

## SINGAPORE AND INTERNATIONAL LAW

This section was introduced for the first time in the December 1977 issue of the Review (1977) 19 Mal. L.R. 401. Its objective is to reproduce materials and information that will illustrate Singapore's attitude to, and approaches on, questions of international law and international organisations. As far as possible, primary materials will be reproduced but where unavailable, and the topics are important, secondary materials including relevant extracts from newspaper reports will be reproduced. The materials will be presented under the following headings:

- I. Policy Statements
- II. Legislation \*
- III. Judicial Decisions \*
- IV. Treaties (other than Asean Instruments)
- V. Asean Treaties, Declarations and other Instruments \*
- VI. Singapore in the United Nations and other International Organisations and Conferences

Owing to limitations of space, the materials reproduced in the section will be selective. As the materials are compiled from the Law Library and other sources, it should be stressed that any texts contained herein are not to be regarded as officially supplied to the Review.

### I. POLICY STATEMENTS

- (a) *Text of Statement of the Singapore Government on the Situation in Afghanistan, 31 December 1979 (Singapore Government Press Release MC/DEC/45/79 (Foreign Affairs))*

The overthrow of the Government of Afghanistan by Soviet troops is a clear warning to Asia that Western imperialism, now largely defunct, is not without a successor. Now that the limits of Soviet power in Europe have been defined, Soviet action in Afghanistan is a signal to Asia that in the eighties it will be the target of Soviet ambitions. This is the first time since World War Two that Soviet troops have moved in force against an Asian country. It has done so only a month after the United Nations adopted a modified Soviet sponsored resolution condemning all forms of "hegemonism".

\* For this issue, there are no materials under this heading.

We in South-East Asia are equally aware that Soviet action in Afghanistan comes on top of its massive military support to Vietnam to overrun and occupy Democratic Kampuchea.

Of particular concern to non-Communist Asia is that the victims of aggression in both cases were Communist states. Democratic Kampuchea was Marxist. The two leaders who were deposed and killed in Afghanistan were both Marxists closely allied to the Soviet Union and its policies.

But in each instance ideological affinity and friendship gave neither Kampuchea nor Afghanistan guarantees of political independence or national dignity.

If a Communist superpower can mete out harsh treatment to follow Marxist states which do not toe its line, can non-Communist states place much credence on Soviet assurances that association with it would always be on the basis of mutual benefit, tolerance for different social systems and non-interference in one another's internal affairs?

The Soviet Union has in the past encouraged small nations to pursue non-alignment as a means of securing their political integrity and independence. Some 90 nations, including Afghanistan, joined the non-alignment movement.

But neither non-alignment nor pro-Soviet policies have saved Afghanistan's independence and dignity.

The question now foremost in the minds of all nations, particularly those of Asia, is: "After Afghanistan, who next?"

Peaceful co-existence and non-alignment were credible policies when in the immediate post-war years Soviet military power was less apparent than it is today.

But in the closing years of the seventies both in Kampuchea indirectly and in Afghanistan more openly the Soviet Union has been less inhibited about demonstrating its military might.

The Soviet Union as a superpower and a great nation can do much to make this world more secure and a better place.

But what it has done in Kampuchea and in Afghanistan will certainly raise serious doubts and fears as to Soviet policies and purposes.

(b) *Boycott of the Moscow Olympics, 3 May 1980 (Singapore Government Press Release 09-0/80/05/03)*

The Singapore Government has decided to boycott the Moscow Olympics, and will advise the Singapore National Olympic Council not to participate in the coming Olympic Games in Moscow.

It is now clear that a great many countries are in favour of a boycott. In line with our previous stand and having regard to the fact that a significant number of countries in Asia, Western Europe

and other regions have decided not to participate in the Games, Singapore has decided not to participate in the Games.

The continued occupation of Afghanistan by Soviet troops has elicited widespread criticism and condemnation by the international community. The Soviet action in Afghanistan not only threatens international peace and security but establishes a precedent, which if condoned, makes every weaker state fair game for stronger predatory states.

While the Singapore Government sympathises and fully understands the dilemma confronting the athletes who have painstakingly prepared for the Games, it cannot be blind to the stark realities created by the Soviet action.

#### IV. TREATIES (OTHER THAN ASEAN INSTRUMENTS)

(a) *Singapore-China Trade Agreement, 29 December 1979 (Singapore Government Press Release MC/DEC/44/79 (Trade & Industry))*

The Minister for Finance, Mr. Hon Sui Sen, signed a trade agreement with the People's Republic of China in Beijing today. Mr. Li Qiang, the Chinese Minister for Foreign Trade, signed on behalf of the People's Republic of China.

The agreement is a general framework agreement providing for the expansion of economic and trade relations between the two countries.

Under the agreement, the two countries agree to grant each other most-favoured nation treatment with respect to customs duties and other taxes and duties applicable to trade exchange. The two countries will provide the maximum facilities possible to increase bilateral trade and narrow any existing trade gap.

All payments between the two countries shall be made in freely convertible currencies.

The two countries also agree to facilitate their participation in trade fairs and exhibitions to be held in each others' territories.

The agreement provides for the two countries to discuss measures aimed at broader trade relations between the two countries and the solution of problems connected with the implementation of the agreement.

(b) *Avoidance of Double Taxation Convention — Singapore/Sri Lanka, 25 January 1980 (Singapore Government Press Release 08-0/80/01/25)*

The Convention for the Avoidance of Double Taxation between the Republic of Singapore and the Democratic Republic of Sri Lanka was signed in Singapore on 29 May 1979.

The Convention was brought into force on 25 January 1980 following an exchange of Instruments of Ratification between Singapore and Sri Lanka.

The Convention takes effect in both countries as from the basis period for the year of assessment beginning on or after 1st January 1978 in respect of income subject to tax.

The Convention provides for limitation of tax by the country of source to 15 per cent on dividends, 10 per cent on interest and 15 per cent on royalties relating to industrial, commercial or scientific equipment and experience. However, interest derived and beneficially owned by a banking or financial institution of a State shall be exempt from tax in the other Contracting State. There is also provision whereby Singapore will give certain amount of tax credit for the Sri Lanka tax on dividends and interest which has been reduced or exempted in accordance with the special economic incentive laws of Sri Lanka viz 15 per cent Sri Lanka tax on dividends and 10 per cent on interest.

The conclusion of the Convention, besides reducing the impact of double taxation, will increase the flow of trade, investment and technical know-how between the two countries.

With the ratification of the Convention, Singapore has nineteen Agreements for the Avoidance of Double Taxation in force.

## VI. SINGAPORE IN THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANISATIONS AND CONFERENCES

- (a) *Extracts from Speech of Professor Tommy Koh, Singapore's Permanent Representative to the UN at the UN Security Council Debate on the Situation in Afghanistan, 6 January 1980 (Singapore Government Press Release 09-0/80/01/06)*

... I wish to recall that ever since my country became independent, my government has consistently pursued a foreign policy of non-alignment. We are not aligned with any of the great powers. We are not a party to their competing military alliances and political blocs. We have studiously avoided involvement in the rivalries between the great powers. The position which my government takes on specific issues such as the situation in Afghanistan, is based upon the principles of the UN Charter, the generally accepted principles of international law, the principles of non-alignment and our judgment of the merits of each case. Relations between small nations and great powers are at best of times difficult. But when a great power defies the basic principles of the UN Charter by openly invading and occupying weaker and smaller nations, then association between it and smaller nations carries obvious dangers. The Soviet action in Afghanistan will certainly be viewed in this light by many small nations.

Let me review briefly the salient facts concerning the situation in Afghanistan.

On the 25 and 26 December 1979 a massive Soviet airlift into Kabul, the capital of Afghanistan, took place. In over 200 flights approximately 10,000 Soviet troops were transported into Afghanistan. On the evening of the 27 December Soviet troops were involved in a coup against President Hafizullah Amin who was killed. Immediately

after the coup, two Soviet motorised rifle divisions entered Afghanistan by land. The Soviet Union is now said to have about 50,000 combat troops in Afghanistan.

The Soviet Union has argued that its troops are in Afghanistan at the invitation of the Afghan government. The Soviet Union claims that the massive Soviet airlift which occurred on the 25 and 26 December had taken place at the invitation of the government of Afghanistan. Unless we assume that the late President Amin had suicidal tendencies, it is reasonable to infer that he would not have invited Soviet troops to enter Afghanistan in order to depose and kill him.

After the coup against President Amin, the Soviet Union brought from exile in Eastern Europe, an Afghan, Babrak Karmal, and made him the new President of Afghanistan. The important fact is that at the time of the Soviet intervention, Babrak Karmal was not part of the government of Afghanistan and therefore had no authority to request the intervention by Soviet troops. If small nations accept this basis for intervention, then they are setting a precedent to justify great power interventions on this basis in the affairs of all small nations in the future.

Have the actions of the Soviet Union in Afghanistan violated any of the principles of the UN Charter and the generally accepted principles of international law? The answer is yes. In the first place, the use of Soviet troops to depose one ruler and substitute another is clearly in violation of the principle on non-interference in the internal affairs of other states and of the principle of non-use of force against the political independence of other states. The actions of the Soviet Union also violate some of the principles contained in the declaration on principles of international law concerning friendly relations and co-operation among states, unanimously adopted by the General Assembly at its 25th Session. One of the principles violated by the Soviet actions is the principle that "every state has the duty to refrain from any forcible action which deprives people of their right to self-determination and freedom and independence". Another principle which has been violated is that "no state... has the right to intervene directly or indirectly for any reason whatever in the internal or external affairs of any other state". Yet Another principle which has been violated is that "no state shall organise... armed activities directed towards the violent overthrow of the regime of another state...".

The actions of the Soviet Union in Afghanistan have certain grave implications for countries in Asia and for small and non-aligned countries. The fact that this occurred barely a month after the UN General Assembly adopted a resolution, based upon a Soviet initiative, condemning all forms of hegemonism, clearly suggests that the Soviet Union has a credibility gap. How can we reconcile Soviet deeds with Soviet words? Henceforth, it will be extremely difficult for us to give any credence to declarations by the Soviet Union that it will respect the territorial integrity, sovereignty and political independence of other states and that it will strictly abide by the principle of non-interference in one another's internal affairs.

In the past, Soviet Union has encouraged small nations to pursue a foreign policy of non-alignment as a means of securing their political

integrity and independence. Some 90 nations including Afghanistan have joined the movement of non-aligned countries. The fact that the Government of Afghanistan, which was overthrown by Soviet troops, was a member of the non-aligned movement and was friendly to the Soviet Union, is doubly disconcerting. It makes some of us wonder whether a foreign policy of non-alignment provides one with any security against external interference and aggression in the world today.

The great powers have a special responsibility by virtue of their strength and prestige to adhere loyally to the basic principles of the UN Charter. They should set an example to smaller nations on rational and peaceful conduct of relations between countries. They should be enforcers of the purposes and principles of the United Nations. That is why five of the members of the Security Council were accorded the special status of permanent members with veto powers. They were accorded this privileged position because they had a special responsibility. But when those in a privileged position to enforce the purposes and principles of this organisation breach them at the expense of a small nation then we are well on the way to a world without law and without principles.

In conclusion, my delegation joins others in demanding, first, the withdrawal of Soviet forces from Afghanistan; second, the cessation of Soviet interference in the internal affairs of Afghanistan and third, respect by the Soviet Union and all other states for the territorial integrity, sovereignty and political independence of Afghanistan.

- (b) *Extracts from Speech of Professor Tommy Koh, Singapore's Permanent Representative to the UN at the UN General Assembly Debate on "The Situation in Afghanistan" on 12 January 1980 (Singapore Government Press Release 09-0/80/01/13)*

I have listed carefully to the statements made in this debate by the Soviet Union and by the delegations which support her. In essence their case is based upon the following four propositions.

First, the Soviet forces in Afghanistan are there at the invitation of the Government of Afghanistan.

Secondly, the Soviet forces played no part in the overthrow and execution of President Hafizullah Amin which occurred on the 27 December 1979.

Thirdly, that the present debate constitutes an unwarranted interference in the internal affairs of Afghanistan and is therefore contrary to paragraph 7 of Article 2 of the UN Charter.

Fourthly, that the Government of Afghanistan requested military assistance from the Soviet Union and the Soviet Union agreed to render such assistance in accordance with Article 51 of the UN Charter.

I shall attempt to analyse briefly each of the four arguments adduced by the Soviet Union and her supporters. I shall begin with the first proposition. The Soviet Union says that at all relevant times her armed forces were in Afghanistan at the invitation of the govern-

ment of that country. We know for a fact that on the 25 and 26 December 1979 a massive Soviet airlift into Kabul took place. In over 200 flights approximately 10,000 Soviet troops were transported into Afghanistan. The critical question is who had invited the Soviet troops to enter Afghanistan on the 25, 26 and 27 December until President Amin was killed and Babrak Kamal was appointed as his successor? The Soviet statement does not make this clear. It cannot be seriously contended that President Amin had invited the entry of Soviet forces in order to depose and to kill him. Is it the contention of the Soviet Union that the request for Soviet military assistance had come from Babrak Karmal? If this is the answer it will not stand up to scrutiny.

In April 1978, the government of President Mohammed Daud was overthrown by a coup d'état carried out by communist members of the Afghan Armed Forces. On the 30 April, a new government was established with Nur Mohammad Taraki as Prime Minister and Babrak Karmal and Hafizullah Amin as Deputy Prime Ministers. Three months later, on 6 July, Babrak Karmal was dismissed from his post as Deputy Prime Minister and sent to Czechoslovakia as the Afghan Ambassador. A few weeks later Babrak Karmal was recalled from Prague by his government. He refused to return. Instead, he lived in exile in the Soviet Union until after the coup against President Amin on the 27 December. Therefore, if the Soviet forces had entered Afghanistan between the 25 and 27 December at the request of Babrak Karmal, he had no authority to make such request because he was not the leader or even a member of the Afghan Government at the relevant time.

I shall now turn to examine the second question. The Soviet Union has denied that its Armed Forces had either engineered or participated in the coup against President Hafizullah Amin. I find the Soviet denial unconvincing. According to press reports, on the evening of December 27, Soviet troops surrounded the Presidential Palace in Kabul and fighting occurred between Afghan soldiers defending the Palace and the Soviet forces. According to such reports, the Soviet troops also attacked Afghan forces guarding Radio Afghanistan and other key government installations and took control of them.

The Soviet Union has contended that the present debate constitutes an unwarranted interference in the internal affairs of Afghanistan and is contrary to paragraph 7 of Article 2 of the UN Charter. The validity of this argument depends upon whether or not the entry of Soviet forces into Afghanistan since 25 December contravenes the sovereignty, territorial integrity and political independence of Afghanistan. If the Soviet forces have been in Afghanistan, at the invitation of the government of that country, then the Soviet contention is valid. It collapses as being without foundation in view of the fact that the Soviet forces have entered Afghanistan since 25 December in violation of the sovereignty, territorial integrity, and political independence of Afghanistan and that the Soviet forces had either engineered or participated in the overthrow of President Hafizullah Amin.

The fourth and final argument of the Soviet Union is that the government of Afghanistan had requested military assistance from the Soviet Union and the government of the Soviet Union had agreed

to provide such assistance in accordance with Article 51 of the UN Charter. Article 51 states that nothing in the Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member state. The article, however, requires that the member state shall report the measures taken by it in the exercise of this right of self-defence immediately to the Security Council. In the opinion of my delegation, the Soviet Union has failed to make out a case under Article 51. The article gives no power to a country such as the Soviet Union to send its armed forces into the territory of another country and to overthrow its government. The facts do not establish that between 25 and 27 December, Afghanistan was the victim of an armed attack by a third state and that the government of Afghanistan had appealed to the Soviet Union for military assistance in order to repel such armed attack. At the relevant time, Afghanistan was not at war with any foreign power. There were no foreign soldiers on the territory of Afghanistan except Soviet troops. The government of Afghanistan did not, between 25 and 27 December, appeal to the Soviet Union for help in order to repel an armed attack by a third state.

An objective analysis of the facts and of the relevant provisions of the UN Charter has led me to the following conclusions. First, that contrary to Soviet contention, Soviet forces entered the territory of Afghanistan without the invitation of the legal government of that country. Secondly, contrary to Soviet contention, Soviet forces either engineered or at least participated in the overthrow of President Hafizullah Amin. The question whether Hafizullah Amin was a good or bad ruler is irrelevant because, as Ambassador Bishara of Kuwait has explained, the nature of the regime of a contrary does not justify foreign armed intervention in the internal affairs of that country. Thirdly, that the present government of Afghanistan headed by Babrak Karmal is imposed by the Soviet Union on Afghanistan. Fourthly, the present debate is not an interference in the internal affairs of Afghanistan and is not contrary to paragraph 7 of Article 2 of the Charter. Fifth and finally, that Article 51 of the Charter cannot be invoked by the Soviet Union to justify its violation of the territorial integrity and political independence of Afghanistan and its interference in the internal affairs of that country.

The Soviet actions in Afghanistan have already created several grave consequences for the world. On the international plane, it has created a new climate of fear and of anxiety throughout the world. It has put a stop to the process of detente and confidence-building. It has revived the cold war and intensified rivalry between the great powers. It has undermined the prospects for fruitful negotiations in the field of arms control and disarmament, especially between the two superpowers.

For us in Asia, the Soviet armed intervention in the internal affairs of Afghanistan is a particularly significant event. It is the first time since the end of the Second World War that the Soviet Union has deployed its armed forces against a country in Asia. It makes many of us in Asia wonder whether the Soviet Union is turning its attention to Asia in view of the relative stability of relations between eastern and western Europe. Is Afghanistan an isolated



incident or is it indicative of Soviet ambitions in Asia? If the latter, who is next, after Afghanistan?

My country is a member of the Movement of Non-Aligned Nations. Members of our Movement attach the highest importance to the principle that every state should respect the sovereignty, territorial integrity and political independence of every other state, to the principle of non-interference in the internal affairs of other states and to the principle of non-use of force in relations between states. I agree completely with Ambassador Clark of Nigeria, when he said that we must demonstrate our adherence to these principles by applying them to all states, whether they be from the west or from the east or from the Non-Aligned Movement itself. The actions of the Soviet Union in Afghanistan are in clear contravention of these principles. Members of the Non-Aligned Movement must therefore demand that the Soviet Union withdraw immediately and unconditionally its forces from Afghanistan, that the Soviet Union should cease its interference in the internal affairs of Afghanistan and that all states should refrain from interference in the internal affairs of Afghanistan so that the people of that country will be able to decide its own destiny and to choose its own form of government according to its own wishes.