

WHAT'S HAPPENING TO INTERNATIONAL LAW IN AFGHANISTAN?

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The military operations against Afghanistan constitute an extremely serious disruption of the fundamental principles of international law embodied in the United Nations Charter which resulted from the tragic experiences of World War II. The tacit acceptance of the UN to these operations has itself placed the organization in opposition to the UN's own basic principles.

The Charter's fundamental philosophy is to substitute the imposition of power and domination of people through armed force by an agreement that mediation by nation States as their representatives constitutes a people's right to free choice without outside interference. Thus, the Charter prohibits the striking of blows at the integrity of the territory (including air space) of a State, except if necessary to "maintain or restore peace", and in self-defense.

It is clear that the US incursion into Afghanistan is not to maintain or restore peace. An intervention by a state can only be justified to maintain or restore peace. It must be noted that the use of the term "war" in reference to the US aggression in Afghanistan is also totally inappropriate, because "war" assumes that there is a confrontation between two or more

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states, whereas in this case the military operations are unilateral and are not against any resistance or armed response. As for self-defense, the Charter only permits it in the case of an attack by one or several States on another State.

The logical consequences of the Charter and UN proclamations on the sovereignty of peoples and on the competence of member States to serve as the people's delegates in international relations is to introduce the concept of a world police power to protect the sovereignty of each state.

It is clear that the United States began very early to ignore the UN Charter whenever what they called "their vital interests" were affected. It began in 1953, with the Caracas resolution. The US initiated the concept of "internal attacks" in support of their ideological intervention in Guatemala.¹ At that time the theory of "self-defense against the internal attacks of international communism", was introduced and subsequently was reintroduced by the US into Article 4 of the Treaty of the Northern Atlantic (NATO). It is under the same cloak of internal attack that the US operations against Afghanistan are justified. Since an "internal attack" is not a legal justification under the Charter because such an interpretation would permit any state to attack another under the same pretext as is happening in Afghanistan, a State that has not attacked anyone. The US assault on that country can only be defined as a lawless act of aggression. Other ideological supports to the necessity to this venture, specifically to "fight against terrorism" are also unacceptable under principles of international law.

First, the argument of necessity must be used very carefully: it is not sufficient to describe a situation as exceptional, as an excuse to ignore the law. Moreover, this argument cannot justify the systematic and continued bombing of Afghanistan as well as the infringement on the integrity of its territory by ground troops or commandos, whose vague objectives include the eradication of terrorism and the punishment of bin Laden.

Under recognized principles of international law, even

assuming that terrorism arises from a bin Laden source in Afghanistan, it would require a public network of terrorists in that country including the police and "secret service" to justify retaliation in accordance with the Convention against terrorism. Under no circumstances would principles of international law authorize this attack on the entire society.

Furthermore, military action against Afghanistan cannot be legally justified on the grounds of punishment, retaliation, or even revenge. Although it is obvious that revenge is playing a big part in the actions of the United States government which pretends to only seek to punish the unpunished crime. But under well recognized principles of law, and especially of criminal law, state power cannot be used to exact revenge.

What should the response to these crimes have been from the State in whose territory a crime had been committed? It should have asked for the extradition of the guilty parties, and, if they were not available, to judge them in absentia.

Such extradition could be refused, under the law of extradition established by international treaties. The United States could ask for bin Laden's extradition, and Afghanistan could refuse, but even such a refusal would not authorize war.

So, what is the responsibility of the State of Afghanistan? It might be considered liable under criminal or civil law. But in this case, the notion of criminal liability must be excluded because 1) as discussed above, the Charter does not permit punitive or retaliatory wars and; 2) criminal liability is personal in that one can only be punished for acts that one has personally committed (One cannot punish an entire nation for the acts of individuals). So it is that States cannot be attacked as collectively guilty under a notion of collective liability for other peoples crimes. The State of Afghanistan cannot be found guilty of the infringement of a state's rights or collusion to infringe upon the rights of another state to justify the US incursion. The alleged act of hosting a presumed guilty person cannot constitute criminal guilt.

As for civil liability which consists of holding a party financially liable for compensation for the damage caused by its conduct, the seizing of assets by the International Tribunal of the Hague would be possible if that court determined such a decision was justified, but, even so, it could never justify the bombing of a country.

It is important to note that the attacks on Afghanistan are not legally justified. The US is relying on the low level of information and the molding of public opinion, by sentimental and moralist pronouncements on "good law". They take pride in deposing the Taliban government whose practices did not bother the US until they needed a pretext, using the objective of getting bin Laden wherever he was thought to be, operating in the state of Afghanistan as if it were not on an internationally acknowledged State.

Such pretexts cannot be justified. The law only makes sense when it has universal value, equal and indivisible. From now on, every State and every people have to fear that they take the chance of being bombed to death if there is a target on their territory that the United States (or any other State) claims they have a right to capture.

International law, which grew from the grievances of World War II, constituted a great step in world civilization. There is a universal responsibility not to give it up for any reason.

REFERENCES

1. See *Revue de l, Le Droit au Service de la Paix* (Oct. 1954), *AJD* (*Law in the Service of Peace*)