

Afghanistan, Pakistan, and the Intersection of National Security and International Justice

23 July 2009 2 Comments



In an effort to build a comprehensive understanding of the challenges facing the system of international criminal justice, the Hauser Center interviewed Tyler Moselle, Program Manager and Interim Executive Director at Harvard Kennedy School's Carr Center for Human Rights Policy on the conflicts in Afghanistan and Pakistan, as well as addressing the broader issue of the connection between national security and international justice.

Rahim Kanani – Hauser Center: How have the conflicts in Afghanistan and Pakistan influenced, or not, the dynamic system of international criminal justice?

Tyler Moselle – Carr Center: In Afghanistan, there was no powerful mechanism of international justice which the Bush administration could use to press the Taliban regime to give up Osama bin Laden and senior al Qaeda leaders who plotted and directed the 9/11 attacks. The Bush administration demanded the Taliban hand over bin Laden or face invasion. This connection between global terrorism and regimes that harbor and protect them was elaborated on in the 2002 US National Security Strategy. The central problem was that there was no solid mechanism of international justice capable of dealing with trans-national terrorists. Some may argue that a new version of the ICC or an offshoot of international law should evolve to deal with trans-national terrorism or even piracy but that has not happened yet.

With regard to Pakistan, the United States and western allies respect the sovereignty of Pakistan and thus will not deliver an ultimatum to the Zardari government like it did to the Taliban in 2001, even though the general consensus among many intelligence agencies is that bin Laden and other senior al Qaeda leaders are hiding in Pakistani territory. In this scenario, international justice is not applicable and has little to do with the primarily political relations between the US, some other Western countries, and Pakistan. The US sends drones into Pakistan to kill Taliban and al Qaeda leaders but Pakistan, or other nations, are not bringing this issue to the court of international justice.

RK: How would you characterize the intersection of national security and international justice?

TM: International justice has two components that intersect with the dubious concept of “national security.” First, let us interrogate the terms of definition. International justice attempts to be trans-national and universal: it claims to apply to everyone equally regardless of race, history, culture, gender, etc., while national security is applied to a specific group of people with specific interests, history, identity, etc. and is parochial. International justice is abstract while national security can be connected to a specific nation. Generally, national security developed as a way to defend the tribal or collective interests of X group from outsiders.

The Romans, for example, developed a civilization based on certain laws, philosophy, trade, and other fundamental elements, and excluded their citizenship rights or national identity from barbarians, outsiders, and “the others.” You could argue the Romans did this as a way to protect their “national security” because they did not want the essence of their nation to be diluted. Specifically, Roman law in this case could not be universal because they specifically delineated the applicability of their law. Thus, German tribes could not claim the protection of “international justice” when the Romans conquered and subjugated them. The Germanic tribes could perhaps call upon natural right, or divine justice, as an abstract reference to communicate their desire for a higher power to step in and help them but there was no tangible institution or instrument that embodied international law. Similarly, under the Treaty of Westphalia, state sovereignty was designed so no powers external to the specific nation-state could interfere with events happening inside country X’s borders. In short, state sovereignty and national security in the form of a political and legal treaty excluded individuals from calling upon rulers or peoples outside of their nation for support in the name of international justice.

Fast-forward to the early 1900s where Germany used national security claims to land taken in previous treaties as justification for invading countries. Individuals and nations had no recourse to a form of international justice because the League of Nations was basically defunct and ineffectual. Only after the end of WWII, did a leading number of powerful nations assert the need for “international justice” which could be applied universally or trans-nationally and could hold countries, rulers and regimes to account for their actions (with the Nazi regime in mind).

Fast-forward again to the last 20 years where countries have used the notion of national security to prevent interference in their respective borders because they do not want meddling eyes penetrating their sovereignty in the name of international justice—i.e. Sudan.

Yet, international justice as articulated in bodies like the United Nations and various Declarations, may be said to represent Western neo-colonialism and thus a direct threat to non-Western sovereignty and interests. In short, Western NGOs can criticize China, Sudan, and the Congo for human rights abuses, but China does not call for invading and overthrowing the United States of America because it still performs the death penalty, or recruits high school-age males to join its military, or still has deep-rooted problems with gender and racial disparities.

Which should be superior, international justice as expressed and promoted by the United Nations and its subsidiaries? Should we respect our own nations' security interests? Should we search for a synthesis between the two? Globalization has enhanced the interconnectedness of the world: tensions at the intersection of national security and international justice will only be heightened as this process continues.