

THE AUSTRALIAN CENTRE FOR MILITARY LAW AND JUSTICE,
AND THE ANU COLLEGE OF LAW PRESENT:



PUBLIC LECTURE

THE PRINCIPLE OF MILITARY NECESSITY IN INTERNATIONAL HUMANITARIAN LAW

Professor Michael Schmitt
University of Durham



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Law Theatre

ANU College of Law (Bldg 5), Fellows Road

The Australian National University

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No principle is more central to the content and understanding of international humanitarian law than military necessity. It has informed the law since its modern inception in the 19th century. Yet the principle has also been the subject of misinterpretation and abuse. For instance, the notion of military necessity was offered to justify many of the horrendous abuses suffered by the populations of occupied nations during the Second World War. Although rejected by war crimes tribunals following the conflict, it continues to be used as a justification for deviation from the tenets of the law governing armed conflict. On the other hand, it is being increasingly suggested that military necessity is a principle which restricts how armies may conduct hostilities, even beyond the specific rules of international humanitarian law.

This lecture examines the principle of military necessity and its relationship to the countervailing principle of humanity. Both represent foundational principles which are meant to permeate all humanitarian law, whether found in treaties or existing as customary international law. Their coexistence serves to balance humanitarian law in a way that best protects individuals and property while allowing States sufficient leeway to conduct military operations effectively. The lecture will further examine how the principles are being applied by courts, non-governmental organizations and others involved in the legal assessment of armed conflict, and offer thoughts on whether the trend is positive or negative.

Professor Michael N. Schmitt is Chair of Public International Law at Durham University in the UK. He was previously Dean of the Marshall Center for Security Studies in Germany. He is a Senior Fellow at the TMC Asser Institute in the Hague, served as the 2007-08 Stockton Visiting Professor of International Law at the US Naval War College, and was the 2006 Sir Ninian Stephen Visiting Scholar at Melbourne University. Professor Schmitt served 20 years in the US Air Force, specialising in operational and international law. He is presently the General Editor of the Yearbook of International Humanitarian Law and serves on the editorial boards of the International Review of the Red Cross, International Peacekeeping, Journal of Military Ethics, Connections, Journal of International Humanitarian Legal Studies, and the International Humanitarian Law Series (Martinus Nijhoff). Professor Schmitt's works on law and military affairs have been published in Australia, Belgium, Chile, Germany, Israel, Italy, Norway, Peru, Sweden, Switzerland, the Netherlands, the United Kingdom, and the United States.

The views expressed in this seminar are those of the presenter and do not necessarily represent the views of The Australian National University.

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