**Indian claim to exceptionalism: The missile fiasco**

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The occupation of Jammu & Kashmir, the Agartala conspiracy, testing nuclear arsenal to create a threat of nuclear weapons, building a network of spies in Pakistan (Jadhav is an example), launching a misinformation campaign against Pakistan, routine border disturbances, the political manipulation of FATF, and now, to blatantly launch a supersonic cruise missile, capable of carrying nuclear weapons, in the territory of Pakistan; these are some of the examples of India’s mala fide and aggression against Pakistan.

The missile strike of March 9, 2022, however, may be a decisive moment for Pakistan to change the direction of its policy towards India.

The act of firing a missile inside the territory of another country is a clear violation of Article 2(1) and 2(4) of the UN Charter. It is not only a breach of sovereignty of another state, but also a violation of its territorial integrity.

It is notable that sovereignty and territorial integrity are the foundational principles of international law, and may be amongst the highest of the norms of jus cogens (peremptory norms). A violation of such normative standards of law must be condemned most vigorously and vehemently by the international community.

In a nuclear context, the missile strike must have not only been declared unlawful as a breach of sovereignty, but it should also have been seen as a threat of use of nuclear weapons and as a serious threat to international peace and security. But for Pakistan’s heroically careful reaction, the security situation in South Asia could have deteriorated catastrophically.

The United Nations’ responsible organs (UNGA and UNSC), the International Atomic Energy Agency (IAEA), the Missile Technology Control Regime (MTCR), the Nuclear Suppliers Group (NSG) and other relevant international groups/bodies should take due notice of India’s aggression and the continuous threat of use of nuclear weapons that it poses against Pakistan.

In an international legal order where enforcement of law would not have been problematic, India would have been liable for compensation at minimum, let alone the issue of criminal responsibility. Draft Articles 30 and 34 of Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001) clearly provide that India is legally bound to assure non-repetition of such missile launches and also provide compensation/reparation to Pakistan for the damage caused.

It is also painstakingly problematic that India’s claim that the missile was launched by mistake is treated as an absolute justification or as an exonerating excuse.

There are two major problems with such application of mistake as a defence. Firstly, considering the legal aspect of the issue, the defence of mistake operates only after the finding of a breach of law has been made, to limit the perpetrator’s liability.

India’s claim that the conduct was mistaken suggests that India accepts violation of its international obligation(s)—possibly of Article 2(1) and (4) of UN Charter, Article 1 of ICAO Convention and obligations relating to nuclear weapons. In this case, India must negotiate a settlement with Pakistan to peacefully resolve the dispute—India is bound to do so under Article 2(3) of the UN Charter.

Secondly, it is factually unsettling that if the action was a mistake, then why did Indian authorities not inform Pakistan timely of the incident to avoid the risk of an armed conflict, and allow for Pakistan to take necessary steps for the safety and security of its people and territory? This question suggests that India acted with mala fide intentions once again.

India’s action could be a missile testing operation that it conducted in Pakistan; it may have been an attempt to test Pakistan’s response strategy; it may also have been an attempt to escalate the countries’ dissatisfaction over Kashmir into an armed conflict; or, it could have been an attack to achieve any other unknown objective. Therefore, it is possible that India’s conduct was not mistaken.

The preponderance of evidence suggests that India has committed a serious violation of international law whether or not it was the intention to do so. To prove that its narrative of mistake is true, India must submit the matter to a Fact-Finding Commission for inquiry in collaboration with Pakistan.

Pakistan’s armed forces and the government have reacted to the incident with a great sense of responsibility. However, like Stanislav Petrov (the Russian military officer who avoided a war between the USSR and the US by not reporting the false missile alarm), Pakistan’s defence forces acted carefully and responsibly. Pakistan’s call for a joint fact-finding commission is what is needed to resolve any misunderstanding or miscommunication.

Nonetheless, there are certain lessons for the international community. The UNSC must play a more proactive role in condemning the missile strike blunder by India to de-escalate the situation for peace in South Asia. UNGA resolutions in this respect may also be invited.

In addition, the international community must take a firm stand against Indian aggression, subjecting the latter to economic sanctions if necessary. It falls squarely within the mandate of the UN, considering Article 1 of the UN Charter.

The IAEA should also take notice of India’s irresponsible activities in reference to its use of the threat of nuclear weapons against Pakistan. It is also essential that the UNSC, and the NSG take due cognisance of the incident and ensure India is not given membership of security-related organisations unless the Indian government is able to demonstrate that it is a responsible and peaceful member of the global community.

Lastly, an expedient and responsible way for both India and Pakistan to manage such crises in the future may be to renegotiate the Pre-Notification Agreement on Flight Testing of Ballistic Missiles, which may be improved to include other kinds of missile technologies as well and also include a dispute settlement mechanism. Only combined international action and domestic response can ensure that international aggression remains an unacceptable practice.

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