

The future of international law in light of the Russian-Ukraine conflict



Representative Image Only

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An analysis of the order of the International Court of Justice on Provisional Measures in the ongoing Ukraine-Russian conflict points at the ineffectiveness of international law and its instrumentalities.

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IN the past two years, apart from the havoc and destruction wrecked by the pandemic, which has had its ramifications on international law and polity across the globe, there has also been a shift in the overall relevance and utility of international law. As the age-long debate – "[is international law a true law?](#)" – takes over and becomes increasingly more relevant, incidents in the recent past have increasingly highlighted the drawbacks of international law and hinted at its inefficacy and increasing irrelevance.

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Not only has international law through its instrumentalities such as the United Nations ('UN') (and its subsequent organs, especially the International Court of Justice ('ICJ')) failed to serve its purpose (mentioned in Article 1 of the [UN Charter](#)), their action (and often, inaction) has left much to be desired. The need of the hour, it seems, is to work towards a reimagined world order, and find a confluence of international relations and international law in the global sphere to ensure peace, security, cooperation and stability for future generations.

Provisional measures order by International Court of Justice

After the unilateral and unprovoked commencement of Russian aggression in the sovereign territory of the nation of Ukraine began on February 24, Ukraine was fast to act and invoked the jurisdiction of the ICJ as quickly as February 26. As Russian actions were supposedly based on international law provisions (self-determination under Article 1 of the UN Charter and self-defence under Article 51 of the Charter), Ukraine's action (to invoke the jurisdiction of ICJ and the attention of various other UN organs) seemed appropriate and proportionate at the time.

In less than a month from this initiation of proceedings, the ICJ also pronounced its [order](#) on Provisional Measures on March 16 – with a majority opinion tilting in favour of all of Ukraine's requests.

While the [initial proceedings](#) were initiated by Ukraine to dispute the claims of Russia of an ongoing genocide in the Ukrainian territories of Luhansk and Donetsk, Ukraine quickly adopted and filed [provisional measures](#) and requested

the immediate cessation of the 'special military action' by Russia in the Ukrainian territory.

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Even with the notable absence of Russia from the oral proceedings as well as its major contention disputing the jurisdiction of the ICJ to hear this proceeding, the ICJ deemed it important to speedily adjudicate and ordered a complete halt to the Russian military operations in Ukraine. It overwhelmingly (with a 13:2 majority) ordered in favour of Ukraine's requests for provisional measures.

However, this order was almost three months ago, and there has been no end to the Russian aggression. In fact, news reports seem to signify that the Russian aggression has only intensified; as we complete 100 days of the war, the number of civilian (and even combatant) casualties, mass graves, and [possible 13,000 incidents of war crimes](#) in the territory of Ukraine raises questions as to the effectiveness of the ICJ order. Russia's absence from the oral proceedings, rejecting the jurisdiction of the ICJ, and blatant disregard to not comply with the said order signifies that the ICJ order is not final and effective.

However, nothing can be further from the truth. ICJ is the principal judicial organ (Article 1 of the [ICJ Statute](#)) and is the primary organ to ensure compliance with the UN Charter and its obligations. Since both Ukraine and Russia are members of the UN, they are *de facto* bound by the ICJ and its regulations, especially on touchstones of international law – the entire basis of this war (on the [Genocide Convention](#) and [Self-Defence](#)). So, what does this say about the efficacy of the international legal regime in the 21st century? It indeed paints a bleak picture and renders institutions of global justice powerless at the hands of mighty nations.

Criticisms

Can international law be said to be 'true law', especially considering its lack of enforceability? The answer may not be as simple. While it seems clear that the

nations do adhere to the norms as dictated by international covenants, treaties, and customary international law principles, there seems to be a gap in implementation in the event of derogation of these norms by any State.

If a State derogates from any provision of the UN Charter – such as in the case of Russia in its unilateral and unprovoked invasion of Ukraine (in violation of Article 2(4) and Article 51 of the UN Charter), what measures can be imposed on Russia to prevent/punish for this particular action (if any)? And does the lack of enforceability render international law defunct and not a 'true law'? This seems to be the going consensus, especially considering the current conflict – where there is still no end in sight, even with the judicial mechanism of international law dictating for the conflict to end immediately.

While the consequences seem to display a rather morbid picture of international law, there are certain mechanisms in place to ensure the enforceability of these norms. Notice of Provisional Measures (Article 41(1) of the ICJ Statute) shall be given to the parties of the dispute as well as to the UN Security Council (Article 41(2) of the ICJ Statute). However, in this case, the issue simply seems to be the presence of Russia as one of the permanent members of the Security Council and enjoying the power of [veto](#) – in case of retaliation to the Russian aggression.

While Article 94 of the UN Charter compels States to comply with the decisions of the ICJ with recourse to the Security Council in case of non-compliance and to ensure compliance (Article 94 (2)), this recourse, especially in this case, seems redundant. With Russia exercising its veto power and blocking any action against itself, Ukraine seems to be cornered to a conflict with no respite in international law.

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As the conflict rages on, the matter is still to be heard by the ICJ on merits. However, it has been held by the ICJ in the [LaGrand case of 2001](#) that provisional measures are just as binding on parties as much as the final judgment. But in this case, Russia's veto or abstention on certain Security

Council Resolutions and consequent absence in the ICJ proceedings are highlighting the cracks in the international legal regime – especially for the world to see.

It may even embolden certain nations to follow a similar path of aggression, acquisition and escalation of pre-existing disputes to an all-out war, especially if they are one of the permanent members of the Security Council. [Economic sanctions failing](#) to bring this conflict to an end this time has led to an impasse between these two States, rarely seen since the inception of the United Nations.

Another important issue plaguing the enforceability of international law is the composition of the ICJ – where the judges are elected by the UN General Assembly and Security Council. However, these judges also belong to certain member States, and often are bound by the international polity and relations of their nations. As seen even in the Order on Provisional Measures, the [two dissenting judges](#) were from Russia and China (which is Russia's ally). It is hardly fair and reasonable to divorce the opinion of judges from that of their respective States in most cases. This is just another stark example of the ongoing tussle of international law with international relations, and the domination of the latter over the former.

These factors, in light of the Russian invasion of Ukraine, seem to highlight not just the fault lines of international law but threaten its very status as a '[true law](#)'. If the Order on Provisional Measures has been so flagrantly disregarded by Russia, there is extremely little hope from the Final Judgment of the ICJ (still underway). Even the [proceedings](#) initiated by the International Criminal Court give little to hope for as Russia is not a party to the [Rome Statute](#), unlike the UN Charter and the consequent ICJ Statute.

Bleak outlook

As a young girl who at the age of ten years, I was fascinated and inspired by international law and the UN. That illusion has been shattered in the recent past (in light of the [genocide of the Rohingya](#), and the conflicts in [Afghanistan](#), [Syria](#) and [Russia-Ukraine](#), among others), and exposed the futility of international law and its instrumentalities. The future of international law does indeed seem bleak and seems to denote that the mighty will always prevail, leaving no room for global peace, global security or global justice.