

## Sovereignty and the doctrine of pre-emption

KAZI ANWARUL MASUD

ANNIE-Marie Slaughter of Harvard Law School, a member of the International Commission of Jurists, and President of the American Society of International Law, and Lee Feinstein of the Council on Foreign Relations in a recent article (*Foreign Affairs* Jan/Feb 2004) advocates re-writing some of the rules and provisions of the UN Charter in view of the most dangerous security threat facing the 21st century in the shape of possible terrorist attacks killing thousands or even millions of people at a stroke by using WMD.

They argue that the UN charter aimed at outlawing the use of force except in self-defence or used through a multilateral institution was written in the context of classic interstate conflicts waged by standing armies of identifiable soldiers. It is well known that President Bush's doctrine of pre-emption has been rejected by the UN Secretary General Kofi Anan, but recognising the gravity and the unprecedented nature of the threat he called upon the UNSC to consider "early authorisation of coercive measures." Slaughter and Feinstein argue that Kofi Anan's call for authorisation opens the gate for revision or at least a reinterpretation of what constitutes

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a "threat to peace" under the UN charter.

The iconic moments of 9-11 terrorist attacks have generated several calls for the revision of the UN charter. While the developed countries' call for revision is for gaining authority to pre-empt not an imminent but a plausible threat, the developing countries will like a reconstitution of the UNSC and other UN organs because the UN charter when formulated reflected the ground realities of the post-Second World War era, but not the sea change which has taken place since then. The wave of decolonisation has seen the emergence of many countries joining the UN. The end of Cold War has seen fragmentation of the Soviet empire and of East Europe. And now the world is witnessing the

scourge of al-Qaeda and its associates.

Historian Bernard Lewis finds several forms of Islamic extremism current at present (he recognises, though, Muslim complaints when media speak of terrorist movements and actions as "Islamic" and do not identify the Irish and Basque terrorists as "Christian" terrorism), the best known being al-Qaeda, the fundamentalism of Saudi establishment, and institutional revolution of the Iranian ruling hierarchy. While al-Qaeda needs little elaboration, the perceived threat from Saudi fundamentalism is contested. Bernard Lewis describes Wahabism, embraced by the Saudi rulers, as a "rejection of modernity in favour of a return to the sacred past" whose ire is not directed primarily against outside

imperialist designs would make their efforts to portray Islam and Muslim culture as being inherently expansionist and prone to violence rather unconvincing. Since the present day world, transatlantic quarrel notwithstanding, is effectively dominated by the West and more appropriately by the United States despite warnings by the likes of Joseph Nye of Harvard that "against the dangers of a foreign policy that combines unilateralism, arrogance and parochialism (because) throughout history coalition of countries have arisen to balance dominant powers and the search for new state challengers is already underway," attempts are afoot to put a new garb on "guiding principle" proposed by the International Commission on Intervention and State Sovereignty co-chaired by Gareth Evans and Mohammed Sahanoun.

Slaughter and Feinstein would like addition of a principle of "responsibility to protect" the international community, acting through the United Nations, depicting a collective duty to prevent nations run by rulers in closed societies lacking internal checks from acquisition of and dissemination of knowledge relating to WMD. In case where such regimes have already acquired WMD, the first responsibility is to halt these programs and to prevent regimes from transferring WMD capabilities or actual weapons to non-state actors. It is interesting to note that while Evans and Sahanoun's "guiding principle" is aimed at international response to humanitarian crisis massive violation of human rights, genocide, famine, or the human cost of anarchy; Slaughter and Feinstein's "responsibility to protect" the international community from rulers of closed societies stresses on WMD.

In a closed society, they argue, with no opposition the international community may discover a danger when it is too late and the standard diplomatic tools are simply inadequate to address the problem. Slaughter and Feinstein propose updating the UN charter governing the use of force to face a new generation of threats. Departing from the Bush unilateral doctrine of pre-emption they think the UNSC is still the preferred destination for collective actions because the legitimacy and the weight of preventive measures endorsed by the UN will make it easier to carry them out and to make them more effective. They, however, conclude that the security threats faced by individual nations and the international community in today's era of terrorism and proliferation of WMD require proactive rather than reactive set of international response.

Advocacy of a proactive policy to ensure international security inevitably brings in the ongoing debate on the concept of state sovereignty. The Treaty of Westphalia (1648) is generally taken as a historical reference point which gave several attributes to European states which had been contested in the past. Westphalia ensured sovereign independence of states; each state being motivated in its international behaviour by a consistent national interest; and the inter-state system regulated by a balance of power among the principal powers.

This was further cemented by the Peace of Utrecht (1712-1713) in which the European rulers understood each other as essentially self-determining actors, none of which was entitled to dictate to others. Westphalian model of sovereignty now has a theoretical existence both due to wilful abrogation of sovereignty by a group of countries as in the case of the European Union or through incorporation of states (e.g. Yalta agreement) or invasion (e.g. Iraq).

Currently a school of thought reasonably vocal in developed countries advocates enforcement if necessary of a universally accepted code of conduct on all states. In other words a state to retain its sovereignty has to behave properly both with its citizens and with the international community at large. Besides globalisation almost inevitably will have a corrosive effect on the purists' concept of sovereignty.

All said and done the latest assault on the sovereign state of Iraq now based on the argument of humanitarian intervention to "liberate" the Iraqis from the brutal clutches of Saddam Hussein, in the words of Fareed Zakaria of *Newsweek International* portrays a picture of the US waging a pre-emptive war unilaterally, spurning international co-operation, rejecting UN participation, humiliating allies, and creating a poisonous atmosphere of anti-Americanism around the globe compounded by the villainy committed at Abu Ghraib prison, does not encourage the international community to follow the lead of Charles Krauthammer's Prometheus in subjugating rogue elements. The Americans deserve better than what they have got now. So do the British whose thousand years' chronicle filled with giants like Winston Churchill and Lloyd George have now shrunk to the size of "Bush's poodle."

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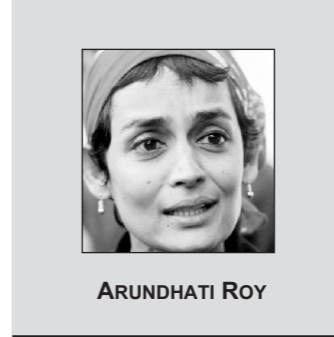
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## Darkness passed....



ARUNDHATI ROY

LET us hope the darkness has passed. India's real and virtual worlds have collided in a humiliation of power.

For many of us who feel estranged from mainstream politics, there are rare, ephemeral moments of celebration. Today is one of them. When India went to the polls, we were negotiating the dangerous cross-currents of neo-liberalism and neo-fascism -- an assault on the poor and minority communities.

None of the pundits and psephologists predicted the results. The rightwing BJP-led coalition has not just been voted out of power, it has been humiliated. It cannot be seen as a decisive vote against communalism, and neo-liberalism's economic "reforms." The Congress has become the largest party. The left parties, the only parties to be overtly (but ineffectively) critical of the reforms, have been given an unprecedented mandate. But even as we celebrate, we know that on every major issue besides overt Hindu nationalism (nuclear bombs, big dams and privatisation), the Congress and the BJP have no major ideological differences. We know the legacy of the Congress led us to the horror of the BJP. Still, we celebrate because surely a darkness has passed. Or has it?

Recently, a young friend was talking to me about Kashmir. About the morass of political venality, the brutality of the security forces, the inchoate edges of a society saturated in violence, where militants, police, intelligence officers, government servants, businessmen and even journalists encounter each other, and gradually, over time, become each other. About having to live with the endless killing, the mounting "disappearances," the whispering, the fear, the rumours, the insane disconnection between what Kashmiris know is happening and what the rest of us are told is happening in Kashmir. He said: "Kashmir used to be a business. Now it's a mental asylum."

Admittedly, the conflicts in Kashmir and the north-eastern states make them separate wings that house the more perilous wards in the asylum. But in the heartland too, the schism between knowledge and information, between fact and conjecture, between the "real" world and the virtual world, has become a place of endless speculation and potential insanity.

Each time there is a so-called terrorist strike, the BJP government

But in urban India, shops, restaurants, railway stations, airports, gymnasiums, hospitals have TV monitors in which India's Shining, Feeling Good. You only have to close your ears to the sickening crunch of the policeman's boot on someone's ribs, you only have to raise your eyes from the squalor, the slums, the ragged broken people on the streets and seek a friendly TV monitor, and you will be in that other beautiful world.

has rushed in, eager to assign culpability with little or no investigation. The attack on the parliament building, on December 13, 2001, and the burning of the Sabarmati Express, in Godhra, the following year are fine examples. In both cases, the evidence that surfaced raised disturbing questions and so was put into cold storage. Everybody believed what they wanted to, but the incidents were used to whip up communal bigotry in a haze of heightened Hindu nationalism.

Many governments -- state as well as centre; Congress, BJP, as well as regional parties -- have used this climate of manufactured frenzy to mount an assault on human rights on a scale that would shame the world's better known despotic regimes.

In recent years, the number of people killed by the police and security forces runs into tens of thousands. Andhra Pradesh (neo-liberalism's poster state) chalks up an average of about 200 deaths of "extremists" in "encounters" every year. In Kashmir an estimated 80,000 people have been killed since 1989. Thousands have simply "disappeared."

According to the Association of Parents of Disappeared People in Kashmir, more than 2,500 people were killed in 2003. In the last 18 months there have been 54 deaths in custody. The Indian state's proclivity to harass and terrorise has been institutionalised by the draconian Prevention of Terrorism Act (Pota). In Tamil Nadu, the act has been used to stifle criticism of the state government. In Jharkhand, 3,200 people, mostly poor adivasis (indigenous people) accused of being Maoists, have been named in Pota cases. In eastern Uttar Pradesh, the act is used to clamp down on those who protest about the dispossession of their land. In Gujarat and Mumbai, it is used almost exclusively against Muslims.

In Gujarat, after the 2002 pogrom in which an estimated 2,000 Muslims were killed, 287 people were accused under Pota: 286 were Muslim and one a Sikh. Pota allows confessions extracted in police custody to be admitted as evidence. Under the Pota regime, torture tends to replace investigation in our police stations: that's everything from people being forced to drink urine, to being stripped, humiliated, given electric shocks, burned with cigarette butts and having iron rods put up their anuses, to being beaten to death.

Under Pota you cannot get bail unless you can prove that you are

innocent -- of a crime that you have not been formally charged with. It would be naive to imagine that Pota is being "misused." It is being used for precisely the reasons it was enacted. This year in the UN, 181 countries voted for increased protection of human rights. Even the US voted in favour. India abstained.

Meanwhile, economists cheering from the pages of corporate newspapers inform us that the GDP growth rate is phenomenal, unprecedented. Shops are overflowing with consumer goods. Government storehouses are overflowing with grain. Outside this circle of light, the past five years have seen the most violent increase in rural-urban income inequalities since independence. Farmers steeped in debt are committing suicide in hundreds; 40% of the rural population in India has the same foodgrain absorption level as sub-Saharan Africa, and 47% of Indian children under three suffer from malnutrition.

But in urban India, shops, restaurants, railway stations, airports, gymnasiums, hospitals have TV monitors in which India's Shining, Feeling Good. You only have to close your ears to the sickening crunch of the policeman's boot on someone's ribs, you only have to raise your eyes from the squalor, the slums, the ragged broken people on the streets and seek a friendly TV monitor, and you will be in that other beautiful world of the singing, dancing world of Bollywood's permanent pelvic thrusts, of permanently privileged, happy Indians waving the tricolour and Feeling Good. Laws like Pota are like buttons on a TV. You can use it to switch off the poor, the troublesome, the unwanted.

When Pota was passed, the Congress staged a noisy opposition in Parliament. However, repealing Pota never figured in its election campaign. Even before it has formed a government, there have been overt reassurances that "reforms" will continue. Exactly what kind of reforms, we'll have to wait and see. Fortunately the Congress will be hobbled by the fact that it needs the support of left parties to form a government. Hopefully, things will change. A little. It's been a pretty hellish six years.

Arundhati Roy is the author of *The God of Small Things* and *The Ordinary Person's Guide to Empire*.

Courtesy: Znet.

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