The UN, human rights and post-conflict situations

edited by
Nigel D. White and Dirk Klaasen

Juris Publishing
MANCHESTER 1824
## Contents

- Notes on contributors .......................... page vii
- Preface ............................................ xi
- Abbreviations ...................................... xii

### 1 An emerging legal regime?  
*Nigel White* and *Dirk Klaasen*

### Part I Legal principles

1. Human rights law and UN peace operations in post-conflict situations  
   *Boris Kondoch* ........................................ 19

2. Reasonable measures in unreasonable circumstances: a legal responsibility framework for human rights violations in post-conflict territories under UN administration  
   *John Cerone* ........................................... 42

3. UN accountability for human rights violations in post-conflict situations  
   *Guglielmo Verdirame* ............................. 81

### Part II Different models of protection

5. Managing for sustainable human rights protection: international missions in the peace processes of Bosnia and Hercegovina and Guatemala  
   *Milburn Line* ........................................ 101

6. The UN, security and human rights: achieving a winning balance  
   *Michael Kelly* ....................................... 118

7. International territorial administration and human rights  
   *Ralph Wilde* ........................................ 149

### Part III The politics of protection

8. Human rights and the 'empire of civil society'  
   *Tony Evans* .......................................... 177
Peace agreements and human rights: implications for the UN

Christine Bell*

Gruesal to understanding the UN's role in human rights protection post-conflict is an understanding of the context that shapes the dilemmas which confront the UN. There are three key dimensions to this context – the conflict in question is mostly 'internal'; peace agreements are the preferred way of moving towards resolution of the conflict; and an expansive human rights project has become key to both addressing the conflict and to fashioning solutions to it. These three factors together point to a complex relationship between conflict, the politics of transition from conflict, and human rights. This relationship is important to international and domestic actor alike, but raises some particular issues for the UN. This chapter argues that these issues are both conceptual and practical, and that both are interlinked: conceptual problems feed into practical problems, and vice versa. This linkage is complicated by the dialectical and interactive relationship of the UN to internal conflicts in which it intervenes. UN standards, UN positions and UN involvement in these conflicts, all shape the arguments, positions and even the identities of protagonists to the conflict.1 This in turn shapes UN responses. This dialectic defies notions of best practice: discussion about effective UN strategies can perhaps best take account of the shifting ground. Accordingly, this Chapter argues that there are no simple answers to the UN's dilemmas regarding human rights protection in peacebuilding, and that moving towards a more theorised understanding of the nature of the dilemmas, backed up by a research agenda, is a valuable starting point.

This chapter aims to contribute to a theoretical approach to practical problems, and sketch out the building blocks of a further research agenda. The

* The author would like to thank Johanna Keenan for her research assistance, and Javaid Robban and David Wippman for their comments on an earlier draft (mistakes remaining are my own).
chapter begins by exploring the implications of the transitional context for understanding the terms 'post-conflict' and 'human rights'. A resultant series of dilemmas for international actors, where best practice is elusive and under-researched, are sketched out by way of illustration. Next it provides a brief overview of the type of involvement that the UN has had in peace agreements from the 1990s until the current day. The next section then moves to address two underlying conceptual problems implicated by the transitional justice context: first, the question of sovereignty and neutrality and scope of UN's action; and second, a question about the role of international law and standard-setting in transition. In conclusion the need for further research is set out by way of summary.

A transitional justice context and the UN

The current examination of the role of the UN in human rights and post-conflict peace-building has three key dimensions. The first is that the type of conflict being dealt with, from the 1990s onwards, is 'internal conflict', as traditionally understood. That is, the majority of conflicts have taken place within state borders. Even those conflicts which have been 'interstate', India–Pakistan, NATO–Kosova–Federal Republic of Yugoslavia and (to a lesser extent) the US–coalition intervention in Afghanistan and Iraq, have been linked to 'internal conflict' with issues of ethnic division and lack of democracy. Internal conflict is, however, something of a misnomer. So-called 'internal conflict' often revolves around disputes about the very borders and sovereignty of the state; is implicated in regional and, at times, international instability, inviting chapter VI and chapter VII United Nations' responses; has created refugee flows which cross borders; and, as just noted, has spawned interstate conflict. Attempts have been made to categorise internal conflicts, into three (overlapping) types: identity conflicts, democracy conflicts and criminal conflicts. This raises an initial question as to whether the role that

---

2 See further, C. Bell, Peace Agreements and Human Rights (Oxford: Oxford University Press, 2000); this argument is also drawn from, C. Bell, 'Dealing with the Past in Northern Ireland', Fordham International Law Journal 26 (2003), 1095.


Peace agreements and human rights

human rights play in conflict resolution, and the UN approach to human rights protection, does or should vary depending on the nature of the conflict.

Despite the international dimensions of conflict occurring within state borders, the internal nature of the conflict raises problems as regards the role and scope of UN involvement. In particular, it raises conceptual problems of sovereignty, neutrality and the permissible scope of UN action which are further addressed below. This in turn implicates human rights: the most obvious justification for UN involvement in domestic affairs lies in its human rights mandate.

The second aspect to the context is the fact that peace agreements or settlements are currently the preferred way of addressing internal conflict.\(^5\) These peace agreements move beyond ceasefire declarations, providing detailed frameworks for future political, legal and military structures. Often these settlements are the result of facilitated negotiations where the different parties are brought together in negotiations aimed at an agreed text. Recently, failure to reach negotiated agreement or the outbreak of violence has resulted in a post-conflict framework being imposed through an SC resolution, such as in Kosovo or East Timor. Negotiated peace agreements are often of dubious legal status. While reading as legal documents, and using the language of obligation captured in treaty-like language and conventions, the mix of state and non-state actors—many of whom cannot be argued to be subjects of international law—who typically sign peace agreements mean that their international and domestic legal status is questionable.\(^6\)

The significance of the 'peace agreement' is that it is usually aimed at the main parties who have been waging the war militarily as parties, and involves some element of compromise between their political and military goals. This compromise is translated into the design of legal and political institutions giving rise to ongoing practical, political, legal and moral dilemmas focused around how best to achieve transition from violence, as illustrated further below. These dilemmas are ones which any actor engaging in the field must grapple with. However, again they raise particular issues both for the UN, and for the notion of 'human rights'. As regards the UN, they raise issues relating to its mandate, its capacity and its effectiveness. In the case of UN administrations the dilemmas fall dramatically and directly at the UN's door. As regards 'human rights', the notion of negotiating human rights raises immediate concerns as to the extent to which human rights have normative requirements, and the extent to which 'the interpretation and application of human rights and justice are negotiable in the context of political settlement'.\(^7\)

\(^5\) See Bell, *Peace Agreements*.

\(^6\) See Articles 2 and 3, Vienna Convention on the Law of Treaties (VCLT), defining treaties as agreements between states, and international agreements as between states and other subjects of international law.

\(^7\) M. Parvallot, 'Bridging the Divide: Exploring the Relationship Between Human Rights and
This leads to the third dimension to the current context, which is the role that human rights now play with relation to peace agreements and post-conflict reconstruction. Human rights abuses are often asserted to have a clear link with internal conflict, although commentators disagree as to the extent to which they are a symptom of such conflict, or its cause. From either perspective, addressing human rights issues in the text of an agreement is often asserted to be key to conflict resolution. There are a variety of reasons, both principled and pragmatic, underlying this assertion. These include the international community's insistence on an 'off-the-peg' form of liberal democracy, characterised by a standard set of political and justice institutions. They include the assertion of human rights as a key 'part of the problem', by some of the participants to the conflict, which requires them to be addressed in any search for a solution. They include the enlightened self-interest of traditional opponents of human rights measures domestically, who may come to accept human rights measures as a price worth paying for retaining a measure of political power, or a particular constitutional status. They include the value to mediators of human rights instruments which offer an increasing variety of tools with which to address post-conflict reconstruction of domestic institutions. These range from normative standards providing for specific rights, to institutional blueprints useful to reconstruction such as those providing for best practice with regard to both political institutions and legal institutions such as the criminal justice system and policing. Hard and soft law human rights standards provide normative requirements and best practice advice, around which transitional legal responses can be fashioned. Finally, human rights instruments increasingly offer a basis for international involvement in domestic arenas, as already mentioned.

'Human rights' in the 'post-conflict' environment

The transitional justice context indicates the problems in understanding 'human rights post-conflict'. It indicates inherent tensions in any notion of what 'human rights' are or should be post-conflict, and indeed problems in the very notion of what constitutes the 'post-conflict' phase of any conflict.

---

8 ibid.
10 See e.g. UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, 1992; Council of Europe Framework Convention for the Protection of National Minorities, 1995.
**Human rights**

The relationship of human rights to processes of conflict resolution is contested and controversial; human rights protections have been both asserted to be vital to peacebuilding, and also challenged as an impediment to such processes. The international legal order itself asserts a connection between justice and peace. The UN Charter opens with the objective of avoiding war and immediately references the concept of human rights. However, the view that human rights are a tool for conflict resolution has also been challenged. The assertion of normative human rights constraints on peace negotiations has been argued to be unhelpful to reaching accommodation between warring parties. Normative constraints on self-determination solutions, on who should be allowed to the table, and requiring accountability for past human rights abusers, have all been criticised in this way.

The debate between conflict resolution and human rights fields is often characterised as one between pragmatists who emphasise the negotiation process and treat rights issues as negotiable, and idealists who focus on outcomes such as democratic constitutionalism and the normative requirements of human rights protection. This characterisation runs to the heart of debates about the UN's role with relation to human rights post-conflict, as demonstrated by debates over how far to push accountability for human rights violators during peace negotiations. However, the characterisation disguises a deeper disagreement over the relationship of human rights to conflict resolution. In essence, debates about the primacy of either 'human rights' values or 'conflict resolution' values in negotiations involve a debate over conflicting notions of the causes of and remedies for conflict, and the appropriate role of international actors in identifying causes and effecting remedies. The characterisation of pragmatists versus idealists detracts from clear interrogation of what are in essence political differences around how best to move from conflict to peace, with which organisations such as the UN must grapple. Case studies aimed at providing some kind of evidence as to the relationship of human rights protections to peacebuilding are few and far between.

---

15 Cf. Bell, Peace Agreements.
Peace agreements and justice

Post-conflict

Negotiation processes are messy, with few clear starting or ending points. What few clear moments there are, can often only be identified with hindsight. Today's 'historic settlement' may become tomorrow's 'failed capitulation to terrorists'. Peace agreements tend to provide merely frameworks for ongoing political negotiation and mediation of the conflict. If 'conflict' is not reduced to mean 'violent conflict', then peace agreements can be viewed as devices to better manage, and perhaps transform, conflict away from violence. Even if 'post-conflict' is meant to mark the beginning of a lasting ceasefire, some caution about the term is still necessary. A lasting ceasefire may result in a reduction of violence. However, peace processes often mark changes in patterns of violence, rather than the cessation of violence. Ongoing violence, for example in the form of violence against women, or the rise of organised crime, may be seen as less problematic and less worthy of concern and intervention, than the violence of 'the conflict', while nevertheless, having its roots in that same conflict.¹⁶

Examination of the role of the UN and human rights 'post-conflict' which uses reductive and fixed notions of what the relevant 'conflict' is, stands to be deficient in two main regards. First, in focusing on linear (and arguably 'masculine')¹⁷ definitions of 'the' conflict, the search for human rights solutions will be similarly linear and limited. Second, it stands to compartmentalise falsely UN efforts with regard to conflict prevention, peacemaking and peacebuilding. These are processes which Boutros-Ghali noted as far back as 1992 were intrinsically linked.¹⁸ Post-agreement efforts to use human rights as a tool for peacebuilding may do much to inform attempts to prevent nascent internal conflict. Similarly, UN successes or failure with regard to human rights at pre-conflict or during conflict stages will crucially shape and continue to shape any eventual post-agreement landscape, including both the shape of any agreement, and perceptions of the UN's legitimacy, and what its appropriate role is.


Resultant dilemmas

These difficulties come together in a series of dilemmas for any international actor involved in the post-agreement phase of a conflict. These dilemmas are legal, moral and political. They are genuine dilemmas – there is no easy answer. At times pleas within the UN for further training, 'lessons learned' units, and greater coordination between the different 'bits' of the UN, risk underestimating what may just be difficulties that will always be present. The transitional justice context described above indicates that human rights issues are centrally implicated in these difficulties as the following examples illustrate.

The political settlement dilemma
Should elections be held quickly, risking a consolidation of power-mongers with ongoing military agendas, enabled by a climate which is not 'free and fair', and re-enforcing the forced population transfers of a conflict (an allegation made in Bosnia)? Or, should they be moved more slowly, and risk undermining peace, by undermining the legitimacy and accountability of interim arrangements for holding power (as alleged in Angola)?

The demilitarisation v. rule-of-law dilemma
Should a peace ceasefire or peace agreement see immediate steps taken to ensure demobilisation, demilitarisation and reintegration of military into civilian life and new police and military structures? This will mean ignoring the accountability for past violations which would underwrite the long-term programme of establishing the legitimacy of new justice institutions. Or, should these moves await rule-of-law issues, such as following up on human rights violations, being resolved and risk ongoing mobilisation of armies and the undermining and undoing of the peace?

The constitutional law dilemma
Should constitutional frameworks be immediately established as permanent, to bring legitimacy and a clear power-map for transition which will reassure military actors and civilian populations? Or, should constitutional development await the further indigenous political debate and input, which might make these frameworks living documents, with internal processes capable of mediating conflict, without external intervention, in the long-term?

Reconstruction, return of refugees and redistribution of land
Should refugees and displaced persons be returned immediately or not? Not to do so risks permanent consolidation of conflict population transfers and so-


called ethnic cleansing, diasporas capable of destabilising the peace process, and long-term conflict over issues such as land redistribution, which can escalate at any time. However, returning refugees without rule-of-law protections may similarly reinforce ethnic divisions and consolidate post-conflict political bases in a way that is unhelpful to building peace. Even worse, a measure of success in undoing these divisions may begin to undo the political deal, especially when return of land offers a further reversing of ethnic cleansing.

Dealing with the past
Any move towards a liberal democratic future would seem to require accountability for past human rights violations, and a 'drawing of the line' between prior regimes and future ones. However, for a ceasefire to work, and a compromise agreement to be fashioned, often all military parties have to be drawn into a process, regardless of their past atrocities. The dealing with the past dilemma has been well rehearsed, as involving tensions between the requirements of accountability and political accommodation.21

Rather than seeing these dilemmas as simple clashes of human rights and pragmatic politics (justice v. peace), and trying to pull them in one direction or the other, it may be more useful to view them as dilemmas of change management. Hampson has suggested that some of these dilemmas are a result of a natural tension between short-term (stop the violence) peacebuilding objectives, and longer-term 'address the root causes of violence' projects.22 If this is the case, the response to the dilemmas could usefully focus on how to design agreements aimed at 'stopping the war' in such a way as to leave open a broader range of possibilities at the post-conflict stage.23 The central question for those involved in peace agreement negotiations might thus become, not how much justice should be balanced with how much pragmatism, but how can the trade-offs required at an early stage of the process be fashioned so as not to preclude more robust human rights measures necessary to long-term stability, at a later stage.24 This of course does not eliminate all the problems,

---


22 Hampson, 'Making Peace Agreements Work'.

23 Contrast the human rights agreement in Guatemala, providing for no impunity (Comprehensive Agreement on Human Rights, 29 March 1994), with the (earlier) El Salvador Human Rights Agreement which has no such provision, and where a broad amnesty was later passed (Agreement on Human Rights, 26 July 1990).

24 Ibid.; see also Bell, *Peace Agreements*. 
yet it does suggest that further research on best practice with relation to these dilemmas, such as Kumar's work on elections, would be useful.

The UN and peace agreements

The UN does not have complete control over when and how it is given human rights tasks post-conflict. A framework for the post-conflict phase will be sketched out in a peace agreement, and developed through ongoing post-agreement initiatives. However, even a brief glance at peace agreements indicates a broad variety of roles for the UN. While a comprehensive overview of the UN's role in peace agreements is beyond the scope of this chapter, an initial sketching of types of involvement is included by way of illustration. The UN's roles can be analysed either in terms of the type of function which the UN provides, or in terms of the degree of intervention which it undertakes. Again, in either classification, it is difficult to analyse separately UN involvement in conflict prevention, during a conflict, or in post-conflict reconstruction. All types of roles can take place at any stage of a conflict, and what happens at one stage of a process sets the context of UN involvement in the next stage.

Types of UN function

Military

In many conflicts, the UN has provided military observer missions and peacekeeping forces at different stages. Often a peace agreement will set out the UN role in this regard, or where the UN is not directly involved, express hope that the UN will become involved in this way. The role of these missions in enforcement of peace agreement commitments includes human rights enforcement. The UN is, of course, not the only organisation capable of providing this function, others will also provide peacekeeping, with different degrees of UN support, and different degrees of compliance with the UN Charter (for example, the Economic Community of West African States (ECOWAS) in Liberia, NATO in Bosnia, the Commonwealth of Independent

25 K. Kumar, Post-conflict Elections, Democratisation and International Assistance (Boulder, Col.: Lynne Rienner, 1998).
26 See www.un.org/peace/index.html for further information on peacekeeping operations and peacebuilding missions.
27 See e.g. agreements in Angola (Acordos de Paz para Angola, Lisbon (Bicesse Accords) 31 May 1991), Guatemala (Basic Agreement on the Search for Peace by Political Means ("The Oslo Agreement"), 30 March 1990).
28 Article 6, Agreement on a Ceasefire and Separation of Forces, signed in Moscow on 14 May 1994 (Georgia–Abkhaz process) ('The parties appeal to the United Nations Security Council to expand the mandate of the United Nations military observers in order to provide for their participation in the operations indicated above').
Peace agreements and justice

States (CIS) (Georgia–Abkazia), or even individual states such as the UK (unofficially) in Sierre Leone, and the UK and US in Iraq). The UN may later take over this function, or become involved in its supervision (as with the Economic Community Monitoring Group (ECOMOG) in Liberia), or may continue not to be involved.

Diplomatic
The UN can undertake diplomatic roles through a variety of mechanisms, involving a spectrum of involvement. A very common one is through a Special Representative of the Secretary-General of the UN (or the Secretary-General in person); another form is through a Special Envoy to the SC. Diplomatic roles are usually reflected in any resulting peace agreement. Even where the diplomatic role is at a minimum, the UN diplomat will often be a signatory or 'witness' to the agreement. These diplomatic roles implicate the UN in human rights issues, even where UN commitments are minimal formal ones. Take, for example, a UN diplomat's role as an observer, signatory or third-party witness to a peace agreement. The legal implications of signing a peace agreement in this way are unclear. However, for a UN representative to sign an agreement would seem to signal some type of UN endorsement, meaning that the UN should have audited the agreement in terms of the normative requirements which it promulgates and claims to uphold. An example of the UN taking this type of role seriously is found in its (now famous) letter from the Secretary-General's representative, dissenting from the immunity provisions of the Lomé Peace Agreement (which arguably later enabled the establishment of a Special Court). However, examples such as this are not easy to find.

Humanitarian role
UN agencies such as the UNHCR, provide humanitarian roles at different stages of the conflict. At the post-conflict stage, these can be vital in reconstruction, and will be another way for the UN to be involved in human rights post-conflict. These functions may be written into the text of an agreement, for example, the Bilateral Agreement between the Republic of Afghanistan and the Islamic Republic of Pakistan on the Voluntary Return of Refugees, 14 April 1988, which included the UNHCR in the agreement. Alternatively, they may

29 See e.g. The General Framework Agreement for Peace in Bosnia and Hercegovina (Dayton Peace Agreement), 14 December 1995; Arusha Peace and Reconciliation Agreement for Burundi, 28 August 2000.
31 Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, 7 July 1999, Art. IX.
32 Established by SC Res. 1315; see also Special Court Agreement (Ratification) Act (2002) (Eng.)
33 See, e.g. Article VI: 'At the request of the Governments concerned, the UNHCR will cooperate and provide assistance in the process of voluntary repatriation of refugees in accordance with the present Agreement. Special agreement may be concluded for this purpose between UNHCR and
Peace agreements and human rights

emerge pragmatically later, as a result of ongoing involvement, and appear in later agreements.

Development role
In a similar way, agencies such as the UNDP may be involved in reconstruction, and human rights post-conflict, through their development mandate. The Department of Political Affairs also has an Electoral Assistance division, which assists with elections. In Sri Lanka, while not built into any of the peace agreements around 1995, nor explicit in the peace agreements of the current process (though acknowledged in press statements emanating from the process), the role of the UNDP, UNHCR and UNICEF have been ongoing, providing technical assistance to the Sri Lankan Government, in particular assisting with reconstruction, and the issues of disappearances and child soldiers, in the North East.

Human rights role
The broad reach of international human rights machinery that includes treaty-monitoring bodies, special rapporteurs, the Human Rights Commission and Sub-commission, coupled with more general mechanisms for asserting human rights pressure, such as GA declarations, or the interventions of the OHCHR, means that the UN is involved in most conflicts in some way or another, through the mechanism of human rights discourse. In some cases the UN takes a more direct ‘peace process’ human rights role, related to its overall role. In Guatemala, for example, the UN-mediated process produced agreements which, first of all, asserted the role of the UN in verification generally. A human rights agreement was then one of the first in a series of agreements signed, and provided a substantive role for the UN in monitoring human rights violations. This role formed a departure for the UN at the time, but did much to practically consolidate the peace process and formed a basis for extensive and ongoing UN involvement. In Cambodia the establishment of the UN Transitional Authority gave the UN primary authority for implementing human rights commitments.

Low-key capacity and confidence-building role
There are a range of lower-level roles which the UN can perform. UN personnel can make visits to countries with capacity-building aims. For example, in the Georgia–Abkazia process, UN volunteers (UNVs) provided this low-level capacity-building role.

Through these different types of function the UN will be involved in setting a context in which human rights post-conflict dilemmas out. This context may be set through active engagement – with clear UN requirements shaping conflict solutions, or more passive UN influence as regional organisations and domestic parties operate on the basis of assumptions effectively endorsed by UN inaction.

**Scales of UN involvement**

Through these different roles there is a spectrum of involvement for the UN post-conflict. This spectrum is difficult to summarise or classify in any simple way, given the broad range of roles that the UN can perform, and the scope for any of these roles to be maximalist or minimalist. However, the scope of possible roles itself evidences that very few processes – even those which are most ‘domestic’ in appearance – take place without some level of UN involvement, as the following (still attenuated) attempt to sketch out a spectrum illustrates.

**Ostensible non-involvement**

In some peace processes the UN is ostensibly not involved in any way. Northern Ireland forms a good example; throughout the conflict the British Government resisted direct UN intervention as compromising its sovereignty and exaggerating the problem.\(^{37}\) Similarly, complex and ongoing peace processes in Bangladesh,\(^ {38}\) Nepal and Columbia, have no ostensible direct UN involvement. Yet, even in these cases, the UN is not irrelevant to the post-agreement implementation of human rights protections. First, lack of direct UN engagement may have played a part in the type of solutions which domestic parties have agreed to. In particular, the UN’s failure to intervene as regards self-determination claims will have underwritten the types of solutions which emerge in satisfaction of those claims, most notably an underwriting of the legitimacy of state boundaries, and ongoing ‘internalisation’ of the conflict.\(^ {39}\) Secondly, the ongoing role of human rights machinery may well be important both during the conflict, and to post-agreement implementation of human rights commitments, as providing objective criteria for human rights change.

**Minor discrete involvement**

There are processes where the UN is not involved structurally, or even as an official observer to the peace negotiations, but becomes involved in a discrete aspect of the peace process which has human rights implications. In South

---


\(^{38}\) See Agreement between the National Committee on Chittagong Hill Tracts Constituted by the Government and the Mukti Bahini Chittagong Hill Tracts (1997) 1997.
Peace agreements and human rights

Africa, for example, peace process beginnings were domestic, despite occurring in the context of strong international pressure to end apartheid (in which the UN played a key role). However, at an early stage of the process, the problem presented of how to return African National Congress (ANC) exiles to be present at multiparty talks. The issue was resolved by involving UNHCR, who facilitated the signing of an Agreement by the South African Government in March 1991, providing for the repatriation of ‘any South African refugee and/or political exile who returns voluntarily to South Africa as an unarmed civilian’. The agreement contained detailed definitions and procedures. This agreement, and the scope of UNHCR’s involvement, was discrete dealing with a particular problem which domestic parties could not manage alone. The UN was later to establish an observer mission in South Africa (UNOMSA) which initially focused around containing conflict and implementing the National Peace Accord in 1992, and later on monitoring elections in 1994. In 1992, after the collapse of multiparty negotiations, and the Boipatong massacre, the SC adopted resolution 765 of 1992, expressing concern at the breakdown of negotiations, condemning the escalation of violence, and issuing an invitation to the Secretary-General to appoint a Special Representative to ‘recommend . . . measures which would assist in bringing an effective end to the violence and in creating conditions for negotiations leading towards a peaceful transition to a democratic, non-racial and united South Africa’. Boutros-Ghali duly appointed Cyrus Vance, who visited South Africa with a small team, and held discussions with a range of parties and interest groups, resulting in a team of ten observers to monitor a week of mass action by the ANC in August, and after the success of those observers, the sending of further observers to assist in the implementation of the National Peace Accord. Later, pursuant to a request by the Transitional Executive Council-endorsed resolution adopted by the Multiparty Negotiating Council, the UN adopted SC Resolution 894 (1994) providing for electoral observation.

Observer or signatory to the process

In some processes the UN is at the peace negotiations in some incarnation, or a signatory to a peace agreement in an observer capacity. Often this is through diplomatic or agency roles as described above. This can reflect past UN involve-

---

ment in the conflict, or an attempt by the parties through the text of a peace agreement to internationalise their commitments. Even a formal signatory role can have human rights implications as the example of Sierra Leone given above illustrates. However, it may also lead to more substantial UN commitments and involvement in human rights at a later stage.

Specific tasks
Military, UN agency or diplomatic arms may be involved in specific post-conflict tasks with human rights implications, themselves operating on a spectrum, from roles such as that in South Africa as described above, to the primary monitoring of an agreement's implementation, most dramatically illustrated by UN administrations.

UN as mediator
In some processes the UN is a direct mediator of a peace agreement, for example, Cambodia, Guatemala, El Salvador and East Timor.

UN post-conflict reconstruction
Where the UN is a direct mediator, and sometimes when it is not, the UN may end up with primary responsibility for an agreement's implementation and reconstruction, including all the dilemmas outlined earlier. The UN administrations in Cambodia, Kosovo (and to a lesser extent Bosnia), and East Timor provide prime examples.

Different parts of the UN may be involved in all these different ranges of activities simultaneously, or over the course of a conflict. In the case of Afghanistan, for example, the secretary-general initiated a diplomatic process in 1988, relating to Soviet, US and Pakistan interests. This process formally came to an end with the Agreement on the Interrelationships for the Settlement of the Situation Relating to Afghanistan, 14 April 1988. The UN was not a primary party to the agreements (although a representative of the secretary-general was present), but the agreements referenced Charter principles, and UNHCR had a role built in with relation to repatriation. A later attempt by interested countries to establish a context for peace in Afghanistan in 1999, had the UN sign in an observer capacity, with hope expressed that the UN would broker an agreement for Afghanistan. Subsequent to the US conflict with Afghanistan, the UN convened talks to establish an interim government, and its ongoing role in reconstruction was affirmed.

44 R. Wilde, Chapter 7 of this volume.
46 Tashkent Declaration on Fundamental Principles for a Peaceful Settlement of the Conflict in Afghanistan, 19 July 1999.
47 Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions (Bonn Agreement), 5 December 2001.
Peace agreements and human rights

The above discussion illustrates three general points relevant to the post-conflict terrain. First, it illustrates that the particular role which the UN has in post-conflict peacebuilding is not determined by a coherent plan as regards systematic analysis of conflicts, and usefulness of the UN’s possible functions and role. Rather, it is shaped by an interlocking set of short-term and long-term geopolitical organisational and local factors. As Bertram puts it (and the Brahimi Report, discussed below, largely affirms), UN member states are stingy (not prepared to fund operations to a realistic level), they are fickle (will only support interventions to the extent that they can garner domestic support) and are biased (have their own geopolitical vested interests). These factors in practice determine whether the UN, or some other organisation gets involved; they determine which aspect of the complex and diverse UN machinery is involved; they determine the stage of the peace process at which UN involvement takes place; they determine which aspect of the peace process (refugees, institution building, peacekeeping) it is involved in; and shape the UN’s capacity for achieving human rights protections by circumscribing the political context for human rights in post-conflict peacebuilding.

Second, the discussion illustrates that while the focus of interest and research in the UN’s involvement in conflict tends to be around the more dramatic instances such as peacekeeping and interim administrations, the range of the UN’s involvement in conflicts is varied in function, role and relationship to the peace process. This points to the need for some type of clear mapping of the role of the UN involvement in ‘internal’ conflicts with a view to establishing good practice with relation to human rights. This mapping would need to go beyond the current projects relating to UN peacekeeping in its different generations. It could usefully map links between involvement (normative and actual) in pre-conflict, during conflict and post-conflict situations. Examination of UN involvement in human rights post-conflict, only makes sense if there is some acknowledgement of what exactly is meant by ‘the UN’, and also of how engagement at one stage of a process impacts on engagement at another stage.

**Sovereignty and neutrality**

All of the UN’s roles and functions have one element in common: the UN is involved because of its perceived externality to a conflict’s protagonists, and the objectivity it can bring to implementation of an agreement’s

---


commitments. From its most minimalist to its most maximalist role, the UN is looked to as a peace underwriter. However, the peculiarities of the transitional justice landscape, mean that this role has clear implications for traditional UN doctrine, which it is unrealistic to expect peacekeepers, for example, to resolve on the ground.

The practical reality that we are talking about 'internal' conflict, means that there is an immediate doctrinal difficulty for the UN as part of an international law framework which traditionally has seen states as the primary actors. The discussion above illustrates the political nature of peacebuilding, and the implication of human rights in that politics; as Bertram notes 'peace building is nothing less than the reallocation of political power, it is not a neutral act'.

It will typically be resisted by one or more parties in a conflict, and this often raises a conflict between the UN and the governmental and military forces who may come to lose out in the reallocation of power. The implementation of the human rights dimension of an agreement is likely to be one of the main sites of struggle. This is because human rights are one of the key tools to implementing the rebalance of power, and also a tool which gives the UN legitimacy in intervening. Post-agreement, signing and ratifying human rights conventions and coming under traditional enforcement mechanisms such as the treaty-monitoring committees in the short term, will be the exception rather than the rule. Therefore the UN will typically have to engage in more direct enforcement of the human rights commitments of a peace agreement, as part of its general implementation functions.

The internal nature of the conflict raises an initial problem of the Charter basis for direct UN enforcement of human rights protections. The UN's role is limited by Article 2(7) of the Charter which provides that:

Nothing . . . shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

However, the current scope of the phrase 'essentially within the domestic jurisdiction of any State' is no longer clear, given the expansion of the human rights project. As we have seen, the human rights project no longer merely sets out normative standards. It potentially requires radical transformation of legal institutions, and further still, of political institutions along the lines of programmatic minority rights declarations and conventions. While a theoretical justification for UN action might exist through human rights discourse, the extent of involvement in domestic institutions, and the difficult and highly political nature of the transitional justice landscape place the UN in uneasy conceptual space.

A problem with intervention under the chapter VII exception also pertains to internal conflict. Articles 39 and 40, chapter VII provides that military
enforcement can take place but only where there is a ‘threat to the peace, breach of the peace or aggression’ in what is usually understood to mean a threat to ‘international peace’. But often the internal nature of ethnic conflict means that arguments of a threat to international peace are difficult to make. Without such a threat, chapter VI requires states to look for negotiated solutions, and empowers the SC to investigate where ‘continuance of the dispute or situation is likely to endanger the maintenance of international peace and security’ (Article 34). However, there is no power to impose solutions without the consent of states. As internal conflicts mutate, and precisely because the relationship between international law and the claims of protagonists to a conflict is a dialectical one, the issue of consent raises difficult questions. Whose consent is the relevant consent, where there is a fundamental challenge to the legitimacy of a government, or state boundaries? Often the legitimacy of consent will be in question, for example, in a self-determination dispute. What happens when those consenting renge mid-way, or withdraw elements of their consent? Who then is to decide when consent is not needed?

It may be unfashionable to raise problems of domestic sovereignty; but to paraphrase Twain ‘rumours of its death are greatly exaggerated’. Statehood is still, to use Boutros-Ghali’s phrase, ‘the foundation-stone’ on which the UN Charter stands.52 This means that aside from the mechanisms of the UN human rights machinery, the basis for more extensive UN involvement in state reconstruction and direct human rights enforcement is in uneasy legal space. In practice it is often managed by slippery journeys in and out of chapter VI and VII and manipulation of the notion of ‘consent’. This was well illustrated in former Yugoslavia. In 1991 as EC peace-making initiatives failed, the EC became replaced by the UN in its peacekeeping role. UN Secretary-General Cyrus Vance put forward a blueprint for UN peacekeeping which was to result in the establishment of UNPROFOR.53 The original form of this mandate did not claim to be chapter VII based, and made reference to the request of the Yugoslav Government. As violence escalated, subsequent resolutions made no reference to consent and eventually were explicitly based on chapter VII.54 These authorised increasingly forceful actions, including a flight ban,55 the establishment of an impartial Commission of Experts on war crimes,56 enforcement of ‘safe areas’57 and eventually the use of air power to enforce the safe areas.58 A review of the SC resolutions in East Timor by Rothert, similarly notes the simultaneous use of ‘consent’ and chapter VII (which would not require consent), and an ambiguity in SC language as to whether the threat to peace

52 Boutros-Ghali, Agenda for Peace, para. 17.
54 Bell, Peace Agreements, p. 104.
Peace agreements and justice

and security was a threat to international peace and security. He argues that SC Resolution 1272 establishing UNTAET, which operated ostensibly on Indonesian invitation, but was underwritten by chapter VII, evidenced an attempt to establish a consensual cooperation as practically useful in avoiding direct conflict with Indonesia, while preserving scope for UN operation in the case of consent being withdrawn. It can be argued that the legal situation is now one where the SC can act even in an almost exclusively internal conflict just by concluding that the conflict poses a threat to international peace. However, both former Yugoslavia and East Timor examples illustrate the continuing practical problems in moving from an assumption of consent, to operating without consent. In the case of former Yugoslavia as chapter VI approaches gave way to Chapter VII approaches, the strategies and assumptions which had underwritten the former, limited the latter. To give some examples, the presence of UNPROFOR as a result of their extended peacekeeping role limited more robust enforcement action, such as air strikes. Similarly, the ban on arms to all parties, initiated when conflict was still nascent as an attempt to limit it, at a later stage appeared to escalate the conflict by leaving the Bosnian Government unfairly disadvantaged and vulnerable.

In East Timor, the UN’s lack of ability to respond to post autonomy vote violence indicated a now much criticised ‘best-case planning’ international community approach to Indonesian understandings and intentions post vote. As Martin points out, such planning would have needed to be underwritten by the SC signalling that non-consensual military intervention was a possibility:

it is hard for the Secretariat to be known to be planning for the possibility that an important member state would violate its commitment to maintain security, at a time when its friends in the Security Council were insisting on praising it for its cooperation . . . [W]ithout a signal from the Security Council, contingency planning for military intervention of the kind that was anathema to Indonesia could only take place outside any formal UN framework.

The UN itself, has evidenced a schizophrenic and ever-mutating approach to tackling the sovereignty dilemma. Agenda for Peace, stated ‘the foundation-stone of this work is and must remain the State. Respect for its fundamental sovereignty and integrity are crucial to any common international progress’; but then noted that ‘the time of absolute and exclusive sovereignty, however, has passed’. The implications were left open. The Brahimī Report, drawing

60 Rothert further argues that it also evidences a possible development that a threat to the exercise of the right of self-determination in a non self-governing territory is a threat to international peace and security; but suggests that this is probably limited to places where the UN has taken an active role in giving effect to that right, ibid.
on earlier peace-keeping reviews, states, at paragraph 48, that '[t]he Panel concludes that consent of the local parties, impartiality and use of force only in self-defence should remain the bedrock principles of peacekeeping'. But this paragraph then goes on to note that in the context of modern peace operations, ‘consent can be manipulated in many ways by the local parties’. Parties may give consent to a UN presence so as to buy time to continue military operations, and later withdraw this consent; or a party may try to limit an operation’s freedom of movement; or refuse to comply with an agreement’s provisions. Moreover, even where parties do consent, their level of military control may ‘be much looser than the conventional armies with which traditional peacekeepers work’ and split into factions who operate outside formal authority altogether (paragraph 48).

Similar problems arise with relation to the doctrine of UN neutrality. Article 40 of the UN Charter states that provisional measures to prevent an aggravation of a threat to or breach of the peace ‘shall be without prejudice to the rights, claims, or position of the parties concerned’. But again, the fact that there is a transition, means that there is a shift in power taking place and being resisted and negotiated on an ongoing basis, and human rights debates will be a central site of tension. While human rights non-governmental organisations and human rights standards, often assume that the political can be separated from the legal, the reality is that human rights measures post-conflict are supremely political. They involve a fundamental challenge to government power.

The UN experience with relation to peacekeeping in the 1990s again evidences a reactive approach to the neutrality issues which can be traced through its key peacekeeping documents. In the 1992 Agenda for Peace there is no detailed discussion of the problems of neutrality. In the 1995 supplement to that document, consideration is influenced by Somalia and Bosnia Hercegovina (BiH), and the difficulties of becoming involved in direct and military enforcement of ceasefires. The report emphasises that there are three particularly important principles: ‘consent of the parties, impartiality and the non-use of force except in self-defence’. Unsuccessful operations are defined as ones where these principles were not adhered to, and the suggestion is that the UN ‘went too far’ in the type of task it was prepared to undertake, with Somalia and BiH referred to as examples:

There are three aspects of recent mandates that, in particular, have led peacekeeping operations to forfeit the consent to the parties, to behave in a way that was perceived to be partial and/or to use force other than in self-defence. These have been the tasks of protecting humanitarian operations during continuing

63 See discussion by B. Kondoch in Chapter 2 of this volume.
64 Ibid.
Peace agreements and justice

warfare, protecting civilian populations in designated safe areas and pressing the parties to achieve national reconciliation at a pace faster than they were ready to accept.66

The supplement points out that this was in part a logistical problem – the capacity and will to undertake these tasks effectively was not present. However, the report goes further towards identifying the conceptual problem of reconciling peacekeeping with peace enforcement, stating:

The logic of peace-keeping flows from political and military premises that are quite distinct from those of enforcement; and the dynamics of the latter are incompatible with the political process that peace-keeping is intended to facilitate. To blur the distinction between the two can undermine the viability of the peace-keeping operation and endanger its personnel.67

This would seem to suggest a need to pull back the peacekeeping function to more traditional forms. However, events in Sebrenica and Rwanda, and the consequences to the UN of inaction once more changed the analysis. The Brahimi Report, synthesising the lessons learned from the previous decades, again recognises the problem of consent and neutrality, and that it is related to the sovereignty dilemma. However, in noting the difficulties of consent, paragraph 49 attempts to distinguish between impartiality (good) and neutrality (bad):

Impartiality for such operations must therefore mean adherence to the principles of the Charter and to the objectives of a mandate that is rooted in those Charter principles. Such impartiality is not the same as neutrality or equal treatment of all parties in all cases for all time, which can amount to a policy of appeasement. In some cases, local parties consist not of moral equals but of obvious aggressors and victims, and peacekeepers may not only be operationally justified using force but morally compelled to do so.

Brahimi cites the genocide in Rwanda as in part blameable on the international community’s failure to use or reinforce the operation then on the ground ‘to oppose obvious evil’.68

However, distinguishing between ‘impartiality’ and ‘neutrality’ does not solve the problems of neutrality and sovereignty. Hindsight may appear to identify the problem, but it does not automatically sketch out a solution for future action. It may be relatively easy to identify when the UN got it wrong, but it is not so easy in the middle of a conflict to make the necessary adjudication as to who are the ‘obvious aggressors’ and who are the ‘victims’, nor to decide when ‘adherence to the principles of the Charter’ requires that such an adjudication should be made. Furthermore, as Ian Martin’s fascinating evaluation of UNAMET suggests, the imperatives of reaching a compromise to end

66 Ibid., para. 34.
67 Ibid, para. 35.
Peace agreements and human rights

Conflict may mean taking risks as to the good faith of a party (in that case the Indonesian Government), which at the time were acknowledged to be optimistic, and in hindsight, had a 'worst case scenario' outcome. In short, a deal which does not grapple in advance with the fact that one party may well be uncompliant at the implementation stage, may be worth a risk as the only deal possible. There may therefore be no 'best practice' answer to UN intervention, only better and worse examples, which may do little to inform future situations. Again, as Bertram notes, practical and conceptual problems are interlinked. Often when the 'on the ground' reality changes and a peacebuilding mandate ceases to become fulfillable, the UN cannot do much about this, and is faced with a choice between abandoning the mission with resultant loss of credibility, and perhaps disastrous human consequences, or moving into a more difficult adjudication of 'baddies' and 'goodies' regardless of whether this can be satisfactorily justified, or whether appropriate resources have been committed. As Bertram argues the neutrality difficulty further:

creates serious problems on the ground, undermining the credibility and capability of UN peace builders to carry out their missions. Inevitably, groups that stand to lose as a result of UN intervention will claim — legitimately or not — infringement of state sovereignty, and the perception of infringement may also trigger popular opposition.

Rolling back UN ambitions, and establishing a UN mission without armed peacekeepers and neither means nor mandate to protect itself does not solve the problem. As Martin notes of UNAMET (established without enforcement mandate or capacity), 'by encouraging the East Timorese to participate in the consultation and by promising that the UN would remain after the vote, whatever the outcome, UNAMET created expectations that the UN would afford protection, or at least would not abandon East Timor'.

The problems of sovereignty and neutrality do not just apply to dramatic situations. They also complicate the more prosaic problems which exist with relation to the broader spectrum of UN activities. Even where the UN's role is more minimal, the paradoxes of supporting 'liberal democracy' through increasing involvement of UN personnel as players in political and legal institutions indicate a self-negating task. As Chandler has argued with respect to Bosnia, '[t]he constantly expanding role of the multitude of international organisations has inevitably restricted the capacity of Bosnian people to discuss, develop and decide on vital questions of concern'. Furthermore, how can UN mission personnel even be appropriately trained in grappling with internal political dilemmas, such as day-to-day operational policing matters, so as to move forward a

---

69 Martin, *Self-determination in East Timor*.
70 Bertram, 'Reinventing Governments', 396.
broader conflict transformation agenda, when the political nature of peace-
buiding cannot be acknowledged? Again, to use BiH as an example, there is a
qualitative difference, between approaching human rights enforcement as a
matter of keeping all the bits of a ‘US-style’ constitutional democracy up and
running, and human rights enforcement as a means of ‘on-doing’ the ethnic
territorial divisions at the heart of the deal (as Dayton seemed to contemplate).

The sovereignty and neutrality dilemmas therefore also are ‘true’ dilemmas.
Acknowledging Charter sovereignty and neutrality requirements as clear
limits on peacebuilding, may lead to ineffectiveness, and would be a departure
from current trends. Rolling back, reinterpreting or jettisoning Charter com-
mitments in a coherent way would require a reworking of foundational ration-
ales of UN competencies, which would be difficult (and perhaps undesirable)
to achieve. The dialectical relationship between parties to a conflict and inter-
national law and the UN, means that fudging the issue has practical conse-
quences for the UN in terms of lack of legitimacy that are both conceptual and
practical. It is unrealistic to expect these dilemmas to be resolved by peace-
buiders on the ground.

Role of standard-setting

There are lurking issues for the UN as regards standard setting, which are
linked to the above debates. Two distinct standard-setting problems can be
identified. First, there is a question as to the appropriate role of human rights
standards in prescribing the contours of peace agreements. Related to this is
the question of whether peace processes themselves could be usefully made the
subject of at least ‘soft law’ standards. And secondly, there is the problem as to
whether and how the UN itself should be subject to (UN-promulgated) human
rights standards when acting in internal conflict.

Peace process standards?

The expansion of the human rights project while creating a broad basis for
international action, also threatens to blunt the instrument. As everything
becomes human rights, so human rights become just another, not particularly
distinctive, way of doing politics (fueling challenges such as those of cultural
relativism). Soft law standards, which extrapolate best practice in terms of
criminal justice policing and national institutions, already look like a detailed
political blueprint for governance. When one adds to that standards on minor-
ity rights whose references to effective participation are being used to under-
write devices for political accommodation, such as consociationalism, the
picture is almost complete. At the minute I would suggest that the distinction
between hard law and soft law is being used to preserve a more legal and more
political sphere: hard law for normative obligations. soft law for best-practice
Peace agreements and human rights

details regarding implementation. But soft law often finds ways (perhaps inevitably) of hardening.

The expansion of the human rights project raises questions as to the degree to which legal standards should proscribe or limit solutions for those who would address conflict. This debate has many possible incarnations, and goes to the heart of 'transitional' dilemmas as already described. With regard to self-determination, Slaughter notes the 'rise of group rights may be understood as the further colonisation of the political by the legal'. She also suggests that 'the relative success of informal efforts at mediating simmering ethnic conflicts suggests the value of expanding the repertoire of political solutions rather than searching for new rights and remedies'.

The experience of Northern Ireland, however, suggests that legal underwriting of innovative attempts at internal self-determination for minority rights, may be useful in bringing parties to an acceptance of their legitimacy, and reaching group accommodation.

The danger with legal approaches is that the scope for negotiated settlement and bottom-up peace processes is reduced.

This raises a related standard-setting dilemma: should the negotiation of peace processes themselves be the subject of at least soft law standards? There are aspects of peace agreements which often do not comply with international law. First, the processes themselves often are deeply exclusive. From a gender perspective the absence of women from peace negotiations which figure political elites who fight — i.e. men, is striking. Read any account of a conflict and the names that will predominate are male family names, sometimes with the sole exception of one political 'wife' (presented as 'anti-peace', as evidenced by discussion of Winnie Mandela and Mira Milošović). A few processes stand as exceptions in requiring the participation of women in negotiations, and/or producing agreements which address some gender issues.

This is despite the Platform for Action assertion emerging from the Fourth World Conference on Women, Beijing 1995, that 'in addressing armed or other conflicts, an active and visible policy of mainstreaming a gender perspective into all policies and programmes should be promoted so that before decisions are taken an analysis is made of the effects on women and men, respectively'. It further flies in the face of SC Resolution 1325 of 31 October 2000, which in paragraph 8 calls on all actors involved in negotiating and implementing peace agreements 'to adopt a gender perspective', and to ensure that women and women's groups should be fully involved in the peace process, and that special effort should be

74 A. Slaughter, 'Pushing the Limits of Liberal Peace: Ethnic Conflict and the "Ideal Polity"', in Wippman (ed.), International Law, pp. 128-44.
75 Ibid., p. 129.
76 Bell, Peace Agreements.
77 See Agreement Reached in Multiparty Negotiations (Belfast/Good Friday Agreement), 10 April 1998; Arusha Peace and Reconciliation Agreement for Burundi, 28 August 2000.
taken to ensure that women's needs and interests are included in the political negotiations. Besides being discriminatory, the lack of participation of women in many peace processes evidences a gap more generally as to the involvement of civic society which in turn leads to an implementation 'gap'. Political elites and diplomats do not always know what works in practice, and often see human rights standards as 'add-ons' to the political accommodation provisions at the centre of any agreement. Institutional coherence in terms of human rights, is not always designed with the requirements of effective implementation firmly in mind. In BiH, for example, the Dayton Agreement's unthinking wholesale supposed incorporation of thirteen major human rights conventions into domestic law, and the confusing array of overlapping human rights institutions stands as evidence. Anticipating implementation problems and addressing them in advance is often something that civil society is better able to debate and has more commitment to than political elites (whether domestic or international). Soft law process standards requiring representative negotiators, and connections between political elites and civic society might be useful, and less likely to be challenged as limiting possible negotiated compromises, than any substantive provision.

The Brahimi Report touches on the idea of standards for peace agreements when it notes that often UN peace operations first appear when negotiators working towards a peace agreement, contemplate UN implementation of that agreement. Paragraph 58 of the report states:

> The Panel believes that the Secretariat must be able to make a strong case to the SC that requests for UN implementation of ceasefires or peace agreements need to meet certain conditions before the Council commits UN led forces to implement such accords, including the opportunity to have adviser-observers present at the peace negotiations; that any agreement be consistent with prevailing international human rights standards and humanitarian law; and that tasks to be undertaken by the UN are operationally achievable – with local responsibility for supporting them specified.

While the Brahimi Report does not go as far as suggesting soft law guidelines for peace processes, interestingly, NGOs have made moves towards establishing best practice with relation to their own processes of engagement. There is a danger, however, with regard both to substantive and process soft law standards, that they may prompt a move away from the UN as mediator – a trend which Darby claims is already in evidence, in any case – as a tactic for evading normative constraints.


Peace agreements and human rights

Accountability of the UN itself

The third standard-setting dilemma revolves around the question of what are the mechanisms by which the international community itself should be amenable to human rights standards; an issue that is particularly implicated in peacekeeping generally, but particularly in instances of UN administration where the UN effectively takes over the functions of government. This issue is addressed in detail elsewhere in this volume, and will not be further addressed here. However, the very fact that pages of analysis and debate can take place around whether and how the UN and its personnel are accountable for human rights abuses, is startling given its role in promulgating human rights standards and the fact that implementation of human rights protections is one of its main rationales for UN intervention in the first place. The crisis in accountability and legitimacy again is conceptual, but also has practical implications and consequences, both for specific UN missions, and for the UN more generally. Studies of East Timor have criticised the UN’s efforts to secure local participation and capacity-building as hampered by ‘a number of institutional influences – including bureaucratic constraints, ideology and institutional constituencies’. Beyond mere UN accountability for its own human rights violations, there are broader questions as to whether the suggestion for guidelines addressing process mooted above might also be useful to guiding UN intervention more broadly, regardless of whether other organisations used them.

Conclusions: a research agenda for the future

None of these peacebuilding issues has an easy ‘best practice’ answer. It is suggested that understanding the nature of transitional justice is key to understanding the dilemmas and forming responses. Perhaps the best that can be expected, is to institute mechanisms to learn from past experiences. The Brahimi restructuring of peacekeeping, means that the UN itself is attempting to revamp its ‘Policy Analysis and Lessons Learned Unit (transformed into the Peacekeeping Doctrine and Best Practices Unit)’, within the Department of Peacekeeping Operations. The report also recommends the creation of a pilot peace-building unit within the Department of Political Affairs. However,

initial indications as to whether the lessons learned are leading to changed practice are not encouraging.\textsuperscript{85}

This chapter also indicates that there is a clear ongoing need for research projects such as have inspired this volume to begin to think around some of the dilemmas identified herein. This research can be at the level of specific dilemmas, as illustrated by Kumar’s work on elections.\textsuperscript{86} However, it has been argued here that there is a larger piece of work required, which involves going beyond where the UN locates its ‘peace keeping, making and building project’ and mapping more clearly how the UN responds to internal conflict more generally. Research mapping the work done by international organisations is now somewhat unfashionable, but the explosion of internal conflict and the variety of international responses to it, now calls for such a mapping, before coherence of response can be gauged. While the reports such as Brahimi, re-evaluate the response of the UN from the perspective of its peacekeeping / peace-building role, there is still a sense of the tail wagging the dog – in the sense that the corporate engagement with internal conflict across the totality of the UN’s work is not addressed. How do peacekeeping and its peace-building extension coordinate with the broader range of UN work on internal conflict? To what extent do differences in types of conflict require different approaches? What should the nature of the relationship between UN and other possible negotiators/oversseers of peace agreements be (with post-Iraq resonance)? All these require some attempt at answers which take account of realpolitik.