



***UNITED
NATIONS***

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



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Advisory opinion of 22 July 2010

On 22 July 2010, the International Court of Justice gave its Advisory Opinion on the question of the Accordance with international law of the unilateral declaration of independence in respect of Kosovo.

The Court was composed as follows: President Owada; Vice-President Tomka; Judges Koroma, Al-Khasawneh, Buergenthal, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood; Registrar Couvreur.

The final paragraph (para. 123) of the Advisory opinion reads as follows:

" ...

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.

Vice-President Tomka appended a declaration to the Advisory Opinion of the Court; Judge Koroma appended a dissenting opinion to the Advisory Opinion of the Court; Judge Simma appended a declaration to the Advisory Opinion of the Court; Judges Keith and Sepúlveda-Amor appended separate opinions to the Advisory Opinion of the Court; Judges Bennouna and Skotnikov appended dissenting opinions to the Advisory Opinion of the Court; Judges Cançado Trindade and Yusuf appended separate opinions to the Advisory Opinion of the Court.

History of the proceedings (paras. 1-16)

The Court begins by recalling that the question on which the advisory opinion 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. It further recalls that that question reads as follows: "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?"

The Court then gives a brief summary of the history of the proceedings.

Reasoning of the Court

The Advisory Opinion is divided into five parts: (I) jurisdiction and discretion; (II) scope and meaning of the question; (III) factual background; (IV) the question whether the declaration of independence is in accordance with international law; and (V) general conclusion.

I. Jurisdiction and discretion (paras. 17-48)

A. Jurisdiction (paras. 18-28)

The Court first addresses 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 "[it] 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."

The Court notes that the General Assembly is authorized to request an advisory opinion by Article 96 of the Charter, which provides that "[t]he General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question." It recalls that Article 12, paragraph 1, of the Charter provides that, "[w]hile the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the... Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests."

The Court observes, however, as it has done on an earlier occasion, that "[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*