

SEVERAL REFLECTIONS ON THE SIGNIFICANCE OF THE ICJ ADVISORY OPINION ON ACCORDANCE WITH INTERNATIONAL LAW OF THE UNILATERAL DECLARATION OF INDEPENDENCE IN RESPECT OF KOSOVO

Beatrice ONICA JARKA*

Abstract

The paper shall focus on the presentation of the reasoning stated in the ICJ Advisory Opinion on the accordance with international law of the unilateral declaration of independence in respect of Kosovo and the significance of the said reasoning in the actual context of international law in respect of new statehood. The paper shall try to point out the existence of an intent of the ICJ by its Advisory Opinion to state a new understanding of the statehood considering that the context of the unilateral independence statement and the capacity in which its authors acted is of sufficient importance to rule on the legality of such statement. By avoiding to rule on the coexistence of the right to territorial integrity and the right of self determination as rights connected with the unilateral statement of independence, the Court lost the opportunity to settle the relation between the two rights in the context of the remedial secession solution in favor of a multiethnic group which was subject to gross human rights violation in the past. Assuming the jurisdiction on the Advisory Opinion, the Court proved itself willing to show that issues which were till now considered purely political and subject to decision of the political organs of the UN may become, even in a narrow approach, points of law.

Keywords: ICJ, Kosovo, independence, jurisprudence, secession

Introduction

On July 22, 2010, the ICJ has delivered its Advisory Opinion on accordance with international law of the unilateral declaration of independence in respect of Kosovo, by deciding among others by ten votes to four that the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law.

The said Advisory Opinion was granted as a response to the United Nations General Assembly question: "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?" While the Court in its Advisory Opinion apparently approached the matter in a narrow formal manner, willfully ignoring the right of Kosovo to secede from Serbia, the significance of the Advisory Opinion is crucial in the actual international context in which Republic of Kosovo has been recognized already by 70 states and states as Romania, Cyprus, Spain or Russia continues to oppose to such recognition.

This paper shall focus on the significance of the ICJ Advisory Opinion, examining both its legal and political dimension and the lost opportunity for the Court to open a reinterpretation of the right to self determination and its exercise by minority groups easily able to declare their

* Lecturer, Ph.D., Law Faculty, "Nicolae Titulescu" University, Bucharest (e-mail: beatrice.onicajarka@cunescu.ro).

independence. The narrow approach of the ICJ in considering only the legality of the statement of independence without going in depth to the rights behind the statement of independence and their exercise in connection with the rights of sovereignty and territorial integrity of Serbia is not going to stop developing a path in which right to secede may become integral part of the right to self determination. It is the ICJ Advisory Opinion which opened the Pandora box for all states which will see in the Kosovo case the acceptance by international community of secession by the unilateral will of the population occupying a certain territory. The Advisory Opinion on Kosovo stands as legal evidence that the international community is ready to embrace unilateral secession despite and against rights to territorial integrity sovereignty. Even considering the unique character of Kosovo situation, there will others who will claim similar treatment.

The significance of the ICJ Advisory Opinion shall be examined from the point of view of the legal aspects considered by the Court in its reasoning and comparison with the existing international law in the field of rights to self determination, right to secede and right to territorial integrity and sovereignty.

The examination of the ICJ Advisory Opinion allows at this point observing the correspondence with the existing doctrine and the other UN organs resolutions and the use of such doctrine and resolutions by ICJ.

Finally the examination of the ICJ Advisory Opinion will allow several reflections on a possible initiation of jurisprudence¹ of ICJ in respect of the self determination right as a possible auxiliary source of law in the determination and interpretation of this right in the postcolonial context.

1. Legal framework

The legal framework is represented by the UN Charter, the 1970 Resolution 2625 (XXV) of the UN General Assembly concerning “ Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with The Charter of United States” or the Final Act of the Conference on Security and Cooperation in Europe, the International Covenants on Civil and Political Rights and respectively on Economical, Social and Cultural Rights,, Security Council resolution 1244 (1999)

2. Description of the Advisory Opinion

2.1. Request for the Advisory Opinion

By a letter dated 15 August 2008 sent to the Secretary-General, Republic of Serbia requested the inclusion in the agenda of the sixty-third session of the General Assembly of a supplementary item entitled “Request for an Advisory Opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law”.

At the second plenary meeting of its sixty-third session held on 19 September 2008, the General Assembly approved the recommendation of the General Committee for inclusion of the item in the agenda of the sixty-third session under heading F. “Promotion of justice and

¹ This work was supported by CNCISIS –UEFISCSU, project number 860 PNII – IDEI 1094/2008 in an exercise of showing how the international jurisprudence is considered an auxiliary source of law in determination and interpretation of the norms of international law.

international law”, and allocated it to the Plenary (A/63/PV.2). In this sense Serbia submitted draft resolution A/63/L.2 dated 23 September 2008 on the “Request for an Advisory Opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law” (A/63/L.2 of 23 September 2008). At the 22nd plenary meeting of its sixty-third session held on 8 October 2008, the General Assembly adopted the draft resolution submitted by Serbia by a recorded vote of 77 in favor to 6 against, with 74 abstentions (A/63/PV.22). The resolution represents the General Assembly resolution 63/3, with the title “Request for an Advisory Opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law” (A/RES/63/3 of 8 October 2008)².

2.2. Proceedings before ICJ

The question addressed to ICJ raised a strong interest among the UN states. Within the time-limit fixed by the Court for that purpose, written statements were filed by 36 states while more than 20 states have oral submissions within the proceedings. The diversity of the states interested in the topic is impressive. Among the states submitting written statements were states supporting the independence of Kosovo as United Kingdom, United States of America or Germany and states which declared that they will not recognize the new created Republic of Kosovo as Romania or Russian Federation.

The authors of the unilateral declaration of independence themselves filed a written contribution. The acceptance of the written contribution of the unilateral declarations of independence within the procedure in front of ICJ represents a strong indication of the ICJ’s belief as to the capacity these authors were acting with. As provided in the ICJ Statute, article 66, ICJ shall receive written statements and oral statements only from states and international organizations in connection to the matter addressed for the Advisory Opinion.

2.3. Conclusion of the Advisory Opinion

On July 22, 2010, the ICJ has delivered its Advisory Opinion on accordance with international law of the unilateral declaration of independence in respect of Kosovo, by deciding among others by ten votes to four that the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law.

2.4. Content of the Advisory Opinion

i. Powers of General Assembly to address the question for Advisory Opinion

After a short description of the factual situation and the legal context, the Court concluded that the General Assembly has legitimate interest in the question, even though this matter is under Security Council consideration.

ii. Scope and meaning of the question

The Court turned to the scope and meaning of the question on which the General Assembly has requested that it give its opinion and considered it being clearly formulated.

In a clear attempt to avoid explicit implications of its opinion, the Court considered that the question addressed by the General Assembly is narrow and specific. In this sense the Court considered that the question posed does not ask whether or not Kosovo has achieved statehood nor

² See International Court Of Justice Reports Of Judgments, Advisory Opinions And Orders, Accordance With International Law Of The Unilateral Declaration Of Independence By The Provisional Institutions Of Self-Government Of Kosovo (Request For Advisory Opinion) Order Of 17 October 2008 at the internet address: <http://www.icj-cij.org/docket/files/141/14799.pdf>

about the validity or legal effects of the recognition of Kosovo by those States which have recognized it as an independent State.

As consequence, the Court was not of the opinion that reformulation of the scope of the question is necessary.

Nevertheless the Court found herself in the position to note that the reference to the *Provisional Institutions of Self-Government of Kosovo*” (General Assembly resolution 63/3 of 8 October 2008) as the authors of the declaration of independence is, comparing with the title of the resolution “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”, a matter which is capable of affecting the answer to the question whether that declaration was in accordance with international law. This is why the Court decided to freely examine the “*entire record and decide for itself whether that declaration was promulgated by the Provisional Institutions of Self-Government or some other entity.*”

Avoiding any matter of secession, the Court felt obliged to make clear that in case of Kosovo the question addressed by the General Assembly does not require 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.*”³

As a consequence on this aspect the Court expressed the opinion that 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.*”

iii. *Legal background for considering the question*

Further on the substance of the matter, the Court analyzed the legal background against which the request has to be considered. Based on the existing international law as to independence declarations the Court reached the conclusion that the practice of States as a whole does not suggest that the act of promulgating the declaration was regarded as contrary to international law but rather that international law contained no prohibition of declarations of independence.

The Court made the difference between the statements of independence within the context of the exercise of the right of self determination and statements of independence outside this context. In connection to this last type of statements, the Court noted that “*the practice of States does not point to the emergence in international law of a new rule prohibiting the making of a declaration of independence in such cases*”⁴.

By merely mentioning the scope of the principle of territorial integrity as enshrined in the international instruments, the resolutions of the Security Council condemning particular declarations of independence invoked by several written submissions in case of Southern Rhodesia, northern Cyprus, Republika Srpska and the right of “*remedial secession*” in the face of the situation in Kosovo, due to their express invocation in the written statements of the participants in the proceedings, the Court concluded nevertheless, that these issues fall outside the scope of the question posed by the General Assembly.

Regarding the Security Council resolution 1244 (1999) and the UNMIK Constitutional Framework created there under, the Court noted that none of the participants in the proceedings 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.

³ See Advisory Opinion on 22 July 2010 at the internet address: <http://www.icj-cij.org/docket/files/141/15987.pdf>

⁴ Advisory Opinion, para. 79

Within the international law background, the Court appreciated 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.

Regarding the regulations adopted on behalf of UNMIK by the Special Representative of the Secretary-General, notably the Constitutional Framework, the Court observed that the Constitutional Framework is binding and derives its binding force from the binding character of resolution 1244 (1999) and thus from international law and in that sense it therefore possesses an international legal character. On the other hand the Constitutional Framework functions in the opinion of the Court 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.

In this regard, the Court noted that Security Council resolution 1244 (1999) and the Constitutional Framework were still in force and applicable as at 17 February 2008 and definitely 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.

Going further to the 1244 (1999) Security Council resolution interpretation, the Court observed⁵ that three distinct features of that resolution are relevant for discerning its object and purpose.

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.

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 mean for the stabilization of Kosovo and for the re-establishment of a basic public order (para.98). In this sense the Court noted that 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 with the purpose to establish, organize and oversee the development of local institutions of self-government in Kosovo under the aegis of the interim international presence.

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.

iv. Identity of the authors of the declaration of independence

The Court considered important to comment on the identity of the authors of the declaration of independence, trying 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 created for the government of Kosovo during the interim phase. After analyzing the text of the declaration and the context of its adoption the Court concluded that 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.

Then, the Court turned to the question whether the authors of the declaration of independence acted in violation of Security Council resolution 1244 (1999) or the measures adopted thereunder representing the Constitutional Framework. In this sense the Court concludes

⁵ Advisory Opinion, para. 97-99

that the Security Council resolution 1244 (1999) does not “*contain 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*”⁶. In the same sense, the Court held that as the declaration was not issued by the Provisional Institutions of Self-Government as set out in the Constitutional Framework, “*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*”⁷. Accordingly, the Court found that the declaration of independence did not violate the Constitutional Framework.

3. Concurring and dissenting opinions

The Advisory Opinion reasoning felt frustrating equally for the judges voting against the opinion but also to several voting for judges. In this sense, four judges from those voting in the favor of the Advisory Opinion considered necessary to address the content of opinion separately. Going from Judge Simma’s statement to that expressed by Judge Cancado Trindade, through the separate opinion of Judge Sepúlveda Amor and that of Judge Yusuf, all express the clear need for clarification of the Court standing as to the Kosovo matter.

3.1. Concurring opinions

Judge Simma⁸ has stated for example that the Court’s interpretation of the General Assembly’s request is unnecessarily limited and potentially misleading reflecting an outdated view of international law. The request deserved in the opinion of Judge Simma a more comprehensive answer, assessing both permissive and prohibitive rules of international law.

In the same sense, Judge Sepúlveda-Amor⁹, after considering that there were no compelling reasons for the Court to decline to exercise jurisdiction in respect of the request of the General Assembly has expressed the opinion that the Court could have taken a broader perspective, providing a more comprehensive response to the request by the General Assembly. Even if the Court has not been asked to decide on consequences produced by the Declaration of Independence, but only to determine whether it is in accordance with international law, the larger picture was necessary. Therefore, issues such as the scope of self-determination, “*remedial secession*”, the extent of the powers of the Security Council in respect of territorial integrity, the fate of a Chapter VII international administration, complexities in the relationship between UNMIK and the Provisional Institutions of Self-Government, and the effect of recognition and non-recognition in the present case fall within the realm of the Court’s advisory functions.

Judge Yusuf¹⁰ delivered its separate opinion following, in principle, the same line of reasoning as his two colleagues mentioned above. In this sense, judge Yusuf stated that the Court overly restricted the scope of the question put to it by the General Assembly. Going further Judge Yusuf considered that while declarations of independence *per se* are not regulated by international

⁶ Advisory Opinion, para.118

⁷ Advisory Opinion, para.121

⁸ See Judge Simka’s Separate Opinion in the case at the internet address: <http://www.icj-cij.org/docket/files/141/15993.pdf>

⁹ See the Judge Sepúlveda – Amor Separate Opinion in the case at the internet address: <http://www.icj-cij.org/docket/files/141/15997.pdf>

¹⁰ See Judge Yusuf’s Separate Opinion in the case at the internet address: <http://www.icj-cij.org/docket/files/141/16005.pdf>

law, the claims they express and the processes they trigger may be of interest to international law and for the Court in expressing a position on the scope and normative contents of the right to self-determination, in its post-colonial conception and the circumstance in which external self-determination of people of Kosovo was legal.

The last and most elaborated separate opinion belongs to Judge Cancado Trindade¹¹. In a 71 pages length opinion, Judge Cancado Trindade felt obliged to analyze in depth the needs and aspirations of the “People” or the “Population”, the international administration of territory, the concern of the United Nations Organization as a whole with the humanitarian tragedy in Kosovo, the Principle of Self-Determination of Peoples under prolonged adversity or systematic oppression or the Kosovo’s Independence with U.N. supervision, Judge Cancado Trindade concluded that states exist for human beings and not *vice-versa* and “*states transformed into machines of oppression and destruction ceased to be States in the eyes of their victimized population*”¹²

3.2. Dissenting opinions

On the other side, in their dissenting opinions, the judges voting against the conclusions of the Advisory Opinion expressed further their frustration as to the Advisory Opinion content.

Reflecting this frustration, the Vice-President Tomka¹³ considered that the Court should have exercised its discretion and declined to respond to the General Assembly’s request, as the Security Council’s silence cannot be interpreted as implying any tacit approval of the declaration and the Advisory Opinion is prejudicial to the exercise of the Security Council’s powers. Vice President Tomka further presented himself in the favoring of considering that final settlement should have been determined by the agreement between the parties or by the Security Council, but not merely by one party as it happened in the situation.

Dissenting opinion of Judge Bennouna¹⁴ was in the sense that, by delivering the Advisory Opinion the Court substituted for the Security Council in exercising its political responsibilities. Judge Bennouna felt compelled to criticize the option undertaken by the Court to respond to the request of the General Assembly in case of Kosovo.

By his dissenting opinion, Judge Skotnikov¹⁵ has also considered that the Court should have used its discretion to refrain from exercising its advisory jurisdiction in the rather peculiar circumstances of the case which implied that an answer to a question posed by one organ of the United Nations, is entirely dependent on the interpretation of a decision taken by another United Nations organ. In his opinion, the Court – both as a principal organ of the United Nations and as a judicial body – must have exercised great care in order not to disturb the balance between the three principal organs General Assembly, Security Council and the Court, as has been established by the Charter and the Statute. Judge Skotnikov also addressed the issue of the Court’s interpretation of general international law. According to the Advisory Opinion, which was supporting the finding that “*general international law contains no applicable prohibition of declarations of independence*”, Judge Skotnikov considered that such an interpretation is a misleading statement

¹¹ See Judge Trindades’s Separate Opinion in the case at the internet address <http://www.icj-cij.org/docket/files/141/16003.pdf>

¹² See Judge Trindades’s Separate Opinion in the case at the internet address <http://www.icj-cij.org/docket/files/141/16003.pdf>

¹³ See Judge Tomka Dissenting Opinion in the case at the internet address: <http://www.icj-cij.org/docket/files/141/15989.pdf>

¹⁴ See Judge Bennouna Dissenting Opinion in the case at the internet address: <http://www.icj-cij.org/docket/files/141/15999.pdf>

¹⁵ See Judge Stontnikov Dissenting opinion in the case at the internet address: <http://www.icj-cij.org/docket/files/141/16001.pdf>

as the general international law simply does not address the issuance of declarations of independence, because “*declarations of independence do not ‘create’ or constitute States under international law.*”

4. Weaknesses of the ICJ Advisory Opinion

The content of the Advisory Opinion has obvious weaknesses revealed in both the concurring and dissenting opinion. The Court after considering in its discretion that it should answer to the question posed by the General Assembly, it limited the scope of the question to general consideration of the unilateral independence statement, taken totally out from the entire context of its issuance which was ultimately more political than legal.

By issuing the Advisory Opinion the Court frustrated not only those declared against the unilateral independence declaration but also those in favor of it. And we do not refer solely to the dissenting and concurring judges but also to the many states participating in the procedure which, most of them, addressed the issues posed by the General Assembly in their complexity as points of law. The Advisory Opinion was like the Court decided to make a step ahead on an unprecedented matter and then its courage failed so the Court took a half of step back, hiding behind a supposed narrow scope of the question.

The question addressed to the Court deals with the very specific issue of how far could go the exercise of two essential international rights one against each other: the right belonging to the state – the right to territorial integrity and another belonging to a “*people*” – the right to self determination, in its extreme form of manifestation the “*remedial secession*” and the issue of new statehood based on the unilateral statement of independence.

In essence, these were the points of law which the Court had to construe in order to assess the legality of the unilateral statement of independence for Kosovo. It was unexpected to see how the Court chooses to consider such a narrow approach of the independence statement going so far as to state that such instrument does not need to be the exercise of a right under international law, eventually the right to self determination. The unilateral statement of independence of a people cannot be obviously seen taken out from the context of international law, which includes the exercise of rights in an independence statement and the effects of such statement. It would have conferred to the Advisory Opinion quality to assess the impact of the independence statement on the territorial integrity of Serbia and to analyze it as an exercise of the right to external self determination – underlining the consequences of such statement the creation of a new state.

4. 1. The state sovereignty and right to territorial integrity

The sovereign equality and rights inherent to sovereignty which include the right to territorial integrity represent for many years the foundation of international law having both legal and political importance. Its enshrining in instruments with both universal and regional significance: the UN Charter, the 1970 Resolution 2625 (XXV) of the UN General Assembly concerning “*Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with The Charter of United States*” or the Final Act of the Conference on Security and Cooperation in Europe evidences the long standing and centrality these legal norms have in international law. ICJ has indeed recently referred to “the central importance in international law and relations of State sovereignty over territory and of the stability and certainty of that sovereignty” (case concerning *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge* (Malaysia/Singapore), 2003). Within

the proceedings the sovereignty and the right to territorial integrity of Serbia represented the main issue by which the unilateral statement of independence of Kosovo was to be interpreted.

The Court had for the first time the opportunity to make clear the application of the principle of sovereignty and territorial integrity in the context of state and non-state entities relation, and to make a first in stating on the significance of this right in connection the rights of minorities and an eventual right to self determination of such groups if necessary.

4.2. The right to self determination and its application outside the process of decolonization

The right of self determination is recognized at international level as having broad application. The principle is enshrined in UN Charter, in the International Covenants on Civil and Political Rights and respectively on Economical, Social and Cultural Rights, the 1970 Resolution 2625 (XXV) of the UN General Assembly concerning “Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with The Charter of United States” or the Final Act of the Conference on Security and Cooperation in Europe. The international doctrine¹⁶ has several times dealt with the right of self- determination, the internal and external determination and the right to remedial secession. By the Advisory Opinion, the Court had the opportunity to finally settle the coexistence of the right of territorial integrity and the right to self determination and the exercise of such right in the context of the territorial integrity of the state, but it did not.

4.3. The declaration of independence and the statehood criteria

The declaration of independence cannot be viewed outside the context of the fulfillment of the statehood criteria by the authors of the declaration.

It is mandatory to interpret the legality of a declaration of independence together with the criteria referring to the statehood. Such criteria should have been analyzed in the context of the entrenched presence of international organizations in Kosovo, such as KFOR, UNMIK and EULEX and their effective governmental responsibilities in the territory and the United Nations Secretary-General’s Special Representative and UNMIK powers to enter into foreign relations. As stated in the concurring opinions, the Court could have discussed also the consequences of the declaration of independence.

4.4. Political nature of the ICJ Court decision

Instead of addressing the points of law in question, exercise of international rights, new statehood issue, the Court preferred to rather take a political approach of the matter stating that an independence statement made a group is not forbidden under international law.

5. Significance of the ICJ Advisory Opinion – Conclusions

While the Court has not settled important points of law as the coexistence of the principles of the Advisory Opinion of the ICJ proclaiming the legality of the statement of independence of Republic of Kosovo has a strong significance to the new statehood concept.

At a first sight its extremely narrow scope could be considered to not contribute to any development of the statehood issue. Nevertheless, despite such a narrow scope there will be states

¹⁶ See James Crawford, *The Creation of States in International Law*, Second Edition, Clarendon Press, Oxford, 2006 or Rosalyn Higgins, *Problems & Process, International Law and how to use it*, Clarendon Press, Oxford, 1996

that do have separatist movements and that will fear that the decision will be interpreted as giving the go-ahead for breakaway regions or *de facto* states to declare independence. It is to be said that the Advisory Opinion implicitly recognizes that Serbia lost its sovereignty over Kosovo as a result of the war crimes committed in that territory.

Following the adoption of the Advisory Opinion, states that supported Kosovo's independence and have recognized Kosovo as an independent state greeted the Advisory Opinion.

It was the U.S. Secretary of State Hillary Clinton who called on all states that have not done so, to recognize Kosovo, while Member of European Parliament for Austrian Social-Democrats Hannes Swoboda said that Kosovo's independence completes the dissolution of Yugoslavia and marks the establishment of a new order in the Balkans Region¹⁷. Therefore the Advisory Opinion shall have an impact on the recognition of the Republic of Kosovo, despite the fact that the Court apparently has not discussed this issue in the Advisory Opinion.

On the other side, it is important to underline that the Advisory Opinion, as narrow as it is, shall have not only an impact on the Republic of Kosovo recognition but also on other interested groups in supporting an international right to secession, recognised by the international community. It should not be forgotten that the Advisory Opinion is grounded on the state practice not forbidding statements of independence and affirms to a certain extent an emerging international rule of law as to the right of secession.

Last but not least, the Advisory Opinion marks also the intent of the Court to proceed on issues considered to be under the realm of political organs of the UN as a statement of independence shall always be the first affirmation of the statehood within international relations and statehood has been considered for a long time exclusively a political consideration.

Whether or not the Advisory Opinion may be considered the initiation of a jurisprudence on the recent developments of the right to self determination outside the colonial context and on their growing acceptance by the international community remains to be seen.

¹⁷ KOSOVO. Weekly Report: ICJ Advisory Opinion on Kosovo Independence 28 July 2010 at the internet address: <http://www.vita.it/news/view/105870>