**Post-9/11: unilateralism v international law**

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Post-9/11, the world is witnessing increasing violations of international law, especially International Human Rights Law (IHRL) and International Humanitarian Law (IHL) in conflict situations, specifically where powerful states are involved, on the one hand, and a lack of consequences for these violations, on the other.

In the aftermath of 9/11, we have seen international law being violated by powerful states on one pretext or the other. The UN system of Collective Security, as envisaged under Chapter VII of the UN Charter, has been consistently undermined with the notion of Coalitions of the Willing. This new concept was propagated by the US for its war in Iraq, on allegedly the issue of Weapons of Mass Destruction (WMD), when the majority of the UNSC P5 refused to go along with sanctioning this military action.

As US-UN relations worsened, this trend has concretized, notably with the violation of Article IV (Sections 11, 12 and 13) of the Headquarter Agreement 1947, signed between the UN and US. In violation of this agreement, the US has repeatedly denied visas to representatives of countries perceived to be ‘hostile’ to the US, who were to participate in the UNGA and UNSC deliberations or present their country’s case before the Security Council on issues especially under Chapter VII relating to breaches of peace and security.

Section 11 inter alia states: “The federal, state or local authorities of the United States shall not impose any impediments to transit to or from the headquarters district of: (1) representatives of Members or officials of the United Nations, or of specialized agencies as defined in Article 57, paragraph 2, of the Charter, or the families of such representatives or officials …”

Section 12 inter alia states: “The provisions of Section 11 shall be applicable irrespective of the relations existing between the governments of the persons referred to in that section and the government of the United States…”

Section 13 inter alia states: “(f) The United Nations shall, subject to the foregoing provisions of this section, have the exclusive right to authorize or prohibit entry of persons and property into the headquarters district and to prescribe the conditions under which persons may remain or reside there.…”

Post-9/11, powerful states have also used “self-defence” to carry out preemptive strikes against states and non-state actors in third states. The UN Charter allows states the right to act in self-defence “if an armed attack occurs” but over the years governments have sought to interpret ‘self-defence’ in a wide variety of ways to justify their actions under this principle.

However, Agnes Callamard, UN special rapporteur on extrajudicial, summary or arbitrary executions, in a series of tweets last week made clear that especially in “anticipatory self-defence” (when you claim you expect your assets will be attacked), the test from a legal standpoint is “very narrow”. Reaffirming the Caroline test, Ms Callamard stated: “it must be a necessity that is ‘instant, overwhelming, and leaving no choice of means, and no moment of deliberation’”. Interestingly, she also stated that an “individual’s past involvement in ‘terrorist’ attacks is not sufficient to make his targeting for killing lawful”.

While the use of drones has also been justified on the basis of self-defence, under customary international law, such use is only legal if the threatened attack is imminent and no other option is viable or available. The US has been developing its narrative to legally justify drone attacks under international law, but so far this position has not been internationally accepted.

The creation of the International Criminal Court (ICC) and setting up of international tribunals for holding states accountable and individuals criminally liable for serious violations of international law illustrates the growing importance of adhering to IHRL and IHL. Thus far, states like the US, Pakistan and India – to name a few – have chosen to remain outside the jurisdiction of the ICC framework but it is worth recalling that the basic principles underlying the ICC Statute are now accepted as customary international law.

Recently, President Trump declared his administration had identified a number of Iranian cultural sites to attack, following which there was global uproar, especially from US allies, that this would be construed as a war crime. Cultural sites are protected during an armed conflict under the principle established in the 1954 Hague Convention that damaging any people’s cultural site is “damage to the cultural heritage of all mankind.”

This principle, enshrined in the Hague Convention, is bolstered by the 1977 Additional Protocols to the Geneva Conventions, the 1998 Statute of the ICC and the 1999 Additional Protocol to the Hague Convention itself; and has now become part of customary international law. International law also prohibits “the destruction of cultural property as a way of intimidating people under occupation or as a reprisal”. Unesco has the responsibility to monitor compliance.

A most interesting situation has also arisen now, where a country’s parliament has asked foreign forces to leave its territory but the government of the main foreign forces has refused to comply with the request. Does this denote occupation of the country by an external power?

There is some ambivalence under IHL as to whether this would constitute an “Occupation”. Article 42 of the Hague Regulations 1907 defines occupation as: “Territory is considered occupied when it is actually placed under the authority of the hostile army”. However, according to the ICRC “under IHL there is occupation when a state exercises an unconsented-to effective control over a territory on which it has no sovereign title”.

Most importantly, at a basic level, once a host country asks, especially through its parliament, foreign forces to leave, their continued presence amounts to a violation of Article 2(4) of the UN Charter, which contains prohibition on the threat or use of force against the territorial integrity or political independence of any State. This is binding on all UN member states.

Breaches of the UN Charter by powerful states require to be dealt with strictly under international law to ensure that the system regains its credibility, which is essential for a successful pushback against growing unilateral adventurism by powerful states and the ensuing lack of accountability for violations of international law. The weaker states in the international community have displayed a greater tendency to adhere to IHL and IHRL for fear of adverse consequences, whilst there has been complete impunity for powerful perpetrators of egregious violations of IHL and IHRL.

There is a need for us to work towards strengthening rule of law internationally. In the absence of a strong international legal framework, which enforces its rules equally on powerful and weak states alike, the polarization and resentment that is continuously utilized to challenge the credibility of international law will prevail while the sanctity of the rules continues to erode.

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