

Political rights of 'occu

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In the wake of the 11 September attacks the established norms relating to laws of the rights of struggles of Peoples seem to have been changed, as it were, sub-silently. It is well established in the evolution of International Law, that it takes a very long time for the creation of its rules and modalities. Since the end of the Second World War it had become gradually settled that peoples of "occupied" territories, or those under foreign domination or control had the inherent right of attaining their lawful aspirations of complete political autonomy. The means employed for such struggles were "protected" by the legal precepts and were accepted.

However, today while many of such areas stand liberated, in this context, the World of Islam faces easily its most awesome challenge in a Millennium. From North Africa to the Philippines, there are many areas in which Islamic people find themselves under such external yoke. Not surprisingly, therefore even long lasting disputed territories such as those under Israeli or Indian domination, have seemingly now become inextricably bound with the legal aspirations of the occupied people on the one hand, and the currently evolving realities on the other hand as espoused by the Powers that may be.

It is the prospect of being confronted with the phenomenon of these newer norms, precepts and dogmas of "terrorism" while addressing this very issue, that it has to be determined if "legally" the law as it stood on 11 September on this issue is still available for invoking such rights? Some of these new "rules" have been internally formulated by the exigencies of our Times by Powers that be but with the open support of the natural "opponents" of such an evolution. Others have been articulated by external factors, most of which are not benign to Islamic thinking, teachings or possible resurgence. Yet surprisingly enough, most, if not all Islamic States, are apparently willing to accept such "changes" in the "law" that was to their clear benefit. Why one may ask even without a demur is this being done?

Transnational realities or the realpolitik of these past few weeks stresses two factors:

1. Internally, the vast Islamic populations, with few exceptions, if any, face impoverished economic realities of life, unstable structural national institutions and governments in which their representative character is essentially irrelevant. Internationally, they have become faced with strategic truisms of the 21st Century for which they are often least prepared and, their leadership demonstrably lacks, more often than not, the required vision or the needed quality of decisions.

2. The US is easily and without demur by any other state, the new Solitary Super Power. In more classical language of Gibbons or Kennedy, it is "the Imperial Power" of today. Washington has cogently and openly demonstrated this status in the past several weeks.

As a current phenomenon this newly

emerging awareness of what constitutes "state terrorism" signifies a colossal challenge to the World of Islam. Why? Because the territories from where such peoples' struggles seem to be emanating are of Muslim communities, and, regrettably those opposing such struggles fall on that side of the international political divide that the US, for one reason or another, must support. For instance, Mr. Sharon, by background is known to have committed serious terrorist acts. Yet he is acceptable to Washington and Yasser Arafat is apparently not.....thus far he has not even entered the White House since the present incumbency began a year ago. It has nothing to do with the persons of Mr. Sharon or Mr. Yasser Arafat. They simply represent interests in regions where the US feels it must do what it is doing...where such international clash of interests did not surface, as in Bosnia or Kosovo, it was the US that led for the creation of Muslim entities within Europe.

Let us see another facet of the disputes regarding Palestine and Kashmir. Since Mr. Sharon took office, the Israelis seem to march into this territory, after Oslo Accords admittedly territory beyond the Israeli borders, and when they wish. Against small rock throwing boys, F 16 and Helicopter gun-ships are deployed. Yet Washington and sometimes Brussels, often ask Yasser Arafat to rein in the occasional "terrorists" by which is meant a suicide bomber. In Kashmir, where fatalities are greater by thousands from those in Palestine, the West hardly ever even acknowledges the real controversy. Why? In both cases it is not in long-term Western interests to apparently do so. As such, law notwithstanding the clear deprivation of peoples' rights, action in aid of such interests is not forthcoming.

Terrorism, in its simplest conceptual phraseology means the killing of innocent and unconnected people for the avowed attainment of the political aims of the terrorists. Terror, as such, is terrible as is the killing of innocent people, whether they are Americans or Afghans or Muslims or Non-Muslims. Let there be no mistake that all civilized peoples abhor terrorism and we are appalled at the 11 September atrocities. In Pakistan we are all the more sensitive to being victims of terrorism, as we have had more than our unfortunate experience in this regard. As such we can fully empathize with the anger and hurt US feels at their unprecedented victimization. On the human plane there is thus full understanding of the feelings of the American people and their Government. But the legal question is, should law on the question of rights of Occupied Peoples' be changed as a result thereof, though seemingly unconnected it may be?

Struggle for Political Rights of Occupied People

To understand the conceptual political ramifications of this subject, some preliminary international legal concepts need to be stated. When we view the

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legal meaning of the phrase, the "struggle for rights of the occupied peoples", it is clear it directly deals with the larger concept of the continuous movements disprivileged peoples the world over have faced over the past three centuries. In the international legal field this discussion finds an enormous place within the confines of evolution of right of self determination of people. A good reference here can be made with advantage to the following enunciation of this point by an OIC statement made at the UN in 1986:

"The OIC would like to affirm its conviction that there is no power in the World that can prevail over the just struggle of rights of the people for freedom once they are resolved.

International law affirms the legitimacy of the struggle of the occupied peoples. Thus the rights of the peoples to self determination necessarily implies the right of the people to struggle by every means available to them, when the possibilities of obtaining recognition of the right to self-determination by peaceful means have been exhausted."

This ethos also finds pre-eminence in Common Articles 1 of both the International Covenant on Economic, Social and Cultural Rights, and the International Covenant of Political Rights of 1966 which boldly asserts:

"All peoples have the right of self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

Article 1 and 55 of the UN Charter calls upon States to develop friendly relations based upon the principle of equal rights of peoples and self-determination. Even more eloquently the UN General Assembly's famous Declaration of 1960 on rights of subjugated people categorically states importance of this matter. The right to resist repressive measures directed against dependent peoples thus seems to exist as a preemptory norm of general principles of International Law in accordance with Article 53 of the Vienna Convention on Law of Treaties. This principle, without question, has existed prior to UN itself and has attained a character of being most important of all human freedoms. The Declaration in 14th August 1941 Atlantic Charter actually witnessed emergence of the phrase that

Occupied" peoples

Law

"the struggles of the peoples reflects the principle of equal rights and self determination of the peoples." And was reinforced in Resolution 637 A (VII) of 16 December 1952 by the General Assembly.

This UN law is also reflected in International Law. We have already seen the forefront of both the Covenants of 1966. Being treaty law it represents totality of World's legal commitment to this norm. The World Court also made its most memorable recitation of this stand in the Advisory Opinion in Western Sahara Case by stating, "the principle of self-determination is a rule of international law." Clearly that the struggles of peoples have the force now of established law and the UN pronouncements is beyond question.

Does this Right Still Exist?

What remains to be seen is whether this position still holds good after 11 September tragedy. This question is now necessary since in Palestine and Kashmir, developments seem to be emphasizing that perhaps the law articulated above representing over a half century of international legal development may be undergoing a fundamental change. Both in Palestine and Kashmir, the overt acts of previously considered "freedom fighters", are now facing, both from their erstwhile supporters and international community, a different level of scrutiny and conceivably of the content of "legal standards" to be observed by such activists.

The international legal foundation of the concept of terrorism began with the phenomenon of violent offences by individuals directed against civilians or against military targets in non-combat situations in order to make political protests to, or to secure certain political behavior by States. Gradually, this legal concept got enlarged, when it became known that State actors were also in its support and it became to be known as "State terrorism." However, to counter such practices, International Law only allowed the use of force by the victim state in the following five categories, viz: (1) non-war armed action, (2) retorsion, (3) reprisal, (4) intervention, and (5) pacific blockade.

But in the background of Law relating to rights of Occupied Peoples, it was always taken to signify (both by the Security Council and the General Assembly) that any action in support of such struggles was never thought to come within the conceptions of terrorism or state terrorism. The third major organ of UN, and premier international legal institution, the World Court was directly seized of this matter in the only case on this subject, Nicaragua VS. US. In this case entire claim of Nicaragua was based on what is clearly in content, the ingredients of State terrorism. Its Statement of Claim included before the World Court averment that the "US was recruiting, training, arming, financing, supplying, and otherwise encouraging supporting, aiding, and directing paramilitary actions in and around Nicaragua... and killing, wounding and kidnapping citizens of

Nicaragua." The Court eventually surprisingly didn't provide us with a clear definition of the term State terrorism.

The grundnorm of contemporary rhetoric no less than state actions, such as those of US, UK, some other European countries and Israel and now conceivably India seems to suggest that after 11 September, even activists of Peoples of Occupied Territories may not be capable of obtaining legal protection of rights which hitherto clearly did. Those that now perceive them to be the targets of such violence, clearly are emphasizing the prevalence of another level of legal normative behaviour? In World War II, resistance fighters were seen and treated as terrorists by Nazi Germany, while considered heroes by the Allies. Today, many Islamic militants who are considered terrorists by many developed and developing countries are treated as heroes by large masses in Muslim World.

Conclusion

Despite the fact that contemporary facets of terrorism essentially concern Islamic countries there has been the total failure of OIC as it only met twice during the period of the Afghan War at Ministerial level, without any action. "Affected" countries too, have undergone drastic changes in policies. For instance, on 1 November, 1999, General Musharraf held his first press conference as new head of Government when questioned by representative of Associated Press that there was open recruitment of would-be activists in Lahore and Muzafarabad as "volunteers", and how was it being tolerated, replied, "it is peoples dynamics." But in the last few weeks' visible action has been taken against such peoples. The Government of General Musharraf as reported by NY Times of 2/1/02 are shutting even sections of wings dealing with Kashmir in the Intelligence business. I suppose this is all to do with becoming "moderate" or "modern". It is incorrect to say this is not a vital change in approach and policy since it plainly is. Similarly, in the face of clear invasion of the territory of the Palestinian Authority by Israeli Defense Forces, Yasser Arafat has had to officially crack down on groups alleged by Israel to have carried out suicide attacks.

It is manifest that accepted notions of peoples right to seek liberation, by all means, as the OIC statement quoted above, has apparently been curtailed or at least appears to be undergoing some changes. Professor Huntington's thesis about Clash of Civilizations, to my mind was an acute prognosis of the struggle great powers have to face eventually as we move ahead in the present century. Islamic nations, therefore, need to work in an enlightened manner to move ahead with prudence. Without unduly being critical, I must place on record courage of two Muslim Countries, Saudi Arabia and Malaysia. They exhibited remarkable propensity to at least put forth their own views despite external pressures. The stature of Crown Prince Abdullah has increased and we have perhaps ground for hoping that his vision is adopted elsewhere in the Islamic countries as well.