

Committee/Council: Disarmament and International Security
Committee

Issue: Reestablishing The Criteria Under Which A Country Engages Into War (Jus Ad Bellum) And The Laws Of War (Jus In Bello)

Student Officer: Eda Karaoglu

Position: Co-Chair

Introduction

War is “*a state of usually open and declared armed hostile conflict between states or nations (Merriam-Webster).*” For ages, countries engaged in war with each other for several reasons. Every reason was always variable, as the wishing outcome of that war was independent. The rulers fought for what they desired. The losses of those wars were cruel, brutal and unethical. It had no restrictions or prohibitions. Millions suffered as a result of these unbalanced wars, and innocents, more than we can count, lost their lives. The conditions of the wars were inhumane, and the captives were treated in an unimaginable way. Nowadays, a great amount of war crimes are committed and no one takes responsibility upon them, an act which was considered normal until World War I, as there were no rules present to protect the right of the countries who were in a war with each other. Until World War I came to an end the use of armed forces was considered as an acceptable way to settle disputes and it was not regarded as illegal and immoral. As a result, there were not any prohibitions against war.

The western just war tradition is composed by two themes: (1) the jus ad bellum or moral justification for going to war, and (2) the jus in Bello, or moral guidelines for conduct in war. The international law focuses on both of these terms, thus focusing on how a country or a group fights and how the conflict should be conducted. Subsequently the two theories are not dependent on each other. In the Geneva Conventions that took place in 1949 this issue of war crimes and the right to engage in war was a thoroughly discussed topic and some rules were established to protect all the nations’ rights. As times passes these laws need to be re-established as the conditions of today have radically changed, especially focusing on the technological development and advancements in weapons. The need to change and re-establish these rules and adapt them according to today’s society is of great magnitude.

Definition of Key-Terms

Jus Ad Bellum

“Jus ad bellum refers to the conditions under which States may resort to war or to the use of armed force in general. (International Committee of The Red Cross)” It is basically a set of criteria in which States have the right to engage in a war, making the war a “just” war. This prohibition to use armed forces, with expectations such as self-defence and the authorization from the United Nations itself is set out in the core of the United Nations Charter of 1945.

Jus In Bello

Jus in bello, also known as International Humanitarian Law, “regulates the conduct of parties engaged in an armed conflict. (International Committee of The Red Cross)” It basically seeks to decrease suffering in the armed conflicts by ensuring to assist the victims of the armed conflict by enhancing it to the greatest extent possible.

War Crimes

War crime is an act that seriously violates the law of war that gives rise to individual criminal responsibility, harming and causing unnecessary suffering to victims, the ones who were captured and the civilians. Examples of war crimes include the intentional killing or torturing of civilians or prisoners, destroying civilian property, taking hostages and using child soldiers

Geneva Conventions

The Geneva Conventions is composed of four treaties, with the addition of three protocols that establishes the standards of the international law to ensure the humanitarian treatment in wars. It extensively defines the basic rights of the wartime prisoners and establishes protections for the ones who are wounded or became sick. It also defines the rights and protections afforded to States that are not fighting yet. The Convention is about the people in war and so it does not address the use of weapons in a war.

Hague Conventions

These are international treaties and also declarations negotiated at the peace conferences that took place in The Hague, Netherlands. It is one of the first formal statements of the war crimes and laws of war in the body of secular international law, alongside with the Geneva Convention. In total, there had been 2 Hague Conventions, third one postponed and later canceled due to the start of the World War I in 1915.

United Nations Charter

The Charter of the United Nations is the foundational treaty of the United Nations signed in 1945. In Chapter VII, it tries to take action of an unjust war and tries to set a law of war to minimize the sufferings, hence improve the conditions of the civilians.

Customary International Law

The International Court of Justice Statute defines customary international law in Article 38(1)(b) as "evidence of a general practice accepted as law." (United Nations) There are several more than one customary international law recognized by states.

Jus Cogens

Jus cogens is the Latin word for "compelling law", which is a fundamental principle of international law that is accepted internationally

Jus Bellum Iustum

Jus Bellum Iustum, which is the Latin phrase for, just war theory, is a doctrine that aims to ensure that war is morally justifiable by means of criteria that must be met for a war to be considered just. These criteria are split into two groups: jus ad bellum (the right to go to war) and jus in bello (right conduct in war).

Background Information

The **Jus in bello** is translated into "justice in war" and has traditionally been related to the "treatment of the enemy". The jus in bello is consisted by the six following rules:

1. "Weapons prohibited by international law must not be used."
2. "There is a distinction between combatants and non-combatants. Only combatants may be targeted. It is wrong to intend the deaths of non-combatants. Some philosophers argue that it is wrong even to intend the deaths of combatants, as only the minimum use of force is legitimate."
3. "Armed forces must use proportional force, i.e. proportional to achieving the end."
4. "Prisoners of war must be treated well, because once captured, they have ceased to be the threat to life and security."

5. “No weapons or means of war that are ‘evil in themselves’ are permitted. Examples include ethnic cleansing and mass rape.”

6. “Armed forces are not justified in breaking these rules in response to the enemy breaking these rules.”

The **jus ad bellum** is composed by six distinct conditions, each of those must be met independently prior to a decision that it is just to go to war:

1. “War must be in a just cause. There is disagreement over what constitutes a just cause.”

The protection and defense of innocent people from aggressive regimes and attack or self-defense involve the ‘resistance of aggression’ which translates to the violation of the fundamental human and basic rights. A just war can only be started by a legitimate state, a state which is recognized by further states and by its own citizens, while it must respect other states and people and not violate their rights.

2. “The right intention for fighting the war is because it is in a just cause. Any other intention, e.g. material gain, undermines the justice of the war.”

3. “The decision to go to war must be made with the proper authority (usually laid down in the state’s constitution) and by a public declaration.”

4. “The declaration of war must be a last resort, following the exhaustion of all plausible alternatives means to resolving the conflict.”

5. “A declaration of war can only be just if the state can foresee a probability of success in resolving the conflict through war. Violence without likely gain cannot be justified.”

6. “The response of declaring war must be proportionate, i.e. the good that can be secured through war must outweigh the evil that will most likely occur. The end must justify the means. And in this calculation, the state must take into account not just the costs and benefits to itself, but those that will affect everyone involved in the war (e.g. including enemy casualties).

Declaring a just war?

When a conflict arises between two or more countries declaring war on each other should be the last action to be taken into consideration. Before ensuring that it is the last option there are several other actions present to be implemented in order to solve the conflict at hand. First is trying to find a middle ground by means of negotiations. If this does not succeed to give a solution to the problems, the countries may resort to the International Court of Justice (ICJ) to apply their decisions. Then countries may try to re-negotiate and request the help from other

countries. If all of these actions do not give a solution to the problem and if the criteria are also met, a country can declare a just war. Furthermore, negotiation is essential, when one is trying to restore peace, as it can help to solve the problems through speaking, communicating and debating with the concrete arguments. Organizing conferences, listening to authorized personnel, and forming forums to solve the conflicts can also be an effective method to solve the conflicts, hence prevent the war.

To ensure that a war under consideration is just and humane, previous conventions and agreements have been made. Among these, the first ones were the Geneva and the Hague Conventions, whose purpose was to establish some ground rules during an armed conflict and aimed to protect the wounded and the innocents. It had failed its purpose during the 1st and the 2nd World War, while many other war crimes were committed, especially during the 2nd World War. The League of Nations, which was formed after World War I also aimed to prevent further wars but the League of Nation did not succeed, alongside with its mission. The Charter of the United Nations that was adapted in 1949 tried to solve this issue by means of creating the criteria of jus ad bellum and jus in bello but the problem remains as the principals cannot be implemented in most cases and countries resort to violent acts and wars. Lastly, the International Court of Justice was formed, also as a solution to prevent wars by solving the disputes legally.

Some examples that the laws of war are used, can be found here:

1. <https://atlismta.org/online-journals/0506-journal-government-and-the-rights-of-individuals/jus-ad-bellum-in-the-iraq-war/>
2. <http://nationalinterest.org/feature/just-war-against-isis-11388>
3. <http://www.ejiltalk.org/is-israels-use-of-force-in-gaza-covered-by-the-jus-ad-bellum/>
- 4.

Major Countries and Organizations Involved

United Nations

United Nations plays a fundamental role in this issue as it holds the treaties and has the ability to negotiate and find solutions as they observe that the war is the last resort. Its Charter, established in 1949 upholds nations' right to self-defense, either individually or as a group to aggression by another nation (or group of nations). The UN Security Council, consisting of the 5 permanent members, acting on the basis of Chapter VII of the Charter, may also decide to use collective forces against to a threat to the peace.

The Global Centre for the Responsibility to Protect

The Global Centre for the Responsibility to Protect was set up in 2008. It holds a major role to develop and promote the concept of the, R2P (responsibility to protect) which has the following definition: "*The responsibility to protect is a principle which seeks to ensure that the international community never again fails to act in the face of genocide and other gross forms of human rights abuse.*"¹ Heads of government and state at the World Summit, adopted R2P in 2005 as the United Nations General Assembly. The principle stipulates, that countries are obliged to protect their citizens from mass atrocities; that the international community should assist them; that, if the country in question fails to act appropriately, the responsibility to do so belongs to larger community of states. R2P should be understood as a solemn promise made by leaders of every country to all people that are endangered by mass atrocities. (International Committee of the Red Cross)". In core, it suggests that the international community has the responsibility to take joint action to protect the people in a State where four crimes (which are: genocide, war crimes, ethnic cleansing and crimes against humanity) are taking place.

International Court of Justice

"The International Court of Justice (ICJ) is the principal judicial organ of the United Nations (UN). It was established in June 1945 by the Charter of the United Nations and began work in April 1946. (International Court of Justice)"

It makes sure that if countries engage in a war, it is a just war.

Timeline of Events

Date	Description of event
1864	Humane rules of war are established when Geneva Convention was signed. It is the first treaty of the Geneva Convention
1899	First Hague Conference
1906	The signing of the second Geneva Treaty.
1907	Second Hague Conference.

¹ 2008 Parliamentary Hearing At The United Nations
<http://www.ipu.org/splz-e/unga08/s1.pdf>

1919	Covenant of the League of Nations tried to outlaw war.
1925	Bio-Chemical Warfare Geneva Protocol was issued. It is a protocol to prohibit the use of asphyxiating, poisonous or other gasses during a war. It also prohibits bacteriological methods of warfare.
1928	The Treaty of Paris, also known as the Briand-Kellogg Pact) also tried to outlaw war.
1929	The signing of the third Geneva Treaty.
1945	The adaptation of the United Nations Charter that confirms the trend «The members of the Organization shall abstain, in their international relations, from resorting to the threat or use of force ...”
12 August 1949	The signing of the fourth Geneva Treaty after the aftermath of the World War II. It consists of terms that were agreed after the events that took place in World War II.

Relevant UN Treaties, Resolutions, and Events

The Charter of the United Nations

The legal source of just ad bellum declares that:

Article 2: “All members shall refrain in their international relations from the threat or the 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” and in Article 51: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations.”²

Geneva Conventions with Protocols

Geneva Conventions are a number of treaties on the treatment of the prisoners of war, soldiers, who are incapable of fighting, and civilians. It applies only in times of armed conflict and seeks to protect people that are civilians or wounded members of the armed forces.

² Charter of the United Nations

<http://www.un.org/en/sections/un-charter/chapter-i/>

Possible Solutions

A possible solution to the problem of reestablishing the criteria under which a country engages in war (jus ad bellum) and the laws of war (jus in bello) can be forming a new treaty in which countries agree not to declare war, for a specified time, if their requirements are fulfilled. The other solution can be mutual disarmament between the countries when the both parties agree on it on mutual terms. Moreover, the principals can be improved of jus ad bellum in order for the decrease of the possibilities of a just war. Another solution could be to increase the negation path between the nations that are during a conflict and to further ensure that war is literally the last resort. Also, a set of criteria can be established to determine to when the war is the last resort.

To find further possible solutions, delegates are encouraged to think the reasons for war and find the solution to the reasons. Also, it would be very beneficial to see the weapons as a reason for war (as obtaining weapons was ne of the reasons of WW I) and focus on disarmament of the nations.

Bibliography

Cornell University Law School. Customary International Law. 7 July 2016 <https://www.law.cornell.edu/wex/customary_international_law>.

Crimes of War. Crimes of War Education Project. 6 July 2016.

Danilenko, Gennady M. European Journal of International Law International Jus Cogens: Issues of Law-Making. 7 July 2016 <<http://www.ejil.org/article.php?article=2025&issue=101>>.

Global Centre. Global Centre Responsibility Act. 8 July 2016 <<http://www.globalr2p.org>>.

International Committee of the Red Cross. Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907. 5 July 2016 <<https://www.icrc.org/ihl/INTRO/195>>.

—. Geneva Conventions of 1949 and Additional Protocols, and their Commentaries. 6 July 2016 <<https://www.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp>>.

International Committee of The Red Cross. What Are Jus Ad Bellum And Jus In Bello? 8 July 2016 <<https://www.icrc.org/en/document/what-are-jus-ad-bellum-and-jus-bello-0>>.

International Court of Justice. International Court of Justice, The Court. 8 July 2016 <<http://www.icj-cij.org/court/index.php?p1=1>>.

Merriam-Webster. Definition of War. 1 July 2016 <<http://www.merriam-webster.com/dictionary/war>>.

Stanford. Stanford Encyclopedia of Philosophy. 3 July 2016
<<http://plato.stanford.edu/entries/war/#2.1>>.

United Nations. Charter of the United Nations. 4 July 2016 <<http://www.un.org/en/charter-united-nations/index.html>>.

— . Charter of the United Nations and Statute of the International Court of Justice. 26 June 1945. 8 July 2016 <<http://www.un.org/en/charter-united-nations/>>.

— . International Court of Justice, Statute of the International Court of Justice. 7 July 2016 <<http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>>.

--Crimes of War – Jus ad Bellum / Jus in Bello

By Karma Nabulsi

<http://www.crimesofwar.org/a-z-guide/jus-ad-bellum-jus-in-bello/>

<http://documents.routledge->

[interactive.s3.amazonaws.com/9781138793934/A2/Political/JustWarTheory.pdf](http://documents.routledge-interactive.s3.amazonaws.com/9781138793934/A2/Political/JustWarTheory.pdf)