INTERNATIONAL LAW AS PROCESS AND PRACTICE
A TRANSATLANTIC CONVERSATION ON USE OF FORCE
WORKSHOP

Wednesday, 3 July 2019
Berlin-Brandenburgische Akademie der Wissenschaften (Einstein Saal)
Jägerstraße 23/24, 10117 Berlin
"Although the modern jus ad bellum has never worked as the text of the UN Charter suggests, it has been fairly resilient over time. Despite its limits, it remains foundational to the global order, largely because states have found ways to keep it relevant as their sensibilities and geopolitical dynamics have changed. For those who remain committed to this system for collective security, the current regulatory challenge is to find ways to adapt it yet again—and establish new parameters to regulate the security problems that states now view and treat as the most pressing. These problems are not new; they relate mostly to transnational terrorism, the commission of mass atrocities, and the proliferation of weapons of mass destruction. But in today’s security climate, they are evidently not amenable to regulation through the general standards. The informal regulation offers a promising alternative. It allows states to balance, on a case-by-case basis, their competing demands for dispatch, flexibility, and collective legitimization. Of course, such regulation can be effective only if states themselves decide to use it, but their past practice suggests that they might. They would almost certainly strengthen the jus ad bellum if they do." Monica Hakimi, The Jus Ad Bellum’s Regulatory Form, AJIL 112 (2018), 151-190, at 190.
“The use of military force and international law in their historical manifestations builds a complex relationship. While current textbooks often focus on the relentless fight of pacifist international lawyers and enlightened governments to gradually restrain war through more legal rules, we tend to overlook to what extent international law has at the same time normalized the use of force in certain historical periods. Contemporary international legal scholarship had an instrumental role in developing and cementing new justifications for the use of force as well as in adapting justifications to the changing preferences of strong political and economic actors. Methodological trends within the discipline, such as the observed oscillations between natural law traditions and positivism in the 19th and 20th centuries, usually are not at the origin of doctrinal changes but, rather, should be seen as scholarly strategies to enhance or challenge the authority of justifications for the use of force in a particular historical context. In this context, protagonists of pacifist legal projects aspired to create a world without war, but in their concrete and imperfect realization, these projects often ended up serving to buttress or conceal inequality and other forms of hegemonic interventionism.” Jochen von Bernstorff, The Use of Force in International Law before World War I: On Imperial Ordering and the Ontology of the Nation-State, EJIL 29 (2018), 233-260, at 260.
## WORKSHOP PROGRAMME

**WEDNESDAY, 3 JULY 2019, 10.00 - 18.00**

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<th>Time</th>
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<td><strong>9.30 – 10.00</strong></td>
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| **10.00 – 10.30** | WELCOME AND INTRODUCTION  
Anne Peters |
| **10.30 – 11.45** | **SESSION 1**  
CODE AND CONDUCT. THE JUS AD BELLUM’S REGULATORY FORM  
Monica Hakimi, The Jus ad Bellum’s Regulatory Form, AJIL 112 (2018), 151-190.  
Chair: Frank Jarasch  
Statements: Christian Marxsen, Evelyne Lagrange, Nicole Deitelhoff |
| **11.45 – 13.00** | **SESSION 2**  
THE PAST FUTURES OF THE USE OF FORCE. HISTORIOGRAPHICAL INTERLUDE  
Chair: Alexandra Kemmerer  
Statements: Jochen von Bernstorff, Agatha Verdebout, Jacob Katz Cogan |
13.00 – 14.00  LUNCH  WINTERGARTEN / ROOFTOP TERRACE

14.00 – 15.15  SESSION 3  WHAT IS CUSTOMARY INTERNATIONAL LAW? AND WHAT IS IT GOOD FOR?  

Monica Hakimi, What is Customary International Law? And What Good is It? (forthcoming).

Chair: Björnstjern Baade  
Statements: Ian Hurd, Paulina Starski, Georg Nolte

15.15 – 15.45  COFFEE BREAK

15.45 – 17.00  SESSION 4  THE WORK OF INTERNATIONAL LAW. CONSTRUCTING AN INTERNATIONAL COMMUNITY  

Monica Hakimi, Constructing an International Community, AJIL 111 (2017), 317-356.  
Monica Hakimi, Why Should We Care about International Law? (Review of Harold Hongju Koh, The Trump Administration and International Law), (forthcoming).

Chair: Sigrid Boysen  
Statements: Antje Wiener, Yifeng Chen, Claus Kress

17.00 – 17.30  GENERAL DEBATE / PROSPECTS  

Chair: Anne Peters  
Rejoinder: Monica Hakimi

20.00 – 21.30  HEIDELBERGER SALON  SYRIA AND BEYOND. ON USE OF FORCE IN INTERNATIONAL LAW  

Monica Hakimi, Christian Marxsen, Anne Peters, Norbert Röttgen

21.30 – 22.30  RECEPTION ON ROOFTOP TERRACE, BBAW
INTERLOCUTORS

Andreas von Arnauld
Felix Arndt
Helmut Aust
Björnstjern Baade
Jack M. Beard
Leander Beinlich
Jochen von Bernstorff
Sigrid Boysen
Yifeng Chen
Jacob Katz Cogan
Philipp Dann
Nicole Deitelhoff
Yuwen Fan
Isabel Feichtner
Monica Hakimi
Matthias Hartwig
Felix Herbert
Christiane Hoffmann
Ian Hurd
Frank Jarasch
Paula Jenner
Alexandra Kemmerer
Eckart Klein
Michal Kowalski
Claus Kress