



# Human Rights and Resort to Force

14-15 November 2019

*While there has been much emphasis on the relationship between the *jus in bello* (the rules relating to the conduct of participants during an armed conflict) and human rights, there is an opportunity to revisit the relationship between the *jus ad bellum* (the rules governing resort to armed force) and human rights. The workshop will examine three points of interaction between these bodies of rules*

*The workshop will be preceded by a lecture, in honour of Professor Henry Shue, to be delivered by Professor Sam Moyn from Yale Law School. A dinner for workshop participants will follow the lecture.*

## Thursday November 14

**17.30**      **"The Case Against Humane War"**

**Lecture by Samuel Moyn, Henry R. Luce Professor of Jurisprudence at Yale Law School and a Professor of History, Yale University**

**Venue: Lecture Theatre Blavatnik School of Government**

This lecture will survey Leo Tolstoy's still relevant criticism of the attempt he witnessed to make war more humane through international law, and will explore how constant his criticism was in spite of his shifting reasons and the almost total change in his career in the alternatives to more humane war ought to be pursued instead. The lecture will conclude by assessing the relevance of Tolstoy's attack on humane war to today's "forever war."

## Friday November 15

**9.00 – 9.10**    **Welcome and Introductions**

**9.10 – 10.50**   **The *Jus Ad Bellum* and the Right to Life**

This session will examine whether the conformity of resort to force with the *jus ad bellum* has an impact on the assessment of whether the right to life or other rights have been violated. The UN Human Rights Committee recently stated, in *General Comment No. 36* (para. 70), that states "engaged in acts of aggression as defined in international law, resulting in deprivation of life, violate *ipso facto*" the right to life provided in International Covenant on Civil and Political Rights. Are there cogent reasons in supports such a position? What exactly would be the scope of such a principle? How is aggression to be defined for these purposes, does it extend to all

unlawful uses of force? And which deprivations of life would fall within it? All those that occur because of an act of aggression (including for example all those lives lost during an occupation) or only those that arise from the initial unlawful use. What implications would this position of the Human Rights Committee have for the application of International Humanitarian Law?

**Discussant:** **Adil Haque**, Professor of Law and Judge Jon O. Newman Scholar  
Rutgers Law School

**Presenters:**

**Eliav Lieblich**, Associate Professor of Law, Tel Aviv University - Buchmann Faculty of Law  
"The Humanization of *Jus ad Bellum*: Prospects and Perils."

**Omar Naqib**, World Food Programme

"Can the *jus ad bellum* protect against arbitrary killing? Some considerations around interpreting the right to life according to international law on the use of force."

**Moderator:** **Janina Dill**, Associate Professor of U.S. Foreign Policy,  
University of Oxford; Professorial Fellow, Nuffield College, Oxford; Co-Director, ELAC

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**10.50 – 11.20**      **Coffee Break**

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**11.20 – 13.00 Human Rights as a Reason for Resort to Force**

This session will re-examine the debates in law, moral philosophy, and international relations about the question of resort to force in order to protect human rights. Are the debates around humanitarian intervention and responsibility to protect simply at an impasse or is there new thinking to be developed in this area? To what extent have recent developments regarding the use of force in response to the use of chemical weapons in Syria affected the evolution of the law? Should we think differently about how the law in this area interacts with practice, and take into account that states sometimes fail to condemn uses of force to protect human rights? Is it possible to conceptualise humanitarian intervention as a defence or circumstance precluding wrongfulness rather than as a practice that is positively permitted by the *jus ad bellum*?

**Presenters:**

**Monica Hakimi**, Professor of Law, University of Michigan Law School

**Federica Paddeu**, John Tilley Fellow, Queen's College Cambridge

**Moderator:** **Dapo Akande**, Professor of Public International Law,  
University of Oxford; Fellow, Exeter College, Oxford; Co-Director, ELAC

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**13.00 – 14.15**      **Lunch**

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**14.15 – 15.55**      **The Criminalization of Aggression and Human Rights Protection**

This session will focus on developments regarding the crime of aggression. In general, international criminal justice provides protections for atrocities directed at human beings. However, the crime of aggression criminalises violations of the prohibition of

the use of force. To what extent is this criminalization of the jus ad bellum violations consistent with the protection of human rights violations that we see in international criminal law? Does the crime of aggression as developed in the amendments to the Statute of the International Criminal Court leave room for resort to force to protect human rights? Or to the extent that international law does not permit resort to force in order to protect human rights, would criminalization of aggression be an impediment to using force for this purpose?

**Discussant:** **Tom Dannenbaum**, Assistant Professor, Fletcher School of Law and Diplomacy

**Presenters:**

**Marieke de Hoon**, Assistant Professor, Vrije Universiteit Amsterdam

*"The Crime of Aggression's Politics of (Con)Fusion: Navigating Human Rights Discourse and Geopolitical Use of Force in a Criminal Court of Law"*

**Kevin Jon Heller**, Associate Professor, University of Amsterdam; Professor of Law, Australia National University.

*"Using Force to Protect Human Rights — the Left's Ticking Time-Bomb Scenario."*

**Moderator:** **Federica D'Alessandra**, Executive Director, International Peace and Security Programme, ELAC.