

OPINION

*NATO Is Destroying Stiff Dogmas, but not the World Order**

Dainius Žalimas

The NATO military operation against Yugoslavia encountered contradicting evaluations in the world. A number of politicians and lawyers in different states expressed doubt on the legality of the NATO actions. Some of them, particularly Russian state officials, viewed the NATO actions as aggression against the sovereign and independent state of Yugoslavia and as the destruction of the settled world order and the rule of international law in international relations. While in the West, as well as in the Central and Eastern Europe states, there is the concern that NATO has created a dangerous precedent that for instance, may allow Russia to use force against the Baltic states under the pretext of protecting the rights of the Russian-speaking minorities. Meanwhile, the supporters of the NATO military operation do not doubt its legality and justify it as necessary to maintain international peace and security and to strengthen justice in international relations.

The discussions on the NATO actions against Yugoslavia can also be looked at from a broader point of view, namely - as a dispute between two different law schools - that of legal positivism and natural law. The arguments of the opponents of the NATO operation, not surprisingly rely on the legal positivism school's conception of the world order and international law which was dominant in the Soviet Union. The advocates of legal positivism consider as law only that which has been formally issued (in this case, international law is only what has been defined in the Charter of the United Nations and other international treaties) and completely ignore the norms which emerge in society as rules of naturally just behavior. In other words, they forget that the norms of behavior arise in a society naturally with the concept of justice that society adopted and accepted. Therefore, in this respect law and justice are identical concepts (for example, Aristotle did not distinguish between law and justice) - what is unjust cannot be considered law. The legal positivism based doctrine limits itself only to the formal expression of law. The role of legal usage is denied, law is clearly distinguished from justice by asserting that what is just does not necessarily have to be legal, and vice versa - what is legal does not necessarily have to be just. The latter concept of law and justice is dominant in Russia and a number of post-Soviet states, as well as in some other European countries.

The assessment of NATO actions against Yugoslavia depends upon the person's world outlook, i.e. whether he accepts the legal positivism based conception of law, or the traditional conception of law being identical to justice. The full assessment of the NATO operation would change and all the arguments of the opponents would be rejected, if law was derived from the requirements of justice and these two concepts were considered identical. The principles of justice require interpreting international law norms by taking into account more than just how these norms are formalized in the UN Charter and other written sources of international law. According to Friedrich von Hayek, words do not necessarily express perfectly what is considered just. Julius Paul (III century BC), a lawyer of Ancient Rome, emphasized that justice does not originate from a rule, but on

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the contrary, the rule is derived from the concept of justice adopted by the people. Therefore, international law norms should be interpreted according to the principles and criteria of justice, applicable in the given case of the NATO operation against Yugoslavia. It can not be otherwise, if we recognize the axiom declared by many theoretician lawyers that the aim of law coincides with the aim of moral norms - to guarantee the evolution of society in accordance with the principles of justice.

It should be obvious that the goal of the NATO operation is not to destroy the state of Yugoslavia, but to prevent its military forces from violating the human rights of the Albanians in Kosovo. Respect for human rights is one of the basic principles of international law and one of the aims of the UN as declared in Article 1 of its Charter. NATO only pursues the practical implementation of this aim. International law recognizes the concept of humanitarian intervention, the use of military force to protect basic human rights and prevent a human catastrophe. The UN Security Council in its resolutions No. 1199 and No. 1203 adopted in 1998 stated that the situation in Kosovo could result in a human catastrophe and urged the government of Yugoslavia and the Albanian authorities in Kosovo to solve the conflict peacefully by reaching a political agreement and thus reducing the threat of a human catastrophe. The government of Yugoslavia, however, was not willing to listen to this urging, and was thus responsible for making the peaceful resolution of the conflict impossible.

There is probably no doubt that Yugoslavia has been carrying out genocide against the Albanians in Kosovo as well as other violations of international law, considered to be war crimes. In the previously mentioned resolutions No. 1199 and No. 1203, the UN Security Council pointed out that the military forces of Yugoslavia were performing non-discriminative attacks against civilian Albanians and deporting them from their homes. Such actions, as well as the use of force by Serb soldiers against civilians, particularly women and children, are prohibited by the 1977 Second Supplementary Protocol for Non-International Armed Conflicts to the Geneva Conventions on the Protection of War Victims. According to Article II of the UN General Assembly Convention of 1948 on the Prevention and Punishment for Genocide, genocide includes actions aimed at the complete or partial destruction of any national or ethnic group, namely, murdering and mutilating members of such group, the intentional creation of living conditions for the group whose purpose is their destruction, etc. The listed genocide actions have already become the policy of the Yugoslavian government toward Albanians and obviously created a human catastrophe in the region.

It is also worth remembering that Yugoslavia under Milosevic started aggression against Slovenia, Croatia, Bosnia and Herzegovina when they declared their independence and inspired the crimes against humanity and war crimes carried out by local Serb forces in Bosnia and Herzegovina. All attempts to resolve the conflict in Bosnia and Herzegovina peacefully were unsuccessful until NATO started air strikes against the Serb military forces. Attempts were made for a long time to solve the crisis in Kosovo through negotiations, but it was impossible to carry out negotiations with a country which is neither able, nor wishing to negotiate and views negotiations only as a method to delay the resolution of the conflict and to demonstrate the impotence of the international community. Yugoslavia is such a country today for it has not shown any flexibility, but used the time of negotiations for preparing still more intense military actions against the

Albanians in Kosovo. Thus, it is obvious that Yugoslavia, and not NATO, is to be blamed for the military operations in the Balkans.

The natural laws of justice demand that everyone should receive what he deserves. In this case, Yugoslavia under Milosevic is not an exception. The requirement of justice was applied to his state. It is perfectly clear that only military measures can stop Yugoslavia's threat to the peace and stability in Europe, compel it to make concessions, and resume negotiations. Therefore, Yugoslavia only received what it really deserved. The NATO operations, whose aim was to curb Yugoslavia's aggressive potential forever, can be viewed as an instrument of the international community to ensure that justice would prevail in international relations. There are always certain risks in military matters and the success of the NATO operations was, therefore, not necessarily guaranteed. However, it would be interesting to know what alternatives the opponents of the NATO operation would have proposed in this situation; perhaps only another peace initiative, doomed to fail, but allowing Milosevic to continue mocking the hopelessness of the international community.

Humanitarian intervention in this particular case does not violate the universally accepted norms of international law forbidding the threat or use of force. Article 2.4 of the United Nations Charter urges members to refrain "from the threat or use of force against the territorial integrity or political independence of any member or state, or in any other manner inconsistent with the purposes of the United Nations." Clearly, in this case force against the territorial integrity of Yugoslavia has not been used, since the international community, including NATO, are not attempting to tear Kosovo from Yugoslavia by force and continue to consider Kosovo an integral part of Yugoslavia. The use of force is also not directed against the independence of Yugoslavia, since Yugoslavia's independence does not give it the freedom to commit immense violations of international law and to carry out international crimes. According to traditional international law, genocide and violation of basic human rights are declared to be international crimes. The UN Commission of International Law lists genocide as an international crime in its project on the Articles of States' Responsibility. International humanitarian legal norms also belong to the *jus cogens* category of imperative international legal norms, and thus their violation is also considered to be an international crime. The concept of absolute sovereignty became outdated a long time ago; states must adhere to universally accepted norms of international law. Thus, the independence of any state does not grant it independence from international law. In this aspect, NATO is only seeking that Yugoslavia obey the imperatives of international law, firmly establishing respect for basic human rights.

It would also be difficult to state that the use of force against Yugoslavia is not compatible with the goals of the UN. As has been mentioned, one of the purposes of the UN is encouraging respect for human rights, and the humanitarian intervention by NATO was intended for that purpose. The preamble of the UN Charter mentions the use of armed force only in the common interest. Apparently, stopping the massive violations of human rights in Kosovo is in the common interest of the whole international community, totally in compliance with the objectives of the UN. According to traditional international law, whose norms are expressed in the previously mentioned project on the Articles of States' Responsibility, all the world's countries have the right to react to any international crime.

It is unclear on what grounds the opponents of the NATO operation assert that the use of force against Yugoslavia breaches the Charter of the United Nations. In fact, those condemning the NATO military operation declare that any use of force against a sovereign state must be directly authorized by the UN Security Council, otherwise it would constitute a gross violation of the UN Charter and be a violation of international law. But does this formal rule at all help strengthen the role of justice in international relations and can it be explained so formally in general? It is clear that the Security Council could not directly approve the NATO actions because Russia and China would have vetoed them. For this reason, the Security Council would have been unable to fulfill its main function - to ensure international peace and security. But does this mean that in such cases the international community should not take any appropriate actions and allow Yugoslavia to continue violating international law, natural human rights, and conduct the genocide of Albanians in Kosovo, and thus encourage potential war criminals by creating the impression that they would not be punished. Finally, should the fate of justice depend on nations such as Russia and China whose understanding of justice and international law is excellently illustrated by the recent war against Chechnya and the continuing occupation of Tibet and the genocide of Tibetans? In this case, it would probably be better not even to talk about justice. It is also worth remembering the previous practice of the UN and the Unity for Peace Resolution adopted by the General Assembly in 1950, according to which the UN Security Council has the primary, but not exclusive responsibility to maintain international peace and security. Therefore, if the Security Council is not able function effectively due to the constant lack of solidarity, other institutions can assume the responsibility for maintaining international peace and security.

International law should not be looked at solely through the prism of the formal procedural rules of the UN Charter. The opponents of the NATO operation forget that the interpretation of the UN Charter norms change in the course of time taking into account the requirements of justice, the necessity to implement the requirements in a changing world as well as with the appropriately changing norms of international law. Therefore, the UN Charter is a quite flexible document, whose elucidation can alter as the understanding of the concrete goals of the UN change. However, the written formulation of the Charter's norms change very rarely. It may not be otherwise, since it is impossible to preserve the modern norms of international law and to understand them in a strictly literal way like a static phenomenon. Unfortunately, the supporters of legal positivism are likely to interpret the international law norms in this way. Moreover, such an interpretation contradicts the purpose of international law to promote the progress of the international community according to the criteria of justice.

Thus, the norms of the UN Charter should be interpreted not only literally but also in accordance with the need to fulfill UN goals. The opponents of the NATO operation forget that UN Security Council Resolution No. 1199 of September 23, 1998, demanding the end to fighting in Kosovo, mentions the use of further supplementary measures to restore international peace and security, if the conflict cannot be resolved by peaceful means. Since the Resolution was adopted according to Chapter VII of the UN Charter, which provides for the possible use of force, the supplementary measures may also include military force. Thus, it might be said that the Resolution foresees the use of force against Yugoslavia if the plan of restoring peace in Kosovo fails because of

Yugoslavia's fault (this actually happened). In this case, the NATO actions fully comply with the meaning of the Resolution and the requirements of justice, according to which it is to be interpreted.

Finally, international law is a creation of the international community derived from the requirements of justice prevailing within the international community. The majority of the international community does not condemn the NATO actions (out of the 15 states in the Security Council only Russia, China, and Namibia voted for the condemnation). On the other hand, the UN Human Rights Commission did not condemn the NATO actions, but the policy of ethnic cleaning in Kosovo pursued by Yugoslavia. One can claim that the international community interprets the norms of international law in such a way that it can undertake effective actions to guarantee international peace and justice when the UN Security Council is unable to sanction them directly. In this way a new practice of clarifying and applying international law norms has appeared. Because it is universally accepted, it becomes a legal custom. The international community does not protest against the NATO operation, implying that it is considered to be legal. If the NATO actions were considered illegal, it would be difficult to imagine how the international community could look indifferently at the violation of the norms of international law that are the most essential ones for its existence. The supporters of legal positivism, who consider the NATO actions as aggression, are also caught in their own traps of the formalistic interpretation of law; they forget that only the UN Security Council is authorized to declare that there is an act of aggression, and the Security Council has not adopted such a declaration.

Hence, the NATO operation should be understood as a thoroughly legal act, whose objective is to strengthen the rule of international law and justice in international relations and to implement UN objectives. It could be wished that this would not become a onetime step, but a precedent that could be applied not only in the continent of Europe. Moreover, the precedent of the NATO actions against Yugoslavia is more useful than pernicious for the Baltic and other Central and Eastern Europe nations. For example, if the Baltic states would be included in the zone of NATO interests and their attack would be understood as a threat to NATO, they could expect effective military assistance despite the opposition of some members of the Security Council or the absence of direct authorization by the Security Council .

On the other hand, we should not really be afraid that the NATO operation might constitute a precedent for Russia to occupy the Baltic states again. It is unrealistic to believe that regimes would take power in the Baltic states that would start implementing such actions against the national minorities as Milosevic has done against the Albanians in Kosovo. Russia still remains a state that will when needed always find pretexts to make an act of aggression (e.g. accusing the Baltic states of unfriendly actions towards the USSR in 1940, or expressing the need to introduce constitutional order in Chechnya in 1994). Moreover, the never ending absurd accusations that the Baltic states violate the rights of the Russian-speaking people and discriminate against them sometimes turning into absolutely illegal economic sanctions (for example, those recently applied to Latvia) show a peculiar feature of Russian policy and its understanding of international law. Thus, unfortunately, Russia remains a state that is always able to interpret the norms of international law in a way that would help it meet its still expansive goals.