War, Conflict and Human Rights
Theory and practice
Second edition

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1 The interplay between war and human rights

Key points

- The study of war and human rights is an interdisciplinary subject, involving knowledge of law, politics, and conflict analysis and resolution.
- Promotion of human rights and resolution of violent conflict are often viewed as being in tension by scholars and practitioners of each.
- The relationship between war and human rights is complex: human rights violations can underpin conflict, can emerge from conflict, and can transform conflicts already under way, and human rights accountability may be a critical demand within, but also an obstacle to, peace processes.
- Peace processes must not only address demands for accountability for past abuses, but also disarm combatants and reshape political processes and institutions of law and governance.
- A wide range of law exists that may be relevant in addressing human rights violations that arise during conflict, falling broadly under the rubrics of international human rights law and international humanitarian law.
- A wide range of responses to past abuses may be developed, through use of domestic courts or through international institutions and processes, including the International Criminal Court.
- Nonstate armed groups and private military and security companies play a critical role in contemporary armed conflicts, and pose challenges to peace processes, but also complicate the application of international humanitarian law.

Overview

This book examines key issues and debates regarding the connections between armed conflict and human rights, both theoretical and practical. It also examines the key legal sources and obligations in both international human rights law and international humanitarian law. And it does so from a grounded, real-world perspective, through in-depth case studies of particular countries involved in and emerging from armed conflict, paying attention to the specific human rights and conflict resolution challenges presented in each, and the compromises ultimately reached. The chapters in Part I examine in detail a wide range of human rights and accountability mechanisms that have been developed, each of which maps to one or more of the country case studies in Part II. This book thus examines an important set of issues
that are directly located at the intersection of courses on human rights and international humanitarian law, and courses on conflict analysis and conflict resolution. The approach is explicitly hybrid, mixing disciplinary approaches, policy analyses, case studies, and legal analyses.

War, armed conflict, and human rights

The relationship between war and other violent conflict is complex and dynamic. As discussed later, violations of human rights can be both causes and consequences of violent conflict. Further, gross violations of human rights and violations of international humanitarian law can alter the course of conflicts, adding grievances and changing the interests of various actors, in turn making conflicts more intractable. Where this is the case, conflict resolution can become much more difficult, not least because many issues beyond the original “root causes” of conflict will be at stake, and because trust between the warring parties will be extremely low. Finally, demands for accountability will be made, whether by victims and relatives of victims, by local and international nongovernmental organizations, or by various international actors such as donor countries. The pursuit of legal accountability is often controversial, and is often resisted by one or more of the fighting parties; insisting upon legal accountability may impede negotiations or peace implementation. Nonetheless, there have been numerous attempts to pursue legal accountability while also making peace, and this book will examine many such cases.

These complex problems are both legal and political. Developing useful policy responses requires an understanding not only of international human rights and humanitarian law, but also of conflict dynamics and conflict resolution. We turn next, briefly, to the specific fields and disciplines of conflict analysis and resolution, human rights, and international humanitarian law, which will be developed in greater detail in subsequent chapters. We then address in greater detail the specific ways in which war and human rights violations may be intertwined, and the particular and competing demands and goals of conflict resolvers and human rights promoters.

Conflicts analysis and causes of conflict

Conflict analysis, in theory and in practice, seeks to identify the “underlying” causes of conflict as well as to understand the dynamics of conflict once it is under way. In any given conflict there is always more than one cause, although some will be more salient in particular conflicts, as discussed in Chapter 2. Causes of conflict can include mistrust or grievances based upon ethnic discrimination or preferential treatment; competition over resources, whether political or economic; demands for political autonomy or independence; allegations of corruption; and myriad claims regarding current or past human rights abuses. Attempts to resolve conflicts will need to address many or all of these underlying causes, which means that in conflict resolution processes, human rights abuses are but one concern among many. Those seeking to resolve conflict will be concerned with bringing all relevant parties to the negotiating table, including the possibility of defection by some, particularly “spoilers”; building confidence among parties; and addressing the many grievances that parties may have against one another. They may also be concerned with allocating future economic and political resources; guaranteeing security for all parties, particularly those that fear for their survival; rebuilding institutions of law and order; and addressing specific demands for justice to rectify past abuses. They may also be concerned with setting the stage for
The interplay between war and human rights

Peacebuilding processes, often with a significant international presence, or with longer-term reconciliation and conflict transformation. Clearly, in many instances, human rights are not the first topic of concern for conflict resolution experts or practitioners. However, as we will see, human rights violations and human rights protections are intimately linked to the patterns of contemporary conflict in a number of ways, meaning that contemporary efforts to end wars have been compelled to deal with human rights and humanitarian law obligations. Encounters between human rights advocates and conflict resolution experts have thus been necessarily uneasy, with each “side” viewing the priorities of the other as suspect.

Human rights violations as causes of conflict

Human rights violations can be both causes and consequences of conflict. We begin with the ways in which human rights violations can generate conflict, with some examples for illustration in Box 1.1. In the most general sense, grievances over the real or perceived denial of rights can generate social conflict. This may be the case where there is systematic discrimination, differential access to education or health care, limited freedom of expression or religion, or denial of political participation, whether based upon race, ethnicity, caste, religion, language, gender, or some other characteristic. These violations may seem relatively minor, particularly in comparison to some of the grave crimes examined later in this book, including war crimes and genocide, but they can still generate real grievances and social unrest. In functional politics, such grievances may be handled through relatively peaceful, constitutional means, whether through litigation in the courts or through legislative reform or administrative policy change. However, in weak, corrupt, abusive, or collapsed and collapsing states, such conflict is more likely to become violent. That violence may be merely sporadic, if serious, or it may give rise to more systematic opposition.

Violent conflict may also emerge where there are more violent human rights abuses—illegal detention, extrajudicial execution, disappearances, torture, widespread killing, or even attempts at genocide. Where civilians have already been targeted by such violence, whether committed by the state or by nonstate actors, it is unlikely that peaceful resistance will have much effect, so it is yet more likely that affected individuals and groups will take up arms to defend themselves. In such situations, then, human rights violations are an important, underlying cause of conflict, although seldom the only one. Once war has erupted,

Box 1.1 Conflict and human rights in practice: Northern Ireland, Kosovo, and Sierra Leone

In Northern Ireland, the Catholic community claimed that they were the victims of systematic abuse and discrimination, and sought first to gain reforms through a nonviolent civil rights movement. When that failed, they resorted to the use of violence, and the Irish Republican Army emerged. The sustained denial of fundamental rights, even in the absence of serious bodily harm, can thus promote violent conflict.

In Kosovo, the Kosovo Liberation Army claimed that it took up arms in response to real and anticipated ethnic-cleansing efforts by the Serbs.

In Sierra Leone, the Civil Defense Forces emerged to protect local communities from the predations of both the government and Revolutionary United Front rebel forces.
any serious attempt at conflict resolution will also have to address the underlying sources of the original conflict, including abuses of human rights. Otherwise, violence, particularly retaliation for past abuses, is likely to re-emerge once third-party mediators, observers, or peacekeepers have departed.

**Human rights violations as consequences of conflict**

Alternatively, human rights abuses can emerge primarily as a result of violent conflict. A conflict may have been undertaken by the parties primarily out of concern to promote a political or ideological agenda, or to promote the welfare of one or more identity groups, or to access resources. Examples abound: the leftist rebels in El Salvador ostensibly fought to redress the massive wealth imbalance in the country and the grinding poverty suffered by the majority, seeking land redistribution and a more egalitarian economic system. However, the conflict with the government that ensued generated vast human rights abuses, such as disappearances, torture, illegal detention, and execution, mostly committed by the government. In Argentina, the alleged threat of communist subversion was used by the military junta to maintain its own power and engage in systematic disappearances and repression. Conflicts over access to resources, such as diamonds in Sierra Leone, timber in Liberia, coltan in the Democratic Republic of Congo, and oil in Sudan, have taken a great toll beyond the cost to human life on the battlefield, resulting also in wide-scale killing and displacement of civilians, and gross human rights abuses. The vast majority of harm in recent conflicts has been inflicted on civilians, either incidentally or, more frequently, deliberately in the pursuit of resources. Violations may include human rights abuses such as torture and disappearances, but also frequently include war crimes, crimes against humanity, and even genocide.

**Human rights violations as both causes and consequences of conflict**

Of course, human rights violations are usually both causes and consequences of conflict, intertwined among other factors. For example, in Sudan, causes of conflict have included concerns about religious repression, access to resources, and control of land, as well as the human rights violations themselves, incurred over the course of the multi-decade conflict. It would be incorrect to suggest that the north–south conflict was generated by attempts of the government in the north to impose sharia law on the population of the south, who were largely Christian or animist. It would similarly be incorrect to argue that the conflict in Sudan was over access to oil alone. Rather, religious repression, discrimination and marginalization based on perceived racial distinctions and geography, and access to resources were at stake in that conflict, which reached a negotiated conclusion in 2005.

**Human rights violations as transformers of conflict dynamics**

Human rights violations are not only causes and consequences of violent conflict, however; they are also potentially transformative of conflicts and may make their resolution a greater challenge. Thus, conflicts that may begin over resources, religion, or ethnic or territorial claims, may, as they progress, create new grievances through the real and perceived violation of human rights by one or more parties. Further, such violations may reify divides in society, making it easier for leaders to mobilize people—civilian and armed—to violent action. In such mobilization, it becomes easy to demonize the “other,” whether rebel group or state actor, which in turn facilitates not merely killing on the battlefield, but also the commission of
further human rights violations. The conflict may be transformed, although not always, into one that is primarily about grievances, identity, and recrimination, even though other causes may have precipitated the original fighting. Further, and this is key from the perspective of conflict resolution, heightened mistrust and resentments make initial negotiations difficult, and may create impediments to long-term peacebuilding and reconciliation. Moreover, it is difficult to convince people and groups who have been wronged to sit face-to-face and negotiate; even if leaders take that step, ordinary individuals might be reluctant to set aside grievances. This fundamentally changes the terrain of peacebuilding; victims, civil society, and other actors may demand redress of past abuses, even though such redress is likely to be resisted by some or all of the warring parties.

**Human rights and accountability as demands during peace negotiations and postconflict peacebuilding**

Human rights protections and accountability for past violations are usually among the demands that parties consider when negotiating the end to an armed conflict. However, these are not the only demands, as discussed in Chapter 2. Human rights may emerge as a central concern in negotiations in a number of ways. First, the demand for accountability will likely be central for one or more parties at the negotiating table, with civil society, nongovernmental organizations, or the international community also pressing for some form of accountability beyond the negotiation table. The latter might take the form of prosecutions, lustration or vetting (removal or barring of abusers from certain public offices), truth commissions, or reparation. Any of these groups, and indeed some armed groups as well, might demand the restructuring and retraining of security forces, so that they will respect human rights in the future. Yet simultaneously, individuals who have also been perpetrators of serious human rights violations, whether they are part of armed groups or the government, may fear imprisonment or, at the very least, loss of privileges through lustration, or public shaming through the release of a truth commission report. They may press for blanket amnesties or at least for their own protection. Thus demands for accountability can be serious obstacles during negotiations. Many have argued that the possibility of prosecution hampered negotiations with the Lord’s Resistance Army (LRA) of northern Uganda: although the government provided reassurances regarding domestic prosecution during the Juba Peace Talks of 2006–2008, the International Criminal Court had already issued arrest warrants for LRA leader Joseph Kony and four others. A variety of provisions may be built into a peace agreement, or the issue may be held in abeyance to be dealt with subsequently. Demands for accountability and the various mechanisms to address past abuses after conflict are examined in greater detail in Parts II and III of this volume.

Alternatively, human rights protections may also be central to a negotiating process, important in laying the groundwork for democratic development, and may be useful in confidence building. Thus, for example, in El Salvador’s multiple rounds of negotiations, one of the first operational agreements, the San José Agreement, approved the creation of a United Nations (UN) human rights observer mission. The functioning of the mission not only meant that human rights were prioritized during the negotiating process, but also introduced a third party on the ground in the country. Many scholars argue that the presence of a third party—as monitor, guarantor, and stabilizer—is essential if peace negotiations are to succeed.

Human rights protections and accountability for past abuses are also often claimed to be essential to peacemaking and peacebuilding. Analysts and advocates have argued that addressing human rights violations is essential for restoring the peace and building rule
Box 1.2 UN mediation and amnesties

A common demand of parties to conflicts are amnesties or other bars to accountability for serious crimes. These parties make such demands both out of fear of prosecution resulting in imprisonment, but also out of concern to maintain their own political legitimacy and viability in a post-agreement state. Thus, amnesties have historically been significant tools in the “toolbox” of mediators. However, such amnesties have faced increasing political criticism and growing arguments that some or all amnesties are illegal. While there remains legal debate about the constraints upon amnesty, there is consensus amongst some, though certainly not all, scholars, that blanket amnesties for serious international crimes such as genocide, war crimes, torture and crimes against humanity are not permissible. United Nations mediators receive explicit instruction that the UN cannot endorse any peace agreement with such provisions. With amnesty excluded or limited in many instances, other measures to reassure parties to negotiations, such as power-sharing arrangements, are often utilized, and may de facto limit accountability options.


of law, and in particular for demonstrating that a society is now on a different, nonviolent path. They have similarly argued that the absence of accountability may hamper long-term peacebuilding, because some former victims may seek vengeance, or the population more broadly may place little faith in postconflict institutions that have not addressed human rights abuses.

Conversely, the pursuit of accountability may hamper not only peace negotiations, but also peace implementation, where those who face accountability return to violence or threaten to return to violence. Thus in El Salvador, for example, the impending release of the truth commission report, which would find the armed forces responsible for the vast majority of human rights abuses committed during that country’s conflict, caused unrest in the military. In Argentina, a country emerging from a severe internal repression that never became an official armed conflict, the attempt to prosecute the former military leadership resulted in with five coup attempts.

Other issues covered by peace processes might not seem directly related to human rights, but could have an important impact on demands for accountability and reconciliation processes. For example, peace negotiations and peace processes deal with the disarmament, demobilization, and reintegration of ex-combatants to guarantee that they do not return fighting. This may require a host of guarantees to parties that may be at cross-purposes with human rights protections, including amnesty but also other concessions to individuals or groups who may be responsible for grave violations of human rights or international humanitarian law. Thus the 1999 Lomé Agreement in Sierra Leone granted a blanket amnesty, and guaranteed notorious rebel leader Foday Sankoh a position in government. Negotiations will address an array of contentious issues, such as land tenure or access to resources, and restructuring of and access to governance and political representation. Particularly where governance has been poor, corrupt, or undemocratic, some domestic and international actors will be interested in rebuilding, or building for the first time, key elements needed to establish the rule of law—transparent legislation, a functional judiciary and correctional system, and
Box 1.3 The relationship between conflict and human rights

- Human rights violations as causes of conflict
- Human rights violations as consequences of conflict
- Human rights violations as both causes and consequences of conflict
- Human rights violations as transformative of conflict dynamics
- Human rights and accountability as demands during peace negotiations and postconflict peacebuilding

...the like. Protection of human rights may also be an important component of postconflict rule of law promotion strategies.

Human rights concerns thus play a complex range of roles and have a complicated relationship to both peace negotiations and peacebuilding processes. The relationship is made more complex by the fact that specialists in the protection of human rights and specialists in conflict resolution form different communities, with different expertise.

Advocating human rights and conflict resolution: different communities, different agendas

Rhetorically, the goals of those who seek to protect human rights and those who seek to promote conflict resolution are complementary: both seek to reduce human suffering, in particular to prevent physical harm and violence to individuals, largely civilians, by governments or nonstate armed groups. However, they two groups may prioritize goals or assess success differently, with conflict resolution advocates typically prepared to place less importance on human rights concerns, at least temporarily, while details of peace agreements are being resolved, as explained in Box 1.4. Human rights advocates, conversely, will generally focus upon the underlying grievances as causes of the conflict, or on the abuses that occurred during the conflict, and insist that conflict might re-emerge if “justice” is not done. They may be less sensitive to the possibility that a demand for justice during peace negotiations might actually block conflict resolution.

Not surprisingly, conflict resolution advocates will prioritize different goals than human rights advocates. The latter will be suspicious of amnesties, and promote legal accountability, the creation of human rights institutions, the needs of victims, and public discussion of past abuses. Conflict resolution advocates, as noted above, will be interested primarily in reaching a negotiated settlement, and may be willing to sacrifice some human rights concerns to that

Box 1.4 Advocating human rights and conflict resolution: potential tension

- Human rights advocates prioritize accountability, public reckoning, national human rights institutions, and the needs of victims, and will be wary of any outcome that involves negotiation with or amnesty for human rights abusers.
- Conflict resolution advocates prioritize reaching a settlement that can bring an end to violent conflict, and will be prepared to negotiate with and even in some instances consider amnesty for human rights abusers.
end. However, they are also concerned with creating a sustainable, long-term peace and reducing the risk of return to conflict, and thus have an interest in the rule of law, democratic governance, and ultimately many human rights protections. Thus, while the primary goals of the two communities may appear to be at odds, given the intertwined nature of human rights violations and war, there may be a convergence to be identified, and each group of practitioners needs to be sensitized to the concerns of the other.

**Relevant law**

This book does not cover all obligations under international human rights law and international humanitarian law, as these are too vast to be addressed sufficiently here. The relevant legal obligations, developed in greater detail in Chapter 4, are primarily those that are closely tied to violent conflict as either causes or consequences. Further, the bulk of this book addresses situations in which violations of legal obligations are actual crimes, for which international, individualized criminal accountability is possible. These comprise a narrow set of violations, and are those for which postconflict regimes, or the international community, have prosecuted perpetrators.

The legal rights and obligations of greatest relevance here are the core international human rights documents, often referred to as the **International Bill of Rights**: the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and International Covenant on Economic, Social, and Cultural Rights (ICESCR). As we shall see in Chapter 4, these documents, where they do create obligations for states, do not create international crimes. The same is true of the Convention on the Elimination of Racial Discrimination in All Its Forms (CERD), the Convention on the Rights of the Child (CRC), and the Convention on the Elimination of Discrimination Against Women (CEDAW). Nonetheless, all of these documents articulate rights or obligations, the violation of which may serve to promote conflict, or result from conflict. Other human rights documents create more explicit obligations for states, and violations by individuals may be prosecutable crimes, as with the Convention on the Prevention and Punishment of the Crime of Genocide (the **Genocide Convention**) and the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (the **Torture Convention**). Similarly, obligations

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**Box 1.5 ** **Key international legal documents**

- International Bill of Rights:
  - Universal Declaration of Human Rights
  - International Covenant on Civil and Political Rights
  - International Covenant on Economic, Social, and Cultural Rights
- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
- Four Geneva Conventions of 1949 and their two additional protocols of 1977
- Rome Statute of the International Criminal Court
- Convention on the Elimination of Racial Discrimination in All Its Forms
- Convention on the Rights of the Child
- Convention on the Elimination of Discrimination Against Women
under international humanitarian law, whether customary or based on treaty, may include grave breaches, known in common parlance as war crimes, for which individuals may be prosecuted. The key conventions of study here are the four Geneva Conventions of 1949 and their two additional protocols of 1977. Finally, the Rome Statute of the ICC defines three crimes for prosecution—war crimes, crimes against humanity, and genocide—and has defined a fourth over which it does not yet have active jurisdiction, the crime of aggression.

Responses to human rights abuses

Given the complex relationship between conflict and human rights, and the competing demands articulated above, a number of responses to significant human rights abuse have been developed—the domestic, transnational, hybrid, and ad hoc and permanent international, as noted in Box 1.6 and discussed in Part III of this volume. Domestic responses to armed conflict and simultaneously grapple with human rights abuses may include all of the measures already noted, ranging from amnesty to prosecution, alongside restitution, reparation, retraining of security forces, and development of national human rights mechanisms. Transnational responses, whereby abuses are addressed in a different country than that in which they occurred, are most commonly the case in the pursuit of criminal accountability, with the exercise of universal jurisdiction, but accountability may also be pursued through civil suits. Most criminal cases have been brought in a few European countries, such as Belgium and Spain, while most civil cases have been brought in the United States, through the Alien Tort Claims Act (ACTA), or in the United Kingdom. Hybrid institutions for accountability have also been developed in recent years. These are tribunals created to function in the country where an armed conflict has occurred; they utilize not only domestic law and judges, but also a combination of domestic and international judges, prosecutors, and lawyers, and may rely on international human rights and humanitarian law or a combination of international and domestic law. There have been several such experiments to date—in Kosovo, East Timor, Sierra Leone, Cambodia, and Bosnia. Finally, there are international responses, through international criminal tribunals. Historically, after World War II, prosecutions were undertaken in the Nuremburg and Tokyo Tribunals, but new international bodies began to emerge in the 1990s with the creation of two ad hoc tribunals for the prosecution of crimes committed during the war in the former Yugoslavia and during the genocide in Rwanda. More recently, the ICC has undertaken formal investigations of crimes committed in numerous countries in Africa, to date Libya, Kenya, Uganda, the Democratic Republic of Congo, Sudan, the Central African Republic, Côte d'Ivoire and Mali. Each of these judicial bodies is somewhat different; although many refer to the same core legal obligations, their mandates and competence vary significantly.

**Box 1.6 Accountability institutions and responses**

- Domestic transitional justice
- Regional courts
- Ad hoc international tribunals
- Permanent international tribunals
- Hybrid or mixed tribunals
- Universal jurisdiction
- Civil accountability
Internal armed conflicts

Many of the conflicts examined in this book share a unique feature—they are internal armed conflicts, although many of them may involve a cross-border dimension. The internal nature of many contemporary conflicts generates particular legal and practical difficulties. While international human rights law functions in times of war and peace, and applies consistently whether the conflict is internal or international, the same cannot be said of international humanitarian law. The latter operates only where an armed conflict occurs. In some instances of civil strife, there may be genuine debate about whether an armed conflict is in fact occurring. Contemporary conflicts are seldom declared, and many low-intensity conflicts, while costly in lives and human rights violations, might not be treated as “wars.” More important, however, international humanitarian law is traditionally dualistic, distinguishing between international and noninternational armed conflict, as is discussed in Chapter 4. This, as we shall see in Chapter 5, poses particular difficulty in pursuing accountability for armed groups and private military and security companies engaged in internal armed conflict.

Discussion questions

- What is the general relationship between war and human rights?
- How might human rights violations engender conflict? How does conflict engender human rights violations?
- Are amnesties permissible in peace agreements?
- How does the evolution of conflict, and human rights violations, change conflict?
- How might the interplay of conflict and human rights violations and protections affect conflict negotiation, resolution, and peacemaking?

Further reading

Bell, Christine, Peace Agreements and Human Rights (Oxford: Oxford University Press, 2003), Chapters 1, 2, 10, and appendix, “A Decade of Peace Agreements.”


Official documents and sources


2 Conflict
Fundamentals and debates

Key points
- Current conflicts vary significantly in nature and in the actors involved compared to the traditional interstate conflicts prevalent when the United Nations (UN) architecture for the prevention and resolution was designed.
- Understanding the root causes of conflicts is essential in order to design adequate conflict prevention and resolution policies.
- Security and development actors share the same ultimate goal of avoiding conflicts, but do not necessarily share the same priorities in specific conflicts; their priorities may sometimes even appear contradictory.
- The UN institutional framework provides the main apparatus for international peacekeeping and peacebuilding.

Overview
After the end of the Cold War, internal conflicts proliferated significantly. Since then, collective efforts to prevent and resolve these conflicts have been a central focus for the international community. This chapter analyzes the characteristics and causes of contemporary armed conflicts, and how the international system copes with preventing and resolving them, as well as how it attempts to build durable peace afterward. This chapter examines the distinction between peacemaking, peacekeeping, and peacebuilding, and the historical evolution of these processes, as well as the main actors involved in conflict prevention, conflict resolution, and postconflict reconstruction, with special emphasis on the UN legal and institutional framework.

Today's conflicts
The international institutional architecture designed after World War II foresaw a system to prevent and resolve international disputes, focused on conflict between two or more states, which had been the most common form until then. The end of the Cold War marked a significant change in the nature and development of armed conflicts, and therefore also in the strategies to prevent, resolve, and mitigate their effects. The 1990s saw a spectacular proliferation of internal armed conflicts. Since then, interstate wars have decreased to mere few, among them: the Gulf War in 1991, the wars between Ethiopia and Eritrea in 1998,