

DEBUNKING RUSSIA'S INTERNATIONAL LAW JUSTIFICATIONS

Relevant for: International Relations | Topic: Effect of policies and politics of developed & developing countries on India's interests

Russian President Vladimir Putin | Photo Credit: AP

Notwithstanding the spin offered by international relations experts on the Russia-Ukraine crisis, the unequivocal truth is this. The Russian invasion of Ukraine is a brutal murder of the United Nations (UN) Charter and several other tenets of international law. Ironically, Russian President Vladimir Putin has invoked international law to justify Moscow's barefaced illegal actions. But these justifications are erroneous.

Three days before the full-scale invasion of Ukraine, Russia recognised the supposedly independent territories of Donetsk and Luhansk in eastern Ukraine and signed treaties of friendship with these entities paving the way for Russian troops moving in as "peacekeepers". In doing so, Russia seems to rely on the controversial theory of remedial secession, which posits the unilateral secession of a territory from the parent state in the most extreme cases. However, international law, beyond the context of decolonisation, does not recognise a general right to unilateral secession within the principle of self-determination. Even if an arguable case could be made for remedial secession, it requires a very high threshold such as severe violations of human rights and systemic oppression of ethnic Russians by Ukraine. Russia's claims of the genocide of ethnic Russians are not backed by any evidence. Ukraine has moved the International Court of Justice on the issue of alleged genocide. In any case, Ukraine expressly agreed to recognise the autonomy of Donetsk and Luhansk under the Minsk Accords with Russia, thereby promising to protect the right to self-determination of these territories. Therefore, Russia's claims have no basis in international law. In recognising the statehood of Donetsk and Luhansk, Russia has violated Article 2(4) of the UN Charter by undermining Ukraine's territorial integrity.

The Russian illegality has not been restricted to just this. The Russian missile strikes in Ukraine including on non-military objects and the Russian forces marching through Ukrainian soil are a ruthless exhibition of the use of force in international relations, which Article 2(4) of the UN Charter proscribes. Bizarrely, Mr. Putin claims that he is acting in self-defence as per Article 51 of the UN Charter. Article 51 recognises the inherent right of individual or collective self-defence in the case of an armed attack by one state against another state. However, Ukraine has not launched an "armed attack" against Russia warranting defensive strikes. Moreover, there was no 'imminent' threat from Ukraine that would have justified Russia's actions even under the arguable theory of anticipatory self-defence in international law. The right to collective self-defence under Article 51 exists only for states. Donetsk and Luhansk are not states under international law. Moreover, Ukraine did not attack these purportedly independent states. Even assuming that legitimate grounds for self-defence exist, nothing in Article 51 or customary international law permits a disproportionate action in self-defence, such as a full-scale invasion of Ukraine.

Mr. Putin's despicable actions are tantamount to committing the crime of aggression as defined under the Rome Statute of the International Criminal Court (ICC). The Rome Statute in Article 8 *bis* (2) defines an act of aggression to mean any use of force against the sovereignty, territorial integrity, or political independence of another state. Ideally, the aggressor state and its leaders should face international criminal responsibility for aggression. However, the ICC is unable to

exercise jurisdiction unless both the aggressor and victim states are party to the Rome Statute. With Russia and Ukraine not being a party, the likelihood of legal accountability to the actions of Russia is slim.

Mr. Putin also indirectly invoked the controversial doctrine of humanitarian intervention, also termed Responsibility to Protect (R2P), in international law for its actions in Ukraine. R2P stems from every state's responsibility to protect its population from gross violations of human rights and the international community's responsibility in assisting states to fulfil such responsibility. Controversially, this principle has been stretched to justify the use of force by third states in the territory of a state which has failed in its duty to protect its citizens. Such actions may or may not be authorised by the UN Security Council (UNSC); the 2011 military intervention in Libya received UN authorisation, while the 1995 North Atlantic Treaty Organization bombing of Bosnian Serbs did not. However, the R2P doctrine remains disputed in international law. Even if it exists, there is no evidence that ethnic Russians in Ukraine are facing atrocities that merit a humanitarian intervention of the scale that Russia has launched. The irony of Russia invoking the R2P doctrine for its Ukrainian invasion, in the same declaration criticising the West for R2P in Libya and the former Yugoslavia, is lost in hubris.

It will be futile to look at the current crisis through the narrow lens of black letter law alone without expounding the ideational moorings of Russia's approach. The Kremlin believes that the world is divided into spheres of influence. Thus, one needs to distinguish between countries that are truly sovereign and countries that possess nominal or limited sovereignty. Russia views Ukraine as an entity that possesses limited sovereignty. The global community should take note of Mr. Putin's precarious game of resurrecting a 'Russian empire' that could topple the very foundations on which the post-World War rule-based international order has been laboriously built. This is part of the Russian approach toward international law which believes that the basis of international law is not universal but cultural and civilisational distinctness.

Rooted in Russia's cultural and civilisational exceptionalism is the emphasis on statism. Indeed, Putin's Russia has doubled down on statism in international law through institutionalising several mechanisms. For example, Russia has created a constitutional apparatus to denounce international human rights law, by empowering the Russian Constitutional Court to invalidate any judgment by any human rights mechanism (including the European Court of Human Rights), if they are found to be inconsistent with the Russian constitution.

History tells us humanity has suffered at the hands of hyper-masculine autocratic leaders who set out on the path of achieving mythical civilisational greatness. The global community should collectively ensure that this is not repeated. International law should be marshalled to constrain arbitrary state power and check imperial designs. Or else the sustenance of a rule-based international order shall remain a pipe dream.

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