Origin of the twin terms *jus ad bellum/jus in bello*

by Robert Kolb

The august solemnity of Latin confers on the terms *jus ad bellum* and *jus in bello*[1] the misleading appearance of being centuries old. In fact, these expressions were only coined at the time of the League of Nations and were rarely used in doctrine or practice until after the Second World War, in the late 1940s to be precise. This article seeks to chart their emergence.

The doctrine of just war

The terms *jus ad bellum* and *jus in bello* did not exist in the Romanist and scholastic traditions. They were unknown to the canon and civil lawyers of the Middle Ages (glossarists, counsellors, ultramontanes, doctors *juris utriusque*, etc.), as they were to the classical authorities on international law (the School of Salamanca, Ayala, Belli, Gentili, Grotius, etc.). In neither period, moreover, was there a separation between two sets of rules — one *ad bellum*, the other *in bello*.[2]

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Original: French

[1] *Jus ad bellum* refers to the conditions under which one may resort to war or to force in general; *jus in bello* governs the conduct of belligerents during a war, and in a broader sense comprises the rights and obligations of neutral parties as well.

[2] P. Haggenmacher, *Grotius et la doctrine de la guerre juste*, Paris, 1983, pp. 250 ff. and 597 ff., and "Mutations du concept de guerre juste de Grotius à Kant", *Cahiers de philosophie politique et juridique*, No. 10, 1986, pp. 117-122.

From earliest times, the Western tradition sought to place war in a legal framework by formulating a doctrine of just war.[3] The aim was to reconcile might and right, *Sein* and *Sollen,* by making the former serve the latter, or by curtailing might with right. On the basis of those premises, war was seen as a just response to unprovoked aggression, and more generally as the ultimate means for restoring a right that had been violated (*consecutio juris*)[4] or for punishing the offender.[5] The material causes for which a just war could be waged fell into four categories: defence, recuperation of property, recovery of debts and punishment. An act of war was considered lawful if it was just; and it was considered just if it met the conditions enumerated above.

In the doctrine of *bellum justum,* therefore, legal analysis bore exclusively on the act of resorting to war, and more particularly on the causes pursued. War was viewed from the subjective angle as a concrete act carried out by a specific belligerent for specific reasons, and such an act

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[3] There is an abundant literature on the concept of just war.

For the Graeco-Roman period in particular, see S. Clavadetscher-Thürlemann, *Polemos dikaios und bellum iustum: Versuch einer Ideengeschichte,* Zurich, 1985; M. Mantovani, *Bellum iustum: Die Idee des gerechten Krieges in der römischen Kaiserzeit,* Bern/Frankfurt am Main, 1990; S. Albert, *Bellum iustum: Die Theorie des gerechten Krieges und ihre praktische Bedeutung für die auswärtigen Auseinandersetzungen Roms in republikanischer Zeit,* Lassleben, 1980; H. Hausmaninger, "Bellum iustum und iusta causa belli in älteren römischen Recht", *Oesterreichische Zeitschrift für öffentliches Recht,* 1961, Vol. 11, pp. 335 ff.

For the Middle Ages in particular, see F.H. Russell, *The just war in the Middle Ages,* Cambridge/London, 1975; G. Hubrecht, "La guerre juste dans la doctrine chrétienne, des origines au milieu du XVI[e] siècle", *Recueil de la Société Jean Bodin,* 1961, Vol. 15, pp. 107 ff.; J. Salvioli, *Le concept de la guerre juste d'après les écrivains antérieurs à Grotius,* 2nd ed., Paris, 1918; A. Vanderpol, *La doctrine scolastique du droit de la guerre,* Paris, 1925, p. 28 ff., and *Le droit de la guerre d'après les théologiens et les canonistes du Moyen Age,* Paris/Brussels, 1911; G. Beesterm-Iler, *Thomas von Aquin und der gerechte Krieg: Friedensethik im theologischen Kontext der Summa Theologica,* Cologne, 1990.

On the notion of just war in general, see Haggenmacher, *Grotius, op. cit.*; J.B. Elshtain, *The just war theory,* Oxford/Cambridge (Mass.), 1992; R. Regout, *La doctrine de la guerre juste de Saint Augustin à nos jours,* Paris, 1935; D. Beaufort, *La guerre comme instrument de secours ou de punition,* La Haye, 1933; M. Walzer, *Just and unjust wars: A moral argument with historical illustrations,* 2nd ed., New York, 1992; Y. de la Brière, *Le droit de juste guerre,* Paris, 1938; G.I.A.D. Draper, "The just war doctrine", *Yale Law Journal,* Vol. 86, 1978, pp. 370 ff.; K. Szetelnicki, *Bellum iustum in der katholischen Tradition,* Fribourg, 1992.

On the relationship with the Muslim doctrine of war, see J.T. Johnson, *Just war and Jihad: Historical and theoretical perspectives on war and peace in Western and Islamic tradition,* New York/London, 1991; R. Steinweg, *Der gerechte Krieg: Christentum, Islam, Marxismus,* Frankfurt am Main, 1980.

[4] Haggenmacher, *Grotius, op. cit.,* pp. 457 ff., and "Mutations", *art. cit.,* pp. 108-109.

[5] Grotius, *De iure belli ac pacis* (1625), Book II, chap. I, 2, 1. See Haggenmacher, *Grotius, op. cit.,* pp. 549 ff.

brought into being a legal regime that reflected the validity of the causes invoked or, so to speak, the belligerent's right to resort to force. This meant that war was not seen as a *de facto* situation to which the same set of rules applied in all cases. In other words, there was no general *jus in bello;* the rights and obligations of belligerents were unequal and depended exclusively on the causes which they claimed to be pursuing and on the material justness of those causes.[6]

Thus, for example, Grotius's *temperamenta belli* (restrictions on warfare), which it is tempting to equate with contemporary *jus in bello,* applied only to belligerents resorting to war for a just cause;[7] they broadened the concept of just war while defining its limits. Here, too, everything revolved around the notion of just cause. A belligerent without a just cause had no rights; he was simply a criminal who might be executed. Consequently, no legal restraints could be imposed on his behaviour.

For these reasons, there was no room for *jus in bello* as we understand it today, that is, a body of independent, objective and suprapersonal rules applying to all belligerents alike and governing the conduct of hostilities in a *de facto* situation.[8] This explains why both the term *jus in bello* and the concept to which it refers are absent from the classical texts.

As for the term *jus ad bellum,* its absence is more surprising. However, the simple right to wage war that was vested in public authorities was also irrelevant in the doctrine of *bellum justum.*[9] Legal analysis looked deeper, focusing instead on causes and hence on the lawfulness of resorting to war. Moreover, the predominance of *ad bellum* considerations in general over the *in bello* aspect made it impossible even to conceive of such terms, whose existence would have implied a more extensive, evenly balanced and fully articulated development of two mutually exclusive branches of the law.[10] We are reminded of the early philosophers' theory whereby a

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[6] Haggenmacher, *Grotius, op. cit.,* pp. 457 ff., 547 ff., and 568 ff., and "Mutations", *art. cit.,* pp. 110-113.

[7] Grotius, *op. cit.,* Book III, chaps. XI-XVI (see Haggenmacher, *Grotius, op. cit.,* pp. 600 ff.).

[8] Haggenmacher, *Grotius, op. cit.,* pp. 600 ff.

[9] The rule limiting the competence to wage war to the public authorities (i.e. the sovereign) is affirmed in an oft-quoted passage of St Thomas Aquinas which sets out the three prerequisites for such competence: *auctoritas principis, justa causa* and *recta intentio* (*Summa theologica,* II, II, 40, 1). See O. Schilling, *Das Völkerrecht nach Thomas von Aquin,* Freiburg im Breisgau/Berlin, 1919. On *recta intentio,* see Haggenmacher, *Grotius, op. cit.,* pp. 401 ff.

[10] See below.

term or a concept can come into existence only in relation to its absolute opposite. They claimed, for example, that ugliness existed only in relation to beauty; it could not be conceived of except in contrast to beauty.

Although the time was clearly not ripe for the emergence of the terms that concern us here, they sometimes crept in, used in a non-technical sense far removed from their modern meaning. Grotius, for instance, wrote that he was "fully convinced (...) that there is a law common to all nations governing both recourse to war and the conduct of warfare...".[11] This *law ad bella* and *in bellis* obviously remained subordinate to the doctrine of just war.[12]

To sum up, the subjective notion of the right to wage war in pursuit of certain causes precluded the emergence of an independent *jus in bello;* at the same time, however, the doctrine of lawful causes for waging war inhibited the affirmation of the simple right to make war (*jus ad bellum*). In such a system, both concepts lay outside the scope of the law, which was concerned with antecedent issues.

War as a de facto *situation*

Throughout the seventeenth and eighteenth centuries, the doctrine of just war lost ground to the idea that States had discretionary powers to wage war and that those powers could be used as a means of pursuing national policy. That was the era of *raison d'Etat.* This concept of war became permanently entrenched in the nineteenth century, in parallel with the erosion of the concept of war as a just act. War was now seen as a *de facto* and intellectually neutral situation.[13] Quite logically, the result was a major shift in the legal emphasis from the subjective lawfulness of resorting to war to the rights and duties relating to hostilities as such, in other words to rights and duties *durante bello.*[14] This new edifice appears

[11] Grotius, *op. cit.,* prolegomena, para. 28: "Ego cum ob eas, quas jam dixi, rationes, compertissimum haberem, esse aliquod inter populos ius commune, quod & ad bella & in bellis valeret...". See also Book I, chap. I, 3, 1: "De iure belli cum inscribimus hanc tractationem, primum hoc ipsum intelligimus, quod dictum jam est, sitne bellum aliquod iustum, & deinde quid in bellum iustum sit". (In giving our treatise the title *The law of war,* we first wish to examine, as we have said, whether war can be just and what is just in war. — ICRC translation.)

[12] Haggenmacher, *Grotius, op. cit.,* p. 601.

[13] Haggenmacher, "Mutations", *art. cit.,* pp. 113-117.

[14] Haggenmacher, *Grotius, op. cit.,* pp. 599 and 605 ff., and "Mutations", *art. cit.,* pp. 117 ff.

to be a mirror image of the previous one. A system based on the material lawfulness of war (war as a sanction) gave way to a system focusing on its formal regulation (rules pertaining to the opening of hostilities and the effects of war).[15] To quote an eminent specialist on the subject: "Now that the field of vision had been restricted, greater attention could be paid to the conduct of hostilities: for owing to this indifference [to the causes of war], armed violence came to be seen first and foremost as a process to be regulated in itself, regardless of its causes, motives and ends."[16]

This opened the door to *jus in bello* as it is understood today. The distinction which Vitoria had already begun to make between lawful reasons for resorting to war and just limits in the law of war[17] was upheld by Wolff, the first to see rights and duties *durante bello* as being independent of the underlying causes of war,[18] and was later firmly established by Vattel, who incorporated into the law of nations a series of rules setting legal restrictions on means of warfare.[19] Kant made an explicit and modern distinction between the two branches of the law (*Recht zum Krieg* and *Recht im Kriege*),[20] but neither he nor any of the other authors mentioned used the terms *jus ad bellum* and *jus in bello*.

The explanation for this lies in the lack of any doctrinal need to draw a conceptual distinction between the two branches of the law rather than in random developments of terminology or the decline of Latin. The fact is that for reasons that were different in nature but identical as to their effect, the mere competence to resort to war (*jus ad bellum*) aroused no more legal interest than it had previously. As one of the sovereign's absolute and discretionary powers,[21] it was seen as the cornerstone of the rules of law relating to war, their logical *prius*, and thus basically remained an implicit dogma. Legal endeavours had focused entirely on the formali-

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[15] On this dichotomy, see Haggenmacher, "Mutations", *art. cit.*, pp. 107-108.

[16] Haggenmacher, *Grotius, op. cit.*, p. 599.

[17] *De iure belli relectiones*, Nos. 15 ff. (lawful motives for war) and Nos. 34 ff. (just limits in the law of war). See Haggenmacher, *Grotius, op. cit.*, pp. 171-172 and 611.

[18] *Jus gentium methodo scientifica pertractatum* (1749), paras. 888 ff. See Haggenmacher, *Grotius, op. cit.*, pp. 607-608, and "Mutations", *art. cit.*, pp. 118-189.

[19] *Le droit des gens* (1758), Vol. III, chap. VIII. See Haggenmacher, *Grotius, op. cit.*, pp. 609-610, and "Mutations", *art. cit.*, p. 119.

[20] *Metaphysik der Sitten, Rechtslehre*, para. 53.

[21] As N. Politis puts it with his usual elegance in *Les nouvelles tendances du droit international* (Paris, 1927, pp. 100-101): "Sovereignty killed the theory of *justum bellum*. The States' assertion that they did not have to account for their deeds led them to claim the right to use the force at their disposal as they saw fit" — ICRC translation).

ties to be observed in initiating hostilities and on the respective rights and obligations of belligerents, that is to say on matters subsequent to the subjective right to resort to war. Yet the term *jus in bello* was still not used. The lack of any opposition or equivalence between the two branches of the law prevented the emergence of such a term, which could only come into existence when the two aspects of war assumed approximately equal importance and it became necessary to underline the distinction between them.

It was at the time of the League of Nations that the two branches came to be considered on an equal footing and found their place in positive law. In the expression of the time, the aim was to "outlaw war".[22] The former absolute power to resort to war was replaced by the rules of *jus contra bellum.* From then on, the problem of recourse to force was at the centre of legal concerns, standing in opposition to law *in bello.* The theoretical distinction between laws aimed at preventing war and the laws and customs of warfare was thus clearly established. All that remained to be done was to find appropriate terminological expression for this distinction, which had finally crystallized under the pressure of history.

The terminological aspect

Neither in the Middle Ages nor in the Age of Enlightenment did the law lack terms for what is now known as *jus in bello.* At least certain analogies can be drawn providing the conceptual differences outlined above are taken into account. Many texts from these periods contain terms such as *jus belli,*[23] *usus in bello,*[24] *mos et consuetudo bellorum,*[25] *modus belli gerendi,*[26] *forma belli gerendi,*[27] *quid quantumque in bello liceat et*

[22] H. Wehberg, *The outlawry of war,* New York, 1931, and "La mise de la guerre hors la loi", *Recueil des Cours de l'Académie de droit international de La Haye (RCADI),* 1928-IV, Vol. 24, pp. 146 ff.; C.C. Morrison, *The outlawry of war: A constructive policy for world peace,* Chicago, 1927; and Q. Wright, "The outlawry of war", *American Journal of International Law (AJIL),* 1925, Vol. 19, pp. 76 ff.

[23] See for example Saint Augustine, *De civitate Dei,* I, 1, and *Epistula CXXXVI.*

[24] Saint Augustine, *De civitate Dei,* I, 1; I, 6; XIX, 23.

[25] *Ibid.*

[26] Grotius, *De iure praedae,* chap. VII, art. III-IV.

[27] *Ibid.*

quibus modis,[28] *jus armorum,*[29] *lex armorum,*[30] *jus militare,*[31] *jura et usus armorum,*[32] *droiz de guerre,*[33] *droit d'armes,*[34] *drois, usaiges et coustumes d'armes,*[35] *usance de guerre,*[36] *droit et usage d'armes,*[37] *Kriegsmanier,*[38] etc.[39] Not all these terms pertain to public international law as we understand it today: they did not apply only to armies set up under public authority. *Jus armorum* was the professional code for warriors[40] — knights, for example — and constitutes *jus gentium.*[41]

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[28] Grotius, *De iure belli ac pacis,* Book III, chap. I, 1.

[29] P.C. Timbal (ed.), *La guerre de Cent Ans vue à travers les registres du Parlement (1337-1369),* Paris, 1961, p. 541.

[30] H. Knighton, *Chronicle,* Vol. II, London, 1985, p. 111. Also see the note of Edward III concerning the Ivo de Kerembars affair, in M.H. Keen, *The laws of war in the Middle Ages,* London/Toronto, 1965, p. 29, note 1.

[31] G. Baker of Swinbrook, *Chronicon,* Oxford, 1889, pp. 86, 96 and 154.

[32] M.H. Keen, "Treason trials under the law of arms", *Transactions of the Royal Historical Society,* 5th series, 1962, Vol. 12, p. 96. See also the letter from N. Rishdon to the Duke of Burgundy, in Keen, *The laws of war, op. cit.,* p. 17.

[33] M. Hayez, "Un exemple de culture historique au XVe siècle: la Geste des nobles français", *Mélanges d'archéologie et d'histoire de l'Ecole française de Rome,* 1963, Vol. 75, p. 162; Keen, *The laws of war, op. cit.,* p. 1.

[34] See the cases of David Margnies *vs* Prévôt de Paris (Parlement de Paris, ca 1420) and of Jean de Melun *vs* Henry Pomfret (Parlement de Paris, 1365), in Keen, *The laws of war, op. cit.,* pp. 18 and 260.

[35] S. Luce, *Histoire de Bertrand du Guesclin et de son époque. La jeunesse de Bertrand du Guesclin, 1320-1364,* Paris, 1876, pp. 600-603.

[36] J. de Bueil, *Le Jouvencel,* Vol. II, Paris, 1889, p. 91.

[37] P. Contamine, *Guerre, état et société à la fin du Moyen Age. Etudes sur les armées des rois de France, 1337-1494,* Paris/The Hague, 1972, p.187.

[38] G.F. de Martens, *Précis du droit des gens moderne de l'Europe,* 3rd ed., Gottingen, 1821, p. 462, quoting an author writing in 1745; C. Lüder, in F. Holtzendorff (ed.), *Handbuch des Völkerrechts,* Vol. IV, Hamburg, 1889, p. 254.

[39] For all these examples and others, see Contamine, *Guerre, état et société, op. cit.,* pp. 187 ff.; Keen, *The laws of war, op. cit.,* pp. 1 ff.; E. Audinet, "Les lois et coutumes de la guerre à l'époque de la guerre de Cent Ans", *Mémoires de la Société des Antiquaires de l'Ouest,* 1917, Vol. 9.

[40] Keen, *The laws of war, op. cit.,* pp. 7-22. It was only in the sixteenth century, at the time of the School of Salamanca, that *jus belli* took on the meaning that it has today in public law. See Haggenmacher, *Grotius, op. cit.,* p. 283.

[41] Keen, *The laws of war, op. cit.,* p. 10 ff. On the concept of *jus gentium,* see *inter alia* M. Voigt, *Das ius naturale, aequum et bonum und ius gentium der Römer,* 4 vol., Aalen, reprint, 1966 (1st ed., Leipzig, 1856-1875); G. Lombardi, *Sul concetto di ius gentium,* Milan, 1974; M. Kaser, *Ius gentium,* Cologne/Weimar, 1993; M. Lauria, "Ius gentium", *Mélanges P. Koschaker,* Vol. I, Weimar, 1939, pp. 258 ff.; P. Frezza, "Ius gentium", *Revue internationale des droits de l'Antiquité,* 1949, Vol. 2, pp. 259 ff.; Haggenmacher, *Grotius, op. cit.,* pp. 313 ff.

One important expression in the context of public international law is *jura belli*, which can be traced back to Livy.[42] In the nineteenth century it was sometimes used to mean *jus in bello* in the modern sense (Heffter used it this way in his influential handbook).[43] The Latin terms *jura belli* and *jus belli* both seem to have been derived from the Greek expression "oi tou polemou nomoi" used by Polybius.[44] The English expression "laws of war" is also quite old. During the reign of Charles I, the Earl of Essex decreed the *Laws and ordinances of war* governing the conduct of the parliamentary forces during the civil war that brought Cromwell to power.[45] The term can be found in the literature as well.[46] In French, the expression *lois de la guerre* rapidly gained acceptance.[47]

It is extremely rare to find the terms *jus ad bellum* and *jus in bello* used before 1930. Neither was mentioned during the 1899 and 1907 Peace Conferences, among whose aims was codification of the law of war.[48] Enriques used the term *jus ad bellum* in 1928, having apparently invented it on the spot to serve a specific need.[49] Keydel drew a clear distinction between the two branches of the law in a well-researched thesis on recourse to war published in 1931 in a scholarly review edited by Professor Strupp, but did not use the terms in question.[50] Keydel, like Strupp himself,[51] diligently enumerated all the Latin words and expressions relating to the matter. It may be concluded, therefore, that up to the early 1930s

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[42] *History of Rome*, Book II, 12, and Book XXXI, 30: "Esse enim quaedam belli jura, quae ut facere ita pati sit fas".

[43] A.G. Heffter, *Le droit international de l'Europe*, 4th ed., Berlin/Paris, 1883, p. 260.

[44] *Histories*, Book V, 9, 11.

[45] E. Nys, *Les origines du droit international*, Bruxelles/Paris, 1894, p. 208.

[46] See for example R. Ward, *An enquiry into the foundations and history of the law of nations in Europe*, Vol. II, London, 1795, p. 165; and R. Phillimore, *Commentaries upon international law*, Vol. II, London, 1857, p. 141.

[47] See for example de Martens, *Précis du droit, op. cit.*, p. 461, para. 270, "Loix de la guerre".

[48] See *Actes et documents relatifs au programme de la Conférence de la Paix*, The Hague, 1899; and *Actes et documents: Deuxième Conférence internationale de la Paix, La Haye, 15 juin-18 octobre 1907*, 3 vol., The Hague, 1907.

[49] G. Enriques, "Considerazioni sulla teoria della guerra nel diritto internazionale", *Rivista di diritto internazionale*, 1928, Vol. 20, p. 172.

[50] H. Keydel, *Das Recht zum Kriege im Völkerrecht, Frankfurter Abhandlungen zum moderne Völkerrecht*, No. 24, Leipzig, 1931, p. 27.

[51] K. Strupp, "Les règles générales du droit de la paix", *RCADI*, 1934-I, Vol. 47, p. 263 ff.

the terms *jus ad bellum* and *jus in bello* had no currency. They began to gain recognition towards the middle of the decade, in particular, it would seem, at the prompting of the School of Vienna.[52]

Among the first to use these terms was Josef Kunz, who may well be the one who coined them. Kunz had a gift for formulating precise concepts and giving them incisive Latin names (he later came up with the term *bellum legale)*;[53] the phrases we are concerned with appear in an article[54] he published in 1934 and a book that followed in 1935.[55] Two years later, Alfred Verdross used the term *jus in bello* in exactly the same way as Kunz, placing it in parentheses after the word *Kriegsrecht* in his handbook on public international law.[56] The chapter on recourse to force was published only in the second edition, and here the term *jus ad bellum* appeared.[57] Around the same time, R. Regout made frequent use of both terms in his book on the doctrine of just war,[58] making it clear from the outset that they reflected a fundamental distinction, and W. Ballis followed suit.[59] It is impossible to say whether these were independent developments or otherwise.

Interestingly enough, neither term can be found in the texts produced by other major publicists during the interwar years, nor, according to our investigations, were they used in the courses on war and peace given at the The Hague Academy of International Law or in any other courses. The breakthrough occurred only after the Second World War, when Paul Guggenheim, another disciple of the School of Vienna, drew the terminological distinction in one of the first major international law treatises of the postwar era.[60] A number of monographs subsequently took up the

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[52] On the Vienna neopositivist school of philosophy, see V. Kraft, *Der Wiener Kreis: Der Ursprung des Neopositivismus,* 2nd ed., Vienna/New York, 1968. On the legal school of Vienna, see J. Kunz, *The changing law of nations,* Toledo, 1968, pp. 59 ff.; and J. Stone, *The province and function of law,* Cambridge (Mass.), 1950, pp. 91 ff.

[53] "Bellum justum and bellum legale", *AJIL,* 1951, Vol. 45, pp. 528 ff.

[54] "Plus de lois de guerre?", *Revue générale de droit international public (RGDIP),* Vol. 41, 1934, p. 22.

[55] *Kriegsrecht und Neutralitätsrecht,* Vienna, 1935, pp. 1-2.

[56] *Völkerrecht,* Berlin, 1937, p. 289.

[57] *Völkerrecht,* 2nd ed., Berlin, 1950, p. 337.

[58] *La doctrine de la guerre juste de saint Augustin à nos jours,* Paris, 1935, pp. 15 ff.

[59] *The legal position of war: Changes in its practice and theory from Plato to Vattel,* The Hague, 1937, p. 2.

[60] P. Guggenheim, *Lehrbuch des Völkerrechts,* Vol. II, Basel, 1949, p. 778.

terms,[61] which soon gained widespread acceptance and were launched on their exceptionally successful career. In a thesis written under Guggenheim's supervision and published in 1956, Kotzsch gave them pride of place, treating them in the manner to which we have grown accustomed and which we now take for granted.[62]

This article, the product of the author's curiosity and of research carried out for another study,[63] does not claim to provide a complete overview of the emergence of the terms *jus ad bellum* and *jus in bello*. Indeed, there would be a lot more to say: many omissions would need to be remedied, and many imprecise points clarified. The purpose here is simply to shed some light on the origin of those terms and to dispel the general illusion that they have been used since earliest times. This false impression and the fact that so little is known on the subject, even by specialists, make this a fascinating field of research that yields surprising results.

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[61] See for example F. Grob, *The relativity of war and peace*, New Haven, 1949, pp. 161 and 183-185.

[62] *The concept of war in contemporary history and international law*, Geneva, 1956, pp. 84 ff.

[63] A contribution to the new edition of the *Dictionnaire de droit international*, edited by Jean Salmon and Eric David.