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NOTA DA REDACÇÃO: Por razões alheias ao Autor (Prof. Doutor Ruy de Albuquerque) o artigo “Para uma revisão da ciência jurídica medieval: a integração da *auctoritas* poética no discurso dos juristas (*ars inveniendi*)”, será publicado na íntegra no próximo número da Revista.

THE SEPTEMBER 11 EVENTS. CAUSES AND CONSEQUENCES

MOUSTAFA Y. SOLIMAN

11th September 2001, is it the end of a chapter of the world history and starting of a new one? Is it a sharp, diversion in the basics of international law, which controls international relations?

We witness today that some of the norms of international law that are the results of the historical development of the human heritage, are now questionable since the events of 11 September, and we started to witness its introduction prior to these events.

We believe that we must go back to the phase of the Soviet Union collapse and the end of the cold war, which led to the following consequences:

- US Global domination which generated a state of a world wide political imbalance, provided Washington with the opportunity, for the first time, to intervene on bilateral or multi lateral basis. Many States did, not always meet such policies, with agreement.
- There is an uneasy general feeling that the US military machine, is the long arms by which Washington conclude many conflicts, or pressurize governments to achieve certain policies, like what happened in the cases of Libya, Sudan and Afghanistan, and also what happened in Bosnia and Kosovo which are some of the best examples in this regard.
- The increased use of the principles of human rights as a mean to intervene in the internal affairs of states under the pretext of protecting minorities or the right for Self — Determination or other excuses, which causes embarrassment for many governments, who sometimes have to yield to US pressure.
- But, on the other hand, we witness contradicting implementations for that humanitarian principle. For instance, in certain occasions the application of this principle is very Relentless to some states and smooth with others. The best example in this regard is the blindfold US policies concerning China's many human rights violations.
- There is an increased feeling of disappointment and anger by the Arab and Islamic nations towards US foreign policy in the Middle East. In

particular, it's almost complete partiality towards Israeli policies, which assisted in inflaming the situation in the occupied territory to an unprecedented level of violence. Which might lead to an uncontrollable outbreak of violence in the region, and maybe also in the rest of the Islamic World, as we notice from the following facts:

- The US bias with the Israeli stance regarding its repression of the Palestinian uprising.
- Obviously, Washington did not try to study the causes that led to the uprising, which did actually occur after a general feeling of Palestinian desperation towards reaching a peaceful settlement through negotiations. Such negotiations, which have continued for almost ten years without reaching a satisfactory solution to end that occupation which, continue since almost 35 years.
- The Israeli violations, such as, the building of settlements and confiscation of land belonging to Palestinians and trying to making demographic changes in the Occupied Territories. Such actions, are strict violations to the provisions of International Law, specifically, the 1949 Geneva Conventions. In this regard, the US did not show an opposing stance to these Israeli violations.
- At the same time the US administration prevented the Security Council from:
 - i) Adopting any resolution concerning the Middle East (Security Council resolutions 1397, 1402 and 1403 were only adopted less than a month ago).
 - ii) Allowing the UN to join the efforts to contain the uncontrollable situation
 - iii) Sending international observers to prevent the constant violent confrontations between the Israeli armed forces and the Palestinian population.
- In addition to the mentioned factors, we have noticed some other setbacks in US policy towards several global issues, most importantly, it's withdrawal from the Kyoto agreement, establishing a Missile Defense System and its withdrawal from the 1973 US — Russian Anti Ballistic Missile Treaty.
- The US, in coordination with the other developed countries, has fostered the policies of Globalization, taking into account, the economic, Cultural and Social aspects, with no consideration to the cultural particularities and social conditions of third world populations. At the

same time, the difference in the economic performance has broadened the gap between the rich and poor countries, which produced unprecedented poverty in third world countries. All that led to an increased opposition of the world public opinion against globalization and which was reflected in many demonstrations around the world.

- No doubt, that all or some of these factors have contributed to produce the proper foundation for terrorism to cultivate on, which as a result, was the cause of the events of 11th September.
- But no matter what the motives were that led to the events of 11th September, terrorism remains to be the unaccepted mean to an end, because it is an inhumane method rejected by all religions and human values.
- The world community has taken rapid steps to support the US stance against terrorism, out of shock and sympathy towards the distressful event of 11th September, which have surpassed all human imagination. This support has become an international protest or demonstration against terrorism.
- To start war against terrorism, it was of essence that the US finds the proofs and evidences that verify the perpetrators of the crime and determine the party, or parties, that instigated and planned such actions. Surprisingly enough, in a concise period, the perpetrators and the organization they belonged to were identified; namely the “AlQaeda Network” headed by Usama bin Laden (who — as already accused of Nairobi and Dar-elsalam US embassies bombings).
- The first phase of the war against terrorism started with the US ultimatum to the Taliban government to turn over Usama bin Laden and the other wanted AlQaeda leaders.
- The Taliban refused to comply with the ultimatum under the pretext that the results of the investigations and the material evidence that prove the implication of bin Laden and his Organization in these actions, have to be disclosed, which Washington refused.
- It was expected that the US would disclose the preliminary conclusions of the investigations and the legal evidences, but that never happened. It only provided its allies, under complete secrecy, with the evidences it has concluded. This naturally left the rest of the world community, skeptic towards the issue, a feeling that still exists among some.
- It was noticeable that the US movement was quite prompt, an action justified by the American public demand for reprisal, and therefore the US government took the following steps:
 - An active US response to establish a global consensus to support its war against terrorism, which it succeeded in accomplishing expedi-

tiously, since it is simply inconceivable that there are countries that support terrorism.

- US measures to suspend the accounts and activities of a number of financial and charity institutions. The US administration released a list of the suspected institutions, in this regard, so as to dry up all the sources of financing the AlQaeda or other terrorist organizations.
 - It is only for the American administration; according to its own view, to decide which organizations or institution or even states are to be considered terrorist in nature.
 - On the domestic level, in the US, there was an escalation of procedural activities by the congress which adopted some emergency laws, confining for the first time, many freedoms that were customarily guaranteed by the American Democratic System and considered one of its corner-stones.
 - Hundreds of individuals were detained due to suspicion: without providing evidence to justify the detention; without providing the necessary means for legal defense for those individuals or even without allowing the disclosure of the location of their detention.
- The Military Actions
- The war started with intense aerial raids and bombardment, causing utter destruction that cause high civilian casualties due to the difficulty for B-52 Bombers to discriminate between military and civilian targets.
 - The US did not use its ground forces, except after the retreat of the Taliban, and the Afghani resistance military forces take-over. Many violations were reported to have been perpetuated by these forces in the northern cities and the capital Kabul.
 - It is believed that the most observable violations to the Geneva conventions was the massacre of the prisoners of war detained in the city of Mazar Sharief, where the US forces used aerial bombardment on the castle they were detained in. This caused a negative reaction throughout the international community, which led to the demands of the human rights activists for a formal investigation to verify that the treatment of the prisoners of war is in accordance with the Geneva Convention.
 - The inhuman treatment of the Afghani soldiers and the members of the AlQaeda, who were captured after the collapse of the Taliban, were met with great international criticism. Specially, the treatment of the prisoners, who were detained in X-ray prison on Guantanamo

base. This induced the International Committee of the Red Cross (ICRC) to demand from the US government the treatment of the detainees as prisoners of war in accordance with international law, particularly, the Third Geneva Convention concerning the treatment of prisoners of War. The US insisted that the detained were not POW's but members of terrorist gangs, although it did withdraw this classification regarding the Taliban forces. And what was incomprehensible was that the prisoners were captured during combat in a conventional military conflict, which signifies the applicability of the third Geneva Convention concerning the Prisoners of War. Unless it can be proven without a doubt that the individuals arrested were in any way responsible for the September eleventh attacks or any other terrorist actions.

- But what we are observing now on the international scene as an aftermath of the almost concluded military operation in Afghanistan undertaken by the US and its participating allies can be depicted in the following points:
 - The continuation of the “War against Terror” based on the US definition of terrorism with a worldwide reach that may continue for years to come. And this was clearly stated by President Bush in his earlier statements following the September eleventh events and confirmed by his proposal to the US congress for the funding of the coming military operations.
 - And to enforce this policy we are witnessing the individuality of the US decision-making that has increased to the point of foregoing all coordination with its long-term allies specifically the European Union. The statements given by some European heads of states like both the French president and Prime Minister expressing their discontent of these US policies proves the extent of the embarrassment instigated by these policies. For example:
 - President Bush’s declarations in his speech on (the state of the union) that shocked the world when he singled out three countries and branded them as the axis of evil mainly Iraq, Iran and N. Korea. This accusation was not due to any involvement with international terrorism, but mainly for their possession or attempt of possession, and/or capability to manufacture nuclear weapons. This has given a new dimension to the definition of the word terrorism and has become a source of concern to many countries.

It also makes us question the classification of other countries that is known for a fact that they do possess such arsenals specially India, Pakistan and Israel.

- The US insistence on the necessity of undertaking another military strike o against Iraq using ground forces with aerial support. This was made public by statements given, by both American and British officials. Using Iraq's refusal to receive the UN inspection team and the possibility of Iraq's having possession of weapons of mass destruction as a pretext. This decision has created a wave of negative reactions that engulfed all Arab states. It was obvious during the US vice-president Dick Cheney's middle-east trip where the US decision was met by complete dismissal from all countries, in the region, including Kuwait and Saudi Arabia.
- The Pentagon list that was earlier disclosed by the US media containing the name of seven states, which the US deems possible to use a nuclear strike against. These states are Syria; Libya; Iraq; Iran- North Korea; China and Russia. This information not only caused a worldwide shock but also perpetuated a feeling of anxiety that the world is encountering a political turmoil. This could lead to destructive repercussions that will not help by any means in the attempts to contain and defeat the international terrorism. On the contrary, it is possible that this will generate a dramatic upsurge in the number of terrorist organizations worldwide with the expected consequences of more world suffering. Even more so, this policy may encourage the formation of new international coalitions and drag the world back to a renewed era of cold war.
- The latest studies undertaken by the Gallup institute concerning the position of the Islamic communities towards the US after the September eleventh events identified a strain in the US relationship with the Arab and Muslim nations since the studies revealed that:
 - These nations are increasingly skeptic about the US policy due to its injustice, prejudice and the superior manner with which it comes to terms with the facts.
 - Only 18% of the participants of this survey in nine Islamic countries believe that Arabs were behind the September eleventh terrorist attacks while 61% expressed their doubt about the possibility of any Arab involvement. This can only lead us to the fact that the lack of concrete proofs presented by the US is a major weakness in its position.

- Consequently 53% of the survey participants both denounce the September eleventh terrorist attack and oppose the Afghanistan military operations perceiving it as morally inexcusable.
 - Those holding opposing views to the US concerning its policy expressed their resentment and discontent to the continued hostile position of the US towards the Palestinian cause on one hand and its unconditional forbearance to Israel on the other. Whether on the level of the present conflicts or within the UN. Added to the US insistence on curtailing the role of the international organizations and specifically the UN Security Council on this issue so as to contain the situation in the form of US-Israeli organized pressure which will achieve the Israeli aims with no considerations for the Palestinian right to independence.
- After this review, we can only speculate on the role of the UN and other international organizations against terrorism and the events of September the eleventh. Specifically the UN, which represents the global conscience in one of the most dangerous issues that, threatens our world order.

The United Nations and the international organizations in there war against terrorism:

We can say that the UN has long been active in the fight against terrorism, which reflects the determination of the international community to eliminate this horrible threat.

- The international organization and its agencies have developed a wide range of international legal agreements that enable the international community to take action to suppress terrorism.
- Dating back to 1963 these agreements provide the basic legal tools to combat international terrorism in its many forms from the seizure of aircraft, to hostage- taking to the financing of terrorism.
- Many have been ratified by the majority of countries around the world and only the most recent one is not yet in force.
- Such agreements have developed by the General Assembly, the international civil aviation organization (ICAO), the International Maritime Organization (IMO) and the International Atomic Energy Agency (IAEA)
- On the other hand we find out that the General Assembly on 12th, September 2001 (one day after the attack) strongly condemned the

- heinous acts of terrorism and called for urgent actions to enhance international cooperation to prevent and eradicate acts of terrorism.
- Also concerning the Security Council it has also been involved in the subject:
 - On 28 September 2001, the Council adopted resolution 1373, that reaffirms its unequivocal condemnation of the terrorist acts on the US and lays out wide-ranging strategies to combat international terrorism.
 - On the 11 September immediately after the attack the council in its resolution 1468 condemned, in its strongest terms, the attack and called upon all states to work together urgently to bring the perpetrators to justice.
 - Resolution 1333 (2000) demanded that Taliban authorities act swiftly to close up all camps where terrorists are trained.
 - Resolution 1269 (1999) unequivocally condemned all acts of terrorism and called on Member States to adopt specific measures.
 - Resolution 1267 (1999) demanded that the Taliban turn over Usama bin Laden to appropriate authorities so that he can be brought to justice.
 - On the other hand, many conventions held for the same purpose, we will mention two of them only as an example:
 - The International Convention for the Suppression of terrorist bombings (adopted in New York on 15 December 1997 by the General Assembly) — (26 state parties) seeks to deny “Save Havens” to persons wanted for terrorist bombings by obligating each state party to prosecute such persons if it does not extradite them to another state that has issued an extradition request.
 - International Convention for the Suppression of the financing of terrorism (adopted in New York on 9 December 1999 by the General Assembly) obligates states parties either to prosecute or extradite persons accused of funding terrorist activities and requires banks to enact measures to identify suspicious transactions.
 - Such two examples reflect part of the activities of the international organization in this regard.
 - Henceforth, what we are witnessing is a declaration of war against terrorism in the absence of a specific definition of terrorism.
 - The lack of a definition has taken a new meaning since the Security Council acted on September 28 to mandate states to act against

terrorism. Resolution 1373 adopted unanimously without any public debate, requires member states to cut off funding for terrorists, suppress recruitment of terrorists, ensure that asylum laws are not abused by terrorists and take action against them, all that without having a definition for the “term terrorist”.

- The council framed its actions under the UN charters chapter seven provisions on maintaining international peace and security, thus automatically making the resolution binding to all states.
 - Without a definition for “terrorist”, Amnesty Internationals UN representatives said “Every government will then be able to define a terrorist that means political opponents can easily be branded as terrorists, therefore the resolution gives their governments scope to take measures that violate human rights.”
 - The resolution was adopted so very quickly that the enormous implications have not thought through, but governments felt that they had to act forcefully.
 - Therefore it is essential to reach a definition for ‘terrorism.
-
- Today there is no universally accepted definition of terrorism; countries define the term according to there own national interest. International regional bodies when they craft definitions, do so in the interest of their member states. Academics striving to define terrorism are also subject to there own political views. European countries and the United States tend to define terrorism that it only applies to acts of non-governmental organizations.
 - For example title 22 of the US code defines terrorism as “premeditated politically motivated violence” against “non combatant targets by sub national groups” usually with the goal to influence the audience.
 - The US department of defense uses a different definition that highlights another element of the western concept of terrorism. Terrorism is “the calculated use of violence or the threat of violence to uncalculated fear, intended to coerce or intimidate governments or societies in the pursuit of goals that are generally political, religious or ideological.
 - While there is no universal definition of terrorism, various expert point out that there are common elements to terrorist acts:
 - Terrorist acts are usually committed by groups who do not possess political power to change policies they view as intolerable.
 - They chose targets and actions to maximize psychological effects on societies or governments. For these targets terrorists often chose methods that inflict the highest numbers of victims.

- Getting as much media exposure as possible media coverage magnifies the terrorist acts by attention to the terrorist cause.
- They often justify their acts on ideological or religious grounds.

— So we believe that the term 'terrorism' is bound up in political controversy. Terrorism implies the killing and injuring innocent people, no country wants to be accused of supporting or harboring terrorist groups, but at the same time no country wants what it considers to be a legitimate use of force to be considered terrorism.

— President Bush declared war against terrorism, the vast recourses of the US and other countries have been directed toward ending terrorism around the world although it is clear that countries are not only divided about what to do about terrorism but also about the main topic "definition of terrorism".

After this presentation of the events and developments since the 11th of September, and the resulting consequences of this war against the terrorism we reach the final conclusion:

— The UN did not play a substantial role in this war. In spite, its previous efforts in the field of combating terrorism, through the related General Assembly and the Security Council resolutions, and also through the treaties that were concluded in that regard. On the military level, the UN role remained minute through out the war, even the political activities were through the US stance. This role has to be reconsidered to guarantee that the war against terrorism is an international issue and not to be handled only by the US. This is the only way this war can gain international legitimacy. Therefore, the mandate that was granted to the US by the Security Council resolution 13 72 should be reviewed.

— The difficulty of reaching a specific definition for terrorism has caused a great disorder in international relations. And it's unthinkable that the efforts in this regard will target only individuals and organizations with complete disregard for state terrorism, such states that are using the full power, of their military arsenal to repress freedom fighters and independent movements.

— There has to be a definition that differentiates between terrorism and independence movements.

— We therefore believe that it is imperative that an international conference should be organized at the soonest possible time, to confer about matters related to the recent consequences and to reach a precise definition for terrorism, which should be satisfactory and comprehensive.