

SEMINAR

CONSTITUTION AND WAR

**CENTRO DE ESTUDIOS POLÍTICOS Y CONSTITUCIONALES
EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE
COMMISSION) – COUNCIL OF EUROPE**

Thursday 14 and Friday 15 September 2023

The relationship between constitutions and war encompasses various dimensions, including the prevention of wars, the protection of democratic governance and human rights during times of conflict, and the promotion of post-war reconciliation and rebuilding. The first aspect to consider is the distinction between wars permissible under constitutionalism and offensive wars. Constitutions can act as crucial safeguards against unjustifiable conflicts, providing a framework for decision-making, mitigating the risk of unchecked executive powers, and preventing unnecessary escalations into armed conflicts.

A fundamental aspect of the constitutional framework is civilian control over the military. The role of democratic and judicial oversight in upholding accountability becomes vital. By establishing clear constitutional guidelines, states ensure that the military operates within legal boundaries and that individuals responsible for misconduct are held accountable. A significant challenge lies in striking the right balance between protecting human rights and democratic principles, while also addressing the extraordinary measures necessitated by war. Robust constitutional frameworks for introducing and applying martial law are essential to ensure that emergency measures are employed judiciously, with power remaining constrained even in times of crisis.

Beyond the conduct of war, constitutions play a critical role in post-war societies. They serve as roadmaps for reconciliation, fostering inclusive societies, and addressing the root causes of conflicts. Transitional justice mechanisms, power-sharing arrangements, and mechanisms for addressing past grievances are all important elements that constitutions can incorporate to facilitate healing and promote social cohesion.

The round table discussion will delve into these critical issues, drawing from historical and contemporary examples. By sharing experiences and knowledge, participants are invited to examine the multifaceted interaction between constitutions and war. They will explore how

constitutional frameworks can contribute to enhancing accountability, protecting human rights, and fostering reconciliation in the aftermath of armed conflicts.

Thursday 14 September

10:00 Opening Remarks

- **YOLANDA GÓMEZ SÁNCHEZ**, Director of the CEPC, Professor for Constitutional Law
- **JUAN IGNACIO MORRO VILLA CLÁN**, Ambassador Permanent Representative of Spain to the Council of Europe
- **SIMONA GRANATA-MENGHINI**, Director/Secretary, Venice Commission

10:30 First Panel. Types of war

Issues to be covered:

- *Wars permissible under constitutionalism and offensive wars*
- *Criteria for “just wars”*
- *Jus ad bellum (morality of going to war)*
- *Jus in bello (moral conduct within war)*
- *External wars and civil wars; proxy wars*

- **JOSEP BAQUÉS QUESADA**, Lecturer of Political Science, University of Barcelona
- **KONSTANTINOS PAPAGEORGIOU**, Emeritus Professor of the Philosophy of Law at the National and Kapodistrian University of Athens

Moderator: **Montserrat Abad Castelos**, Professor of International Public Law, Carlos III University of Madrid

12.00 Coffee break

12:30 Second Panel. Jus ad bellum in constitutional law: the national regulation of warfare

Issues to be covered:

- *Constitutional framework for powers to declare war, mobilise the military, deploy military forces, and apply extraordinary measures*
- *Comparative review of how these issues have been treated in the past and by contemporary constitutions*
- *References to the experience in World war II, Vietnam war, Russian-Ukrainian war*

- **ANDRÉS DE CASTRO GARCÍA**, Lecturer of International Relations, National University of Distance Education and Deputy Director of the General Gutiérrez Mellado University Institute for Peace, Security and Defense Research

- **NICOS C. ALIVIZATOS**, Emeritus Professor of Constitutional Law at the National and Kapodistrian University of Athens, Member of the Venice Commission for Greece

Moderator: **Amparo Alcoceba Gallego**, Senior Lecturer in International Public Law, Carlos III University of Madrid

14.00 Lunch

16:00 Third Panel. *Ius in bello*: Democracy and control of the military action during wartime

Issues to be covered:

- *Constitutional framework for civilian control over the military and its limits*
- *The roles, responsibilities, and limitations of the military*
- *Judicial review of government actions during the war*
- *Civilian protection*
- *Rights of victims and remedies*
- *War crimes*
- *Command responsibility*

- **JUAN ANTONIO MOLINER GONZÁLEZ**, Major General of the Air Force (R), Vice President of the Academy of Military Arts and Sciences

- **DAN MERIDOR**, Lawyer, Member of the Venice Commission for Israel

Moderator: **Carola García-Calvo**, Senior Analyst at the Elcano Royal Institute, Associate Lecturer of Political Science at the Rey Juan Carlos University

Friday 15 September

9:30 Fourth Panel. *Ius in bello*: constitutional protection of fundamental rights during wartime

Issues to be covered:

- *Constitutional framework for ensuring human rights and upholding democracy and the rule of law in the time of war*
- *Declaring martial law and applying emergency measures*
- *Distribution of powers during martial law*
- *Safeguards to prevent abuse of power, and the role of legislative and judicial oversight*
- *Protection of human rights, notably the right to life, prohibition of torture, arbitrary detention, freedom of expression, assembly, and movement*
- *Exercise of electoral rights*

- **PALOMA BIGLINO CAMPOS**, Professor of Constitutional Law at the University of Valladolid, Substitute Member of the Venice Commission for Spain

- **MONIKA HERMANN**S, Retired Justice of the German Federal Constitutional Court

Moderator: **Alfonso Fernández-Miranda Campoamor**, Professor of Constitutional Law, Complutense University of Madrid, Director of the Extraordinary Chair of Military Law (Ministry of Defence/Complutense University of Madrid)

11.00 Coffee break

11:30 Fifth Panel. The Constitution after the war

Issues to be covered:

- *Constitutions as roadmaps for reconciliation and rebuilding in post-conflict societies*
- *Constitutional framework for transitional justice and ensuring accountability for war crimes, power-sharing arrangements, mechanisms for addressing past grievances, ensuring inclusivity, accommodating diverse interests and promoting social cohesion*
- *References to the experience in the Inter-American and Balkan regions*

- **ERIKA MARÍA RODRÍGUEZ PINZÓN**, Associate Researcher at the Complutense Institute of International Studies

- **CHRISTIE S. WARREN**, Professor of the Practice of International and Comparative Law, Director of the Center for Comparative Legal Studies & Post-Conflict Peacebuilding, William & Mary Law School

Moderator: **Óscar Sánchez Muñoz**, Senior Lecturer of Constitutional Law at the University of Valladolid, Substitute Member of the Venice Commission for Spain

13:00 Conclusions

- **RAFAEL BUSTOS GISBERT**, Professor of Constitutional Law at the Complutense University of Madrid, Member of the Venice Commission for Spain
- **NICOS C. ALIVIZATOS**, Emeritus Professor of Constitutional Law at the National and Kapodistrian University of Athens, Member of the Venice Commission for Greece

13:30 Closing remarks

- **SIMONA GRANATA-MENGHINI**, Director/Secretary, Venice Commission
- **YOLANDA GÓMEZ SÁNCHEZ**, Director of the CEPC, Professor for Constitutional Law

Working languages: Spanish and English

Simultaneous translation for both languages will be provided
The seminar can be attended in hybrid modality (presential + online)