

International law after the Ukraine War

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Abstract:

The war in Ukraine has triggered robust global discussion on the contemporary relevance of international law and a rules-based international order. We contend that the Ukraine war is a symptom of deep-rooted structural inequalities both in the creation and international law, long occluded in optimistic western narratives. In this paper, we unpack the racial origins of international law and how these racial inequities of international law have played out in Ukraine. Second, we unpack the inequities of global 'order' both through a theoretical review and by demonstrating how 'order' has been diluted in contemporary state practice. Finally, we end with a more positive note, on the limited value of international law-not as an instrument of fairness or equity but as a mechanism of global co-ordination for great powers. While great powers certainly benefit more than others, international law also brings with it a discursive value that enables smaller states to engage in normative global discourse, as has happened through the Ukraine crisis. Further, international law also helps construct and partially enforce red lines that are necessary for facilitating, controlling and limiting conflict.

1. Introduction

As the war in Ukraine rages on, questions about the purpose, benefits and value of international law are being brought up by the media and policy-makers alike. It is a paradigmatic case of the deeply inequitable application of international law protections. Unpacking the historical and political reasons for the positioning of the Ukraine war as a crucial moment for international law or the 'rules-based order' is necessary to evaluate the structural inequities long inherent in international law but occluded in dominant western narratives. In terms of implementation, history is replete with examples of military aggression that violates the territorial sovereignty, and human rights norms undertaken often by Western states.

International law then, in some sense, is a fruit of colonial control, and has historically functioned as a legitimating basis for the unchecked tyranny and oppression meted out by the Anglophone West. It has perennially been marked by structural challenges that have impeded the realisation of

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justice claims for Third World people in particular. In fact, the architecture of the international legal system was constructed through coercion, force, military aggression, and gunboat diplomacy. Consequently, the normative content of international law in many ways mirrors these power differentials, and (counterintuitive to the prevailing view) serves to entrench First World hegemony. Yet, we must not throw the baby out with the bath water. Many of the important developments in international law emanated from the Global South, which has collectively managed to imbue the system with positive moral valence. In many ways, the real civilizing mission has been the collective effort of the Global South in heralding norm developments such as the prohibition on racial discrimination.

In light of this, it is important to recognize the manner in which narratives about the Russian invasion of Ukraine have been racialized. While the aggression itself may not amount to a paradigm-shifting case, it does possess discursive value, as this context offers insight about how international law is perceived. The rhetoric around the Russian aggression is also quite telling of the responsibility of western liberal democracies, in eroding institutional trust, and enabling the very structural challenges that undermine the functioning of the system. While the design of the institutions responsible for global “order” is insidious, we contend that international law does have value insofar as it articulates a common vocabulary that states utilize while transacting with one another; and to that end, helps encourage stability and peace.

As such, we intend to demonstrate three core claims in this paper. First, that race occupies a central location in international legal discourse through a critical review of the Ukrainian context. Second, we hope to lay bare the manner in which western liberal democracies have entrenched a racial nexus of power that remains contemporarily relevant in Ukraine, which in turn has been responsible for the structural challenges afflicting international law. Finally, we hope to identify the limited value of international law—not as a body of rules that levels the playing field but instead one that states could use to retain stability and peace, when it is in their strategic interests to do so.

2. The Centrality of Race in International-Law-Making-Lessons from Ukraine

2.1. A Genealogy of the Racial Foundations of Early Scholars of International Law

In order to truly understand the origins of the racialized precepts that are present in international institutional frameworks currently, it is perhaps appropriate to explore the genealogical roots of the positions of foundational scholars of international law such as, Vitoria, Hugo Grotius etc. Of course, while the contingent subtext from which representations