

THE UNITED STATES-AFGHANISTAN CONFLICT AND THE DECLINE OF INTERNATIONAL LAW

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The armed conflict between the United States and Afghanistan¹, ostensibly justified by the September 11 attacks on New York and Washington, is another stage in the process of the decline of international law and in the deepening of the coma at the UN.

When international society was bi-polar, international law benefited from the fact that each pole was a vigilant guardian of the other's behavior. Each great power, fearing the other's reprisals, limited its responses against the other, if not in its area of influence but at least towards the other's conduct. The illegal exercise of armed force, as defined in the United Nations Charter, was relatively limited. A complex system of counterweights and balances eventually resulted in the greatest benefit to the fundamental principles of international law. Breaches of the law, especially unilateral armed interventions were committed "in the name of the law". Most certainly they were abusive distortions, but they were not built upon a rejection of the law itself. These practices constituting an attack upon legality, did not reject the idea of the necessity of international legal regulation. These breaches of the law left

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the possibility of review under international law. This time is past.

The norms and principles whose structures placed pressure on the State who violated them has given way to the assertion of "soft law better adapted to the process of internationalization". It establishes a precedent that is close to an outright denial of the law. Now there are "moral imperatives", unilaterally proclaimed, which justify the use of armed force and are justified by regressive concepts like the conflict between Good and Evil, similar to concepts of "just wars" in previous periods.

The complex game that is international terrorism and the imperial policy of the United States accelerates and accentuates the process of dissolution of every legal principle previously useful to the US Empire's leadership (in particular over its "allies" who are also its rivals) but also to the internationalization that is mainly profitable to great private transnational powers.

The dramatic force of the terrorist spectacle on September 11th 2001, compared to the various attacks, massacres and slow deaths which people experience without the media watching helped draw attention at least temporarily to controversies that have never been resolved: the issue of terrorism in conflict with the United States and European foreign policies and State terrorism, the Israel problem, and the problem of the legality of the use of armed struggle to assert the right to self-determination and independence².

The self imposed mission of the United States is to make its' domestic law universal, its' "way of life" and its' own "moral values" as models that rise above every obstacle. As the American Albert Parry said in 1976: "There is no difference between terrorism and revolution, between terrorism and war, between civil war and international war"³. According to this approach, any dispute arising from the alliance of Europe and the United States or the United States and any developing

country, becomes "treason". In this way, Israeli security ideology is elevated to a worldwide principle⁴.

This analysis of the law makes distinctions insignificant. The lack of evidence of direct links between the terrorist act and the possible responsible State is not a bar to its elimination⁵. The principle requiring measured responses to inflicted assaults, disappears. What used to be the accusation against the USSR⁶ has become the indictment against the "terrorist countries" or "gutter-countries", when defined by the US Congress, based on its political needs and circumstances, and makes any response by them permissible outside any legal framework.

In this way, long-standing principles of international law have been swept away. So that "Self-defense", (disrespected for a long time by Israel, inventor of "preventive self-defense") once a commonly recognized legal principle has become meaningless. Nobody, including the United Nations has dared to challenge the indefinite extension of the concept of "self-defense" made by the United States. Professor Ruzie has even declared that it was "useless" and even "indecent" to question whether or not the United States was really in a situation of self-defense following the September 11th attacks⁷, after the deafening silence of legal jurisprudence in France which has mainly acted like a US satellite country⁸.

Article 51 of the United Nations Charter converts traditional notions of self-defense to a "safety valve", that can result when the collective security system established by the Charter fails that limits a State's capacity to be at war. This definition of self-defense makes it permissible only when the Security Council fails to act and can only be used until the problem is resolved by the Security Council itself, which, also will review the measures taken by the State that proclaims itself to be in a self-defense situation. This review is intended to prevent the assaulted State from unilaterally deciding who is the aggressor without providing any supportive evidence to the United Nations⁹. The Security Council is to decide the State

“to punish” for its strategy¹⁰ as well as the conditions of punishment.

The US cannot complain about the United Nations’ weaknesses since they are mainly responsible for them: “One cannot blame anybody else for one’s own mistake”. Moreover in resolution 1368; the Security Council “declares itself ready to take any necessary measure to respond to terrorist attacks... And to fight against any kind of terrorism... in pursuit of its responsibilities according to the Charter.” However, the United States blatantly ignored not only the UN but NATO itself, proclaiming by its conduct that it is the only nation able to discern the “good” of humanity and how to promote it.

Resolution 3314 (XXIX) of December 14th 1974 of the United Nations General Assembly defines attack to be the act of a state, or, as the International Court of Justice added, the act of an armed force sent by a State. However, the Taliban are responsible only for acting as the host to and not the instigator of the supposed terrorists, which is not the same as an attack on a state.

The September 11th attack has been used by the United States to justify unilateral self-defense. This interpretation leaves the State considering itself assaulted, free of any constraint, in respect to the nature, kind and extent of the “response”. There is confusion between acts of self-defense and savage reprisals without proof, unregulated by international law. The United States attempted to annihilate the terrorists’ networks by massive bombings of an entire population, contrary to the fundamental provisions of humanitarian law. Neither the United States nor the United Nations have tried to implement the provisions of the Charter that make negotiations in search of reconciliation, the fundamental and preliminary condition of any coercive action. The systematic and continued bombings of Afghanistan by the US air-force are out of proportion with the illegal act for which they are responding and are degenerating into a war, beyond legal regulation, as if American

victims are endowed with a humanity superior to all the other victims of international relations.

This decline of international law, is mainly due to the unilateralism of the only worldwide Super Power, combined with the setting aside of international organizations. (The UN is ignored and the Security Council is turned into a simple registry office of US positions). The absence of any conformity with the UN Charter or the Security Council decisions permits the United States to indulge political opportunity without consideration of the law. NATO which has the capacity to restrain the United States has been set aside. As far as the International Criminal Court is concerned, although the terrorist attack qualifies as a crime against humanity and the court is competent to judge the people accused of terrorism if they are arrested, it has no potential application to the United States since they refused to ratify the Rome statute. The United States obviously aspires to imperial unilateralism, supported by States willing to provide their allegiance¹¹.

One must be very optimistic to believe, as Professor A. Pellet does, that: "The great advances in the law are always the fruits of major crises. And the poignant collapse of the Twins Towers could offer the opportunity, dramatically, to start to build the international law of the 21st century"¹² (in English in the text). Professor Marysol Touraine, Socialist Deputy, had already predicted after the collapse of the USSR that there is a compelling need for international law.

Each recent serious international crisis enables dominant private and public powers to move towards a globalization that only benefits a very few. This is one of the serious "collateral effects" of the United States-Afghanistan conflict.

The unsupported notion that is gaining jurisprudential dominance that a super power can decide what is legally right, makes clear that the Super Power's foreign policy has escaped from legal frameworks. The example of the United States is obvious as it openly refuses any international legal constraints,

dragging the international community towards indifference if not contempt towards international legal regulation. However, the US is not the guardian of international law, although it threatens its existence, criticized by only a few NGOs.

In any case, unless one surrenders international legal regulation to transnational firms and their auxiliaries, globalization for the common good must demonstrate concern for the common good and its protection.

The September 11th crisis does not move the world forward towards a condition in which international law is respected or towards a civil society which protects the observance of international law. The leaders of the Super Powers are very careful to preserve the rights of private property in questions affecting international relations, even using them at the right moment to promote holy alliances or to invent remedies for their economic difficulties by "calling for help" from a State, previously denigrated).

Can we rely on jurists and legal precedent to prevent these perversions of law?

REFERENCES

1. The difficulties encountered by the United States in their use of the Taliban leaders whom they had helped to take over Kabul to build a giant pipeline crossing Afghanistan, were at least as important as the attacks inflicted.
2. See M. Benchikh. "The Issue of International Terrorism Facing the United Nations General Assembly"; A. Bentoumi. "Terrorism and Armed Struggle Under International Law"; L. Blishchenko. "Acts of Terrorism Punishable Under International Law", in *Terrorism and National Liberation*. IPO. P. Lang, Ed.. 1987.
3. See A. Parry. *Terrorism from Robespierre to Arafat*, N.Y. The Vanguard Press. 1976.
4. The general mobilization of Israel against terrorism, defining any contact by a citizen of Israel with PLO members to be an offense of complicity with terrorism, is similar to President Bush's attempt

to enlist the entire world in a campaign against the nebulous terrorists, but also against accessory States, and "friends of terrorist friends".... without the least connection with the general principles of criminal law that "civilized" countries so often refer to, particularly by the United States in respect to other issues.

See also the notion of "security space" that Israel implements by taking up the territory of other States: The United States uses this principle and extends it to the entire planet.

5. According to Mr. Makinski's phrase in "La Revue de la Defense Nationale, des" (December 1986, p.41)
6. S.T. Francis. *The Soviet Strategy of Terror*. Washington, The Heritage Foundation. 1981
7. Debate on the website "Actualite et Droit International": www.ridi.org/adi.
8. This split in jurisprudence is also manifest in American legislation by Helms-Burton and d'Amato-Kennedy imposing unilateral embargos by the United States.
9. The United Nations leaves declarations concerning direct links between Afghanistan and ben Laden's network unexamined. The member States of the Security Council, are satisfied to be told by the US to resolve their own problems (Russia/ Tchetchenia, China/ Tibet, etc.)
10. In case the military operation in Afghanistan fails, the "need for victory" of the United States may very well lead to new military operations against other nations like Iraq, for instance.
11. The United States makes some of their allies (like Saudi Arabia) pay for the cost of their military operations.
12. Debate on the website "Actualite et Droit International": www.ridi.org/adi.