



**STATEMENT BY AMBASSADOR MIROSLAVA BEHAM,  
PERMANENT REPRESENTATIVE OF SERBIA TO THE OSCE,  
UNDER CURRENT ISSUES,  
ON THE ADVISORY OPINION OF  
THE INTERNATIONAL COURT OF JUSTICE ON KOSOVO/ SERBIA,  
AT THE 825<sup>th</sup> MEETING OF  
THE OSCE PERMANENT COUNCIL**

29 July 2010

Mr. Chairman,

The delegation of Serbia would like to inform the distinguished Permanent Council on the Serbian position as to the Advisory Opinion rendered by the International Court of Justice on 22. July 2010.

After almost two years of the Court's preoccupation with the issue of whether the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo was in accordance with international law, its opinion was awaited with eager interest by the international political and legal public, and already triggered off heated debates in international media and among expert circles all around the globe. What is, however, most disturbing is that the Court's Advisory Opinion already was greeted with enthusiasm by a number of separatist groups all over the OSCE region and beyond it.

But, Mr. Chairman, let me first explain the outcome of the Court's almost two years of deliberations. A close reading of the Advisory Opinion shows that the ICJ ruled on a very narrow issue – on the very technical content of the declaration of independence. In doing so, the Court considers at first that “general international law contains no applicable prohibition of declarations of independence” and accordingly, the Court “concludes that the declaration of independence of 17 February 2008 did not violate general international law”.

In a second step, the ICJ recognizes that Security Council resolution 1244 (1999) and the Constitutional Framework possess a binding international legal character and thus form part of the international law which is to be considered in replying to the question posed by the General Assembly. The Court then comes to the conclusion that Security Council resolution 1244 “did not bar the authors of the declaration of 17 February 2008 from issuing a declaration of independence”, since it does not contain a prohibition “binding on the authors of the declaration of independence, against declaring independence”.

Further, contrary to the overwhelming evidence presented before it, not only by Serbia but also by the United Nations Secretary-General, the Court refrained from recognizing that the authors of the unilateral declaration of independence were the Provisional Institutions of Self-Government of Kosovo. The Court endorsed the plea that it was adopted by “persons who acted together in their capacity as representatives of the people of Kosovo”. - In other words: According to the Court, the authors of the declaration of independence did not violate the Constitutional Framework, because they did not act *within* this legal order, in the capacity of an institution, but behaved somehow as a private group of people. This approach creates a dangerous precedent.

While reducing it to a mere technical issue, the Court, however, clearly states that its opinion is not about the legal consequences of that declaration, nor about the question whether or not Kosovo has achieved statehood or whether or not Kosovo is a unique case, nor is it about the validity or the legal effects of the recognition of Kosovo by those States who have recognized it as an independent State. The Court also notes that the right of self-determination or secession was not considered by it. The Court, on the other hand, underlines that “it is entirely possible for a particular act – such as a unilateral declaration of independence – not to be in violation with international law without necessarily constituting the exercise of a right conferred by it”.

It is clear, as well, Mr. Chairman, that the Court reaffirmed that both UNSCR 1244 and the Constitutional Framework of Kosovo are in force and continue to apply. This applies as well to the Special Representative of the Secretary General, who is continuing to exercise his functions in Kosovo (para 91 and 92 of the Advisory Opinion respectively). With this in mind, it is clear that the province of Kosovo remains a territory subject to an international regime, whose final status is undetermined. It is therefore not an independent, sovereign state.

To sum up: What the Court *did not say* is that Kosovo’s act of secession from Serbia or its recognition by various countries is legal. But perception is everything, as the *New York Times* stated, and the false perception that the Court ruled in favour of the Albanian authorities in the south Serbian province of Kosovo could have deep and far-reaching consequences for the international community and an effect on a series of separatist movements in the world, who could use – or: misuse the ICJ’s opinion to declare independence and say that it is in compliance with international law. This means that the borders of any State could be constantly endangered by the threat of secessionism – on the grounds of ethnic, religious political or other strivings -, which would lead to long-term instability in the world.

Mr. Chairman,

As the Advisory Opinion of the ICJ stated, the declaration of independence by the Pristina authorities is “an *attempt* to determine finally the status of Kosovo”. This means that the Court found that “a political process designed to determine Kosovo’s future status” envisaged in UNSCR 1244, has not run its course. Proceeding from this, the Court affirmed that the UN General Assembly has a legitimate interest in discussing this issue and its possible consequences. This means that the matter is not

closed but is subject to further consideration by the General Assembly which requested the advisory opinion (as it is stated in para 40 and 44 of the Advisory Opinion). The process before the General Assembly should therefore not be prejudged by any further recognitions, which by definition infringe on the territorial integrity and sovereignty of a member state of the United Nations, namely of the Republic of Serbia. – Allow me to inform the Permanent Council that Serbia submitted yesterday a draft resolution to the sixty-fourth session of the General Assembly calling for the continuation of a peaceful dialogue of the parties.

And may I remind at this point, Mr. Chairman, that unilateralism is and remains a phenomenon that violates basic international norms, as well as the principles of consensus-based security – in the OSCE region and in the world. Serbia is determined to continue the cooperation with the international community in finding a solution that will satisfy both sides. This is the only way to strengthen common priorities, to normalize relations and to finalize the process of the democratic transformation of the Balkans into a stable and prosperous region that would be integrated into the European Union as a whole.

On the grounds of these assessments, Serbia will continue with its peaceful diplomatic activities aiming at the protection of its territorial integrity and based on the full respect of the principles of international law. As it was confirmed by the overwhelming majority of parliamentarians in the National Assembly of Serbia on 26 July, Serbia will never recognize the unilaterally declared independence of Kosovo, because we are deeply convinced that such a unilateral ethnic secession is not in compliance with the principles of the United Nations and can have serious negative implications for the present system of international relations.

Mr. Chairman,

In concluding let me emphasize that it is of crucial importance in this moment to preserve peace and stability in Kosovo, for which the international community bears special responsibility. In this context, it is decisive to avoid any provocations, unilateral measures or the use of violence that would threaten peace, stability and security in the region.

Thank you, Mr. Chairman