

Promoting Peace and Protecting Rights: How are Human Rights Good and Bad for Resolving Conflict?

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Introduction

Actors seeking to improve conditions for civilians in internal conflicts work towards protecting human rights and resolving conflict. This paper explores how practical efforts to protect human rights can sometimes advance and at other times hinder practical efforts to resolve conflict. Nevertheless, tensions between resolving conflict and protecting human rights are not inevitable. They can be reduced, though not eliminated, through institutional design or political acumen. The emphasis in this paper is on the more politically sensitive phases of mediation in peace processes, though some of the broader issues of post-conflict stability are also addressed.

The resolution of violent conflict and the protection of human rights are two interconnected but distinct objectives. It is possible, though unlikely in practice, that a situation will arise in which there are few human rights violations but high levels of conflict. It is also possible to have situations where there is no conflict, yet human rights are violated systematically. All things being equal (including levels of conflict) it would be desirable to strengthen human rights. Similarly, all things being equal (including human rights protections) it is desirable to reduce the levels of conflict. Certainly, when there is a tension between the two, human rights activists may give priority to human rights, and, similarly, those who are seeking to end armed violence may give priority to resolving conflict. Rather than press the case for one set of priorities over the other, I want to try to contribute to a more systematic discussion about where precisely the tensions are, and how they can or cannot be reduced, given that both priorities are worthwhile objectives for all societies. I hope this discussion will contribute to efforts to achieve both more effectively.

This paper avoids a detailed discussion of how to define human rights and conflict resolution, because its approach does not turn on agreement on the precise point at which human rights are protected and a conflict is resolved, except that it is more than the minimalist and less than the maximalist positions. The minimalist position for human rights is defined in terms of harm to bodily integrity (and not a more expansive

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idea of civil, political, and social and cultural rights),¹ while a maximalist notion of human rights seeks to transfer arguments for a just society at the state level directly to a global level. A similar approach is taken with regard to conflict resolution. Some institutions and organisations consider a conflict resolved when violence has stopped, even when its threat is present. For them the minimalism of ceasefires, armistices, truces, and the halt to combat killings alone, without a political settlement, is sufficient to declare a conflict resolved. Others take a maximalist approach, requiring not just the presence of a political settlement and ongoing and strengthened co-existence, but rather full inclusion of all excluded groups, and full political and even social equality.² While these may be desirable goals in a process of resolving conflict, such stringent standards are not required to consider a situation as post-conflict. Discussing how human rights and conflict resolution are in tension with or complement each other does not require that we agree on the precise point at which a conflict is resolved - only that we understand the kind of arguments that might be used to specify that point, and how they may be evaluated *vis á vis* each other.

I. How are Human Rights Good for Resolving Conflict?

Let me begin with the good news: there are a number of ways in which protecting human rights and resolving conflict can be complementary objectives. Yet aspects that may be complementary in the long term may not be in the short term, and vice versa. By describing, from long to short term, the areas of possible complementarity, we can highlight where it is well established, where there are merely possibilities that should be explored, and where it is still based on assumptions or, in social science jargon, hypotheses that need to be tested.

1. Long-term Stability

We know that there is a close correlation between the protection of human rights and the long-term stability of a society. However, the precise relationship between the protection of rights and the stability of societies is not clear. Does the protection of civil and political rights contribute to stability because the decisions of a state are more likely to be directly accountable to its citizens in such a society? Or do societies where rights are protected also have strong states that are better at detecting, preventing, avoiding and countering conflict?

The latter implication – that strong states are good for stability because they can either address political factors that lead to conflict or rapidly repress groups that promote or provoke instability – cannot be disregarded, even though it might be uncomfortable for human rights advocates.

Nevertheless, when human rights are well protected in a society conflict is less likely. This is true not only of social, economic and cultural rights, but also of political and civil rights. If social and economic rights are protected, we might say that a society is broadly addressing the concerns of its people, and if political rights are protected, we might also say that it has a degree of political accountability. The protections of both sets

¹ For an articulation of the minimalist position in human rights see Michael Ignatieff, *Human Rights as Politics and as Idolatry*, Princeton University Press, Princeton, 2001. For a critique of minimalism in human rights, see Joshua Cohen, 'Minimalism About Human Rights: The Most We Can Hope For?', (2004) 12 *Journal of Political Philosophy* 2 at 190-213. Also, for a discussion on the limit of an expansive approach, see his 'Is There a Human Right to Democracy?', in Christine Sypnowich (ed.), *The Egalitarian Conscience: Essays in Honour of G. A. Cohen* (Oxford: Oxford University Press, 2006).

² See David Mendeloff 'Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?' (2004) 6 *International Studies Review* 3 at 355–380, for useful discussion about delineating the end of a conflict.

of rights make it harder for those who oppose the state to get people exercised about the violations of their rights (since they are not being violated), and therefore to mobilise and organise opposition to the state. Now this may be a point about conflict prevention rather than conflict resolution. The fact that societies where rights are protected are less likely to have conflict does not necessarily mean that once you have conflict, establishing and strengthening rights – whether social and economic or political – will help resolve conflict. This distinction is important. In fact conflict is often associated with the assertion and/or demand for rights. So while rights (once you have them) are good for avoiding conflict, trying to seek them when you do not have them may lead to conflict, particularly if the state lacks the political sagacity or capability to grant them as a strategy for accommodating aggrieved groups.

Having said this, however, we should also point out that strengthening human rights in a society can be good for its long-term stability. This is true for two reasons. First, if our rights or those of our fellow citizens are violated we (and they) have less reason to complain. Second, the effective protection of human rights is usually associated with justice, and citizens of a country, the world community and even political leaders tend to accept solutions that they view as just. Thus a political structure embedded in human rights can help make societies more stable.

2. Identifying Causes of Conflict

A close study of how human rights are violated in a society can sensitise us to the potential for conflict and the causes of conflict.³ We often associate conflict with the systematic violation of human rights. These violations are of three basic types – social and economic rights or ‘the presence of social inequality’, discrimination due to religious, social, gender or other factors, and violations of political rights. The claim is that when these rights are violated, citizens in a society express their opposition, and then, when this opposition is disregarded or repressed, this can lead to conflict.

First, studying and analysing human rights violations can help identify ‘root or structural causes’. When we see a society that is deeply unequal – for example, apartheid South Africa – we expect that it is unlikely to remain stable, or avoid conflict for long. Where such structural inequality exists, indicate there are serious violations of social and economic rights. In such societies we are likely to find social indicators that are skewed towards one group (whether class, ethnic, religious, racial or regional) over another. The differences may be in income, health, housing, and education, among others. To identify these structural inequalities, we might ask a series of questions regarding a social group in this society: Do they have adequate housing? Do they have access to healthcare? Do they have jobs? These questions help us determine whether there are serious violations of social and economic rights. When the answers to these questions are negative we can expect that conflict is possible because groups who are discriminated against are likely to seek redress either within or outside the political system.

While addressing these structural inequalities is always good for any society, we need to be cautious about concluding that such inequality invariably leads to violent conflict and political instability. It is possible to see considerable inequality side by side with relatively stable societies. Consider India, a society that is considered one of the most unequal in the world. Yet its political and social institutions function relatively effectively and its society is stable and predictable. There are a number of other examples – such as the United States and Brazil – where social inequality and political stability co-exist. Two explanations are proffered for the presence of high inequality and low levels of conflict. They are both connected to power and resources. When a group

³ This section draws on Oskar N. T. Thoms and James Ron, ‘Do Human Rights Violations Cause Internal Conflict?’ (2007) 29 *Human Rights Quarterly* at 674-705.

may be large in number, but has so little (for example, it only has resources to scrape by) that it lacks the resources to organise opposition and protest, or when it is a small minority that lacks the power to be heard, deep inequality can co-exist with political stability. Still the presence of structural inequalities that are associated with systematic violations of social and economic rights is a strong sign that a society may become unstable politically.

Second, a human rights approach can help identify what I will call an intermediate cause of conflict – discrimination. Where there is discrimination there is likely to be someone who is, or at least feels, excluded, for it indicates that some people will be favoured over others, whether redressing or exacerbating existing inequalities, and this can lead to tensions that can set the stage for conflict. When human rights activists prepare reports on a country and identify widespread discrimination against a social group – racial, ethnic, class or regional – this is usually a good predictor of the potential for conflict. Even if such discrimination exists in the absence of structural inequality, it can indicate efforts by the state or powerful elements of society to marginalise and exclude some groups, which are likely to resist, particularly when they have the resources to do so.

Finally, studying human rights violations can also help us identify proximate causes of conflict. These proximate causes are usually associated with the contravention of political and civil rights. While structural inequality and discrimination are strong indicators of the potential for conflict, violations of civil and political rights are always associated with conflict and instability. Even in societies where there is no structural inequality, violence and conflict can still erupt where there are violations of civil and political rights. Violations of civil and political rights are usually associated with a powerful group in society using state power to prevent another group from organising politically. Such contraventions are also invariably part of subverting the democratic process. They indicate that the state is preventing systemic expression of political dissent and disaffection, and compelling those who wish to express their opposition to pursue non-systemic means. This can seriously destabilise a political community and lead to violence. So violations or fulfilment of these rights is a good indicator of whether or not a society is at risk with regard to conflict.

3. Identifying Mechanisms for Resolving Conflict

Human rights activists and approaches are usually considered to be good at identifying the causes of a problem (or at least its symptoms), but bad at identifying the solution. This need not be so. A human rights approach can also help identify potential mechanisms to help resolve a political conflict. Consider ethnic conflicts, which usually involve some form of group-based discrimination on language, religious or cultural grounds. This discrimination is often connected to political opposition to the state and sometimes turns towards political instability, as in the Baltic States, and even violence, as in Sri Lanka. In this case human rights can provide examples of mechanisms that can take into consideration the reasonable concerns of groups without discriminating against others.

The Office of the High Commissioner on National Minorities (HCNM) of the Organisation for Security and Cooperation in Europe (OSCE) is a good example of such an approach. In particular the HCNM developed a set of mechanisms, the 'Lund Recommendations' for integrating diversity, that was able to provide for the aspirations of minority nationalities without leading to division of a state, political instability, or disregard for a group's concerns.⁴ In the case of national minorities, for example, these

⁴ http://www.osce.org/documents/hcnm/1999/09/2698_en.pdf. 'Lund recommendations on the effective participation of minorities in public life'.

mechanisms can range from electoral arrangements and autonomy measures to language rights and different types of anti-discrimination laws or positive discrimination efforts.

By also emphasising the importance of equal treatment, human rights standards provide a benchmark for the limits of accommodating claims of groups or individuals where they interfere with other important civil and political rights, or the reasonable concerns of other groups. If a group claims to have been discriminated against, demands self-rule, and, to that purpose, secession, a human rights approach may respond by suggesting means of addressing the discrimination, without self-rule and/or secession: anti-discrimination measures, language rights, proportional representation in parliament and administration, and affirmative action. Alternatively, a human rights approach may suggest means by which the group can enjoy self-rule without secession: local autonomy, provincial autonomy, federalism, consociationalism, or veto power. The point is that human rights mechanisms can provide options (rather than prescriptions), benchmarks (rather than rigid rules), and the limits of possible accommodation in cases where minority or majority nationalities make demands that clash with fundamental commitments to political equality in a state. Parties to a conflict can find these options useful for resolution, even if they may not always endorse the rights claims associated with these options.

4. Providing a Neutral Standpoint

Human rights also provide a neutral standpoint that can help to resolve disputes between parties in conflict. In a violent conflict, differences are invariably negotiated on the basis of political power, military balance and competing claims of justice. By moving towards a political process over a military one, parties are implicitly accepting that the military balance is not the sole or even the primary basis for adjudicating competing claims. This leads parties to make political demands, which are invariably based on a series of perceived and/or real grievances that parties have against each other. These grievances are usually described as ‘unjust’ measures carried out by one group against the other.

When parties make such competing claims, they usually do not share a common framework for assessing the validity of the claims or for weighing one side’s claims against the other. When negotiations stall because of a standoff over competing claims, the parties revert to using political power and/or military power to press the claims of one side against the other. A human rights approach can provide a common and neutral framework for working out competing claims by helping parties to move away from simple assertions of political or military power as a way of winning the argument and towards providing reasons and explanations for their demands.

While international human rights standards may be controversial, they are not necessarily viewed as one or another party’s standards in a civil conflict.⁵ Rather, they are free-standing obligations that parties can be asked to and are expected to uphold. This is particularly true of states that are considered primary protectors of human rights in the world today. A human rights approach allows mediators, in particular, to point to some set of obligations other than the interests of one or another party, and apart from the preferences of the mediator. By suggesting that there are standards that ought to be upheld irrespective of the context, international human rights can facilitate dispute resolution when two parties differ on the outcome.

5. Contributes to Confidence in a Peace Process

Protecting human rights can also contribute to increasing confidence in a peace process in several ways. First the voices of unarmed and non-violent actors may be strengthened with an increase in their confidence that basic rights – from the right to life to freedom

⁵ I address the critique of human rights as Western in section II.5 below.

of expression and association - will not be violated. These actors are more likely to support peaceful outcomes than violent ones. Additionally, where there are prosecutions of egregious violators of human rights, or where mediators successfully exclude those who have committed the most wanton violations – such as mass killings, war crimes and crimes against humanity – local actors become more confident that a peace process will not lead to the entrenchment of those who are likely to abuse rights and exclude others.⁶

Second, protecting human rights can increase international confidence in a peace process and political settlement, leading to greater international support. Most international and regional organizations, from the United Nations (UN) to the African Union and the European Union, have mandates for protecting human rights. Many are bound to uphold human rights in political solutions. UN mediators are expressly barred from endorsing political solutions or agreements where international human rights obligations are not upheld, particularly the granting of amnesties for war crimes and crimes against humanity.

Third, key bilateral and multilateral donors, such as the World Bank, Asian Development Bank and other agencies, are influenced by international confidence in a peace process. The more support there is, the more likely these donors are to provide assistance. And here human rights can play a role in influencing international backing for a process. Many states, as well as regional organisations like the European Union, directly tie support for a peace process to improvements in the human rights situation, as well as efforts to address human rights through peace agreements. While human rights are not the only, or even the central part of a peace agreement, armed parties themselves often fail to address them effectively. This is partly because parties to an armed conflict are more likely to have committed and/or may continue to commit such violations. International actors feel obliged to pay more attention to these issues.

6. Reduces Levels of Violence

The most glaring violations of human rights are associated with violence – physical threats, intimidation, abductions and killings. Protecting human rights can contribute to resolving conflict by reducing levels of violence in a number of ways. Firstly, when human rights activists observe and write detailed reports about what actors are doing to violate human rights, publicise these incidents, and/or bring them to the attention of key domestic and international actors (a practice associated with organisations like Amnesty International and Human Rights Watch) they can shame a government or an armed group into behaving less violently.

Secondly, levels of violence can be reduced by the active presence of unarmed human rights monitors in situations of political instability and violent conflict.⁷ This presence can take place either as part of a political settlement (to ensure compliance) or as a prelude to a settlement to build confidence. There are a number of examples of this kind of presence in situations of conflict. In Kosovo, immediately prior to the North Atlantic Treaty Organisation (NATO) bombings and the expulsion of Kosovar Albanians by Serb forces, the Organisation of Security and Cooperation (OSCE) in Europe had an active field presence that monitored the human rights situation and contributed significantly to reducing levels of violence. Unfortunately, their presence was short-lived as international politics drove the country towards war. The largest and most systematic presence in situations of intense armed violence is maintained by the International Committee of the Red Cross (ICRC). Their approach differs from others in that they are confidential. They rarely publicise their findings, and they focus on the laws of war. Their presence provides an important tool in reducing violence by bringing

⁶ Excluding these actors can also be a challenge to resolving conflict. I discuss this in section II.6 below.

to the attention of usually armed parties instances in which human rights have been violated.

7. Protects Bridge Builders

Moderates within a community, as well as those who work closely across groups that are in conflict, tend to be among the first and often the last victims of violence. Armed parties in a conflict use violence to intimidate and coerce people into supporting them and the group they claim to represent. Those who work across communities, whether social, ethnic, ideological or political, are therefore viewed by armed actors as a threat. These people are bridge builders who understand, articulate and represent the (social, religious, ethnic and political) communities to which they belong, as well as those to which they do not. Initial efforts to resolve a conflict are usually the most sensitive and extremists can block these efforts by targeting moderates/bridge builders on their sides. Human rights activists also tend to be disproportionately represented among those targeted, because they generally affirm values that are universal, rather than particular.

What has been discussed thus far is not intended to be an exhaustive description of the different ways in which human rights are good for resolving conflict. Rather, the aim has been to lay out the kinds of arguments that need to be made to better unpack the complementarities between protecting rights and mediating conflicts. However, I began with the good news, now the bad: just as human rights can be beneficial for ending conflict, it can also be bad.

II. How are Human Rights Bad for Resolving Conflict?

The fact that human rights can be an obstacle to the resolution of conflict can make it harder to address human rights and end conflict at the same time. Nevertheless, this tension is not inevitable and can be reduced, though not eliminated, through institutional design or political acumen.

1. Alienating Parties to a Conflict

Resolving conflict is a sensitive personal and political process. It involves finding the right political context for making peace, as well as approaching leaders of states and rebel groups in a way that makes them feel that peace is both possible and desirable. Raising issues of human rights violations in such contexts can make it harder to build trust between parties – whether such issues are raised by the negotiators on behalf of the two parties, or by the mediator. This is particularly true at the initial stages of a peace process, when parties are most sensitive to criticism and most uncomfortable with the change in the political context and their own relationships with each other. Most parties involved in war have committed human rights abuses. At the initial stages of a process, violations are likely to be ongoing because fighting has not yet ended. Additionally, the memory of violations by both sides is still fresh, and raising human rights violations – even in order to address them – can distance parties from each other and the mediator in a conflict.

However, this need not preclude those involved in a peace process from raising these violations in more subtle and constructive ways. One way of doing so is to focus not only on the violations, but on mechanisms for addressing them; another is to encourage other actors – whether governments, international organisations and non-governmental organisations – to raise the issue of human rights violations. This enables mediators or peace negotiators to play a more problem-solving role rather than ‘a naming and shaming’ role, by helping to reduce violations that parties are accused of committing.

⁷ Liam Mahony, *Proactive Presence: Field Strategies for Civilian Protection* (Geneva: Centre for Humanitarian Dialogue, 2006).

In this way the important issue of human rights can be raised without directly alienating the parties from the peace process.

2. Asymmetrical Violations of Human Rights

A situation of conflict is usually associated with a range of violations – from those stemming from violence itself (killings, displacement of people, insufficient humanitarian access to civilians) to those stemming from the political and social structure of the state (insufficient political representation, lack of language rights, denial of land rights etc.). Stopping the former – violations of international humanitarian law and in some cases violations of civil and political rights - usually entails ending the violence and bringing about a more peaceful climate. In the absence of fighting, violations of International Humanitarian Law (IHL) will inevitably come to a halt, and it may even be possible to restore civil and political rights, since their suspension by the state is often a response to violent conflict. However, restoring or granting social and economic rights can take time, because implementing these rights requires structural social and political changes. This can lead to an asymmetry in the process of addressing human rights violations between those that entail long-term reform and those that can be addressed immediately.

States are at a political advantage in a situation of asymmetry of rights violations. They can call on rebel groups to halt the fighting as a way to stop rights violations related to war, such as killings. Indeed, assuming command and control is intact, these violations can be halted by a simple order from the military leaders on both sides to their respective soldiers to desist from fighting and/or killing. Addressing violations of social and economic rights is a more complex and lengthy process. For example, if parties are fighting over land, economic opportunities and other social and economic concerns, the state can argue (not incorrectly) that land needs to be allocated, economic assistance mobilised, and rights restored through acts of parliament. This invariably involves procedural, as well as political delays, as opponents need to be brought on board, or at least blocked. When conflicts are about power-sharing or autonomy, the rationale for the long-term nature of addressing the exclusion (or violations of participatory, governance and other rights) is even stronger. States can say to the rebel armed actor: 'Halting your rights violations simply requires the political will to issue an order, addressing ours requires a complicated political process that may even entail constitutional reform.'

Even if these arguments for the delay are justified, rebels and anti-state armed groups may see the use of human rights as a ruse to get them to make concessions – mainly to stop fighting – while enabling states to return to the *status quo ante* with no political concessions. Armed groups usually view violence as their main leverage in a political struggle with the state. They will view a human rights approach that focuses on an end to fighting as a way to address violations of IHL and civil and political rights as asymmetrical – advantaging the state and disadvantaging themselves, irrespective of how valid the rationale for such an asymmetry.

3. Leads to Loss of Control and Influence

States and armed entities engaged in a process of negotiation generally aim to maintain influence, if not control, over their populations. When they violate human rights and are condemned for it, they lose legitimacy among their constituencies as well as internationally; yet when human rights are protected, their political opponents can speak out and this can undermine their control over their populations. This would be a problem for peacemaking if the political entities engaging in violations were generally moderate, and those opposed to them were extremists. But that is rarely the case. Usually it is the moderates who have less and the extremists who have more military power.

Thus protecting human rights in these situations can help strengthen voices for accommodation.

However, in the short term there may still be a political risk for a group, either affiliated with the state or against it, that sees its power eroding as other voices are raised in the context of greater protection for human rights. This group faces a political tension between seeking peace and controlling its constituency. This tension can best be addressed by demonstrating how adherence to human rights can increase legitimacy, particularly internationally, and how the failure to do so can undermine this legitimacy. The trade-off that is presented to the armed entity or state is not between human rights and legitimacy, and control; rather, it is between control won by violating human rights and influence and legitimacy won by protecting human rights.

4. Leads to Inflexibility

The perceived inflexibility of human rights is another point of tension between human rights and the resolution of conflict. Human rights are often promoted as non-negotiable and absolute; conflict resolution is usually about finding the common ground between political actors who hold different positions, including about what is right and wrong. Human rights activists are wary of efforts to negotiate the implementation of human rights, which is understandable given the tendency of actors, particularly in conflict situations, to avoid or shirk their human rights obligations.

Nevertheless, even when actors sincerely wish to fulfil their human rights obligations, it is not always clear how they should do so, or even which ones they should prioritise. Desire to address commitments alone is insufficient to determine what should be done. Resources must be mobilised and allocated, and political attention must be paid to the potentially divergent ways in which parties to a conflict, as well as the victims of that conflict, view the different human rights concerns. There will invariably be questions about how to weigh the implementation of equally important but competing standards. All of these factors suggest that even when human rights standards are not flexible there will be considerable space for negotiation in implementing them..

5. Human Rights are Western

In some cases a party or parties to a conflict critique the international human rights system and the rights associated with it – such as the Universal Declaration of Human Rights – as based on a Western conception of the individual, thus conflicting with notions of rights in other cultures. In such cases the use of human rights even as a partial framework for conflict resolution may be viewed as itself biased. In many (though not all) cases, it is the non-state actor in a conflict that rejects human rights as Western.

In the early 1990s an effort was made by some political leaders and high officials in Asia to develop the idea of particularly ‘Asian values’. It was claimed that Asians favoured stability over freedom, the group over the individual, and economic prosperity over other values. Notwithstanding that the strongest advocates of this view were leaders and officials from one-party dominated states, the debate helped to highlight some of the elements that might be present in an alternative to the universal approach to human rights.

The argument for ‘Asian values’ in contrast to universal ones, did not ultimately gain much ground intellectually, or even politically.⁸ It quickly became apparent that the challenge of establishing what Asian values are was almost as great as that of establishing universal ones. With several billion people and many states, cultures, and intellectual and political traditions, Asia could not be reduced to the views of a few countries. Moreover,

⁸ For an excellent critique of ‘Asian values’ see Amartya Sen, *Asian Values and Human Rights* (New York: Carnegie Council on Ethics and International Affairs, 1997).

what proponents of Asian values identified as such – attachment to family, stability and certain types of economic prosperity – appeared to be very similar to Western conservative values. Finally, many of the values viewed as Western by proponents of a distinct set of Asian values were also found in many Asian cultures and traditions.

Still, there are many actors in armed conflicts who either reject a universal set of values, or argue for theirs over others associated with the international human rights system. For example, the Taliban has its own particular code of rights derived from a combination of Islamic law and Pashto traditions. While some of these codes, particularly in civil disputes, may be compatible with the international human rights system, others, such as women's rights, clearly are not. In other conflicts, such as Iraq, insurgents (whether Islamists affiliated to Al'Qaeda or nationalists affiliated to Sunni tribes) may view human rights as biased in favour of the occupying forces, because of guilt by association. Thus international institutions that seek to implement human rights, such as the United Nations, are viewed as complicit in the occupation of Iraq.⁹ It may be argued not only that powerful, Western countries are failing to live up to universal standards of human rights, but also that these standards are themselves biased in favour of those states.

In addition, a party to a conflict (usually a non-state actor) may perceive another party (usually the state) as having the persuasive power - institutional and rhetorical – to influence how human rights violations are perceived. Thus one side may be subject to greater condemnation than the other even when both violate the same rights. Non-state actors view themselves as outside the international system of human rights, which states have a greater voice in shaping, and thus are more likely to perceive themselves as the victims of such double standards.

On the other hand, states may feel the onus is unfairly placed on them to improve human rights in a situation of armed conflict, while an armed non-state actor is able to escape scrutiny and condemnation because it is excluded from the international system. Non-state actors are given an advantage in a conflict because they are not under an equal obligation to uphold rights.

When parties' conceptions of rights differ radically, or when there is a perception of disparity between the ability of parties to pursue their own case for rights with mediators or other people dealing with the peace process, a human rights approach may sometimes hinder the pursuit of peace.

6. Culpability for Past Human Rights Violations

Finally, a tension arises between human rights and conflict resolution when issues of culpability for past violations are raised. It is rare for political actors who are engaged in negotiations to end war not to have been directly or indirectly involved in serious violations of human rights. Peace processes seek to engage these actors and move them towards the political mainstream. It would be difficult, if not impossible, to achieve this if such actors were told their willingness to move from violent politics to non-violent politics would condemn them not only to political irrelevance, but also to prison. For this reason, in order to maintain peace processes most facilitators find themselves in the uncomfortable position of having to make excuses for or seeking political forgiveness for the perpetrators of human rights violations. This is particularly true prior to the demobilization and disarmament of armed groups or militaries in peace processes.

Although this is probably the most challenging tension between resolving conflict and the effective implementation of international human rights standards, it is not

⁹ While the UN opposed the US military invasion, its subsequent willingness to come in after the fact may have led to this perception.

impossible to resolve. Mediators and political leaders may avoid mentioning amnesties altogether in negotiations over peace, although this is not likely to be successful, since armed groups and states invariably make demands for amnesties that help their leaders and fighters avoid prosecution. Another way of addressing this tension is to provide an amnesty nationally, but not internationally. Leaders with egregious human rights records would then lack international legitimacy. This has a negative impact on their domestic legitimacy. Over time, once peace is consolidated, this need not rule out the possibility of pursuing these violations through domestic courts.¹⁰

The International Criminal Court (ICC) has been criticised by some peace activists for hindering peace processes by prosecuting rebels and some state actors for war crimes. For example, some analysts attribute the current delay in effective conclusion of the talks between the Ugandan government and the rebel Lord's Resistance Army to the indictment by the ICC of its leader Joseph Kony for war crimes. But others argue the ICC is not a hindrance to negotiations, as Kony has continued talking despite the indictment.

Still, even the ICC recognises this tension between the punishment of individuals for past violations and the pursuit of peace: its focus is on the former, but its statute does not disregard the latter. ICC provisions permit delays in prosecution, as well as alternatives to international prosecution. For example, the United Nations Security Council can delay an indictment through a resolution for up to a year and can renew it as required. Additionally, even after an indictment is served, the ICC can halt proceedings if the state concerned demonstrates that it is holding a serious and substantive national judicial process to deal with past violations. This requirement does not stipulate the kind of sentence that should be meted out, but only the seriousness of the process. The point is not that these measures resolve the tension between efforts to prosecute human rights violations and efforts to pursue peace, but that there is a recognition that these two values will often be in tension with each other. While a great deal of attention has been paid to this tension, it has been mistakenly viewed as representing an overall tension between the promotion of peace and the protection of rights.

Conclusion

I want to conclude by touching on a broader conceptual issue that motivates some of the confusion in efforts to address the tension between human rights and conflict resolution. Human rights activism and advocacy focuses on the state as the primary if not the sole violator of rights, for historical as well as conceptual reasons. The universal set of human rights that we are familiar with emerged from the aftermath of World War II. Nazi Germany was seen as the paradigm of the rights-violating entity. War, death, and destruction were seen as emerging from that powerful state's efforts to suppress the political freedoms of individuals and minorities at home, culminating in the genocide of millions of Jews, Gypsies, and homosexuals.

The practical dangers to human rights posed by a powerful state also fit neatly with the classical liberal conception of rights as a limitation on state power. The subsequent experience of the human rights movement, particularly in the West, focused on opposing one-party states in Eastern Europe and military regimes in Latin America, reinforcing the idea that the primary challenge to human rights are powerful and abusive states.

¹⁰ The case of the Chilean dictator Pinochet illustrates this approach, although he ultimately evaded prosecution and conviction in Chile because of old age and ill health.

But recent civil wars, particularly in Africa, are at least as much about weak states with weak institutions as they are about strong states that abuse their citizens. This suggests civil conflicts may actually be about too little state, not just too much.¹¹ Human rights violations in many situations of civil conflict tend to be among armed actors, including the state, claiming to represent different social groups, rather than between the state and society. Armed actors from all sides have committed violations against each other. There are victims and perpetrators of human rights violations on all political sides.¹² Human rights and conflict resolution then become inextricably intertwined in ways that make it harder to separate one from the other. So a better understanding how they can both complement and contradict each other in peace processes becomes vital to promoting peace and protecting rights.

¹¹ I am indebted to Pablo Policzer for this way of formulating the problem for human rights. See Pablo Policzer, 'Human Rights Violations beyond the State', (2006) 5 *Journal of Human Rights* 2 at 215-233.

¹² Iván Orozco Abad, 'Dealing with Symmetrical Barbarism: A Challenge for the Human Rights Movement (The Colombian Case)', unpublished manuscript.