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The notion of armed attack under the UN charter and the notion of international armed conflict : interrelated or distinct? : LL.M. Paper (Geneva Academy) / Öykü Irmakkesen

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Author zone:	Öykü Irmakkesen
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Abstract:	<p>The paper tries to put together the doctrinal discussions regarding the definitions of both terms and to draw a relationship between the two. It is an exercise to push the limits of the strict distinction between jus ad bellum and jus in bello, not in a provocative way but in search of a reconciled international law. Briefly, it attempts to build a bridge between jus ad bellum and jus in bello, which may sound purely theoretical in the first glance but which have direct consequences for the persons affected by the said acts. It starts with comparing jus ad bellum and jus in bello systems. In a first part, it defines armed attack by comparing the notion with two related concepts; aggression and use of force. It examines how and why three different concepts were used by the drafters of the UN Charter and the significance of this choice. In the second part, the notion of international armed conflict is defined and the focused aspect is the beginning of application of International Humanitarian Law. Thus, what is in the focus of the analysis is the triggering act of International Humanitarian Law as opposed to the continuous act of international armed conflict. The third part finally compares the two main notions, that of armed attack and of triggering act of an international armed conflict. In order to do so, it decomposes them to their elements of nature, intensity, origin, target, intent and legality. The number of controversies each of these elements withholds opens to door for further research on issues such as the responsibility of states for the acts of non-state groups or possible responsibility of the non-state groups themselves. The author's conclusion is that the two notions remain strongly distinct and thus that in this specific issue there is no influence of jus ad bellum in jus in bello or vice versa. Consequently, the protection of persons affected by international armed conflicts remain outside the scope of "politics" and safely objective.</p>
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Authors:	Irmakkesen, Öykü

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