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The use of force is regulated by several different regimes of international law.

General public international law and the law of the United Nations <sup>[1]</sup> Charter govern the legality of the resort to the use of force between States. This is referred to as the *ius ad bellum* <sup>[2]</sup>. It is important to note that IHL's application does not, in any way, depend on *ius ad bellum* determinations of the legality of resort to force. The two branches of law must be kept distinct.

In addition, both international humanitarian law and international human rights law deal with the use of force. In both conduct of hostilities <sup>[3]</sup> and law enforcement <sup>[4]</sup> paradigms, the use of force is regulated by principles of necessity <sup>[5]</sup>, proportionality <sup>[6]</sup> and precautions <sup>[7]</sup>, but these principles have distinct meanings and operate differently in each of the two regimes. Additionally, in IHL, the use of force is governed by the cardinal principle of distinction <sup>[8]</sup>.

According to this principle, the defining criterion for determining the rules governing the use of force against a particular individual under IHL is whether such a person is a lawful target under its norms on the conduct of hostilities <sup>[3]</sup>. The situation is less clear in non-international armed conflicts - which require a fact-specific analysis - and with regard to the use of force against isolated individuals who are lawful targets under IHL but are located in regions under a State's firm and stable control, where no hostilities are taking

place and it is not reasonably foreseeable that the adversary could readily receive reinforcement (see targeted killings <sup>[9]</sup>).

However, under IHRL, the use of lethal force in law enforcement operations may be employed only as a last resort, subject to strict or absolute necessity. Persons posing a threat must be captured rather than killed, unless it is necessary to protect other persons against the imminent threat of death or serious injury, or to prevent the perpetration of a particularly serious crime involving grave threat to life, and this objective cannot be addressed through means less harmful than the use of lethal force.

## CASE

- Iran, Victim of Cyber warfare <sup>[10]</sup>
- Iraq/Syria/UK, Drone Operations against ISIS <sup>[11]</sup>
- Israel/Palestine, Accountability for the Use of Lethal Force <sup>[12]</sup>
- Africa, The AfCHPR on the interplay between human rights and IHL <sup>[13]</sup>

## LEGAL SOURCE

Charter of the United Nations and Statute of the International Court of Justice <sup>[14]</sup>

## BIBLIOGRAPHIC RESOURCES

### Suggested readings:

BROWNLIE Ian, *International Law and the Use of Force by States*, Oxford, Clarendon Press, 1963, 532 pp.

GARDAM Judith, *Necessity, Proportionality and the Use of Force by States*,

Cambridge, CUP, 2004, 259 pp.

GRAY Christine, *International Law and the Use of Force*, 3rd ed., Oxford, OUP, 2008, 455 pp.

SASSÒLI Marco, “*Ius ad bellum* and *Ius in Bello* – The Separation between the Legality of the Use of Force and Humanitarian Rules to be Respected in Warfare: Crucial or Outdated?”, in SCHMITT Michael & PEJIC Jelena (eds), *International Law and Armed Conflict: Exploring the Faultlines, Essays in Honour of Yoram Dinstein*, M. Nijhoff, Leiden/Boston, 2007, pp. 242-264.

ZWANENBURG Martin, “Pieces of the Puzzle: Peace Operations, Occupation and the Use of Force”, in *The Military Law and the Law of War Review*, Vol. 1-2, No. 45, 2006, pp. 239-248

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[13] <https://casebook.icrc.org/case-study/africa-afchpr-interplay-between-human-rights-and-ihl>

[14] <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>