

The affirmation by the International Court of Justice on July 22 of the February 2008 unilateral declaration of independence by the Republic of Kosovo is a welcome affirmation of the democratic principle of people's self-determination, but by itself does not offer a clear path for international recognition of Taiwan's own status as a democratic independent state.

Kosovo, previously an autonomous province of Serbia and formerly an autonomous province in the defunct Socialist Federal Republic of Yugoslavia, has a population of some two million people, 90 percent are of Albanian ancestry.

The process of its emergence as an independent state is part of the horrifyingly tragic history of the disintegration of Yugoslavia in the 1990s and witnessed both cases of "ethnic cleansing" by Serbian forces under the late Slobodan Milosevic and Kosovo Liberation Army forces followed by years of "transitional" U.N. administration and U.N.-led negotiations on the territory's ultimate status.

In the wake of the failure of such negotiations, the Assembly of Kosovo issued an unilateral declaration of independence on February 17, 2008 and since has received recognition from 69 countries, including the U.S. and the 22-member European Union, and by the Republic of China (Taiwan).

Although Kosovo has not formally applied for U.N. membership due to opposition by permanent U.N. Security Council members the Russian Federation and the People's Republic of China, Pristina has been accepted into the International Monetary Fund and other international bodies.

The Serbian government, effectively the successor to Yugoslavia, has refused to recognize Kosovo's independence and, with Russian and PRC backing, received approval from the U.N. General Assembly in October 2008 to request the ICJ for an advisory opinion on the international legality of Kosovo's declaration of independence from Serbia.

The ICJ's non-binding but morally weighty advisory opinion that "the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law" was welcomed by "non-state" actors around the world, such as Basque and Catalan nationalist

ICJ, Kosovo and Taiwan's future

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parties, but opposed by governments in which "separatist" movements exist, including Spain, Russia.

For its part, Beijing is particularly concerned over the possible "domino" effect in relation to Xinjiang and Tibet, which are now controlled by the PRC regime, and Taiwan, which is not.

Even though the ICJ opinion did not confer a "positive entitlement" or right for Kosovo unilaterally to declare independence, its position that the declaration "did not violate international law" breaks through efforts by some states, notably the PRC, to elevate "the principle of territorial integrity" into an absolute ban on "separatism."

Instead, the ICJ's finding that the "the scope of the principle of territorial integrity is confined to the sphere of relations among states" and that "international law contained no prohibition of declarations of independence" effectively reaffirms the principle of people's self-determination is a "peremptory norm" of international law.

'Anti-Secession Law' nixed

The implications of the ICJ opinion are by no means unambiguous for Taiwan, which, despite its misleading ROC moniker, is a democratic independent state whose government has been since 1996 entirely elected from top to bottom by its 23 million people in regular manifestations of the principle of people's sovereignty.

On the positive side, the ICJ finding may discourage any attempt by the PRC to push for "legal unification" of Taiwan through the U.N. system, perhaps by attempting to secure formal legal backing for its claim that the U.N. General Assembly Resolution 2751 of Oct. 25, 1971 not only granted the PRC the U.N. Security Council and General Assembly seats for "China" but also granted Beijing sovereignty over Taiwan.

The ICJ opinion on Kosovo also hints that a declaration or, more precisely, a formal affirmation by Taiwan of its independence would probably not "violate international law" especially since Taiwan has actually never been part of the PRC State.

Moreover, the ICJ opinion would also seem to undercut attempt by Beijing to cite such an affirmation by Taiwan, through democratic procedures, of its independence, as "a violation of international law" or to cite its own March 2005 "Anti-Secession Law" as a "legal" pretext to attack Taiwan for making such an affirmation.

However, the positive relevance of the ICJ opinion to Taiwan is weakened by differences in the political context, notably the willingness of the U.S. and major European powers to support the ill-starred Kosovo government in the face of opposition by Serbia and by Russia and the PRC in stark contrast to the reluctance of the same powers to support Taiwan's democracy.

Therefore, the ICJ advisory opinion indicates a formal affirmation of Taiwan's independence through an exercise of democratic self-determination may be a necessary, but by on means sufficient, condition for international acceptance of Taiwan's independence.

Fulfilment of this later fundamental political condition will depend mostly on both the direction of the will of Taiwan's 23 million people and the effectiveness of "public diplomacy" to build international understanding and support for the value of Taiwan's democratic independence to the world community.

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