

Crisis in International Law

What is the issue?

- While the United Nations Charter has succeeded in ensuring that the world doesn't fight another world war, it has failed in stopping inter-state wars.
- It is said that year 2023 is going to further test the limits of international law, not just because of Russia's ongoing illegal war, but also due to other factors that will play out in the next 12 months and beyond.

What is the problem with the international law?

- In an essay written more than two decades ago, Professor Hilary Charlesworth (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 doesn't fight another world war, it has failed in stopping inter-state wars.

What is the geo-economic challenge?

- The post-World-War-II world was a bipolar one with 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 "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.

What was the 'relative harmony' phase like?

- The 'relative harmony' phase saw
 - 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 securitisation of international law.

What is the new ground reality?

- 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 weaponising international law.

The Westphalian notion of international law that championed international rule of law and territorial integrity of states is now pitted against Chinese and Russian versions that game 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.
- As this clash between different visions of international law sharpens in 2023, it will push international law into a deeper crisis.

What is the international economic lawlessness?

- 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.
- The U.S. 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.
- For example, 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.
- All these challenges are only going to become ominous in 2023 leading to greater lawlessness in the world economy.

What is the populist challenge?

- International law in 2023 will continue to face challenges from populist and ethno-nationalist regimes in several countries.
- Although the leaders of U.S. and Brazil who supported populist ideas have demitted office, these ideas are still found in 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.
- In the populist scheme of things, international law is often reduced to a mere law of coordination which is
 - not aimed at international cooperation to develop and espouse common global values, but
 - aimed at ensuring 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.
- Scholars characterise the crisis in international law in different ways. Regardless of the characterisation, the fact remains that the liberal international legal order is under attack from many sides.

There is a need that the international community, in 2023, fight back against the relentless assaults posed by securitisation, populism, and protectionism on core universal values that international law enshrines.

Reference

[The Hindu | The crisis in international law](#)

