# The function of Jus Post Bellum in international law

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## Introduction

### *A. Introducing the Theme of Jus Post Bellum*

Sir Hersch Lauterpacht once opined that "if international law is, in some ways, at the vanishing point of law, the law of war is, perhaps, even more conspicuously, at the vanishing point of international law."[1] Lauterpacht was not arguing that there was no law to apply—something antithetical to his approach.[2] Rather, he was suggesting that there was work to do. He makes this observation after a stunning list of problems that require clarification,[3] suggesting that the lawyer must "do his duty regardless of

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[1] Lauterpacht, H, The Problem of the Revision of the Law of War, *British Year Book of International Law* 29 (1952) 360, 381-2.

[2] See generally, Lauterpacht, Hersch. Function of Law in the International Community. Oxford: Clarendon Press, (1933); "Non Liquet and the Function of Law in the International Community'(1959)." BYIL 35: 124; Lauterpacht, Hersch. "The Doctrine of Non-Justiciable Disputes in International Law." *Economica* 24 (1928): 277-317. The title of the present work, "The Function of *Jus Post Bellum* in International Law" is in part a homage Lauterpacht's historic work, The Function of Law in the International Community. It was based on an earlier 1928 work in *Economica* in which Lauterpacht argues against the doctrine of non-justiciable disputes in international law and expanded into a general exploration into the principal issues of the philosophy of international law. Lauterpacht suggested "a hypothesis which, by courageously breaking with the traditions of a past period, incorporates the rational and ethical postulate, which is gradually becoming a fact, of an international community of interests and functions." Lauterpacht, Hersch. Function of Law in the International Community. Oxford: Clarendon Press, (1933), p. 422. This hypothesis, that an international community of interests and functions exists, informs this work.

[3] The list is 36 lines long. Lauterpacht, H, The Problem of the Revision of the Law of War, *British Year Book of International Law* 29 (1952) 360, 381.

dialectical doubts—though with a feeling of humility[.]"[4] What is that duty? To "expound the various aspects of the law of war."[5]

One might continue the observation—if the laws regulating war are at the vanishing point of international law, the laws regulating the transition from war to peace are at the vanishing point of laws regulating war. The transition to peace is at the frontier of efforts to govern human conduct, both at the global and local level. As an armed conflict concludes, the victor's comparative strength is often at its apogee, and the opposing side may be at its most desperate. How can either side be constrained by law under these challenging circumstances?

Characterizing the transition to peace as a phenomenon at the frontier of law only hints at the rich, complex nature of this difficult area. The transition to peace is often a period of intense instability and complex legal interplay and flux. New states, constitutions, inter-state agreements and peacekeeping agreements may come into existence, crimes may or may not be amnestied, old institutions may lose their legal existence and lawgivers of the *ancien régime* may lose their role as a source of law. The causes of the conflict, the conflict itself, and actions taken within the conflict may be the subject of legal action as the transition to peace moves forward.

[4] Lauterpacht, H, The Problem of the Revision of the Law of War, *British Year Book of International Law* 29 (1952) 360, 381. Referring to lawyers generically as male was common in 1952.

[5] ibid 382.

### *B. Problematization*

This study focuses on legal and normative principles of the transition from armed conflict to peace, often called *jus post bellum*. *Jus post bellum* is self-consciously named in relation to its sister terms, *jus ad bellum* and *jus in bello*, terms that have been exhaustively developed and theorized since they were coined in the early-1900s, a subject that will be discussed in detail below. *Jus post bellum*, in contrast, is comparatively under-developed. For *jus post bellum*, there is no foundational treaty text equivalent to the Hague Regulations of 1899[6] or 1907[7] or the Geneva Conventions of 1949[8] for *jus in bello* or Articles 2 and 51 of the United Nations Charter[9] for *jus ad bellum*. It is a phrase frequently used without definition, or with little understanding that others may use the term to mean something else. It is almost never used with anything approaching a full exposition of the intellectual history upon which it is built. Before the scholarship in

[6] Short title: Hague Declaration (1899); International Peace Conference 1899, Declaration (IV,3) concerning Expanding Bullets. The Hague, adopted 29 July 1899, (entry into force 4 September 1900).

[7] Short title: Hague Regulations (1907); International Conferences (The Hague), Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907.

[8] International Committee of the Red Cross (ICRC), Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 12 August 1949, 75 UNTS 31 ("GCI"); International Committee of the Red Cross (ICRC), Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), 12 August 1949, 75 UNTS 85 ("GCII"); International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), 12 August 1949, 75 UNTS 135 ("GCIII"); International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287 ("GCIV").

[9] United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

recent years, the laws and principles that constitute the *jus post bellum* were rarely expounded. This study helps to consolidate a firmer theoretical grounding for the term, as well as a clearer intellectual history and analysis of its content. *Jus post bellum*, like *jus gentium* or *jus civile*, is best understood as *by definition* primarily a system or body of law and related principles.

While this is primarily a work of legal analysis, given the deep roots of *jus post bellum* analysed in Chapter 1, normative aspects will also be considered. Larry May's work on the normative principles of *jus post bellum* is noteworthy. May advocates that six normative principles of *jus post bellum* be recognized: rebuilding, retribution, reconciliation, restitution, reparation, and proportionality.[10] Given the normative content of his work, he rightly suggests that the addressee of these principles are not only political leaders but average citizens.[11] The goal of May's conception of *jus post bellum* is the same as the hybrid functional approach outlined in this work,[12] namely, one that emphasizes the *functional* aspects of *jus post bellum* (establishing a just and lasting peace) while nonetheless rooting it in a general timeline of transition from armed conflict to peace.[13] As May and Elizabeth Edenberg put it:

[10] See e.g. May, Larry. "Jus Post Bellum Proportionality and the Fog of War." European Journal of International Law 24.1 (2013): 315-333, p. 316.

[11] ibid 318-9.

[12] See particularly ch. 3.

[13] May, Larry. "Jus Post Bellum Proportionality and the Fog of War." European Journal of International Law 24.1 (2013): 315-333, p. 320.

> It is not merely peace that is at issue, but a just peace, where mutual respect and the rule of law are key considerations. […] The *jus post bellum* literature focuses, as one might expect, on the achieving of peace. […] While *jus post bellum* theorists want a just peace, not merely any peaceful settlement of hostilities, they focus on the stopping of hostilities.[14] *Jus post bellum* principles all are aimed at securing a just and lasting peace at the end of war or armed conflict. Discussion of these principles has been standard fare in the Just War Tradition for several thousand years, even if *jus post bellum* principles are not usually given the status afford to *jus ad bellum* and *jus in bello* principles.[15]

This work principally reflects on the historic meaning of normative principles that inform contemporary law and practice in Chapter 1, *Past —The Deep Roots of* Jus Post Bellum. Recognition that the application of law in this area has, as May and Edenberg state, the *aim* of a just and lasting peace (and is not neutral with the application to these normative goals) is necessary for understanding and development of *jus post bellum*.

Another way to frame the normative emphasis on a "just and sustainable peace" so often referenced in the literature of *jus post bellum* is to tie it to concepts form peace studies such as Johan Galtung's "positive peace" being differentiated from a mere "negative" peace,[16] without a just resolution of the causes of the war and conduct within the war.

[14] May, L. and Edenberg, E. (2013) 'Introduction', in May, L. and Edenberg, E. (eds.) *Jus Post Bellum and Transitional Justice:*. Cambridge: Cambridge University Press, p. 1.

[15] ibid. 2-3.

[16] The concepts of "negative" and "positive" peace were developed by Johan Galtung in his seminal 1964 article: Galtung, J. (1965). An Editorial. *Journal of Peace Research*, 1(1), 1-4. For more on Galtung's work on structural analysis of peace, *see also* Galtung, J. (1969). Violence, Peace and Peace Research. *Journal of Peace Research*, 6 (3), 167-191. Galtung, J. (1981). Social Cosmology and the Concept of Peace. *Journal of Peace Research*, 17 (2), 183-199. Galtung, J. (1985). Twenty-Five Years of Peace Research: Ten Challenges and Some Responses. *Journal of Peace Research*, 22 (2), 141-158. Galtung, J. (1990). Cultural Violence. *Journal of Peace Research*, 27 (3), 291-305.

The specific nature of what constitutes a "just" peace depends in large part on what the causes of the war and conduct of the war were. The fundamental aspect of what is "just" with respect to a "just and sustainable" peace is that *jus post bellum* is not simply focused on peace at any price with respect to justice; it rejects for example the goal of a sustainable peace founded on annexation, the denial of self-determination, rewarding aggression, denying the responsibility of trusteeship, violation of laws of occupation or human rights, or complete impunity for international criminal law violations. Attention should be paid not only to the justice demanded under international law but the particular priorities of those who will live in the constructed peace.[17] Legal scholars interested in *jus post bellum* cannot shy away from principles, including normative principles, that inevitably arise in discussions of *jus post bellum*.[18]

For international lawyers the transition to peace may be at the frontier, or the vanishing point. For those surviving armed conflict and that must live in the society created by the

[17] For more on subjective and objective public reasoning in the area of distributive justice, the foremost scholar on the subject may be Amartya Sen. *See* e.g. Sen, Amartya Kumar. *Collective choice and social welfare*. Vol. 11. Elsevier, 2014; Sen, Amartya. *The Idea of Justice*. Harvard University Press, 2011 (particularly Part IV); Sen, Amartya. *Development as freedom*. Oxford Paperbacks, 2001. For those particularly interested in a philosophical approach to the evaluation of post-conflict justice, the works of Larry May on the subject are recommended, particularly May, Larry. "Grotius and Contingent Pacifism." *Studies in the History of Ethics* (2006): 1-24; May, Larry. "Jus Post Bellum Proportionality and the Fog of War." *European Journal of International Law* 24.1 (2013): 315-333; May, Larry. "Jus Post Bellum, Grotius and Meionexia." Eds. Carsten Stahn, Jennifer S Easterday and Jens Iverson. *Jus Post Bellum: Mapping the Normative Foundations* (OUP 2014) 15–25; May, Larry. *After war ends: a philosophical perspective*. Cambridge University Press, 2012.

[18] For an example of an approach to define the principles of just peace from an international studies perspective, see Williams, Robert E., and Dan Caldwell. "Jus Post Bellum: Just war theory and the principles of just peace." *International Studies Perspectives* 7.4 (2006): 309-320.

peace, the possibilities and risks inherent in creating a potentially novel social structure with new rules and power relations is not at the edge but at the center of their reality. There is a chance of creating a new moment that is in a sense "pre-constitutional"—indeed peace agreements and similar documents often serve a constitutional function. One might argue that this period when the new core of a future society or relationship between states can be formed is, perhaps, controlled purely by non-legal forces, that it is the outcome solely of the use of force. But upon reflection, most jurists will reject that notion, adopting instead the notion espoused by Lauterpacht, that where there are questions, there is work to do in determining the international law that applies to the transition to peace.

Without answering the type of questions described above, there is an increasing gap between the references to *jus post bellum* and providing a coherent, well thought out theoretical and historical basis for the concept. By exploring definitional aspects of *jus post bellum*, including its relationship to *jus ad bellum*, *jus in bello*, and related concepts such as transitional justice and international criminal law, this work will seek to provide a coherent view of how scholars consider the term, closing the gap between the varied definitions scholars use for the term (when a definition is supplied at all). There is an unfortunate tendency by some scholars to treat *jus post bellum*, transitional justice, and post-conflict justice as interchangeable—this idea or assumption of interchangeability is a tendency this work argues against. By exploring the historical roots of *jus post bellum* within the just war tradition, it will address the gap between scholars such as Grégory

Lewkowicz[19] who insist that there are no such roots and the many authors who think such roots exist. With these foundations laid, the thesis will address the gap implicit in the uncertain question of the potential of *jus post bellum*.

### *C. Research aims*

This thesis has three overarching objectives. First, the thesis will evaluate the history of *jus post bellum avant la lettre*, tracing important writings on the transition to peace from Augustine, Aquinas, and Kant to more modern jurists and scholars. Second, it explores definitional aspects of *jus post bellum*, including current its relationship to sister terms and related fields. Third, it will explore the current state and possibilities for future development of the law and normative principles that apply to the transition to peace. *Jus post bellum* has received an increasing amount of attention in recent years, but remains comparatively[20] under-theorized, and frequently referenced without realizing that many authors be talking past each other, meaning different things while using the same term. The author's hope for the thesis is not only to help clarify the debate over the term, but also to move the consensus towards a hybrid functional (rather than temporal) approach to *jus post bellum*, that is, to define an approach to this area of law that focuses on the goal of achieving a just and sustainable peace (with an awareness of temporal context) rather than a mere discussion of law that applies during early peace.

[19] Lewkowicz, Grégory. "Jus Post Bellum: vieille antienne ou nouvelle branche du droit? Sur le mythe de l'origine vénérable du Jus Post Bellum." *Revue belge de droit international* 1 (2011).

[20] As compared to the last century's theorization of *jus in bello* and *jus ad bellum*.

In addition to the positive objectives identified above, it may be helpful to identify at the outset what this work argues against. Throughout the thesis, explicitly or implicitly, the suggestion that *jus post bellum* does not exist is rebuffed, as is the idea that it has no content. In the introduction and conclusion to Chapter 1 (Past – The Deep Roots of *Jus Post Bellum*) the claim that the just war tradition is devoid of discussion of the subject matter of *jus post bellum* or that discussing the just war tradition is meritless is specifically rejected. Chapter 2 situates *jus post bellum* with its sister terms, *jus in bello* and *jus ad bellum*. The particular content and contours of *jus post bellum* are explored in Chapter 3 (Three theories of *Jus Post Bellum*) and Chapter 4 (Present – An Exploration of Contemporary Usage). Chapter 4 also specifically rejects the idea that transitional justice, post-conflict international criminal law and *jus post bellum* are interchangeable ideas. Chapter 5 provides a closer examination of *jus post bellum* in international and non-international armed conflict. Chapter 6 examines the contemporary legal content of *jus post bellum.* More generally, the thrust of this work is not to argue for the use of the term *jus post bellum*, although there are reasons to do so, but rather to examine the law and normative principles of the transition to peace regardless of the terminology used.

### *D. Research questions*

It is not enough to simply invoke the existence of *jus post bellum*, as many scholars and practitioners do. Rather, it is helpful to, first, test the existence and meaning of *jus post bellum* and second, examine the added value of *jus post bellum*. The overarching

research question is to identify the function and content of *jus post bellum*. More specifically, the primary research questions discussed in this work are:

1) What are the historical roots of *jus post bellum* and how does this impact present day conceptualizations of *jus post bellum*?

2) To what extent do sister terms shape the contours of *jus post bellum*?

3) What is the present day function of *jus post bellum*?

4) To what extent do competitive notions such as transitional justice shape the contours of *jus post bellum*?

5) How does *jus post bellum* operate in international and non-international armed conflict?

6) What is the contemporary legal content of *jus post bellum*?

7) How should *jus post bellum* evolve as a concept?

For maximum clarity, each research question is paired with a chapter. Research question 1 (historical roots) is addressed in Chapter 1 (*Past — The Deep Roots of Jus Post Bellum*). Research question 2 (Sister terms) is addressed in Chapter 2 (*Exploration of Sister Terms*). Research question 3 (function) is addressed in Chapter 3 (*Three theories of jus post bellum*). Research question 4 (competitive notions) is addressed in Chapter 4 (*Present — An Exploration of Contemporary Usage*). Research question 5 is addressed in Chapter 5 (*Jus Post Bellum in the context of International and Non-International*

*Armed Conflict*). Research questions 6 and 7 are addressed in Chapter 6 (*Contemporary Legal Content of Jus Post Bellum*).

### *E. Explanation of Structure*

This work is structured in six chapters. The first four chapters form Part I, the theoretical foundation for the thesis. Chapter 1 establishes the existence and use of *jus post bellum* within the just war tradition, ranging from Augustine of Hippo to Immanuel Kant. Chapter 2, *Exploration of Sister Terms* roots the discussion of *jus in bello* in the "sister terms" *jus ad bellum* and *jus in bello*. One of the main concepts this work seeks to introduce and reinforce is outlined in Chapter 3, *Three Theories of Jus Post Bellum*. Chapter 4, *Present – An Exploration of Contemporary Usage*, has two major sections. The first section reviews contemporary scholarship, evaluating the functional/temporal definitional dichotomy. The second section contrasts *jus post bellum* and transitional justice.[21]

Part II builds upon the foundation of Part I, covering in two chapters the substance and future of *jus post bellum*. The question of why *jus post bellum* is useful for both International Armed Conflict and Non-International Armed Conflict and how it applies in each is explored in Chapter 5, *Jus Post Bellum in the context of International and Non-*

[21] This sub-chapter builds upon Iverson, Jens. "Contrasting the Normative and Historical Foundations of Transitional Justice and Jus Post Bellum: Outlining the Matrix of Definitions in Comparative Perspective": 80-101." *Jus Post Bellum: Mapping the Normative Foundations. New York: OUP* (2014); and Iverson, Jens. "Transitional Justice, Jus Post Bellum and International Criminal Law: Differentiating the Usages, History and Dynamics." *International Journal of Transitional Justice* 7.3 (2013): 413-433.

*International Armed Conflict*. Chapter 6 surveys the contemporary legal content of *jus post bellum* with an eye towards some areas (such as the Responsibility to Protect) that are more *lex ferenda*[22] than *lex lata*.[23] The work concludes with a review of the substance of *jus post bellum*, an appraisal of the research aims and suggestions for further research.

### *F. Propositions*

The following propositions are presented as a numbered list, not strictly orthogonal with the structure of this work, but bringing forth certain major points that are referenced throughout.

1. "*Jus post bellum*" is a useful and meaningful term, best used to examine and structure the laws and principles applicable to the effort to transition from an armed conflict to a just and sustainable peace. While meaningful, the phrase "*jus post bellum*" is not always used consistently by various authors. This plurality in intended meaning comes from the newness of the term, the complexity of the problem, and the relative under-theorization of the concept. Despite the newness of the term, the concept has deep roots.[24]

[22] Law as it should be.

[23] Law as it exists.

[24] See generally Part I.

2. The function of *jus post bellum* is the successful transition from armed conflict to a just and sustainable peace. A hybrid functional approach to *jus post bellum* is superior to a primarily temporal approach to *jus post bellum* in terms of coherence, efficacy and scholarly depth.[25]

    a. The simplest but least useful theorization of the *jus ad bellum/jus in bello/jus post bellum* tripartite division is that these areas cover the beginning, middle, and end of armed conflict. This might be called a "temporal" tripartite division. It might be thought of as a "horizontal" approach, where *jus ad bellum* covers the moment of entry into armed conflict, the *jus in bello* covers the period during armed conflict, and *jus post bellum* covers the period after armed conflict.

    b. With a hybrid functional conception, *jus ad bellum*, *jus in bello*, and *jus post bellum* can overlap temporally, but differ in terms of function. While the emphasis of application may change over time, with *jus ad bellum* taking the lead during peace, *jus in bello* taking the leading during periods of armed conflict, and *jus post bellum* playing a role during the transition to peace, their definition is rooted more in their function than in their sequence.

[25] See generally ch. 2, 3.

3. The concerns and laws of *jus post bellum*, like those of *jus ad bellum* and *jus in bello*, predate the terms themselves. A review of the works of Augustine and his peers, the Institutes of Justinian, the Decretals of Gregory IX, Thomas Aquinas, Baldus de Ubaldis, Francisco de Vitoria, Francisco Suarez, Alberico Gentili, Petrus Gudelinus, Hugo Grotius, Christian Wolff, Emer de Vattel, and Immanuel Kant demonstrate that the issue of the transition from armed conflict to peace is of enduring importance.[26]

    a. The writings of international jurists regarding the successful transition from armed conflict to a just and sustainable peace is deeply rooted in the same just war tradition that informs contemporary *jus ad bellum* and *jus in bello*.

    b. The legal and normative tradition regarding the transition to peace has been under-examined in part due to the retrospective application of the terms of the twentieth century (*jus ad bellum* and *jus in bello*) to encompass the entirety of thinking about armed conflict. This reductive pattern of thinking poorly serves contemporary understanding of these important works.

    c. It is a fair criticism to note that there are limits to the import of a tradition primarily based in Europe. A truly comprehensive, encyclopaedic

[26] See generally ch. 1.

approach to the history of legal and normative thinking regarding the transition from armed conflict to peace would be of great value, but is beyond the scope of this work. While not universal, there remains a good deal of value in analyzing a discrete tradition that has been largely historically rooted in Europe, given its impact on contemporary law and practice.

d. It is far from useless to discuss the ancient traditions of normative and legal thinking on the justice of war and peace, and indeed failure to reevaluate and consider the traditions that gave rise to contemporary international law is to doom oneself to a curious form of self-imposed blindness—not only to the beneficial analysis of past authors, but also to their errors (such as using *jus post bellum* as a general license to violate other norms).

4. While *jus post bellum*'s function in aiming to establish a just and sustainable peace is in many ways more complex than the function of *jus ad bellum* or *jus in bello*, it is no less coherent in its basic aims.[27]

a. The transition to peace is often a period of intense instability and complex legal interplay and flux. New states, constitutions, inter-state agreements and peacekeeping agreements may come into existence, crimes may or

[27] See generally ch. 2, 5.

may not be amnestied, old institutions may lose their legal existence and lawgivers of the *ancien régime* may lose their role as a source of law. The causes of the conflict, the conflict itself, and actions taken within the conflict may be the subject of legal action as the transition to peace moves forward.

b. One benefit of including *jus post bellum* as part of a trichotomy rather than limiting analysis of armed conflict and peace to the *jus ad bellum*/*jus in bello* trichotomy is it encourages a reevaluation of the coherence and purpose of *jus ad bellum* and *jus in bello* as well.

5. *Jus post bellum*'s sister terms *jus ad bellum* and *jus in bello* extensively shape the contours of *jus post bellum*, helping jurists take a comprehensive view of the challenges of armed conflict and the transition to peace.[28]

6. Transitional justice is clearly distinguishable from *jus post bellum*. Transitional justice, properly understood, is a conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes. [29] *Jus post bellum* is rooted in transition from armed conflict to a just and sustainable peace.[30]

[28] See generally ch. 2, 5.

[29] Teitel, "Transitional Justice Genealogy" 69.

[30] See generally, ch. 4.

a. While *jus post bellum* is substantively broader than Transitional Justice in many respects, *jus post bellum* is also clearly inapplicable in certain scenarios where Transitional Justice is applicable. Similarly, one can imagine a change in regime in which no significant human rights violations were perpetrated by the previous regime, deposed by armed conflict. Armed conflicts can happen without massive human rights violations. Additionally, armed conflicts occur without regime change. In these instances, Transitional Justice would tend not to apply, but *jus post bellum* would.

b. Similarly, Transitional Justice and *jus post bellum* are both distinguishable from post-conflict justice. Transitional Justice does not require armed conflict, while post-conflict justice obviously does. *Jus post bellum* is broader than post-conflict justice, although clearly can include it.

7. A review of the contemporary legal content of *jus post bellum* provides a clear indication of the need for *jus post bellum*. Procedural fairness is generally necessary for peace to succeed. Territorial disputes must be resolved, and aggression condemned. No longer is it acceptable and commonplace to exterminate or enslave the defeated population. The prohibition on the annexation of territory is central not only in determining the legality of particular post-conflict settlement, but also in underpinning the entire order of stable and pacific interstate relations. The possibility of holding individuals to account must be

available, and the possibility of freeing a post-conflict state from odious state must be considered.[31]

8. *Jus post bellum* should push back against the prohibition on transformative occupation in certain situations.[32]

9. *Jus post bellum* addresses an issue of vital concern for the international community and for post-conflict societies. Relapse into armed conflict is too frequent in modern history,[33] with devastating results. *Jus post bellum* should be developed to help all participants manage the complex process of ending armed conflict and developing early peace as successful as possible.[34]

The promise of peace lies not only in the cessation of the suffering of war but also in the wide variety of forms that peace can take. Navigating the path to a just and sustainable peace is notoriously difficult. There is work to be done on this frontier. Before looking at the laws and norms that apply and could apply to the transition to peace, it may help to take a step back and think generally about how to approach law and norms with respect to armed conflict in general.

[31] See generally ch. 6.

[32] See ch. 6.

[33] From 1945-2009, 57 percent of all countries that suffered from one civil war experienced at least one subsequent conflict. UCDP/PRIO Armed Conflict Dataset, vol. 4, 2009. Barbara F. Walter, Conflict Relapse and the Sustainability of Post-Conflict Peace, World Development Report Background Paper, 2010, World Bank, p. 1.

[34] Passim.

### *G. Conceptual framework: Introducing the law and principles regarding armed conflict and the transition to peace*

How should the law and principles regarding armed conflict be approached? At least since the terms *jus ad bellum* and *jus in bello* were invented in the early 20th century,[35] there has been a strenuous emphasis on the distinction between two sets of legal and normative questions regarding armed conflict. The law applicable to armed conflict is typically divided into two parts, the first governing resort to force (*jus ad bellum*), and the second the conduct within the conflict (*jus in bello*). While imperfect, the laws restricting aggressive war (*jus ad bellum*) and codifying war crimes and other international humanitarian law violations (*jus in bello*) have matured considerably since the Second World War. In contrast, transitions out of armed conflict are less regulated and frequently fail. The post-conflict pause in violence often collapses into renewed armed conflict, or persists as a mere "negative" peace,[36] without a just resolution of the causes

[35] *See* Robert Kolb, "Origin of the Twin Terms Jus Ad Bellum/Jus In Bello" (1997) 37 *International Review of the Red Cross* 553; *see also* Carsten Stahn, "Jus Post Bellum: Mapping the Discipline(s)" (2008) 23 *American University International Law Review* 311, 312.

[36] The concepts of "negative" and "positive" peace were developed by Johan Galtung in his seminal 1964 article: Galtung, J. (1965). An Editorial. *Journal of Peace Research*, 1(1), 1-4. For more on Galtung's work on structural analysis of peace, *see also* Galtung, J. (1969). Violence, Peace and Peace Research. *Journal of Peace Research*, 6 (3), 167-191. Galtung, J. (1981). Social Cosmology and the Concept of Peace. *Journal of Peace Research*, 17 (2), 183-199. Galtung, J. (1985). Twenty-Five Years of Peace Research: Ten Challenges and Some Responses. *Journal of Peace Research*, 22 (2), 141-158. Galtung, J. (1990). Cultural Violence. *Journal of Peace Research*, 27 (3), 291-305.

of the war and conduct within the war. From 1945-2009, 57 percent of all countries that suffered from one civil war experienced at least one subsequent conflict.[37]

There has been a push in recent years to approach the law that governs the use of force not as a dichotomy, but as a trichotomy. But adding *jus post bellum* to *jus in bello* and *jus ad bellum* has proven difficult, much as rebuilding a viable post-conflict society is more complicated than a general prohibition on armed conflict. To find the legal core of *jus post bellum*, one cannot simply reference a single document such as the prohibition on aggressive war in the Charter of the United Nations[38] or a set of treaties governing conduct in war such as the Geneva Conventions of 1949[39] and their additional protocols.[40] Rather, the law that governs the transition to peace is contingent and cross-

[37] UCDP/PRIO Armed Conflict Dataset, vol. 4, 2009. Barbara F. Walter, Conflict Relapse and the Sustainability of Post-Conflict Peace, World Development Report Background Paper, 2010, World Bank, p. 1.

[38] United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI; see in particular Articles 2 and 51.

[39] International Committee of the Red Cross (ICRC), Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 12 August 1949, 75 UNTS 31 ("GCI"); International Committee of the Red Cross (ICRC), Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), 12 August 1949, 75 UNTS 85 ("GCII"); International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), 12 August 1949, 75 UNTS 135 ("GCIII"); International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287 ("GCIV").

[40] International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3 ("API"); International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609 ("APII"); and to a minimal degree International Committee of the Red Cross (ICRC),

cutting. Different laws may apply to each transition, and the applicable laws in any particular transition will be drawn from legal areas often considered separately. For example, transitions to peace occur in the context of conflict exclusively between states and also in conflicts involving non-state actors, with the involvement of the United Nations Security Council or without its involvement, with the dissolution of states or the creation of them, with a military victory for those with criminal culpability or without that difficulty.

Why make the distinction between two or three different areas of regulation and norms relating to armed conflict? Why not one unified theory of the justice of war? Why not a highly atomized field with each sub-element of the current two or three areas treated as one of scores of separate areas (e.g. why think of *jus in bello* protections for those *hors de combat*, civilians, prisoners of war, and weapons law under one umbrella term)? The terms *jus ad bellum* and *jus in bello* were coined in large part to protect one set of concerns (governed by *jus in bello*) from another (governed by *jus ad bellum*). Again, *jus ad bellum* regulates recourse to the use of force. *Jus in bello* regulates the conduct of the armed conflict, seeking to limit the damage caused by war without resort to adjudicating the justice of the conflict as a whole.[41]

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Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 8 December 2005 ("APIII").

[41] *See, e.g.*, François Bugnion, Jus ad bellum, jus in bello and non-international armed conflicts, Yearbook of International Humanitarian Law, T. M. C. Asser Press, vol. VI, 2003, pp. 167-198

There are extremely good reasons to make this distinction between *jus ad bellum* and *jus in bello*, beyond any qualitative difference that allows for the creation of a convenient typology. Chief amongst these reasons is to protect *jus in bello* from *jus ad bellum*—that is, to prevent the asserted justice of one's cause[42] in war from being an excuse for one's conduct. Without a strict distinction between questions of *jus in bello* and *jus ad bellum*, the regulations of *jus in bello* tend to crumble under the emotional force of *jus ad bellum* claims, leaving the humanitarian concerns at the heart of *jus in bello* wholly unprotected.

Since the terms *jus in bello* and *jus ad bellum* became commonplace, this distinction has been the starting point for answering the question of how the law and principles regarding armed conflict should be approached. First, one determined if a particular question related to the laws and norms of entering into armed conflict. If that was not the concern but it still related to armed conflict, the question was generally determined to be one within the body of laws and norms known as *jus in bello.* Thus, *jus in bello* grew to cover many diverse wartime and peacetime concerns, as long as they were not reducible to *jus ad bellum*.

### *H. Addressees of jus post bellum*

Additional information regarding the addressees of *jus post bellum* will become clearer throughout this work, particularly in Chapter 2 (Exploration of Sister Terms) and Chapter 6 (on the contemporary legal content of *jus post bellum*). Introducing the range of addressees at the outset, however, may help to clarify the concept somewhat.

[42] Or the injustice of one's opponent's cause.

Discussing addressees can be unexpectedly complicated.[43] Even in the simple case of domestic law, there can be debate as to whether the addressee is the nationals of that state or the government officials and agencies. [44] Classical commandments such as "do not murder" directly address all persons, but typical modern domestic legislation often more directly regulates the state apparatus that may arrest, try, and punish (alleged) murderers.[45]

To take an example closer to the subject of this work, consider the question of the addressees of *jus ad bellum*. The standard response as to the addressees of *jus ad bellum,* is simple: states are the addressees, because *jus ad bellum* involves international armed conflicts, which are between states. On further reflection, scholars and practitioners might consider that the United Nations is also regulated and in a sense a source of specific regulation of *jus ad bellum*, in the form of one its organs, the United Nations Security Council.[46] The issue of which organ or subsidiary organ of the United Nations

[43] For a foundational work on the modern complexity of this issue (without emphasising the terminology "addressee") Kelsen, Hans. *Pure theory of law*. Univ of California Press, 1967. .

[44] For more on this general issue, see e.g. Stevenson, Drury. "To Whom Is the Law Addressed?." Yale Law & Policy Review 21.1 (2003): 105-167; Stevenson, Drury D. "Kelsen's View of the Addressee of the Law: Primary and Secondary Norms." *Hans Kelsen in America-Selective Affinities and the Mysteries of Academic Influence*. Springer International Publishing, 2016. 297-317; Stevenson, Drury D., Kelsen's View of the Addressee of the Law: Primary and Secondary Norms (June 21, 2014). Kelsen in America Interdisciplinary Conference hosted by Valparaiso University School of Law at the Lutheran School of Theology at Chicago, June 27 – 28, 2014.

[45] Stevenson, Drury D., Kelsen's View of the Addressee of the Law: Primary and Secondary Norms (June 21, 2014). Kelsen in America Interdisciplinary Conference hosted by Valparaiso University School of Law at the Lutheran School of Theology at Chicago, June 27 – 28, 2014.

[46] *See e.g.*, United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Article 51.

is addressed by *jus ad bellum* is further complicated by the trend towards more "robust" peacekeeping mandates,[47] historic examples such as the Uniting for Peace Resolution,[48] or the role of the Secretary General; and if the term "addressee" is not limited to restrictive regulation but also the possibility of license or facilitation. Addressees of *jus ad bellum* arguably also go beyond states when one looks at the role of collective self-defence organizations such as the North Atlantic Treaty Organization or for example organized armed groups that play a role in internationalized armed conflicts. While some may argue that *jus ad bellum* only regulates the act of aggression and not the crime of aggression, given that the act is a constituent part of the crime, those "in a position effectively to exercise control over or to direct the political or military action of a State"[49] who may be liable to be convicted of the crime of aggression may consider themselves at least indirectly addressed by *jus ad bellum*. To ask "who are the addressees of *jus ad bellum*" is thus an imprecise question, allowing a general answer such as "generally

[47] I.e., with greater authorization to use force, in particular to protect civilians. *See* e.g. Tardy, Thierry. "A critique of robust peacekeeping in contemporary peace operations." *International Peacekeeping* 18.2 (2011): 152-167; Terrie, Jim. "The use of force in UN peacekeeping: The experience of MONUC." *African Security Studies* 18.1 (2009): 21-34; Ocran, T. Modibo. "The Doctrine of Humanitarian Intervention in Light of Robust Peacekeeping." *BC Int'l Comp. L. Rev.* 25 (2002): 1.

[48] UN General Assembly, *Uniting for peace*, 3 November 1950, A/RES/377; for more on the Resolution *see* e.g. White, Nigel D. "The relationship between the UN Security Council and General Assembly in matters of international peace and security." *The Oxford Handbook of the Use of Force in International Law*. 2015; Johnson, Larry D. ""Uniting for Peace": Does it Still Serve Any Useful Purpose?" *American Journal of International Law* 108 (2014): 106-115; Carswell, Andrew J. "Unblocking the UN Security Council: The Uniting for Peace Resolution." *Journal of Conflict and Security Law* (2013).

[49] Rome Statute of the International Criminal Court, July 1, 2002, 2187 U.N.T.S. 3 (last amended 2010) Article 8 *bis*.

states" but requiring a specific legal question applied to a precise fact pattern to provide an answer as to who is addressed by which specific legal provision. Noting the need for precision when amplifying a question such as "who are the addressees of *jus ad bellum*" in no way suggests that *jus ad bellum* has no meaning in terms of legal responsibility, it merely suggests the need for clarity.

*Jus in bello* is a more complex body of law than *jus ad bellum* in many respects, regulating a great diversity of conduct within armed conflict and occupation as opposed to largely prohibiting conduct (albeit with notable exceptions). The potential addressees of *jus in bello* grow as one includes non-international armed conflict in the phenomena addressed. Nonetheless, a general answer to the question "who are the addressees of *jus in bello*" can be ventured: generally belligerent states, and also in non-international armed conflict organized armed groups, although properly conceived a wider array of actors from the International Committee of the Red Cross to local humanitarian groups to intergovernmental organizations are also regulated. A more precise question is needed for a more specific answer, but that in no way lessens the importance, coherence, or validity of *jus in bello*.

*Jus post bellum* is more complicated still, involving what is in many respects a more complex set of challenges (ending conflict and building a positive peace, not restricting force and protecting the vulnerable). Most importantly with respect to the question of "who are the addressees of *jus post bellum*", many questions of *jus post bellum* properly conceived involve a greater diversity of potential actors. That said, it is worth describing

at the outset some general answers to the question of the addressees of *jus post bellum*. The general summation might be "usually states, sometimes other parties to peace agreements and international organizations," but of course specifying the particular law applied and factual scenario clarifies the answer.

With respect to *jus post bellum* and the regulation of the procedural fairness of peace treaties between states emerging from international armed conflict, the addressees are primarily states, although for example depositories may also be involved. More generally peace processes (including the crafting of peace agreements) may have a distinctive self-determination role bound to questions of state legitimacy and human rights protections that may involve both governments and organized armed groups. [50] Peace agreements often have a hybrid international/domestic legal status and may create obligations that may need to be interpreted from both a treaty or contract law framework and a constitutional law framework; and distinctive types of third-party delegation,[51] but primarily can be said to address those entities who are party to the agreements.

*Jus post Bellum* is informed by The Responsibility to Protect doctrine,[52] particularly the Responsibility to Prevent and the Responsibility to Rebuild as part of this doctrine.

[50] See generally Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (Oxford University Press 2008).

[51] Christine Bell, *Peace Agreements and Human Rights* (Oxford University Press 2000) 407; see also Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (Oxford University Press 2008).

[52] See International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (International Development Research Centre 2001) 39–45; see also United Nations Secretary

These responsibilities lie primarily on the territorial state, but secondarily to the international community as a whole.

Certain specific legal restrictions that are part of *jus post bellum* apply to governments due to their state-based nature. The prohibition of annexation as a forbidden conclusion to an armed conflict is addressed to states. The prohibition of the threat of the use of force as guaranteed by the Article 52 of the Vienna Convention on the Law of Treaties[53] with respect to fairness in peace treaties applies to states, as do other areas of treaty law. Similarly, the duty to extradite or refer for prosecution (*aut dedere aut judicare*) certain criminal violations bind states or state actors, limiting their ability to grant amnesties or to simply refrain from acting. This is in tension with the duty of states in non-international armed conflicts a duty to "endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained,"[54]

General's High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility, Report of the High-level Panel on Threats, Challenges and Change* (2004) 65–7; UN General Assembly, *2005 World Summit Outcome : resolution / adopted by the General Assembly*, 24 October 2005, A/RES/60/1, paras 138–9; United Nations General Assembly, *Implementing the Responsibility to Protect: Report of the Secretary-General*, UN Doc. A/63/677 (12 January 2009) para. 48.

[53] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, Art. 52.

[54] Art. 6(5) of Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (signed 12 Dec. 1977, entered into force 7 Dec. 1978) 1125 UNTS 609.

arguably limiting this type of amnesty to conduct other than, for example, genocide,[55] torture,[56] destruction of cultural property, [57] and terrorism.[58] When a question of law in the transition from armed conflict to peace relies on the law of state succession or occupation, these laws are also primarily addressed to states.

The addressee of a question of *jus post bellum* with respect to the right to self-determination is more complex. Self-determination has historically been the goal of many armed groups, and may be a necessary part of a just and sustainable peace. The right to self-determination is a peremptory norm. [59] Under Additional Protocol II it is made clear that an "International Armed Conflict" "include[s] armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist

[55] UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, (Entry into force: 12 January 1951) United Nations Treaty Series, vol. 78, p. 277.

[56] UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, (Entry into force 26 June 1987) United Nations Treaty Series, vol. 1465, p. 85.

[57] UN Educational, Scientific and Cultural Organisation (UNESCO), *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, 14 May 1954 (Entry into force: 7 August 1956).

[58] United Nations, *Convention for the Suppression of Unlawful Seizure of Aircraft*, 16 December 1970, (Entry into force: 14 October 1971) UN Treaty Series 1973; UN General Assembly, *International Convention against the Taking of Hostages*, 17 November 1979, (Entry into force: 3 June 1983) No. 21931; UN General Assembly, *International Convention for the Suppression of Terrorist Bombings*, 15 December 1997, (Entry into force: 23 May 2001) No. 37517; UN General Assembly, *International Convention for the Suppression of the Financing of Terrorism*, 9 December 1999, (Entry into force: 10 April 2002) No. 38349.

[59] International Law Commission. "Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries." Report of the International Law Commission on the Work of its 53rd session (2001), Commentary on Article 26, paragraph 5, p. 85.

régimes in the exercise of their right of self-determination[.]"[60] The primary addressee of these norms are states, but other groups such as international organizations may also be regulated.[61] Similarly, human rights law, when applied in the context of the transition from armed conflict to peace with an aim towards establishing a just and sustainable peace, is primarily addressed to states but is increasingly applied to international organizations and non-state actors as well. The law of International Territorial Administration, as indicated by the term, historically is addressed to international organizations, albeit with impacts on other entities.

While the obligation to extradite or refer for prosecution may apply only to states, the scope of international criminal responsibility and its impact on the transition from armed conflict to peace regulates more than states. A central theory behind international criminal responsibility (thus saving most prosecutions from challenges regarding legality) is that conduct can be criminalized regardless of domestic law. This addresses states by limiting the effectiveness of state decriminalization, amnesty, or inaction. The application of international criminal law, regardless of whether this occurs in international, hybrid, or domestic fora, can play an important role in building a just and sustainable peace. It is addressed primarily to individuals, but also to others subject to the authority of court or tribunal, as well as the court or tribunal itself.

[60] International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609, Article 1.

[61] *See e.g.* Emerson, Rupert. "Self-determination." *Am. J. Int'l L.* 65 (1971): 459 (on obligation to support self-determination efforts).

If state debt can be discharged during the transition from armed conflict to peace due to its "odious" nature, the law regulating the discharge or validity of such debt is addressable both to the state debtor and the creditor, whether that creditor is a governmental, intergovernmental, or non-governmental entity.

## *I. Method and Approach*

As the different Parts of this work have different objectives, they correspondingly have different methodologies and approaches. These are explained in more detail in each section as appropriate, but an initial review may be helpful at the outset.

Perhaps the most innovative aspect of the methodologies used in this thesis is contained in the annex. The term "*jus post bellum*" is used by a vast number of scholars in accelerating stream of scholarship. These writing are by no means limited to public international law—in fact, in the author's experience, in a good research library system there will often be more titles on *jus post bellum* outside of the law library than within it. In order to map out the scope and contours of the broader literature on the subject, quantitative and sampling methods were used (described further in the annex) to code and track trends in the literature. While different methodological choices could be employed to develop a more comprehensive and nuanced evaluation of sets of publications on a subject, the author hopes that the basic approach of including coding and statistical analysis of the literature will become more widespread in a period of higher rates of

publication and publication availability, particularly when the discussion over an emerging term lacks a desired level of shared definition and approach by scholars.

The methodology for each chapter is explained in part by its goal. The objective of Chapter 1 is to help support aspects of Proposition 1 ("Despite the newness of the term, the concept has deep roots") and Proposition 3 ("the issue of the transition from armed conflict to peace is of enduring importance") and help answer Research Question 1 ("What are the historical roots of *jus post bellum*") by highlighting a genealogy of thinking regarding the law and principles regarding the transition from armed conflict to a just and sustainable peace. Accordingly, Chapter 1, *Past — The Deep Roots of Jus Post Bellum* surveys a selection of leading authors in the just war tradition to elucidate their writings on the law and norms pertaining to the transition from war to peace.

The goal of Chapter 2 is to address Research Question 2 ("To what extent do sister terms shape the contours of *jus post bellum*?") Chapter 2, *Exploration of Sister Terms*, is largely an objective[62] introduction to the basic *jus ad bellum, jus in bello, jus post bellum* trichotomy. It includes both very traditional methods such as literature review and close readings of important legal and historical texts, particularly treaties, but also what is increasingly called in the Humanities the varied methodology and tools of the "digital

[62] The author has tried to be transparent as to his views, particularly with respect to *jus post bellum* having a laudable function, he nonetheless has tried to be objective throughout this work.

Humanities."[63] This combination of qualitative and quantitative analyses helps address the open-ended but still relatively focused second research question, allowing support for Proposition 4 (on the greater comparative complexity but similar comparative coherence of *jus ad bellum* with respect to its sister terms) and Proposition 5 (sister terms extensively shape *jus post bellum*, and together they allow a more comprehensive approach).

In Chapter 3, *Three Theories of Jus Post Bellum*, the approach is more theoretical, making an argument that *jus post bellum* could and should be conceptualized in a primarily functional (rather than temporal) manner, but that a hybrid approach that emphasizes the functional goals while maintaining an awareness of temporal context is the best synthesis of competing approaches. The methodology of this section builds upon the statistical approach in the Annex with a more qualitative approach, both to help map the contours of current scholarship and to propose a synthesis between what may be described as unwittingly rival camps. The objective of this chapter is to support Proposition 2, that *jus post bellum* has a discrete function ("the successful transition from armed conflict to a just and sustainable peace") and that a hybrid functional approach is superior to a primarily temporal approach. It answers Research Question 3 ("What is the present day function of *jus post bellum*.")

[63] Patrik Svensson, The Landscape of Digital Humanities, Digital Humanities Quarterly, 2010 Volume 4 Number 1, available at http://digitalhumanities.org/dhq/vol/4/1/000080/000080.html last visited 16 July 2014.

The ambition of Chapter 4 is to answer Research Question 4 ("To what extent do competitive notions such as transitional justice shape the contours of *jus post bellum*?") and to support Proposition 5 ("Transitional justice is clearly distinguishable from *jus post bellum*.") Chapter 4, *Present – An Exploration of Contemporary Usage*, begins with an analysis of the scholarship on *jus post bellum*, identifying and quantifying trends in the way *jus post bellum* is discussed. This is many ways an expansion of Chapter 3's theoretical framework and preliminary analysis. Chapter 4 continues with a detailed discussion of the difference between *jus post bellum* and Transitional Justice, contrasting the two along a variety of dimensions, and ultimately making persuasive argument about the better conception of each term.

Chapter 5, *Jus Post Bellum in the context of International and Non-International Armed Conflict*, takes a largely textual approach, relying heavily on treaties and historical writings, and provides an introduction to the substantive law of *jus post bellum*. It seeks to clarify how *jus post bellum* operates in international and non-international armed conflict (Research Question 5.)

Chapter 6 reviews the contemporary legal content of *jus post bellum*. Doing so provides a clear indication of the need for *jus post bellum*, as well as providing substance and legal granularity to the term (Proposition 7). The approach here relies chiefly on reference to and analysis of primary legal texts, in order to answer Research Question 6 ("What is the contemporary legal content of *jus post bellum*") and where relevant Research Question 7

("How should *jus post bellum* evolve as a concept?"). The work concludes with an appraisal of the research aims in this thesis.