INTERNATIONAL HUMANITARIAN LAW AND THE MODERN CONCEPTUAL CONUNDRUM OF *JUS AD BELLUM**

Abstract
Attempts to prevent the confusion that accompanies the misunderstanding of the conflation of humanitarian aid with geopolitical hostility remain a subject of persistent global scrutiny and academic debate. Removing these benign interventions meant to guarantee legal safe harbor for persons who are engaged in charitable works presents a uniquely intricate, if not paradoxical, jurisprudential problem and challenge. There exists a precarious doctrinal tension where the categorization of altruistic actors directly intersects and clashes with the legal parameters defining aggressive warfare. This article evaluates the seeming challenges of constructing, reconstructing, deconstructing, and elucidating the constituent elements of the jus ad bellum in international discourse, tracing its technical definition from its historical evolution to modern jurisprudence. The primary obstacle lies in its conceptual definition. The subject has generated a multifarious of conflicting and confusing interpretations and diverse scholarly perspectives, compounding the analytical complexities and hurdles that impede efforts to establish a precise universal conceptualization as well as a universally accepted definition. Under international law, the definition of the concept of jus ad bellum has been defined so vaguely and ambiguously that it has lost its original intent. This paper seeks to address the intersecting legal and theoretical challenges that exist between philanthropic entities whose primary obligation is purely charitable work and the core, war-driven purpose of jus ad bellum. It examines the interrelationship and interplay between international humanitarian operations and the legal frameworks governing conflict. The core argument is that personnel engaged in humanitarian activities must be granted specific criminal immunity while performing their routine duties. In addition, the paper suggests an urgent imperative to reconstruct the contemporary evolutionary concept of jus ad bellum within international law. One way is to develop contemporary methods and mechanisms to monitor and regulate state and non-state conduct and prevent standard relief operations from being misconstrued as violations of jus ad bellum. Ultimately, this study advocates for an updated regulatory framework that safeguards aid workers while maintaining global systemic security measures and holistic security evaluations.

Keywords: Jus ad Bellum, Modern Conceptual Conundrum, International Humanitarian Law, International Law, Warfare

1. Introduction

The dialogue concerning the broad usage of international humanitarian law and Jus ad bellum has elicited a sophisticated comprehension and interpretation.[1] One reason is that the doctrine of Jus ad bellum, while a long-standing development, is beset by terminological ambiguity. Equally significant is the ongoing debate among academics, states, and humanitarian organizations, including non-state entities, regarding its interpretation in contemporary armed conflicts and the absence of actionable compliance mechanisms.[2] In other words, the discourse surrounding the universal application of international humanitarian law and *jus ad bellum* has generated highly nuanced interpretations.[3] This conundrum and complexity stem overtly from the fact that the doctrine of *jus ad bellum*, despite its historical heritage and pedigree, remains beset and overwhelmed by conceptual and terminological obscurity and ambiguity. This is in addition to the fact that a large number of scholars, sovereign states, and humanitarian organizations including non-state actors regarding its doctrinal interpretation in contemporary conflicts, a challenge compounded by the absence of robust enforcement mechanisms.

A primary development in jus ad bellum involves the shifting classifications of participants in international armed conflicts.[4] tangible acts of aggression show in several distinct scenarios.[5] First, a state may formally declare war against another. Second, a nation's armed forces may violate another state's territorial integrity without a formal declaration. Finally, acts of aggression occur when a state intentionally targets the air forces of a rival nation.[6] In other words, a significant development within the doctrine of *jus ad bellum* concerns the legal classification of actors and combatants in international armed conflicts. By the instinct of tradition, illegal use of coercive measures and aggression have been conceptualized via many distinct parameters. One parameter envolves a formal declaration of war by one sovereign state against another. The second involves a cross-border military invasion or incursion by a state's armed forces absent any formal intention to declare war. A final dimension manifests when a state deliberately executes targeted strikes against the aerial assets of another nation.

***By Richard Suofade OGBE,** Senior Lecturer, Faculty of Law, Niger Delta University, Amassoma, Bayelsa State, Email; drogbe@ndu.edu.ng

[1] Michael N Schmitt, 'The Resort to Force in International Law: Reflections on Positivism, Natural Law, and policy-Oriented Jurisprudence' (2011) 24(3) *Leiden Journal of International Law* 519

[2] Ibid, 524

[3] Christine Gray, *International Law and the Use of Force*, (4th edn, Oxford University Press 2018) 120

[4] Shai Dothan, 'The Humanization of *Jus ad Bellum*: Prospects and Perils' (2021) 32(2) *European Journal of International Law* 316.

[5] Ibid, 313

[6] Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, art 63

2. The Fluid and Ambiguous Parameters of the Right to Wage War

Attempts at defining the concept of *jus ad bellum* have been volatile **and** obscure.[7] This situation is rooted in core collateral factors that unfortunately still exist.[8] This nebulous situation has impacted the evolution, importance, and jurisprudence of any definition applied to *jus ad bellum*.[9] In other words, attempts to conceptualize *jus ad bellum* have long been protean and elusive. This definitional instability is confounded by exogenous variables that continue to persist within the international order. Consequently, this conceptual obscurity has severely impeded the evolution, normative authority, and jurisprudence of the *jus ad bellum* framework.[10]

One topical challenge is the conceptualizational and structural ambiguities of Article 51 of the UN Charter. While it permits self-defense against an armed attack, it fails to specify the required threshold.[11] This deletion and oversights spark current scholarly debate over whether digital conflict, economic coercion, or minor border disagreements and attacks meet the threshold for retaliation. In other words, a key jurisprudential challenge in contemporary international law stems from the definitional and structural ambiguities embedded within Article 51 of the UN Charter. It is correct to say that the provision unambiguously authorizes a state's intrinsic right to defend itself collectively or individually in response to an armed attack, the letter and spirit of the Charter do not make any provision as regards the precise threshold required to trigger this inherent right. This opaque permutation has created an analytical legal conundrum which now forces scholars and jurists to struggle with the conceptual boundaries of state coercion. The resulting ambiguity complicates state accountability, as international bodies struggle to evaluate the legality of unilateral military responses against asymmetric or unconventional provocations.[12]

As expected, this structural indeterminacy triggers a drawn-out debate on how to categorize gray-zone operations that fall below traditional thresholds of conventional warfare. In particular, intense controversy persists regarding whether low-intensity border skirmishes, offensive cyber operations, or aggressive economic warfare can legally constitute an armed attack.[13] Whereas historical interpretations often anchored in the International Court of Justice's *Nicaragua* precedent require an attack to meet specific criteria of scale and effects, modern state practice increasingly challenges these rigid boundaries.[14] The flop and slip of Article 51 to adapt to modern asymmetric threats profoundly undermines the collective security framework and architecture established in 1945, since state adversaries utilize digital sabotage and economic destabilization to achieve strategic objectives without firing a single conventional weapon[15]

In other words, the precise and sacrosanct legal mechanism that governs and controls the legality of military force is captured and authorized by the extant provisions of the United Nations Charter. Article 51 clearly states that military intervention is unlawful and cannot be deployed unless authorized via a Security Council mandate or executed in self-defense. While these statutory preconditions appear textually unequivocal, systemic ambiguities have arisen regarding the precise parameters of self-defense. Divergent state interpretations have severely compromised the consensus on when the use of force is legally permissible, rendering the doctrinal boundaries of self-defense exceptionally fluid and contested.

The definition and interpretation of self-defense through its interpretation of Article 51 is well clarified by the Charter, which explicitly and precisely defines it as a response to imminent peril**.** This differs from unlawful preemptive force, which is an attack launched with the aim of forestalling aggression. The issue of self-defense remains open to varying interpretations because, when it is legally permitted, the prohibition of military intervention is not compromised. In other words, the Charter delineates the parameters of self-defense via its construction of Article 51, which explicitly restricts the doctrine to scenarios featuring an imminent threat. This architectural mechanism is contrary to unlawful preemptive self-defense, characterized by military exigency carried out to prevent anticipated aggression. This partly makes the doctrine of self-defense a subject of intense jurisprudential debate. The situation is the same even when such military action is lawfully invoked; the foundational prohibition against military intervention remains uncompromised.

---

[7] Michael N Schmitt, 'In Defence of Scarcity: An Argument for Maintaining the Jus ad Bellum/Jus in Bello Distinction' (2015) 54 *Washburn Law Journal* 137

[8] Ibid, 139

[9] Christopher Greenwood, 'The Relationship Between Ius ad Bellum and Ius in Bello' (1987) 9 *Review of International Studies* 221

[10] Ibid, 228

[11] Mary Ellen O'Connell, 'The Power and Purpose of International Law' (2011) 18 *Indiana Journal of Global Legal Studies* 46

[12] Judith Gardam, 'Necessity and Proportionality *in Jus ad Bellum* and *Jus in Bello'* (1993) 32 *Virginia Journal of International Law* 392

[13] Oona A Hathaway and Scott J Shapiro, 'Outlawing War: New Ways of Enforcing International Law' (2019) 113 *American Journal of International Law* 425

[14] *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 14, para 194

[15]

The inference is that such a nation cannot be deemed an aggressor. It is this vagueness that prevents international law from explicitly defining the crime of aggression. Closely related to this is the central challenge of analyzing the crime of aggression under Article 2(4) of the UN Charter, which also complicates the permissibility of military intervention. Although Article 2(4) is a fundamental UN principle, it fails to outline explicit qualifications for the use of force; instead, this concept must be implicitly inferred from related charter provisions. This dynamic has only exacerbated the overall issue. It is inferred that such a state cannot be classified as an aggressor. This very definitional imprecision obstructs the capacity of international law to establish a lucid codification of the crime of aggression. Inextricably linked to this issue is the foundational analysis of Article 2(4) of the UN Charter, which further complicates the legal architecture by failing to delineate the boundaries of permissible military intervention explicitly to delineate the boundaries of permissible military intervention explicitly. Although Article 2(4) represents a pillar of the United Nations, it fails to state the explicit qualification of what constitutes the use of force. Instead, this threshold must be implicitly deduced from peripheral charter provisions a structural limitation that has heavily compounded the existing legal ambiguity.

3. The Interplay of International Humanitarian Law and *Jus ad Bellum*: Structural Ambiguity and Legal Stagnation

The dichotomy between international humanitarian law and *jus ad bellum* is highly ambiguous and fluid**,** which accounts for the varied interpretation and understanding.[16] This is part of the reason the pace of development of international legal standards for humanitarian activities is rather sluggish. In other words, the demarcation between *jus ad bellum* and international humanitarian law is complex and unstable, which accounts for the varied perspectives and approaches taken. This is part of the reason the pace of development of international legal standards for humanitarian activities is rather stagnant.

The constructural foundational relationship between *jus ad bellum* (the legal framework governing the resort to force) and international humanitarian law only shows a core theoretical fault line in modern public international law.[17] Traditional legal doctrine suggests a more codified, pragmatic separation between these two regimes. This dualistic framework ensures that the application and explication of humanitarian protections remain distinct and independent of the legality of any form of resort to force, thereby guaranteeing equal protection for all victims of armed conflict.[18] Unfortunately, contemporary state practice, asymmetric warfare, and the rise of non-state actors have increasingly blurred this conceptual boundary. This fluid and ambiguous interface creates an unstable interpretive legal framework, leading to highly fragmented readings of international legal obligations.

This doctrinal conundrum explicitly undermines the progressive development and growth of international legal rules, principles, and standards that govern and control humanitarian activities. Because the demarcation between *jus ad bellum* and IHL is perceived as malleable, states frequently conflate the political legitimacy of a conflict with the objective execution of humanitarian operations. This apparent failure injects geopolitical permutations as well as calculations into what should ordinarily be an objective legal space. It is this palpable fear that makes States resist any form of binding legal evolution on account of new humanitarian codifications that might inadvertently validate an adversary's cause or restrict their own strategic mechanism and advantage. Consequently, the codification of advanced humanitarian standards remains stagnant, paralyzed by conflicting state perspectives and defensive legal postures.

4. *Opinio Juris*: Evaluating State Practice and Acts of Aggression

The concepts of acts and aggression remain contextually distinct within the framework of the treaty, which has been explicitly explicated in the UN Charter. This conceptual divergence is anticipated given the heterogeneous interpretations advanced by international legal scholars. Whereas the "act" is taken to mean an infraction carried out by the state, crime is simply described as the individual criminal responsibility ascribed to the mastermind of the underlying aggression. Doctrinal consensus therefore dictates that while a sovereign state perpetrates an act of aggression, an individual incurs liability for a crime of aggression. Both modalities are firmly codified within the Rome Statute and concurrent international legal instruments.

Under Articles 39 to 51 of the United Nations Charter, the Security Council possesses the exclusive competence and right to determine the existence of any threat to international peace and security. However, the debate remains unabated over the precise codification of what constitutes an "act of aggression. This partly because the Charter omits an explicit conceptual and doctrinal framework. Unfortunately, the charter gives the Security Council this interpretive authority to entirely use its discretion. The Security Council has discharged this formidable mandate under highly contentious and politically fraught circumstances, routinely drawing substantial criticism from scholars and public commentators who argue its determinations are legally inconsistent or structurally inadequate.

[16] Henning Lahmann, 'Jus Contra Bellum in Cyberspace and the Sound of Silence' (2022) 9 *Oslo Law Review* 21
[17] Robert Kolb, 'Origin of the Twin Terms Ius ad Bellum and Ius in Bello' (1997) 320 *International Review of the Red Cross* 553, 559
[18] Convention on the Safety of United Nations and Associated Personnel (adopted 9 December 1994, entered into force 15 January 1999, 2051 UNTS 363, art 7.

The Rome Statute deserves a scholarly examination as regards the codification of the act and crime of aggression, majorly because it is the Rome Statute that sets up the International Criminal Court in 2002. This treaty grants exclusive jurisdiction to the ICC over the crime of aggression. Despite the well-coordinated opposition by several global powers most notably the United States, the United Kingdom, and various Western allies against the integration of this offense into the Court's mandate, the provision was ultimately adopted. This legislative success was catalyzed by the concerted diplomatic efforts of a coalition comprising numerous European Union member states and a significant contingent of the Non-Aligned Movement, who collectively championed its inclusion.

A seminal achievement of the 2010 Kampala Review Conference was the codification of a definition establishing individual criminal responsibility for the crime of aggression. This jurisdictional framework dictates that prosecution hinges upon two cumulative thresholds. First, the accused must occupy a position of leadership vesting them with effective authority to direct the political or military apparatus of a State. Second, the individual must be substantially involved in the planning, preparation, initiation, or execution of an act of aggression which, by virtue of its character, gravity, and scale, constitutes a manifest violation of the United Nations Charter.

5. Constitutional Dynamics: The UNSC and UNGA Frameworks on Force

The United Nations Security Council is endowed with the explicit jurisdictional competence under Chapter VII of the U.N. Charter to investigate and definitively determine the existence of any threat to the peace, breach of the peace, or act of aggression. Within the metrics of international law, these three seemingly confusing legal classifications are not intended to be synonymous; on the contrary, they represent a nuanced spectrum of geopolitical crises. The peculiar applications of these terms within the foundational text of the Charter, complemented by the various resolutions by the General Assembly, only provide doctrinal jurisprudential credence to their varied doctrinal interpretations and explications.

Historically, both the primordial intendment of the framers as well as the progressive evolution of international legal frameworks have isolated acts of aggression as the most egregious violations of state sovereignty.[19] This conceptual and doctrinal hierarchy theoretically informs the Security Council's structural legal framework, which makes an act of aggression the most severe manifestation of a breach of the peace. In operation, the Security Council routinely constructs and applies these definitions through a highly contextualized, politically contingent lens. Rather than relying on rigid theoretical definitions, the Council primarily identifies actionable aggression when there is an overt deployment of armed might directly violating the territorial integrity or political independence of a victim state.

This evidence clearly shows a clear inclination by the United Nations General Assembly (UNGA) to identify acts of aggression. For instance, states that violate another nation's territorial sovereignty are typically designated as outcasts, a retributive measure intended to act as a deterrent. However, the UNGA is frequently accused of being selective in its determination of acts and crimes of aggression. Consequently, scholars have interrogated why the UNGA has failed to establish an objective definition of the crime of aggression that ensures due process for potential defendants and guides prosecutions impartially. This persistent failure is widely regarded as its defining vulnerability.

Positioning the definition of the crime of aggression within the parameters of UN Resolution 3314 only promotes the desired and well-intended consistency with customary international law. Under this framework, a clear carve-out must be established to immunize interventions executed under regional multilateral auspices. Specifically, state actors operating via regional organizations to conduct intra-regional humanitarian operations should be shielded from prosecution for aggression.[20] Despite the fact that these operations do not have any explicit statutory authorization under the United Nations Charter, they nonetheless garnered widespread commendation from the UN Secretariat, the Security Council, and the broader international community.

One prospective reform requires the International Criminal Court (ICC) to rectify and refine its definition of the crime of aggression. The current framework is overly expansive, ambiguous, restrictive, and volatile, thereby creating a chilling effect that jeopardizes legitimate humanitarian initiatives under the threat of criminal liability. Any attempt to safeguard the judicial independence of the ICC will necessitate ensuring that the procedures governing deference to Security Council resolutions remain insulated from political permutations and institutional bias.

6. Conclusion

This paper provides an evaluation of the intersections and disparities between International Humanitarian Law and the modern concept of *jus ad bellum*, tracing their historical evolution.[21] This paper submits that bringing both procedural and substantive solutions will take care of these murky and obscure complexities. A primary finding indicates that while

[19] Claus Kreb, 'The State Conduct Element of the Crime of Aggression' (2019) 20(2) *Journal of Conflict and Security Law* 189.

[20] Emanuela-Chiara Gillard, 'Promoting and Facilitating Impartial Humanitarian Work in Evolving Conflicts' (2025) 107(927) *International Review of the Red Cross* 415.

[21] Yoram Dinstein, *War, Aggression and Self-Defence* (6th edn, Cambridge University Press 2017)

jus ad bellum remains doctrinally ambiguous, its definition has evolved sufficiently to establish legal culpability under customary international law.[22] Resolving this doctrinal impasse requires the formulation of a mutually agreed-upon conceptual and structural framework for *jus ad bellum*. This proactive measure serves to forestall the inevitable escalation of political and legal complications. Although such accountability may appear logistically unfeasible, individual criminal responsibility for violations of *jus ad bellum* constitutes a doctrine of customary international law that merits further refinement and consolidation. In other words, navigating this jurisprudential challenge requires a concerted effort to establish a consensus-based definitional and structural framework for *jus ad bellum,* which should not be left to the whims and caprices of individual States. Such a measure is critical to preempting destabilizing political and legal complications that would otherwise inevitably arise.[23] While arguably idealistic in practice, individual accountability for violations of *jus ad bellum* remains a foundational tenet of customary international law that warrants progressive development and codification.

[22] Christopher Greenwood, 'The Relationship Between Ius ad Bellum and Ius in Bello' (1987) 9 *Review of International Studies* 221, 223

[23] Ibid, 227