

THE VIOLATION OF INTERNATIONAL LAW AND THE UN CHARTER

Providing Context

PROF. KHURSHID AHMAD



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September 11, 2001 was a dark day at the dawn of the Twenty-first century because of the terrorist acts on the World Trade Centre and the Pentagon. October 7, 2001 was even darker because of US and British aggression and bombardment of a poor and already ruined Afghanistan.

After the incidents of September 11, world sympathy was with the USA and the innocent victims of the tragedy. Muslims throughout the world, including the Taliban government of Afghanistan, shared the American grief and unequivocally condemned the terrorist acts. In the moments of grief and anguish, all peoples - whether in the east or west, rich or poor, developed or developing - who had suffered at the hands of the US leadership because of its military and financial maneuverings ignored their own afflictions and miseries.

The US leadership however, overwhelmed by arrogance, revenge, and the pursuit of its own 'special interests' adopted a strategy that came as second nature. President Bush's declaration of the 'first war of the twenty- first century' came on 13 September and on 14 September the US Senate gave full authority to President Bush to take any action against terrorism. Instead of identifying the perpetrators of the attacks on the World Trade Centre and the Pentagon through an unprejudiced, just and legal system and probing into the causes and reasons of terrorism, it launched its aggression against the Afghan people and embarked upon a grim and brutal plan to maintain its domination through the use of sheer force and strengthen its grip on the rich resources of Central Asia.

A 'world coalition' was stage-managed by enticements, cajoling, influencing and threats. Britain was at the US's side, vassal-like, standing shoulder to shoulder from the very first day. NATO's 18-member countries had to join in this operation, willingly or unwillingly. Article 5 of its Treaty, which states that war on a member would be considered as war on all member states, was invoked without any regard to the meaning of 'war' and 'attack' in the light of international law and the UN Charter. The events of September 11 were considered enough in themselves to serve as a 'declaration of war' from the alleged perpetrators, and the 'war against terrorism' was launched with unseemly haste. Political pressure and blackmail was employed to get the rest of the world on board. Weak countries were cajoled and bullied: side with America or be ranged against it; count as US allies or as supporters of terrorists. A world that had been divided into White and Red in the cold war was now partitioned into White and Black. Many countries, including Pakistan, became victims of, or surrendered to, this threatening posture.

US aggression against Afghanistan however was part of a well thought out plan and had hardly anything to do with the events of September 11. It was an abominable example of 'might is right'. It was an open violation of all political ethics, international law, and the UN Charter. It was the prelude to a new colonial era.

The need for a judicial commission

While the events of September 11 might have badly bruised the ego of the USA, the killing of 'over 6,000 people' (estimate at end of October 2001 but subsequently revised, the final figure being 2,819) originating from some 80 to 90 countries of the world were not only extraordinary but also a crime against humanity. It was as much a crime in Islamic law as it was in the American Constitution, international law and covenants. This is why all Muslim governments, Islamic movements and Ulama condemned it without any reservation. The Taliban government condemned it. In spite of all this, and after just one hour of the events, former Israeli Prime Minister Barak was reading from a written speech during a BBC programme naming specific individuals and groups. Then, everyone started repeating the mantra that the Afghan government should hand them over to the USA immediately and unconditionally, without any research, scientific investigation, inquiry, judicial commission or hint of a trial.

Kennedy's assassination, the Oklahoma bombing, and the killings of school children in the USA were all probed into. Commissions were set up, court proceedings held. Senate and Congressional Committees carried out their own investigations and presented their results in these cases. In contrast, the facts, the causes and the implications of such a big, cataclysmic incident as September 11 that gravely impacted on global economy and politics are being covered up.

There were, and remain, numerous unanswered questions to warrant a thorough and transparent enquiry. For example, how could intelligence agencies with an annual budget of \$50 billion not provide forewarnings? It is said that the events of September 11 took two years of planning; involving more than fifty people in addition to the hijackers - yet these people have yet to be traced. If the perpetrators are dead, how come their minders in the US have melted away so effectively? No significant information has come to light from the 2,000 that have been detained so far in the United States or elsewhere. How come a host of experts, all Americans, have asserted that amateur pilots trained on small civilian airplanes cannot fly 757 jetliners and keep them under control after killing or removing their own pilots? Nor can they hit, with precision, a specific building surrounded by so many other skyscrapers in a city like New York. Moreover the way, in which official circles of Saudi Arabia have challenged the identity of the hijackers, and their lifestyle of wine and dining, raise further question marks.

The veteran Egyptian commentator and former minister Muhammad Heikal, in an interview with Stephen Moss published in The Guardian, alluded to the possibility of involvements beyond the oft-mentioned US- named individuals and groups: "When I hear Bush talking about al-Qaida as though it was Nazi Germany or the Communist party of the Soviet Union, I laugh because I know what is there. Bin Laden has been under surveillance for years, every telephone was monitored and al-Qaida has been penetrated by American intelligence, Pakistani intelligence, Saudi intelligence, and Egyptian intelligence. They could not have kept secret an operation that required such a degree of organization and sophistication..."

There was only one reasonable way out: a judicial commission should have been formed without delay that would have conducted an independent investigation and held open hearings. And, where solid evidence is uncovered, any accused could have either been extradited to the USA through the legal process according to internationally established laws of extradition or the case would have been referred to an international court or some neutral judicial commission with the help of the governments concerned. The Taliban repeatedly asked for evidence and went as far as to say that they were ready to present those responsible before a court or a judicial commission of non-partisan Muslim countries.

Senior British parliamentarians, such as 'father of the House of Commons' Tam Dalyell supported the case for respect for international conventions and the rule of law:

"British reaction to the terrorist attacks in New York on September 11 was exactly what bin Laden had wanted. The Anglo-American offensive against terrorism could lead to reprisals against British and American ex-partite access to the world. It is absolutely essential that the United Nations is brought in as soon as possible and not sidelined. Even now there ought to be an effort to offer to the Taliban for bin Laden to face a trial in a court under the auspices of the UN with both Islamic and non-Islamic judges." **(The News International, London, 9 October, 2001, p. 9)**

Bush's fixation with one individual and colonial design did not let him take this reasonable course. His trite response was:

"When I said: no negotiations, I meant no negotiations. We know he is guilty. Turn him over. There is no need to discuss innocence or guilt." **(The Independent, 15 October, 2001, p.1)**

The USA has justified its stand by stating that all information cannot be made public, but this runs against the principles of justice, basic rights and judicial norms. One cannot be the accuser, the prosecutor, the presenter of evidence, the judge and the executioner. That is a travesty of justice. The recourse to bloodletting is perhaps to satisfy the ego and the sense of revenge, to cover up the failures of the intelligence and security systems, or to exploit the emotions of the people in the name of patriotism. But the United States in fact is also using the opportunity to achieve geo-strategic and economic objectives in Central Asia for which the ground was being prepared for years.

Consequences of war

While distinguished journalists and political veterans were expressing their apprehensions. President Bush was bent on imposing a deadly war on Afghanistan and subjecting its people to destruction. The attackers were exuberant on achieving 'air superiority' - against a country with no

roads and railways, where even the facilities of electricity, water and food are not available, and with no air force. Towns and villages, and even mosques, schools, dispensaries, UN and Red Cross depots were leveled to the ground in the name of 'targeted bombing'. As a result, more than ten thousand people including over four thousand civilians, children, women, the sick and old have been killed and the entire country destroyed and thrown back into insecurity, political instability and perpetual warfare. The USA stands guilty of aggression against a sovereign state. Pakistan's 'General President' Musharraf had asserted that the campaign would be "short and targeted" - for which he claimed he was given guarantees - but it has instead turned Afghanistan into a land of continuing turmoil with no signs of stability in sight.

Afghanistan's Rightful Stand

Every sovereign country of the world has the right to refuse handing over its own citizens or those to whom it has given shelter or asylum to any other country, if this means breaking its laws or international covenants. If a person is required by some country, then there is only one way of doing this: his extradition is sought through the proper judicial process in line with ethics and the norms of international law. Even then, the court of the country whose citizen's extradition is sought has the power to decide on handing or not handing him over only after it has satisfied itself on the basis of evidence submitted to it.

Britain, of all nations, well understands these responsibilities. It has a laudable tradition of not extraditing accused persons willy-nilly. It refused to extradite Chile's former ruler Pinochet to the US, because he was wanted there for crimes for which capital punishment was applicable. Britain abides by the European conventions on human rights, under the terms of which an accused cannot be extradited to a country if a death sentence can be passed. As a European delegate declared on the Pinochet case, "We are fully and deeply on the American side on the fight... But we have a position of principle against the death penalty and there can be no exception on it" (The Sunday Telegraph, 7 October 2001). In siding with US aggression against Afghanistan, and shutting the door to the judicial route, Britain was unfaithful to values that it cherishes.

It appears that since the European countries are 'civilized', they have the right to hold their law supreme; Afghanistan, Pakistan and other 'eastern' countries are 'uncivilized' - their national law, religion, and tradition have no sanctity! The USA has the right to get the people it requires expelled from any country, be it Pakistan or the Philippines. It even kidnapped Panama's President after sending in some 25,000 troops, and then initiated legal proceedings in the USA. On the other hand, other countries cannot proceed against an American required in connection with some crime in their own territories. The USA has the audacity to claim that even verdicts of the International Court of Justice (ICJ), established under the UN Charter, are valid for other member countries but do not hold good for America. It did so in 1996 when it refused to accept the court's decision regarding American military intervention in Nicaragua. It has now in 2002, un-signed its allegiance

to the ICJ on the grounds that American armed personnel cannot be tried, even for crimes against humanity, at an international judicial forum. It is manifest global vandalism, not the mark of a civilized country.

Afghanistan fought for its sovereign right that the person it gave shelter to cannot be handed over to the USA on its demand without any clear evidence and judicial process. It lost that war, as it was destined to against the only super power, but it vindicated a principle. The USA's war against Afghanistan would be regarded in history as an act of aggression. Running amok with power, it is trampling upon the UN Charter, the Geneva Convention, and all international norms.

Violation of International Law

It is an established principle of law that a country or a person cannot be punished for someone else's crimes. Abetting a crime and giving shelter to someone are two different issues, especially when responsibility is not established and conclusive evidence not presented. The mere presence of a person in some country does not entitle another country to attack the asylum-giver simply because he is sought by it. The International Law Commission has distinct laws in this regard which have been accepted by all countries of the world including the USA and Britain. Article 11 of the Law states:

“The conduct of a person or group of persons not acting on behalf of the state shall not be considered an act of the state under international law.”

Similarly, Article 14 says:

“The conduct of an organ of an insurrectional movement that is established in the territory of a state, or in any other territory under its administration, shall not be considered an act of that state under international law.”

In the case of the Nicaragua government mentioned earlier, the USA was indicted by the ICJ in some matters but was absolved in others because of this principle. The judgment reads:

“The court finds that the USA, by producing a manual...and disseminating it to the Contra forces, has encouraged the commission by them of acts contrary to the general principles of humanitarian law but does not find a basis for concluding that any such acts which might have been committed are imputable to the USA as acts of the USA.”

In the light of these principles it is clear that even if a person in Afghanistan had committed, or was alleged to have committed, a crime against humanity, the responsibility could not be put at the door of the Afghan government. It should be clearly borne in mind that these laws are to prevent governments, especially those who wield great power, from arbitrary use of force against others

under the excuse of some provocative acts. These laws are to block such military adventures. But the US deliberately ignored them all and acted as a rogue state.

Requirements of the UN Charter

The UN Charter's very purpose is to prevent the one-sided and arbitrary use of force by nations. Article 33 clearly says:

“The parties of any dispute, the continuance of which is likely to endanger the maintenance of international peace and security shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”

Subsequent articles call on member states to resolve issues through talks and peaceful means, and if these fail, it is incumbent on them to refer the matter to the Security Council. No country can take action against another country on its own, nor through a coalition does that neglect the United Nations. The Security Council has the mandate to impose economic sanctions and also approve military action, under the UN Military Staff Committee.

Article 51 of the UN charter provides for an inherent right of self- defence in the face of military attack. Even in case of assumed threat, it is incumbent upon the country that is subject to attack to inform the Security Council. Moreover it must accept whatever the Council decides for restoring peace, without seeking to interfere or tamper with the UN's decision-making process. The US's invocation of Article 51 as justification for the military action against Afghanistan is a travesty. It was not under armed attack from Afghanistan, and it could not launch a strike merely on the basis of imaginary or assumed threat perceptions.

The Security Council resolution of 28 September, 2001 did not define terrorism in the first place, nor was it directed against a particular country. It asked all member countries to observe a 7-point demand that included preventing financial support to terrorist activities, freezing of assets of terrorist organizations, checking individuals and groups from providing financial support to terrorists, recruitment of new blood or providing arms to these organizations, a ban on co-operation to those who shelter terrorists and terror organizations, preventing terrorists' movement by effective border controls, and assistance in connection with criminal investigations.

The USA and Britain have violated each and every article of the comprehensive framework for international relations determined by the UN, in pursuance of their ulterior objectives. In the light of the UN Charter and international law, the American and British stand on Afghanistan was not based on justice. It was open aggression. It has set a bad precedent: a cruel and one-sided approach that is harmful for world peace.

Furthermore, keeping the Security Council uninformed even after military action and the Secretary General's own inactivity were violations of the Charter. This clearly means that whatever went on

in the name of the 'international community' was neither a genuine international operation nor was it in accordance with the UN Charter. It was an act of state terrorism by a superpower, and by all who co-operated in this terrorism. This aggression was committed against an oppressed country, and the government of the country was changed by foreign intervention. The guilt is shared by all those who participated in or facilitated this oppression, in proportion to their contribution in perpetrating this military adventure.

The conscience of humanity is being aroused to recognize this naked aggression by super-powers, although the voices of protest are no more than subdued murmurs. The statement of over one hundred German intellectuals to the US President entitled 'A world of justice and peace would be different' is worth reflecting on:

"The mass murder by the terrorist attack on September 11 in your country, and the US war in Afghanistan as a reaction to that terror also affects Europe, the Islamic world, and the future of all of us. We think it especially important that an open and critical dialogue take place throughout the world among intellectuals of civil societies about the causes and consequences of these events, to assess them and judge their significance...there can be no moral justification for the horrible mass murder on September 11. We agree with you wholeheartedly about that. We also share the moral standards that you apply, namely that human dignity is inviolable, regardless of sex, colour of skin, or religion, and that striving for democracy is an important foundation for the protection of human dignity, of individual freedoms, of freedom of religion, and of the human rights specified in the UN Charter. But it is precisely these moral values, which are universally valid in our eyes, that cause us to reject the war that your government and its allies (us included) in the "alliance against terror" are waging in Afghanistan - and which has cost the lives of more than 4,000 innocent to date, including many women and children - with the same rigorousness with which we condemn the mass murder of innocent bystanders by the terrorist attack. There are no universally valid values that allow one to justify one mass murder by another. The war of the 'alliance against terror' in Afghanistan is no 'just war'."

(Frankfurter Allgemein, 2 May 2002)

Acting with impunity against Afghanistan has emboldened the USA to continue in this vein with others - military intervention in sovereign countries without legitimate authority, pre-emptive action on unproven apprehensions, and the right to 'change regimes' it regards as unacceptable. This is a recipe for international disaster and global destabilization. Even Henry Kissinger is uncomfortable with this licence to murder and conquest. In his article on President Bush's impending attack on Iraq, he says that it cannot be justified as self-defence (Los Angeles Times, cited in Dawn 13 August 2002).

It is time the world community awakens to this menacing threat to world order.
