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UDI at the ICJ

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Serbia seeks green light from UN General Assembly for the Hague ruling on whether Kosovo's unilateral secession was in accordance with international law.

What Serbia wants?

Serbia has filed a draft resolution in which it asks from the UN General Assembly to seek an advisory opinion from the International Court of Justice in The Hague on the legality of the unilaterally-proclaimed independence of Kosovo:

*"Mindful of the purposes and principles of the United Nations,
Bearing in mind its functions and powers under the Charter of the United Nations,
Recalling that on 17 February 2008 the Provisional Institutions of Self-Government of Kosovo have declared independence from the Republic of Serbia,
Aware that this act has been received with varied reactions of the members of the United Nations as to its compatibility with the existing international legal order,*

1. Decides, in accordance with Article 96 of the Charter, to request the International Court of Justice, pursuant to Article 65 of the Court's Statute, to render an advisory opinion on the following question:

"Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?"

Serbia has proclaimed two objectives with this initiative. The first, immediate objective is to have the ICJ provide its stand on the UDI and to stop the recognition of Pristina's act by UN members. The second, long-term objective is to have Belgrade and Pristina go back to the negotiating table on the status question.

The constraints

- The resolution needs to be supported by the simple majority of UN member countries at the UN General Assembly.
- Apart from the 40+ countries which have already recognized Kosovo's secession, states can also decide to remain impartial.



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- The main supporters of Kosovo's secession have announced increased pressure ahead of the General Assembly on those states which have not recognized. This might increase the number of countries which would remain impartial.
- The vote at the General Assembly might be a result of bargaining on other items on the agenda.
- Countries which would want to profit from the Kosovo precedent are unlikely to support the initiative
- The opinion of the ICJ would be non-binding.
- States which have recognized Kosovo could decide not to respect it
- Serbia is under pressure to drop the case if it wants to pursue European integration. British ambassador to Belgrade Stephen Wordsworth: "An initiative at the Court seems like a direct challenge to us". French foreign minister Bernard Kouchner : "If this tribunal says the act (of recognition of Kosovo's secession) was illegal, it would be bizarre to see Serbia wanting to join such illegality. It's illogical. The Serbs either consider us as open, legal and very committed to human rights or they don't. If they don't, I don't see why they would join (the EU)".

The advantages

- The low number of countries which have recognized Kosovo's secession reflect a deep sense of concern in the international community over Pristina's right to independence. Most UN member countries reject the view that Kosovo is a "unique case" and have serious doubts about recognizing a move which has not been accepted by Serbia nor endorsed by the UN Security Council. They would thus like to have legal guidance.
- Some of the most important members of the international community, including Russia, China and India, have given it a clear support.
- The conflict in Georgia has given prominence to the cases of independence of South Ossetia and Abkhazia. It has shown that the "unique case" argument is empty mantra. Furthermore, states which have undermined Serbia's territorial integrity over Kosovo are calling for Georgia's territorial integrity over South Ossetia and Abkhazia, thus falling into the clear double-standards trap.
- If the court rules in favor of Serbia, it could seriously hamper the process of further recognition of Kosovo.



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- Furthermore, states which have recognized Kosovo could be faced with domestic and international pressure to renounce to it.
- States pressuring Serbia to drop the case would reveal their own doubts about the legality of the decision to recognize Kosovo, as well as their own fear about international law and judicial proceedings in line with it.
- Serbia shows that it wants to resolve disputes in court and in respect of international law - and not through violence. It moves the question of Kosovo from the sphere of pure political opportunism into the arena of international law.