

61. International Conference for Military History (ITMG)



(Il)legality of Military Force and Violence

Navigating between Possibility, Necessity, and Proportionality

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The Russian war against Ukraine violates the prohibition of the use of force in article 2 (4) of the Charter of the United Nations. Since the Briand-Kellogg-Pact in 1928, the use of war as means to settle political disputes between states has been prohibited. The Charter of the United Nations reaffirmed this prohibition and expanded it beyond the use of force, to include the threat of force. Since 1945, the prohibition of aggressive wars has formed a core principle of the international order. Now, the consequences for the international order are to be discussed. The conference will address this topic by examining the historical development of the principles relating to (Il)legality of Military Force and Violence.

To achieve this, the conference will focus on the principle of military necessity. The use of military force can be characterized by the tension between possibility on the one hand and necessity as well as humanity on the other. This tension must be balanced by the principle of proportionality in international humanitarian law. The use of ‘dumdum bullets’ in conflicts against indigenous people in European imperial conflicts; the treatment of captives and members of civilian populations; the use of chemical agents; responses to guerilla warfare; the nuclear arsenal of the Cold War; the (self-)control of unmanned drones; cyber-attacks; humanitarian interventions; the War on Terror; the torture of prisoners – alle these issues raise questions concerning where the line must be drawn between what is militarily possible and what is necessary as well as proportional: Where is this line? When is the line to unrestricted violence crossed? The question whether military options are pursued, and, if so, which options are pursued depends not only, in military perspective, on strategic, tactical, and operational considerations or, from a political perspective. War and warfare have become determined by customary and codified law. The waging of a war for the settlement of disputes has been renounced. In this conference, the development of legal restraints on war and, by consequence, the legal transformation of ‘war’ into ‘armed conflict’ will be discussed. We will look at the *ius ad bellum* as well as the *ius in bello*. The goal is to achieve an interdisciplinary understanding of this narrative and its consequences over time. The conference provides a framework to analyze this development either in relation to recent events or as in long-term historical perspectives. We also welcome theoretical, methodological, and legal-dogmatical analysis (see topics below).

Today's understanding of international (humanitarian) law changed at the end of World War II and with the founding of the United Nations. The Holocaust, the crimes of the Wehrmacht, the mass mobilization of populations use an availability of NBC weapons and led to an expansion of war that seemingly knew no borders. The modern discussion about laws for war began

in seventeenth century with Hugo Grotius and the Thirty Years' War. However, based on a 'just war' theory, European states initiated the codification of the international law of war (*ius in bello*) in the nineteenth century. During the Hague Peace Conferences of 1899 and 1907, Western states negotiated the Hague Regulations. As early as 1864, with the first Geneva Convention, they created protection for the wounded and for their care through the International Committee of the Red Cross. The Lieber Code, crafted during the U.S. Civil War (1861-1865), regulated the conduct of U.S. soldiers well into the twentieth century, and it was incorporated into various international treaty agreements. These treaties were of course undermined by following events. In the post-World War II era, a very different kind of structure emerged, often perceived as marking a shift from a state-centered system to a pattern of constitutionalism that frames a legal world order. This development has implications for our understanding of state sovereignty. Sovereignty is integrated in a legal world order that today cannot anymore be described as anarchic. However, the recent events and military missions in Afghanistan, Iraq, Libya, or Syria, or Kosovo seem to contradict the assumption of the legal regulation of armed conflict. The Russian War against Ukraine has brought this discussion to an entirely new level, and it has cast doubt on the existence of an international order. At the same time, some observers still accentuate the relevance of international law in these conflicts and wars.

Against this background, the following topics will be addressed and discussed in the conference:

Legal (Un-)Certainty in War and in Armed Conflicts

Which problems and difficulties arise in war and in armed conflicts? Which authorities define rules and norms, who judges? How is knowledge of laws, rules and norms generated, processed, distributed, conceived, and practiced? How do military organizations and soldiers on the ground cope with uncertainties in the use of force? How is the concept of law used to legitimize the use of military force and violence?

Technologies and Weapons

How do new technologies shape the possibilities in war and armed conflict? What consequences do they have on necessity and proportionality? The use of poison gas, airstrikes, and submarine warfare in World War I have shown the effect of technologies and weapons. The first nuclear strike on Japanese territory in World War II underpins this assumption. Since then, the development towards use of unmanned (autonomous) drones and cyber-attacks has broadened the arsenal of military possibilities, posing the question of arms control and especially their necessity and proportionality.

Legal World Order

How did the change of world order bring about the transformation of 'war' into 'armed conflict'? Are humanitarian interventions of the twentieth and twenty-first century the same as those in the nineteenth century? What consequences does the Russian war against Ukraine have for the international legal order? On a general level, these questions point to regulations, legitimations and the contextual structure of war and armed conflict.

Frames, Norms, and Reality

How do understandings of warfare frame or interact with war regulations? What specific function do codifications of military force and violence possess? What is the basis for norms in warfare? How do norms correspond or relate to the realities of warfare? What strategies are at work to frame (obvious) illegal acts of the use of military force as (seemingly) legal forms?

Limits, Alternatives, Grey Zones

What is the real of rules for the codification of warfare? To whom do rules apply? What were alternative models to a 'western' international humanitarian law? How does legal codification itself produce uncertainties? Are there red lines, where are grey zones? How are these borders or border regions of (il)legal use of force constituted? What can be said about 'privatization' of military force regarding to the (il)legality?

Doctrines, Theories, and Methods

These questions and observations fuel the longstanding debate about the relationship between law and politics in international relations. The question whether states, the military, and soldiers consider necessity and proportionality in the use of force, lies at the very heart of these debates. Does this lead to a mere apologetic description of international humanitarian law? Do legal dogmatics cope with the growing challenges of armed conflicts?

Presentations that discuss other topics related to the main theme of the conference are welcome. Scholars from law, history, sociology, political science, and other cognate disciplines are welcome to respond and to participate. We encourage young scholars to submit abstracts for presentation. The conference will be held in English. Translations will be provided.

Authors are invited to submit abstracts of original papers until **29 May 2022**.

Only **one abstract** per author will be considered. Abstracts must not exceed **500 words**. Please add name, affiliation, and a short (one page max.) **CV** to your proposal.

If you want to organize a **panel** (*3 slots* max. for a two-hour panel), extend your submission for each author under the forementioned conditions.

It will also be possible to organize an **author meets critic** event. State in your proposal a book, its relevance, and a possible commentator beside the book author.

We will inform authors of selected papers by **6 June 2022**. The conference program will be published by **12 June 2022**. The conference will be held online. A publication is in consideration.

For submission of proposals and for further information please contact:

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