

Blow for separatism

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The international court has set a dangerous precedent in opining that Kosovo's declaration of independence did not violate international law.

GERALD VAN DAALEN/AFP



Hisashi Owada (second from right), President of the International Court of Justice, speaks during the Kosovo trial

THE advisory opinion of the International Court of Justice (ICJ), given on July 22, endorsing the "independence" of Kosovo has come as a shock not only to Serbia but also to a host of countries around the world battling secessionist and divisive forces. The learned judges of the court ruled in a 10-4 decision that the unilateral declaration of independence by Kosovo in February 2008 was valid under international law.

The ICJ, however, clarified that its ruling pertained only to Kosovo's declaration of independence, not to its status as an independent state. Hisashi Owada, the head of the ICJ, said international law contained "no prohibitions on the declaration of independence" and, therefore, Kosovo's declaration of independence did not violate international law. Serbia had asked the ICJ, through the auspices of the United Nations General Assembly, to rule on the legality of Kosovo's action.

The advisory opinion of the ICJ was immediately welcomed in many Western capitals, especially Washington, London, Paris and Berlin. The governments there had played an important role in the break-up of Yugoslavia. Kosovo hosts one of the biggest bases of the North Atlantic Treaty Organisation (NATO) in the region.

The United States State Department spokesman was quick to endorse the ICJ's verdict, and Secretary of State Hillary Clinton called on the international community "to move beyond the issue of Kosovo's status" and recognise its statehood. Currently, 69 countries have extended recognition to Kosovo. The ICJ's landmark ruling could help Kosovo cross the magic figure of 100, which would then let it qualify for formal U.N. membership. Kosovo's Prime Minister, Fatmir Sejdiu, said the ICJ's decision "finally removes all doubts that countries that don't recognise Kosovo still have".



Serbian President Boris Tadic said his country would never accept the non-binding verdict of the ICJ. He said the ICJ opinion was “difficult” and Serbia would “never accept the unilateral declaration of independence by Kosovo”. Most Serbs consider Kosovo their spiritual heartland. The Serb minority in Kosovo has virtually established an autonomous enclave in the tiny breakaway country. The ICJ’s decision may embolden Kosovo to use military means to establish control over the Serb minority in the north. There have already been clashes there. The Serbs have stocked up on weapons to prepare for any eventuality.

Serbia has offered “enhanced autonomy”, bordering on virtual independence, to Kosovo and wants the U.N. General Assembly to vote on the issue when it meets in September. Serbia had argued in the ICJ that Kosovo’s declaration of independence challenged its sovereignty and undermined international law.

The United States and the major powers in the European Union seem to be confident that Serbia’s desire to join the E.U. will eventually make it accept the reality of an independent Kosovo. The Serbian President has said that a confrontation with the West on the issue will be counterproductive for the country’s plans to integrate with the E.U.

Russia for dialogue

Russia said the ICJ’s decision would have no influence over its policy on Kosovo. The Russian foreign office spokesman said a solution to the issue was possible only through dialogue between Belgrade (the capital of Serbia) and Pristina (the capital of Kosovo). The Russian envoy to NATO, Dmitry Rogozin, said there was no question of Moscow accepting the splitting of a country that is a U.N. member. Chechen rebels are still carrying out hit-and-run attacks in the Caucasus and have not given up their dreams of secession. Until recently they had the implicit support of many Western and West Asian countries.

China said it would continue to “respect the sovereignty and territorial integrity of Serbia”. Beijing also stressed “that respect for sovereignty and territorial integrity is the basic principle of international law and the basis of today’s global legal system”. The reaction was an implicit criticism of the ICJ’s position on Kosovo’s declaration of independence, an action that provided succor to the separatists in Tibet and Xingjian.

ALEXA STANKOVIC/AFP



SERBIAN PRESIDENT BORIS Tadic (centre) at an extraordinary Parliament session on July 26 in Belgrade held in the wake of the ruling by the ICJ.

New Delhi's response has been low-key, unlike Moscow's and Beijing's, as it does not want to anger unnecessarily its close strategic ally, the U.S. The Indian Foreign Ministry spokesman said the government was studying the ICJ's ruling and there was no change in the government's position. New Delhi has not recognised Kosovo's unilateral declaration of independence.

Five E.U. members, which are themselves battling secessionist forces, have refused to recognise Kosovo's independence. Spain is facing challenges to its unity in the Basque and Catalan regions. Cyprus has been unilaterally partitioned, with the Turkish Cypriots claiming the northern half of the island. Greece, Slovakia and Romania are also facing challenges from restive minorities.

Important global powers like Russia, China and India fear that the ICJ's ruling will set up a dangerous precedent. China, for the first time since the 1960s, made an oral presentation at the ICJ, arguing against recognition being granted for an independent Kosovo.

The leaders of many breakaway regions in the world view the ICJ's ruling as a green signal to declare formal independence. In fact, breakaway regions like Nagorno-Karabakh, an Armenian-dominated enclave inside Azerbaijan, are preparing to follow suit and declare independence. The leaders of Abkhazia and Southern Ossetia say the ICJ ruling has given them also the right to seek self-determination. These two regions had broken away from Georgia with Moscow's military help. Kosovo, too, was created by U.S. and NATO troops masquerading as peacekeepers during the last Balkan war, 11 years ago. After Yugoslavia was bombed into submission, Kosovo was declared a U.N. protectorate. In reality, it was a NATO protectorate created on the basis of the propaganda that the Yugoslav government of Slobodan Milosevic had perpetrated acts of genocide there.

'Responsibility to protect'

The E.U. then put in motion the "process of supervised independence" for the protectorate. During the conflict in Kosovo, the Canadian government sponsored an International Commission on Intervention and State Sovereignty, known as R2P (responsibility to protect). This doctrine, endorsed

wholeheartedly by the West, maintains that if a state is unwilling or unable to uphold its duty of protection to its people, then this duty falls upon the international community.

Russia, too, justified its intervention in Abkhazia and Southern Ossetia in 2008 on the basis of “humanitarian intervention” to protect the enclaves from ethnic cleansing by Georgia. Moscow showed the West that it, too, can play a similar game. The West is using the R2P rationale to interfere in Darfur and other parts of the world.

LAURA BOUSHNAK/AFP



OSOVAN SERBS IN a cafe in the northern part of the divided Kosovan town of Mitrovica on August 4. People of this ethnic group consider themselves victims of injustice.

The ICJ's opinion should be seen in this context. Serbian Foreign Minister Vuk Jeremic warned recently that there were about 50 Kosovos waiting to happen on the African continent alone. Pandora's Box has been well and truly opened.

The ICJ has taken a clear position on the issues of self-determination and territorial integrity for the first time in more than 40 years. The ICJ stated that international law recognised “a right to self-determination for the people of non-self-governing territories” and that the “principles of territorial integrity applies only to the sphere of relations between states”.

Edwin Bakker, an expert on international law at the Netherlands Institute of International Relations Clingendael, told The Financial Times that the ruling would strengthen separatists round the globe. “Cases that have been confronted with very brutal repression may feel that their chances for an independent state have increased,” he said. Bakker also noted that it was for the first time since the break-up of Pakistan in the early 1970s that a country had become independent despite strong opposition from the state it was separating from.

Observers are of the view that the strong language in the ICJ ruling will give additional legal ammunition to separatist and independence movements. The ruling is sure to provide a fillip to long-running struggles, such as the one in Western Sahara, which the African Union views as an unfinished agenda of the decolonisation struggle. The other gainers will no doubt be groups whose struggles for independence have been given the status of “international dispute”. Already some Western commentators have drawn parallels between Kashmir and Kosovo. Edwin Bakker said the cases comparable to Kosovo were the conflicts in Myanmar (Karen, Shan), Iraq (Kurdistan) and India (Kashmir).