

The Daily Star

Reviving international law in the Balkans: 'Plan Slavko Curuvija'

by Chibli Mallat

The greatest difficulty in the Kosovo conflict appears in the way force has been carried out over the past few weeks regardless of a clear and specific authorization by the Security Council acting under the UN Charter. Instead, the reliance of NATO on law appears in a flimsy and convoluted conjuring-up of former UN resolutions with tenuous relevance to the present conflict.

For the peaceful future of the Balkans, a more convincing alternative both legally and morally is required under international law.

Complicated as the situation may be, we must first offer a restatement of some past and prospective facts, without which the legal argument cannot rest.

- Kosovo is part of predominantly Serb-dominated Yugoslavia, while a distinct cluster of cultural, religious or ethnic differences sets Muslim Albanian Kosovars apart from Orthodox Christian Serbs. Kosovo includes an important minority of some 200,000 Serbian inhabitants, which lived in relative peace with the non-Serbian majority until the accession of Slobodan Milosevic to power 10 years ago.

- A logic of ethnic separatism was initiated in the Balkans through the irresponsible attitude of the new united Germany in 1991, despite the clear reluctance of its major partners, including the United States and France. The misplaced enthusiasm of the newly unified Germany for the recognition of Slovenia and Croatia has combined with the lack of American leadership in standing up to the break-up of Yugoslavia, triggering the rise of narrow and ugly nationalisms across the Balkan region and in the former Soviet Union.

- First in Croatia and Bosnia, now massively in Kosovo, the break-up of the former Yugoslavia has unleashed a logic of separatism which made compelling the danger, then the reality, of a concomitant logic: Exclusivism culminating in ethnic cleansing. Mass murder and forceful eviction of people from their homes is a consequence of the pervasive exclusion of minorities by extremist governments fueled by the newly defined nationalisms. Several parties have participated in serious and massive crimes over the years following the break-up in 1991, including the Croatian, Bosnian and Serbian leaderships.

- The latest such instance of crimes against humanity is currently unfolding in Kosovo. The government of Slobodan Milosevic, in an excessive and inhuman reaction to the increased guerrilla warfare of the Kosovo Liberation Army, has been carrying it out for the past year. The KLA is itself encouraged in its separatist policy by the overall Balkan logic and by Mr. Milosevic's repression in Kosovo over most of his decade of domination over the former Yugoslavia. KLA extremism, however, should not be discarded and is part and parcel of the logic of separatism/exclusivism.

- The current Serbian president carries the largest and most significant share in the responsibility for a long list of atrocities, in a pattern which dates back at least to the Bosnian war. This behavior cannot go unpunished. The government headed by Mr. Milosevic cannot be permitted to survive the current crisis.

- In any contemplation of a stable future, all the people of Kosovo must return to their homes. The return of the Muslim Albanian population of Kosovo must mark the end of the Balkan wars and reverse the logics of separatism and ethnic cleansing. To that effect, at a time when Mr. Milosevic and other individuals responsible for mass crime are being brought to account, the civilian Serbs living in Kosovo must be protected at any cost, as must the risks of new Kosovos and Bosnias be addressed in Montenegro, Macedonia and elsewhere.

As for law, and against the political and moral collapse that has followed the separatist logic condoned by the West, three redeeming features of international law have arisen. The first is the establishment of the International Criminal Tribunal for the former Yugoslavia. This was established by Security Council Resolution 827 May 25, 1993, to prosecute those responsible for serious violations of international humanitarian law committed in the former Yugoslavia since 1991.

Despite some shortcomings because of the difficulty in arresting some of the indicted fugitive, the tribunal has been the single most successful response in law to the logic of separatism and ethnic cleansing in the Balkans. Its role must be central in the solution to the Kosovo war, as it has been in the aftermath of the Bosnia tragedy.

Significantly for international law, the tribunal was established under Chapter VII of the UN Charter the right to use force.

The work of the tribunal is directly related to the second and third redeeming “new” principles under international law since the Gulf War: The right, indeed the duty, to intervene in domestic affairs, to redress intolerable repression as it unfolds; and the separation, in law, between governments and peoples.

Applying the redeeming features of the present jus cogens to the above facts, the re-introduction of a vision based in law can take the following shape.

- The courageous tribunal prosecutor, Louise Arbour, issues an open indictment of Mr. Milosevic, with reference to the April 6 letter to NATO from tribunal president Gabrielle McDonald, and her own repeated warnings to Mr. Milosevic. The indictment, which can be issued under Rule 61 of the tribunal’s charter, will carry a significant list of charges resting on the current atrocities as the continuation of a pattern, and emphasizing the consequences in law for the refusal by Mr. Milosevic to heed the tribunal’s orders. The refusal of Mr. Milosevic to respond to the indictment would automatically trigger the right to use force under Chapter VII of the UN Charter and the precedents established by the tribunal regarding indicted Bosnian fugitives.

- At the same time, UNPROFOR, NATO and the EU/WEU issue a joint statement requesting the surrender of Mr. Milosevic within 48 hours. NATO stops the bombing for that period.

- As Mr. Milosevic will, in all likelihood, refuse to budge, NATO and the EU/WEU announce “Plan Slavko Curuvija,” named after the journalist who denounced the Milosevic regime for its moral and political failures and was shot dead April 11 at his Belgrade home.

That would declare “the use of all necessary means” to arrest and apprehend the fugitive Slobodan Milosevic in pursuit of the clear mandate allowed under the resolutions establishing the tribunal, while spelling out the precedents in the use of force to apprehend fugitives in Bosnia and elsewhere over the past few years.

It would also restate the principle of a separation between the people of Serbia and the

leadership, reiterate the five-point plan formulated at Rambouillet, but emphasize further the respect for the Yugoslav boundaries in their present state and the clear rejection of a separate Kosovo state.

The plan would call upon other countries, including Russia and China, to participate in due course in deploying forces in the areas of Kosovo which have a heavy concentration of Serbs.

Finally, the plan would include the Balkan “Marshall Plan” called for by the European Union.

How is this different to the various plans put forward so far?

In the first place, it must be made crystal clear, immediately, that Mr. Milosevic will not be allowed to survive politically, and that the efforts to bring him to justice are a priority for the international community. The current hesitation by NATO and its supporters is wrong. A compromise with Mr. Milosevic which allows his political survival will repeat the mistakes of the Gulf War with which the peoples of Iraq and the region are still tragically living 10 years later.

Allowing Mr. Milosevic to remain in power will ruin the prospect of reconciliation in the Balkans. An indictment of him will encourage those in Serbia who, on understandable national grounds, see the action of NATO as a purely anti-Serbian campaign. The whole war must move away from its predominant anti-Serbian character to a strict anti-Milosevic war. Indicting him will draw the line, for the first time in law, between him and the peoples of the Balkans.

Secondly, the use of force becomes fully legitimate, and finds both its moral and legal rationale in clear precedents established by the tribunal in pursuit of fugitive criminals from the Bosnian war.

Thirdly, a different argument in law would also mean that if and when ground troops are deployed, they must go further than Kosovo and liberate parts of Serbia from Mr. Milosevic’s rule, to ensure that Kosovo’s Serbian minority does not get ethnically cleansed should the pendulum swing the other way, and so that Serbs pressure Mr. Milosevic to surrender in the face of the occupation by foreign powers of their heartland. Only thus will the Serbian population palpably realize the extent to which the atrocities of Mr. Milosevic have undermined their country.

To make this legal principle tangible on the ground, it will be also necessary to carry out the air campaign differently after the lull following the announcement of the indictment: There is no sense bombing bridges or civilian factories, while withholding details of military targets. NATO and its allies must account for their targets in a clear and detailed manner. This will show Serbs how the utmost care is being given to go after the government’s apparatus of repression, and not Serbia as such.

It will also encourage those elements in the battered Yugoslav Army to start questioning their sacrifice by Mr. Milosevic openly.

Fourthly, it cannot be emphasized enough that the KLA must not be allowed to play a role in Serbia, and more importantly, that it be prevented from playing any security role that could threaten the civilian Serbian population in Kosovo. The recent emphasis on the KLA by the U.S. and other governments is misleading and must be replaced by an emphasis on moderate Kosovar positions such as those held by Ibrahim Rugova.

On the longer haul, the prospect of a collective joining of the European Union within 10 to 20 years will establish a new logic of cooperation between the peoples of the Balkans,

reversing for the first time since 1991 the logic of separatism and exclusivism which led to ethnic cleansing. The new German government and the other European countries owe it to their people and to the peoples in the Balkans who have suffered from it for a decade.

Finally, the current participation of some 20 countries in the Balkan theater of war must offer a model to the world of what will never be accepted by the international community. The NATO war against the Serbs must turn into an explicit “world war” against an unacceptable use of the tools of power for ethnic cleansing and other mass violations of international humanitarian law.

All the countries, however distant, should be encouraged to participate. For the first time, Russia and other powers would be able to see a future for Yugoslavia which is not based on the logic of separatism, which hounds them in Chechnya and elsewhere.

In such a way, the greatest victory would be the return of full-fledged international law to the scene, including, crucially, singling out the main culprit, Slobodan Milosevic, and driving a wedge, in law as well as in practise, between him and the people of Serbia.

The return of the ethnic Albanians to Kosovo must not mask the more dramatic depths of the Balkan wars since 1991, and the need for international law to play a preponderant role in the global search for a solution that concerns us all intimately.

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