



The Distinction and
Relationship between
Jus ad Bellum and
Jus in Bello

Keiichiro Okimoto

STUDIES IN INTERNATIONAL LAW

The Distinction and Relationship between *Jus ad Bellum* and *Jus in Bello*

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Preface

This book is based on the doctoral thesis I completed at the University of Cambridge. My initial interest in the topic of the relationship between *jus ad bellum* and *jus in bello* developed when I was studying at the London School of Economics, which was also when the invasion of Iraq took place in March 2003. Since then, I have tried to observe various conflicts from the perspective of the relationship between *jus ad bellum* and *jus in bello* and also conducted research on past conflicts from the same perspective, in order to grasp the evolution of the issue and compare the past and the present. Since I left the University of Cambridge, I was posted to various conflict and post-conflict situations as a delegate and a legal adviser of the International Committee of the Red Cross (ICRC), namely to Iraq, Israel and the Occupied Territories, Philippines, and Rwanda. The time spent in these countries enlightened me in many ways, which I would have never experienced otherwise. Apart from what I saw, heard and felt about the impact of armed conflicts on each and every individual who survived or who was trying to survive, the important role that *jus ad bellum* and *jus in bello* played in a specific conflict was particularly striking. At the same time, the risk of divergent interpretations on particular rules of *jus ad bellum* and *jus in bello*, or on the relationship between *jus ad bellum* and *jus in bello*, was felt particularly when such divergence had the possibility of affecting the lives of people. This book was prepared against such a background.

This book takes into account a vast amount of material pertaining to the relationship between *jus ad bellum* and *jus in bello*, including official documents and statements of states; official documents and statements of the ICRC; resolutions, reports, verbatim records, official statements, and other documents of the United Nations organs; proceedings and judgments of international courts, tribunals, and arbitrations as well as national courts; and opinions of experts. I have tried to consult materials as much as my language ability permitted, namely in English, French, and Japanese, and tried to select case studies from different regions with a view to achieving an appropriate level of representativeness. Owing to the sheer extent of the topic, this book only covers the main aspects of the relationship between *jus ad bellum* and *jus in bello*, but it is hoped that it would be a basis for further research and discussion.

I am indebted to distinguished experts for their valuable comments, namely Professor Marc Weller, Judge Christopher Greenwood, and Professor Christine Gray. I am grateful to Dr Jean-Marie Henckaerts,

who drew my attention to many important materials. I would also like to thank Professor Tatsuro Kunugi for strongly encouraging me to publish my doctoral thesis.

Finally, I would like to express my deepest gratitude to my wife, Tomoko, for her warm encouragement and technical support to many parts of the book, and to my parents for their constant support throughout the preparation of this book.

The views expressed in this book are personal and do not necessarily reflect the views of the ICRC, and any errors or omissions are solely my responsibility.

List of Abbreviations

ADF	Allied Democratic Forces (Democratic Republic of the Congo)
APs	Additional Protocols to the Geneva Conventions, 1977
API	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977
APMC	Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, 1997
Art	Article
BWC	Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 1972
Chapter VII	Chapter VII of the Charter of the United Nations
CCW PII	Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II), 1980
CICR	Comité international de la Croix-Rouge
CIHL	customary international humanitarian law
CPA	Coalition Provisional Authority (Iraq)
CPC	Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954
CPN-M	Communist Party of Nepal-Maoist
CPP	Communist Party of the Philippines
CRC	Convention on the Rights of the Child, 1989
CRC OPI	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2001
CTS	Consolidated Treaty Series
CWC	Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, 1993
DOMREP	Mission of the Representative of the United Nations Secretary-General in the Dominican Republic
DRC	Democratic Republic of the Congo

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ECOWAS	Economic Community of West African States
ERW	explosive remnants of war
EWCA	England and Wales Court of Appeal
GAOR	General Assembly Official Records
GCs	Geneva Conventions, 1949
GCIH	Geneva Convention Relative to the Treatment of Prisoners of War, 1949
GCIV	Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949
GP	Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, 1925
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	international humanitarian law
ILC	International Law Commission (United Nations)
ILM	International Legal Materials
ILR	International Law Reports
ISAF	International Security Assistance Force (Afghanistan)
KFOR	Kosovo Forces (NATO)
LNTS	League of Nations Treaty Series
MINOPUH	United Nations Civilian Police Mission in Haiti
MINUGUA	United Nations Verification Mission in Guatemala
MINURCA	United Nations Mission in the Central African Republic
MINURSO	United Nations Mission for the Referendum in Western Sahara
MINUSTAH	United Nations Stabilization Mission in Haiti
MONUA	United Nations Observer Mission in Angola
MONUC	Mission de l'Organisation des Nations Unies en République démocratique du Congo
MONUSCO	Mission de l'Organisation des Nations Unies pour la stabilisation en République démocratique du Congo
NATO	North Atlantic Treaty Organization
NPA	New People's Army (Philippines)
<i>Official Records</i>	<i>Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva (1974–1977)</i>
ONU	Organisation des Nations Unies
ONUB	Opération des Nations Unies au Burundi
ONUC	Opération des Nations Unies au Congo
ONUCA	United Nations Observer Group in Central America

ONUMOZ	United Nations Operation in Mozambique
ONUSAL	United Nations Observer Mission in El Salvador
PLO	Palestine Liberation Organization
POW	prisoner of war
RPF	Rwandan Patriotic Front
SOFA	status of forces agreement
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNAMIC	United Nations Advance Mission in Cambodia
UNAMIR	United Nations Assistance Mission for Rwanda
UNAMSIL	United Nations Mission in Sierra Leone
UNASOG	United Nations Aouzou Strip Observer Group (Chad/Libya)
UNAVEM I, II, and III	United Nations Angola Verification Mission I, II, and III
UNCHR	United Nations Commission on Human Rights
UNCRO	United Nations Confidence Restoration Operation in Croatia
UNDOF	United Nations Disengagement Force (Middle East)
UNEF I and II	United Nations Emergency Force I and II
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFICYP	United Nations Peacekeeping Force in Cyprus
UNGA	United Nations General Assembly
UNGOMAP	United Nations Good Offices Mission in Afghanistan and Pakistan
UNHRC	United Nations Human Rights Council
UNIFIL	United Nations Interim Force in Lebanon
UNIIMOG	United Nations Iran–Iraq Military Observer Group
UNIKOM	United Nations Iraq–Kuwait Observation Mission
UNIPOM	United Nations India–Pakistan Observation Mission
UNITA	National Union for the Total Independence of Angola
UNITAF	Unified Task Force (Somalia)
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNMIBH	United Nations Mission in Bosnia and Herzegovina
UNMIH	United Nations Mission in Haiti
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMIL	United Nations Mission in Liberia
UNMIS	United Nations Mission in the Sudan
UNMISSET	United Nations Mission of Support in East Timor
UNMIT	United Nations Integrated Mission in Timor-Leste
UNMOGIP	United Nations Military Observer Group in India and Pakistan
UNMOP	United Nations Mission of Observers in Prevlaka

UNMOT	United Nations Mission of Observers in Tajikistan
UNOCI	United Nations Operation in Côte d'Ivoire
UNOGIL	United Nations Observation Group in Lebanon
UNOMIG	United Nations Observer Mission in Georgia
UNOMIL	United Nations Observer Mission in Liberia
UNOMSIL	United Nations Observer Mission in Sierra Leone
UNOMUR	United Nations Observer Mission Uganda–Rwanda
UNOSOM I	United Nations Operation in Somalia I and II and II
UNPREDEP	United Nations Preventive Deployment Force (Former Yugoslav Republic of Macedonia)
UNPROFOR	United Nations Protection Force (former Yugoslavia)
UNSC	United Nations Security Council
UNSF	United Nations Security Force in West New Guinea
UNSMIH	United Nations Support Mission in Haiti
UNTAC	United Nations Transitional Authority in Cambodia
UNTAES	United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (Croatia)
UNTAET	United Nations Transitional Administration in East Timor
UNTAG	United Nations Transition Assistance Group (Namibia)
UNTMIH	United Nations Transition Mission in Haiti
UNTS	United Nations Treaty Series
UNTSO	United Nations Truce Supervision Organization (Middle East)
UNYB	Yearbook of the United Nations
UNYOM	United Nations Yemen Observation Mission
UPDF	Uganda Peoples' Defence Forces
US	United States of America
USSR	Union of Soviet Socialist Republics
WHO	World Health Organization
1899 HRs	Convention (II) with Respect to the Laws and Customs of War on Land and Its Annex: Regulations concerning the Laws and Customs of War on Land, 1899
1907 HRs	Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations concerning the Laws and Customs of War on Land, 1907

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