

The Perils and Repercussions of Kosovo's Independence

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BEIRUT — Thousands of Kosovars took to the streets last week to celebrate their territory's second anniversary of independence. But two years after Kosovo stunned the world by unilaterally declaring its autonomy from Serbia, the country's sovereignty remains as contentious as ever. So much so that the world's foremost legal body, the International Court of Justice (ICJ), was tasked to determine the legality of the move by the UN General Assembly in 2008. Since then, a carousel of interested nations has paraded in front of judges at the ICJ to defend their opposing positions. Some, like the US, argue that Kosovo's claim to independence in 2008 was justified under international law, but their vocal opponents – Russia, Iran, and many more – maintain just the opposite.

In an exclusive interview with The Daily Star, Serbia's defense counsel in the court case, Marcelo Kohen, argues that beyond the question of Kosovo's independence, it is often the plain national interest of states combating secessionist movements – from China to Iran – which is keeping many governments on their toes as they wait for the court's verdict, expected to fall this spring.

Q: Can you detail Serbia's position and arguments in this case?

A: The Serbian position is twofold. With regard to general international law, the unilateral declaration of independence is not in conformity with the principle of territorial integrity of states, and cannot be justified on the basis of the principle of self-determination because the Kosovo Albanians are not entitled to external self-determination. The second aspect is Resolution 1244 of the UN Security Council, which established an international regime for the territory, including the respect of [its] integrity.

Q: And what is the position of Kosovo on the case?

A: Essentially the position of the authors of the declaration of independence is that international law does not prohibit declarations of independence, that the creation of states is a matter of fact and not a matter of law, and that the Security Council Resolution 1244 is neutral with regard to the final status of Kosovo. So according to them, this allows the Kosovo population to declare their independence. A position I obviously consider untenable.

Q: The ruling of the ICJ on Kosovo's independence will be a non-binding one. What is the value of such a ruling if states are not obligated to respect it?

A: Judgments by the court are binding. In contentious cases, the court has the possibility to decide and its decisions are binding to the parties. Advisory procedures are different. But

nevertheless they have a very strong influence on the subject the court deals with.

You have some states considering that the declaration is illegal, you have other states pretending that international law regulates secession. So what the court will say will bring an end to the legal discussion. Moreover, you also have concrete consequences. You have some pressure by the United States in order to obtain more recognition, and if the court says that the unilateral declaration is illegal, it will create a deterrent effect [over states who mull recognizing Kosovo's independence]. On the contrary, if the Court says it is in conformity with international law, then this will open the way for more recognitions. So many states are waiting for what the Court will say.

Q: And what are possible implications for other secessionist movements in the world?

A: What the international court will say with regard to Kosovo will be equally applicable to other situations in which states are facing secessionist attempts.

The most important case and comparable one is the situation in Georgia, South Ossetia and Abkhazia, because the Russians are using the same arguments the United States and some Western Europeans countries use to justify Kosovo's independence.

Q: Do the positions states defended when consulted by the ICJ not simply reflect their predictable national interest and own context, rather than a disinterested opinion on rules of international law on state sovereignty?

A: Obviously if states feel that their interest is at stake, they will participate in the [advisory] procedure. In this case, you have states like Spain, China, even Iran, which participated against the declaration of independence.

It is easy to imagine what their reasons are: in Iran, obviously, you have the Kurdish attempts of independence; in Spain you have the Basques and Catalonia; Taiwan and Tibet in China.

Q: Does that position not undermine the status of international law as a normative framework that defends the rights of people regardless of state interest?

MK: No, I don't think so. It's quite normal to have states thinking in different ways, interpreting norms in different ways, and in other cases obviously trying to manipulate the law.

This is easier to perceive at the international level. In my view, many states are perfectly aware that the declaration of independence is illegal, but they try to justify their political positions using legal arguments. That's quite normal in international relations.

You will never find a state accepting that it has acted contrary to international law. What is essential here – as it was the case with the construction of the wall in occupied Palestinian territory – is that there will be the most authoritative voice stating what is the right interpretation of the rules at stake.

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