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Understanding Human Rights Violations in Armed Conflict

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From an international law perspective, human rights are those norms embedded in treaties and other forms of international law that require states or other actors to protect, ensure, or recognize certain rights possessed equally by all people. But those involved in violent conflict—whether as parties to the conflict, victims of deliberate or accidental abuses, or intervenors advocating on behalf of victims or working at conflict resolution or peacebuilding—all have their own subjective view of human rights. To understand the human rights dimension of a violent conflict, and the prospects for achieving sustainable peace, both international norms and the subjective views about human rights held by internal and external actors must be explored.

This article provides a template for reaching such an understanding. It begins by providing an overview of the origin, content, and means of implementing international human rights law. It then surveys the typical (though by no means comprehensive) views of human rights of both internal and external actors involved in or concerned with a violent conflict, and some of the reasons they hold those views. Finally, it looks at some common scenarios in which differing perspectives on human rights, particularly those held by intervenors, complicate efforts to end the violence or build peace.

The International Human Rights Legal Framework

Underpinning international human rights law are the premises that every state has a duty to respect the human rights of its citizens and that other nations and the international community may challenge any state that fails

to do so. Contemporary international human rights law is a legacy of worldwide horror at the atrocities inflicted on innocent civilians during World War II. Before then, international law exclusively governed the relations between states. While individuals may have been the subject about which states made agreements, only sovereign states enjoyed the prerogative of enforcing that law vis-à-vis another state. Thus if State X harmed a citizen of State Y, only State Y, and not the harmed individual, could lodge a protest or demand compensation. If paid, that compensation went to State Y, which international law deemed to be the aggrieved party. The individual had no right independent of her state to seek redress. Within their own territories, governments of sovereign states could do as they wished to their citizens without fear of outside intervention.

The United Nations Charter, which was drafted during the summer of 1945, declares that saving "succeeding generations from the scourge of war . . . , [and] . . . reaffirm[ing] faith in fundamental human rights" are among the highest purposes of the organization. The Universal Declaration of Human Rights (UDHR), which was adopted by the UN General Assembly just three years later, declares that human rights are the foundation of freedom, justice, and peace. Everyone is entitled to all the rights and freedoms set forth, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. The fundamental rights in the UDHR can be grouped into five categories: security of the person,¹ equality before the law,² nationality and the rights to leave and return to one's state,³ political rights,⁴ and economic, social, and cultural rights.⁵ Since 1948, the United Nations and other intergovernmental organizations have codified almost all the norms in the UDHR in multiple international treaties, including the widely ratified International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

International human rights law is an odd species of law. Most domestic law, and even much international law, is created by memorializing, regulating, and creating mechanisms for enforcement of already widely accepted social norms. In other words, law arrives on the scene after social agreement about the content of the law and practices that demonstrate commitment to social agreement are already in place. In contrast, international human rights law was born of wishful thinking by a hopeful world confronting the evils of its immediate past. Indeed, the UDHR declares itself to be not a legal document but "a common standard of achievement for all peoples and all nations." Even decades later, as the two covenants were adopted by the UN General Assembly, many of the states that drafted and ratified

them continued to engage in practices that violated terms of those treaties. For those states, ratification was an expression of solidarity with international good intent—a means of demonstrating to other states that they were among the "good guys"—rather than a set of legal standards that constrained their conduct at home. Pre-World War II ideas about sovereignty and the duty of states to refrain from interfering in the domestic affairs of other sovereign states led them to resist mechanisms or practices of policing their own compliance with their treaty obligations.

Because the United Nations and other intergovernmental bodies possess only the authority that member states delegate to them, international human rights law enforcement has lagged far behind the articulation of norms. In the absence of effective formal enforcement mechanisms, international human rights advocates formed nongovernmental organizations (NGOs) to promote human rights and developed an array of advocacy strategies for pressuring governments to conform their behavior with international human rights law. These organizations investigate human rights abuses wherever they occur, including in places enduring armed conflict. Because of their reputation for accuracy, their findings are relied on by the news media, many governments, and most intergovernmental institutions. While these NGOs hope their reports will bring about a change in the behavior of the government or other entity whose abuses they spotlight, their main targets are the policymakers who are in a more powerful position to put pressure on human rights violators. They lobby other governments to take human rights into account in their foreign aid and press the United Nations and other intergovernmental organizations to put pressure on rights abusers.

International human rights law defines the rights that citizens possess under their own governments. But in cases of international armed conflict it may be the government of another state that is inflicting suffering on civilians. In many situations involving internal armed conflict, the rebel group or other party responsible for abusing civilians' rights is not a state and therefore not a party to the international human rights conventions. Thus, even in the absence of enforcement mechanisms, the rights enshrined in human rights treaties have limited applicability in most armed conflicts.

Beginning in the 1980s, when bloody and destructive Cold War-era proxy wars in Central America and other parts of the world dominated world news, human rights activists turned increasingly to international humanitarian law as the legal foundation for their advocacy in situations involving armed conflict. This body of law, the origins of which predate international human rights law by centuries, was crafted to protect civilians and others not taking part in armed conflict, such as sick or wounded soldiers or prisoners

of war, from the ravages of war. Its prohibitions include mass killing, mass expulsion, using food as a weapon of war, hostage taking, murder, torture, rape, and the mistreatment of persons held in displaced-person or detention facilities. International humanitarian law is articulated in the almost universally ratified Geneva Conventions of 1949 and numerous other international treaties. Crimes of genocide and crimes against humanity, which, like international human rights law, entered international jurisprudence in the wake of World War II, are part of international humanitarian as well as international human rights law.

With the end of the Cold War and the beginning of an era of greater UN receptivity to institutional activism, human rights activists turned their attention to strengthening international enforcement measures. Although activists are often at odds in determining at what point the United Nations should send troops to intervene in armed conflicts with serious human rights consequences, they quickly unite in pressing for judicial sanctions against those who commit or are responsible for human rights atrocities in the context of armed conflict. Human rights activists were the creative force behind the UN Security Council's decision to establish the International Tribunal for the former Yugoslavia, and its cousin, the International Tribunal for Rwanda. And to universalize the probability that perpetrators of human rights atrocities would be held to account in a court of law, they spearheaded the drive for the establishment of the International Criminal Court.

Human Rights from the Perspective of Parties to Violent Conflict

Human rights violations are an integral part of every armed conflict. Sometimes they are among the principal reasons for the conflict, as was true in the American Civil War, in which one of the Union's major objectives was ending Southern black slavery. Abuses of human rights also spawned many wars of national liberation against colonial powers, and wars waged by leftist guerrilla insurgents against corrupt or dictatorial governing regimes.

Even where leaders of a society are motivated to go to war as a means to attain or retain their power or wealth, they typically manipulate long-held human rights grievances as a means to exhort the populace to join them in their warring adventure. This was the case in the wars in the former Yugoslavia, in which Serbian political leaders incited Serbs to join them in their nationalist territorial claims by reminding them of unredressed ancient and World War II-era human rights violations against Serbs, and blaming that suffering on other Yugoslav national groups.

Human rights are often invoked even when they have little or no connection with the real reason for the war. For example, when President George H. Bush sought to win American popular support for armed efforts to repel the Iraqi invasion of Kuwait, he cited an Amnesty International report alleging that Iraqi soldiers had invaded Kuwaiti hospitals, thrown babies out of incubators and onto the floor, and taken the incubators back to Baghdad. In fact, the incubator story was false, invented and promulgated by a public relations firm and paid for by the government of Kuwait as part of its campaign to lure the United States into war with Iraq. While Amnesty International acknowledged that it had been duped, the first Bush administration made no attempt to correct the mistake, even after American involvement was well under way.⁶

Germany's Nazi regime first invented and then manipulated rights grievances as part of its strategy to win the support and participation of the German people in their conquest of Europe and murderous crusade against European Jewry and other ethnic groups. They injected virulent anti-Jewish propaganda into a political environment in which freedoms of speech, association, and the press were squelched. As a result, most Germans had little or no access to sources of information that could counteract the racist propaganda blitz. In that propaganda the Nazis falsely "reminded" Germans that they had been the target of vast crimes and other harms perpetrated against them by Jews and that a destructive response to Europe's Jews was not outside the bounds of morality, because Jews were not "human."⁷

Human rights are central concerns even in cases in which the motive for a conflict has no connection to human rights, or in which human rights are not invoked as a rationale for a conflict. This is because in every modern war innocent civilians suffer human rights abuses as a consequence of the conflict. In some cases that suffering is accidental, as when civilians step on land mines, are killed or maimed by bombs that land off target, or, in guerrilla war contexts, are mistakenly assumed to be fighters. But in contemporary wars, which are fought around population centers and not on defined battlefields, civilians are frequently the targets of war. Every contemporary war brings us images and news accounts of vast suffering by innocent civilians: refugees streaming out of Bosnian or Kosovar villages; mountains of bones of genocide victims in Cambodia and Rwanda; orphanages filled with child amputees in Sierra Leone; besieged communities in Sarajevo, Ethiopia, and Sudan, where hunger was used as a weapon of war; unspeakable mistreatment of prisoners of war in Afghanistan, where Northern Alliance opposition forces sealed hundreds of captured Taliban

troops in shipping containers, leaving them to die from lack of air, water, and food; and, universally, the rape of women on a mass scale.

If rights abuses are not addressed in the context of the resolution of the current conflict, they can set the stage for future conflicts because unredressed past grievances are so easy to manipulate. The formula has been applied over and over again. Leaders remind their people of the time when THEY did something terrible to US, and of OUR powerlessness at that past time to redress the grievance. If the "us" group simultaneously is made to feel vulnerable (politically, economically, or in any other way) or threatened, or lacks access to alternative perspectives such as those provided by a free press, emotions can easily become charged. People seldom act rationally in the midst of such charged emotions and often embark on a course of conduct that, at a more secure or politically open time, they would find abominable. Once strongly held views about respecting the rights of others give way to revised views about the importance of protecting US from future abuse by THEM or finally getting what is rightfully OURS. All sensitivity to the possibility that THEY have legitimate grievances of their own evaporates. At that point, violence makes more sense than dialogue.

Once people have joined the ranks of those committing new rights violations, moral reflection on their own conduct becomes even more difficult. They obey orders that under other circumstances they know to be immoral and illegal. They replace moral qualms with greater fervor for the cause, or some sort of alternative morality such as "How can I be disloyal to my comrades in arms, who have sacrificed so much?" They avoid or destroy anyone who challenges their revised worldview. When both (or all) sides involved in a conflict are motivated by similar stimuli and charged emotions, and where the balance of power is relatively even, the conflict is likely to become intractable; the underlying motivations for fighting are likely to be redefined with the passage of time or changing internal or external circumstances.

Victims' Perspectives on Human Rights

Victims, depending on their level of education and political sophistication, may be familiar with international human rights law, but it is their subjective experience that most colors their understanding of human rights. Most people spend most of their lives occupied with matters that are immediately important to them, their families, and their local communities. When rights concerns arise for them, it is usually in reaction to something that has happened: the murder, disappearance, or arrest of someone they know; an

experience with discrimination; or any of the range of atrocities associated with armed conflict.

When other human beings deliberately inflict human rights abuses on them or their loved ones, victims feel aggrieved. Their response is to want the violence and abuse to stop and their suffering to end. They also want to make sure it does not happen to anyone else, and to restore their dignity and other losses resulting from the abuse. When victims cannot stop the abuse, when they see it happening to others, and when they have no place to turn for justice or other types of help, they feel powerless. The combination of the abuse they have suffered, their sense of grievance, and their feelings of powerlessness may lead to despair and depression; it may also lead to a desire for revenge.

Most human rights abuses also cause victims to suffer some degree of psychological trauma. Deliberate human-induced suffering rattles the foundations of the victim's worldview and transforms his or her experience of trusting others. How could my neighbor, my government, any other human being, do this to me? The internalization of this trauma leads to a range of psychological and psychosomatic responses that, where full-blown, fit the psychiatric diagnoses of post-traumatic stress disorder (PTSD) and on depression. Even in cases in which a victim's responses do not meet these diagnoses, most people who have suffered human-induced trauma satisfy at least some of the PTSD criteria. Moreover, if untreated, these symptoms may last a lifetime. Aspects may be passed on to others in the victims' immediate environment, particularly their children. The interrelated experience of grievance, powerlessness, and psychic trauma leaves victims and those close to them susceptible to unscrupulous leaders who would exploit their past to achieve the leaders' own self-serving ends.

International human rights law and the international network of human rights NGOs provide victims with an alternative, cycle-breaking response to this potentiality. The legal framework afforded by international law provides victims who have access to it with an objective means to identify and measure the magnitude of the wrongs they have suffered. Although modest, and not consistent from one part of the world to the next, international human rights enforcement mechanisms provide victims with a venue for raising complaints that are superior to the co-opted judicial or political institutions that exist in the place where the harm occurred. International human rights investigators validate victims' stories by listening carefully, independently verifying them where possible, and publishing them in the international domain, which may result in at least embarrassment to, if not sanctions against, the responsible parties.

Many victims become active in domestic human rights organizations or victims' groups that document abuses, identify means for putting pressure on responsible parties to end those abuses, and provide mutual support should the victims become targets of renewed rights violations. Through these various means, victims reduce their sense of powerlessness, increase the likelihood that their grievances will be addressed, and provide themselves with some insulation from being drawn into a perpetrator role in the future.

Intervenors' Perspectives on Human Rights

We already have observed that international human rights advocates view human rights largely through the lens of international human rights law. At the same time, they tend to be highly sensitive to the suffering of victims and perceive themselves to be advocates or agents on victims' behalf.

Those who are involved in conflict resolution, whether as diplomats mediating peace negotiations (track-1 conflict resolvers) or nongovernmental facilitators of dialogue between groups involved in a conflict (track-2 conflict resolvers), usually are unequivocal about human rights violations, but their focus is different. They understand that conflict is normal but abhor the associated violence and loss of life. Their principal aim is to help the parties to a conflict achieve a settlement while decreasing the overall level of violence. Over the long term they try to facilitate improved relations between the parties to a conflict so that those parties will be in a better position to resolve or de-escalate future conflict before it turns violent.

Because their focuses are different, human rights advocates and conflict resolvers may find themselves at odds. At a recent joint meeting of leading international human rights advocates and conflict resolution professionals, participants were divided by profession into two groups and asked to reflect on the question "What values motivate the other group's work?"

With respect to the values of conflict resolvers, the human rights advocates described them as nonadversarial, value neutral, expedient professionals who prefer quiet diplomacy over confrontation, are prepared to put everything on the table, believe that every individual is redeemable or capable of change, view the world in shades of gray instead of in black and white, and put peace above all other interests, including justice. The conflict resolvers described the human rights advocates as adversarial, believers in the power of shame, outcome directed with little concern for process, "bleeding hearts," absolutist (based on universal principles), judgmental, unwilling to consider non-human rights issues, and "conversation stoppers."

Both disciplines recognized aspects of their own values in the other group's descriptions of them, though both groups were quick to clarify that these attitudes were not universally held and that there were great differences among individual diplomats, activists, and NGOs in their field.⁸

Ways in Which Differing Perspectives on Human Rights Complicate Efforts to End Violence or Build Peace

Perceptions of Bias

Because victims in armed conflict want the violence and abuse to stop and their suffering to end, they welcome the assistance of professional outside intervenors who can genuinely help. These include human rights advocates, who can draw worldwide attention to their plight, and conflict resolvers, who can help the parties to end the violence. Yet charges of lack of impartiality can undermine the capacity of these intervenors to assist effectively.

While most international human rights NGOs think of themselves as impartial—they report evenhandedly about human rights and humanitarian law violations by all parties to an armed conflict, and they investigate human rights violations in all parts of the world without regard for the political orientation of the responsible regime—they often are seen by one or more of the parties to a conflict as biased. Conflict resolvers also tend to think of human rights NGOs as parties themselves, or at least stakeholders, in a conflict. This is because human rights advocates openly advocate for victims and for the strict application and enforcement of international human rights and humanitarian law.

Where the aim of one of the parties to a conflict is to end severe or long-standing human rights violations such as injustice, discrimination, or repression, human rights advocates are likely to sympathize with that party's cause. In such cases, even where these advocates have reported objectively on abuses by all parties, they are likely to be perceived as biased by those in power and by those members of society who benefit from the social order that existed before the conflict or who prefer it to war. Opposition forces may interpret activists' human rights advocacy as a form of "solidarity" with their cause. Once labeled as biased, human rights advocates have a difficult time shedding their partisan mantle. Thus, in cases where an armed conflict was motivated initially by political or socioeconomic rights violations even though the rationale for fighting has subsequently changed to greed or deep-seated hatred and inability to trust the other side, the legitimacy of human rights advocates is often suspect.

Human rights advocates also may be accused of partiality to parties who have claims with which they sympathize. Like all nonprofit organizations, human rights NGOs must marshal their resources and set priorities for reporting to maximize the impact of their work. Massive or dramatic violations involving loss of life and intense human misery typically draw greater resources and command greater media attention than grinding socioeconomic conditions or long-standing repression or discriminatory practices. Those involved in fighting what they believe to be a "just war" to end these latter types of abuses may feel that human rights advocates are biased or hypocritical because they failed to adequately publicize the underlying abuses that occurred before a resort to arms was perceived to be necessary.

Like their human rights counterparts, conflict resolvers involved in mediating the settlement of an armed conflict may be subjected to charges of partiality. For the sake of neutrality and to maintain their acceptability to all parties as outside intervenors, conflict resolvers involved in settlement talks typically take no position with respect to the conflict. But conflict resolvers tend not to be neutral about the violence and suffering associated with the conflict, which they openly deplore. Parties who depend on continuing violence to retain power may see conflict resolvers as agents of their opponents. On the other hand, in cases where one or more of the parties have turned to violence because they believe that all peaceful means for resolving underlying structural human rights violations have been barred, those parties may perceive conflict resolvers' efforts to end the violence—particularly in the short term, when there is not adequate opportunity to address all the underlying issues—as merely a sop to those in power. For these parties, loss of life and other human suffering caused by armed conflict are an acceptable price to pay to ensure that those underlying structural issues are resolved in their favor.

The Interplay between Human Rights Investigations and the Conduct and Settlement of Armed Conflict

Human rights reports, although written to draw attention to ongoing violence and suffering, sometimes contribute to the escalation of a conflict. In conflicts between ethnically divided groups, human rights reports directed against members of a group can inflame the anger of already emotionally charged troops and their civilian supporters and can provoke those who were otherwise reluctant to take part in the violence to take up arms. For example, in Macedonia, human rights reports of abuses by the Macedonian security forces inflamed emotions in the Albanian community, while reports of violations by Albanian fighters had the same effect on Macedonians.⁹

Accounts of suffering by members of one's own group can reduce or further numb moral reflection and thus make it easier for fighters to take out their anger on, or seek revenge against, members of the other group, including those who bear no responsibility for the original suffering.

Also, when sensitive conflict resolution negotiations are contemplated or ongoing, independent human rights reports may impact conflict resolvers' ability to bring the parties together or keep them at the negotiating table. And the reports can serve to harden parties' positions, thereby making it more difficult for them to explore their real interests. For example, at a critical early moment in the Salvadoran peace negotiation process, a leading international human rights NGO released a report documenting, for the first time, abductions and killings by the FMLN rebel forces. The report stung the rebel leadership and caused them to reexamine their relationship with the international human rights community, among which they included the United Nations. This made it more difficult for the UN mediator in El Salvador to win the rebels' confidence and persuade them to negotiate. To avoid repetition of the problem, the mediator conferred with the NGO and asked it to inform him when a report would soon be released. This enabled him to avoid surprise and provided him with useful knowledge that he converted into a mediation tool. By strategically using his advance knowledge, he was able to put discreet pressure on the party that was the target of an upcoming human rights report to adopt measures that simultaneously improved rights conditions and its prospects at the negotiating table.¹⁰

Peace Agreements and the Amnesty Problem

Virtually every time conflict resolvers intervene to assist the parties in negotiating an end to armed conflict, they encounter the problem of how to deal with those individuals who are responsible for violations of human rights or the laws of war. Both international human rights and humanitarian law impose a duty on states to prosecute those who have committed the most egregious human rights violations, war crimes, and crimes against humanity. In past decades, criminal prosecution for such violations was an academic concern for most peace process participants who had committed international crimes; they had confidence that if they could not negotiate an amnesty or other form of immunity from prosecution, another state would afford them comfortable refuge. As international human rights advocates have placed increasing emphasis on criminal justice responses to human rights violations, criminal prosecution has increasingly become a real possibility.¹¹ For some necessary parties to peace processes, the potential for

criminal prosecution has been a barrier to serious—or indeed any—participation in negotiations. Thus, for example, General Raoul Cedras was prepared to negotiate the restoration of democracy in Haiti only after he had been assured of asylum in Panama. In Mozambique, amnesty was a necessary precondition for both parties to come to the negotiating table.

Parties with clean hands also may be leery of confronting the issue of prosecuting war criminals during the peace negotiation process. While their formal position may be that war criminals must be brought to justice, interests such as creating or restoring democracy, maintaining order during the transition period, placating a restive military or other armed fighters, or staving off economic collapse may be of much higher immediate priority. Thus, it is not surprising that redressing the past usually does not figure prominently in settlement agreements but is left for the postagreement implementation phase, if it is undertaken at all.¹²

Demands for amnesty, on the other hand, are a frequent subject in peace negotiations. Human rights advocates and conflict resolvers often are divided on how to respond to such demands, especially when those seeking amnesty are seated at the negotiating table. Former president Jimmy Carter and his negotiating partners, General Colin Powell and Senator Sam Nunn, faced rebuke from the human rights community for including an amnesty for General Raoul Cedras and his cohorts as a condition in the settlement that led to the restoration of Haiti's democratically elected government. For their part, the negotiating team, who were given only twenty-four hours to mediate a solution, defended the amnesty as necessary to achieve a negotiated settlement and stave off an imminent military attack by U.S. troops.¹³

When the parties to the Bosnian conflict met in Dayton, Ohio, to negotiate an end to the violence, impunity also was on the table. From the outset of the talks, there was speculation among human rights advocates that the International Criminal Tribunal for the Former Yugoslavia (ICTY) would find itself on the Dayton chopping block. Even after it became clear that the tribunal was secure, reports from Dayton suggested that the parties and NATO were reluctant to make cooperation with the tribunal a "show stopper" to the larger peace.¹⁴ Ultimately the Dayton Accords included language that required the parties to cooperate in the prosecution of offenders before the ICTY but did not define the limits of such cooperation. Moreover, the Dayton Accords made no mention of what role NATO troops were to play in apprehending indicted war criminals. NATO subsequently took the position that it did not have the authority to track down indictees, though it could arrest those it came across while carrying out other duties.¹⁵

In Sierra Leone, the parties to the Lome peace negotiations were prepared to address a broad range of human rights issues but resisted human rights advocates' efforts to insert themselves into debate about a proposed amnesty provision. Even the UN Secretary-General's Special Representative Francis Okelo's efforts to propose amendments that would narrow the broad sweep of the proposed provision and specifically omit international crimes were rebuffed. The Lome Agreement granted "absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the signing of the present Agreement." This provoked an instruction from UN secretary-general Kofi Annan to Okelo to dissociate the United Nations from the provision by appending to his signature to the agreement the words "The United Nations holds the understanding that the amnesty and pardon . . . shall not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international law."¹⁶

Postsettlement Peacebuilding and the Relative Priority of Justice and Reconciliation

In postsettlement contexts, human rights advocates and conflict resolvers share the goals of developing and strengthening civil society and preventing backsliding that could cause renewed human rights abuses or violence; however, their priorities for reaching these goals differ. Human rights NGOs typically emphasize achieving justice through the prosecution and punishment of those responsible as the highest priority. Conflict resolution NGOs focus their attention on promoting dialogue and reconciliation among previously warring parties.

These priorities often appear to collide and may even be absorbed or manipulated by the parties in ways that contribute to undermining the postsettlement aims of both disciplines. This occurred in Rwanda, where the distortion of NGO priorities increased the postconflict polarization of the two communities. Because most of the genocide victims were Tutsi, justice came to be identified as a "Tutsi issue." Hutus, on the other hand, including perpetrators of the genocide, their family members and supporters, and those who had no involvement in the violence but were subjected to blame solely as a result of their ethnicity, came to be identified with the issue of reconciliation.¹⁷ This sort of division has been reported elsewhere, including Nigeria and Sri Lanka. According to a senior Sri Lankan peace activist, most human rights NGOs operating in the area of ethnic conflict comprise Tamils, whereas most domestic conflict resolvers are Sinhalese.¹⁸

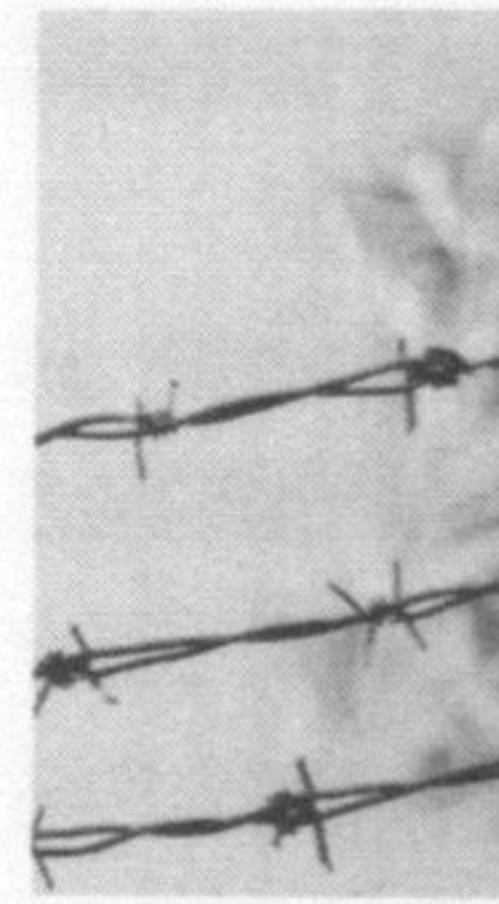
Human rights advocates and conflict resolvers have honed their skills and gained the most experience intervening in situations in which serious atrocities are ongoing and an end to violence is most urgently needed. Thus, it is not surprising that afterward both tend to place a high priority on the lingering issues resulting from the conflict. The approaches and methods the two groups of intervenors use when tensions are at their highest, however, are not always well suited to a postconflict milieu characterized by political insecurity, a dearth of institutions able to maintain order, and massive resettlement or reconstruction needs. Enforcement approaches to human rights are ill suited to the early stages of peace implementation, during which enforcement mechanisms are nonexistent.¹⁹ Facilitated dialogue is not sufficient in and of itself to promote coexistence, let alone reconciliation. Coexistence interventions are necessarily long-term processes that involve changing parties' perceptions and attitudes. Intervenors must be prepared to devote a lot of time to training, launching, and overseeing coexistence activities, and even then, in the absence of structural changes at the societal level to ensure the safety and security of citizens, they should not be overconfident that such activities will be a bulwark against future violence.²⁰

Achieving justice for past wrongs and bringing about the reconciliation of previously warring groups are needs that any postconflict society that seeks a peaceful, rights-respecting future must address. But that future necessarily also includes the full range of postsettlement societal needs such as political stabilization, economic development, institution building, physical reconstruction, education, and health care, as well as truth, justice, and reconciliation. A society in transition from war to peace must decide for itself the relative order for addressing these needs. That is not to say that human rights and conflict resolution intervenors have no role to play in the nation-building process. On the contrary, human rights-advocates have the potential to contribute significantly toward promoting rights respecting law enforcement, administrative, and judicial institutions; developing and monitoring processes that protect individuals against discrimination; and promoting economic and social rights. Conflict resolvers are needed to foster dialogue and cooperation among members of previously warring groups so that they can work together to set priorities and meet societal needs. When they adopt this shared forward-looking approach, both groups of professionals diminish the likelihood that they will be identified with an issue that gives relief or support to only one party to the conflict. This, in turn, reduces the possibility that intervenors will fuel societal divisions that could then flare into renewed violence.

Notes

1. These rights include life, liberty and security of the person, the right not to be held in slavery, the right not to be subjected to torture or cruel, inhuman, or degrading treatment or punishment, and the right not to be subjected to arbitrary arrest or detention.
2. These rights include fair and impartial hearings, due process in criminal proceedings, and effective remedies for violations of fundamental rights.
3. These rights include freedom of movement, the right to leave and return to one's country, and the right to seek asylum.
4. These rights include freedom of thought, conscience, and religion; freedom of expression; peaceful assembly; the right to participate in government; and the right to vote in periodic, genuine elections.
5. These include the rights to food, to health care, to education, to work, to found a family, to own property, and to participate in cultural life.
6. See Robert L. Koenig, "Testimony of Kuwaiti Envoy's Child Assailed," *St. Louis Post-Dispatch*, January 9, 1992, 1-C; Jim Dwyer, "Desert Mirage of Dead Babies," *Newsday*, July 3, 1992, 2.
7. See, e.g., Lucy S. Dawidowicz, *The War against the Jews: 1933-1945* (New York: Bantam Books, 1986).
8. Joint meeting of International Human Rights Advocates and Conflict Resolution Professionals, Fletcher School of Law and Diplomacy, Tufts University, December 1, 2000.
9. Sarah Broughton, "Macedonia" (conference paper, Carnegie Council on Ethics and International Affairs, "Bridging Human Rights and Conflict Resolution: A Dialogue between Critical Communities," July 16-17, 2001), 11.
10. Ambassador Alvaro de Soto (presentation, Fletcher School of Law and Diplomacy, Tufts University, April 21, 2001).
11. See Ellen Lutz and Kathryn Sikkink, "The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America," *Chicago Journal of International Law* 2, no. 1 (Spring 2001).
12. Christine Bell, *Peace Agreements and Human Rights* (New York: Oxford University Press, 2000), 273.
13. Robert A. Pastor, "More and Less Than It Seemed: The Carter, Nunn, Powell Mediation in Haiti, 1994," in *Herding Cats: Multiparty Mediation in a Complex World*, ed. Chester A. Crocker, Fen Osler Hampson, and Pamela Aall (Washington, DC: United States Institute of Peace Press, 1999), 505-25.
14. Michael Scharf, "The Amnesty Exception to the Jurisdiction of the International Criminal Court," *Cornell International Law Journal* 32, no. 3 (1999): 507.

15. Human Rights Watch, "Good Neighbors: NATO and Indicted War Crimes Suspects in Bosnia and Hercegovina" (press release, November 12, 1997).
16. Michael O'Flaherty, "Sierra Leone's Peace Process: The Role of the Human Rights Community, 1998-2000," in *Human Rights and Conflict Resolution in Context: Reflections on Practice in Colombia, Sierra Leone, and Northern Ireland*, ed. Ellen L. Lutz and Eileen Babbitt (forthcoming).
17. Hizkias Assefa, interview by Ellen L. Lutz, June 7, 2001.
18. Carnegie Council on Ethics and International Affairs, "Integrating Human Rights and Peace Work: Perspectives from Sri Lanka, South Africa, Northern Ireland, and Nigeria," *Human Rights Dialogue* (Winter 2002).
19. See Tonya L. Putnam, "Human Rights and Sustainable Peace," in *Ending Civil Wars: The Implementation of Peace Agreements*, ed. Stephen John Stedman, Donald Rothchild, and Elizabeth M. Cousens (Boulder, CO: International Peace Academy and Lynne Rienner, 2002), 237-71.
20. Eileen F. Babbitt et al., "Imagine Coexistence: Findings and Recommendations for the UNHCR" (July 2002), <http://Fletcher.tufts.edu/chrcr/pdf/imagine.pdf>.



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Human Rights A Source of Conflict, State Making, and State Breaking

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When the George W. Bush administration justified its invasion of Iraq by appealing, belatedly, to the need to liberate the Iraqi people from the oppression of Saddam Hussein, it was making a normative argument based implicitly on universal human rights. This was a dramatic recent occasion when rights arguments have been used to legitimize the use of arms by the United States or other nations and movements. Much of this book focuses on the problem of trying to enforce contemporary international legal standards for human rights during the course of intrastate violent conflicts, in which the combatants usually and often deliberately inflict violence on noncombatants. The volume also deals with the problem of bringing past violators to justice after a war. The practitioners who must deal with these problems are obviously correct to seek ways to mitigate them. Ellen Lutz's chapter presents an excellent starting point. However, these problems are embedded in a much larger and more fundamental global-historical process, whereby human rights principles themselves and the values that they seek to legalize often contribute to conflicts over state making and state breaking. Differing human rights come into conflict with one another, and the principles and discourse of human rights themselves can contribute to violent conflict. Human rights are not simply something that may or may not be abridged or enforced amid or after a conflict; they are often what the conflict is about.

By arguing that human rights can be part of the problem and not always a solution, I do not mean only that gross human rights violations by oppressors often trigger violent reactions from the oppressed. That is one