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The role of International Law in the current upsurge of conflicts

Marcelo Mello Valença

As the Cold War between the United States ("USA") and the Soviet Union ("USSR") came to an end, the international community was overtaken by a wave of optimism. Many believed that finally it would be possible to preclude the use of force in international relations as well as to promote the non-violent resolution of disputes. As a consequence, a more peaceful and collaborative world would emerge as the threat of war would fade away. This optimistic wave was reflected throughout the 1990s as international society worked collectively to strengthen international institutions and multilateral efforts to promote peace. One of the most visible aspects were the several peacekeeping operations authorized by the UNSC to end intrastate conflicts, mostly in Africa, the Balkans, and Asia.

These peacekeeping missions not only highlighted the new engagement of international society towards the protection of human rights and the promotion of democracy and the role of law, but also indicated a new trend on the nature of international conflicts by the end of the 20th century. Intrastate- and extrastate conflicts now constituted the majority of the contemporary armed disputes: the former are conflicts between groups within a state while the later defines disputes between a domestic group against a state (COW, 2004). Interstate wars, i.e., wars among sovereignty states, were no longer the dominant form of armed conflicts. Would the liberal peace finally prevail?

The United Nations ("UN") and especially the United Nations Security Council ("UNSC"), once paralyzed by the superpower dispute, would

finally step up and assume its role towards the promotion of peace and international security. The experiences of two great powers wars in the 20th century showed the world the destructive potential of contemporary warfare and the international society realized its core values would be threatened in case of another major war. Facing a new political scenario, the international society found out that international intervention motivated by humanitarian reasons to prevent and resolve internal conflicts would also contribute to the maintenance of these values. The UNSC is responsible for evaluating international disputes as well as creating constraints to prevent the use of force in international relations by recurring to the law of war, the branch of international law that regulates and arbitrates armed conflicts, both within and between states.

Still, two questions remain recurrent in world politics. Is there any way to overcome power politics and promote the rule of law in the international system? How a legal framework designed to regulate state behavior can influence non-state actors?

This chapter tries to answer these questions. I will try to provide an analytical framework to understand how international law can contribute to the prevention of armed conflicts, including when non-state parties are involved. I support the idea that international law – more precisely, the law of war – is both effective and responsible for protecting and promoting the values underlying contemporary international society.

Political pundits and analysts alike point out that international law is not able to prevent a great power from acting unilaterally. Both the US invasion in Iraq in 2003, and Russian's in Ukraine, in 2014, reinforce such argument. They even accuse international law of being ineffective to prevent local disputes in areas where neither great powers nor the international society have a direct interest in intervening, as recently seen in Darfur, Syria, and Libya. Their argument is based on the premise that international norms alone can barely limit violence and the use of force.

I strongly disagree on these. I propose in this chapter that international law is not responsible for preventing the use of force, but to limit its use in international relations. The decrease in the number of wars and armed conflicts in the last decades reinforces such stance. The law of war is particularly valuable when the conflict starts, as it curbs policies and strategies that may cause unnecessary harm to both combatants and non-combatants alike, even in intrastate conflicts.

As a consequence, my answers to the above-posed questions are quite optimistic. Despite the lack of enforcement of international law, adherence to such standards is a way of legitimizing the values shared by the international society.

I develop my argument in three steps. Firstly I present the set of international norms known as the law of war. By and large, it is divided in two main sections, the jus ad bellum – the law towards war – and the jus in bello – the law in war.[1] The law of war is

[1] This terminology is not consensual, but it is established in the literature. Some authors as Michael Walzer (2003), though, may refer to jus ad bellum and jus in bello, respectively, as "the right to go to war" and "the right conduct in war". In any case, the broad idea is the same.

structured on the values shared by international society and reflects its understanding of now valid and legitimate is the use of force in a given era.

I then propose that both jus ad bellum and jus in bello are applicable even when there are non-state parties involved. These set of norms were created by states to regulate their interaction, but their ultimate goal was the preservation of international society. My argument here clearly reflects a solidarist stance. Accordingly, jus ad bellum and jus in bello can be seem as equally valid in the relation between domestic groups and states and domestic groups alike. Their logic is based on the idea of a common humanity underlying international society. The law of war protects humanity from unnecessary harm, so it is not concerned on who is waging war, but on the maintenance of the values of international society.

I conclude the chapter by raising some issues that may be problematic for the law of war. Despite its centrality for the maintenance of international society, international law is subject to political moves and will. In that sense, states may break some rules in case there is special interests involved and still praise the role of international law. The same applies to contemporary themes such as refugees, war crimes, and massive violations of human rights.

Before proceeding, I would like to clarify the use of the terms (armed) disputes, (armed) conflicts, and war. The academic and political literature on war and peace do present distinct definitions for the two terms. Whiles disputes and conflicts do not necessarily involve the use of military force, wars do. However, and despite I acknowledge the importance of upholding such differences, in this piece I will use them as interchangeable terms, especially when the term "armed" is added to one of them. I do believe it will contribute to make my argument clearer and I do apologize in advance in case for any simplification this choice may cause.

The law of war and the use of force in international relations

International law has long leaned over into armed conflicts. It is possible to notice the development of a customary law, heavily influenced by jus naturale, the natural law or the rules of humanity, to regulate warfare, especially regarding diplomacy, mediation, and the respect for hierarchy and ranks. Such practices are prior to the formation of nation-states, dating back to the pre-Christian era.[2] The replication of such procedures thought time institutionalized some practices regarding warfare and built the foundations for the customary law towards war. These institutions can also be traced back as pillars to the development of modern international relations (Mello, 2000).

War played a central role in the formation, expansion, and maintenance of international order in the last centuries. As an international institution, it helped to consolidate the practices and expectations in international relations. However, other international

[2] The Romans were one of the first societies to create a set of norms to differentiate the treatment between its citizens and foreigners, which may be considered an antecessor to the law of war.

institutions do play a complementary role to war, such as the international law and the great powers. Combined, they provide a framework to understand the legitimacy and possibility of recurring to the use of force in order to achieve state interests.

In that sense, one can perceive a change on how international society understands war throughout time. Notwithstanding the different approaches taken by both international relations and international law to war, it is possible to relate its foundations to the just war theory, as it contribute to justify and limit war (Johnson, 1981).

Firstly proposed in the pre-Christian era, the modern just war theory is heavily influenced by Saint Augustine and Saint Thomas Aquinas (Johnson, 1981; Walzer, 2003). According to the just war theory, war is not always the worst option in international politics. In that sense, it can be justified provided two conditions are met: the right conduct in war and the right to go to war. As for the religious and philosophical basis of just war, armed conflicts must be morally accepted and fit within a moral code of conduct. On contemporary terms, the moral acceptance refers to the jus ad bellum while the moral code of conduct refers to the jus in bello. The jus ad bellum describes the conditions that allow a war to be legally and legitimately accepted within the framework of the international law. The jus in bello, on the other hand, regulates the conduct in war.

Saint Thomas Aquina, probably the most influent thinker to support the just war theory, proposed that a divine authority would justify the use of force against an enemy usually religiously antagonist. His idea of proper authority ultimately rests on God and His will against the infidels. St. Thomas Aquina's writings and the ones that influenced his thoughts were men of their ages and, as such, developed their thoughts based on their world view and their religious and political notions of right and wrong. As a consequence, and despite the contributions brought to the debate, they expressed the values and the understanding of a Christian international society composed mostly of European political communities.

In today's contemporary international law, however, the law of god does not suffice be legally evoked to determine legitimacy in international relations. International society developed collective fora to promote the discussion on war and peace and the international law elected the United Nations Security Council as the legitimate arena to determine whether the use of force is legal or not. The UNSC is a political instance, but it acts under the premises of the jus ad bellum, as expressed in the UN Charter.

International society is based on the ability of its members of respecting compromises and limitation of violence is one of them. Accordingly, contemporary jus ad bellum suggests that the use of force may be a resort to political communities if the right conditions are on the table. No matter if it´s a conflict involving states or other forms of political communities, including non-state actors, the norms of jus ad bellum are always a pre-requisite for the legitimate use of force.

Its legal basis rests on the UN Charter, mainly article 2 (3) and (4) and the Chapter 7, which comprises articles 39 to 51 (Morris, 2013: 105). As of the UN Charter Article 1 (1), UN main objective is

[t]o maintain international peace and security, and to that end: *to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law*, adjustment or settlement of international disputes or situations which might lead to a breach of the peace[.] (emphasis added)

Considering such institutional preference, Article 2 asserts that UN members shall act in accordance with the following principles:

› 3. All Members *shall settle their international disputes by peaceful means* in such a manner that international peace and security, and justice, are not endangered.
› 4. All Members *shall refrain in their international relations from the threat or 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 (emphasises added).

These legal provisions put off the use of force as a tool of international politics. It is important to highlight that Article 2 (4) is considered jus cogens, i.e., a norm that must be observed by all states.[3] Therefore, the use of force is relegated to a minor role – the ultima ratio, last resort. As set out previously, war may not be the worst option for a state to achieve its goal, but contemporary shall be treated as the last one. In this sense, the experiences from the previous two world wars led states to understand that international society and international order are better served if the threat of force is diminished. The maintenance of peace and international security is considered a higher goal than an individual state's ambition or will.

However, and accordingly to the respect of states sovereignty and the limitations of international law, the UNSC cannot outlaw of forbid a state from using force in case it needs or desires. Yet, it limits the opportunities of actually happenning.

Nothing in the present Charter shall impair *the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security*. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present

[3] According to Black's Law Dictionary, jus cogens is "a mandatory norm of general international law from which no two or more nations may exempt themselves or relesse one another" (Garner, 2000: 695). The legal prescription of jus cogens may also be found in the article 53 of the 1969's Vienna Convention on the Law of Treaties: "Treaties conflicting with a peremptory norm of general international law (jus cogens): (…) For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security (emphazises added).

In this case, Article 51 stipulates the two exceptions to the general rule. Article 51 grants state members with the right of acting in self-defence, both individual or collectively, in case of a imminent threat. The definition of self-defence in international law resembles the self-defence in the domestic law. It is a proportional response to an imminent act of aggression against a state while the threat is still present. Self-defence depends on the combination of necessity and proportionality. While the former refers to the need for action to prevent the threat of becoming effective, the later demands that the reaction is dully proportional to the nature of the threat.[4]

In a similar note, it is important to distinguish between preemption and prevention when discussing self-defence. A preemptive attack consists on conducting military actions against a state that is about to attack. Prevention, on the other hand, is a military action against targets that may be a threat in the future, but it is currently not. According to these distinctions, the idea of self-defence within the jus ad bellum is restricted only to preemptive attacks as they would consist on the imminent threat.

The definition of threat, however, is problematic. As I discussed elsewhere (Valenca, 2014), states creating obstacles for a more clear definition as it could imply necessary international action even in situations where there was no interest to do so. What constitutes a threat remains open to subjective, political discussions.

The second exception to Article 2 (4) is the possibility of the UNSC to promote collective actions to restore or maintain international peace and security under the Article 42. The competence of the UNSC to act is granted by the article 39 combined to articles 41 and 42. The UNSC has the power to determine what constitutes a threat and propose recommendations on how to deal with it. In that sense, what constitutes a threat or not may be a sensitive topic, as it is subject to great power politics.

As there is no objective definition of threat, the interpretation of those exceptions should be made in a strict fashion. Even the recommendation of enforcement measures should consider the use of force as a last resort. Despite being often referred as the chapter that deals with enforcement and use of force, Chapter VII regulates "action[s] with respect to threats to the peace, breaches of the peace, and acts of aggression". In that sense, enforcement may also implies economic and political sanctions (Hamann, 2012), which would be preferable. It would maintain respect for the sovereignty of states while preserving UN most basic principles.

The ability of the UNSC to authorize means to maintain peace and international security reflects the role played by the organ in international relations. The UNSC is responsible for legitimatizing the use of force, either by acknowledging and prescribing responses to acts of aggression or by calling for collective actions against potential

[4] The Just Law Theory also supports that a just war shall be deployed by using proportional means.

threats to the international order. It is important to highlight it does not have the expectation of prevent the use of force. The UNSC is responsible for legitimizing it. In that sense, the UNSC took out states' prerogative of the jus bellum dicendi, i.e., the right of proclaiming war. In a contemporary international society, states may unilaterally still resort to the use of force, but it will only be internationally accepted if it fits within the law of the war framework. If one needs to relate the jus ad bellum to the just war theory, UN may be compared to a modern version of the divine authority proclaimed by Saint Augustine and Saint Thomas Aquina. The use of force is not deployed in the name of the UN, but under its authorization.

The *jus ad bellum* explicits the conditions under which the use of force is legitimate in international relations. However, when a war starts, international law becomes even more important.

During the expansion of the modern international society, war was not only a valid political choice, but also an institution that anchored international order (Bull, 1977; Holsti, 2005, Buzan, 2014). The use of force was a part of international politics and, as such, there were limits to prevent the spillover of violence on domestic society, contributing to the continuation of domestic politics. In that sense, war should not prevent normal politics. Wars were supposed to be violent, but could not create unnecessary human suffering nor violating the *jus naturale*.

Accordingly, the development of a set of rules applicable to all humanity would strengthen the bonds among states, enhancing the solidarity within the international society and promoting its values. The expansion of the international society not only brought more members to it but also led to the development of collective mechanisms to protect both its values and individuals. A recurrent example is the "Declaration Renouncing the Use, in Time of War, of Certain Explosive Projectiles", commonly referred to as the Saint Petersburg Declaration of 1868. The Declaration is one of the first modern documents to state a clear humanitarian concern by as well as to impose normative limits to warfare.

- That the progress of civilization should have the effect of alleviating as much as possible the calamities of war;
- That the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy;
- That for this purpose it is sufficient to disable the greatest possible number of men;
- That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable;
- That the employment of such arms would, therefore, be contrary to the laws of humanity (Swinarski, 1991: 14-15; Morris, 2013: 109)

These humanitarian guidelines constitute the basis of the *jus in bello* – the law in war -, also known as the International Humanitarian Law.[5] The *jus in bello* focuses on the

[5] For a comprehensive list of the treaties and declarations that forms the core of jus in bello, please refer to <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByDate.xsp?redirect=0>. Accessed on August 12, 2016.

protection of those involved in armed conflicts, whether they are combatants or non-combatants, aggressors and victims alike. Thus, its main objective is the prevention of unnecessary suffering caused by war.

The *jus in bello* is commonly divided in two sub-categories, the Hague Law and the Geneva Law (Swinarski, 1991; Morris, 2013). This division is strictly didactic, but contributes to a clear understanding of how international society protects its most basic premises. While the former focuses on the protection of victims of armed conflicts, the later prescribes how belligerent parties should engage force during war time. Combined, the Hague Law and the Geneva Law highlight the common ground that supports international society values and its normative concerns: even in a scenario of war, states should and must respect and protect individuals, as their preservation is a necessary condition to the preservation of international society.

The Hague Law is based on the several conferences held in The Hague in 1899 and 1907 as well as on the 1977's Additional Protocol I. Similarly to the Saint Petersburg Declaration, these conferences reinforced the solidarity among states and prescribe the ways and means employed in war. The Hague Law includes, but is not limited to, the use of bombing and ranged attacks, chemical weapons, and other technologies considered excessive, even in an armed conflict situation.

The Geneva Law, on the other hand, is based on the four conferences held in Geneva in 1949. Each of them addresses a group of victims in an armed conflict. The first conference prescribes the treatment to the wounded and the sick in land conflicts. The second regulates conflicts at sea and the treatment to the wounded, the sick and the shipwrecked. The third conference refers to prisoners of war, while the fourth protects civilians in armed conflicts. Collectively, they provide the foundations of contemporary humanitarianism and highlight the importance of respecting minimum requirements to preserve the integrity of international society.

The *jus in bello* represents what international society considers part of the most fundamental aspects of political life: the limitation of violence and ability of keeping promises and respecting what was agreed upon. In that sense, its applicability is not conditioned to either the legitimacy of the armed conflict nor to the respect to these norms by the other belligerent party – i.e.the conflict does not need to fill the jus ad bellum's requisites. The *jus in bello* is not subject to the principle of reciprocity. It must always be observed, even in armed conflicts that do not follow the premises of the *jus ad bellum*.

Many authors in international law consider the principle of reciprocity as the basis of modern and contemporary international law framework. By and large, it prescribes that the conduct and actions of a state can be replicated by the other part in their bilateral relations (Garner, 2000: 1021). Thereby, if a set of rules preclude the principle of reciprocity – i.e., they are subject to the principle of non-reciprocity -, it means these rules are above any condition of state's discretion.

In the case of the *jus in bello*, the principle of non-reciprocity is endorsed on the Article 1 of the Geneva Convention. It states that "[t]he High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances" (emphasis added) (ICRC, 1949). This is so because the jus in bello is "essentially unilateral and non-reciprocal in nature" (Morris, 2013: 110).

By establishing a common ground that must be observed and respected by states while in war, the jus in bello promotes humanitarianism in world politics. Humanitarianism is the idea that moral and sympathy are common and can be extended to all human beings universally. In other words, despite the fact that international society is based on and structured on a system of states, individuals share a common bond that spills over state borders and connect them in a deeply fashion. The jus in bello not only regulates and protects core values of a international society composed by states but also promotes the connection of all humanity.

Combined, the jus ad bellum and the jus in bello offer the basis for promoting the preservation of international society. They reflect international values and tare contingent on how states understand such values, mainly the three elementary ones: the limitation of violence, the respect to what was agreed upon, and the stability of the possession of things (Bull, 1977: 4). These elementary values are present, in different degrees, in all political communities and, in the case of the contemporary international society of states, they highlights the foundations of the law of the war.

The law of war and contemporary conflicts

The legal framework presented in the previous section is based upon and reflects the structure of a state-centric society. The expected outcomes of the law of war provide the conditions to guarantee the continuity of the international society in all the elementary values proposed earlier. The limitation of violence reflects a concern on the impacts of the use of force in international relations. The respect on what was agreed upon is translated on the idea that laws must be abided. The stability of the possession of things, on its turns, reflects state sovereignty. Considering this scenario, how is it possible to think that the law of war, created by states to regulate their own conduct, may not only apply but also be respected by non-state parties?

The answer to this question is structured on three premises. The first one reinforces the predominance of states in a world where non-state parties are gradually assuming a much bigger role, which implies that international organizations and states alike shall treat these new actors as actors endowed with rights and duties in the international sphere. In a similar fashion as states, non-states parties do represent sociopolitical groups that may not be autonomous or sovereign in international politics, but do represent a significant parcel of individuals. In that sense, and even if one highlights this parties are subjected to state control, they are a part of this state politics and, as such, shall be taken in consideration while interacting with other political groups.

The second premise refers to the role of individuals as the foundation of any society or political group, whether it is directly connected to domestic or international politics. In the case of domestic politics, individuals from different groups are considered parts of the same whole. This idea implies that their cultural, political, or sociological differences do impact on the formulation of public policies, but they are all considered parts of a larger whole. In the case of international politics, this "larger group" is not easily identified. It is not uncommon to refer to deeper differences to describe the cultural and political differences between states. On top of that, the idea of a larger group of individuals that ignores state borders – humanity – is hardly accepted. Cultural clashes are more visible and sometimes prevent universal strategies to preserve individuals.

Finally, the third premise functions based on the synthesis of the first two and suggests that the ability of the international community of states must adapt over the past centuries to accommodate to the political changes in order to ensure its continuity. In this case, I refer to the role of non-state actors in international politics, especially with regard to the use of force.

As noted earlier in this chapter, changes in the way war was made resulted in a decrease of wars between states and an increase in intrastate wars. But that did not represent the retirement of states from this area or the loss of their relevance in the control of the use of force in international politics. On the contrary, the United Nations Security Council continued to address the issue to preserve the principles that underpin international order.

Thereby, strategies such as peace missions, described earlier, changed their structure and became more complex and multidimensional. International responses were no longer intended to stop the immediate use of force, but to build structures that would prevent its use in domestic societies.

In this sense, States, as representatives of the international society, act – or developed a legal and normative framework that allows them to act – in order to prevent violence among non-state actors from escalating. Several international documents, produced within the United Nations' scope, point to this trend, as the 2004 report "A more secure world: Our shared responsibility – Report of the High-level Panel on Threats, Challenges and Change" or the "An Agenda for Peace – Preventive diplomacy, peacemaking and peace-keeping" of 1992 and its supplement published in 1995. These documents reinforce values that are inherent to international society as they prescribe both, the member's expected behavior and the actions that must be rejected in hopes of collective action by its members.

Therefore, *Jus ad bellum* and *jus in bello* are part of this international normative toolkit. They reflect the modern understanding about when the use of force is accepted in international politics as well as implied conditions. At the same time, it protects individuals and communities from the use of excessive force in order to ensure a humanitarian foundation that is common to all States, groups and individuals.

And, how would non-state groups submit to these practices? I believe this answer is determined by wishful thinking, but that an operation is easily envisioned.

Non-state groups would be subject to the same controls as States as they seek international acceptance and recognition of their claim. Therefore, their strategies and methods would be subject to the same values and conditions as States'. Moreover, they would be subject to the elements that guide international society.

States, in turn, would act to control and ensure this behavior, particularly at the UN level. The understanding that these non-state groups have international rights and duties is widely disseminated, as shown by the Security Council's resolutions and recommendations in the past couple of decades. However, acting and maintaining credibility are an important way to ensure that two of the international society's fundamental values are being observed. Therefore, limiting violence and respecting agreements do affect non-state groups. On the other hand, the issues of sovereignty and stable possession present clear limitations internationally given their state-centric approach.

Concluding thoughts: signs of optimism or challenges to the law of war?

Despite the remarkably optimistic approach I present in this chapter and discussion, both international law and the law of war face hard challenges. The tension between might and right are an integral part of international relations so this relation may affect the general perception on the effectiveness of international law.

On the side of the *jus ad bellum*, the UNSC needs to have the ability to overcome such wrong perceptions. As the international body responsible for legitimizing the use of force in international politics, the UNSC has played its role properly, despite some lack of collaboration from state members. The challenges posed by contemporary armed conflicts to the *jus ad bellum* refer both to the possibilities of promoting peaceful means to resolve disputes as well as the collective response to international threats.

The challenges that lay here, for reflection and without questioning, can be included in two larger groups. The first group is made up of the collective arrangements that are sought so the effectiveness of the Law of war is not affected by the perception that force constrains the law. The second group is formed by elements deriving from the behavior of belligerent groups and that affect individuals, communities and even the international society of States based on an idea of humanitarianism.

As I propose in another paper (Valencia, 2014), the role of States in the prevention of violence and on behalf of a larger humanitarian bond still faces issues related to specific interests, whether of a political, economic or strategic nature. Thus, rhetorical support without effective action or hindering of authorization for collective actions can affect the way international law is perceived by both the international community of States as by non-state groups. This happens because, despite the duty to act when called upon by the Security Council, there is no obligation to do so, given the

sovereignty of states. Thus, particularly when there are deeper connections between those States or target groups of international action and the countries engaged in the effort to prevent the use of force, international collective action can lose momentum. Still, States reinforce international law as they seek explanations for this violation of norms, creating justifications that would make such violations "morally acceptable".

In that sense, is it possible to think that right may contain might? The examples mentioned in the introduction to this chapter may suggest otherwise, but it is important to notice that armed conflicts became the exception in international relations. States have developed mechanisms that limit the opportunities they use force, even considering the possibility of deterrence. Powerful states may still act unilaterally and violate international norms, but they still justify their actions. We can take George W. Bush's attempts to justify the US invasion to Iraq based on legal interpretations of a UNSC resolution. Or Putin's attempt to justify invading Ukraine based on a threat against peoples with a Russian ascendency. Unlike in previous centuries, an interstate war is unlikely, which may be considered great news: states are more likely to resolve their disputes via peaceful means.

Thus, and despite the problems that may arise from the legitimization of the use of force, I understand the major challenges to international society come from the *jus in bello*. One can correctly points out that the number of armed conflicts worldwide has reduced sensibly in the last decades, both in the state and intrastate levels. However, it is also correct to highlight that armed conflicts are getting more violent. If one considers that intrastate wars are currently predominant and more violent, our perception of international law would indicate a complete failure of such institution. How can international society revert such trend?

States tend to follow the principles of *jus in bello* more often than non-state groups. However, most political actors abide by the bulk of international norms most of the time. Nonetheless, some cases of non-compliance affect our global perception and makes jus in bello seem less effective than it really is.

These elements have a common base but ultimately stand out in different ways. During the 1980s and 1990s, the violation of the principles of *jus in bello* was more evident within the great genocides that marked the intrastate conflicts that decade. The genocides in Rwanda, Cambodia and Bosnia-Herzegovina, for example, were a facet of how non-state groups were active in conflicts. The use of this kind of violence was a way to dehumanize the enemy, bringing it down to a sub-human condition as a way to legitimize violence.

In recent years, violations of *jus in bello* were more evident with the creation of conditions that led to the collapse of the states where conflicts occur, leading to large displacements of people affected by violence. Unacceptable and unnecessary levels of violence in intrastate armed conflicts currently promote large waves of refugees that, although protected by international standards, find themselves caught between a violent dispute in their territory and the difficulties of establishing, temporarily or

permanently, in other regions as refugees. As a policy tool, international law offers solutions to these issues, but there is no way to force states or non-state groups to abide by such responses. International law is a coordinating law, dependent on the cooperation and interdependence of actors in order to be effective.

However, it is important to highlight a final topic before concluding this chapter. Despite obvious problems in the application of international law and the laws of war, the international community seems more inclined than ever to adopt collective solutions to resolve disputes and prevent the use of force and violence. Even in situations where enforcement is not evident and the effectiveness of the standard is not as apparent as desired, there is legal room to develop forms of constraint. Coercive measures do not involve only the use of military force, but also mechanisms of political and economic sanctions, for example. Thus, the law of war makes room for these alternatives as a way for preserving and complying with the principles of jus ad bellum. After all, the legitimacy of international political actors is a fundamental aspect in the consolidation of international society. The development of alternatives to strengthen international society is an aspect that makes international law a compatible tool with the political and historical conditions for its implementation.

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