note No. 133310 of October 20, 2008, regarding the request for an advisory opinion submitted to the International Court of Justice by the General Assembly of the United Nations on the question of the "Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo".

In this regard and on behalf of the Government of the Argentine Republic I hereby submit comments on the written statements on the above mentioned question included in your notes No. 134141 and No. 134178. Following your recommendation, please find attached to this letter thirty (30) bound paper copies of those comments and one (1) CD-ROM containing the electronic version.

I avail myself of the opportunity to renew to you the assurances of my highest consideration.

Santos Goñi Marengo  
Ambassador

Mr. Philippe COUVREUR  
Registrar of the International Court of Justice  
The Hague

**INTERNATIONAL COURT OF JUSTICE**

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

**REQUEST FOR AN ADVISORY OPINION**

**WRITTEN COMMENTS OF THE  
ARGENTINE REPUBLIC**

**17 July 2009**



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## Introduction

1. The present Written Comments are filed pursuant to the Court's Order of 17 October 2008 upon the request for an advisory opinion made by the General Assembly of the United Nations in its resolution 63/3 of 8 October 2008 on the *Accordance with international law of the unilateral declaration of independence by the provisional institutions of self-government of Kosovo*.
2. Pursuant to the same Order, the Argentine Republic (hereinafter "Argentina") filed its Written Statement (hereinafter "AWS") on 17 April 2009. Thirty-five other States also produced written statements. The authors of the unilateral declaration of independence (hereinafter "UDI") by the provisional institutions of self-government (hereinafter "PISG") of Kosovo of 17 February 2008 also filed their written contribution, as authorised by the Court's Order. However, the authors of that declaration presented themselves as the "Republic of Kosovo", in a way that is not in conformity with international law and with the Order itself. Argentina notices that the Court has not invited any entity called the "Republic of Kosovo" to participate in these proceedings and considers that no State called "Republic of Kosovo" exists. Consequently, it is Argentina's view that the participation of the authors of the UDI in these proceedings must strictly be confined to the terms of the Court's Order, which is in no way equivalent to the participation of States.
3. Predictably, some States advanced the idea that the UDI is not in conformity with international law, whereas other States, as well as the authors of the UDI, considered that it is. Nevertheless, a few points of agreement among the participants of the first round of written pleadings can be identified. *First*, it has generally been acknowledged that the principle of respect for the territorial integrity of States is of paramount importance in international relations, although some States advocate for its non-applicability to non-State actors and others advance the idea of the *sui generis* and "non-precedent" character of

Kosovo in order to justify what would be a departure from its respect. *Second*, with the sole exception of the authors of the UDI, Security Council Resolution 1244 (1999) (hereinafter “UNSCR 1244 (1999)”) is considered to still be in force and is regarded as a cornerstone for the legal analysis of the situation under scrutiny. *Third*, it is generally accepted that the right to self-determination only belongs to a ‘people’, as this term is narrowly construed under international law. Noticeably, some States and also – conspicuously – the authors of the UDI themselves, requested the Court not to analyse whether the inhabitants of Kosovo constituted a people entitled to exercise self-determination. *Fourth*, with the exception of Albania and France, no State has challenged the clear jurisdiction of the Court to render an advisory opinion in the current proceedings. Like Argentina, several other States have expressly analysed and referred to the jurisdiction of the Court and the absence of compelling reasons that would lead the Court not to respond to the General Assembly’s request, whereas other States directly analysed the merits of the question without challenging the Court’s jurisdiction.

4. However, clear points of disagreement emerge from the texts submitted in the first round of written pleadings. These are:
  - (1) Who the authors of the UDI are;
  - (2) The scope and effect of the UDI;
  - (3) Whether international law applies to the UDI, including the relevance of territorial integrity in cases of secessionist attempts;
  - (4) The argument that international law is allegedly “neutral” vis-à-vis the creation of States in general and secession in particular;
  - (5) Whether the population of Kosovo is entitled to exercise self-determination, particularly through the application of the so-called doctrine of “remedial secession”;
  - (6) Whether the UDI is or is not in accordance with UNSCR 1244 (1999), both with regard to the regime established by this resolution as well as with regard to the procedure contained therein for the purpose of determining the future status of the territory;

- (7) Whether the legal determination the Court is requested to make in the question submitted by the General Assembly will have any concrete effect.
5. At the same time, it should be noted that in some written statements and in the written contribution of the authors of the UDI considerable effort has been exerted in attempts to avoid any legal analysis, or even worse, to replace legal analysis with political considerations, in most cases presenting these as though they were incontrovertible “evident truths” that are not susceptible to any kind of analysis. Argentina, relying on the rule of law, strongly rejects this perception and this approach, which presupposes the primacy of power over law. What the General Assembly has requested is the Court’s legal, not political, analysis. Argentina has full confidence in the role of the International Court of Justice as the principal judicial organ of the United Nations.
  6. The present Written Comments will be confined to a brief analysis of a discreet number of issues. Since some of the arguments developed in written statements and in the written contribution of the authors of the UDI have already been answered in its own written statement, Argentina respectfully refers the Court to its written statement of 17 April 2009. Argentina reserves its position with regard to any aspect of the question submitted to the Court, both of fact and law, which was addressed in other texts submitted in the first round of the present written pleadings.
  7. These Written Comments are divided into three parts.
  8. The first part will briefly address those arguments advanced to deny jurisdiction and propriety, even if some of these arguments are not of a preliminary character. Evidence of this is the fact that the two States invoking the lack of jurisdiction of the Court advance the same arguments that other States rely upon for contending that the UDI is not in contradiction with

international law, i.e. that the creation of States is a pure matter of fact and that the UDI is not regulated by international law<sup>1</sup>.

9. The second part concerns some preliminary issues raised by some written statements and the written contribution of the authors of the UDI, advanced with the clear intention of avoiding the application of the relevant rules of international law to the UDI and hence the situation created by it. These issues are whether the PISG of Kosovo were or not the authors of the UDI, whether the UDI should be subject to legal analysis based on its legal nature, and whether Kosovo is or is not a so-called “special case”.
10. The third part will focus on the relevant legal issues that have been raised by the General Assembly’s request for an advisory opinion. These issues are whether the UDI is or is not in accordance with the principle of respect of the territorial integrity of Serbia, with UNSCR 1244 (1999), and with the international law rules concerning the peaceful settlement of disputes; whether the UDI can or cannot be justified under international law on the basis of an exercise of the right to self-determination, and consequently whether the inhabitants of Kosovo are a “people” as this term is narrowly construed under international law; and lastly, whether facts that have occurred after 17 February 2008 have altered the legal situation existing at the time of the issuance of the UDI.

**Section I: Arguments advanced to deny the jurisdiction of the Court and the judicial propriety of giving an advisory opinion are not justified**

11. Argentina considers that the competence of the General Assembly to request the present advisory opinion, and the legal nature of the question submitted, are well established. There are also no compelling reasons preventing the Court to exercise its advisory jurisdiction<sup>2</sup>. This section will comment on the

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<sup>1</sup> Cf. Albania WS (paras. 43-44) and France WS (para. 2.4) on the one hand, and UK WS (paras. 6.65) and the USA WS (p. 52) on the other hand.

<sup>2</sup> WSA, paras. 14-38.



following arguments raised by a minority number of States, to demonstrate that they are not accurate:

- (A) “The creation of States is a pure matter of fact not regulated by international law”;
- (B) “The General Assembly does not have any interest and cannot act in this matter”;
- (C) “The advisory opinion will not have any practical effect”.

**(A) The creation of States is a matter of fact and law**

12. There is abundant regional and universal practice demonstrating that the creation of new States is governed by international law. Suffice to mention the examples of Katanga, Rhodesia, Biafra, the Bantustans, the so-called “Turkish Republic of Northern Cyprus”, Anjouan, “Somaliland”, the Serb entities within Croatia and Bosnia and Herzegovina, and the autonomous Republics within Georgia, among others<sup>3</sup>. Unilateral declarations of independence have either been considered illegal or the groups wishing to secede territory have been warned that any entity so declared would be in contradiction to the territorial integrity of the State concerned, and would not be accepted<sup>4</sup>. On the other hand, international law has recognised the right for new States to be created where the principle of self-determination is applicable, as the title itself of UNGAR 1514 (XV) clearly shows<sup>5</sup>. Consequently, the UN actively promoted the creation of the independent State of Namibia, and it recognised the validity of a unilateral declaration of independence in the case of the Republic of Guinea-Bissau<sup>6</sup>. This is enough to dispose of the argument that the creation of States is an exclusive matter of fact or that international law remains neutral with regard to the creation of States. Such an argument is *inter*

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<sup>3</sup> See UNSCR 169 (1961), 216 (1965), 541 (1983), 787 (1992), 1781 (2007), UNGAR 31/6A, 32/105N, 34/93G.

<sup>4</sup> See UNSCR 787 (1992), 1769 (2007), 1701 (2006).

<sup>5</sup> Declaration on the Granting of the Independence to Colonial Peoples and Countries.

<sup>6</sup> UNSCR 435 (1978), 356 (1974) and UNGAR 3061 (XXVIII) of 2 November 1973.

*alia* manifestly incompatible with the existence of UNSCR 1244 (1999), which regulates Kosovo.

13. Moreover, it is noted in passing that many States promoting the secession of Kosovo from Serbia and advancing the “factual” or “international legal neutrality” argument have themselves identified in their written statements situations where international law nevertheless intervenes and prevents the creation of a new State, even where the factual constitutive elements for this creation have been present. According to these States, this is the case when rules concerning the prohibition of the use of force, racial discrimination, self-determination, foreign intervention, respect for international agreements, and more generally, the violation of peremptory norms, are at stake<sup>7</sup>. Another relevant rule that has not been explicitly mentioned by these same States is respect for the territorial integrity of States. Equally, whilst some of these States have mentioned binding international agreements, they have failed to mention relevant UN resolutions, like UNSCR 1244 (1999) that applies to the case of Kosovo.

**(B) The General Assembly has a concrete interest in submitting the question to the Court**

14. Article 10 of the UN Charter provides a large number of bases for the General Assembly to have an interest in submitting the question of the UDI of Kosovo to the Court. Argentina has emphasized the specific responsibility of the UN with regard to a territory that has been placed under international administration. The fact that the Secretary-General’s and his Special Representative’s action in conformity with UNSCR 1244 (1999) is not being fully implemented, due to the lack of legal determination of the situation, is a matter of direct concern for the General Assembly. The same can be said with regard to the lack of action by the Security Council on the issue, due to the existence of opposing views among its permanent members. It can be recalled that UNSCR 1244 (1999) established no time limits for this regime, which

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<sup>7</sup> See Estonia WS (p. 4), Finland WS (pp. 2-3), France WS (paras. 1.5 and 1.15), Ireland WS (para. 22-23), and Germany WS (pp. 29-30).

remains in place until the Security Council decides otherwise<sup>8</sup>, in clear contrast with the other UN operations that require the adoption of Security Council resolutions explicitly prolonging the presence of an international operation<sup>9</sup>. By virtue of Article 10 of the Charter, the General Assembly “may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter”. The General Assembly can consequently recommend action to the other organs. This in no way contradicts Article 12, paragraph 1, of the Charter, as has been argued<sup>10</sup>. The Court has also already had the opportunity to rebut similar reasoning<sup>11</sup>. For the reasons mentioned in the WSA, the General Assembly is perfectly entitled to request the advisory opinion on this clear legal question.

**(C) The advisory opinion will have important practical effects**

15. Leaving aside the fact that, as the Court has previously noted, it is for the General Assembly “to decide for itself on the usefulness of an opinion in the light of its own needs”,<sup>12</sup> the argument that the advisory opinion in the current proceedings cannot have any practical effect is self-serving and – more seriously – indicates that some States have intend to simply disregard the advisory opinion if the Court does not provide an opinion that accords with their views.

16. It has been argued that the advisory opinion will not have any effect because, regardless of the legality of the UDI, an “independent State” called Kosovo will continue to exist<sup>13</sup>. This argument goes even further than the “international law neutrality” theory. Indeed, it constitutes a blatant rejection

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<sup>8</sup> UNSCR 1244 (1999), operative para. 19.

<sup>9</sup> E.g. UNSCR 1079 (1996) 1120 (1997) extended the United Nations Transitional Authority in Eastern Slavonia, Baranja and Western Sirmium mandate; UNSCR 126 (1999) extended the United Nations Transitional Administration in East Timor mandate.

<sup>10</sup> Albania WS, para.52 ; France WS, para. 1.28-1.42.

<sup>11</sup> Cf. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 150, para. 28.

<sup>12</sup> *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 237, para. 16.

<sup>13</sup> France WS, para. 2.4.

of international law. If this were generally true, it would mean that the international reaction to other secessionist attempts defying international law in the past, would, at best, be superfluous, and at worse, illegal, since if a State exists, it has rights and obligations that would have been denied by such reactions. As a matter of course, the contrary is the case. If a unilateral act which purports to create a State is illegal, the only possible legal consequence is that it does not produce the effect desired by its authors. This is a basic premise for the functioning of international law, and indeed of any legal system. An illegal unilateral annexation of territory does not produce a transfer of sovereignty, regardless of whether the annexing State is in control of the territory. Similarly, a unilateral termination of a treaty which is not in conformity with the law of treaties does not produce the termination of the treaty concerned. Examples can continue.

17. Strikingly, this position adopted by States such as Albania, France, the United Kingdom and the United States of America<sup>14</sup>, is based on the assumption that an independent State does exist, a claim which strikes at the core of the question raised by the General Assembly. As it has been mentioned in the AWS<sup>15</sup>, neither the factual nor the legal conditions for the existence of a State are present in the case of Kosovo.

18. The purported existence of a so-called “Republic of Kosovo” is not an “irreversible fact”, as some States contend, thereby evincing their political desire to impose a given solution on a situation regulated by the UN. If the UDI is not in conformity with international law, as indeed it is not, the practical effect of the advisory opinion will be that the PISG of Kosovo will continue to be treated by the UN in the manner prescribed by the Constitutional Framework adopted by the Secretary-General’s Special Representative, that the Special Representative must entirely assume the tasks delegated to him by the Secretary-General in accordance to UNSCR 1244 (1999), that the political process for determining the future status of Kosovo will reassume, and in other words, that UNSCR 1244 (1999) – a binding

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<sup>14</sup> Albania WS, paras. 43-44; France WS, para. 2.4; UK WS, paras. 6.65; USA WS. UK WS p. 52.

<sup>15</sup> AWS, paras. 115-131. See also Serbia WS, paras. 943-985.

resolution still in force, as acknowledged even by the States having recognised the so-called “Republic of Kosovo” – will be effectively implemented in all its aspects.

19. The fact that other unilateral declarations of independence not made in accordance with international law which subsequently have been factually reversed, proves that an attempt to create a new State in circumstances contrary to international law does not create in turn an “irreversible fact”, and that arguments that the purported new State is a *fait accompli* are fundamentally flawed. The cases of Anjouan and Aceh are illustrative.
  
20. The local government of Anjouan, one of the islands composing the Union of the Comoros (formerly the Federal Islamic Republic of the Comoros), unilaterally declared its independence on 3 August 1997. The declaration was followed by a referendum in which 99.88 % of the participants voted in favour of independence. The local government exercised effective control over the island and even succeeded in expelling a military operation launched by the central government to put an end to the separatist movement. This situation lasted for four years, when under the auspices of the Organization of African Unity, an internal agreement was concluded between the central and the local authorities, granting to Anjouan more autonomy than it enjoyed in the past<sup>16</sup>.
  
21. The unilateral declaration of independence of Banda Aceh was proclaimed on 4 December 1974<sup>17</sup>. The longstanding civil war that followed only ended with the Memorandum of Understanding signed on 15 August 2005<sup>18</sup>, concluded under the auspices of Mr. Martii Ahtisaari’s mediation, who proposed a large autonomy for the region maintaining Indonesian sovereignty, although Indonesian armed forces had withdrawn from the territory. A monitoring

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<sup>16</sup> See A. Oraison, ‘L’obligation de non-reconnaissance de l’Etat d’Anjouan (Les problèmes posés par la nouvelle balkanisation de la République fédérale islamique des Comores)’, *Revue de droit international, de sciences diplomatiques et politiques*, 1998, vol. 76 n° 2, pp. 159-183 ; F. Ouguergouz and D.L. Tehindrazanarivelo, ‘La problématique de la sécession en Afrique’, in M.G. Kohen (ed), *Secession. International Law Perspectives* (Cambridge : CUP, 2006), pp. 270-271.

<sup>17</sup> Text available at : <http://acehnet.tripod.com/declare.htm>

<sup>18</sup> Text available at : [http://www.cmi.fi/files/Aceh\\_MoU.pdf](http://www.cmi.fi/files/Aceh_MoU.pdf)

mission constituted by the European Union and ASEAN contributing countries was also established.

22. To speak about Kosovo's situation as an "irreversible fact" is all the more surprising since the concrete situation is characterised by a strong international presence having paramount power, the legal origin of which is UNSCR 1244 (1999) and not a purported authorisation of a so-called "independent State". It must be added that the majority of States does not recognise the existence of a new sovereign State, that the international regime set out by UNSCR 1244 (1999) requires the adoption of a further resolution by the Security Council to be terminated and that the sovereign State, Serbia, has consistently taken the position that it will not consent to any unilateral declaration of independence. To complete the picture, mention must be made of the two hundred thousand displaced persons from Kosovo in other parts of Serbia, as well as other countries, whose right to return home has been recognised by the UN, but has not yet been implemented. Furthermore, in some parts of the Province of Kosovo the PISG no longer exercise their authority since they began purporting to act as though they were the organs of an independent State. This is a far cry from an "irreversible fact". The UDI not only has not put an end to the international regime established by UNSCR 1244 (1999), but has gravely exacerbated the difficulties for reaching a lasting and just settlement to the conflict.

23. Clearly, a legal determination by the Court of the situation arising from the UDI will help the UN organs to perform their duties, and will allow member States to accommodate their political action towards Kosovo with due regard for international law. In this sense, the claim that the Court's advisory opinion "pourrait avoir des conséquences politiques regrettables, notamment celle d'envenimer la situation en cristallisant les positions des uns et des autres"<sup>19</sup> is particularly unfortunate. On the contrary, what is lacking in the current situation is legal guidance and the will of some actors to act in conformity with international law. From the point of view of the UN, the advisory opinion

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<sup>19</sup> France WS, para. 1.18.

will help the UN political organs to put an end to the legal uncertainty with which they are acting. The so-called UN policy of neutrality towards the UDI, if it lasts, will contribute to maintaining a conflict without any prospect of reaching a solution, in a situation in which the UN bears direct responsibility on the basis of a resolution adopted under Chapter VII of the Charter.

24. The idea that an advisory opinion will “menacer l’équilibre trouvé sur le terrain”<sup>20</sup> cannot be sustained for two simple reasons: *first*, it is difficult to see how an advisory opinion in which the Court provides a legal answer can threaten anything (with the exception of the position of those embracing illegality), and *second*, to call “équilibre” the current situation in Kosovo sounds strange – to say the least – when major problems (factual impossibility of return for displaced persons, ethnic separation, lack of a serious and fair judiciary, the unknown fate of missing persons, and other issues mentioned in the Secretary-General recent reports<sup>21</sup>) still remain unresolved and were exacerbated by the UDI.

## **Section II: Arguments invented for the purpose of avoiding a legal analysis of the UDI must be rejected**

25. This section addresses some arguments made with the intention of avoiding a legal analysis of the UDI, but which implicitly acknowledge that the UDI is not in conformity with international law. These arguments are:
- (A) That the PISG of Kosovo are not the authors of the UDI;
  - (B) That the UDI is a mere statement of purpose without any legal consequences;
  - (C) That Kosovo is a *sui generis* case.

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<sup>20</sup> France WS, para. 1.19.

<sup>21</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN doc. S/2009/300 (10 June 2009); Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN Doc. S/2009/149 (17 March 2009); Report of the Secretary-General on the United Nations Administration Mission in Kosovo, UN Doc. S/2008/6922 (4 November 2008); Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN Doc. S/2008/458 (15 July 2008); Report of the Secretary-General on the United Nations Interim Mission in Kosovo, UN Doc. S/2008/211 (28 March 2008).

**(A) The authors of the UDI are undoubtedly the PISG**

26. Contrary to abundant evidence and the factual ascertainment made by the General Assembly in the wording of the very question submitted to the Court, some States, as well as the authors of the UDI, have advanced the idea that the UDI was not issued by the PISG, but by “the representatives” of a purported “Kosovar people”<sup>22</sup>. This is clearly an attempt to avoid providing a straightforward answer to question raised by the General Assembly, since it is apparent that the PISG, created by the UN in the framework of the international administration of a territory, cannot unilaterally put an end to the regime established by Resolution 1244 (1999) and infringe the territorial integrity of a member State of the Organisation.

27. Overwhelming evidence emanating from the UN<sup>23</sup>, the authors of the UDI themselves<sup>24</sup>, and the States having recognised a so-called “Republic of Kosovo”<sup>25</sup> shows that the UDI was adopted by the Assembly of Kosovo and

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<sup>22</sup> Authors of the UDI WC, para. 6.01.

<sup>23</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN Doc. S/2008/211 (28 March 2008), para. 3.

<sup>24</sup> Authors of the UDI WC, Annex 2, p. 227.

<sup>25</sup> Albania, Recognition, Statement of Prime Minister: “Based on Declaration of Assembly of Albania, on October 21, 1991, in compliance with decision of Assembly of Kosovo, on February 17, 2008 for Declaration of Independence...”, available at: <http://www.keshilliministrave.al/index.php?fq=brendaandm=newsandlid=7323andgj=gj2>; available also via: <http://www.kosovothankyou.com/>; Denmark, Recognition, Press Release: “On 17 February 2008, the Assembly of Kosovo declared Kosovo’s independence.” Available at: <http://www.um.dk/en/servicemenu/News/NewsArchives2008/DenmarkRecognizesKosovoAsAnIndependentState.htm>; Estonia, Recognition, Press Release: “The Kosovo Assembly declared the province independent from Serbia on 17 February.” Available at: [http://www.vm.ee/eng/kat\\_138/9350.html](http://www.vm.ee/eng/kat_138/9350.html); Pressemitteilung der Bundesregierung Nr. 51, Zustimmung des Kabinetts zur völkerrechtlichen Anerkennung des Kosovo vom 20.02.2008: “Am 17. Februar 2008 hat die Parlamentarische Versammlung in Pristina eine Unabhängigkeitserklärung verabschiedet.” Available at: [http://www.bundesregierung.de/nn\\_1264/Content/DE/Pressemitteilungen/BPA/2008/02/2008-02-20-erkennung-des-kosovo.html](http://www.bundesregierung.de/nn_1264/Content/DE/Pressemitteilungen/BPA/2008/02/2008-02-20-erkennung-des-kosovo.html); Ireland, Recognition, Press Release: “The recognition of Kosovo by Government decision follows a resolution by the Kosovo Assembly on 17th February to declare Kosovo independent.” Available at: <http://foreignaffairs.gov.ie/home/index.aspx?id=42938>; Latvia, Recognition, Press Release: „Respecting the declaration adopted by the Assembly of the Republic of Kosovo on 17 February, the Republic of Latvia recognises the independence of the Republic of Kosovo.” Available at: <http://www.mfa.gov.lv/en/news/press-releases/2008/february/20-4/>; Lithuania, Recognition, Resolution: “the declaration of independence of Kosovo adopted by the Assembly of Kosovo on 17 February 2008 and declaring Kosovo an independent and sovereign state...” Available at: <http://www3.lrs.lt/docs2/JISENYRJ.DOC>; Norway, Recognition, Original Letter: “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 WS,



was endorsed by the President and the Prime Minister, all of which comprised the PISG. These organs purported to stop acting as the PISG and considered themselves to be acting as the Assembly, the President and the Prime Minister of an alleged “new independent State” immediately after the adoption of the UDI. Noticeably, there were no elections held for the individuals taking up positions in the Assembly, as the President or as the Prime Minister of this purported “new State”, for the simple reason that they had already been elected as organs of the PISG and were acting in that capacity. Clearly, in the opinion of the authors of the UDI, the adoption of the UDI resulted in a change in their legal situation, and they henceforth considered themselves to be the representatives of a new sovereign State, thereby putting an end to Serbian sovereignty and UN administration of the territory.

**(B)The UDI is an act that aims at producing certain legal effects and is subject to legal analysis**

28. It has been argued that the UDI alone produces no legal effects since it would just be a part of a complex process leading to the creation of a new independent State<sup>26</sup>. This is, once again, an attempt to avoid analysing the purported creation of so-called new States under international law. According to the very wording of the UDI, the UDI constitutes the starting point of the existence of a purported “new State”. As mentioned above, after its adoption, the PISG began to act as though they were the organs of a new State. If there was a process attempting to lead to the creation of an alleged “new State”, then the UDI purports to constitute the end of such a process and, consequently, a legal analysis of the UDI serves to determine whether the proclaimed “independent State” does, nor does not, exist.

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Annex 3; Poland, Recognition, Press Release: “On 17 February 2008, the National Assembly of Kosovo adopted a declaration of independence...” Available at: <http://www.premier.gov.pl/english/s.php?id=1793>; Switzerland, Recognition, Media Release, “The Federal Council took note of the Declaration of Independence adopted by the Assembly of Kosovo on 17 February 2008...” Available at: <http://www.eda.admin.ch/eda/en/home/recent/media/single.html?id=17497>; Sweden, Recognition, Press Release: “On 17 February the Kosovo Assembly adopted a resolution which declares Kosovo to be independent.” Available at: <http://www.sweden.gov.se/sb/d/10358/a/99714>.

<sup>26</sup> Czech Republic WS, p. 6; Authors of the UDI WC, para. 8.11.

29. States now claiming that the UDI has no legal effects nevertheless considered the UDI to mark the beginning of the existence of a new State, considering that the so-called “Republic of Kosovo” was bound by the engagements it assumed in the UDI.
30. Norway was aware in its WS of the contradiction of trying to deprive the UDI of 17 February 2008 of any legal effect and at the same time considering that the UDI had created binding engagements vis-à-vis the supposed new “State”. To escape from this contradiction, Norway produced a convoluted argument. It considered that the UDI “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 [i.e. the purported “new State” of Kosovo], it was considered part of a binding unilateral declaration under international law under the prevailing extraordinary circumstances described”<sup>27</sup>. To put it simply, according to Norway, the UDI by the PISG of Kosovo was not a binding act under international law, but it created a new State, whose authorities immediately referred to the UDI and then the engagements of the UDI became a binding unilateral act under international law<sup>28</sup>. This is just a self-serving analysis made with the sole intention of avoiding any legal analysis of the very crux of the UDI – the creation of the State – while at the same time treating the remaining content of the UDI to be of a binding character.
31. In the same direction, Albania produced the extravagant argument that “[w]hile a DoI [Declaration of Independence] produces effects at the international level and has international consequences, it is not itself regulated by international law. Therefore, the question cannot normally be answered whether a DoI is in conformity with international law. In that respect *a DoI as*

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<sup>27</sup> Norway WS, Annex I.

<sup>28</sup> The Norwegian Royal Decree adopted by the King in Council of 28 March 2008 recognising the “Republic of Kosovo” itself contradicts the legal analysis made in the Norway’s written statement. According to the Royal Decree: “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”. Norway WS, Annex I (emphasis added).

*the birth of a new sovereign State* is a matter which is essentially within the domestic jurisdiction of the State in the sense of Article 2, paragraph 7 of the UN Charter”<sup>29</sup>. If one follows the argument made by Albania, the condemnation by the Security Council of Katanga, Rhodesia and Turkish Republic of Northern Cyprus declarations of independence were wrong and violated their “domestic jurisdictions”. The same can be said, for example, with regard to the position of the OAU adopted vis-à-vis Biafra, Anjouan or Somaliland.

32. The UDI, being an act which in the view of its authors and those that have recognised a so-called new independent “State” has produced legal effects, can and must be examined in the light of its conformity or not with international law.

**(C) The *sui generis* character of Kosovo is determined by relevant UN resolutions, not by some particular powers**

33. Some written statements argue that Kosovo constitutes a *sui generis* case and does not constitute a precedent<sup>30</sup>. The UDI itself observes that Kosovo is “a special case” and “is not a precedent for any other situation”. It is apparent from these statements that the purported independence of Kosovo has no legal ground and, since their authors wish to impose an illegal situation, they are trying to avoid further collateral effects of what would constitute a bad precedent for the future.

34. It may be that Kosovo constitutes an “extraordinary”, “special” or “*sui generis*” case. However, it does not constitute such a case because a group of States or the authors of the UDI qualified Kosovo in that way<sup>31</sup>. It is the result of the “extraordinary”, “special” and “*sui generis*” determinations made by the

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<sup>29</sup> Albania WS, para. 47.

<sup>30</sup> Albania WS, para. 95; Denmark WS, para. 2.4; Estonia WS, pp. 11-12; France WS, para. 2.17; Germany WS, pp. 26-27; Ireland WS, para. 33; Japan WS, pp. 5 & 8; Latvia WS, p. 2; Luxembourg WS, para. 6; Maldives WS, p. 1; Poland WS, para. 5.2; Slovenia WS, p. 2; United Kingdom WS, para. 0.22.

<sup>31</sup> For the ‘non precedent’ argument, see AAWS, para. 60.

United Nations through the establishment of the regime adopted by UNSCR 1244 (1999). This comprises *first*, the establishment of an international administration on part of the territory of a member State while preserving its territorial integrity; *second*, a political process the purpose of which is to determine the future status of the territory; *third*, the end of this regime and this process requires a further decision of the Security Council under Chapter VII of the Charter<sup>32</sup>.

35. The “*sui generis*” argument does not help Kosovo’s secessionists and their supporters. On the contrary, it commands strict respect for the “exceptional”, “special” and “unique” regime and conflict settlement means established by the UN, something which the UDI precisely defies and deviates from.

### **Section III: The UDI violates relevant international law rules and as result it is void and does not produce its alleged effects**

36. This section will discuss some arguments advanced in some written statements and the written contribution of the authors of the UDI concerning the merits of the question raised by the General Assembly. It will stress the non-accordance of the UDI with the principle of respect for the territorial integrity of Serbia **(A)**, with UNSCR 1244 (1999) **(B)**, and with the rules concerning the peaceful settlement of disputes **(C)**. It will show that the UDI cannot be justified by the principle of self-determination **(D)** and that facts that have taken place after 17 February 2008 have not and could not have altered the legal situation existing at the time of the issuance of the UDI.

#### **(A) All States and the PISG must respect Serbia’s territorial integrity and the UDI is a violation of this obligation**

37. It is beyond doubt that the independence of part of the sovereign territory of an existing State implies the loss of the sovereignty of the latter over that

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<sup>32</sup> AWS, para. 69.

territory. If this would occur without the consent of the State concerned, this is tantamount to infringing its territorial integrity. Indeed, there could be no greater violation of the obligation to respect the territorial integrity of States than an attempt to deprive a State of its territory without its consent. Of course, this does not apply to the creation of States through the decolonization process, since “the territory of a colony or other non-self-governing territory has under the Charter a status separate and distinct from the territory of the State administering it”<sup>33</sup>.

38. States supporting Kosovo’s secession and the authors of the UDI reject the principle of respect of the territorial integrity of Serbia, invoking in general that this principle would not be applicable to non-State actors. They also contend that respect of the territorial integrity of the FRY (now Serbia) is only mentioned in the preamble of UNSCR 1244 (1999) and with regard to the interim period, and not for the outcome of the process leading to the determination of the future status of Kosovo. Moreover, they argue that the explicit reference to the territorial integrity of the FRY in the Preamble of resolution 1244 (1999), was of little effect since the Preamble was a “non-binding clause”.<sup>34</sup>

39. Argentina reiterates here what it demonstrated in AWS: the UN practice of invoking the principle of respect of the territorial integrity of States *vis-à-vis* non-State parties to domestic conflicts<sup>35</sup>. If the Security Council acted in that manner, it is because it considers that the territorial integrity principle is applicable in such circumstances.

40. The practice of the General Assembly also confirms that the principle of territorial integrity is infringed in situations of purported creation of new States from the territory of an existing one. The examples of the Bantustans that follow are eloquent since they are in general presented as the illegality of the purported creation of States on the exclusive basis of their contradiction

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<sup>33</sup> Declaration on Principles of International Law Concerning Friendly Relations, UNGAR 2625 (XXV).

<sup>34</sup> WC Authors, para. 9.05.

<sup>35</sup> AWS, paras. 75-82.

with rules prohibiting apartheid and imposing respect for human rights. In fact, this was not the only basis invoked by the General Assembly to consider the declarations of independence of the Transkei, Bophuthatswana and Venda as invalid. The General Assembly also denounced that the establishment of Bantustans were designed “to destroy the territorial integrity of the country”, while reaffirming “the inalienable rights of the African people of South Africa in the country as a whole”<sup>36</sup>.

41. With regard to UNSCR 1244 (1999), the argument developed by some States and the authors of the UDI is rather curious. It suggests that the Security Council could have modified the scope of this fundamental principle. It also suggests that the invocation of the respect for the territorial integrity of the FRY (now Serbia) by the Resolution was made not as a guarantee, but on the contrary, as a way to narrow its scope: it would only be applicable during the interim period. This surprising interpretation flies in the face of the purpose of the principle and leads to an absurd result, which was certainly not the intention of its authors. Moreover, if what was in mind was the possibility that the final outcome of the future status process could be independence, this in no way requires an infringement to the principle of territorial integrity. Such a result requires Serbia’s consent. If one State cedes part of its territory or otherwise accepts the creation of a new State on its territory, there is no infringement of its territorial integrity at all. But this is not the case here.

42. Indeed, what the Security Council did was to confirm the application of the principle of the respect for the territorial integrity of States to the particular situation of Kosovo. This confirmation was all the more necessary since an international administration and a conflict settlement mechanism concerning the territory of a member State was at stake.

43. The preamble of UNSCR 1244 (1999) described the grounds for the regime established by it. As such, its probative value for the interpretation of the object and purpose of the resolution is undeniable. The same that was

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<sup>36</sup> UNGAR 34/93G. See also UNGAR 31/6A and 32/105N.

remarked with respect to the Preamble of the UN Charter at the San Francisco Conference applies to the Preamble of UN resolutions: “The provisions of the Charter, being in this case indivisible as in any other legal instrument, are equally valid and operative. The rights, duties, privileges, and obligations of the Organization and its members match with one another and complement one another to make a whole. Each of them is construed to be understood and applied in function of the others”.<sup>37</sup>.

44. The Court has in the past had occasion to use parts of a preamble of Security Council and General Assembly resolutions for the determination of the scope of international obligations<sup>38</sup>. Equally, the Court also stressed the importance of treaty preambles in a number of cases.

45. In the *Rights of Nationals of the United States of America in Morocco* case, the Court stated:

“This principle, in its application to Morocco, was thus already well established, when it was reaffirmed by that Conference and inserted in the Preamble of the Act of 1906. Considered in the light of these circumstances, it seems clear that the principle was intended to be of a binding character and not merely an empty phrase”<sup>39</sup>.

46. In the *Case concerning Sovereignty over certain Frontier Land*, the Court considered that a mixed boundary commission had authority to demarcate the areas under dispute on the basis of the Treaty of London of 19 April 1839. And the Court continued:

“This is confirmed by the Preamble to the Boundary Convention of 8 August 1843, which recites that: ‘... The King of the Netherlands ... and ... the King of the Belgians, taking into consideration the Treaty of 19 April 1839, and wishing to fix and regulate all that relates to the demarcation of the frontier [...]’” This statement represents the common intention of the two States. Any interpretation under which the Boundary Convention is regarded as leaving in

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<sup>37</sup> Report of the Rapporteur of Committee 1 to Commission I, (1945) VI *The United Nations Conference on International Organization* 446, 13 June 1945, Doc. 944, p. 447.

<sup>38</sup> Genocide Convention (Bosnia), paras. 190, 275, 301, 302, 303; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, para. 118 ; *Case Concerning Maritime delimitation in the Black Sea (Romania v. Ukraine), Judgment of 3 February 2009, I.C.J. Reports 2009*, para. 63.

<sup>39</sup> *Case Concerning Rights of Nationals of the United States of America in Morocco, Judgment of 27 August 1952, I.C.J. Reports 1952*, pp. 183-4. See also the reference to the Preamble of the Special Agreement concluded by the parties in the *Case Concerning the Frontier Dispute (Burkina Republic/Republic of Mali), Judgment of 22 December 1986, I.C.J. Reports 1986*, p. 564, para. 19.

suspense and abandoning for a subsequent appreciation of the status quo the determination of the right of one State or the other to the disputed plots would be incompatible with that common intention”<sup>40</sup>.

47. In the *Territorial Dispute (Libya/Chad)*, the Court also used the Preamble of the Treaty of 1955 to determine its object and purpose and to confirm the interpretation of the Treaty that the Court had reached<sup>41</sup>.

48. These considerations are plainly applicable to the assertion of the respect of the territorial integrity of the Federal Republic of Yugoslavia (now Serbia).

49. Consequently, the principle of the respect for the territorial integrity of States applies in the case of Kosovo and UNSCR 1244 (1999) confirms and guarantees this application. The UDI is a flagrant violation thereof.

**(B) The UDI by the PISG of Kosovo is a blatant infringement of UNSCR 1244 (1999)**

50. The AWS already sets out the reasons why the UDI constitutes a grave violation of UNSCR 1244 (1999) which seriously disregards the functions and responsibilities of the Security Council<sup>42</sup>. The attempt to avoid this straightforward conclusion by contending that the authors of the UDI were not the PISG is wrong and futile. The UN regime established by UNSCR 1244 (1999) applies to everybody in Kosovo, and the PISG, as indeed any community, political party, group or individual, did not possess the power to make a UDI and is subject to the 1244 (1999) regime.

51. It is clear that a unilateral decision by one of the parties to the conflict cannot modify the regime established by the Security Council (UNMIK/KFOR administration and security force) nor decide the outcome of negotiations. Serbia could not unilaterally put an end to the international presence in

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<sup>40</sup> *Case concerning Sovereignty over certain Frontier Land, Judgment of 20 June 1959 : I.C.J. Reports 1959*, pp. 221-222. See also *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. reports 1994*, p. 24, para. 47.

<sup>41</sup> *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. reports 1994*, pp. 25-26, para. 52.

<sup>42</sup> AWS, paras. 117-120.



Kosovo established by virtue of a SC resolution. Similarly, the PISG and any other entity in Kosovo cannot put an end to this administration and to Serbian sovereignty over the territory.

**(C) The UDI seriously contravenes the existing obligations related to the negotiation process**

52. It has been argued that negotiations within the framework established by UNSCR 1244 (1999) were exhausted and there would be no sense to continue them. Even if this contention were correct (*quod non*, see AWS, para.124), this would not lead to a justification of the accordence of the UDI with international law. It would be for the Security Council to determine the further steps to be taken. A deadlock in negotiations in no way authorises one party to impose its position on the other, nor the termination of the obligation to settle the dispute through peaceful means.

53. It has been argued that “[w]here the avenues for a bilateral, negotiated settlement have been exhausted, and no renewed injunction to negotiate has been issued, for example by the Security Council, there exists no general international law rule requiring negotiations to continue”<sup>43</sup>. This assertion is incorrect both as a general statement and specifically in relation to the case of Kosovo.

54. Argentina has already quoted what the Manila Declaration on the Peaceful Settlement of International Disputes states generally:

“In the event of failure of the parties to a dispute to reach an early solution by any of the above means of settlement, they shall continue to seek a peaceful solution and shall consult forthwith on mutually agreed means to settle the dispute peacefully”<sup>44</sup>.

55. Clearly, any failure in a negotiation process does not release the parties from the obligation to continue to seek settlement through the same or other

<sup>43</sup> United Kingdom WS, para. 6.37.

<sup>44</sup> GA Resolution 37/10 of 15 November 1982. See also the Declaration of Principles of International Law annexed to Resolution 2625 (XXV).

peaceful means. Even less, such a failure does not authorise one party to decide unilaterally the nature of the settlement and to impose it on the other. Such an approach would be precisely contrary to the obligation to settle disputes by peaceful means.

56. To require a “renewal” of the injunction to negotiate by the Security Council is equally wrong. It was for the Security Council to open the process for the settlement of the future status of Kosovo<sup>45</sup>. It is also for the Security Council to decide when this process has come to an end<sup>46</sup>. And it is also for the Security Council and not for one of the negotiating parties – nor even the Secretary General or his Special Envoy – to decide whether the process has reached a deadlock, and which new avenues should be explored. The Security Council has neither ascertained the exhaustion of the negotiations nor declared the process for the determination of the future status of Kosovo to be at an end. The obligation to reach a consensual settlement for that determination only ends when such settlement is reached or when the Security Council decides to implement other mechanisms. Neither of these alternatives is present in the case of Kosovo<sup>47</sup>.
57. Furthermore, in the particular case of Kosovo, the exclusion of a unilaterally imposed solution has been explicitly mentioned by the Contact Group in its guiding principles governing these negotiations, stating that “[a]ny solution that is *unilateral* or results from the use of force would be unacceptable”<sup>48</sup>.
58. As a result of the above, by making the UDI, the PISG attempted to unilaterally put an end to the process for the settlement of the future status of Kosovo, by attempting to impose a given outcome on Serbia and to the UN,

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<sup>45</sup> AWS, paras. 117-118.

<sup>46</sup> *Ibid.*

<sup>47</sup> The examples furnished by the United Kingdom to allegedly support its contention concern treaty-based provisions which envisage not only negotiations but also other means of settlement of disputes (Article XXI, para. 2 of the treaty of Amity, Economic and Consular Rights between the United States of America and Iran, and Articles 74 and 83 of the United Nations Convention on the Law of the Sea). (United Kingdom WS, para. 6.37). Failure of negotiations opens the way to other ways of peacefully settling the dispute. Thus, these examples in no way support the British contention.

<sup>48</sup> Annex to Letter dated 10 November 2005 from the President of the Security Council addressed to the Secretary-General, 10 November 2005, UN Doc. S/2005/709, p. 3, para.6 (emphasis added).

thereby seriously contravening the obligation to determine the status of Kosovo through the process decided by the Security Council, as well as the rules applicable to this process of settling the dispute by peaceful means.

**(D) The principle of self-determination does not provide support for the UDI**

59. The authors of the UDI, as well as other States supporting Kosovo's secession, have requested the Court not to examine the applicability of the principle of self-determination to the case of Kosovo<sup>49</sup>. Other States that also support the secessionist forces in Kosovo have simply referred to a "people" allegedly entitled to self-determination, without providing any support for this assertion<sup>50</sup>. Yet others have invoked the purported doctrine of "remedial secession"<sup>51</sup>. Argentina respectfully refers the Court to the AWS, where Argentina has established that the principle of self-determination of peoples does not provide support for the UDI<sup>52</sup>. In particular, Argentina has asserted that only "peoples", in the narrowly constructed notion that this term of art possesses in international law, are entitled to self-determination; that the United Nations plays an essential role in determining the units entitled to exercise self-determination; and that grave violations of human rights do not transform a group of individuals into a "people" entitled to self-determination, although other important rights are granted to minorities and other groups.

60. Argentina has also explained that the Rambouillet Accords do not apply the principle of self-determination to the population of Kosovo and that the reference to "the will of the people", is but one element to be taken into consideration among other things, and is not tantamount to the recognition of a "people".

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<sup>49</sup> Authors of the UDI WC, para. 8.38.

<sup>50</sup> Albania WS, paras. 75, 79, and 84; Netherlands WS, para. 3.3; France WS, para. 2.18; Switzerland WS, paras. 75 and 77; Authors of the UDI WC, para. 4.03 and 8.40.

<sup>51</sup> Albania WS, para. 81; Estonia WS, p. 4 *et seq*; Finland WS, para. 7; Germany WS, p. 35; Ireland WS, para. 30; Netherlands WS, paras. 3.6-3.7; Poland WS, para. 6.5; Slovenia WS, p. 2; Switzerland WS, paras. 62-63; Authors of the UDI WC, para. 8.40.

<sup>52</sup> ASW, paras. 87-100.

61. It has been argued that as a result of UNSCR 1244 (1999), “the future of the territory of Kosovo ceased to be a matter for Serbia alone to decide upon. It became a matter to be resolved having regard to the interests and wishes of the inhabitants of Kosovo”<sup>53</sup>. This contention is deliberately misleading and does not make clear who would be in a position to determine the future status of the territory. It neglects that there are two sides participating in the negotiating process. Moreover, it is uncontroversial that the territory in question is an integral part of Serbia<sup>54</sup>. The inhabitants of Kosovo do not possess the decisional power over the fate of the territory. The UN has not recognised the existence of a “Kosovar people” entitled to self-determination. Consequently, the UDI cannot be justified on the basis of an exercise of the right of a people to self-determination.

**(E) Events subsequent to the critical date have not and cannot supersede the illegality of the UDI**

62. It has been advanced that even if the UDI was illegal, developments that have taken place after 17 February 2008 cured this illegality, precluding any possibility to return to the pre-existing situation<sup>55</sup>. This contention is wrong both in fact and law.

63. From the factual viewpoint, the situation on the ground has not substantially changed, with the exception that many functions fulfilled by MINUK were transferred to EULEX and this has been done by virtue of UNSCR 1244 (1999) and not by any kind of invitation of the so-called “Republic of Kosovo”. The strong international presence remains in Kosovo. The Security Council has not taken any decision putting an end to this presence and all member States and the UN organs that have dealt with the matter (i.e. the Security Council and the Secretary General) consider that UNSCR 1244 (1999) remains in force<sup>56</sup>. Those parts of the territory of the Province which decided not to obey the PISG, since these institutions now consider

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<sup>53</sup> United Kingdom WS, para. 0.25 (1).

<sup>54</sup> For the States having recognised the so-called “Republic of Kosovo”, at least until 17 February 2008.

<sup>55</sup> France WS,

<sup>56</sup> AWS, para. 67.

themselves to be acting as an independent State, still remain outside any exercise of their powers. Recognition cannot cure the illegality of the UDI. To say that “developments since that point [the issuance of the UDI] have crystallized Kosovo’s independence, resolving any doubt as to the position and curing any deficiency that may have existed<sup>57</sup>” is at the most the expression of wishful thoughts. The facts are very far from any crystallisation of the existence of a sovereign State.

64. More important, however, is the inaccuracy of this contention from a legal perspective. This assertion implies that an illegal act challenging the very foundations of international law and that of the United Nations could be ultimately being cured without the consent of the main injured State or without any further decision of the Organisation. There is nothing in contemporary international law that lends any merit to this assertion and the State invoking this argument does not provide any explanation supporting its assertion.

65. It must be stressed that in the particular case of Kosovo, the armed operation by NATO in 1999 was explained by their authors as “necessary to avert a humanitarian catastrophe”<sup>58</sup>. The same States now invoke the existence of an “irreversible fact” which would result in the loss of part of the territory of the sovereign State against which they resorted to an armed intervention. This cannot but raise serious concerns with regard to the respect for the fundamental principles of international law. The outcome of this intervention cannot in any way be used to modify any existing legal situation, particularly when what is at stake is the territorial integrity and the national unity of States.

66. As explained in AWS, events subsequent to the critical date have not modified the illegality of the UDI<sup>59</sup>. Moreover, the situation on the ground has not substantially evolved. Serbia has not given its consent to the creation of a new

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<sup>57</sup> United Kingdom WS, para. 0.26.

<sup>58</sup> NATO Press release 1999 (040), 23 March 1999. Available at :

<http://www.nato.int/docu/pr/1999/p99-040e.htm>

<sup>59</sup> AWS, paras. 47-53.

State through the separation of part of its territory. By no means can the assertion invoking any cure of the original illegality be accepted.

## **Conclusions**

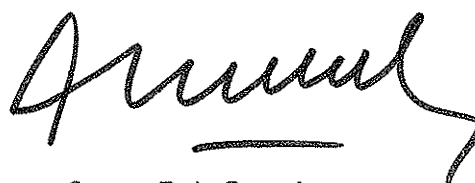
67. With these Comments, Argentina wishes to contribute to the present advisory proceedings, on the basis of its support for the rule of law at the international level. Respect for international law in general and for United Nations resolutions in particular are essential features of an international community based on the sovereign equality of its members.

68. On the basis of the arguments developed both in its Written Statement and in the present Written Comments, Argentina respectfully submits that:

- (a) The Court has jurisdiction to answer the question raised by the General Assembly;
- (b) There are not compelling reasons preventing the Court from exercising its advisory jurisdiction;
- (c) The unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo is not in accordance with international law, since:
  - (i) It is an act which did not fall within the competences of its authors, as stemming from Resolution 1244 (1999) and the Constitutional Framework adopted by UNMIK Regulation 2001/9;
  - (ii) It infringes the competences and responsibilities of the Security Council under Chapter VII of the Charter of the United Nations;
  - (iii) It infringes Resolution 1244 (1999) in a way described in paragraph 118 of AWS;
  - (iv) It constitutes a violation of the territorial integrity of Serbia:

- (v) It constitutes a breach to the obligation to settle disputes through peaceful means, in particular the obligation to reach a settlement for the future status of Kosovo through negotiations.

July 17, 2009



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