**Non-intervention & the law**

BY S I K A N D E R A H M E D S H A H 2022-04-06

DAYS before the vote of no-confidence, Pakistan`s embattled prime minister, Imran Khan, addressed the nation at a political rally. Following a carefully constructed rhetoric on the value of being an independent, free and self-respecting nation, as envisioned by the nation`s founding fathers, Khan withdrew a paper from his pocket, claiming that what he held in his hand was a `letter` from a country of significant eminence. It was reportedly a warning for him and correspondingly for Pakistan that if Khan didn`t step down, diplomatic ties between the two countries would suffer and Pakistan would face `difficulties`. To Khan`s mind, the reason this warning was issued was a diplomatic trip he took to Russia on the eve of the Russian invasion of Ukraine.

Following the receipt of what was apparently a diplomatic cable, Pakistan`s National Security Committee issued a strong condemnation, terming the communication undiplomatic and tantamount to blatant interference in Pakistan`s internal af f airs, and an attack on its sovereignty. Therefore, before the claim is drowned out in the din of counterclaims among which the main assertions are that the cable is fabricated, or at least exaggerated by a drowning PTI government grasping at straws it is essential to first unpack its intricacies and properly embed it within the f r amework of internationallaw.

International law, customary or otherwise, could not be clearer on the importance of respecting the sovereignty of any nation state -its internal politicalprocesses andforeign pohcy decisions being a fundamental element of its sovereign authority.

The UN Charter, the foundational treaty binding on all UN member states, enunciates in Article 2(4): `All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state`. In Article 2(7), it limits the authority of international organisations and member states to intervene in `matters which are essentially within the domestic jurisdiction of any state`.

In the same vein, two of the UN General Assembly`s notable resolutions, that have come to hold significant juridical force in the internationallegal space, recognise several actions which otherwise operate to subvert a nation`s sovereignty, including violating its political, economic, and cultural foundations or advocating or assisting a regime change. These are the 1965 `Declaration on theInadmissibilityof InterventionandInterference in the Domestic Affairs of States` and the 1970 `Declaration on Principles of International Law Friendly Relations and Cooperation Among States`.

In the early 1980s, the International Court of Justice was asked for its opinion on America`s involvement in regime change in Nicaragua. The ICJ, deciding the case against the US, seminally lay down the principle of non-intervention in state processes as critical to state sovereignty.

Essentially, the court concluded that sovereign states shall not intervene in each other`s internal affairs, including `the choice of a political, economic, social and cultural system, and the formulation of foreign policy`.

This principle was explicitly recognised in the 1949 Corfu Channel case, and later reinforced in 2005 when the ICJ was called on to adjudicate on one of the most pernicious armed conflicts on the African continent. This was the Democratic Republic of Congo vs Uganda case, in which the court stated that the Nicaragua judgement had said clearly that the non-intervention principle prohibits a state `to intervene, directly or indirectly, with or without armed force, in support of the internal opposition within a state`.

Still, some Western powers have developed novel ways to justify intervention and bring about regime change in other states, as they did in Libya, and later attempted to do in Syria, on the pretext of protecting local populations from serious human rights violations if a state is unable to do so. The overwhelming majority of states seem to view such oblique methods to unseat goverments as a `threat to the peace`under Chapter VII of the UN Charter.

In today`s globalised, technologically advanced, diplomatically nuanced, and media-savvy age, outright violations of a nation`s sovereign rights by another state, as was seen in the Nicaragua case, are harder to establish. That said, issuing a warning to a sitting prime minister, through of ficial dip-lomatic channels, that his independent foreign policy and internal political decisions will have negative consequences for his country appears to be a categorical violation of the provisions of the UN Charter and other customary international legal norms.

A similar sentiment was expressed by the US, when it accused Russia of committing an expansive list of cybercrimes aimed at manipulating its internal electoral processes from espionage to internet trolling, and where the Office of the US Special Council prosecuted several Russian companies for having `a strategic goal to sow discord in the US political system, including the 2016 US presidential election`. It seems ironic now: the US considered this subversive Russian interference an attack on American democracy itself, but under similar circumstances, Pakistan is apparently expected to compromise on its own sovereign political process, and make these crucial internal decisions based on the health of its future relationship with Western powers.

An independent foreign policy has always been the hallmark of any sovereign political regime, and Pakistan is certainly wanting in the exercise of drafting a straightforward one. Pakistan presently operates in a complex geostrategic context: from seeking a critical strategic alliance with China to navigating the fallout from the West`s `war on terror` in neighbouring Afghanistan; from seeking a more robust relationship with Iran particularly in light of Pakistan`s growing energy needs to the daunting task of managing a fraught relationship with India.

A historically subservient relationship with some Western powers has always been a thorn in Imran Khan`s side one he has hastily sought to remove, but clearly not without f acing dire consequences. The real tragedy, however, lies not in the fall of his government, but in the way that, yet again, Pakistan`s political process might have been allowed to be strong-armed by foreign intervention.  The writer is former legal adviser to Pakistan`s foreign ministry, and faculty Lums Law School.