

Nijjar killing: Accusations and their implications under international law

As accusations and counter-accusations abound, how will the allegation that the Indian government had a hand in the killing of Khalistani activist Hardeep Singh Nijjar play out in the arena of international law?



Representative Image Only

Raushan Tara Jaswal

Published on: 29 Sep 2023

As accusations and counter-accusations abound, how will the allegation that the Indian government had a hand in the killing of Khalistani activist Hardeep Singh Nijjar play out in the arena of international law?

—

NEW Delhi might have made giant strides towards becoming the voice of the Global South and a superpower during the recently concluded G20 summit; but the accusations of Canadian Prime Minister Justin Trudeau have acted like a spanner in the works.

The Canadian Prime Minister has accused the Indian government of involvement in the killing of a Sikh activist and a Canadian citizen— [Hardeep Singh Nijjar](#).

India had designated Nijjar as a terrorist, as he was a high-profile Khalistani activist wanted in various cases in India.

The accusations of the Canadian government must be directly addressed as soon as possible before any further escalation, not the least because they are causing a geopolitical nightmare between what were previously friendly nations.

Whereas the Canadian Prime Minister has cited "*credible sources*" to back his claim, the Indian government has categorically denied the allegations.

Recently, India's external affairs minister, [S. Jaishankar](#), stated that it is not the "*government's policy to engage in acts like the killing of Nijjar*" but was open to looking into documents, if provided by the Canadian government to establish their claim.

This comes after what seemed like a backhanded jibe at Canada.

Without mentioning the accusations or incidents at the [United Nations General Assembly](#), the minister stated that terrorism and extremism cannot be fought as per "*political convenience*" and that respect for territorial integrity cannot be an exercise by "*cherry picking*".

Regardless of the optics of the situation and the resultant geopolitical consequences— including [suspension of Indian visa services in Canada](#), these accusations, if proven, might signal an international relations nightmare.

However, at this stage, this is still a developing story— with various moving parts, and accusations may be deemed unfounded due to the lack of comprehensive evidence highlighting the Indian government's involvement.

“ Without mentioning the accusations or incidents at the United Nations General Assembly, the minister stated that terrorism and extremism cannot be fought as per "*political convenience*" and that respect for territorial integrity cannot be an exercise by "*cherry picking*".

Implications

But what are the international law implications if Canada's allegations are proven true? Are there any specific international treaties, conventions or customary international law principles that India would be deemed to have violated? Could India have any satisfactory defences, even if the allegations are proven beyond reasonable doubt?

If such allegations are proven, there are certain international law violation implications that one must explore.

The first and most basic tenet of international law is the principle of sovereignty— every country is deemed a sovereign entity ([Article 2 \(1\) of the UN Charter](#)), with the freedom to determine its internal policies and the regulation of its citizens.

Given that Nijjar was a Canadian citizen, any action— directly or indirectly in his killing— would violate Canada's sovereignty, and territorial and political integrity. It is a well-established customary international law principle that one country cannot intervene in domestic matters or target individuals of another country.

This particular line of defence has been used by the Indian government at [international forums](#) in the case of Jammu and Kashmir (J&K)— where it has consistently claimed that foreign nations (including Pakistan) cannot intervene in its 'territorial and political sovereignty', even though J&K is recognised as an international dispute under the United Nations (UN).

Hence, the involvement of Indian State actors in killing Canadian citizens on Canadian soil would be an egregious violation of the principle of sovereignty. This act, if proven, would also be considered a use of force or the threat of use of force against the territorial integrity or political independence of any State, which is expressly prohibited under the [United Nations Charter \(Article 2\(4\)\)](#).

Any such act could meet the 'armed attack' threshold and warrant Canada to take any measures under the 'Right to Individual or Collective Self-Defence' ([Article 51](#)). Considering Canada is also a member of the North Atlantic Treaty Organisation (NATO), it could lead to an armed offensive against the Indian State, though the possibility of this happening is negligible.

The protection of the 'Right to Individual Self-Defence,' however, may also be available to India. While this defence is usually applicable in times of active war

or as a retaliatory measure against an 'armed attack', some States have also used the principle of [preemptive self-defence](#).

“**Usually, such targeted killings are 'permitted' during established armed conflicts between two or more nations. Apart from the accusations, there is no active armed conflict between India and Canada in the present case.**

The concept of 'preemptive self-defence', though not recognised formally through conventions or treaties, has gained increasing popularity in recent years.

Under this defence, the threshold of acting in such self-defence is that such a threat should be 'imminent'. India can claim the defence that harbouring separatist entities and terrorists in Canada' directly infringes on the territorial and political integrity of India and would be a ground for justifying its intervention, if proven.

Similar incidents involving targeted killings of foreign nationals on foreign soil have very little justification in international law and are frowned upon. However, such threats of imminent danger and the need to act preemptively have been invoked by the US in justifying the killing of [Osama Bin Laden](#) (on Pakistani soil) and [Gen. Qassem Soleimani](#) (on Iraqi soil).

Usually, such targeted killings are 'permitted' during established armed conflicts between two or more nations. Apart from the accusations, there is no active armed conflict between India and Canada in the present case. In the absence of an armed conflict between the two nations, the permitted targeted killing is an onerous burden to discharge.

Other aspects that can be investigated and seen to be violated are the right to life (Article 6), the right to be represented in a court of law (Article 9), the right to equal protection of law (Article 14) without subverting the judicial processes under the [International Covenant on Civil and Political Rights](#) (ICCPR).

Under this convention, extra-judicial killings, even domestically, violate these substantive rights. In the present case, both countries are signatories to the

ICCPR. Also, in peacetime, in the absence of an armed conflict, this accusation, if proven, could be said to have violated the law of war (Geneva Conventions).

The burden on India would be to prove that there was an imminent threat of the use of force, hence, the killing was justified. However, these principles would only kick in if such accusations are proven. Until then, these are just academic endeavours— to evaluate the feasibility of these accusations and the justifications for India's intervention(s), if any.

Available remedies

If such accusations are proven, a few remedies are available to Canada under international law— such as bringing a case against India at the International Court of Justice (ICJ). While such cases rarely get admitted at the ICJ, there are enough grounds for violation of the United Nations Charter and its ancillary conventions for the ICJ's jurisdiction to be invoked.

“**Both countries need to approach this matter with utmost transparency and cooperation, engaging in a thorough and impartial investigation to establish the facts and adhere to their international obligations.**

India has a lot of [exceptions](#), including hostilities and armed conflicts, and to not bring a claim against other commonwealth members, under the ICJ's jurisdiction. Another hurdle is that these proceedings can only be initiated by Canada as a State and cannot be initiated by individuals or any public interest groups.

The Canadian government (and/or Nijjar's family members) can realistically prosecute the crime in Canadian courts. Such proceedings would be amiss since Canada cannot prosecute Indian citizens or the Indian government under its domestic law. Nijjar's family can also sue for civil compensation— the actors against whom such a claim might be initiated have still not been brought to light by the investigative processes.

In any case, both countries need to approach this matter with utmost transparency and cooperation, engaging in a thorough and impartial investigation to establish the facts and adhere to their international obligations.

The resolution of these allegations, one way or another, will have significant implications for the international community and the principles of sovereignty and human rights that underpin it. Therefore, it remains crucial to follow the developments closely and await further evidence and diplomatic efforts to address the situation.