

LAW OPINION

The Ukraine crisis amid fractured international legal order - hypocrisy of powerful

It is not only Putin who violates international law. The US too refuses to be bound by international law. We well remember Bush's claim that 'the UN Charter is dead, and the US is not bound by international law'. This rejection of the international order has exposed its arrogant unilateralism in zealously guarding its authoritative militaristic and dogmatic patriotic behaviour.

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The ongoing Russian invasion of Ukraine once again has solicited world attention to the international legal order that has repeatedly been fractured by powerful states in the post-cold war era. Obviously, the Russian invasion of Ukraine is illegal in international law and a clear violation of the peremptory norm of prohibition of force in international relations and non-intervention under Article 2(4) of the UN Charter. The West has reacted angrily and held Russia responsible for violating Ukraine's sovereignty in total disregard of international law and bombarded with sanctions. In an identical way Russia opposed and condemned the US and its allies' invasion of Iraq in 2003. The world is too familiar with the military posturing of powerful states imposing their vested interests despotically by sheer power. These military adventures and reactions by powerful states exhibit the hallmark of cold war that has coerced and vandalised the international legal order, the bedrock of world peace and security.

The end of the cold war in the early 1990s offered a new world order with hopes to move from independence to interdependence and confrontation to collaboration. It created a new unipolar world with the US as the only superpower. The US was in a unique position to establish a peaceful world. Instead, the US opted to elevate itself to the status of an 'exceptional state', strengthened its alliance with other western and non-western states and pursued its so-called 'assertive multilateralism' to advance its foreign policy, strategic goals, and economic interests. It projected a self-perpetuating image of benevolent leader in international rule-making and standard-setting that were implemented selectively only to advance its strategic interests through military might, economic coercions, and veto power in the UN Security Council (SC). It continually exonerated itself from abiding by international legal principles it promotes for others. This unilateralism fragmented international law and weakened its regulatory authority to the extent that it can no longer ensure the peaceful co-existence of states, powerful and weak alike. This is how the US and its western allies pursued their version of a 'just world order' that was a major contributor to the downfall of the world order propelled by the rule of law.

The sovereign equality of states is meant to address global power imbalance, protect vulnerable small states from powerful states. This legal order is being routinely undermined by powerful states, which have introduced a pervasive tendency of reducing the international legal order subservient to their self-interest. Their asymmetric power has grown so exponentially that has rendered them more equal than others. Small states, which are not enamoured with their hierarchical power, are less sovereign and overwhelmed by predatory power, as

has happened in the invasion of Ukraine, 20 years after the invasion of Iraq. Is Putin's invasion different from the Iraqi invasion? Is Putin's recognition of the Ukrainian breakaway republics worse than the US recognition of Jerusalem as the capital of Israel? How would the West and its allies justify their violent occupation of Iraqi and Palestinian territories against Putin's forcible occupation of Ukraine? How would the former justify 53 US vetoes on SC resolutions criticising Israeli illegal occupation of Palestinian territory against Russian veto on SC resolution condemning Russian aggression on Ukraine. The chronology of manufactured wars against those states not submissive to the will of powerful states suggest that what Putin has started in Crimea and Ukraine, the West has already done that to destroy Iraq, Libya, and Afghanistan

mass destruction (WMDs). These western leaders were never brought to justice for committing war crimes. Putin has regarded Ukraine's bid to join NATO a threat to Russian security and asked the West not to expand NATO to its backyard. Putin's demand is an interference with the independent decision-making of Ukraine. But the West and its allies have been pursuing the same policy to prevent Iran from developing alleged nuclear weapons that the West thinks would destabilise the power balance in the Middle East, where Israel is the only nuclear power. Iran has been bearing the full brunt of successive sanctions by the US and its allies to deny Iran its sovereign right that the US and other nuclear weapon states take for granted. No nuclear state has signed and/or ratified the Nuclear Weapons Prevention Treaty 2017.

frustrate the ICC. Bush enacted the American Service Members Protection Act 2002 prohibiting US cooperation with the ICC and allowing the President to use all means to release its nationals in ICC custody for committing ICC crimes. It concluded agreements with states under intimidation requiring them not to surrender to the ICC any US nationals guilty of the ICC crimes. It threatened to veto the renewal of the UN-led peacekeeping operations if its peacekeepers were not granted immunity from the ICC prosecution. It refused entry of the ICC prosecutor to investigate whether the US troops committed war crimes in Afghanistan.

This write-up highlights the credibility crisis of the West in resisting Putin's aggression. Notwithstanding worldwide antiwar demand for peace and security,



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with absolute impunity in the post-cold war era.

It is not only Putin who violates international law. The US too refuses to be bound by international law. We well remember Bush's claim that 'the UN Charter is dead, and the US is not bound by international law' (The Observer, London, 14 July 2002, p 14). This rejection of the international order has exposed its arrogant unilateralism in zealously guarding its authoritative militaristic and dogmatic patriotic behaviour. Antiwar public demonstration around the World including in Russia has not deterred Putin in the same way unprecedented worldwide public demonstration failed to deter Bush, Blair, and Howard from attacking Iraq on the false pretext of possessing weapons of

NATO, a cold war leftover, remains the western military muscle to dominate the world through gunboat diplomacy. The proposed NATO membership of Ukraine has led Putin to attack, which NATO has termed 'reckless'. NATO has forgotten what massacre it had inflicted on Libya in 2011 as the mercenary of the West. The US claims that Putin is set to remove the present pro-West government of Ukraine by a pro-Russian government. This is precisely what the US and its allies did in Libya (and Iraq, attempted in vain in Syria) in violation of the SC resolution 1973 (2011). Putin has been branded as a war criminal to be brought to justice. Neither Russia nor the US are party to the International Criminal Court (ICC). The US did everything to

the post-cold war era is dominated by leaders with cold war confrontationist mindset, who think they alone can solve world problems by force. Consequently, the international legal order continues to eclipse under the shadow of power. The US and its allies first and now Putin have invented legitimacy of invasions through power yet opposing each other's invasion as illegal. This is how they have divided the world, swallowed international law, and vandalised the international order by provocative double-standards and shedding crocodile tears for legitimacy with veiled ulterior geostrategic and arms trading motives.

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GLOBAL LAW UPDATE

Military Junta representing Myanmar at the ICJ

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The International Court of Justice (ICJ) has recommended *The Gambia v Myanmar* case hearing. It has approved the military junta government to represent the case on behalf of Myanmar. The representation has longterm effects and several implications, specially in the

On a different note, NUG had pleaded to withdraw the preliminary objections forwarded by Myanmar's defense lawyers in the first hearing. They were ready to accept the jurisdiction of the ICJ and Gambia as an applicant in this case. Their acceptance would expedite the proceeding. The ICJ lacked clairvoyance and brought complications to the future

Moreover, the agents of military junta are an unelected and illegal government, who has a long history of atrocities through murder, rape, arson etc.

right to movement and other fundamental rights were retained. Allegedly 6,00,000 Rohingyas reside in Rakhine without proper food, medicine, and different fundamental needs. At the same time, approximately 1,30,000 Rohingyas live in open-air detention camps. The military junta administration continuously denies humanitarian assistance to these Rohingyas of Central Rakhine by violating provisional measures.

The ICJ defended this major mistake by saying it has no permanent country representatives. Anybody can represent through the Minister of Foreign Affairs or Ambassador by communicating with Registrar at the ICJ. Article 42 of the ICJ Statute directs that agents shall represent a state through the assistance of counsels or advocates. But the ICJ also says a government must appoint the agent at the court. However, there is no intelligible interpretation of what government would refer to. We can understand government as legally elected or illegal military power for this discussion. According to the previous representations by different states at the ICJ, we might say the government would refer to legal governments. Also, there is no sign of legality in Myanmar's military junta as they have taken over power through illegal force by disrupting democracy.

So, any recognition by the ICJ as a UN organ will validate the demand for international recognition for the military junta in international forums. According to the ICJ, the military junta caused irreparable damage to the Rohingya rights. Their continuous denial of the Rohingya identity has later turned to clearance operations and eventually

irreparable damage to Rohingya rights. The military junta is insensitive and xenophobic towards ethnic and minority rights. Specially after the coup killing about 1500 citizens of Myanmar, they turned out to be more ferocious towards other ethnic races of Myanmar. So there remains a question; why the ICJ did not import the UN's idea of 'moral imperative' that the UNGA Credentials Committee exercised while approving Myanmar's NUG backed ambassador.

Moreover, the agents of military junta are an unelected and illegal government, who has a long history of atrocities through murder, rape, arson etc. Neither the citizens of Myanmar nor the Rohingyas residing at camps want military junta to represent Myanmar. Many Rohingyas and rights activists have requested the ICJ not to approve the military junta as the representative of Myanmar. There are several probable outcomes of this instance of the ICJ. Firstly, the military junta will claim recognition under the UNGA Credential Committee by resonating with the instance of the ICJ. Hence the overthrowing of democracy will be buried under political reality. Secondly, the repatriation of the Rohingyas might become a utopian dream. They will not consent to repatriation to a military-ruled country or their perpetrators. Lastly, in the wake of China and Russia's open support at the UN Security Council, Myanmar's military junta did not pay heed to the implementation of provisional measures ordered by the ICJ. Hence, it would undoubtedly disrupt the repatriation process even if it is ordered to implement.

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context of the Rohingya repatriation. The instance of the ICJ by approving military junta agent at the court clashes with United Nations General Assembly's recognition of the National Unity Government (NUG), elected by the people of Myanmar.

procedure by approving military junta to represent the case. The ICJ set the fox to look after the geese. After the first hearing, the court asked to prevent genocidal violence against the Rohingyas. The military junta did not comply with the provisional measures forwarded, but the