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Introduction

Investigating Law, War and the Penumbra of Uncertainty

Between these two points, indeed, the *is*, and the *ought to be*, so opposite as they frequently are in the eyes of other men, that spirit of obsequious *quietism* that seems constitutional in our Author, will scarce ever let him recognize a difference.

Jeremy Bentham, 'A Fragment on Government'[1]

INTRODUCTION

The law governing the resort to military force, the *jus ad bellum*, is the area of international law perhaps most critical to the very survival of states. It is also the field of international law that seeks to regulate how states initiate the kinds of military campaigns that have caused untold death and suffering throughout history. It is therefore unsurprising that this part of international law remains the subject of sharp controversy. Military interventions routinely provoke claims and counter-claims about their justification in law, as can be seen by the arguments about the legality of US-led military interventions in Iraq, Kosovo, Afghanistan and Syria, as well as around the lawfulness of Russia's interventions in Georgia and Ukraine. Such controversies persist in spite of the apparently clear rules in the UN Charter, and in the detailed further supplementary means of determining law provided by UN General Assembly declarations and International Court of Justice (ICJ) cases. This book examines such uncertainty and contestation, and specifically considers the effects of international lawyers' extra-legal political, strategic and ethical intuitions on their legal assessments of controversial cases engaging the *jus ad bellum*.

[1] Jeremy Bentham, 'A Fragment on Government', in James H. Burns and H. L. A. Hart, eds., *A Comment on the Commentaries and A Fragment on Government* (Oxford: Clarendon Press, 2008), 498.

I was motivated to write this book by my own perhaps naïve surprise, as an official in the United Kingdom's Foreign, Commonwealth and Development Office (FCDO), that even respected international lawyers had fundamental disagreements about the legality of the US-led military interventions in Kosovo in 1999, Afghanistan in 2001 and of course Iraq in 2003. Like many FCDO officials, I had a basic understanding of international law and experience of working with the FCDO's international lawyers. So I had some sense that international law had 'grey areas', and that plausible legal arguments could often be advanced for opposing positions. However, I assumed even difficult legal questions ultimately always had a single correct answer, which the FCDO's lawyers could be relied upon to discover after sufficient study of doctrine, precedent and the relevant legal materials. Underpinning this assumption was a sense that such legal questions would ultimately be decided by some authoritative tribunal or other dispute resolution mechanism. It was the sharp and ultimately formally unresolved debates between respected international lawyers around the legality of use of force in Kosovo, Afghanistan and Iraq that led me to realise the naivety of this assumption, and to seek to deepen my knowledge of international law.

My studies showed me that many respected scholars had already examined such controversies in the *jus ad bellum*, through analysis of legal doctrine in treaties and other textual legal materials, in more or less formal expressions of state practice and *opinio juris*, in the decisions of the ICJ and other tribunals and in the writings of other legal scholars. But these analyses seemed to fail to take sufficient account of important aspects of the controversies they examined. A key point that such studies identified was that many wars fought today are different to the wars that many believe the drafters of the UN Charter envisaged when they framed the key provisions of their foundational treaty. Overt invasion of one state by another state for straightforward acquisition of territory or economic resources is rare. Instead, those who use military force internationally today advance other justifications: to defend themselves against terrorists, to avert an imminent attack, to protect their own citizens or other civilians from slaughter, or to enforce UN Security Council (UNSC) resolutions. Many of the scholarly works I studied noted that such controversial justifications for resort to force pointed to intrinsic features of uncertainty in the law, the operation of competing rules of legal interpretation, the potential for partisan politicisation of legal assessment, and lawyers' own beliefs about politics, strategy and ethics to skew their legal assessments. But the legal studies I read devoted relatively little effort to investigating these aspects of controversy in the *jus ad bellum*.

I found explanations advanced by critical legal theorists and legal realists of the political and power-based nature of international law also incomplete. Self-interest, the struggle for power and the dominance of and resistance to hegemonic discourses did not seem sufficient explanation for what appeared to be sincere, deeply held disagreements between highly regarded international lawyers about what the law permitted and prohibited in general and in specific cases. And none of these studies said much about how uncertainty and contestation might be shaped by the *factual* uncertainty around military crises, and by the law's apparent requirement for lawyers to make *forecasts* or counter-factual conjectures of the consequences of using and not using force.

I found potential new ways of thinking about these controversies in other fields within and outside law. Legal philosophers and philosophers of knowledge have investigated vagueness in law. Socio-legal scholars have examined competing legal cultures in legal systems. Scholars of international politics, ethics, strategic culture and political psychology have considered how actors' competing underlying beliefs about the world can determine behaviour in international relations. And the literature around legal risk management, strategic intelligence analysis and political forecasting has considered techniques for dealing with similar dilemmas.

This book is the first that seeks to synthesise approaches from these different disciplines to offer new ways of understanding and dealing with uncertainty, controversy and the role of extra-legal intuitions in hard cases engaging international law governing resort to military force. Unlike other studies of the *jus ad bellum*, this book does not try to identify what the law is, nor to prescribe *the* 'correct' method for framing and assessing legal arguments. Rather, this book explores how legal reasoning works in this area of law, using concepts from the philosophy of knowledge to explain what it is about the *jus ad bellum* that enables uncertainty and disagreement. This book casts light on why and how lawyers' political, ethical and strategic intuitions about how the world works and how it *ought* to work shape their legal assessments of hard cases engaging this law. The book considers how uncertainty about current and *future* facts feeds into legal uncertainty – how hard cases of force often require complex factual assessments, and *forecasting* of the immediate and long-term consequences of both using and not using force. This is the first book to investigate the *jus ad bellum* using interviews and a survey with UK-based international lawyers, alongside systematic textual analysis of ICJ judgments and scholarly writings. And this book is the first to draw on insights from legal risk management, strategic intelligence assessment and political forecasting to suggest techniques lawyers might use to help tackle such analytical dilemmas.

LEGAL AND EXTRA-LEGAL CONTROVERSY IN THE *JUS AD BELLUM*

International law governing the resort to military force has long been and remains the subject of sharp controversy. The Cold War is often seen as having restrained the major powers' willingness to use force for fear of catastrophic escalation, leaving 'international law looking like a frightened rabbit staring into the headlights of an approaching car, obsessed by the fear of an oncoming disaster which it was almost entirely powerless to prevent'.[2] Yet even then, lawyers and states often disagreed, perhaps not always sincerely, about the legality of specific instances of use of force, including by the United Kingdom and France in Suez, by the USSR in Czechoslovakia, by India in East Pakistan, and by the United States in Vietnam and Latin America, prompting one scholar to ask 'Who Killed Article 2(4)?'[3] Lauterpacht's famous description of the *jus in bello* might also be applied to the *jus ad bellum*: '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.'[4]

Such disagreements surprise some non-lawyers, because the *jus ad bellum* appears succinct and unambiguous. Three brief paragraphs in Articles 2(4), 42 and 51 of the UN Charter appear to prohibit all use of force by states internationally, except when authorised by the UNSC or in individual or collective self-defence against armed attack. Yet when assessing specific controversial instances – 'hard cases' – of force, even expert international lawyers often draw 'opposing conclusions regarding the state of the law'.[5] Such contestation can contribute to what Koskenniemi describes as 'the common feeling that international law is somehow "weak" or manipulable', that indeterminacy is a 'structural property' of international law, which is thus 'useless' for 'justifying or criticizing international behaviour'.[6] It can create suspicion that, since lawyers can 'plausibly take a number of different positions' when assessing the lawfulness of hard cases of force, their legal opinions tend to align

[2] Christopher Greenwood, 'Humanitarian Intervention: The Case of Kosovo', in *2002 Finnish Yearbook of International Law* (Helsinki: Kluwer, 2002), 141–2.

[3] Thomas M. Franck, 'Who Killed Article 2(4)? Or: Changing Norms Governing the Use of Force by States', *American Journal of International Law*, 64 (1970), 809–37.

[4] Hersch Lauterpacht, 'The Problem of the Revision of the Law of War', *British Year Book of International Law*, 29 (1952), 360–82, 382.

[5] Christian Marxsen, 'A Note on Indeterminacy of the Law on Self-Defence Against Non-State Actors', in *Self-Defence Against Non-State Actors: Impulses from the Max Planck Trialogues on the Law of Peace and War*, MPIL Research Paper Series No. 2017–07 (Heidelberg: Max Planck Institute, 2017), 79.

[6] Martti Koskenniemi, *From Apology to Utopia* (Cambridge: Cambridge University Press, 2005), 66, 62, 67.

with, and are 'in fact motivated by', their 'policy preferences' and 'political choices'.[7] Such contestation can even lead some to conclude that, since war is the ultimate contest of politico-military power and blind chance, it is exempt from legal reasoning, vulnerable to Cicero's claim about law and personal self-defence: 'Silent enim leges inter arma.'[8]

This book examines such debates by considering several interconnected, long-established, but still contentious propositions about international law governing resort to force, seeking to describe how far they are valid, with what limitations and under what conditions. This book seeks to develop these propositions using concepts from the philosophy of knowledge, from socio-legal theory and from international strategy, politics and ethics to describe the structure and sources of legal and factual uncertainty in this area of law. The book particularly examines how far this uncertainty is rooted in lawyers' underlying extra-legal intuitions – political, ethical and strategic presuppositions and beliefs about how the world works and how it ought to work.

The collapse in August 2021 of the Afghan Government led by Ashraf Ghani in the face of the Taleban's military campaign came after this book had entered production, so is not discussed in the main text. However, those developments arguably support the relevance of this book's discussion of uncertainty, forecasting and the role of intuitions and biases in decisions about the resort to force.

First, this book argues that the *jus ad bellum*, like many areas of international and domestic law, is 'specifically indeterminate'. In at least some cases, what the law prescribes is vague, and displays specific forms of vagueness described by the philosophy of knowledge. The law relies on 'paradigms' – authoritative examples or 'plain cases' of lawful and unlawful behaviour.[9] These paradigms are vulnerable to 'supervaluationism', when lawfulness is determined by multiple tests that are overlapping, but not entirely co-incident, and may be evaluated using different values.[10] And the law operates not

[7] Marxsen, 'Indeterminacy', 80; Marko Milanovic, 'Accounting for the Complexity of the Law Applicable to Modern Armed Conflicts', in Michael N. Schmitt, Shane R. Reeves, Christopher M. Ford and Winston S. Williams, eds., *Complex Battlespaces: The Law of Armed Conflict and the Dynamics of Modern Warfare* (Oxford: Oxford University Press, 2019), 41.

[8] Marcus Tullius Cicero, 'Pro Milone', in Albert Curtis Clark, ed., *Oxford Classical Texts: M. Tulli Ciceronis: Orationes*, vol. 2, *Pro Milone*; *Pro Marcello*; *Pro Ligario*; *Pro Rege Deiotaro*; *Philippicae I–XIV* (Oxford: Oxford University Press, 1918), 5.

[9] H. L. A. Hart, *The Concept of Law*, 3rd ed. (Oxford: Oxford University Press, 2012), 127.

[10] Timothy Williamson, 'Vagueness in Reality', in Michael J. Loux and Dean W. Zimmermann, eds., *The Oxford Handbook of Metaphysics* (Oxford: Oxford University Press, 2009), 690, 692.

according to 'bivalent logic' but 'fuzzy logic' – lawful and unlawful behaviour is separated, not by a sharp boundary, but a fuzzy 'penumbra of uncertainty'.[11] These forms of vagueness facilitate uncertainty and contestation about the lawfulness of many wars fought today because these wars are different in multiple important ways to the overt invasion by one state to deprive another of its territorial integrity or political independence, which the UN Charter most clearly prohibits.

Second, this book argues that uncertainty about the law in specific cases is exacerbated by uncertainty about current and in particular *future* facts in such cases. Assessing the lawfulness of a potential decision to use force requires both assessment of the current facts of the military crisis that may justify force, and also *forecasts* of the future consequences of either using or not using force in that crisis. But there are usually multiple possible interpretations of the current facts in such cases, and there are always multiple possible forecasts of the future consequences of using or not using force. Different assessments of the present and future flow from different assessors' assumptions and implicit theories 'about how the world works', and 'how events would have unfolded' under different conditions.[12] Uncertainty about the future both in specific cases of force, and in the evolution of force more generally may even mean that vagueness in the *jus ad bellum*, like other law, is both necessary and inevitable.

Third, the *jus ad bellum*, like other law, might be described as 'partially autonomous'. Uncertainty and competing interpretations of law, fact and forecasting in specific hard cases of resort to force and the absence of authoritative legal rules for tackling such uncertainties, encourage lawyers to apply consistent, mutually reinforcing 'extra-legal' 'political and ideological viewpoints' and intuitions, including about strategy and ethics, to choose between competing interpretations of law and fact, and to reach conflicting legal conclusions.[13] Politico-strategic and ethical intuitions can act as forms of cognitive biases that shape choices about the interpretation of facts, expectations of consequences, methods of legal interpretation and thus about what the *jus ad bellum* requires. Uncertainty about the *jus ad bellum* as a system of prescriptive rules and principles may even encourage lawyers to practise 'strategic behaviour in interpretation', to use the *jus ad bellum* in its mode of

[11] Hart, *Concept of Law*, 127; Williamson, 'Vagueness in Reality', 690, 692.

[12] Philip Tetlock, *Expert Political Judgement* (Princeton: Princeton University Press, 2005), 145, 146.

[13] James Green, *The International Court of Justice and Self-Defence in International Law* (Oxford and Portland: Hart Publishing, 2009), 184.

a system of argumentative practices to justify or criticise the lawfulness of specific behaviour in accordance with their extra-legal beliefs and interests.[14]

Fourth, this book argues that lawyers tend to conform to varying degrees to competing 'interpretive' and 'strategic cultures' concerning the *jus ad bellum*. Different 'interpretive–strategic cultures' consist of lawyers who share similar, mutually reinforcing intuitions, assumptions and beliefs about legal interpretation and about extra-legal factors, such as politico-strategic causation and ethical justification.[15] Lawyers in such cultures thus reach similar conclusions about the law and facts in specific cases. These competing cultures vary along a continuum from 'restrictivists', likely to see few legal, politico-strategic and ethical justifications for force, to 'expansionists', likely to see more such justifications.[16]

This book argues that 'restrictivists' adopt approaches to legal interpretation that might be grouped under the heading of 'formalist'. In assessing the lawfulness of resort to force, formalists emphasise the ordinary meaning of the words of the UN Charter and other formal sources of the *jus ad bellum*, hold that the law has evolved little since 1945, accept only explicitly legal statements as evidence of *opinio juris*, require clarity and overwhelming quantity of state practice for new custom, and regard only the UNSC as permitted to authorise force in situations where the law is unclear. 'Expansionists' prefer legal interpretation techniques that this book groups under the heading of 'dynamist'. In assessing the lawfulness of resort to force, dynamists take account of the UN Charter's wider purposes and other law, arguing the law has evolved significantly since 1945, accepting a wider variety and smaller quantity of *opinio juris* and state practice for new custom, and seeing more discretion for states and bodies outside the UNSC to authorise force when the law is unclear.

In terms of extra-legal strategic, political and ethical reasoning, this book argues that 'restrictivists' adopt approaches that might be grouped under the

[14] Koskenniemi, *From Apology to Utopia*, 67–9; Duncan Kennedy, *Legal Reasoning: Collected Essays* (Aurora, CO: The Davies Group Publishers, 2008), 159.

[15] Michael Waibel, 'Interpretive Communities in International Law', in Andrea Bianchi, Daniel Peat, Matthew Windsor, eds., *Interpretation in International Law* (Oxford: Oxford University Press, 2015), 148; Peter Haas, 'Introduction: Epistemic Communities and International Policy Coordination', *International Organization*, 46 (1992), 1, 3; Theo Farrell, 'World Culture and Military Power', *Security Studies*, 14:3 (2005), 450; Colin Gray, 'National Style in Strategy: The American Example', *International Security*, 6:2 (1981), 22; Alastair Iain Johnston, 'Thinking About Strategic Culture', *International Security*, 19:4 (1995), 46.

[16] Anne Peters and Christian Marxsen, 'Editors' Introduction: Self-Defence in Times of Transition', in *Self-Defence Against Non-State Actors: Impulses from the Max Planck Trialogues on the Law of Peace and War*, MPIL Research Paper Series No. 2017–07 (Heidelberg: Max Planck Institute, 2017), 7.

heading of 'pacificist' – effectively viewing the *jus ad bellum* as a *jus contra bellum*.[17] They tend to choose the interpretation of law that they assess minimises potential for future legal uncertainty and abuse, best protects the interests of less powerful states while distrusting more powerful states, and treating the prohibition on force as always the most important decision-making principle. When assessing different interpretations of uncertain facts, and constructing forecasts of potential consequences of using or not using force, pacificists tend to proceed on the basis that unilateral force almost always causes more harm than it prevents for the state using force and for the international system, that only self-interested states use force unilaterally, and only a narrow range of interests and ethical values are sufficiently widely shared to guide decisions about unilateral force. 'Expansionists' adopt approaches to politics, strategy and ethics that this book groups under the heading of 'interventionist'. They tend to choose the interpretation of law that fits with changes in conflict since 1945, and hold that principles such as human rights, preventing genocide, stopping terrorism or the proliferation of weapons of mass destruction (WMDs), can be more important than the prohibition on force. When assessing different interpretations of uncertain facts, 'interventionists' tend to proceed on the basis that unilateral force can often prevent more harm than it causes for the state using force and the international system, states using force unilaterally can advance common interests as well as self-interest, and a range of interests and ethical values can be sufficiently shared internationally to guide decisions about unilateral force.

It is important to note that theorists of interpretive culture and strategic culture do not claim that individuals necessarily conform to cultures consciously, or deliberately coordinate or act collectively. A lawyer's alignment with an interpretive or strategic culture may reflect deeply internalised, unconsciously held intuitions and preferences, the product of both an individual's socialisation and inherent cognitive characteristics. Interpretive and strategic cultures may reflect coherent patterns of what psychologists term 'cognitive biases', 'motivated biases' and 'heuristics' – intuitions, presuppositions and rules of thumb that simplify 'the complex tasks of assessing probabilities and predicting values', and are usually economical and effective, but sometimes 'lead to severe and systematic errors'.[18]

[17] Olivier Corten, *The Law against War: The Prohibition on the Use of Force in Contemporary International Law* (London: Hart Publishing, 2010), 2.

[18] Amos Tversky and Daniel Kahneman, 'Judgment under Uncertainty: Heuristics and Biases', *Science*, 185:4157 (1974), 1124–31, 1124.

Fifth, this book argues that fields outside the *jus ad bellum* offer insights that might help lawyers manage these uncertainties and subjectivities. Legal risk management, international humanitarian law, strategic intelligence analysis and political forecasting suggest techniques to manage uncertainties and assumptions, and systematically develop and evaluate multiple alternative interpretations and forecasts of fact and law. International lawyers can use such techniques to enhance their assessment of hard cases engaging the *jus ad bellum*.

INVESTIGATING LEGAL AND FACTUAL UNCERTAINTY ABOUT RESORT TO WAR

This book is the first to examine controversies in the *jus ad bellum* using an innovative combination of theoretical concepts and qualitative and quantitative methods.[19] For analytical focus, this book examines the *jus ad bellum* as it applies to states, not considerations for resort to force by non-state actors, nor the *jus in bello* – the law governing military behaviour within armed conflict. This book uses the term '*jus ad bellum*' to describe international law governing resort to force by one state in or against another state. It takes as the main sources of the *jus ad bellum* the UN Charter, the *Caroline* criteria or Webster formulation, which is widely accepted as describing customary international law governing self-defence, and other interpretations of the law that are widely accepted as authoritative, such as UN General Assembly (UNGA) declarations and ICJ jurisprudence. Although states and non-legal commentators still often use the term 'war' to describe international military conflict, this book generally uses the terms 'resort to force', 'use of force' or 'armed attack' – the UN Charter includes the latter two terms.[20] The term 'unilateral use of force' is used to mean resort to force that does not have unambiguous UNSC authorisation.

This book seeks to analyse how international lawyers use competing theoretical frameworks when they apply the *jus ad bellum*, while not intending to endorse any of those frameworks, to the extent that any analysis can exclude theoretical presuppositions. Nevertheless, to provide an intelligible narrative, this book uses terms associated with specific theoretical approaches, although

[19] Denis J. Galligan, 'Legal Theory and Empirical Research', in Peter Cane and Herbert Kritzer, eds., *The Oxford Handbook of Empirical Legal Research* (Oxford: Oxford University Press, 2010), 966–1001; Gregory Shaffer and Tom Ginsburg, 'The Empirical Turn in International Legal Scholarship', in *American Journal of International Law*, 106:1 (2012), 1–47.

[20] Christine Gray, *International Law and the Use of Force* (Oxford: Oxford University Press, 2008), 9.

that does not mean the book endorses those approaches. For example, many legal scholars see a distinction between what Dworkin described as 'hard cases', which may have 'a unique answer that is either not obvious or is subject to disagreement', and situations where the law is indeterminate – 'it fails to justify a unique answer to an intelligible legal question'.[21] However, this book uses the term 'hard case' to describe any case that provokes significant disagreement between international lawyers and states about what the *jus ad bellum* requires, both 'when no settled rule dictates a decision either way', and also where knowledgeable lawyers cannot readily 'discriminate between two or more interpretations' of the relevant legal materials, since the two kinds of case usually appear identical to an external observer.[22]

Similarly, some scholars argue 'there is no neat distinction between the political factors inherent in law and the political views (conscious or unconscious)' of legal decision-makers.[23] Dworkinian and other contemporary natural law approaches may integrate such factors into legal reasoning, seeking the interpretation of law that best advances those 'principles and policies' providing 'the best political justification for the statute at the time it was passed'.[24] Nevertheless, this book uses the term 'extra-legal' to denote forms of reasoning widely accepted as separate from law, '(in the sense of not-doctrine based) background assumptions'.[25] Even Dworkinian jurists usually seek some legal anchoring – for example, a UNSC resolution, another existing body of international law, a UNGA declaration or other authoritative expression of collective international will – for political and other principles that can be legitimately invoked when interpreting the *jus ad bellum*.[26]

This book regards such extra-legal reasoning as including politics and strategy, concerning the ways and means states and other actors use to pursue their interests, involving 'bargaining and persuasion', 'threats and pressure, psychological as well as physical', 'words as well as deeds' and 'the art of creating power'.[27] It also includes ethical or normative theories about when force might be considered right or wrong, when it might ultimately help 'enable us to live together well in communities and so flourish as human

[21] Leslie Green, 'Notes to the Third Edition', in Hart, *Concept of Law*, 319.
[22] Ronald Dworkin, 'Hard Cases', *Harvard Law Review*, 88:6 (1975), 1057–109, 1060; Ronald Dworkin, *Law's Empire* (Oxford: Hart Publishing, 1998), 255–6.
[23] Green, *Self-Defence*, 176.
[24] Ronald Dworkin, *A Matter of Principle* (Oxford: Oxford University Press, 1985), 145, 129.
[25] Marxsen, 'Indeterminacy', 80.
[26] Sean D Murphy, 'Protean *Jus Ad Bellum*', *Berkeley Journal of International Law*, 27 (2009), 36, 26.
[27] Lawrence Freedman, *Strategy: A History*, Kindle ed. (Oxford: Oxford University Press, 2013), xii.

beings'.[28] And extra-legal reasoning also includes notions of legitimacy, ideas about whether law is created and applied according to processes acceptable to a political community, and conforming with substantive moral and political rationales.[29] Other extra-legal factors such as economics may also shape *jus ad bellum* decisions. However, this book concentrates on the effects of politics, strategy and ethics to retain analytical focus and manageability, and because law's autonomy from politics and ethics has consistently been a key concern for jurists such as Hart and Kelsen.[30]

This book examines scholarly writings about the law governing resort to force, about different legal theories and forms of legal interpretation, and theories of international politics and ethics in conflict. It identifies from these sources pivotal contested principles about the legal, factual and ethical analysis and justification of resort to force, which may function as legal and extra-legal intuitions underpinning competing approaches to the *jus ad bellum*. The book uses three methods to consider how these competing principles may be observable in legal reasoning about the *jus ad bellum*.

First, this book reports systematic textual analysis of scholarly writings and UK government statements concerning the legality of military interventions in Kosovo in 1999, Afghanistan in 2001 and Iraq in 2003. Fifteen scholarly writings were analysed, written or co-written by a total of eight influential UK legal scholars: Ian Brownlie and Brian Apperley, Christine Chinkin, Christine Gray, Christopher Greenwood, Vaughan Lowe, Lindsay Moir and Nigel White (writing with Eric Myjer).[31]

[28] David Fisher, *Morality and War* (Oxford: Oxford University Press, 2011), 60.

[29] Thomas M. Franck, *Fairness in International Law and Institutions* (Oxford: Oxford University Press, 1998), 27; Christine Chinkin, 'Rethinking Legality/Legitimacy after the Iraq War', in Richard Falk, Mark Juergensmeyer and Vessellin Popovski, eds., *Legality and Legitimacy in Global Affairs* (Oxford: Oxford University Press, 2012), 220–39, 221–2; Richard Falk, 'Introduction: Legality and Legitimacy', in Falk, Juergensmeyer and Popovski, *Legality and Legitimacy*, 4–39, 9.

[30] Hans Kelsen, *Introduction to the Problems of Legal Theory* (Oxford: Clarendon Press, 1992), 2, 3; H. L. A. Hart, 'Positivism and the Separation of Law and Morals', *Harvard Law Review*, 71 (1958), 615.

[31] Christopher Greenwood, 'International Law and the NATO Intervention in Kosovo', *The International and Comparative Law Quarterly*, 49 (2000), 926; Vaughan Lowe, 'International Legal Issues Arising in the Kosovo Crisis', *The International and Comparative Law Quarterly*, 49 (2000), 934; Christine Chinkin, 'The Legality of NATO's action in the FRY', *The International and Comparative Law Quarterly*, 49 (2000), 910; Gray, *International Law*, 132–40, 156–60, 216–22, 354–69; Ian Brownlie and Brian Apperley, 'Kosovo Crisis Inquiry: Memorandum on the International Law Aspects', *The International and Comparative Law Quarterly*, 49 (2000) 878; Christopher Greenwood, 'International Law and the "War against Terrorism"', *International Affairs*, 78 (2002), 301; Chinkin, 'Rethinking Legality/Legitimacy', 220; Lindsay Moir, *Reappraising the Resort to Force: International law*, Jus ad Bellum *and the*

Second, the book reports systematic textual analysis of majority ICJ judgments and twenty-eight separate or dissenting opinions written by a total of twenty-two ICJ judges on three key cases: *Military and Paramilitary Activities in and against Nicaragua* (1986), *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004) and *Armed Activities on the Territory of the Congo* (2005).[32] These cases dealt significantly with the *jus ad bellum* – alleged violations of this law were central to the *Nicaragua* and *Congo* cases. The cases also provide evidence of different national legal cultures, since the judges in these cases came from nineteen countries, including Brazil, Egypt, Germany, India, Nigeria, the United Kingdom and the United States.[33] These

War on Terror (London: Bloomsbury Publishing, 2010), 40; Eric Myjer and Nigel White, 'The Twin Towers Attack: An Unlimited Right to Self-Defence?', *Journal of Conflict and Security Law*, 7 (2002), 5; Christopher Greenwood, 'International Law and the Pre-emptive Use of Force: Afghanistan, Al-Qaida, and Iraq', *San Diego International Law Journal*, 4 (2003), 7–38; Vaughan Lowe 'The Iraq Crisis: What Now', *The International and Comparative Law Quarterly*, 52:4 (2003), 859–71; Ian Brownlie, 'Memorandum from Professor Ian Brownlie QC', Minutes of Evidence Taken Before the Foreign Affairs Committee, 24 October 2002, in Foreign Affairs Committee, *Foreign Policy Aspects of the War on Terrorism*, HC196, Session 2002–2003 (19 Dec. 2002); Nigel D. White and Eric P. J. Myjer, 'Editorial: The Use of Force against Iraq', *Journal of Conflict and Security Law*, 8:1 (2003), 1–14.

[32] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)*, Merits, Judgment, International Court of Justice (ICJ) Reports 1986, 14; *Nicaragua*, Separate Opinion of Judge Ago, ICJ Reports 1986, 181; *Nicaragua*, Separate Opinion of Judge Elias, ICJ Reports 1986, 178; *Nicaragua*, Dissenting Opinion of Judge Sir Robert Jennings, ICJ Reports 1986, 528; *Nicaragua*, Separate Opinion of Judge Lachs, ICJ Reports 1986, 158; *Nicaragua*, Separate Opinion of Judge Ni, ICJ Reports 1986, 201; *Nicaragua*, Dissenting Opinion of Judge Oda, ICJ Reports 1986, 212; *Nicaragua*, Separate Opinion of Judge Ruda, ICJ Reports 1986, 174; *Nicaragua*, Dissenting Opinion of Judge Schwebel, ICJ Reports 1986, 259; *Nicaragua*, Separate Opinion of Judge Sette-Camara, ICJ Reports 1986, 192; *Nicaragua*, Separate Opinion of President Nagendra Singh, ICJ Reports 1986, 151; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, 136; *Wall*, Separate Opinion of Judge Al-Khasawneh, ICJ Reports 2004, 235; *Wall*, Declaration of Judge Buergenthal, ICJ Reports 2004, 240; *Wall*, Separate Opinion of Judge Elaraby, ICJ Reports 2004, 246; *Wall*, Separate Opinion of Judge Higgins, ICJ Reports 2004, 207; *Wall*, Separate Opinion of Judge Kooijmans, ICJ Reports 2004, 219; *Wall*, Separate Opinion of Judge Koroma, ICJ Reports 2004, 204; *Wall*, Separate Opinion of Judge Owada, ICJ Reports 2004, 260; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*, Judgment, ICJ Reports 2005, 168; *Congo*, Separate Opinion of Judge Elaraby, ICJ Reports 2005, 327; *Congo*, Dissenting Opinion of Judge *Ad Hoc* Kateka, ICJ Reports 2005, 361; *Congo*, Dissenting Opinion of Judge Kooijmans, ICJ Reports 2005, 306; *Congo*, Declaration of Judge Koroma, ICJ Reports 2005, 284; *Congo*, Separate Opinion of Judge Parra-Aranguren, ICJ Reports 2005, 292; *Congo*, Separate Opinion of Judge Simma, ICJ Reports 2005, 334; *Congo*, Declaration of Judge Tomka, ICJ Reports 2005, 351; *Congo*, Declaration of Judge *Ad Hoc* Verhoeven, ICJ Reports 2005, 355.

[33] Argentina, Belgium, Brazil, Egypt, Germany, India, Italy, Japan, Jordan, Netherlands, Nigeria, Poland, People's Republic of China, Sierra Leone, Slovakia, Tanzania, United Kingdom, United States and Venezuela.

cases are key sources of jurisprudence for the *jus ad bellum*, since the ICJ is the only court that at present approximates an authoritative final adjudicator in international disputes about this area of international law. And the cases collectively map the evolving jurisprudence around a contentious question in the *jus ad bellum*: whether armed attacks by non-state actors trigger the right of self-defence.

Both these sets of systematic textual analyses considered how far the legal assessments in the scholarly writings, government legal statements, and ICJ opinions expressed the contested legal and extra-legal principles identified earlier. In other words, this research assessed how far these different sets of lawyers were making 'legal' assessments, and how far they advanced extra-legal opinions.

Third, unlike previous studies of the *jus ad bellum*, this book draws on structured interviews and an online survey with a total of thirty-one UK-based international lawyers with experience and/or knowledge of the *jus ad bellum*. The views of such lawyers, often regarded as impartial experts, can significantly influence perceptions of the lawfulness of force in the wider legal community and society, particularly since the ICJ rarely considers such cases. Such lawyers may provide an indicator of what society agrees the law actually is, since, as D'Amato has noted, lawyers with high standing as academics or practitioners have 'some right to claim, on the basis of professional training and experience', an ability to predict 'what a judge would decide'.[34] Such international lawyers can directly shape states' legal positions through advice to governments, including in international tribunals, and because government legal advisers often draw on scholarly writings in developing national legal positions.[35] And practically, it is more straightforward to interview and survey such lawyers than those currently serving with governments.

The bibliography includes an anonymised list of the thirty-one interview and survey participants. Sixteen were legal scholars, eight, practising international lawyers and seven, former government lawyers. Six of the participants were Queen's Counsel. Although all based in the United Kingdom, they represented ten nationalities: Australia, Canada, Federal Republic of Yugoslavia, Germany, Greece, Israel, Italy, New Zealand, Ireland and the United Kingdom. This book does not claim to provide a statistically accurate assessment of British lawyers' legal and extra-legal views about the *jus ad*

[34] Anthony D'Amato, 'Legal Uncertainty', *California Law Review*, 71 (1983), 1.

[35] Sir Franklin Berman, KCMG, QC, 'The Role of the International Lawyer in the Making of Foreign Policy', in Chanaka Wickremasinghe, ed., *The International Lawyer as Practitioner* (London: British Institute of International and Comparative Law, 2000), 15; Professor Sir Robert Jennings, 'Introduction', in Wickremasinghe, *International Lawyer*, xxiii.

bellum. Instead this book uses a case study method to investigate the detailed features and range of variation of legal and extra-legal opinions about resort to force within the UK legal community. In the United Kingdom, the population of lawyers being surveyed is too specialised, and the process being investigated – legal advice and commentary about the *jus ad bellum* – too specific and actor-dependent, for random sampling to be reliable. Participants were therefore selected using 'purposive sampling', guided by 'the study's purpose and the researcher's knowledge of the population'.[36] Participants were identified for 'reputational', 'decisional' and 'positional' reasons – they were assessed to have influence on wider expert opinion and official decisions about resort to force, and/or represent a range of opinions across the UK legal profession.[37]

Participants were identified by examining websites of international law departments of all Russell Group universities, and approaching all professors of public international law and other faculty members in those institutions whose research or teaching interests suggested they might have *jus ad bellum* expertise, and UK-based members of the editorial boards of two relevant academic journals.[38] Practising international lawyers were chosen by searching for 'public international law' in the Chambers and Partners website, consulting the attorney general's public international law panel list, and inviting to participate lawyers whose webpages suggested expertise in the *jus ad bellum* or wider international law in armed conflict.[39] All living UK-based authors of legal writings analysed in this research for whom contact details could be found were also approached. Former government lawyers were identified through published works, consultation with colleagues and the author's own knowledge. Finally, some participants were identified by 'snowball' or 'chain referral' – suggested by participants who had already taken part.[40]

Using these methods, the author contacted by email a total of seventy-nine international lawyers between June 2017 and July 2018. Thirty-one individuals eventually participated in the research in some form. Twenty-three completed

[36] Oisín Tansey, 'Process Tracing and Elite Interviewing: A Case for Non-probability Sampling', *PS: Political Science and Politics*, 40:3 (2007), 765–72, 770.

[37] Ursula Hoffmann-Lange, 'Methods of Elite Research', in Russell J. Dalton and Hans Dieter Klingemann, eds., *The Oxford Handbook of Political Behavior* (Oxford: Oxford University Press, 2007), 910–29.

[38] Russell Group Universities, http://russellgroup.ac.uk/about/our-universities/; *Journal on the Use of Force and International Law*, www.tandfonline.com/action/journalInformation?show=editorialBoard&journalCode=rjuf20; *Journal of Conflict and Security Law*, https://academic.oup.com/jcsl/pages/Editorial_Board.

[39] Chambers and Partners, www.chambersandpartners.com/11814/96/editorial/1/1.

[40] Tansey, 'Process Tracing', 770.

the survey in some form, while thirty participants were interviewed. The author holds copies of all interview transcripts and completed survey questionnaires. Twenty-two of the seventy-nine individuals invited to participate were male, while seven of the thirty-one eventual participants were female. There are various possible explanations for this. These figures may broadly represent the gender distribution of UK-based international lawyers with expertise in the *jus ad bellum* and conflict and security law. The information sources used may not adequately represent female international lawyers with such expertise. Or the methods used to search these information sources may be inadequate to identify those female international lawyers.

The participants referred to several actual UK instances of the use of force, but did not mention the United Kingdom's air strikes on Syria in April 2018, as all interviews were completed by March 2018. In designing the questionnaire and interview, the author drew on training and advice from a professional opinion research specialist and from a scholar specialising in expert survey and interview methodology, published sources on interview and expert/elite survey methods, and the survey conducted in developing the *Chatham House Principles on Self-Defence*.[41]

To maintain anonymity for those who requested it, all participants were assigned an identifying number to which all their inputs are attributed, identifying each individual's profession, such as 'legal scholar', 'former government lawyer' or 'practising international lawyer'. The following interviewees agreed to have their participation noted here, although specific quotes are not attributed to them:

- Professor Dapo Akande, Professor of Public International Law, Co-Director, Oxford Institute for Ethics, Law & Armed Conflict, University of Oxford
- Professor Susan C. Breau, Dean of Law, University of Victoria (when interviewed: Head of School of Law, University of Reading)
- Professor Bill Bowring, School of Law, Birkbeck College, University of London

[41] Ursula Hoffmann-Lange, 'Studying Elite versus Mass Opinion', in Wolfgang Donsbach and Michael W. Traugott, eds., *The SAGE Handbook of Public Opinion Research* (London: SAGE Publications Ltd, 2008), 3–63; Marco R. Steenbergen and Gary Marks, 'Evaluating Expert Judgments', *European Journal of Political Research*, 46 (2007), 347–66; Jon A. Krosnick and Stanley Presser, 'Question and Questionnaire Design', in *Handbook of Survey Research*, 2nd ed. (Bingley: Emerald Group, 2010), 63–313; Alan Bryman and James J. Teevan, *Social Research Methods* (Oxford: Oxford University Press, 2005), 80–4; Dr Kai Opperman, Scholar of Political Science; Dr Hayk Gyuzalyan, Survey Design Specialist, IPSOS-MORI; Elizabeth Wilmshurst, 'The Chatham House Principles of International Law on the Use of Force in Self-Defence', *International and Comparative Law Quarterly*, 55 (2006), 963.

- Professor Charles Garraway, formerly Colonel, Army Legal Services, Fellow, Human Rights Centre, University of Essex
- Professor Christian Henderson, Chair of International Law, University of Sussex
- Professor Noam Lubell, Professor of International Law, Director of the Essex Armed Conflict and Crisis Hub, University of Essex
- Professor Marko Milanovic, Professor of Public International Law, University of Nottingham
- Jasmin Nessa, Postgraduate Research Student and Graduate Teaching Assistant, Liverpool Law School
- Professor Christian J. Tams, Chair of International Law, University of Glasgow
- Professor Nicholas Tsagourias, School of Law, University of Sheffield

Since much of the research conducted for this book focused on UK-based lawyers and UK actions in Kosovo, Afghanistan, and Iraq, this study reveals patterns of opinion and reasoning which can most confidently be applied to the cultural and historic specificities of UK-based international lawyers in the late twentieth and early twenty-first centuries. The book's focus on English language sources and practitioners also potentially limits the generalisability of its conclusions. At the same time, the UK-based focus of the interviews, survey and scholarly analysis made it less likely that disagreements identified by those methods were caused by national differences in legal systems and media discourse, and more likely that those differences were due to individual intuitions and preferences. And the legal and factual arguments discussed with the lawyers interviewed and in the analysis of scholarly writings were not specific to the United Kingdom or to any one country, but instead relate to the justification of resort to military force under international law in general, including in the UNSC and ICJ. The range of nationalities of the lawyers interviewed and of the ICJ judges whose opinions this book analyses, also make it more likely that this book's arguments may be applicable beyond the United Kingdom.

OUTLINE OF THE BOOK

This book is divided into three parts, setting out the conceptual basis for its claims about uncertainty in the *jus ad bellum*, assessing what the empirical research conducted for this book suggests about those claims, and finally considering potential responses to the dilemmas identified. The first part consists of two chapters considering the nature and sources of uncertainty in the *jus ad bellum*. Chapter 2, the book's first substantive chapter, considers legal

uncertainty in the *jus ad bellum* as set out in the UN Charter and other sources of law. It describes the four key concepts from the philosophy of vagueness and legal sociology already described in this chapter, which underpin this book's analysis: paradigms, supervaluationism, fuzzy logic and the 'penumbra of uncertainty', and competing interpretive cultures. The chapter outlines 'hard cases' which these sources of uncertainty appear to enable: anticipatory self-defence, pre-emptive self-defence, self-defence against non-state actors, humanitarian intervention, and use of force to prevent WMD proliferation. The chapter describes how interviewees and survey participants evaluated such potential justifications for force, the results displaying the forms of vagueness already identified. The chapter then outlines one possible explanation for this contestation, which the second part of the book will assess: that lawyers with different opinions about the lawfulness of resort to force also align with different 'interpretive cultures', holding different opinions about principles of legal interpretation. 'Restrictivists' espouse in effect a *jus contra bellum*, tending to prefer interpretation techniques that this book groups under the broad heading of 'formalist', while 'expansionists' tend to prefer interpretation techniques which this book groups as 'dynamist' when applying the *jus ad bellum*.

Chapter 3 considers factual uncertainty in the *jus ad bellum*. The chapter describes how the forms of vagueness introduced in Chapter 2 can affect the factual evidence necessary to assess military crises which engage the *jus ad bellum*. The chapter argues that the key *jus ad bellum* tests of necessity, imminence and proportionality also require decision-makers to compare multiple *forecasts* of the harms caused or permitted if force is or is not used. The chapter describes how survey participants evaluated the lawfulness of force in four fictional scenarios, demonstrating how even hypothetical 'facts' elicited varying opinions. The chapter describes rules of evidence the ICJ has developed, which reduce but do not resolve factual uncertainty, and offer no advice for conducting the forecasts required by the *jus ad bellum*. The chapter outlines the second potential explanation for contestation in the *jus ad bellum* which the second part of this book assesses: that lawyers resolve such factual and forecasting uncertainties by applying their own extra-legal politico-strategic and ethical intuitions, forming competing strategic cultures that disagree about the legality of specific instances of force and about the *jus ad bellum* more generally as well. Restrictivists tend to align with what this book describes as a 'pacificist' strategic culture, which sees little political, strategic and ethical justification for force, while expansionists tend to align with an 'interventionist' strategic culture, generally seeing more such extra-legal justifications for force.

The second part of the book consists of two chapters assessing the plausibility of the competing 'interpretive cultures' and 'strategic cultures' proposed in the first

part, using systematic textual analysis of writings of legal scholars, UK government legal statements, and ICJ judgments, and interviews and a survey with UK-based international lawyers. Chapter 4 considers the evidence for the explanation advanced in Chapter 2, that contestation in the *jus ad bellum* is associated with differences between competing formalist and dynamist interpretive cultures, in which lawyers apply competing legal interpretation techniques. The chapter describes different legal interpretation techniques identified through textual analysis of UK government legal statements and writings by eight legal scholars assessing the lawfulness of US-led military interventions in Kosovo in 1999, in Afghanistan in 2001 and Iraq in 2003, and in the judgments and separate opinions in three ICJ cases engaging the *jus ad bellum*: *Nicaragua* (1986), *Wall* (2004) and *Congo* (2005). The chapter reports views of interviewees and survey respondents around key principles of legal interpretation, and how these views correlate with participants' assessment of the lawfulness of different justifications for force.

The chapter concludes that these analyses support the general argument that the *jus ad bellum* displays various forms of vagueness: paradigms, supervaluationism and fuzzy logic. There also appear to be associations between lawyers' choices about legal interpretation and their disagreements about the lawfulness of different justifications for force. Lawyers' preferred interpretation techniques appear to display social supervaluationism, ranging on a continuum between interpretive cultures of 'formalism', broadly aligning with a restrictive approach to the *jus ad bellum*, and a 'dynamist' interpretive culture, broadly aligning with a more expansionist approach. But the correlation has caveats. Lawyers did not always display all interpretive preferences under the headings 'formalism' and 'dynamism'. Expansionist lawyers sometimes deployed formalist arguments to support lawfulness of force in Afghanistan, Congo and Iraq, while restrictivist lawyers sometimes used dynamist arguments to argue the law did not permit such use of force. Furthermore, such competing interpretation techniques provide no guidance for the factual assessments and forecasts the *jus ad bellum* requires. Thus the chapter suggests disagreements about legal interpretation do not explain *all* the uncertainty and disagreement that can be observed in the *jus ad bellum*.

Chapter 5 considers evidence for extra-legal intuitions as sources of uncertainty, assessing the explanation advanced in Chapter 3, that uncertainty and contestation in the *jus ad bellum* is associated with competing pacificist and interventionist strategic cultures, in which lawyers hold different views about political, strategic and ethical evaluation of force. The chapter describes differences in extra-legal reasoning identified by textual analysis of the UK Government legal statements, scholarly writings, and ICJ judgments analysed in Chapter 4. The chapter reports interviewees' and survey respondents' views about key extra-legal propositions concerning the *jus ad bellum*, both in the

abstract and in fictional scenarios, describing how these views correlate with participants' assessment of the lawfulness of different justifications for force. The chapter concludes that there appears to be a correlation between lawyers' choices about extra-legal reasoning and their disagreements about the lawfulness of different justifications for force. 'Pacificist' lawyers who view unilateral force as politico-strategically and ethically problematic tend to prefer a more restrictive *jus contra bellum*, while 'interventionist' lawyers who see unilateral force as more often politico-strategically and ethically the least bad option tend to favour a more expansionist *jus ad bellum*.

But, as with Chapter 4, these conclusions have caveats. Many 'interventionist' lawyers accept legal prohibitions on for example humanitarian intervention, even where they believe such actions are politico-strategically and/or ethically justifiable. 'Pacificist' lawyers accept the lawfulness of, for example, anticipatory self-defence, despite their politico-strategic and ethical misgivings. Lawyers did not always display all the interpretive preferences grouped under the 'formalism' and 'dynamism' headings, and these preferences did not always align with the extra-legal preferences of the 'pacificist' and 'interventionist' strategic cultures, or with opinions about the *jus ad bellum* proposed in the explanations advanced in part one of the book. This suggests lawyers' extra-legal intuitions and choices about legal interpretation combine to create contestation and uncertainty only in cases where law is most unclear, facts and forecasts of consequences are particularly contestable, or where the most obvious reading of the law creates apparently extremely politico-strategically or ethically unacceptable results. Extra-legal intuitions shape, but do not entirely determine, opinions about legal interpretation and the *jus ad bellum*.

The third part of the book consists of two chapters examining potential responses to uncertainty and extra-legal reasoning in the *jus ad bellum*. Chapter 6 considers how insights from legal risk management, international humanitarian law (IHL) and strategic intelligence analysis and political forecasting might help manage uncertainty and extra-legal biases in the *jus ad bellum*. This chapter describes a potential framework for dealing with legal and factual uncertainty in the *jus ad bellum*, drawing on key principles which the three fields have evolved to manage factual and legal uncertainty, by assessing multiple interpretations of current facts, and multiple forecasts of possible consequences of different policy choices – including risks of legal challenge, that information justifying force is shown to be incorrect, that force does not achieve its goals, or does so only by causing unacceptable harms. The proposed framework suggests a systematic approach to *jus ad bellum* assessments, integrating inter-disciplinary legal and extra-legal expertise to consider the factual and legal context, to assess risks of any legal justification for force

being challenged or disproven, and recommending whether to accept these risks and use force, take steps to reduce the risks, or if risks are so severe that force should not be used. The chapter applies this framework to the Kosovo and Afghanistan interventions, and considers how such a framework might have affected UK legal advice on the 2003 intervention in Iraq, which included a section on legal risks. The chapter concludes that the proposed framework provides a way of attempting to address the vagueness, uncertainty and extra-legal intuitions identified in this book, but does not eliminate uncertainty – and raises significant normative questions.

Chapter 7 considers such normative concerns. The chapter first considers different approaches to dealing with legal uncertainty and extra-legal factors in different countries and professional contexts. The chapter then examines legal advisers' professional responsibilities when dealing with politically difficult cases, and reports interviewees' views of lawyers' responsibilities when dealing with difficult *jus ad bellum* cases and about risk management techniques. By focusing on managing risks of legal challenge to a decision to use force, the framework potentially encourages lawyers to act only as 'counsellor', enabling their governments to do whatever they want, rather than fulfilling their normative role of 'conscience', encouraging governments to adjust their behaviour to abide by law. At worst, such a framework might advise decision-makers to proceed with clearly unlawful military action if political and other circumstances meant there was little risk of that action facing legal challenges. The chapter nevertheless argues the framework developed in Chapter 6 can help deal with legal and factual uncertainty and extra-legal intuitions, and suggests how lawyers could use the framework alongside their own professional judgement to achieve a form of Rawlsian 'reflective equilibrium' when evaluating hard cases in the *jus ad bellum*.

Chapter 8 concludes the book by reviewing its arguments, identifying weaknesses in the methods used and proposing ways in which these might be addressed, for example by involving participants in other countries. The chapter importantly notes that uncertainty and contestation remain marginal problems in the *jus ad bellum*, as in other areas of international law. In most cases, the requirements of international law governing resort to force are clear and uncontested. There are many reasons to believe the contemporary international law governing resort to force has contributed to global peace and stability. This book's examination of legal and factual uncertainty and extra-legal intuitions in the *jus ad bellum* seeks to support and assist lawyers and states in their mission to uphold and apply this crucial area of international law, not to encourage lawyers or states to undermine or abandon it.