

International law questions

Law



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Questions on Kosovo Declaration of Independence Did the declaration of independence violate UN Security Council Resolution 1244 (1999) according to the Court?

The International Court of Justice ruled that the declaration of independence of Kosovo did not violate UN Security Council Resolution 1244/1999.

Essentially the International Court of Justice ruled that UN Security Council Resolution 1244/1999 was implemented to install an interim government as a means of resolving the crisis and to commence reconstruction and stabilization measures. The declaration of independence was not inconsistent with nor compromised the interim measures, but merely provides for a final step in the status of Kosovo.

a) Who were the authors of the declaration according to the Court?

The court took into account the identities of the persons signing the declaration of independence, their respective political positions and the language contained in the declaration of independence. In this regard, the individuals signing the declaration of independence were democratically elected persons and therefore representatives of the people of Kosovo. Moreover, since the persons signing the declaration of independence indicated in the declaration that the independent state supported and would continue the work of the interim government, they were indeed representatives of the people of Kosovo and thus were not acting in the capacity of one of the interim institutions established for reconstruction and stabilisation.

b. Were they bound by UNSCR 1244(1999) according to the Court?

According to the Court, the authors of the declaration of independence were bound by UNSCR 1244/1999 insofar as they were required to observe it until <https://assignbuster.com/international-law-questions-essay-samples/>

the final resolution of the crisis in Kosovo until the provisional institutions were handed over to an established government. The fact that the court emphasized that the declaration of independence was not intended to act within the interim government's mandate speaks to the fact that the authors of the declaration of independence were bound to observe UNSCR 1244/1999. The Court also indicated that the declaration of independence was not intended to usurp the interim government but merely spoke to the future sovereign status of Kosovo. By all indications, it would appear that the Court was of the opinion that the authors of the declaration of independence were bound to comply with UNSCR 1244/1999.

c. DO you agree with the Courts assessment?

I agree with the Court's assessment since, the interim government was installed to diffuse a hostile situation and not to act in a permanent capacity. The interim government could not act in a way that contravened the people of Kosovo's right to self-determination. Since the authors of the declaration of independence acted on behalf of the people of Kosovo that duly elected them to represent their interests, the declaration of independence was entirely appropriate. It was particularly appropriate since the declaration of independence not only recognized the utility of the interim government, but also indicated that it would support and work with the interim government. It therefore follows that the peacekeeping efforts and the reconstruction efforts of the interim government were in no way compromised by the declaration of independence.

2) Did the Court answer the question posed, or did it, answer a question it would rather have been posed? (See in particular judge Koromas dissent)

The initial question was a request for an opinion on whether or not “ the
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unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo” was in accordance with international law?” The Court instead reformulated the question to ask whether or not the declaration of independence contravened UNSCR 1244/1999. Judge Koroma in his dissenting opinion argued that the court did not answer the question giving rise to the action but substituted it with one of its own and as such did not answer the question giving jurisdiction to the court. However, upon reading the Court’s opinion that Court in establishing its jurisdiction answered the question that necessarily follows from international law. Under international law, the parties are bound by UN Resolutions pursuant to the UN Charter. The initial question does ask whether or not the declaration of independence contravened international law. Moreover, the initial question takes the position that the authors of the declaration of independence were acting as a provisional institution under the interim government. The court dealt with that aspect of the question by stating that the authors were not acting as one of the provisional institutions. Therefore, despite the reformulation of the initial request for an opinion, the Court addresses all of the issues raised in the request for an opinion and therefore does answer the question first submitted.

Bibliography

International Court of Justice. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Summary of the Advisory Opinion, 22 July 2010/Summary 2010/2.