LAW OPINION

The hegemonic Western world order in crisis in Gaza

Flagrant partisanism and moral depravity of the Western rule-based world order has exposed its hegemony that has galvanised global public dissent against the order in the Gaza crisis, paralleling to South African apartheid.

M RAFIQUL ISLAM

Few postwar world order crises have solicited world attention and concern as alarmingly as has the ongoing genocidal mass killings and wanton devastation in Gaza by Israel. The marginalised plight of the Palestinians has assaulted the consciousness of humanity and intruded into its sense of propriety as demonstrated by the Security Council vote on 18 April 2024 on the recognition of Palestine as a full UN member. This vote has isolated the lone vetoing US, the blind ally of Israel. This note unmasks few of numerous double standards and blatant defiance of the world order once passionately engineered in the heartland of Europe to reinforce its colonial imperial domination and exploitation of the Global South. NATO has been created to be the imperial force to guard the Euro-US military leadership in the world to advance their geostrategic control and geoeconomic interests.

Following the Hamas invasion of Israel on 7 October 2023 and Israeli invasion of Gaza on 27 October 2023, Israel bombed the Iranian Consulate and killed officials in Damascus on 1 April 2024. The inviolable protection and immunity of the Iranian Consulate and officials are guaranteed under the Vienna Convention on Consular Relations 1963. Its Articles 31 and 33 ensure the 'inviolability of the consular premises' and Articles 40-41 guarantee the 'protection of consular officers and [their] personal inviolability'. Article 54 obliges third states to comply with such inviolable protection and immunity requirements of the Convention. These provisions entail precise legal obligations for all Convention members including Israel. No Western state has talked about or condemned this Israeli violation of the Convention, a product of the Euro-centric international law and order. These Western states found no contradiction in condemning the Mexican embassy in Ecuador raid on 5 April 2024 by Ecuadorian police to arrest former Ecuadorian Vice President who took asylum in the Mexican Embassy in Ecuador to avoid arrest for corruption charges. Many Western states, albeit including the US, were outraged by this raid and censored Ecuador for violating international diplomatic law and order.

The US, UK, France and Australia warned Iran not to retaliate to deescalate the tension. When Iran launched strikes against Israel in retaliation on 14 April 2024, these Western states were quite quick to condemn Iran and imposed new sanctions. But they remained silent when Israel attacked Iran on 18 April 2024 as if the right to self-defence belonged only to Israel, which has no duty to deescalate the tension. The double standards of the Western states are also evident if one compares their strong opposition to Russian invasion of Ukraine and unprecedented support for Ukraine against their tendency to justify the Israeli invasion and destruction of Gaza as an act of self-defence. Iran faces strong Western opposition and sanctions for its development of nuclear power for peaceful purposes, a right that most Western states and Israel have taken for granted.

The moral depravity and bankruptcy of the Western rule-based world order has been exposed when its imperial mask fell in the post-cold war 1990s with the emergence of a unipolar world order dominated by the US and its military alliance. It manufactured a self-perpetuating image of benevolent leader in world rule-making and standard-setting, implemented selectively by military might, economic coercions, and veto power in the UN. It has been continually exonerating itself from abiding international law it promotes for others. The sovereign equality of all states as the propeller of peaceful coexistence of states by addressing power imbalances to sustain stable world order was routinely disrupted by the invasion of Iraq on false pretences in 2003 and Libya in violation of the UN Security Council resolution 1973 of 17 March 2011, and proxy wars in Syria and Yamen in a bid to change of regimes which resisted Western imperialism. The US displayed its arrogant unilateralism due to its belief that its pre-eminence as the only superpower elevated it above international law and the UN, asserting that the UN 'is dead and the US is not bound by international law' (*The Observer*, London, 14 July 2002, p 14). A culture of impunity emerged where violations of world order are overlooked and prosecutions for such violations do not apply to the US and its allies who pervasively reduced international legal obligations subservient to their political agendas, economic interests, and military strategies, rendering them more equal than others. States not enamoured with this hierarchical power like Iran are less sovereign and encounter Western resistance in exercising their sovereign rights. This is how the new Western world order manufactured in the 1990s has been eroding international order and peaceful coexistence of states in the 21st century.

Postwar organisations have been designed to complement the maintenance of a Western hegemonic world order. Both Roosevelt and Churchill dominated negotiations for the creation of the UN in the 1944 Moscow conference and 1945 San Francisco conference. The UN Charter was crafted to sustain their control over world affairs. This explains why the General Assembly, being the plenary organ of the UN represented by the heads of states and governments with democratic decision-making has only recommendatory authority. In contrast, the Security Council, composed of 15 appointed bureaucrats, has the decisive and mandatory decision-making power, absolutely controlled by the 5 veto yielding members and any one of them can paralyse the decision of the remaining 14 members. The purpose was neither to promote democratic decision-making, nor the maintenance of world peace and security, but to advance the powerful minority-dominated world order by making the rest of the world powerless.

The ICC jurisdiction is inoperative in most powerful states as they are not members. It suffers from its excessive west-centric systemic bias displayed in its statute and orientations. Its jurisdiction is so far limited largely to Africa. When the US-led Western states used the Security Council to indict Sudanese President Bashir and Libyan leader Gaddafi to the ICC Prosecutor, the speed at which the Prosecutor launched these cases suggests that the ICC is not immune from the Western influence. The ICC Chief Prosecutor made 4 investigations to assess war-ravaged Ukraine between 22 March 2022 and 7 March 2023; and the ICC issued arrest warrant against President Putin on 17 March 2023. In the case of Gaza devastation, the Chief Prosecutor visited Gaza on 10 October 2023 and 3 December 2023 in response to the mounting criticisms worldwide for its prolonged inaction. South Africa-led 6 ICC members and a coalition of NGOs made several submissions to the ICC with compelling evidence of the commission of crimes of genocide in Gaza, the ICC is yet to take any concrete step to prosecute those responsible.

Flagrant partisanism and moral depravity of the Western rule-based world order has exposed its hegemony that has galvanised global public dissent against the order in the Gaza crisis, paralleling to South African apartheid. The UK and US vetoed all Security Council resolutions against apartheid in the 1950s-1960s. They abstained from the Security Council resolution 276 against South African apartheid in Namibia on 30 January 1970 amid unprecedented international public outrage. Precisely the same happened in the Security Council resolution 2728 on 25 March 2024 for an immediate ceasefire in Gaza. The US opted for abstention on the face of mounting criticisms worldwide. These instances are the manifestation of the Western world order that is overtly discriminatory at its best and hypocritical at its worst.

The writer is Emeritus Professor of Law, Macquarie University, Sydney, Australia.

LABOUR AND EMPLOYMENT

Exploring legal realism and legal formalism for the Rana Plaza judgment

ROBAYET FERDOUS SYED

During a recent visit to Bangladesh, I conducted interviews for a specific purpose. One case of interest was the prolonged legal proceedings surrounding the Rana Plaza tragedy, which began on 24 April 2013. While the Apex court recently instructed the trial court to expedite proceedings and deliver a judgment within six months, only 69 out of 594 witnesses have been examined as of March 2024, raising concerns about the efficiency of the justice system.

The case was initiated under multiple sections of the Penal Code 1860, including section 304A, which addresses negligence leading to death and carries a maximum penalty of five years' imprisonment or a fine, or both. However, the primary accused, Sohel Rana, has already been in custody for about 11 years, prompting speculation about potential charges being escalated to section 302, which deals with murder and carries harsher penalties.

In interviews with prosecution and defence lawyers, differing views have emerged. The prosecution expressed confidence in establishing the facts and emphasised the court's role in setting a precedent for workplace safety. Besides the penal statute, they expect external factors, such as social impact, to influence the court's decision.

In contrast, the defence contended that the incident did not satisfy the ingredients for murder under section 302, characterising it as an unavoidable accident. They highlighted legal ambiguities and the absence of precedent for similar cases in Bangladesh. Drawing from the contrasting viewpoints of the prosecution and defence, this article aims to delve into two prominent legal theories, legal realism and legal formalism, shedding light on their differing perspectives on the interpretation of laws. Through an exploration of their fundamental principles and relevant examples, it seeks to clarify the distinctions between these approaches.

When addressing the Rana Plaza issue, if judges encounter dearth of specific legal statutes or precedents to guide decision-making or when interpreting ambiguous statutes, they ought to employ ingenuous legal principles and methodologies.

Legal realism posits that the law cannot be divorced from the social, political, and economic contexts in which it operates. Proponents argue that judges do not make decisions based solely on legal rules and principles but are influenced by various external factors such as personal beliefs, social norms, and policy considerations. The formula looks like this: [legal rules + external factors] = decision. In essence, legal realism contends that law is not a rigid set of rules, but rather a flexible instrument shaped by human judgment and societal forces.

One of the key figures associated with legal realism is Oliver Wendell Holmes Jr., who famously remarked in his dissenting opinion in *Lochner* v *New York* (1905) that "the life of the law has not been logic; it has been experience." This statement encapsulates the essence of legal realism, emphasising the importance of pragmatic considerations over abstract legal reasoning. An example that illustrates legal realism in action is the case of *Brown* v *Board of Education of Topeka* (1954). In this landmark decision, the US Supreme Court ruled that racial segregation in public schools was unconstitutional. While legal principles such as the Equal Protection Clause of the Fourteenth Amendment were cited, the decision was heavily influenced by societal changes, including the civil rights movement and shifting attitudes towards race relations. Legal realists would argue that the Court's decision was not merely a result of legal analysis but also reflected broader social and political dynamics.

In contrast to legal realism, legal formalism adheres to the belief that law can and should be applied objectively, based solely on the text of legal statutes and precedents. Proponents of legal formalism argue that judges should interpret and apply the law without regard to extraneous factors such as personal beliefs or societal consequences. The formula looks like this: [legal text + legal precedents] = decision. According to this perspective, judges uphold the rule of law by faithfully applying legal rules and principles in a consistent manner.

One of the leading advocates of legal formalism was the late US Supreme Court Justice Antonin Scalia, who championed the doctrine of textualism – the idea that the meaning of a legal text should be derived from its plain language and original intent. Scalia believed that judges should refrain from injecting their own policy preferences into their decisions and instead focus on interpreting the law as written. An example of legal formalism in action can be found in the case of *District of Columbia* v *Heller* (2008). In this case, the Supreme Court held that the Second Amendment protects an individual's right to possess a firearm for self-defence. The majority opinion, authored by Justice Scalia, relied heavily on the text of the Second Amendment and historical analysis of its original meaning. Legal formalists would argue that the Court's decision was guided by strict adherence to legal principles rather than considerations of public policy or social context.

When addressing the Rana Plaza issue, if judges encounter dearth of specific legal statutes or precedents to guide decision-making or when interpreting ambiguous statutes, they ought to employ ingenuous legal principles and methodologies. Typically, judges do combine such approaches, considering multiple factors to reach a reasoned decision in the absence of specific legal statutes or precedents. The goal is to achieve a fair and just outcome that aligns with legal principles and serves the broader interests of society.

The writer is PhD candidate, Department of Business Law & Taxation, Monash University, Australia.