aims to understand the challenges and opportunities that diversity in the international judiciary can present.

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LEX PACIFICATORIA, JUS POST BELLUM, OR JUST "GOOD PRACTICE"?

International Law and Peace Settlements. By Marc Weller, Mark Retter, and Andrea Varga, eds. Cambridge, UK: Cambridge University Press, 2021. Pp. xxxiv, 704. Index.

Lawyering Peace. By Paul Williams. Cambridge, UK: Cambridge University Press, 2021. Pp. xii, 289. Index.
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At the international level, getting into an armed conflict is clearly easier than getting out of one. Resolving the underlying issues that led to the conflict in the first place—and that have likely been exacerbated during the fighting—almost always proves profoundly difficult. While those issues are unlikely to be primarily "legal" in nature, international law and international lawyers should and do play important roles both in crafting interim arrangements to bring the fighting to an end and in establishing the conditions for a sustainable peace between the contesting parties.

Against the backdrop of the continuing conflict in Ukraine (among other crises), it is worth asking what law, if any, applies to such efforts, whether there are any clear legal requirements or parameters for such agreements, and what the lawyers involved in the negotiations need to focus on. These are not new questions, of course, and since each conflict has its own unique origins, contours, and context, it is unrealistic to expect simple (much less uniform) answers. The two volumes under review address the issues from differing perspectives and offer practical insights into how international lawyers can play positive roles in constructing a durable post-conflict peace. In so doing they also illuminate doctrinal debates over recent developments in the evolution of international law.

I.

International Law and Peace Settlements, edited by Marc Weller, a law professor at the University of Cambridge, Mark Retter, of Oxford University, and Andrea Varga, of the University of Glasgow, focuses broadly on "the complex relationship between peace settlements and international law" (p. 2). It is a hefty work (over seven hundred pages including twenty-nine substantive chapters) undertaken as part of the Lauterpacht Center's "Legal Tools for Peace-Making Project"[1] and in collaboration with the United Nations. It is also ambitious, attempting a systematic and comprehensive assessment of the relationship between international law and peace settlement practice across a range of core settlement issues, such as transitional justice, human rights, refugees, self-determination, power-sharing, and wealth-sharing.

Weller's introductory chapter sets the stage by rejecting "an overly formulaic definition of peace agreements" (p. 8)—meaning one that focuses too narrowly on the existence of a legally binding text—in favor of a broader, more inclusive notion of "peace settlements," a term he defines as including "instruments concluded between two or more conflict parties—whether state or non-state—with the aim of achieving the suspension, termination or resolution of an armed conflict" (p. 14). Unsurprisingly, the book's table of peace agreements and instruments (pp. xxv–xxxiii) lists over two hundred entries, spanning the period from 1945 to 2018.

The twenty-seven substantive chapters that follow address a genuinely impressive range of

[1] *See* Lauterpacht Centre for International Law, *Legal Tools for Peace-Making Project*, *at* https://www.lcil.cam.ac.uk/researchcollaborative-projects-housed-lcil/legal-tools-peace-making-project.

issues. Part I focuses on the "Historical Dimensions to Peace Settlement Practice." Larry May opens the discussion in Chapter 2 with a description of "Ancient Peace Treaties and International Law," which, he claims, demonstrates that "norms of international order were tied to the establishment of peaceful relations between ancient states" (p. 31) as early as the second millennium BCE. He concludes that "there needs to be something like a *jus cogens* norm that promises and agreements should be kept" (p. 44) and "a regime of sanctions that are meant to increase the likelihood of compliance with international treaties" (p. 45). In the third chapter, entitled "The Lore and Laws of Peace-Making in Early Modern and Nineteenth-Century European Peace Treaties," Randall Lesaffer traces the growth of the historical *jus post bellum* through the Treaty of Versailles, which "marked the beginning of a radical transformation of peace-making" (p. 63).

Christoph Kampmann's Chapter 4 suggests that the Treaty of Westphalia is properly understood as "a separate German peace" or a "security order for Central Europe, particularly the Holy Roman Empire," rather than "a framework for general European politics" (p. 66). In "The Boundaries of Peace-Making," Megan Donaldson analyzes eighteenth and nineteenth century European peace treaty practice, especially in the context of the expansion of the British Empire in those centuries. She concludes that while "no direct, jurisgenerative relationship exists between the history of peace-making in empire . . . and the (implicitly global) practice of peace-making in the present," that history nonetheless "serves as an intellectual provocation for current juridical thinking about peace-making" (p. 105).

Part II, denominated "Peace Agreements as Legal Instruments," focuses on "the nature and functions of peace agreements" and the potential relationships those agreements have to international law (p. 24). In Chapter 6, Laura Edwards and Jonathan Worboys address "The Interpretation and Implementation of Peace Agreements," noting that the lack of textual clarity and questions about the applicable law often raise issues of interpretation and implementation while acknowledging that "constructive ambiguity" can sometimes be helpful (p. 135).

Mats Berdal's discussion of "The Afterlife of Peace Agreements" notes that "[t]here is no simple or easy way of benchmarking success when it comes to analysing peace agreements and their afterlife" (p. 163). "[R]ather than signalling a clean break from past patterns of conflict," peace agreements should instead be "understood as but one phase in what is always a drawn-out, contested, frequently violent and multilayered transition from war to peace" (p. 141), and reaching judgments about their success or failure "require[s] a longer-term historical perspective . . ." (p. 163).

In Chapter 8 on "Interactions Between Peace Agreements and International Law," Philipp Kastner notes a recent trend toward more inclusive peace negotiations and calls for "constructive engagement" between the law and practice and suggests that international law should "seek to facilitate, and not necessarily regulate in a hard sense, the negotiation and conclusion of peace agreements . . . by setting out . . . 'broad normative parameters'" (pp. 180, 182).

Part III focuses on "Key Actors and the Role of International Law" and the ways in which they might be constrained by, or required to apply, international norms. In Chapter 9, "Non-state Armed Groups and Peace Agreements," Daragh Murray examines the implications of the participation of armed groups and terrorist entities in settlement agreements for the development of relevant rules of customary international law, concluding that while "states should remain the primary international actors, armed groups should have at least a limited role in processes that result in the creation of laws applicable to them" (p. 210). In the following chapter, Andrea Varga offers a similar analysis with respect to the obligations of "third parties" such as "Witnesses and Guarantors," noting that while legal obligations can be created for third parties to an agreement when the requisite intent and consent are present, "the mere signature of international actors, in the absence of any [clearly

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expressed] obligations, is incapable of having such an effect" (p. 236).

Chapter 11, by Nigel D. White, assesses the normative development of the role of the UN Security Council in peacemaking and peace settlement under Chapters VI and VII of the Charter, concluding that while peacemaking is "the most fundamental" of all the Council's functions, it is "the least developed legally, and the most abused politically" (p. 263.) In Chapter 12, titled "Peace-Making, Peace Agreements and Peacekeeping," Scott Sheeran and Catherine Kent examine the complex strategic and operational issues posed by the relationship between peacekeeping, peace-making, peace agreements, and international law, noting that peacemaking (as a "political process") is "often in tension with normative goals and legal standards" (p. 277) and is "often privileged over normative concerns" (p. 283). In consequence, they conclude, "there are few universal rules or principles that apply to the challenges of peacekeeping, peace-making, peace agreements and international law" (p. 288).

The seven chapters in Part IV address a broad range of topics related to "Representation, Sovereignty and Governance." Tiina Pajuste's contribution surveys "Inclusion and Women in Peace Processes," noting that while "international law does not provide detailed guidance regarding inclusion in the post-conflict situation" (p. 305), equality and non-discrimination are fundamental human rights principles so that inclusion is "consistent with international law" (p. 311). Reflecting on the relationship between "National Dialogues and the Resolution of Violent Conflicts," Katia Papagianni observes in Chapter 14 that inclusive dialogues can help "repair the legitimacy deficit of the existing political process" (p. 315) even though they are not "democratic processes" (p. 316).

In "Advancing Peaceful Settlement and Democratisation," Brad R. Roth challenges the notion of an "emerging right to democratic governance" (p. 333), arguing (provocatively but cogently) against "according an excessive role to externally generated norms of 'free and fair elections'" (p. 335), the "sanctification of electoral outcomes" (p. 354), and "formulaic applications of supposed international norms of democratic governance" (p. 355), and in favor of "the participatory arrangement that promises to establish and maintain social peace" (p. 345). In his view, "[p]eace and democracy may both be better served if the international lawyers stand aside" (p. 355).

Chapter 16, by Marie-Joëlle Zahar, analyzes various forms of "Power Sharing and Peace Settlements," concluding that, while they have serious "blinders and limitations" (p. 373), they have become a permanent feature of peace agreements. Isak Svensson's chapter on "Resolving Religious Conflicts Through Peace Agreements" contends that while such conflicts may be among the most difficult to resolve peacefully, it is possible to find workable solutions through power-sharing arrangements, including "legalisation as a political party" (p. 384).

Observing that "the process of constitution-making represents the most important moment in shaping a given society" (p. 398) and that "self-determination conflicts" often appear to be "intractable" and a "zero-sum game (independence-territorial unity)" (p. 430), Marc Weller's Chapter 18 on "Self-Determination and Peace-Making" explores the various ways in which settlement agreements can engage issues of "the identity of the social unit that is to be the state" and "the constitutional shape of the state" (p. 399). It discusses a range of possible power-sharing (sovereignty allocation) arrangements (alternatives to the "unitary state"), including, *inter alia*, internal autonomy, federalization, confederation, and independence. Since "the right to self-determination, even of peoples, does not apply in the same way in all circumstances . . ., the exercise of the right of self-determination, and the extent of that right, depends on the context of application" (p. 404).

In the final chapter of Part IV, "Peace Agreements and Territorial Change," Marcelo Kohen and Mamadou Hébié challenge the taxonomic distinction between the law of peace and the law of war. They observe that peace agreements may result in "an abandonment of sovereignty, a transfer of sovereignty from one state to

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another, or the creation of a new sovereign entity . . .” (p. 445). They contend that “[t]he term ‘peace treaty’ is neither a legal term of art with an authoritative legal meaning nor a defined legal category . . .,” although it can be distinguished from “ceasefire agreements” and “armistice agreements” (pp. 433–34).

Part V surveys the “Economic Aspects of Peace Settlements.” Andrew Ladley and Achim Wennmann’s Chapter 20 on “Political Economy, International Law and Peace Agreements” identifies what they portray as a “growing incongruence” between the formal terms of post-conflict agreements and “the de facto distribution of power and wealth” in concrete situations, suggesting “the need to question the viability of the current automatisms to propose a ‘liberal peace’ as a pathway to exit violence and war . . .” (p. 472).

In Chapter 21, Daniëlla Dam-de Jong notes that “[c]ompetition over natural resource governance and benefits are often central features of armed conflict” (p. 474). She suggests that peace agreements must balance national ownership of natural resources with the possibility of international intervention to avoid permitting states to use natural resource revenues to oppress their populations. In the next chapter, George Anderson focuses more particularly on the need for “Sharing Resource Wealth in Conflict Settlements,” not just resource revenue but also access to, and management and use of, the resources themselves (pointing to Sudan, Nigeria, and Bolivia as relevant examples). In “Overcoming Violence in Maritime Conflicts with Provisional Arrangements,” Christian Schultheiss notes that “the politically most sensitive issues for reaching joint fishery or joint development agreements in disputed areas tends to be the spatial definition of the agreement area” (p. 544).

Regarding post-conflict assistance, Mark Retter’s analysis in Chapter 24 (“Financing Peace Through Law?”) examines “the role of international finance for post-war transitions to peace and its relationship to international law” (p. 545). He finds little support in post-conflict peace settlement practice for the “Belligerent Rebuild Thesis” as an “emerging principle of international law” (p. 559) and questions whether either the “International Rebuild Thesis” (placing collective responsibility on the international community as a whole) or the related “Right to Development” impose any legal obligations. He similarly doubts the assertion of an obligation under *lex pacificatoria* as a principle of customary international law, considering it “too under-determinative” (p. 568).

Part VI comprises four chapters under the heading “Humanitarian Obligations and Human Rights.” The first, by Jake Rylatt and Mark Retter on “Negotiating the International Legal Fate of Detainees,” surveys detention practice in both international and non-international armed conflict in light of International Humanitarian Law and Human Rights Law. They conclude that while there are “emerging normative expectations and standards” regarding the scope, timing, and modalities for detainee release, one should hesitate to embrace them as part of a *lex pacificatoria* having “any internationally legally binding character until there is sufficient state practice and *opinio juris* to support their emergence as international custom” (pp. 580, 601).

In Chapter 26, Renée Jeffery asks whether pursuit of “accountability” is essential for peace or an obstacle. She notes a “series of dramatic shifts” (p. 625) in recent years away from accepting the use of “impunity measures” (such as amnesties) in peace agreements and toward “the pursuit of accountability” through such measures as criminal prosecutions and truth and reconciliation commissions. She concludes, however, that “[i]n the absence of clear empirical evidence about the relationship between accountability measures and peace, the claim that accountability is essential for peace becomes a normative argument” (p. 626).

Armed conflicts almost always result in significant displacement of people and the loss of land, housing, and other property. Anneke Smit’s chapter on “The Return of People and Property” reviews recent “normative developments at the international level” (p. 629) and argues that “a truly just approach requires a

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balance of competing private interests in housing, land and property, and public interest regulation of land use and planning" so that "the conditions for a just and sustainable peace may be satisfied" (*id.*). In Chapter 28, "Peace Settlements and Human Rights," Jenna Sapiano challenges the assumption that "human rights and peace are necessary to each other" (p. 655), noting that neither is absolute and they are sometimes in tension. Since peace is "foundational to a new post-settlement political order," she suggests treating it "as a goal external to human rights law to be balanced or weighed against human rights obligations" (p. 680).

Weller's concluding chapter subtitled "Developments in Peace Settlement Practice and International Law" asks whether, in light of the breadth of issues and possible solutions, it is "possible, helpful or necessary to proclaim the existence of a *lex pacificatoria*" (p. 685), a term he defines as "the law and practice of international peace settlements" (p. 702). He concludes that it is not. "Short of the requirement that force is no longer available as means of forcing a settlement upon a state, and that the forcible acquisition of territory cannot stand, the autonomy of the parties in shaping the substance of any agreement remains untouched" (p. 687). While "[i]nternational law offers an important repository of standards to which the parties can refer when terminating a conflict and reconstructing societies," he contends, these are "mostly in the nature of good or best practice, rather than firm legal requirements" (p. 703).

II.

In *Lawyering Peace*, Paul Williams, who is the Rebecca I. Grazier Professor of Law and International Relations at American University's Washington College of Law, addresses many of the same topics from a less doctrinal, more practical perspective. His stated aim is "to help parties, practitioners, and academics work their way through the multitude of decision points they face in a negotiation, and then to draft legal text that encapsulates that agreement in a way the will promote the durability of the agreement or constitution"—in other words, to enable negotiators to "build better and more durable peace agreements" (p. 2). He does so through a "rigorous examination" of previous experiences and a "clear-eyed approach to the good, bad, and ugly of peace agreements" (*id.*).

The discussion is organized around what Williams calls the "five key puzzles" that negotiators must address in the post-conflict context: whether and how: (1) to create and/or reestablish a state's monopoly of force; (2) to construct an effective internal power-sharing arrangement and governance structure; (3) to reallocate the ownership and management of natural resources; (4) to modify the state internal structure of governance; and (5) to provide a path toward external self-determination. Each of the volume's five substantive chapters addresses one of these areas: Security, Power-Sharing, Natural Resources, Self-Determination, and Governance.

By investigating how a variety of peace agreements have dealt with issues in these five areas, the volume aims to provide a primer on the norms, procedures, and processes on which negotiators can draw in solving the various "puzzles" and "conundrums" that can arise in the course of negotiations. Relevant provisions from twenty-two such agreements are summarized in the Appendix. Not all of those twenty-two were fully successful, of course, but, as the author acknowledges, lessons can be learned from failures as well as successes. Williams avoids endorsing any particular arrangements, pointing out that "[t]he path to a sustainable peace instead lies in the parties and mediators accurately identifying the puzzles facing the parties, detailing the issues, and then methodically addressing the conundrums that make up these puzzles" (p. 196).

Security. As Williams observes, the fundamental task of a peace agreement is "to restore security and rebuild the security infrastructure" in a post-conflict state (p. 7). Doing so requires re-establishing the state's "monopoly of force," which provides "the basis for state legitimacy" and is "a fundamental component of achieving a durable peace" (p. 48). Chapter 1 investigates the ways in which various agreements have

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sought to do so, consistent with principles of sovereignty, political independence, and territorial integrity.

These efforts confront what Williams calls "two buckets of conundrums" (p. 17) involving "complicated tradeoffs" (p. 49). In intrastate conflicts, the task typically involves competing non-state actors (such as paramilitary forces) and presents challenges with respect to disarming and demobilizing the combatants, perhaps sharing command and control or even integrating them into the national forces. In conflicts crossing national boundaries, it may also involve regional or international forces, whether provided by an ad hoc collection of states, a regional force, or a global force under UN auspices.

The bulk of the chapter reviews issues related to "sharing" the task with the international community, reprising relevant provisions of the UN Charter and distinguishing the four types of UN missions that have been used in this task: "peace making," "peacekeeping," "peace enforcement," and "peacebuilding." Among the challenges are issues related to the nature, mandate and configuration of the international forces, sharing force with non-state actors, disarming the combatants, and reintegrating them into civilian society or into the national forces—each of which may involve "complicated tradeoffs" (*id.*).

Power-Sharing. Recognizing that "political marginalization" (p. 50) is a nearly universal driver of conflict, Williams observes in Chapter 2 that effective arrangements for power-sharing can "enhance[e] the durability of a peace agreement" and "minimiz[e] the risks of tension and conflict between groups in ethnically or religiously heterogeneous societies" (p. 52). Depending on the circumstances, the parties' agreement may choose "horizontal" or "vertical" arrangements—the former involving executive, legislative, and judicial functions at the national level and the latter allocating authority between the national and subnational or local levels.

The chapter discusses the challenges to allocating legislative and executive authority on both axes and how they have been addressed through different state structures—for instance, on the horizontal plane through unitary and "devolved unitary," federal and confederal, and asymmetric allocations depending on the subject. It notes that power sharing can be useful in forging compromise between the parties engaged in peace negotiations but at the same time carries a very real potential for the parties to try to "retain their disproportionate access to political power and economic resources" (p. 53).

The chapter surveys how these challenges were addressed in a number of instances, including Bosnia and Herzegovina, Colombia, Indonesia/Aceh, Iraq, Macedonia, Nepal, the Philippines, South Africa, Sudan, and Yemen. It notes that such negotiations offer a "unique opportunity to innovate within frameworks of power-sharing" but can also serve as a disingenuous means of trying to "tip states back into conflict," so that parties "need to carefully consider each component of the decentralization process and its relationship to the unique challenges of a particular post-conflict setting" (p. 93).

Natural Resources. Issues concerning access to natural resources (and the distribution of funds generated by resource allocation) are a main driver of post-agreement conflict. In fact, Williams notes that "conflicts related to natural resources are twice as likely to revert to conflict in the first five years after the signing of a peace agreement" (p. 94). At the same time, properly negotiated approaches to natural resource ownership, management, and revenue allocation can be a "key factor in promoting a durable peace" (p. 95).

Chapter 3 discusses issues related to the "three main types of natural resource-based conflicts"—those relating to extractive resources (oil, gas, minerals, diamonds, timber), to land, and to water. It notes that such questions are often interwoven with other "conflict drivers" such as disenfranchisement of the local (especially Indigenous) population. In fact, "reallocation of natural resources is significantly more difficult to negotiate than topics in the political and security arenas" (pp. 99–100).

The chapter surveys "key state practice" in a number of areas, including ownership, management, and revenue allocation, giving particular attention to issues of timing, i.e., "where to

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place this discussion . . . on the timeline of the negotiation process" (p. 109). Examples are drawn from, *inter alia*, the "Kimberly Process" concerning "blood diamonds" and the experiences in Aceh, Yemen, Papua New Guinea/Bougainville, Sierra Leone, and Sudan.

Self-Determination. Noting that "[s]elf-determination and sovereignty-based conflicts are widespread" and often "deadly" (p. 124), Williams explores how various settlement agreements have addressed issues arising from the clash between the principles of sovereignty and territorial integrity, on the one hand, and the right to "external self-determination" on the other (p. 125). He notes that since 1991, twenty-seven new states have been created either through state dissolution or state succession (p. 132).

Various forms of "internal self-determination" can offer viable solutions "short of secession" when the relevant group possesses "a united identity that is sufficient for it to attain distinctiveness as a people" (p. 131). At the same time, "a durable peace" typically requires a transitional period of "shared sovereignty" as a prelude to independence (p. 136), as well as the use of referenda, phased institution building, and other power-sharing mechanisms.

Again surveying state practice, the chapter provides insights into the experiences in, *inter alia*, Bosnia and Herzegovina under the Dayton Accords, East Timor, Northern Ireland, Western Sahara, and South Sudan.

Governance. Chapter 5 addresses other issues concerning post-conflict governance that the parties may not have been able to resolve during the process of negotiating peace—in particular, the timing of national elections, how to address adoption of a new constitution or a modification of the existing one, whether to hold a public referendum, and how to address human rights issues in the light of specific cultural or religious contexts.

Williams notes that these issues may be "less clearly detrimental or beneficial" to the interests of the parties but they can nonetheless be "conflict drivers," and their resolution "remains essential for the successful implementation of any peace agreement" (p. 153). He gives particular emphasis to "participatory" constitution-drafting (p. 155) and the importance of "actively creating legal processes and procedures that govern how postconflict governance reforms are created and implemented" (p. 156).

Descriptions are given of a number of different approaches adopted in, *inter alia*, Bosnia, Iraq, Colombia, East Timor, Guatemala, Northern Ireland, and South Africa. Williams notes that "[d]espite the risks of committing a misstep while determining the processes for postconflict governance reform, the parties see including constitutional reform as an increasingly important component of peace negotiations" (p. 183).

The Conclusion. The final chapter reprises the substance of the various chapters and notes that "[t]he path to a sustainable peace" is not through armed conflict but requires the parties to identify the various puzzles that confront them and then "methodically addressing the conundrums that make up these puzzles . . . [w]orking through each conundrum and agreeing and drafting comprehensive and cogent legal provisions . . ." (p. 196).

III.

Both volumes are well-written, thoroughly researched and documented, and both provide essential background, insights, and guidance for lawyers engaged in efforts to prevent or conclude armed conflict and to advance the goals of peace and justice, whether in government, international and non-governmental organizations, private practice, or academia. Of course, each particular conflict is unique in its origins, so that the lessons drawn from one outcome (whether success or failure) are not necessarily applicable in whole or in part to any other.

Neither book purports to be a comprehensive "how to" manual but rather to offer useful and practical perspectives on the issues that arise generally in conflict settlement and peacemaking efforts. Both underscore that international law and international lawyers should and do play important roles in crafting interim arrangements to bring the fighting to an end and in establishing

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the conditions for a sustainable peace between the relevant parties.[2]

To that end, those involved need to be aware of the range of problems and possible solutions that prior experience has revealed. At the same time, the books beg the question whether any clear legal requirements or parameters actually exist for negotiating or concluding valid "peace agreements" or other post-conflict arrangements.

Historically, international law—at least in its classic Westphalian conception—excepted the sovereign's authority over the "internal" matters of his or her domain and recognized a *jus ad bellum* accepting (and to some extent limiting) their legal authority to resort to war or more generally to engage in armed conflict internationally.[3] Today, the first dimension is regulated by, *inter alia*, international human rights law; the second is primarily addressed (and sharply limited) by the UN Charter, which requires states to resolve their international disputes peacefully and broadly prohibits the threat or use of force by states (with a limited exception for self-defense) in preference for collective action under the authority of the UN Security Council.

For many, keeping the peace has always been the ultimate purpose of international law.[4] In recent years, a good deal of writing (and contestation) has been devoted to the question whether a "Right to Peace" has been recognized in international law. In 2017, of course, the UN General Assembly adopted a "Declaration on the Right to Peace,"[5] and the increased involvement of the United Nations in efforts to bring international armed conflicts to an end and prevent further violence is often cited to buttress that claim.[6] Some have seen in the development of such a right the emergence of a new rule of international law prohibiting armed conflict—a *jus contra bellum*.[7]

In fact, much of the debate about the proper role of the UN in this regard is framed in non-legal terms such as "conflict prevention and mediation," "peacemaking," "peacekeeping," "peace enforcement," and "peacebuilding."[8] The boundaries between these categories are often indistinct but taken together they describe a range of collective actions (sanctioned by the UN Security Council under Chapters VI and VII of the Charter) along a continuum from preventing armed conflict through containing and suppressing it to the restoration and preservation of international peace and security.

Thus, "peacemaking" typically encompasses efforts undertaken after a conflict has begun that aim at establishing a ceasefire or a rapid peaceful settlement, while "peacebuilding"

[2] Remarkably, neither book gives attention to the role played by the Conference on Security and Cooperation in Europe (now the OSCE) in negotiating the 1989 Joint Declaration of Twenty-Two States, which has been described as the "[f]inal [p]eace [a]greement" of World War II. *See* JOHN J. MARESCA, THE UNKNOWN PEACE AGREEMENT (2022).

[3] It also recognized *jus in bello* (the "corpus of the laws and customs of war"), regulating the conduct of parties to an armed conflict, which today is more commonly referred to as the "law of armed conflict" or "international humanitarian law."

[4] *See, e.g.*, JAMES BRIERLY, THE LAW OF NATIONS: AN INTRODUCTION TO THE INTERNATIONAL LAW OF PEACE (1928); HANS KELSEN, PEACE THROUGH LAW (1944); GRENVILLE CLARK & LUIS B. SOHN, WORLD PEACE THROUGH WORLD LAW (1958); Leo Gross, *International Law and Peace*, *in* LEO GROSS, ESSAYS ON INTERNATIONAL LAW AND ORGANIZATION (1984); PROMOTING PEACE THROUGH INTERNATIONAL LAW (Cecilia Marcela Bailliet & Kjetil Mujezinovic Larsen eds., 2015); Cecilia M. Bailliet, *Peace Is the Fundamental Value that International Law Exists to Serve*, 111 ASIL PROC. 308 (2017).

[5] GA Res. 71/189, Annex (Feb. 2, 2017); *see also* African Charter of Human and Peoples' Rights, June 27, 1981, Art. 23(1), 21 ILM 58 (1982) ("All peoples shall have the right to national and international peace and security."); William Schabas, *The Human Right to Peace*, 58 HARV. INT'L L.J. ONLINE 28 (2017), *at* https://harvardilj.org/2017/04/the-human-right-to-peace.

[6] *Cf.* Henry F. Carey & Rebecca Sims, *The International Law of Peace*, *in* PEACEBUILDING PARADIGMS: THE IMPACT OF THEORETICAL DIVERSITY ON IMPLEMENTING SUSTAINABLE PEACE (Henry F. Carey ed., 2020).

[7] ROBERT KOLB, INTERNATIONAL LAW ON THE MAINTENANCE OF PEACE: *JUS CONTRA BELLUM* (2018).

[8] *See* UN Peacekeeping, *Terminology*, *at* https://peacekeeping.un.org/en/terminology; *see also* Louis B. Sohn, *The New Dimensions of United Nations Peacemaking*, 26 GA. J. INT'L & COMP. L. 123 (1996); THE OXFORD HANDBOOK OF PEACEBUILDING, STATEBUILDING, AND PEACE FORMATION (Oliver P. Richmond & Gëzim Visoka, eds., 2021).

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normally refers to post-conflict activities intended to diminish the risk of renewed conflict. These are imprecise terms, however, and it is difficult to see where one stops and the other begins. Yet they share the goal (in the words of one proposed bill in the U.S. Congress to establish a federal "Department of Peacebuilding") of promoting "conditions conducive to both domestic and international peace and a culture of peace."[9]

Another term often used in this context to emphasize the importance of taking measures to address and resolve the claims of the victims of the conflict (especially in case of mass atrocities) is "transitional justice or governance." It has been described as comprising "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice, and achieve reconciliation."[10]

To embrace all of these considerations, the concept of a general *jus post bellum* has gained currency in recent years. While it too lacks a formal definition, it can be broadly understood to embrace the international law and practice related not only to prevention and termination of armed conflict and to maintaining the post-conflict peace by ensuring "transitional justice," but also to rebuilding post-conflict societies in accordance with internationally recognized principles of peace and justice and in an effort to prevent future conflicts.[11]

Against this (somewhat confusing) doctrinal background—and reflecting the profusion of peace agreements that have been concluded over the past few years—yet another term has recently gained some currency: *lex pacificatoria.* Broadly defined by some as the "law of the peacemakers," its substantive focus seems narrower—the law and practice specific to crafting the peace agreements themselves. In that conception, *lex pacificatoria* can be understood to reflect the "best practices" (if not the "required elements") involved in negotiating and concluding post-conflict "peace agreements" (however they may be defined). Its relationship with other legal doctrines such as *jus contra bellum* and *jus post bellum* is not entirely clear but has been the subject of recent academic discourse.[12]

Advocates for *lex pacificatoria* will find scant support in either of the volumes under review, despite their focus on peace agreements. In *Lawyering Peace*, Williams does not engage the issue, or even use the term (or *jus post bellum* for that matter). His five core "puzzles" focus on the substantive problems "needing resolution to achieve a durable peace" (p. 7). He does not ignore the legal dimension; indeed, each of his substantive chapters includes a "conceptual and legal primer" that includes discussion of the relevant norms and principles of international law. In Chapter 2, for example, he underscores the need to respect the fundamental legal principle of sovereignty as well as the formal mandates of UN peacemaking, peacekeeping, peace enforcement, and peacebuilding missions (p. 11). Nowhere, however, does he contend that the various

[9] Proposed Department of Peacebuilding Act of 2021, H.R.1111, introduced in February 2021 by Rep. Barbara Lee (California) to establish a new executive branch department "dedicated to peacebuilding, peacemaking, and the study and promotion of conditions conducive to both domestic and international peace and a culture of peace."

[10] *See* Report of the UN Secretary-General, The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, UN Doc. S/2004/616 (Aug. 23, 2004).

[11] There is extensive literature on the concept. *See, e.g.*, *Jus Post Bellum*: Mapping the Normative Foundations (Carsten Stahn, Jennifer S. Easterday & Jens Iverson eds., 2014); Larry May & Elizabeth Edenberg, *Jus Post Bellum* and Transitional Justice (2013); Robert A. Stein, Jus Post Bellum*: Justice After the War*, 27 Minn. J. Int'l L. 1 (2018); Just Peace After Conflict: *Jus Post Bellum* and the Justice of Peace (Carsten Stahn & Jens Iversen eds., 2020); Jens Iverson, *Jus Post Bellum*: The Rediscovery, Foundations, and Future of the Law of Transforming War into Peace (2021); Carina Lamont, International Law in the Transition to Peace: Protecting Civilians Under *Jus Post Bellum* (2022).

[12] *See, e.g.*, Christine Bell, On the Law of Peace: Peace Agreements and the *Lex Pacificatoria* (2008); Christine Bell, *Of* Jus Post Bellum *and* Lex Pacificatoria*: What's in a Name?*, *in Jus Post Bellum*: Mapping the Normative Foundations, *supra* note 11; Ghassem Bohloulzadeh, *The Nature of Peace Agreement in International Law*, 10 J. Pol. & L. 208 (2017); Asli Ozcelik, *Entrenching Peace in Law: Do Peace Agreements Possess International Legal Status*, 21 Melb. J. Int'l L. 190 (2020).

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peace agreements he surveys have given rise to unique norms of international law or that their negotiation is constrained by such norms.

In their introductory chapter to *International Law and Peace Agreements*, the editors explicitly raise "the complex relationship between peace agreements and international law, and particularly whether a specialised branch of international law, a *jus pacificatorium*, has emerged" (p. 2). More specifically, they ask:

> Is there a *lex pacificatoria* arising from within settlement practice, and what is the status of its normativity? How does this purported *lex pacificatoria* relate to international law, and does it give rise to a new branch of international law—a *jus pacificatorium* to supplement *jus ad bellum* and *jus in bello*? (P. 23.)

A few of the substantive chapters in the volume do engage with those questions. In particular, Philipp Kastner concludes not only that "a well-defined *lex* is hardly discernible" but that "it still seems impossible—and arguably undesirable—to determine *the* law of peace" (p. 184). Mark Retter cautions against "confusing positive legal normativity with other forms of normativity" and finds the concept of *lex pacificatoria* to be "too under-determinative in its criteria of inclusion to identify which (category of) principles arising from settlement practice are apt for crystallisation into international legal standards" (p. 568).

In his concluding chapter, Mark Wetter offers a comprehensive assessment of the relationship between international law and peace settlement practice across core settlement issues such as transitional justice, human rights, refugees, self-determination, power-sharing, and wealth-sharing. Granting that peace settlements may have a "normative import in the sense of shaping the expectations of the sides as to future conduct" (p. 698), and that international law "offers an important repository of standards to which the parties can refer when terminating a conflict and reconstructing societies" (p. 703), he finds it "difficult to point to new elements of international law that have been pioneered in this context and that arise only or principally in this context" (*id.*). In other words, in his view, there is no real "core of a *lex pacificatoria* that advances upon international law, by adding specific legal content unique to this field of enquiry" (*id.*).

IV.

Lawyers, especially legal academics, love labels. In the broad field of international law, formal terms (especially in Latin) are frequently used to articulate a hierarchy of norms[13] or at the least the proposition that some particular rule (or set of rules) is binding, compulsory, and non-derogable. In this instance, the suggestion is that in some fashion, a particular approach to negotiating peace agreements (or settlements) is obligatory, and/or that some specific substantive undertakings or restrictions must be included in the relevant agreement in order for it to be valid under international law.

Neither volume provides a basis for reaching such a conclusion—whether it is characterized as *jus* or *lex*. Rather, taken together these texts describe elements of emerging practice across a wide range of disparate conflicts which have been "settled" in different ways according to the specific situations. They describe points of similarity as well as distinction, and demonstrate that the "peacemakers" can learn from analyzing prior experiences, both the successful and the unsuccessful. Yet it remains clear that the path toward peace is situationally dependent.

Clarity and consistency can certainly be helpful in difficult negotiations (often if not always, at any rate). Is it required by international law in some form? It would seem incumbent on those who contend that specific elements, provisions, or characteristics are legally required—that is, must be included in a peace settlement agreement—to demonstrate how achieving peace will be facilitated by compelling negotiators to agree to certain formulations or provisions simply because they have been denominated "the law."

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[13] *See* Dinah Shelton, *Normative Hierarchy in International Law*, 100 AJIL 291 (2006).

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