

LAW OPINION

# Who has paralysed the postwar rule-based world order?



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The heinous tragedy and torment of Gaza continues unabated. The outrage of international public opinion, overwhelming support of states in the UN General Assembly, unprecedented Security Council binding resolution, and the Secretary-General's repeated warning of an apocalyptic situation warranting immediate cease-fire and uninterrupted access of humanitarian assistance have so far gone unheeded in this world order. This failure is not to the wonderment of those who are familiar with the excessive exceptionalism of the leader of this deceptive rule-based order and rampant bias for allies.

There are pressing embryonic flaws in the genesis of the postwar world order, based on international law, absolutely dominated by Eurocentricism. Originating in the heartland of Europe, this order encapsulates Anglo-American imperial ambitions, values, ideals, and vocabularies as the foundation of its legal rationality. Colonial narratives propagated this order as neutral and civilised to be adhered as universal and valid for the rest of the world. It is this pervasive idea of westernisation of the order that has de-legitimised the values and expectations of non-western and non-ally states contrary to the principle of sovereign equality of states as the foundation of international legal order. The derisory treatment of non-western states making them peripheral reflects an inherent orientalist superiority complex to gerrymander the elusive virtues of the order. For its very survival and continuity in a multi-

cultural plural world, the postwar mono-cultural 'order' has patronised the emergence of an ego-centric 'power-cult' and alliance for economic strangulation/sanction and military coercion on those deemed inimical to the hierarchical power. Since the 1990s, the US led western allies have established military superiority through NATO in the absence of their cold war rival, the USSR and Warsaw Pact.

The history of the so-called rule-based world order is littered with instances of disorderly and unlawful powerplays condoned to camouflage the impunity and unaccountability of the powerful perpetrators. The atrocities committed in Gaza is yet the latest manifestation of this (dis)order. In May 2024, the US State Department has submitted a Report to the Congress on the use of US weapons by Israel in Gaza commissioned by President Biden. The Report reveals that Israel may have violated international law for being 'inconsistent' with the US and Israel's obligations under international humanitarian law protecting non-combatant civilians, women, and children. Unsurprisingly, the US has been sending new arms to Israel despite Rafah invasion. This is how successive US administrations have been pursuing their belligerent foreign policy and providing blanket armed protection to Israel. This US policy has mismanaged and stultified the Middle East peace process. This State Department Report 2024 is likely to be shelved with no action whatsoever as happened with similar past reports.

The British Parliament launched the Sir John Chilcot Commission to investigate the justification of the

UK's participation in the Iraq war. The Chilcot Report of 6 July 2016 found that Prime Minister Blair's decision to go on war was based on flawed and fabricated intelligence and unfounded assumptions. Similarly, the House of Commons' International Commission of Inquiry on Libya Report of 16 September 2016 revealed that Prime Minister Cameron's decision to invade Libya through NATO was neither lawful, nor successful and that he lied/misled the House by asserting that the Libyan operation would be limited to only civilian protection, while the Libyan regime change was his hidden agenda. Nothing has happened to the war mongering western leaders who repeatedly infringed Article 2(4); the prohibition of the use of force in international relations, a governing principle of the UN Charter and peremptory (jus cogens) norm with hierarchically superior status in international law. They remained unaccountable for their crimes of aggression that destroyed Iraq and Libya; rather they were rewarded. Tony Blair was appointed on 7 June 2007 as special representative of the Quartet of international powers to negotiate a peace deal between Israel and the Palestinians and David Cameron is the incumbent British Foreign Secretary overtly determined to supply arms to Israel.

The present contemptuous state of the world order is largely attributable to the US-led unipolar world without the USSR since the 1990s. It led US Secretary of State Madeleine Albright to arrogantly assert, 'we are the indispensable nation' in pursuit of 'asserted multilateralism', backed by unilateral military intervention when

necessary to protect its geopolitical and geostrategic interests beyond the reach of international law and the UN – an exceptionalist state indeed. In interstate conflicts so far, the US is the only state that dropped atomic bombs in Japan, chemical weapon agent orange in Viet Nam, and cluster bombs in Afghanistan. Recently, US lawmakers initiated a bill, the Illegitimate Court Counteraction Act 2024, for sanction and visa restriction on key ICC prosecutorial officials involved in seeking arrest warrants against Israel leaders for committing war crimes and crimes against humanity in Gaza. Such US threats and bullying tactics against international judiciaries are common in the face of every adverse judgement. The US undermined the International Court of Justice when lost in the Nicaragua case in 1987 and has hamstrung the WTO Appellate Body for decisions made against US for trade-rule violations.

The US declined to be party to the International Criminal Court (ICC) and campaigned to destabilise the ICC. Its American Service Members Protection Act 2002 prohibited US cooperation with the ICC and granted the President to 'use all means necessary and appropriate to bring about the release' of US nationals or allies if detained by the ICC. The US concluded bilateral treaties with Israel, among others, preventing the surrender to the ICC of any US national guilty of international crimes. In 2002, the US threatened to veto the renewal of all UN peace-keeping missions unless its troops committing crimes were granted immunity from ICC prosecution. The Security Council granted this immunity for 12-months and renewed once. The US demand for immunity ceased in 2004 after footages of US troops' degrading and dehumanising treatments of Iraqi prisoners in the Abu Ghraib jail went viral worldwide. In 2020, the US imposed sanctions on senior ICC officials for launching investigations into alleged war crimes committed by US and allies' troops in Afghanistan and denied visa to the ICC Chief Prosecutor to interview repatriated US marines served in Afghanistan to find out whether war crimes were committed. While the US praised the ICC for issuing arrest warrant against Putin, the US/UK are reportedly persuading the ICC not to issue arrest warrant against Netanyahu. Talking about allies, in 2023 the Australian Federal Court found a Victoria Cross recipient soldier committing war crimes in Afghanistan in 2009-10, 2012, who has appealed the decision. An Australian whistleblower has been jailed in May 2024 for revealing confidential information on alleged war crimes committed by Australian soldiers in Afghanistan.

The legal equality of all sovereign states was conceived as the enforcer of international obligations to respect each other. This ideological basis of the world order is being routinely eroded by a pervasive tendency to reduce international legal obligations subservient to 'power'. This power-

driven defiance has become tormenting for states not enamoured with this hierarchical power. This is how the predatory power of the US-led coalition has disrupted, depleted, and paralysed the effectiveness of the world order for peaceful co-existence of states since the end of the cold war. Instead of being benevolent leaders, the post-cold war leaders displayed their cold war confrontationalist agenda to retain hegemonic control over the world and opted to confront world affairs in their own way through sheer force and rendered their legal obligations to eclipse under the shadow of 'power'. The rule-based postwar world order has turned into a rule of the jungle-based order led by the US. This systemic dysfunctionality has caused an extraordinary confidence crisis in the world order, experiencing spiraling recourse to power as a means of resolving interstate disputes like the Ukraine war in defiance of their assumed duty to the peaceful settlement of disputes under international law and the UN Charter (Art 33). The growing strategic partnership between Russia/China and their allies shows the ominous sign of besetting the world order into cold war hostilities once again.

It is in this context of the world order that Israel's savage and deadly invasion of Gaza needs to be understood. Israel and its allies justify the Gaza invasion as a form of aggressive self-defence to annihilate a target group wholly or partially in the same way the US-UK invented pre-emptive self-defence to justify the Iraq invasion. Neither form of self-defence exists in international law and the UN Charter, yet, they have exercised this self-made self-defence with impunity. The UN inaction in implementing the Security Council mandatory ceasefire resolution despite its authority to resort to sanctions and armed action against the defying state mandated in Articles 41-42 of the UN Charter, procrastinating ICJ proceedings, ICC trepidation in issuing arrest warrant against Israeli war leaders, hypocritical western threat against Rafah attack amid relentless arms supply to Israel, and whispering opposition of the Arab states are indicative that 'might' determines 'right' and 'power' prevails over 'justice' – as the hallmark of the postwar world order. One promising outcome of the Gaza crisis is the transcending galvanisation of bottom-up international public outrage, waging a consciousness-raising campaign that is storming the corridor of power for seismic reform in the prevalent world order. To them, the US sermon of human rights, freedom, fairness, and democracy sounds increasingly hollow and self-defeating on the face of its persistent paradoxical and lawless actions in global problems. Any claim that this order is 'rule-based' is far-fetched and pretentious.

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LAW ENFORCEMENT

## SHIPBREAKING YARDS need to be environment friendly

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The shipbreaking industry implies an industry that processes (e.g., separates and stores) old and discarded steel, copper metal materials, serviceable parts and machineries, fittings, furniture, and other materials in a shipyard or any convenient place. Importing and dismantling ships can generate foreign exchange revenue for the home country and potentially boost economic growth. Bangladesh is making a significant contribution to the global shipbreaking market through resource recovery.

Article 18(A) of the Bangladesh Constitution states that the state shall protect the environment and safeguard the natural resources, among others. The purpose of this constitutional provision is to protect the environment in Bangladesh. Bangladesh has ratified the Hong Kong Convention (HKC) in 2023, and the convention provides guidelines for

stricter environmental safety standards for shipbreaking industries.

Some domestic laws have been enacted for shipbreaking to ensure environmental protection. For instance, the Bangladesh Ship Recycling Act, 2018, the Shipbreaking and Recycling Rules, 2011, the Bangladesh Environment Conservation Act, 1995, the Environment Conservation Rules, 1997, the Environment Court Act, 2010, the Accidents Act, 1855 and many other related laws. The main objective of these laws is to outline regulations for safe and environment friendly recycling of ships, address environmental concerns, and ensure worker safety.

Unfortunately, due to lack of enforcement of laws, shipbreaking industry engenders huge pollutants and thereby degrades the environment. Furthermore, according to the International Labor Organisation (ILO), the shipbreaking industry is one of the most dangerous in the world. Every year, many workers



die by suffocation due to explosions, poisonous gases, and falling iron sheets while cutting ships in the traditional way in these yards. Ships imported for breaking

contain black oil, asbestos, harmful paints, and various chemical, while shipbreaking produces unrecyclable iron powder. Many old toxic ships are also bought by the

owners in Bangladesh; the owners of the shipbreaking industry buy those ships at a low cost and these ships are not safe for the environment. Indeed, the shipbreaking industry owners do not maintain any safety procedures. Thus, the shipwreck industry causes terrible damage to the environment as well as to human health.

The shipbreaking industry is playing a significant role in the economy, but that should not be the case at the cost of environmental degradation and worker insecurity. The industry cannot be considered as safe in any way in the present context. By implementing mandatory Environmental Impact Assessments (EIAs) and other necessary measures, Bangladesh can ensure that the shipbreaking industry contributes to a sustainable future, protects the environment, protects workers' health, and generates economic benefits.

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