The Kosovo Advisory Opinion of the International Court of Justice*

I. Introduction

1. The Advisory Opinion proceeding concerning Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (the Kosovo Advisory Opinion)¹ is the first in which all of the permanent members of the Security Council have participated in both the written and oral proceedings,² a situation

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The original version contains this abstract: “This note first summarizes the Kosovo Advisory Opinion of the International Court of Justice of 22 July 2010 and then makes observations regarding several issues involved in the proceedings: the reformulation of the question presented by the United Nations General Assembly, the interpretation of Security Council resolution 1244 and the Constitutional Framework, self-determination and remedial secession and the unlawful use of force by the NATO in 1999.”

¹ Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, 22 July 2010 (Kosovo AO), ICJ Reports 2010. All materials regarding this matter are found at the ICJ website (http://www.icj-cij.org).
² Ibid., paras.6, 14, listing written statements received and oral statements heard.
not found even in the *Nuclear Weapons* Advisory Opinion proceedings. During the period leading up to the proceedings, a great deal of literature appeared, including the *Agora: Kosovo* published in the *Chinese Journal of International Law*. One could easily feel the high stakes in the proceedings.5

2. Against this background, the Advisory Opinion given by the Court on 22 July 2010 appears anti-climatic. To the question asked by the United Nations General Assembly (UNGA)—“Is the unilateral declaration of independence by the Provisional Institutions of Self-government of Kosovo in accordance with international law?”—the Court replied that it “Is of the opinion that the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law”.6 Earlier on in the opinion, the Court decided that it would not deal with the issue as to whether, outside the defined context relating to previous colonial experience or alien subjugation, international law provides for a right of self-determination or “remedial secession”,7 a question helping to engender much of the attention to the request for advisory opinion.

3. In this note, I will first summarize the background to the proceedings and the Kosovo Advisory Opinion itself. I will then make observations regarding several issues involved in the proceedings: the reformulation of the question presented by the UNGA, the interpretation of Security Council resolution 1244 and the Constitutional Framework, self-determination and remedial secession and the unlawful use of force by the NATO in 1999. In so doing, I do not aspire to present comprehensive arguments about, or solutions to, the potential problems identified.

II. The background

4. Often it is said that Kosovo has been the cradle of Serbian culture. According to one encyclopaedia, the name Kosovo is derived from a Serbian place-name

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3 Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Reports 1996, 226, paras.5, 9, listing written statements received and oral statements heard.
5 For an analysis of these high stakes, see Rein Müllerson, Precedents in the Mountains: On the Parallels and Uniqueness of the Cases of Kosovo, South Ossetia and Abkhazia, 8 Chinese JIL (2009), 2–25.
6 Kosovo AO, paras.1, 123(3).
7 Ibid., para.83.