



[Under the Radar. The World's Forgotten Crises](#)

# Crisis of International Law?

A Call for Better Expectation Management

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International law is unable to end the Russian war of aggression in Ukraine or the conflict in the Middle East. Overall, doubts about its capabilities are growing. International law, they say, is “in crisis”. But is international law really so ineffective? Is it not more a case of adapted expectation management and greater political will?

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The two world wars were certainly the most far-reaching armed conflicts in modern human history. For more than seven decades after these wars, in Europe at least, people thought they were safe. Russia’s war of aggression against Ukraine is bringing the war right to our doorstep once again. With the attack on Israel, another war has been raging in our extended neighbourhood since 7 October 2023 – involving a country that is historically particularly close to us. The terrorist organisation Hamas continues to hold 100 hostages<sup>1</sup> in Gaza. But even if these two wars have dominated the German media in the last two years, the list of ongoing wars and armed conflicts around the world is much longer.<sup>2</sup> International law (alone) cannot put an end to this immeasurable suffering. However, many people expect nothing less from it.

### **International Law and the Russian War of Aggression**

With its full-scale attack on Ukraine on 24 February 2022, Russia is once again violating the ban on the use of force recognised under international law. Article 2 No. 4 of the Charter of the United Nations (UN Charter) states: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”<sup>3</sup>

The prohibition of the use of force is probably the greatest achievement in international law. Military force used by one state against another is fundamentally illegal under international law. Only two exceptions are enshrined in writing:

firstly, every state has the right to self-defence. Secondly, the Security Council decides on the use of military force to maintain or restore international peace and security. Waging a war of aggression is the highest crime at international level – the original sin, so to speak, which opens the door to all subsequent war crimes. The onset of the Russian aggression was quickly followed by the realisation that international law could neither end nor significantly influence this war. The International Court of Justice as well as the International Criminal Court appear to be secondary arenas.

On 26 February 2022, just two days after Russia’s attack, Ukraine filed an urgent appeal and a lawsuit with the International Court of Justice (ICJ). Established in 1946 and based in the Peace Palace in The Hague, the International Court of Justice is the most important judicial body of the United Nations (UN). It hears interstate disputes and consists of 15 judges of different nationalities. However, neither Russia nor Ukraine have submitted to the jurisdiction of the ICJ. For this reason, the Court does not rule on a violation of the prohibition of the use of force, but rather on the Convention on the Prevention and Punishment of the Crime of Genocide, as both states have signed and ratified the Genocide Convention.

According to Article IX of the Convention, the ICJ has jurisdiction in disputes between the contracting parties, too. Russia bases its war of aggression on the claim that Ukraine is committing genocide against the Russian minority in eastern Ukraine. In the main proceedings, Ukraine seeks a declaration that it is

not responsible for such a genocide. Hearings lasted five days in September 2023. Recently, the Court of Justice largely authorised the action against Russia. It will now open the main proceedings. We still have to wait for a judgement. However, on 16 March 2022, the Court ruled in an urgent application that Russia must cease its military operation immediately. There was a risk of irreparable damage to the rights of Ukraine and its people, so the ICJ accepted the request for interim measures. Evidently, Russia has failed to cooperate. The highest international judicial authority has no means of enforcement and so the destruction and killing continues unhindered before the eyes of the world community.

The International Criminal Court (ICC)<sup>4</sup> also launched official investigations into war crimes and crimes against humanity shortly after the start of the war. In 1998, the agreement on an International Criminal Court was adopted at the UN Conference of States in Rome. The so-called Rome Statute was signed by 139 states and came into force in 2002, enabling the ICC to begin its work in The Hague in 2003. Of the 139 signatory states, 124 have ratified the international treaty to date. Germany has always been particularly committed to the work of the ICC. Unlike the ICJ, the ICC is not part of the UN, but an independent international organisation. Whereas only states can be parties before the ICJ, the ICC's achievement in terms of international law is precisely that individuals have to answer to an independent judicial institution of the international community.

### **Calls for a special tribunal for Ukraine were raised at an early stage.**

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The ICC is by no means intended to replace or review national prosecutions, but only to intervene if the country concerned is unable or unwilling to prosecute crimes committed by its own nationals. For this reason, the jurisdiction

of the ICC is limited to particularly serious crimes: genocide, crimes against humanity, war crimes and the crime of aggression. Within a few days of 24 February 2022, a total of 43 states had referred the investigations to the Chief Prosecutor, which had never happened before in such numbers. On 17 March 2023, the ICC issued an international arrest warrant against Russian President Vladimir Putin and his Commissioner for Children's Rights, Mariya Lvova-Belova. Both are allegedly responsible for the war crime of the unlawful expulsion and transfer of Ukrainian children from the occupied territories of Ukraine to the Russian Federation.<sup>5</sup> Further arrest warrants followed, including one for former Russian Defence Minister Sergei Shoigu. The accused are not expected to be arrested in the near future, however.

Calls for a special tribunal<sup>6</sup> for Ukraine were also raised at an early stage. This is a temporary criminal court convened for a specific situation. This would be necessary as neither Russia nor Ukraine were signatories of the Rome Statute in 2022. Ukraine has submitted to the jurisdiction of the ICC, which explains the above-mentioned arrest warrants. It also recently ratified the Rome Statute in August 2024, 24 years after signing it.<sup>7</sup> However, there is a jurisdictional gap for the crime of aggression. Due to a political compromise, no action can be taken against nationals of non-party states unless the UN Security Council gives the "green light". Nevertheless, this option is unviable due to Russia's veto right as a permanent member of the Security Council (and an amendment to the treaty is also unrealistic in the near future). However, the actual establishment of a special tribunal is also not yet foreseeable.

In addition to the legal proceedings, the international community condemned the Russian invasion on 2 March 2022. Only a few days after Russia's attack on Ukraine, 141 states voted in favour of an immediate withdrawal of Russian troops. Just under a year later, on 23 February 2023, the UN General Assembly repeated a similar call – again 141 states voted in favour. With

the UN resolution of 12 October 2022, 143 states also declared the annexations of the Ukrainian regions of Luhansk, Donetsk, Zaporizhia and Kherson invalid and called on Russia once again to withdraw “immediately, completely and unconditionally” from Ukraine, as it was violating Ukraine’s territorial integrity and sovereignty.<sup>8</sup> Yet, none of this had any significant effect on the current war in Ukraine, which continues unabated.

### **International Law and 7 October 2023**

The situation is similar with regard to the Middle East. Israel’s right to exist is coming under increasing threat. Israel has been defending itself on several fronts for more than a year. The Middle East conflict escalated with the terrorist attack by Hamas on Israel on 7 October 2023 and the rocket attacks by the terrorist militia Hezbollah in Lebanon, which began the following day. Iran has already attacked Israel twice this year with several hundred missiles. Israel has used targeted military operations to kill terrorists in Gaza, Syria, Lebanon and Iran, and started a ground offensive against Hezbollah in Lebanon at the beginning of October 2024. Many civilians have also died in Gaza and Lebanon. There is a humanitarian disaster in Gaza.

### **In international law, there is no power above the state.**

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Here, too, the international courts are dealing with developments within the scope of their competences. Although Israel does not formally recognise the ICJ or the ICC, it is defending itself against the accusations made there. South Africa has filed a lawsuit against Israel at the ICJ, based on the accusation of genocide against the Palestinians. The chief prosecutor of the ICC, in the context of his investigations, has not only applied for arrest warrants against three Hamas terrorists, but also against the then Israeli defence minister and the prime minister. These warrants were granted by the court on

21 November 2024. Israel has also commented on this and subsequently filed an appeal. Israel is thus taking the accusations seriously and respecting the two international courts. The courts will take sufficient time, particularly during the main proceedings, to substantively and comprehensively assess the facts and circumstances. However, in view of the warnings to the population, the humanitarian aid and the fact that Israel is constantly exposed to attacks by Hamas and has to defend itself, the accusation of genocide seems legally dubious; this is despite some highly questionable statements by Israeli ministers (most of whom, however, do not exercise military leadership themselves).

Yet, in view of the many discussions in the Security Council and the intensive ceasefire negotiations between all parties, it is once again clear that this conflict cannot be pacified by international law. So is international law ineffective? Does this mean it is losing its value?

### **The Law Does Not Make Peace – States Do**

It is frustrating and gruelling when resolutions or court decisions are not implemented in an international context. But it is important to understand what international law can and cannot do. According to the UN definition, international law “defines the legal responsibilities of States in their conduct with each other, and their treatment of individuals within State boundaries”<sup>9</sup>. This covers many topics of international interest, such as human rights and world trade. Today, there is a widely interwoven international set of rules that affects many areas. In Germany, we speak of the rules-based international order in this context.

Compared to national public law, there is a fundamental difference in international law. In contrast to civil law, national public law regulates the relationship between the individual and the state. International law, on the other hand, regulates the relationship between states. This aspect is essential, because the great disappointment with international law often stems from the fact that people erroneously assume that it works in the same way as national law. In

international law, however, there is no supranationality, no power above the state. The states stand hierarchically next to each other. They are sovereign. States voluntarily enter into their obligations under international law. As they have an interest in other countries complying with the regulations, they pledge to do the same. If they break their commitment, they undermine mutual trust and, in turn, encourage others to follow their example. The agreement is therefore based on mutual interest and trust.

### **The crisis of international law is less a crisis of law than of nations.**

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This does not mean that there are no consequences for breaking the rules. There were

indeed international reactions to Russia's war of aggression: the US and other countries, as well as the EU, imposed massive and unprecedented sanctions against Russia. However, all consequences require the international community to take action. There is no automatic enforcement. The party acting in violation of international law must be actively urged to restore compliance with the rules. This only works if it can actually be influenced by the actions of the other states. The implementation of the obligation always depends on the sovereign state itself – unlike in national law, where the state intervenes in the life of the individual as a regulatory power with its monopoly on the use of force.

States feel bound by international law to varying degrees. They often (unfortunately) only follow it as long as it benefits them. The major powers US, Russia, China and India, for example, have



Open disregard for international law: Russia's president Putin celebrating the illegal incorporation of four eastern Ukrainian territories into the Russian Federation in September 2022. [Photo: © Mikhail Metzel, TASS, dpa, picture alliance.](#)



Subject of legal disputes: The Hamas terror attack and the Israeli response are currently being investigated by the International Court of Justice and the International Criminal Court. The picture shows a building destroyed by the Israeli army in the Gaza Strip in October 2024. Photo: © Majdi Fathi, NurPhoto, TASS, picture alliance.

not yet ratified the Rome Statute and therefore do not recognise the jurisdiction of the ICC. This additionally undermines an international system that was fragile from the outset. Ernst-Otto Czempiel summarised the relationship between international law and political reality as follows: “International law is and remains a consensus law that depends on being accepted by the participating states. Its contribution towards peace is only as great as the members of the system allow it to be. It is therefore up to them to decide whether and to what extent international law can promote peace.”<sup>10</sup>

### The Role of the UN Security Council

The crisis of international law is, if you like, less a crisis of law than of nations. It can only function if all states submitting to it understand and apply it equally. Acceptance of the law is the basic prerequisite for its effectiveness. The

finding that international law is in crisis is also nothing new.<sup>11</sup> It is in the nature of things that this discourse is repeated when, from the perspective of several states, the prohibition on the use of force is unjustifiably violated and the outbreak of violence is not quickly contained by the international community. The veto right of individual member states in the UN Security Council has proven problematic in this context – and not only in the current war in Ukraine.

### The Security Council is more of a political than a legal body.

The Security Council is the central power and sanctions body of the United Nations. It consists of 15 members – five permanent and ten elected for two-year terms. In addition to

France, China, the US and the United Kingdom, Russia is also a permanent member. It is the Security Council's task to adopt and enforce measures if there is an unlawful violation of the prohibition of the use of force, as set out in Chapter VII of the Charter.

In addition to this responsibility, the Security Council is also responsible if a party to a dispute fails to fulfil its obligations arising from a judgement of the ICJ. Article 94 of the UN Charter stipulates that the Security Council may adopt measures to give effect to the judgement. In light of these facts, it comes as no surprise that the multi-layered endeavours under international law with regard to the war in Ukraine have so far been unsuccessful. As a permanent member of the Security Council and in accordance with Article 27(3) of the UN Charter, Russia has a veto right. The five permanent Council members can block any Security Council decision with their vote. The Russian veto thus prevents any resolution that would initiate binding countermeasures against the country.<sup>12</sup> It is therefore these five member states that have to agree each time.<sup>13</sup> And it is therefore the Security Council that, for political reasons, repeatedly fails to enforce court decisions and the law. The Security Council is more of a political than a legal body. Political will is invariably required to enforce international law. And this will is lacking.

Quite rightly, there are repeated calls for reform of the Security Council. It reflects the balance of power after the Second World War. However, this no longer corresponds to today's geopolitical realities. Since 1945, 142 other states have become members of the UN. To ensure that all member states respect the decisions of the Security Council, it must be appropriately legitimised and thus representative. Otherwise, it lacks the necessary authority. The German government rightly points out that in the absence of reform, there is a risk that decision-making processes will be shifted to other forums, even if these do not have the binding effect and legitimacy of the Security Council.<sup>14</sup> Indeed, Russian aggression also poses the "danger of an

increasing tendency for political conflicts to be carried out violently, for imperialist goals to be realised by force".<sup>15</sup>

### **Expectations Need to Be Adapted**

However, contrary to what is claimed by some German and international experts with regard to either the Russian aggression in Ukraine or the war in Gaza, this does not mean that international law is "at an end".<sup>16</sup> Nor is international law ineffective. The achievements of international law can by no means be taken for granted. It has taken decades to develop it to its current state. The long-lasting European peace is, among other important factors, also largely due to international law. While there have been around 135 military conflicts between sovereign states in the past 70 years, there were more than 180 in the 70 years before that.<sup>17</sup> Thanks to the United Nations, all member states come together time and again to negotiate.

### **The terrorist organisations Hamas and Hezbollah openly trample on international law.**

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Unfortunately, crises, mistakes and failures are often more memorable than achievements and successes. However, these should not be forgotten. Despite the need for reform and their weaknesses, the established systems are peacemakers. In order to continuously strengthen and improve the international structure, patience and adapted expectation management are required.

Although Russia is continuing its war, the impact of the court decisions and votes in the UN General Assembly should not be underestimated. Putin is considered a wanted war criminal in many parts of the world. He is severely restricted in his freedom to travel (even though Mongolia, despite its treaty obligation as a member state of the ICC, did not arrest him during a recent state visit<sup>18</sup>). The clear condemnation of

the aggression, which Russia has labelled a “special operation”, by 141 UN member states has had an impact. A vast majority of states firmly opposes the war of aggression. And the judgement of the ICJ retains a high authoritative force and significance for all, even if it has not been implemented or enforced (for the time being)<sup>19</sup>.

All of this is (also) thanks to international law. Furthermore, it is international law and its courts that ensure that the Russian war of aggression is dealt with and investigated and that those responsible are brought to justice as effectively as possible. Deterrence and perseverance are needed. Even if Putin is not arrested in the end, he can still be charged. This also has an impact on other states and may deter them from waging a war of aggression of their own.

International law also sets the legal framework in the Middle East conflict. All parties are repeatedly reminded of this. It is the standard that Germany also uses as a basis. While Hamas and Hezbollah, as the terrorist organisations they are, openly trample on international law, it is Israel’s claim to abide by it.

### **The Law Is Just a Tool and It Needs to Be Strengthened More than Ever**

Ultimately, international law depends on the will of states to abide by it. The law is merely a tool for peace and justice, but not a guarantee. It is based on consensus and reciprocity<sup>20</sup> between political players. Those who still want a global peace-based order must continue to strengthen international law, trusting in the same interests of other states, and campaign and advocate for its political enforcement at the same time. International cooperation in favour of the rule of law can and must play an important role here.

To stay with a picture by Carolyn Moser: “Ultimately, international law for the international community is like medicine for a sick person: it can help to alleviate pain and combat the disease, but only in conjunction with the patient’s self-healing powers.”<sup>21</sup> The truth is that the

medicine must also be distributed and taken in order to work. And if it does not work (immediately) every time, we would not automatically doubt its basic functionality.

*– translated from German –*

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- 1 As of: 8 December 2024. Haaretz 2024: Israel-Gaza War: Day 429, in: <https://haaretz.com> [8 Dec 2024].
- 2 The list of (current) wars and armed conflicts worldwide is regrettably long. An informative list with portraits and analyses (from a peace education perspective) can be found here: Servicestelle Friedensbildung (BaWü) 2024: Kriege und Konflikte weltweit (Wars and conflicts worldwide), in: <https://ogy.de/51pq> [29 Oct 2024]; Gantzel, Klaus Jürgen 2003: Über die Kriege nach dem Zweiten Weltkrieg. Tendenzen, ursächliche Hintergründe, Perspektiven (On the wars after the Second World War. Trends, causal backgrounds, perspectives), in: Wegner, Bernd (ed.): *Wie Kriege entstehen* (How wars are created), Paderborn, pp.299-318.
- 3 Charter of the United Nations of 26 June 1945, BGBl. 1973 II, p. 431.
- 4 Rinke, Franziska / Wulff, Arne / Elsner, Gisela et al. 2017: *Between Aspiration and Reality. 15 Years of the International Criminal Court (ICC)*, International Reports, 33: 2, Konrad-Adenauer-Stiftung, 13 Jul 2017, in: <https://ogy.de/jj2f> [29 Oct 2024].
- 5 Rinke, Franziska 2024: *Stolen Lives. The Kidnapped Children of Ukraine*, Die Politische Meinung, Konrad-Adenauer-Stiftung, 14 Oct 2024, in: <https://ogy.de/6mei> [29 Oct 2024].
- 6 Rinke, Franziska 2022: *Ein Sondertribunal für das Verbrechen der Aggression* (A special tribunal for the crime of aggression), Legal Tribune Online (LTO), 30 Nov 2022, in: <https://ogy.de/igin> [29 Oct 2024].
- 7 LTO 2024: *Ukraine wird Mitglied des Internationalen Strafgerichtshofs* (Ukraine becomes a member of the International Criminal Court), 21 Aug 2024, in: <https://ogy.de/uk50> [29 Oct 2024].
- 8 UN 2022: *Resolution adopted by the General Assembly on 12 October 2022, A/RES/ES-11/4*, 13 Oct 2022, p. 2, in: <https://ogy.de/1ve8> [19 Nov 2024]. A total of six resolutions have now been passed in the eleventh emergency special session of the UN General Assembly, all of which are directed against Russian aggression (A/RES/ES-11/1 to -11/6). The emergency meeting was opened on 28 February 2022 and last convened for two more days on 22 February 2023. All six resolutions, adopted between 2 March 2022 and 23 February 2023, call for an end to the war.
- 9 UN Information Service Vienna 2024: *International Law*, in: <https://ogy.de/nqq5> [29 Oct 2024].
- 10 Czempiel, Ernst-Otto 1998: *Friedensstrategien. Eine systematische Darstellung außenpolitischer Theorien von Machiavelli bis Madariaga* (Peace strategies. A systematic presentation of foreign policy theories from Machiavelli to Madariaga), Opladen, p.107.
- 11 Sutter, Patrick 2004: *Das humanitäre Völkerrecht in der Krise?* (International humanitarian law in crisis?), *Aus Politik und Zeitgeschichte (APuZ)*, 15 Oct 2004, in: <https://bpb.de/28040> [29 Oct 2024].
- 12 Von Knobelsdorff, Christoph / Bummel, Andreas 2022: *Debatte: Das Vetorecht muss reformiert werden* (Debate: The right of veto must be reformed), Deutsche Gesellschaft für die Vereinten Nationen, 3 May 2022, in: <https://ogy.de/rfqd> [29 Oct 2024].
- 13 Since 1946, the permanent members of the Security Council have used their veto 321 times (as of: 4 September 2024). Russia and the USSR accounted for more than half of these vetoes, namely 158 times. The US follows with 92 vetoes. Great Britain (32 times), China (21 times) and France (18 times) used their veto significantly less. *Peace Security Data Hub 2024: Security Council Data – Vetoes Since 1946*, 4 Sep 2024, in: <https://ogy.de/1dul> [29 Oct 2024].
- 14 Federal Foreign Office 2022: *Reform of the United Nations Security Council*, 14 Jan 2022, in: <https://ogy.de/66jk> [29 Oct 2024].
- 15 Heinemann, Christoph 2023: *Völkerrechtler Kreß: Deutschland darf Waffen in erheblichem Umfang liefern* (International Law Expert Kreß: Germany may supply weapons on a significant scale), interview, Deutschlandfunk, 5 Mar 2023, in: <https://ogy.de/q3k6> [29 Oct 2024].
- 16 For a similar perspective, see, for example, Brock, Lothar / Simon, Hendrik 2022: *Ist das Völkerrecht am Ende?* (Is international law at an end?), *Frankfurter Rundschau*, 28 Nov 2022, in: <https://ogy.de/qlg2> [29 Oct 2024].
- 17 The statistics and questions raised are answered and explained here: *Worldview Upgrader*, in: <https://ogy.de/bqhi> [29 Oct 2024]. Gapminder is a Swedish organisation whose mission is to analyse and reduce global systematic misunderstandings with knowledge, including war statistics.
- 18 Tagesschau 2024: *Ehrengarde statt Verhaftung* (Guard of honour instead of arrest), 3 Nov 2024, in: <https://ogy.de/8gbg> [29 Oct 2024].
- 19 Lange, Felix 2022: *Verliert das Völkerrecht an Bedeutung?* (Is international law losing its significance?), *LTO*, 3 Sep 2022, in: <https://ogy.de/u3e1> [29 Oct 2024].
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