

(By *byronica*, 24.7.2010)



The ICJ majority opinion combines the best of sophistry with the worst of pettifoggery. Its advisory ruling is a perversion of truth and justice. In other words, just more of the same we have seen in the Balkans since 1991, and even before.

The three-hour-long reading of the majority opinion of the International Court of Justice had barely begun when cheerleaders of the pseudo-state hit the world media with their *pronunciamentos* that the Kosovo question had been settled in favor of independence. Their sole piece of evidence was the tortured holding of ten of the judges that the February 2008 unilateral declaration of independence (UDI) “did not violate general international law.” Leave aside for the moment that, on cue, the ICJ’s insubstantial observation immediately was morphed – as the ten unworthies knew it would be – into “Kosovo independence is in accordance with international law” and thence, to “Kosovo really is a state.”

Leave aside the damage done to the reputation of what had been one of the few institutions of the international system that had been respected as relatively resistant to political pressure.

Leave aside the short-term jubilation of the Albanian mafia kingpins who run Kosovo and their skills worldwide, as well as the comparable disheartenment of not only Serbs but anyone with a decent respect for justice and the very concept of the rule of law.

Instead, ask: what really happened at the Court, and what difference will it make? Short answer to both parts of the question: not much.

As to the decision itself: The majority opinion rambled at length, combining the best of sophistry with the worst of pettifoggery, to justify answering not the question the ICJ was asked, but the one the majority preferred to answer. Specifically, since the (Albanian Muslim) Provisional Institutions of Self-Government (PISG) created under UN Security Council Resolution 1244

obviously had no authority to declare anything valid about the province's status, the majority declined to answer the validity of a declaration of the PISG *qua* PISG.

Instead, the Provisional Institutions – or rather the same individuals who both issued the UDI and who constitute the PISG, but were somehow not acting as the PISG when they issued the UDI – were transformed by an act of pure invention of the Court into a voice of the people of Kosovo generally (as if such existed), whose declaration was outside of (though not, it seems, in violation of) any identifiable legal constraint. Since anyone can “declare” anything without impacting international law, which concerns only actions of states, international law was, *ergo*, not violated.

It is a stunning perversion of any concept of juridical thought. If one takes the time to read the majority opinion (which almost no one actually does – it is enough to refer to it in respectful tones) and compare it to the dissents, the worthlessness of the former is inescapably evident.

More important is what comes next on the international political front. Predictably, the Obama Administration – notably Vice President Joseph Biden and Secretary of State Hillary Clinton – weighed in immediately, the former with a friendly call to Serbian President Boris Tadić, the latter with an appeal to the world community to jump on board the Kosovo recognition train bound for glory and the EU. As for the Biden-Tadić “come to Jesus” talk, I'll leave the speculation to others. As for the Clinton appeal, we shall see what the real political waves may be. My guess is, again: not much.

To be sure, the global hosannas to the Court included the usual caveats regarding Kosovo's “uniqueness” and implied notice stamped on the opinion that negative consequences of any principle of law cited herein applicable only to Serbs. Separatists around the world seem not to have gotten the memo, however. Already we hear the “us too” chorus from Palestinians, Armenians (Nagorno-Karabakh), Ossetians, Abkhazians, Catalans, Basques, Kurds, etc.

To the extent that most global opposition to Kosovo's supposed statehood is generated by fear of separatism, this decision paradoxically will scare many more countries than it convinces. Spain and Romania have already reaffirmed their firm opposition. Slovakia and Cyprus will be unshakable. (Greece, unreliable from the start, is a greater concern.) But when the matter is examined country by country, it is apparent that the decision may prompt another dozen recognitions, a score at most.

ICJ on Kosovo: Less Than Meets the Eye

Пише: James Jatras
петак, 30 јул 2010 14:01

This still would not be a majority in the UN General Assembly, and still not a way to get past a Russian and Chinese veto under Chapter Two, Article 4 of the UN Charter, according to which membership is by "... decision of the General Assembly upon the recommendation of the Security Council." Not only Russia and China, but the rest of a world where Washington's voice matters less and less will not be swayed but will be even more adamant in their opposition to legitimating separatism: India and Pakistan, Iran and Israel, Indonesia, Brazil, South Africa, Argentina, Mexico, Ukraine, Georgia, most of Latin America, most of Africa.

What might have been... The real tragedy is that if the independence of the Court – heretofore one of the less disreputable of the UN institutions – had not been subverted, and if a decent decision had been forthcoming, the possible ratchet the other way might have been significant. Some countries – Czech Republic comes to mind – having been bullied into what they know to be an immoral and destructive position, might have used the Court's ruling as an excuse to do the right thing and withdraw recognition. That path to "walking the dog back," and perhaps setting the stage for genuine and serious negotiations, unfortunately, is closed for the foreseeable future. What we will have is what we have now: stalemate, tension, and threat of violence.

Viewed in context, the ICJ advisory ruling is a setback, a crying shame, and a perversion of truth and justice. In other words, just more of the same we have seen in the Balkans since 1991 and even before. What it means finally is that the multi-front struggle continues, not only for Kosovo but for simple honesty and decency. So what has changed?

The author is Director of the American Council for Kosovo www.savekosovo.org

<http://www.balkanstudies.org/articles/icj-kosovo-less-meets-eye>