

## REMARKS BY HAROLD HONGJU KOH

<https://doi.org/10.1017/amp.2023.60>

What was distinctive about this event is that it is not just the use of force for aggression. This is the use of blatant war crimes as a tool of naked aggression. The Russians started war crimes from day one, indiscriminate shelling from afar. We now see, in Bucha, that when they got up close, they tortured people; they bound them; in the case of women, they raped them; they summarily executed them; and they threw them into mass graves. This is one of the most blatant combinations of atrocity and aggression we have seen in many decades.

One of the most interesting things to me has been the response not just among international lawyers but among the press and others. When we got the provisional measures order, which by a vote of thirteen to two ruled that Russia should immediately suspend all military operations in the territory of Ukraine, the *Washington Post*, the journal of record in this town, called it a “largely symbolic ruling,” because “the International Court of Justice cannot enforce its own orders.”

But not a court in the world can enforce its own orders. When the Supreme Court of the United States ordered Richard Nixon to turn over the tapes, that was not a symbolic judgment. But as we said in the oral argument, in *Marbury v. Madison*, Chief Justice Marshall declared that it is emphatically the province and duty of the judicial department to say what the law is. And then when the Court has said what the law is, and declared certain conduct *prima facie* illegal, it then becomes everyone’s duty to enforce it.

In short, we are not operating in a system of simple enforcement, where some police force arrives to enforce the local court’s ruling. There will be those who help impose sanctions. There will be those who help corporations pull out of Russia. There are those who capture the ships of the oligarchs. There are those who help the refugees, et cetera.

What have we learned? International law is not usually self-executing, and this is what Ambassador Markarova meant earlier today when she said that international law and international lawyers must rise to the occasion. She said, “we are putting our faith in you,” meaning that this is a watershed moment for every single person in this room. This is not just about Russia versus Ukraine. This is about Russia versus the post-war global legal order, and every single person here should be thinking: “Am I doing what I can do to help fight for the international legal system that we have got?” Because for example, if China using its Belt and Road Initiative to buy off countries and get them to abstain on resolutions, and people here at this meeting are not doing anything about it, then the system will not work. But if you get an order that says that providing these kinds of aid to war criminals violates international law, then maybe China will back off. And the goal is extremely simple. Make Vladimir Putin an isolated outlaw in an interdependent world.

If you make it illegal, then you isolate him. When you isolate him, it will weaken his position and force him into diplomacy. When you force him into diplomacy, then the killing can stop. And then there is a possibility of a negotiated outcome, which is what law is supposed to help accomplish.

And if we as international lawyers cannot all contribute to that effort—there has not been a clearer example in my lifetime—then why did we go to law school? Why did we study international law? Why are we even at this meeting?

It is not about just thinking about it; it is doing what you can. It is about every single person thinking about “how can I use what I have learned, the contacts that I have, the forums where I can help to isolate and declare illegal what the Russians have done and start to find a way out of this slaughter for the purpose of aggression?”

**MONICA HAKIMI**

Thank you. Yanar, let me come to you. What is your perspective on the invasion, as someone who—and now I am quoting back to you the words that you said to me—“has been at the receiving end of war?” How do you see the Ukraine invasion relative to what has happened in your country, and how do you see its implications for international law and for the people on the ground?

**REMARKS BY YANAR MOHAMMED**

<https://doi.org/10.1017/amp.2023.61>

Thank you, Monica, and I have to say that I have just come from Iraq. I am in North America now, in Toronto. The implication on the tens of millions of people is that their life is destroyed for many generations to come.

I remember when the United States started the war on Iraq—and we have had a couple of them, not just one. I was a civilian who was living in her home, had graduated from her education, and waiting for the right job to start working, when the bombs started to fall on our heads. We had two American wars forced on us, and the aggressor was a different administration, but the result was almost the same.

People whose lives were affected could not fix their difficulties in a decade or two. It takes more. When you are a civilian living in a country among tens of millions, while the whole world looks at that country with one single name, the name of the dictator, which was Saddam Hussein at the time. I feel a little bad for the people of Ukraine, or even for the people of Russia who have been reduced to the name of Vladimir Putin. It is not just one person in there, it is a whole country of people.

We know very well that once war breaks out between two countries, it will not restrict itself to one side. It will go across to the other side in one way or another. Millions of people’s lives will be ruined, and what can international law do? Is it true that it does not do enough? Of course, it is true, but is it worth working more on it, until it gains ground, and it can control the hand of the bullies not to press the button on the bombing of another country? Yes, of course it is worth it.

We in Iraq had our lives ruined, in 1990, when George Bush, the father, bombed us while meaning to punish Saddam Hussein. Then again, in 2003, when the pretext for the war was that Iraq possessed weapons of mass destruction. And weapons of mass destruction were not found in Iraq in spite of having the UN team of inspectors look for them for years, and yet there was no procedure against the aggressor and no punishment for those whose decisions and acts resulted in the death of—the numbers may be disputed, but it is not less than hundreds of thousands of civilians.

When we heard of the war on Ukraine by the Russians, the responses in Iraq were different from those on this side of the world, because there is a history of Iraq being attacked repeatedly by members of NATO. The original position was that people should not side with the allies of NATO. But it was very confusing, because we know what a sudden massive military attack does to the lives of tens of millions of civilians, being bombed overnight; thus, leading to the death of thousands of people within weeks. Therefore, we in Iraq would definitely be against this war, but then again, the illiberal forces that decided such an—and I will use the word— imperialist war. The fact that Russia, which is the remnant of a socialist order, had started the war against Ukraine does not negate the fact that it is an imperialist war done for reasons of economy and for political hegemony. With the Ukrainians, we feel that we were sitting in their same places at two points of our history, when the American wars were launched against us for the same reasons of imperialist economy and political hegemony. We in Iraq were ruled by a dictator who had his own political dreams and adventures, trying to be the sole Arab nationalist hero within the region, eventually having us