

RUSSIA'S CONTINUED DEFIANCE OF INTERNATIONAL LAW

Relevant for: International Relations | Topic: Europe, European Union (EU) and India

Russian President Vladimir Putin chairs a Security Council meeting via a video link in Saint Petersburg on October 10, 2022. | Photo Credit: AFP

Despite widespread global condemnation, including a resolution in March 2022 adopted by 141 countries in the United Nations General Assembly (UNGA) demanding that Russia immediately and unconditionally withdraw from Ukraine, Moscow brazenly continues with its illegal [military offensive against Kyiv](#). The resolutions by UNGA are not binding, but decisions by the International Court of Justice (ICJ) are. On Ukraine's application, the ICJ, in a provisional measure ruling, again in March, ordered Russia to immediately suspend its military operations in Ukraine. Russia has not complied with this decision. In the meanwhile, Russian troops in Ukraine have been accused of indulging in war crimes under international humanitarian law. Ukraine is not only fighting a brave military battle to defend its sovereignty but is also using all possible levers under international law against Russia. It has moved international courts such as the ICJ, the International Criminal Court, and the European Court of Human Rights to put Russia in the dock. But nothing seems to dissuade Russian President Vladimir Putin's revisionist and imperial designs. Mr. Putin is willing to go to great lengths to resurrect a Russian empire and attain mythical civilisational greatness even if that means striking at the very foundations of the post-war international legal order assiduously built on core values such as sovereignty and non-intervention.

The newest item added to the long Russian list of barefaced violations of international law is the recent annexation of Donetsk, Luhansk, Zaporizhzhia, and Kherson — the four regions that are an integral part of Ukraine. Russia claims that these regions have had referendums and decided to join Russia. United Nations Secretary-General António Guterres has rightly pointed out that the so-called "referenda" in Ukraine were conducted in areas that are under Russian occupation. Thus, it is highly unlikely that the so-called referendums constitute a genuine expression of the popular will of the people.

To somehow prove the legitimacy of his actions to the Russian people, Mr. Putin frequently invokes the UN Charter. Just before invading Ukraine, he referred to Article 51 of the UN Charter (which provides for self-defence against an armed attack). Mr. Putin was wrong since Russia faced no aggression from Ukraine. In his recent speech announcing the illegal annexations, he referred to Article 1 of the Charter. The reference particularly was to the right of self-determination of the people of these regions. Mr. Putin is wrong again. The contours of the right of self-determination under international law are debatable. This right, also provided in Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, provides that a group of people can freely determine their political status. But this right has to be read with Article 2 of the UN Charter which lists the principle of non-intervention as one of the seven core principles of the UN. Moreover, since the drafting of the UN Charter, the principle of self-determination has been understood in the context of decolonisation rather than the annexation of new territories on the pretext of self-determination.

Under international law, Russia's control over the four Ukrainian regions, before the so-called referendums, is known as 'belligerent occupation'. Rules on belligerent occupation are explained under the Hague Convention of 1899 — the first treaty that laid down the laws of war. Article 43

of the Convention states that if “the authority of the legitimate power over territory” has “passed into the hands of the occupant, the latter shall take all steps in his power to re-establish and ensure public order and safety”. Furthermore, while doing so, the occupant shall “respect, unless absolutely prevented”, the domestic laws of the country whose territory it has occupied.

Russia’s unilateral action of merging the four Ukrainian territories with it is a flagrant violation of Article 43 of the Hague Convention. The Article clearly states that Russia, being the occupier, only has ‘authority’ and not ‘sovereignty’ over these regions. Further, any change in this status, i.e. from ‘authority’ to ‘sovereignty’ can only happen with Ukraine’s consent. Moreover, Russia should have retained the existing Ukrainian laws of these regions. But Russia has made these regions part of its own territory, which means, Russian laws would apply there now.

What is ironic is that the Hague Conferences were led by the Russian Tsar Nicholas II. For all the criticism of the West, Mr. Putin is not even following a law whose creation was led by his own countrymen.

In a recent speech, the Russian President, in an extremely irresponsible and provocative fashion, hinted at using nuclear weapons in the ongoing war. Consequently, the threat of a catastrophic nuclear war lingers in the background. Neither Russia nor Ukraine has signed the Treaty on the Prohibition of Nuclear Weapons. But here again, the UN Charter is helpful to understand the legality of these nuclear threats. The Charter provides the right of individual and collective self-defence, which means that if Russia launches a nuclear attack, not only Ukraine but also its allies can launch a counter-attack on Russia in collective self-defence. Furthermore, the Charter empowers the Security Council to take action even in the case of threat of force. Mr. Putin’s statement is a threat of nuclear war, i.e., the threat of use of force in the Charter terms. As such, nothing stops the UN Security Council from initiating action under Chapter VII of the Charter against Russia. Of course, it is not going to materialise, primarily because of Russia’s veto power as a UN Security Council member.

Finally, ultra-realist foreign policy honchos will point to the irrelevance of international law as it has failed in restraining Russia. However, an autocrat’s defiance of international law does not diminish its importance. After all, there are scores of examples in contemporary times of totalitarian regimes violating their own country’s laws with impunity. But that does not make domestic law irrelevant. On the contrary, it underscores the need for everyone to boisterously emphasise its importance. Likewise, the need to articulate international law norms is highest in the face of its blatant violation. We should not end up on the wrong side of history.

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