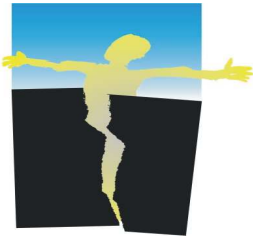


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Status of Kosovo

Serbia has not recognized Kosovo's independence as a new reality in the region. Its strategy for maintaining the status quo was meant to impose partition as a result of the reality in the field. Ever since Kosovo's independence declaration, Serbia's persistent diplomatic action has had a single goal – to impel partition of Kosovo. Vojislav Kostunica's plan to win the early elections (May 2008) by playing on the card of Kosovo's independence failed. However, some international circles, including the United Nations, backed the Serbian government's decision to transfer the Kosovo issue to legal terrain – i.e. to the International Court of Justice and its advisory opinion about the legality of Kosovo independence.



The proceedings before the International Court of Justice /ICJ/ in The Hague (December 1-10, 2009) were not seen in Serbia as a triumphant campaign in the name of international justice one would expect after all those stories in the media and statements by officials. Argumentation and composition of Serbia's delegation, the media coverage of the event and the messages publicized in

parallel with it were somewhat inconsistent with a year-long enthusiasm for Serbia's diplomatic motion in the UN (February 2008) to file for an advisory opinion about the legality of Kosovo's self-proclaimed independence.

Dusan Batakovic, historian and incumbent ambassador to France, was at the head of Serbia's delegation. Contrary to all expectations, Serbian media have not been exactly preoccupied with the event. Hardly any media outlet sent a special reporter to The Hague. Unlike in Kosovo, the proceedings were not broadcast live in Serbia. The event was not a challenge even for the public broadcasting service, RTS, let alone for some other television.

At the beginning of "historical proceedings" in The Hague, Foreign Minister Vuk Jeremic said he expected the advisory opinion to strengthen "our interpretation as a predominant one at the international arena."¹ This statement signaled ensuing actions by Serbia's diplomatic service.

It is no secret that Belgrade works towards Kosovo's partition. This strategy was evident even in the discussion in ICJ. And all this leads to the conclusion that the official Belgrade will do its best to present the Court's advisory opinion – at home and abroad – as a suggestion for renewal of negotiations of sorts between Belgrade and Prishtina in which Belgrade will place the partition option on the agenda.

¹ *Politika*, December 1, 2009.

President of the ICJ Hisashi Ovada also announced the possibility for different interpretation of the advisory opinion. On the eve of the discussion he said the opinion would be comprehensive but not given in the form of a uniform answer.

Because of the argumentation in favor of Kosovo's independence presented by Croatia's and Bulgaria's representatives over the proceedings before the ICJ, Serbia aggravated anew its relations with its closest neighbors.

Pros and cons

More than twenty countries presented their arguments on Kosovo's independence during the ten-day public proceedings before the International Court of Justice. Kosovo's independence declaration practically divided the world over pros and cons. The pro countries argued that Kosovo had been a part of the dysfunctional state of Serbia for years and under its repression culminating in political violence and massive use of force, notably in the period 1998-99. The countries opposing Kosovo's independence argued that territorial sovereignty should be respected and that fragmentation of states could be a global precedent leading to chaos and instability.

The very fact that about the same number of countries presented their pros (14) and cons (12) also testifies of the international legal controversy over "the right to a state."

Serbia's and Kosovo's representatives opened the debate. The Serbian delegation argued that Kosovo institutions ("provisional" as it named them) had not been entitled to adopt "an independence act" and that the act itself had "undermined the foundations of the international law."² For their part, representatives of Kosovo claimed that independence was irrevocable as it was only "a natural course of events following on years-long repression against Kosovo Albanians by Belgrade authorities."³

² *Politika*, December 2, 2009.

³ *Ibid.*



Head of the Serbian delegation Dusan Batakovic reminded that Serbia peacefully responded to independence declaration. However, this meant not that it was "irresolute to defend its sovereignty and territorial integrity," he said. According to Batakovic, the case of Kosovo is a challenge for the international law since the ICJ advisory opinion will be of major significance for UN and "provide guidelines for functioning of the world organization's bodies."⁴

British lawyer Michael Wood, who led the Prishtina team, argued that the case of Kosovo was unique and, therefore, called for unique response. The Independence Declaration did not come all of a sudden, he said, but was "a natural outcome of the political process the Security Council launched in 2005 and which ended in 2007."⁵

All the pros and cons presented by representatives of the countries taking part in the debate were mostly along the lines of the two confronting views. The countries that have not recognized Kosovo so far (Greece, Argentina, Venezuela, Vietnam, etc.) sided up with Serbia, whereas those recognizing it (Great Britain, Jordan, France, etc.) stood up for Kosovo Albanians' right to independence. Generally speaking, countries' attitudes towards independence of Kosovo were rather conditioned by their domestic situations and potential secessionist aspirations at national level. As a country that might be faced with such challenge, China for the first time ever took part in proceedings of this type. Its representative Xhie Handxi underlined, "Sovereign states have the right to prevent unilateral secession and protect their integrity."⁶

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Beta News Agency, *Politika*, December 8, 2009.

Though it actually used “the Kosovo precedent” by recognizing secessionist Georgian republics of Abkhazia and South Ossetia (2008), Russia defended Serbia’s position before the ICJ. According to its representative, Kiril Gregorian, UN Resolution 1244 is still in force and, therefore, no institution whatsoever is authorized to declare independence. This is why UN Special Representative Martti Ahtisaari was not authorized to end Belgrade-Prishtina negotiations and recommend independence as the only viable solution, he argued. Russia takes that unilateral proclamation of independence was prohibited “outside the colonial context.”⁷

US representative Harold Hongju Koh presented his argumentation on the same day as his Russian counterpart. He was the only one to invoke a verdict by the International Criminal Court for Former Yugoslavia /ICTY/ - the verdict passed to Milan Milutinovic and “the group of five” incorporating evidence of the crimes committed under the auspices of a state. Arguing that only states are obliged to respect the principle of territorial integrity but not entities within them, Koh said US perceived independence declaration as the final stage of ex-Yugoslavia’s disintegration. Kosovo’s independence reinforced regional stability and “opened the door to European future” to all states, he concluded.⁸

Argumentation in favor of the right of Kosovo Albanians to self-determination presented by Sir Michael Wood, member of the UN Commission for International Law, was among the strongest. Claiming that universal international law comprises no rules on legality of secession, he elaborated the history of Serbia’s repression against Albanians in Kosovo: from 1912, through Aleksandar Rankovic to Slobodan Milosevic in 1999.⁹

⁷ *Politika*, December 9, 2009.

⁸ *Politika*, December 9, 2009.

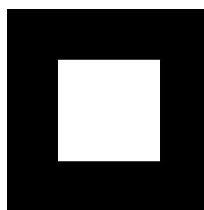
⁹ *Blic*, December 13, 2009.

Media coverage and parallel views

The media in Serbia did not carry detailed stories about the proceedings before the ICJ, despite the fact that they were more focused on them than before. Tabloids almost totally marginalized the proceedings, whereas “serious” media did to publicize in-depth expert opinions and analyses. Reports were generally correct, though more inclined towards Serbia’s position.

While three Kosovo-based televisions were broadcasting live the proceedings, not a single station from Serbia did it despite the fact that signal from ICJ is free of charge and any accredited TV station with a van for satellite transmission is welcome to air from the courtroom. TV stations usually engage local crews at the cost of 1,000-1,500 Euros per day. But no station from Serbia was interested in any such arrangement.¹⁰

While the proceedings were on in ICJ some Belgrade-seated media carried hints about an upcoming official offer for partition of Kosovo. Addressing the annual meeting of the Serbian Academy of Arts and Science¹¹ /SANU/ a couple of days before the proceedings began, President Boris Tadic said that what Serbia needed was innovativeness in negotiating Kosovo status, the same as in its foreign affairs and other areas. “One who did not learn a simple lesson that a rigid and excessively traditional approach failing to produce any result should not be used any more, loses the right and legitimacy to perform any duty in present times,” said Tadic.¹²



In the article titled “Neither White nor Black” *Politika* and *Danas* carried on the same day, retired ambassador

¹⁰ *Politika*, December 6, 2009.

¹¹ Outstanding members of SANU such as Dobrica Cosic or Aleksandar Despic have been advocating „a historical agreement between Serbs and Albanians“ – actually partition of Kosovo.

¹² *Politika*, December 13, 2009.

Radoman Jovic wrote that ICJ advisory opinion would be blurred and incomplete (“neither black nor white”). Jovic does not offer any concrete proposal but claims that all earlier “mantras” the incumbent government has taken over for its predecessor (“we shall never recognize Kosovo”) “lead nowhere.” Referring to President Tadic’s statement about “the necessity of a more flexible attitude towards Kosovo,” he says he hopes there is a vision “that would result in a new strategy for finding a viable solution acceptable to the two peoples.”¹³

No matter how rationally argued, all the published articles actually indicated that partition would be the most rational solution of all. In this context, *Politika* carried an article by Stephen Mayer, professor of national security and political science at the Washington National University of Defense. Under the headline “What Does Victory Look Like in Kosovo” Prof. Mayer argues that the advisory opinion – no matter to whose advantage it might be – will make no difference. The Kosovo issue, he says, can only be solved justly in a political process “in which both sides are ready for compromise and sacrifice.” “Belgrade must acknowledge that it cannot get back the entire Kosovo – not even should it offer it an extended autonomy. And Prishtina must acknowledge that it shall never be capable of moving forward unless ready to hand over the area North of the Ibar River to Serbia and create special conditions for other territories with majority Serb population,” writes Mayer.¹⁴

Serbia’s Foreign Minister Vuk Jeremic was the first to hint at Kosovo’s partition though he has wasted enormous energy in blocking its recognition for almost two years now and considerably contributed to the success of Serbia’s motion in UN last year. He never said it explicitly but two of his interviews published on the eve of ICJ proceedings were most indicative. In his interview with *Politika*, Jeremic reminded that

¹³ *Politika, Danas*, December 2, 2009.

¹⁴ *Politika*, December 9, 2009.

previous negotiations failed because both parties had definitely defined “outcome coordinates” in advance. Presently, we are focused on renewal of the negotiations, he said. And should there be another round of negotiations, “we should all manifest our readiness for a compromise that would secure stability of the region in the long run and speed up the process of EU accession for the entire Western Balkans,” he said.¹⁵ In his interview with *Blic* several days later, he said, “We must not repeat the same mistake if we want to reach a compromise solution.” The said “mistake” he referred to was that “both sides in negotiations were stating in advance the outcome of the process.”¹⁶



Ivan Vejvoda, director of the Balkan Trust for Democracy, stresses that all actors in the Balkans are resolute to move towards EU integration – and this indicates that there might be “some space for negotiations.” If there is a common ground for settlement of the issues of everyday life, there will be preconditions for “something more complex, which we call the status issue.”¹⁷

Inappropriate attitude towards neighbors

Except for Rumania, all neighboring countries have recognized Kosovo’s independence. Bulgaria and Croatia applied for the debate before the International Court of Justice. According to the professor at the Faculty of Political Sciences, Predrag Simic, Croatia’s appearance before ICJ is a heavy blow not only to bilateral relations but also to regional stability. Bulgaria’s argumentation additionally complicates the situation, he adds.¹⁸

The head of Serbian delegation, Dusan Batakovic, nervously and inappropriately responded to the argumentation in favor of Kosovo’s

¹⁵ *Politika*, December 1, 2009.

¹⁶ *Blic*, December 7, 2009.

¹⁷ *Politika*, December 13, 2009.

¹⁸ *Politika*, December 8, 2009.

independence presented by a Bulgarian representative. He called it “a stab in Serbia’s back.”¹⁹ His reaction to the presentation by the Croatian representative, Andreja Metelko Zgombic, was even stronger. Namely, Ms. Zgombic had argued for legality of Kosovo’s independence on the grounds of its status in ex-Yugoslavia under the 1974 Constitution. (Under the 1974 Constitution both Kosovo and Vojvodina were constituent part of the federation and Serbia’s autonomous provinces at the same time.). Belgrade called her presentation “a fierce blow” to which Serbia would have to find “a proper and well-thought-out answer.” Quoting well-informed diplomatic sources in Belgrade, *Blic* writes that Belgrade understood her presentation as an allusion to Vojvodina.²⁰

Sasa Obradovic, deputy head of the Serbian delegation, was even more explicit by saying that any mention of an autonomous province was not a mere coincidence. “Croats know too well the ongoing political skirmishes over the adoption of statute of Vojvodina,” he said, adding, “We see it as a hostile act to which we are not going to respond offhandedly.” He also called the presentation by the Croatian delegation “a renewal of the mentality of Tadjman’s era.”²¹

In the talk show “Interview with Viewers” hosted by Jugoslav Cosic on TV B92, Foreign Minister Vuk Jeremic also said that the Croatian representative’s argumentation in The Hague “directly raises the question of Vojvodina.”²² However, no concrete actions (diplomatic notes, withdrawal or expulsion of ambassadors, etc.) have been taken so far to additionally weight Serbia’s bad relations with almost all neighboring countries.

Anyway, some of the arguments allegedly used by the Croatian representative had been used by Serbia’s elites in early 1980s in the debate on the amendments to the 1974 Constitution, which resulted in

annulment of Vojvodina’s and Kosovo’s autonomy.

Belgrade has underestimated the international community’s resolve to settle the status of Kosovo and, therefore, inadequately acted in the 2007 negotiations. Ever since the beginning of the Kosovo crisis Belgrade has had an eye on the partition scenario and taken it as the only acceptable solution. In 2004, the book “Kosovo” by Dobrica Cosic was being promoted in all bigger towns in Serbia – that was actually an official announcement of the partition policy.

Having mistakenly assessed the attitude of international factors, Belgrade has opted for the strategy of moving the Kosovo question to international arena – before the International Court of Justice. Its intensive diplomatic campaign secured it support from a certain number of countries, which could face similar problems themselves.

As soon as the proceedings before ICJ began, the statements coming from Belgrade indicated what was being expected as an outcome: renewal of Belgrade-Prishtina negotiations and a compromise over partition of Kosovo.

Kosovo is no longer treated as Serbia’s internal affair – and this is illustrated by the media’s inadequate interest in the proceedings before ICJ. Kosovo has always been more in the function of “legitimate” raising of the question of partition of Bosnia-Herzegovina.

In the final stage of closing the Balkan question the international community needs to be fully aware that any reopening of the issue of borders is a Pandora’s Box and disintegrates the security structure built over two decades. A unique and functional Bosnia-Herzegovina is a key to stability in the Balkans. As for Serbia, closing of the issue of borders opens new avenues for necessary changes in the country itself.

¹⁹ RTV B92, December 8, 2009.

²⁰ *Blic*, December 8, 2009.

²¹ *Blic*, December 9, 2009.

²² RTV B92, „Interview with Viewers.“