

The Crisis In International Law

The Hindu

Paper - II
(International Relations)

Securitisation, populism, and protectionism threaten on the core universal values enshrined in international law.

In an influential essay written more than two decades ago, Professor Hilary Charlesworth, who is now a judge at the International Court of Justice, described international law as “a discipline of crisis”. Not much has changed since then. Just when the world was recovering from the pain induced by COVID-19, Russia’s invasion of Ukraine last year once again highlighted the ‘crisis’ dimension of international law. One of the underlying bases of the post-world war international legal order has been to explicitly outlaw war through the adoption of the United Nations Charter. While the U.N. Charter has succeeded in ensuring that the world does not fight another world war, it has failed in stopping inter-state wars. This year is going to further test the limits of international law, not just because of Russia’s ongoing illegal war, but also due to several other factors that will play out in the next 12 months and beyond.

The Geo-Economic Challenge

The world post-World War II was a bipolar one with great power competition between a ‘capitalist’ America and a ‘communist’ Soviet Union. The end of the Cold War led to the disintegration of the Soviet Union and the collapse of communism. This ‘unipolar’ moment gave a leg-up to multilateralism and led to three decades of what C Raja Mohan calls “relative harmony” among the major powers. However, even during this period, the North Atlantic Treaty Organization bombed Kosovo and the Western forces invaded Iraq in complete disregard to the U.N. Charter. As Ralph Wilde argues, these U.S.-led military actions did not attract as vociferous an international response as the Russian invasion of Ukraine did.

The Stage of 'Relative Harmony'

The ‘relative harmony’ phase saw the spread of democracy, greater acceptance of universal human rights, and a global consensus for maintaining international rule of law with multilateral institutions and independent international courts acting as referees. However, these universal values are under threat as we have entered a multipolar world involving the securitization of international law. The major powers are at each other’s throats.

Today international law faces a new ground reality the dwindling of the 'liberal' and 'capitalist' West and the rise of an 'autocratic' China and 'expansionist' Russia. The meteoric rise of China means that Beijing is now flexing its muscles, including by weaponizing international law. China views law as an instrument in the service of the state. This is diametrically opposed to the rule of law theory in liberal democracies where the law's function is to constrain unbridled state power.

The Westphalian notion of international law that ostensibly championed international rule of law and territorial integrity of states is now pitted against Chinese and Russian versions that believe in gaming international law for national interests. Under the Chinese and Russian versions, the territorial integrity of nations and the sovereignty of states doesn't quite matter. For instance, the Russian approach towards international law believes that the basis of international law is not universal but cultural and civilizational distinctness. The Russian vision of international law, in complete violation of the UN Charter, distinguishes between countries that are truly sovereign and countries that possess nominal or limited sovereignty, such as Ukraine. As this clash between different visions of international law sharpens in 2023, it will push international law into a deeper crisis.

International Economic Law Lessness

An important fallout of the rise of the geo-economic order is the concomitant spread of economic protectionism. The rise of China has set the cat among the pigeons in the U.S., which is desperate to ensure its continued hegemony. Washington is fast backtracking on the neoliberal consensus of interdependence and non-discrimination in international economic law that it laboriously built in the last three decades. The recent adoption of the Inflation Reduction Act in the U.S.,

International Law

- International law is the set of rules, norms, and standards generally recognized as binding between states. It establishes normative guidelines and a common conceptual framework for states across a broad range of domains, including war, diplomacy, economic relations, and human rights. One of the underlying bases of the post-world war international legal order has been to explicitly outlaw war through the adoption of the United Nations Charter.
- The Charter of the United Nations (UN) is the foundational treaty of the UN, an inter-governmental organisation. It establishes the purposes, governing structure, and the overall framework of the UN system, including its six principal organs: the Secretariat, the General Assembly, the Security Council, the Economic and Social Council, the International Court of Justice, and the Trusteeship Council.
- The UN Charter mandates the UN and its member states to maintain international peace and security, uphold international law, achieve "higher standards of living" for their citizens, address "economic, social, health, and related problems", and promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". As a charter and constituent treaty, its rules and obligations are binding on all members and supersede those of other treaties.

UN Charter

The Charter of the United Nations is the founding document of the United Nations. It was signed on 26 June 1945 and came into force on 24 October 1945. The United Nations Charter is an instrument of international law, and the member states of the United Nations are bound by it. The United Nations Charter codifies key principles of international relations, ranging from the sovereign equality of states to the prohibition of the use of force in international relations.

which aims to transition to clean energy by providing massive industrial subsidies to domestic American companies at the cost of imports and foreign companies, is a case in point. Likewise, the U.S. has vehemently rejected the recent World Trade Organization (WTO) panel reports that held the U.S.'s protectionist industrial policies masquerading as national security objectives illegal. The U.S. has also strangled the WTO's effective dispute settlement mechanism by relentlessly blocking the appointment of the Appellate Body members. All these challenges are only going to become ominous in 2023 leading to greater lawlessness in the world economy.

The populist challenge

Although leaders such as Donald Trump and Jair Bolsonaro have demitted office, international law in 2023 will continue to face challenges from populist and ethnic-nationalist regimes in several countries such as Hungary, Turkey, Poland, and Israel. Populists attack the legitimacy of international law and refer to it as foreign law, which is inimical to their national interests. International law, in the populist scheme of things, is often reduced to a mere law of coordination. This law of coordination is not aimed at international cooperation to develop and espouse common global values, but only to ensure a minimal relationship between countries with common ideational moorings. Populists also attack international institutions and international courts for thwarting them from pursuing the interests of the 'pure' people they claim to represent. They enact domestic laws to protect the ethnic identity of the 'pure' people even if these laws undermine international law.

Different Views of International Law

Scholars characterize the crisis in international law in different ways. B.S. Chimni believes that a crisis in international law will exist if the phenomenon of imperialism is not addressed. On the other hand, the late James Crawford argued that crises occur in international law because of "the absence of any constitutional order, other than constitutional order of States". This, arguably, allows nationalism to trump international law. Still others such as Jan Klabbers contend that the crisis of international law today is the crisis of liberal democracy.

Way Forward

Regardless of the characterization, the fact remains that the liberal international legal order is under attack from many sides. Will 2023 see the international community fight back against the relentless assaults posed by securitisation, populism, and protectionism on core universal values that international law enshrines?

Expected Question

Que. Consider the following statements-

1. The Charter of the United Nations came into force on 24 October 1945.
2. The United Nations Charter of 1945 is the foundational treaty of the United Nations as an intergovernmental organization.

Which of the statements given above is/are correct? _____

- (a) Only 1 (b) Only 2
(c) Both 1 and 2 (d) Neither 1 nor 2

Answer : C

Mains Expected Question & Format

Que.: Securitization, populism, and protectionism have threatened the core universal values enshrined in international law. Analyze with examples.

Answer Format :

- ❖ Mention the elements threatening the basic universals enshrined in International Law.
- ❖ Explain these elements with examples.
- ❖ Give a balanced conclusion.

Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC mains examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.