



UvA-DARE (Digital Academic Repository)

A Showcase of Hypocrisy

Ingo Venzke on the Crisis of International Law

Venzke, I.

Publication date

2022

Document Version

Other version

[Link to publication](#)

Citation for published version (APA):

Venzke, I. (2022). A Showcase of Hypocrisy: Ingo Venzke on the Crisis of International Law. Web publication or website, The New Institute. <https://thenew.institute/en/media/beyond-the-war/a-showcase-of-hypocrisy>

General rights

It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations

If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: <https://uba.uva.nl/en/contact>, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.

Alevtina Kakhidze, Lost In Ukraine, 2022

BEYOND THE WAR /
INTERVIEW

A Showcase of Hypocrisy

Ingo Venzke on the Crisis of International Law.

31.03.2022 | [Ingo Venzke](#) | [Beyond the War](#) |

Not far from Kyiv, in a village called Muzychi, lives visual artist Alevtina Kakhidze. She decided to stay in her home country, despite several offers from friends and family to leave. Since the outbreak of the war, her diary entries blatantly reflect the horrors happening in Ukraine. For our newsletter series, she also shared a statement against the war which you can [read here](#).

Ingo Venzke on the Crisis of International Law.

What does this war tell us about the state of international law?

The international legal order has clearly failed in its primary ambition: the preservation of peace. By general acclaim, international law is now in crisis. But Russia's attack is not the first nor the last time that power politics has prevailed over the law's prohibition to use force in international relations. The record of the "West" is also tainted on this count. Its military interventions in Kosovo, Iraq, Libya, Syria, and drone strikes in Yemen or Pakistan have all been illegal. Of course, two wrongs do not make a right and there are differences between these instances. In no other case has the chorus of condemnation been so unified as it is now, which may reflect the fact that Russia's justifications of the war are beyond the pale. But differences in reaction also point to selectivity and even hypocrisy.

Politicians like former UK Prime Minister Gordon Brown were involved in the 2003 attack on Iraq and now champion the idea of setting up a special criminal tribunal for the Russian aggression. They

do this with the confidence that they would not find themselves on the receiving end of international law. Vladimir Putin and his entourage also resort to international legal arguments to justify their actions. But I doubt that they do this with the aim of convincing anyone. The incredulity of their arguments rather expresses their disdain for the law. In the meantime, much of international law continues to work rather unaffected by the war. Stronger still, the law backs many of the non-military responses to the Russian aggression.

International law has continuously been undermined in its cardinal prohibition of the use of force.

There is an obvious contradiction: the law is weak, but all actors try to get the law on their side. Why is that?

International law offers a veneer of legitimacy that many actors care about. Though I doubt that this is the case for Putin's Russia, whose legal arguments showcase hypocrisy rather than trying to convince anyone. The degree to which public commentary resorts to legal arguments and terminology is also remarkable. It remains a crucial function of the law that, in spite of its weakness on the ground, it offers a rather strong basis for criticism. The argument that Russia's actions are a criminal act of aggression and that war crimes are being committed has gravity. The appeal of the law is linked to institutional resources that may be levied in response to breaches. Note that the Prosecutor of the International Criminal Court (ICC) went to Ukraine last week, and evidence of war crimes is being collected by a team from the ICC as well as other actors.

The question of whose side the law is on matters in many practical questions down the line, such as the delivery of weapons to Ukraine and all the economic countermeasures, including the sanctions against oligarchs. Several of these reactions would be illegal were they not justified in reaction to Russia's prior breach of international law. In still further detail, many sanctions against oligarchs are violations of their property, which can only happen legally on a clear statutory basis and in exceptional circumstances.

Alevtina Kakhidze, *What Russia Is*, 2022

A lot of the problems of today go back to the early 90s and the end of the Cold War: can you explain that moment, the decisions taken and the precedence of trade over security concerns? In the 1990s, the view prevailed that liberalism and capitalism had won. Vladimir Putin signed up to

that view for a while too. Even as he turned away, Russia still joined the WTO as recently as 2012. Security concerns were not so much subsumed under concerns of trade and economic liberalism as they were merged into one. The works of Friedrich August von Hayek, the arch theorist of neo-liberalism, gained increasing political traction in the 1980s. He had envisioned a world without borders and pointed to illiberal economic policies as the roots of fascism. With different arguments, Montesquieu had already popularized the idea that trading nations are less likely to fight each other. And recall Thomas Friedman's adage of the 1990s that no two countries that have McDonald's would fight a war with one another. Russia proved him wrong, first with the aggression against Georgia in 2008, with the annexation of Crimea in 2014, and now with the renewed attack on Ukraine.

Economic entanglement was also Angela Merkel's rationale for dealing with security concerns vis-à-vis Russia. It is still a prominent approach. 23 states are currently engaged in accession negotiations at the WTO. Since 2017, the WTO notably calls this process the "Trade for Peace Program." The 2008 financial crisis only made small dents in bedrock beliefs about the virtues of economic liberalism. The war in Ukraine will now likely do more to shatter those beliefs, at least when it comes to folding security concerns into trade relations.

Perhaps the war creates new opportunities for reforms of the United Nations that have been stalled until now.

How can the rule-based international order be reformed or rescued in the light of this war? Circling back to the beginning of our exchange: international law has continuously been undermined in its cardinal prohibition of the use of force. But the law is broader and is woven into the international order in many more ways than the Russian aggression suggests on first blush. That is important to realize and tease out. But by no means does it follow that the ambition of preserving peace should be abandoned. Perhaps the war creates new opportunities for reforms of the United Nations that have been stalled until now. A lot of attention in my professional bubble has gone to the use of vetoes in the Security Council, that vetoes should be constrained or abandoned. That may be so but does not get to the problem. It may even be distracting. What would an alternative Security Council do in the current situation? Authorize the use of force? That is neither legally necessary because NATO and other countries could act in collective self-defence of Ukraine. Nor does it change anything about NATO's and other countries' unwillingness to do precisely that. Debates about so-called humanitarian interventions and the responsibility to protect have been similarly misleading over the past decades: it is typically a lack of political will and not the law that stands in the way of right action.

The better approach to pursue ambitions of preserving peace is three-fold. Strengthening international institutions by weakening the reach of the most powerful beyond reconsidering their

veto power in the Security Council is one element. Another is that the most powerful actors who now condemn Russia's aggression will continue to practice what they preach in the future and not disregard the law next time it collides with their interests. Finally, current levels of condemnation and compassion should be levied beyond the war in Ukraine. The ICRC recently reminded everyone that there are about 100 armed conflicts happening in the world right now. And yesterday the UN reported that 70 people went missing and are presumed to be dead after leaving Libya for Europe. The total death count in the Mediterranean since 2014 stands at about 25,000.

Ingo Venzke was a fellow at THE NEW INSTITUTE and has contributed to the programs "The Foundations of Value and Values" and "The Future of Democracy". He is also Professor of International Law and Social Justice at the University of Amsterdam.