

## **US intervention: was it legal?**

by

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**THE legitimacy of the intervention to take out Osama bin Laden is being discussed all over. Academics and experts are questioning the legality on grounds of abuse of human rights, the violation of the rule of law and a serious breach of the principle of non-intervention.**

In this regard, the Guardian has questioned the legality of the operation under international law. It has also quoted Prof Nick Grief, an international lawyer in Kent University, as stating that the said attack had the appearance of an extra-judicial killing, a killing carried out without due process. Geoffery Robertson QC is reportedly stating that the killing is undermining the rule of law.

So far, the UN Security Council has come out only with a statement welcoming the news of the 'death' of Osama Bin Laden. It has clearly refrained from commenting on the 'intervention' aspect of the operation. Likewise, the UN secretary general has not approved or endorsed the intervention aspect. The Security Council has passed no resolution on this issue, apparently because of doubts on the legality of this intervention.

Any statement from the UN welcoming this intervention would strengthen the argument for future interventions. The UN has thus cautiously avoided weakening the norm of 'non-intervention', which is one of the most respected principles in international law and politics.

On the other hand, President Obama maintains that the protection of US interests warrants such intervention in exercise of the country's right of self-defence. The US attorney general referred to Osama bin Laden as a lawful military target. It is thus clear that the US administration firmly believes intervention in self-defence is legitimate particularly in such a 'unique' case.

But this is the US version and several states and international lawyers may not entirely agree with this view. The European Union countries may have welcomed the death of Osama bin Laden but no state has praised or approved US intervention inside Pakistan.

Intervention of this nature becomes legitimate only if it is authorised by the UN or a competent regional entity or if it is carried out pursuant to the consent of the state where it has taken place.

It is now well known that until the completion of the intervention/operation, no prior authorisation was obtained from the state authorities. Pakistan was not even informed.

However, the US government seems to be far less worried on this issue as if it had received or implied 'retrospective consent' from the political leadership of Pakistan during its communications with it immediately after the intervention.

In this regard, Washington seems to rely on the article authored by President Zardari (who is both the executive head of the state and the commander in chief of the Pakistani armed forces) published in the Washington Post the very next day, in which he effectively praises the operation and also refers to his personal grievance regarding Osama bin Laden.

However, a careful perusal of the article demonstrates that it does not explicitly grant 'retrospective consent' to the intervention nor discusses it. Instead, it remains confined to comments on the life and death of Osama bin Laden. In other words, the article does not expressly approve the actual act of intervention.

On the other hand, the Foreign Office came out with a firm and clear stand expressing concern and reservation that the intervention was unauthorised. Blocking the temptation for any other state to conduct a similar intervention, the Ministry of Foreign Affairs stated that this operation/intervention, must not become the rule.

The foreign secretary reaffirmed a similar position in a forceful press conference. Later, the information minister also reiterated this position in parliament. Unless some other 'information' surfaces about any retrospective approval of this operation between the Pakistani and US leadership, the intervention in Pakistan by the US does not meet the standards of a lawful unilateral intervention as evolved under international law.

Recently some scholars have argued that intervention will acquire legitimacy if the state where it has occurred is 'unable' or 'unwilling' to perform its obligations regarding terrorists, non-state actors, human rights, etc. This view still does not enjoy wide acceptance. However, the fact remains that Pakistan was never given the final information on Osama bin Laden with a deadline to prove its 'willingness' to arrest him and hand him over to the US.

Further, another arguable legal constraint on the US was that the Security Council was seized of the matter under Resolutions 1267 and several others. The UN Charter (Article 51) effectively discourages unilateral actions when the Security Council is seized of the matter.

Yet another concern from the Pakistani side is that the US had an obligation to cooperate in sharing the information under the binding UN resolutions. Pakistan had been faithfully providing necessary information to the US as also admitted by President Obama during his speech. On the other hand, the US withheld crucial information that it had pieced together from Pakistan.

The question is whether the withholding of this information by the US from Pakistan constitutes the disregard of US obligations under Security Council resolutions. Further, the US had taken away information and material that it collected from Bin Laden's residence. That can be crucial for Pakistan's own internal security. How will the US react to the request from Pakistan to share this information? Can it refuse or should it refuse? In that case, will the US not be acting in disregard of its obligations under UN resolutions that bind all member states to extend the fullest cooperation to each other on all matters related to terrorism?

Parliament is also likely to take up this matter. Whatever position it takes on the 'intervention' issue or 'retrospective consent' would be crucial. In a strange sense, the Pakistani political leadership now holds the key to the question of the legitimacy of this intervention.

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