The *Jus Post Bellum* Project:

Jus - Post - Bellum:

Mapping the Normative Foundations

31 May – 1 June 2012

Conference Report

An NWO-funded Vidi project of the Grotius Centre for International Legal Studies at the University of Leiden

Conference Report

INTRODUCTION

The proper ending of conflict and the organization of post-conflict peace is one of the greatest challenges of contemporary warfare. This issue has resurfaced in the context of modern interventions and their aftermath. The Grotius Centre for International Legal Studies' *Jus Post Bellum* Project investigates whether and how a contemporary *jus post bellum* may facilitate greater fairness and sustainability in conflict termination and peacebuilding.

On 31 May and 1 June 2012, the *Jus Post Bellum* Project proudly hosted its launch conference, "'Jus - Post - Bellum': Mapping the normative foundations," at the Peace Palace in The Hague, the Netherlands. The conference aimed to clarify the meaning and content of *jus post bellum*, including contemporary understandings, criticisms and historical and modern approaches towards defining key notions. The conference presentations covered a broad range of issues, bringing together specialists from a variety of disciplines, including political science, law, and philosophy, who took different approaches in exploring the common issue of transitions from war to peace.

The conference began with a conceptual discussion of *jus post bellum* and whether it is a useful term for discussing post-conflict transitions to sustainable peace. Next, panelists explored functional aspects of the *jus post bellum* framework and how it interacts with other laws and norms. The conference then turned to discussions on the temporal application of *jus post bellum*. Panelists also discussed interactions between international organizations in the post-conflict context, as well as practical and political considerations related to *jus post bellum*. Additionally, panelists explored the specific normative content of *jus post bellum*, drawing on disparate bodies of international law such as treaty law, self-determination, rules governing the status of foreign armed forces in post-conflict situations, environmental law and amnesty law.

This document focuses on the dialogue that occurred at the conference. It is impossible to capture the depth of the discussions that took place over the two-day conference, and therefore, as mentioned at the conference, we encourage participants and presenters to continue to debate on the project's Virtual Research Environment. We are thankful to all participants and to attendees for sharing their insights.

Support for the conference was provided by the Netherlands Organization for Scientific Research (NWO). We are grateful to the assistance of our Office Manager, Astrid de Vries, as well as assistance provided by students from the Leiden LL.M. programs in public international law: Martin Browne, Robynne Croft, Sofia Intoudi, Tatiana Jancarkova, Johanna Riggert and Mathew Truscott.

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KEYNOTE ADDRESS

Larry May, Vanderbilt University

The Keynote Address by Larry May noted that *jus post bellum* is a branch of the Just War tradition that was countenanced and discussed in very early times. He discussed how important 16th and 17th Century theorists such as Hugo Grotius, Francisco Vitoria and Francisco Suarez addressed the principles of *jus post bellum*. He proposed six concepts related to *jus post bellum*: retribution, reconciliation, rebuilding, restitution, reparations and proportionality. May also argued that there are various ways to conceptualize justice. He discussed "meionexia"—the concept of demanding less than what one is due—as a form of justice for *jus post bellum*. May related meionexia to fairness, humility and compassion. He contended that such a "moderate" justice, demanding less that one is due, is important for lasting peace.

May concluded by discussing how *jus post bellum* and transitional justice relate to each other. Transitional justice concerns moral and legal considerations in regime change after massive atrocity. *Jus post bellum* concerns moral and legal considerations when war or armed conflict has come to an end. Both relate to just peace, May noted. However, he argued that although transitional justice and *jus post bellum* might share a framework, there are significant differences. A particularly worrisome difference, he noted, is how war is conceived: as something to be progressively curtailed or something that can be used for positive humanitarian ends, such as reflected in some current transitional justice trends.

PANEL I: SITUATING THE CONCEPT

Moderator: Randall Lesaffer

Peace Settlements and International Law: From *Lex Pacificatoria* to *Jus Post Bellum*

Christine Bell, School of Law, University of Edinburgh

Christine Bell critiqued the concept of *jus post bellum* as a descriptive and normative framework for considering post-conflict developments. Bell examined new practices in how international legal regimes regulate peace settlement implementation and argued that new articulations constitute a new *lex pacificatoria*, or "law of the peacemakers." Relating the law of the peacemakers to *jus post bellum*, Bell noted the benefits of working with broad parameters and frameworks. She said she resisted the temptation to "develop" and stabilize *jus post bellum*, as this could undo the benefits that come from fluid notions and the ability to be context-specific that arises out of the less stable approach of utilizing different underlying regimes. Bell argued that it was unclear whether consensus could be reached on *jus post bellum*, and wondered whether further developing *jus post bellum* could merely create new and harder boundary dilemmas. Rather, uncertainty and partiality can be useful, she claimed, for allowing discussion, debate and creativity in the ambiguous areas.

Transitional Justice and *Jus Post Bellum*

Ruti Teitel, New York Law School

Ruti Teitel next explored the limits of what she terms the "inherited notion of *jus post bellum*." She inquired about the relationship between *jus post bellum* and *jus ad bellum*, asking whether injustice in beginning a war might impose more post-war duties. Teitel argued that given the nature of modern warfare and the shift to wars of liberal intervention, the contemporary understanding of *jus post bellum* is no longer limited to restorative ex post justice; it must include forward-looking aims and the discourse of transitional justice is better suited to this purpose. The transitional justice discourse can take into account full modalities of transformation and ideas of human security, she posited. Further, it moves beyond the focus on the state towards a focus on the individual. Transitional justice is not constrained by temporality and is more capacious given that it moves beyond transformation.

Jus Post Bellum – The Gentle Modernizer of the Law of Armed Conflict

Inger Österdahl, Uppsala University

Inger Österdahl examined the relationship between *jus ad bellum, jus in bello* and *jus post bellum*, arguing that the introduction of a systematic and comprehensive *jus post bellum* will challenge the traditional conceptual categories relating to the law on the use of force. Österdahl argued that *jus post bellum* has the potential to either restrict or facilitate the *jus ad bellum*, and will underscore the importance of a scrupulous implementation of the *jus in bello*. In particular, she claimed that *jus post bellum* might discourage a resort to violence or be an argument for the termination of armed conflict. She further argued that *jus post bellum* could lead to a new organizing principle for the law of armed conflict, moving it towards a more human-centric approach rather than a state-centric approach. Österdahl also suggested that *jus post bellum* might reduce the distinction between the different branches of IHL, which could eventually develop into one larger body of law.

The Trilemma of Justice: Global Justice, Transitional Justice, and *Jus Post Bellum*

Jens Meierhenrich, London School of Economics

Jens Meierhenrich delivered a provocative and critical response to the other papers, before propounding "the trilemma of justice," a device for describing the challenge of reconciling the demand for justice with the imperatives of legality, morality and reality. He suggested that if *jus post bellum* is to have any meaning at all, it must remain tied to *jus in bello*w and *jus ad bellum*. Moreover, *jus post bellum* should be limited to the time that marks the transition from war to not war, which, he argued, is a short period. He thought *jus post bellum* was an inappropriate framework to address larger questions of justice, arguing that transitional justice might be a better paradigm for this. Meierhenrich argued for a minimalist approach to *jus post bellum* and cautioned against creating over-inflated expectations of *jus post bellum*.

Discussion

During the discussion, Bell noted the challenge of creating a space for law and politics in post-conflict situations where differing moral conceptions inevitably exist. Meierhenrich noted the existence of many conceptions of *jus post bellum* and emphasized his efforts to disentangle the current intellectual landscape before assembling his own theory. Meierhenrich proposed proportionality as a meta-norm in *jus post bellum*, and suggested studying the justice of behavior or conduct after a war rather than specific outcomes of state building or peace. Responding to a question from Larry May about how the concept of reconciliation differs between transitional justice and *jus post bellum*, Meierhenrich noted that he thinks of reconciliation as mercy and forgiveness, but counseled caution in using the term, as it has been used and invoked in ways that has given rise to illiberal effects. Ruti Teitel noted that reconciliation is a transformative project, and is about reconciliation between peoples.

PANEL II: MAPPING NORMATIVE FRAMEWORK

Moderator: Eric de Brabandere

Jus Post Bellum as a Partly Independent Legal Framework

Dieter Fleck, formerly Ministry of Defense, Germany

Dieter Fleck began the discussion by noting that he was disturbed by the idea that *jus post bellum* might not exist. He postulated that there are many branches of law that are relevant for *jus post bellum*, and that the content of *jus post bellum* should be taken from those existing areas of law. Fleck characterized *jus post bellum* as a "partly independent legal framework," saying that a new field of *jus post bellum* law would consist of treaties, custom, best practices and soft law. Fleck noted that three major areas of *jus post bellum* include assistance in regime change, robust law enforcement operations, and international territorial administration. While he noted that there are areas where black letter *jus post bellum* law might apply, not every rule would be applicable in every situation. He suggested that there is a need for regulation in post-conflict situations, as well as for the participation of different actors, including non-state actors. The tension between the need for regulation and the voluntary character of many *jus post bellum* norms is a challenge, Fleck noted.

Creating Governments in the Aftermath of War: How Appropriate is Article 25 of the ICCPR?

Matthew Saul, Durham University

Matthew Saul addressed the creation of popular governments in the aftermath of war. Saul explored how the international law of political participation relates to the creation of a government with a popular mandate. He argued that the involvement of a population in the governance of a post-conflict situation was an important component of peacebuilding initiatives because it leads to greater legitimacy and effectiveness of new governments. The appropriateness of international law in this regard rests upon the manner in which it balances two competing interests: tailoring the approach to the particular context and accountability for the approach taken. According to Saul, while Article 25 of the ICCPR provides

procedural requirements for elections, it is a "light approach," leaving room for derogation and flexibility. However, he concluded that at least in some cases, such as Sierra Leone, Article 25 of the ICCPR is appropriate for guiding the creation of new governments post-conflict. He argued that flexibility in Article 25 is inherently useful as it provides for cultural sensitivity. He also noted that there is not much reason to be concerned about the lack of coercion, since interim governments will pursue the best interest of the situation, and not act out of self-interest.

Targeting the State: *Jus Post Bellum* and Sovereignty, a Relational Account

Dov Jacobs, Leiden University

Dov Jacobs focused on the relationship between *jus post bellum* and sovereignty. He argued that underlying the debate about democratic transitions after conflict is a growing suspicion against the State, which, he argued, is the reason for international intervention in post-conflict situations. However, Jacobs contended, these two dimensions raise a number of conceptual difficulties that will need to be solved by the *jus post bellum* project, most notably in relation to the interaction between the local and the international. He challenged what he characterized as a systematic and systemic suspicion of the State. Jacobs argued that one of the primary goals of *jus post bellum* should be to delegitimize sovereignty rather than bypass it. He suggested the State and its sovereignty should an objective of *jus post bellum*. Jacobs also discussed why he thought international institutions should be conceptually analyzed as organs of the national legal order, rather than the opposite. This, he contended, allows a more subtle discussion of how international institutions interact with national institutions and ultimately contribute to the reaffirmation of national sovereignty.

Jus Post Bellum: An Interpretive Framework

James Gallen, Trinity College Dublin

James Gallen explored the potential for *jus post bellum* to operate as an interpretive framework for international law in transitions from conflict to peace. He argued that different fields of international law—such as transitional justice, peacebuilding, security sector reform and economic development—all purport to contribute to the restoration of civic trust and rule of law through the use of law. However, the international legal regulation of these fields is fragmented, leading to a lack of accountability, assessment of priorities and structure for respecting local ownership and sovereignty. Gallen contended that the explicit use of integrity among public officials and international organizations offers a new principle and process to consciously and publicly strive to avoid fragmentation between these fields. He suggested that an interpretive approach to *jus post bellum*, based on integrity and manifested through principles of accountability, stewardship and proportionality, could enable coherent, explicit and public consideration of issues significant in transitional societies.

Discussion

The ensuing discussion dealt with the questions: what is the added value of developing *jus post bellum* as a normative framework, and who is the object of the *jus post bellum*? These questions were considered in light of the ambiguous place that the state sovereignty holds in the *jus post bellum* discussion. A normative framework was seen as providing an opportunity to look at connections and principles interconnecting with other fields of international law.

Panelists considered that the existing concepts do not encourage taking account of unique challenges in individual post-conflict situations. The importance of contextual sensitivity was particularly stressed and possible implications of the distinction between international and non-international armed conflicts discussed. A conflict emerged between human rights law perspective and international law perspective on sovereignty, namely with regard to the perception of post-conflict situations as implying a state failure and the state-centric nature of international law. The concept of reversed *dualité fonctionnelle* was challenged by the notions of subsidiarity and complementarity of international law vis-à-vis domestic institutional solutions that could serve as a reconciliation mechanism between sovereignty and *jus post bellum*. Finally, the impact of *jus post bellum* on *jus in bello* was assessed, namely the effect of the capacity to reconstruct on the obligation not to destroy in conflict.

The second panel discussed how *jus post bellum* as a legal framework is an emerging concept. While certain existing norms of international law are applicable and the concept is certainly interlinked with *jus ad bellum* as well as *jus in bello*, their needs differ. Various views prevail as to the level of flexibility or rigidity required for such a legal framework in order to ensure legitimate and effective governance and reconstruction of the territory affected by the conflict. It is also unclear to what extent the state and state-sovereignty fit in to the concept and how long the *jus post bellum* phase of a conflict actually lasts.

PANEL III: THE POLITICS AND PRACTICE OF *JUS POST BELLUM*

Moderator: Jennifer Easterday

Differentiating Patterns of "Peace"

Astri Suhrke, Chr. Michelsen Institute: Post-war Violence

Astri Suhrke opened the discussion by explaining her research on what she preferred to call "peace post bellum." She argued that central factors shaping peace after conflict are found to lie in the war-to-peace transition itself, above all the outcome of the war in terms of military and political power and its relationship to social hierarchies of power, normative understandings of the post-war order, and the international context. Her research focused on thirteen post-conflict situations ranging from the American and Spanish civil wars to various modern conflicts. Through these case studies she divided the outcomes into four categories: Victor's Peace, Loser's Peace, Divided Peace and Pacified Peace. Focusing on Victor's Peace, Suhrke used the situation in Spain under the rule of Franco to demonstrate how Victor's Peace is typified by massive post war violence. The victory in that situation was absolute, resulting in the emergence of a strong, unified state, unconstrained by international intervention. The state then went on to violently clean the society of opposition to prevent any re-emergence of conflict. Suhrke concluded by noting that the increasing role played by the international community now makes Victor's Peace uncommon, as international intervention usually forces a compromise solution rather than outright victory.

Jus Post Bellum and Politics of "Exit"

Dominik Zaum, Reading University

Dominik Zaum discussed the impact of exit strategies on *jus post bellum*. The transition from international actors to legitimate local actors links *jus post bellum* to the authorities after conflict. It also links it to wider peace mechanisms and to self-determination and local ownership. Zaum noted that exit has increasingly involved the UN. The UN exit strategy has been evolving and now focuses on a gradual transition with successor missions, rather than a time-mandated exit. This has been driven by a wish to avoid recidivism, rather than by a clear normative framework. He pointed out that there is an increasing reliance on benchmarks; however, he argued, these benchmarks have numerous difficulties and are often highly politicized. Zaum then concluded with three key points: *jus post bellum* matters for exit and it is increasingly involved in decisions; this can undermine desired outcomes; and the language around exit veils the underlying politics for different actors to pursue their interests.

From War To Peace: *Jus Post Bellum* as a Continuation of Politics By Other Means

Roxana Vatanparast

Roxana Vatanparast engaged in a critical examination of the temporal scope of *jus post bellum* and its manipulation by politicians. Focusing on economic reconstruction, she suggested that, if done incorrectly, it might in fact lead to further conflict. She used the example of Iraq to show that if reconstruction fails to involve local actors it will not facilitate development. Post war reconstruction may also be used as a means for plunder and opportunism. *Jus post bellum*, she suggested, needs to provide a space to address these issues, to avoid post war reconstruction becoming merely an avenue to pursue politics by other means.

Power-Sharing – An Obstacle to Peace? Practical and Political Considerations in Peace Agreements: A Case Study of the DRC

Nneka Okechukwu, University of Hull

Nneka Okechukwu focused on the role of power-sharing and whether it became an obstacle to peace in the Democratic Republic of Congo ("DRC"). She argued that the DRC power-sharing agreement allowed for four vice presidents from different groups, but it was not representative of the community. The peacekeeping mission suffered from a lack of political commitment and local actors played members of the international community against one another, Okechukwu argued. The troops of the factions were merged, but were not integrated which resulted in them keeping their initial loyalties to their former commanders. There was also a system of immunities in which people were co-opted into the power sharing government rather than being held accountable. In this way, the one-track power-sharing agreement proved insufficient to address the root causes of the conflict.

Facilitating Post-Conflict Reconstruction: Is the UN Peacebuilding Commission Successfully Filling an Institutional Gap or Marking a Missed Opportunity?

Freya Baetens, Leiden University

Freya Baetens focused on the issues of local ownership, sustainable development and accountability. She began by giving a brief overview of the UN Peace Building Commission ("UNPBC"). At the time of its creation in 2005, there were no benchmarks against which to measure its success or failure, although the UNPBC review panel has provided some critiques of the UNPBC's work. The review panel pointed out that national ownership was imperative, and that therefore the international community had to take account of its limitations in the peace building process. In particular, the international community, which funds reconstruction efforts, tends to impose a liberal, market oriented approach, which may not reflect the priorities of the local community. Baetens noted the contraction between the UNPBC review panel emphasis on employment, and the limitations imposed by Bilateral Investment Treaties. She also pointed out the need for mutual accountability, and the use of other means of accountability than just the purely legal. This may include fiscal accountability, peer accountability and public or reputational accountability. Regarding the need to set benchmarks, Baetens suggested the use of common but differentiated responsibilities. In closing she noted that it is essential to involve the community in decisions. Outside groups often try to impose their ideas of the healing process, but the local community often has excellent ideas of their own and need to be listened to.

Discussion

Many questions were posed from the floor. On the issue of local ownership, the panel pointed out that it is an important consideration, but also one that has numerous difficulties. There is a tendency to control who the local owners are and to work with existing elites, which may entrench existing problematic structures. It was however noted that the PBC had developed some rules for accreditation of local owners, which may be of use.

Another key topic was the role of international institutions. The panel acknowledged that local ownership had its limits because funding is dependent on these institutions—the international institutions would therefore always play a leadership role. Others argued that the key problems related to interventions by international organizations are not clear, but suggested that one key problem is that we don't know what works and that there are problems of coordination on the ground. Some suggested we had a wealth of knowledge and pointed to Liberia as an example of intrusive international financial management that worked very effectively.

A question was also posed on the usefulness of lustration. The panel pointed out numerous positive and negative aspects. There appeared some consensus that in principle it was useful, however it is always necessary to examine the practical realities of the situation. In many instances it would be a question of timing. At certain points in the transition it may need to be avoided to secure peace, however it may be returned to later. In this regard, ideas such as indictments under seal from the international courts were considered useful tools.

PANEL IV: TEMPORAL DIMENSIONS OF *JUS POST BELLUM*

Moderator: Terry Gill

At War's End: Time To Turn to *Jus Post Bellum*?

Mark Evans, Swansea University

Mark Evans began by emphasizing that he regards *jus post bellum* as a "dressing up box" with many costumes in it, *i.e.*, generally an interdisciplinary topic. Distinguishing "restricted" and "extended" conceptions of *jus post bellum*, he argued that an adequate theory of *jus post bellum* needs to embrace an account both of *jus ex bello* and a morality of peacebuilding. Moreover, he explored the role of "justice" in the aftermath of war, emphasizing its different dimensions and its need to be balanced with other values such as peace, freedom, self-determination and democracy.

Jus Post Bellum and Dilemmas of Temporal Application

Jann Kleffner, Swedish National Defense College

Jann Kleffner then explored some of the dilemmas that the determination of the start and end of *jus post bellum*'s applicability entail. He argued that to allow the application of *jus post bellum* to begin when the law of armed conflict ceases to apply is difficult in practice, given the uncertain start and end dates of the conflicts. Moreover, certain overlaps of the law of armed conflict and *jus post bellum* might be desirable. Emphasizing that transition from conflict to peace is a process and a dividing line is therefore unhelpful, he called for a more fluid and flexible approach whereby *jus post bellum* consists of several elements whose applicability do not depend on the qualification of the given situation, but on whether the situation calls and allows for their application.

From *Jus in Bello* to *Jus Post Bellum*: When do Non-International Armed Conflicts End?

Rogier Bartels, Netherlands Defense Academy

Rogier Bartels focused on when *jus post bellum* begins in cases of non-international armed conflicts (NIACs). He stressed that so far, only the determination of the start, but not of the end of IHL applicability has received attention. Examining the indicators for the existence of a NIAC identified by the ICTY in *Haradinaj* and *Boškoski*, such as UNSC attention and refugee flows, Bartels argued that these could be applied outside the area of the former Yugoslavia and especially to determine whether the NIAC has ended. Moreover, he suggested that it might be useful for modern conflicts to develop a *jus post bellum* with a geographical element and concluded by highlighting that it is neither possible nor desirable to determine a particular moment when IHL ceases to apply, as IHL and *jus post bellum* can apply simultaneously.

Jus Post-Occupation

Yaël Ronen, Sha'arei Mishpat College

Yaël Ronen subsequently considered the notion of "jus post-occupation" and a January 2008 Israeli Supreme Court ruling that Israel remains obliged to provide electricity to the residents

of the Gaza Strip despite the termination of occupation. She emphasized that the idea of post-occupation law is to maintain stability, but also to facilitate transition and that this body of law should be characterized by transition and dependence. As it is unlikely for states to agree to a new obligation, Ronen then considered whether "jus post-occupation" can be based on existing law or concepts such as the law of occupation, human rights law or by analogy on post-colonialism or R2P. The presentation closed with a number of queries with regards to post-occupation law that require further analysis.

Power-Sharing Derogations, Emergency Clauses and the Definition of the Post

Martin Wählisch, European University Viadrina

Martin Wählisch looked at conflict termination from a human rights perspective. Investigating the legal conditions for emergency derogations, justified discrimination and transitional power sharing, Wählisch scrutinized indicators set by international human rights institutions such as the ECtHR and the UN Anti-Discrimination Committee for ending the suspension of human rights provisions in post-conflict phases. He examined the cases of Bosnia and Herzegovina, Lebanon and Libya to show that the definition of "post" depends on the perspective of the legal body or advisor that interprets time limitations and the scope of *jus post bellum*.

Discussion

In the ensuing discussion, one participant stressed that for the commencement of hostilities there has to be a judicial determination in order to establish individual responsibility, but wondered who was to decide in all other cases – a constitutional court or the parliament. Kleffner responded by asking whether it is really necessary to decide when it is time for the applicability of *jus post bellum*. While he agreed that a determination is necessary regarding individual responsibility, he opined that as far as reparation, demobilization, etc. are concerned, it should be decisive whether it is possible to reintegrate former combatants or provide reparations.

There was also a discussion about whether IHL or HRL should apply when determining whether a war has ended, as the latter imposes restrictions on lethal force. Bartels emphasized that HRL does not cease to apply, but that it is a matter of *lex specialis*.

Following up on discussions from earlier in the day, participants debated whether *jus post bellum* should be regarded as functional and what this could mean for the temporal scope of its application—noting that whether we regard *jus post bellum* as ending or continuing might depend on its function. Kleffner emphasized that the determination of the relevant elements of *jus post bellum* is a fact-driven exercise, and agreed that this could change depending on the different functions *jus post bellum* could play in different contexts. He noted that this fact-driven aspect of *jus post bellum* makes him hesitant to think of "elements" of just post bellum, and that it is better to take elements from different bodies of law that fit different contexts and are necessary, possible and fill a function.

Lastly, one participant asked whether—given the difficulty to identify the existence of an armed conflict—*jus post bellum* should also be applicable to internal disturbances and used for the purpose of prevention, e.g. in Syria. In his reply, Bartels emphasized that prevention

of an armed conflict's reoccurrence should be attempted and referred to the two theories with regard to the internationalization of NIAC, namely the effective control and the overall control test. Ronen also asserted that if a state joins an armed conflict it does not necessarily turn into an IAC.

Overall, there seemed to be agreement between panelist and participants alike that a flexible and functional approach to the temporal dimension of *jus post bellum* should be adopted. The determination of an exact starting and ending point of the applicability of *jus post bellum* was considered neither possible nor desirable. In the further discussion of the applicability *ratione temporis* of *jus post bellum*, its relationship with, *inter alia*, IHL, HRL and the law of occupation is likely to play a significant role.

PANEL V: THE 'JUS' IN *JUS POST BELLUM*

Moderator: Dieter Fleck

Law and Just Post Bellum: Counseling Caution

Robert Cryer, Birmingham University

Robert Cryer spoke about concerns over the applicability of the concept in its "aggressive" form, making a distinction between three versions of *jus post bellum*: as a categorization of law, as a provision of principles of morality to guide conduct, and finally as a form of normative legal scholarship detailing rights and obligations.

Cryer counseled caution in relying on morality for extending the influence of *jus post bellum*, which risks the imposition of moral values. There has to be lateral room in national legal orders for disagreement, manifesting as pluralism. Cryer countered any conception of *jus post bellum* that would allow for forcible regime change or be used as a vehicle for policy, arguing that this would be fundamentally contrary to a basic notion of international law—sovereignty. In concluding he noted that aggressive forms of *jus post bellum* do not respect self-determination or sovereignty and are thus deeply problematic, especially when there is no agreement on future direction let alone specifics such as who decides who is the intervener.

Navigating the Unilateral/Multilateral Divide

Gregory Fox, Wayne State University

Gregory Fox addressed unilateral and multilateral modes of conflicts. While asserting that *jus post bellum* does not provide answers, he argued that it does pose questions and offers an opportunity to extend obligations to international organizations, which are involved in increasingly involved with multilateral conflicts. Fox noted that the state-centric structure of obligations is problematic. He asked whether it requires degrees of *jus post bellum* dependent upon the context, and if so, to what extent there should be UN Security Council involvement in reconstructive efforts. He then posed two broader questions: Does *jus post bellum* allow for liberal democratic transformations without eviscerating *jus ad bellum* limitations and in doing so go beyond R2P? Does a multilateral intervention permit occupation and does *jus post bellum* require self-determination in these contexts?

The Status of Foreign Armed Forces Deployed in Post-Conflict Environments: A Search for Basic Principles

Aurel Sari, University of Exeter

Moving towards more specific areas of law, Aurel Sari discussed the content of rules where armed forces are present in post-conflict situations, for which there is currently no single coherent legal regime. Discussing to what extent *jus post bellum* might apply to foreign forces, Sari noted that there are influential *lex specialis* rules such as Article 31 of the European Convention on Immunities that provide a strong indication that the extension of obligation will run into unforeseen difficulties. Sari compared the rules that could be derived from status of forces agreement and customary law, observing that immunities and territorial sovereignty (manifested as consent) have to be factored in. With this matrix of competing competencies, *jus post bellum* considerations that extend beyond the end of the armed conflict have to be expressed and based on consent.

Jus Post Bellum and the Norm of Environmental Integrity

Cymie Payne, Rutgers University

Cymie Payne explored the norm of environmental integrity, noting that it is increasingly important in post-conflict design, but is not yet fully integrated into legal orders. For coherency, she argued, this norm must be considered a part of *jus post bellum*. To this end, she provided a provisional definition of the norm of environmental integrity: a right of civilian populations to not be arbitrarily deprived of functioning and complete environmental systems. She contended that the norm is an obligation owed to the present and future international community, and that awards for damage must be spent on the environment. She raised several challenging considerations, however, including how violations of the norm interact with violations of the laws of war and whether all parties to a conflict (including international interveners acting under the R2P doctrine) have a strict liability to repair environmental damage they case. Payne concluded by emphasizing how the inclusion of the norm of environmental integrity marries with the fundamental goals of *jus post bellum*'s peaceable and rehabilitative aims.

Should Insurgents be Amnestied?

Frédéric Mégret, University of McGill

Frédéric Mégret focused his comments on justifications for insurgent amnesties, such as the conceptualization of a scheme of managing dissent as a tool of reintegration into society. Mégret was wary of using the aim of reconciliation to extend amnesties to all insurgents, stating that there isn't a clear enough motive for absolution of this kind. Mégret considered that the *jus in bello* argument that any prospect of leniency for good behavior encourages better standards of conduct was a compelling justification. He accepted that working out the reasons for granting privilege is an ongoing task and a number of different purposes could be in play at any time. He concluded that value pluralism, disagreement about substantive judgment at the international level, and the conception as amnesty as a reactive mechanism will be tricky obstacles of overcome even with a new force of law in *jus post bellum*.

Discussion

The discussion primarily concerned the level at which the obligation should be imposed. Of particular interest was a question concerning whether *jus post bellum* might be simply considered the need to make a timely decision on a set of key issues without prescribing the ideal answer. In response, many of the panelists, especially Sari, noted the overlap of obligations during periods where *jus in bello* may be predominant. It was suggested that there might be a general law that is part of *jus post bellum*, including specific rules and procedural aspects. However, it was emphasized that sometimes making the wrong decision might be better than making no decision, and that there remains a need for informal approaches, given that the success of peacebuilding might depend on the derogation from some rules.

Payne considered that the expressive and deterrent functions of law that would require an unlawful actor to pay the consequences should guide how and who should pay the costs of a violation. Larry May intervened with a comment for Robert Cryer, stating that the principles that form the basis of post conflict obligations may exist but more work needs to be done to develop them, on an inter-civilization basis, a process that will not happen quickly.

ROUNDTABLE DISCUSSION ON *AFTER WAR ENDS*

Moderator: Jens Iverson
Participants: Claus Kress, Larry May, Jann Kleffner, and Ruti Teitel

Claus Kress cautioned against the dangers of introducing artificial distinctions to confuse common underlying principles. He suggested it was unclear whether there is a need to apply distinct conduct rules before or after the end of armed conflict, including perhaps during a period of fragile peace. These goals may have broad temporal implications that go beyond the period normally considered the proper focus of *jus post bellum.* Examining how the posited goals of *jus post bellum* work in other contexts may help to shape *jus post bellum* to serve as a modest but useful complement to other related concepts.

Jann Kleffner raised a broader point in relation to the six principles that Larry May based his book on, questioning whether we are "quite there yet." He argued that it is a prospective project, and something we should move towards. Turning to some of the specific concepts discussed in the book, Kleffner noted that May bases his idea of reconciliation on human rights considerations. However, Kleffner argued that human rights bodies do not hesitate to investigate in the context of abuse and seek reconciliation for a broad temporal range already. With respect to rebuilding, this is an existing principle in the form of the 3rd strand of R2P, which is informed by existing law in many ways. With respect to restitution and reparations, Kleffner claimed that they find their basis is in State Responsibility and secondary rules. This leads to the responsibility of individuals for which there we have already an existing body of law, but noted that individual restitution is more of a stretch. Kleffner asked whether international law is really able to assist with individual restitution. Kleffner concluded by stating that the book describes "the box" of *jus post bellum* as a consolidation exercise, encapsulating existing areas of law that are not as surprising as one might think.

Ruti Teitel praised the book for its systemic analysis of *just post bellum*. She asked whether *jus post bellum* is different from IHL and international criminal law, and in what way it is constraining. She further asked whether *jus post bellum* could be considered a sub-discipline or a field. Teitel emphasized the importance of avoiding overextended prosecutions, and suggested that punishment and retribution made more sense post-conflict. The ICTY engaged in gap filling guided by the telos of peace. She noted that we can see where the courts have been less judicially active following recent conflicts.

Larry May stated that he had not set out to comment on a new area of law. He first set out to see what the existing law is, and if there are gaps, how do we fill them with principles? May argued that we do not need a new area of law if we already have other areas to build on. However, one way to fill the gaps in existing law is to make a nice grounding of the existing areas and then to unify the 'filling.' It is a question of how the different concepts of 'jus' relate to one another. He argued that this debate was productive, because he considered that these things form a system, part of one thing, and that they are not utterly distinct.

In response to Jann Kleffner, he stated that retribution has to do with what happened *in bello*, not with violations after the war: *jus post bellum* is about bellum, he stated. May claimed that whether *jus post bellum* is a "sub-discipline" or a new area of law altogether remains a question to be answered. He noted that there are some issues that were not taken up by R2P discourse and he seeks to give it a different approach. There is no necessary inconsistency, May claimed.

May argued that meionexia is a fairly non-standard moral theory. It suggests that prudence and morality are not far apart. The book aims to take a straightforward approach to morality. May suggested that it was an issue of asking, "What should I do?" It is not required not to demand what we deserve, particularly when we think it would be better for the society, he said. We may request that it is not demanded.

The panelists also addressed the question, "Where should we go from here?" Claus Kress recommended that we analyze whether within this narrowly defined transition period there is indeed enough room for a modest but useful set of more specific rules. He cautioned that we should have a modest vision of a complementary *jus post bellum*. Ruti Teitel suggested that one of the important research angles is to think about whether we are in a paradigm shift. Specifically, whether the principles of law and morality that should attend that problem are different to what was written about historically. Jann Kleffner counseled pragmatism: do not lose sight of the problems we seek to solve.

Stahn concluded by noting that this was a conference to frame the research agenda for the future. He stated that it is important to continue to interact with those who deal with these issues on a daily basis, and to engage with international organizations. One interesting test question: if *jus post bellum* went away, what would happen? This leads us to reflect on the importance of this notion, and what it might do.