

RECENT BOOKS ON INTERNATIONAL LAW

PEACE AGREEMENTS AND HUMAN RIGHTS,
By CHRISTINE BELL

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Normative concerns have always informed peace agreements. In the post-Cold War era, international human rights norms have emerged as the touchstone to articulate political claims. The typical peace agreement contains human rights commitments throughout its text, and examining these components sheds light on the tension between justice and peace, and on the relationship between law and politics. A number of authors have analyzed the connection between human rights violations and internal and international conflicts. Christine Bell seeks to address the more forward-looking question of "whether protecting human rights through the implementation of human rights mechanisms plays a positive role in conflict management, resolution, or transformation" (p. 6). The conflicts that most concern Bell are primarily intrastate in nature and involve "protracted conflict with deep ethnic and self-determination claims" (p. 10). The study does not explicitly consider what could be considered "standard wars" (in which there may be, as a matter of course, some human rights violations), but the general conclusions are nevertheless written as if they apply to all peace agreements.

At the outset, Bell acknowledges that the terms "peace process" and "peace agreements" are contested. "Just as one person's freedom fighter is another's terrorist, so one person's peace process is another's 'cease fire agreement,' or yet another's 'victory' and another's 'sell-out'" (p. 16). Bell does not pretend to resolve the definitional dilemma. Instead, she notes that "the terms 'peace process' can be understood as a value judgment attached to efforts to resolve a conflict at a particular time" (*id.*). Although "the entire process of conflict can be regarded as an attempt to achieve a solution," Bell focuses on what she describes as

"colloquial use of the term 'peace process'—that is, as 'attempts[s]' to resolve the process through dialogue rather than direct violence" and, in particular, as "attempts to bring political elites . . . to some sort of mutual agreement" (p. 18).

Bell is interested in all written agreements that could be seen as furthering the peace process, regardless of whether the agreements achieved the desired results (and as she herself acknowledges, the Oslo peace process, for example, has utterly failed). Applying this broad definition, Bell suggests that we consider three types of peace agreements, reflecting three different stages in the peace process: (1) prenegotiation agreements, which "typically revolve[] around who is going to negotiate and with what status" (p. 20); (2) framework-substantive agreements, which "begin to set out a framework for resolving the substantive issues of the dispute" (p. 25); and (3) implementation agreements, which "begin to take forward and develop aspects of the framework, fleshing out their details" (p. 27).

To some extent, the scope of Bell's analysis is limited by her methodology, which relies on a close reading of the written peace agreements and on secondary sources. Field research and interviews with stakeholders to the peace agreements may have provided a different perspective on the question that Bell raises about the relation between human rights and peace. Bell is more interested, however, in the "what" questions—which can reveal changes in relationships, strategies, and structures—than in the "why" questions of causality.¹ In probing the "what" questions of human rights and peace agreements, Bell succeeds admirably.

Bell skillfully adopts a case-study approach, examining Bosnia, Israel/Palestine, Northern Ireland, and South Africa. For each peace process, she examines the formation of peace agreements and the inclusion of specific human rights provisions. Subsequent chapters are devoted to a comparative analysis of the peace agreements with regard to self-determination, provisions on "building for the future" through the creation of specific institutional arrangements, and provisions on "undoing the past," with a specific focus on return of refugees, claims to land, treatment of prisoners, and other prior-regime questions related to accountability and truth.

¹ See ALEXANDER WENDT, *SOCIAL THEORY OF INTERNATIONAL POLITICS* 77–88, 165–77 (1999).

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The initial task of determining the human rights component of a particular peace agreement is fraught with difficulty. As Bell notes, "Given that peace agreements are aimed at reducing violent conflict, in one sense the entirety of the agreement is concerned with human rights through ending the violence . . . which went hand in hand with a paucity of human rights abuses" (p. 33). Political arrangements as to how power should be exercised—in light both of past human rights abuses and of competing claims to self-determination—could also be deemed part of the human rights component of a peace agreement. A more straightforward component is the establishment of institutional arrangements specifically to address past human rights abuses and to promote future adherence to human rights standards. Yet even with respect to such provisions, identification of the human rights elements is complicated by the expanding scope of human rights law to additional topics and actors—reaching nonstate, multistate, and individual actors.

Bell does not analyze the implications of labeling some provisions of a peace agreement as human rights components while considering other provisions as part of "broader political arrangements" (p. 35). Her methodology would have been stronger had she grappled with such issues and offered a reasoned justification for the scope of her project. Instead, she raises useful questions for "future comparative work" (*id.*) and then explains her use of customary and treaty-based human rights and humanitarian law to identify three types of human rights provisions that figure in peace agreements: "rights to self-determination or minority rights ('the deal'), building for the future (institutional protection for civil, political, social, economic and cultural rights), and past human rights violations" (p. 34).

Her discussion of self-determination claims makes a particularly strong contribution to the existing literature. Bell identifies and analyzes compromises between the self-determination claims of minorities and the civil, political, social, economic, and cultural rights of individuals; conflicts may often centrally involve both sets of claims. She notes that in Bosnia, Israel/Palestine, and Northern Ireland, "the self-determination norm stands accused, not merely of failing to prevent the conflict, but of causing it" (p. 103). Parties on both sides of these conflicts employed the language of human rights and, in particular, of self-determination to articulate and justify their own, opposing positions. In this type of situation, international human rights discourse

did not resolve the conflict but, indeed, became a site of conflict.

International elites continually reassess self-determination claims. Their opinions on the validity of such claims, Bell observes, inform their decisions on appropriate responses to human rights violations and other breaches of peace and security. With respect to Bosnia and Israel/Palestine, "the enforcement actions were intimately related to a fluctuating international analysis of self-determination claims, and mutated with that analysis" (p. 104). Ultimately, the inability of the international community to agree on the parameters of a solution to the underlying self-determination claims "hindered attempts to limit the conflict by enforcing human rights protection and preventing ethnic population shifts" (p. 116). At the same time, "the inability of the international community to enforce basic human rights and humanitarian law protections created a fluid numbers game in which the parties to the conflict could further their self-determination claims through illegitimate 'fact creation' on the ground" (*id.*).

Bell astutely recognizes that "often issues that appear to be about process, or technical in nature, are inextricably intertwined with substantive issues going to the core of the conflict" (p. 7). Nowhere is this observation more true than with respect to self-determination claims. Negotiators tend to "resolve" this difficult matter of self-determination by failing to settle it. While peace agreements repeat the traditional phrases of "territorial integrity" and "inviolability of borders," they do little to address the central questions of which territory and which borders. This wait-and-see approach to crucial self-determination claims portends future conflict. "By incorporating rather than accommodating the self-determination dispute," Bell warns, "they become new forums for waging old self-determination conflicts" (p. 190). That is, for the resolution of self-determination claims, more important than self-determination language is the development of viable institutional arrangements for governing the fractionalized societies that gave rise to those claims. Without such arrangements, the long-term effort to build democratic institutions will be blunted since the political consensus required to support these institutions will be lacking.

With respect to her case studies, Bell hints that each peace agreement involved an accommodation between the political elites of majority and minority populations on how to reconcile their demands for access to power, government, and

territory. Such accommodations required compromise not only on the issues of equality, sovereignty, territorial integrity, and secession-partition, but also on the "meta-conflict"—the "conflict as to what the conflict is about" (p. 10). In each case, compromises were achieved through some permutation of federalism, autonomy, power sharing, and normalization of intergovernmental relations with kin groups in neighboring states.

Bell asserts that in the postagreement reconstruction phase, human rights institutions play a dual role. First, by providing institutions that promise to respond to human rights abuses in a way that the previous regime did not, they play a "legitimizing role" and, accordingly, "constitute a flagship of democratic credentials" (p. 159). This legitimizing role rings hollow if the new institutions do not, in fact, respond to abuses in a more assertive manner than their predecessors. Local stakeholders in the democratization project (that is, local political elites and their constituents) are consequently far less likely to be impressed by this legitimizing role than international negotiators, who have their own interests in promoting democracy.² Among other concerns, the negotiators may view establishment of "flagship" democratic credentials as a quick exit strategy for their own involvement in the conflict.

In *Bosnia: Forging Democracy After Dayton* (1999), David Chandler persuasively argues that instead of being a flagship of democratic credentials, the institutional framework in Dayton "lacked democracy" in the interests of Western negotiators.³ Bell herself later notes that in Bosnia the international administrators have had a track record of second-guessing the decisions of elected officials and removing elected politicians from office. She wryly wonders if "the price of democracy is democracy," and observes that rewriting the Dayton framework to improve structural weaknesses is difficult for an international community that has embarked on the larger project of "fostering the primacy of democratic constitutionalism" (p. 180). It appears, then, that Bell would agree that to the extent that human rights institutions provide flagship democratic credentials, these credentials should be approached skeptically.

The second role that Bell identifies for human rights institutions is an "integrative" one. (p. 159). She contends that "human rights institutions emerge not from a (fictional) social contract between individual and state, but as part of an (actual) ethnically-based bargain. They are designed and agreed to, with the idea that such institutions can provide a common framework of justice through which ongoing ethnic divisions can be mediated" (*id.*). This argument rests on two unproven assumptions.

First, do local stakeholders actually share the international democratizers' belief that dispute settlement processes can peacefully and fairly mediate ongoing ethnic conflict? I have found that with respect to Kosovo—a conflict not discussed by Bell—many Kosovar Albanians hope that the international community will deliver to them democratic institutions that will resolve their conflict with Serbs once and for all. Alien to Kosovar society is the notion that communal conflict exists at some level in all democracies and that it can be managed peacefully. So, too, is the notion that Kosovars can or should have faith in dispute settlement processes that are under their own (as opposed to international) control. Having never trusted their own police, courts, and politicians to operate according to the rule of law and in line with international standards, Kosovars are not about to change their views overnight.

Second, are the human rights institutions in question really the product of ethnically based bargains? Bell states that "the institutions which emerge, while governed by international law, find their way into agreements as a direct result of a political bargaining process rather than principled design" (p. 229). The questions are: Who is doing the bargaining, and are they viewed as legitimate? Which groups have a voice, and which (for example, women or members of minority groups) have been left out? In order for the human rights norms embodied in peace agreements to represent the product of such a bargaining process, the elites who craft the agreements must actually represent the stakeholders in the conflict and be perceived by them as legitimate. Whether these conditions were satisfied in Bell's case studies is questionable.

In analyzing human rights, Bell ultimately identifies both a "forward" and "backward-looking" role for them—a dual role that generates a distinctive form of transitional jurisprudence. Bell concludes from her case studies that

² An interesting set of case studies examining this phenomenon can be found in KATRIN VON HIPPEL, *DEMOCRACY BY FORCE: U.S. MILITARY INTERVENTION IN THE POST-COLD WAR WORLD* (2000).

³ DAVID CHANDLER, *BOSNIA: FORGING DEMOCRACY AFTER DAYTON* (1999).

peace agreements are best understood as a form of transitional constitution, and that the human rights provisions must be understood as an integral part of that constitutional and as having particular transitional functions. Peace agreements provide a framework which is both constitutional—setting out governmental arrangements and values—but at the same time distinctively temporary, transitional, international and political." (Pp. 7-8).

One message the reader takes away from Bell's work is that, given the significant attention to human rights in peace agreements today, it would make a great deal of sense for all countries interested in peace and justice to invest in the implementation of peace agreements. The cessation of hostilities through a peace agreement does not, in and of itself, "solve" the strategic dilemmas, structural imbalances, and open wounds of unaddressed abuses and interpersonal hostilities. As David Lake and Donald Rothchild stress in their exhaustive study of ethnic conflict, a "stable peace can arise only as effective institutions of government are reestablished, the state begins again to mediate between distrustful ethnic groups, and the parties slowly gain confidence in the safeguards contained in the new ethnic contracts."⁴ Both the "forward" and "backward-looking" peace-agreement provisions identified by Bell are useful for this institution-building project. Yet this kind of institution building is insufficient for the realization of long-term peace and justice.

In some cases, peace and justice also require that international intervention continue through the postagreement transition. Bell recognizes that where, as in Bosnia and Israel/Palestine, peace agreements are the result of international pressure, they can be sustained only through continual international pressure. Thus, in situations like Bosnia, peace agreements may also embody provisions for transitional international oversight. The nature and extent of the required international authority varies, Michael Doyle has observed, according to the root cause of conflict, local capabilities for change, and the specific degree of international commitment available to assist change.⁵ Future comparative studies could

augment Bell's work by analyzing provisions for international transitional authorities in peace agreements.

Finally, long-term realization of human rights requires the development of a human rights culture. Bell writes that human rights form "an area of common ground where different sides [can] agree on a common set of governing values" (p. 189). These values must govern all aspects of life, not just political institutions—but how does that come to happen? The adoption of human rights language is an essential step in building a human rights culture, but still more is required. Human rights concepts enter culture slowly as a population develops its own shared (yet contested) understanding of the prominence and importance of the norms. Incrementally, the norms become part of the "frame" in which people derive a sense of who they are and where they are going.⁶ Future work could also develop the relationship between the human rights provisions of peace agreements and the construction of human rights cultures.

In conclusion, Christine Bell has written an extremely insightful and original analysis of the dynamics between international human rights law and peace agreements. While other studies have examined the specific topics Bell identifies—there have been strong recent studies of postagreement mechanisms promoting accountability and truth⁷—this volume is the first by a single author to map the field of human rights provisions in peace agreements. Bell's original contribution is magnified by her attention to detail and careful application of a strong analytical framework. *Peace Agreements and Human Rights* will be of great interest not only to international lawyers and human rights specialists, but also to academics and practitioners interested in peace and conflict issues.

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Crocker, Fern Osler Hampson, & Pamela Aall, eds., 2001).

⁴ THOMAS FITZGERALD, *METAPHORS OF IDENTITY* 186 (1995).

⁵ See, e.g., FRANCESCA B. HAYNER, *UNSPEAKABLE TRUTHS: CONSCIENTIOUS STATE TERROR AND ATROCITY* (2001); RUTH LUTTELL, *TRANSITIONAL JUSTICE* (2000); see also DAVID WIPMAN, *INTERNATIONAL LAW AND ETHNIC CONFLICT* (1988).

⁴ David A. Lake & Donald Rothchild, *Ethnic Wars and Global Engagement, in THE INTERNATIONAL SPREAD OF ETHNIC CONFLICT* 339, 349 (David A. Lake & Donald Rothchild eds., 1998).

⁵ Michael Doyle, *War Making, Peace Making and the United Nations, in TURBULENT PEACE* 529, 550 (Chester A.