

# SEMINAR: CONSTITUTIONS 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.

## PROGRAMME

### Thursday 14 September

#### 10:00 Opening Remarks

- **YOLANDA GÓMEZ SÁNCHEZ**, Director of the CEPC, Professor for Constitutional Law
- **JUAN IGNACIO MORRO VILLACIÁN**, 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 PAPAGEORGIU**, Emeritus Professor of the Philosophy of Law at the National and Kapodistrian University of Athens

Panel Chair: **MONTSERRAT ABAD CASTELOS**, Professor of International Public Law, Carlos III University of Madrid

## 12.00 Coffee break

### 12:30 Second Panel. *Ius 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

Panel Chair: **MARÍA AMPARO ALCOCEBA GALLEGO**, Professor of 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

Panel Chair: **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

- **MONICA HERMANN**S, Former Justice of the German Federal Constitutional Court, former Substitute Member of the Venice Commission for Germany

Panel Chair: **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*



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- *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

Panel Chair: **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 will take place in hybrid modality (presential + online)