

FRACTURES IN THE FOUNDATION: IS WAGING AGGRESSIVE WAR STILL PROHIBITED BY INTERNATIONAL LAW?

This panel was convened at 3:30 p.m. on Thursday, April 7, 2022 by its moderator, Monica Hakimi of University of Michigan Law School, who introduced the speakers: Harold Hongju Koh of Yale Law School; Yanar Mohammed of the Organization of Women’s Freedom in Iraq; Sabeena Rajpal, assistant legal adviser at the U.S. Department of States; and Ganna Yudkivska, judge at the European Court of Human Rights.

REMARKS BY MONICA HAKIMI

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Good afternoon. I am Monica Hakimi. I am from the University of Michigan Law School, and it is my pleasure to moderate this panel on the recent invasion in Ukraine. The invasion has caused me, as I suspect it has caused many of you, a great deal of horror, sadness, and fear. We hope to spend the hour today interrogating the question of what the invasion means for *jus ad bellum*, in particular, and for the international legal order more generally.

I will briefly introduce each of our panelists, and then we will structure the panel more like a conversation than like a series of presentations. I will ask a series of questions to get us going. I will hopefully leave some time at the end to take questions from the floor and from viewers who are watching online.

The first panelist is Ganna Yudkivska, who has been a judge on the European Court of Human Rights since June 2010. She is also an associate professor of European and international law at the bar academy of Ukraine. The second panelist is Harold Hongju Koh, Sterling Professor of International Law at the Yale Law School and former Legal Adviser to the U.S. Department of State. Third, Sabeena Rajpal, who is the Assistant Legal Adviser at the U.S. Department of State, leading the office that provides legal advice to the Bureau of European Affairs. And by Zoom, we are joined by Yanar Mohammed, who is a co-founder and president of the Organization of Women’s Freedom in Iraq, OWFI, a national women’s organization dedicated to rebuilding Iraq on the basis of secular democracy and human rights for all.

The topic of the invasion of Ukraine could take us weeks to discuss. As I said, we will focus on the invasion itself and talk about some of the responses to it and the consequences and longer term implications of it.

Sabeena, let me start with you. Could you please put the invasion in a little bit of context? There is no real question, I think, that the action violates the black letter rules on the use of force, as established in the UN charter and in customary international law. It was a blatant and unprovoked act of aggression, as the UN General Assembly has recognized. And yet this is not the first operation that violates or seriously pushes the boundaries of *jus ad bellum*. Kosovo and Iraq 2003 both immediately come to mind. But there seems to be a sense, at least in some quarters, that this invasion is uniquely, if not singularly, abhorrent. And so I want to ask you whether there is something different about this particular violation of *jus ad bellum*, or is it, as some have contended, just another in a long line of violations? Relatedly, what kind of precedent do you think it sets for *jus ad bellum* going forward?