

Observance of Law, or Global Kosovization

Interview With Zivadin Jovanovic, President of the Belgrade Forum for a World of Equals

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Q: Is it possible that the International Court of Justice in The Hague delivers such an opinion that each party will be able to interpret in its own way?

A: This option cannot be ruled out, but need not be the only one. In the early 1990s, many international institutions, including the UN system, began 'resolving' problems by the method of "constructive ambiguities".

Once two sides face insurmountable obstacles, the decision-makers formally endorse positions and expectations on both sides. Therefore, at a critical moment, the conflict between the antagonistic positions is overcome, and the actual decision is only made later on, at the interpretation stage of the endorsed document. The USA inaugurated this approach upon the end of the Cold War because, as the only remaining superpower, it was certain that its interpretation would be final and binding.

The unipolar world is fading away, but multi-polarity is a process. It remains to be seen to what extent the International Court of Justice will prove to be truly independent and resistant to influences characteristic of the past two decades, when it gives its opinion pursuant to Serbia's initiative.

Q: Can we expect the judges to vote in line with the political positions of their respective countries of origin?

A: This influence exists, but need not be present in each particular case, nor is it singular. In principle, such influence may be in favor of, or contrary to, expectations of a given party within the proceedings.

The governments of the leading NATO countries have a lot at stake to get a final opinion from the Court that will justify the unilateral secession of Kosovo, since this was a project of theirs.

This would also support the defense of adopted positions (such as deployment of military forces in the Balkans, the control of oil and gas flows encircling Russia) and validate the aggression against Serbia (the Federal Republic of Yugoslavia) in 1999.

However, not all governments of NATO member states favor the unilateral secession, fearing the ghost of "Kosovization" within Europe and other continents as well. Russia, China, India, Indonesia, Brazil, the United Arab Emirates, Egypt, and the vast majority of the countries of Africa, Asia, and South America support Serbia's position and observance of

international law. They are against any secession not only in principle but also due to the dictate of protection of sovereignty and territorial integrity. The influence of the aforementioned countries in international relations, including in the United Nations, is not insignificant, and is rapidly growing.

Q: Can we expect, after the International Court of Justice delivers its opinion, a reversible process related to the recognition of Kosovo's independence, i.e., withdrawal of recognition by the countries which have already recognized Kosovo?

A: For starters, it will suffice that the Court's opinion eases pressure and blackmail, contributes to the freezing of further recognition of the illegal situation, thus making possible the consolidation and reinforcement Serbia's position.

Q: What can be the legal consequences of the opinion in The Hague?

A: It is unrealistic to expect any direct legal consequences because the Court is not tasked to make a legally binding decision; it renders its advisory opinion only.

This opinion will nevertheless have its weight and importance, first and foremost on future relations and positions of UN bodies, and thereafter on the positions of the UN member states in relation to Kosovo and Metohija, and also with similar issues elsewhere in the world.

If the Court's opinion observes the principles of international law enshrined in the United Nations Charter and the OSCE Final Act, namely, if it acknowledges the principles of sovereignty and territorial integrity of Serbia as a founder and a member of these two international organizations, Pristina will have no chances of membership. This will leave Pristina with the only option of conceding to the real negotiations on the status of the province.

Q: Do you find it acceptable that the President of the International Court of Justice beforehand states his opinion that the findings of that Court in relation to the Kosovo case will not be "single-directional"?

A: The President of the Court is not alone; the Court has fifteen judges. Even if he were the only one to judge, he would be obliged to follow the procedure set by the Court Statute instead of making public comments about a pending case.

His public address is but another in a series of symptomatic precedents in usurping the prerogatives of an important institution within the UN system. By prejudging the outcome of a pending case, even if only partially, the President of the Court violated the Statute and inflicted damage to the Court's standing.

It remains to be analyzed what made the President of the International Court of Justice make such a gesture, especially with no apparent cause. Recently, there was some other 'spinning' directed to the public.

Among others, a thesis was launched that a unilateral secession, although in principle not permitted, nevertheless may be justified and recognized where a minority has been exposed to mass-scale violence by the central government apparatus.

NATO used a strikingly similar 'justification' ten years ago to commit aggression against Serbia, whose tragic consequences are still present.

Now, on the eve of the beginning of the hearing before the International Court of Justice, almost the same 'argumentation' is employed. This can be construed in no other way than as the continuity of the power centers' policy towards Serbia.

Now is the right time to recall the numerous judgments of German courts of law, which unambiguously confirm that, back in the 1990s, there was no organized or mass violence exerted by Serbia (the FRY) against the Albanian national minority in Kosovo and Metohija. One should also recall the letter which Mr. Dietmar Hartwig, Head of EU Mission in Kosovo and Metohija (the ECMM) until 20 March 1999, addressed to German Chancellor Angela Merkel on 26 October 2007 that, inter alia, reads:

"Not a single report submitted in the period from late November 1998 up to the evacuation on the eve of the war mentioned that Serbs had committed any major or systematic crimes against Albanians, nor was there a single case referring to genocide or genocide-like incidents or crimes.

"Quite the opposite, in my reports I have repeatedly informed that, considering the increasingly more frequent KLA attacks against the Serbian executive, their law enforcement bodies demonstrated remarkable restraint and discipline.

"The clear and often cited goal of the Serbian administration was to observe the Milosevic-Holbrooke Agreement to the letter so as not to provide any excuse to the international community to intervene.

"There were huge 'discrepancies in perception' between what the missions in Kosovo have been reporting to their respective governments and capitals, and what the latter thereafter released to the media and the public.

"This discrepancy can only be viewed as INPUT TO LONG-TERM PREPARATION FOR WAR AGAINST YUGOSLAVIA. Until the time I left Kosovo, what the media never happened and with no less intensity what the politicians have been relentlessly claiming. Accordingly, UNTIL 20 MARCH 1999 THERE WAS NO REASON FOR MILITARY INTERVENTION, which renders illegitimate measures undertaken thereafter by the international community. The collective behavior of EU Member States prior to, and after the war broke out, gives rise to serious concerns, because THE TRUTH WAS KILLED, AND THE EU LOST RELIABILITY." (All emphasis by Z. J.)

Q: If the decision of the International Court of Justice is by its nature only advisory and non-binding, how could Serbia benefit from it?

A: It will depend on the contents of the opinion. If the Court remains committed to the law and the UN Charter as its founding act, which supports the expectations and vital interests of Serbia and of more than two-thirds of humankind, and it will hugely benefit peace, stability and prosperity.

It is not an overstatement to say that the Court's position on the issue of the illegal independence of Kosovo is the turning point for the future of the global legal order and global relations. Will Kosovo become a precedent? The answer is known only to those who are loudest in asserting the opposite. The Court's opinion will determine what we will have:

peace and prosperity, or instability and conflict.

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