



WAR, CONFLICT AND HUMAN RIGHTS

THEORY AND PRACTICE



**CHANDRA LEKHA SRIRAM,
OLGA MARTIN-ORTEGA AND JOHANNA HERMAN**

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War, Conflict and Human Rights

War, Conflict and Human Rights is an innovative new interdisciplinary textbook combining aspects of law, politics, and conflict analysis to examine the relationship between human rights and armed conflict.

Making use of both theoretical and practical approaches, this book:

- examines the tensions and complementarities between protection of human rights and resolution of conflict – the competing political demands and the challenges posed by internal armed conflict;
- explores the scope and effects of human rights violations in contemporary armed conflicts, such as those in Sierra Leone, Sudan, the Democratic Republic of Congo, and the former Yugoslavia, as well as the “global war on terror”;
- assesses the legal and institutional accountability mechanisms developed in the wake of armed conflict to punish violations of human rights law and international humanitarian law, such as the ad hoc tribunals for the former Yugoslavia and Rwanda, and the International Criminal Court;
- discusses continuing and emergent global trends and challenges in the fields of human rights and conflict analysis.

This book will be essential reading for students of war and conflict studies, human rights, and international humanitarian law, and highly recommended for students of conflict resolution, peacebuilding, international security and international relations, generally.

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How to use this book

War and other forms of armed conflict often give rise to massive human rights violations, and violent conflict is indeed often provoked by grievances that may include serious violations of human rights and international humanitarian law. Demands for accountability for human rights violations are common in countries emerging from conflict, and postconflict countries have deployed a variety of mechanisms to address these demands. Indeed, demands for accountability can pose obstacles to peace negotiations. However, these crucial connections between war and human rights lie at the intersection of international human rights law and international humanitarian law, and conflict analysis and resolution. The issues at stake are not merely theoretical ones; they are central to the work of practitioners in international politics and international law. The knowledge needed to address these issues is therefore interdisciplinary, being both legal and political. There is thus a need to develop expertise that is analytic as well as theoretical, and substantive knowledge of both politics and law.

The study of war, conflict, and human rights is a complex, interdisciplinary undertaking. Many students may have expertise in international human rights law but not in conflict analysis, or may be familiar with particular conflicts but not with the legal and institutional responses to those conflicts, and abuses committed during their waging. This book attempts to bridge those gaps by presenting a comprehensive approach to the interaction between conflict resolution and human rights. It is designed to support students in upper-division undergraduate and Master's-level courses in conflict resolution and in human rights, as well as in hybrid studies of both.

Structure of the book

Part I addresses the theoretical issues underlying conflict and human rights, examining critical debates, politics, and law. Chapter 1 lays out the relationship between war and human rights, establishing the interaction that underpins the rest of the analysis in this book. Chapter 2 surveys the literature on critical conflict analysis, conflict resolution, and postconflict peacebuilding. It addresses the broad debates over the root causes of conflict; different methods of conflict prevention, mitigation, and resolution; and the challenges of postconflict peacebuilding. Chapter 3 examines the history of human rights and key debates in the human rights literature. These debates include those between universalist and particularist approaches, between individual and group rights, and between political and economic rights. Chapter 4 presents the relevant law, specifically international human rights law and international humanitarian law, and examines the specific challenge of addressing violations of these obligations in internal, as opposed to international, armed conflicts, and the special problem of armed groups, including terrorist groups.

Part II moves from the theoretical to the concrete, examining serious internal conflict and attendant human rights violations in the context of five case studies. The first four of these involve specific countries that have recently reached agreements ending armed conflict, while the fifth involves the global community. The country case studies examine the respective peace negotiations, and the choices made within those negotiations. Students will be able to explore the opportunities that were available for accountability, and to think about the various possibilities, without being constrained by what ultimately happened. Chapter 5 examines the wars in the former Yugoslavia during the 1990s, and the resolution reached through the Dayton Accords. Chapter 6 examines the peace process in Sierra Leone, which experienced violent conflict over resources and poor governance, and serious violations of human rights, including forcible conscription of child soldiers, mutilation, torture, and massacres. Chapter 7 considers the peace process in the Democratic Republic of Congo, which also experienced violent conflict over resources and governance, and gross human rights violations perpetrated by internal forces as well as militaries and militias sent or supported by multiple neighboring countries. Chapter 8 addresses the process in Sudan, where a protracted conflict over resources, religion, territory, and human rights violations raged in the south until recently, with the conflict and demands changing character over time. Here the only accountability process under way is linked not to the recently completed peace agreements, but to an ongoing conflict in Darfur. Finally, Chapter 9 presents a different type of case study, examining conflict, armed groups, and human rights in the context of the “global war on terror.”

Part III examines a range of accountability mechanisms that have been developed since the early to middle 1990s. Each chapter examines a different model of response to abuses linked to armed conflict: transnational, hybrid, and international. Chapter 10 discusses the ad hoc international criminal tribunals established for the former Yugoslavia and Rwanda in 1993 and 1994, respectively. Chapter 11 examines transnational methods of accountability, specifically the exercise of universal jurisdiction and transnational civil accountability. Chapter 12 addresses a relatively recent development in accountability – the hybrid or mixed tribunal – and discusses the operations of hybrid tribunals in Sierra Leone, East Timor, and Kosovo, and prospects for such a tribunal in Cambodia. Chapter 13 turns to the emerging practice of the International Criminal Court and its investigations and cases under way in the Democratic Republic of Congo, Sudan, Uganda, and the Central African Republic. Finally, Chapter 14 considers lessons learned from these cases, and prospects and challenges for the future.

Guidance for students and instructors

While the three parts of this volume differ in content and approach, guidance for students and instructors is provided throughout. A general glossary is provided at the end of the book, presenting key terms used in the human rights, international law, and conflict resolution literature. Whenever a key term is used for the first time in a chapter it is highlighted in bold so the reader will know that a definition is available in the glossary. To help guide class discussion and assist students in initiating future research, each chapter begins with an outline of key points highlighting the main debates and concepts addressed in that chapter, and concludes with a set of discussion questions and group exercises, as well as a list of further readings and official documents and sources. The country-specific chapters in Part II of the volume also include maps, key facts about the country or territory under discussion, and a list of key players to help guide students through the complex web of groups and institutions involved in the conflict concerned.

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Chandra Lekha Sriram, Olga Martin-Ortega, and Johanna Herman

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Part I

War and human rights

Critical issues

1 The interplay between war and human rights

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 many 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.

Conflict analysis and causes of conflict

Conflict analysis, in theory and in practice, seeks to identify the “underlying” causes of conflict as well as to enable us 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 is 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 **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 polities, 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.