1 Introduction

Matthew Saul and James A Sweeney

War can lead to the devastation of the infrastructure of a state. The extent of the devastation and lack of state capacity will mean that, in some instances, reconstruction is dependent on the willingness of external actors to provide assistance. This assistance can take the form of military, financial, technical, and administrative support and engagement.¹ The degree to which external support is provided can vary significantly, depending on a range of factors, including the perceived risks posed by the ineffective state for international peace and security and the realisation of human rights,² but also the strategic interests of influential states and the surrounding geo-politics. A review of practice over the last 20 years reveals a number of examples where circumstances surrounding a conflict have been such that there has been extensive international involvement in its aftermath. Prominent examples, which represent varying forms and levels of international engagement, include periods in the recent past of Cambodia, Haiti, Bosnia and Herzegovina, Sierra Leone, Kosovo, East Timor, Afghanistan, Liberia, and Iraq.³

The prevalence and importance of internationally facilitated post-conflict reconstruction over the last 20 years has stimulated the production of an extensive body of policy literature on best practice. This includes, for example, the several United Nations (UN) ‘Rule of Law Tools for Post-Conflict States’, which give practical advice on, inter alia, prosecution initiatives, vetting, reparations, and monitoring legal systems.⁴ Likewise there is a growing academic literature, a key focus of

³ These examples are prominent in the literature, see, e.g., R. Paris and T D Siak (eds), The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations (Routledge 2009); B. Bowdler, H Charlesworth and J Farrell (eds), The Role of International Law in Rebuilding Societies after Conflict: Great Expectations (CUP 2009); J Stromseth, D Wippman and R Brooks, Can Might Make Right? Building the Rule of Law after Military Interventions (CUP 2006).
which has been on how to make reconstruction processes more effective. Although there are no generally agreed upon indicators for measuring effectiveness, and the assessment of effectiveness has been approached in a variety of ways, a common theme of this literature can be summarised as to produce recommendations that will enhance the contribution of a reconstruction process to the development of a sustainable peace, understood as peace in which stability is secured independently, with respect for the rule of law and realisation of human rights.

Sustainable peace is an aim that can be connected to many international laws. The post-conflict state and the interested international actors (states and international organisations (IOs)) are bound by international law. As such, there can be hope that international law is operating so as to further best practices in post-conflict settings. At the same time, most international law has not been created with post-conflict reconstruction settings in mind. Indeed the role of law in transitional societies more generally is at least moot, leading to divergent notions of otherwise apparently universal concepts such as 'justice'. This raises the prospect that international law might be complicating the implementation of best practices and underpins the argument that it is important for the practice of post-conflict reconstruction to be studied from an international legal perspective. However, along with the developing nature of the policy debate, there is the breadth of areas of state that fall to be reconstructed, the different contexts at stake, the different actors involved, and the different bodies of international law involved. These considerations make the provision of a comprehensive account of how international law relates to policy in this field – an important, but demanding and ongoing task. The rest of this introduction will explain the particularities of why and how this book addresses the role of international law in the policy of post-conflict reconstruction.

**Background and purpose**

**The policy debate**

The present volume finds its point of departure in the extensive range of policy decisions with major significance for the future direction of a state and its population that can fall to be made in the aftermath of war. The prevalence of extensive international involvement in post-conflict reconstruction over the past 20 years has generated a considerable body of policy literature. This literature includes work that takes a more critical stance on the methods and underlying rationales of international actors who enable post-conflict reconstruction (e.g., Chandler's critique of the politics surrounding international state building practices, which are argued to involve obfuscation of the location of sovereign power through the backing afforded to domestic actors by the international actors that make reconstruction possible). It also includes work that takes a more practical, problem-solving approach. For example, Caplan's study of the functional areas of operation and challenges encountered by international administrators of territory following conflict, where challenges include the practicalities of exercising authority in circumstances where state infrastructure is lacking and support of the population is far from guaranteed, as well as the problem of ensuring meaningful accountability when the population has no formal power to influence the (de)selection of the international administrators. As a general matter, the question of approach is often one of degree; regardless of the perspective taken, there tend to be recommendations designed to help reach the overall goal of sustainable peace.

Policy work can also vary in terms of its breadth of focus. The literature has included studies that take a general approach, such as Paris' study that has argued – on the basis of a range of case studies – that there should be a move to ensure that state infrastructure is in place and functioning before attempts at democratisation. It has also included studies that are focused on particular sectors across...
The international legal debate

The need for investigation into how international law relates to the practice of conflict remains significant. The literature on post-conflict reconstruction and development is vast, with a focus on the role of international law. The cases of, for example, the United Nations, the International Criminal Court, and other international organizations are well documented. The literature on post-conflict reconstruction and development is well-developed, with ongoing discussions on the role of international law. The literature on post-conflict reconstruction and development is well-developed, with ongoing discussions on the role of international law.
on the reconstruction can be a matter that is undertaken by a domestic government alone, even where its authority is underpinned and potentially subject to influence from international actors. In this latter setting, the actors with political authority might not experience an impetus to address international law, but, even where they do, they might be less inclined to pursue novel readings of the law.

A number of studies have addressed how aspects of international law and its compliance machinery relate to post-conflict reconstruction practices in certain situations. This collection of writing, in common with the more doctrinal literature, includes a particular focus on international criminal law. For instance, through studying the complementarity principle, which necessitates genuine domestic proceedings to render the International Criminal Court (ICC) cases inadmissible, in relation to accountability practices in Uganda and Sudan, Nouwen has recently drawn attention to and helped to explain why there is a lack of evidence to support the view that the creation of the ICC will lead to an increase in domestic proceedings for crimes connected to conflict. A number of factors are found by Nouwen as compounding the unwillingness of domestic actors to act, including the failure of the complementarity principle to be deployed in a coherent manner that could strengthen its normative character.

Other strands of post-conflict policy and international law are also starting to be addressed. For instance, in a recent study on the regulation of sex between international personnel (e.g. peacekeepers, military contractors, and non-governmental organisation (NGO) workers) and local people, Simmons highlights (with three case studies on Bosnia, West Africa, and the Democratic Republic of Congo) the failings of international law in this area, many of which are connected to the mismatch between the central role of non-state actors and the state-centric nature of international law, which has underpinned the failure of states to exercise jurisdiction. In such a setting, the usefulness of the standards set by international law is argued to potentially depend on networked regulation in which a host of actors in addition to states, including NGOs, insurance companies, UN agencies, and the media, combine to give the law effect.

31 See M Saul, Popular Governance of Post-Conflict Reconstruction (CUP 2014) 29.
32 See A Orford, International Authority and the Responsibility to Protect (CUP 2011) 137, 190–2; drawing attention to how when protection is prioritized in the justification for international engagement, there is the potential for anything that might complicate this objective, such as parliamentary governance, to be restated as an unfounded luxury regardless of the actual underlying motivations.
33 For the concern that the field of transitional justice – particularly in the sense of strategies for dealing with past atrocities – is at risk of becoming overly focused on legal institutions in a manner that is disconnected from political realities, see K McEvoy, ‘Letting Go of Legalism’, in McEvoy and McGregor (n 15) 10, 30.
34 See S H Nouwen, Complementarity in the Line of Fire (CUP 2013) 397; the list of other important work connected to the operation of international criminal law in the aftermath of conflict includes, T Kibwara, Culture and Cross-Examination: International Justice and the Special Court for Sierra Leone (CUP 2009); I Mallinder, Apartheid, Human Rights and Political Transitions (Harv 2006); M Drumbl, Atrocity, Punishment, and International Law (CUP 2007).
35 G Simmons, Sex in Peace Operations (CUP 2015) 179.
36 Ibid at 190.

27 Bell (n 10); C Bell, On the Law of Peace: Peace Agreements and the Lex Pacis (OUP 2008).
28 Bell (n 10) 183.
29 Bell (n 10) 183.
30 See Sjöblad and Finzi's Bosnia & Herzegovina App Nos 27996/06 and 34836/06 (ECtHR, 22 December 2009), para 47; for commentary on the approach taken by the Court, compare C McCrudden and B O'Leary, Courts and Convictions: Human Rights versus Power-Sharing (OUP 2013) 149; with S Wheatley, 'The Construction of the Constitutional Potentials of Democratic Politics by the European Court of Human Rights following Sjöblad and Finzi', in R Dickinson, E Katzeli, C Murray and OW Pedersen (eds), Examining Critical Perspectives on Human Rights (CUP 2012) 173.
In addition, it is important to note the recently completed study by Saul, which has been central to the development of the current volume. Saul's study addressed the way in which international law relates to the practice of popular engagement in the governance of post-conflict reconstruction.37 By studying the contrasting situations of Sierra Leone and Afghanistan in the light of the international law on self-determination and political participation, Saul has drawn attention to the normative impetus international law can create for a proactive approach to the involvement of the population in decision making on reconstruction of the state. But this study has also shown how the usefulness of the law depends on the commitment of the actors with authority to operate in good faith in the best interests of the population; where good faith is lacking, and the actors are not susceptible to the implicit compliance pull of the law, a problematic accountability gap is argued to exist.

The more applied studies help to bring into focus the ways in which international law can interact with the political contexts of post-conflict situations. It is often not as simple as international law specifying conduct and this being followed or ignored in practice. The meaning of international law for a context can be contestable.38 This, accompanied by variation in the key stakeholders and interests, can entail differences in the strength of its normative character from situation to situation. This, in turn, can have implications for the space that is available for policy manoeuvres to be determined by the needs of the context. The studies of law in practice have, though, tended to be focused on particular types of situations and on particular policies and international law. This can lead to the interconnected nature of many reconstruction initiatives being under appreciated. It also limits the scope for generalisations about the relevance of international law. To generate and strengthen a broader understanding of the relevance of international law for the policy of post-conflict reconstruction requires a more complete study of the phenomenon, one that considers different areas of practice, in different situations, and with different bodies of international law, alongside one another. In this respect, there are a number of important projects that have informed and helped to refine the focus of the present book.

One important body of work that the present volume connects to addresses the concept of jus post bellum. This can be understood as "[the] laws and norms of justice that apply to the process of ending war and building peace."39 There is no clearly established international legal framework that has been created specifically for the aftermath of war.40 Rather the recent call for international lawyers to think in terms of jus post bellum – included in the work of Stahn on this topic – can be seen as a call to identify the law that is applicable in the post-conflict setting, to assess its relevance, and to think about its scope for adaptation through new law. To date, a number of publications contribute towards this objective. In particular, Kleffner and Stahn's book, which addresses a range of issues related to the possible conceptualisation of the legal framework applicable in the aftermath of war as device for jus post bellum, and the follow-up volume by Stahn, Easterday, and Iverson, Jus Post Bellum, which alongside theorising on issues on jus post bellum from a range of perspectives, includes chapters that address how international law relates to particular post-conflict practices, such as the creation of popular governments, the negotiation of status of forces agreements, and the protection of the environment.

The concept of jus post bellum is particularly useful as a tool for drawing attention to the need to study the operation of international law after conflict, on the basis that the aftermath of conflict is a period that is not generally regulated by the laws of war, but is not quite akin to a time of peace. Analysing practice from the perspective of jus post bellum also provides a useful basis for reflecting on the adequacy of what exists in terms of legal regulation and what might be developed. Still, the usefulness of jus post bellum as an analytical tool for present purposes is challenged by the contested nature of the guiding principles and the breadth of subject matter that is covered; this includes, but reaches well beyond, reconstruction practices; as well as the type of situations for which it would apply, with the normative standards arguably requiring divergence depending on whether the international actors have been a party to the original conflict or are joining subsequently to assist.41 Moreover, as the jus post bellum concept is inherently associated with moral postulates, it could be that its adoption would complicate, rather than facilitate, the analysis in a study that is interested in shedding light on how international law connects with policy postulates.42 Accordingly, the present volume does not expressly adopt jus post bellum as an analytical framework. Nonetheless, by addressing a broad range of areas of reconstruction, it has the potential to contribute to a number of the key themes in the jus post bellum debate, such as what sort of

37 M Saul, Popular Governance of Post-Conflict Reconstruction (CUP 2014).
38 This can impact on the capacity of international law to serve as a mediating concept during the movement from the political and legal structures of one regime to another; see, for the idea of international law as a mediating concept in transitions from authoritarian regimes and democracies, R Teitel, Transitional Justice (OUP 2000) 20-21.
40 On the various bodies of international law that can be applied, see V Chetail (ed), Post-Conflict Peacebuilding A Lexicon (OUP 2009) 18 highlighting 'international humanitarian law; international human rights law; international criminal law; international refugee law; international development law; international economic law; the law of international organisations; the law of international responsibility; the law relating to the peaceful settlement of disputes; treaty law which governs in particular ceasefire agreements; and the law relating to the succession of states in the case of territorial dismemberment due to conflict.'
42 See, e.g., the debate on whether victory in war implies a post-conflict obligation to rebuild: Chayes (n 8); G Verdrie, 'What to Make of Jus Post Bellum: A Response to Antonia Chayes' (2013) 24 European Journal of International Law 307.
topics might benefit from new law, what form of law is most useful in post-conflict settings (e.g. principles or rules; of a certain or uncertain nature), and, through the study of practice, might also provide a basis for reflecting on the identity and contents of the debated key guiding principles of jus post bellum.  

Another study of a general nature that has not explicitly adopted jus post bellum as a framework for investigation is Bowden, Charlesworth, and Farrell’s edited book from 2009, The Role of International Law in Rebuilding Societies after Conflict. Through chapters on issues including the role of international law in circumstances of beligerent occupation, the way in which definitions of democracy at the international level have the potential to relate to practice, the nature of rule of law promotion by the UN Security Council (UNSC); the role of treaty ratification and the role of international human rights law as a source of accountability for UN missions, the book has, amongst many other important contributions, helped to uncover some of the diverse roles that international law can undertake in relation to post-conflict reconstruction that is dependent on external intervention, including, ‘tempering, regulating, legitimating and undermining’. The chapters of this book also provided the basis for the concluding chapter by Braithwaite. Here, attention is drawn to the importance of not evaluating ‘international law as a framework that sits alone above the fray, but as a strand in a web or fabric of controls’, as well as to how discrete initiatives, which can appear disconnected because of different actors, locations, and themes, can serve to weave together a rich framework of peacebuilding regulation. The present book seeks to build on these findings by both focusing on and deepening the enquiry into the question of international law regulating the policy making across different areas of the reconstruction process.

With regard to influencing policy makers, both domestic and international, it is important to clarify the way in which international law might exert its influence. This relates to the 2012 volume from Kristjandottir, Nollkaemper and Ryngaert, International Law in Domestic Courts: Rule of Law Reform in Post-Conflict States. This book brought together scholars to examine in detail attempts that were made in certain significant post-conflict or post-authoritarian situations to strengthen the domestic rule of law with the aid of international law. Through chapters on a range of countries, such as South Africa, Bosnia, Afghanistan, Iraq, Rwanda, and Russia, this book has helped to show the basis for international law to be applied by domestic institutions as well as the limitations and effects of this practice. In particular, it has shown that international law has the potential to be used by domestic courts in the aftermath of war as a means of locking in certain normative considerations. However, it has also drawn attention to the scope for and value of such efforts to be linked to the nature and functionality of the domestic judicial infrastructure. This signals that it is in countries that have been most devastated by conflict that there is likely to not be a possibility to turn to domestic courts for accountability, and here that the scope for accountability to be provided through the international legal order is at its strongest. Accordingly, the present volume is concerned both with the scope for a state to be constrained by the operation of international law through its own domestic legal order, but especially and in some instances essentially only, through its operation in the international legal order, where the compliance pull is generated through a range of social mechanisms – persuasion, coercion (implicit and material) and acculturation.

From surveying the existing policy and international legal literature, it is evident that there is scope for international law to exert influence on the practice of post-conflict reconstruction, but not necessarily always in an effective manner and not always in a useful manner from the perspective of the move towards a sustainable peace. It is also apparent that to help develop understanding of the role of international law in policy making and implementation, there is a need to combine doctrinal work with deeper practice-based analysis of the sort that can help to highlight the way in which complexities in the law feed into the complexities of particular contexts. This need is starting to be met with a growing number of studies that take a more applied approach to the analysis of international law after conflict. But there are areas of practice that remain significantly understudied (including some of those addressed in this volume, such as security sector reform (SSR), economic reform). Moreover, the sector-specific focus of many of the existing studies does not facilitate general arguments as to the role of international law in the policy of post-conflict reconstruction. It is the need for a sustained and more complete focus on the practice and international law for the policy of post-conflict reconstruction, as a means of furthering understanding and contributing to debates in international politics and law, whilst also contributing to the resource pool for policy makers, which the present volume seeks to help satisfy. It does so in the following ways.

Method

The book as a whole is concerned with three main questions. One is more descriptive: how does international law regulate policy making on post-conflict reconstruction? Two questions are of a more applied nature: how does international law...
law relate to the implementation of the best practice postulates on post-conflict reconstruction? What potential is there for international law to be harnessed more effectively towards the interests of achieving a sustainable peace through reconstruction after conflict?

To shed light on these questions, the book presents, and in the concluding chapter draws together, the individual studies of a group of scholars, with a range of backgrounds but a common research interest in how international law connects with the aftermath of conflict. The topics covered in the book include foundational issues for the reconstruction of the state: identifying an interim government (Saul); the involvement of IOs (O’Donoghue); gender policy (Swaine); justice for past atrocities (Jones); as well as matters of reform: constitution (Turner and Houghton); rule of law (McAuliffe); security sector (Sharp); economic reform (Mardikian); and issues of administration: the media (Buysse), legal empowerment (Waldorf), internal displacement (Sandvik and Lemaître), and displacement and property (Sweeney).

Across the book a range of situations are covered, many as case studies. These are spread throughout the book and consider a range of contexts including: Afghanistan, Timor-Leste, Liberia, Sierra Leone, Somalia, Kosovo and Bosnia. A common link is the extensive nature of international involvement, which places external actors in a position to exert an influence along with domestic actors as to how the state is reconstructed, whilst also creating particular challenges of accountability, and the matching of local and international expectations. An exception to the extensive international involvement is the case study on Colombia, where the civil conflict, ongoing since 1964, is largely focused in rural areas, and there is a strong administrative state and a growing economy. Still, nearly 6 million people are internally displaced as a result of armed conflict, creating challenges that can usefully be compared to those in faced in post-conflict situations where international support is required for administration to proceed.

The content of the book has been developed on the basis of a set of issues that the authors were encouraged to address in each of the chapters. In particular, they were encouraged to offer an account of the particular policy area/debate; details on the nature of the international law that is potentially relevant for this area/debate (both substance and compliance mechanisms); an exploration of how the legal framework relates to practice (has the law been complied with, has it not, what sorts of consequences can be construed from the current condition of the law?); and a contemplation of the implications of the analysis of the role of international law for the policy debate. The extent to which these aspects are covered varies from chapter to chapter, depending on the particular theme and interest/expertise of the author, but the guidance is reflected in all of the chapters and this has helped to facilitate the coherence of the book and the drawing of overall conclusions.

The coherence of the book has also been aided through two workshops. The first was held in Durham in June 2013 and at that point was made possible by the financial assistance of Law and Conflict at Durham (now Law and Global Justice) and Durham Global Security Institute. A second was held under the auspices of the Lancaster Centre for International Law and Human Rights in June 2014, and was made possible by the financial support of Security Lancaster. The two workshops brought together most of the authors and also interested faculty from the two institutions to discuss the contents of the chapters, which were at an early stage in Durham and close to completion in Lancaster. The workshops allowed for the cross-fertilisation of ideas amongst the experts involved in a manner that has undoubtedly benefited the individual chapters, but has also facilitated the identification of the common themes of the chapters that speak to the main research questions of the book and are addressed in the conclusion.

**Defining post-conflict reconstruction**

Before providing chapter overviews, it is useful to address the meaning of one of the key concepts of the book, post-conflict reconstruction. Post-conflict reconstruction is a term without definitive meaning that can encompass a broad range of circumstances. Through the circulation of a concept paper, the individual authors were made aware of the sort of situations and activities that were most central to the main research problem of the book. There was, though, no attempt to limit the individual authors to work with specific definitions, and where an author takes a particular position on definitions that author can be expected to have been explicit on this point. It is, though, possible to note some commonalities in the chapters which help to give meaning to ‘post-conflict’ and ‘reconstruction’ in the context of this book.

In terms of ‘post-conflict’, most of the chapters in this book focus on situations in which the main hostilities have ended but domestic government remains unable to assert effective control (in the sense of an ability to preserve public order) over the territory in question without external assistance. Numerous factors have contributed to the environments that are studied, including weak state and civil infrastructure, and the persistence of low-level violence stemming from ‘criminal elements generated by the war-time economy, demobilised but not demilitarised or reintegrated ex-combatants… frustrated expectations of rapid reconstruction and large-scale unemployment’. Indeed, in many of the situations considered there has not been a clear demarcation between conflict and post-conflict. What has been a common theme in the situations studied is a sufficient decrease in hostilities for the commencement of efforts at reconstruction, often, though not always, in a manner dependent on international actors.

---


In terms of the meaning of ‘post-conflict reconstruction’, the focus of the chapters individually and as a whole generally fits with the idea that it is a reference to the ‘mechanics of achieving a stable, reconstituted, and sustainable society after conflict’. 56 Reconstruction can cover matters of security, governance, transitional justice, rule of law, and economy. It can involve reform of infrastructure, physical construction, and more ad hoc projects, such as a programme of disarmament, demobilisation, and reintegration (DDR). In this sense, reconstruction is part of the peace-building project, the aim of which Boutros Boutros-Ghali (as UN Secretary General in 1992) defined broadly as measures taken to ‘not only consolidate peace after war, but also to prevent renewed violence in countries that had recently experienced conflict’. 57 In addition, the concept of reconstruction has generally been used to cover the reform and capacity building activities that are often addressed under the heading of state building, when the latter is seen as ‘a call for paying greater attention to strengthening or constructing effective and legitimate governmental institutions as an important element of peace-building’. 58

Chapter overviews

The book is comprised of three parts. Part I is concerned with foundational matters: the things that need to be in place in order for reconstruction to proceed. It addresses identification of interim governments, the framework for accountability of IOs, the cross-cutting issue of gender, and the approach to accountability for past atrocities. Part II moves the focus to questions of reform with chapters dealing with the drafting of new constitutions, reform of the security sector, the development of the rule of law, and economic reconstruction. Part III turns attention to matters of administration, including the approach taken to regulation of the media, internally displaced persons, the legal empowerment of particular groups, and property restitution. The book concludes with a chapter drawing together the main findings from each of the chapters, reflecting on the insights that they provide for the three main research questions, and considering the implications for related debates and future research.

Foundational issues

Part I commences with Saul’s chapter on the identification of an interim government to lead post-conflict reconstruction. The chapter takes as its departure point the call for local ownership of post-conflict reconstruction. This directs that in the interests of the legitimacy and effectiveness of reconstruction initiatives, decision-making should be locally driven, but that the approach taken (in terms of extent and manner of local participation) should depend on the context. 59 By identifying the extent international legal framework for the creation of interim government in the laws of sovereignty and self-determination, and considering how this law relates to practice, especially events in Afghanistan, Saul’s chapter draws attention to how international law in this area largely overlaps with the best practice postulate of local ownership and that the current underdeveloped condition of the international law on governmental status can be connected to a number of positive aspects of practice in this area. However, potentially more problematically, the chapter also demonstrates how current international law leaves scope for the broad interests of the population to be overlooked in the process of identifying an interim government. The potential for international actors to be supporting a domestic government with little claim to be an embodiment of the constituent people is a key reason why it is important to consider how international law relates to and potentially regulates other policies of post-conflict reconstruction that can fall to be made by such a government.

Chapter 3 picks up on the theme of the responsibility of international actors for how post-conflict reconstruction unfolds. More specifically, O’Dononhue focuses on the nature of the obligations of due diligence that accompany the involvement of IOs in post-conflict reconstruction. The issue of accountability of IOs operating in post-conflict contexts has been the subject of considerable debate, not least because of the absence of IOs as parties to key international human rights instruments and the immunity that staff members enjoy from domestic jurisdiction. 60 Drawing on the resurgence of interest of the concept of due diligence in international law as a general matter, the chapter makes the case for the engagement of IOs in the aftermath of conflict to be subject to particular due diligence obligations that can help to prevent negative impacts from arising in the first place. The call has relevance for all situations where IOs operate, either as direct administrators, as was the case in Kosovo, or as assissitors to domestic governments, as in Sierra Leone.

Chapter 4 examines attempts made by the international system to translate a set of UNSC resolutions on ‘women, peace and security’ into practical strategies aimed at furthering their implementation through policy innovation in post-conflict reconstruction. Swaine’s chapter is situated in the existing critiques by feminist legal scholars and practitioners alike of the potential offered by international law frameworks in advancing and securing gains for women in conflict and post-conflict processes. The work of governments and IOs in these contexts has also been critiqued both for overlooking the relevance of gender as a critical analytical frame, as well as failing in their practice, to reform the systemic gendered order that works to exclude women’s equality concerns across the spectrum of

56 Nio Ailin, Haynes and Cahn (n 8) 87.
59 T Domme, Peacebuilding and Local Ownership: Post-Conflict Consensus Building (Routledge 2012).
60 Simm (n 33); G Verdriame, The UN and Human Rights: Who Guards the Guardians? (CUP 2011).
post-conflict reconstruction processes. By critically assessing the utility of attempts to translate the UNSC resolutions into practical strategies, paying particular attention to the example of Liberia’s development of a National Action Plan on women, peace and security, the chapter demonstrates what it means to attempt a bureaucratic translation of a resolution of the UNSC into state-level administrative tools. Swaine argues that in post-conflict reconstruction, instruments such as the UNSC resolutions should be practically oriented towards tackling the root causes of the obstacles faced by women: the gender inequalities that pre-empted the conflict and endure in its aftermath.

Chapter 5 turns to the debate surrounding accountability for past atrocities following conflict, where recognition of the importance of justice for sustainable peace is tempered by calls for account to be taken of context in arriving at answers to the myriad of questions that can arise for policy makers.61 The particular focus of Jones’ chapter is on the extent to which international law and the ICG’s complementarity regime, which regulates the relationship between the ICC and domestic criminal justice institutions, restricts policy makers in developing responses to mass atrocity that respond to local factors. The chapter draws attention to the importance of a number of contextual considerations, including the resources available for the pursuit of justice, and local politics, but places a particular emphasis on the needs and aspirations of affected communities; an emphasis that is in line with the observation of Mani that ‘if ideas and institutions about as fundamental and personal a value as justice are imposed from outside without an internal resonance, they may flounder, notwithstanding their assertion of universality’.62 Drawing on doctrine and examples from practice, the chapter presents the argument that whilst international law provides a flexible framework for post-conflict accountability, the ICC has potential to inhibit the development and implementation of ‘situation-specific’ approaches to mass atrocity. It also calls attention to indications that the practice of the ICC is having a streamlining effect on the form and function of domestic and internationalised justice mechanisms and argues that this should be responded to by policy makers as well as by organs of the ICC.

Reform issues

The first issue of reform to be addressed is found in Part II, Chapter 6 on the practice of constitution making. The act of constitution making is readily recognised as a key feature of many transitions from conflict to peace. The gathering of key stakeholders to determine how to allocate authority throughout the state and the nature of the fundamental principles upon which the state will be governed can be both a transformative moment, but can also be an area for contestation and resumption of disputes amongst different stakeholders. The questions of which actors will be involved, on what terms, and to what ends are central to productiveness of a process, but also can be a source of contestation. The policy debate in this area is intense and context driven, reflecting a number of different positions, with some, for instance, recognising that there can be merit in delaying dealing with contentious issues and stressing the importance for the contextual relevance of a constitution that its development is guided by domestic politics rather than lawyers or philosophers,63 with others highlighting the challenges that can arise from delay and noting that in some instances there is a need to work for a balance between external imposition and internal populism.64 By exploring the various ways in which international law can and has, in fact, interacted with constitutional processes, particularly the recent process in Somalia, Turner and Houghton’s chapter recognises the importance of contextual sensitivity, but suggests that ultimately the most useful course is likely to require closer dialogue between law and politics in order to address some of the tensions inherent in trying to restore fractured sovereignty through constitutional transformation.

In Chapter 7, Padraig McAuliffe turns his attention to the issue of rule of law reform. The development of the rule of law following conflict can include the creation and strengthening of institutions, such as the judiciary and oversight commissions, the promulgation of new law and the updating of existing law. Amongst other things, rule of law reform can be a means to address the fact that conflicts can often be traced to non-transparent and corrupt governance, which, if left unaddressed, can resume in the period following conflict.65 McAuliffe’s chapter recognises the importance of rule of law reform, but draws attention to the reality of the limited resources that marks rule of law reconstruction in practice. This question of resources is argued to lead policy makers to rationalise and prioritise activities so as to avoid a mismatch of expectations and both international and domestic capabilities. A particular focus of the chapter is on where the balance of focus should be with regard to reforming extant and potentially peace destructive ordinary law and the question of combatting impunity for past human rights violations. McAuliffe’s chapter draws on examples from a range of practice to argue that, in many instances, there can be a case for prioritising ordinary law reform over the issue of addressing acts committed during conflict, though McAuliffe’s recognises that the Rome Statute obligations can be a potential obligation to such a course of action.

---

61 See, e.g., Lundy and McGovern (n 9) 102–103.
63 See H Lerner, Making Constitutions in Deeply Divided Societies (CUP 2011) 234.
65 See C L Sriman, (Re)building the Rule of Law in Sierra Leone: Beyond the Formal Sector?, in C L Sriman, O Marín-Ortega and J Herman (eds), Peacebuilding and Rule of Law in Africa: Just Peace? (Routledge 2011) 127, 141; Srommert, Wippman, and Brooks (n 5) 6–7; see Richmond, ‘The Rule of Law in Liberal Peacebuilding’, in C L Sriman, O Marín-Ortega and J Herman (eds), Peacebuilding and Rule of Law in Africa: Just Peace? (Routledge 2011) 44, 50.
In Chapter 8, Dustin Sharp addresses SSR. Common elements of SSR include the structural arrangements and training of armed forces and the police. The terminology of SSR can also be extended to include activities that include non-state actors, such as DDR programmes that target and provide support for combatants in the hope of encouraging them to give up their weapons and return to civilian status. In analysing how SSR relates to international law, particularly international human rights law, Sharp’s chapter is more focused on reform of the state-based institutions. With access to a broad body of policy literature, Sharp draws attention to the disconnect between the type of security forces portrayed in the policy literature, accountable, human rights abiding, and the approach that is taken is practice where human rights ideals can appear to be too readily elided in the interest of expediency. Sharp argues that more attention to the content of the relevant international human rights obligations in the policy work could be one way of working towards a closer resemblance between the ideals and practice of SSR.

Chapter 9, the final chapter in Part II addresses economic reconstruction. The advantages for peace and stability that are associated with economic prosperity and development help to explain the centrality of the economy in programmes of reconstruction in the aftermath of war. Especially where economic disparities have helped to fuel violent conflict it is seen as vital that measures are taken to ‘promote economic development that can improve the general welfare and thus weaken the economic foundations of political violence’. The nature of these measures should depend on the context, but there is a striking consistency across situations in the reform of institutions, regulations, and policies, in a manner intended to develop a free-market economy. Mardikian’s chapter picks up on this contradiction. In assessing how the economic right to self-determination relates to the process of economic reform, particularly in East Timor, she draws attention to how in a formal sense a government might be afforded the right to determine its economic infrastructure, but if it seeks membership of the international community, the actors with the resource for reconstruction, it will find itself influenced by the norms and rules of this community. The result is that the right to economic self-determination is arguably becoming substantiated by the practice of internationally enabled post-conflict reconstruction.

66 OECD (n 62) 5; see also DDR, L Waldorf, “Getting the Gunpowder Out of Their Heads”: The Limits of Rights-Based DDR (2013) 35 Human Rights Quarterly 701.
68 Caplan (n 12) 136.
70 This links into the call from Melandri (n 10) for more attention to be given to how international statebuilding relate to the development of the meaning of the right to self-determination in international law.

Administration issues

Part III of the book begins with a chapter by Antoine Buyse, which addresses the administration of the media sector. The media can be a key site in a state during a period of post-conflict reconstruction. By making information available and publicising the views of different groups, a free and diverse media can facilitate transition in numerous ways, including by encouraging the development of a culture of transparency and accountability. However, as Buyse highlights, the media can also operate in a manner that leads to destabilisation, by spreading what Buyse terms ‘dangerous expressions’. This can create a tension for administrative authorities, one which is not necessarily answered through recourse to international law, where the right to freedom of expression might be read as competing in some instances with other rights, such as the right to life. Buyse’s chapter, with a focus on Bosnian and Kosovo, examines how the tensions in policy objectives and tensions international human rights law have worked out in practice. Buyse’s analysis indicates the significance of the tensions and the absence of ready answers as to how they should be resolved. In such settings, it can be tempting for a stakeholder to overlook international human rights law, for it to fall into the background, but Buyse draws attention to the proportionality assessments that are required for any limitation of international human rights law as providing a framework that should be used to structure thinking on the approach to be taken in a particular instance.

Chapter 11, by Lars Waldorf, turns attention to the issue of legal empowerment in post-conflict situations. Legal empowerment is concerned with expanding access to justice for the poor with a view to enabling them to use the law to advance their rights and demand social goods. The dramatic surge of legal empowerment programming over the past ten years in post-conflict states can be read as a response to a need for a counterweight to rule of law programming. As Waldorf notes in this chapter, where rule of law is top-down, state-centric, formal, and apolitical, legal empowerment is bottom-up, civil society focused, informal, and political. There can, though, be a tendency for legal empowerment to also be approached in a top down manner. Through particular attention to work of the United Nations Development Programme (UNDP) on legal empowerment across a range of post-conflict settings, Waldorf’s chapter draws attention to the scope for international human rights law to be a factor in removing the distinctive features of legal empowerment, such as allowing international actors to take the local law as it is. International human rights law is identified by Waldorf as part of the normative environment which leads the UN to ‘hybridise the norms, institutions, and practices of [local] customary law so they comply with global rights norms’.

Chapter 12 explores the challenges of responding to displacement in the Colombian context, where pervasive violent conflict coexists with a constitutional democracy. In Colombia, there are nearly 6 million internally displaced persons. Sandvik and Lemaître track the almost parallel development of international law and Colombian domestic law in this area, before turning to consider how changes in the domestic legal framework dealing with internally displaced people have affected the conditions for displaced women’s legal mobilisation. The authors
describe the important role of the Constitutional Court drawing upon international instruments (such as the UN Commission on Human Rights, Guiding Principles on Internal Displacement),\textsuperscript{71} to give judicial meaning to policies to address the humanitarian emergency of displacement, as well as the subsequent turn to transitional justice under the new administration as a basis for addressing the effects of armed conflict, including alteration of the legal framework for dealing with internal displacement by the 2011 Victims’ Law. The authors draw on extensive first-hand empirical research with women’s organisations to illuminate what the existence of the two domestic regimes both informed by different international frames has meant for internally displace women, particularly with regard to identity, access to justice, and the security of displaced women. The chapter calls for more scholarly attention to be given to the messy complexity that arises from the deployment of progressive law, both domestic and international, in violent contexts.

Chapter 13 continues on the theme of displacement. Sweeney adopts a critical stance on the relationship between law and policy in the area of post-conflict housing restitution. The UN’s Basic Principles and Guidelines on the Right to a Remedy are examined and particular attention is paid to the Pinheiro Principles. Judged against such best practice policy guidance, the failure of international human rights courts and tribunals to recognise a free-standing right to restitution might seem problematic. However, the chapter argues that the state of the law is more complex than it appears, and identifies that the ‘legal’, corrective approach to restitution embodied in the Pinheiro Principles has, in any event, fallen out of favour. Instead, the complex and occasionally non-ideal findings of, in particular, the European Court of Human Rights show that a more flexible, arguably ‘transitionally relativist’, approach is sustainable.

Chapter 14 draws the individual chapters together in an attempt to shed further light on the three main research questions that underpin the book as a whole. A key argument of the book is that international law’s role in relation to post-conflict reconstruction policy can vary according to area of reconstruction, the body of international law, the type of situation, and the identity of the actors with decision-making authority. This, as the conclusion sets out, has significant implications in terms of the scope for generalisations about the role of international law in the policy of post-conflict reconstruction, including with regard to how existing international law might be most usefully harnessed to allow for the realisation of the goals of international law whilst also furthering the effectiveness of post-conflict reconstruction as a route to sustainable peace.