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ON ECONOMIC GROWTH
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*Branislav Radeljić*¹

Growing Concerns about Islam in the European Union

ABSTRACT

The establishment of a united Europe was characterized by Christian-Democratic values. Over time, this trend has been challenged due to a growing presence of Muslim communities across Europe. In response to the new dynamics, various arguments focusing on Islam in the European Union, European identity and inclusion of the Muslims have emerged. Accordingly, this paper examines the presence of Islam in the EU and while taking into consideration both historical and present dimensions, points out various aspects that surely question their coexistence.

Key words: Islam, European Union, Islamophobia, European identity.

Introduction

Discussions about Islam in the European Union have gained significant space. Numerous academic conferences, public debates and informal meetings seek to address this rather controversial topic. This controversy is very much due to the initial outlook of the then European (Economic) Community and the present EU. As noted by Checkel and Katzenstein, “the historical foundations of the European Union are undeniably Christian-Democratic, a capacious political tradition that accommodates temperate offshoots of conservative political Catholicism as well as a social Catholicism.”² In fact, the founding fathers of the EU — Konrad Adenauer, Alcide de Gasperi and Robert Schuman — were all Christian Democrats and devoted Catholics. This dimension was a

¹ Branislav Radeljić, Associate Lecturer in International Politics, University of East London, United Kingdom, e-mail address: B.Radeljic@uel.ac.uk.

² Jeffrey T. Checkel, and Peter J. Katzenstein, “The Politicization of European Identities,” in Jeffrey T. Checkel and Peter J. Katzenstein (eds), *European Identity*, Cambridge, Cambridge University Press, 2009, p. 14.

synonym for a united Europe and European identity at the time. Since then, the things have significantly changed and many questions related to the EU's willingness and capacity to accept Islam have emerged and required immediate answers. Accordingly, in this paper, I analyze the presence of Islam in the EU and look at various dilemmas surrounding this coexistence. The paper is divided into three sections: the first section offers a brief historical overview of the Muslim community's arrival and settlement process in the EU, the second section examines the post-September 11 debates, and finally, the third section looks at future prospects and possible scenarios.

Historical Overview

Before the 1960s, the presence of Islam in the European Union was almost invisible. Rare mosques and occasional gatherings in suburbs of European capitals did not represent a matter worthy of public discussion. However, in the 1960s, the trend changed rapidly. The economic growth of European countries combined with low birth rates implied that an additional labor force in order to maintain the progress was needed. In this respect, France became a host country for many Muslims from Algeria, Morocco and Tunisia. The first wave of the migration consisted of male migrants looking for jobs. In his study, Esman classifies them as members of labor diaspora, usually "undereducated, unskilled individuals of peasant or urban proletarian backgrounds" who migrate "in search of improved livelihoods and better opportunities for their children."³ Although they had decided to migrate alone and support their families back home, soon after, the process of family reunification in the host country followed. This was an obvious indication that they wanted to remain in Europe. The French openly maintained that most immigrants were not part of their society and that they would probably never become — an attitude that inspired immigrants' growing attachment to Islam. As argued by Esman, more discrimination and exclusion led to stronger emphasis of their Islamic identity: "They were told by religious leaders, most of whom were trained and imported from their homelands, that religion and government, church and state, cannot, under Islamic law and practice, be separated. Islam, as they preached it, is incompatible with the infidel, amoral, secular cultures of contemporary Europe."⁴

In West Germany, after the erection of the Berlin Wall, the government signed bilateral agreements with Turkey in 1961, Morocco in 1963 and Tunisia in 1965, all of them permitting the entry of cheap labor. One scholar underlined that while the foreign workers were needed to sustain high rates of growth and

³ Milton J. Esman, *Diasporas in the Contemporary World*, Cambridge, Polity Press, 2009, p. 16.

⁴ *Ibid.*, p. 24.

keep jobs in Germany, the newly introduced *Gastarbeiter* program had no single intention to offer settlement to the guest-workers.⁵ Contrary to expectations, they brought their families and became permanent settlers. The immigrants gathered at their homes and practiced their religious values. For the Germans, this publicly invisible realm in the 1960s meant that the nature of exile Islam was rather quiet. More importantly, as summarized by Ezli, Germany “had conceived of immigration exclusively as working migration in which an ever fluctuating and always renewed population of workers would be involved. The cultural, and thus religious, dimension of immigration was not deemed important enough to warrant any special attention.”⁶

Finally, in the United Kingdom, although not a member state of the European Union until 1973, the first large-scale Muslim immigration began in the late 1950s. The growing number of immigrants from Asia led to the passing of the first Commonwealth Immigrants Act in 1962, aimed at restricting immigration into the UK.⁷ The effect of this legislation was limited as the new immigrants came into the country based on family reunification schemes. In addition, the UK proved attractive for migrants from former British colonies in Africa that led to another Immigration Act in 1971.⁸ However, the intention to limit immigration “generated an inflow of migrants in larger numbers, because of the already existing networks of migration — the ‘chains’ of migration in which seamen and soldiers acted as the first links.”⁹

The experience of the above-mentioned European countries shows that both the Europeans and the Muslims found themselves in a rather problematic situation. I argue that throughout this period Western Europeans, or at least their political authorities, for the sake of economic advancement of their respective countries, ignored the religious aspect that the European Community was based on and proud of. Thus, the religious otherness did not matter as long as the economic benefits were there. In response to the oil crisis in 1973 and the subsequent economic recession, many European governments decided to subsidize immigrants to return to their homelands, as there was no actual need for them. This policy was not successful. Many immigrants were already second,

⁵ James F. Hollifield, *Immigrants, Markets and States: The Political Economy of Postwar Europe*, Cambridge, MA, Harvard University Press, 1992, p. 218.

⁶ Özkan Ezli, “The Development of Turkish Islam in Germany”, Internet: <http://www.aicgs.org/analysis/c/ezliapr07.aspx>, 01/07/2010.

⁷ “Commonwealth Immigrants Act 1962”, Internet: <http://www.britishcitizen.info/CIA1962.pdf>, 02/07/2010.

⁸ “Immigration Act 1971,” Internet: <http://www.britishcitizen.info/IA1971.pdf>, 02/07/2010.

⁹ Konrad Pêdziwiatr, “Muslims in Europe: Demography and Organizations,” in Yunas Samad and Kasturi Sen (eds), *Islam in the European Union*, Oxford, Oxford University Press, 2007, p. 28.

locally born, generation and without interest in return. For example, Esman examines the post-1973 development in France and notes that “very high rates of unemployment, approaching 50 percent, produced sentiments of resentment, isolation, and powerlessness” resulted in “a street culture with the familiar accompaniment of drugs, violence-prone street gangs, petty crime, and hatred of mainstream French society.”¹⁰

At this stage, it was already clear that the ambition to shape the European (Economic) Community on the ideas that are primarily congruent with Roman Catholicism was going to face various challenges. Aware of the puzzle, the Europeans insisted on further strengthening of European identity, seeing it often as a powerful tool to face the presence of Islam. The successive waves of immigration and the proliferation of Muslim associations in France and Germany in the 1980s (Union des Organisations Islamiques de France, Fédération Nationale des Musulmans de France, Islamrat für die Bundesrepublik Deutschland, Türkisch-Islamische Union der Anstalt für Religion), fostered the relevance of Islam to the extent that it became “an agent in the discourse of action or reaction.”¹¹ This performance made a clear cut between the two identities, European and Islamic. In this respect, the 1989 headscarf affair in France, when three girls came to their public school wearing headscarves, served to demonstrate that Islamic identity in the EU was still in the process of construction. In her account, Kastoryano looks at the outcome of this event that apparently challenged the relationship between the state, religion and public opinion, and notes that “[m]obilizations around the headscarf issue have strengthened the leadership of Islamic associations as representatives of a community taking shape around Islam.”¹²

For the advocates favoring the European Union as a Christian-Democratic organization, the collapse of Communism provided a new opportunity for additional support from East Germany, Poland and Czechoslovakia, where the Catholic Church played an important role in overthrowing the regime. In regard to this period, Mortimer talks about two mutually inclusive subjects: Christianity and the Western media. He seems quite happy to see “Christianity in vogue” and the Western media to promote it, but, more importantly, he sees media power in a position to deliberately identify “a new threat” to European stability — possibly Islam.¹³ However, Mortimer’s article, published in January

¹⁰ Milton J. Esman, op. cit., p. 27.

¹¹ Riva Kastoryano, “Religion and Incorporation: Islam in France and Germany”, *International Migration Review*, Vol. 38, No. 3, 2004, p. 1238.

¹² Ibid., p. 1240.

¹³ Edward Mortimer, “Christianity and Islam”, *International Affairs*, Vol. 67, No. 1, 1991, p. 10.

1991, overestimated both Christianity and the media. Soon after, the outbreak of war in the Yugoslav federation proved that the two major branches of Christianity – Catholicism and Eastern Orthodoxy acted as enemies of each other, thus questioned the whole concept about Christian unity. Accordingly, the Western media stepped in and depicted the Orthodox community of Yugoslavia, the Serbs, as a threat to European stability.

More precisely, the EU decision-makers paid attention both to the Western media and the Vatican City who openly favored Slovenia and Croatia, the Catholic republics of the Yugoslav federation. Later, the war in Bosnia-Herzegovina, a republic that encompassed Catholic, Orthodox and Muslim faiths, reconfirmed the relevance of religion in the conflict and decision-making. As suggested by Mortimer, Europe needed “to define itself in terms ... of Christian heritage, and to emphasize as sharply as possible the distinction and the frontier between itself and the world of Islam.”¹⁴ However, the Yugoslav wars challenged this suggestion and provided an additional time for the establishment of greater Islamic identity across Europe.

Apart from an increasingly evident religious aspect, some studies insisted on some new problems at the time. For example, Suárez-Orozco talked about important economic and social patterns that could have hardly been appreciated in the EU. In this trend, his arguments rely on the facts that remittances from the immigrants “feed billions of dollars into the peripheries” and “Islamic marriage and divorce patterns and gender relations that are disturbing both legally and socially to the host groups.”¹⁵ All these patterns served to stress the diversity between the Muslims and Christians across the EU and, in fact, they were successful. Accordingly, the author continued, “Islamic culture is perceived by some as not ‘quite compatible’ with European culture” and it is exactly this perception that commenced to dominate the discussions about the immigration across the EU.¹⁶

Understandably, the European Union was concerned. In his writing, Huntington sought to describe the European position: “European societies generally do not want to assimilate immigrants or have great difficulty doing so, and the degree to which Muslim immigrants and their children want to be assimilated is unclear.”¹⁷ This statement is justified, regardless of Huntington’s

¹⁴ *Ibid.*, p. 13.

¹⁵ Marcelo M. Suárez-Orozco, “Migration, Minority Status and Education: European Dilemmas and Responses in the 1990s”, *Anthropology & Education Quarterly*, Vol. 22, No. 2, 1991, p. 101.

¹⁶ *Ibid.*, p. 103.

¹⁷ Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order*, New York, Free Press, 2002, p. 204.

hardly acceptable intention to demonize Islam. Since its foundation, the European Union has been an attractive immigration destination. Even if, at various points, some of its member states wished to see immigrants going back to their country of origin, this did not happen. On the one hand, while disappointed by the immigrants' decision to remain, the EU developed a standpoint that was often interpreted as policy of marginalization or exclusion. In fact, having great difficulties to assimilate immigrants represented a nice expression for European unwillingness to do so. On the other hand, the immigrants often wanted to see the process of assimilation conducted under their own terms and conditions, such as keeping dual citizenship illegally or rejecting European values although enjoying European benefits. For the member states of the EU, this level of flexibility was unacceptable.

The growing influx of Muslim immigrants from the Balkans into the European Union during the 1990s did not face any serious obstacles. By contrast, most member states openly welcomed the immigrants at their ports of entry and provided them with necessary support. The EU was openly sorry for the Muslims from Bosnia-Herzegovina and Kosovo. Once in the EU, well-recognized Muslim religious institutions and cultural associations further supported them. Immediate interest in the Muslims from the Balkans put the existing debates about non-European Muslims in the EU aside. While many anxious Europeans saw Islam as inassimilable, the Muslims insisted on greater rights. Various immigrant and, in particular, Islam-related debates filled the Western media. Regardless of conclusions and eventual policies these debates might have led to, the terrorist attacks of September 11, 2001, implied a reconsideration of every possible aspect of Islamic ideology and community.

Current Debates

In this section, I examine main debates characterizing the post-September 11 period. In fact, most of them begin with a notion that after September 11 the perception of Islam has significantly changed. One scholar observed that the event was "interpreted as the fulfillment of a prophecy that had been in the consciousness of the West for a long time, i.e., the coming of Islam as a menacing power with a clear intent to destroy Western civilization."¹⁸ The Western media and policy-makers talked about Islam as a threat. In this context, they often went to the extent to present the Westerners or, to be precise, Christians, as superior to the supporters of Islam.

¹⁸ Ibrahim Kalin, "Roots of Misconception: Euro-American Perceptions of Islam Before and After September 11," in Joseph E. B. Lumbard (ed), *Islam, Fundamentalism, and the Betrayal of Tradition*, Bloomington, IN, World Wisdom, 2009, p. 149.

I identify various topics, or even key words, that have dominated debates about Islam in the European Union. First, as already envisaged, Islam is presented as a threat to the European security. In 2003, the EU officials adopted the *European Security Strategy*, which identified terrorism and Islamic political radicalism as key threats without making any religious reference.¹⁹ However, the notions of this document were primarily discussed among the EU officials, while the public was left to the media. The Western media talked about Muslims as potential terrorists, extremists and radicals. Some of them tried to justify the threatening aspect of Islam by looking into future. For example, the *Daily Telegraph* accused the British government and the rest of the EU of “ignoring a demographic time bomb ... including millions of Muslims [who] will change the continent beyond recognition over the next two decades.”²⁰ These words surely question the work performed by the EU policy-makers. Indeed, apart from their initial engagement with the European Security Strategy and, to the lesser extent, the European Neighborhood Policy, the Brussels officials have not offered any substantially improved document in regard to Muslim presence in the EU. The main reason behind such European attitude is that the EU had already committed itself to the Muslim community by deciding to accept Turkey as a candidate country for EU membership during the EU Helsinki Summit of 1999.²¹ The summit confirmed EU’s readiness to support diversity within its own borders, thus contradicted the initially promoted perception that the European unity was and had to stay exclusively Christian-Democratic.

Acceptance of the Turkish candidacy encouraged greater expression of the Muslim network across the European Union. In her study, Kastoryano examined the supporting role of international organizations interested in Islam in Europe and noted that these organizations “mobilize resources to allow Muslims to go beyond the national diversity in the various countries of the European Union and to create a single religious identification and a transnational solidarity based on this diversity.”²² By saying so, it appears that the Europeans have a problem with Islamic unity and, moreover, due to their own incapacity to achieve greater European unity, perceive the Muslims as a threat.

Second topic about the Muslims in the European Union, although continuously used to justify the first one, concentrates on the conflicting nature

¹⁹ European Council, “European Security Strategy: A Secure Europe in a Better World”, Internet: <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>, 06/07/2010.

²⁰ Adrian Michaels, “Muslim Europe: the Demographic Time Bomb Transforming our Continent,” *Daily Telegraph*, 8 August 2009.

²¹ Helsinki European Council, “Presidency Conclusions, 10 and 11 December 1999”, Internet: http://www.europarl.europa.eu/summits/hel1_en.htm, 05/07/2010.

²² Riva Kastoryano, op. cit., p. 1251.

of Islam. Here, the Western media and public have unintentionally promoted what is Huntington's understanding of the relations between Islam and Christianity. While seeing them as "stormy," he noted that "[t]he 20th century conflict between liberal democracy and Marxist-Leninism is only a fleeting and superficial historical phenomenon compared to the continuing and deeply conflictual relation between Islam and Christianity."²³ This complex relationship is further challenged by the fact that some Islamic states, such as Turkey and Iran, took part in the wars in Bosnia-Herzegovina and Kosovo by openly protecting and supporting the local Muslims. However, this transnational involvement is important as it contributes to the previously mentioned points about the construction of a unifying identity among the Muslims. Thus, regardless of their country of origin, their collective interest transcends the boundaries, ignores diversity among the homelands and, most relevantly, leads to Islam's representation and recognition within the society.

Finally, third topic focuses on what I call visual otherness. The 1989 headscarf affair in France indicated that the Muslim fashion is perceived differently across the EU. For example, the *Courrier International* reported that not all EU member states reacted in the same way: "In France, the classroom is the ideal place to transmit lay, republican values. Every girl who dares to wear her headscarf in class thus risks sparking a national scandal. In Germany, little girls are left in peace."²⁴ However, it did not take long for the Germans to reconsider their approach. In September 2003, the constitutional court ruled: "While the state of Baden-Württemberg had no grounds to ban ... an Afghan-born teacher from wearing a headscarf in school, it was free to enact legislation to this effect."²⁵ Understandably, the debates about the Muslim outfit in France and Germany spread among the rest of the EU.

The media select what to offer to the public. In his 1997 book, Said explored Western media coverage of Islam and listed a number of relevant consequences that followed:

One is that a specific picture — for it is that — of Islam has been supplied. Another is that its meaning or message has on the whole continued to be circumscribed and stereotyped. A third is that a confrontational political situation has been created, pitting 'us' against 'Islam.' A fourth is that this reductive image of Islam has had ascertainable results in the world of Islam itself. A fifth is that both the media's Islam and the cultural attitude to it can tell

²³ Samuel P. Huntington, op. cit., p. 209.

²⁴ "France Sees Headscarves as a Veiled Threat", *Courrier International*, 29 September 2003.

²⁵ Bertrand Benoit, "Do any other European States Feel the Same Way?", *Financial Times*, 4 November 2003.

us a great deal not only about 'Islam' but about institutions in the culture, the politics of information and knowledge, and national policy.²⁶

Each of the five Said's points finds place in current debates about Islam in the EU. For example, his notion of a specific picture of Islam could relate both to its visual expression through habits and outfits or general perception of Islam as a threat. While Muslims do not have a problem with praying in the middle of their Western-style shopping malls, the Westerners find it strange or, even, intimidating. While majority of Muslim women wear burqas with pleasure, the Europeans often feel sorry for them. Over time, being different and being seen as a potential threat have reinforced stereotyping about Islam and further division between 'us' and 'Islam' or *vice-versa*. If not minimized, this division could affect any coexistence negatively. In addition, a reductive image of Islam has opened questions about Muslim identity and as a result led to its greater expression. Finally, Said is right when noting the power of the media in presenting Islam and shaping the public opinion.

Indeed, the media face no obstacles in their intention to approach the public. For example, in relation to Islam and terrorism, one scholar analyzes the rapid development and power of the media and underlines that "the more recent forms of terrorism are aimed not at specific and limited enemy objectives but at world opinion. Their primary purpose is not to defeat or even weaken the enemy militarily but to gain publicity and to inspire fear—a psychological victory."²⁷ This is exactly what consolidates the concept of Islamophobia. In its 1997 report, the Runnymede Trust, a well-known non-governmental organization, published eight points that are related to the concept of Islamophobia.²⁸ In short, these points indicated that there was a serious problem with the perception and acceptance of Islam. If properly interpreted, the points warned that such an obvious presence of Islamophobia could widen the gap between the EU and its Muslim communities. Still, Islamophobia became a matter of serious discussions only after the terrorist attacks against the US

²⁶ Edward W. Said, *Covering Islam*, London, Vintage Books, 1997, p. 44.

²⁷ Bernard Lewis, *The Crisis of Islam*, London, Orion Books, 2004, p. 125.

²⁸ These points are: "1. Islam is seen as a monolithic bloc, static and unresponsive to change; 2. Islam is seen as separate and 'other.' It does not have values in common with other cultures, is not affected by them and does not influence them; 3. Islam is seen as inferior to the West. It is seen as barbaric, irrational, primitive, and sexist; 4. Islam is seen as violent, aggressive, threatening, supportive of terrorism, and engaged in a clash of civilizations; 5. Islam is seen as a political ideology, used for political or military advantage; 6. Criticisms made of 'the West' by Islam are rejected out of hand; 7. Hostility towards Islam is used to justify discriminatory practices towards Muslims and exclusion of Muslims from mainstream society; 8. Anti-Muslim hostility is seen as natural and normal" ("Islamophobia: A Challenge for Us All," quoted in European Monitoring Centre on Racism and Xenophobia, "Muslims in the European Union: Discrimination and Islamophobia," p. 61, Internet: [http://fra.europa.eu/fraWebsite/attachments/ Manifestations_EN. pdf](http://fra.europa.eu/fraWebsite/attachments/Manifestations_EN.pdf), 09/07/2010).

and subsequent attacks in Madrid and London, in 2004 and 2005. Following these attacks, the Council of Europe presented its definition of Islamophobia as “the fear of or prejudicial viewpoint towards Islam, Muslims and matters pertaining to them. Whether it takes the shape of daily forms of racism and discrimination or more violent forms, Islamophobia is a violation of human rights and a threat to social cohesion.”²⁹ Thus, although less broad, the post-September 11 definition is relevant for two reasons in particular: first, it linked Islamophobia to violations of human rights and, second, it underlined the linkage between Islam and social cohesion.

Accordingly, a question of who is to blame for Islamophobia has two answers. The first answer sees the Western media as an unbeatable power to ‘promote’ Islamophobia. Indeed, following the events of September 11, “certain specific and often predictable [media] sources have been actively incorporating the most explicit expressions of Islamophobia into their coverage deeming their actions irresponsible, prejudicial, inciteful and more directly, extremely dangerous.”³⁰ Thus, while it is not difficult to agree with this observation and many similar ones that accompanied the attacks in the US and Europe, Islamophobia has primarily been understood as a Western prejudice against Islam and rejection of everything that has something to do with it.

The second answer sees the Muslim communities as responsible for Islamophobia. Various terrorist groups have decided to provide the media with footages explaining their intentions and goals. By deciding to do this, they provoked greater Islamophobia in the West. Understandably, the public will always react to these sorts of statements. After having conducting a survey about the Muslims, the EU summarized the findings:

On average 1 in 3 Muslim respondents were discriminated against in the past 12 months, and 11% experienced a racist crime. The highest levels of discrimination occurred in employment ... thousands of cases of discrimination and racist crime remain invisible ... People without citizenship and those who have lived in the country for the shortest period of time are less likely to report discrimination. Regarding the reasons for not reporting incidents, 59% of Muslim respondents believe that ‘nothing would happen or change by reporting’ ... Ethnicity is the main reason for discrimination ... Only 10% stated that they thought the discrimination they experienced was based solely on their religion.³¹

²⁹ Ingrid Ramberg, *Islamophobia and Its Consequences on Young People*, Strasbourg, Council of Europe, 2005, p. 6.

³⁰ Christopher Allen, “Islamophobia in the Media since September 11”, paper presented at the University of Westminster, School of Law, London, 29 September 2001, p. 3.

³¹ European Union Agency for Fundamental Rights, “Data in Focus Report: Muslims”, p.8, Internet: http://fra.europa.eu/fraWebsite/attachments/EU-MIDIS_MUSLIMS_EN.pdf, 09/07/2010.

The above survey is important not only because it shows that being Muslim in the EU can be rather difficult, but because it questions some of the so far self-glorified aspects of the Union, such as the respect for diversity and inclusion. Discriminatory policies in employment lead to a conclusion that the EU is not as open as it promotes itself to be. Ethnic background and fashion outfit often have primacy over the educational background and professional expertise. More alarming is the fact that many Muslims believe that reporting discrimination seems pointless. Such a belief implies that the European leaders who deal with these highly sensitive issues maintain dual standards shifting from favoring diversity and inclusion to ignoring them, depending on occasion.

In his 2009 book, Caldwell questions whether Europe can be the same with different people in it. He argues that the initial idea of a united Europe did not take immigration into consideration: in the 1950s and 1960s, “European tolerance of other cultures was sincere, particularly among elites, but not even they anticipated that such tolerance would mean the establishment, entrenchment, and steady spread of a foreign religion on European soil.”³² Indeed, for a long time, the Europeans were busy with their ever expanding European project, primarily inspired by economic cooperation and progress, whereas religious aspect of the Community was ignored. As noted earlier, the Muslims were allowed to come to Europe based on various bilateral agreements, but as soon as their help was not needed, the host countries across Europe expected them to leave. Although this did not happen, Caldwell notes that even “when Islam became Europe’s main religious problem, almost nobody dared to say so.”³³

However, the European Union opted for a strategy that is nowadays criticized for trying to bring two rather contrasting dimensions together. First dimension is all about European ambition to see the EU as united in its diversity. In this respect, European elites call for greater inclusion of the Europeans coming from new Member States as well as existing non-Europeans in the EU. What remains unclear is whether the elites do so for the sake of their own self-promotion in the EU and highly attractive benefits or they really want to see a diverse EU. For example, while there is an evident interest in Turkish EU membership, both sides perceive it as a complex puzzle that still lacks many of its pieces.

Second dimension is about European ambition to push for a greater European identity as many Europeans have realized that both integration and progress of the European Union will depend on the existence of a strong European identity. While having not offered any clear idea regarding the Muslims living across the EU and their role in the whole process, the

³² Christopher Caldwell, *Reflections on the Revolution in Europe*, London, Penguin Books, 2009, p. 91.

³³ *Ibid.*, p. 161.

strengthening of a European identity could not be interpreted as European intention to combat Islam, but to integrate it under certain, its own, conditions. Accordingly, numerous questions relating to the mechanisms of the EU to address the Muslims within its borders and the power of Islam to affect or even dismantle the whole concept of a European identity or, even more, the EU, have emerged and required answers.

Forthcoming Dilemmas

Discussions about the future take numbers seriously. For example, France, Germany and the United Kingdom together have more than ten million Muslims and more than 6000 mosques.³⁴ Moreover, the number of Muslims in the European Union is likely to increase. The Brussels officials claim to be committed to the non-EU countries that have already been granted a candidate status or wish to apply and eventually become full EU members. This means that if Turkey, Bosnia-Herzegovina, Albania and Kosovo become members of the EU, its Muslim population will amount for over 100 million. But, are the Brussels decision-makers ready to face a more obvious presence of Islam in the EU? Caldwell argues that the importance of Islam in Muslim communities in Europe is on the rise: “In France, 85 percent of Muslim students describe their religious beliefs as ‘very important,’ versus 35 percent of non-Muslims. In Germany, too, religiosity is more widespread among Muslim immigrants than among natives — 81 percent of Turks come from a religious background, versus 23 percent of Germans.”³⁵ In fact, these percentages are likely to be sustained even more with more Muslims in the EU.

However, lack of well-defined policies as how to address Islam in the EU equals emergence of new challenges. For example, accession of Turkey to the EU would be a good test to understand the relationship between the Union and Islam. In his study, Zürcher correctly argues that Turkey’s accession to the EU “would confront the Union with a state whose historical development has left it with ties between religion and the state that go further than those of any other member” — an aspect that would surely change in the long term due to the unavoidable democratization process characterized by greater religious plurality.³⁶ Indeed, the Brussels officials are aware of the existing differences between the two parties. In 2005, one of the reports revealed:

³⁴ Statistics offered by European Commission’s Eurostat and Network of European Foundations.

³⁵ *Ibid.*, p. 143.

³⁶ Erik Jan Zürcher, *The European Union, Turkey and Islam*, Amsterdam, University Press, Amsterdam, 2004, p. 54.

Perhaps the most sensitive of all arguments centers on cultural and religious differences. Since the EU identifies itself as a cultural and religious mosaic that recognizes and respects diversity, supporters of Turkey's EU bid believe that, as long as both Turkey and the EU member states maintain this common vision, cultural and religious differences should be irrelevant. The EU member states' concerns over Turkey's human rights record as well as global and regional security-related issues have also been key factors behind Turkey's prolonged application process.³⁷

Although optimistic about the EU-Turkey cooperation, this statement warns about complexities accompanying Turkey's path towards the EU. Still, if cultural and religious differences are given priority, the extent to which both parties are ready to compromise is worthy of consideration. While both the EU and Turkey are proud of their cultures, religious beliefs and prejudices, it will be difficult to abandon these as substantially irrelevant. Moreover, it is the EU who has insisted on greater European identity as a valid counter objection to Islamic identity within the Union. Finally, different understandings about human rights may be conflicting, as both sides have long-established records in this field.³⁸

In regard to the others, above-mentioned potential EU members, the situation in Bosnia-Herzegovina is rather unstable.³⁹ Religious composition of the country has always mattered and in case of a new conflict, the parties involved could easily decide to ask for and receive support from countries they share the same religion with. This was already the case in the past and there is no a single reason to question its repetition. In fact, the period following the end of the war and division of Bosnia-Herzegovina in 1995 has been characterized by further accentuation of religious differences among the country's constituent peoples. In her study, Bringa noted a dual relevance of Islam for Bosnian Muslims: first, it brings and binds them closer together as opposed to Serbian or Croatian, thus Orthodox or Catholic and, second, it connects them to Muslims worldwide as opposed to non-Muslims.⁴⁰ This notion is important in relation to the accession of Bosnia-Herzegovina to the EU. Apart from being perceived as a tool to improve the overall economic and

³⁷ "EU-Turkey Relations", Internet: <http://www.euractiv.com/en/enlargement/eu-turkey-relations/article-129678>, 26/07/2010.

³⁸ For an analysis of human rights, see, for example, Harun Arikian, *Turkey and the EU: An Awkward Candidate for EU Membership?*, Hampshire, Ashgate, 2006, pp. 111-57.

³⁹ Bosnia-Herzegovina is the sixtieth and the only European country listed in "The 2010 Failed States Index" of the 60 most troubled countries in the world (*Foreign Policy*, July/August 2010, p. 76).

⁴⁰ Tone Bringa, *Being Muslim the Bosnian Way*, Princeton, NJ, Princeton University Press, 1995, p. 197.

political performance of the county, it is questionable whether EU membership would manage to bring Bosnian peoples together or Muslims would prioritize the establishment of greater links with other Muslim communities in the EU, thus supporting greater Islamic identity.

In predominantly Muslim Albania, Islam has gained a fuller relevance since the collapse of Communism. Contrary to expectations, American and, more importantly, European investment did not materialize instantly – an important aspect that inspired the slogan “Towards Europe or Islam.” In her study, Vickers summarized the outcome: “In the months that followed an Arab-Albanian Islamic Bank was established in Tirana and around 20 Arab Islamic foundations were opened throughout the country. Foreign Islamic organizations began a country-wide mosque construction program and even funded the expenses of those Albanians wishing to travel to Mecca for the annual Hajj pilgrimage.”⁴¹ However, two decades after, it is difficult to believe that strong connections already established between Albania and some Arab countries will be fully ignored when discussing the accession of Albania to the EU. In fact, as observed by Vickers, “[s]ome Albanians believe that one reason Europe appears to be in no rush to embrace Albania as a member of the European Union, is that the majority of the population come from a Muslim background.”⁴²

Finally, in Kosovo, a country that has faced numerous problems regarding its international recognition, Islam has been one of the most important dividing characteristics between the Serbs and the Kosovo Albanians, thus Christians and Muslims. However, some EU member states, such as France, Germany and the United Kingdom, although having openly claimed to have occasional problems with their own Muslims, never abandoned the Muslims in Kosovo in their fight for independence. The Brussels officials seem to have ignored the religious aspect of Kosovo and the idea that an independent Kosovo will possibly create greater links with the Muslims across the EU and further undermine the efforts surrounding European identity. Again here, double standards seem to penetrate some significant decisions related primarily to the present EU policy-making and the future European identity. In fact, the case of Kosovo can easily be interpreted as the EU’s readiness to reconsider its project about a European identity or even abandon it.

One scholar examines the state of affairs across the European Union and notes that “the accession of Muslim countries and the rise of far-right mobilization and violence, can only be addressed effectively under a broad consensus among its members. Across Europe, however, the citizens are split

⁴¹ Miranda Vickers, “Islam in Albania,” Shrivenham, Defence Academy of the United Kingdom, 2008, p. 2.

⁴² *Ibid.*, p. 5.

regarding its cultural identity and social model.”⁴³ This split is even more accentuated by the fact that immigration and the Islamization of immigrants in the EU is regulated by the individual member states, not the Union. Accordingly, extreme differences between Germany and the Netherlands in relation to the legal status of Islam represent an additional challenge to the idea about European identity.⁴⁴ Furthermore, reconsideration of the European identity will imply reconsideration of Western values. In this respect, Zürcher has a valid point when saying: “The many Muslims in the EU member states also mean that European identity and civilization can no longer be defined in purely Western terms.”⁴⁵

The present European Union struggles with the tolerance. The concept of European tolerance, “with its philosophical foundations and political aims, was the result of persistent efforts by different and quarrelling peoples who basically were not tolerant at all.”⁴⁶ For example, in regard to the Muslims, apart from seeing the burqa as a symbol for “the repression that women can suffer in Islam” and a threat to “security, sexual equality and secularism,” some European governments would like to see it banned although “banning it altogether would be an infringement on the individual rights which their culture normally struggles to protect.”⁴⁷ Out of 5 million Muslims in France, only about 2000 cover their face fully. This micro-minority was enough for the National Assembly to pass a draft law on 13 July 2010 stating that “no one can, in the public space, wear clothing intended to hide the face.”⁴⁸ By becoming law, the ban is expected to apply both to the residents and visitors in France, whereas offenders will face penalties, financial fines or prison.⁴⁹ Thus, while the French leaders justify the ban as the right way to fight all forms of religious extremism, they cannot predict possible reactions. Indeed, if talking about consequences of the ban, the most dangerous aspect seems overlooked: French leadership has

⁴³ Juan Díez Medrano, “The Public Sphere and the European Union’s Political Identity”, in Jeffrey T. Checkel and Peter J. Katzenstein (eds), *European Identity*, Cambridge, Cambridge University Press, 2009, p. 106.

⁴⁴ In Germany, the state and religious institutions are not separated; while the Jewish community, the Catholic Church and the Protestant Church are all recognized by the state, Islam is not. In the Netherlands, the state and religious institutions are separated; the Dutch system allows all religions to establish their own institutions, including Islam.

⁴⁵ Erik Jan Zürcher, *op. cit.*, p. 74.

⁴⁶ Evyatar Friesel, *The Days and the Seasons*, Detroit, MI, Wayne State University Press, 1996, p. 102.

⁴⁷ “A Bad Idea,” *The Economist*, 15 May 2010, p. 18.

⁴⁸ Quoted in Bobby Ghosh, “The Moment”, *Time*, 26 July 2010, p. 7.

⁴⁹ Gauthier-Villars, David, “France Advances Ban on Some Islamic Veils”, *The Wall Street Journal*, 14 July 2010, p. A15.

ignored the fact that the decision to ban burqas “may stigmatize Islam and create a defensive reaction” across the EU.⁵⁰

Conclusion

The presence of Islam in the European Union represents a growing concern both for the Muslims and the Europeans who, while having to understand that the days when the Union was exclusively Christian are gone, will have to integrate their Muslim communities. In this respect, I addressed the situation characterizing both the past and the present. In the future, new enlargements of the EU will bring more Muslims into the Union. Accordingly, policy-making should focus on the process of inclusion and less on the ideas how to strengthen European identity that, intentionally or not, could lead to exclusion or emergence of an ever stronger Islamic identity across the EU. The media and the public are aware of the complexity of the subject and are ready to discuss the future. Indeed, while some contributions manage to inspire further Islamophobia by questioning whether Europe will become “a new ‘Eurabia’,”⁵¹ some others try to transmit what many European Muslims see as the cosmopolitan nature of Islam and its readiness to coexist with the others.⁵² However, under what conditions?

⁵⁰ “Running for Cover”, *The Economist*, Internet: <http://www.economist.com/node/16113091/print>, 26/07/2010.

⁵¹ For example, one discussant noted: “What will Europe be like in 20 or 30 years we simply cannot know for sure. The dominant cultures may rise up in reaction to an increasing Islamization of their population. One thing for sure, look for some major cultural conflicts in the future. Will Europe quietly pass into the night and increasingly transition into a new ‘Eurabia’? Maybe. I am praying and hoping for a Christian revival to spread across the face of Europe once more and bring thousands of Muslims to Christ—that too would bring a major change to Europe and beyond” (“The Islamization of Europe”, Internet: <http://answersforthefaith.com/2009/08/08/the-islamization-of-europe/>, 10/07/2010).

⁵² As Maisami put it: “Islam’s future depends upon its ability to wed Western-style modernism with Islamic principles, or, in other words, whether it can develop an Islamic-style modernism. The challenge is to engage in modernity without sacrificing Muslim values or undermining Islamic principles. ‘As we are only slowly realizing, Islam is truly a world religion, increasingly visible in Europe and the United States as well as Asia, Africa, and the Middle East.’ It is significant for the future of Islam that ‘the capitals and major cities of Islam are not only Cairo, Istanbul, Mecca, but equally Paris, London, New York’” (M. Maisami, “Islam and Globalization”, *The Fountain*, Summer 2003).

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PORAST ZABRINUTOST ZBOG POJAVE ISLAMA U EVROPSKOJ UNIJI

APSTRAKT

Hrišćansko-demokratske vrednosti su predstavljale glavnu odliku u procesu ujedinjavanja Evrope. Tokom vremena ovaj trend je prekinut zbog rastućeg prisustva muslimanskih zajednica po celoj Evropi. Kao odgovor na ovu novu dinamiku otpočele su razne rasprave na temu Islama i Evropske unije, evropskog identiteta i uključivanja muslimana u EU. Iz tog razloga u članku se istražuje prisustvo Islama u EU i uzimajući u obzir i istorijske i sadašnje dimenzije ukazuje se na različite aspekte koji sigurno dovode u pitanje njihovu koegzistenciju.

Ključne reči: Islam, Evropska unija, islamofobija, evropski identitet.

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Understanding the Colombian Civil War

ABSTRACT

The purpose of this article is to review the profile and causes of the Colombian conflict, to shed light on the context in which the current events on the Colombian battlefields are occurring and therefore, to bring attention to the fact that the conflict cannot be resolved merely with brute military force what has, with the successes of Uribe government's anti-guerrilla campaigns, become a general opinion. It is also an objective of this article to set a foundation upon which some further critical approach analysis of the Colombian armed conflict can be built.

Key words: Colombia, paramilitary forces, guerilla warfare, criminal organizations, drug.

The recent successes of the Colombian armed forces against the leftist rebels, mainly the Revolutionary Armed Forces of Colombia – People's Army (*Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo* (FARC-EP)) and the establishment of new paramilitary formations such as *Águilas Negras*, *Rastrojos*, *Los Paisas* and others have again drawn media attention to the ongoing armed conflict in Colombia. In mass media and in the academic sphere as well insurgents are often portrayed as yet another of the many criminal gangs active in Colombia or at best as narco-terrorists. While it is true that *modus operandi* of these groups includes terrorist attacks and that their activities are mainly funded through criminal activities, such classification can only derive from a lack of understanding of the subject or/and political intentions to further denigrate the insurgents and to praise Colombian government that is itself not far from being criminal, on other hand. The conflict in Colombia is a

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complex and a long-lasting one and it cannot simply be dismissed with a good versus evil scenario.

The methodology used in this analysis is based on the conflict analysis methodology developed by the International Development Research Center (IDRC) in cooperation with a broad consortium of other non-governmental organizations that was published in 2004. IDRC (2004) suggests that a comprehensive conflict analysis should encompass profile, root causes, actors and dynamics of the conflict. As it is not the intention of this article to build a full analysis of the conflict in Colombia, but merely to bring attention to root causes that ought to be addressed by policy makers on field, only the profile and root causes of the conflict are analyzed. The chapter on the profile of the conflict defines the type of conflict in Colombia and warring parties, sets background to the current conflict and examines the casualties of the conflict and its conflict intensity. What follows is the chapter about the root causes of the conflict in which the structural causes, proximate causes and triggers are examined. The findings of the profile and root cause analysis are then combined in the conclusion, which seeks to propose some general guidelines both for future policy making and further academic research about the conflict in Colombia.

Addressing the root causes of the conflict ought to be the primary concern of those striving towards finding the resolutions for it. While it is true that the root causes such as poverty and inequality are themselves not enough for an internal conflict to take place as McDougall points out, solving merely the problems of state weakness and others that form objective conditions under which an armed rebellion can take place can only transform forms of violence as Leech proves on the case of El Salvador.² The peace accords that ended the civil war in El Salvador in 1992 failed to address the socio-economic roots of the conflict and although the rebel forces were demobilized surrendering their arms, the economic situation forced many of the former guerrillas as well as soldiers to turn to violent criminal activities in order to survive. “Ten years after the end of civil conflict, the number of killings in El Salvador was comparable to the worst years of that countries civil war”.³

² Alex McDougall, “State Power and Implications for Civil War in Colombia”, *State in Conflict & Terrorism*, 32 (4), 2009, p. 327.

Garry Leech, “The War on Terror in Colombia”, *Colombia Journal*, New York, 2004, p. 22.

³ Ibid.

Profile

Colombia measures 1.138.910 km² and has an exceptional strategic position.⁴ It is the only South American country adjacent both to the Pacific and Atlantic Oceans. Its position makes it “a throat” of communication and transportation lines between South and Central American countries. In the north, it borders Panama lying in the proximity of the Panama Canal, while in the east it borders Venezuela, a country with the largest proven oil reserves in the Americas. Its main physical features are the Andes and the lowlands. Valleys and basins of the three Andes chains, all of which have a general south-north orientation, are where the most of the Colombian population is concentrated. This is also the part of the county with fairly good land traffic connections and relatively cool climate. Hot tropical climate is typical for Colombian lowlands, which extend over almost two-thirds of the country and are, with the exception of the costal Caribbean region, very scarcely populated. In these lowlands, rivers are a dominant feature of both the physical and human landscapes of the region. Majority of the lowland population is settled on the riverbanks while rivers are often the only possible access lines to these regions.

“Colombia’s geography proved to be a major obstacle to state building”, especially in the scarcely populated lowlands.⁵ The Colombian state never managed to establish effective control in these parts of the country. Most attempts of establishing legitimate and permanent state presence failed due to the lack of required financial and human resources as well as the lack of support from the local population with no experience of state as an impartial dispenser of justice. Meanwhile, the rural elites found state presence to be either unnecessary or undesirable and urban elites lacked motivation for making an effort necessary to alter this situation. To this day, few traffic connections between Colombia’s hinterlands and the capital city exist and rural communities still live in semi-isolation from the daily state politics and economy.⁶ Within Colombia, the difference in road density between various departments is enormous. According to data presented by Ramirez et. al. and Herbst that measures road density in the selected Colombian Departments, Quindico had the highest road density of 0.113 km/km, while Vaupes and Cesnare had road density of only 0,003 km/ km².⁷ Heavy terrain, dense tropical forest, hot

⁴ CIA – The World Factbook, *Colombia*. Retrieved July 19, 2010, from <https://www.cia.gov/library/publications/the-world-factbook/geos/co.html>

⁵ Alex McDougall, “State Power and Implications for Civil War in Colombia”, *State in Conflict & Terrorism*, 32 (4), 2009, p. 328.

⁶ Ibid. P. 329.

⁷ Alex McDougall, “State Power and Implications for Civil War in Colombia”, *State in Conflict & Terrorism*, 32 (4), 2009, p. 330.

climate conditions, lack of roads, small state presence and porous borders make these areas a guerrilla warfare paradise.

Type of Conflict

Classifying conflict is always a difficult task, due to a great number of definitions of war, civil war, armed conflict and other states of war that appear in the world. Uppsala Conflict Data Program defines an armed conflict as a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths in one calendar year.⁸ Although the intensity of conflict in Colombia varied since its beginning in 1964, it has always fallen under the Uppsala Conflict Data Program definition. But, the conflict in Colombia is also often regarded as civil war, although the Colombian government ferociously renounces such a classification as it regards insurgents as common criminals or terrorists and not as warring parties. Small and Singer define civil war as “any armed conflict that involves (a) military action internal to the metropole, (b) active participation of the national government, and (c) effective resistance by both sides.”⁹ Sambanis dismisses this definition as being “deceptively straightforward”¹⁰ and then through analysis of various intrastate conflicts defines eight criteria a conflict must fulfil in order to be defined as civil war.¹¹ Conflict in Colombia fulfils all the required

⁸ Uppsala Conflict Data Program. *UCDP Definitions*. Retrieved from http://www.pcr.uu.se/research/UCDP/data_and_publications/definitions_all.htm July 20, 2010.

⁹ Melvin Small, David Singer, *Resort to arms: International and civil war, 1816-1980*, Sage, Beverly Hills, CA, 1982, p.210.

¹⁰ Nicholas Sambanis, “What Is Civil War? Conceptual and Empirical Complexities of an Operational Definition”, *The Journal of Conflict Resolution*, 48 (6), 2004, pp. 816.

¹¹ “An armed conflict should be classified as civil war if: (a) The war takes place within the territory of a state that is a member of the international system with a population of 500,000 or greater, (b) The parties are politically and militarily organized, and they have publicly stated political objectives, (c) The government (through its military or militias) must be a principal combatant. If there is no functioning government, then the party representing the government internationally and/or claiming the state domestically must be involved as a combatant, (d) The main insurgent organization(s) must be locally represented and must recruit locally. Additional external involvement and recruitment need not imply that the war is not intrastate. Insurgent groups may operate from neighboring countries, but they must also have some territorial control (bases) in the civil war country and/or the rebels must reside in the civil war country, (e) The start year of the war is the first year that the conflict causes at least 500 to 1,000 deaths. If the conflict has not caused 500 deaths or more in the first year, the war is coded as having started in that year only if cumulative deaths in the next 3 years reach 1,000, (f) Throughout its duration, the conflict must be characterized by

criteria. The number of battle-related deaths from the early years of war can only be estimated today. The intensity of the conflict throughout its history has varied, as has the number of inflicted deaths to the government by insurgents, which has been very low in the last few years, probably under the required 100 mark. However, the conflict fulfils all other requirements proposed by Sambonis. Due to the political organization of the warring parties and utilization of violence as means to further political goals, both on the side of the government and insurgents, the conflict can therefore be classified as a civil war, although it is true that sometimes numerical requirements required by some academics in order to classify a conflict as such, are not met.

Warring parties

For decades, Colombia has been ravaged by a civil war between the Colombian government and several non-state actors. The latter are divided into two broad groups — left wing insurgents/guerrillas and right wing paramilitaries. Throughout the history, many different guerrilla groups were formed and many have already been disbanded such as the M-19 group and indigenous guerrilla formations. The largest insurgent groups however, the FARC-EP¹² and the

sustained violence, at least at the minor or intermediate level. There should be no 3-year period during which the conflict causes fewer than 500 deaths, (g) Throughout the war, the weaker party must be able to mount effective resistance. Effective resistance is measured by at least 100 deaths inflicted on the stronger party. A substantial number of these deaths must occur in the first year of the war.⁴ But if the violence becomes effectively one-sided, even if the aggregate effective-resistance threshold of 100 deaths has already been met, the civil war must be coded as having ended, and a politicide or other form of one-sided violence must be coded as having started, (h) A peace treaty that produces at least 6 months of peace marks an end to the war, (i) A decisive military victory by the rebels that produces a new regime should mark the end of the war. Because civil war is understood as an armed conflict against the government, continuing armed conflict against a new government implies a new civil war. If the government wins the war, a period of peace longer than 6 months must persist before we code a new war (see also criterion k)” (Nicholas Sambonis, “What Is Civil War? Conceptual and Empirical Complexities of an Operational Definition”, *The Journal of Conflict Resolution*, 48 (6), 2004, pp. 829-30).

¹² At the beginning of its existence, FARC had about 350 members (International Crisis Group. (2002). Colombia's Elusive Quest for Peace. *Latin America Report N°1*. Retrieved, from http://se1.isn.ch/serviceengine/Files/ISN/27311/ipublicationdocument_singledocument/F12B8E97-AE9C-4F5F-8736-1101A37CC158/en/001_colombias_elusive_quest_for_peace.pdf, July 20, 2010, p.3). At peak of its power in 2002 FARC-EP numbered about 26,000 combatants. This number was then drastically reduced by government anti-guerrilla campaigns; however in 2010 FARC-EP still has an estimated 8,000 men and women under arms (International Crisis Group. (2010). Improving Security Policy in Colombia. *Latin America Briefing* No 23, 2010 Retrieved, from <http://www.crisisgroup.org/~media/Files/latin-america/colombia/B23%20Improving%20Security%20Policy%20in%20Colombia.ashx>, July 21, 2010, p.77).

National Liberation Army (*Ejército de Liberación Nacional* (ELN)),¹³ have persisted to this day. There is also a very small Popular Liberation Army (*Ejército Popular de Liberación* (EPL)); however, not much is known about it. Paramilitary groups are also not a cohesive group. They had been formed as self-defence units by large landowners to protect themselves against guerrilla attack and many of them later formed close alliances with the drug cartels, notably the Medellín cartel. In the 1990s they formed a loose coalition of the United Self-Defense Forces of Colombia (*Autodefensas Unidas de Colombia* (AUC)), but the group was demobilized in 2006 after reaching a successful demobilization agreement with the government in 2003. Since then new paramilitary groups have appeared and the International Crisis Group (2010, 9) identifies them as *Rastrojos*, Popular Revolutionary Anti-Subversive Army of Colombia (*Ejército Revolucionario Popular Antisubversivo de Colombia* (ERPAC)), *Los Paisas*, *Los Urabeños* and *Águilas Negras*. Although they are much smaller in number than the former AUC,¹⁴ being often dismissed merely as criminal gangs and much more fragmented than the former AUC, they are, nevertheless, gradually becoming a warring party in the conflict.

Background to the conflict

The current state of war in Colombia has its roots in the period named La Violencia when the Liberal and Conservative Parties were engaged in the civil war. La Violencia, which caused approximately 200,000 deaths started with the assassination of liberal presidential candidate Jorge Eliécer Gaitán in April 1948 in Bogotá.¹⁵ Mass unrests, rioting and looting that erupted after the assassination were brutally repressed by the government and an estimated that 2,000 people were killed in the crackdown. After the crackdown, the Conservative Government

¹³ ELN had about 5,000 members at its peak in the mid-1990s (International Crisis Group, 2002: p. 10). Today their number is estimated at around 3,000 (James Hackett, ed.). *The Military Balance*, International Institute for Strategic Studies, London, 2010, p.77).

¹⁴ When demobilized in 2006, AUC numbered about 32,000 men. Today's emergent criminal bands, remnants of the AUC, number about 3,500 men (The Military Balance, 2010, p. 77).

¹⁵ Uppsala Conflict Data Program, *La Violencia' and the start of left-wing guerrillas*. Retrieved, from http://www.pcr.uu.se/gpdata/gpcountry.php?id=35®ionSelect=5-Southern_Americas# July 20, 2010.

Garry Leech, "The War on Terror in Colombia", *Colombia Journal*, New York, 2004, p.21. Linda Robinson, "Guerrillas in the Mist", *The New Republic*, 221 (10), 1999, pp. 21-2. Retrieved July 20, 2010, from <http://web.ebscohost.com.nukweb.nuk.uni-lj.si/ehost/detail?vid=4&hid=110&sid=2d109657-efaf-49bb-a471-04f226e24ff8%40sessionmgr104&bdata=Jmxhbm9c2wmc2l0ZT1laG9zdC1saXZlJnNjb3BIPXNpdGU%3d#db=a9h&AN=12441396>, p. 22.

headed by Mariano Ospina Pérez became even more authoritarian than before Gaitán's assassination. As of March 1949, all public rallies were banned, in May of the same year all liberal governors were fired and in November, the parliament was disbanded.¹⁶ In cooperation with the Communists, the Liberals began waging an armed struggle against the Conservatives. They organized "self-defence" groups that were later transformed into peasant guerrilla forces.¹⁷

The presidential elections of 1949 were boycotted by the liberals and as a result, Laureano Gómez, the only remaining candidate, took office in 1950. He broadened powers of the presidency and curtailed civilian liberties as part of an effort to confront mounting violence in the country. "Pro-labor laws passed in the 1930s were cancelled by executive decree, independent labor unions were struck down, congressional elections were held without opposition, the press was censored, courts were controlled by the executive, and freedom of worship was challenged as mobs attacked Protestant chapels".¹⁸ In 1953, after five years of fighting, General Gustavo Rojas Pinilla ousted Gómez in a widely supported *coup d'état* and then unsuccessfully tried to initiate a popular movement, similar to that of Juan Perón in Argentina. In 1957, he was forced to resign due to the general strike and strong opposition to his rule. Five-member military junta, composed of Liberals and Conservatives took over.¹⁹ But even before that happened, the Liberals and the Conservatives had faced with the dictatorship of Rojas Pinilla and struck political agreements in Sitges (Spain) and San Carlos "which sought to reduce inter-party tensions and provide a basis for power-sharing between the parties".²⁰ The National Front, a common body of both Conservatives and Liberals, was created and agreements became constitutional amendments.²¹

¹⁶ Karen M. Sturges-Vera, "La Violencia". In: Denis M. Hanratty, Sandra W Meditz, (eds.). *Colombia: A Country Study*. GPO for the Library of Congress, Washington, 1990. Retrieved from <http://countrystudies.us/colombia/22.htm>, July 20, 2010.

¹⁷ International Crisis Group, Colombia's Elusive Quest for Peace. *Latin America Report N°1*. 2002 Retrieved, from http://se1.isn.ch/serviceengine/Files/ISN/27311/ipublicationdocument_singledocument/F12B8E97-AE9C-4F5F-8736-1101A37CC158/en/001_colombias_elusive_quest_for_peace.pdf, July 20, 2010, p.3.

¹⁸ Karen M. Sturges-Vera, "La Violencia". In: Denis M. Hanratty, Sandra W. Meditz, (eds.). *Colombia: A Country Study*. GPO for the Library of Congress, Washington. Retrieved from <http://countrystudies.us/colombia/22.htm>, July 20, 2010.

¹⁹ International Crisis Group, Colombia's Elusive Quest for Peace. *Latin America Report N°1*. 2002, Retrieved, from http://se1.isn.ch/serviceengine/Files/ISN/27311/ipublicationdocument_singledocument/F12B8E97-AE9C-4F5F87361101A37CC158/en/001_colombias_elusive_quest_for_peace.pdf, July 20, 2010, p. 3.

²⁰ Karen M. Sturges-Vera, "The Rojas Pinilla Dictatorship". In: Denis M. Hanratty, Sandra W. Meditz, (eds.). *Colombia: A Country Study*. GPO for the Library of Congress, Washington. 1990. Retrieved from <http://countrystudies.us/colombia/23.htm>. July 20, 2010.

²¹ Ibid.

The National Front brought relative peace in the country, but eliminated all other political opposition. With the Liberals now on the government side, the remaining Communist rebels became the priority target of the government.²² Therefore, violence continued although on the smaller scale than before. Immediately after the constitution of the National Front some fractions of Liberals, but mainly Communists, opposed exclusive political system that was formed and refused to disarm. In 1964, an estimated 100 armed groups were still active. In the same year, the Colombian government conducted a brutal attack on the self-proclaimed Republic of Marquetalia in today's department of Caldas, which marked the beginning of the current civil war in Colombia. Although rebels were defeated in Marquetalia, their core managed to survive and regroup. In the same year, a group of Colombian students, which returned from Cuba, established the ELN,²³ while the remnant rebel groups that survived Marquetalia formed the core of the FARC, which was formally established two years later.²⁴

Number of casualties

There are no reliable statistics on the number of people that have been killed in the Colombian civil war since 1964. No official statistics exist and academic sources use different methodologies that are often not disclosed. What follows is some of the data on casualties of the Colombian civil war that will be presented in order to form a broad picture of the level of violence in that war.

Ploughshares (2009) puts the total number of killed anywhere between 50,000 and 200,000, which includes some 40,000 since 1990.²⁵ Restepo and Spagat put the number of killed and injured in a period between 1988 and 2003 at a little over 50,000, out of which about 25,000 were combatants and the rest civilians.²⁶

²² Uppsala Conflict Data Program, *La Violencia' and the start of left-wing guerrillas*. Retrieved from http://www.pcr.uu.se/gpdatabase/gpcountry.php?id=35®ionSelect=5-Southern_Americas# July 20, 2010.

²³ Mark W. Chernick, "Conflict in Colombia: An Analysis and Perspectives for Peace". In: Mo Bleeker Massard (ed.), *Colombia: Conflict Analysis and Options for Peace-Building*, Swisspeace. Bern, 2003, p. 15.

²⁴ Uppsala Conflict Data Program, *La Violencia' and the start of left-wing guerrillas*. Retrieved from http://www.pcr.uu.se/gpdatabase/gpcountry.php?id=35®ionSelect=5-Southern_Americas# July 20, 2010.

²⁵ Project Ploughshares, *Armed Conflicts Report: Colombia (1964 - first combat deaths)*. Retrieved from <http://www.ploughshares.ca/libraries/ACRText/ACR-Colombia.html>, July 20, 2010.

²⁶ Restepo, J., Michael S., *Civilian Casualties in the Colombian Conflict: A New Approach to Human Security*, University of London, London, 2004, p.14.

McDougall estimates that the FARC-EP killed an average of 500 soldiers annually in the 1980s and an average of 1,000 in the 1990s, while an average of 2.2 guerrillas were killed for every Colombian soldier by 1989 and an average of 1.52 by 1999.²⁷ The problem with estimating the number of casualties in the Colombian civil war is that many people have been killed in gun battles that are not war related, but are a result of rampant urban criminal violence. Leech puts the annual number of violent deaths at 28,000 out of which only 22% come as a result of the conflict being waged by various armed groups.²⁸

Very specific casualty groups are mine victims. According to Landmine and Cluster Munitions Monitor,²⁹ 6,696 mine related casualties were reported in Colombia between 1999 and 2008.³⁰ In 2008 alone, 160 people were killed (44 civilians) and 617 were injured (212 civilians).³¹

Conflict intensity

Graph 1.6.1 that is based on the data of Heidelberg Institute for International Conflict Research shows the conflict intensity between the Colombian government and the FARC-EP, ELN and Paramilitaries. The conflicts between non-state actors also exist, especially between right wing paramilitaries and left wing insurgents, while in the past the former often collaborated with the government in anti-guerrilla operations. The ELN and FARC-EP also sometimes fight each other over territory. However, these conflicts are of minor importance for security in Colombia, especially since demobilization of the

²⁷ Alex McDougall, "State Power and Implications for Civil War in Colombia", *State in Conflict & Terrorism*, 32 (4), 2009, pp.337.

²⁸ Garry Leech, "The War on Terror in Colombia", *Colombia Journal*, New York, 2004, p.21.

²⁹ Landmine and Cluster Munitions Monitor, *Casualties and Data Collection*, 2009, Retrieved July 21, 2010, from http://www.the-monitor.org/index.php/publications/display?url=lm/2009/es/mine_casualties.html#casualties_from_1999%E2%80%932008.

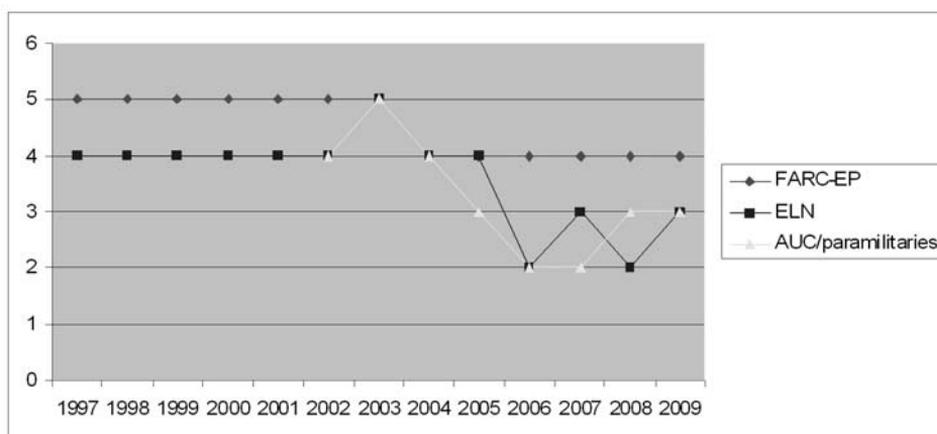
³⁰ Only Afghanistan and Cambodia had greater number of mine victims in that period.

³¹ In the last decade non-state actors in the conflict, most notably the FARC-EP, have increased use and production of anti-personnel mines throughout the country, while the Republic of Colombia became a party to the Mine Ban Treaty in 2001 and completed the destruction of 18,531 stockpiled antipersonnel mines in 2004 (Landmine and Cluster Munitions Monitor 2009). However, prior to signing the Mine Ban Treaty, the government forces laid approximately 20,000 anti-personnel mines throughout the country, mostly for perimeter defense, and in 2009 an estimated 150,000 m² around 18 military bases remained to be contaminated with anti-personnel mines, while the number of contamination in civilian areas is unknown (Landmine and Cluster munitions monitor 2009). Landmine and Cluster Munitions Monitor, *Colombia: 2008 Key Data*, 2009. Retrieved July 21, 2010, from http://www.themonitor.org/index.php/publications/display?act=submit&pqs_year=2009&pqs_type=lm&pqs_report=colombia.

AUC, when compared to conflicts of state vs. non-state armed groups. Therefore, only intensity of those conflicts will be presented.

Heidelberg Institute for International Conflict Research³² defines five stages of conflict intensity and they are as follows: latent conflict,³³ manifest conflict,³⁴ crisis,³⁵ severe crisis³⁶ and war.³⁷

Graph 1: Conflict intensity of government vs. non-state actors



Sources: Heidelberg Institute for International Conflict

Legend: 5 = war, 4 = Severe Crisis; 3 = Crisis; 2 = Manifest Conflict; 1 = Latent Conflict.

³² Heidelberg Institute for International Conflict Research, *Conflict Barometer 2002*, University of Heidelberg, Heidelberg, 2002, p.2.

³³ “A positional difference on definable values of national meaning is considered to be a latent conflict if respective demands are articulated by one of the parties and perceived by the other as such” (Heidelberg Institute for International Conflict Research, *Conflict Barometer 2002*, University of Heidelberg, Heidelberg, 2002, p. 2).

³⁴ “A manifest conflict includes the use of measures that are located in the fore field of violent force. This concerns for example verbal pressure, threatening publicly with violence, or the imposition of economic sanctions” (Heidelberg Institute for International Conflict Research, 2002, p. 2). Please note, that before 2002 this category did not exist in Conflict barometers issued by Heidelberg Institute.

³⁵ “A crisis is a tense situation in which at least one of the parties uses violent force in single incidents” (Heidelberg Institute for International Conflict Research, 2002, p. 2).

³⁶ “A conflict is considered to be a severe crisis if violent force is repeatedly used in an organized way” (Heidelberg Institute for International Conflict Research, 2002, p. 2).

³⁷ “Wars are a type of violent conflicts in which violent force is used with a certain continuity in an organized and systematic way. The conflict parties apply extensive measures, according to the situation. The amount of destruction is vast and of long duration” (Heidelberg Institute for International Conflict Research, 2002, p. 2).

The conflict intensity between the FARC-EP and the Colombian government has been on the level of war until 2004, when the intensity of the conflict was lowered to severe crisis due to the successes of President Alvaro Uribe's fierce anti-guerrilla campaigns and has since then remained on that level. International Crisis Group observes that although the FARC-EP has been severely weakened during the Uribe's presidency, it has effectively adapted to the new situation on the battleground and is far from being defeated.³⁸ We can therefore, expect that the intensity of the conflict between the government and the FARC-EP will probably remain on the same level in the following years.

Uribe's election in 2002 and the commencement of his anti-guerrilla campaigns escalated the conflict with the ELN to a full scale in 2003. After defeats on field, the ELN lost its strength and as a consequence, the intensity fell first to a severe crisis level in 2004 and 2005, when the ELN engaged in peace talks with the government and then consequently fell to a level of manifest conflict in 2006. It has again reached the level of crisis in 2007, when the peace talks were terminated without a deal being reached and then again in 2009. Unless the ELN recovers its strength, the intensity of the conflict between the ELN and the government will probably remain on the same level. The conflict between the government and paramilitaries (then the AUC) also escalated to war in 2003, probably due to the government anti-drug campaigns, but already that year a demobilization agreement was signed between the AUC and the government and consequently, the conflict was steadily losing its intensity until 2006, when the AUC ceased to exist and the conflict intensity reached a level of manifest conflict. Since then new right-wing paramilitary formations, mostly remnants of the AUC that refused to demobilize, have been formatted and have steadily been rising both in number and presence throughout Colombia. The conflict between these new paramilitaries and the government has again reached a level of crisis in 2008 and has remained on that level in 2009.

Root causes of conflict

International Crisis Group states "unequal distribution of land and wealth, expulsion of poor farmers to the country's agricultural frontier where the state

³⁸ FARC-EP has been able to increase the number of attack between 2008 and 2009 and so reversed the general trend of diminishing number of attack during Uribe's administration (International Crisis Group, Improving Security Policy in Colombia, *Latin America Briefing No 23*, 2010, retrieved from <http://www.crisisgroup.org/~media/Files/latin-america/colombia/B23%20Improving%20Security%20Policy%20in%20Colombia.ashx>, July 21, 2010. p. 3).

was weak or absent and a deeply-rooted tradition of violence” as some of the reasons that “sparked the conflict and explain its persistence over decades.”³⁹ United Church of Canada states similar reasons for the outbreak of current civil war in the 1960s: “social injustice, unequal distribution of land, concentration of political power and wealth and the impossibility of implementing real alternatives through democratic means.”⁴⁰ Chernick attributes historical reasons for the outbreak of civil war to economic, political and social patterns of exclusion that are typical for Latin America, while Gray, through an analysis of the war in Colombia, identifies six factors that he sees as causes of war and its continuation — economic causes, state weakness, landscape, U.S. policies, duration of violence and opportunism of non-state actors.⁴¹

Velásquez differs between historical causes and factors that have influenced escalation and continuation of the conflict. Historical causes are social, economic and political exclusions, as well as the Colombian tradition of attaining political objectives through violence.⁴² Coupled with the authoritarian political culture these causes set conditions for the outbreak of the conflict. External and internal factors have then contributed to the escalation of the conflict. Foreign factors were the following: the Cold war and its influences on national security doctrines, the Cuban revolution and the Sino-Soviet rupture; while domestic factors were the following: restricted democracy under the National Front, political radicalization of labour unions and youth groups, especially students, remnants of the liberal guerrilla groups from the period of La Violencia.⁴³ Other factors that later contributed to the continuation and escalation of the conflict surfaced such as drug trafficking, collapse of the justice system as element for regulating social behaviour, lack of confidence as

³⁹ International Crisis Group, “War and Drugs in Colombia”, *Latin America Report No 11*, 2005. Retrieved July 21, 2010, from http://www.crisisgroup.org/~media/Files/latin-america/colombia/11_war_and_drugs_in_colombia.ashx, p. 6.

⁴⁰ United Church of Canada, *Colombia: A country of Paradoxes*, 2009. Retrieved July 21, 2010, from http://www.united-church.ca/files/getinvolved/unitedforpeace/advocacy_colombiabackgrounder.pdf, p. 2.

⁴¹ Mark W. Chernick, “Conflict in Colombia: An Analysis and Perspectives for Peace”. In: Mo Bleeker Massard (ed.), *Colombia: Conflict Analysis and Options for Peace-Building*, Swisspeace. Bern, 2003, p. 13.

Gray, Vanessa Joan, “The New Research on Civil Wars: Does It Help Us Understand the Colombian Conflict?”, *Latin American Politics & Society*. 50 (3), 2008, pp. 63–91.

⁴² Alberto V. Velásquez, “The Colombian Armed Conflict: Analysis and Perspectives”. In: Mo Bleeker Massard (ed.), *Colombia: Conflict Analysis and Options for Peace-Building*, Swisspeace, Bern, 2003 p. 31.

⁴³ Karen M. Sturges-Vera, “La Violencia”. In: Denis M. Hanratty, Sandra W. Meditz, (eds.). *Colombia: A Country Study*. GPO for the Library of Congress, Washington. Retrieved from <http://countrystudies.us/colombia/22.htm>, July 20, 2010.

a value of social cohesion and delinquent and corrupt behaviour of government administrations.⁴⁴

The most important factor that influenced the course of the war was undoubtedly drug trafficking, which started to flourish in the 1970s. It is, however, a grave simplification to reduce the causes of the war merely to it. The first impact of drug trafficking on the war had been the rise and evolution of the right-wing paramilitary formations that at the beginning served mostly as the protection for large landowners and drug lords from the attacks of left-wing guerrillas. In the 1980s drug trafficking also started to gain importance for the guerrillas, who found in it a source of finance for the struggle they were waging against the government.⁴⁵ Government officials, too, were often involved in the drug business,⁴⁶ apparently even former president Alvaro Uribe who in 1991, while still serving as a senator, was ranked 82nd of 100 most influential drug lords in Colombia by the U.S. Defense Intelligence Agency in one of its top secret reports, now available on the internet.⁴⁷

From the above, the root causes of the conflict as defined by International Crisis Group can be identified.⁴⁸ They are as follows: structural causes that created preconditions for the violent conflict, proximity causes or factors that further escalated and deepened the conflict, also, what they call “triggers,” which are single acts that will set and escalate a conflict.⁴⁹ The attack of the government forces on the Republic of Marquetalia mentioned in the Chapter 1.4 *Background to Conflict* could be regarded as a trigger. But, there have been no such triggers in recent years. For this reason, only structural and proximity causes will be defined in continuation.

⁴⁴ Ibidem.

⁴⁵ International Crisis Group, “War and Drugs in Colombia”, *Latin America Report N°11*, 2005. Retrieved July 21, 2010, from http://www.crisisgroup.org/~media/Files/latin-america/colombia/11_war_and_drugs_in_colombia.ashx. p. 4; Chernick, Mark W., “Conflict in Colombia: An Analysis and Perspectives for Peace”. In: Mo Bleeker Massard (ed.), *Colombia: Conflict Analysis and Options for Peace-Building*, Swisspeace. Bern, 2003, pp. 13–7; Garry Leech, “The War on Terror in Colombia”, *Colombia Journal*, New York, 2004, p. 16.

⁴⁶ See subchapter Drug Trafficking.

⁴⁷ Defense Intelligence Agency, *Colombian Narco Trafficker Profiles*, 23. September 1991. Retrieved July 21, 2010, from <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB131/dia910923.pdf>.

⁴⁸ International Crisis Group, “Improving Security Policy in Colombia”, *Latin America Briefing No 23*, 2010, retrieved, from <http://www.crisisgroup.org/~media/Files/latin-america/colombia/B23%20Improving%20Security%20Policy%20in%20Colombia.ashx>, July 21, 2010.

⁴⁹ Ibid.

Structural causes

Structural causes of the civil war in Colombia are of political, economic and social nature. Among political issues the most burning are political exclusiveness, formed with the National Front in 1958, and weak state presence on the most part of Colombian territory, while the question of agrarian reform, vast development discrepancies between urban and rural environment, tendency of attaining political objectives through violence and especially poverty and income inequality are the main socio-economic causes.

Political causes

In 1958, the National Front had established an exclusive political system in which power alternated between the Liberal and Conservative Parties that were the only two ones allowed to participate in elections. Regardless of the election results, the ruling party always shared some of its power with the other party. Such a system was constitutionally set at the end of La Violencia and lasted until 1974. The only legal way of political participation and opposition by dissident groups was through formation of “movements” that “challenged the establishment by presenting candidates under the Liberal or Conservative labels”.⁵⁰ The underground opposition that served as a foundation for the creation of left-wing guerrilla groups was a logical reaction to such a political system. The constitutional reforms of 1968 marked the beginning of the end of the National Front, and the presidential elections of 1974 and the local elections of 1976 returned the normal inter-party competition to Colombia. But, even though the election system was now open for all parties to participate, voter turnout was low⁵¹ and the Liberal and Conservative parties retained majority of seats in the parliament.⁵² A new constitution, enacted in 1991, broadened civil liberties and set up bodies such as Human Rights Ombudsman and Constitutional Court.⁵³ It did not, however, in any way changed the existing political system. 2002 was the first year since 1958 that a presidential candidate, not belonging to either the

⁵⁰ Karen M. Sturges-Vera, “Opposition to the National Front”. In: Denis M. Hanratty, Sandra W. Meditz, (eds.), *Colombia: A Country Study*, GPO for the Library of Congress, Washington, 1990. Retrieved July 22, 2010, from http://en.wikipedia.org/wiki/National_Front_%28Colombia%29#Creation.

⁵¹ Voter turnout on parliamentary elections after the abolishment of National Front only three times surpassed 50 %: in 1970 (51.9 %), 1974 (57.1 %) and 1990 (55.3 %) (International Institute for Democracy and Electoral, Assistance 2009).

⁵² Rex A. Hudson, “Post-National Front Political Developments”. In: Denis M. Hanratty, Sandra W. Meditz, (eds.). *Colombia: A Country Study*. GPO for the Library of Congress, Washington. Retrieved from <http://countrystudies.us/colombia/22.htm>, July 20, 2010.

⁵³ U.S. Department of State, 2010. *Background Note: Colombia*, Retrieved July 22, 2010, from <http://www.state.gov/r/pa/ei/bgn/35754.htm>.

Conservative or the Liberal Party, was elected president. Álvaro Uribe Vélez was elected in the first round of election with 53.04 % at 46.45 % of voter turnout.⁵⁴ In his election platform he promised a tougher approach to the illegal armed groups that operated in Colombia and vowed not to negotiate with them until they declared truce and disarmed.⁵⁵ In 2005, the Constitutional Court confirmed the decision of the Congress adopted in 2004 to allow Uribe to run for a second term.⁵⁶ In 2006, Uribe was again elected president, this time with 62.35 % at 45.05 voter turnout.⁵⁷ Although Uribe tried to amend the Constitution to allow him to run for the third term, the Constitutional Court rejected his plea. Therefore, in 2010, Juan Manuel Santos, former defence minister in Uribe's government was elected president in the second round with 69 % of votes at a low voter turnout.⁵⁸

The Colombian political system is riddled with corruption on all levels. The Organization Transparencia por Colombia, a national branch of Transparency International, estimates that a high or very high levels of corruption are present in at least half of Colombia's regional institutions, while the low level of public accountability is typical for the whole public sector. Corruption was proven again in late 2006 when the so-called "para" scandal broke out. Hard evidence that proved the entanglement of more than fifty high ranking politicians in drug trafficking and collaboration with the paramilitaries was provided by the Colombian prosecuting authorities. The scandal forced many of the high ranking officials to resign, such as Uribe's Foreign Minister, Head of the Administrative Department of Security (*Departamento Administrativo de Seguridad* (DAS)), Colombia's main intelligence service, and many high ranking officers of the Colombian Armed Forces,⁵⁹ among whom was even chief of the general staff, General Mario Montoya.⁶⁰

⁵⁴ International Foundation for Electoral Systems, *Election Profile: Colombia*, 2002. Retrieved July 22, 2010, from <http://www.electionguide.org/results.php?ID=441>.

⁵⁵ Connie Veillette, "Plan Colombia: A Progress Report", *CRS Report for Congress*, 2005. Retrieved July 22, 2010, from <http://fpc.state.gov/documents/organization/48382.pdf>, p.2.

William F. Pérez, *An Effective Strategy for Colombia: A Potential End to the Current Crisis*, Strategy Research Project, Carlisle Barracks, U.S. Army War College, 2004, p.6.

⁵⁶ Before this ruling presidents were allowed to serve only one four year mandate.

⁵⁷ International Foundation for Electoral Systems. *Election Profile for Colombia – Results*. Retrieved July 22, 2010, from <http://www.electionguide.org/results.php?ID=1011>.

⁵⁸ Sibylla Brodzinsky, "Juan Manuel Santos wins Colombia presidential election", *Guardian*, June 21. 2010. Retrieved July 22, 2010, from <http://www.guardian.co.uk/world/2010/jun/21/juan-manuel-santos-colombia-president>.

⁵⁹ International Crisis Group, "Colombia's New Armed Groups", *Latin America Report N°20*. 2007. Retrieved July 22, 2010, from http://www.crisisgroup.org/~media/Files/latin-america/colombia/20_colombia_s_new_armed_groups.ashx, p. 5.

⁶⁰ BBC News, *Colombian army commander resigns*, November 4. 2008. Retrieved July 21, 2010, from <http://news.bbc.co.uk/2/hi/americas/7709073.stm>.

The low voter turnout, corruption and collaboration with the illegal right-wing paramilitary formations shed bad light on the legitimacy of state institutions when coping with state problems and prove that political exclusion in one form or another is still present in the Colombian society. Most Colombians do not have much confidence in the existing political system or simply believe that nothing will change, no matter who is in power. That creates political passiveness, especially among the lower class.

Socio-economic causes

Since the 1970s, Colombia had a steady 4 to 5 % annual economic growth, with an exception of small recession in 1998 and 1999 when GDP fell by about 4 %.⁶¹ In 2009, the Colombian GDP *per capita* was 9.200 USD, down from 9.300 in 2010, due to the global economic crisis.⁶²

Irrespectively to relatively good economic development indicators mentioned above, Colombia remains a country of high levels of poverty and inequality. The World Bank estimates that in 1978 approximately 80 % of its population lived in poverty, 65 % in 1988, 60% in 1995 and 64% in 1999.⁶³ In 2006, the government estimated that 49.2 % of the population lived in poverty, while Colombian non-governmental organizations put the number at 70%.⁶⁴ The Embassy of Sweden quotes the government estimates for 2005 when 46.8 % of the population was supposed to live in poverty, and at the same time brings attention to high differences in poverty levels between urban and rural areas, 46.7 % and 69%, respectively. The data provided by the World Bank shows that in 1978 70% of the urban and 94% of the rural population lived in poverty, while the ratio between the urban and rural poor was 55% to 79 % in 1999.⁶⁵ The Colombian government ratio estimates for 2003 were 46.7 % to 69 %. Gómez et. al. also notice vast discrepancies between

⁶¹ World Bank, *Colombia Poverty Report*, 2002. Retrieved July 21, 2010, from http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2003/04/23/000094946_0304090401521/Rendered/PDF/multi0page.pdf, pp. 3-4

⁶² CIA – The World Factbook, *Colombia*. Retrieved July 19, 2010, from <https://www.cia.gov/library/publications/the-world-factbook/geos/co.html>.

⁶³ World Bank, *Colombia Poverty Report*, 2002. Retrieved July 21, 2010, from http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2003/04/23/000094946_0304090401521/Rendered/PDF/multi0page.pdf. p. 12.

⁶⁴ Helda Martinez, “Colombia: Poverty — the Old, the New and the Newest”, *Inter Press Service News Agency*, October 16. 2006. Retrieved July 21, 2010, from <http://ipsnews.net/news.asp?idnews=35118>.

⁶⁵ World Bank, *Colombia Poverty Report*, 2002. Retrieved July 21, 2010, from http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2003/04/23/000094946_0304090401521/Rendered/PDF/multi0page.pdf, p. 12.

urban and rural areas in the access to education and public services, unemployment, infant mortality rates, literacy rate, the access to safe drinking water and many others.⁶⁶ The Embassy of Sweden estimated Chocó to be the most critical of the provinces in Colombia, while its socio-economic indicators were much closer to those of the poorest countries in the world than to the Colombian average.

Even more critical than the number of poor in Colombia is the income inequality. The World Development Bank puts the Gini coefficient at 58.5, which makes Colombia a country with the sixth most unequal distribution of wealth among 141 countries for which data is provided.⁶⁷ In 2003, 20 % of the wealthiest Colombians earned 62.67 % of all incomes, while the poorest 20% only earned 2.48 %.⁶⁸ Another problem is connected to land ownership that is seen as a symbol of prestige in most Latin American countries. In 1996, 60.5 % (compared to 29 % in 1960) of productive land was concentrated in hands of less than 1% of landholders, while on other side of the spectrum 66% of landholders owned about 3 % (compared to 6 % in 1960).⁶⁹

Poverty, rural underdevelopment and income inequality are main features of the Colombian daily life, which together with political exclusivity and political passiveness of majority of the population, form structural causes of the conflict in Colombia. They were present in the 1960s when the war broke out and they are still present today. Some of these problems are even worse today than they were in 1960s.

Proximate causes

Among proximate causes, we can count numerous violations of human rights and international laws of armed conflict that are perpetrated by all warring parties. Most obvious are undoubtedly extrajudicial killing, massacres and harassments as well as displacements of civilian population.⁷⁰ These are the

⁶⁶ Alfredo Sarmiento Gómez, Lucía Mina Rosero, Carlos Alonso Malaver, Sandra Álvarez Toro., *Colombia: Human Development Progress towards the Millennium Development Goals*, United Nations Development Programme, 2003.

⁶⁷ UNDP, *Human Development Report 2009*. Retrieved July 21, 2010, from <http://hdrstats.undp.org/en/indicators/161.html>.

⁶⁸ World Bank, *World Development Indicators*, 2007. Retrieved July 21, 2010, from http://siteresources.worldbank.org/DATASTATISTICS/Resources/table2_7.pdf, p.66.

⁶⁹ Martin Jelsma, "Conflict, Sustainable Development, and the Illegal Drug Economy in Colombia: An Analysis of Trends and Policy Recommendations for a Peace Building Approach". In Mo Bleeker Massard (ed.), *Colombia: Conflict Analysis and Options for Peace-Building*, Swisspeace, Bern, 2003. p. 42.

⁷⁰ UNHCR (2007: 170) estimates that in 2006 there were between two and three million of internally displaced persons in Colombia – the largest population of internally displaced in the Western Hemisphere and second largest in the world, second only to Sudan.

causes that together with the apparent inability of judiciary to bring responsible to justice further make the war escalate.

Very important factor is also meddling of foreign countries in the Colombian civil war. The most obvious is the role of USA with its political and material support to the Colombian government in the struggle against insurgents. The neighbouring countries, too, play an important role. After the Colombian incursion on the FARC-EP camp in Ecuador, the Colombian government claimed to have found data on the computer, of then second highest ranking FARC-EP officer Raul Reyes that proved collaboration of the Venezuelan government with the rebel group. Of course, such allegations were ferociously denied by the government of Hugo Chávez in Venezuela in a diplomatic dispute that followed. Although the Colombian government did present to the public some not very convincing data, which the Venezuelan government immediately marked as being forged, up to now nothing has happened in that regard. It is however a fact that, especially before the incident in Ecuador, Chávez often spoke high of the Colombian insurgent groups and even named a public library after Manuel Marulanda, a long-time chief of the FARC-EP, deceased in 2008.⁷¹

But, the most important among the proximate cause is without doubt drug trafficking into which all of the warring parties are involved directly or indirectly.

Drug trafficking

Drug trafficking in Colombia first appeared in the mid-1960s when marijuana started to be grown massively.⁷² In the 1980s, marijuana was replaced with a much more profitable production of cocaine.⁷³ At the beginning, coca was not massively grown for cocaine production in Colombia. Most of the coca paste was smuggled to Colombian cocaine laboratories from Bolivia and Peru and majority of cocaine exports then went out from Colombia. In 1991, Colombia produced

⁷¹ International Crisis Group, "Improving Security Policy in Colombia", *Latin America Briefing* No 23, 2010. Retrieved, from <http://www.crisisgroup.org/~media/Files/latin-america/colombia/B23%20Improving%20Security%20Policy%20in%20Colombia.ashx>, July 21, 2010, p. 7.

⁷² Mexico and Colombia were the main suppliers of marijuana for the North American markets. But, in the 1970s and 1980s, the government eradication campaigns and rise in domestic supply in North America drastically lowered marijuana production in both countries (Jelsma, 2003: 41).

⁷³ International Crisis Group, "War and Drugs in Colombia", *Latin America Report No 11*, 2005. Retrieved July 21, 2010, from http://www.crisisgroup.org/~media/Files/latin-america/colombia/11_war_and_drugs_in_colombia.ashx, p. 3.

only 13.7 % of the world coca leaf production with 80% of the world cocaine production. The government anti-drug campaigns in Bolivia and Peru, extensively supported by USA, contributed to the fact that Colombia today produces 80% of the world cocaine, majority of which is made from domestic coca leaves.⁷⁴ Heroin, too, is produced in Colombia.⁷⁵

Drug trafficking led to the creation of large drug cartels among which Cali and Medellin stood out by its size and power. Cartels were large hierarchical organizations disrupted and destroyed by the police in the mid-1990s, what led to the creation of smaller, technologically and organizationally more sophisticated and less integrated cartels.⁷⁶ Cartels played an important role in the Colombian civil war. At the time of large cartels prior to the 1990s, their leaders, in collaboration with large landowners, formed illegal private paramilitary formations to protect them against the police and guerrilla attacks. It was already in the late 1980s when these formations had begun to emancipate themselves from their patrons and started to take over the lands where coca was being grown.⁷⁷ In this way, paramilitaries became financially independent from their former patrons. Drug trafficking also had large influence on the Colombian guerrillas, especially on the FARC-EP, which found a source of finance for their activities in levying taxes on drug producers, merchants and transporters, also seeking to impose certain order on the illegal business.⁷⁸

However, the illegal armed groups are not the only one involved in drug trafficking. Ernesto Samper's presidential campaign, after which he won the

⁷⁴ International Crisis Group, "War and Drugs in Colombia", *Latin America Report N°11*, 2005. Retrieved July 21, 2010, from http://www.crisisgroup.org/~media/Files/latin-america/colombia/11_war_and_drugs_in_colombia.ashx, pp. 3-4.

⁷⁵ Ibid.

⁷⁶ Dario E. Teicher, "The Colombian War and the Narco-Terrorist Threat". In: Michael W. Ritz Ralph G. Hensley, Jr. James C. Whitmire, (eds.), *Homeland Security Papers: Steaming the Tide of Terror*, Maxwell Air Force Base, USAF Counterproliferation Center, 2004, p. 25.

⁷⁷ International Crisis Group, Colombia's Elusive Quest for Peace, *Latin America Report No 1*. 2002. Retrieved, from http://se1.isn.ch/serviceengine/Files/ISN/27311/ipublication/document_singledocument/F12B8E97-AE9C-4F5F-8736-1101A37CC158/en_/001_colombias_elusive_quest_for_peace.pdf, July 20, 2010, p. 5.

⁷⁸ Although many sources, especially those of the Colombian and U.S. governments, label the Colombian guerrillas as pure criminal drug trafficking organizations that is not the case. The guerrillas do not use money gained in drug business for personal enrichment, but they rather spend all of it on financing their struggle, consolidation of power and infrastructural development in the areas they control (Vanessa Joan Gray, "The New Research on Civil Wars: Does It Help Us Understand the Colombian Conflict?", *Latin American Politics & Society*. 50 (3), 2008, pp. 67-8).

Mark W. Chernick, "Conflict in Colombia: An Analysis and Perspectives for Peace". In: Mo Bleeker Massard (ed.), *Colombia: Conflict Analysis and Options for Peace-Building*, Swisspeace. Bern, 2003, p. 13.

elections in 1994, was financed by millions of dollars from the Cali cartel.⁷⁹ In addition to that, President Samper was once again embarrassed on 20 August 1996, when drug-sniffing dogs found 8 pounds of cocaine on the official Colombian Air Force airplane that was to fly President Samper to New York to speak at the United Nations on the evils of drugs.⁸⁰ The indirect links between the Colombian government and drug trafficking were again revealed with the “para” scandal in 2006, when the evidence of collaboration between top government officials and illegal paramilitaries were brought to public.⁸¹

The Colombian government has been waging war on drugs for a long time, but with not much success. Although the UN Office on Drugs and Crime reported a 47% decrease of coca producing areas,⁸² it in no way has reduced the retail prices in the streets of U.S., while the purity of cocaine has improved.⁸³

Conclusion

In the last eight years, the Colombian forces achieved many successes in the war against the illegal armed groups. The paramilitary AUC was demobilized through negotiations and the largest two of the guerrilla groups, FARC-EP and ELN, were forced out of a large area of the territory they had previously controlled, while at the same time, they suffered great losses in personnel due to deaths in combat and desertions. For weakening of all non-state actors, the intensity of the Colombian civil war has been lowered, although the intensity of the government vs. FARC-EP conflict still remains at the level of crisis, while the intensity of the conflict with the paramilitaries and ELN is currently at the level of crisis. Both insurgent groups have successfully adapted to the situation on the battlefield by employing new tactics. Territorial control was mostly substituted by guerrilla warfare and unless they regain their strength, it will

⁷⁹ International Crisis Group, “War and Drugs in Colombia”, *Latin America Report No 11*, 2005. Retrieved July 21, 2010, from http://www.crisisgroup.org/~media/Files/latin-america/colombia/11_war_and_drugs_in_colombia.ashx, p. 4.

⁸⁰ Dario E. Teicher, “The Colombian War and the Narco-Terrorist Threat”. In: Michael W. Ritz Ralph G. Hensley, Jr. James C. Whitmire, (eds.). *Homeland Security Papers: Steaming the Tide of Terror*; Maxwell Air Force Base, USAF Counterproliferation Center, 2004, p. 28.

⁸¹ International Crisis Group, “Colombia's New Armed Groups”, *Latin America Report No 20*. 2007. Retrieved July 22, 2010, from http://www.crisisgroup.org/~media/Files/latin-america/colombia/20_colombia_s_new_armed_groups.ashx, p.5.

⁸² Connie Veillette, “Plan Colombia: A Progress Report”, *CRS Report for Congress*, 2005. Retrieved July 22, 2010, from <http://fpc.state.gov/documents/organization/48382.pdf>, p. 5.

⁸³ International Crisis Group, “War and Drugs in Colombia”, *Latin America Report No 11*, 2005. Retrieved July 21, 2010, from http://www.crisisgroup.org/~media/Files/latin-america/colombia/11_war_and_drugs_in_colombia.ashx, p. 2.

probably remain that way. Although weakened, the ELN and FARC-EP are far from being defeated. The new Colombian government is at a crossroad. It can further escalate the war against insurgents, while it seems that complete military victory is impossible, or it can engage insurgents in negotiations. It seems that now, more than ever, it is the time to do so. The fact is that root causes of the civil war are far from being resolved. Although the level of poverty has been lowered in the last two decades, it is still high both in the urban and rural areas. The income inequality has grown and is one of the highest in the world and the question of agrarian reform is even more burning than it was at the outbreak of the war. Opportunities for political participation are now much better than they were before, but majority of the population is still politically passive, most likely due to its low confidence in the political system riddled with corruption on all levels. The poor socio-economic and political development of Colombia is still a great source of legitimacy for the insurgents in the areas where they operate and will remain such unless the Colombian government initiates real efforts to address the root causes of the conflict.

The war on drugs has provided few tangible results, as the overall supply of drugs to European and North American markets has obviously not been disturbed. The fact is that all warring parties are involved in drug trafficking and when one is weakened the other takes over. Beside that, taxes on drug trafficking are only one of the many incomes the insurgents have, so disrupting drug trafficking will not necessarily cause downfall of insurgency. If overall military victory of the government against the insurgents is achieved and root causes of the conflict are not resolved, there are great chances that some other sort of violence will sprung out in Colombia, what could involve formation of either new insurgent groups or new criminal organized groups that will be more financially than politically motivated as was the case in El Salvador. Such violence will be much more difficult to deal with, as the visible, identifiable and more or less centrally organized enemy that operates today will be replaced by a large number of small and fragmented criminal organizations.

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O GRAĐANSKOM RATU U KOLUMBIJI

APSTRAKT

Namera je da se u članku da prikaz profila i uzroka konflikta u Kolubiji, da se baci svetlo na okvir u kome se sadašnji događaji na bojnim poljima u ovoj zemlji odvijaju, i na taj način skrene pažnja na činjenicu da se sukob ne može rešiti isključivo primenom brutalne vojne sile, što je sa uspesima koje su snage Uribeove vlade postigle u borbi protiv gerile, postalo generalno mišljenje. Cilj ovog članka je takođe da se postavi temelj koje može da posluži kao osnova za neku dalju kritičku analizu kolumbijskog oružanog konflikta.

Ključne reči: Kolumbija, paravojne formacije, gerilski način ratovanja, droga, kriminalne organizacije.

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Legal Mode for Advisory Redress at the International Court of Justice for the Case of Macedonian UN Membership

ABSTRACT

The present article examines the legality of imposing additional conditions (with respect to those prescribed in the Charter) on Macedonia in SC Res. 817 (1993) and GA Res. 47/225 (1993) for its admission to UN membership. These conditions include acceptance by the applicant of a provisional name and an obligation to negotiate with another country (Greece) over its name. It is shown that the imposition of these conditions violates Article 4(1) and some other articles of the Charter. The consequences of the imposed conditions on the legal status of Macedonia as a UN member are also examined. The imposed conditions define a discriminatory status of the member state in violation of Article 2(1) of the Charter. It is shown that these violations of Charter provisions represent *ultra vires* acts of the UN Organization and involve its legal personality. These breaches of the Charter provisions also violate some of the basic rights of the applicant (and later member) state and gravely derogate its legal personality. The advisory jurisdiction of the International Court of Justice is considered to provide appropriate mechanisms for the judicial redress of the effects of the above illegal acts of the UN Organization.

Key words: United Nations, law, politics, state, Macedonia.

Introduction

The admission of Macedonia to UN membership in April 1993 by the General Assembly resolution 47/225 (1993),² pursuant to the Security Council resolution

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² GA Res. 47/225, 8 April 1993 [hereinafter GA Res. 47/225 (1993)].

817 (1993)³ recommending such admission, was associated with imposing on the applicant two additional conditions with respect to those explicitly provided in Article 4(1) of the UN Charter, namely acceptance of (i) being provisionally referred to as the ‘Former Yugoslav Republic of Macedonia’ (for all purposes within the United Nations) and (ii) of negotiating with another country over its name.⁴ These impositions are part of the above mentioned resolutions, in which it has been also recognized (explicitly in SC resolution 817) that the applicant fulfills the standard criteria of Article 4(1) of the Charter required for admission. In a recent paper⁵ we have analyzed the legal nature of the additional conditions imposed on Macedonia for its admission to UN membership in the context of the advisory opinion of International Court of Justice (I.C.J.) given in 1948 regarding the conditions for admission of a state in the United Nations⁶ (and subsequently accepted by the General Assembly⁷) and concluded that the attachment of conditions (i) and (ii) to those specified in Article 4(1) of the Charter for the admission of Macedonia to UN membership is in violation with the Charter.

In the present article we shall examine the legal consequences of the unlawful admission of Macedonia to UN membership and the possible modes of judicial redress. The emphasis will be placed on the relationship between the rights of states as applicants or members of the UN Organization, as derived from the Charter, other general UN documents and the UN legal practices on one side, and the duties of the Organization relating to those rights (i.e. its adherence to the provisions of the Charter), on the other. Before analyzing in more depth the illegal character and legal effects of the breaches made by the UN Organization in the process of admitting Macedonia to UN membership and the means of reinstating the proper legal status of Macedonia as member of the United Nations, we shall give a brief account of the problem of legal responsibility of international organizations (in particular the United Nations) for their unlawful acts (or

³ SC Res. 817, 7 April 1993 [hereinafter SC Res. 817 (1993)].

⁴ After a reference in the preamble to the SC recommendation for admission of the applicant to UN membership, the GA Res. 47/225 (1993) states that the General Assembly ‘[d]ecides to admit the State whose application is contained in document A/47/876 - S/25147 [i.e. the Republic of Macedonia] to membership in the United Nations, this State being provisionally referred to for all purposes within the United Nations as ‘the former Yugoslav Republic of Macedonia’ pending settlement of the difference that has arisen over the name of the State.’ The imposed condition for negotiation with Greece over the name of the applicant is implied in the last part of the decision. Note that this condition imposes at the same time an obligation to the applicant when admitted to UN membership.

⁵ Igor Janev, “Legal Aspects of the Use of a Provisional Name for Macedonia in the United Nations System”, 93 *AJIL*, 1999, p. 155.

⁶ *Admission of a State to the United Nations (Charter, Art. 4)*, ICJ Reports (1948) 57 [hereinafter *Admission*].

omissions), with special attention to those acts that are committed in their relations with their member states and other international legal persons.

Legal Responsibility of United Nations for Acts Involving their Relations with Member States

The question of legal responsibility of international organizations for their illegal acts has been subject of discussions among legal scholars since the forties and fifties.⁸ The main interest has been focused on the legal effects of such acts and the possibilities of their judicial redress. In absence of a developed legal practice in the area of international institutional life, the discussions on the subject had in the past a predominantly doctrinarian character. With the lapse of time, accumulation of a considerable body of relevant legal practice took place during the last five decades, which, coupled with the development and consolidation of certain legal concepts of international law (such as the legal personality of international organizations, etc.), laid the foundations for development of a fairly consistent theoretical framework for the treatment and redress of the illegal acts of international organizations.⁹ An international organization, as an international legal person, derives its powers (explicitly expressed or implied) from its constitutional source and is bound to act only within the limits and in accordance with the terms of the grant made to it by its members. The most obvious illegal acts that an organization can commit in exercising its powers and functions are: breach of the constitutional provisions (e.g. by exceeding its powers), error in the interpretation of constitutional provisions, assertion of competence by an incompetent organ, improper exercise of a discretion on the basis of inaccurate or incomplete knowledge or for wrong reasons or motives, implementation of a decision adopted by a majority but inconsistent with the constitutional provisions, suspension or expulsion from the organization in absence of proper justification, wrongful apportionment of expenses among the members, breach of the staff rules and regulations, etc.¹⁰ Unless there are specific provisions in the constitutional

⁷ GA Res. 197 (III, A), 8 December 1948 [hereinafter GA Res. 197 (III, A) (1948)].

⁸ Paul Recueil Guggenheim, "La Validité et la Nullité des Actes Juridiques Internationaux", 47 *Hague Recueil*, 1949, pp. 195-263; see also the volumes of *Annuaire de l'Institut de Droit International*, 44-I (1952), 45-II (1954), 47-I (1957), 47-II (1957).

⁹ D.W. Bowett, *The Law of International Institutions*, 4th edn., Sweet & Maxwell, London, 1982, pp. 362-5. For a more critical recent review of this issue, particularly regarding the acts of the Security Council, see Jose E. Alvarez, Thomas M. Franck, "Judging the Security Council", 90 *AJIL*, 1996, pp.1-39, and references therein.

¹⁰ Elihu Lauterpacht, "The Legal Effects of Illegal Acts of International Organizations", in *Cambridge Essays in International Law. Essays in honour of Lord McNair*, Cambridge Press, 1965, pp. 88-121, at 89.

instrument of the organization (such as in the case of the European Communities¹¹), the effects of the illegal acts of the organization are governed by the general principles and practice of international law.¹² The United Nations Organization possesses an international legal personality and the capacity to bring international claims,¹³ but the Charter does not contain provisions which explicitly address the question of its responsibility for unlawful acts of its organs and the judicial redress of their consequences. The juridical responsibility of the United Nations Organization for its own acts is, however, a correlative of its legal personality and the capacity to present international claims. In the well known *Reparation*¹⁴ case, the International Court of Justice, affirming the international legal personality of the United Nations Organization, pointed out that "... the rights and duties of an entity such as the [U.N.] Organization must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice",¹⁵ thereby affirming that this organization has certain *duties* related to its purposes and functions. Although the International Court of Justice may, according to Article 65(1) of its Statute, give an advisory opinion on any legal question at the request of the General Assembly and Security Council, and of any UN organ or specialized agency within the UN system upon authorization by the General Assembly (Article 96 of the Charter), the Court still does not have any juridical control over the legal effects of the acts of the Organization. The advisory opinions of the Court have no binding power themselves, but may be (and normally are) accepted by the organs requesting them as they induce "moral consequences which are inherent in the dignity of the organ delivering [them]."¹⁶ Exception to this rule is the General Convention on the Privileges and Immunities of the United Nations of 1946 which provides that the opinion given by the Court (upon the request of the Organization) regarding differences which could arise between the Organization and a signatory state shall be binding to the parties.¹⁷

¹¹ See, e.g., Henry Schermers, Denis Waelbroeck, *Judicial Protection in the European Communities*, 4th edn., Kluwer Law International, 1987.

¹² Ian Brownlie, *Principles of Public International Law*, 4th edn., Oxford University Press, 1990, p. 701.

¹³ *Ibid.*, pp. 680-1, pp. 688-90.

¹⁴ *Reparation for Injuries suffered in the Service of the United Nations*, ICJ Reports (1949) 174 [hereinafter *Reparation*].

¹⁵ *Ibid.*, at 180.

¹⁶ Judge Azevedo, in *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (First phase)*, ICJ Reports (1950) 80.

¹⁷ General Convention on the Privileges and Immunities of the United Nations (13 Feb. 1946), Art. VIII, Sect. 30.

In the advisory jurisdiction of the Court there have been only a few cases in which the relations of the United Nations with the states have been involved. In the *Reparation and Mazilu*¹⁸ cases the request for an advisory opinion was initiated and brought to the Court by the Organization. In the *IMCO*¹⁹ and *Certain expenses*²⁰ cases, the request for Court's opinion was initiated by the member states (of the IMCO and the UN, respectively). For the purposes of our further discussions, we shall outline some of the characteristic features of these and a two other cases.

The *IMCO* case is illustrative in several respects. It is the first case in the history of international organizations and of the Court itself when the Court was requested to give its opinion on a question of breach of a constitutional document (the Convention for the establishment of IMCO) made by the plenary organ (the Assembly of IMCO) of the organization. Another feature of this case is that the question on legality of the committed act (the election of the Maritime Safety Committee at the first session of IMCO Assembly in 1959) was put before the Court by the IMCO Assembly itself (authorized by the UN General Assembly for such an action) on request by two member states of the organization (Liberia and Panama), which contended that in the course of the elections their constitutional rights had been violated (namely, to be automatically elected in the Committee membership in accordance with the explicitly prescribed criteria in Article 28 of the IMCO Convention which they had been fulfilling). What happened was that during the elections, most of the voting members of the organization had taken as a basis for their vote additional criteria, not expressly provided for in Article 28 of the Convention, to which they had attached greater relevance than to those laid down explicitly in that article. The Court delivered the opinion "that the Maritime Safety Committee of IMCO which was elected on January 15, 1959, [was] not constituted in accordance with the Constitution for the establishment of the Organization."²¹

The above opinion of the Court was accepted by the IMCO Assembly at its next session. The Assembly resolved that the previously elected Committee should be dissolved and decided "to constitute a new Maritime Safety Committee in accordance with Article 28 of the Convention as interpreted by the International Court of Justice and its Advisory Opinion."²² The Assembly

¹⁸ *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, ICJ Reports (1989) 177 [hereinafter *Mazilu* case].

¹⁹ *Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization*, ICJ Reports (1960) 145 [hereinafter *IMCO*].

²⁰ *Certain Expenses of the United Nations (Art. 17, para 2, of the Charter)*, ICJ Reports (1962) 151 [hereinafter *Certain Expenses*].

²¹ *Supra* note 18, at 150.

²² IMCO Assembly Resolution A. 21 (II), 6 April 1961.

also decided to confirm and adopt the measures which had been taken by the previously elected Committee in the period (1959-1961) between the two Assembly sessions. Without going into a more subtle analysis of the IMCO case,²³ we would like to point out the identity of the character of the illegal act (breach of a procedural constitutional provision by the plenary organ of the organization) in the IMCO case with that of Macedonian admission to UN membership. As we shall see later on, the legal consequences in the Macedonian case are, however, much more complex. Nevertheless, the IMCO case may serve as a model for the juridical redress of the Macedonian case as well.

In the *Certain expenses*²⁴ case the question put before the Court resulted from the largely divided views of the UN members regarding the constitutional basis of the expenditures authorized by a number of General Assembly resolutions for the operation of the UN Emergency Force (UNEF) in the Middle East and for the UN operations in the Congo (ONUC). (In the latter case the GA resolutions were undertaken in pursuance of the corresponding Security Council resolutions). The division of the UN members in this case was essentially related to the question of legality of the mentioned operations under the terms of the Charter, i.e. regarding the validity of corresponding GA resolutions. The request for the Court's opinion took the form of whether these expenditures constituted "expenses of the Organization" within the meaning of Article 17(2) of the Charter. The Court's opinion was given in the affirmative and was based on arguments that the decisions of the General Assembly regarding incurring expenditures for the above operations (having an observational character) are made in accordance with the mission of the United Nations (for the maintenance of world peace and security), that the General Assembly is authorized to consider such expenditures as part of the expanded regular budget of the United Nations and, in accordance with Article 17(2), to apportion them to the member states as an obligation. This case illustrates that the decisions of the General Assembly that are of binding nature represent acts of the Organization. According to Article 18 of the Charter, such acts of binding nature of the General Assembly are related to the budget of the Organization and to the *legal status* of its members (e.g. *admission*, suspension and expulsion of members).

In order to further elucidate the relationship between the legal responsibility of the United Nations Organization and the legal status of its members, we shall briefly outline the earlier mentioned *Reparation* case.²⁵ The question put before the Court in the General Assembly's request for advisory opinion was whether the United Nations, as an Organization, had the capacity to bring an

²³ Lauterpacht, *supra* note 9, at 100-6.

²⁴ *Supra* note 19.

²⁵ *Supra* note 13.

international claim against a state responsible (*de jure* or *de facto*) for the injuries suffered by an agent of the Organization in the performance of its duties with a view to obtaining reparation due in respect to the damage caused (a) to the United Nations and (b) to the victim (or to persons entitled through him). In the derivation of its affirmative response to these questions, the Court first established that the UN Organization possessed international legal personality, necessary for discharging its functions and duties on the international plane, that the Charter defined the position of the member states in relation to the Organization (requiring their assistance in the discharge of Organization's functions (Article 2(5)), acceptance to carry out its decisions (and those of the Security Council) and giving the Organization the necessary privileges and immunities on their territories (Articles 104, 105)), and that the rights and duties of the Organization were closely related to its functions and purposes as specified or implied in the Charter. From the facts that the question on the capacity of UN Organization to bring an international claim against a member state was put in the context of the legal liability of that state (to pay reparations), and that the Court's opinion was given in the affirmative, it follows that the Charter is an international treaty to which the Organization effectively is a party and which, by defining the mutual rights and responsibilities of the parties, establishes a contractual relationship between them.²⁶ This is further reinforced by the fact that in deriving its opinion the Court also invoked the General Convention on the Privileges and Immunities of the United Nations which in an explicit way establishes the rights, duties and mutual responsibilities between the signatories (the member states) and the Organization, and even defines (Section 30 of Article VIII) the mode of judicial settlement of the disputes between the different parties (by an ICJ advisory opinion of binding character). It can be concluded that both the Charter and the Convention on Privileges and Immunities establish a relationship between the legal responsibility and the legal status of the international persons involved (the Organization and the member states). As we have seen, this relationship is of contractual nature and must involve the juridical liabilities of the parties.

The *Mazilu* case provides a typical example when the legal status of the UN Organization (as represented by one of its agents) is violated by a member state.²⁷ In performing his duties on an UN (ECOSOC) mission, Mr. Mazilu was deprived from his privileges and immunities by Romania, and ECOSOC requested the Court for an advisory opinion regarding the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of

²⁶ The treaty character of the Charter has been also strongly emphasized by the Court in the *Admission* case (*supra* note 5).

²⁷ *Supra* note 17.

the United Nations in the case of Mr. Mazilu. Despite the official objection (i.e. non-consent) of Romania for presenting the request to the Court, the Court has considered the case and delivered its opinion in the affirmative. Being requested pursuant to Article 96(2) of the Charter, and not under Section 30 of Article VIII of the Convention (to which Romania had expressed reservation during its accession to the Convention), the Court's opinion could not have a binding force. (As noted earlier, Section 30 of Article VIII of this Convention provides a mechanism for settlement of the disputes between the Organization and the signatories of the Convention via a binding advisory opinion of the Court on matters related to the legal status of the parties).

The *Effects of Awards* case is an example when the Organization was found liable for violating the legal status of staff members of the Organization.²⁸ The question put before the Court by the General Assembly was to inquire whether there was any legal ground for refusing to give effect to an award of compensation made by the United Nations Administrative Tribunal in favor of a UN staff member whose contract of service had been terminated without his assent. The Court's opinion was given in the negative. This opinion was based on the arguments that a contract of service, concluded between a staff member and the UN Secretary General, acting on behalf of the Organization, engaged the legal responsibility of the Organization as a juridical person with respect to the other party, and that, in accordance with Article 10 of the Tribunal's Statute, the judgment of the Tribunal was binding to the parties, final and without appeal. This case illustrates that, when the Organization violates the legal status of its elements (including that of its staff members as defined by the contract of service), it becomes responsible as a legal person. Since the UN Charter possesses also features of contractual character, through which the Organization appears as a party, particularly in matters related to the legal status of its members (in other words, since the legal status of both the Organization and its member is of contractual origin), it can be concluded that the violation of any aspect of the legal status of either of them by the other leads to a legal responsibility of former and involves their legal personalities.

From the above briefly analyzed cases on which the ICJ has given its opinion, several conclusions can be drawn:

- 1) In discharging its constitutional functions the UN Organization has both rights and duties expressed in or derived from the constitutional provisions and has a legal responsibility for their lawful implementation;
- 2) The UN Charter, as a multilateral treaty, enables the Organization with an international legal personality for carrying out its duties and functions, and

²⁸ *Effects of Awards of Compensation made by the United Nations Administrative Tribunal*, ICJ Reports, 1957. 47 hereinafter *Effects of Awards*.

in the matters that involve the relations of the Organization (as a legal person) with its members it acquires features of contractual character (engaging the liability of the parties);

- 3) Breaches of constitutional provisions by the plenary organ of the Organization, related to the rights and legal status of its members, represent unlawful acts of the Organization (with respect to another international person), for which the Organization is legally responsible;
- 4) For violations by the Organization of the constitutional provisions, particularly the rights related to the legal status of its member states, the advisory opinion of the International Court of Justice may serve as an instrument for settlement of the disputes (as exemplified by the *IMCO* and *Effects of Award* cases).

The Unlawful Character of the Admission of Macedonia to UN Membership

As mentioned in the Introduction, Macedonia was admitted to UN membership by the General Assembly resolution 47/225 (1993) subject to acceptance (i) to be referred with the provisional name “the Former Yugoslav Republic of Macedonia or all purposes within the United Nations”, and (ii) to negotiate with Greece over its name.²⁹ These two conditions for admission of Macedonia to UN membership are additional with respect to those laid down explicitly in Article 4(1) of the Charter, which the recommending SC resolution 817(1993) recognizes to be fulfilled by the applicant.³⁰ In characterizing the legality of the imposition of the above two conditions to the applicant for effecting its admission to UN membership, three questions should be analyzed:

- (a) are the conditions (i) and (ii) indeed additional to those laid down in Article 4(1) of the Charter, or are they only part of them, or contained in them;
- (b) does the conditions provided in Article 4(1) of the Charter form an exhaustive set of necessary and sufficient conditions for admission of a state to UN membership, or can this set be expanded by additional conditions;
- (c) are the UN political organs (the Security Council and the General Assembly) legally entitled to expand the admission criteria of Article 4(1) of the Charter on the basis of political considerations?

²⁹ *Supra* note 1.

³⁰ *Supra* note 2.

In order to analyze these questions we remind that Article 4(1) of the Charter provides: "Membership in the United Nations is open to all other [i.e. other than the original UN members] peace loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations". The conditions for admission to UN membership, as expressly provided in this Article, require that the applicant (1) be a state, (2) be peace-loving, (3) accepts the obligations of UN Charter, (4) be able to carry out these obligations and (5) be willing to do so. The fulfillment of these conditions by the applicant is a prerequisite for recommending (by the Security Council) and effecting (by a decision of the General Assembly) the admission, i.e. they have to be satisfied, in the judgment of the Organization, prior to the act of admission. The Security Council resolution 817(1993), recommending the admission, recognized that Macedonia had fulfilled the above conditions at the time of its application to UN membership.

In order to identify the nature of the conditions (i) and (ii) imposed on Macedonia by (the SC resolution 817 (1993) and the GA resolution 47/225(1993), one should look first into their functional role, i.e. whether they determine the suitability of the applicant for membership. The conditions (i) and (ii), however, are imposed as requirements on the applicant at the moment of its admission to UN membership, and they transcend in time the act of admission. Such requirements do not serve the purpose of criteria, which the applicant should fulfill prior to its admission (like those in Article 4), but they are, rather, conditions which the applicant should accept to carry on and fulfill after its admission to membership. The strong Macedonian objection³¹ to the inclusion of such conditions in the SC resolution 817(1993) was completely ignored, and the admission to UN membership was subjected to their acceptance. The conditions for admission, imposed on the state by the act of its admission, and which transcend that act in time, cannot be evidently regarded as part of, or contained in, those enumerated in Article 4(1), the fulfillment of which is required prior to the act of admission. In absence of the institute of "conditional admission" to the UN membership, the conditions (i) and (ii) must be regarded as *conditions transcending their cause*, i.e. as being additional to those contained in Article 4(1). The additional character of these conditions with respect to those laid down in Article 4(1) is also obvious from the fact that, as it has been mentioned earlier, the resolution SC Res. 817(1993) explicitly recognizes that the applicant satisfies the conditions for admission prescribed in Article 4(1) and recommends admission. The very fact that the conditions (i) and (ii) transcend in time the act of admission indicates that their character is not legal, but rather it is of political nature. We shall discuss in more detail the legal consequences of

³¹ See UN SCOR, 48th Sess., Supp. Apr., May, June, at 35, UN Doc. S/25541, 1993.

these conditions somewhat later on. At this point, we would like to emphasize that the imposition of additional conditions (i) and (ii) in the SC Res. 817 (1993) creates an internal logical inconsistency in this resolution. Apparently, the motivation for imposing the conditions (i) and (ii) to the admission of Macedonia to UN membership was the observation by the Security Council that “a difference has arisen over the name of the State, which needs to be resolved in the interest of the maintenance of peaceful and good-neighborly relations in the region”.³² This provision implies that the applicant state is unwilling to carry out the obligation contained in Article 2(4) of the Charter which requires that the “[m]embers shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations” On the other hand, the recognition contained in SC Res. 817 (1993) that the applicant state fulfils the admission criteria of Article 4(1) means that the Security Council affirms that the applicant state is a peace-loving state, able and willing to carry out the obligations in the Charter (including Article 2(4)). Therefore, the two statements in SC Res. 817 (1993) are contradictory to each other.

The questions (b) and (c) put forward at the beginning of this Section have been answered in the advisory opinion given by the International Court of Justice in the *Admission* case.³³ This opinion provides an interpretation of Article 4(1) of the Charter and has been accepted by the General Assembly.³⁴ The advisory opinion states that a “member of the United Nations that is called upon, by virtue of Article 4 of the Charter, to pronounce itself by vote, either in the Security Council or in the General Assembly, on admission of a state to membership in the Organization, is not juridically entitled to make its consent dependent on conditions not expressly provided in paragraph 1 of that article”.³⁵ This opinion of the Court was based on the arguments that the UN Charter is a multilateral treaty whose provisions impose obligations on its members, that Article 4 represents “a legal rule which, while it fixes the conditions for admission, determines also the reasons for which admission may be refused”,³⁶ that the enumeration of the conditions in Article 4(1) is exhaustive, since in the opposite “[i]t would lead to conferring upon Members an indefinite and practically unlimited power of discretion in the imposition of new conditions”³⁷ (in which case Article 4(1) would cease to be a legal norm).

³² *Supra* note 2, preamble.

³³ *Supra* note 5.

³⁴ *Supra* note 6.

³⁵ *Supra* note 5, at 65.

³⁶ *Ibid.* at 62.

³⁷ *Ibid.* at 63.

The conclusion of the Court was that the conditions set forth in Article 4(1) are exhaustive - they are not only the necessary but also the sufficient conditions for admission to membership in the United Nations.³⁸

The Court specifically addressed the question whether it is the political character of the organs responsible for admission (the Security Council and the General Assembly, according to Article 4(2)), or the maintenance of world peace and security (Security Council, according to Article 24 of the Charter) that one can derive arguments which could invalidate the exhaustive character of the conditions enumerated in Article 4(1). The Court rejected this possibility and held that “[t]he political character of an organ cannot release it from the observance of the treaty provisions established by the Charter when they constitute limitations on its powers or criteria for its judgment.”³⁹ Thus, according to the Court's opinion, the Charter limits the freedom of political organs and no “political considerations” can be superimposed on, or added to, the conditions prescribed in Article 4(1) that could prevent admission to membership.

The advisory opinion of the Court also emphasized the functional purpose of the conditions: they serve as criteria for admission and have to be fulfilled, in the judgment of the Organization, prior to the recommendation and the decision for admission.⁴⁰ Further, once it has been recognized by the competent UN organs that these conditions have been fulfilled, the applicant acquires a (unconditional) right to UN membership.⁴¹ This right follows from the “openness” to membership enshrined in Article 4(1) and from the universal character of the Organization. In the words of Judge Alvarez, “[t]he exercise of this right cannot be blocked by the imposition of other conditions not expressly provided for by the Charter, by international law or by convention, or on grounds of a political nature.”⁴²

As mentioned earlier, the General Assembly, by its Resolution 197(III, A) of 1948, accepted the Court's interpretation of Article 4(1) of the Charter and recommended that “each member of Security Council and of the General Assembly, in exercising its vote on the admission of new Member, should act in accordance with the foregoing opinion of the International Court of Justice.”⁴³ Moreover, in the parts C, D, E, F, G, H, I, of the same GA Resolution 197(III)⁴⁴

³⁸ *Ibid.* at 62.

³⁹ *Ibid.* at 64.

⁴⁰ *Ibid.* at 65.

⁴¹ *Ibid.*

⁴² *Ibid.* at 71.

⁴³ *Supra* note 6, at 30.

⁴⁴ GA Res. 197 (III,-C,D,E,F,G,H,I), 8 December 1948.

of 1948, the General Assembly implemented the Court's interpretation of Article 4(1) of the Charter by requesting the Security Council to provide recommendations for admission of a number of states to UN membership, the delivery of which was blocked by certain Security Council members on the basis of arguments (of political nature) not strictly related to the conditions set forth in Article 4(1).

In view of the Court's interpretation of Article 4 of the Charter as a legal norm (which should be observed also by the UN political organs) and its acceptance by the General Assembly [the GA Res. 197(III, A)], it is obvious that the imposition of additional conditions on Macedonia for its admission to UN membership is a clear violation of Article 4(1) of the Charter. From the fact that the additional conditions transcend in time the act of admission (with no strictly specified time limit), it follows that their imposition did not serve the purpose of admission conditions (which should be fulfilled before the act of admission), but rather a specific political purpose. This indicates that the additional conditions imposed on Macedonia for its admission to UN membership have no legal character and, by their nature, are extraneous to those contained in Article 4(1).

The violation of Article 4(1) of the Charter by the General Assembly's Resolution 47/225(1993) is not a mere *ultra vires* act. The imposition of additional conditions to Macedonia for its admission to UN membership means denial of its *right* to admission once it has been recognized that it fulfilled the exhaustive conditions set forth in Article 4(1). This right is enshrined in the Article 4(1) itself ("Membership in the United Nations is *open* to all [other] peace-loving states") and is implied by the principle of universality of the United Nations Organization. For the Organization itself, the principle of its universality and the provision for its "openness" to membership create a *duty* to admit an applicant to UN membership when it has been recognized that it fulfills the criteria set forth in Article 4(1). Thus, the imposition of additional conditions on a state that fulfills the prescribed admission conditions violates the right of that state to become a member of the Organization and one of the fundamental principles of the Organization as well. The duty of the Organization to admit states that fulfill the conditions of Article 4(1) to UN membership without imposing additional conditions has been recognized by the General Assembly in its Resolution 197(III, parts C,D,E,F,G,H,I), as mentioned earlier.

Legal Implications and Consequences of the Imposed Admission Conditions

We shall now turn to a more substantive analysis of the additional conditions imposed on Macedonia by the UN organs for its admission to UN membership. We remind at this point again that they include acceptance by the applicant (i) of

“being provisionally referred to for all purposes within the United Nations as ‘the former Yugoslav Republic of Macedonia’ pending settlement of the difference that has arisen over the name of the state”,⁴⁵ and (ii) of negotiating with Greece over its name (implied in the second part of the above cited text common to both GA Res. 47/225(1993) and SC Res. 817(1993) and from the provision in the SC Res. 817 (1993) by which the Security Council “urges the parties to continue to cooperate with the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia in order to arrive at a speedy settlement of the difference”⁴⁶). The reason for imposing these conditions was given in the preamble of SC Res. 817(1993) in which the Security Council, after affirming that the applicant state fulfills the conditions of Article 4, observes that “a difference has arisen over the name of the State, which needs to be resolved in the interest of the maintenance of peaceful and good-neighborly relations in the region”.⁴⁷ This observation of the Security Council, which has generated the imposition of the mentioned additional conditions for the Macedonian admission to the UN membership, was apparently based on the Greek allegation that the name of the applicant “implies territorial claims’ against Greece.”⁴⁸ Without examining the legal basis of the Greek allegation (see later for details on this aspect), the Security Council, in accordance with its responsibility for the maintenance of world peace and security provided for in Article 24 of the Charter, has used the above political consideration as a sufficient basis for imposing the additional conditions on Macedonia for its admission to UN membership. We have already seen that this is not in accordance with the GA Resolution 197(III, A) and the Court’s interpretation of Article 4(1). However, there are other, and perhaps even more important, legal implications of the imposed additional conditions. They are related to the inherent right of states to determine their own legal identity, to the principles of sovereign equality of states⁴⁹ and the inviolability of their legal personality,⁵⁰ and to the legal status (including the representation) of the member states.

By imposing the conditions on Macedonia regarding its name, the Security Council and the General Assembly essentially denied the right of Macedonia to choose its own name. The inherent right of a state to have a name can be derived

⁴⁵ *Supra* note 1 and note 2.

⁴⁶ *Supra* note 2, para 1.

⁴⁷ *Supra* note 2, preamble.

⁴⁸ See UN SCOR, 48th Sess., Supp. Apr., May, June, at 36, UN Doc. S/25543 (1993).

⁴⁹ UN Charter, Art. 2(1).

⁵⁰ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, GA Res. 2625 (XXV), 24 October 1970.

from the necessity that a juridical personality must have a legal identity. In the absence of such an identity, the juridical person, such as a state, could – to a considerable degree, or even completely – lose its capacity to *interact* with other such juridical persons (conclude agreements, etc) and independently enter into and conduct its external relations. The name of a state is, therefore, an essential element of its juridical personality and, consequently, of its statehood. The principles of sovereign equality of states and the inviolability of their juridical personality lead to the conclusion that the choice of a name is a basic, inherent right of the state. This right is not alienable, divisible or transferable, and it is a part of the right to “self-determination” (determination of one's own legal identity), i.e. it belongs to the domain of *jus cogens*. External interference with this basic right is inadmissible. If this were not true, i.e. if an external factor is allowed to take part in the determination of the name of a state, under the assumption that the subject state has at least a non-vanishing influence on this determination, it can easily be imagined that the process of determination of the name of that state (e.g. via negotiations) may never end. The state may never acquire its name, which would create an extraordinary political and legal absurd on the international arena. It also goes without saying, that if such external interference with the choice of the name of a state would be allowed, even through a negotiation process, it might easily become a legally endorsed mechanism for interference in the internal and external affairs of the state, i.e. a mechanism for degradation of its political independence. Such effects of an external interference with the right of a state to choose its own name are very far from the accepted legal standards of international law. The extreme form of the external interference with the choice of name of a state would be the straight imposition of the name by an external (e.g. international) authority, which would simply mean a straight denial of the right of states to choose their own names. It is easy to see that this would lead to either drastic changes of the fundamentals of presently practiced international law, or to a legal chaos. From these reasons, the choice by a state concerning its own name must be considered an inherent right of the state, which belongs *stricto sensu* to its domestic jurisdiction. In exercising this right, states have, therefore, a complete legal freedom.

The denial by the UN political organs of the inherent right of Macedonia to choose its name, implied by the additional conditions imposed for its admission to UN membership, is, therefore, in violation of Article 2 (paragraphs 1 and 7) of the Charter. The respect of the principles embedded in this article are equally applicable to the Organization as is to its members (e.g. Article 2(7) explicitly forbids the Organization to intervene in matters, which are essentially within the domestic jurisdiction of the states), and their violation by the Organization directly involves its legal responsibility.

The violation of Article 2(1) of the Charter and of the principle of inviolability of the legal personality of states in the process of admission of Macedonia to UN membership has immediate consequences on its legal status within the United Nations as a member. With respect to other UN member states, Macedonia is obliged to bear within the UN system an imposed, provisional name (reference) and to continue to negotiate with Greece over its name. These additional obligations of Macedonia as a UN member distinguish its position from that of the other UN members and define a discriminatory status. Membership, as a legal status, contains a standard set of rights and duties, which are equal for all members of the Organizations (“sovereign equality of the Members”, Article 2(1)) and derogation or reduction of these membership rights and duties for particular states is inadmissible, particularly in the areas which are related to, or involve, the legal personality of member states. It follows that the additional obligations imposed on Macedonia as a UN member are again in violation of Article 2(1) of the Charter.

The discriminatory status of Macedonia as a UN member manifests itself in a particularly clear manner in the area of representation. In all acts of representation within the UN system, and in the field of UN relations with other international subjects, the provisional, and not the constitutional name of Macedonia is to be used. This is in violation with the right of states to non-discrimination in their representation in the organizations of universal character (i.e. the UN family of organizations) expressed in an unambiguous way in Article 83 of the Vienna Convention on Representation of States.⁵¹ That article of the Convention provides that “[i]n the application of the provisions of the present Convention no discrimination shall be made as between states”.⁵² The right to equal representation of states in their relations with the organizations of universal character is only a derivative of the principles of sovereign equality of the states within the Organization and inviolability of their juridical personality. The representation on a non-discriminatory basis, however, has a particular significance in the exercise of the legal personality of states in their relations with other states or organizations since it involves in a most direct and explicit way the legal identity of the states.

There is another viewpoint from which the legal status of Macedonia in the United Nations could be looked at. It can be questioned whether a state admitted to UN membership under conditions (or obligations), which extend in time with no specified limit and which, degrade its legal personality can be

⁵¹ Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, UN Doc. A/CONF. 67/16 (March 14, 1975). [See also 69 *AJIL* (1975) 730].

⁵² *Ibid.* Art. 83.

considered as a *full* member of the Organization (in the sense of the principle of sovereign *equality* of the members), despite the fact that the state possess all other rights (and duties) provided by the membership status. Or, can such a state be considered rather, *de facto, conditionally admitted* to the UN membership? Let us suppose that the negotiating process may extend indefinitely. What would be the legal status of such a member carrying out a permanent obligation? Should it be expelled from the Organization's membership for not complying with the obligation in an efficient way (or for its obstruction)? Should the other negotiating party also be expelled from the Organization for the same reason (assuming that in the negotiations the parties have equal negotiating status)? But, expelling the state from UN membership for failing to fulfill the obligation imposed by the act of its admission would only prove that the state had been conditionally admitted to UN membership and that it had a legal status of a conditional member of the United Nations (a status which is not provided for by the Charter). If expulsion from membership is not affected, to avoid the conclusion that the membership status of the state was of conditional nature, then the Organization accepts to tolerate a permanent factual non-compliance of one of its members with an obligation. It may also be possible that the obstruction of the "settlement of the dispute in an efficient way" by negotiations is caused not by the party carrying the admission obligation, but by the other negotiating party (e.g. by insisting to enter into matters from the domestic jurisdiction of the first party, or from other - for instance, political reasons or motivations). The fulfillment of the imposed obligation could, thus, depend not solely on the good will of the party carrying the obligation, but also on the other party, i.e. on a factor, which is outside of its control. This introduces another component in the legal status of Macedonia in the UN membership, which is related to its independence in carrying out its membership obligations.

There is still another possible way to look at the legal status of Macedonia in the UN membership. By denial of the right of the state to free choice of its name, and by imposing to it a provisional name for use within the UN system (i.e. as an attribute to its membership), the UN organization essentially suspended the legal identity of one of its members at the moment and by the act of its admission to membership.⁵³ The suspension of the legal identity of a member state by the act of admission defines a legal status for that state within the UN characterized by a derogated legal personality and reduced (contractual) capacity for conducting its international relations both within and outside the UN system. This specific status

⁵³ In both SC Res. 817 (1993) and GA Res. 47/225 (1993) the name of the applicant is not mentioned but the applicant is referred to as the State whose application is contained in document S/25147 (in the SC resolution), or in document A/47/876 - S/25147 (in the GA resolution). See also *supra* note 3.

of Macedonia as a UN member is clearly different from that of all other member states and is in violation with Article 2(1) of the Charter.

All the above contradictions and inconsistencies in the legal status of Macedonia in the UN membership have their origin in the violation of the Articles 4(1) and 2(7) of the Charter by the resolutions of Security Council and the General Assembly related to, respectively, the recommendation for and effecting of the admission of Macedonia to UN membership. We shall now reveal the source of these violations.

As indicated earlier, the imposition of additional conditions in the Security Council Resolution 817 recommending Macedonia for admission to UN membership was based on concerns regarding “the maintenance of peaceful and good-neighboring relations in the region”,⁵⁴ triggered by the Greek allegation that the applicant's name “implies territorial claims”⁵⁵ against Greece. Greece also advanced claims that the right of use of the name “Macedonia” belongs, for historical reasons, only to Greece. There is, however, no legal basis for linking the conditions for admission of a state to UN membership, as specified explicitly in Article 4(1) of the Charter, with allegations based on assumptions regarding possible future (political) developments. Indeed, based on the principle of separability of domestic and international jurisdiction, the name of the state, which is a subject of domestic jurisdiction, does not create international legal rights for the state that adopts the name, nor does it impose legal obligations on other states, which would be a negation of the basic idea and purposes of international law. Clearly, the name, *per se*, does not have an impact on the territorial rights of states.⁵⁶ Furthermore, from the inherent right of a state to determine its legal identity and from the principle that all states are juridically equal, it follows that all states have equal legal freedom in the choice of their names. For this reason, the Greek claims that Greece has an exclusive right to the use of the name “Macedonia” have “no basis in the international law and practice”.⁵⁷ The Greek opposition to the admission of Macedonia to UN membership under its constitutional name is not only without legal basis, but it is also in violation with the international law when interfering in matters, which are essentially within domestic jurisdiction of Macedonia.⁵⁸ Thus, by ignoring

⁵⁴ *Supra* note 2, preamble.

⁵⁵ *Supra* note 47.

⁵⁶ The EC Arbitration Commission on Former Yugoslavia, when considering the question of recognition of Macedonia by the European Community, in its Opinion No. 6 [see 31 *ILM* (1992) 1507, 1511] has not linked the name of the country to the Greek territorial rights.

⁵⁷ Louise Henkin et al., *International Law: Cases and Materials*, 3rd edn., West, St. Paul, 1993, p. 253.

⁵⁸ *Supra* note 49, at 123.

the principles of separability of domestic and international jurisdictions in the case of Macedonian admission to UN membership, the Security Council has opened the door for violation of several articles of the UN Charter and for creation of an unusual membership legal status for one of the UN members, not instituted by the Charter.

Legal Responsibility of the UN Organization and Possible Modes of Redress

In the preceding two sections of this study we have provided a number of arguments which show in a clear way that the inclusion of the two additional conditions in the SC Resolution 817 (1993) and GA Resolution 47/225(1993), related to the admission of Macedonia to UN membership, violates the provisions of Articles 4(1), 2(1) and 2(7) of the Charter and constitutes an *ultra vires* act of these organs. Since the admission to membership, effected by a decision of the General Assembly, expresses the legal capacity of the UN Organization to admit a state to membership, and since a state has also a legal capacity to become a member of the Organization, it follows that the act of admission engages the legal personalities of both the Organization and the applicant state and that the admission is a legal act of the Organization.⁵⁹

As argued in Section 3 above, the responsibility of the Organization related to the unlawful admission of Macedonia to UN membership derives from the *right* of the applicant to admission when it fulfills the prescribed criteria laid down in Article 4(1) of the Charter and the *duty* of the Organization to admit such applicant to membership, following from the “openness” of the Organization and its mission of universality.⁶⁰ In this context, the provisions contained in Article 4(1) should be interpreted as a legal norm of an international treaty which governs the admission to UN membership.⁶¹

⁵⁹ The ICJ advisory opinion given in the *Certain Expenses* case (*supra* note 19) affirms that, irrespectively of the distribution of powers among the organs of the UN organization, the acts of these organs with respect to a third party represent acts of the Organization. The decisions of the General Assembly made in accordance with Art. 18(2) of the Charter, including the decisions on admission to membership, have a binding character.

⁶⁰ The correlation between the right of a state fulfilling the conditions laid down in Art. 4(1) to admission to UN membership and the duty of the Organization to admit such a state to membership was elaborated in detail in the ICJ advisory opinion given in the *Admission* case (*supra* note 5). Particularly clear form of this correlation was given in the concurring individual opinion of Judge Alvarez (*Ibid.*, at 71).

⁶¹ This interpretation of Art. 4(1) was given by the ICJ in the *Admission* case (*supra* note 5, at 62) and was accepted by the General Assembly (*see supra* note 6).

Observance of this legal norm is compulsory for the Organization as it is for the applicant state. The violation of Article 4(1) in the process of admission of Macedonia to UN membership constitutes, therefore, a breach of the Charter and the constitutionally guaranteed right of the applicant by the Organization. The specific content of the violation of Article 4(1) is the extension of the admission criteria by the UN political organs beyond those enumerated exhaustively in that article, i.e. an inappropriate and politically motivated interpretation of Article 4(1) contradicting the interpretation of that article given by the International Court of Justice in the *Admission* case and accepted (in 1948) by the General Assembly. In this sense, the breach of Article 4(1) of the Charter by the Organization in the case of Macedonian admission to UN membership is similar to the *IMCO* case,⁶² discussed in Section 2, in which the breach of Article 28 of the IMCO Convention by the Assembly of IMCO was committed similarly because of an inappropriate interpretation of the provisions of that article (resulting in additional criteria for election in the IMCO Maritime Safety Committee membership).

As argued in Section 4, the determination of the legal identity of a state is an inherent right of that state, falling strictly within its domestic jurisdiction. This right, being strongly correlated with the right to self-determination, belongs to the domain of *jus cogens*. On the other hand, the legal identity is an essential element of the legal personality of a state, the inviolability, which again has the character of a *jus cogens* norm. The denial of the right of a state to determine its own name is, therefore, in violation with the norms of *jus cogens*, reflected in the provisions of Articles 1(2), 2(1) and 2(7) of the Charter and in the Declaration on Principles of International Law.⁶³ The Organization, as any other subject of international law, has a duty to respect these norms. Article 2(7) specifically and expressly limits the powers of the Organization over matters from the strict internal jurisdiction of the states. The breach of this article in the case of the Macedonian admission to UN membership by interfering in the inherent right of this state to choose its own name is certainly an *ultra vires* act of the Organization (The Organization bears a legal responsibility for this unlawful act.). Since the basic principles embodied in the Charter are mutually interrelated and consistent with each other, breach of one principle (or legal norm) usually leads to violation of other principles (or norms). Thus, the violation of Article 2(7) also leads to violation of the principle enshrined in Article 2(1), as generalized by the Declaration on Principles of International Law (“sovereign equality of states”⁶⁴), and *vice versa*.

⁶² *Supra* note 18.

⁶³ *Supra* note 49.

⁶⁴ *Ibid.*, at 122.

Furthermore, the violation of Articles 4(1) and 2(7) during the process of admission leads to a discriminatory legal status of Macedonia as a UN member, i.e. to the violation of Article 2(1) of the Charter. (Indeed, *ex injuria jus non oritur*). As we have argued in the preceding section, the breach of this article results effectively in suspension of the legal identity of the member state, inflicting thus a grave damage on its legal personality (e.g. by reducing its contractual capacity, its capacities in the domains of legation and representation, etc.), and on its external political and economic relations. The responsibility of the Organization for violating Article 2(1) derives from its duty to strictly observe this treaty provision (principle of the Organization), and from its mission in promoting the legal justice and the rule of international law.⁶⁵

The violations of the Charter provisions contained in Articles 4(1), 2(1) and 2(7) may each serve as a sufficient legal basis (*ultra vires* acts) for requesting a judicial redress, i.e. for removal of the conditions imposed on Macedonia during its admission to UN membership and the resulting discriminatory legal status as a UN member. On the substantive level, however, they are all closely interrelated (as argued above), since the violation of Articles 2(1) and 2(7) underlines the violation of Article 4(1). On the other hand, the breach of Article 4(1) (which implies the violations of Articles 2(1) and 2(7)) appears to be the source generating the problems related to the specific legal status of Macedonia in UN membership. Further, the breach of Article 4(1) appears to be most obvious, since the admission of Macedonia to UN membership has not followed (in its substantive part) the standard admission procedure. Moreover, and most importantly, this breach is in direct discord with the General Assembly resolution 197 (III, A) regarding the interpretation of Article 4(1) given by the International Court of Justice in the *Admission* case.⁶⁶

As a mechanism for judicial redress of legal consequences generated by the violation of Article 4(1) in General Assembly resolution 47/225 (1993) and Security Council resolution 817 (1993), the advisory jurisdiction of the International Court of Justice appears to be the most appropriate in this case. The question of legality of these resolutions in their parts related to the imposition of additional conditions on Macedonia regarding its name for its admission in UN membership (i.e. their compatibility with the provisions of Article 4(1) of the Charter) could be put before the Court by the General Assembly on request by Macedonia (possibly jointly with a group of Member States that have already recognized Macedonia under its constitutional name). Since this question is of purely legal nature, the General Assembly may request an advisory opinion from the Court (Article 96(1) of the Charter). The General Assembly cannot obstruct

⁶⁵ UN Charter, preamble.

⁶⁶ *Supra* note 5..

such a request for an advisory opinion to be put before the Court because the requested opinion is related to the legality of its own act. Such an obstruction (based on whatever reasons) would essentially mean that the General Assembly, as a political organ, is imposing its own response to the question regarding the legality of its own act, or, imposing its own judgment in a case in which it is itself a "party" (representing the Organization).⁶⁷ This would be incompatible with the basic legal principles of juridical equality and *bona fide*, and with the mission and the duty of the UN Organization regarding the respect of international law.⁶⁸ Moreover, the earlier discussed *IMCO* case⁶⁹ provides an example in which the Organization has not obstructed the request for a Court's advisory opinion regarding the compatibility of a decision of the IMCO plenary organ with the provisions of its constitutional document. On the other hand, since the question regarding the legality of imposing additional conditions on Macedonia for its admission to UN membership is essentially a special case of the more general question (of the same character) already considered by the Court in the *Admission* case,⁷⁰ there cannot be any uncertainty about the Court's competence for its consideration. For the same reason, and from the obvious incompatibility of the additional conditions for the Macedonian admission to UN membership with the exhaustive character of the conditions set forth in Article 4(1) of the Charter, the Court's advisory opinion in this case cannot be different from its opinion already given in the *Admission* case. Similarly, the position of the General Assembly with respect to the Court's opinion in the Macedonian case cannot be different from its position⁷¹ taken with respect to the Court's opinion in the *Admission* case. In fact, the Macedonian case is only a specific example of the general issue considered by the Court in the *Admission* case, created by the non-observance (or neglect) of the already adopted Court's interpretation of Article 4(1) of the Charter.⁷²

The mode of redress via the advisory jurisdiction of the Court includes also the more subtle problem of the legal consequences of legally defective GA

⁶⁷ As we have argued earlier, in the act of admission of a state to UN membership the legal personalities of both the Organization and the applicant state are involved.

⁶⁸ *Supra* note 64.

⁶⁹ *Supra* note 20.

⁷⁰ The question for which an advisory opinion of the Court was requested by the General Assembly had the form: "[i]s a Member of the United Nations which is called upon, in virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph 1 of the said Article?" (See GA Res. 113(II), 14 November 1947).

⁷¹ *Supra* note 6.

⁷² *Ibid.*

resolution 47/225 (1993). Apart from its preamble (referring to the recommendation of the Security Council for admitting the applicant to UN membership with additional conditions and to the application of the candidate), GA resolution 47/225 (1993) contains a decision which includes two parts: (a) to admit the applicant State to membership in the United Nations, and (b) “this State being provisionally referred to for all purposes within the United Nations as “the former Yugoslav Republic of Macedonia” pending settlement of the difference that has arisen over the name of the State”.⁷³ Part (a) of the GA resolution reflects the assessment of the Security Council that “the applicant fulfills the criteria for membership laid down in Article 4 of the Charter and follows the Security Council recommendation for admission of the applicant state to UN membership.” Part (b) of the GA resolution contains the imposed additional conditions related to the name of the applicant (and future UN member) without the acceptance of which part (a) could not have been affected. Only part (b) of the GA resolution is *ultra vires* and only this part can be considered void. From the requirement of legality, the unlawful part (b) of the GA resolution should be considered void *ab initio*. However, practical consideration (within the General Assembly, after the favorable Court's advisory opinion is received and presumably adopted) may render the determination that part (b) of the resolution is void *ex nunc*.⁷⁴ In either case, according to the principle of separability,⁷⁵ the invalidation of part (b) of the resolution should not affect the validity of part (a). Obviously, the invalidation of part (b) of GA Res. 47/225 (1993) can be done by a new GA resolution, which would also affirm the use of constitutional name of Macedonia within the UN system.

Another basis for a judicial redress in the Macedonian case via the advisory jurisdiction of the International Court of Justice could be based on the violation of Article 2(1) of the Charter in GA Res. 47/225 (1993) by which the legal personality of the state is severely derogated (through suspension of its legal identity and imposing a discriminatory membership status). The question of derogation of legal personality of Macedonia by this GA resolution within the context of Article 2(1) has an obvious legal character and is, therefore, a legitimate subject for the Court's advisory jurisdiction. Since some of the basic principles of international law are involved in the subject (related, e.g., to the inherent rights of

⁷³ *Supra* note 1. The formulation of part (b) of GA Res. 47/225 (1993) is identical with the formulation given in the recommendation of the Security Council resolution SC Res. 817 (1993). The SC resolution, however, somewhat expands on the character of the ‘difference’ and on its settlement by negotiations (*see supra* note 45).

⁷⁴ Such a determination was given, for instance, by the Assembly of IMCO when accepting and implementing the Court's advisory opinion (*see supra* note 21).

⁷⁵ *Supra* note 9, at 120.

states, inviolability of legal personality, equality of states, etc), the Court cannot formulate its opinion in a manner inconsistent with those principles. The General Assembly could neither ignore the Court's opinion based on such principles.

Summary

We have presented a detailed analysis of the legal aspects of SC Res. 817 (1993) and GA Res. 47/225 (1993), which are related to the admission of Macedonia to UN membership. It has been demonstrated that the additional conditions imposed on Macedonia for its admission to the United Nations constitute a clear violation of Articles 4(1), 2(1) and 2(7) of the Charter and define a discriminatory legal status of the state as a member (again in violation of Article 2(1)). The responsibility of the United Nations Organization for violation of Charter's provisions derives from the duty of the Organization to respect the basic rights of the states (either as applicants to UN membership or as UN members), which are protected by the principles of international law enshrined in the mentioned articles of the Charter. The character of these violations is of the *ultra vires* type with respect to the legal norms of the Charter as a multilateral treaty. The violations of Articles 4(1), 2(1) and 2(7) involve the legal personalities of both the Organization and the Macedonian state. This provides a basis for instituting a judicial redress of the legal consequences resulting from the breach of constitutional provisions. We have discussed two possible pathways for such judicial redress, based on the violation of Article 4(1) and Article 2(1), respectively, and on the use of the advisory jurisdiction of the International Court of Justice.

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PRAVNI OKVIR ZA SAVETODAVNO MIŠLJENJE
MEĐUNARODNOG SUDA PRAVDE U SLUČAJU
PRIJEMA MAKEDONIJE U UN

APSTRAKT

U ovom članku razmatramo zakonitost dopunskih uslova prijema u UN (izvan onih propisanih Poveljon UN-a) u slučaju Makedonije sadržanih u rezolucijama Saveta bezbednosti 817 (1993) i Generalne skupštine UN 47/225 (1993) u postupku učlanjenja (ove zemlje). Ti uslovi sadrže prihvatanje od strane podnosioca zahteva sa privremenim imenom i obaveze da pregovara o svom imenu sa drugom državom (Grčkom). Pokazano je da se nametanjem ovih uslova krši član 4(1), kao i drugi članovi Povelje Ujedinjenih nacija. Pravne posledice tih uslova na pravni status Makednije u članstvu su takođe ovde ispitane. Nametnutim uslovima se za Makedoniju stvara diskriminatorni status u članstvu, što je suprotno članu 2(1) Povelje UN. Konsekventno, pokazuje se da takvo kršenje Povelje predstavlja *ultra vires* akte počinjene od strane UN, koji involviraju pravni subjektivitet ove organizacije. Kršenja normi Povelje ovde su u vezi i sa kršenjem ključnih prava države aplikanta (kasnije države članice) i, posledično, dolazi do suštinskog narušavanja pravnog subjektiviteta buduće članice. Iz svega ovoga nameće se zaključak da bi najpodesniji način razrešenja situacije u vezi sa pomenutim nelegalnim (parcijalno nelegalnim) pravim aktima od UN-a, odnosno posledicama problematičnih (njegovih rezolucija) bilo korišćenje savetodavne jurisdikcije Međunarodnog suda pravde.

Ključne reči: Ujedinjene nacije, pravo, politika, država, Makedonija.

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The Positions of African States on the Problem of Kosovo and Metohija and State Sovereignty and Integrity in Africa

ABSTRACT

The paper presents an analysis of the general positions of African states on the problem of Kosovo and Metohija and its relatedness with the issue of sovereignty and territorial integrity in Africa. African states generally supported the preservation of sovereignty of Serbia over Kosovo and Metohija. That support is related with the national interests of African states to preserve their territorial integrity, with the fight against separatism on their own territory as well as with setting of the principle of preservation of sovereignty and territorial integrity of states as the basic principle of international relations in XXI century.

Key words: Problem of Kosovo and Metohija, Serbian-African relations, Serbia's foreign policy, African Union, separatism, sovereignty and territorial integrity.

Introduction

The subject of this paper are the positions of African states on the problem of Kosovo and Metohija with special reference to the final status of the province and preservation of Serbia's sovereignty and territorial integrity in the period from 24 March 1999 to 1 October 2010 as well as interrelatedness of those positions with the protection of sovereignty and territorial integrity in Africa.

The paper set two objectives. The first is to find out what the general positions of African states on the problem of Kosovo and Metohija were in the United Nations Security Council (UNSC) before 17 February 2010 when the Albanian separatists in Kosovo and Metohija adopted the declaration of

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independence as well as their positions and activities afterwards. The second one is related to the analysis of the reasons for those positions.

There are two main hypotheses in this paper and they are as follows: 1) African states generally support the principle of preservation of sovereignty and territorial integrity of Serbia related to the problem of Kosovo and Metohija; 2) the support of African states to Serbia concerns their national interests to preserve territorial integrity and to set the principle of preservation of sovereignty and territorial integrity of states as a basic principle of the international relations in XXI century.

This paper is divided into three chapters. The first chapter is a review of general positions of African states on the problem of Kosovo and Metohija. It has two parts - the first deals with the positions of African states in the UNSC, including NATO aggression against Yugoslavia, the adoption of the UNSC Resolution 1244, the UNMIK administration until 2008 and the status negotiations; the second studies the positions of African states concerning the independence of Kosovo and Metohija. The analysis of the problem of separatism in Africa is presented in the second chapter. The subject of this analysis are separatist movements that have the biggest potential to threaten the territorial integrity of African states as well as those movements that are members of the Unrepresented Nations and Peoples Organizations (UNPO) where the Albanian separatists from Kosovo and Metohija have already been represented by the Democratic League of Kosovo. The analysis will address the main characteristics of these movements, regions in which they operate, their goals, and main arguments they use to justify those goals. The validity of their claims and goals will not be the issue of this chapter since the intention is to show why they are regarded as separatist by the African governments. The third chapter is dedicated to the importance African states attach to the principle of respect of sovereignty and territorial integrity in international relations. This will be expressed through the analysis of the strategic documents of the Organization of African Unity and the African Union, the statutes of the African regional economic communities and documents that defined strategic partnerships of the African Union with non-African states and international organizations.

The General Positions of African States on the Problem of Kosovo and Metohija

The Positions of African States in the UNSC

1) The NATO Aggression against Yugoslavia and the UNSC Resolution 1244

After the beginning of the NATO aggression against Yugoslavia, the UNSC held a session on 24 March 1999 where non-permanent members from Africa,

the Gambia, Gabon and Namibia expressed rather different positions. The Gambia implicitly supported the aggression pointing out that “the Council had primary responsibility for international peace and security, but at times the exigencies of a situation demanded decisive and immediate action, and events in Kosovo deserved such treatment”. Gabon took a neutral position declaring that “it was regrettable that condemnations and appeals to search for political solutions had not been heeded”. Namibia expressed strong opposition to the aggression stressing that “the military action was not the solution and the implications of such action might go beyond that country and threaten the peace and security of the region”.² On 26 March, Namibia also actively demonstrated its opposition to the aggression when its representative voted in favour of the proposed draft resolution that “demanded for the immediate cessation of the use of force against Yugoslavia and the urgent resumption of negotiations”.³

On 10 June, all UNSC members from Africa supported the Resolution 1244, but they yet retained different positions regarding the nature of the conflict and problem of Kosovo and Metohija. According to the statement of the Gambia’s representative, the problem generator was Belgrade, whose “repression and violence against the civilian population in Kosovo had shocked the collective conscience of mankind”. Gabon kept its neutral position, and its representative pointed out that “the Resolution 1244 upheld the principles of dialogue, negotiation and peace in solving problems that are very dear to Gabon”. Namibia once again expressed its opposition to the NATO military action emphasizing that it was “regrettable that only after large-scale senseless killings and destruction of property a peace plan had been achieved”. At the same time, Namibia underlined that “the root historical causes of the conflict must be addressed fully and only then a lasting peace could be achieved in Kosovo and in Yugoslavia as a whole”.⁴ In the *Algiers Declaration* adopted in July 1999, African states indirectly expressed their common concern for the NATO action against Yugoslavia without authorisation from the UNSC. This declaration was a strategic document that defined the main directions of the common African policy in XXI century. A part of this document that highlights the most important challenges in the new century says that “the unilateral use of force in international relations, outside the duly

² “Press Release SC/6657”, United Nations Security Council, 24 March 1999, Internet, <http://www.un.org/News/Press/docs/1999/19990324.sc6657.html>, 10/9/2010.

³ Acting on a draft resolution submitted by Belarus, Russian Federation and India, the Council failed to adopt it by a vote of 3 in favour (China, Namibia, Russian Federation) to 12 against, with no abstentions. “Press Release SC/6659”, United Nations Security Council, 26 March 1999, Internet, <http://www.un.org/News/Press/docs/1999/19990326.sc6659.html>, 10/9/2010.

⁴ “Press Release SC/6686”, United Nations Security Council, 10 June 1999, Internet, <http://www.un.org/News/Press/docs/1999/19990610.SC6686.html>, 10/9/2010.

conferred mandate of the United Nations Security Council, opens the way to practices inimical to world peace and security”.⁵

2) The UNMIK Administration until 2008 and the Status Negotiations

In accordance with the Resolution 1244, the UN established an international civil mission in Kosovo and Metohija (UNMIK) in order to provide an interim administration under which the people of the province could enjoy substantial autonomy within Yugoslavia (later Serbia and Montenegro, and eventually Serbia).⁶ Since the establishment of the UNMIK in July 1999 until the proclamation of independence of Kosovo and Metohija in February 2008, the UNSC members from Africa defined their positions on the Kosovo and Metohija problem mostly on the basis of the reports and briefings of the Special Representative of the Secretary-General and Head of the UNMIK. Special Representative submitted quarterly reports on regular basis on the situation in the province and the progress of the mission. In some cases, there were briefings on specific issues, which demanded immediate discussion in the UNSC. African states were able to get familiar with the positions of Yugoslavia/Serbia only in those cases when Yugoslav/Serbian representatives commented on the reports and briefings. The Yugoslav/Serbian diplomacy did not attach much importance to the UNSC members from Africa because its attention was almost exclusively directed towards the permanent SC members. From 1999 up to 2008, 17 African non-permanent members of the UNSC took part in the debate concerning Kosovo and Metohija.⁷ In this period, African

⁵ “Algiers Declaration”, Algiers, 14 July 1999, Internet, <http://www.africa-union.org/root/au/Documents/Decisions/hog/9HoGAssembly1999.pdf>, 20/9/2010.

⁶ The UNMIK’s responsibilities included: a) Deterring renewed hostilities, maintaining and where necessary enforcing a ceasefire, and ensuring the withdrawal and preventing the return into Kosovo of Federal and Republic military, police and paramilitary forces; b) Demilitarizing the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups; c) Establishing a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered; d) Ensuring public safety and order until the international civil presence can take responsibility for this task; e) Supervising demining until the international civil presence can, appropriate, take over responsibility for this task; f) Supporting, as appropriate, and coordinating closely with the work of the international civil presence; g) Conducting border monitoring duties as required; h) Ensuring the protection and freedom of movement of itself, the international civil presence, and other international organizations. “Resolution 1244 (1999)”, United Nations Security Council, 10 June 1999, Internet, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>, 10/9/2010.

⁷ These 17 states were: Gabon and the Gambia (1999), Namibia (1999 and 2000), Tunisia and Mali (2001), Mauritius (2001 and 2002), Cameroon and Guinea (2002 and 2003), Angola

states applied a strategy of observation with minimal participation, choosing to discuss those issues, which they considered important for the common African interests in international relations. All African states expressed their full support to the UNMIK and its activities in the field, including election process, building of multi-ethnic society, creation of interim administration institutions, the Kosovo Police Service and interim constitutional framework, as well as transferring the competencies to the local institutions. However, all along their support depended on the implementation of the Resolution 1244 and respect for the territorial integrity of Yugoslavia, later Serbia and Montenegro, and finally Serbia.

Some issues concerning the UNMIK administration were the matter of specific interest of African states. For this reason, they considered them great problems for the administration in the province. African states expressed great concern over the ethnically motivated violence perpetrated by the Albanians against the Serbs, the unsatisfying pace of return of displaced persons, a lack of security, organized crime, and the fact that the interim province authorities did not always comply with the Resolution 1244. However, African countries were not always unanimous regarding these issues. Thus, some of them expressed general positions while the others were more specific. In 2000, Tunisia emphasized that the “return of refugees and displaced persons remained central to peace in Kosovo” and Namibia that “increasing intimidation and unmitigated violence by the Albanian majority, aimed at driving minority communities out of Kosovo, was totally unacceptable”.⁸ Regarding the agenda on security and organized crime in 2002 and 2003, Cameroon took very clear positions, unlike the other African UNSC members. In 2002, Cameroon stressed that “some actions deserved priority and that actions included strengthening security, disarming all armed groups, and encouraging the return of all minorities”.⁹ In 2003, Cameroon continued in the same manner when its representative emphasized that “continued acts of violence in the region, fear and mafia methods could not be allowed to reign”.¹⁰

The implementation of the formula ‘the Standards before Status’ was especially important. The purpose of the standards was to create a fairer and

(2003 and 2004), Algeria and Benin (2004 and 2005), Tanzania (2005 and 2006), Congo and Ghana (2006 and 2007), the Republic of South Africa (2007 and 2008) and Libya and Burkina Faso (2008).

⁸ “Press Release SC/6873”, United Nations Security Council, 9 June 2000, Internet, <http://www.un.org/News/Press/docs/2000/20000609.sc6873.doc.html>, 10/9/2010.

⁹ “Press Release SC/7340”, United Nations Security Council, 27 March 2002, Internet, <http://www.un.org/News/Press/docs/2002/sc7340.doc.htm>, 10/9/2010.

¹⁰ “Press Release SC/7958”, United Nations Security Council, 17 December 2003, Internet, <http://www.un.org/News/Press/docs/2003/sc7958.doc.htm>, 10/9/2010.

more tolerant society, and to improve the levels of public sector performance, before the beginning of the Kosovo and Metohija status negotiations.¹¹ The process of the adoption of standards was violated during the ethnic cleansing of the Serbs committed by Albanian separatists in March 2004. All African states in the UNSC, Angola, Algeria and Benin, strongly condemned the ethnic cleansing, therefore demanding from Albanian majority, interim institutions and the UNMIK to protect the Serbs and implement the standards as a condition for the beginning of the negotiations.¹²

The negotiation process between the Serbian Government and representatives of the Albanians from Kosovo and Metohija started in February 2005. The agenda included technical matters, which were supposed to be an introduction to the status negotiation. At that moment three African non-permanent UNSC members, Algeria, Benin and Tanzania, expressed their full support to the negotiations, but also set requests for the fulfilment of certain conditions - Algeria and Tanzania required from the international community to create conditions for the implementation of standards and Benin urged that the equal participation in the political life of the province should be allowed to the Serbs.¹³ After several rounds of negotiations on technical matters, the UNSC approved the inception of the status negotiations on 24 October and appointed former Finnish President Martti Ahtisaari the main mediator on 11 November. All African UNSC members supported those decisions. The UN-backed talks, led by UN Special Envoy Ahtisaari, began in February 2006. While some progress was made on some technical matters, both parties remained on diametrically opposite positions on the question of the final status of the province. After several rounds of negotiations, it became clear that there were two conflicting concepts of resolution of the Kosovo and Metohija problem - the substantial autonomy offered by the Serbian Government and full independence, which was the only acceptable solution for the representatives of the Albanians. During the negotiations, African states were neutral waiting to

¹¹ The standards included eight fields: Functioning of democratic institutions, Rule of law, Freedom of Movement, Sustainable returns and the rights of communities and their members, Economy, Property Rights (including cultural heritage), Priština-Belgrade dialogue, Kosovo Protection Corps (KPC). Within these fields were identified 109 goals, presented to the Security Council in December 2003 in the document 'Standards for Kosovo'. This document in turn was implemented through the 'Kosovo Standards Implementation Plan', finalized in March 2004. United Nation Interim Administration Mission in Kosovo, "About UNMIK", Internet, <http://www.unmikonline.org/intro.htm>,

¹² "Press Release SC/8056", United Nations Security Council, 13 April 2004, Internet, <http://www.un.org/News/Press/docs/2004/sc8056.doc.htm>, 10/9/2010.

¹³ United Nations Security Council, "Meetings conducted / Actions taken by the Security Council in 2005", Internet, <http://www.un.org/Depts/dhl/resguide/scact2005.htm>, 10/9/2010.

see the final outcome, but all the time they emphasized their general support of the principles of peaceful settlement of disputes.¹⁴

In February 2007, Ahtisaari delivered a status settlement plan that offered “supervised independence” for the Serbian southern province. The Ahtisaari plan was supported by the USA and the EU, but it was unacceptable for Serbia, which launched diplomatic initiative in order to prevent the adoption of the plan in the UNSC. For Serbia, it was strategically important to get support from Russia and China, permanent UNSC members, but its initiative was also directed towards those UNSC members, which had not explicitly supported the plan and all African states were among them. The main Serbian argument, included in its initiative, was that Kosovo independence would be a precedent, which could be used by numerous separatist movements in the world and Africa, in particular. With this argument, Serbian Foreign Minister Vuk Drašković had visited Pretoria in April 2007 in order to get support from the Republic of South Africa, one of the most influential African states.¹⁵ After that visit, African states became very significant in the Serbian diplomatic initiatives. African UNSC members accepted the relevance of the Serbian argument and did not support the Ahtisaari plan, but they also were not explicitly against it waiting to estimate the development of the situation among the great powers. In July, when a draft resolution based on the Ahtisaari plan was presented, Russia stated that it would be against any resolution, which was not acceptable to both Belgrade and Kosovo and Metohija’s Albanians. As a result of the disagreements between the great powers, the draft was withdrawn and therefore, the African members practically avoided voting on the Ahtisaari plan.

The UN Secretary-General later endorsed another time-limited round of negotiations led by USA/EU/Russian Troika of mediators. The Troika completed its work in December 2007 without having achieved an agreement between the parties on the Kosovo and Metohija status. The Serbian Government emphasized that independence was unacceptable and expressed willingness to resume the negotiations, but the Albanian separatists stressed that independence was the only solution.

3) The Proclamation of Kosovo Independence

The interim Assembly of Kosovo, controlled by the Albanian separatists, adopted a unilateral declaration of independence of the Serbian province on 17 February 2008 and the UNSC held a meeting the next day. The African members

¹⁴ United Nations Security Council, “Meetings conducted / Actions taken by the Security Council in 2006”, Internet, <http://www.un.org/Depts/dhl/resguide/scact2006.htm>, 10/9/2010.

¹⁵ “Serbian FM visits South Africa”, *B 92*, 14 April 2007, Internet, http://www.b92.net/eng/news/politics-article.php?yyyy=2007&mm=04&dd=14&nav_id=40673, 25/8/2010.

were not explicitly determined on the declaration, but the statement of their representatives indicated their future positions. Burkina Faso could “only take note of the new situation” and called upon the parties “to avoid any violence in order to preserve peace and security and secure the basic rights of all the communities”. The Libyan representative said that his country would be “supportive of the principles of justice and international law stipulated that sovereignty of all states and their territorial integrity”, which indicated that Libya would not recognize independence of Kosovo and Metohija. The representative of South Africa “regretted that such a step had not been taken in conformity with a legal and political process envisaged by resolution 1244” and added that “South Africa, as a member of the United Nations, the Non-Aligned Movement and the African Union, upheld and promoted the principle of the territorial integrity of states”.¹⁶ The reactions of Libya and South Africa were especially significant bearing in mind their leading role in the African continent and positions in the African Union.

The Positions of African States on Kosovo Independence

After the proclamation of independence of Kosovo and Metohija, Serbia’s diplomatic strategy was focused on preventing two consequences that would be particularly negative for the efforts to preserve the sovereignty and territorial integrity. They were as follows: 1) a huge number of recognitions of independent Kosovo and Metohija; 2) Kosovo and Metohija’s membership in international organizations, especially the UN. The most important part of this strategy was the Serbian initiative to submit a draft resolution in the UN General Assembly in order to request an advisory opinion from the International Court of Justice on whether the unilateral declaration of independence of Kosovo and Metohija was in accordance with international law. In this way, official Belgrade continued the struggle for the preservation of its territorial integrity in the legal field believing that it would contribute to the resistance to the influence of great and powerful states that supported Kosovo and Metohija’s independence, like the USA and the most influential EU members. However, Belgrade decided to initiate the request for an advisory opinion, but not to sue those countries that had already recognized Kosovo and Metohija’s independence for violating Serbia’s territorial integrity. For a number of states and the significance of some African states in developing countries, the Non-Aligned Movement and the Arab and Islamic world Africa was given great importance in the implementation of this strategy. The first important step in the strategy implementation towards African states was made at the AU summit in Sharm el-Sheikh in July 2008, where Serbian President Boris Tadić urged

¹⁶ “Press Release SC/9252”, United Nations Security Council, 18 February 2008, Internet, <http://www.un.org/News/Press/docs/2008/sc9252.doc.htm>, 10/9/2010.

African states to support the Serbian proposal in the General Assembly and not to recognize independent Kosovo and Metohija.¹⁷ The next step directed towards African states, but also towards the states of Arab and Islamic world was Jeremić's visit to Cairo in August. The fact is that Egypt has been one of the most influential states in the African Union, Arab League and Organization of Islamic Conference. Until then, only 4 small African states had recognized the independence of the Serbian province.¹⁸

The Serbian diplomatic initiative produced the expected results when the UN General Assembly adopted the resolution, which requested the ICJ advisory opinion at XXII meeting of LXIII session in October 2008. Prior to the vote, some African states, among which were those with the greatest influence on the African continent, issued the statements in which they explained the reasons for voting in favour of the resolution. For Egypt, it was "clear that this question was a legal issue, not a political question". The representative of South Africa said that his "delegation would vote in favour of the draft resolution, supporting the right of the Member States to seek advice from the International Court of Justice", and emphasized "that though 48 countries had recognized Kosovo, it was also important that 144 countries had not". Algeria "firmly backed the work of the Court, and believed in the primacy of international law in international relations", and pointed out that "the draft contained no elements of a political or controversial nature".¹⁹

The draft resolution on the request for the ICJ advisory opinion on whether the unilateral declaration of independence of Kosovo and Metohija was in accordance with international law was adopted by a recorded vote of 77 in favour to 6 against, with 74 abstentions. Out of 77 votes in favour of the resolution, 23 came from Africa.²⁰ No African state with the right to vote was against the resolution and out of 74 abstentions there were only 9 from Africa.²¹ Among 28 states that did not vote, 15 were from Africa.²²

¹⁷ President of the Republic of Serbia, "President Tadić's speech at the African Union Summit", Internet, <http://www.predsednik.rs/mwc/default.asp?c=303500&g=20080630103641&lng=eng&hs1=0>, 26/8/2010.

¹⁸ Senegal (19 February 2007), Burkina Faso (24 April 2007), Liberia (30 May 2008) and Sierra Leone (13 June 2008).

¹⁹ "Press Release GA/10764", United Nations General Assembly, 8 October 2008, Internet, <http://www.un.org/News/Press/docs/2008/ga10764.doc.htm>, 10/9/2010.

²⁰ Algeria, Angola, Botswana, Congo, DR Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Guinea, Kenya, Lesotho, Madagascar, Mauritius, Namibia, Niger, Nigeria, South Africa, Sudan, Swaziland, Tanzania, Zambia and Zimbabwe.

²¹ Benin, Burkina Faso, Cameroon, Ghana, Morocco, Senegal, Sierra Leone, Togo and Uganda.

²² Burundi, Cape Verde, Chad, Ethiopia, Gabon, Gambia, Ivory Coast, Libya, Malawi, Mali, Mauritania, Mozambique, Rwanda, Seychelles and Tunisia.

From the adoption of the UN General Assembly resolution until the ICJ gave the advisory opinion, Serbia's main diplomatic efforts were directed to prevent new recognitions of Kosovo and Metohija's independence. African states had a great importance in these efforts and Serbian officials, mostly President Tadić and Foreign Minister Jeremić, presented two main messages to their African counterparts and they were the following: 1) the independence of Kosovo and Metohija would create a precedent that could destabilize almost all African states; 2) African states should wait with their decision on independence recognition until the ICJ gave the advisory opinion. The diplomatic offensive to African countries included visits of Serbian officials to the most influential African states, their participation in the African Union summits, the talks with African counterparts in the UN Headquarters, as well as visits of African officials to Serbia. Between April 2009 and July 2010, the frequency of meetings of Serbian officials with their African counterparts was much higher than a decade and a half before. Serbian highest officials held meetings with more than 40 African leaders who expressed their support for the principle of preserving of territorial integrity, but at the same time explained that their states were under great pressure to recognize Kosovo and Metohija's independence.²³ The pressure was too strong for 7 African states, which had recognized Kosovo and Metohija's independence before the ICJ gave an advisory opinion.²⁴

The ICJ made public its advisory opinion on 22 July 2010 and concluded "that the adoption of the declaration of independence of 17 February 2008 did not violate general international law, Security Council resolution 1244 (1999) or the Constitutional Framework. Consequently the adoption of that declaration did not violate any applicable rule of international law".²⁵ Even though the ICJ discussed only the unilateral declaration, but not the independence of Kosovo and Metohija the advisory opinion was regarded as Belgrade's failure to solve the problem in the legal field. The entire problem was returned to the political field where Belgrade continued to express well-known arguments related to Kosovo and Metohija as a precedent. The only political measures, which Belgrade could apply

²³ Serbian foreign minister visited Libya in April 2009, South Africa in May 2009, Morocco in September 2009, Nigeria, Gabon and DR Congo in November 2009, and Ghana in March 2010. He also participated in the AU summit in Addis Ababa in January 2010. The Serbian President visited Libya in September 2009 and in March 2010. On the other hand, the Foreign Minister of Egypt visited Serbia in February 2010, while Foreign Ministers of Mali and Gabon did it in May 2010.

²⁴ The Gambia (7 April 2009), the Comoros (14 May 2009), Malawi (16 December 2009), Mauritania (12 January 2010), Swaziland (12 April 2010), Djibouti (12 May 2010) and Somalia (19 May 2010).

²⁵ International Court of Justice, "Advisory Opinion: Accordance with international law of the unilateral declaration of independence in respect of Kosovo", 22 July 2010, Internet, <http://www.icj-cij.org/docket/files/141/15987.pdf>, 30/7/2010.

in the aftermath of the ICJ decision was to continue preventing new recognitions of independence while preparing new negotiations with representatives of Kosovo and Metohija's Albanians. As a part of such policy, Serbia's officials continued the already mentioned diplomatic practice towards African states in order to persuade them not to recognize independence of Kosovo and Metohija. One can say that Serbia's diplomacy has made significant success so far, bearing in mind that there are no new recognitions from Africa after the ICJ gave the advisory opinion. On the other hand, a majority of African states have not recognized independence of Kosovo and Metohija. Since 17 February 2008, when the Albanian separatists in Kosovo and Metohija adopted the declaration of independence up to 1 October 2010, only 11 of 54 African states recognized independence of the Serbian southern province.²⁶

Regions in African States with Separatist Tendencies

Kabylia, Algeria

Kabylia is located in the northeastern part of Algeria with an area of about 25,000 km² (slightly more than 1% of Algerian territory) and population of 9 million (25% of Algerian population). Almost the entire population of this region is consisted of the Kabyles, a people of Berber origin and Islamic religion. The Kabyles also live in the other parts of Algeria, mostly in the capital where they make about 40% of the population, but also outside of Algeria, mostly in France.²⁷

Since 2001, in this region the *Movement for Autonomy of Kabylie – MAK* (*Mouvement pour l'autonomie de la Kabylie – MAK*), has gained major political support. The government in Algiers considers this movement separatist because of its ultimate goals. The main goal in the MAK's official political agenda is the federalization of Algeria where Kabylie should constitute a separate federal unit with a wide range of competences.²⁸ This is unacceptable for official Algiers, which claims that federal unit status would be an introduction to the later

²⁶ The African states that recognized Kosovo independence have almost no influence in Africa, given the fact that they together represent less than 4% of the entire African population and slightly more than 1% of the African GDP. On the other hand, the states that expressed full support to Serbia's integrity, such as Nigeria, South Africa, Libya, Egypt, Morocco, Algeria, Angola, Namibia, Ghana and Ethiopia represent more than a half of the African population and almost 90% of the African GDP.

²⁷ Encyclopedia Britannica, "Kabylia", Internet, <http://www.britannica.com/EBchecked/topic/309347/Kabylie>, 12/8/2010.

²⁸ Ferhat Mehenni, *Official Request for a Regional Autonomy Status in Kabylia*, 05/08/2008, Internet, <http://mak.makabylie.info/OFFICIAL-REQUEST-FOR-A-REGIONAL,00777?lang=en>, 12/8/2010.

secession. Algiers' concerns about the possible secession of Kabylia stem from the arguments, which MAK uses to justify its goals. The first argument is related to the historical right and points to the fact that Kabylia had existed as the Kingdom of Numidia from III to I century BC and that the Kabyles had lived in North Africa for centuries before the Arabs came. Regarding the historical rights MAK emphasizes a specific anti-colonial identity of Kabylia, which is related to the Kabylia long-term resistance to the French occupation in the second half of XIX century as well as the participation of the Kabyles in the Algerian war of independence. The second MAK's argument stems from the need to preserve cultural identity of the Kabyles because the government in Algiers has for decades pursued the policy of arabization. Political discrimination and violations of human rights of the Kabyles is MAK's third argument. MAK even claims that the government provoked the civil war in 1963 only in order to destroy the political elite of Kabylia and prevent it from gaining independence. According to MAK, the government has always used massive retaliation when the people of Kabylia demanded the fulfilment of their legitimate rights. Economic development is the fourth argument and MAK stresses that a large part of Algeria's GDP depends on economic activities in Kabylie. These activities are related to the natural gas exploitation and economic output realized in Kabylia industrial facilities and Bejaia port, the second largest port in Algeria and the sixth in the entire Mediterranean.²⁹

Western Sahara, Morocco

Western Sahara is predominantly Moroccan-controlled territory in North Africa bordering on the rest of Morocco in the north, on Algeria in the northeast, on Mauritania in the east and south, and the Atlantic Ocean in the west. This territory covers 266,000 km² and it is one of the most sparsely populated territories in the world, mainly consisted of desert flatland. The population of the territory is estimated at just over 500,000, over half of which live in El Ayun, its largest city.³⁰ The largest inhabited part of this territory is predominantly controlled by Morocco, while the narrow strip along the border with Mauritania and Algeria is under control of the *Popular Front for the Liberation of the Red River and the Golden Chanel – Polisario Front (Frente Popular de Liberacion de Saguía el Hamra y Río de Oro - Frente Polisario)*. For the government in Rabat, Western Sahara is an inalienable part of the Moroccan territory, while the Polisario Front declared an independent state – Sahrawi Arab Democratic Republic.³¹

²⁹ Ibid.

³⁰ Global Security Center, "Western Sahara", Internet, <http://www.globalsecurity.org/military/world/war/western-sahara.htm>, 13/8/2010.

³¹ Ibid.

The main argument of the Polisario concerns the historical right based on the anti-colonial struggle. Western Sahara was a Spanish colony named the Red Channel and the Golden River (Saguía el Hamra y Río de Oro). During the decolonization in Africa, Morocco and Mauritania claimed that this territory had been seized from them and demanded cessation of the Spanish colonial rule. As a parallel process, Polisario emerged in this territory in 1973 as a separate anti-colonial movement, which began a guerrilla war against the Spanish authorities. Under the pressure of the Polisario's actions and in order to retain even minimal authority over its colony, the Spanish government concluded an agreement with Morocco and Mauritania in November 1975 on the tripartite administration of Western Sahara. In accordance with that agreement, Morocco was supposed to take control over the Red Channel and Mauritania over the Golden River. Morocco and Mauritania sent their troops into those areas and the Polisario regarded those actions as an act of occupation. In February 1976, in response to the occupation, the Polisario proclaimed independence of Western Sahara. Many African countries, members of the Organization of African Unity, recognized the Western Saharan independence, but neither Morocco nor Mauritania did so. After the departure of Spanish authorities, the Polisario's guerrilla fight continued, this time against Morocco and Mauritania. Under the pressure of the Polisario's actions, but also because of its internal instability Mauritania withdrew from its part of Western Sahara and recognized its independence in 1979. However, the Polisario failed to take control over the Golden River because much stronger Moroccan army had already done that. The Polisario was suppressed to the narrow desert strip along the border with Mauritania and Algeria and the Moroccan authorities physically separated that strip from the rest of Western Sahara building a long sand wall.³²

The problem of Western Sahara was the main reason why Morocco broke relations with most of African states, withdrew from the Organization of African Unity in the 1980s and did not participate in the creation of the African Union.

Igboland (Biafra), Nigeria

The civil war in Nigeria (1967-1970), caused by the secession of Biafra is a tragic historical experience, which Nigerian officials always mention when they emphasize the importance of the respect for sovereignty and territorial integrity as the basic principle of international relations.

The reasons of Biafra's secession and civil war lie in the political instability in Nigeria related to the conflicts between the three largest peoples in the first years of independence. There are over 250 peoples in Nigeria and three of them

³² Ibid.

are the largest - the Hausa-Fulani in the north, the Yoruba in the west and the Igbo in the east. The Igbo people have a population of about 25 million and it is one of the largest peoples in whole Africa. Most of them live east of the Niger Delta, in a region with undefined boundaries named after this group – Igboland.³³ The trigger of the civil war was a military coup organized by the officers from the Igbo people at the beginning of 1966, when thirty high-ranked officials from the Hausa-Fulani people were killed. In mid-1966, the Hausa-Fulani officers organized a counter-coup, which was a prelude to the large-scale clashes between the two ethnic groups all over Nigeria. After the negotiations had failed, the Igbo people declared an independent state of Biafra on the territory where they constituted the majority. The government in Lagos considered this an act of secession and sent the army to intervene generating in this way the civil war. At the end of the three-year war, Biafra was abolished, and Igboland was returned under the sovereignty of Nigeria, but the cost of it were more than a million casualties, millions of displaced persons and the devastated country.³⁴ Today, Igboland is integrated into the Nigerian federation and members of Igbo people occupy high positions in the state administration. However, in 2001, a *Movement for the Actualization of the Sovereign State of Biafra* in Igboland was formed as a political group whose aim has been to put the Biafra question in the focus of the public opinion and to raise again the question of independence when the adequate conditions appear.³⁵

Niger Delta, Nigeria

The Niger Delta is a region in southeast Nigeria with an area of approximately 70,000 km² (7.5% of the Nigerian territory) and approximately 31 million inhabitants (20% of the Nigerian population), consisted of over 40 peoples. The largest among them is the Ijaw with the population of 15 million.³⁶ A political movement with the greatest support among the Ijaw people is the *Movement for the Emancipation of the Niger Delta – MEND*. The ultimate goal of this movement, which has a very strong military wing, is the foundation of the independent Republic of the Niger Delta, aiming to take full control over the natural resources in this region. The MEND legitimates its goal by using the

³³ Encyclopedia Britannica, "Igboland and the Delta City-States", Internet, <http://www.britannica.com/EBchecked/topic/414840/Nigeria/55313/Igboland-and-the-delta-city-states>, 20/8/2010.

³⁴ Major Abubakar A. Atofarati, *The Nigerian Civil War, Causes, Strategies and Lessons Learnt*, Internet, <http://www.africamasterweb.com/BiafranWarCauses.html>, 20/8/2010.

³⁵ See more on: <http://massob.org/>.

³⁶ Ebipamone N. Nanakumo, *Self-Government for the Ijaws is the Solution to the Niger Delta Conflict*, Internet, http://www.ijawfoundation.org/self_government.htm, 22/8/2010.

economic argument. It emphasizes that the Nigerian government, alongside with multinational corporations, exploits the oil-rich Delta without investing the profit in its development. In accordance with that, the only means that people of the Delta could use to retain their economic wealth is independence.³⁷ Closely associated with the project of making the Delta independent are the activities of the *Movement for the Survival of the Ogoni People – MSOP*, which the government in Abuja also considers a threat to the territorial integrity of the state. The Ogoni people, with the population of 850,000, live in a small part of the Delta (Ogoniland) that covers approximately 1,000 km². Although Ogoniland does not occupy a large area, it is very important because it is the oil-richest region in whole Nigeria. The MSOP emphasizes that due to inadequate exploitation of oil, the survival of the Ogoni people is under question and the only solution for this problem is the political autonomy.³⁸ The government in Abuja considers this solution separatist because the proposed autonomy includes absolute control over the natural resources of this region. According to government, the economic independence, which Ogoniland would ultimately gain, would only be the first step towards the political independence, which is, of course, unacceptable.

Yorubaland, Nigeria

Yorubaland is a region located in southwestern part of Nigeria where the Yoruba people live. The Yoruba is one of the three largest peoples in Nigeria with the population of about 30 million (20% of the Nigerian population).³⁹ In the turbulent political history of independent Nigeria, the Yoruba people generally supported its integrity. However, the events of the mid-1990s led part of the Yoruba people to start thinking about independence. Those events are related to the presidential elections that were held in 1993. The opposition candidate and member of the Yoruba people, Moshood Kashimawo Olawale Abiola, won the elections. His victory was named historical because he was the first presidential candidate in the Nigerian history that obtained support from all three largest peoples, a decisive majority in two thirds of the Nigerian federal units, and was the first elected president who was not from the North. However, incumbent president Ibrahim Babangida did not recognize the election results, which led to a political crisis that culminated when General Sani Abacha organized a coup and seized power at the end of 1993. Several years later, in

³⁷ Ibid.

³⁸ Movement for the Survival of the Ogoni People, "Ogoni Bill of Rights", Internet, http://www.mosop.org/ogoni_bill_of_rights.html, 23/8/2010.

³⁹ Encyclopedia Britannica, "Yoruba states", Internet, <http://www.britannica.com/EChecked/topic/653817/Yoruba-states>, 23/8/2010.

1997, the part of the Yoruba political elite formed the *Oodua People's Congress* – *OPC* with the original intention to actualize the question of overthrowing the democratically elected Abiola.⁴⁰ The OPC's political agenda later indicated that the Yoruba people could live in a democracy only in their own state. In this regard, the OPC emphasizes protection of human rights and democracy as the main arguments for independence, referring to the retaliations against members of the Yoruba people during Abacha's dictatorship in 1998/99. The second argument for independence of Yorubaland is related to the historical rights based on the fact that the Yoruba people had had a state long before the arrival of European colonizers. The third OPS's argument derives from the specific ethnic and linguistic homogeneity of Yorubaland that does not exist in other parts of Nigeria. The economic argument is the fourth one and it is based on the fact that Lagos, the largest city and port in Nigeria, is located in Yorubaland.⁴¹

Bakassi Peninsula, Nigeria

The Bakassi Peninsula is located at the extreme eastern end of the Gulf of Guinea, where the warm east-flowing Guinea Current meets the cold north-flowing Benguela Current. It consists of a number of low-lying, largely mangrove covered islands covering an area of around 665 km². The population of the peninsula is the subject of some dispute. However, according to the general estimates there are between 150,000 and 300,000 people. The Bakassi Peninsula has been an object of the border dispute between Nigeria and Cameroon since their independence. These two states were on the verge of war because of the disputed peninsula and several border territories in the north in 1981. Both countries had argued that the Bakassi was an extension of their land, but Cameroon presented the case before the International Court of Justice in 1994. In October 2002, the ICJ made a decision, mostly based on the British-German colonial treaties from late XIX and early XX century that peninsula belonged to Cameroon. This decision was strongly condemned by the Nigerian public opinion and the government in Abuja called for negotiations for the peaceful implementation of the ICJ decisions. Since 2002, with the UN mediation, Nigeria and Cameroon held several summits, where phased transfer of sovereignty was agreed. In June 2006, it was agreed that the Nigerian army would withdraw, but that the civilian administration would stay for another two years. However, the situation became very complicated in July 2006, when

⁴⁰ Although the name of this people is Yoruba, the OPC uses the word Oodua in its name. According to the Yoruban mythology, Oodua is the name of an ancient father of the whole Yoruba people.

⁴¹ Oodua People's Congress, "About the OPC", Internet, <http://ooduapeoplescongress.org/aboutopc.htm>, 23/8/2010.

South Cameroonian separatists, in cooperation with separatists in the Niger Delta, declared an independent Democratic Republic of Bakassi demanding immediate departure of the Nigerian authorities. The whole process was slowed down and in 2007, the Nigerian Senate declared the transfer of sovereignty to Cameroon to be illegal. The Nigerian Supreme Court was in the same line with the Senate, demanding from the Government to solve the problem of Nigerian refugees from the peninsula who had not wanted to live under the Cameroonian sovereignty. Despite all the opposition, the Government transferred sovereignty over the peninsula to Cameroon in August 2008 and implemented the ICJ decision and agreement with Cameroon.⁴² The loss of this small, but strategically important peninsula has exerted significant influence on the government in Abuja to emphasize the importance of preservation of the sovereignty and territorial integrity in international relations.

Southern Cameroons, Cameroon

Southern Cameroons is a region located in the southwestern part of Cameroon, with an area of 43,000 km² (8% of the territory of Cameroon) with slightly more than 6 million inhabitants (31% of the Cameroonian population).⁴³ The major political support in this region is on the side of the *Southern Cameroons National Council – SCNC*, which emerged from several different parties and movements in the 1990s. The main goal of the SCNC is the independence of Southern Cameroons, and the government in Yaounde considers that a serious threat to territorial integrity of the state.⁴⁴

The SCNC uses two main arguments to explain its goals. The first one is related to the historical rights based on the fact that Southern Cameroons had become a part of Cameroon as a result of a great historical injustice and a fraud of colonial powers. The territory of Southern Cameroons had been a part of the German colony of Cameroon from 1885 to 1916. After the First World War, German Cameroon was divided and four fifths became the French colony of Cameroon, while one fifth became a part of the UK colonial system. The UK divided its part into two administrative units – Northern Cameroons and Southern Cameroons and incorporated them into its colonial system within Nigeria. During the decolonization, an anti-colonial movement emerged in British Cameroon demanding independence. The UK allowed independence, but only through the implementation of the formula *independence through the*

⁴² Justice Muluh Mbuh, *The Bakassi Peninsula Dispute*, Internet, http://www.postwatchmagazine.com/files/bakassi_notes.pdf, 23/8/2010.

⁴³ Unrepresented Nations and Peoples Organization, “Southern Cameroons”, Internet, <http://www.unpo.org/content/view/7915/145/>, 24/8/2010.

⁴⁴ *Ibid.*

joining, which meant that two units of British Cameroon might choose whether to join independent Nigeria or independent Cameroon, the former French colony. In the referendum, which was organized at the beginning of 1961, Northern Cameroons chose to join Nigeria and Southern Cameroons decided to unite with Cameroon. After the unification, Cameroon became a federation where Southern Cameroons was one of the federal units. The SCNC emphasizes that referendum was a choice between two bad options and the people of Southern Cameroons had to choose a less evil, since they could not get their own independent state.

The second argument for independence stems from the need of the people of Southern Cameroons to preserve its national identity, which the government in Yaounde systematically suppresses through the unitarisation of Cameroon. The SCNC emphasizes that the government in Yaounde abolished the federal constitution in 1972 and made Cameroon a unitary state. The government also divided Southern Cameroons into two parts and incorporated them into two different provinces whose governors are French-speaking in contrast to the people of Southern Cameroons who are English-speaking. The SCNC adds charges of retaliation, which the government made during the 1990s when the people of Southern Cameroons sought the re-establishment of federal system. SCNC took decisive steps towards achieving its eventual goal, on 31 December 1999, when it adopted the unilateral declaration of independence of the Republic of Ambazonia, which is another name for Southern Cameroons. No African state has recognized Ambazonia's independence, and SCNC decided to start seeking international support by joining the UNPO in 2005.⁴⁵

Northern Regions, Ivory Coast

Similarly to Nigeria, Ivory Coast experienced difficulties of the civil war, which was a consequence of the secession attempts of its parts. The Northern Regions of Ivory Coast, which cover about 40% of its territory, are inhabited with people originating from the neighbouring countries, mostly Mali and Burkina Faso. This people settled northern parts of Ivory Coast in the second half of XX century being attracted by the economic prosperity and national integration model, which existed in Ivory Coast during the reign of Félix Houphouët-Boigny. Houphouët-Boigny was trying to apply the French model of national integration stressing that all inhabitants of Ivory Coast had a common Ivorian identity regardless of their ethnic background. The combination of such an integration model and a successful economic model was very attractive to the people from the neighbouring poor and unstable states.

⁴⁵ Ibid.

This country had recorded economic growth until the mid-1980s, when the fluctuations of prices of agricultural products and raw materials on the world market and unsuccessful program under the auspices of the IMF caused stagnation and the subsequent crisis. The economic crisis was the introduction to the rise of xenophobia among the majority people whose members accused strangers of damaging the economy of Ivory Coast. However, xenophobia was not so dominant in the period when Houphouët-Boigny was in power and while his national integration model was in force. With his death in 1995 and the arrival of a new political elite the xenophobia among the majority people has strengthened, which caused a deep political crisis. The crisis reached a zenith at the presidential elections in 2000 when the new political elite required that presidential candidates' parents had to originate from Ivory Coast alone. The main opposition candidate, originating from the North, did not fulfil this requirement this causing a huge election crisis. The crisis was the prelude to political shocks that culminated in September 2002 when inhabitants of the Northern Regions started a rebellion against the government in Yamoussoukro. In a very short period, the rebels took control of almost half of the country and began to act as an independent state. In the civil war that took place for several years the government in Yamoussoukro failed to regain control over the rebellious territories, so it initiated negotiations with the rebels. The result of the negotiations was a peace and power-sharing agreement concluded in March 2007. In accordance with the agreement, the rebellious territories were formally returned under the Ivorian sovereignty, while the rebels' leaders became a part of the government. Despite the agreement and the process of reintegration and reconciliation, the rebels preserved their armed forces. Formally, there is no clear territorial division, but in practice, it exists and the rebels have enough strength to threaten the sovereignty and integrity of Ivory Coast once again, in case they cannot peacefully achieve their interests within the government in Yamoussoukro.⁴⁶

Casamance, Senegal

Although it was the first African state that recognized the independence of the Serbian southern province, Senegal is also faced with separatist aspirations in its southern province of Casamance. This province includes the southern parts of Senegal between the Gambia and Guinea Bissau along the Casamance River. It has an area of 52,000 km² (27% of the Senegalese territory) and 1.5 million inhabitants (11% of the Senegalese population).⁴⁷ The major political

⁴⁶ Global Security Center, "Ivory Coast Conflict", Internet, <http://www.globalsecurity.org/military/world/war/ivory-coast.htm>, 24/8/2010.

⁴⁷ United Nations Children's Fund, "Casamance, Rebuilding & Healing", Internet, http://www.unicef.org/infobycountry/files/leaflet_Casamance_low.pdf, 25/8/2010.

movement, whose goal is independence of the province, is the *Casamance Movement of Democratic Forces – CMDF* (*Mouvement des forces démocratiques de Casamance – MFDC*), formed in 1982.⁴⁸

The main CMDF's argument for independence of Casamance is related to the historical right. The first colonial power that had occupied Casamance was Portugal. In 1888, as a result of the colonial agreements, Portugal ceded this territory to France, which incorporated it into the colony of Senegal. Due to different languages, Casamance had never been fully integrated into Senegal. During the decolonization process, the people of Casamance had their own anti-colonial movement, which was associated with Senegalese nationalists led by Leopold Senghor. Senghor gave a promise to the political elite of Casamance that it would gain independence 20 years after Senegal had got its independence from France. After the expiry of that period in 1980, the political elite of Casamance demanded independence, but the government in Dakar responded with retaliations. This action of the government in Dakar was marked as a huge historical fraud and the political elite of Casamance formed the CMDF in order to fight for independence, while the CMDF got its military wing in 1985. In 1990, the CMDF started attacking the Senegalese army and received support from neighbouring Guinea-Bissau, a former Portuguese colony. The situation calmed down in 2001, when Guinea Bissau, because of its internal instability stopped supporting separatists in Casamance. On the other hand, the government in Dakar found moderate fractions of separatists who abandoned the method of armed struggle and agreed to negotiate. Casamance did not gain independence, but it was divided into several provinces with low-level autonomy. This outcome of negotiations divided separatists and that division eventually caused clashes among them. The current situation in Casamance is very unstable, with a large presence of Senegalese army.⁴⁹

Somaliland, Somalia

Somaliland is a region located in the northwest part of Somalia, with an area of 137,000 km² (21% of the Somali territory) and about 3.5 million inhabitants (38% of the Somali population).⁵⁰ Somaliland is one of several pseudo-state entities, which emerged after the collapse of Somalia in 1991. For almost two decades, Somaliland has functioned as an independent state with legislative, executive and judicial branches. Now, it has no intention to return under the

⁴⁸ Global Security Center, "Mouvement des Forces Démocratiques du le Casamance (MFDC)", Internet, <http://www.globalsecurity.org/military/world/para/mfdc.htm>, 25/8/2010.

⁴⁹ Ibid.

⁵⁰ Government of Somaliland, "Republic of Somaliland - Country Profile", Internet, <http://www.somalilandgov.com/>, 15/8/2010.

sovereignty of renewed Somalia despite the fact that the African Union and the international community make significant efforts to rebuild the Somali state.

The first argument of Somaliland leadership refers to the fact that this region was already an independent state. Until 1960, Somaliland had been a British protectorate, while the remaining part of former Somalia belonged to Italy. Somaliland got independence from the UK on 24 June 1960, but on 1 July, it got united with the former Italian colony what resulted in the creation of Somalia. In this state, Somaliland was marginalized since the government in Mogadishu implemented the policy of centralization, especially during the dictatorship of Said Barre. The political instability caused by Barre's ruling methods and war against Ethiopia caused the conflicts between several powerful Somali clans. They culminated in 1991 when Barre was overthrown and Somalia collapsed being divided into several entities controlled by the warring clans. The political elite in Somaliland considered that the time for the re-foundation of the state had come and declared its independence in May 1991. While Somaliland was establishing its state structure, the rest of Somalia was in chaos of the civil war that has not been over even two decades after.⁵¹

Another important argument for independence is related to the fact that Somaliland enjoys a high degree of political and economic stability, while the institutions and economy in the remaining part of Somalia cannot function even with the support of the AU, EU, UN, NATO and many others. The leadership of Somaliland refuses to participate in Somalia rebuilding process stressing that Somaliland is the independent state, which does not want to be again in the situation it passed through in the past and that the independence cannot be negotiated. In accordance with this policy, Somaliland became the UNPO member in 2004. Somaliland leadership is especially encouraged by the unilateral declaration of independence of Kosovo and Metohija and they believe that the similar pattern can be applied in their case noting that Somaliland has much more capacities to be an independent state than that Serbian province.⁵² The additional encouragement for the leadership of Somaliland stems from the fact that the government in Mogadishu recognized independence of Kosovo and Metohija in May 2010.

Southern Provinces, Somalia

In the aftermath of Somalia's collapse in 1991, the clans from the southern provinces fought for supremacy, while in the 1998/99 period an independent

⁵¹ Unrepresented Nations and Peoples Organization, "Somaliland", Internet, <http://www.unpo.org/content/view/7916/142/>, 15/8/2010.

⁵² Ibid.

state of Jubaland was formed.⁵³ Since 2001, this region has been under control of the *Islamic Courts Union*, an alliance of several Islamist groups, which tried to take power in Somalia and establish the system based on the Sharia law.⁵⁴ In early 2007, the Transitional Government of Somalia, with the support of the Ethiopian troops, succeeded to suppress the Islamists. However, despite the international aid and the presence of the AU Mission in Somalia, the Somali government failed to maintain control over this region. A member of the former Islamic Courts Union, the *Al-Shabaab*, took control over the southern provinces in 2009 and started to take over parts of the capital city in 2010. Al-Shabaab does not recognize the government in Mogadishu and the territory under its control is practically independent from Somalia and exists as a fragile state under the Sharia law.⁵⁵

Oromia, Ethiopia

Oromia is the largest region in Ethiopia and with an area of 600,000 km² it covers nearly 50% of the Ethiopian territory. The majority people in this region are the Oromo people with the population of about 30 million, which makes 38% of Ethiopian population.⁵⁶ One of the main political groups in this region is the *Oromo Liberation Front – OLF*, a movement that has fought, using all political means, for Oromian independence since 1973.⁵⁷ The OLF's first argument for independent Oromo is related to the historical right, based on the need to correct the historical injustice. The OLF claims that Abyssinia (now Ethiopia), backed by European colonizers, occupied Oromia in the 1890s. Before the Abyssinian occupation, the Oromo people had had its own state and fostered a specific cultural and historical identity. The second argument relates to the discrimination of the Oromo by the Ethiopian government led by the political elite of the Amhara people until 1991 and the Tigre people since the mid-1990. The OLF emphasizes that the Abyssinian/Ethiopian government abolished all institutions of the Oromo people and suppressed every possible resistance. During the reign of Emperor Haile Selassie, Oromo language was

⁵³ World Statesmen Encyclopedia, "Jubaland", Internet, <http://www.worldstatesmen.org/Somalia.html#Jubaland>, 15/8/2010.

⁵⁴ Global Security Center, "The Supreme Islamic Courts Union / al-Ittihad Mahakem al-Islamiya (ICU)", Internet, <http://www.globalsecurity.org/military/world/para/icu.htm>, 15/8/2010.

⁵⁵ National Counterterrorism Center, "Al-Shabaab", Internet, http://www.nctc.gov/site/groups/al_shabaab.html, 15/8/2010.

⁵⁶ Unrepresented Nations and Peoples Organization, "Oromo", Internet, <http://www.unpo.org/content/view/7917/135/>, 16/8/2010.

⁵⁷ Ibid.

banned and the communist junta, which overthrew the Emperor, continued to suppress the national identity of the Oromo people. In order to improve the positions of the Oromo people, the OLF became a part of an alliance with the Tigre people and other separatist movements in Ethiopia whose goal was the removal of the communist junta from power. Pressed by the actions of this alliance the junta and the whole Amharic political elite were forced to leave power. The key positions in the new government were occupied by the representatives of the political elite of the Tigre people. The new government had promised to improve the status of the Oromo people and the OLF was involved in the creation of a new constitution. However, since 1995, the Tigrean political elite started to copy the former Amharic methods regarding the centralization of power and discrimination of other ethnic groups. The third argument for the independence of the Oromia is based on the great economic potential, especially in agriculture. According to OLF, this potential is unused because the government in Addis Ababa does not invest enough, but redirects the funds to those areas where the Tigre people live or where the ruling party has the strongest support. In this regard, the use of the Oromian economic potential is possible only in the independent state. In order to strengthen its positions with the Oromo people and internationalize the question of Oromia the OLF became an UNPO member in 2004.⁵⁸

Ogaden, Ethiopia

Ogaden is a region in the eastern part of Ethiopia with an area of 280,000 km² (22% of the Ethiopian territory) and 4.4 million inhabitants (0.5% of the Ethiopian population), of which 97% are the Somalis.⁵⁹ Since 1983, the major political support in this region has been given to the *Ogaden National Liberation Front – ONLF*, whose eventual goal is gaining independence from Ethiopia and unification with Somalia. The main ONLF's arguments for independence are similar to the arguments used by the OLF in Oromia - the occupation by Abyssinia in the XIX century and the political and economic discrimination by the Ethiopian government led by the Amharic and Tigrean regime.⁶⁰

The ONLF emphasizes an additional argument and it is as follows: Ogaden is a part of the Somali ethnic area and therefore it should be a part of the Somali state. The Ogaden problem has already provoked a war between Ethiopia and Somalia. The war began in 1975 when Somalia attacked Ethiopia in order to support the separatist movement, the Western Somali Liberation Front. This war

⁵⁸ Ibid.

⁵⁹ Unrepresented Nations and Peoples Organization, "Ogaden", Internet, <http://www.unpo.org/content/view/10714/302/>, 16/8/2010.

⁶⁰ Ibid.

lasted until 1991 with some interruptions when Barre's regime in Somalia and the communist junta in Ethiopia were overthrown. The Ogaden problem is one of the main reasons for the Ethiopian involvement in the Somali state rebuilding. The government in Addis Ababa considers that its influence on the Transitional Federal Government in Mogadishu and the engagement of troops within the AU peacekeeping force will prevent the spillover of conflicts from Somalia into its territory and in the relations between the ONLF and Islamists who control southern Somalia. With the intention to strengthen its positions and to seek international support for its goals, the ONLF became an UNPO member in February 2010.⁶¹

Southern Sudan, Sudan

Southern Sudan is an autonomous region, which has an area of 640,000 km² (24% of the Sudanese territory and about 9 million people (21% of the Sudanese population). The Christian blacks make the majority of the population in this region unlike the Muslim Arabs who make the majority of the Sudanese population.⁶² Misunderstandings based on those differences were the main causes of the civil war, which lasted for half a century (1955-2005) between the Arab north and the black south. Since 1983, two main parties in this war were the government in Khartoum and two movements of Southern Sudan people - the *Anya-Nya Movement* and the *Sudan People's Liberation Movement*. This war, whose terrifying consequences were 2.5 million killed and over 5 million displaced people, was finished in October 2005. Under the concluded peace agreement, Southern Sudan got a high-level autonomy with the possibility of holding a referendum on independence in 2011.⁶³ Bering in mind many decades of armed struggle of the people of Southern Sudan the decision on independence is the most expected outcome of the referendum. However, there are no clear predictions how the government in Khartoum will react to that outcome, although many people say that the independence of Southern Sudan could be the beginning of disintegration of the Sudanese state.

Darfur, Sudan

Darfur is a region located in western Sudan with an area of 500,000 km² (20% of the Sudanese territory), which is divided into three administrative units - North Darfur, West Darfur and South Darfur. Overall, all three units have about 6 million

⁶¹ Ibid.

⁶² Government of Southern Sudan, "Southern Sudan", Internet, <http://www.goss-online.org/>, 18/8/2010.

⁶³ Government of Southern Sudan, "History of Southern Sudan", Internet, <http://www.goss-online.org/>, 18/8/2010.

inhabitants (15% of the Sudanese population) who are mostly of the Muslim religion.⁶⁴ National differences as well as the specific concept of Islam that the regime of Omar al-Bashir promoted were the main causes of the conflict between the government in Khartoum and the political movements of the people of Darfur. Among these movements, the biggest support is on the side of the *Sudan Liberation Movement/Army – SLMA* and the *Justice and Equality Movement – JEM* whose main goal is the independence of Darfur.⁶⁵ The first argument, used by these movements in favour of independence, is related to the historical rights based on the fact that Darfur had been a sultanate for centuries. That sultanate was destroyed by the British and the Egyptians and incorporated into the British colonial system. The second argument stems from the accusation that the people of Darfur are a victim of the systematic discrimination by the government in Khartoum. After gaining independence that discrimination was mainly economic, related to the lack of any kind of investments in this area. A dire consequence of this discrimination was famine that hit Darfur in 1980, which was the trigger for the first major armed conflict in that region. Since then, according to Darfur rebels, the Khartoum government has violated civil rights of the people in Darfur. Due to the inability to control the situation in Darfur by the regular security forces, the Sudanese government supported the establishment of various Arab militias composed of the Arabs from Darfur and the neighbouring areas. The presence of paramilitary groups in the region had resulted in the increased tensions, which culminated in 2003 when two most powerful movements in Darfur started a rebellion. In response to the rebellion, the regular Sudanese security forces intervened together with the Janjaweds, the Arab militia, thus provoking the civil war. Hundreds of thousands of people were displaced during the war and the number of victims is yet to be determined. The war ended in May 2006 with the peace agreement, which gave the rebels an opportunity to participate in the government and guaranteed a referendum in which people of Darfur can decide whether they want to merge three Darfur administrative units into one. However, the agreement was not accepted by all parts of the rebel groups, so the conflict has actually never ended. The problem of Darfur is very important for the government in Khartoum not only because of the threats to the sovereignty and territorial integrity, but also because of the fact that the political and military leadership of Sudan is accused of war crimes before the International Criminal Court.

The indictment, which was raised before the ICC in mid-2008 includes charges against President Bashir and several top government officials for the death of 300,000 people and the expulsion of nearly 3 million people from their

⁶⁴ Darfur Information Center, “About Darfur”, Internet, <http://darfurinformation.com/about.asp>, 18/8/2010.

⁶⁵ “Rebel Groups in Darfur”, Internet, http://www.pbs.org/newshour/indepth_coverage/africa/darfur/rebel-groups.html, 18/8/2010.

homes. On the other hand, the government in Khartoum rejects the charges stating that less than 20,000 people were killed during the conflict in Darfur and that the indictment is actually a farce for the intention to overthrow Bashir's regime.⁶⁶ Bearing in mind the experience of the former leaders of Yugoslavia and Serbia with criminal charges related to Kosovo and Metohija the problem of Darfur is the question of political survival of the Sudanese government as well as a life threat to its members.

Eastern Sudan, Sudan

Eastern Sudan is the region in Sudan mostly inhabited by the Beja people with the population of about 2 million inhabitants (5% of the Sudanese population). This semi-nomadic people also live in the southern parts of Egypt and northern parts of Eritrea. The major political support among this people is being received by the *Beja Congress*, which has fought for self-determination and independence since the 1950s. The main arguments used by the Congress are related to the marginalization and arabization of the Beja people as well as the economic and political discrimination practiced by the government in Khartoum.⁶⁷

In the last several years, the Congress has received significant support from the neighbouring Eritrea, whose government wants to destabilize Sudan because of Khartoum's support to the Islamist groups in Eritrea. As a part of this support, Eritrea helped the Beja Congress merge with the political movement of the nomadic Rashaid people who also fight against their marginalization in Sudan organizing the *Eastern Front*. The Eastern Front made an alliance with the separatists in southern Sudan and Darfur and started occasional attacks against the Sudanese security forces in Eastern Sudan. In mid-2006, when Eritrea expected the beginning of war against Ethiopia for the border disputes it initiated the peace talks between the Eastern Front and the Sudanese government. The negotiations resulted in the agreement by which the Sudanese government promised to improve the situation of the Beja and Rashaid people, respectively.⁶⁸ The government in Khartoum concluded both this agreement and the agreements related to Darfur and Southern Sudan under great pressure. Therefore, their implementation is closely associated with the referendum process in Southern Sudan and Darfur as well as with the survival of Bashir's regime.

⁶⁶ Darfur Information Center, op.cit.

⁶⁷ Global Security Center, "Beja Congress", Internet, <http://www.globalsecurity.org/military/world/para/beja.htm>, 19/8/2010.

⁶⁸ Ibid.

Cabinda, Angola

Cabinda is an Angolan enclave squeezed between the territories of Congo and DR Congo with an area of 7,300 km² (0.5% of the Angolan territory) and about 300,000 inhabitants (0.16% of the Angolan population). The separatist movement in this enclave is the *Front for the Liberation of the Enclave Kabinda – FLEK* (*Frente para a Libertação do Enclave de Cabinda – FLEK*), formed in 1973. Its single goal is independence of Cabinda.⁶⁹ The first FLEK's argument for independence is related to the historical rights based on the fact that Cabinda had been recognized as a political entity in 1885 when it signed an agreement with Portugal. In the Portuguese colonial system, Cabinda had a status of protectorate until 1930s when Salazar's regime incorporated it into the colony of Angola. The second argument refers to the existence of a separate anti-colonial movement. When the rebellion against the Portuguese colonial administration in Angola started in the 1960s and 1970s, the FLEK was formed in Cabinda. In 1975, Angola gained independence, but the civil war between the two anti-colonial movements, the MPLA and UNITA, had begun. The war ended in 2002 with the victory of the MPLA, which emphasized the sovereignty of Angola over Cabinda. During the war, the FLEK supported the UNITA believing it would later enable independence of Cabinda. FLEK's support to the enemy side during the civil war is an additional argument for the government in Luanda to keep Cabinda firmly under control. The third argument for independence is the massive violation of civil rights in Cabinda by the Angolan security forces during intervention in 2002/03. After the civil war had ended with the defeat of UNITA in 2002, the government in Luanda sent its troops to Cabinda in order to eliminate the separatist threat. The bulk of FLEK's forces was destroyed and the rest fled into Congo where they started producing reports that the Angolan security forces tortured and killed civilians. The fourth argument is economic and is related to Cabinda's oil wealth. It is estimated that about 60% of Angola's revenues from oil production comes from oil deposits in Cabinda. With the intention to get international support for independence of Cabinda, the FLEK became an UNPO-member in 1997.⁷⁰ Although most of Cabinda is controlled by the Angolan government forces, the FLEK makes occasional attacks on the roads where the targets are mainly civilians.⁷¹

⁶⁹ Unrepresented Nations and Peoples Organization, "Cabinda", Internet, <http://www.unpo.org/content/view/7864/99/>, 25/8/2010.

⁷⁰ Ibid.

⁷¹ The last serious attack FLEK performed in January 2010 when the target was a bus with the football players from Togo who traveled to the *Africa Cup of Nations*, which was held in Angola.

Barotseland, Zambia

Barotseland is located in southwest Zambia, with an area of 125,000 km² (16% of the Zambian territory) and population of 600,000 inhabitants (5% of Zambian population). The Lozi people are the majority population in this area. The political movement with the largest support of the Lozi people from Barotseland is the *Barotse Patriotic Front – BPF* whose eventual goal is the independence of this region.⁷²

The first BPF's argument for independence of Barotseland is related to the historical rights based on the fact that the Lozi people had had their own kingdom for centuries before the colonizers arrived. In the British colony of Northern Rhodesia (now Zambia) Barotseland had an autonomous status. The autonomy of Barotseland was retained even after Zambia gained independence. However, the government in Lusaka gradually decreased the level of autonomy and finally changed the name of Barotseland into Western Provinces. The second argument for independence relates to the economic discrimination of this region and the Lozi people, which, according to the BPF, has lasted for several decades. The BPF stresses that the government in Lusaka invests minimal funds in the economic development and infrastructure and the main indicator for that is the fact that there is only one road in the province, the one that leads from Lusaka to the town of Mongu, which is the centre of the province.⁷³

Caprivi Strip, Namibia

The Caprivi Strip is a narrow strip of land in the far northeast of Namibia, about 400 kilometres long, bordered by the Kwando, Linyanti, Chobe and Zambezi Rivers. Originally part of Bechuanaland (now Botswana), the Caprivi Strip was ceded by UK to Germany in a complicated land exchange deal designed to link the German colonies from west to east Africa. The majority population in this territory are the Lozi people who are already fighting for independence of Barotseland. The Lozi people consider Caprivi Strip a part of its ethnic area, which should be a part of a united Lozi state. In order to achieve that goal, the Lozi people from Caprivi Strip formed the *Caprivi Liberation Movement – CLM* in 1994, a few years after Namibia had gained independence. The ultimate goal of this movement is the secession from Namibia and unification with Barotseland. During the Namibian war of independence, the Caprivi Liberation Army, whose successor is the CLM, was an ally of the

⁷² “Barotse Patriotic Front”, Internet, http://www.blurbwire.com/topics/Barotse_Patriotic_Front, 26/8/2010.

⁷³ Ibid.

apartheid regime in South Africa and Angolan UNITA that opposed to the independence of Namibia. Therefore, the government in Windhoek has an additional reason to strengthen the control of Caprivi Strip and to prevent the activities of separatists from the Lozi people.⁷⁴

The Importance of Respect of Sovereignty and Territorial Integrity Attached by African States in International Relations

The Importance of e Sovereignty and Territorial Integrity in Strategic Documents of the Organization of African Unity and the African Union

The Charter of the Organization of African Unity was the statute of the Organization of African Unity (OAU), the largest and most important African international organization from 1963 to 2002 and the predecessor of the African Union. The Preamble of the Charter stressed the importance of preservation of sovereignty and integrity, noting that African states were “determined to safeguard and consolidate hard-won independence as well as the sovereignty and territorial integrity”.⁷⁵ In this regard, one of the OAU purposes, defined in Article II, was the “defense of sovereignty, territorial integrity and independence” of the OAU member-states.⁷⁶ In the Article III of the Charter, “non-interference in internal affairs of the member states and respect for their sovereignty and territorial integrity” were defined as the main principles of the OAU.⁷⁷

2) *The Treaty Establishing the African Economic Community*, adopted in 1991 is a legal basis for the African continental economic integration. The Preamble of this document highlights that the African countries will start the process of economic integration “bearing in mind the principles and objectives defined in the OAU Charter”.⁷⁸ The most important among these principles, as it was mentioned, are the protection of the sovereignty and territorial integrity.

The Constitutive Act of the African Union is the statute of the African Union, the successor of the OAU and the most important African organization at present, which serves as a framework for the African political and economic

⁷⁴ Global Security Center, “Caprivi Liberation Movement (CLM)”, Internet, <http://www.globalsecurity.org/military/world/para/caprivi.htm>, 27/8/2010.

⁷⁵ Preamble, “OAU Charter”, Addis Abbaba, 23 May 1963, Internet, http://www.africa-union.org/official_documents/Treaties_%20Conventions_%20Protocols/OAU_Charter_1963.pdf, 2/9/2010.

⁷⁶ Article II, Ibid.

⁷⁷ Article III, Ibid.

⁷⁸ Preamble, “Treaty Establishing the African Economic Community”, Abuja, 3 June 1991, Internet, http://www.africa-union.org/root/au/Documents/Treaties/Text/AEC_Treaty_1991.pdf, 2/9/2010.

integration. Although the idea of African states was the creation of a qualitatively new international organization, which should eventually grow into a supranational organization modelled after the European Union, “defense of the sovereignty, territorial integrity and independence of States” remained one of the main objectives of the AU.⁷⁹ The principles of the AU further confirm the importance of the sovereignty and territorial integrity of African states, thus the principle of “the respect of the borders that existed at the time of independence and non-interference in internal affairs of member-states” is explicitly stated in the statute.⁸⁰

4) *The African Charter on Human and Peoples’ Rights* from 1981 is the most important document on human rights adopted at the African soil being a combination of the principles of the Universal Declaration of Human Rights from 1948, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights from 1966. This Charter established a special institutional mechanism for human rights protection in Africa in the form of the international commission. The sovereignty and territorial integrity of states are significant even in the document of this kind. In the article, where the obligations of individuals were listed, it was stressed that everyone should “preserve and strengthen the national independence and territorial integrity of their country and contribute to its defense in accordance with international law”.⁸¹

The Declaration on the Political and Social-Economic Situation in Africa and the Fundamental Changes Taking Place in the World, adopted by the OAU Assembly in 1990, is a strategic document in which African states made a review of the situation in the world and Africa at the end of the Cold War and adopted directions of their common activities in the post-Cold War era. In this document, the African states emphasized they were “bounded by the purposes and principles of OAU”, including, of course, the preservation of the sovereignty and territorial integrity.⁸²

6) *The Algiers Declaration*, adopted by the OAU Assembly in 1999, is a strategic document, which defined the main directions of the common policy of

⁷⁹ Article III, “Constitutive Act of the African Union”, Lome, 11 July 2000, Internet, http://www.africa-union.org/root/au/AboutAU/Constitutive_Act_en.htm, 2/9/2010.

⁸⁰ Article IV, Ibid.

⁸¹ Article XXIX, “African Charter on Human and Peoples’ Rights”, Banjul, 27 June 1981, Internet, <http://www.africa-union.org/root/au/Documents/Treaties/Text/Banjul%20Charter.pdf>, 2/9/2010.

⁸² Article XII, “Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World”, Addis Ababa, 11 July 1990, Internet, www.chr.up.ac.za/hr_docs/african/docs/ahsg/ahsg33.doc, 2/9/2010.

African states in the XXI century. This declaration clearly indicated that African states would emphasize the importance of preserving the sovereignty and territorial integrity as a central principle in international relations. It highlights that African countries are “convinced that respect for the principle of inviolability of the borders that existed at the time of independence was a crucial contribution to preserving peace and stability on the African continent, confirm its validity as the basic norms applicable in resolving border disputes”.⁸³ Closely related to this issue is the confirmation of determination of African countries to promote “peaceful means in resolving conflicts in accordance with the principles of sovereign equality, non-interference in internal affairs of other states, avoiding the threat or use of force, as well as the principles of independence, sovereignty and territorial integrity of States”.⁸⁴

7) *The Mechanism for Conflict Prevention, Management and Resolution* that was established in 1993, is the main result of the efforts of African countries to take greater responsibility for security on their continent, to preserve and promote the peace and security, and to become less dependent from non-African entities in the security area. The legal basis for the Mechanism was a special OAU Assembly Declaration, which stressed that Mechanism “would be guided by the purposes and principles of the UN Charter and the OAU Charter, and in particular, by the principles of sovereign equality of States, non-interference in internal affairs, respect for sovereignty and territorial integrity of States”.⁸⁵

8) *The Peace and Security Council of the African Union* is the AU organ established in order to reform the Mechanisms for prevention, management and conflict resolution. The legal basis for the Council can be found in the special AU Assembly Protocol, which underlined that Council’s operations “would be guided by the following principles: respect for sovereignty and territorial integrity of states, non-interference in internal affairs of member-states by the other state, sovereign equality, the inalienable right to independent existence, and respect (for) the borders established at the time of independence”.⁸⁶

⁸³ “Algiers Declaration”, op.cit.

⁸⁴ Ibid.

⁸⁵ Article XIV, “Declaration of the Assembly of Heads of State and Government on the Establishment within the OAU of a Mechanism for Conflict Prevention, Management and Resolution”, Cairo, 30 June 1993, Internet, <http://www.africa-union.org/root/au/Documents/Decisions/hog/3HoGAssembly1993.pdf>, 2/9/2010.

⁸⁶ Article IV, “Protocol Relating to the Establishment of the Peace and Security Council of the African Union”, Durban, 11 July 2002, Internet, http://www.africa-union.org/root/au/Documents/Treaties/Text/Protocol_peace%20and%20security.pdf, 2/79/2010.

*The Preservation of Sovereignty and Territorial Integrity as a Basis for
Functioning of the African Regional Economic Communities*

The African Union is the main framework for economic integration of Africa which has its regional pillars – regional economic communities. The process of economic integration of all five African regions develops within these communities, while their eventual aim is the creation of regional customs union, which should be merged into a continental customs union and common market.

The North African regional economic community, founded in 1988, is the Arab Maghreb Union – AMU, with its headquarters in Rabat, Morocco and 5 member states.⁸⁷ The AMU Statute explicitly stated that one of its main objectives was “the defense of sovereignty and independence of Member States”.⁸⁸

In central Africa, the Economic Community of Central African States – ECCAS has existed since 1983, with its headquarters in Libreville, Gabon and 11 member states.⁸⁹ One part of the Preamble of the ECCAS Statute clearly states that ECCAS will act “bearing in mind the principles of international law governing relations between states, and especially the principles of sovereignty, equality and independence of all states, non-interference in internal affairs, as well as the principles of rule of law in their mutual relations”.⁹⁰ The importance of this issue was further enhanced in the Statute confirming that “the sovereignty, equality and independence of all states, non-interference into internal affairs, the principle of rule of law in mutual relations and prohibition of using force in solving disputes” will be the principles of the ECCAS.⁹¹ The East African Community – EAC, formed in 1999, operates in the African Great Lake region. It has its headquarters in Arusha, Tanzania and 5 other member states.⁹² Among the principles set in the EAC Charter, “mutual trust, political will and sovereign equality” have a significant place.⁹³ The West African region is covered by the Economic Community of West African States – ECOWAS, formed in 1993, with its headquarters in Abuja, Nigeria and 14

⁸⁷ Algeria, Libya, Mauritania, Morocco and Tunisia.

⁸⁸ Article III, “Traite instituant l'Union du Maghreb arabe”, Marakesh, 17. fevrier 1988, Internet, http://uma.leguide.ma/images/traite_de_marrakech.pdf, 2/9/2010.

⁸⁹ Burundi, Cameroon, Central African Republic, Chad, Congo, DR Congo, Equatorial Guinea, Gabon, Rwanda and Sao Tome and Principe.

⁹⁰ Preamble “Treaty establishing Economic Community of Central African States”, Libreville, 18 October 1983, Internet, http://www.iss.co.za/AF/RegOrg/unity_to_union/pdfs/eccas/eccastreaty.pdf, 2/9/2010.

⁹¹ Article III, Ibid.

⁹² Burundi, Kenya, Rwanda, Tanzania and Uganda.

⁹³ Article VI, “Treaty for the Establishment of the East African Community”, Arusha, 30 November 1999, Internet, <http://www.eac.int/documents/EAC%20Treaty.pdf>, 2/9/2010.

member states.⁹⁴ One of the main ECOWAS principles is “equality and prohibition of the use of force between member-states” which certainly points to the importance of sovereignty.⁹⁵

In the eastern part of the continent, in the region known as the Horn of Africa, there operates the Intergovernmental Authority on Development – IGAD, founded in 1996, with its headquarters in Djibouti and 6 other member states.⁹⁶ One of the main principles defined in the IGAD Statute is the “sovereign equality of states and non-interference in internal affairs of states”.⁹⁷ The regional economic community, which covers Southern African states, is the Southern African Development Community – SADC, founded in 1992, with its headquarters in Gaborone, Botswana and 14 member states.⁹⁸ The Preamble to the SADC Statute clearly states that the SADC will act “bearing in mind the principles of international law governing relations between the states”.⁹⁹ The importance of this issue was further confirmed when “sovereign equality of all member-states” was defined as the basic SADC principle.¹⁰⁰

The remaining two regional economic communities include the states from several African regions. The first one is the Common Market for East and South Africa – COMESA, founded in 1993, with its headquarters in Lusaka, Zambia and 19 member states.¹⁰¹ The Preamble of the COMESA Statute underlines that the COMESA will act “bearing in mind the principles of international law governing relations between sovereign states”, what clearly indicates the importance of the issue of sovereignty and territorial integrity.¹⁰² The second one

⁹⁴ Benin, Burkina Faso, Cape Verde, Ivory Coast, the Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

⁹⁵ Article IV, “Treaty of Ecowas”, Cotonou, 24 July 1993, Internet, <http://www.comm.ecowas.int/sec/index.php?id=treaty&lang=en>, 2/9/2010.

⁹⁶ Djibouti, Ethiopia, Kenya, Somalia, Sudan and Uganda.

⁹⁷ Article VI, “Agreement Establishing the Intergovernmental Authority on Development”, Nairobi, 26 March 1996, Internet, http://www.igad.org/about/agreement_establishing_igad.pdf, 2/9/2010.

⁹⁸ Angola, Botswana, DR Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, the Republic of South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

⁹⁹ Preamble, “Declaration and Treaty of SADC”, Windhoek, 17 August 1992, Internet, http://www.sadc.int/english/documents/legal/treaties/declaration_and_treaty_of_sadc.php, 2/9/2010.

¹⁰⁰ Article IV, *Ibid.*

¹⁰¹ Burundi, the Comoros, DR Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, the Seychelles, Sudan, Swaziland, Uganda, Zambia, Zimbabwe.

¹⁰² Preamble, “The COMESA Treaty”, Kampala, November 5, 1993, Internet, http://www.comesa.int/comesa%20treaty/comesa%20treaty/Multi-language_content.2005-07-01.3414/en, 2/9/2010.

is the Community of Sahel-Saharan States – CEN-SAD, founded in 1998, with its headquarters in Tripoli, Libya and 29 member states.¹⁰³ The main principles of the CEN-SAD clearly indicate the importance of respecting the sovereignty so that “no member-state shall use force or threaten to use it and no member-state shall intervene in the internal affairs of the other member-states”.¹⁰⁴

The Preservation of Sovereignty and Territorial Integrity as Basis for the African Strategic Partnership with Non-African States and International Organizations

The African states, individually or/and within the AU, develop relations with many non-African states and international organizations. The relations with China, the European Union, India and South American countries are labelled as strategic because of their importance for entire Africa. The main institutional framework for the partnership between the AU and China is the Forum on China-Africa Cooperation – FOCAC, founded in 2000.¹⁰⁵ At the first FOCAC ministerial meeting, held in Beijing in October 2000, China and African states had adopted the Beijing Declaration. In this document, China and African states identified main challenges they would jointly face and defined the main fields of African-Chinese cooperation in XXI century. The preservation of sovereignty and territorial integrity was marked both as a challenge and a major field of cooperation, particularly bearing in mind that “globalization subjected developing countries to serious challenges to their economic security and even national sovereignty”.¹⁰⁶ The Beijing declaration emphasized that “objectives and principles of the UN Charter and the OAU Charter had to be respected, and that any state or group of states had no right to impose their will to others by force or to interfere in the internal affairs of other states under any pretext”.¹⁰⁷ The second FOCAC ministerial meeting was held in December 2003 when the Addis Ababa Action Plan was adopted. This document confirmed the importance of the goals and principles of the

¹⁰³ Benin, Burkina Faso, Central African Republic, Chad, the Comoros, Djibouti, Egypt, Eritrea, the Gambia, Ghana, Guinea, Guinea Bissau, Ivory Coast, Liberia, Libya, Kenya, Mali, Mauritania, Morocco, Niger, Nigeria, Sao Tome and Principe, Senegal, Sierra Leone, Somalia, Sudan, Togo and Tunisia.

¹⁰⁴ Egypt State Information Service, “Egypt and Community of Sahel-Saharan States”, Internet, <http://www.sis.gov.eg/en/Story.aspx?sid=323>, 2/9/2010.

¹⁰⁵ More on FOCAC, see: Ratko Vukanić, “Sino-African Cooperation in the XXI Century and the FOCAC as Its Main Framework”, *The Review of International Affairs*, Vol. LX, No. 1136, October-December 2009, pp. 62–92.

¹⁰⁶ “The Beijing Declaration of the Forum on China-Africa Cooperation”, Beijing, 12 October 2000. Internet, <http://www.focac.org/eng/ltada/dyjbzjhy/DOC12009/t606796.htm>, 2/9/2010.

¹⁰⁷ Ibid.

Constitutive Act of the African Union, including the key importance of the preservation of sovereignty and territorial integrity of states.¹⁰⁸ African states and China also defined the issues of common interest to which they would give their special attention, such as “national sovereignty, territorial integrity, non-interference in internal affairs, peaceful settlement of disputes, peaceful coexistence, national pride and the right to development”.¹⁰⁹

The strategic partnership between the African Union and the European Union is based on the Joint Africa-EU Strategy, adopted in 2007. In the Part III of the Chapter I of this document, African states and the EU underlined that their “partnership and its further development will be guided by the basic principles such as unity of Africa and respect for international law”.¹¹⁰

The main institutional framework for the African-Indian partnership is the Africa-India Forum, established in 2008. At the first summit of the Forum in April 2008, India and African states adopted the Delhi Declaration, which emphasized that the partnership would be “based on fundamental principles of equality, mutual respect, respect for independence, sovereignty and territorial integrity of States”.¹¹¹

The basis for the partnership between the African Union and South American states are the documents adopted at the Africa-South America Summit in November 2006. One of those documents is the Abuja Declaration, which “recognized that the Constitutive Act of the African Union and UN decisions are necessary basis for economic cooperation and integration as well as the maintenance of international peace and stability”.¹¹² African and South American countries specifically emphasized that “cooperation between the two regions will be based on commitment to multilateralism and respect of international law”, what makes the respect of sovereignty and territorial integrity significant.¹¹³

¹⁰⁸ See: “The Forum on China-Africa Cooperation - Addis Ababa Action Plan (2004-2006)”, Addis Ababa, 16 December 2003, Internet, <http://www.focac.org/eng/ltada/dejbjzjhy/DOC22009/t606801.htm>, 2/9/2010.

¹⁰⁹ Ibid.

¹¹⁰ “The Africa-EU Strategic Partnership: A Joint Africa-EU Strategy”, Lisbon, 31 October 2007, Internet, <http://europafrica.files.wordpress.com/2006/10/africa-eu-strategic-partnership.pdf>, 2/9/2010.

¹¹¹ “The Delhi Declaration”, 9 April 2008, Internet, <http://www.africa-union.org/root/au/Conferences/2008/april/India-Africa/India-Africa.html>, 2/9/2010.

¹¹² “Abuja Declaration”, Abuja, 30 November 2006, Internet, <http://www.iss.co.za/uploads/AFRISOUTDECL.PDF>, 2/9/2010.

¹¹³ Ibid.

Conclusion

This paper shows that African states generally support the principle of preservation of sovereignty and territorial integrity of Serbia related to the problem of Kosovo and Metohija. This conclusion is based on the following four main facts:

First, African states supported adoption of the UNSC Resolution 1244, which formally ended the NATO aggression against Yugoslavia and confirmed Yugoslav/Serbian sovereignty over the province of Kosovo and Metohija.

Second, African states supported the territorial integrity of Serbia in the UNSC from July 1999, when the UNMIK had been established, to 17 February 2008, when the Albanian separatists in Kosovo and Metohija adopted the declaration of independence.

Third, A large majority of African states do not recognize the independence of the Serbian southern province. Since 17 February 2008, when the Albanian separatists in Kosovo and Metohija adopted the declaration of independence, to 1 October 2010 only 11 of 54 African states, have recognized its independence.

And finally, A large majority of African states have supported Serbia's efforts to maintain sovereignty over Kosovo and Metohija.

The paper also shows that the African support to Serbia's sovereignty and territorial integrity arises from two main reasons and they are as follows:

The problem of separatism, being one of the most dangerous causes of instability in majority of African states. The analysis of separatist movements in various African states shows that the pattern of activities the separatists in Africa apply is almost the same as the one of the separatists in Kosovo and Metohija. They both use five groups of arguments to justify their goals and they the following: 1) historical rights, which stems from the fact that some people had its own state before the arrival of the other, that a people is located within a particular state because of the occupation or because some peoples were not allowed to exercise the right of self-determination; 2) preservation of national and cultural identity; 3) political and economic discrimination by the majority people of the state; 4) human rights violation with massive retaliations; 5) possibility of economic and democratic development only in the independent state. On the other hand, several separatist movements from African states are members of the UNPO alongside with the Democratic League of Kosovo, which represents Albanian separatists from Kosovo and Metohija. Armed struggle is also a similarity between the separatist movements from Kosovo and Metohija and in some African states.

African states define the principle of respect of sovereignty and territorial integrity as the basis for the functioning of the African Union, African regional

economic communities as well as the basis for establishment of partnership relations with non-African states and international organizations.

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STAV AFRIČKIH DRŽAVA PREMA PROBLEMU
KOSOVA I METOHİJE I DRŽAVNOG SUVERENİTETA
I İNTEGRİTETA U AFRICI

APSTRAKT

U radu je data analiza generalnih stavova afričkih država prema problemu Kosova i Metoje i njihova povezanost sa pitanjem suvereniteta i teritorijalnog integriteta u Africi. Afričke države su generalno podržale očuvanje suvereniteta Srbije na Kosovu i Metojiji. Ta podrška je vezana za nacionalne interese afričkih država koji se odnose na očuvanje teritorijalnog integriteta, borbu protiv separatizma na svojoj teritoriji i uspostavljanje principa očuvanja suvereniteta i teritorijalnog integriteta država kao osnovnog principa međunarodnih odnosa u 21. veku.

Ključne reči: problem Kosova i Metohije, srpsko-afrički odnosi, srpska spoljna politika, Afrička unija, separatizam, suverenitet i teritorijalni integritet.

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The Impact of Human Resources on economic Growth and Development of Serbia

ABSTRACT

The research paper presents an attempt to clarify the relevance of the human capital concept in labour economics and theories of economic growth. The characteristics of human capital are compared with those of “owned” capital, while the aspects of market behaviour of individuals, households and companies in acquiring of productive skills are discussed. The process of acquiring productive skills has all the characteristics of investments including the problems of financing, measurement of inputs and outputs, and of rational choice between the available possibilities. The role of human capital in economic development is explained and the influence of disposable human capital on international trade and movements of production factors is considered.

Key words: human capital, economic growth, economic development, international trade.

Approach to the problem

Under the present conditions, the impact of human resources on economic growth and development is becoming crucially important. Therefore, the objective of this paper is to consider the use of the human capital concept in economy in general and then its impact on economic growth and development of Serbia. Besides, the article regards this concept that is being used in labour economics and economic growth theories, comparing the characteristics of human capital with the ones of the “owned” capital. By all this, it is necessary to show the aspects of market behaviour of individuals, households and companies in acquiring of productive and service skills in everyday work. Acquiring of all these skills by individuals has all the characteristics of investment. Further, this has to do with financing, costs (expenditure) measurement and performances, or actually with the rational choice between

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the available possibilities. Therefore, it is necessary to consider the role of investments on human capital, which, reversibly influence growth and development of some countries, including Serbia, in specific. Then, it is pointed to the influence of available human capital on international economic relations, or actually on international trade and trends of production factors on the increasingly globalised and turbulent market.

According to traditional economic theory, capital is the main driving force of economic development. By all this, one should keep in mind that it is defined in different ways. In the simplest terms, it can be defined as an accumulated physical and financial property that is used in goods production and in provision of services and information. Human capital is one of the factors of economic growth and development. This implies the investment in education and health of people for the purpose of increasing their production abilities. It also includes the investment in technology as a codified (recorded) human knowledge on production. All these production factors increase the overall production effects, but it necessary to invest in them as is the similar case with physical means of production.

Certainly, the purpose of this paper is not to systematically present the past knowledge of human capital based on the available economic literature. However, in one of its parts, the author will analyse, among other things, some dilemmas and the “unfinished business” in incorporating this concept in theories of labour economics and theories of growth and development economics, but also in educational and development policies of a contemporary state Serbia should be, too. Then, it is necessary to compare the characteristics of human capital with those of “owned“capital”.² Under the contemporary conditions, theory and practice are increasingly dealing with microeconomics of human capital or the market behaviour of individuals, households and companies, which are all acquiring production skills. “Incorporation” of knowledges and skills in a man in order to increase his production capabilities has the characteristics of investments that include the problems of financing, production performance and generally a rational choice between the available opportunities. It is important to see the role of investment in human capital for growth and development of an economy as the Serbian is, which is still being treated as a developing one.³ Besides, it is necessary to perceive the influence

² The differences result from the institutional assumption that the owner can use and sell that property within legal frameworks, what is not the case with human capital.

³ Serbia is a specific country by the characteristic of its economic crisis which had the following three stages: the stage of megainflation that was caused by the geopolitical shock, the stage of transition stagflation and the stage of transition shock. Transition stagflation and transition shock obviously show that it is necessary to establish a new sector for the sake of prosperity and survival of economy.

of available human capital on international economic relations, international trade and production factors trends. Then, one should emphasise the great significance of entrepreneurship, which connects human and physical capital with the contemporary technology. Taking into consideration their performances external and internal entrepreneurs can be treated as a special part of human capital. By all this, natural capabilities and experience are their main part that can be increased by education.

Concept of human capital in economic science and practice

The concept of human capital is not yet comprehensively accepted in economic science and economic practice in particular. The term “capital” is reluctantly used, since it obviously involves some ownership relations, what also includes the man as a thinking individual.⁴ However, one should keep in mind that human capital is by many elements different from “owned” one. It includes means of production and can be transferred by market transactions. The argument against the use of the term “human capital” in economic science is that this expression is not used in everyday economic language.⁵ Instead of human capital, the term “man value” was used for a long time. It also denoted some taxation systems as well as compensations for the reduced work capability or death of an individual. Today, this term is accepted and regularly used, but more in economic literature than in economic practice.

The main form for formation of human capital is education, but it is also a subject of other scientific disciplines, this particularly including pedagogy, psychology and sociology. In terms of the human capital concept, economic aspects include investment in production performances that are mostly measured in monetary units and they result from the market human behaviour. However, this obviously includes only one of all possible approaches in the educational process in the human society. Certainly, not only that education increases production performances but it offers the man the opportunities to develop himself and achieve greater social satisfaction. Implicitly, the man’s production skills produce results only if he willingly co-operates in their use.

In economic practice pointing to the motivation aspects of formation and use of human capital, however, seems to be the most important. By all this, one should keep in mind that the study itself or actually permanent education requires efforts that will be made only if there are specific motivation reasons.

⁴ Actually, it reminds many people of slavery and other forms of dependence where a man and his commitments can be bought and sold, what is unacceptable to the contemporary, civilised world.

⁵ Alfred Marshall, *Principles of Economics*, Macmillan, London, 1956.

This also applies to the already created human capital in economic and numerous non-economic activities that exert a great impact on the economy operation, its growth and development.⁶ Economic development includes not only the growth of national production scope, but also all necessary systemic changes in economy as well as structural ones.

On the other hand, the institutional factors that influence the market behaviour of both companies and employees are labour legislation and trade unions, state-funded education, and then integral pension and health care systems. All these factors exert an impact on the net earnings, employment, on the relationship between savings and consumption, what actually implies the size of investments to human capital. In various countries, the intensity of acting of institutional factors is different. Therefore, the influence of the behaviour of participants on the market is also different.

Interdependence of human and owned capital

The establishment of a size of investment in human capital causes the same dilemmas that appear in establishing owned capital. By all this, there is a principal question whether investments expenses should be taken or it should be the discounted sum of value that will be made by the use of capital. Actually, the capital that does not yield profit is not a value regardless of how big investments have been made in its formation. Anyway, the investment in human capital is more difficult to estimate by expenses (invested funds) in any form.⁷ Therefore, in establishing the size of investments in human capital it is more acceptable to take the present value of performances than it is the case with physical capital.

On the other hand, under the present conditions economic development includes the following:

- a) growth of material production and national income together with structural changes and changes in the operation of the specific economy with general upward development trend;
- b) a unity of developments and development, or actually the most general form of developments and development of economy;

⁶ The concept of economic growth is narrower than economic development, since economic growth is basically a component of development.

⁷ That includes tuition fees, supplies and book expenses, living costs during the period of training. This should be added the lost earnings that older students or course attendants could have made if they had got employed earlier. These expenses are covered by various subjects, but there are no accounting or statistical records about them as is the case with physical capital.

- c) any developments of economy imply numerous changes that are equally qualitative and quantitative;
- d) the caused changes are made under the impact of scientific and technical progress and changes of the social and economic surroundings.

In choosing the occupation and education, a “net” aspect of earnings plays a significant role. Sometimes it becomes prominent especially with those who do not ask too much efforts or offer better work conditions, while the studying efforts will be most often neglected. The analysis of the production function of formation and after that use of human capital is rather complex for many reasons. It is because of the education results in the creation of both consumer and production capital. The former is used to expand the choice of consumption during one’s lifetime. Although the effects of investment into human capital can be counted too, it is assumed that it has a full sense with the production of human capital. However, if the size of human capital is counted by taking expenses (and not discounted future performances) there is a problem to precisely separate consumer and production human capital.

In the production use of human capital implementing factors are significant and these are especially available physical capital and technology. All three factors are interrelated: new means of production that are more expensive involve modern technology, requiring a certain level of knowledge and skills of employees. Many experts assess that the decisions on investments in human capital that are made by individuals or their families are more difficult than it is the case with the investments in physical means of production. Thus, the choice of occupation is an investment for a long term where the demand for some work profile can be changed due to abrupt technological progress. However, in time and based on the costs principle the calculated value of human capital is growing to the utmost point after which the amortisation is bigger than new investments.⁸ In developed economies, differences in market behaviour of people will depend on their net property and human capital value in terms of a total of discounted earnings to the end of one’s work lifetime. By all this, it should be kept in mind that along with savings almost most usually one’s ownership property is growing as one is getting older, while human capital is diminishing. One should not neglect the fact that in developed economies new jobs are created almost only in human capital intensive branches.

⁸ In young age people study and work more than when they are older, or actually the older a man becomes the bigger is the subjective “value of leisure”.

Microeconomic aspects of investment in human capital

In the microeconomic approach to economic developments, it is assumed that participants in the market act rationally in accordance with the target function. By all this, they face the limitations in the form of prices they cannot influence upon as well as some production capacities in the form of a production function, this also including institutional conditions. The main participants in the market that are related to human capital are actually individuals, households and companies. On the other hand, the state also participates in funding and investing in human capital, but in microeconomics, it is not considered a participant in the market because it applies the economic criteria to a limited extent.

It is assumed that the clear function of a company is to make a net gain or profit. When a net profit is made, the differences in time are expressed by a market interest rate that is imposed to a specific company as well as other resource prices. Then it is assumed that the capital market operates perfectly, this meaning that loans will always be approved, which will be repaid from some future incomes. However, as for individuals the targets of economic acting are becoming more complex.⁹ Economic literature almost usually neglects the fact that besides preferences regarding higher pays and consumption people have also the ones related to the kind of jobs they do. Sociology is more open to this problem – it attempts to perceive and resolve the problems with the hierarchy of professions, what actually means to evaluate some better than others. Different professions necessarily make different physical and mental efforts, submitting themselves to unpleasant work conditions. Therefore, measuring by unit of time money pay is not the only criterion for successfulness of work performed by the chosen profession.

It can be assumed that a part of available production time of people is the one where production human capital is created and where it is used. The quantity of human capital that is created by unit of time depends on the ability of an individual, but also on the phase of the living cycle in which this capital is invested.¹⁰ Good results that are achieved in the previous phase of investment in human capital increase the effects of investment in the next phases of the life cycle. By all this, it is implied that the adjustment of wishes and ambitions in choosing a specific sort of human capital is very significant, and it is not only the quantity or duration of education. Thus, it is the choice

⁹ It is assumed with good reason that it the pay per unit of time — the bigger it is the higher level of consumption is.

¹⁰ There is a strictly defined sequence of phases where some kinds of human capital can be created — from the pre-schol training to completion of university studies.

of professions that requires certain affinities, but also the abilities in the educational process and in using the acquired knowledge in the work process.

In Serbia, one can have an additional insight into the formation and use of human capital by taking a survey of acquiring practical skills by studying during the work lifetime. Thus, the quantity of formed capital is measured by the time spent at work, or by years of work experience. However, taking into consideration the division of acquired working skills to general that can be used anywhere and special ones, which can be used only in a particular company there are differences between the interests of workers and interests of companies. The former tend to acquire as much as possible general skills while companies will tend to offer only those special skills. However, this is not always possible to apply in practice. Since they know the effects of work of some of their employees, in their policy of work education companies will pay them better when they think, from the aspect of their interests, that the educational process is completed. In this way, they can partly reduce the damage that occurs if their employee finds a job in some other company after he has acquired his general skill in the previous one. However, it is yet considered that the employee covers his general practical education himself since he is paid less in the first years of his work.

Human capital and economic growth

Physical capital that is expressed in money unit on the basis of actual investment has an exceptionally important role in explaining economic growth, and especially growth and development of transition countries. The second factor that explains economic growth is living work that is measured by the number of employees or, if the annual growth is measured, by the employee-year unit.¹¹ However, as the empirical research shows it is almost by the rule that a surplus of performances cannot be ascribed either to capital or to labour. That surplus has different names and is most often regarded as the result of technological progress and sometimes as the measure of lack of knowledge of the way and sorts of integral acting of all production factors. One of the possible explanations lies in the assumption that labour as a production factor is inappropriately specified. On the other hand, if the quantity of labour is expressed by taking into account the invested human capital it is obvious that in explaining the contribution to economic growth the role of labour would be greater than physical capital.

¹¹ The common contribution of both factors can be measured by applying the Cobb-Douglas function in order to present the annual growth of production performances as the result of the annual growth of capital and labour.

However, neglecting the function of human capital becomes prominent also in the way of forming the annual budgets of specific countries. In the social budget, expenses for education are, by the rule, regarded as expenditures and not as investments. Therefore, funding of these expenditures is not regarded as savings as is the case in the simplest budgets where it is assumed that investments should be equal to the savings. That certainly also makes effects on the conception of state functions in education, including the taxation system. Some countries apply various scientific methods and models that are used in research to count the size of human capital. Since different procedures are applied, different results are obtained. It is understandable that it is difficult to count the size of human capital by adding expenditures of households, companies and the state for education and training bearing in mind that it is not easy to separate those investments from the expenditures for other purposes (if investment in human capital also includes health care of employees it is even more difficult to separate the consumption part from the investment one). Therefore, more often is applied the procedure of defining the relationship between the increase in investment in human capital (which is, for example, measured by years spent in education) with the increase of the sum of discounted lifetime work incomes.

Two mechanisms of human acting exert an impact on growth. The first is production of one's own technological innovations (as is the case with the most developed countries) and the second is the imports of foreign most modern technology. However, if a country leads the way in creating new technologies the others will more rapidly keep up with it if they possess sufficient human capital. On the other hand, there is a dilemma whether human capital is important only when a new technology is adopted or when it is later used. All factors of growth are mutually complementary and interdependent. Therefore, one should keep in mind that a lack of one of them could decelerate growth.¹² In underdeveloped countries big investments in physical capital produce results only if they are rich in natural resources (oil, gas, ores), while human capital, technology and entrepreneurship is coming from developed countries. Entrepreneurship has also considerably contributed to attaining more accelerated economic growth.

¹² Thus, the investments in physical and human capital were big in the former Soviet Union, but due to the lack of entrepreneurship and possibilities to use the Western technology economic growth was very slow.

A new approach to growth and development

A new approach to growth and development of the Serbian economy should be based on a more effective and efficient use of human resources. In spite of a number of positive shifts in growth and development, Serbia's economy is still burdened with numerous negative indicators.¹³ In the period that will be characterised by rapid and abrupt changes not only in economic sphere, dynamic technological changes will be incorporated and they will bring about radical transformations in the economy and society. That future time will be permeated with rapid changes in the economy, which will be based on the following:

- a) growing significance of information resources;
- b) mutual linking of new technologies;
- c) the process of internationalisation of production, labour division and growing inter-dependence of producers within the global frameworks;
- d) the economic growth concept that would be primarily measured by the achieved results in raising the quality of life.

Economic growth is quantitatively expressed in various ways and most often, it is done by indicators of growth rate of GDP, national income, GDP per capita, national income *per capita*, etc.

A new strategy of Serbia's economic growth and development should necessarily be adopted since the devastating economic crisis in the last twenty years has made it lose its relative position impeding its new geopolitical positioning. That new positioning requires the achievement of economic growth and development. It is considered that the basic factor of growth is economy competitiveness, while its driving force is an efficient financial system. The new strategy of Serbia's economic competitiveness should rest on the following four pillars:

- macroeconomic management;
- microeconomic management;

¹³ For example, a comparatively high inflation rate (9.5 per cent), deficit of foreign trade balance (8.5 per of GDP), low level of investments in capital assets (19.4 per cent), volume of final consumption that exceeds the GDP volume (by 5.9 per cent in 2006), the unfinished restructuring and company privatisation (only about 60 per cent of socially-owned enterprises has been privatised, 96 big companies have been in the process of restructuring), low level of capacity use in the processing industry (averagely about 30 per cent), technological lagging behind the industrialised countries of Europe (as assessed by 5-6 technological years), rise in unemployment (991,807 persons), poverty index of 10.5 per cent (the poverty limit is 20 per cent) and other negative indicators.

- legislation and institutions of the system, and
- value system and business ethics.

In this process, no institution can replace the role a new government would play. The main task of the future government should be to work out this job, establish institutions and mechanisms and assign them with a task to carry out certain activities.

By using human capital in an appropriate way together with the use of physical capital as an investment basis, it is possible to forecast some greater shifts in Serbia's economy in the forthcoming mid-term period. Many Serbian economic experts forecast the following parameters:

- economic growth of 5-7 per cent annually;
- rise in the competition ranking of countries by 30-40 places;
- inflation to be less than 5 per cent annually;
- reduced foreign trade and current balance of payments deficits;
- the share of investments in GDP by more than 25 per cent;
- the share of exports in GDP by more than 40 per cent;
- reduction of the real unemployment rate to about 11 per cent;
- rise in the living standard, social care for elderly and disabled persons, etc.

All research studies that deal with the impact of human capital on growth and development show that under the present conditions human capital is almost and by the rule bigger than physical capital. This is particularly true keeping in mind that its rise in the time concerned, for example annually, is bigger than the rise of physical capital.¹⁴ Anyway, great attention is usually devoted to the inter-dependence of human and physical capital, this including technology and entrepreneurship, in generating economic growth. On the other hand, inducing of technology development when human capital is insufficient or ill-disposed can bring about great inequality in incomes, what reduces social cohesion and can cause political instability. Fore example, the economic developments in Serbia are much different from the declared objectives and tasks that are formally incorporated in "The National Development Strategy from 2006 to 2012". As provided for, till 2012 10 billion Euros of investments would be ensured annually. This should be achieved by the model of three thirds – one third from the domestic sources – from the profits gained by the economy, from the state and household

¹⁴ This explains the rapid recovery of the countries that suffered from vast destruction during the wars, since if the contemporary technology was available human capital could promptly make up the losses in physical capital.

budgets; the second third from the foreign direct and portfolio investments; and the third one from the credits to be approved by international financial institutions and by taking loans on the capital market. In this way, in the following three years investments in what is usually called fixed capital (capital assets) would be raised to 25 per cent of GDP.¹⁵

Taking as a basis the national economy it could be explored to what extent the key factors (technology, available physical capital and the level of physical development of the country) are inter-related and particularly to what extent they are related to the investments in human capital and what combinations produce the best overall results for economic growth of the country.

Human capital and foreign trade

In the contemporary circumstances, international trade has retained its old model of functioning. This means that the country that is rich in some products or some production factor exports the products that require its intensive use. On the other hand, such a country imports the products that require an intensive use of the factors it is deficient of. It implies that this directly includes production factors, too. Of course, the countries that are rich in capital tend to export in the countries that are rich in labour force, while labour force will migrate in the opposite direction. The inter-dependence of capital and foreign trade includes the Leontief paradox.¹⁶ It shows that the USA has exported the products that contained a lower level of capital per worker than those that have been imported. The explanations of this phenomenon have been different, and among others, one is that the theoretical approach is based on the incorrect assumptions. They have, however, insufficiently taken into account the possibility that human capital has been disregarded, which is (together with advanced technology) incorporated in the American export products. On the other hand, processed natural resources (oil, ores) have been dominant in imports and they are produced by the capital-intensive processing industry. However, in the prevailing practice the labour factor is expressed by unit of time regardless of human capital that is incorporated into the contents.

¹⁵ By this scenario, in three years Serbia would receive totally 18.6 billion Euros in foreign capital or 6.2 billion annually — a bit more through direct and portfolio investments and a bit less than three billion Euros in loans.

¹⁶ Edward Learner, "The Leontief Paradox", Reconsidered, *Journal of Political Economy*, 88 (3), 1980, pp. 495-503.

Thus, a large comparative advantage of industrialised countries lies in the industry branches that involve high contents of knowledge and information. On the other hand, those countries have imported products with high contents of human skills. Of course, labour productivity has grown faster in export than in import branches. Due to the high contents of industrial products in international trade, labour productivity has also grown faster in import branches than in economy in average, but the growth rates have been lower than those in export branches. Yet, the contents of research and development have exerted greater impact on comparative advantages of exports of industrialised countries than on the size of unit labour costs. However, today it is obvious that changes follow the direction of technological intensity, this also including higher contents of human capital.

Thus, taking into consideration human capital, it is evident that industrialised countries export factor-intensive products. However, as for production factor trends, the migration of highly skilled labour has been intensified to industrialised countries. This makes one conclude that human capital is cheaper, but also less valued in less developed countries. The people from those countries are more motivated to study and work than those in developed countries since the former ones willingly accept a lesser net pay for the same jobs than their colleagues in the latter countries.

Instead of a conclusion

In considering growth and development, one should assume that there are enormous regional and social inequalities in the world and majority of the mankind lives in privation, want and poverty. The contemporary development of new technologies should enable further rapid and dynamic development of industrialised countries but it should also give hope that poverty will be reduced and a more rational division of labour will be established in the new millennium. At the present level of knowledge of the science, there are three levels of organisation of any economy as a big economic system, and they are as follows:

- e) general economic balance;
- f) system stability; and
- g) system optimal level.

Apart from the new vision of Serbia's development, it is possible to more rapidly achieve its economic growth and development also raising the level of competitiveness and attaining a higher level of efficiency of the integral financial system. For example, the World Bank estimates that a share of a new sector in forming GDP should be at least 40 per cent in order to annul the negative effects of transition.

Mostly, economic growth implies an increase in production in Serbia's overall economy in terms of its total GDP in correlation to the overall population. The same factors of economic growth also apply to Serbia and they are the following:

- accumulation (of capital), what includes all investments in the country, equipment and human resources;
- population growth, and related to this, growth of available labour force; and
- technical progress or human knowledge and ability of its active use.

As regards growth and development of the Serbian economy in the present circumstances its starting position is not bad since it has the following characteristics: macroeconomic stability has been achieved, price and foreign trade liberalisation has been implemented, the banking system and public finances have been reformed, VAT has been introduced, the taxation system has been harmonised with the international standards, the fiscal deficit has been eliminated, legal security of companies has increased, GDP growth has been achieved, growth of foreign exchanges reserves and savings of population has been attained, etc. However, the missing link is an appropriate use of human capital in achieving economic growth and development of Serbia. This is the factor that is used insufficiently and therefore, its synergy effects have not yet been fully expressed. It is considered that that the impact of human resources on resolving the development and structural problems of Serbia's economy could be decisive in the forthcoming period. The greatest potential in the development of Serbian economy should be human resources, this meaning that the quality of education and permanent training of skilled labour should be reaffirmed. On the other hand, education and studying themselves require from an individual to make some efforts — he will come through them only if he expects a sufficient compensation in the form of higher net earnings in the future. In choosing profession, what also influences the quantity and a sort of the needed human capital, the main criterion could be the total earnings an individual can make. Besides, the increased migration of skilled labour is becoming more intense as a result of compounding of the globalisation process. It is considered that after the initial “investment expenditures” migrations are useful for individuals as for the immigration and emigration countries, this including the whole world economy.

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UTICAJ LJUDSKIH RESURSA NA PRIVREDNI RAST I RAZVOJ SRBIJE

APSTRAKT

Rad predstavlja pokušaj da se pojasni važnost koncepta ljudskog kapitala u ekonomiji rada i teorijama ekonomskog rasta. Karakteristike ljudskog kapitala se porede sa osobinama koje ima „svojinški,“ kapital, dok se razmatraju vidovi tržišnog ponašanja pojedinaca, domaćinstava i preduzeća u sticanju proizvodnih stručnih znanja. Proces sticanja proizvodnih stručnih znanja ima sve karakteristike koje imaju investicije, što uključuje probleme finansiranja, merenje uloženi sredstava i proizvodnje i racionalan izbor između mogućnosti na raspolaganju. Objašnjava se uloga ljudskog kapitala u ekonomskoj razvoju i razmatra se uticaj koji raspoloživi ljudski kapital ima na međunarodnu trgovinu i kretanje faktora proizvodnje.

Ključne reči: ljudski kapital, ekonomski rast, ekonomski razvoj, međunarodna trgovina.

CONFERENCES

JAPAN AND SERBIA: REGIONAL COOPERATION AND BORDER ISSUES – A COMPARATIVE ANALYSIS

On 9-10 September 2010, the Institute of International Politics and Economics (IIPE) organized the international conference *Japan and Serbia: Regional Cooperation and Border Issues – A Comparative Analysis*. This conference was a part of the international round table *Japan and Serbia in a Foreseeable Future*, which the IIPE organizes in cooperation with the leading universities in the field of social sciences in Japan and the Embassy of Japan in the Republic of Serbia.

The participants in the opening session of the conference were as follows: Duško Dimitrijević, Director of the IIPE, who delivered a welcome speech; Viktor Nedović, Assistant Minister in the Ministry of Science and Technological Development of the Republic of Serbia, who delivered an opening speech on scientific cooperation between Japan and Serbia, and H.E. Toshio Tsunozaki, Ambassador Extraordinary and Plenipotentiary of Japan to the Republic of Serbia.

The conference consisted of three working sessions.

The agenda of the first session was placed within the framework of the title *Border Issues as an Obstacle for Regional Cooperation – Theory and Practice*. At the beginning of this session, in his paper “The Possibility of Establishment of Comparative Border Politics: Serbia and Japan” Mamoru Sadakata, Professor at the Nagoya University, examined the meaning of regional boundaries in contemporary international relations, especially in South-Eastern Europe and Northeast Asia. Professor Sadakata pointed out that Serbia’s regional boundaries had changed frequently (the Near East, the Balkans, Eastern Europe, South-Eastern Europe, and the Western Balkans) and made a comparison with Japan, whose boundaries were also changed (the Far East, Northeast Asia, the Asia-Pacific, and East Asia). In the paper “What do National Borders Mean for Okinawa?: National Security and the Public Opinion on the U.S. Military Basement”, the second participant, Taro Tsukimura, Professor at the Doshisha University, presented the difficulties regarding the “Okinawa question”, especially from the perspective of the meaning of national borders for Okinawa. In his paper “International Legal Aspects of Delimitation on the Border Rivers: the Danube River Case”, Duško Dimitrijević, Director of the IIPE, analysed the question of territorial delimitation between Croatia and Serbia on the Danube

River, which resulted from the succession of SFR Yugoslavia. At the end of the first session, in the paper “Borders of the National Territory in History Education” Shinichi Yamazaki, lecturer at the University of Tokyo, presented the results of a comparative analysis on how national territory had been conceived, both in history textbooks of the Yugoslav successor states (Serbia, Croatia, Slovenia, Bosnia-Herzegovina and Macedonia) after gaining their independence, as well as in those of Japan.

Regional cooperation in Asia was the agenda of the second session. In the paper “Review of the Mechanism of Modern Conflicts from the Theoretical Point of International Political Economy“, the first participant, Hiroaki Hamana, lecturer at OISCA College of Global Cooperation, analysed the conceptual shortcoming regarding the concept of fragile state and presented the results of the usage of the agency theory in examination of the relationship between the government and the citizen within a fragile state. In her paper “The Nature of Japan’s connections with the South-East Asian Community (ASEAN)“, Aleksandra Babović, Research Associate at the IIPE, analysed Japan’s diplomatic practice towards the ongoing process of South-East Asian integration. She pointed out that Japan was historically and geopolitically inseparable from this region with its proactive role in the rationalization process also emphasizing Japan’s reluctant policy since it delicately combined bilateral and multilateral approaches to this cooperation. In the paper “PR China – Border Issues within the Framework of Modernization and Opening Up”, the next participant of the second session, Dragana Mitrović, Professor at the Faculty of Political Science in Belgrade, analysed China’s demarcation and creation of secure land and sea borders as an essential part of the implementation of its reforms and the strategy of opening up. In the paper “Development of Economic Relations between Japan and South-Eastern European Countries”, Masahiko Yoshii, Professor at the Kobe University, presented the trade and FDI data which showed that economic relations between Japan and South-Eastern European countries had been very weak, having very peculiar characteristics. At the end of this session, in the paper “Eastern Partnership as Regional Framework for European Union’s Cooperation with Ukraine, Belarus, Moldova, Azerbaijan, Georgia and Armenia”, Ana Jović-Lazić and Marko Nikolić, Research Associates at the IIPE, summarized the main points of the EU policy towards these former Soviet republics since May 2009, when the policy was officially launched.

The third working session was dedicated to regional cooperation in the Western Balkans. In his paper “National and Civilization Borders in the Balkans”, the first participant of this session, Slobodan Janković, Research Associate at the IIPE, examined the national and civilization borders in the Balkans in the light of contemporary international relations theories recalling

classical geopolitical thought in the attempt to determine whether the Balkans were anything else than a highly problematic border zone and what role in that zone was reserved for Serbia and the Serbs. In the paper “Tourism as a Factor of Balanced Regional Development of Serbia and Cooperation with Countries in the Region”, Pero Petrović, Professorial Fellow at the IIPE, underlined the importance of the sector of tourism in regional development of Serbia through its direct and indirect impacts on the regional economy. In the paper “Kosovo as a Frontier Community: Comparison with the Reflection of Japanese Historiography”, the next participant, Ryoji Momose, Assistant Professor at the Osaka University, analysed how nation-centred historiography might contribute to the formation of negative understanding of the region, using an example of the Serbian southern province. In their paper “Regional Cooperation in the Western Balkans as a Precondition for the European Union Membership”, Dragan Đukanović, Research Fellow and Ivona Lađevac, Research Associate at the IIPE, analysed the role of the Republic of Serbia in the regional initiatives in South Eastern Europe stressing that the main objective of Serbia’s participation in the regional forums of cooperation was the promotion of its foreign policy interests. The authors also emphasized that the establishment of regional forms of cooperation was the obligation of the Western Balkan countries with a view to their European Union integration examining the possibilities for the promotion of Serbia’s interests by strengthening its role in the multilateral frameworks of cooperation in South Eastern Europe. In her paper “Serbia and the European Union Danube Strategy”, the next participant, Edita Stojić-Karanović, Professorial Fellow at the IIPE, pointed out the importance of the EU Danube Strategy for Serbia and presented the main activities of the International Scientific Forum “Danube - River of Cooperation”. It strives towards achieving an objective of identifying Serbia as a Danube region country. The Croat question in Yugoslavia between the two World Wars was the subject of the paper “Making the Croat Question through Political Language in the Kingdom of Yugoslavia”, presented by Takuya Moma from the University of Tokyo. At the end of this session, in their paper “Regional cooperation in the Fight against Terrorism and Organized Crime”, Dejan Gajić and Žaklina Novičić, Research Associates at the IIPE, examined possible connections between the criminal activity networks and terrorism and the modalities for cross-border regional cooperation in the field of the fight against these threats.

Ratko VUKANIĆ

THE DEVELOPMENT POTENTIALS OF FOREIGN DIRECT INVESTMENTS: INTERNATIONAL EXPERIENCES

On 16 and 17 September 2010, in cooperation with the Hanns Seidel Foundation (HSF) the Institute of International Politics and Economics (IIPP) organized an international conference on *The Development Potentials of Foreign Direct Investments: International Experiences*. The conference was opened by Duško Dimitrijević, Ph.D., Director of the IIPP; Slobodan Milosavljević, Ph.D., Minister of Trade and Services of the Republic of Serbia; Nikola Ratković, Director of the Directorate for Multilateral Economic Cooperation in the Ministry of Foreign Affairs of the Republic of Serbia; and Lutz Kober, Head of Office of the HSF Project in Serbia and Project in Montenegro.

The conference consisted of three working sessions.

The global experiences and development potentials of FDI were on the subjects of the first session. The first participant, Chen Libing, Ph.D., Professor at the Department of Economics of the Zhongnan University of Economics and Law in Wuhan, China, using China's experience analyzed the adverse impact of FDI on developing countries and emphasized that despite the fact that FDI contributed to China's economic growth they also caused negative effects such as environmental pollution, threat to industrial safety, profit transfer, violation of workers rights, etc. Professor Libing also analyzed the causes of FDI negative impacts and gave some advice to rectify such a situation. The next participant, Hutaoyang, Ph.D., Professor at the Department of Economics of the Zhongnan University of Economics and Law in Wuhan, explained the reasons why China should change its economic development pattern, which depended too much on the exportation as well as on FDI. According to Professor Yang, the current development pattern entailed a potential risk of weakening China's competitive strength and was not propitious for the further economic expansion of China. Another paper dealt with China's economic experiences and it was presented by Dragana Mitrović, Ph.D., Executive Director of the Center for Asian and Far Eastern Studies and Professor at the Faculty of Political Sciences in Belgrade, Serbia, who analyzed the significance and limitations of FDI on China's reform and implementation of the opening-up policy. The Russian experiences with

development potentials of FDI, with special reference to Russia's integration into the global financial system were presented by Svetlana Glinkina, Ph.D., Deputy Director of the Institute of Economics of the Russian Academy of Sciences in Moscow, Russia, and Natalia Kulikova, Ph.D., Director of the Center for East European Studies of the same institute. The next participant of the first session, Santiago Anima Puentes, M.B.A., Academic Coordinator of the Center for Economic Studies of the European Union at the Faculty of Economics of the National Autonomous University in Mexico City, Mexico, summarized the behaviour and evolution of the European Union's FDI to Mexico from 1999 to 2009. Analyzing the global strategy of transnational corporations in the oligopolistic competition, Professors at the Faculty of Economics of the University of Kragujevac, Serbia, Ljiljana Maksimović, Ph.D., Gordana Radosavljević, Ph.D. and Gordana Marjanović, Ph.D., emphasized that FDI were managed on the basis of strategic dependence between TNC and their global positioning among competitors within oligopolies as well as that the increase of FDI in developing countries and transitional economies was the consequence of TNC strategic interactions. Later in the session, Slobodan Cvetanović, Ph.D., Professor at the Faculty of Economics of the University of Niš in Niš, Serbia, Dušan Cvetanović from the Alpha University in Belgrade, and Predrag Belej from the Niš Expert Team, analyzed the spillover effect of FDI on foreign endogenous economic growth. The effects of transnational corporations' FDI were the subject of analysis presented by Dobrosav Radovanović, Ph.D., Assistant Professor at the University of Business Studies in Banja Luka, Bosnia and Herzegovina, and Nikola D. Radovanović, M.B.A., Assistant at the High School of Modern Business in Belgrade. At the end of the first session, Miroslav Antevski, Ph.D., Research Fellow at the IIPE, analyzed the relationship between FDI and the new knowledge with special reference to the adoption of new knowledge as the core determinant of development and international competitiveness.

The subject of the second working session was the European experiences on development potentials of foreign direct investments. At the beginning of this session, Professors at the University of Economics in Vienna, Austria, Joachim Becker, Ph.D. and Rudy Weissenbacher, Ph.D., analyzed how FDI contributed the reducing or aggravating key crisis vulnerabilities in Central, Eastern and South Eastern Europe. Natalia Kulikova, Ph.D. and Mikhail Lobanov, Ph.D., from the Institute of Economy of the Russian Academy of Sciences in Moscow, explicated the role of FDI in the economic modernization of Central and Eastern European EU member states from the Russian viewpoint. The following participant of the second session, Dražen Derado, Ph.D., Professor at the Faculty of Economics of the University of Split in Split, Croatia, presented determinants of FDI inflows in transition economies. Assistant Professors at the

Faculty of Economics and Business Administration of the West University of Timisoara in Timisoara, Romania, Ioana Vadasan, Ph.D. and Nicoleta Sirghi, Ph.D., analyzed labour force as the attractive factor for FDI in the case of Romania. Later in the session, Tajana Barbić, M.B.A., and Iva Čondić-Jurkić, M.B.A., Research Assistants at the Institute of Economics in Zagreb, Croatia, presented a paper on relations between FDI and stock markets development in Central and East European countries. FDI in EU law after the adoption of the Lisbon Treaty with special focus on the specific steps of the European institutions in the development of the new exclusive competences in the common international investment policy within the context of the world economic crisis and global competition in attracting and promoting FDI were the subject of the analysis presented by Žaklina Novičić, M.A. and Ivona Lađevac, M.A., Research Associates at the IIPE. At the end of this session, Srđan Đinđić, Ph.D., Assistant Professor at the Faculty of Economics at the University of Kragujevac in Kragujevac, analyzed the substantial corporation tax reforms in the EU by the implementation of the common consolidated corporate tax base (CCCTB) with the aim of promoting the functions of the common market, expansion of the investment activity and affirmation of the global competitive superiority of the EU.

The third working session dealt with the experiences in the Western Balkans. At the beginning of this session, Slobodan Cvetanović, Ph.D., Professor at the Faculty of Economics of the University of Niš, Danijela Despotović, Ph.D., from the same faculty and Dušan Cvetanović from the Alpha University, analyzed relationships between domestic savings and FDI within the new model of economic growth of the Western Balkan countries. The next participant, Irena Kikerkova, Ph.D., Professor at the Faculty of Economics of the St. Cyril and Methodius University in Skopje, Macedonia, presented the outlook for attracting FDI to Macedonia with their structure in this country, the effects they produced in the economy also identifying the major causes for the poor results in this area in Macedonia. Dražen Koški, Ph.D., Professor at the Faculty of Economics of the University Josip Juraj Strossmayer in Osijek, Croatia, described the foreign exchange inflow and foreign exchange outflow as the financial dichotomy of FDI by using the quantitative analysis of economic data for Croatia for the period from 2005-2009. The experience of the Tondach Company in development potential of FDI was the subject of the paper presented by Jasmina Osmanković, Ph.D., Professor at the School of Economics and Business of the University of Sarajevo in Sarajevo, Bosnia and Herzegovina, and Jasmin Hošo, Ph.D., Director of Tondach Representative Office in Sarajevo. Vlatka Bilas, Ph.D., Assistant Professor, Danijela Čenan, M.B.A., Research Associate, Sanja Franc, Research Assistant at the Faculty of Economics and Business of the University of Zagreb, presented the results of

the comparative analysis of FDI incentives in Croatia, Macedonia and Turkey, the EU member candidates as well as in Serbia, Montenegro and Bosnia and Herzegovina, the potential EU candidates. The general characteristics of FDI in Serbia were the main subject of the paper presented by Pero Petrović, Ph.D., Professorial Fellow at the IIPE. Later in the session, Goran Nikolić, Ph.D., Research Fellow at the Institute of European Studies in Belgrade, considered the significance for attraction of FDI for export and competitiveness growth and balance of payment sustainability. The following participant, Hasiba Hrustić, Ph.D., Professorial Fellow at the IIPE, analyzed the importance of tax policies on FDI, with special reference to the question how corporate and personal income taxes affect the cost of capital and return to investment. At the end of this session, Gordana Milovanović, Ph.D., Professor at the Faculty of Economics of the University of Kragujevac, predicted a possible impact of EU Strategy for the Danube Region on the future FDI inflow in the Western Balkans.

Ratko VUKANIĆ

THE ROLE AND PLACE OF THE REPUBLIC OF SERBIA IN INTERNATIONAL ORGANIZATIONS

On 12 and 13 October 2010, in cooperation with the Hanns Seidel Foundation (HSF) the Institute of International Politics and Economics (IPE) organized the international conference *The Role and Place of the Republic of Serbia in International Organizations*. The conference was opened by Duško Dimitrijević, Ph.D., Director of the IPE, Slađana Prica, Deputy Assistant Minister of the Ministry of Foreign Affairs of the Republic of Serbia, Dragan Đukanović, Ph.D., Research Fellow at IPE and coordinator of the conference, and Lutz Kober, Head of Office of the HSF Project in Serbia and Project in Montenegro. The conference was also attended by H.E. Željko Kuprešek, Ambassador of Croatia to Serbia and H.E. Milan Predan, Ambassador of Slovenia to Serbia.

There were four working sessions of the conference.

The first session was entitled *The Contemporary International Organizations: Transformation and Trends*. At the beginning of this session, Aleksandar Fatić, Ph.D., Professorial Fellow, and Mina Zirojević-Fatić M.A., Research Associate at the IPE, presented the challenges to modern-day sovereignty and examined soft security as well as the social controls developed to address it within the context of the fluid and sometimes unfathomable limits of the sovereign state, which waned away and appeared again depending on the more general structures of power and interest. The next participant, Hasiba Hrustić, Ph.D., Professorial Fellow at the IPE, presented the role of the World Bank in Serbia's development strategy. The role and place of Serbia in international organizations related to security issues such as confrontation with the Wahhabi movement and the Hypo Bank affair was presented by Darko Trifunović, Ph.D., Professor at the Faculty of Security Studies in Belgrade. Saša Ojdanić, counsellor at the Directorate for the European Union Institutions in the Ministry of Foreign Affairs of the Republic of Serbia, analyzed the methods for profiling Serbia through the UN system. Later in this session, Žaklina Novičić, M.A. and Dejan Gajić, M.A., Research Associates at the IPE, presented the results of the UN decision on *Responsibility to Protect* – a set of principles based on the idea that sovereignty is not a privilege but a responsibility as well

as the importance of this discussion for Serbia. The next participant, Dragan Živojinović, M.A., Research Associate at the Faculty of Political Science in Belgrade, explained why Serbia's membership in international organizations and active participation in their work was not a matter of choice but a matter of necessity in the world so inter-dependent and globalized as it was at present. The importance of Serbia's cooperation with international organizations in the field of counter-terrorist financing was the issue of the paper presented by Goran Bošković, Ph.D., and Saša Mijalković, Ph.D., Assistant Professors at the Academy for Criminalistic and Police Studies in Belgrade. Zvonimir Ivanović, M.A., Research Associate at the Academy for Criminalistic and Police Studies in Belgrade, and Vladimir Urošević, Ph.D., official in the Ministry of Interior of the Republic of Serbia, presented the results of Serbia's participation in the international fight against high technology crime on multilateral and bilateral levels. At the end of the first session, Professor Ljubo Jurčić, Ph.D., Vlatka Bilas, Ph.D., Assistant Professor, and Sanja Franc, Research Assistant at the Faculty of Economics and Business of the University of Zagreb, analyzed the importance of the WTO for the trade liberalization on a regional level.

The second working session dealt with Serbia's participation in global international organizations. At the beginning of this session, Željko Nikač, Ph.D., Professor at the Academy for Criminalistic and Police Studies in Belgrade, Miloš Oparnica, Director of the NCB Interpol in Belgrade, and Sergej Uljanov, M.A., official of the NCB Interpol in Belgrade, presented the main results of the national central bureau of Interpol Belgrade in international police cooperation. Nenad Ilić, M.A.B., President of the National Liberal Network in Belgrade, and Olga Krmptić, representative of the Pan-European Union in Serbia, explored the value of the Pan-European Union as an international organization of particular importance for the countries acceding to the European Union using the example of Serbia. The next participant, Miroslav Antevski, Ph.D., Research Fellow at the IIPE, analyzed the impact of international economic organizations on development of the national economy also using the example of Serbia. Igor Janev, Ph.D., Senior Research Fellow at the Institute of Political Studies in Belgrade, considered the matter of legality of the Tribunal for former Yugoslavia attempting to prove that the UN has made *ultra vires* acts in the process of establishment of the Tribunal. Considering the matter, he proposed an action Serbia should take within this context. The role and place of Serbia in the WTO and its position in international trade was the subject of the paper presented by Sanja Jelisavac-Trošić, M.B.A., Research Associate at the IIPE, and Ivana Popović-Petrović, M.B.A., Research Associate at the Faculty of Economics in Belgrade. The next participant, Stevan Rapaić, Research Assistant at the IIPE, considered a possible impact of the future membership of Serbia in the WTO on the micro economic level, this especially including foreign trade enterprises.

Another paper that dealt with economic matters was presented by Goran Puzić, Ph.D., and Stevica Dedanski, Ph.D., Professors at the Megatrend University in Vršac, who analyzed cooperation between Serbia and OECD member states. Next in this session, Dragan Đukanović, Ph.D., Research Fellow, and Ivona Lađevac, M.A., Research Associate at the IIPE, considered the importance of Serbia's cooperation with the International Organization for Migration and the International Labour Organization that had to do with the problem of working migration. Ana Jović-Lazić M.A. Research Associate, and Marko Nikolić, M.A. Research Associate at the IIPE, explored the necessity for Serbia to integrate in all UNESCO basic programmes and create conditions for their implementation in order to ensure successful development as well as to become part of the contemporary international trends in education, science, culture, and communications. The following participant, Nano Ružin, Ph.D., former Ambassador of Macedonia to NATO in the period from 2001 to 2008, analyzed the significance of the NATO New Strategic Concept, which should be adopted for the Western Balkans in November 2010 at the Lisbon Summit. At the end of the second session, Aleksandar Jazić, M.A., researcher from Belgrade, presented the most important facts about the relations between Serbia and the NATO.

Serbia's cooperation with regional international organizations was the subject of the third working session of this conference. The first participant, Jovan Teokarević, Ph.D., Professor at the Faculty of Political Science in Belgrade, presented the main reasons why Serbia was late in the European integration process. Željko Nikač, Ph.D., Professor at the Academy for Criminalistic and Police Studies in Belgrade, and Boban Simić, M.A., lecturer at the same academy, analyzed the significance of Serbia's cooperation with the European Police Office (EUROPOL). The next participant, Miloš Lutovac, M.A., lecturer at the Higher School of Professional Business Studies in Novi Sad, explored the prospects for development of relations between Serbia and the European Bank for Reconstruction and Development. Political and economic cooperation of Serbia with the African Union and its member states was the subject of the analysis presented by Ratko Vukanić, Research Assistant at the IIPE. Vladimir Urošević, Ph.D., official in the Ministry of Interior of the Republic of Serbia, and Sergej Uljanov, M.A., official of the NCB Interpol in Belgrade, analyzed the structure and functions of the *joint centres*, a new model of European international police cooperation. Dragan Mlađan, Ph.D., Professor at the Academy for Criminalistic and Police Studies, and officials in the Ministry of Interior of the Republic of Serbia, Predrag Marić and Ivan Baras, explicated the participation of the Emergency Sector of the Ministry of Interior of the Republic of Serbia in international cooperation and association in the area of emergency situations caused by natural and technological causes. The segment on international police cooperation ended with the analysis of the

relations between the European Gendarmerie Force (EGF) and Serbia, presented by Dalibor Kekić, Ph.D., and Dane Subošić, Ph.D., Professors at the Academy for Criminalistic and Police Studies in Belgrade. Later in this session, Vladimir Trapara, M.A.B., researcher from Belgrade, explicated the relevance of the activities that the OSCE mission in Serbia currently performed in the field of strengthening of democracy and human rights, judicial reform and combat against organized crime. Relations between Serbia and the NATO through the Partnership for Peace Programme was the subject of the paper presented by Milan Lipovac, M.A., and Zoran Kučeković, M.A., researchers from Belgrade. The next participant, Marko Novaković, Research Assistant at the IIPE, summarized the results and perspectives of Serbia's cooperation with the Council of Europe. At the end of this session, Branko Pavlica, Ph.D., Professorial Fellow at the IIPE, analyzed Serbian-German relations in the process of forming the new European architecture.

The fourth working session of this conference discussed the experiences of other countries in international organizations. At the beginning of this session, Miloš Šolaja, Ph.D., Professor at the Faculty of Political Science in Banja Luka, analyzed the impact of the post-Cold War changes in the international institutional framework in South-Eastern Europe on relations among the states in the region. The next participant, Dragan Petrović, Ph.D., Senior Research Fellow at the IIPE, examined the interest of Serbia in the integrative processes in the post-Soviet territory, this especially including the Customs Union of Russia, Belarus and Kazakhstan, the Common Economic Space and the Collective Security Treaty Organization. The role and place of Macedonia in international organizations was the subject of the paper presented by David Veskov, M.A., representative of the International Pan-European Union in Macedonia. Later in this session, Okunola Bukola Adeyemi and Damilare Leye Amoo, researchers from Nigeria, presented Nigeria's experiences in participation in international organizations. At the end of this session, Vlatka Bilas, Ph.D., Assistant Professor at the Faculty of Economics and Business in Zagreb, Sanja Franc, Research Assistant at the same faculty and Iva Čondić-Jurkić, Research Assistant at the Institute of Economics in Zagreb, analyzed the role of the IMF in dealing with the global financial crisis in European emerging economies.

Ratko VUKANIĆ

THE ROLE OF CIVIL SOCIETY IN PROMOTING THE POTENTIAL OF THE DANUBE BASIN IN THE LIGHT OF THE EU STRATEGY FOR THE DANUBE REGION

On 21 October 2010, in cooperation with the International Scientific Forum “Danube-River of Cooperation“ the Institute of International Politics and Economics (IIPE) organized XXI International Scientific Conference “Danube – River of Cooperation” entitled *The Role of Civil Society in Promoting the Potential of the Danube Basin in the Light of the EU Strategy for the Danube Region*.

The conference was opened by Božidar Đelić, Deputy Prime minister of the Republic of Serbia and Chairman of the Working Group of Serbia’s Participation in Developing the EU Strategy for the Danube Region. At the beginning of his speech, the Deputy Prime Minister informed the conference participants and media representatives that the European Commission would submit a draft strategy to the European Council on 9 December and expressed the expectation that the EU Strategy for Danube would be adopted in the first half of 2011 during Hungarian presidency. The Deputy Prime Minister emphasized the importance of the Strategy, pointing out that it was one of the EU responses to the economic crisis and that it would have a direct effect on more than 100 million people in the Danube River basin. He also noted that even those European states that did not belong to the Danube River Basin like Italy, Spain, Finland and Sweden expressed their interest in the Strategy. Speaking of its importance for Serbia the Deputy Prime Minister emphasized that more that 80 Serbian municipalities would be able to apply for the projects within the Strategy. The importance of the Strategy also reflected in the fact that Serbia should be co-coordinator, alongside with one of EU member countries, in four fields of strategy implementation such as: 1) infrastructure; 2) tourism and culture; 3) knowledge, economy and technology; and 4) security, and especially environmental protection and prevention of illegal trade and migration on the Danube. Analyzing the possibilities for its implementation as early as in 2013, the Deputy Prime Minister noted that the Strategy should make a balance between the set expectations and *three NOs*: 1) no new money, 2) no new institutions and 3) no new legislation. At the end of his speech, the Deputy Prime Minister mentioned the role of the civil society in the Strategy implementation. He noted that multidimensional strategies carried with themselves the risk of leaving the needs of ordinary citizens behind also emphasizing that the role of civil society organizations was to prevent such a risk.

Later in the opening session, Duško Dimitrijević, Ph.D., Director of the IPE, delivered a greeting speech and spoke about the relations between the IPE and the International Scientific Forum “Danube-River of Cooperation“. The next participant of this session was Dejan Ralević, Deputy Assistant Minister of Foreign Affairs of the Republic of Serbia. Mr. Ralević spoke of the place of the Serbian Ministry of Foreign Affairs in drafting the Danube Strategy emphasizing that the Serbian proposals were incorporated in the draft strategy. He expressed the expectation that Serbia would be equally involved in the Strategy implementation as it was involved in the Strategy drafting. Analyzing the importance of regional cooperation for Serbia’s EU integration process, Mr. Ralević pointed out that the Danube was one of the bases for Serbia’s European identity stressing that cooperation in the Danube River Basin would be an additional opportunity. Later in this session, Dragana Milovanović, head of Division for Strategic Planning and Management and International Cooperation of the Ministry of Agriculture, Forestry and Water Management of the Republic of Serbia, presented the results of the participation of the Water Directorate in drafting the Danube Strategy. In the first part of her presentation, Mrs. Milovanović spoke of the participation of the Water Directorate in drafting the Danube River Basin Management Plan, which was adopted in 2009 and became an integral part of the Danube Strategy. Later, Mrs. Milovanović analyzed possible main directions of the Strategy implementation in Serbia and pointed out that water supply and sanitation would be the most important. At the end of her presentation, Mrs. Milovanović analyzed the financial aspects of the Strategy implementation in this field and estimated that the investments for carrying it out should be about 6 billion euros. At the end of the opening session, Zoltán Hajdú, PhD., representative of the Danube Network of National and Sub-Regional Economic and Professional Advocacy Organizations for the EU Danube Strategy, spoke of the need for cooperation of civil society organizations in the Danube River basin, especially in the region of the Middle and Lower Danube.

The conference had three working sessions and its moderator was Edita Stojić-Karanović, Ph.D., Professorial Fellow at the IPE and President of the International Scientific Forum “Danube – River of Cooperation”.

The first working session was held under the title *The EU Strategy for the Danube Region – Activities, Goals and Priorities of Serbia*. The first participant was Sanda Šimić, Assistant Director of the European Integration Office of the Government of the Republic of Serbia, who presented the Cross-Border and Transnational Cooperation Programme. This programme is a part of the Instrument for Pre-accession Assistance (IPA), which was incorporated in the 2007-2013 EU budgets in order to prepare the candidates and potential candidates for the use of EU structural funds. Most of Mrs. Šimić’s presentation

was dedicated to cooperation programmes with Hungary, Bulgaria, Romania, Bosnia and Herzegovina, Montenegro and Croatia, this including the information on the territories covered by these programmes, their goals, number of projects and the phases of their implementation. Later in her presentation, Mrs. Šimić pointed to the main problems related to the implementation of these programmes such as co-financing of projects, unmodified legislation and a lack of systemic solution for budgetary support for application for the projects. The second participant of this session was Milan Dimkić, Ph.D., Director of the Institute “Jaroslav Černi”, who analyzed the state of the hydrographical network of Serbia and the main problems in this field. Speaking of the hydrographical network Mr. Dimkić emphasized that the Danube flow increased two times in Serbia and that the water quality analysis showed that the Danube was cleaner at the exit from Serbia than at its entrance. Later in his presentation, Mr. Dimkić analyzed four main hydrographical problems in Serbia and they are as follows: 1) the problem of water supply, especially in Bačka, Banat and Šumadija; 2) protection from polluted water; 3) irrigation; and 4) flood and erosion control. At the end of his presentation, Mr. Dimkić estimated that 7 billion euros in the next 20 years or 350 million each year would make solve these problems. The presentations of these two participants were followed by a discussion.

The second working session was held under the title *The Role of the Civil Sector in the Coordination of Public Policies in the Light of the EU Strategy for the Danube Region*. The first participant was Ljubiša Adamović, Ph.D., representative of the European Centre for Peace and Development (ECPD). At the beginning of his presentation, Mr. Adamović summarized the main activities of the ECPD, especially in the field of environmental protection. Later in the presentation, he pointed out that the low level of environmental awareness in Serbia was the reflection of the negative social environment whose main characteristics were very bad social conditions, poverty, corruption and the low price of electricity and water as well as a lack of appropriate penalties. Mr. Adamović criticized the lack of long-term government plans in the multi-party system because the governments planed their policies on a short-term basis, from one election cycle to another. At the end, Mr. Adamović presented several projects of the ECPD with focus on the improvement of environmental awareness. The second participant of this session was Svetlana Stefanović, representative of the European Movement in Serbia (EMS). In the first part of her presentation, Mrs. Stefanović pointed out the main problems in the relations between the civil society and the Danube Strategy. In the second part, she presented the conclusions and proposals adopted at the international conference on the Danube Strategy that was organized by EMS on 7 May 2010. This conference had been a part of the activities directed towards holding a public debate on the Danube Strategy in Serbia, which also included the conference organized in the Serbian Chamber of Commerce on

30 March on ideas, goals and economic aspects of the Strategy, as well as international conference organized at the IIPE on 6 April on the position on the Strategy and knowledge economy. The third participant was Edita Stojić-Karanović, who emphasized the importance of partnership among civil society organizations for carrying out ideas and projects and presented a project where the International Scientific Forum “Danube – River of Cooperation” cooperated with other organizations. This was followed by a discussion in which other participants of the conference took part.

The third working session was dedicated to the presentations of the projects aimed at research, support and self-organizing of the civil society. Ivona Lađevac, M.A., and Slobodan Janković, M.A., Research Associates at the IIPE, presented the project *Debating Serbia's European future: the Voice of Civil Society in Decision Making*, which IIPE carries out in cooperation with the European Institute in Sofia, Bulgaria. This project is a part of a broader project *Strengthening Serbia-EU Civil Society Dialogue*, granted by the European Commission Delegation to Serbia in 2010. The project has the following three goals: 1) strengthening of the Serbia-EU civil society dialogue; 2) increasing the contribution of civil society organizations in creation and implementation of public policies; and 3) extension of dialogue between civil society organizations and authorities in Serbia in the EU integration process. The first component of the project are field research, whose results will be used as a basis for the second component – debates, which will be held in Belgrade, Zrenjanin, Novi Sad, Čačak, Vranje and Novi Pazar in the first half of 2011. The first component of the project was implemented successful and the IIPE with its partner from Bulgaria started the preparations for the debates. Later in this session, Zorica Korać, representative of the Regional Environmental Center for Central and Eastern Europe (REC), presented the *Project SECTOR: Supporting Environmental Civil Society Organisations*. In 2006, the REC and the Swedish International Development Cooperation Agency launched the project in order to promote the development of a vibrant and democratic environmental civil society within the region. The first part of the project lasted for four years (2006-2010). In October 2009, an additional SECTOR component for Serbia (SECTOR II) was initiated for the support to Serbian civil society groups. SECTOR II is to be implemented from October 2009 until March 2011. The third presentation dealt with the Danube Network of National and Sub-regional Economic and Professional Advocacy Organizations for the EU Danube Strategy. Zoltán Hajdú, representative of this organization, summarized the results of its main projects. This session ended with the discussion on the details related to presented projects.

Ratko VUKANIĆ

DOCUMENTS*

INTERNATIONAL COURT OF JUSTICE
22 July 2010
General List
No. 141

ACCORDANCE WITH INTERNATIONAL LAW OF THE UNILATERAL DECLARATION OF INDEPENDENCE IN RESPECT OF KOSOVO

Jurisdiction of the Court to give the advisory opinion requested.

Article 65, paragraph 1, of the Statute – Article 96, paragraph 1, of the Charter – Power of General Assembly to request advisory opinions – Articles 10 and 11 of the Charter – Contention that General Assembly acted outside its powers under the Charter – Article 12, paragraph 1, of the Charter – Authorization to request an advisory opinion not limited by Article 12.

Requirement that the question on which the Court is requested to give its opinion is a “legal question” – Contention that the act of making a declaration of independence is governed by domestic constitutional law – The Court can respond to the question by reference to international law without the need to address domestic law – The fact that a question has political aspects does not deprive it of its character as a legal question – The Court is not concerned with the political motives behind a request or the political implications which its opinion may have.

The Court has jurisdiction to give advisory opinion requested.

Discretion of the Court to decide whether it should give an opinion.

Integrity of the Court’s judicial function – Only “compelling reasons” should lead the Court to decline to exercise its judicial function – The motives of individual States which sponsor a resolution requesting an advisory opinion are not relevant to the Court’s exercise of its discretion – Requesting organ to assess purpose, usefulness and political consequences of opinion.

* In view of fact that the text in this section are an official nature, no alternations of any kind have been made to them by the editor of the *Review of International Affairs*.

Delimitation of the respective powers of the Security Council and the General Assembly – Nature of the Security Council’s involvement in relation to Kosovo – Article 12 of the Charter does not bar action by the General Assembly in respect of threats to international peace and security which are before the Security Council – General Assembly has taken action with regard to the situation in Kosovo.

No compelling reasons for Court to use its discretion not to give an advisory opinion.

Scope and meaning of the question.

Text of the question in General Assembly resolution 63/3 – Power of the Court to clarify the question – No need to reformulate the question posed by the General Assembly – For the proper exercise of its judicial function, the Court must establish the identity of the authors of the declaration of independence – No intention by the General Assembly to restrict the Court’s freedom to determine that issue – The Court’s task is to determine whether or not the declaration was adopted in violation of international law.

Factual background.

Framework for interim administration of Kosovo put in place by the Security Council – Security Council resolution 1244 (1999) – Establishment of the United Nations Interim Administration Mission in Kosovo (UNMIK) – Role of Special Representative of the Secretary-General – “Four pillars” of the UNMIK régime – Constitutional Framework for Provisional Self-Government – Relations between the Provisional Institutions of Self-Government and the Special Representative of the Secretary-General.

Relevant events in the final status process – Appointment by Secretary-General of Special Envoy for the future status process for Kosovo – Guiding Principles of the Contact Group – Failure of consultative process – comprehensive Proposal for the Kosovo Status Settlement by Special Envoy – Failure of negotiations on the future status of Kosovo under the auspices of the Troika – Elections held for the Assembly of Kosovo on 17 November 2007 – Adoption of the declaration of independence on 17 February 2008.

Whether the declaration of independence is in accordance with international law.

No prohibition of declarations of independence according to State practice – Contention that prohibition of unilateral declarations of independence is implicit in the principle of territorial integrity – Scope of the principle of territorial integrity is confined to the sphere of relations between States – No general prohibition may be inferred from the practice of the Security Council with regard to declarations of independence – Issues relating to the extent of the right of self-determination and the existence of any right of “remedial secession” are beyond the scope of the question posed by the General Assembly.

General international law contains no applicable prohibition of declarations of independence – Declaration of independence of 17 February 2008 did not violate general international law.

Security Council resolution 1244 and the Constitutional Framework – Resolution 1244 (1999) imposes international legal obligations and is part of the applicable international law – Constitutional Framework possesses international legal character – Constitutional Framework is part of specific legal order created pursuant to resolution 1244 (1999) – Constitutional Framework regulates matters which are the subject of internal law – Supervisory powers of the Special Representative of the Secretary-General – Security Council resolution 1244 (1999) and the Constitutional Framework were in force and applicable as at 17 February 2008 – Neither of them contains a clause providing for termination and neither has been repealed – The Special Representative of the Secretary-General continues to exercise his functions in Kosovo.

Security Council resolution 1244 (1999) and the Constitutional Framework form part of the international law to be considered in replying to the question before the Court. Interpretation of Security Council resolutions – Resolution 1244 (1999) established an international civil and security presence in Kosovo – Temporary suspension of exercise of Serbia's authority flowing from its continuing sovereignty over the territory of Kosovo – Resolution 1244 (1999) created an interim régime – Object and purpose of resolution 1244 (1999).

Identity of the authors of the declaration of independence – Whether the declaration of independence was an act of the Assembly of Kosovo – Authors of the declaration did not seek to act within the framework of interim self-administration of Kosovo – Authors undertook to fulfil the international obligations of Kosovo – No reference in original Albanian text to the declaration being the work of the Assembly of Kosovo – Silence of the Special Representative of the Secretary-General – Authors of the declaration of independence acted together in their capacity as representatives of the people of Kosovo outside the framework of the interim administration.

Whether or not the authors of the declaration of independence acted in violation of Security Council resolution 1244 (1999) – Resolution 1244 (1999) addressed to United Nations Member States and organs of the United Nations – No specific obligations addressed to other actors – The resolution did not contain any provision dealing with the final status of Kosovo – Security Council did not reserve for itself the final determination of the situation in Kosovo – Security Council resolution 1244 (1999) did not bar the authors of the declaration of 17 February 2008 from issuing a declaration of independence – Declaration of independence did not violate Security Council resolution 1244 (1999).

Declaration of independence was not issued by the Provisional Institutions of Self-Government – Declaration of independence did not violate the Constitutional Framework.

Adoption of the declaration of independence did not violate any applicable rule of international law.

ADVISORY OPINION

Present: President OWADA; Vice-President TOMKA; Judges KOROMA, AL-KHASAWNEH, BUERGENTHAL, SIMMA, ABRAHAM, KEITH, SEPÚLVEDA-AMOR, BENNOUNA, SKOTNIKOV, CANÇADO TRINDADE, YUSUF, GREENWOOD; Registrar COUVREUR.

On the accordance with international law of the unilateral declaration of independence in respect of Kosovo,

THE COURT,

composed as above,

gives the following Advisory Opinion:

1. The question on which the advisory opinion of the Court has been requested is set forth in resolution 63/3 adopted by the General Assembly of the United Nations (hereinafter the General Assembly) on 8 October 2008. By a letter dated 9 October 2008 and received in the Registry by facsimile on 10 October 2008, the original of which was received in the Registry on 15 October 2008, the Secretary-General of the United Nations officially communicated to the Court the decision taken by the General Assembly to submit the question for an advisory opinion. Certified true copies of the English and French versions of the resolution were enclosed with the letter. The resolution reads as follows:

“The General Assembly,

Mindful of the purposes and principles of the United Nations,

Bearing in mind its functions and powers under the Charter of the United Nations,

Recalling that on 17 February 2008 the Provisional Institutions of Self-Government of Kosovo declared independence from Serbia,

Aware that this act has been received with varied reactions by the Members of the United Nations as to its compatibility with the existing international legal order,

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

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

2. By letters dated 10 October 2008, the Registrar, pursuant to Article 66, paragraph 1, of the Statute, gave notice of the request for an advisory opinion to all States entitled to appear before the Court.

3. By an Order dated 17 October 2008, in accordance with Article 66, paragraph 2, of the Statute, the Court decided that the United Nations and its Member States were likely to be able to furnish information on the question. By the same Order, the Court fixed, respectively, 17 April 2009 as the time-limit within which written statements might be submitted to it on the question, and 17 July 2009 as the time-limit within which States and organizations having presented written statements might submit written comments on the other written statements in accordance with Article 66, paragraph 4, of the Statute.

The Court also decided that, taking account of the fact that the unilateral declaration of independence of 17 February 2008 is the subject of the question submitted to the Court for an advisory opinion, the authors of the above declaration were considered likely to be able to furnish information on the question. It therefore further decided to invite them to make written contributions to the Court within the same time-limits.

4. By letters dated 20 October 2008, the Registrar informed the United Nations and its Member States of the Court's decisions and transmitted to them a copy of the Order. By letter of the same date, the Registrar informed the authors of the above-mentioned declaration of independence of the Court's decisions, and transmitted to them a copy of the Order.

5. Pursuant to Article 65, paragraph 2, of the Statute, on 30 January 2009 the Secretary-General of the United Nations communicated to the Court a dossier of documents likely to throw light upon the question. The dossier was subsequently placed on the Court's website.

6. Within the time-limit fixed by the Court for that purpose, written statements were filed, in order of their receipt, by: Czech Republic, France, Cyprus, China, Switzerland, Romania, Albania, Austria, Egypt, Germany, Slovakia, Russian Federation, Finland, Poland, Luxembourg, Libyan Arab Jamahiriya, United Kingdom, United States of America, Serbia, Spain, Islamic Republic of Iran, Estonia, Norway, Netherlands, Slovenia, Latvia, Japan, Brazil, Ireland, Denmark, Argentina, Azerbaijan, Maldives, Sierra Leone and Bolivia. The authors of the unilateral declaration of independence filed a written contribution. On 21 April 2009, the Registrar communicated copies of the written statements and written contribution to all States having submitted a written statement, as well as to the authors of the unilateral declaration of independence.

7. On 29 April 2009, the Court decided to accept the written statement filed by the Bolivarian Republic of Venezuela, submitted on 24 April 2009, after expiry of the relevant time-limit. On 15 May 2009, the Registrar communicated copies of this written statement to all States having submitted a written statement, as well as to the authors of the unilateral declaration of independence.

8. By letters dated 8 June 2009, the Registrar informed the United Nations and its Member States that the Court had decided to hold hearings, opening on 1 December 2009, at which they could present oral statements and comments,

regardless of whether or not they had submitted written statements and, as the case may be, written comments. The United Nations and its Member States were invited to inform the Registry, by 15 September 2009, if they intended to take part in the oral proceedings. The letters further indicated that the authors of the unilateral declaration of independence could present an oral contribution.

By letter of the same date, the Registrar informed the authors of the unilateral declaration of independence of the Court's decision to hold hearings, inviting them to indicate, within the same time-limit, whether they intended to take part in the oral proceedings.

9. Within the time-limit fixed by the Court for that purpose, written comments were filed, in order of their receipt, by: France, Norway, Cyprus, Serbia, Argentina, Germany, Netherlands, Albania, Slovenia, Switzerland, Bolivia, United Kingdom, United States of America and Spain. The authors of the unilateral declaration of independence submitted a written contribution regarding the written statements.

10. Upon receipt of the above-mentioned written comments and written contribution, the Registrar, on 24 July 2009, communicated copies thereof to all States having submitted written statements, as well as to the authors of the unilateral declaration of independence.

11. By letters dated 30 July 2009, the Registrar communicated to the United Nations, and to all of its Member States that had not participated in the written proceedings, copies of all written statements and written comments, as well as the written contributions of the authors of the unilateral declaration of independence.

12. By letters dated 29 September 2009, the Registry transmitted a detailed timetable of the hearings to those who, within the time-limit fixed for that purpose by the Court, had expressed their intention to take part in the aforementioned proceedings.

13. Pursuant to Article 106 of the Rules of Court, the Court decided to make the written statements and written comments submitted to the Court, as well as the written contributions of the authors of the unilateral declaration of independence, accessible to the public, with effect from the opening of the oral proceedings.

14. In the course of hearings held from 1 to 11 December 2009, the Court heard oral statements, in the following order, by:

For the Republic of Serbia:

H.E. Mr. Dušan T. Bataković, PhD in History, University of Paris-Sorbonne (Paris IV), Ambassador of the Republic of Serbia to France, Vice-Director of the Institute for Balkan Studies and Assistant Professor at the University of Belgrade, Head of Delegation,

Mr. Vladimir Djerić, S.J.D. (Michigan), Attorney at Law, Mikijelj, Janković & Bogdanović, Belgrade, Counsel and Advocate,

Mr. Andreas Zimmermann, LL.M. (Harvard), Professor of International Law, University of Potsdam, Director of the Potsdam Center of Human Rights, Member of the Permanent Court of Arbitration, Counsel and Advocate,

Mr. Malcolm N. Shaw Q.C., Sir Robert Jennings Professor of International Law, University of Leicester, United Kingdom, Counsel and Advocate,

Mr. Marcelo G. Kohen, Professor of International Law, Graduate Institute of International and Development Studies, Geneva, Associate Member of the Institut de droit international, Counsel and Advocate,

Mr. Saša Obradović, Inspector General in the Ministry of Foreign Affairs, Deputy Head of Delegation;

For the authors of the unilateral declaration of independence:

Mr. Skender Hyseni, Head of Delegation, Sir Michael Wood, K.C.M.G., member of the English Bar, Member of the International Law Commission, Counsel,

Mr. Daniel Müller, Researcher at the Centre de droit international de Nanterre (CEDIN), University of Paris Ouest, Nanterre-La Défense, Counsel,

Mr. Sean D. Murphy, Patricia Roberts Harris Research Professor of Law, George Washington University, Counsel;

For the Republic of Albania:

H.E. Mr. Gazmend Barbullushi, Ambassador Extraordinary and Plenipotentiary of the Republic of Albania to the Kingdom of the Netherlands, Legal Adviser,

Mr. Jochen A. Frowein, M.C.L., Director emeritus of the Max Planck Institute for International Law, Professor emeritus of the University of Heidelberg, Member of the Institute of International Law, Legal Adviser,

Mr. Terry D. Gill, Professor of Military Law at the University of Amsterdam and Associate Professor of Public International Law at Utrecht University, Legal Adviser;

For the Federal Republic of Germany:

Ms Susanne Wasum-Rainer, Legal Adviser, Federal Foreign Office (Berlin);

For the Kingdom of Saudi Arabia:

H.E. Mr. Abdullah A. Alshaghrood, Ambassador of the Kingdom of Saudi Arabia to the Kingdom of the Netherlands, Head of Delegation;

For the Argentine Republic:

H.E. Madam Susana Ruiz Cerutti, Ambassador, Legal Adviser to the Ministry of Foreign Affairs, International Trade and Worship, Head of Delegation;

For the Republic of Austria:

H.E. Mr. Helmut Tichy, Ambassador, Deputy Legal Adviser, Federal Ministry of European and International Affairs;

For the Republic of Azerbaijan:

H.E. Mr. Agshin Mehdiyev, Ambassador and Permanent Representative of Azerbaijan to the United Nations;

For the Republic of Belarus:

H.E. Madam Elena Gritsenko, Ambassador of the Republic of Belarus to the Kingdom of the Netherlands, Head of Delegation;

For the Plurinational State of Bolivia:

H.E. Mr. Roberto Calzadilla Sarmiento, Ambassador of the Plurinational State of Bolivia to the Kingdom of the Netherlands;

For the Federative Republic of Brazil:

H.E. Mr. José Artur Denot Medeiros, Ambassador of the Federative Republic of Brazil to the Kingdom of the Netherlands;

For the Republic of Bulgaria:

Mr. Zlatko Dimitroff, S.J.D., Director of the International Law Department, Ministry of Foreign Affairs, Head of Delegation;

For the Republic of Burundi:

Mr. Thomas Barankitse, Legal Attaché, Counsel,

Mr. Jean d'Aspremont, Associate Professor, University of Amsterdam, Chargé de cours invité, Catholic University of Louvain, Counsel;

For the People's Republic of China:

H.E. Madam Xue Hanqin, Ambassador to the Association of Southeast Asian Nations (ASEAN), Legal Counsel of the Ministry of Foreign Affairs, Member of the International Law Commission, Member of the Institut de droit international, Head of Delegation;

For the Republic of Cyprus:

H.E. Mr. James Droushiotis, Ambassador of the Republic of Cyprus to the Kingdom of the Netherlands,

Mr. Vaughan Lowe Q.C., member of the English Bar, Chichele Professor of International Law, University of Oxford, Counsel and Advocate,

Mr. Polyvios G. Polyviou, Counsel and Advocate;

For the Republic of Croatia:

H.E. Madam Andreja Metelko-Zgombić, Ambassador, Chief Legal Adviser in the Ministry of Foreign Affairs and European Integration;

For the Kingdom of Denmark:

H.E. Mr. Thomas Winkler, Ambassador, Under-Secretary for Legal Affairs, Ministry of Foreign Affairs, Head of Delegation;

For the Kingdom of Spain:

Ms Concepción Escobar Hernández, Legal Adviser, Head of the International Law Department, Ministry of Foreign Affairs and Co-operation, Head of Delegation and Advocate;

For the United States of America:

Mr. Harold Hongju Koh, Legal Adviser, Department of State, Head of Delegation and Advocate;

For the Russian Federation:

H.E. Mr. Kirill Gevorgian, Ambassador, Head of the Legal Department, Ministry of Foreign Affairs, Head of Delegation;

For the Republic of Finland:

Ms Päivi Kaukoranta, Director General, Legal Service, Ministry of Foreign Affairs,

Mr. Martti Koskenniemi, Professor at the University of Helsinki;

For the French Republic:

Ms Edwige Belliard, Director of Legal Affairs, Ministry of Foreign and European Affairs,

Mr. Mathias Forteau, Professor at the University of Paris Ouest, Nanterre-La Défense;

For the Hashemite Kingdom of Jordan:

H.R.H. Prince Zeid Raad Zeid Al Hussein, Ambassador of the Hashemite Kingdom of Jordan to the United States of America, Head of Delegation;

For the Kingdom of Norway:

Mr. Rolf Einar Fife, Director General, Legal Affairs Department, Ministry of Foreign Affairs, Head of Delegation;

For the Kingdom of the Netherlands:

Ms Liesbeth Lijnzaad, Legal Adviser, Ministry of Foreign Affairs;

For Romania:

Mr. Bogdan Aurescu, Secretary of State, Ministry of Foreign Affairs,

Mr. Cosmin Dinescu, Director-General for Legal Affairs, Ministry of Foreign Affairs;

For the United Kingdom of Great Britain and Northern Ireland:

Mr. Daniel Bethlehem Q.C., Legal Adviser to the Foreign and Commonwealth Office, Representative of the United Kingdom of Great Britain and Northern Ireland, Counsel and Advocate,

Mr. James Crawford, S.C., Whewell Professor of International Law, University of Cambridge, Member of the Institut de droit international, Counsel and Advocate;

For the Bolivarian Republic of Venezuela:

Mr. Alejandro Fleming, Deputy Minister for Europe of the Ministry of the People's Power for Foreign Affairs;

For the Socialist Republic of Viet Nam:

H.E. Madam Nguyen Thi Hoang Anh, Doctor of Law, Director-General, Department of International Law and Treaties, Ministry of Foreign Affairs.

15. Questions were put by Members of the Court to participants in the oral proceedings; several of them replied in writing, as requested, within the prescribed time-limit.

16. Judge Shi took part in the oral proceedings; he subsequently resigned from the Court with effect from 28 May 2010.

I. JURISDICTION AND DISCRETION

17. When seised of a request for an advisory opinion, the Court must first consider whether it has jurisdiction to give the opinion requested and whether, should the answer be in the affirmative, there is any reason why the Court, in its discretion, should decline to exercise any such jurisdiction in the case before it (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 232, para. 10; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 144, para. 13).

A. Jurisdiction

18. The Court will thus first address the question whether it possesses jurisdiction to give the advisory opinion requested by the General Assembly on 8 October 2008. The power of the Court to give an advisory opinion is based upon Article 65, paragraph 1, of its Statute, which provides that:

“The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.”

19. In its application of this provision, the Court has indicated that:

“It is . . . a precondition of the Court’s competence that the advisory opinion be requested by an organ duly authorized to seek it under the Charter, that it be requested on a legal question, and that, except in the case of the General Assembly or the Security Council, that question should be one arising within the scope of the activities of the requesting organ.” (*Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982*, pp. 333-334, para. 21.)

20. It is for the Court to satisfy itself that the request for an advisory opinion comes from an organ of the United Nations or a specialized agency having competence to make it. The General Assembly is authorized to request an advisory opinion by Article 96 of the Charter, which provides that:

“1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.”

21. While paragraph 1 of Article 96 confers on the General Assembly the competence to request an advisory opinion on “any legal question”, the Court has sometimes in the past given certain indications as to the relationship between the question which is the subject of a request for an advisory opinion

and the activities of the General Assembly (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 70; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, pp. 232-233, paras. 11-12; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 145, paras. 16-17).

22. The Court observes that Article 10 of the Charter provides that:

“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, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.”

Moreover, Article 11, paragraph 2, of the Charter has specifically provided the General Assembly with competence to discuss “any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations” and, subject again to the limitation in Article 12, to make recommendations with respect thereto.

23. Article 12, paragraph 1, of the Charter provides that:

“While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.”

24. In the present proceedings, it was suggested that, since the Security Council was seised of the situation in Kosovo, the effect of Article 12, paragraph 1, was that the General Assembly’s request for an advisory opinion was outside its powers under the Charter and thus did not fall within the authorization conferred by Article 96, paragraph 1. As the Court has stated on an earlier occasion, however, “[a] request for an advisory opinion is not in itself a ‘recommendation’ by the General Assembly ‘with regard to [a] dispute or situation’” (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 148, para. 25). Accordingly, while Article 12 may limit the scope of the action which the General Assembly may take subsequent to its receipt of the Court’s opinion (a matter on which it is unnecessary for the Court to decide in the present context), it does not in itself limit the authorization to request an advisory opinion which is conferred upon the General Assembly by Article 96, paragraph 1. Whether the delimitation of the respective powers of the Security Council and the General Assembly - of which Article 12 is one aspect - should lead the Court, in the circumstances of the present case, to decline to exercise its jurisdiction to render an advisory opinion is another matter (which the Court will consider in paragraphs 29 to 48 below).

25. It is also for the Court to satisfy itself that the question on which it is requested to give its opinion is a “legal question” within the meaning of Article

96 of the Charter and Article 65 of the Statute. In the present case, the question put to the Court by the General Assembly asks whether the declaration of independence to which it refers is “in accordance with international law”. A question which expressly asks the Court whether or not a particular action is compatible with international law certainly appears to be a legal question; as the Court has remarked on a previous occasion, questions “framed in terms of law and rais[ing] problems of international law . . . are by their very nature susceptible of a reply based on law” (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 18, para. 15) and therefore appear to be questions of a legal character for the purposes of Article 96 of the Charter and Article 65 of the Statute.

26. Nevertheless, some of the participants in the present proceedings have suggested that the question posed by the General Assembly is not, in reality, a legal question. According to this submission, international law does not regulate the act of making a declaration of independence, which should be regarded as a political act; only domestic constitutional law governs the act of making such a declaration, while the Court’s jurisdiction to give an advisory opinion is confined to questions of international law. In the present case, however, the Court has not been asked to give an opinion on whether the declaration of independence is in accordance with any rule of domestic law but only whether it is in accordance with international law. The Court can respond to that question by reference to international law without the need to enquire into any system of domestic law.

27. Moreover, the Court has repeatedly stated that the fact that a question has political aspects does not suffice to deprive it of its character as a legal question (*Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, p. 172, para. 14). Whatever its political aspects, the Court cannot refuse to respond to the legal elements of a question which invites it to discharge an essentially judicial task, namely, in the present case, an assessment of an act by reference to international law. The Court has also made clear that, in determining the jurisdictional issue of whether it is confronted with a legal question, it is not concerned with the political nature of the motives which may have inspired the request or the political implications which its opinion might have (*Conditions of Admission of a State in Membership of the United Nations (Article 4 of the Charter), Advisory Opinion, 1948, I.C.J. Reports 1947-1948*, p. 61, and *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 234, para. 13).

28. The Court therefore considers that it has jurisdiction to give an advisory opinion in response to the request made by the General Assembly.

B. Discretion

29. The fact that the Court has jurisdiction does not mean, however, that it is obliged to exercise it:

“The Court has recalled many times in the past that Article 65, paragraph 1, of its Statute, which provides that ‘The Court *may* give an advisory opinion . . .’ (emphasis added), should be interpreted to mean that the Court has a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met.” (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 156, para. 44.)

The discretion whether or not to respond to a request for an advisory opinion exists so as to protect the integrity of the Court’s judicial function and its nature as the principal judicial organ of the United Nations (*Status of Eastern Carelia, Advisory Opinion, 1923, P.C.I.J., Series B, No. 5*, p. 29; *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, p. 175, para. 24; *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982*, p. 334, para. 22; and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 156-157, paras. 44-45).

30. The Court is, nevertheless, mindful of the fact that its answer to a request for an advisory opinion “represents its participation in the activities of the Organization, and, in principle, should not be refused” (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999 (I)*, pp. 78-79, para. 29; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 156, para. 44). Accordingly, the consistent jurisprudence of the Court has determined that only “compelling reasons” should lead the Court to refuse its opinion in response to a request falling within its jurisdiction (*Judgments of the Administrative Tribunal of the ILO upon complaints made against the Unesco, I.C.J. Reports 1956*, p. 86; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 156, para. 44).

31. The Court must satisfy itself as to the propriety of the exercise of its judicial function in the present case. It has therefore given careful consideration as to whether, in the light of its previous jurisprudence, there are compelling reasons for it to refuse to respond to the request from the General Assembly.

32. One argument, advanced by a number of participants in the present proceedings, concerns the motives behind the request. Those participants drew attention to a statement made by the sole sponsor of the resolution by which the General Assembly requested the Court’s opinion to the effect that

“the Court’s advisory opinion would provide politically neutral, yet judicially authoritative, guidance to many countries still deliberating how to approach unilateral declarations of independence in line with international law.

.....
Supporting this draft resolution would also serve to reaffirm a fundamental principle: the right of any Member State of the United Nations to pose a simple, basic question on a matter it considers vitally important to the Court. To vote against it would be in effect a vote to deny the right of any country to seek - now or in the future - judicial recourse through the United Nations system.” (A/63/PV.22, p. 1.)

According to those participants, this statement demonstrated that the opinion of the Court was being sought not in order to assist the General Assembly but rather to serve the interests of one State and that the Court should, therefore, decline to respond.

33. The advisory jurisdiction is not a form of judicial recourse for States but the means by which the General Assembly and the Security Council, as well as other organs of the United Nations and bodies specifically empowered to do so by the General Assembly in accordance with Article 96, paragraph 2, of the Charter, may obtain the Court’s opinion in order to assist them in their activities. The Court’s opinion is given not to States but to the organ which has requested it (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71). Nevertheless, precisely for that reason, the motives of individual States which sponsor, or vote in favour of, a resolution requesting an advisory opinion are not relevant to the Court’s exercise of its discretion whether or not to respond. As the Court put it in its Advisory Opinion on *Legality of the Threat or Use of Nuclear Weapons*,

“once the Assembly has asked, by adopting a resolution, for an advisory opinion on a legal question, the Court, in determining whether there are any compelling reasons for it to refuse to give such an opinion, will not have regard to the origins or to the political history of the request, or to the distribution of votes in respect of the adopted resolution” (*I.C.J. Reports 1996 (I)*, p. 237, para. 16).

34. It was also suggested by some of those participating in the proceedings that resolution 63/3 gave no indication of the purpose for which the General Assembly needed the Court’s opinion and that there was nothing to indicate that the opinion would have any useful legal effect. This argument cannot be accepted. The Court has consistently made clear that it is for the organ which requests the opinion, and not for the Court, to determine whether it needs the opinion for the proper performance of its functions. In its Advisory Opinion on *Legality of the Threat or Use of Nuclear Weapons*, the Court rejected an argument that it should refuse to respond to the General Assembly’s request on the ground that the General Assembly had not explained to the Court the purposes for which it sought an opinion, stating that

“it is not for the Court itself to purport to decide whether or not an advisory opinion is needed by the Assembly for the performance of its functions. The General Assembly has the right to decide for itself on the usefulness of an opinion in the light of its own needs.” (*I.C.J. Reports 1996 (I)*, p. 237, para. 16.)

Similarly, in the Advisory Opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court commented that “[t]he Court cannot substitute its assessment of the usefulness of the opinion requested for that of the organ that seeks such opinion, namely the General Assembly” (*I.C.J. Reports 2004 (I)*, p. 163, para. 62).

35. Nor does the Court consider that it should refuse to respond to the General Assembly’s request on the basis of suggestions, advanced by some of those participating in the proceedings, that its opinion might lead to adverse political consequences. Just as the Court cannot substitute its own assessment for that of the requesting organ in respect of whether its opinion will be useful to that organ, it cannot – in particular where there is no basis on which to make such an assessment – substitute its own view as to whether an opinion would be likely to have an adverse effect. As the Court stated in its Advisory Opinion on *Legality of the Threat or Use of Nuclear Weapons*, in response to a submission that a reply from the Court might adversely affect disarmament negotiations, faced with contrary positions on this issue “there are no evident criteria by which it can prefer one assessment to another” (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 237, para. 17; see also *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 37, para. 73; and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 159-160, paras. 51-54).

36. An important issue which the Court must consider is whether, in view of the respective roles of the Security Council and the General Assembly in relation to the situation in Kosovo, the Court, as the principal judicial organ of the United Nations, should decline to answer the question which has been put to it on the ground that the request for the Court’s opinion has been made by the General Assembly rather than the Security Council.

37. The situation in Kosovo had been the subject of action by the Security Council, in the exercise of its responsibility for the maintenance of international peace and security, for more than ten years prior to the present request for an advisory opinion. The Council first took action specifically relating to the situation in Kosovo on 31 March 1998, when it adopted resolution 1160 (1998). That was followed by resolutions 1199 (1998), 1203 (1998) and 1239 (1999). On 10 June 1999, the Council adopted resolution 1244 (1999), which authorized the creation of an international military presence (subsequently known as “KFOR”) and an international civil presence (the United Nations Interim Administration Mission in Kosovo, “UNMIK”) and laid down a framework for the administration of Kosovo. By resolution 1367 (2001), the Security Council decided to terminate the prohibitions on the sale or supply of arms established

by paragraph 8 of resolution 1160 (1998). The Security Council has received periodic reports from the Secretary-General on the activities of UNMIK. The dossier submitted to the Court by the Secretary-General records that the Security Council met to consider the situation in Kosovo on 29 occasions between 2000 and the end of 2008. Although the declaration of independence which is the subject of the present request was discussed by the Security Council, the Council took no action in respect of it (Security Council, provisional verbatim record, 18 February 2008, 3 p.m. (S/PV.5839); Security Council, provisional verbatim record, 11 March 2008, 3 p.m. (S/PV.5850)).

38. The General Assembly has also adopted resolutions relating to the situation in Kosovo. Prior to the adoption by the Security Council of resolution 1244 (1999), the General Assembly adopted five resolutions on the situation of human rights in Kosovo (resolutions 49/204, 50/190, 51/111, 52/139 and 53/164). Following resolution 1244 (1999), the General Assembly adopted one further resolution on the situation of human rights in Kosovo (resolution 54/183 of 17 December 1999) and 15 resolutions concerning the financing of UNMIK (resolutions 53/241, 54/245A, 54/245B, 55/227A, 55/227B, 55/295, 57/326, 58/305, 59/286A, 59/286B, 60/275, 61/285, 62/262, 63/295 and 64/279). However, the broader situation in Kosovo was not part of the agenda of the General Assembly at the time of the declaration of independence and it was therefore necessary in September 2008 to create a new agenda item for the consideration of the proposal to request an opinion from the Court.

39. Against this background, it has been suggested that, given the respective powers of the Security Council and the General Assembly, if the Court's opinion were to be sought regarding whether the declaration of independence was in accordance with international law, the request should rather have been made by the Security Council and that this fact constitutes a compelling reason for the Court not to respond to the request from the General Assembly. That conclusion is said to follow both from the nature of the Security Council's involvement and the fact that, in order to answer the question posed, the Court will necessarily have to interpret and apply Security Council resolution 1244 (1999) in order to determine whether or not the declaration of independence is in accordance with international law.

40. While the request put to the Court concerns one aspect of a situation which the Security Council has characterized as a threat to international peace and security and which continues to feature on the agenda of the Council in that capacity, that does not mean that the General Assembly has no legitimate interest in the question. Articles 10 and 11 of the Charter, to which the Court has already referred, confer upon the General Assembly a very broad power to discuss matters within the scope of the activities of the United Nations, including questions relating to international peace and security. That power is not limited by the responsibility for the maintenance of international peace and security which is conferred upon the Security Council by Article 24, paragraph 1. As the Court has made clear in its Advisory Opinion on *Legal Consequences*

of the Construction of a Wall in the Occupied Palestinian Territory, paragraph 26, “Article 24 refers to a primary, but not necessarily exclusive, competence”. The fact that the situation in Kosovo is before the Security Council and the Council has exercised its Chapter VII powers in respect of that situation does not preclude the General Assembly from discussing any aspect of that situation, including the declaration of independence. The limit which the Charter places upon the General Assembly to protect the role of the Security Council is contained in Article 12 and restricts the power of the General Assembly to make recommendations following a discussion, not its power to engage in such a discussion.

41. Moreover, Article 12 does not bar all action by the General Assembly in respect of threats to international peace and security which are before the Security Council. The Court considered this question in some detail in paragraphs 26 to 27 of its Advisory Opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, in which the Court noted that there has been an increasing tendency over time for the General Assembly and the Security Council to deal in parallel with the same matter concerning the maintenance of international peace and security and observed that it is often the case that, while the Security Council has tended to focus on the aspects of such matters related to international peace and security, the General Assembly has taken a broader view, considering also their humanitarian, social and economic aspects.

42. The Court’s examination of this subject in its Advisory Opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* was made in connection with an argument relating to whether or not the Court possessed the jurisdiction to give an advisory opinion, rather than whether it should exercise its discretion not to give an opinion. In the present case, the Court has already held that Article 12 of the Charter does not deprive it of the jurisdiction conferred by Article 96, paragraph 1 (paragraphs 23 to 24 above). It considers, however, that the analysis contained in the 2004 Advisory Opinion is also pertinent to the issue of discretion in the present case. That analysis demonstrates that the fact that a matter falls within the primary responsibility of the Security Council for situations which may affect the maintenance of international peace and security and that the Council has been exercising its powers in that respect does not preclude the General Assembly from discussing that situation or, within the limits set by Article 12, making recommendations with regard thereto. In addition, as the Court pointed out in its 2004 Advisory Opinion, General Assembly resolution 377A (V) (“Uniting for Peace”) provides for the General Assembly to make recommendations for collective measures to restore international peace and security in any case where there appears to be a threat to the peace, breach of the peace or act of aggression and the Security Council is unable to act because of lack of unanimity of the permanent members (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p.

150, para. 30). These considerations are of relevance to the question whether the delimitation of powers between the Security Council and the General Assembly constitutes a compelling reason for the Court to decline to respond to the General Assembly's request for an opinion in the present case.

43. It is true, of course, that the facts of the present case are quite different from those of the Advisory Opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. The situation in the occupied Palestinian territory had been under active consideration by the General Assembly for several decades prior to its decision to request an opinion from the Court and the General Assembly had discussed the precise subject on which the Court's opinion was sought. In the present case, with regard to the situation in Kosovo, it was the Security Council which had been actively seized of the matter. In that context, it discussed the future status of Kosovo and the declaration of independence (see paragraph 37 above).

44. However, the purpose of the advisory jurisdiction is to enable organs of the United Nations and other authorized bodies to obtain opinions from the Court which will assist them in the future exercise of their functions. The Court cannot determine what steps the General Assembly may wish to take after receiving the Court's opinion or what effect that opinion may have in relation to those steps. As the preceding paragraphs demonstrate, the General Assembly is entitled to discuss the declaration of independence and, within the limits considered in paragraph 42, above, to make recommendations in respect of that or other aspects of the situation in Kosovo without trespassing on the powers of the Security Council. That being the case, the fact that, hitherto, the declaration of independence has been discussed only in the Security Council and that the Council has been the organ which has taken action with regard to the situation in Kosovo does not constitute a compelling reason for the Court to refuse to respond to the request from the General Assembly.

45. Moreover, while it is the scope for future discussion and action which is the determining factor in answering this objection to the Court rendering an opinion, the Court also notes that the General Assembly has taken action with regard to the situation in Kosovo in the past. As stated in paragraph 38 above, between 1995 and 1999, the General Assembly adopted six resolutions addressing the human rights situation in Kosovo. The last of these, resolution 54/183, was adopted on 17 December 1999, some six months after the Security Council had adopted resolution 1244 (1999). While the focus of this resolution was on human rights and humanitarian issues, it also addressed (in para. 7) the General Assembly's concern about a possible "cantonization" of Kosovo. In addition, since 1999 the General Assembly has each year approved, in accordance with Article 17, paragraph 1, of the Charter, the budget of UNMIK (see paragraph 38 above). The Court observes therefore that the General Assembly has exercised functions of its own in the situation in Kosovo.

46. Further, in the view of the Court, the fact that it will necessarily have to interpret and apply the provisions of Security Council resolution 1244 (1999) in

the course of answering the question put by the General Assembly does not constitute a compelling reason not to respond to that question. While the interpretation and application of a decision of one of the political organs of the United Nations is, in the first place, the responsibility of the organ which took that decision, the Court, as the principal judicial organ of the United Nations, has also frequently been required to consider the interpretation and legal effects of such decisions. It has done so both in the exercise of its advisory jurisdiction (see for example, *Certain Expenses of the United Nations, (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Reports 1962*, p. 175; and *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, pp. 51-54, paras. 107-116), and in the exercise of its contentious jurisdiction (see for example, *Questions of the Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Provisional Measures, Order of 14 April 1992, I.C.J. Reports 1992*, p. 15, paras. 39-41; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), Provisional Measures, Order of 14 April 1992, I.C.J. Reports 1992*, pp. 126-127, paras. 42-44).

47. There is, therefore, nothing incompatible with the integrity of the judicial function in the Court undertaking such a task. The question is, rather, whether it should decline to undertake that task unless it is the organ which has taken the decision that asks the Court to do so. In its Advisory Opinion on *Certain Expenses of the United Nations*, however, the Court responded to the question posed by the General Assembly, even though this necessarily required it to interpret a number of Security Council resolutions (namely, resolutions 143, 145 and 146 of 1960 and 161 and 169 of 1961) (*Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Reports 1962*, pp. 175-177). The Court also notes that, in its Advisory Opinion on *Conditions of Admission of a State in the United Nations (Article 4 of the Charter) (I.C.J. Reports 1947-1948*, pp. 61-62), it responded to a request from the General Assembly even though that request referred to statements made in a meeting of the Security Council and it had been submitted that the Court should therefore exercise its discretion to decline to reply (*Conditions of Admission of a State in the United Nations (Article 4 of the Charter), Pleadings, Oral Arguments, Documents*, p. 90). Where, as here, the General Assembly has a legitimate interest in the answer to a question, the fact that that answer may turn, in part, on a decision of the Security Council is not sufficient to justify the Court in declining to give its opinion to the General Assembly.

48. Accordingly, the Court considers that there are no compelling reasons for it to decline to exercise its jurisdiction in respect of the present request.

II. SCOPE AND MEANING OF THE QUESTION

49. The Court will now turn to the scope and meaning of the question on which the General Assembly has requested that it give its opinion. The General Assembly has formulated that question in the following terms:

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

50. The Court recalls that in some previous cases it has departed from the language of the question put to it where the question was not adequately formulated (see for example, in *Interpretation of the Greco-Turkish Agreement of 1 December 1926 (Final Protocol, Article IV), Advisory Opinion, 1928, P.C.I.J., Series B, No. 16*) or where the Court determined, on the basis of its examination of the background to the request, that the request did not reflect the “legal questions really in issue” (*Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980, p. 89, para. 35*). Similarly, where the question asked was unclear or vague, the Court has clarified the question before giving its opinion (*Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982, p. 348, para. 46*).

51. In the present case, the question posed by the General Assembly is clearly formulated. The question is narrow and specific; it asks for the Court’s opinion on whether or not the declaration of independence is in accordance with international law. It does not ask about the legal consequences of that declaration. In particular, it does not ask whether or not Kosovo has achieved statehood. Nor does it ask about the validity or legal effects of the recognition of Kosovo by those States which have recognized it as an independent State. The Court notes that, in past requests for advisory opinions, the General Assembly and the Security Council, when they have wanted the Court’s opinion on the legal consequences of an action, have framed the question in such a way that this aspect is expressly stated (see, for example, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16* and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I), p. 136*). Accordingly, the Court does not consider that it is necessary to address such issues as whether or not the declaration has led to the creation of a State or the status of the acts of recognition in order to answer the question put by the General Assembly. The Court accordingly sees no reason to reformulate the scope of the question.

52. There are, however, two aspects of the question which require comment. First, the question refers to “the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo” (General Assembly resolution 63/3 of 8 October 2008, single operative paragraph; emphasis added). In addition, the third preambular paragraph of the General Assembly resolution

“[r]ecall[s] that on 17 February 2008 the Provisional Institutions of Self-Government of Kosovo declared independence from Serbia”. Whether it was indeed the Provisional Institutions of Self-Government of Kosovo which promulgated the declaration of independence was contested by a number of those participating in the present proceedings. The identity of the authors of the declaration of independence, as is demonstrated below (paragraphs 102 to 109), is a matter which is capable of affecting the answer to the question whether that declaration was in accordance with international law. It would be incompatible with the proper exercise of the judicial function for the Court to treat that matter as having been determined by the General Assembly.

53. Nor does the Court consider that the General Assembly intended to restrict the Court’s freedom to determine this issue for itself. The Court notes that the agenda item under which what became resolution 63/3 was discussed did not refer to the identity of the authors of the declaration and was entitled simply “Request for an advisory opinion of the International Court of Justice on whether the declaration of independence of *Kosovo* is in accordance with international law” (General Assembly resolution 63/3 of 8 October 2008; emphasis added). The wording of this agenda item had been proposed by the Republic of Serbia, the sole sponsor of resolution 63/3, when it requested the inclusion of a supplementary item on the agenda of the 63rd session of the General Assembly (Letter of the Permanent Representative of Serbia to the United Nations addressed to the Secretary-General, 22 August 2008, A/63/195). That agenda item then became the title of the draft resolution and, in turn, of resolution 63/3. The common element in the agenda item and the title of the resolution itself is whether the declaration of independence is in accordance with international law. Moreover, there was no discussion of the identity of the authors of the declaration, or of the difference in wording between the title of the resolution and the question which it posed to the Court during the debate on the draft resolution (A/63/PV.22).

54. As the Court has stated in a different context:

“It is not to be assumed that the General Assembly would . . . seek to fetter or hamper the Court in the discharge of its judicial functions; the Court must have full liberty to consider all relevant data available to it in forming an opinion on a question posed to it for an advisory opinion.” (*Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Reports 1962, p. 157.*)

This consideration is applicable in the present case. In assessing whether or not the declaration of independence is in accordance with international law, the Court must be free to examine the entire record and decide for itself whether that declaration was promulgated by the Provisional Institutions of Self-Government or some other entity.

55. While many of those participating in the present proceedings made reference to the opinion of the Supreme Court of Canada in *Reference by the Governor-General concerning Certain Questions relating to the Secession of*

Quebec from Canada ([1998] 2 S.C.R. 217; 161 D.L.R. (4th) 385; 115 *Int. Law Reps.* 536), the Court observes that the question in the present case is markedly different from that posed to the Supreme Court of Canada.

The relevant question in that case was

“Does international law give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?”

56. The question put to the Supreme Court of Canada inquired whether there was a right to “effect secession”, and whether there was a rule of international law which conferred a positive entitlement on any of the organs named. By contrast, the General Assembly has asked whether the declaration of independence was “in accordance with” international law. The answer to that question turns on whether or not the applicable international law prohibited the declaration of independence. If the Court concludes that it did, then it must answer the question put by saying that the declaration of independence was not in accordance with international law. It follows that the task which the Court is called upon to perform is to determine whether or not the declaration of independence was adopted in violation of international law. The Court is not required by the question it has been asked to take a position on whether international law conferred a positive entitlement on Kosovo unilaterally to declare its independence or, *a fortiori*, on whether international law generally confers an entitlement on entities situated within a State unilaterally to break away from it. Indeed, it is entirely possible for a particular act - such as a unilateral declaration of independence - not to be in violation of international law without necessarily constituting the exercise of a right conferred by it. The Court has been asked for an opinion on the first point, not the second.

III. FACTUAL BACKGROUND

57. The declaration of independence of 17 February 2008 must be considered within the factual context which led to its adoption. The Court therefore will briefly describe the relevant characteristics of the framework put in place by the Security Council to ensure the interim administration of Kosovo, namely, Security Council resolution 1244 (1999) and the regulations promulgated thereunder by the United Nations Mission in Kosovo. The Court will then proceed with a brief description of the developments relating to the so-called “final status process” in the years preceding the adoption of the declaration of independence, before turning to the events of 17 February 2008.

A. Security Council resolution 1244 (1999) and the relevant

UNMIK regulations

58. Resolution 1244 (1999) was adopted by the Security Council, acting under Chapter VII of the United Nations Charter, on 10 June 1999. In this resolution, the Security Council, “determined to resolve the grave humanitarian situation” which it had identified (see the fourth preambular paragraph) and to put an end to the armed conflict in Kosovo, authorized the United Nations Secretary-General to establish an international civil presence in Kosovo in order to provide “an interim administration for Kosovo . . . which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions” (para. 10).

Paragraph 3 demanded “in particular that the Federal Republic of Yugoslavia put an immediate and verifiable end to violence and repression in Kosovo, and begin and complete verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable”. Pursuant to paragraph 5 of the resolution, the Security Council decided on the deployment in Kosovo, under the auspices of the United Nations, of international civil and security presences and welcomed the agreement of the Federal Republic of Yugoslavia to such presences. The powers and responsibilities of the security presence were further clarified in paragraphs 7 and 9. Paragraph 15 of resolution 1244 (1999) demanded that the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups end immediately all offensive actions and comply with the requirements for demilitarization. Immediately preceding the adoption of Security Council resolution 1244 (1999), various implementing steps had already been taken through a series of measures, including, *inter alia*, those stipulated in the Military Technical Agreement of 9 June 1999, whose Article I.2 provided for the deployment of KFOR, permitting these to “operate without hindrance within Kosovo and with the authority to take all necessary action to establish and maintain a secure environment for all citizens of Kosovo and otherwise carry out its mission.” The Military Technical Agreement also provided for the withdrawal of FRY ground and air forces, save for “an agreed number of Yugoslav and Serb military and police personnel” as foreseen in paragraph 4 of resolution 1244 (1999).

59. Paragraph 11 of the resolution described the principal responsibilities of the international civil presence in Kosovo as follows:

- “(a) Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords (S/1999/648);
- (b) Performing basic civilian administrative functions where and as long as required;

- (c) Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections;
- (d) Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peace-building activities;
- (e) Facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords (S/1999/648);
- (f) In a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement . . . ”

60. On 12 June 1999, the Secretary-General presented to the Security Council “a preliminary operational concept for the overall organization of the civil presence, which will be known as the United Nations Interim Administration Mission in Kosovo (UNMIK)”, pursuant to paragraph 10 of resolution 1244 (1999), according to which UNMIK would be headed by a Special Representative of the Secretary-General, to be appointed by the Secretary-General in consultation with the Security Council (Report of the Secretary-General of 12 June 1999 (United Nations doc. S/1999/672, 12 June 1999)). The Report of the Secretary-General provided that there would be four Deputy Special Representatives working within UNMIK, each responsible for one of four major components (the so-called “four pillars”) of the UNMIK régime (para. 5): (a) interim civil administration (with a lead role assigned to the United Nations); (b) humanitarian affairs (with a lead role assigned to the Office of the United Nations High Commissioner for Refugees (UNHCR)); (c) institution building (with a lead role assigned to the Organization for Security and Co-operation in Europe (OSCE)); and (d) reconstruction (with a lead role assigned to the European Union).

61. On 25 July 1999, the first Special Representative of the Secretary-General promulgated UNMIK regulation 1999/1, which provided in its Section 1.1 that “[a]ll legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the Special Representative of the Secretary-General”. Under Section 3 of UNMIK regulation 1999/1, the laws applicable in the territory of Kosovo prior to 24 March 1999 were to continue to apply, but only to the extent that these did not conflict with internationally recognized human rights standards and non-discrimination or the fulfilment of the mandate given to UNMIK under resolution 1244 (1999). Section 3 was repealed by UNMIK regulation 1999/25 promulgated by the Special Representative of the Secretary-General on 12 December 1999, with retroactive effect to 10 June 1999. Section 1.1 of UNMIK regulation 1999/24 of 12 December 1999 provides that “[t]he law applicable in Kosovo shall be: (a) The regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments

issued thereunder; and (b) The law in force in Kosovo on 22 March 1989". Section 4, entitled "Transitional Provision", reads as follows:

"All legal acts, including judicial decisions, and the legal effects of events which occurred, during the period from 10 June 1999 up to the date of the present regulation, pursuant to the laws in force during that period under section 3 of UNMIK Regulation No. 1999/1 of 25 July 1999, shall remain valid, insofar as they do not conflict with the standards referred to in section 1 of the present regulation or any UNMIK regulation in force at the time of such acts."

62. The powers and responsibilities thus laid out in Security Council resolution 1244 (1999) were set out in more detail in UNMIK regulation 2001/9 of 15 May 2001 on a Constitutional Framework for Provisional Self-Government (hereinafter "Constitutional Framework"), which defined the responsibilities relating to the administration of Kosovo between the Special Representative of the Secretary-General and the Provisional Institutions of Self-Government of Kosovo. With regard to the role entrusted to the Special Representative of the Secretary-General under Chapter 12 of the Constitutional Framework,

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

Moreover, pursuant to Chapter 2 (a), "[t]he Provisional Institutions of Self-Government and their officials shall . . . [e]xercise their authorities consistent with the provisions of UNSCR 1244 (1999) and the terms set forth in this Constitutional Framework". Similarly, according to the ninth preambular paragraph of the Constitutional Framework, "the exercise of the responsibilities of the Provisional Institutions of Self-Government in Kosovo shall not in any way affect or diminish the ultimate authority of the SRSG for the implementation of UNSCR 1244 (1999)". In his periodical report to the Security Council of 7 June 2001, the Secretary-General stated that the Constitutional Framework contained

"broad authority for my Special Representative to intervene and correct any actions of the provisional institutions of self-government that are inconsistent with Security Council resolution 1244 (1999), including the power to veto Assembly legislation, where necessary" (Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2001/565, 7 June 2001).

63. Having described the framework put in place by the Security Council to ensure the interim administration of the territory of Kosovo, the Court now turns

to the relevant events in the final status process which preceded the declaration of independence of 17 February 2008.

B. The relevant events in the final status process prior to 17 February 2008

64. In June 2005, the Secretary-General appointed Kai Eide, Permanent Representative of Norway to the North Atlantic Treaty Organization, as his Special Envoy to carry out a comprehensive review of Kosovo. In the wake of the Comprehensive Review report he submitted to the Secretary-General (attached to United Nations doc. S/2005/635 (7 October 2005)), there was consensus within the Security Council that the final status process should be commenced:

“The Security Council agrees with Ambassador Eide’s overall assessment that, notwithstanding the challenges still facing Kosovo and the wider region, the time has come to move to the next phase of the political process. The Council therefore supports the Secretary-General’s intention to start a political process to determine Kosovo’s Future Status, as foreseen in Security Council resolution 1244 (1999).” (Statement by the President of the Security Council of 24 October 2005, S/PRST/2005/51.)

65. In November 2005, the Secretary-General appointed Mr. Martti Ahtisaari, former President of Finland, as his Special Envoy for the future status process for Kosovo. This appointment was endorsed by the Security Council (see Letter dated 10 November 2005 from the President of the Security Council addressed to the Secretary-General, S/2005/709). Mr. Ahtisaari’s Letter of Appointment included, as an annex to it, a document entitled “Terms of Reference” which stated that the Special Envoy “is expected to revert to the Secretary-General at all stages of the process”. Furthermore, “[t]he pace and duration of the future status process will be determined by the Special Envoy on the basis of consultations with the Secretary-General, taking into account the cooperation of the parties and the situation on the ground” (Terms of Reference, dated 10 November 2005, as an Appendix to the Letter of the Secretary-General to Mr. Martti Ahtisaari of 14 November 2005, United Nations dossier No. 198).

66. The Security Council did not comment on these Terms of Reference. Instead, the members of the Council attached to their approval of Mr. Ahtisaari’s appointment the Guiding Principles of the Contact Group (an informal grouping of States formed in 1994 to address the situation in the Balkans and composed of France, Germany, Italy, the Russian Federation, the United Kingdom and the United States). Members of the Security Council further indicated that the Guiding Principles were meant for the Secretary-General’s (and therefore also for the Special Envoy’s) “reference”. These Principles stated, *inter alia*, that

“[t]he Contact Group . . . welcomes the intention of the Secretary-General to appoint a Special Envoy to lead this process . . .

A negotiated solution should be an international priority. Once the process has started, it cannot be blocked and must be brought to a conclusion. The Contact Group calls on the parties to engage in good faith and constructively, to refrain from unilateral steps and to reject any form of violence.

.....

The Security Council will remain actively seized of the matter. The final decision on the status of Kosovo should be endorsed by the Security Council.” (Guiding principles of the Contact Group for a settlement of the status of Kosovo, as annexed to the Letter dated 10 November 2005 from the President of the Security Council addressed to the Secretary-General, S/2005/709.)

67. Between 20 February 2006 and 8 September 2006, several rounds of negotiations were held, at which delegations of Serbia and Kosovo addressed, in particular, the decentralization of Kosovo’s governmental and administrative functions, cultural heritage and religious sites, economic issues, and community rights (Reports of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2006/361, S/2006/707 and S/2006/906). According to the reports of the Secretary-General, “the parties remain[ed] far apart on most issues” (Reports of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2006/707; S/2006/906).

68. On 2 February 2007, the Special Envoy of the Secretary-General submitted a draft comprehensive proposal for the Kosovo status settlement to the parties and invited them to engage in a consultative process (recalled in the Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2007/134, 9 March 2007). On 10 March 2007, a final round of negotiations was held in Vienna to discuss the settlement proposal. As reported by the Secretary-General, “the parties were unable to make any additional progress” at those negotiations (Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2007/395, 29 June 2007, p. 1).

69. On 26 March 2007, the Secretary-General submitted the report of his Special Envoy to the Security Council. The Special Envoy stated that “after more than one year of direct talks, bilateral negotiations and expert consultations, it [had] become clear to [him] that the parties [were] not able to reach an agreement on Kosovo’s future status” (Letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council attaching the Report of the Special Envoy of the Secretary-General on Kosovo’s future status, S/2007/168, 26 March 2007).

After emphasizing that his

“mandate explicitly provides that [he] determine the pace and duration of the future status process on the basis of consultations with the Secretary-General, taking into account the cooperation of the parties and the situation on the ground” (*ibid.*, para. 3), the Special Envoy concluded:

“It is my firm view that the negotiations’ potential to produce any mutually agreeable outcome on Kosovo’s status is exhausted. No amount of additional talks, whatever the format, will overcome this impasse.

.....
The time has come to resolve Kosovo’s status. Upon careful consideration of Kosovo’s recent history, the realities of Kosovo today and taking into account the negotiations with the parties, I have come to the conclusion that the only viable option for Kosovo is independence, to be supervised for an initial period by the international community.” (*Ibid.*, paras. 3 and 5.)

70. The Special Envoy’s conclusions were accompanied by his finalized Comprehensive Proposal for the Kosovo Status Settlement (S/2007/168/Add. 1, 26 March 2007), which, in his words, set forth “international supervisory structures, [and] provide[d] the foundations for a future independent Kosovo” (S/2007/168, 26 March 2007, para. 5). The Comprehensive Proposal called for the immediate convening of a Constitutional Commission to draft a Constitution for Kosovo (S/2007/168/Add. 1, 26 March 2007, Art. 10.1), established guidelines concerning the membership of that Commission (*ibid.*, Art. 10.2), set numerous requirements concerning principles and provisions to be contained in that Constitution (*ibid.*, Art. 1.3 and Ann. I), and required that the Assembly of Kosovo approve the Constitution by a two-thirds vote within 120 days (*ibid.*, Art. 10.4). Moreover, it called for the expiry of the UNMIK mandate after a 120-day transition period, after which “all legislative and executive authority vested in UNMIK shall be transferred *en bloc* to the governing authorities of Kosovo, unless otherwise provided for in this Settlement” (*ibid.*, Art. 15.1). It mandated the holding of general and municipal elections no later than nine months from the entry into force of the Constitution (*ibid.*, Art. 11.1). The Court further notes that the Comprehensive Proposal for the Kosovo Status Settlement provided for the appointment of an International Civilian Representative (ICR), who would have the final authority in Kosovo regarding interpretation of the Settlement (*ibid.*, Art. 12). The Comprehensive Proposal also specified that the mandate of the ICR would be reviewed “no later than two years after the entry into force of [the] Settlement, with a view to gradually reducing the scope of the powers of the ICR and the frequency of intervention” (*ibid.*, Ann. IX, Art. 5.1) and that

“[t]he mandate of the ICR shall be terminated when the International Steering Group [a body composed of France, Germany, Italy, the Russian Federation, the United Kingdom, the United States, the European Union, the European Commission and NATO] determine[d] that Kosovo ha[d] implemented the terms of [the] Settlement” (*ibid.*, Art. 5.2).

71. The Secretary-General “fully support[ed] both the recommendation made by [his] Special Envoy in his report on Kosovo’s future status and the Comprehensive Proposal for the Kosovo Status Settlement” (Letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council, S/2007/168). The Security Council, for its part, decided to undertake a mission to Kosovo (see Report of the Security Council mission on

the Kosovo issue, S/2007/256, 4 May 2007), but was not able to reach a decision regarding the final status of Kosovo. A draft resolution was circulated among the Council's members (see draft resolution sponsored by Belgium, France, Germany, Italy, the United Kingdom and the United States, S/2007/437 Prov., 17 July 2007) but was withdrawn after some weeks when it had become clear that it would not be adopted by the Security Council.

72. Between 9 August and 3 December 2007, further negotiations on the future status of Kosovo were held under the auspices of a Troika comprising representatives of the European Union, the Russian Federation and the United States. On 4 December 2007, the Troika submitted its report to the Secretary-General, which came to the conclusion that, despite intensive negotiations, "the parties were unable to reach an agreement on Kosovo's status" and "[n]either side was willing to yield on the basic question of sovereignty" (Report of the European Union/United States/Russian Federation Troika on Kosovo, 4 December 2007, annexed to S/2007/723).

73. On 17 November 2007, elections were held for the Assembly of Kosovo, 30 municipal assemblies and their respective mayors (Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo S/2007/768). The Assembly of Kosovo held its inaugural session on 4 and 9 January 2008 (Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2008/211).

C. The events of 17 February 2008 and thereafter

74. It is against this background that the declaration of independence was adopted on 17 February 2008. The Court observes that the original language of the declaration is Albanian. For the purposes of the present Opinion, when quoting from the text of the declaration, the Court has used the translations into English and French included in the dossier submitted on behalf of the Secretary-General.

In its relevant passages, the declaration of independence states that its authors were "[c]onvened in an extraordinary meeting on February 17, 2008, in Pristina, the capital of Kosovo" (first preambular paragraph); it "[r]ecall[ed] the years of internationally-sponsored negotiations between Belgrade and Pristina over the question of [Kosovo's] future political status" and "[r]egrett[ed] that no mutually-acceptable status outcome was possible" (tenth and eleventh preambular paragraphs). It further declared that the authors were "[d]etermin[ed] to see [Kosovo's] status resolved in order to give [its] people clarity about their future, move beyond the conflicts of the past and realise the full democratic potential of [its] society" (thirteenth preambular paragraph).

75. In its operative part, the declaration of independence of 17 February 2008 states:

“1. We, the democratically-elected leaders of our people, hereby declare Kosovo to be an independent and sovereign state. This declaration reflects the will of our people and it is in full accordance with the recommendations of UN Special Envoy Martti Ahtisaari and his Comprehensive Proposal for the Kosovo Status Settlement.

2. We declare Kosovo to be a democratic, secular and multi-ethnic republic, guided by the principles of non-discrimination and equal protection under the law. We shall protect and promote the rights of all communities in Kosovo and create the conditions necessary for their effective participation in political and decision-making processes.

.....
5. We welcome the international community’s continued support of our democratic development through international presences established in Kosovo on the basis of UN Security Council resolution 1244 (1999). We invite and welcome an international civilian presence to supervise our implementation of the Ahtisaari Plan, and a European Union-led rule of law mission.

.....
9. We hereby undertake the international obligations of Kosovo, including those concluded on our behalf by the United Nations Interim Administration Mission in Kosovo (UNMIK), . . .

.....
12. We hereby affirm, clearly, specifically, and irrevocably, that Kosovo shall be legally bound to comply with the provisions contained in this Declaration, including, especially, the obligations for it under the Ahtisaari Plan . . . We declare publicly that all states are entitled to rely upon this declaration...”

76. The declaration of independence was adopted at a meeting held on 17 February 2008 by 109 out of the 120 members of the Assembly of Kosovo, including the Prime Minister of Kosovo and by the President of Kosovo (who was not a member of the Assembly). The ten members of the Assembly representing the Kosovo Serb community and one member representing the Kosovo Gorani community decided not to attend this meeting. The declaration was written down on two sheets of papyrus and read out, voted upon and then signed by all representatives present. It was not transmitted to the Special Representative of the Secretary-General and was not published in the Official Gazette of the Provisional Institutions of Self-Government of Kosovo.

77. After the declaration of independence was issued, the Republic of Serbia informed the Secretary-General that it had adopted a decision stating that that declaration represented a forceful and unilateral secession of a part of the territory of Serbia, and did not produce legal effects either in Serbia or in the international legal order (S/PV.5839; Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2008/211). Further to a request from Serbia, an emergency public meeting of the Security Council took place on 18 February 2008, in which Mr. Boris Tadić, the President

of the Republic of Serbia, participated and denounced the declaration of independence as an unlawful act which had been declared null and void by the National Assembly of Serbia (S/PV.5839).

IV. THE QUESTION WHETHER THE DECLARATION OF INDEPENDENCE IS IN ACCORDANCE WITH INTERNATIONAL LAW

78. The Court now turns to the substance of the request submitted by the General Assembly. The Court recalls that it has been asked by the General Assembly to assess the accordancy of the declaration of independence of 17 February 2008 with “international law” (resolution 63/3 of the General Assembly, 8 October 2008). The Court will first turn its attention to certain questions concerning the lawfulness of declarations of independence under general international law, against the background of which the question posed falls to be considered, and Security Council resolution 1244 (1999) is to be understood and applied. Once this general framework has been determined, the Court will turn to the legal relevance of Security Council resolution 1244 (1999), and determine whether the resolution creates special rules, and ensuing obligations, under international law applicable to the issues raised by the present request and having a bearing on the lawfulness of the declaration of independence of 17 February 2008.

A. General international law

79. During the eighteenth, nineteenth and early twentieth centuries, there were numerous instances of declarations of independence, often strenuously opposed by the State from which independence was being declared. Sometimes a declaration resulted in the creation of a new State, at others it did not. In no case, however, does the practice of States as a whole suggest that the act of promulgating the declaration was regarded as contrary to international law. On the contrary, State practice during this period points clearly to the conclusion that international law contained no prohibition of declarations of independence. During the second half of the twentieth century, the international law of self-determination developed in such a way as to create a right to independence for the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation (cf. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, pp. 31-32, paras. 52-53; *East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995*, p. 102, para. 29; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 171-172, para. 88). A great many new States have

come into existence as a result of the exercise of this right. There were, however, also instances of declarations of independence outside this context. The practice of States in these latter cases does not point to the emergence in international law of a new rule prohibiting the making of a declaration of independence in such cases.

80. Several participants in the proceedings before the Court have contended that a prohibition of unilateral declarations of independence is implicit in the principle of territorial integrity.

The Court recalls that the principle of territorial integrity is an important part of the international legal order and is enshrined in the Charter of the United Nations, in particular in Article 2, paragraph 4, which provides that:

“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.”

In General Assembly resolution 2625 (XXV), entitled “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations”, which reflects customary international law (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*, pp. 101-103, paras. 191-193), the General Assembly reiterated “the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State”. This resolution then enumerated various obligations incumbent upon States to refrain from violating the territorial integrity of other sovereign States. In the same vein, the Final Act of the Helsinki Conference on Security and Co-operation in Europe of 1 August 1975 (the Helsinki Conference) stipulated that “the participating States will respect the territorial integrity of each of the participating States” (Art. IV). Thus, the scope of the principle of territorial integrity is confined to the sphere of relations between States.

81. Several participants have invoked resolutions of the Security Council condemning particular declarations of independence: see, *inter alia*, Security Council resolutions 216 (1965) and 217 (1965), concerning Southern Rhodesia; Security Council resolution 541 (1983), concerning northern Cyprus; and Security Council resolution 787 (1992), concerning the Republika Srpska.

The Court notes, however, that in all of those instances the Security Council was making a determination as regards the concrete situation existing at the time that those declarations of independence were made; the illegality attached to the declarations of independence thus stemmed not from the unilateral character of these declarations as such, but from the fact that they were, or would have been, connected with the unlawful use of force or other egregious violations of norm of general international law, in particular those of a peremptory character (*jus*

cogens). In the context of Kosovo, the Security Council has never taken this position. The exceptional character of the resolutions enumerated above appears to the Court to confirm that no general prohibition against unilateral declarations of independence may be inferred from the practice of the Security Council.

82. A number of participants in the present proceedings have claimed, although in almost every instance only as a secondary argument, that the population of Kosovo has the right to create an independent State either as a manifestation of a right to self-determination or pursuant to what they described as a right of “remedial secession” in the face of the situation in Kosovo.

The Court has already noted (see paragraph 79 above) that one of the major developments of international law during the second half of the twentieth century has been the evolution of the right of self-determination. Whether, outside the context of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation, the international law of self-determination confers upon part of the population of an existing State a right to separate from that State is, however, a subject on which radically different views were expressed by those taking part in the proceedings and expressing a position on the question. Similar differences existed regarding whether international law provides for a right of “remedial secession” and, if so, in what circumstances. There was also a sharp difference of views as to whether the circumstances which some participants maintained would give rise to a right of “remedial secession” were actually present in Kosovo.

83. The Court considers that it is not necessary to resolve these questions in the present case. The General Assembly has requested the Court’s opinion only on whether or not the declaration of independence is in accordance with international law. Debates regarding the extent of the right of self-determination and the existence of any right of “remedial secession”, however, concern the right to separate from a State. As the Court has already noted (see paragraphs 49 to 56 above), and as almost all participants agreed, that issue is beyond the scope of the question posed by the General Assembly. To answer that question, the Court need only determine whether the declaration of independence violated either general international law or the *lex specialis* created by Security Council resolution 1244 (1999).

84. For the reasons already given, the Court considers that general international law contains no applicable prohibition of declarations of independence. Accordingly, it concludes that the declaration of independence of 17 February 2008 did not violate general international law. Having arrived at that conclusion, the Court now turns to the legal relevance of Security Council resolution 1244, adopted on 10 June 1999.

B. Security Council resolution 1244 (1999) and the UNMIK Constitutional Framework created thereunder

85. Within the legal framework of the United Nations Charter, notably on the basis of Articles 24, 25 and Chapter VII thereof, the Security Council may adopt resolutions imposing obligations under international law. The Court has had the occasion to interpret and apply such Security Council resolutions on a number of occasions and has consistently treated them as part of the framework of obligations under international law (*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, *I.C.J. Reports 1971*, p. 16); *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Provisional Measures, Order of 14 April 1992, *I.C.J. Reports 1992*, p. 15, paras. 39-41; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America)*, Provisional Measures, Order of 14 April 1992, *I.C.J. Reports 1992*, pp. 126-127, paras. 42-44). Resolution 1244 (1999) was expressly adopted by the Security Council on the basis of Chapter VII of the United Nations Charter, and therefore clearly imposes international legal obligations. The Court notes that none of the participants has questioned the fact that resolution 1244 (1999), which specifically deals with the situation in Kosovo, is part of the law relevant in the present situation.

86. The Court notes that there are a number of other Security Council resolutions adopted on the question of Kosovo, notably Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998) and 1239 (1999); however, the Court sees no need to pronounce specifically on resolutions of the Security Council adopted prior to resolution 1244 (1999), which are, in any case, recalled in the second preambular paragraph of the latter.

87. A certain number of participants have dealt with the question whether regulations adopted on behalf of UNMIK by the Special Representative of the Secretary-General, notably the Constitutional Framework (see paragraph 62 above), also form part of the applicable international law within the meaning of the General Assembly's request.

88. In particular, it has been argued before the Court that the Constitutional Framework is an act of an internal law rather than an international law character. According to that argument, the Constitutional Framework would not be part of the international law applicable in the present instance and the question of the compatibility of the declaration of independence therewith would thus fall outside the scope of the General Assembly's request. The Court observes that UNMIK regulations, including regulation 2001/9, which promulgated the Constitutional Framework, are adopted by the Special Representative of the Secretary-General on the basis of the authority derived from Security Council

resolution 1244 (1999), notably its paragraphs 6, 10, and 11, and thus ultimately from the United Nations Charter. The Constitutional Framework derives its binding force from the binding character of resolution 1244 (1999) and thus from international law. In that sense it therefore possesses an international legal character.

89. At the same time, the Court observes that the Constitutional Framework functions as part of a specific legal order, created pursuant to resolution 1244 (1999), which is applicable only in Kosovo and the purpose of which is to regulate, during the interim phase established by resolution 1244 (1999), matters which would ordinarily be the subject of internal, rather than international, law. Regulation 2001/9 opens with the statement that the Constitutional Framework was promulgated

“[f]or the purposes of developing meaningful self-government in Kosovo pending a final settlement, and establishing provisional institutions of self-government in the legislative, executive and judicial fields through the participation of the people of Kosovo in free and fair elections”.

The Constitutional Framework therefore took effect as part of the body of law adopted for the administration of Kosovo during the interim phase. The institutions which it created were empowered by the Constitutional Framework to take decisions which took effect within that body of law. In particular, the Assembly of Kosovo was empowered to adopt legislation which would have the force of law within that legal order, subject always to the overriding authority of the Special Representative of the Secretary-General.

90. The Court notes that both Security Council resolution 1244 (1999) and the Constitutional Framework entrust the Special Representative of the Secretary-General with considerable supervisory powers with regard to the Provisional Institutions of Self-Government established under the authority of the United Nations Interim Administration Mission in Kosovo. As noted above (see paragraph 58), Security Council resolution 1244 (1999) envisages “an interim administration for Kosovo . . . which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions” (para. 10). Resolution 1244 (1999) further states that “the main responsibilities of the international civil presence will include . . . [o]rganizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections” (paragraph 11 (c)). Similarly, as described above (see paragraph 62), under the Constitutional Framework, the Provisional Institutions of Self-Government were to function in conjunction with and subject to the direction of the Special Representative of the Secretary-General in the implementation of Security Council resolution 1244 (1999).

91. The Court notes that Security Council resolution 1244 (1999) and the Constitutional Framework were still in force and applicable as at 17 February 2008. Paragraph 19 of Security Council resolution 1244 (1999) expressly

provides that “the international civil and security presences are established for an initial period of 12 months, to continue thereafter unless the Security Council decides otherwise”. No decision amending resolution 1244 (1999) was taken by the Security Council at its meeting held on 18 February 2008, when the declaration of independence was discussed for the first time, or at any subsequent meeting. The Presidential Statement of 26 November 2008 (S/PRST/2008/44) merely “welcom[ed] the cooperation between the UN and other international actors, *within* the framework of Security Council resolution 1244 (1999)” (emphasis added). In addition, pursuant to paragraph 21 of Security Council resolution 1244 (1999), the Security Council decided “to remain actively seized of the matter” and maintained the item “Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999)” on its agenda (see, most recently, Report of the Security Council, 1 August 2008-31 July 2009, General Assembly, Official Records, 64th session, Supplement No. 2, pp. 39 ff. and 132 ff.). Furthermore, Chapter 14.3 of the Constitutional Framework sets forth that “[t]he SRSG . . . may effect amendments to this Constitutional Framework”. Minor amendments were effected by virtue of UNMIK regulations UNMIK/REG/2002/9 of 3 May 2002, UNMIK/REG/2007/29 of 4 October 2007, UNMIK/REG/2008/1 of 8 January 2008 and UNMIK/REG/2008/9 of 8 February 2008. Finally, neither Security Council resolution 1244 (1999) nor the Constitutional Framework contains a clause providing for its termination and neither has been repealed; they therefore constituted the international law applicable to the situation prevailing in Kosovo on 17 February 2008.

92. In addition, the Special Representative of the Secretary-General continues to exercise his functions in Kosovo. Moreover, the Secretary-General has continued to submit periodic reports to the Security Council, as required by paragraph 20 of Security Council resolution 1244 (1999) (see the most recent quarterly Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2010/169, 6 April 2010, as well as the preceding Reports S/2008/692 of 24 November 2008, S/2009/149 of 17 March 2009, S/2009/300 of 10 June 2009, S/2009/497 of 30 September 2009 and S/2010/5 of 5 January 2010).

93. From the foregoing, the Court concludes that Security Council resolution 1244 (1999) and the Constitutional Framework form part of the international law which is to be considered in replying to the question posed by the General Assembly in its request for the advisory opinion.

1. Interpretation of Security Council resolution 1244 (1999)

94. Before continuing further, the Court must recall several factors relevant in the interpretation of resolutions of the Security Council. While the rules on treaty interpretation embodied in Articles 31 and 32 of the Vienna Convention on the Law of Treaties may provide guidance, differences between Security

Council resolutions and treaties mean that the interpretation of Security Council resolutions also require that other factors be taken into account. Security Council resolutions are issued by a single, collective body and are drafted through a very different process than that used for the conclusion of a treaty. Security Council resolutions are the product of a voting process as provided for in Article 27 of the Charter, and the final text of such resolutions represents the view of the Security Council as a body. Moreover, Security Council resolutions can be binding on all Member States (*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 54, para. 116), irrespective of whether they played any part in their formulation. The interpretation of Security Council resolutions may require the Court to analyse statements by representatives of members of the Security Council made at the time of their adoption, other resolutions of the Security Council on the same issue, as well as the subsequent practice of relevant United Nations organs and of States affected by those given resolutions.

95. The Court first notes that resolution 1244 (1999) must be read in conjunction with the general principles set out in annexes 1 and 2 thereto, since in the resolution itself, the Security Council: “1. *Decide[d]* that a political solution to the Kosovo crisis shall be based on the general principles in annex 1 and as further elaborated in the principles and other required elements in annex 2.” Those general principles sought to defuse the Kosovo crisis first by ensuring an end to the violence and repression in Kosovo and by the establishment of an interim administration. A longer-term solution was also envisaged, in that resolution 1244 (1999) was to initiate

“[a] political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of the KLA” (Security Council resolution 1244 (1999) of 10 June 1999, Ann. 1, sixth principle; *ibid.*, Ann. 2, para. 8).

Further, it bears recalling that the tenth preambular paragraph of resolution 1244 (1999) also recalled the sovereignty and the territorial integrity of the Federal Republic of Yugoslavia.

96. Having earlier outlined the principal characteristics of Security Council resolution 1244 (1999) (see paragraphs 58 to 59), the Court next observes that three distinct features of that resolution are relevant for discerning its object and purpose.

97. First, resolution 1244 (1999) establishes an international civil and security presence in Kosovo with full civil and political authority and sole responsibility for the governance of Kosovo. As described above (see paragraph 60), on 12 June 1999, the Secretary-General presented to the Security Council his preliminary operational concept for the overall organization of the civil

presence under UNMIK. On 25 July 1999, the Special Representative of the Secretary-General promulgated UNMIK regulation 1999/1, deemed to have entered into force as of 10 June 1999, the date of adoption of Security Council resolution 1244 (1999). Under this regulation, “[a]ll legislative and executive authority with respect to Kosovo, including the administration of the judiciary”, was vested in UNMIK and exercised by the Special Representative. Viewed together, resolution 1244 (1999) and UNMIK regulation 1999/1 therefore had the effect of superseding the legal order in force at that time in the territory of Kosovo and setting up an international territorial administration. For this reason, the establishment of civil and security presences in Kosovo deployed on the basis of resolution 1244 (1999) must be understood as an exceptional measure relating to civil, political and security aspects and aimed at addressing the crisis existing in that territory in 1999.

98. Secondly, the solution embodied in resolution 1244 (1999), namely, the implementation of an interim international territorial administration, was designed for humanitarian purposes: to provide a means for the stabilization of Kosovo and for the re-establishment of a basic public order in an area beset by crisis. This becomes apparent in the text of resolution 1244 (1999) itself which, in its second preambular paragraph, recalls Security Council resolution 1239, adopted on 14 May 1999, in which the Security Council had expressed “grave concern at the humanitarian crisis in and around Kosovo”. The priorities which are identified in paragraph 11 of resolution 1244 (1999) were elaborated further in the so-called “four pillars” relating to the governance of Kosovo described in the Report of the Secretary-General of 12 June 1999 (paragraph 60 above). By placing an emphasis on these “four pillars”, namely, interim civil administration, humanitarian affairs, institution building and reconstruction, and by assigning responsibility for these core components to different international organizations and agencies, resolution 1244 (1999) was clearly intended to bring about stabilization and reconstruction. The interim administration in Kosovo was designed to suspend temporarily Serbia’s exercise of its authority flowing from its continuing sovereignty over the territory of Kosovo. The purpose of the legal régime established under resolution 1244 (1999) was to establish, organize and oversee the development of local institutions of self-government in Kosovo under the aegis of the interim international presence.

99. Thirdly, resolution 1244 (1999) clearly establishes an interim régime; it cannot be understood as putting in place a permanent institutional framework in the territory of Kosovo. This resolution mandated UNMIK merely to facilitate the desired negotiated solution for Kosovo’s future status, without prejudging the outcome of the negotiating process.

100. The Court thus concludes that the object and purpose of resolution 1244 (1999) was to establish a temporary, exceptional legal régime which, save to the extent that it expressly preserved it, superseded the Serbian legal order and which aimed at the stabilization of Kosovo, and that it was designed to do so on an interim basis.

2. The question whether the declaration of independence is in accordance with Security Council resolution 1244 (1999) and the measures adopted thereunder

101. The Court will now turn to the question whether Security Council resolution 1244 (1999), or the measures adopted thereunder, introduces a specific prohibition on issuing a declaration of independence, applicable to those who adopted the declaration of independence of 17 February 2008. In order to answer this question, it is first necessary, as explained in paragraph 52 above, for the Court to determine precisely who issued that declaration.

(a) The identity of the authors of the declaration of independence

102. The Court needs to determine whether the declaration of independence of 17 February 2008 was an act of the “Assembly of Kosovo”, one of the Provisional Institutions of Self-Government, established under Chapter 9 of the Constitutional Framework, or whether those who adopted the declaration were acting in a different capacity.

103. The Court notes that different views have been expressed regarding this question. On the one hand, it has been suggested in the proceedings before the Court that the meeting in which the declaration was adopted was a session of the Assembly of Kosovo, operating as a Provisional Institution of Self-Government within the limits of the Constitutional Framework. Other participants have observed that both the language of the document and the circumstances under which it was adopted clearly indicate that the declaration of 17 February 2008 was not the work of the Provisional Institutions of Self-Government and did not take effect within the legal framework created for the government of Kosovo during the interim phase.

104. The Court notes that, when opening the meeting of 17 February 2008 at which the declaration of independence was adopted, the President of the Assembly and the Prime Minister of Kosovo made reference to the Assembly of Kosovo and the Constitutional Framework. The Court considers, however, that the declaration of independence must be seen in its larger context, taking into account the events preceding its adoption, notably relating to the so-called “final status process” (see paragraphs 64 to 73). Security Council resolution 1244 (1999) was mostly concerned with setting up an interim framework of self-government for Kosovo (see paragraph 58 above). Although, at the time of the adoption of the resolution, it was expected that the final status of Kosovo would flow from, and be developed within, the framework set up by the resolution, the specific contours, let alone the outcome, of the final status process were left open by Security Council resolution 1244 (1999). Accordingly, its paragraph 11, especially in its subparagraphs *(d)*, *(e)* and *(f)*, deals with final status issues only in so far as it is made part of UNMIK’s responsibilities to “[f]acilitat[e] a political process designed to determine Kosovo’s future status taking into account the Rambouillet accords” and “[i]n a final stage, [to oversee]

the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement".

105. The declaration of independence reflects the awareness of its authors that the final status negotiations had failed and that a critical moment for the future of Kosovo had been reached. The Preamble of the declaration refers to the "years of internationally-sponsored negotiations between Belgrade and Pristina over the question of our future political status" and expressly puts the declaration in the context of the failure of the final status negotiations, inasmuch as it states that "no mutually-acceptable status outcome was possible" (tenth and eleventh preambular paragraphs). Proceeding from there, the authors of the declaration of independence emphasize their determination to "resolve" the status of Kosovo and to give the people of Kosovo "clarity about their future" (thirteenth preambular paragraph). This language indicates that the authors of the declaration did not seek to act within the standard framework of interim self-administration of Kosovo, but aimed at establishing Kosovo "as an independent and sovereign state" (para. 1). The declaration of independence, therefore, was not intended by those who adopted it to take effect within the legal order created for the interim phase, nor was it capable of doing so. On the contrary, the Court considers that the authors of that declaration did not act, or intend to act, in the capacity of an institution created by and empowered to act within that legal order but, rather, set out to adopt a measure the significance and effects of which would lie outside that order.

106. This conclusion is reinforced by the fact that the authors of the declaration undertook to fulfil the international obligations of Kosovo, notably those created for Kosovo by UNMIK (declaration of independence, para. 9), and expressly and solemnly declared Kosovo to be bound vis-à-vis third States by the commitments made in the declaration (*ibid.*, para. 12). By contrast, under the régime of the Constitutional Framework, all matters relating to the management of the external relations of Kosovo were the exclusive prerogative of the Special Representative of the Secretary-General:

"(m) concluding agreements with states and international organizations in all matters within the scope of UNSCR 1244 (1999);

(n) overseeing the fulfilment of commitments in international agreements entered into on behalf of UNMIK;

(o) external relations, including with states and international organisations . . ." (Chap. 8.1 of the Constitutional Framework, "Powers and Responsibilities Reserved to the SRSG"), with the Special Representative of the Secretary-General only consulting and co-operating with the Provisional Institutions of Self-Government in these matters.

107. Certain features of the text of the declaration and the circumstances of its adoption also point to the same conclusion. Nowhere in the original Albanian text of the declaration (which is the sole authentic text) is any reference made to the declaration being the work of the Assembly of Kosovo.

The words “Assembly of Kosovo” appear at the head of the declaration only in the English and French translations contained in the dossier submitted on behalf of the Secretary-General. The language used in the declaration differs from that employed in acts of the Assembly of Kosovo in that the first paragraph commences with the phrase “We, the democratically-elected leaders of our people . . .”, whereas acts of the Assembly of Kosovo employ the third person singular.

Moreover, the procedure employed in relation to the declaration differed from that employed by the Assembly of Kosovo for the adoption of legislation. In particular, the declaration was signed by all those present when it was adopted, including the President of Kosovo, who (as noted in paragraph 76 above) was not a member of the Assembly of Kosovo. In fact, the self-reference of the persons adopting the declaration of independence as “the democratically-elected leaders of our people” immediately precedes the actual declaration of independence within the text (“hereby declare Kosovo to be an independent and sovereign state”; para. 1). It is also noticeable that the declaration was not forwarded to the Special Representative of the Secretary-General for publication in the Official Gazette.

108. The reaction of the Special Representative of the Secretary-General to the declaration of independence is also of some significance. The Constitutional Framework gave the Special Representative power to oversee and, in certain circumstances, annul the acts of the Provisional Institutions of Self-Government. On previous occasions, in particular in the period between 2002 and 2005, when the Assembly of Kosovo took initiatives to promote the independence of Kosovo, the Special Representative had qualified a number of acts as being incompatible with the Constitutional Framework on the grounds that they were deemed to be “beyond the scope of [the Assembly’s] competencies” (United Nations dossier No. 189, 7 February 2003) and therefore outside the powers of the Assembly of Kosovo.

The silence of the Special Representative of the Secretary-General in the face of the declaration of independence of 17 February 2008 suggests that he did not consider that the declaration was an act of the Provisional Institutions of Self-Government designed to take effect within the legal order for the supervision of which he was responsible. As the practice shows, he would have been under a duty to take action with regard to acts of the Assembly of Kosovo which he considered to be *ultra vires*.

The Court accepts that the Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, submitted to the Security Council on 28 March 2008, state that “the Assembly of Kosovo held a session during which it adopted a ‘declaration of independence’, declaring Kosovo an independent and sovereign State” (United Nations doc. S/2008/211, para. 3). This was the normal periodic report on UNMIK activities, the purpose of which was to inform the Security Council about developments in Kosovo; it was not

intended as a legal analysis of the declaration or the capacity in which those who adopted it had acted.

109. The Court thus arrives at the conclusion that, taking all factors together, the authors of the declaration of independence of 17 February 2008 did not act as one of the Provisional Institutions of Self-Government within the Constitutional Framework, but rather as persons who acted together in their capacity as representatives of the people of Kosovo outside the framework of the interim administration.

(b) The question whether the authors of the declaration of independence acted in violation of Security Council resolution 1244 (1999) or the measures adopted thereunder

110. Having established the identity of the authors of the declaration of independence, the Court turns to the question whether their act in promulgating the declaration was contrary to any prohibition contained in Security Council resolution 1244 (1999) or the Constitutional Framework adopted thereunder.

111. The Court recalls that this question has been a matter of controversy in the present proceedings. Some participants to the proceedings have contended that the declaration of independence of 17 February 2008 was a unilateral attempt to bring to an end the international presence established by Security Council resolution 1244 (1999), a result which it is said could only be effectuated by a decision of the Security Council itself. It has also been argued that a permanent settlement for Kosovo could only be achieved either by agreement of all parties involved (notably including the consent of the Republic of Serbia) or by a specific Security Council resolution endorsing a specific final status for Kosovo, as provided for in the Guiding Principles of the Contact Group. According to this view, the unilateral action on the part of the authors of the declaration of independence cannot be reconciled with Security Council resolution 1244 (1999) and thus constitutes a violation of that resolution.

112. Other participants have submitted to the Court that Security Council resolution 1244 (1999) did not prevent or exclude the possibility of Kosovo's independence. They argued that the resolution only regulates the interim administration of Kosovo, but not its final or permanent status. In particular, the argument was put forward that Security Council resolution 1244 (1999) does not create obligations under international law prohibiting the issuance of a declaration of independence or making it invalid, and does not make the authors of the declaration of independence its addressees. According to this position, if the Security Council had wanted to preclude a declaration of independence, it would have done so in clear and unequivocal terms in the text of the resolution, as it did in resolution 787 (1992) concerning the Republika Srpska. In addition, it was argued that the references, in the annexes of Security Council resolution 1244 (1999), to the Rambouillet accords and thus indirectly to the "will of the people" (see Chapter 8.3 of the Rambouillet accords) of Kosovo, support the

view that Security Council resolution 1244 (1999) not only did not oppose the declaration of independence, but indeed contemplated it. Other participants contended that at least once the negotiating process had been exhausted, Security Council resolution 1244 (1999) was no longer an obstacle to a declaration of independence.

113. The question whether resolution 1244 (1999) prohibits the authors of the declaration of 17 February 2008 from declaring independence from the Republic of Serbia can only be answered through a careful reading of this resolution (see paras. 94 *et seq.*).

114. First, the Court observes that Security Council resolution 1244 (1999) was essentially designed to create an interim régime for Kosovo, with a view to channelling the long-term political process to establish its final status. The resolution did not contain any provision dealing with the final status of Kosovo or with the conditions for its achievement.

In this regard the Court notes that contemporaneous practice of the Security Council shows that in situations where the Security Council has decided to establish restrictive conditions for the permanent status of a territory, those conditions are specified in the relevant resolution. For example, although the factual circumstances differed from the situation in Kosovo, only 19 days after the adoption of resolution 1244 (1999), the Security Council, in its resolution 1251 of 29 June 1999, reaffirmed its position that a “Cyprus settlement must be based on a State of Cyprus with a single sovereignty and international personality and a single citizenship, with its independence and territorial integrity safeguarded” (para. 11). The Security Council thus set out the specific conditions relating to the permanent status of Cyprus.

By contrast, under the terms of resolution 1244 (1999) the Security Council did not reserve for itself the final determination of the situation in Kosovo and remained silent on the conditions for the final status of Kosovo.

Resolution 1244 (1999) thus does not preclude the issuance of the declaration of independence of 17 February 2008 because the two instruments operate on a different level: unlike resolution 1244 (1999), the declaration of independence is an attempt to determine finally the status of Kosovo.

115. Secondly, turning to the question of the addressees of Security Council resolution 1244 (1999), as described above (see paragraph 58), it sets out a general framework for the “deployment in Kosovo, under United Nations auspices, of international civil and security presences” (para. 5). It is mostly concerned with creating obligations and authorizations for United Nations Member States as well as for organs of the United Nations such as the Secretary-General and his Special Representative (see notably paras. 3, 5, 6, 7, 9, 10 and 11 of Security Council resolution 1244 (1999)). The only point at which resolution 1244 (1999) expressly mentions other actors relates to the Security Council’s demand, on the one hand, “that the KLA and other armed Kosovo Albanian groups end immediately all offensive actions and comply with the

requirements for demilitarization” (para. 15) and, on the other hand, for the “full cooperation by all concerned, including the international security presence, with the International Tribunal for the Former Yugoslavia” (para. 14). There is no indication, in the text of Security Council resolution 1244 (1999), that the Security Council intended to impose, beyond that, a specific obligation to act or a prohibition from acting, addressed to such other actors.

116. The Court recalls in this regard that it has not been uncommon for the Security Council to make demands on actors other than United Nations Member States and intergovernmental organizations. More specifically, a number of Security Council resolutions adopted on the subject of Kosovo prior to Security Council resolution 1244 (1999) contained demands addressed *eo nomine* to the Kosovo Albanian leadership. For example, resolution 1160 (1998) “[c]all[ed] upon the authorities in Belgrade *and the leadership of the Kosovar Albanian community* urgently to enter without preconditions into a meaningful dialogue on political status issues” (resolution 1160 (1998), para. 4; emphasis added). Resolution 1199 (1998) included four separate demands on the Kosovo Albanian leadership, i.e., improving the humanitarian situation, entering into a dialogue with the Federal Republic of Yugoslavia, pursuing their goals by peaceful means only, and co-operating fully with the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia (resolution 1199 (1998), paras. 2, 3, 6 and 13). Resolution 1203 (1998) “[d]emand[ed] . . . that the Kosovo Albanian leadership and all other elements of the Kosovo Albanian community comply fully and swiftly with resolutions 1160 (1998) and 1199 (1998) and cooperate fully with the OSCE Verification Mission in Kosovo” (resolution 1203 (1998), para. 4). The same resolution also called upon the “Kosovo Albanian leadership to enter immediately into a meaningful dialogue without preconditions and with international involvement, and to a clear timetable, leading to an end of the crisis and to a negotiated political solution to the issue of Kosovo”; demanded that “the Kosovo Albanian leadership and all others concerned respect the freedom of movement of the OSCE Verification Mission and other international personnel”; “[i]nsist[ed] that the Kosovo Albanian leadership condemn all terrorist actions”; and demanded that the Kosovo Albanian leadership “cooperate with international efforts to improve the humanitarian situation and to avert the impending humanitarian catastrophe” (resolution 1203 (1998), paras. 5, 6, 10 and 11).

117. Such reference to the Kosovo Albanian leadership or other actors, notwithstanding the somewhat general reference to “all concerned” (para. 14), is missing from the text of Security Council resolution 1244 (1999). When interpreting Security Council resolutions, the Court must establish, on a case-by-case basis, considering all relevant circumstances, for whom the Security Council intended to create binding legal obligations. The language used by the resolution may serve as an important indicator in this regard. The approach taken by the Court with regard to the binding effect of Security Council

resolutions in general is, *mutatis mutandis*, also relevant here. In this context, the Court recalls its previous statement that:

“The language of a resolution of the Security Council should be carefully analysed before a conclusion can be made as to its binding effect. In view of the nature of the powers under Article 25, the question whether they have been in fact exercised is to be determined in each case, having regard to the terms of the resolution to be interpreted, the discussions leading to it, the Charter provisions invoked and, in general, all circumstances that might assist in determining the legal consequences of the resolution of the Security Council.” (*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, *I.C.J. Reports 1971*, p. 53, para. 114.)

118. Bearing this in mind, the Court cannot accept the argument that Security Council resolution 1244 (1999) contains a prohibition, binding on the authors of the declaration of independence, against declaring independence; nor can such a prohibition be derived from the language of the resolution understood in its context and considering its object and purpose. The language of Security Council resolution 1244 (1999) is at best ambiguous in this regard. The object and purpose of the resolution, as has been explained in detail (see paragraphs 96 to 100), is the establishment of an interim administration for Kosovo, without making any definitive determination on final status issues. The text of the resolution explains that the

“main responsibilities of the international civil presence will include . . . [o]rganizing and overseeing the development of provisional institutions for democratic and autonomous self-government *pending a political settlement*” (para. 11 (c) of the resolution; emphasis added).

The phrase “political settlement”, often cited in the present proceedings, does not modify this conclusion. First, that reference is made within the context of enumerating the responsibilities of the international civil presence, i.e., the Special Representative of the Secretary-General in Kosovo and UNMIK, and not of other actors. Secondly, as the diverging views presented to the Court on this matter illustrate, the term “political settlement” is subject to various interpretations. The Court therefore concludes that this part of Security Council resolution 1244 (1999) cannot be construed to include a prohibition, addressed in particular to the authors of the declaration of 17 February 2008, against declaring independence.

119. The Court accordingly finds that Security Council resolution 1244 (1999) did not bar the authors of the declaration of 17 February 2008 from issuing a declaration of independence from the Republic of Serbia. Hence, the declaration of independence did not violate Security Council resolution 1244 (1999).

120. The Court therefore turns to the question whether the declaration of independence of 17 February 2008 has violated the Constitutional Framework

established under the auspices of UNMIK. Chapter 5 of the Constitutional Framework determines the powers of the Provisional Institutions of Self-Government of Kosovo. It was argued by a number of States which participated in the proceedings before the Court that the promulgation of a declaration of independence is an act outside the powers of the Provisional Institutions of Self-Government as set out in the Constitutional Framework.

121. The Court has already held, however (see paragraphs 102 to 109 above), that the declaration of independence of 17 February 2008 was not issued by the Provisional Institutions of Self-Government, nor was it an act intended to take effect, or actually taking effect, within the legal order in which those Provisional Institutions operated. It follows that the authors of the declaration of independence were not bound by the framework of powers and responsibilities established to govern the conduct of the Provisional Institutions of Self-Government. Accordingly, the Court finds that the declaration of independence did not violate the Constitutional Framework.

V. GENERAL CONCLUSION

122. The Court has concluded above that the adoption of the declaration of independence of 17 February 2008 did not violate general international law, Security Council resolution 1244 (1999) or the Constitutional Framework. Consequently the adoption of that declaration did not violate any applicable rule of international law.

123. For these reasons,

THE COURT,

(1) Unanimously,

Finds that it has jurisdiction to give the advisory opinion requested;

(2) By nine votes to five,

Decides to comply with the request for an advisory opinion;

IN FAVOUR: *President* Owada; *Judges* Al-Khasawneh, Buergenthal, Simma, Abraham,

Sepúlveda-Amor, Cançado Trindade, Yusuf, Greenwood;

AGAINST: *Vice-President* Tomka; *Judges* Koroma, Keith, Bennouna, Skotnikov;

(3) By ten votes to four,

Is of the opinion that the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law.

IN FAVOUR: *President* Owada; *Judges* Al-Khasawneh, Buergenthal, Simma, Abraham,

Keith, Sepúlveda-Amor, Cançado Trindade, Yusuf, Greenwood;

AGAINST: *Vice-President Tomka; Judges Koroma, Bennouna, Skotnikov.*

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-second day of July, two thousand and ten, in two copies, one of which will be placed in the archives of the Court and the other transmitted to the Secretary-General of the United Nations.

(Signed) Hisashi OWADA,
President.

(Signed) Philippe COUVREUR,
Registrar.

Vice-President TOMKA appends a declaration to the Advisory Opinion of the Court; Judge KOROMA appends a dissenting opinion to the Advisory Opinion of the Court; Judge SIMMA appends a declaration to the Advisory Opinion of the Court; Judges KEITH and SEPÚLVEDA-AMOR append separate opinions to the Advisory Opinion of the Court; Judges BENNOUNA and SKOTNIKOV append dissenting opinions to the Advisory Opinion of the Court; Judges CANÇADO TRINDADE and YUSUF append separate opinions to the Advisory Opinion of the Court.

(Initialled) H. O.

(Initialled) Ph. C.

INSTRUCTIONS FOR ASSOCIATES

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In writing all contributions for *The Review of International Affairs* authors are kindly asked to respect the following rules.

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2. Articles should be written in *Times New Roman* font, font size 12, with page numbers on the right side of the bottom of the page.
3. The title of the article should be written in capital letters, *in Bold*, font size 14. The title is separated from the text with – *spacing before 18 pt*. Below the title is given the author's forename, middle name and surname (including his title, possibly), the name of the institutions he works for as well as its seat. These data are given in *Italic*.

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6. The *Summary* written in the language of the paper (e.g. Serbian) should be placed after the text. The author should give a concise contents of the paper and the most significant hypothesis his work is based upon.
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9. The first line in every paragraph should by no means be indented by applying tabulator – option *tab*.

10. Latin, Old Greek and other non-English words and terms in the text should be written in *Italic* (e.g. *status quo*, *a priori*, *de facto*, *acquis communautaire*, etc.). The text should contain full names and not initials.

11. Only the following form of quotation marks should be put in the text – “ and ”. In case the additional quotation marks are to be put within these ones it should be done in the following way: “Establishing a Serbian Orthodox Monastic Community in Kosovo, as an integral part of comprehensive ‘final status’ settlement”.

12. Footnotes should be written on the bottom of the page (option *Footnote*), and their marks are solely to be put at the end of the sentence.

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The author's full forename and surname, the title of the monograph (*in Italic*), publisher, place of publishing, year of publishing, p. if one page of the quotation in English is cited, pp. if several pages are quoted. In case several pages are quoted En Dash is applied with no space before and after the numbers (for example 22–50).

When the proceedings in English are quoted and they were edited by more than one editor, then there should be put (eds) in brackets with no full stop after the names of the editors. If there is only one editor then (ed.) is put, including a full stop inside the brackets.

Examples:

John Gillingham, *European Integration 1950–2003*, Cambridge University Press, Cambridge, 2003, p. 221.

Duško Lopandić (ed.), *Regional initiatives in Southeast Europe: multilateral cooperation programs in the Balkans*, Institute of International Politics and Economics, Belgrade, 2001, pp. 24–32.

Theodor Winkler, Brana Marković, Predrag Simić & Ognjen Pribičević (eds), *European Integration and the Balkans*, Center for South Eastern European Studies, Belgrade & Geneva Centre for the Democratic Control of the Armed Forces, Geneva, 2002, pp. 234–7.

b) *Articles in Scientific Journals*

The author's full forename and surname, the title of the paper (with quotation marks), the title of the journal (*in Italic*), the number of the volume, the number of the publication, pp. from–to. The numbers of pages are separated by En Dash (–), with no space. If some data are incomplete it should be clearly stated.

Examples:

Michael Levi, “The Organisation of Serious Crimes”, in: Mike Maguire, Rod Morgan & Robert Reiner (eds), *The Oxford Handbook of Criminology*, Oxford University Press, Oxford, 2003, pp. 878–84. (pp. 878–9 or p. 878).

Robert J. Bunker & John. R. Sullivan, “Cartel Evolution: Potentials and Consequences”, *Transnational Organized Crime*, vol. 4, no. 2, Summer 1998, pp. 55–76.

c) *Articles in Daily Newspapers and Journals*

There should be given the author's name (or his initials, if they are the only ones given), the title of the article – with quotation marks, the title of the newspapers or the journal (*in Italic*), date – in Arabic numerals, the number of the page/pages.

Example:

John Gapper, "Investor votes should count", *The Financial Times*, 17 April 2006, p. 9.

d) *Document quotation*

There should be given the title of the document (with quotation marks), the article, item or paragraph the author refers to, the title of the journal or official gazette containing the document (*in Italic*), the number of the volume, the number of the publication, the place of publishing and year of publishing.

Example:

"Resolution 1244 (1999)", Security Council of the United Nations, 10 June 1999.

e) *Quotation of sources from the Internet*

It should contain the author's name, the title of the contribution or article, a full Internet Website that enables to access the source of quotation by typing the mentioned site, the date of accession to the Web page, page number (if there is one and if presented in PDF format).

Example:

Maureen Lewis, *Who is Paying for Health Care in Eastern Europe and Central Asia?*, IBRD & World Bank, Washington D.C, 2000, Internet, [http://Inweb18.worldbank.org/eca/eca.nsf/Attachments/Who+is+Paying+for+Health+Care+in+Eastern+Europe+and+Central+Asia/\\$File/Who+is+Paying+text.pdf](http://Inweb18.worldbank.org/eca/eca.nsf/Attachments/Who+is+Paying+for+Health+Care+in+Eastern+Europe+and+Central+Asia/$File/Who+is+Paying+text.pdf), 14/09/2004, p. 3.

f) *Repeating of the previously quoted sources*

Ibid. or ibidem is applied only if quoting the previous source in the text, with the page number, and in case the new quotation belongs to the same source (e.g. *ibid.*, p. 11)

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13. The article may contain tables or some other supplements (such as maps, graphs, and the like). It is necessary to give their number and full title (e.g. *Table 1: Human Development Index among EU members* or *Figure 2: State-Building or Sovereignty Strategy*). If the supplement is taken over from the contribution of some other author or a document its source should necessarily be given.

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2. The bibliographic details should be given at the beginning of the review in accordance with the rules prescribed for monographs in footnotes, and with the total number of pages given at the end (e.g. p. 345).

3. Book and conference reviews must not contain footnotes, while all possible remarks should be put in brackets.
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5. Font size, font and justification of the text should be in conformity with the previously mentioned suggestions on writing of articles.
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