

A CCPL YOUNG SCHOLAR SERIES

**Rethinking the Requirement of Military Necessity:
Can the Principle Adequately Restrain Violence in
Contemporary Armed Conflict?****Kosuke Onishi***PhD Student**Law Faculty, Doshisha University, Kyoto***Tuesday 14 February 2017, 12:30-14:00****Academic Conference Room, 11/F****Cheng Yu Tung Tower, Centennial Campus****The University of Hong Kong**

The principle of ‘military necessity’ has been described as one of the oldest and most effective restraints on violence during war. While military necessity permits states to take measures that are required to bring about the military defeat of the enemy, it also restrains the destructive effects of war because conduct that is unnecessary for this aim are unlawful. This dynamic between the permissive and restrictive functions of military necessity is the foundation for the entire corpus of international humanitarian law (IHL), and insofar as military necessity accurately reflects the interests of warring parties one might expect there to be compliance with the principle during armed conflicts.

However, this talk will suggest that the ability for military necessity to restrict violence is doubtful in many contemporary armed conflicts. Nowadays, overcoming the enemy’s military is not always realistic or sufficient to attain ‘victory’. In a majority of armed conflicts, especially those involving non-state armed groups, capturing the hearts and minds of the civilian population is as important, if not more, than military success. This may involve benevolent conduct towards the population. But more often extreme cruelty, violence and intimidation are the modes of operation for governments, freedom fighters, and terrorists alike.

Based on these observations, this presentation will explore the weaknesses of military necessity as a restraint on violence. Because military necessity does not reflect the real objectives of belligerents today, the principle fails to generate compliance. The reality instead is that the principle is in danger of broadening acceptable levels of violence through its permissive function. This has implications relating to what constitutes a legal target, as well as the degree to which collateral damage is permissible during armed conflict. The presentation will conclude by proposing alternative criteria for the use of force.

About the Young Scholar Series. The CCPL organises regular lunchtime presentations by PhD Students and young academics on legal topics of current interest. Those interested in giving a talk in the future may contact Professor Anselmo Reyes (anselmo@hku.hk).

The talk is open to all without charge. To ensure adequate refreshment, please register online as soon as possible by 10 February 2017.

Please click [here](#) for online registration to reserve a place.
For inquiries, please email Joyce Fung at joycef@hku.hk

