INDIAN JOURNAL OF LEGAL REVIEW

VOLUME 6 AND ISSUE 3 OF 2026

INSTITUTE OF LEGAL EDUCATION

INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN - 2583-2344

(Open Access Journal)

Journal's Home Page – https://ijlr.iledu.in/

Journal's Editorial Page - https://ijlr.iledu.in/editorial-board/

Volume 6 and Issue 3 of 2026 (Access Full Issue on - https://ijlr.iledu.in/volume-6-and-issue-3-of-2026/)

Publisher

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INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 3 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

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THE IMPLICATIONS OF DESIGNATING JUS POST BELLUM AS A CUSTOMARY PRINCIPLE OF INTERNATIONAL LAW

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BEST CITATION – KRISHNA ANAND IYER, THE IMPLICATIONS OF DESIGNATING JUS POST BELLUM AS A CUSTOMARY PRINCIPLE OF INTERNATIONAL LAW, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (3) OF 2026, PG. 378-392, APIS – 3920 – 0001 & ISSN - 2583-2344.

I. ABSTRACT

The principle of jus post bellum in international law is one of the three laws of war, which outlines post-war conduct, which is primarily reconstruction and restoration to status quo. Under the purview of the laws of war, the principles of jus ad bellum, or lawful justification for war, and jus in bello, or the lawful conduct to be followed in war, take precedence over jus post bellum, primarily because jus post bellum lacks the obligatory power that comes with customary laws, unlike the other two. The aim of this paper is to explore the applicability of the principle and an in-depth analysis of the direct consequence if the principle also becomes a principle of customary international law.

II. Keywords

"Jus post bellum", "laws of war in customary law", "obligations essential for post-conflict reconstruction", "international humanitarian law", "customary international law"

III. Introduction

The hypothesis of establishing jus post bellum as an international law customary principle presents both hope and risk to future global governance. Should it be formalized through custom, it might transform the way states control the volatile space between peace and war, providing normativity to post-conflict justice, accountability, and reconstruction. However, its promotion presents tough challenges: would post-war obligations' universalization impose checks upon war aggressors' ambition, or would it entangle states in legal and moral ambiguities, obstructing practical peace agreements? Might such a principle develop out of state practice, or would it remain an ideal discourse regulated by political interests and power differentials? To project these contradictions is to face the transforming potential and potential limitations in obligating states not only in fighting war, but in rehabilitating the world once war concludes.

This theoretical framework necessitates, as a preliminary step, an analysis of the underlying principles of international humanitarian law (IHL) regulating armed conflict, and then an exploration of how jus post bellum could complete or prolong these established norms. International humanitarian law, or law of armed conflict, is based on an ambiguous equilibrium between military necessity and humane protection. The law developed through two historical currents: the law of The Hague, which defines the rights and obligations of belligerents in carrying out operations and restricts the selection of means employed in war, and the law of Geneva, which addresses human protection of persons not engaging in hostilities. These paradigms set out legal boundaries within which to lead the conflict, yet provide little direction for this period of paramount importance, after active hostilities have ceased.

IHL's core principles form the conceptual framework upon which any discourse regarding jus post bellum must take root. The principle of distinction obliges parties to war to distinguish

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at all times between combatants and civilians, and between military objectives and civilian objects. This principle, as enshrined in Article 48 and Additional Article 52 of Additional Protocol I to the Geneva Conventions[1056], provides for only legitimate military targets being subject to direct attack, and for civilians and civilian objects to be spared. The principle of proportionality forbids attacks likely to cause incidental harm to civilians as excessive in relation to the tangible and direct military advantage to be achieved. Military necessity only allows those degrees and types of force necessary to attain legitimate military objectives, whereas the principle of humanity forbids inflicting suffering not incidentally necessary to achieving legitimate military objectives. The precautionary principle insists upon regular precautions being taken to spare civilians and minimize incidental casualties.

The very idea of jus post bellum continues to be controversial in international legal scholarship, as there exist different opinions regarding both its definition and scope, and also regarding its legal status. It can be understood as being, in parallel to jus ad bellum (the law of resorts to force) and jus in bello (the law of conduct in hostilities), also a third pillar of just war theory, and in this case, it would contain "a regulatory framework which contains substantive legal rules governing transitions from conflict to peace, as well as rules on the interplay of these substantive rules in case of conflict". This framework would be neutral and would apply regardless of the initial illegality or legality of resort to force, in order to keep intact classical segregation between jus ad bellum and jus in bello, which has been marking modern international humanitarian law.

Other interpretations view jus post bellum as an interpretive lens or set of direction-providing principles for exercising prevailing legal norms in post-conflict contexts rather than as an independent body of substantive laws. In this view, jus post bellum would not provide new legal obligations but would provide normatively directive advice for interpreting and exercising prevailing rules of international law—such as human rights law, humanitarian law, and criminal law—during transition from conflict to peace. The advocates of this view think jus post bellum possesses primary value in terms of promise to elicit consistent interpretation of multiple legal norms to be exercised in post-conflict rebuilding and thereby to better calibrate the effective international law application in this respect.

The Statute of the International Court of Justice[1057], Article 38(1)(b), defines customary international law as "international custom, as evidence of a general practice accepted as law." This definition sets out the two elements comprising customary law: general state practice and opinio juris sive necessitatis (the view that such practice is necessitated by law). The creation of customary international law thus demands both objective proof of habitual state practice and subjective proof that states act in this fashion out of recognition of legal necessity and not out of political expediency or courtesy.

State practice, as the material ingredient in customary law, can consider numerous different government actions and statements as evidence. The International Law Commission has catalogued various sources of evidence of state practice, including treaties, national and international court decisions, national laws, national legal adviser advice, diplomatic notes, and international organizational practice. To attain customary status, there would need to have been sufficient evidence of states being consistent in post-conflict obligations entailing post-conflict reconstruction, reparations, accountability, and reconciliation in various conflict situations. The practice would have to be "sufficiently widespread, representative as well as consistent," and indicating an adequate

[1056] IHL Treaties - Additional Protocol (I) to the Geneva Conventions, 1977 - Article 52

[1057] Statute of the Court Of Justice | INTERNATIONAL COURT OF JUSTICE

number of states have relied and applied these principles and not been rejected by an adequate number of states.

In entrenching customary law in jus post bellum, challenges lie in part in post-conflict pluralism and also in variable state policies regarding post-bellum reconstruction and post-bellum justice. As there is far-reaching state and international institutional practice in post-conflict regions, going as far back as in 1992 UN Agenda for Peace[1058], this practice "does not in general create binding norms due to the lack of fulfillment of criteria of generality and uniformity" to cause customary law formation. The post-conflict interventions have varied substantially in scope, modality, and initial ideology, from large-scale post-World War II German and Japanese reconstruction to comparatively limited peacekeeping interventions in recent conflict situations. This renders it problematic to look for habitual state practice upon which customary law could be founded.

Further, inattention to regular state practice in exercising post-conflict obligations could be an indicium of the absence of opinio juris in respect to obligatory jus post bellum norms themselves. States have often made little effort to offer adequate reconstruction support, seek prosecution of war crimes, or offer adequate reparations for armed conflict victims. These inactions could be seen as proof that states do not consider themselves to be under legal obligation by virtue of complete jus post bellum obligations. These inactions could, instead, indicate capacity limitations, other areas of priority, or disagreement regarding specific content of post-conflict duties as an alternative to rejection of the latter's underlying principle.

Whose practice is to be counted in establishing customary jus post bellum norms presents another degree of complexity. While any states can be counted in forming customary law, practice by "specially affected states"—those having specific interest or engagement in certain areas of international law—may be accorded more importance. With regard to jus post bellum, specially affected states may be states newly freed from war, great powers who have been involved often in armed interventions, or states who have been involved in peacekeeping and post-conflict rebuilding activities on a regular basis. The different interests and points of view of these different sets of states could provide conflicting opinions regarding content and scope of post-conflict obligations.

Their interrelationship with established domains of international law makes it even more complex for jus post bellum to be recognized as customary law. Instead of being independent, jus post bellum operates across several established domains such as international humanitarian law, human rights law, international criminal law, refugee law, and law of state responsibility. Several of these obligations under a potential framework of jus post bellum already have their reflection in these established legal domains. Thus, for instance, war crime prosecution obligations have long been established in international criminal law and international humanitarian law, and protection obligations over civilians have their foundation in human rights law and in the responsibility to protect doctrine.

This overlap also invites inquiry as to whether jus post bellum amounts to new legal content in itself, or if it amounts to little more than rebranded previous obligations under new conceptualizations, and if so, whether there is any added value in having it as an identifiable customary principle, or if prevailing legal regimes have adequate normative direction in post-conflict situations anyway. Others have contended as to whether jus post bellum's greatest value lies in anything other than having an interpretational framing whereby there can be consistent interpretation of prevailing norms in post-conflict situations.

International legal practice in post-conflict situations did offer some evidence of normative

[1058] An agenda for peace :

convergence emerging around certain jus post bellum principles. The increase in international criminal tribunals and truth commissions shows increased recognition that post-conflict accountability is not just policy desirability but legal necessity. The emerging post-conflict victim-centered approaches to transitional justice, such as recognition of rights to truth, to justice, and to reparations, indicates developing consensus regarding certain post-conflict obligations. The inclusion of rule of law and human rights considerations in peacekeeping and peacebuilding mandates shows institutional recognition that durable peace demands more than cessation of hostilities.

But translating these trends into binding customary law obligations themselves remains doubtful. State practice and practice of international organizations and courts, as relevant to customary law creation, can in no way take the place of persistent state practice coupled with opinio juris. Again, ongoing diversity in treatment of post-conflict situations, even in related instances of identical institutional regimes, also indicates an ongoing paucity of international consensus on certain jus post bellum obligations.

IV. Statement of problem

Despite increasing acknowledgment in scholarship and post-conflict practice in law, there continues to exist a significant lacuna in the normative and regulating architecture for an end to armed conflict and transition to peace in international law. Existing regimes in law—primarily jus ad bellum and jus in bello—deal with just war and conduct of war but provide little guidance in terms of duties and steps to justice, accountability, and post-conflict restoration upon cessation of hostilities. The absence of an obvious, universally agreed-upon framework for post-conflict restoration and restoration of peace has led to pervading inconsistencies, confusion, and gaps in state practice, causing long-drawn instability and contentious post-conflict arrangements. The issue of whether jus post bellum can be enshrined as an international law customary principle thus acquires great contemporary relevance: an acknowledgment could revolutionize the legal landscape through an introduction of post-conflict internationally binding obligations, but can also create new challenges in terms of definition, operationalization, and reconciliation of such norms with established legal ideas and political compulsions. The present study tries to critically explore, in an analytical and norm-critical framework, the legal implications—both theoretical and practical—of an acknowledgment of jus post bellum as an international law customary principle, and in particular, in terms of potential for clarification of state duties, increase in post-conflict accountability and restoration of peace, and removal of confusion in international law of war and peace.

V. Research questions

A. What evidence is there of persistent state practice and opinio juris adequate to underpin the characterization of jus post bellum as part of customary international law, and how do these foundations compare to other established customary norms?

B. How could acknowledgment of jus post bellum as customary practice reconfigure state and non-state actor responsibilities after war, and in particular, as to reparations, reconstruction, and penal measures?

C. What would be challenges or areas of uncertainty in integrating jus post bellum into prevailing international law framework, and most importantly, in relation to interrelationship between international humanitarian law, human rights law, and transitional justice?

D. How would customary status of jus post bellum affect practices and expectations of international institutions

and peace missions to offer sustainable and just post-conflict arrangements?

VI. Significance of research

This research has significance in helping to illuminate an otherwise underdeveloped branch of international law, one focused on the passage from armed conflict to peace. Carefully examining whether jus post bellum deserves to be accorded customary status, this research intervenes in pressing norm gaps in regulating post-war justice, accountability, and post-conflict reconstruction—concerns growing in importance as contemporary conflict blurs distinctions between war and peace. Defining an international legal framework for jus post bellum could help increase consistency and legitimacy in international responses to post-conflict crises, minimizing confusion over state and institutional roles during periods of post-conflict reconstruction. This research therefore impacts prospects for achieving durable and just peace agreements, protecting vulnerable populations in post-conflict war, and long-term stability in international governance architecture. Moreover, by linking jus post bellum to established traditions such as jus ad bellum and jus in bello, the research provides new perspectives on how all conflict phases could be systematically regulated under international law, both enriching scholarship debate and practical policy-making in promoting peacebuilding internationally.

VII. Scope and limitation of research

This research includes in-depth doctrinal, philosophical, and practical examination of legal ramifications of recognition of jus post bellum as customary international law. The research critically assesses historical development, normative basis, and recent scholarship on jus post bellum, as it intersects with international humanitarian law, human rights law, transitional justice, and post-conflict peacebuilding. It assesses customary law-forming through an exploration of state practice and opinion juris, reviews theory, and examines select case law and institutional practice. The research strives to bring to focus content, functionality, and transformational potential of jus post bellum in contemporary international law, in relation to recent developments in conflict and peace process. However, there are certain limitations. The theory of jus post bellum is still under-theorized in law scholarship and in state practice, and this leaves considerable uncertainties regarding its definition, legal status, and binding effect. The research is limited by few cases of uniform state practice and express opinio juris in support of jus post bellum as customary law. Its scope is also limited by an interest in public international law; private, regional, and non-state practice serve in chief for comparative or supplementary knowledge. The research also does not involve exhaustive empirical field research in post-conflict contexts, and it instead chiefly depends on doctrine, case law, and institutional sources. Finally, prevailing controversies surrounding transitional justice, peacebuilding, and global governance have the potential to affect the generalizability of leading results, and future developments in the field have the potential to further elucidate or obfuscate jus post bellum's status.

VIII. Objective of Research

In order to critically review legal foundations and state practice, which can affirm or reject recognition of jus post bellum as customary international law in principle, including an investigation into opinio juris and applicable precedents. For purposes of examining practical state, non-state, and international institution applications in case jus post bellum norms—reparations, reconstruction, and transitional justice—gained extensive recognition as binding custom following armed conflict,. In order to examine the interaction and likely strains between jus post bellum and current paradigms in international humanitarian law and human rights law, and how customary form can impact their meaning and practice.

To assess the potential effects of customary post bellum norms of jus on international

peacebuilding effectiveness, legitimacy, and sustainability, reconciliation initiatives, and post-conflict legal transformations in various conflict contexts.

IX. Research Methodology

Doctrinal methodology of research

X. Literature review

A. The Fourth Geneva Convention, 1949

The Convention for the Protection of Civilians in Times of War, Geneva, or the Geneva Convention IV, also shapes the foundation of contemporary International Humanitarian Law, and it's essentially created to safeguard persons who do not take part in hostilities, including civilians, medical personnel, prisoners of war, and the wounded and ill persons. Though Conventions focus chiefly on jus in bello (the conduct during hostilities), there are important provisions regarding jus post bellum in these Conventions. These involve the commitment to repatriate prisoners of war and civilian internees "without delay after the cessation of active hostilities," to seek out and reunite separated family members, and to investigate and prosecute grave breaches irrespective of the date of their commission. As it ensures protection for humanitarian needs and provides for accountability after cease-fire, the Geneva Conventions provide legal foundations for post-conflict societies regarding justice, reconciliation, and humane treatment.

B. The Hague Convention, 1907

The 1907 Hague Convention played a pivotal role in codifying and establishing rules of hostilities as well as occupied power conduct. Article 43 of the 1907 Hague Regulations, in particular, is significant to jus post bellum as it mandates occupied powers to restore and preserve public order and civil life, respecting local laws of the territory save in cases of absolute impossibility. The Conventions also insist on public property, cultural institutions, hospital, and school protection—provisions which continue to matter even after active hostilities cease. In prescribing obligations for stability, governance, and civil protection in transition from war to peace, the Hague framework offers one of earliest legal underpinnings for contemporary post-conflict reconstructive practice.

C. The Marten's Clause, 1899

The Martens Clause, first articulated in the 1899 Hague Convention preamble and since incorporated into various international humanitarian law instruments, serves as a guiding ethical safeguard. It stipulates that even in situations not covered by existing treaties, "the principles of humanity and the dictates of public conscience" must still protect combatants and civilians. Its open-ended nature gives it particular significance for post-conflict contexts, filling normative gaps where specific jus post bellum provisions may be absent. By ensuring that fundamental rights, fairness, and humanitarian values remain guiding standards throughout the transition from war to peace, the Martens Clause aligns with the moral and legal aspirations of jus post bellum.

D. Democratic Republic of Congo v. Uganda (Case Concerning Armed Activities in the Democratic Republic of Congo, ICJ 2005)

In this historical case, the International Court of Justice condemned Uganda for violations of international law in connection with military action and occupation in the Democratic Republic of the Congo (DRC). Uganda was made responsible for damages and ordered to pay reparations in an aggregate

amount of USD 325 million. This included compensation for damage to persons, property, and natural resources. The ruling provides an important precedent for state responsibility for reparations as an integral part of jus post bellum, underlining responsibility to restore and contribute to post-conflict reconstruction and recovery.

E. Chorzow Factory Case (Permanent Court of International Justice, 1928)

Although prior to contemporary jus post bellum debate, this case is pioneering in setting out the reparations principle in international law. It ruled that an international obligation breach entails an obligation to provide adequate reparation to efface all effects of illegal behavior. This principle underlies most post-conflict reparations regimes by invoking corrective justice as an ex post legal requirement.

F. Costa Rica v. Nicaragua (ICJ, 2015)

The ICJ ruled Nicaragua guilty of illegal actions inflicting material damages within Costa Rican territory and concluded it has reparations to pay. The case shows how damages to people and territory in post-conflict phases and compensation are implemented through court judgments, legitimizing reparations as both peace-building instrument and tool of international law enforcement.

G. Iasiello, Louis V. (2004) "Jus Post Bellum", Naval War College Review: Vol. 57: No. 3, Article 5

This work reviews an otherwise underdeveloped corner of the just war theory, jus post bellum, or post-conflict wartime considerations. Acknowledgment of post bellum being an inherently critical phase of operations is in order, and effort needs to be dedicated to cultivating theory to operationalize wartime concerns within the post-conflict phases of occupation, stabilization, restoration, and other elements of nation-building.

H. Iverson, J.M (2017, 21 September) "The role of jus post bellum in international law."

This chapter shows how the hybrid functional approach outlined in fundamental sections of law claimed by the author as central to realizing jus post bellum objectives can be applied. Jus post bellum has been treated in an assortment of manners, including its beginnings, the modern debate over its significance, comparing it to related concepts and sets of law, I.e transitional justice, jus ad bellum and jus in bello, and explaining it in inter-state and non-international armed conflicts.

I. Lech, Marcin (2020) "Modern jus post bellum - finding a new branch of international justice and law." Polish review of international and European law, Vol. 9, issue 2

The arguments put forward in this article concern ideas about jus post bellum as an urgently needed and hopefully emerging branch of a new international order based on fully reasoned ethical principles. The presented views refer to justifying this new international legal order with respect to the necessary parallel transformation of the utility of armed response, and particularly, lethal force to meet modern day and future conflicts.

J. Morality, Jus Post Bellum, and International Law (Cambridge University Press, 2012)

As compiled by Elizabeth Edenberg and Larry May, it represents the first comprehensive intellectual endeavor to bring together political thinkers and international lawyers to investigate post conflict law's theoretical foundations

and practical implications and provide systematic expositions of transitional justice institutions, models and responsibilities of accountability and reconstruction duties.

K. Customary International Law (Cambridge University Press, 2010)

Brian D Lepard offers an exhaustive treatment of one of the most elusive sources of international law, both conceptually and practically, and both in terms of foundations and applications. Lepard's book studies the classical two-component test for customary law creation, i.e state practice and opinio juris, as it discusses modern challenges in ascertaining and relying on customary norms.

L. Dictionary of International Law of Armed Conflict (International Committee of the Red Cross, 2nd Edition, 2020)

Jean Pictet and others offer expert expositions and commentaries on more than 450 terms and notions in international humanitarian law. The in-depth reference book embraces jus ad bellum (law applicable to resort to force) and jus in bello (law applicable to conduct of hostilities) and provides accurate legal explications and historical background to agreed rules of laws of war.

XI. Scheme of Study

A. Introduction and Application of Jus Post Bellum

Jus post bellum, or "justice after war," has gradually come to prominence in international legal scholarship and practice as a significant, yet still under-developed, branch of the international legal order. Its pedigree stretches back through centuries of moral and philosophical reflection, and coheres today in an understanding that achieving just and long-lasting peace after war has its own set of principles—distinguishing from, yet complementary to, those which apply to recourse to war (jus ad bellum) and to its conduct (jus in bello). As warfare has become ever more complex, involving asymmetric attacks, internal warfare, proxy forces, and long occupation, it has come to be realized that it is not sufficient to have concluded overt hostilities. Rather, contemporary regulation needs to take due account of objectives and responsibilities ethical, legal, and practical which come into being once guns fall silent.

In modern legal discourse, jus post bellum is increasingly seen as an urgent doctrinal response to precisely these challenges; a bridge between cessation of hostilities and the formation of a stable, legitimate, and just order. As the international community has grappled with the enduring instability following interventions in Iraq, Afghanistan, Libya[1059], and, most recently, the ongoing war in Ukraine and the protracted crises in Sudan and Yemen, attention has shifted from the conduct of hostilities to questions about legitimate occupation, responsibility for reconstruction, accountability for atrocities, and mechanisms for reconciliation. These developments underscore a core lesson: war's aftermath is not a legal void but a critical phase that requires robust normative guidance.

B. Principles of Jus Post Bellum

Jus post bellum's conceptual framework depends on just war theory and upon historical developments in laws of armed conflict. Classically, two branches were identified: jus ad bellum outlined admissible circumstances for resort to war ("just cause," "right intention," "last resort"), whereas jus in bello controlled during hostilities behavior ("proportionality," "distinction," "necessity," "humanity"). Nevertheless, as legal theorists Marcin Lech and Jens Iverson remind us, such dichotomous structure omits a vital aspect: how and by whose criteria ought one restore peace, once combat ceased?

[1059] The United States after unipolarity_Obama's interventions(lsero).pdf

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This gap is not merely theoretical; it manifests in practical outcomes of conflict. Unraveling of civil order, retaliatory attacks against once-belligerents or minorities, and unremitting displacement can render military victory or negotiated accord ineffective—at times even igniting an original cycle of violence. Thus, the trend to a third branch, jus post bellum, is driven by practical imperatives as well as ideal consistency.

C. Emergence in Recent Practice

Lines of jus post bellum have come into clear relief over recent decades through increasing numbers of transitional justice, international criminal tribunals, peacekeeping, and emerging doctrines of international responsibility. The Rwandan and Yugoslav tribunals[1060], interventions by the International Criminal Court, and processes such as truth and reconciliation commissions all show an emerging consensus as to how accountability, restitution, and institutional transformation are as central to peace as formal ceasefires. The UN's "Agenda for Peace" and mandates for Security Council-led missions in Kosovo, East Timor, and Sierra Leone[1061] show an acknowledgement as to how international law needs to cross over the "peace to law" continuum not just through negotiation and disarmament but through reckoning and justice for past violations.

Consider Ukraine, where the international community's responses to the ongoing Russian invasion have invoked not only the prohibition of aggression and the protection of civilians (jus ad bellum and jus in bello) but also the urgent need to establish future accountability, restitution for civilian harm, and reconstruction efforts even as the conflict persists. Similarly, Sudan's transitions—marred by repeated cycles of violence, failed peace agreements, and humanitarian breakdown—highlight the pitfalls of neglecting the foundations of sustainable peace and the perils when post-bellum justice is not integrated into the international response to ending hostilities.

D. Legislative and Ethical Issues

Jus post bellum tries to base post-war obligations in both law and morality. Larry May lays out a set of principles—rebuilding, retribution (criminal justice), restitution (rights and property), reconciliation, proportionality (in peace terms), and transformation of warriors—that could structure victors', conquered states', and interveners' obligations alike. Louis Iasiello, in reflecting on 20th and 21st-century failure and success in intervention, contends that winning powers have moral and legal obligations to perform "healing mindsets," just restoration, protection of innocents, care for the environment, and facilitation of combatants' and populations' psy-trans out of violence.

These principles aren't aspiration statements at all. The International Humanitarian Law and International Human Rights Law reflected in treaties, including the Fourth Geneva Convention and Hague Regulations have specific obligations already: humane treatment of combatants and civilians, prohibition of reprisals, maintaining public order, restoring infrastructure, and cultural property protection in occupation (Geneva IV, Arts 47-56; Hague IV, Arts 42-56). The ICJ case law, including Democratic Republic of Congo v. Uganda and Costa Rica v. Nicaragua, also affirm post-conflict obligations, including compensation, restitution, and non-repetition, as legal, not just moral, obligations.

E. Post-Bellum Justice in an Age of Terrorism

In the wake of contentious interventions (the Iraq War in 2003, Libya in 2011), failed efforts at establishing just and inclusive government, safeguarding civilians, and engaging past violations have contributed to continued violence, state breakdown, and human catastrophe. These instances highlight the value in an effective jus post bellum, one not

[1060] Doctors without borders | The Practical Guide to Humanitarian Law

[1061] Security Council Visiting Missions : UN Security Council Working Methods : Security Council Report

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simply centered on formal cessation of hostilities but sensitive to frequently-longer, less-linear process of re-establishing political, social, and economic order on just terms.

What marks the contemporary understanding of jus post bellum is an interdisciplinary reach; reaching out to transitional justice, disarmament and demobilization, institutional transformation, non-recurrence assurances, reparation to victims, and reconciliation mechanisms. It is not solely concerned with victors" or occupiers" duties, but also acknowledges agency and rights of local populations bearing an impact, incorporates international principles (like Responsibility to Protect), and demands procedural rationality, local ownership, and proportional resolving of grievances.

F. Questions of Definition and Application

As the subject develops, there are controversies regarding jus post bellum's precise scope. Is it codified law, an ethical set of principles, or an evolving interpretive framework from prior treaties, custom, and practice? Its opponents regard it as nothing more than a rehashing of prior codified humanitarian law and human rights norms, not as an autonomous legal regime, whereas still others, due to frustrations in peacebuilding attempts and imperfection in "victor's justice," insist upon international consensus regarding how post-conflict justice must take place. Consensus, in any event, runs high regarding omitting post-bellum as an afterthought at too great an expense.

In short, jus post bellum is emerging as an indispensable third pillar in international law's architecture of war and peace. It embraces practical and moral imperativity: if post-conflict transitions go poorly, peace proves elusive and justice even more elusive. As continuing war and shifting state practice multiply, need for an evident, equitable, and enforceable post-war set of principles will increase only more acutely. Whether and how the international community elects to systematize and operationalize jus post bellum may decisively determine whether today's, and tomorrow's, wars breed long-lasting peace or new rounds of violence.

G. Customary International Law and Its Importance and Duties

Customary international law offers one of the foundations of the international legal order, reflecting evidence of rules based on general state practice and an sense of legal obligation, or opinion juris. Unlike treaty law, which is directly codified and mutually understood at an inter-state level, customary law evolves naturally through customary practice and common belief that these actions and omissions represent legal necessity. Due to this evolutionary aspect, it can adapt to changing international circumstances and fill gaps in areas where treaties do not dictate or remain absent. The designation of jus post bellum as customary would thus imply states commonly assert an inter-state binding post-bellum obligation emanating from practice and beliefs in international relations, even without positive treaty codification.

H. Aspects of Customary International Law

In the North Sea Continental Shelf cases[1062], the International Court of Justice established as necessary to customary law creation the two cumulative elements of customary law: (1) consistent and general state practice and (2) opinio juris—the perception that those practices are required by law[1063]. State practice is evaluated in manifold manifestations, ranging from legislative actions and formal statements to practice in diplomatic and war situations. The practice must be extensive, representative, and consistent. Opinio juris involves states acting out of legal obligation, not political convenience or custom. This two-pronged requirement renders customary law one of international legal obligation's most important and

[1062] Max Planck Encyclopedia of Public International Law: North Sea Continental Shelf Cases
[1063] The Two-element Approach | Identification of Customary International Law | Oxford Law Pro | Oxford Academic

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
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respected sources, and it binds all states regardless of treaty membership.

Customary law's advantage is its universality. Since it emanates from states' collective behavior and recognition as law, it generates obligations, which are deemed obligatory and nondiscriminatory. Accordingly, recognition of any norm—jus post bellum as well—customary international law grants it an elevated status, which obliges states to comply and defines law regulating state action and international governance. It entails that jus post bellum principles would cease to be treated as policy-guiding or aspirational ideas but as obligatory rules entailing post-conflict phase legal responsibilities.

I. Significance of Consular Jus Post Bellum

Incorporating jus post bellum into customary international law would drastically shift the international peace and security framework. It would entrench post-conflict responsibilities such as reparations, restitution, transitional justice, post-conflict reconstruction, and non-recurrence commitments as norms of positive law. The Ukraine war, for example, acutely highlights in relation to ongoing armed conflicts, internationally established post-war responsibilities founded upon legal norms. Protection of internally displaced persons and reparations for damages to civil infrastructure are areas presently addressed more under political and humanitarian understandings than legal principles of international law binding upon states. The legal recognition of jus post bellum as custom would enable post-conflict responsibilities to be invoked in court by judges, international institutions, and states themselves against those responsible, promoting access to justice to victims and bolstering the rule of law.

Moreover, customary jus post bellum offers a normative foundation for international institutions such as the United Nations, International Criminal Court, and regional institutions to better organize their mandates in post-conflict peacebuilding and justice. It would minimize the current fragmentation of legal standards in varied peace operations and transitional mechanisms of justice, and enable more predictable and fair results. In regional African conflicts, as in Sudan and the Democratic Republic of the Congo, in which peace agreements have time and time again failed, an widely agreed customary jus post bellum framework could direct states and peacekeepers in common post-conflict responsibilities necessary to deliver enduring stability and reconciliation.

In addition, jus post bellum as customary law would act as a deterrent to impunity and one-sided reading of post-conflict obligations by strong states or regimes. It engenders common responsibilities for reconstruction and reconciliation—more than just power politics—and fits with evolving customary law of the Responsibility to Protect by placing an equivalent role on the international community in not just closing down violence but also constructing just peace after conflict[1064].

J. Challenges to the Universally Applied Application of Jus Post Bellum

Conceptualized as jus post bellum—the customary law and morality responsible for regulating the process of shifting armed conflict to just and durable peace—the theory has drawn growing interest in academic and institutional circles. The practical value and global acception of customary jus post bellum remain, however, stifled by complex norm content of the concept, differing political circumstances of states, and differences in conflict situations which strain the boundaries of legal consistency.

K. Conceptual Ambiguities and Overlapping Laws

A first hurdle is the contentious and sweeping definition of jus post bellum itself. While it encompasses essential post-conflict interests—like justice, responsibility, rebuilding, and reconciliation—scholars split over whether it

[1064] About the Responsibility to Protect | United Nations

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 6 AND ISSUE 3 OF 2026
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

represents an independent body of law or an umbrella of thematic overlap gathering pre-existing principles from international humanitarian law (IHL), human rights law, and transitional justice. While some scholars, for instance, believe jus post bellum does not impose new legal duties beyond established case law but rather provides interpretive direction on implementing those pre-existing norms after concluded wars, this generates confusion over both its legal status and scope of duties, and obstructs efforts to create consensus beyond universal standards.

Furthermore, the legal sphere jus post bellum shares to an extensive degree with jus ad bellum (the law of resort to force) and jus in bello (the law of war and armed conflict). While these earlier branches cover in some fashion the law of just war and the law of war and armed conflict, respectively, gaps remain in law during post-conflict periods. The difficulty here is to define clearly jus post bellum's scope to steer between normative duplication or collision. Others warn against further fragmenting international law, diluting cohesion and enforcement. This is underscored by the plurality of applicable international regimes of law—stretching from treaties such as the Fourth Geneva Convention to soft law materials and human rights treaties—that apply to different features of the post-conflict arena.

Overcoming these conceptual and legal encumbrances is an ongoing process. The absence of an integrated corpus or treaty expressively enunciating jus post bellum norms hampers its universal applicability. States, courts, and international institutions fail at times to find specific, binding norms to regulate interventions, reparations, or accountability after conflict, at least in part due to the conflation of occupation law, peace agreements, and post-conflict justice. This conflation strains the potential for jus post bellum to become a commonly recognized and implemented customary principle.

L. Politics of Realities and Power Asymmetry

In addition to lawmaking intricacies, jus post bellum acknowledgment and application also involve international politics and relations of power. The international structure comprises states' diverse agendas, capacities, and interests, and they also have a significant role in response to conflict and post-conflict situations. Big powers or coalitions typically spearhead international interventions and peace operations and can decide to apply post-conflict responsibilities selectively based on geopolitical interests as opposed to regular legal precepts.

For instance, both Iraqi and Afghan post-invasion cases reflect outcomes of poorly coordinated or poorly planned post-conflict engagement[1065]. Failure to set up good governance, security, and to deliver justice crippled the entire mission of stabilizing and rebuilding these societies. Political will, domestic pressures, and resource constraints often undo the careful discharge of post-conflict duties. In some cases, victorious states or international coalition forces have been culpable of "victor's justice" or imposing terms in disregard of local imperatives and politics, eroding legitimacy and fostering resentment.

Correspondingly, it could be argued, lower-strength states due to conflict might lack administrative capacity and political cohesion to perform post-conflict obligations foreseeable under jus post bellum, such as reparations, rule of law reforms, or reconstructive rebuilding of institutions. This disparity makes it challenging for there to be an across-the-board expectation for states to remain in compliance with certain post-conflict obligations without creating piecemeal or patchy global enforcement.

The current war in Ukraine poignantly captures these political intricacies[1066]. The magnitude of destruction and displacement betrays pressing

[1065] MilitaryReview_20081031_art016.pdf
[1066] War in Ukraine | Global Conflict Tracker

post-conflict demands for reconstruction, reparations, and accountability. Yet, political fault lines between great powers and rival legitimacy in war zones muddy synchronized international response in accord with any contemplated jus post bellum norms. Just as, in Sudan and Yemen, long-running crises involving numerous internal and extra-regional players, underscore how geopolitical contest and humanitarian disasters muddy legal and normative compliance in war and peace transitions.

M. Variability in Conflict Settings and Complexity in Culture

Another significant deterrent to the common practice of jus post bellum can be traced in war and cultural situations around the world. All post-conflict situations have distinctive historical grievances, social divisions, and relations of power. Hopes for justice, reparations, and reconstruction therefore significantly differ across different societies.

For example, truth and reconciliation processes set in post-apartheid South Africa can offer models of healing in some cases but have limitations or rejection where ethnic hostilities run deeper or where the conflict legacy contains ingrained cycles of violence and mistrust, as in some regions of the Democratic Republic of Congo or in Myanmar. National traditions, customary practices of punishment, and politics can be different from international legal prohibitions, and there must be careful correspondence between international norms and home-grown practices.

Local ownership has long been familiar in peacebuilding practice, as it highlights that durable peace assumes active involvement of populations touched by the conflict in post-conflict governance and post-conflict justice process. This aspect renders it difficult to impose inflexible, one-size-fits-all jus post bellum standards without adaptive nuances. International institutions and sovereign states have to grapple with reconciling legal consistency and culturally aware and politically viable peacebuilding strategies.

In addition, programs of reparations and accountability involve long negotiations as to who qualifies as a victim, how reparations may be allocated, and balancing rival claims of communities, particularly in circumstances in which local societies have been altered through displacement and shifts in demographics. These complications connote an admission that jus post bellum can scarcely be one-size-fits-all but necessarily must allow for pluralism within one entire regime of law.

N. Evidence of Emergent Customary Status: Practice and Conviction

Whether jus post bellum can be considered customary international law depends upon the classic dual predicates of state practice and opinion juris. While jus post bellum continues to be underdeveloped alongside its sibling branches, there have been impressive empirical and-doctrinal developments indicating base elements of the doctrine meet these requirements.

First, consistent state and international organizational practice reinforces core post-conflict obligations. United Nations peacebuilding missions routinely include mandates for judicial reform, reparation to victims, and institutional restructuring. Regional organizations like the African Union and the European Union increasingly emphasize transitional justice and reconciliation within their post-conflict engagements. The proliferation of international criminal tribunals—from the ICTY and ICTR to the ICC—underscores a legal and political consensus that accountability for wartime atrocities extends into post-war justice frameworks. Courts such as the ICJ have underscored state responsibility for reparations and non-repetition in line with jus post bellum objectives, reinforcing the legal relevance of these duties.

In addition, opinio juris can be evidenced by express normative statements. The high-level

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 3 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

UN texts, such as the "An Agenda for Peace" (1992) and later Security Council resolutions, express state and institutional expectations of post-conflict behavior. The victim rights, duties of an occupying power, and obligations toward displaced persons codified in international treaties—although scattered—demonstrate states' and international institutions' belief in such post-conflict behavior being internationally law-bound. This common belief can be further traced in diplomatic statements, treaty preambles, and in international court jurisprudence, showing an emerging customary belief.

In general, Martens Clause's continuing reference to "principles of humanity and dictates of public conscience" offers a jurisprudential reference point of jus post bellum principles in gaps of positive law. It sanctions progressive post-conflict legal expectations based on core humanitarian and ethical values widely understood[1067].

O. Toward Lasting and Just Peace

In short, just post bellum's critical legal, ethical, and practical foundations require it to be considered an appropriate customary international law norm. This would be a recognition of how successful it would be for international law in preventing, regulating, and responding to war to not only rest upon just initiation and just conduct of war, but also just peace. Customary jus post bellum would provide invaluable guidance to states and international institutions in navigating this dangerous process of transition from war, establishing and fostering justice, reviving trust, and maintaining human dignity—important aims at the heart of the international legal project.

XII. Findings

Having surveyed legal theory, historical development, and practical challenges in jus post bellum, it becomes clear that debate can no longer revolve over whether post-conflict justice, in and of itself, means anything, but to what extent international law does, in fact, live up to it. The research indicates necessity as well as complications in making jus post bellum into a customary international law norm. First, jus post bellum's core ambition is to provide an answer to the "what next" after war. Standard models such as jus ad bellum (the law of the right to war) and jus in bello (the law of warfare conduct) have an enormous gap in them regarding peacebuilding, justice, and repairs in war's aftermath, which societies desperately require. The development of jus post bellum fills in response to historical failures—need further evidence than Iraq, Libya, or Balkan cycles of unrest to find it—but also out of European and other successes, such as post-World War II Europe's transformation, in which strong post-conflict planning helped bring stability in an enduring peace. The research makes clear that jus post bellum is not some rehash of prior laws, but rather an assortment of demands for reparations, rebuilding institutions, prosecuting war crimes, and restoring rights to people and societies. While certain of these ideas can be found in one's own treaties or in regimes of humanity, absent is one common, trustworthy legal anchor which is understood as binding practice, rather than policy or ideal. The ongoing conflict in Ukraine, or in the humanitarian challenges throughout Sudan and Syria, highlights why it does matter: ad hoc responses provide too great an opening to power politics and uneven results. But bringing jus post bellum into customary international law is not easy. International practice, though, shows an increasing trend in accepting post-war responsibilities: peacekeeping mandates have broad requirements for justice and rebuilding, courts such as the ICJ and ICC continue to deliver rulings involving transition and reparation, and states and institutions daily refer to the language of responsibility and non-recurrence. Another persuasive case in favour of formal acknowledgement of jus post bellum is that it brings to bear an even playing field. In grounding post-conflict obligations in law

[1067] Martens-Clause-LOAC.pdf

rather than power or politics, small states and victims have more stable ground upon which to claim reparations and justice. It also generates clearer expectations for occupying powers, externally imposed peacebuilders, and domestic actors alike. This is particularly so in an era in which both internal and inter-state conflict effaces bipolar dividers to an historically unprecedented degree, and in which post-conflict phases become fraught with legal and moral challenges to an historically unprecedented degree. Finally, transforming discourse around jus post bellum mirrors broader transformations in international law—away from state-centered, consensual approaches and towards increased sensitivity to humanity's common interest in durable peace and justice. An acknowledgment of jus post bellum as customary international law would be a significant step to ensuring war's end signifies not just hiatus before further violence, but beginning of actual restoration. Overall, hope for jus post bellum is not legal clarity, but justice in practice.

XIII. Conclusion

Synthesizing all these viewpoints and research, it's difficult not to admire just how far the debate over jus post bellum has progressed, and still how far it still has to go. There's an increased consciousness that surrendering to war shouldn't involve surrendering to injustice, to culpability, to hope for actual healing.

Jus post bellum signals a step-change in how we approach the law's role in human affairs. Not that long ago, post-war arrangements were left to political bargains or, worse, to the whims of victors. The result often was renewed cycles of violence, injustice for victims, and instability that haunted entire regions. The emergence of jus post bellum reflects a more nuanced, hopeful belief: that law can and should provide guidance and standards not just for waging and ending war, but for what comes after. This is no minor ambition. It seeks to give order and meaning to transitions usually marked by chaos, uncertainty, and trauma. The research and analysis here point clearly to one thing: there is both a gap and a pressing need. On the one hand, international law has tools and traditions for dealing with the immediate fallout of war—think humanitarian law, some human rights protections, and mechanisms like the International Criminal Court—but these are not tailored to the special challenges of rebuilding societies, restoring trust, repairing damage, and ensuring that peace is just as robust as war was devastating. On the other hand, there are obvious dangers in pushing too quickly for a new legal doctrine that isn't yet clearly defined, risks overlap or conflict with existing norms, or seems disconnected from the messy realities on the ground. What offers promise for the future is customary law—to which jus post bellum aspires—is not built overnight. It's an evolutionary product of successive decisions, rational argument, and iterative convergence of morality, politics, and practicality. The expanding state practice in maintaining the peace, post-conflict prosecution, and even in how reparations and justice are being contemplated for recent and ongoing wars, testifies to this evolution in practice. When the world cares more for civilians' rights, demands atrocity accountability, and exercises lawful rebuilding, it's establishing precedent for jus post bellum's reception. The harder part is to strike just the right balance: to create an efficacious, credible legal framework preventing abuse and sharpening responsibility, without being too rigid or prescriptive to suffocate innovative, locally generated responses or to ignore each conflict's unique characteristics. Getting it right could transform ways in which wars end, who gets to decide on peace, and whether societies have anything at all of hope in being able to move beyond being able to "end war" to being able to "end wars well." This is jus post bellum's promise: not perfection, but progress—its ground in justice, guidance by law, and shaping by history's harsh lessons.