

Helsinki bulletin



HELSINKI COMMITTEE
FOR HUMAN RIGHTS IN SERBIA
address: Rige od Fere 20,
Belgrade, Serbia
tel. +381-11-3032-408; fax. 2639-437;
e-mail: office@helsinki.org.rs
http://www.helsinki.org.rs

No.66 // JULY 2010

INTERNATIONAL COURT OF JUSTICE DELIVERS ADVISORY OPINION ON KOSOVO INDEPENDENCE: A TURNABOUT IN THE INTERPRETATION OF THE YUGOSLAV CRISIS

On July 22, 2010 the International Court of Justice /ICJ/ delivered an advisory opinion on Kosovo independence – Kosovo's Declaration of Independence, ruled the ICJ, did not violate the international law. For Serbia, this piece of news was a "heavy blow" /President Boris Tadic/ but not a definite defeat of and longstanding and counterproductive policy. The jurists who have worded the initiative for the ICJ and supported it wholeheartedly were disappointed most of all: they were surprised by "the opinion's preciseness," they said. It was obvious that everybody has looked forward for an opinion that each of the two sides could interpret as it suited it, an opinion that would make it possible for Belgrade to maintain the status quo or even coerce Kosovo's partition.

The hopes that Serbia would start "cohabitating" with the realities more constructively after delivery of the opinion have not come true.

However, despite the rhetoric associating the xenophobic policy of the earlier period and unavoidably confronting Serbia with major international factors such as US and EU, now its leadership seems to be seeking some balance between "strong" rhetoric and "soft" patriotism.

Indicatively, also, no public protest was staged in Serbia or incident provoked as in the case of Kosovo's independence declaration.

The government's motion for "continued defense of Kosovo" in UN was voted in by a great majority of MPs (192 out of 250) at the extraordinary parliamentary session of July 26. And yet, what marked most addresses by MPs from the ruling coalition – but those from the Serbian Progressist Party as well – were appealing tones when it came to relations with most influential international factors. So, Vice-Premier Ivica Dacic said, "Though we need to be aware that the international order is unjust, it means not that we should stay away from it." He also said it was necessary for Serbia to recognize the new political reality against which "we should defend Kosovo without leading the country towards self-isolation."¹

Belgrade, being after renewal of status negotiations, now counts on the fact that ICJ did not "legalize Kosovo's secession" (as it was not on ICJ agenda after all). Most parliamentary caucuses, including those from the opposition

1 Press, July 27, 2010

(Serb Progressist and Serb Radical parties) supported this strategy. MPs from Kostunica's Democratic Party of Serbia voted against the government's motion – for them, it was not radical enough. Namely, according to Kostunica, Serbia is making a “fundamental mistake” by turning the UN General Assembly and “dislocating” the Kosovo issue from the Security Council where “we can keep things under control with Russia's principled support.” In his view, the General Assembly could “inflict a heavier and more far-reaching blow to Serbia” (than ICJ)².

MPs from the Liberal Democratic Party also voted against the motion. Party leader Cedomir Jovanovic insisted on an utterly new governmental policy. “Minimizing defeats and hushing up the truth leads us nowhere,” he said. Rather than pursue its Kosovo policy and fighting for “things that have nothing to do with real life,” the government should finally set its priorities, said Jovanovic.³

At this moment, Belgrade's strategy is still the one of buying time on the one hand and intensive diplomatic action among the countries that have not yet recognized Kosovo on the other.

However, despite his more moderate rhetoric and stance about the need for Serbia to develop “the best possible relations with great powers,” President Tadic's speech, taken as a whole, put across quite a different message. Addressing MPs, he said, “What matters to us is an ultimate goal – and that goal is a sustainable solution for Serbia's integrity, for the safeguard of Kosovo and Metohija, for the protection of our people and cultural identity over there. That's what matters to us.”⁴ He called ICJ advisory opinion “a rambling stone that may harm the interests of many countries worldwide”

2 Danas, July 29, 2010.

3 Politika, July 27, 2010.

4 Politika, July 27, 2010.

and made no bones about Kosovo issue being “a generational challenge,” while the Albanian national question a legitimate and important agenda for /discussing/ the Serb national question.⁵ Actually, that's the most important message of all: it (as Dobrica Cosic has been insisting) acknowledges Albanians' legitimate demands under the condition of demarcation between the two peoples. The message goes along the lines of Cosic's plan about recomposition of the Balkans – a recomposition that would meet the interests of Serbs and Albanians at the detriment of Macedonia and Bosnia.

Belgrade has not acknowledged new facts stemming from ICJ's precisely worded advisory opinion and having effect on a number of UN member-states. Namely, two years ago, when EU, US and, eventually, UN gave green light to Belgrade's initiative for ICJ's advisory opinion on Kosovo independence, everyone hoped that Belgrade was shifting the Kosovo issue from political to legal terrain. Accordingly, the approval was meant to be a small concession to Belgrade on the one hand but a sufficient compensation to its regime, on the other, to be “played on at home.” But Serbia interpreted it as a major, authoritative acknowledgment that “matters are not settled yet” and many options “are still open.” Through intensive diplomatic action, mostly among non-aligned countries, it managed to obstruct further recognition of Kosovo statehood (so far, 69 countries, out of 192, have recognized independent Kosovo).

In its strategy for rounding off its warring goals – for annexation of Republika Srpska above all – Belgrade could now (mis)use ICJ advisory opinion as an argument for dissolution of Bosnia-Herzegovina. Bosnia-Herzegovina has always been its top priority, whereas Kosovo, more or less, just a trump card for satisfying territorial appetites of the involved Balkan

5 Ibid.

nations. In this context, Premier of Republika Srpska Milorad Dodik's reaction to the ICJ advisory opinion is most indicative. Noting that Republika Srpska /RS/ has been unhappy for long with the fact that it is a constitutive part of Bosnia-Herzegovina, Dodik said, "ICJ opinion could be at least used as a signpost for RS in its struggle for its future status."⁶ Nebojsa Covic, former member of Zoran Djindjic's cabinet, shares Dodik's opinion. According to him, ICJ explanation indicates that self-determination is viable. "Like it or not, the same right belongs to Serbs in North Kosovo and in Gracanica and Kosovsko Pomoravlje, but also to those in RS," he argues.

Hardly anyone seemed to pay any attention to the section of ICJ advisory opinion quoting that RS (the same as in the case of Cyprus) is not entitled to secession given that such a possibility is not provided under the Dayton Accords, whereas UNSC Resolution 1244 shelved Kosovo status until a future time.

Serbia's decision to act on its own in submitting a draft resolution to the UN General Assembly clearly shows that it has not given up the strategy for "recomposition of the Balkans."

ACTION PLAN

Immediately before ICJ publicized its advisory opinion, Serbian President Boris Tadic said Serbia was ready for "any decision the court may make." He added, however, that he looked forward to an opinion that would "deny Albanians the right to ethnically motivated secession from Serbia."⁷ Indicatively, an action plan for the forthcoming session of the UN General Assembly had already been developed. So it happened that the moment the ICJ delivered its opinion, President Tadic announced that

6 Politika, July 23, 2010.

7 Blic, July 22, 2010.

envoys would be sent to 55 countries to present his personal letters to respective heads of state and government, primarily to those pressurized by US and EU to recognize Kosovo independence. Referring to such a large-scale diplomatic mission, Foreign Minister Vuk Jeremic said, "We shall do our utmost to minimize new recognitions and to have Serbia's resolution adopted by the General Assembly this fall." "That will be a hard mission but not an impossible one," he added.⁸

Belgrade's strategy is based on the interpretation that ICJ advisory opinion relates just to "technical contents of the declaration of independence" since ICJ judges avoided the fundamental issue of secession. In this context, President Tadic said, "The text of /Kosovo/ independence declaration, as such, does not breach the international law since it not even touches on it. ICJ has left a political conclusion to the UN General Assembly. And this is an opportunity for Serbia to struggle for its just cause at the UN session this fall."⁹

REACTIONS BY POLITICAL PARTIES

Almost all of Serbia's political elite supported the initiative for bringing the issue of Kosovo independence before ICJ. However, once its advisory opinion was given, some opposition parties tried to use it for putting all the blame on the incumbent government.

Democratic Party of Serbia – that lost the 2008 elections on its hard-core Kosovo policy, while its leader lost his premiership – was the strongest critic of all. The party vice-president, Slobodan Samardzic, demanded the President's resignation (and resignation of all ministers

8 Danas, July 22, 2010.

9 Politika, July 23, 2010.

from the ruling coalition). In support of his argument he emphasized “political selfishness and political incapability” of the masterminds and executioners of the “catastrophic policy for Serbia’s southern province.”¹⁰

Serb Radical Party directed its criticism towards ICJ that “brutally trampled on the international law,” whereas the leader of *Serb Progressist Party*, Tomislav Nikolic, insisted on a meeting of “all those on whose opinion Serbia’s future course depends.” “This is hard time but not the time for sorrow...We need to decide what to do next,” he said.¹¹

Liberal Democratic Party was most constructive of all. According to it, ICJ ruling calls for changes. “All our future foreign policy actions should serve a single, major goal – a prompt accession to EU,” said the party leader, Cedomir Jovanovic.

Vuk Draskovic, leader of *Serb Renewal Movement*, also takes that ICJ opinion must be accepted with due respect. “Only through cooperation with EU and the international community, rather than through conflict with them and Pristina authorities, could Serbs in Kosovo safeguard their economic, cultural and spiritual ties with Serbia,” said Draskovic.¹²

Disappointed with ICJ clear-cut stance, the parties of the ruling coalition tried to neutralize the significance of the message coming from The Hague by resorting to legal-political “acrobatics.” They insisted that ICJ opinion had not touched on “the heart of the matter” and argued that it was “yet another in the series of precedents of the international law with far-reaching consequences on the international order (Suzana Grubjesic of G17 Plus).¹³ According

to the vice-premier and leader of Socialist Party of Serbia, Ivica Dacic, ICJ was “more under the influence of politics than of legal arguments.” However, he added, “ICJ opinion must not be taken as Serbia’s defeat at the international level...Serbia must persist in the protection of its national and state interests by peaceful and diplomatic means.”¹⁴

A NEW RESOLUTION

Even before ICJ publicized its opinion, the public in Serbia had been informed that the regime and its diplomacy did not consider this opinion a final act of their “struggle for Kosovo.” Given that it was UN General Assembly that formally turned to ICJ, explained the authorities, UN General Assembly itself was the last and most important venue for discussing the Kosovo issue. Hence, Serbia was already preparing a draft resolution for the General Assembly’s consideration.

Brussels was all too well aware of Belgrade’s tactical move. Hence, it started sending messages about “the significance EU attaches to Belgrade’s reaction to ICJ opinion.” Prime Minister of Belgium (presiding EU) Yves Leterme said during President Boris Tadic’s visit to his country, “Reaction of Serbia’s authorities will be more important than the opinion itself...EU will be carefully observing these reactions.”¹⁵

At the same time, the media in Serbia run the news about Brussels offering Belgrade its “good services” in drafting the UN resolution. The offer was made through “a high-ranking Serbian official,” said the media, noting that was “a final offer” to be answered by July 22 at the latest (the date of publication of ICJ opinion).¹⁶

10 Ibid.

11 Ibid.

12 Ibid.

13 Ibid.

14 Ibid.

15 Danas, July 16, 2010.

16 Blic, July 19, 2010.

According to *Blic* daily, all of Serbia's top officials discussed the offer just to conclude that the paper sent by the capital of EU was "much too neutral and ambiguous, and unacceptable to Serbia."¹⁷

Quoting its sources, *Danas* daily claimed that Serbia's plan for the upcoming session of the UN General Assembly made the only topic of all talks between the country's top officials and US and EU diplomats. "Speculation /in the media/ about a possible partition of Kosovo and exchange of territories only weaken Serbia's negotiating position. Such possibilities have never been mentioned in any talks," adds the paper.¹⁸

It is still hard to tell whether under present circumstances Serbia would change its mind and ultimately accept EU offer for a joint resolution. This is what Ivan Vejvoda, director of the Balkans Trust for Democracy, openly advocates. From political point of view, ICJ advisory opinion is "unexpected and has sobering effect," says Vejvoda, adding that from now on any Serbia's independent and unilateral action could "only lead to a next defeat in the UN General Assembly."¹⁹

Given that the parliamentary debate showed that no one is eager to aggravate relations with EU, the legal-political team tasked with drafting Serbia's resolution for UN General Assembly will most probably be consulting Brussels in the process. In this context, the media are elaborating the thesis about another round of negotiations between Belgrade and Prishtina: the negotiations without a precisely defined topic (without the term "status" on which Belgrade has insisted so far).

17 Blic, July 21, 2010.

18 Danas, July 16, 2010.

19 Politika, July 23, 2010.

Negotiations with Brussels on a joint resolution have failed. Belgrade has submitted a resolution of its own despite Germany's, France's and US's insistence on omitting the term "unilateral secession," as an "unacceptable way for settling territorial issues."²⁰ Foreign Minister Vuk Jeremic left for New York to address a non-aligned forum and meet with a number of UN member-states ambassadors.

According to American expert for the Balkans, Martin Sletzinger, Serbia cannot attain both of its priorities – join EU and maintain Kosovo. It is obvious, says Sletzinger, that EU want Serbia in its ranks regardless of Kosovo, but it is also obvious that relations between Serbia and Kosovo need to be settled before Serbia joins the Union.²¹

A resolution welcoming ICJ ruling was drafted in Tirana in consultation with US. The resolution calls upon all the countries to recognize Kosovo and confirms Kosovo's and Serbia's commitment to European course.²²

Continued disregard for the suggestions coming from Serbia's most important international partners (EU and US) is not only something the government and the parliament have decided on, but a part of a much larger strategy. This strategy is also upheld by informal centers of power such as the Serbian Academy of Arts and Sciences' circle around Dobrica Cosic, the Serb Orthodox Church and the entire conservative bloc. They have always been after partition of Kosovo and still are, even at the cost of a total fiasco. They count on a sufficient number of opponents to ICJ advisory opinion and on a new round of negotiations on Kosovo status.

The decision on a unilateral resolution could effectuate Serbia's total defeat in the General

20 Blic, July 29, 2010.

21 Ibid.

22 Ibid.

Assembly but also new stumbling blocs on its way towards EU. Brussels still possesses the “potential for blackmail:” it may or it may not guarantee Serbia a smoother acceptance of its candidacy, or provide guarantees for North Kosovo. Everything depends on Serbia’s flexibility.

Serbia failed to use IJC advisory opinion to make a clear break with Milosevic’s policy – both for Kosovo and Bosnia-Herzegovina. Its unreadiness for such a U-turn was manifest in all statements given on the occasion and in the attempts to link the opinion on Kosovo with Republika Srpska. Belgrade’s acceptance of EU’s offer for a joint resolution (that would not give mention to the status of Kosovo) would be a step in the right direction.

EU’s offer implies swifter acceptance of Serbia’s candidacy. Serbia should not miss this opportunity that would, at the same time, guarantee the Balkans’ irrevocable commitment to transformation and new values.

Relations between Serbia and Kosovo need to be put, as soon as possible, on a track that opens up a dialogue on all burning issues both countries are concerned with.

Milorad Dodik failed to attain a pan-Serb unity on ICJ advisory opinion. That’s a good sign: the opinion seems to have sobered up the general public.

It was for the first time ever that an international institution publicized a clear-cut stand on the Yugoslav crisis. Major international factors, therefore, need to stick to such preciseness and unity when it comes to Bosnia-Herzegovina.

Now that ICJ gave its advisory opinion on Kosovo, Bosnia-Herzegovina remains the only open issue and a true challenge the international community must cope with consequently and resolutely. The policy of pleasing “the strongest party” has only harmed all the countries in the Balkans.