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LEGAL AND POLITICAL CONSEQUENCES OF KOSOVO INDEPENDENCE

Abstract: In his opening statement the author emphasizes that so far all interventions of the West in the Balkans have been disastrous. His approach is based on the premise that independent Kosovo would be a threat to global stability. Already the Peace of Westphalia in 1648 established the principle of territorial integrity of states. According to this principle use of force is prohibited in the solution of international disputes. Further details in this regard are elaborated in the Helsinki Final Act of 1975. This means that borders can be redrawn only with the consent of the involved states. On the other hand, the West is pressing Serbia to give its consent and for that concession is promised membership in the EU as award. In the contrary case Serbia will be severely punished. Kosovo independence would, on the other hand, mean a precedence for secessionism all over the world, particularly in Russia – Abkhazia, South Ossetia, Transnistria (part of Moldova). It would be a precedent for Kurdish people, Chechnya, Nagorno-Karabakh, Kashmir, the Philippines, Thailand, and in Europe for Basques and Serbs in Bosnia. Independent Kosovo would also have serious political implications. In the first place it could trigger Albanian military action in view of making their dream of “Greater Albania” come true. The author of the paper concludes that it would be wise for the USA and Europe and in their own national interest to reconsider their current policy and find for Kosovo another solution instead of independence.

Key words: Western policy, illegal bombing, the rule of terror, independence, NATO, the Contact Group, territorial integrity, dangerous precedence, ethnic cleansing.

1. INTRODUCTION

Last month I appeared as a witness at the International Criminal Tribunal for the Former Yugoslavia. During the questioning by the defendant,

former President Slobodan Milošević, he asked me to quote excerpts from an article I had written in 2000 entitled, *New Diplomacy, Old Agenda*. One of the excerpts read as follows:

“The U.S. led attack on Yugoslavia was designed to improve President Clinton’s public image and restore credibility to NATO, whose existence since the end of the cold war was in jeopardy. This was the real agenda of the NATO war. In terms of Balkan history it is an *old* agenda. Traditionally western intervention in the Balkans has proven to be disastrous. From the Congress of Berlin to both world wars, the western powers have intervened in the Balkans for their own selfish policy objectives. These aims have had little relevance to the issues affecting the peoples of the Balkan countries. What was true of the past has proven true again in Kosovo.”

The events that have taken place in Kosovo since I wrote that article have only served to reinforce the truth of what was then written. Western policy since the end of the illegal bombing of Yugoslavia has been a total failure. The massive ethnic cleansing of the non-Albanian population, the reign of terror against those few Serbs who have remained, the rampant burning and blasting of Christian churches, the refusal to disarm the Kosovo Liberation Army, the acceptance of widespread drug and human trafficking in the so-called UN protectorate stand as evidence against the NATO and United Nations authorities. These are hard facts. They stand as testimony to failure.

Unfortunately, the Serbian tragedy is not yet over. Sometime this year a decision will be announced about Kosovo independence. I say announced because there is some evidence suggesting the decision has already been made to tear away that integral part of Serbia and to grant Kosovo independent status. The Economist magazine of 18–24 February 2006 reported that John Sawers, the political director of the British Foreign Office, told a group of Serbs in Kosovo earlier in the month that the Contact Group¹ had already decided on independence for Kosovo. Since the talks between Serbia and representatives of the Kosovo Albanians are being undertaken under the auspices of the Contact Group Mr. Sawers words are not to be taken lightly.

There are other indications that independence is already a foregone conclusion. The Contact Group Guiding Principles announced in November 2005 stated, among other things, that there could be no return of Kosovo to the pre-1999 situation. This is an ambiguous statement but since prior to 1999 Kosovo was an integral part of Serbia this guiding principle could be interpreted to mean that Kosovo will no longer remain part of Serbia. Other

¹ The Contact Group consists of the United States, Britain, France, Germany, Italy and Russia.

remarks by senior United States officials have made it clear that the option of independence for Kosovo is open for discussion. These are ominous signals that the guarantees set out in UN Resolution 1244 reaffirming the sovereignty and territorial integrity of Yugoslavia as set out in the Helsinki Final Act may be ignored or conveniently overlooked as have other parts of the resolution.

The influential International Crisis Group [ICG]² has not been hesitant in setting out its views on the issue of independence. It has made its recommendations abundantly clear in a report dated February 17, 2006, entitled *Kosovo: The Challenge of Transition*. That report recommends that, “The international community and in particular the UN Special Envoy charged with resolving the status process, Martti Ahtisaari, must accordingly prepare for the possibility of *imposing*³ an independence package for Kosovo, however diplomatically painful that may be in the short term...” There is no concern expressed by the Contact Group or UN officials that because Martti Ahtisaari is a prominent member of the ICG that this report would appear to place him in a conflict of interest position. There is further reason to suspect his impartiality as a mediator since *Der Spiegel* magazine has reported that Mr. Ahtisaari has said that Kosovo is headed for independence.

There may at least be some comfort that the ICG seems to have dropped the idea it once advocated that the discussions include the possibility of adjusting Kosovo’s northern border to include the Preševo valley. However, if the ICG has dropped the idea of incorporating part of southern Serbia into a new and independent state of Kosovo the Albanians in southern Serbia have not. Three ethnic Albanian municipalities in southern Serbia have passed resolutions calling for political and territorial autonomy and the withdrawal of Serbian security forces from the area.

The demands of the Albanians in southern Serbia underline the dangers inherent in the violation of the territorial integrity of states even if it is carried out under the aegis of supposedly responsible international agencies like the Contact Group and is sanctioned by the European Union. Should a decision be taken to grant independence to Kosovo a precedent will have been established that will pose a serious threat to the very structure of world peace and security. The stakes here are high and any decision on Kosovo independence will have implications that go far beyond the geographical confines of the Balkans.

² The ICG membership includes: Morton Abramowitz, George Soros, Wesley Clark, Lord Robertson and Marti Ahtisaari.

³ Italics are the author’s.

2. TERRITORIAL INTEGRITY

The territorial integrity of states is an old principle that is generally acknowledged to have been firmly established by the Peace of Westphalia in 1648 which declared that outside interference in a state's internal affair was illegitimate. Through the years the principle of territorial integrity has not diminished. It is still considered one of the most basic principles of international law and continues to be a major instrument for the prevention of armed conflict between states.

Article 2[4] of the United Nations Charter includes territorial integrity as one of the principles that prohibits the threat or use of force in the resolution of international disputes. Territorial integrity is included in the Declaration of Principles of International Law concerning friendly relations among states. The United Nations Charter regards it as one of the paramount elements included in the concept of sovereign equality.

The Helsinki Final Act of 1975 reinforced the principle of territorial integrity and went further by including a section on the inviolability of frontiers. It is hoped that members of the Contact Group and the UN Special Envoy are familiar with the wording of these two sections of the Act. They read as follows:

“Section III: Inviolability of Frontiers

The participating states regard as inviolable all one another's frontiers as well as the frontiers of all States in Europe and therefore will refrain now and in future from assaulting these frontiers.

Accordingly, they will also refrain from any demand for, or act of, seizure and usurpation of part or all of the territory of any participating State.

Section IV: Territorial Integrity of States

The participating States will respect the territorial integrity of each of the participating States.

Accordingly, they will refrain from any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating State, and in particular from any such action constituting a threat or use of force.

The participating States will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by

means of such measures or the threat of them. No such occupation or acquisition will be regarded as legal.”

These are fundamental principles. They form an integral part of the framework of international law. They are designed to be a guarantee of international security and mutual respect among nations. They are to have universal application and cannot be put aside because of special circumstances or when they prove embarrassing or inconvenient. Their message is simple and clear. Borders can only be changed by agreement between states.

3. PRESSURE ON SERBIA

Unfortunately we have seen in the case of Kosovo in 1999 and more recently with the invasion of Iraq that the countries of NATO and the United States are prepared to violate international law when they consider it in their interests to do so. Furthermore the NATO countries are able to use their economic and political power as leverage to force smaller countries to comply with their demands. The promise of membership in the new Europe can be an offer difficult to refuse even when acceptance means a humiliating loss of self respect if not the loss of territory as well.

In June 2005 the European Council set out the criteria to be met by any decision on the final status for Kosovo. The solution according to the Council had to be fully compatible with European values and norms, comply with international legal instruments and obligations and the United Nations Charter and contribute to realizing the European prospects of Kosovo and the region. However the Council also stressed that any agreement must ensure that Kosovo does not return to the pre-March, 1999 situation.

What the European Council seems to be saying is that any decision about Kosovo must be legal but since it can't be legal without Serbia's consent the Council holds out the possibility of admittance to the European Community in exchange. If Serbia gives up Kosovo its reward will be eventual acceptance into the European Community. The European Council describes this as a satisfactory solution. Others might describe it as blackmail. In any event what is clear is that both the United States and the European Community want a solution to what they interpret as an intractable and festering problem in the heart of Europe. The Europeans may be fussier about the legalities than are the Americans but the final outcome desired is the same.

If Serbia is willing to accept this deal then there are the usual promises that the new Kosovo would be multi-ethnic, would respect human and

minority rights, would guarantee the safe return of the evicted population, that the Christian religious sites would be safeguarded and that crime, corruption and terror would be eliminated. All of the guarantees sound good. The problem is all of them have been promised before and expressed in United Nations resolution 1244. We know how faithfully the guarantees in that resolution have been enforced in Kosovo during the past seven years.

Casting a dark and foreboding shadow over the Kosovo talks is the reality that if the incentive of joining the new Europe does not work and Serbia refuses to consent to the loss of its Kosovo territory then punishment rather than incentives can be used. Serbia has already had its grim share of what this can entail. Loss of IMF and World Bank loans, discouragement of Western investment, ostracism from international institutions, threats from the International Criminal Tribunal of more indictments, manipulation of elections and a host of other penalties designed to force conformity to the will of the United States led NATO powers.

Nevertheless it would be a mistake for the United States and the Europeans to assume that the decision about Kosovo independence will solve all the problems in the Balkans. Kosovo independence is a Pandora's Box and once opened there is every likelihood of further Albanian demands in the region. Furthermore as the United Nations special envoy, Kai Eide has reported, Kosovo is simply not ready for independence. Quite apart from its questionable economic viability,⁴ its record of ethnic cleansing, violence and intolerance of minorities should disqualify it from becoming an independent country. Widespread crime and corruption and its dominance of the European drug trade give sufficient evidence by any standard that it is not ready to join the ranks of independent states.

A further mistake is to believe that a decision to grant Kosovo independence will not become a precedent or that it will not be seen as an example for others who might be striving for self determination. There have been statements from US officials suggesting that Kosovo is unique and therefore cannot be used as a precedent. This is wishful thinking and it is dangerous thinking. A decision to grant Kosovo independence will have far reaching implications. It will serve as an example and encouragement to other independent movements around the world. It could become a symbol and template for secessionists everywhere.

⁴ An independent Kosovo would be one of the poorest countries of Europe with a per capita income similar to that of Haiti [about \$1500 dollars US]. Even neighboring Albania now has surpassed Kosovo in per capita income [\$4,900 US dollars]. Thirty seven % of Kosovo's population lives in poverty. Infant mortality is the highest in Europe and over fifty % of the people have only a primary school education.

4. A PRECEDENT FOR RUSSIA?

Notwithstanding the attempts by US officials to pretend that independence for Kosovo would not be a precedent, the President of Russia, Vladimir Putin, on January 30, 2006, declared that the decision on Kosovo, if it is to be considered legal, should be of a “universal nature” and applicable to post-Soviet territory. The Russian President based his statement on the fact that UN Resolution 1244 has affirmed that Kosovo is an integral part of Serbia. He added that, “Our starting point is that the United Nations Security Council’s decisions are not of a decorative nature, do not depend on the political circumstances, but are adopted in order to be fulfilled.”

President Putin was referring to the unrecognized regions of the former Soviet Union that desire independence: Abkhazia that broke away from Georgia in 1992 and successfully defeated Georgian military attempts to prevent secession. It has not been recognized as an independent state. South Ossetia declared its independence from Georgia in 1991 following armed conflict with Georgian troops but its independence has not been recognized. Transnistria declared unilateral independence from Moldova in 1991 and with the assistance of Russian and Ukrainian troops resisted attempts by Moldova to prevent secession. Its independence has not been recognized.

In response to President Putin’s intervention in the Kosovo process the U.S. Deputy Secretary of State for European Affairs, Rosemary di Carlo has stated that the Kosovo situation and the region itself is a unique phenomenon and that the Kosovo model would not apply to the unrecognized regions of the former Soviet Union. She also pointed out there were no UN resolutions relating to them. What she did not say of course was that the UN resolution relating to Kosovo explicitly reaffirmed it as part of Serbia.

It is difficult to say if President Putin’s remarks are a warning that Russia, as a member of the Contact Group, will insist that the criteria and standards used to decide on Kosovo independence will have universal application and especially to the unrecognized regions of the former Soviet Union. If it is a warning is it to be taken seriously? Or, is it simply a move designed to be used by Russia as a future bargaining chip in negotiations with the Western powers? Previous experience has shown it is unlikely Russia will risk openly defying the United States and Europe over the issue of Kosovo independence. At any rate this remains to be seen. Whatever the motives, however, President Putin’s intervention serves to highlight the reality that, despite protests to the contrary, a decision to grant independence to Kosovo will stand as a precedent.

5. A DANGEROUS PRECEDENT

There are currently 191 member states of the United Nations but an estimated five thousand ethnic groups scattered across the globe. Many of these ethnic groups are desirous of attaining statehood and becoming members of the United Nations. Many have much stronger claims for independence than does Kosovo. The Kurds for example number close to thirty million people and have maintained a distinctive culture for three thousand years despite being dispersed in Turkey, Iraq, Iran and Syria. They were promised a separate state by the allies after World War One but this promise was thwarted by the Turkish dominance of the region under Kemal Ataturk. The leaders of the Kurdish independence movement will not overlook what happens in Kosovo. The American insistence on maintaining the territorial integrity of Iraq at the expense of the Kurdish wish for independence will ring hollow to the Kurds of north eastern Iraq.

Taiwan with its prosperous economy and high standard of living has enjoyed *de facto* independence since being expelled from the United Nations in 1971 and yet it has not been recognized by the international community as an independent state. Tibet, Chechnya, Nagorno-Karabakh,⁵ Tamil Eelam, Kashmir, the Philippines, Thailand - the list is a long one. In Western Europe itself there are serious demands for independence from Basques, Corsicans, and Montenegrins.

In the case of Montenegro it shares the same language, religion, history, culture and ethnicity *as* the Serbs. There is not the slightest reason why this tiny country of 600,000 inhabitants whose leader is alleged to be involved in criminal activities should be granted independence apart from the fact the President once enjoyed the favor of the United States. Yet according to a report in the influential Herald Tribune the European Community is suggesting that Montenegro can secede if fifty percent of the eligible voters cast their ballots and if fifty five percent of those choose independence. In effect this means that Montenegro can attain independence with less than 30 percent of the voters supporting it. Can anyone imagine that Javier Solana the EC foreign Minister would advocate a similar deal being offered the Basque separatists?

There are over three million Hungarians living outside of Hungary in the neighboring countries of Romania, Slovakia, Serbia and Ukraine. Many of

⁵ Armenian officials are already on record as saying they have noted the independence of East Timor, the signing of an agreement in Sudan through referendum and the talks taking place about Kosovo independence.

these would like once again to be governed by Hungary. Already there has been a resurgence of Hungarian nationalism in the Serbian province of Vojvodina. This is not surprising, if Kosovo warrants independence why not Vojvodina? The Serbs and Croats in Bosnia-Herzegovina despite every encouragement from Paddy Ashdown the UN High Representative are not yet resolved to the idea that this artificially created Protectorate is viable. Many among them would favor joining their fellow countrymen in Serbia or Croatia and independence for Kosovo will add strength to these desires.

Among the conditions laid down by the Contact Group and supported by the European Council for any decision about Kosovo is that there is to be no change in current borders, no union with another country or part of another country and that Kosovo must not constitute a military threat to its neighbors. These conditions are of course as a result of legitimate concerns that an independent Kosovo might well be the first step in the realization of the dream of a Greater Albania in the Balkans. No change in borders means no joining up with Albania and no linking up with the Albanians in southern Serbia or Macedonia. There are solid reasons for these concerns. The military incursions of the KLA into southern Serbia and Macedonia in 2001 provided strong evidence that an independent Kosovo could well lead to secessionist ideas among the Albanian populations in the Balkan states.

Conditions laid down during talks on the status of Kosovo are one thing but the enforcement of such conditions after a decision has been made is another. Under the watchful eyes of thousands of NATO and United Nations troops the Albanians in Kosovo have since the withdrawal of Serbian forces acted in a barbarous fashion towards the non-Albanian population, have carried on with drug smuggling and other criminal activities and have conducted military operations across their borders. Is there any doubt that, should Kosovo achieve independence, these activities will be even more difficult to control? The borders between Albania and Macedonia already, in effect, are open borders and are likely to become invisible after independence.

Another serious implication of an independent Kosovo relates to the possibility that the new entity could become a haven for Islamist extremists. There have already been concerns expressed by Western security experts about the infiltration of Islamist extremists in Bosnia, many of whom remained there after the end of hostilities. There have also been reports of mujahideen fighters supporting the KLA against Serbian security forces and that al Qaeda has established bases in Kosovo and Albania. Whatever the truth of these reports it is reasonable to suppose that an independent Kosovo

would be ideally suitable for the establishment of al Qaeda operations and a fertile ground for Islamist extremism.

The United States and the EC have expressed concern about the danger to international security caused by the existence of so called "failed states." Failed states are defined as those countries whose governments have weakened to the point where they can no longer provide adequate public services, physical security or economic livelihood to their inhabitants. They become attractive to terrorist organizations as safe havens and as staging grounds for attacks on other targets. The United States National Security Strategy emphasizes the problem by declaring: "America is now threatened less by conquering states than we are by failing ones... poverty, weak institutions and corruption can make weak states vulnerable to terrorist networks." If, as it seems evident, Kosovo meets all of the characteristics of a failed state, the determined rush of the United States and the European Community to grant it independence will prove to be a grave policy error and will inevitably have a negative effect on Balkan stability.

6. CONCLUSION

After the end of the Cold War and the emergence of the United States as the most powerful military force the world has ever known there was a brief period, as the twentieth century was drawing to an end, to hope that the world would experience a "Pax Americana." A benevolent and democratic America in full support of the ideals expressed in the United Nations Charter would ensure peace and order throughout the world. The threat of global extinction and the horrors of widespread bloodshed and violence would be ended.

This dream was shattered by the United States led bombing of Yugoslavia in the spring of 1999, which was done in violation of the UN Charter and contrary to international law. Despite trying to justify the bombing as a humanitarian intervention to stop alleged genocide and ethnic cleansing in Kosovo it was apparent the real reason was to demonstrate the value of NATO as an organization and of continuing United States dominance in Europe. It was a critical turning point because it signaled the willingness of the United States to use military force to resolve international disputes and to intervene wherever and whenever it so desired.

Subsequent events have shown that the United States has not abandoned this policy. The invasion of Iraq without United Nations authority is the most striking example of the US determination to act unilaterally. There

will always be an attempt to gain support for these actions either through the use of NATO or by persuading the European Community or the newly emerging states of Central and Eastern Europe to get on side. The reality is, however, that the most powerful nation in the world is not willing to abide by the norms of international law or to conform to the principles laid down by the United Nations Charter.

United States policy in the Balkans has been dysfunctional since March 1992, when their Ambassador, Warren Zimmerman, persuaded Izetbegović, the Islamist leader of the Bosnian Muslims, to withdraw his signature to the Lisbon Agreement. This decision, which led to US acceptance of the results of an illegal referendum and recognition of the first Muslim state in Europe, triggered civil war in Bosnia and led directly to the death and destruction that followed. In the following years, US decisions have proven to be equally disastrous for the region.

The United States subversion of the Vance-Owen plan and the following Vance-Stoltenberg agreement prolonged the war in Bosnia unnecessarily. The violation of the United Nations arms embargo and the decision to permit several thousand mujihadeen fighters into Bosnia and to provide them with modern military equipment was also a decision bound to have “blowback” implications damaging not only to the region but also to the ongoing US war against terrorism.

The decision of the United States government to support the cause of the terrorist KLA in its armed rebellion to secede from Yugoslavia is another example of US policy-making gone wrong. There is evidence that the KLA military incursions into southern Serbia and later in Macedonia were backed by American agents. Their current policy supporting independence for Kosovo is but another chapter in an unfolding series of strategic errors. More seriously it reveals an indifference to the concept of sovereignty and of respect for the rule of law that is not in keeping with the principles laid down by the founding fathers of that great nation.

United States policy in the Balkans has been characterized by cynicism, duplicity and short term tactical gain. By backing Islamist aims in the region and supporting terrorist groups in Kosovo there might be the immediate advantage of establishing a large military base in Kosovo or appeasing further Albanian demands by advocating independence for Kosovo but in the long term it will backfire.

For centuries past Serbia, as the largest country in the Balkans and situated on the strategically important crossroads between Europe and the Mid-East, was proud of its well earned reputation as the “guardian of the gate.” A democratic Serbia can be a powerful ally to democratic and free

countries everywhere. In these perilous days when even the United States with all of its awesome military might can be terribly damaged by a handful of fanatical Islamist terrorists it would seem only prudent and in the national interest of Americans and of Europeans to reverse their ongoing policy of humiliating this key Balkan nation and find a solution to the Kosovo problem that falls short of independence.