

Role for law in a world ruled by power

By Tommy Koh

WHAT is the relationship between international law and power? Realists like to say that the world is ruled by power. They tend to be dismissive of international law. I would argue that even in a world ruled by power, states need international law and generally comply with it.

To begin with, realists often think power equals military power. This is not the case. In his book *Power Rules: How Common Sense Can Rescue American Foreign Policy*, Leslie H. Gelb disaggregates power into military, economic and diplomatic power. Another American thinker, Joseph Nye, has suggested a fourth component: soft power.

Second, we do not live in a world ruled by force. To be sure, states do occasionally resort to force. The hope was that, with the conclusion of the Cold War, the world would enter a peaceful era. But according to the Stockholm International Peace Research Institute, there have in fact been more armed conflicts since the Cold War's conclusion than during it. It would, however, be a mistake to conclude that we live in a world ruled by force.

On the contrary, we live in a relatively peaceful world, where the resort to force to resolve inter-state disputes is a minority phenomenon. There are limits to the use of force even for militarily powerful states. It may seem paradoxical, but it is a historical fact that militarily powerful states do not always prevail over less powerful adversaries.

Third, we do not live in a lawless world. We live in an increasingly inter-connected and inter-dependent world. It is a world bound together, not just by state interests, but also by international organisations, regional groupings, international law, customs and practices.

For example, the United States is without question the most powerful state in the world. But as President Barack Obama said at West Point last Saturday: 'We have always had the foresight to avoid acting alone.' The US needs allies and friends. It cannot ignore the interests and opinions of other states.

Take trade: The US has to trade with other countries in order to promote its prosperity. It has to accept the laws and rules governing international trade. Relatively weaker states can refer a trade dispute with the US to the dispute settlement body of the World Trade Organisation (WTO). The US cannot block the WTO from establishing a dispute panel.

I chaired a WTO panel dealing with a dispute brought by Australia and New Zealand against the US. The panel found in favour of Australia and New Zealand. The US complied with the decision. Why?

Because it was in its enlightened self-interest to do so. If it defies the decisions of the WTO's dispute settlement body, other states would be tempted to do the same - and the whole system would be undermined. It is thus in the interests of all states, including powerful ones, to uphold the rule of law.

Some realists may object to my example of trade. Let me, therefore, cite another example. In 1990, Iraq decided to invade and incorporate Kuwait. Iraq was militarily superior to Kuwait and had no trouble overwhelming Kuwaiti defences. Was Iraq successful in subjugating its weaker neighbour?

It was not. The UN Security Council condemned the invasion and demanded the withdrawal of Iraqi forces from Kuwait. When Iraq refused to comply, the Security Council authorised the use of force by a coalition of countries, led by the US. Diplomatically, Iraq was almost totally isolated. Militarily, Iraqi forces suffered a humiliating defeat and withdrew from Kuwait. Kuwait recovered its sovereignty and independence.

I am not suggesting the United Nations will always come to the rescue of small states that are the victim of aggression by powerful states. But the historical record since the founding of the UN in 1945 suggests that the unilateral use of force seldom leads to a successful outcome.

Let me cite the following examples: North Korea failed to conquer South Korea; the US withdrew from Vietnam; the Soviet Union withdrew from Afghanistan; Vietnam withdrew from Cambodia, Iraq withdrew from Kuwait; and the US will soon withdraw from Iraq.

Because the US did not obtain a second Security Council resolution authorising its invasion of Iraq, it did not gain the world's support. As a result, although the US succeeded in toppling Saddam Hussein, it did not succeed in its post-invasion agenda. It did not have international law on its side and many of its allies and friends were unwilling to help it in Iraq.

Is there a role for law in a world ruled by power? My answer is yes. States interact with one another in many areas. Trade is just one. Other areas include investment, tourism, aviation, shipping, telecommunications, the Internet, banking, tax, mobility of workers, refugees, terrorism, weapons of mass destruction, non-proliferation of nuclear weapons, human rights, women's rights, children's rights, diplomatic immunity, etc.

What is not very well known is that in all these areas, as well as in others, there are applicable international law, conventions, rules and institutions. This is a reality that has an impact on states as well as on individuals.

Take mobile phones, which have become a necessity: All of us make calls to friends at home and abroad on our mobile phones. When we make such a call to a foreign friend, the call is carried either by a submarine cable (95 per cent of the time) or by a satellite. The submarine cables of the world are governed by international law, especially the UN Convention on the Law of the Sea. The satellites are governed by air and space law and regulated by the International Telecommunications Union.

The inescapable conclusion is that international law permeates many aspects of our lives. It provides the framework for international cooperation. It helps to make this a rules-based world.

It is, of course, true that, unlike in a domestic legal system, there is no officer empowered to enforce the judgments of the International Court of Justice, the International Tribunal for the Law of the Sea, WTO's dispute settlement body, and so on. But does this mean the judgments have no force? The truth is that most states choose to comply most of the time.

Why? Because they consider it to be in their own self-interest to do so.

The writer is chairman of the Centre for International Law, NUS. Think-Tank is a weekly column rotated among eight leading figures in Singapore's research and tertiary institutions. A longer version of this essay will be presented to the Indonesian Society of International Law next month.