Analyses OSW

CENTRE FOR EASTERN STUDIES 4.08.2010 www.osw.waw.pl

Regional impact of the ICJ's advisory opinion on Kosovo

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The International Court of Justice (ICJ) in The Hague issued an advisory opinion on 22 July, stating that the unilateral proclamation of Kosovo's independence did not breach either international law or the UN Security Council's resolution as of 1999, which had established the interim administration in Kosovo. At the same time, the Court decided to adopt a narrow interpretation of the question put by Belgrade and made reference only to the technical aspects of the proclamation of independence and compliance with the law of the proclamation itself. The ICJ did not express an opinion on whether Kosovo's independence complied with international law and whether Kosovo satisfied the legal criteria of statehood and had had the right to secede. Thus it avoided resolving the dilemma of conflict between the principle of a state's territorial integrity and the right of nations to self-determination.
The legitimisation of the proclamation of independence may increase the number of the states who recognise Kosovo (so far 69). However, the ICJ's opinion will not persuade the key opponents of Kosovo's independence – i.e. Russia and China (both of whom are permanent members of the UN Security Council) and five EU member states – to change their stance. This is the main obstacle to Kosovo's membership of international organisations, such as the UN. The ICJ's opinion will make it more difficult to overcome discrepancies existing between EU member states, which reduce the possibility of developing a coherent and consistent European policy on Kosovo and Serbia. The government in Belgrade, which has rejected the ICJ's opinion as unfair, will probably continue its policy based on diplomatic measures and aimed at resuming talks on the final status of Kosovo.

The Kosovo government's policy

The ICJ's favourable opinion, which legitimises the proclamation of independence, is a big success for Kosovo. The government in Pristina believes that it has marked the end of a stage in which Kosovo's independence was questioned. The Kosovar authorities will try to use the opinion to persuade more states to recognise its independence. Prime Minister Hasim Thaci even believes that non-recognition of Kosovo's independence after the recent opinion from the ICJ could even be contrary to international law.
The recognition of independence by more states is especially significant in the context of Pristina's efforts to join international organisations (so far it has succeeded in becoming a member of the World Bank and the IMF). Kosovo cannot be certain to realise its ambitions due to objection from some states.

As a consequence of the ICJ's opinion, Pristina's stance on Serbia will become less flexible, and the unwillingness to adopt compromise solutions will continue. This will make it even more difficult to normalise bilateral relations and to resolve problems of key significance for the government in Pristina, including gaining control of the areas inhabited by the Serb minority in northern Kosovo, Belgrade's recognition of documents issued by the Kosovo administration (passports, university diplomas, customs documents).
Building well-functioning state institutions free from corruption and nepotism is a major challenge for Kosovo and may turn out to be a bigger problem than the normalisation of Serbia-Kosovo relations. A lack of measurable effects in the state-building process may discourage the EU from active engagement in Kosovo and reduce funds allocated for that purpose from the international community. This would also prove Serbia's claim that the government in Pristina is inept in effectively ruling its territory, and consequently reinforce Belgrade's position in disputes with Kosovo and talks with the EU regarding the normalisation of bilateral relations.

Serbia: a continuation of the previous policy

The opinion means a prestige defeat for the policy conducted by the Serbian government so far. Nevertheless, Belgrade's reaction was calm and limited to a parliamentary debate, which was held at the parliament's extraordinary session on 26 July. The governmental project on policy towards Kosovo adopted during the session provides for a continuation of previous actions and has been supported even by the largest opposition party, the Serbian Progressive Party led by Tomislav Nikolic, which until recently used nationalist rhetoric. Only marginal parties are demanding a change of the government's previous policy, namely the Liberal Democratic Party, which is appealing for the recognition of an independent Kosovo, and the Democratic Party of Serbia led by former Prime Minister Vojislav Kostunica, which wants a sharpening of the policy towards Pristina. Following the guidelines adopted at the parliamentary session, the Serbian government on 28 July submitted to the UN General Assembly a new draft resolution concerning Kosovo, which envisages the launch of negotiations as part of the UN to resolve disputed issues between Belgrade and Pristina.
The European integration process is a priority issue for the present Serbian government. For this reason it has limited its policy towards Kosovo to diplomatic moves aimed at discrediting Kosovo's independence and recommencing negotiations on its status. They are, however, avoiding taking any steps which could be understood as recognition of Kosovo's independence by Belgrade. Therefore Serbia refuses consent to Kosovo's membership of regional organisations and rejects participation in meetings attended by representatives of Kosovo as an independent state. Serbia will continue its previous policy in the immediate future, using controversies over Kosovo's independence inside the EU. A potential normalisation of relations between Kosovo and Serbia and the launch of talks regarding technical issues can only be forced by the European Union.

The European Union has no uniform stance

The strongest impact on the normalisation of Serbia-Kosovo relations can currently be made by the policy of the European Union, which is actively engaged in the process of building the state of Kosovo and which may use the enlargement policy to wield real influence on the policies of both Belgrade and Pristina. The EU is the only international entity capable of forcing a change in their bilateral relations. However, this will require the EU to take a clear stance on the issue of linking Serbia's European integration with the normalisation of relations with Pristina.

The efficiency of the EU policy is seriously limited, because five of its member states (Cyprus, Greece, Spain, Romania and Slovakia) have not recognised the independence of Kosovo. This is a serious obstacle to EU member states developing a joint stance and determining precise expectations regarding the respective policies of Kosovo and Serbia. At present, the EU's expectations towards Serbia and Kosovo are defined in quite general terms, such as the requirement of good relations with neighbouring countries and the recommencement of negotiations.

The EU may also be expected to be divided over its future common policy towards Serbia. EU leaders want to make progress in Serbia's integration with the EU dependent on Belgrade's 'pragmatic' policy towards Pristina.

In turn, the countries which have not recognised Kosovo's independence and those located close to the Western Balkans (Austria, Italy and Slovenia) believe that the change in Serbia's foreign policy is sufficient to accelerate the country's integration process with the EU, e.g. by accepting Serbia's accession application.

EU member states are unlikely to adopt a uniform stance on this issue in the immediate future. The ICJ's opinion will cause an increase in pressure made by EU institutions and the countries which have recognised Kosovo's independence on the other member states to modify their stance on this matter. However, the five countries which have not recognised Kosovo's independence all have already announced that they will not revise their respective policies with regard to Kosovo. Such discrepancies seriously limit the EU's ability to influence Serbia-Kosovo relations. In effect, both countries may continue their existing policies, which prevent stabilisation in the entire Western Balkan region.