



## THIRD WORLD APPROACHES to INTERNATIONAL LAW *Review*

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### War and the Coronavirus Pandemic

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#### **The war metaphor**

Around the world, responses to the COVID-19 pandemic differ. Yet one element that many states – from their politicians and policymakers to journalists, healthcare specialists, and much of the public at large – seem to have in common is in framing and referring to the pandemic as a ‘war’. Nowhere is this more apparent than in the United States. On 17<sup>th</sup> March 2020, US [President Donald Trump tweeted](#): ‘the world is at war with a hidden enemy. WE WILL WIN!’. In a press conference the following day on his decision to invoke the Defense Production Act in response to the crisis, [Trump said](#):

the invisible enemy, it’s always the toughest enemy, the invisible enemy, but we are going to defeat the invisible enemy, I think we’re gonna do it even faster than we thought and it will be a complete victory, a total victory...

Trump further stated that the US is ‘at war against the Chinese virus’, which ‘spreads violently’, while also completely refuting suggestions that using the term ‘Chinese virus’ is racist and puts Asian-Americans at risk. Asked if he considers the United States to be in a ‘war-time footing’ in terms of fighting the virus, he answered (seemingly forgetting that he is *already* a wartime president, with the U.S. continuing its ‘war on terror’ in numerous countries):

I do, I actually do, I’m looking at it that way ... I view it as a ... in a sense a wartime president, I mean that’s what we’re fighting ... one day you have to close it down [the economy] in order to defeat this enemy.

The Atlantic Council, in a piece which draws parallels between the events of 9/11 and the pandemic, urges Trump to invoke Article 5 of the NATO Treaty, an article which

triggers collective self-defence among NATO's members if one of them is subject to an armed attack. Trump could, [writes Frederick Kempe](#) (President and CEO of the Atlantic Council), 'offer the transatlantic community an Article 5 declaration of war against this deadly pathogen', as 'there is far greater need now than after 9/11 for a symbolic gesture of unity.' Kempe also refers to the virus as the 'Chinese-originated COVID-19', and his piece is, unsurprisingly, rather more concerned about maintaining US primacy over China in relations with Europe than it is about effective responses to the pandemic. In an op-ed in the *New York Times*, [David Katz draws a parallel](#) between 'two kinds of military action: inevitable and collateral damage of diffuse hostilities, and the precision of a "surgical strike," methodically targeted to the sources of our particular peril', and the 'battle' against the coronavirus pandemic, calling on the United States and the world to 'consider the surgical approach, while there is still time.'

This invocation of war in discussions and statements on the coronavirus pandemic is not limited to the US. In his address to the nation on the 16<sup>th</sup> March, French President Emmanuel Macron [told the country](#) 'nous sommes en guerre' – 'we are at war' – against an invisible enemy. In Britain, Prime Minister [Boris Johnson argued](#) that his government 'must act like any wartime government', [announced the setting-up of a 'war room'](#), and said he and his cabinet ministers had a 'battle plan'. Israel now finds itself in another 'state of war', [according to](#) Moshe Bar Siman-Tov, director general of the health ministry. In Australia, Prime Minister Scott Morrison [called on Australians](#) to 'summon the spirit of the Anzacs ... Of those who won the great peace of World War II and defended Australia.' As such, while this piece focuses primarily on US policy, it is relevant beyond.

The use of the war metaphor and the language of violence and conflict is neither accurate nor helpful for the situation we are facing. For one thing, those drawing parallels between this pandemic and war fail to recognise the role of war in spreading disease, and in causing public health crises. The relationship between war and disease is not benign, and it is certainly not positive – war does not cure or cleanse. In reality, [war and infectious disease are 'deadly comrades'](#), and 'infectious diseases ruthlessly exploit the conditions created by war, affecting both armies and civilians.' Hagopian contends that war itself should be viewed as a public health problem, given that it is 'arguably at the root of most of the world's violent deaths ... and significant numbers of chronic, infectious, and psychological health problems' and 'generates round after round of refugee movements, mental health crises, infectious epidemics, and chronic

ailments.<sup>1</sup> In Afghanistan, for example, the Costs of War project notes that 'nearly every factor associated with premature death – poverty, malnutrition, poor sanitation, lack of access to health care, environmental degradation – is exacerbated by the current war.' This is, of course, not a new problem. War and the spread of disease have always been related – they were the combined agents of European genocides of Indigenous populations throughout the Americas, and were often intertwined with colonialism. For example, writing on the relationship between cholera epidemics and colonialism in India, David Arnold noted that: 'It has become so customary to apply military metaphors to epidemic diseases to speak of their "attacks" and "invasions," of the "devastation" they cause or the "resistance" they encounter, and of their "conquest" by medical science, that one could easily overlook the literal correspondence between cholera and military power in colonial India.'<sup>2</sup>

Why, then, does the war metaphor hold such appeal? Steinart argues that the war metaphor is 'strong and socially valid because it is connected to very basic social values and their everyday practices: community, patriarchy, masculinity.'<sup>3</sup> I would add that, for Western states in particular – and for some states more than others – the war metaphor is 'strong and socially valid' because it is connected to everyday practices of imperialism. This is especially true in the United States. After all, the US is 'a nation deeply wedded to and defined by war, though maddeningly reluctant to admit it'.<sup>4</sup> The experience of the 'war' on drugs in the US is one illustration of this. Apart from wreaking havoc on communities across the US itself – especially among African-American communities – and driving up dramatically the US prison population, this heavily militarised approach to drug control has had serious and far-reaching effects across Latin America. The 'war' on terror is another example of the US obsession with militarised responses to all kinds of threats. In pursuing it, the US conducts 'counter-terror' operations in more than 80 countries, which has led to more than \$2 trillion in war-related debt, and at least 801,000 deaths directly due to war violence.<sup>5</sup> That we should reach for the language of war and conflict in responding to this pandemic is troubling, and demonstrative of how the past nineteen years in particular, since the advent of the global 'war on terror', have shaped our thinking and our responses. As Steinert notes, 'metaphors have consequences'.<sup>6</sup> For example, Hartmann-Mahmud

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<sup>1</sup> Amy Hagopian, 'Why isn't war properly framed and funded as a public health problem?' (2017) 33:2 *Medicine, Conflict & Survival* 92, at 92.

<sup>2</sup> David Arnold, *Colonizing the Body: State Medicine and Epidemic Disease in Nineteenth-Century India* (University of California Press, 1993) 168.

<sup>3</sup> *Ibid*, 281.

<sup>4</sup> Michael Sherry, 'War as a way of life' (2018) 1:1 *Modern American History* 93, at 95.

<sup>5</sup> Costs of War Project (2020), at <https://watson.brown.edu/costsofwar>.

<sup>6</sup> Heinz Steinert, 'The indispensable metaphor of war: On populist politics and the contradictions of the state's monopoly of force' (2003) 7:3 *Theoretical Criminology* 265, at 266.

finds that declaring a 'war' in such instances often leads to 'a curbing of critical discourse on the issues, because to be anti-war is perceived to be unpatriotic, even treasonous.'<sup>7</sup> Such declarations of war 'in general ... delays or precludes the pursuit of effective solutions to glaring problems facing the international community, and the United States more specifically.'<sup>8</sup>

### Sanctions as imperialism

Despite the societal devastation the coronavirus pandemic is wreaking in the US and across the globe, US imperialism continues apace. As Chimni has noted, 'global imperialism is characterized by the displacement of violence to the third world.'<sup>9</sup> Such violence, indeed, continues in the time of COVID-19. US sanctions on Iran are a prime example of this. The International Court of Justice (ICJ) found in 2018 that US restrictions:

on the importation and purchase of goods required for humanitarian needs, such as foodstuffs and medicines, including life-saving medicines, treatment for chronic disease or preventive care, and medical equipment may have a serious detrimental impact on the health and lives of individuals on the territory of Iran.<sup>10</sup>

The COVID-19 pandemic has been disastrous for Iran. Seyed Abbas Mousavi, Iran's Foreign Ministry spokesperson, has described US sanctions at this time as 'medical terrorism'. Yet, on the 17<sup>th</sup> March, US Secretary of State Mike Pompeo imposed fresh sanctions on Iran, stating that 'the Wuhan virus is a killer and the Iranian regime is an accomplice'. On the 21<sup>st</sup> March, President Trump and Secretary Pompeo confirmed that the US would not offer sanctions relief to Iran.

As is noted in *The Lancet* by Takian, Raoofi and Kazempour-Ardebili, 'since May 2019, the unilateral sanctions imposed by the USA against Iran have increased dramatically to an almost total economic lockdown.' Sanctions are violent. The authors of *The Lancet* piece (all Iranian medical professionals) recognise this, arguing that although sanctions do not 'seem to be physical warfare weapons':

... they are just as deadly, if not more so. Jeopardising the health of populations for political ends is not only illegal but also barbaric ... The global health community should regard these sanctions as war crimes and seek accountability for those who impose them.

<sup>7</sup> Lori Hartmann-Mahmud, 'War as Metaphor' (2002) 14:4 *Peace Review* 427, at 427.

<sup>8</sup> *Ibid.*

<sup>9</sup> B.S. Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (2<sup>nd</sup> ed. Cambridge University Press, 2017) 514.

<sup>10</sup> *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Request for the Indication of Provisional Measures, 03 October 2018, 91, <https://www.icj-cij.org/files/case-related/175/175-20181003-ORD-01-00-EN.pdf> (accessed 01 April 2020).

While Pompeo maintains that humanitarian assistance to Iran is 'wide open' and 'not sanctioned', it is important to note that 'U.S. secondary sanctions have restricted humanitarian trade with Iran by scaring off most banks from facilitating the necessary payments.' However, unilateral sanctions of the kind imposed by the US on Iran are not strictly unlawful under international law: 'economic coercion is *prima facie* legal; the issue of legality will depend on the rules that apply in a given situation.'<sup>11</sup> In its *Nicaragua* judgment, the ICJ was less than strict when it came to economic coercion and finding whether such coercion amounted to illegal intervention. As Hofer notes, 'the Court did not discuss the threshold that needs to be met in order for economic pressure to be considered coercive and was quite restrictive when it came to applying the principle of non-intervention to such acts', stating that it was 'unable to regard such action on the economic plane as is here complained of as a breach of the customary-law principle of non-intervention.'<sup>12</sup> In fact, the bar for what constitutes illegal intervention in terms of economic sanctions is 'set so high that it seems near impossible to reach.'<sup>13</sup>

Like much in public international law, the legality of the economic coercive measures applied by the US to Iran is hazy. As such, in the first instance, it is not entirely accurate to say that US sanctions on Iran do not comply with international law, however dubious the US intentions are, and however illegitimate the claims that these sanctions are in service to its national security. Whether US sanctions, particularly in light of the COVID-19 pandemic, are unlawful under international humanitarian law and international human rights law is another discussion. Even prior to the pandemic, the United States' coercive measures against Iran had 'made the basics of life, including food and medicine, prohibitively expensive, particularly for the poor' and had a drastic impact on healthcare in the country. Idriss Jazairy, the former UN Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, found in 2018 that US measures against Iran constitute economic warfare, and argued that 'this form of warfare that relies on starvation and disease deserves the same concern from the international community as any other conflict.' Yet if human rights obligations were to apply here, the US itself refuses to recognise the extraterritorial application of human rights law.<sup>14</sup>

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<sup>11</sup> Alexandra Hofer, 'The Developed/Developing Divide on Unilateral Coercive Measures: Legitimate Enforcement or Illegitimate Intervention?' (2017) 16:2 *Chinese Journal of International Law* 175, at 180.

<sup>12</sup> *Ibid.*, 181.

<sup>13</sup> *Ibid.*, 183.

<sup>14</sup> See, for example, Beth Van Shaack, 'The United States' Position on the Extraterritorial Application of Human Rights Obligations: Now is the Time for Change' (2014) 90 *International Law Studies* 20.

This desperate situation highlights how the indeterminacy of international law and its interpretation by powerful states (particularly those in the Global North) often facilitates, rather than hinders, measures such as the US sanctions on Iran. As Hofer illustrates, 'developed States – such as the US and EU Member States – justify economic coercion as, among other things, a legitimate means to achieve foreign policy objectives and enforce community norms.'<sup>15</sup> These sanctions, which are essentially a foreign policy weapon, cannot be construed as anything other than a powerful state imposing its will and its weight on a weaker state, and terrorising its civilian population.<sup>16</sup> This should serve as another reminder that questioning the legality or otherwise of such conduct, and nothing more, is simply not enough – something worth keeping in mind as we watch governments around the world proclaim the legality of their responses to this pandemic.

Meanwhile US uses of physical force carry on too. For instance, airstrikes on Somalia continue 'at blistering pace'. One such strike recently killed a 70-year old man and a 13-year old boy. It is notable that these strikes in Somalia, which have killed far more innocent people than just the two mentioned above, are described as 'precision airstrikes' by US Africa Command. This is the same 'surgical approach' which Katz, in his aforementioned *New York Times* piece, implores the US and the world to take against the coronavirus. The idea of 'precision' warfare has, particularly in this era of drone strikes and 'remote' warfare, always been a misnomer. 'Surgical', 'precision' warfare has wreaked untold death and destruction upon thousands of people in numerous countries. In light of this, the idea that the coronavirus pandemic is a 'war' is, at the very least, extremely distasteful.

### **Make solidarity, not war**

Combined with this language of war, and its accompanying tools, the use of terms such as 'Chinese virus' and 'Wuhan virus', alongside Trump's exhortation regarding the pandemic ('this is why we need borders!') demonstrates the potential for far-reaching racist intimidation and violence, and greater anti-immigration measures not only in the US but across the globe. The possibility of nationalist, militarised responses to what is a worldwide medical emergency, with severe repercussions for many of us, looms large. Writing on US economic measures in response to this crisis, Barker observes that planning should be motivated by 'solidarity and compassion', and not by 'defense against shadowy enemies.' This is a message that applies in all aspects of our

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<sup>15</sup> Hofer (2017), 196.

<sup>16</sup> Mallory Owen, 'The Limits of Economic Sanctions Under International Humanitarian Law: The Case of the Congo' 48:1 *Texas International Law Journal* 103, at 113.

response to this pandemic. Chimni writes that '[t]he final form of global alienation is the alienation of humans from fellow humans. We live in a world that is increasingly devoid of sentiments of solidarity with the deprived and oppressed, especially with distant Others.'<sup>17</sup> Many of us may be experiencing alienation through social distancing (albeit of a less traumatic kind than that experienced by those fleeing or living under war, while now also suffering through a pandemic), and understand that this alienation can be mitigated through solidarity, through gestures big and small. Let us not now forget to express that same solidarity with those who were already suffering under violent capitalist imperialism – under sanctions, under military warfare, and more – as we are expressing for our own communities and those around the world who are suffering due to this pandemic.

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<sup>17</sup> B.S. Chimni, 'The Past, Present and Future of International Law: A Critical Third World Approach' (2007) 8:2 *Melbourne Journal of International Law* 499, at 507.