

Advisory Opinion on Kosovo's Unilateral Declaration of Independence: Strategic Silence by the International Court of Justice

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Abstract

Kosovo, one of Serbia's autonomous provinces unilaterally declared independence in 2008. In denial of such, Serbia sought an opinion from the International Court of Justice, which returned an advisory opinion stating that Kosovo's said declaration does not violate the contemporary international law. The opinion has attracted much criticism for failing to adopt a broader interpretation of the question posed and the limited discussion engaged with, in terms of law related to the posited question. Despite the non-binding nature of the advisory opinions, and the supposedly narrow approach of this opinion, it still has posed many implications not only on the status of Kosovo but also on the development of the international law in relation. This paper attempts to engage in an analysis of the said advisory opinion, its alleged narrowness, and the wider implications it may pose to the international law and its actors, more pertinently on issues of statehood, recognition of states, territorial integrity, and future ramifications for UN peace arrangements.

Keywords: Kosovo, Unilateral declaration of independence, remedial secession, recognition of state, territorial integrity

1. Introduction

The Advisory Opinion of the International Court of Justice (ICJ) on Kosovo's unilateral declaration of independence offers many reasons for the international community to take interest in. Of those interested, *inter alia*, the ones interested in

Kosovo's future standing in the international arena and the separatist/secession movements outside of colonial context, take precedence.

To provide with context; following the disbandment of the Socialist Federal Republic of Yugoslavia in early 1990s,

Serbia as a constituent of the former Yugoslavia attained the statehood and became a member of the United Nations in 1992. Kosovo, another constituent remained to be an autonomous province within Serbia dominantly populated with Albanians. The tensions between Kosovars and the Serbian authorities surfaced largely owing to the racial disparities and ended up in an armed conflict to which NATO intervened. Thereafter, Kosovo was placed within the UN administration with provisional institutions for the temporary administration of the province.¹ It is in this context that Kosovo unilaterally declared itself as an independent state on 17th of February 2008. Although many states including United States, United Kingdom and many from the European Union immediately recognized Kosovo as an independent state, Serbia, Russia, China and many others refused to do so. Following which, Serbia moved the General Assembly of the United Nation to make a reference to the ICJ i.e., UN's judicial arm, causing it to pronounce an advisory opinion on the legality of Kosovo's actions. Perhaps, Serbia intended to obtain an opinion favourable to them, which unfortunately was not the case.

To Serbia's dismay, delivering its opinion on 22nd July 2010², the ICJ stated that Kosovo's unilateral declaration of independence is not a violation of contemporary international law. Although it may appear simple to the bare mind, it indeed is not so. The question put forward for ICJ's opinion; the approach taken by ICJ in characterizing the same and arriving

at a conclusion; the issues touched upon; and more surprisingly the many issues which the ICJ categorically refused to comment on; seem to be having far reaching implications for the international law on statehood. This was evident in the aftermath of the advisory opinion being delivered, where supposedly narrow opinion was misinterpreted by many to support their agendas of separate states and to find grounds for international recognition.

In light of the above, this paper attempts to analyse advisory opinion by the ICJ, its approach to the question posed by the General Assembly with reference to the existing norms and rules of international law with a view of understanding its implications on the future of international law in relation to statehood, recognition of states, and territorial integrity among others.

2. Background to the case

Undoubtedly, with the disintegration of Yugoslavia, Kosovo's history has been controversial. In the backdrop of its long-contested history with Serbia; NATO interventions; being placed under UN Administration; and inconclusive negotiations with Serbia, Kosovo unilaterally declared its independence as a separate state. Serbia in turn launched a major campaign against such declaration and as part and parcel of the same, it sought an advisory opinion on whether the Kosovo's unilateral declaration of independence is in violation of the

¹ Office of the Historian, Foreign Service Institute - United States Department of State
<https://history.state.gov/milestones/1989-1992/breakup-yugoslavia> <accessed on 20th July 2021>

² Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010, p. 403

international law. To do so, Serbia had to cause the General Assembly to pass a resolution and this resolution 63/3 was passed on 8th of October 2008 with 77 votes in favour, 6 votes against and 74 abstentions.³

Owing to the unique case of Kosovo, as further analysed below, the case attracted unprecedented attention worldwide. It marks the first time in which all five members of the UN Security Council attended a case and the very first time for China to take part in such.⁴ On the reference being made, the ICJ unanimously agreed to have jurisdiction on the matter.

It has been repeatedly argued that the ICJ did not adequately answer the question before it. While it may be true to a greater extent, Serbia should also be accountable for the same, since it was Serbia's own question which allowed the ICJ to comfortably interpret it so restrictedly. Thus, many argue that Serbia did not ask the right questions from the ICJ, thereby ended up in a worse situation than before. These allegations on Serbia for not asking the correct question was raised considering the contemporary international law, where there seems to be no general agreement among the jurists whether secession is legal or illegal under international law. The critics argue that the real question to ask would have been *whether Kosovo has attained statehood and whether there is an obligation on third party states not to*

*recognize Kosovo given the circumstances of its independence.*⁵ Arguably, this construction of the question would have compelled the ICJ to comment more explicitly on international law related to secession.

Perhaps, the reason behind the restricted drafting of the question could be to attract more votes in favour of the General Assembly Resolution. By the time the Resolution 63/3 was passed, many states including UK, US, France, Japan have already accepted Kosovo to be an independent state. Arguably, a question other than the one which was put forward would have gotten fewer votes for a reference to the ICJ as the ICJ if agrees to opine on it, could thereby implicate the legality of the actions not of Kosovo, but of the UN member states who recognized it. Serbia thus would have thought it to be a smart move to word the question this way to get an ICJ reference although it turned out to be a strategic blunder in the end.⁶ This would have not been the case, had the ICJ decided to interpret the question more broadly and proactively.

The ICJ, on its defence pointed out that in past requests for advisory opinions, the General Assembly and the Security Council have framed the questions so expressly and therefore, the ICJ feels obligated only to answer the question as framed.⁷ Thereby, the Court effectively did nothing to adopt a broader view but happily confined

³ Although UK, US and France seemed opposing initially to this, later on this objection was lifted as it would otherwise appear to be a undue prevention to Serbia's attempts on peaceful resolution of the dispute

⁴ Ker-Lindsay J., 'Was Kosovo's declaration of independence legal?' 18th July 2020 <https://www.youtube.com/watch?v=j1BGCo1apNE> <accessed on 20th July 2021>

⁵ Borgen C., "The Kosovo Advisory Opinion, Self Determination, and Secession" *Opinio Juris*, 23rd July 2010

<http://opiniojuris.org/2010/07/23/the-kosovo-advisory-opinion-self-determination-and-secession/> <accessed on 20th July 2021>

⁶ *ibid*

⁷ Para 50-51 of the Advisory Opinion

themselves to the question posed by the General Assembly without referring to its obvious ramifications for future. Turning a blind eye to such is nothing but a strategic move by the ICJ itself to duck out all possible questions which would have been harder to answer. Unfortunately, this has only raised more issues on Kosovo and for Serbia and consequently added to the misperceptions as regards international law in relation.

As of now, 14 years into its declaration of independence, Kosovo has been recognized by 117 states⁸ although its membership in the United Nations will be at a hold for Russia and China as permanent members of the Security Council, have not yet extended their recognition of Republic of Kosovo.

3. Significance of the case

Commonly, cases on self-determination and thereby secession have been limited in numbers and limited to domestic decisions for the most. Some of them⁹ have acquired greater significance in academic discourse over the years for obvious reasons.¹⁰ However so, this advisory opinion is not the very first opinion or decision pronounced by the ICJ on a matter of self-determination by a purported state for declaring independence on its own. Nevertheless, prior to Kosovo's opinion from the ICJ, self-determination and thereby

independence have always been discussed in the context of colonization and external occupation or foreign military presence in a state.¹¹ Almost all matters otherwise brought before the ICJ has only received disapproval, upholding the basic principle of respecting territorial integrity of a state. Unlikely therefore, for a minority living within a state be recognized to have the right of self-determination transpiring into the right of secession. However unlikely it may be, this is indeed what transposed by the advisory opinion although it may not have been explicitly conveyed. Thereby, this Advisory Opinion marks the first of its kind to opine on self-determination and right of secession outside the colonial context by the principal judicial organ of the United Nations.¹²

The Court attempts to distinguish this case from the earlier cases such as Rhodesia and Northern Cyprus where the Security Council condemned the declarations of independence by stating that those issues related to an "unlawful use of force or other egregious violations of norms of international law,"¹³ in particular, *jus cogens*. The ICJ in the determination of Kosovo's issue, however, fails to adequately consider any of these earlier determinations and the principle of territorial integrity in its conventional sense. It is worthy to note that, with reference to any of these, the Court did not

⁸ Kosovo Thanks You <https://www.kosovothanksyou.com> <accessed on 30th July 2021>

⁹ *Madzimbamuto v. Lardner-Burke & Philip George* [1968] UKPC 2 concerning Southern Rhodesia and Canadian Supreme Court decision to the Reference by the Governor-General Concerning Certain Questions Relating to the Secession of Quebec from Canada [1998] 2 SCR 217

¹⁰ Christakis T., "The ICJ Advisory Opinion on Kosovo: Has International Law Something to Say about

Secession?" (2011) 24 *Leiden Journal of International Law* 73, 74

¹¹ Ker-Lindsay J., 'Was Kosovo's declaration of independence legal?' 18th July 2020 <https://www.youtube.com/watch?v=j1BGCo1apNE> <accessed on 20th July 2021>

¹² Christakis T., "The ICJ Advisory Opinion on Kosovo: Has International Law Something to Say about Secession?" (2011) 24 *Leiden Journal of International Law* 73, 74

¹³ Para 81 of the Advisory Opinion

wholeheartedly engage in an analysis of the consequences of its opinion. The Court's attempt to interpret the question "*Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?*" as restrictive as possible appears to be the reason behind the limited discussion of the intertwined issues and international law itself. As evident from the Opinion, the ICJ has only dedicated six paragraphs for the discussion of law on secession of the total 123 paragraphs of its opinion which appears to be a deliberate strategy by the Court to avoid ruling on a debated topic as such.¹⁴ Although the Court casually disregarded its consequences, the advisory opinion has left room for many interpretations of the current international law on self-determination and secession thereby. Thus, undeniably making this opinion significant to be analysed in terms of its scope and application.

4. Implications of the Advisory Opinion

The advisory opinion although not explicitly, yet impliedly, commented on many aspects that the international community took interest in. In fact, the allegations on undesired narrow interpretation of the question from Serbia to the ICJ is with merit. The ICJ unequivocally expresses its intention to give the question a narrow interpretation as evident from its own words. However, with all due respect, this is to the detriment of the

real consequences of such opinion which the judges failed to account for.

*"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... Accordingly, the Court does not consider that it is necessary to address such issues...in order to answer the question put by the General Assembly. The Court accordingly sees no reason to reformulate the scope of the question."*¹⁵

As explicated by their words, the Court engaged in a surprisingly limited discussion of international law, unlike to what the Court does in general, as regards the advisory opinions.¹⁶ They miserably failed to honour their own words in a previous occasion, which emphasized on how ineffectual an advisory opinion could be if incomplete, and in fact how it could mislead the requesting organization as to the rules applicable to the matter at hand.¹⁷

This self-imposed restrictive approach of the Court is a lost opportunity which, if utilized could have addressed the issue of

¹⁴ Christakis T., "The ICJ Advisory Opinion on Kosovo: Has International Law Something to Say about Secession?" (2011) 24 Leiden Journal of International Law 73, 74

¹⁵ Para 51 of the Advisory Opinion

¹⁶ Christakis T., "The ICJ Advisory Opinion on Kosovo: Has International Law Something to Say about

Secession?" (2011) 24 Leiden Journal of International Law 73, 76

¹⁷ Interpretation of the Agreement of 25th March 1951 between the WHO and Egypt, Advisory Opinion of 20th December 1980, para. 35

self-determination outside of colonial context and how new states could be legally established. Conversely, the Court merely declared that there are no general prohibitions under international law in respect of unilateral declaration of independence.

*"The practice of States... [in the second half of the twentieth century] does not point to the emergence in international law of a new rule prohibiting the making of a declaration of independence in such cases."*¹⁸

This blanket statement that international law does not contain any prohibition on the self-declarations as such, is unequivocally an archaic finding and interpretation of the law, for the simple reason that non-prohibition does not always mean automatic permission to the same. The ICJ has surprisingly failed to account the possibility of such and as Judge Simma, although siding with the majority is highly critical of how the quality of the advisory opinion could be derogated by the same.¹⁹ Holding the same as the reason, dissenting Judge Bennouna stated that although advisory opinion has no binding effect and therefore sets no precedent, it may very well guide and influence the referring authority, in this case the General Assembly in taking their action.²⁰ This becomes even more problematic, where the narrower interpretation of the question has precluded the ICJ from analysing the relevant legal consequences and thus giving limited guidance to the member states in the

recognition of Kosovo as a state. This is to the detriment of the rights of Serbia who is already a member state of UN, in terms of its Sovereignty and territorial integrity.

The ICJ blatantly refuses to explore whether a rule authorizing secession exists in international law.

*"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."*²¹

This is where it becomes pertinent to have asked the right questions from the ICJ instead of what was asked. If the question was *whether Kosova and its provisional institutions of self-governance had the right to self-determination under international law that would give Kosovo the right to unilateral secession from Serbia*, the answer would be different²² and have obligated the Court to find that international law does not endow a right of secession under the circumstances.

However, in its effort to be confined to the question, the Court did not in any way declare Kosovo's statehood to be positive or negative. Furthermore, it did not expressly state that Kosovo or any other entity outside the colonial context had the right to secession, nor did it endorse any attempt to apply external self-

¹⁸ Para 79 of the Advisory Opinion

¹⁹ Para 10 of the Declaration of Judge Bruno Simma

²⁰ Para 24 of the Dissenting Opinion of Judge Mohomad Bennouna

²¹ Para 56 of the Advisory Opinion

²² Christakis T., "The ICJ Advisory Opinion on Kosovo: Has International Law Something to Say about Secession?" (2011) 24 Leiden Journal of International Law 73, 76

determination outside colonial context or to the theory of remedial secession. Nevertheless, it failed to acknowledge that international law, disfavours secession and embodies numerous hurdles against it in favour of the territorial integrity of the parent state, i.e., Serbia in this case.

To dismay, the ICJ opined that the scope of the principle of territorial integrity is confined to the sphere of relations between the states.²³ Arguably, this is not really the case. While it is applicable to relations between the states, it is well applicable to entities within those states. If not, it will be an incentive for all secessionists to demand and declare separate states at their will. This application of the principle has been used in earlier cases such as Comoros and have been infused into many international conventions governing minority rights.²⁴

A Declaration of Independence has little importance if that purported state is not recognized by others. It is the recognition which entails legal consequences. For those states who recognize Kosovo, the latter will be entitled to enjoy all privileges and obligations of statehood within the legal system of the recognizing states. In respect of others, there would be neither privileges nor obligations.²⁵ All the same, whether a state recognizes the other or not, is purely a political exercise²⁶ as exemplified in the instant situation. If it was a legal exercise, Kosovo would not have been recognized by many states immediately after the declaration since Kosovo's territory and

effective control was in dispute. Pertinently, all states have agreed to uphold the territorial integrity of each other. In essence, one can argue that those states who have recognized and endorsed Kosovo's actions have failed to abide by the fundamental duty to respect for an already recognized state's - Serbia's - territorial integrity. Thus, it appears that recognition of states by others could occur irrespective of the legitimate fulfilment of legal conditions under international law by the new state. More pertinently yet surprisingly, the Court referred to Declarations of Independence to be domestic affairs thus the principle of territorial integrity is not applicable.²⁷

The Court also directed that in particular circumstances the declarations of independence would be condemned by the Security Council like in the cases of Rhodesia or Northern Cyprus, owing to the use of unlawful force or other egregious violations of norms of international law. Consequently, it held that the practice of Security Council as appears from the above is that in exceptional cases, i.e., where violation of *jus cogens* involved, the Security Council will prohibit and condemn any declaration of independence but not generally so. Thus, the ICJ emphatically distinguished the case of Kosovo, in making its declaration of independence to be consistent with international law.²⁸

Having concluded that international law in general does not contain any bar to

²³ Para 80 of the Advisory Opinion

²⁴ Article 21 of the European Framework Convention for the Protection of National Minorities

²⁵ *Ibid.*, 453

²⁶ Shaw M. N., *International Law* (6th Ed., Cambridge University Press, 2008) 445

²⁷ Cirkovic E., "An Analysis of the ICJ Advisory Opinion on Kosovo's Unilateral Declaration of Independence" 2010 11(8) *German Law Journal* 901

²⁸ Cirkovic E., "An Analysis of the ICJ Advisory Opinion on Kosovo's Unilateral Declaration of Independence" 2010 11(8) *German Law Journal* 901, 902

declaring independence unilaterally, the Court moved to investigate the *lex specialis* as created by the UN Security Council (SC) Resolution 1244 of 1999 under which the UN administration and Provisional Self-Governing institutions were established in Kosovo. The resolution reaffirmed the territorial integrity and sovereignty of Federal Republic of Yugoslavia (the legal personality of which is continued by Serbia).

Albeit, the Court indifferently mentioned that,

“...UNMIK was essentially designed to create an interim regime 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 of its achievement”.²⁹

and therefore, the SC Resolution has no bearing on the Declaration of independence and that it is not in violation of the Constitutional framework under the resolution.

Yet again, among the most questionable conclusions the ICJ arrived at lies the identity of those who authored the declaration of independence. Although it was the same members of the Assembly of Kosovo: Provisional institutions established under the UN administration who authored it, the Court refused to accept so. Instead, the Court held that they have

acted in a private capacity in the exercise of their right to self-determination and not in the capacity under the UNMIK, which is hard to follow in the logical sense. On the contrary there is evidence as presented by the dissenting Judge Bennouna, the “*Secretary-General and his Special Representative in Kosovo*” stated in writing “*that the declaration was in fact the work of the recently elected Assembly of the Provisional Institutions of Self-Government of Kosovo*”.³⁰

This interpretation appears to have been made to avoid any objections that could be raised on the grounds that these institutions have exceeded their power and thereby have acted *ultra vires* which in turn could have changed the entire dynamic of the case. This was strongly brought together in the dissenting opinions of the four judges. Although this received some attention from the majority, they attempt to counter such by stating that the authors of the declaration are exempted from abiding by UNMIK Constitutional Framework. Yet again, all four dissenting judges strongly disagree with this notion.³¹ As Judge Bennouna correctly points out, even if the capacity in which the authors have declared independence could be private, that should not effectually exempt them from the legal order established by UNMIK regulation for the simple reason that “*all those living in Kosovo... must comply with the régime of self-government established by the United Nations*”.³² Thus, the majority's argument

²⁹ Para 114 of the Advisory Opinion

³⁰ Para 47 -50 of the Dissenting Opinion of Judge Mohomad Bennouna

³¹ Wolff S., “The ICJ and Kosovo's Declaration of Independence: Anything Resolved?” 25th July 2010

<https://www.e-ir.info/2010/07/25/does-the-advisory-opinion-of-the-international-court-of-justice-on-kosovo%e2%80%99s-declaration-of-independence-resolve-anything/> <accessed on 20th July 2021>

³² Para 64 of the Dissenting Opinion of Judge Mohomad Bennouna

as to the identity of the authors seems to be ill-founded.

Many countries making submission on Kosovo's behalf claimed it to be a *sui generis* case. Undoubtedly, all conflicts have its own particular facts and historical elements. This, however, was sought to be employed as a legal argument to convince the international community that the case is unique and that it would entail no further implications for the future of international law. Simply put, to establish that it would not set precedent.³³ It is nevertheless important to note that, the ICJ did not treat Kosovo to be such in anywhere of its opinion. Instead, it went on to investigate the general law for any prohibitions and the SC Resolution 1244 particularly applicable for this case to answer the question. The precedential effect of this opinion cannot therefore be refuted.

Considering the above, it appears that ICJ lost disastrously in its effort to confine itself to answer only the question posed and nothing else. Despite its restricted construction, the implications stemming from the same were widespread. This is evidently demonstrated by many statements given in the aftermath of the opinion. Leading figures in separatist regions around the world; Bosnian freedom fighters, Abkhazia and South Ossetia in the Caucasus, have welcomed the ICJ decision stating that they are to be guided by it and should continue their fight for future

recognition taking Kosovo and its declaration of independence to serve as precedent for them.³⁴ Whether the ICJ envisaged it or not, the reality evidences for the ramifications of the ICJ's opinion. However, the separatist movements are likely to notice that Kosovo's circumstances were different with them being placed under UN administration for a long period with prolonged yet ineffective negotiations being in place. Moreover, Kosovo is a classic example demonstrating that international support and recognition plays a major role in the process. Nevertheless, these separatist movements may also conveniently forget and disregard the same in furthering their political agendas. On the other hand, the states within which such separatist movements are operating are now in tension. For instance, given that the Court specifically cited the case of Cyprus as one in which the UN SC has expressly provided for conditions making a Declaration a violation of international law, Turkish Cypriots can draw little comfort from this. In contrast, in relation to South Ossetia and Abkhazia, where such resolution is unlikely as Russia has already recognized their self-declared independence, Georgia's situation is capricious as it will not be offered the same protection under international law as Cyprus.³⁵ Thus, although argued not to have set precedent in the legal sense, ICJ's Advisory Opinion on Kosovo's status has

³³ Christakis T., "The ICJ Advisory Opinion on Kosovo: Has International Law Something to Say about Secession?" (2011) 24 Leiden Journal of International Law 73, 81

³⁴ Caplan R., "The ICJ's Advisory Opinion on Kosovo" Peace Brief 55, United States Institute of Peace, 17th Sep 2010
[https://www.usip.org/sites/default/files/PB55%20The%20](https://www.usip.org/sites/default/files/PB55%20The%20ICJs%20Advisory%20Opinion%20on%20Kosovo.pdf)

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³⁵ Wolff S., "The ICJ and Kosovo's Declaration of Independence: Anything Resolved?" 25th July 2010
<https://www.e-ir.info/2010/07/25/does-the-advisory-opinion-of-the-international-court-of-justice-on-kosovo%e2%80%99s-declaration-of-independence-resolve-anything/> <accessed on 20th July 2021>

evidently encouraged entities to fight for separate states.³⁶

Furthermore, the advisory Opinion fails to take account of the implication it has on the UN peace keeping operation.³⁷ The Opinion attempts to establish that the authors of the declaration have acted in their own personal capacity other than as members of the provisional institutions for self-governing under the UNMIK and its Constitutional framework, as aforementioned. However, it is suggested that the ICJ failed to successfully establish the same. Assuming otherwise, the ramification of the Opinion is still not the best. It could in either case, more strongly in the latter, suggests that UN peace keeping operations, followed by UN SC administration would pave the way for secessionists to create separate states without any hindrance. This is because such setup will render the parent state without any control over the disputed territory and unable to militarily defend the same, thus leading the disputed territory to statehood if followed by a unilateral declaration of independence by or facilitated by the provisional institutions. No sensible state would then be ready to allow UN peace corps or any such settlement or arrangement within their territory and risk their sovereignty. Without consent none of these international efforts are going to be effective thus, meaningless. Unfortunately, the ICJ appears oblivious to these realities.

Despite the wide-spread criticism on limited legal discourse afforded by the Advisory Opinion, some contend that the ICJ did better by supporting the political will of the member states rather than *over-defining* rules of self-determination, secession and recognition which may be deliberately vague (or non-existent).³⁸ This argument nevertheless is difficult to follow considering the very purpose behind the establishment of a judicial body within the UN framework. It should not be forgotten that the ICJ is the highest adjudicating authority as regards international matters and that it is expected to provide unfailing, unbiased opinions and determinations, for the peaceful, effective, and efficient resolution of the disputes referred to it. International law operates on the premise of co-operation and mutual trust. To shake that, is to threaten international peace and order, and the collapse of the system. The international community does not require a Court which would subject itself to political pressure or what seems to be the popular expectation. This might not be possible with the power dynamics in the world. Nevertheless, in matters of legal significance affecting the very premise on which international legal order is founded upon, neither the ICJ nor any other international body should be excused to compromise the principles of international law.

5. Conclusions

³⁶ Thorp A., 'International Court of Justice Advisory Opinion on Kosovo's declaration of independence' House of Commons Library 4th May 2011

³⁷ *ibid*

³⁸ Borgen C., "The Kosovo Advisory Opinion, Self Determination, and Secession" *Opinio Juris*, 23rd July 2010
<http://opiniojuris.org/2010/07/23/the-kosovo-advisory-opinion-self-determination-and-secession/> <accessed on 20th July 2021>

Statehood, Recognition of a State as a central plank of statehood, right of self-determination and right of remedial secession, all remain to be grey areas of international law demanding some light, despite their unchallenged significance. In such circumstances, Advisory Opinion sought from the ICJ on the unilateral declaration of independence by Kosovo is indeed a loss of a valuable opportunity for the ICJ to clarify those very important issues in contemporary international law.³⁹ Regrettably, it was not only a lost opportunity but one that resulted in further confusions and misconceptions among the stakeholders, despite its clear manifestation of not pronouncing upon the issue of statehood.

Categorically, the Court stated three things. Firstly, general international law contains no applicable prohibition of declarations of independence. Secondly, the authors of the declaration were not the Provisional Institutions of Self-Government of Kosovo but acted in their capacity as representatives of the people of Kosovo. Thirdly and finally, that SC Resolution 1244 (1999), was not violated by the declaration and consequently determining that Kosovo's Declaration of Independence does not violate International Law. It merrily chose to be silent on matters whether Kosovo has attained statehood or the legal consequences of the declaration which they declared to be legal, leaving greater room for state actors, secessionist groups of

ongoing conflicts to interpret the opinion to suit their political agendas. This is nothing but a reminder that, recognition of states by others is merely a political exercise and is has very little to do with international law.

However, the reasons analysed in the preceding sections of this paper further point towards some problematic findings of the ICJ and its necessary implications for future. Territorial integrity of a state, which all member states are bound to respect, have arguably been breached in the case. Secession by Kosovars, along with their recognition as a state by others, has threatened the Serbian territory. This necessarily is welcomed by many secessionists, separatists' groups claiming to be exercising their right to self-determination although outside of a colonial context. Undeniably, the case of Kosovo is unique as the UK Government said it is.⁴⁰ Nevertheless, it is frivolous to conclude that this would not set precedent, as the uniqueness of the case is of little importance to those fighting for a separate state, within a state.

Statehood and recognition of such territories will remain to be a political decision for the most part. Nonetheless, the Advisory Opinion has left pertinent considerations for UN framework if it is to continue as a forerunner in international relations, peace-keeping and effective dispute resolution.

³⁹ Wolff S., "The ICJ and Kosovo's Declaration of Independence: Anything Resolved?" 25th July 2010 <https://www.e-ir.info/2010/07/25/does-the-advisory-opinion-of-the-international-court-of-justice-on->

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⁴⁰ HC Deb 27 July 2010 c85WS

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