

GOA AND INTERNATIONAL LAW

INTERNATIONAL Law, it is said, is that body of law which is composed for its greater part of the principles and rules of conduct which states feel themselves bound to observe in their relations with each other. As the developing theoretical obligations indicate, the ordering of this national relationship is based upon peace and co-operation. Hence, one of the fundamental traits of international law is that unlike state law, it lacks an executing institutional device. Thus the entry of Indian troops into Goa, Diu and Daman on 18th and 19th December, 1961, and thereby its permanent occupation has aroused a mixed feeling amongst the nations regarding its justification in the eye of international law. To some it is a case of “naked militarism”, “ruthless aggression”, “an attempt to re-write the U.N. Charter”, etc., while to others it is a case of a question of freedom, happiness, etc. Broadly speaking it was as our Prime Minister declared in a Press Conference at New Delhi on December 28, “a division of opinion in the world between the black and the white nations,”¹ respectively. On this controversial problem, the present writer submits that it is fully justified in the eye of international law, international practice, U.N Charter and Indian foreign policy of peace and non-violence.

LEGAL STATUS OF GOA

To begin with, it is essential to determine the legal status of Goa, Diu and Daman, Article 71 of the Portuguese Constitution says : “Sovereignty shall reside in the nation..... It is the aim of the Portuguese

nation to fulfil its mission of colonialisation..... Rule of Portuguese territories of India is under a Governor.”² The conclusion, legal as well as constitutional, that can be derived is that these are Indian territories under the occupation of Portugal. It was only in this light that the General Assembly had denounced Portugal for the manner in which it has treated the problems of dependent territories. Hence, Hans Kelsen, an American international jurist, points out that “non-self-governing territories” usually meant non-self-governing colonies.³ Thus, the contention of Portugal and its supporters that Goa was a part and parcel of Portugal is wrong.

Thus, if these territories were non-self-governing territories, Portugal was legally liable for paying obedience to the U.N. Charter. Article 73 says that the trust-state is obliged to promote the well-being of the inhabitants of these territories, to ensure their political, economic, social and educational advancement, and their protection against abuse, to develop self-government and to transmit regularly to the Secretary-General necessary things.⁴ Besides this, the Trusteeship Committee of the General Assembly gives freedom to the people of these territories to become a part and parcel of a state of which they like.

However, there is the question that Security Council never regarded these territories as trust-territories, as our western cities say. The only answer is that like its predecessor, the League of Nations, the U.N.O. also suffers from some gaps and thus in spite of the object of the U.N. Charter and several resolutions of the General Assembly, this was never implemented by the Security Council, which is dominated by the Western nations. Analysing in this light, Portugal violated the U.N. Charter and international law.

CAUSES OF INTERVENTION

Even, then the fundamental question remains: How is India justified in taking recourse to arms in occupying Goa, Daman and Diu? The justification lies in a number of reasons based upon international law and evolving international practice, namely:

- (a)Goa liberation is a part of All-India freedom struggle;
- (b)It was essential for self-defence;
- (c)It was after exhaustion of peaceful means;
- (d)It depended right of self-determination; and
- (e)It meant the implementation of the objective of the U.N. Charter.

Firstly, India had been fighting for freedom for a long time, Goa's freedom was an innate and integral part of India's own freedom struggle which was intensified by Goan Congress Committee, which was formed in 1928 and by other national committees. In 1946, the Goan National Congress was formed and conducted the famous Satyagraha under the leadership of the Indian and Goan leaders. It was a result of this freedom movement that the British left India in 1947 and even the French made a transfer of Indian territories under occupation in 1954. So, in terms of evolving international practice, Portugal had no right to remain in India. It is further argued that "Portugal has regarded Goa and her other two enclaves on the West Coast of India, Daman and Diu, as an integral part of the Portuguese territory since the Portuguese built forts on the coast in 1510 to protect the trade route in Indonesia and China."⁵ If such statements are to be believed, Goa forms a part of India as testified by 4000 years old *Puranic* scriptures. Moreover, as the Defence Minister, V.K. Krishna Menon, said: "If the Portuguese really considered Goa a

part of their nation, why did they try to destroy the town before the Indian forces reached there?"⁶

Secondly, as Oppenheim opines, the introduction of the U.N. Charter's Chapter XI, as referred above, is to put limitations upon the ruthlessness of colonial administration in order that it may not prove a danger to international peace and security.⁷ Portugal's membership of NAIO and its evil imperialistic designs proved a source of danger to the political sovereignty of the Indian Nation as these territories may have been made a military base for big powers. Thus, it became the duty of the Indian Government to eradicate such a danger. This is fully justified according to the principles of the Monroe Doctrine. As President Monroe of U.S.A. said on December 2, 1823, and which was latter justified by the American international jurists as a principle based upon national defence, that the U.S.A. If the interest of its own peace and happiness could not allow the Allied European powers to extend their political system to any part of America, and try to intervene in the independence of the South American republics. It was further argued by Robert D. Armstrong that neighbourhood of colonial possessions of rival military powers would be dangerous to the neutrality, peace and safety of U.S.A.⁸ If we examine Portugal's membership of the NATO and the present-day situation of the world on the one hand, and the acceptance of the policy of non-alignment by India on the other, one can easily conclude that in the events of war or active hostility these Indian territories might have been used for military base. Thus, according to the avowed and accepted principles of Monroe Doctrine as semi-international law and national defence, Indian action was fully justified.

Thirdly, the Portuguese tyranny was intolerable to civilized standards and because of political obstinacy of Portugal every means of peaceful settlement was exhausted.⁹ The Portuguese possessions continued as a

constant irritant to national sentiment and about 850,000 Indians continued to remain under the colonial savagery of Salazar. However, for a peaceful settlement, Indian Government opened an office in Lisbon. Lisbon continued to press India to regard it a part of Portugal. Hence, seeing the political indifference, the Indian Government closed it in 1953. On the other hand, Goa, under Portuguese rule was becoming a tight concentration camp of colonialism along the orders of the Portuguese dictator, in spite of India's repeated requests for negotiation. The ghastly tragedy of Angola further deteriorated the situation. That is why, six months back, Prime Minister Nehru declared that the use of force cannot be ruled out in Goa. In spite of this, the Portuguese administration persisted in its folly and the firing on innocent Indian vessels in November produced immeasurable reactions in Indian national sentiment. Though military forces were moved to these territories, on the request of U.S.A. the action was postponed for three days despite increasing evidence of a breakdown in administration. It was hoped in the interval Portugal would agree to enter into friendly negotiations with India concerning the relinquishing of her colonies. But Lisbon continued to refuse to talk. Thus, India was compelled to help her people in distress and also to maintain U.N. resolutions and to resort to active acts of aggression of Indian shipping and Indian soil by Portugal by force.

Fourthly, Portugal deprived the people of Goa of their legal right of self-determination. After 1910, Portugal proclaimed itself a Republic and after amendments in 1959, even more so. Both the republican spirit and international law demand that on matters of a disputed territory, the *bona fide* local inhabitants of those territories must be consulted as to their preference. This was never done by Portugal. It seems that colonialists have become so arrogant and selfish that they pressed for a

plebiscite on Kashmir, but not on Goa. The tragedy is that this was never expressed by our western friends. Even in the nineteenth century, specially between 1850 and 1870, Germany and Italy were given this right and since then it became an international practice. When this was denied and when every peaceful method was exhausted, India was legally entitled to demand and take steps for the liquidation of colonial imperialism and the implementation of the principle of self-determination.

Finally, opposing these legal grounds of India's action. *The Guardian*, speak of India's ruthless aggression and violation of Article 2 of the U.N. Charter. It says: "when India joined the U.N., it committed itself to settling the international disputes by peaceful means. It also undertook (under the same article of the Charter) to refrain from the threat or use of force against the territorial integrity or political independence of any state." "By invading Goa, its Government had certainly broken first of these premises. As to the second, Indians army argue that by clinging to Goa the Portuguese Government has been using force against their own integrity. But whatever natural justice they may have in this argument, the Charter has to be interpreted on the legal realities that exist today if it is not to dissolve into anarchy."¹⁰ The answer to such criticisms, firstly, is that the relevant Article 2 of the U.N. Charter bans the use of force in a manner inconsistent with the purposes of the U.N. Charter. That India has not violated the purposes of the U.N. Charter rather acted according to it is clear by the U.N. military action in Congo to end dismemberment and colonialism. Secondly, India was right in taking recourse to arms under Article 51 of the U.N. Charter which gives every nation the right of individual and collective self-defence. Thus, in order that India may justify herself as the angel of peace, should have as it did, to end tyranny under its wings.

GANDHI AND GOA

Much has been said about India's betrayal of Gandhian philosophy of peace and non-violence. But to me it seems that it was an execution of Gandhian philosophy in practice otherwise as Kinsly Martin says : Gandhiji would have "blamed Nehru for waiting 14 years before completing India's independence."¹¹ It is clear that when the whole of the country was enjoying the happiness of independence on August 15, 1947, Gandhiji reminded the nation of its duty on the same day: "In free India Goa cannot be allowed to exist as a separate entity in opposition to the lands of free state". How Gandhiji would have approved his action is clear from earlier actions of Gandhiji. In 1940, Gandhiji insisted that Indian army should be sent in favour of Great Britain in war. It is only because of this that Pandit Nehru remarked: "The Practical statesman took precedence over the uncompromising prophet"¹². Furthermore, he was prepared to resist violence with the army in Kashmir. As in Goa, 15 people were shot dead by the Portuguese as they sat on the ground and as they deprived many thousand Satyagrahi people of their rights. Gandhiji again would have made a compromise with legal violence and individual's life and nation's freedom. If not, as our Prime Minister says, non-violence is an "almost metaphysical approach of Mahatma Gandhi, asserting that the Congress Party and the Government had never committed themselves to abjuring force in all circumstances."¹³

CONCLUSION

The Indian action has exposed the hollowness of military regional pacts like SEATO and NATO and has proved that the Afro-Asian nations cannot remain unprivileged nations of the world by the domination of the members of these regional pacts in the Security Council. Furthermore, it established a precedent in international arena that if due

to procedural defects the U.N. machinery cannot be put into operation, the chaotic and irresponsible administration of colonialists will not continue for times to come to guide the destiny of “freedom loving” people in an arbitrary manner. Indian action in Goa is not an attempt to re-write the U.N. Charter of India’s own professions of faith,¹⁴ but it has proved that the U.N.O. requires more faith from Western nations involving the problems of Congo, Cuba, etc. The Goan interlude, thus, is fully justified according to international law and practice, U.N. Charter and Indian adherence to the philosophy of peace and non-violence.

1. *Statesman*, December 29, 1961.
2. Article 71 of the Portuguese Constitution after Amendment of 1959.
3. Hans Kelsen, *Law of the United Nations*, American Journal of International Law.
4. Chapter XI of the *U.N. Charter*.
5. *The Guardian*, December 18, 1961, (editorial).
6. In his speech on Goa and International Law at Vigyan Bhawan, New Delhi, under the auspices of *International Law Association* on January 18, 1961.
7. Oppenheim, *International Law*, Vol. I, eighth edition, p. 227.
8. Robert D. Armstrong, in an article in *American Journal of International Law*, vol. 10, pp.77-103.
9. Editorial, *New Statesman*, December 22, Vol. LXII, p.947.

10. *The Guardian*, (Editorial), December 19, 1961.
11. Kinsly Martin, Gandhi and Goa, *New Statesman*, December 22, 1961, Vol. LXII, p.931.
12. Jawaharlal Nehru, *The Discovery of India*, p.457, (Published by Meridian Books Limited, London).
13. *Statesman*, December 29, 1961.
14. Speeches of Mr. Stevenson, and *The New York Times*, December 24, 1961.