

August 2006

## ILA Study Committee on the Use of Force

### Work Programme

The committee's mandate is to report on the contemporary meaning of "war" within international law. This document sets forth the committee's understanding of the substance of that task and the methodology for accomplishing it.

#### 1.) Substance

Reporting on the meaning of war will require understanding, in the first instance, whether the law still supports a war/peace distinction. It may be, for example, that we now have a uniform set of conduct rules for governing the use of force in war and peace.<sup>1</sup> If the war/peace distinction does matter, are there related categories? For example, is war the same phenomenon as armed conflict in international law today? Is the meaning of armed conflict the same in an international armed conflict as in a non-international armed conflict?

If there is no distinction in international law between war and armed conflict but there is a distinction between armed conflict and peace, what are the legal consequences of the distinction? When, for example, is the *jus ad bellum* triggered? When is the *jus in bello* triggered? Are these "triggering" situations different for international versus non-international armed conflicts? What is the scope of armed conflict? If armed conflict is known to be occurring in one place (the theater of operations), how far from the place does an armed conflict extend? Might certain aspects of an armed conflict extend farther than others? When do armed conflicts end? When does application of the *jus ad bellum* and the *jus in bello* end? Do other fields of international law embrace the same or different understandings of armed conflict from the two major branches of the international law on the use of force, the *jus ad bellum* and *jus in bello*? For example, does international economic law, diplomatic law or treaty law reflect different understandings than the *jus in bello* and the *jus ad bellum*?

#### 2.) Method

The committee will employ classical international law methodology, analyzing treaties, state and organization practice and *opinio juris*, judicial decisions, and scholarly writing. The committee will use publicly available materials.

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<sup>1</sup> See, e.g., Francisco Forrest Martin, *Using International Human Rights Law for Establishing a Unified Use of Force Rule in the Law of Armed Conflict*, 64 Sask. L. Rev. 347 (2001).

### 3.) Timetable and approach

The Committee has identified four topics to begin researching in answer to the central and related questions set out above. Two or three committee members will prepare research papers independently on each of the following topics:

Topics:

1. *Jus Ad bellum*
2. *Jus In bello*/international
3. *Jus In bello*/non-international
4. *Jus In bello*/UN

Timetable:

Preliminary research papers will be exchanged in mid-November.

18 December 2006, Meeting in Berlin to discuss the preliminary research and the next phase.

14 – 15 September 2007, Contextual Conference, Notre Dame University, presentations on the meaning of war in other disciplines; committee meeting to prepare a preliminary draft report

June 2008, ILA meeting in Rio de Janeiro: submit the final report on the meaning of war in international law.

### 4.) Result

A report on the meaning of war in international law with a commentary.