

RESEARCH ARTICLE

Human rights in territorial peace agreements

Nina Caspersen*

Department of Politics, University of York

*Corresponding author. Email: nina.caspersen@york.ac.uk

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Abstract

Justice and peace are commonly seen as mutually reinforcing, and key international peacebuilding documents stress the importance of human rights. Is this apparent normative shift reflected in post-Cold War peace agreements? The existing literature is divided on this issue but has crucially treated both conflicts and peace agreements as aggregate categories. This article argues that the conflict type and the agreement's 'core deal' impact on the inclusion, or exclusion, of human rights provisions. Based on new coding of the 29 comprehensive agreements signed between 1990 and 2010, it compares agreements signed in territorial and non-territorial conflicts, and agreements with and without territorial autonomy. Qualitative Comparative Analysis is used to examine the different combinations of conditions that led to the inclusion of human rights. The analysis finds that agreements signed in territorial conflicts are significantly less likely to include effective human rights provisions, especially if the settlement includes territorial autonomy. Moreover, such provisions tend to be the result of high levels of international involvement, and the consequent lack of local commitment, or outright resistance, undermines their implementation. These findings point to important trade-offs between group rights and individual rights, and qualifies the notion of a liberal peace.

Keywords: Peace Agreements; Human Rights; Territorial Autonomy; Territorial Conflicts; Liberal Peace

Introduction

Since the end of the Cold War, human rights have come to be seen as central to the promotion of sustainable peace. As the UN Secretary-General put it in a 2004 report, 'Justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing strategies.'¹ Or as Myron Weiner more mockingly suggested, 'all good things go together'.² Human rights are highlighted in key peacebuilding documents, including an Agenda for Peace (1992), the Brahimi Report (2000), and the Responsibility to Protect (2001),³ and Christine Bell argues that this normative shift is also reflected in peace agreements.⁴ She suggests that human rights have become 'the universally recognized chic language' in which peace agreements are written⁵ and identifies a rapidly evolving new Law of Peace, which includes robust individual human rights protection, minority rights protection, and transitional justice.⁶ However, other authors have questioned the centrality of human rights in post-Cold War peace agreements, pointing to the interest of

¹United Nations, 'The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies', Report of the Secretary-General (New York, 2004).

²Myron Weiner, 'The clash of norms: Dilemmas in refugee policies', *Journal of Refugee Studies*, 11:4 (1998), p. 442.

³Madhav Joshi, Sung Yong Lee, and Roger Mac Ginty, 'Just how liberal is the liberal peace?', *International Peacekeeping*, 21:3 (2014), p. 367.

⁴Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (Oxford: Oxford University Press, 2008).

⁵Christine Bell, *Peace Agreements and Human Rights* (Oxford: Oxford University Press, 2000), p. 297.

⁶Ibid.

wartime leaders and external powers.⁷ Madhav Joshi, Sung Yong Lee, and Roger Mac Ginty endeavoured to settle this debate and found that more than 90 per cent of peace agreements include provisions related to at least one of the following: human rights, refugees/IDPs, or minority/indigenous rights.⁸ They argue that this ‘suggests a very strong commitment to the human rights aspect of the liberal peace’, but they also note that a significant minority (38 per cent) do not make provision for improved human rights practice.⁹

Existing research on human rights in peace agreements has treated both conflicts and agreements as aggregate categories. However, this article argues that the type of conflict that the settlement is trying to resolve impacts significantly on the inclusion, or exclusion, of human rights provisions. Territorial conflicts, as opposed to conflicts over the nature of the government, are about the status of a particular territory and the dominant group within it. Individual human rights are not central to the claims made. Moreover, the dominant solution to territorial conflicts is territorial autonomy,¹⁰ which has been criticised for denying the rights of minorities within the autonomous region¹¹ and may leave little space for (individual) human rights protections.

The two main research questions explored in this article are therefore: (1) how are human rights provisions in peace agreements affected by the type of conflict; is there a significant difference between territorial and non-territorial conflicts? (2) how are human rights provisions in peace agreements affected by the ‘core deal’, in particular the inclusion of territorial autonomy? As a secondary research question, the article also examines how these provisions fare during the implementation phase. This matters for two reasons: Firstly, we need to consider if the inclusion of human rights provisions in a peace agreement is actually of importance. Secondly, the type of conflict/agreement could also affect the ease with which human rights provisions are implemented. These research questions will be explored through a comprehensive analysis of human rights provisions in post-Cold War peace agreements. The analysis is based on new and detailed coding of the 29 comprehensive agreements that were signed between 1990 and 2010. These agreements were identified using the Peace Accords Matrix (PAM)¹² that includes all comprehensive peace agreements, with a few adjustments that are explained below. The basis of the analysis is therefore similar to Joshi, Lee, and Mac Ginty’s article, which draws on PAM data.¹³ However, unlike the PAM dataset my analysis distinguishes between overarching rights, rights for ‘others’, human rights institutions, and enforcement. The article thereby provides a much more comprehensive and nuanced analysis of human rights provisions. This medium-N analysis is supplemented with case study evidence and Qualitative Comparative Analysis (QCA) is used to examine the conditions that lead to the inclusion, or exclusion, of human rights in territorial peace agreements.

Below, I first use existing literature on conflict types, territorial autonomy, and human rights to develop three hypotheses: two related to the inclusion of human rights provisions in peace agreements and one to their implementation. These hypotheses are then tested in a comparative analysis of agreements signed in territorial and non-territorial conflicts, and agreements that include and do not include territorial autonomy. The findings confirm the hypotheses that territorial peace agreements are much less likely to include human rights provisions. The different pathways

⁷See Jan Selby, ‘The myth of liberal peace-building’, *Conflict, Security and Development*, 13:1 (2013); Dominik Zaum, ‘Beyond the “liberal peace”’, *Global Governance*, 18 (2012); Chandra L. Sriram, *Peace as Governance: Power-Sharing, Armed Groups and Contemporary Peace Negotiations* (Houndmills: Palgrave Macmillan, 2008).

⁸Joshi, Lee, and Mac Ginty, ‘Just how liberal is the liberal peace?’.

⁹Ibid., pp. 376–7.

¹⁰Stefan Wolff, ‘Complex power-sharing and the centrality of territorial self-governance in contemporary conflict settlements’, *Ethnopolitics*, 8:1 (2009).

¹¹See, for example, Donald Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1985).

¹²Kroc Institute for International Peace Studies, ‘Peace Accords Matrix’ (University of Notre Dame, 2019), available at: <https://peaceaccords.nd.edu/peace-accords> last accessed 24 January 2019.

¹³Joshi, Lee, and Mac Ginty, ‘Just how liberal is the liberal peace?’.

(combinations of conditions) leading to the inclusion or exclusion of such provisions in territorial agreements are then examined. The QCA points to the degree of autonomy, rebel strength, and international involvement as key factors. These conditions also impact on the challenges associated with implementing human rights provisions and the final part of the article finds that implementation is more difficult in territorial conflicts, either because of a lack of commitment and detailed provisions, or since human rights could undermine the ‘core deal’. These findings have important implications, not just for academic debates but also for policymaking. It helps explain when human rights are likely to be prioritised by the conflict parties and when we should expect greater resistance. It also alerts us to important trade-offs between different types of human rights: not all good things go together.

Territorial conflicts and human rights protections

Existing analyses of human rights in peace agreements have not distinguished between different types of conflicts. Yet several studies have argued that we should not treat conflicts as an aggregate category and have found that different types of conflicts vary significantly when it comes to root causes, duration, and outcomes.¹⁴ Conflict types can be based either on the characteristics of the groups that are fighting them (ethnic or non-ethnic conflicts) or on the claims they make (conflicts over territory or over government). It is the latter distinction that is the focus of this article. Human rights institutions are, as Bell points out, part of the political bargaining¹⁵ and we would therefore expect their inclusion, or exclusion, from peace agreements to be affected by the maximalist claims made by the conflict parties. This hypothesis does not depend on the predominance of collective grievances, but it does assume that rebel leaders are in some ways constrained by the claims they make. Moreover, as will be shown below, such collective constraints often coincide with the selfish motives of the agreement signatories.

In territorial conflicts, rebels demand a change to the status of a territory. This often involves a demand for independence but can also be a demand for regional self-governance, or indeed for joining another state.¹⁶ These territorial demands are almost always driven by an ethno-nationalist claim to a separate identity, and group identity and rights are at the heart of these conflicts. Examples of such conflicts include the war in Bosnia, the prolonged armed conflict in Indonesia’s Aceh region, and the conflict in Northern Ireland. Territorial control is central to these conflicts, whereas ‘government’ or ‘centre-seeking conflicts’ are focused on control of the central government. For ease of usage, these will be referred to as non-territorial conflicts. Rebels in these conflicts typically make demands relating to the legitimacy of elections, the composition of the government, or regime change.¹⁷ Although non-territorial conflicts can have an ethnic dimension, such as the conflicts in Burundi and Angola, the main demand is a change

¹⁴See, for example, Roy Licklider, ‘The consequences of negotiated settlements in civil wars, 1945–1993’, *American Political Science Review*, 89:3 (1995); Nicholas Sambanis, ‘Do ethnic and nonethnic civil wars have the same causes?’, *Journal of Conflict Resolution*, 45:3 (2001); Barbara F. Walter, ‘Explaining the intractability of territorial conflict’, *International Studies Review*, 5:4 (2003); James D. Fearon, ‘Why do some civil wars last so much longer than others?’, *Journal of Peace Research*, 41:3 (2004); Jacob Bercovitch and Karl Derouen, ‘Managing ethnic civil wars: Assessing the determinants of successful mediation’, *Civil Wars*, 7:1 (2005).

¹⁵Bell, *Peace Agreements and Human Rights*, p. 159.

¹⁶See, for example, Alexis Heraclides, ‘The ending of unending wars: Separatist wars’, *Millennium*, 26 (1997); Walter, ‘Explaining the intractability of territorial conflict’. Territorial conflicts are a subset of self-determination conflicts, which need not include a territorial demand but can be focused on, for example, linguistic rights. See Kathleen G. Cunningham, *Inside the Politics of Self-determination* (Oxford: Oxford University Press, 2014). My distinction between territorial and non-territorial conflicts is focused on the demands made, not whether or not the rebels actually control territory. Such territorial control is found in both types of conflict. See Luis De la Calle and Iganacio Sanchez-Cuenca, ‘Rebels without a territory: an analysis of nonterritorial conflicts in the worlds, 1970–1997’, *Journal of Conflict Resolution*, 56:4 (2012).

¹⁷David E. Cunningham, Kristian Skrede Gleditsch, Belen Gonzalez, Dragana Vidovic, and Peter B. White, ‘Words and deeds: From incompatibilities to outcomes in anti-government disputes’, *Journal of Peace Research*, 54:4 (2017).

in government; usually a transition from a repressive, exclusive regime. Political and civil rights would be expected to play a central role in such transformations, and we can therefore expect human rights to be prioritised by rebel leaders negotiating a settlement. Territorial conflicts, in contrast, focus on the status of a particular territory and the dominant group within it. Group rights – group protections, self-governance, and recognition – are central in these conflicts,¹⁸ while individual rights typically play a much less important role. These group rights can, if the ethnic group is territorially concentrated, be addressed through territorial autonomy, as will be discussed below. In the context of a territorial conflict, negotiating leaders are therefore not expected to push for human rights in the sense of individual rights.

H1: Peace agreements signed in territorial conflicts are less likely than agreements signed in non-territorial conflicts to include human rights provisions.

Territorial autonomy and human rights protections

The ‘core deal’ that predominates in territorial conflicts is another reason why these peace agreements are expected to be less likely to include human rights provisions. Bell has argued that ‘individual rights provisions can only be understood in the light of the deal’s political arrangements’ and she specifically stresses the importance of how the agreement addresses rights to self-determination or minority rights.¹⁹ However, her analysis only covers four cases and does not provide a detailed analysis of the effects of the specific institutional design. Bell is primarily interested in whether ‘the deal’ entails the separation of communal groups. But the core institutional design may well limit the space available for human rights, especially in the case of territorial autonomy, which is by far the most common solution to territorial conflicts.²⁰

Autonomy is a device to allow ethnic or other identity groups to exercise direct control over affairs of special concern to them.²¹ The form of autonomy I am interested in is territorially defined, as opposed to ‘corporate autonomy’, which grants an identity group collective rights on a non-territorial basis. Territorial autonomy in my usage is a territorial form of, what Arend Lijphart refers to as, ‘segmental autonomy’, that is, the rule of the minority over itself.²² This territorial self-governance autonomy is aimed at granting a degree of self-identification to the minority group and provides it with a territorial power-base.²³ Like Yash Ghai, I conceive of territorial autonomy as a generic term that encompasses different types of legal arrangements, including federalism and regional autonomy.²⁴ These different forms are not always easily distinguishable and the choice of label may involve some ‘deliberate fudging’, for example if the constitution prohibits some options or if there is particular sensitivity about sovereignty and state unity.²⁵

Territorial autonomy allows for self-determination within the existing state and thereby ensures protections against discrimination and other forms of human rights abuses from the central government, especially if the autonomous region has its own judiciary and police force.²⁶

¹⁸See also Cunningham, *Inside the Politics of Self-determination*.

¹⁹Bell, *Peace Agreements and Human Rights*, p. 35.

²⁰Wolff, ‘Complex power-sharing’; Nina Caspersen, *Peace Agreements: Finding Solutions to Intra-State Conflicts* (Cambridge: Polity, 2017).

²¹Yash Ghai, ‘Ethnicity and autonomy: a framework for analysis’, in Yash Ghai (ed.), *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-Ethnic States* (Cambridge: Cambridge University Press, 2000), p. 8.

²²Arend Lijphart, *Democracy in Plural Societies* (New Haven: Yale University Press, 1977), p. 41.

²³Ruth Lapidoth, *Autonomy: Flexible Solutions to Ethnic Conflicts* (Washington, DC: United States Institute of Peace Press, 1997), pp. 174–5; Ted R. Gurr, *Minorities at Risk* (Washington, DC: United States Institute of Peace Press, 1993), p. 292.

²⁴Ghai, ‘Ethnicity and autonomy’, pp. 8–9.

²⁵*Ibid.*, p. 10.

²⁶See, for example, Wolff, ‘Complex power-sharing’, p. 28; Caroline A. Hartzell and Matthew Hoddie, *Crafting Peace: Power-Sharing Institutions and the Negotiated Settlement of Civil Wars* (Philadelphia: Penn State University Press, 2007), p. 34.

Territorial autonomy provides a clear powerbase for the former rebel leaders, and it also has benefits from the central government's point of view: it preserves the territorial integrity of the state and it limits the need for reforms at the central level.²⁷ This is significant since the central government will try to manage the costs imposed on them, 'while retaining as much authority as possible'.²⁸ Territorial autonomy therefore has clear advantages as a conflict resolution device, but it may leave little space for human rights *within* the autonomous region and could reduce the demands for effective human rights provisions at the central level.

Critics of territorial autonomy primarily focus on what they regard as the risk of renewed secessionist attempts,²⁹ but its implications for human rights have also been pointed to. Donald Horowitz, for example, warns against the risk of violence against minorities within federal units,³⁰ and Erin Jenne similarly argues that 'nationalist elites are likely to encourage discrimination against ... ethnic minorities who implicitly challenge their claims to territory'.³¹ Territorial autonomy is not necessarily defined in explicitly ethnic terms, but the intention is to empower a specific group within the self-governing region. This is most frequently the local majority group, such as the Acehnese in Indonesia's Aceh region. In the case of India's Bodoland, the settlement promised segmental autonomy for the tribal community through the creation of a Bodoland Autonomous Council. This was to be formed out of villages with a majority tribal population, but also had to include some villages with smaller tribal populations to ensure a contiguous territorial area.³² Territorial autonomy is very much about minority rights, but these rights are protected by prioritising the rights of the dominant group within the autonomous region.

Proponents of territorial autonomy argue that abuses of power, in the form of localised tyrannies of the majority, can be avoided by ensuring robust human rights protections and local power-sharing governments.³³ This has been referred to as 'complex power-sharing'.³⁴ But such provisions could dilute or indeed undermine the autonomous powers and group-based guarantees that form the core deal, and would also constrain the power of the former rebel leaders who usually end up ruling the autonomous region.

H2: Peace agreements that include territorial autonomy are less likely than agreements without such a 'core deal' to include human rights provisions.

It may sound as if the two variables – territorial conflict and territorial autonomy – are coterminous. They are not. Firstly, not all settlements signed in territorial conflicts include territorial autonomy. In some cases the central government refused territorial autonomy due to fears that it would increase the risk of secession, and the separatist group was not strong enough to insist on such an agreement. The peace agreements for Eastern Slavonia (Croatia) and Casamance (Senegal) are examples of this.³⁵ The absence of territorial autonomy could lead to greater demands for human rights provisions, as a means of ensuring group protections. Moreover, the extent of devolved powers varies significantly between the agreements that do include territorial autonomy, which impacts on the strength of group protection provided by the settlement. The effect of different degrees of autonomy on the inclusion or exclusion of

²⁷Caspersen, *Peace Agreements*.

²⁸Cunningham, *Inside the Politics of Self-determination*, p. 4.

²⁹See, for example, Philip G. Roeder, 'Ethnofederalism and the mismanagement of conflicting nationalisms', *Regional and Federal Studies*, 19:2 (2009), pp. 212–13.

³⁰Horowitz, *Ethnic Groups in Conflict*, p. 619.

³¹Erin K. Jenne, 'The paradox of ethnic partition: Lessons from de facto partition in Bosnia and Kosovo', *Regional & Federal Studies*, 19:2 (2009), p. 276.

³²The Bodo Accord (1993), Article 3(a).

³³Stefan Wolff, 'Managing ethno-national conflict: Towards an analytical framework', *Commonwealth & Comparative Politics*, 49:2 (2011), p. 168.

³⁴Wolff, 'Complex power-sharing'.

³⁵Caspersen, *Peace Agreements*. See also Walter, 'Explaining the intractability of territorial conflict'.

human rights provisions is examined as part of the QCA analysis below. Secondly, some settlements signed in non-territorial conflicts include elements of territorial autonomy. Conflicts that are not about the status of a territory may acquire a territorial dimension: a rebel group may, for example, primarily recruit from a particular region and could come to control territory there. Following the signing of a negotiated settlement, such control may continue as a form of territorial autonomy. For example, the Lusaka Protocol for Angola promised UNITA governorships in three of their strongholds and devolved significant powers to the provinces.³⁶ The General Peace Agreement for Mozambique similarly allowed RENAMO to retain territorial control, although only during the transitional period, that is, until a new government was elected.³⁷

The dependent variable, human rights provisions, refers to future-oriented human rights provisions. These are, however, not the only human rights issues of importance in peace talks. Peace settlements may also aim to address past human rights abuses, either through retributive mechanisms, such as war crimes tribunals, or through restorative forms of transitional justice, such as truth commissions.³⁸ However, there is little reason to expect that the type of conflict or settlement will impact on such provisions. The need to make deals with ‘unsavoury groups’³⁹ and leaders will be found in both these contexts, and will come up against similar international pressures and an emerging international law, which does not permit amnesties that cover serious international crimes.⁴⁰ The focus of the article will therefore be on future-oriented human rights provisions, although the effect on how past abuses are addressed (or not) will be touched on in the section on implementation.

Implementation

The key demands made in a conflict and the ‘core deal’ found in a peace agreement are therefore expected to affect the inclusion of human rights provisions. Agreements with a high number of institutional mechanisms have been found to be more durable,⁴¹ but this does not mean that all such provisions are necessarily implemented. Human rights provisions in a peace agreement do not automatically translate into postwar human rights protections.⁴² A peace agreement is ‘only one aspect of a transition away from violent conflict’ but it is, as Joshi, Lee, and Mac Ginty point out, a ‘public commitment’ to change.⁴³ The absence of such a commitment in the form of human rights provisions will reduce the political space available for reforms.⁴⁴ The likely absence of human rights provisions in territorial agreements will therefore impact on postwar protections.

Moreover, the implementation of human rights provisions – if included in a settlement – is also likely to be affected by the conflict type and by the core deal. As will be shown below in the QCA, human rights provisions in the context of a territorial agreement are likely to have been pushed by international mediators. We would expect such provisions to be less effective than locally rooted ones.⁴⁵ Moreover, if human rights provisions threaten the ‘core deal’ and

³⁶‘Lusaka Protocol’ (Lusaka, 1994), Annex 6, Sections II and III.

³⁷General Peace Agreement for Mozambique’ (Rome, 1992), Protocol V.

³⁸See, for example, Bell, *Peace Agreements and Human Rights*, p. 240.

³⁹Sriram, *Peace as Governance*, p. 182.

⁴⁰Bell, *Peace Agreements and Human Rights*, p. 240. See also Nick Grono, ‘The Role of the International Court in Peace Processes: Mutually Reinforcing or Mutually Exclusive?’, IPPR briefing paper (London, 2006).

⁴¹Ramzi Badran, ‘Intrastate peace agreements and the durability of peace’, *Conflict Management and Peace Science*, 31:2 (2014).

⁴²See, for example, Tonya L. Putnam, ‘Human rights and sustainable peace’, in Stephen J. Stedman, Donald S. Rothchild, and Elizabeth M. Cousens (eds), *Ending Civil Wars: The Implementation of Peace Agreements* (Boulder: Lynne Rienner, 2002), p. 238.

⁴³Joshi, Lee, and Mac Ginty, ‘Just how liberal is the liberal peace?’, p. 365.

⁴⁴See, for example, Christine Bell, *Navigating Inclusion in Peace Settlements* (London: The British Academy, 2017).

⁴⁵Bell, *Peace Agreements and Human Rights*, p. 231.

thereby both the protections secured in the settlement and the position of the leaders, then we would expect greater levels of resistance to their implementation.

H3: Implementation of human rights provisions will be more difficult in territorial conflicts, especially if the peace agreement includes territorial autonomy.

Case selection and definitions

The empirical basis of this article is a medium-N analysis of all comprehensive peace agreements signed in armed conflicts between 1990 and 2010. This includes 15 agreements signed in territorial conflicts and 14 signed in non-territorial conflicts (see Table 1). The 29 agreements are comprehensive agreements, which means that they were signed by major parties in the conflict and aimed to address the underlying causes of the conflict. Most of these settlements were identified using the Peace Accords Matrix (PAM),⁴⁶ which is also used by Joshi, Lee, and Mac Ginty,⁴⁷ and the peace agreements analysed in this article are therefore broadly similar to the 34 agreements they cover.⁴⁸ The few exceptions are explained by two additional criteria for comprehensive agreements. Firstly, I only consider an agreement comprehensive if it includes an institutional framework. Agreements that are solely concerned with the immediate cessation of violence are therefore not included. I have consequently excluded the 1999 Agreement on Ending Hostilities in the Republic of Congo. I have also excluded the 1998 Abuja Peace Agreement for Guinea-Bissau, which is only one page long. I do, however, allow for some substantive issues to be left for later. This can be an important negotiation technique that for example proved successful in the case of the Belfast Agreement for Northern Ireland. I am consequently including the Oslo Accords for Israel-Palestine, which the PAM does not include.⁴⁹ Secondly, if more than one agreement is signed in the same conflict, I include the most recent one, unless it simply constitutes an addendum or adds another rebel faction. I only include one agreement per conflict to avoid giving double weight to any one case and its possible idiosyncrasies. Given the relatively small number of comprehensive peace agreements, this could skew the result.

The grouping of territorial and non-territorial conflicts follows the ‘incompatibility’ variable in the UCDP/PRIO Armed Conflict Dataset,⁵⁰ with one exception: the case of Sudan. Civil wars are, as Stathis Kalyvas argues, ‘complex and ambiguous processes’ and identifying a conflict’s ‘master cleavage’ is not always straightforward.⁵¹ Dynamics may change over time and although the Sudanese People’s Liberation Army initially demanded a change in government, it became increasingly focused on the status of South Sudan,⁵² and the 2005 Comprehensive Peace Agreement is predominantly a territorial settlement. Unlike the UCDP/PRIO dataset, I have therefore grouped this case with the territorial conflicts.

Table 1 also indicates if an agreement includes a ‘core deal’ of territorial autonomy. This is found in 73 per cent (11/15) of the agreements signed in territorial conflicts, compared to only 14 per cent (2/14) of the agreements signed in non-territorial conflicts (and in only 7 per cent as a permanent measure). Territorial autonomy is defined by Marc Weller and Stefan

⁴⁶Peace Accords Matrix (2019).

⁴⁷Joshi, Lee, and Mac Ginty, ‘Just how liberal is the liberal peace?’.

⁴⁸This criterion is also similar to what is referred to as ‘full’ and ‘comprehensive’ peace agreements in the UCDP Peace Agreement Dataset. See Stina Höglbladh, ‘Peace agreements 1975–2011: Updating the UCDP Peace Agreement dataset’, in Therése Petterson and Lotta Themnér (eds), *States in Armed Conflict 2011* (Uppsala: Uppsala University, 2012).

⁴⁹This agreement is included by Bell, *Peace Agreements and Human Rights* as a ‘framework or substantive’ agreement.

⁵⁰Erik Melander, Therése Petterson, and Lotta Themnér, ‘Organized violence, 1989–2015’, *Journal of Peace Research*, 53:5 (2016).

⁵¹Stathis N. Kalyvas, ‘The ontology of “political violence”: Action and identity in civil wars’, *Perspectives on Politics*, 1:3 (2003), p. 475.

⁵²See, for example, Oystein H. Rolandsen, ‘A quick fix? A retrospective analysis of the Sudan Comprehensive Peace Agreement’, *Review of African Political Economy*, 130:38 (2011).

Table 1. Comprehensive peace agreements signed between 1990 and 2010.

State	Agreement	Territorial autonomy
<i>Territorial conflicts</i>		
Bangladesh-Chittagong Hill Tracts	Chittagong Hill Tracts Peace Accords, 1997	x
Bosnia	General Framework for Peace/ Dayton Peace Agreement, 1995	x
Croatia-Eastern Slavonia	Basic Agreement/ Erdut Agreement, 1995	
India-Bodoland	Memorandum of Settlement/ Bodo Accord, 1993	x
Indonesia-East Timor	Agreement on the question of East Timor, 1999	x
Indonesia-Aceh	Memorandum of understanding, 2005	x
Israel-Palestine	Declaration of Principles/ Oslo Accords, 1993/5	x
Macedonia	Framework Agreement/ Ohrid Agreement, 2001	
Mali	National Pact, 1992	x
Niger	Agreement Establishing Permanent Peace, 1995	x
Papua New Guinea-Bougainville	Bougainville Peace Agreement, 2001	x
Philippines-Mindanao	Final Peace Agreement, 1996	x
Senegal-Casamance	General Peace Agreement, 2004	
Sudan-South Sudan	Comprehensive Peace Agreement, 2005	x
UK-Northern Ireland	Good Friday Agreement/ Belfast Agreement, 1998	
<i>Non-territorial conflicts</i>		
Angola	Lusaka Protocol, 1994	x
Burundi	Arusha Peace and Reconciliation Agreement, 2000	
Cambodia	Framework for a Comprehensive Political Settlement, 1991	
Côte d'Ivoire	Ouagadougou Political Agreement, 2007	
Djibouti	Agreement for Reform and Civil Concord, 2001	
El Salvador	Chapultepec Peace Agreement, 1992	
Guatemala	Accord for a Firm and Lasting Peace, 1996	
Liberia	Accra Peace Agreement, 2003	
Mozambique	General Peace Agreement for Mozambique, 1992	x
Nepal	Comprehensive Peace Agreement, 2006	
Rwanda	Arusha Accord, 1993	
Sierra Leone	Lomé Peace Agreement, 1999	
South Africa	Interim Constitution Accord, 1993	
Tajikistan	General Agreement on the Establishment of Peace and National Accord, 1997	

Wolff as 'the legally entrenched power' of 'territorial communities to exercise public policy functions (legislative, executive and adjudicative) independently of other sources of authority in the state, but subject to the overall legal order of the state'.⁵³ Although it does not need to be defined in explicitly ethnic terms, the purpose is to allow for self-determination for a communal group within the existing state.⁵⁴ Powers are transferred, not merely delegated,⁵⁵ and minorities are granted a territorially defined 'collective power base'.⁵⁶ Territorial autonomy does not therefore encompass the kind of administrative decentralisation that we find, for example, in the Arusha Peace and Reconciliation Agreement for Burundi.⁵⁷ By this definition, territorial autonomy is also not found in the Erdut Agreement for Eastern Slavonia, which only promised non-territorial cultural autonomy to the Serb community,⁵⁸ or the Ohrid Agreement for Macedonia, which promises a revised Law on Self-Government with increased competencies for municipalities. This administrative decentralisation includes language rights, and was clearly intended to address the grievances of the Albanian minority, but it is more akin to non-territorial communal

⁵³Marc Weller and Stefan Wolff (eds), *Autonomy, Self-governance and Conflict Resolution* (London: Routledge, 2005), p. 13.

⁵⁴See, for example, Lapidoth, *Autonomy*, pp. 174–5.

⁵⁵Weller and Wolff (eds), *Autonomy, Self-governance and Conflict Resolution*, p. 13.

⁵⁶Gurr, *Minorities at Risk*, p. 292.

⁵⁷'Arusha Peace and Reconciliation Agreement' (Arusha, 2000), Protocol II, Articles 2, 8, and 13.

⁵⁸'Basic Agreement' (Erdut, 1995). The General Peace Agreement for Casamance includes no autonomy at all. 'General Peace Agreement between the Government of the Republic of Senegal and MFDC' (Ziguinchor, 2004).

autonomy than the forms of territorial self-rule found in the other agreements. The Belfast agreement for Northern Ireland has been argued to combine territorial autonomy and regional consociation (power-sharing):⁵⁹ the agreement devolves significant powers to the Northern Irish Assembly, and power-sharing guarantees ensure that the Nationalist community cannot be excluded from the regional government.⁶⁰ Although the settlement therefore provides a collective power base for the minority, this power base is not territorially defined.⁶¹ As John McGarry and Brendan O’Leary have argued, ‘community autonomy is least strongly represented in the text, but tacitly evident in the maintenance of separate but proportionally funded primary and secondary education’.⁶² What we find in the agreement is therefore a form of non-territorial cultural autonomy. It is not an example of territorially defined *communal* autonomy, which is what this article is focused on. Territorial autonomy is, on the other hand, included in the ‘Agreement on the Question of East Timor’, even if this option was rejected in favour of independence in the 1999 referendum.

With 29 cases, this is a medium-N analysis, which does not allow for multivariable regression or similar forms of statistical analysis. The comparison of agreements signed in territorial and non-territorial conflicts will therefore rely primarily on descriptive statistics, while the analysis of other context variables will be examined using QCA. The 29 agreements are considered the full population of comprehensive agreements signed between 1990 and 2010, but significance tests (Pearson’s Chi-Square) are reported for the sake of robustness.

Coding and analysis

A comprehensive analysis of human rights provisions in peace agreements needs to go beyond the language used. As Jan Selby suggests, liberal commitments in a peace agreement can mask a detailed content that is distinctly illiberal.⁶³ In order to examine if agreements provide the basis for effective human rights protections, and to enable an analysis of possible trade-offs, the analysis is divided into: overarching rights, human rights institutions, human rights enforcement, and implementation.

Overarching rights

A minimal criterion for the inclusion of future-oriented human rights provisions is a separate section on human rights, while a more substantive criterion is the inclusion of overarching enforceable rights. This can be in the form of a bill of rights or the incorporation of international instruments such as the European Convention on Human Rights,⁶⁴ or the listing of specific rights that are to be protected by an amended constitution. Both criteria are used in the analysis. For agreements that include territorial autonomy, this part of the analysis also examines rights for minorities within the autonomous unit.

Human rights institutions and enforcement

Listing human rights is not enough for effective human rights protections. The existence of institutions that can assist individuals and groups in making claims, forums where these claims can be

⁵⁹Stefan Wolff, ‘The institutional structure of regional consociations in Brussels, Northern Ireland and South Tyrol’, *Nationalism and Ethnic Politics*, 10:3 (2004).

⁶⁰‘Belfast Agreement’ (Belfast, 1998).

⁶¹The central territorial element is instead the links between Northern Ireland and the Republic of Ireland, as contained in Strand 2 of the Belfast Agreement.

⁶²John McGarry and Brendan O’Leary, ‘Consociational theory, Northern Ireland’s conflict, and its agreement, Part 1: What consociationalists can learn from Northern Ireland’, *Government and Opposition*, 41:1 (2006), p. 47, fn. 16.

⁶³Selby, ‘The myth of liberal peace-building’, p. 74.

⁶⁴Bell, *Peace Agreements and Human Rights*, p. 193.

heard, and the ability to enforce the decisions are crucial if the protection of human rights is to go beyond rhetoric. The analysis examines if the agreements include human rights institutions, such as constitutional courts and human rights courts, and enforcement institutions, such as human rights commissions or a human rights ombudsman.⁶⁵ The agreements either have to provide for the creation of new institutions or the jurisdiction of existing institutions is specified. The latter criterion recognises that human rights protections are not only based on the content of the agreement; this is likely part of a wider judicial framework.

Implementation

It is beyond the scope of this article to provide an in-depth analysis of the implementation of human rights provisions. However, implementation data from the Peace Accords Matrix are used to compare the degree of implementation of human rights provisions in the two types of conflicts, and case studies are drawn on to discuss the reasons for these findings.

Human rights in territorial peace agreements

The 29 peace agreements are nearly all written in the language of human rights. The agreement for Eastern Slavonia (Croatia) is typical with its promise that 'the highest levels of internationally recognized human rights and fundamental freedoms shall be respected in the region'.⁶⁶ But a number of these agreements only make fleeting references to human rights and include very little substance.

Overarching rights

If we first look at the 15 agreements signed in territorial conflicts, then we find a separate section on human rights in only six of them (see Table 2). In comparison, nine out of the fourteen agreements signed in non-territorial conflicts include a separate section on human rights, and an additional three have extensive sections on democratic rights. Human rights feature very prominently in some of these non-territorial agreements. The Chapultepec Peace Agreement for El Salvador and Guatemala's Accord for a Firm and Lasting Peace, for example, both contain separate sub-agreements on human rights,⁶⁷ while South Africa's Interim Constitution Accord devotes a whole chapter to human rights.⁶⁸ Among the territorial agreements, only the Dayton Agreement for Bosnia with its annex on human rights contains anything similar,⁶⁹ which suggests that human rights are not generally prioritised. This conclusion is supported by a more detailed analysis of overarching rights.

A list of enforceable rights is found in only five of the territorial conflicts (33 per cent), such as in the Comprehensive Peace Agreement for Sudan, which includes a long list of rights protected by the agreement.⁷⁰ The large majority of the agreements do not include overarching rights. A comparison with agreements signed in non-territorial conflicts points to a striking difference: 11 of these agreements (79 per cent) include overarching enforceable rights (see Table 2 and Figure 1). This is statistically significant, despite the small number of cases (Pearson's Chi-Square test gives a two-sided p-value of 0.014). Similarly, if we compare agreements that

⁶⁵Ibid.

⁶⁶'Basic Agreement' (1995), Article 6.

⁶⁷The 1992 comprehensive agreement for El Salvador included the 1990 San Jose Agreement on human rights. 'Chapultepec Peace Agreement' (Mexico City, 1992). Similarly, in the case of Guatemala the agreement includes the 1994 'Comprehensive Agreement on Human Rights'. 'Accord for a Firm and Lasting Peace' (Guatemala City, 1996).

⁶⁸'Interim Constitution Accord' (Cape Town, 1993), ch. 3.

⁶⁹'General Framework for Peace/Dayton Peace Agreement' (Paris, 1995), Annex 6.

⁷⁰'Comprehensive Peace Agreement' (Naivasha, 2005), ch. 2, Article 1.6.

Table 2. Overarching rights and human rights institutions.

	Human rights section	Overarching rights	Courts	Enforcement
<i>Territorial conflicts</i>				
Bangladesh-CHT				
Bosnia	x	x	x	x
Croatia-ES				
India-Bodoland				
Indonesia-East Timor	x	x		
Indonesia-Aceh	x		x	
Israel-Palestine				
Macedonia		x	x	x
Mali				
Niger				
PNG-Bougainville	x		x	
Philippines-Mindanao				
Senegal-Casamance				
Sudan	x	x	x	x
UK-Northern Ireland	x	x	x	x
<i>Non-territorial conflicts</i>				
Angola				
Burundi	x	x	x	x
Cambodia	x	x	x	
Côte d'Ivoire				
Djibouti		x		
El Salvador	x	x	x	x
Guatemala	x	x	x	x
Liberia	x	x	x	x
Mozambique		x		x
Nepal	x	x		x
Rwanda	x	x	x	x
Sierra Leone	x	x		x
South Africa	x	x	x	x
Tajikistan				

include territorial autonomy with agreements that do not, we find overarching rights in 75 per cent (12/16) of the agreements without autonomy, compared to 31 per cent (4/13) of agreements with this core deal (p-value 0.017). In fact, if we only look at agreements signed in non-territorial conflicts without territorial autonomy, we find overarching human rights in 83 per cent (10/12) of the cases (p-value 0.010).

It could be countered that human rights in the case of territorial autonomy have simply been delegated to the autonomous region and that this actually provides for stronger human rights protections. However, overarching enforceable rights are also not found at the level of the autonomous regions. Moreover, the rights of local minority groups – in the form of groups rights and/or local power-sharing – are included in only five out of thirteen agreements with territorial autonomy (38 per cent), and these provisions tend to lack details. For example, the agreement for Mindanao (Philippines) contains references to cultural rights and mentions the *possibility* for guaranteed representation of minorities in the autonomous region. However, Sharia law is also to be introduced.⁷¹ Minorities within the autonomous regions may be better protected if they are dominant in the state as a whole. This is most notably the case in Israel-Palestine where Israelis are explicitly exempt from the jurisdiction of the Palestinian authorities.⁷² In the Chittagong Hill Tracts, there are reserved seats for non-tribal representatives, but they are still under-represented.⁷³ The Bodoland Accord provides land and language rights for non-tribal

⁷¹Final Peace Agreement' (Manila, 1996), Article 152.

⁷²See, for example, 'Declaration of Principles' (Washington, DC, 1993), Annex II, Article 3.

⁷³'Chittagong Hill Tracts Peace Accords' (Dhaka, 1997), Article C.3.

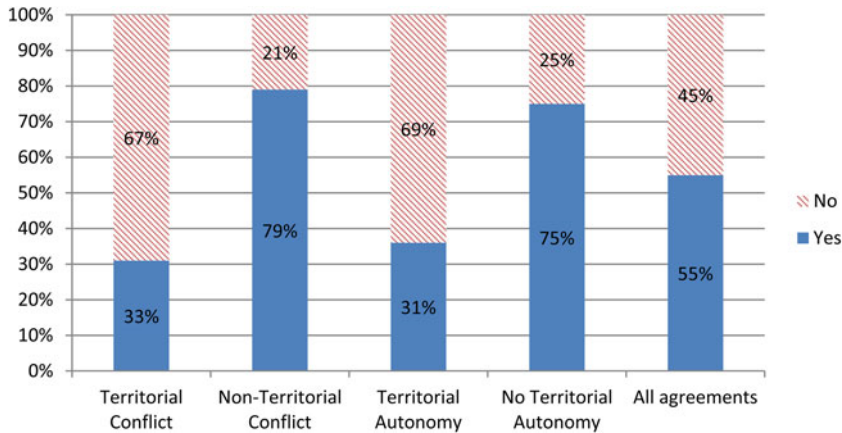


Figure 1. Overarching rights in peace agreements (1990–2010).

communities, and the government can also appoint five (out of 40) members of the autonomous council from groups which ‘could not otherwise be represented’,⁷⁴ but they are not guaranteed a share in power. ‘Complex power-sharing’⁷⁵ does not appear as a dominant model and the rights of those that do not belong to the state’s main ethnic groups are particularly limited.

The analysis of overarching rights therefore supports Hypotheses 1 and 2: human rights provisions are less likely in agreements signed in territorial conflicts, especially if these include a core deal of territorial autonomy. This does not mean that human rights are central in all agreements signed in non-territorial conflicts. Tajikistan’s General Agreement on the Establishment of Peace and National Accord, for example, refers to the ‘observance of human rights’, promises the establishment of democratic political and legal institutions, but there is not much substance, and the agreement has been criticised for being too focused on security.⁷⁶ But the tendency is very clearly for human rights to be much more prominent in these agreements. This trend repeats itself, albeit not as strongly, when we examine human rights institutions and enforcement mechanisms.

Human rights institutions

Human rights institutions are also less frequently included in agreements signed in territorial conflicts, although the difference is not so marked when it comes to provisions related to constitutional or human rights courts (see Figure 2). Such courts are included in six (40 per cent) of the agreements signed in territorial conflicts, compared with seven (50 per cent) in territorial conflicts. For agreements with and without territorial autonomy the difference is a little more marked, with 31 per cent (4/13) and 56 per cent (9/16) of the agreements respectively, but neither of these differences is statistically significant (*p*-values 0.588 and 0.170). The difference is more striking when it comes to human rights enforcement institutions, such as a human rights ombudsman or a national commission of human rights. These are found in nine of the fourteen agreements signed in non-territorial conflicts (64 per cent), compared to only four of fifteen agreements signed in territorial conflicts (27 per cent). This difference is statistically significant (*p*-value 0.042). We find a similar difference if we look at agreements with and without territorial autonomy: only 23 per cent (3/13) of the former include enforcement mechanisms, compared to 63 per cent (10/16) of the latter (*p*-value 0.034).

⁷⁴Memorandum of Settlement/ Bodo Accord’ (Guwahati, 1993), Article 3.b.

⁷⁵Wolff, ‘Complex power-sharing’.

⁷⁶Catherine Barnes and Kamoludin Abdullaev, ‘Introduction: From war to politics’, in Catherine Barnes and Kamoludin Abdullaev (eds), *Politics of Compromise: The Tajikistan Peace Process* (London: Conciliation Resources, 2001), p. 10.

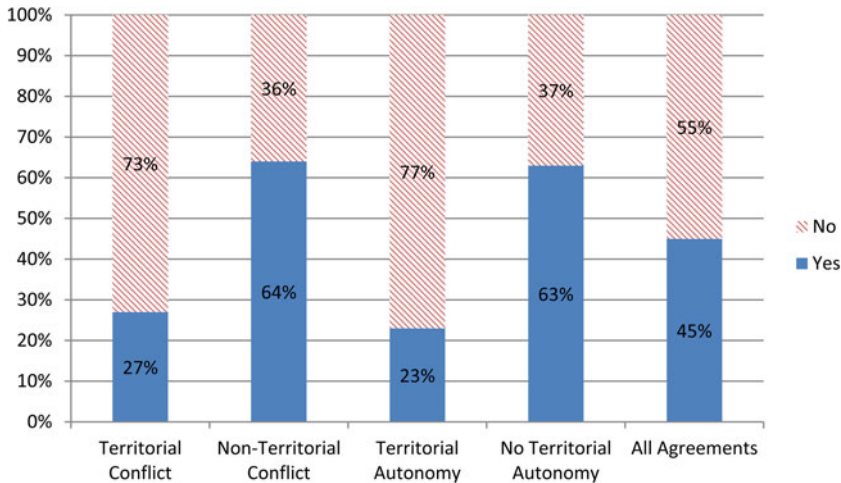


Figure 2. Human rights enforcement institutions in peace agreements (1990–2010).

Human rights institutions are not only included less frequently in territorial agreements, the provisions also tend to lack details. The least detailed provisions are found in the case of Bougainville, where no new human rights institutions are created, and the agreement simply points to the existing Supreme Court as final court of appeal for human rights.⁷⁷ The agreement for Sudan provides for the establishment of both a Constitutional Court and a Human Right Commission,⁷⁸ but details regarding enforcement are lacking. Human rights play a central role in the Belfast Agreement for Northern Ireland, but it still lacks details when it comes to the precise functioning of the Human Rights Commission and the Equality Commission, which are to be established.⁷⁹ Human rights institutions and mechanisms abound in the Dayton Agreement for Bosnia but enforcement mechanism are nevertheless unclear, and no one has an explicit mandate to arrest human rights violators.⁸⁰ This general lack of details is likely to affect the implementation of these provisions, as will be discussed below.

The comparison of territorial and non-territorial conflicts showed a marked difference and supports the hypotheses that a core deal of autonomy and the nature of demands made by the rebel forces significantly affect the extent to which human rights are prioritised. Human rights may be the ‘chic language’ in which to write peace agreements,⁸¹ but only a minority of territorial peace agreements provide for their effective protection.

Territorial conflicts, autonomy, and human rights

Territorial conflicts involve demands for a change in the status of a territory and the recognition, and realisation, of a group’s right to self-determination. For example, in the Bosnian conflict, the demands of the Serb leaders shifted between joining Serbia, independence for their self-proclaimed statelet, and territory and power for a Serb federal entity. These territorial demands were all justified by proclaiming a right to national self-determination and by pointing to the threat allegedly faced by the Serb minority.⁸² While rights and protections often feature

⁷⁷‘Bougainville Peace Agreement’ (Arawa, 2001), Article 127.

⁷⁸‘Comprehensive Peace Agreement’ (2005), ch. 2, Articles 2.11.3 and 2.10.1.2.

⁷⁹‘Belfast Agreement’ (1998), Strand 1, Safeguards, Article 5.

⁸⁰Bell, *Peace Agreements and Human Rights*, pp. 221, 227.

⁸¹*Ibid.*, p. 297.

⁸²See, for example, Nina Caspersen, *Contested Nationalism: Serb Elite Rivalry in Croatia and Bosnia in the 1990s* (Oxford: Berghahn, 2010).

prominently in the demands made in territorial conflicts, they take a different form than in non-territorial conflicts where demands for individual human rights are much more central. These conflicts revolve around issues of authority and power at the centre. As Bell has pointed out, in Central America ‘human rights were often included as part-and-parcel of a process which aimed at democratisation as the “solution” to the conflict’.⁸³

Territorial autonomy provides a popular solution to territorial conflicts: it addresses the demands for self-determination and promises protections against discrimination and other human rights violations. Effective individual human rights protections are not a priority in this context and could in fact undercut the autonomous powers and protections secured in the settlement. For example, the Bengali settlers in the Chittagong Hill Tracts complain of their second-class status, but the tribal community complain that the tribal autonomy does not go far enough, and have objected to the weakening of their overrepresentation on the District Council.⁸⁴ Human rights are not necessarily a positive-sum game, and more effective individual human rights provisions could reduce hardwon group rights and protections. Moreover, local leaders may be keen for their powers to be as unconstrained as possible. In the case of Israel-Palestine, Bell suggests that the Palestine Liberation Organization was not interested in human rights protections because it would have limited their capacity ‘to control dissident political forces’.⁸⁵ The armed movements typically retain power in the post-settlement period and may not be interested in this kind of scrutiny.

However, human rights could become an alternative means for ensuring groups rights, if territorial autonomy is not practically possible or not acceptable to the central government. For example, in the case of Northern Ireland, where territorially defined communal autonomy was not included in the settlement, individual rights were seen as protection against future domination and discrimination.⁸⁶ This helps to explain the inclusion of human rights provisions in this settlement. However, such demands are not necessarily successful. Context matters and although territorial agreements are less likely to include human rights provisions than non-territorial agreements, we find significant variation within this broad category.

QCA analysis: Degree of autonomy, rebel strength, and international involvement

This section uses Qualitative Comparative Analysis (QCA) to examine how the wider conflict context and the degree of autonomy affects the inclusion (or exclusion) of human rights provisions in territorial peace agreements. QCA is suitable for a medium-N analysis and allows for analysis of combinations of conditions and different causal paths leading to the same outcome.⁸⁷ QCA does not estimate the net causal effect of discrete variables, but instead specifies the combinational logic of conditions that lead to a specific outcome. By using this form of analysis, individual cases are aggregated into a manageable number of typical ‘scenarios’.⁸⁸

Several context variables could be expected to affect the inclusion of human rights in territorial peace agreements. In addition to the degree of autonomy contained in the agreement, this section will examine the effects of the relative strength of the rebel position, regime type, and international involvement. This analysis will be used to identify possible pathways or scenarios.

⁸³Bell, *Navigating Inclusion in Peace Settlements*, p. 11.

⁸⁴See, for example, Amena Mohsin, *The Chittagong Hill Tracts Bangladesh: On the Difficult Road to Peace* (Boulder: Lynne Rienner, 2003), p. 71; Cæcilie Mikkelsen, *The Indigenous World 2015* (Copenhagen: International Work Group for Indigenous Affairs, 2015), pp. 316–17; Amnesty International, ‘Bangladesh: Indigenous Peoples engulfed in Chittagong Hills Tract Land Conflict’ (London, 2013), available at: {<https://www.amnesty.org/en/latest/news/2013/06/bangladesh-indigenous-peoples-engulfed-chittagong-hill-tracts-land-conflict/>} last accessed 24 January 2019.

⁸⁵Bell, *Peace Agreements and Human Rights*, p. 196.

⁸⁶*Ibid.*, pp. 194–5.

⁸⁷Benoit Rihoux and Charles C. Ragin, *Configurational Comparative Methods* (Los Angeles: Sage, 2009).

⁸⁸Zsuzsa Csergo, Philippe Roseberry, and Stefan Wolff, ‘Institutional outcomes of territorial contestation: Lessons from post-communist Europe, 1989–2012’, *Publius*, 47:4 (2017), p. 508.

Degree of autonomy

In cases of low levels of autonomy or no autonomy, we could expect a demand for human rights protections at the centre as a supplement to the limited autonomous powers and protections ensured by the core deal. However, as seen in Table 3, while some territorial peace agreements with no or low levels of territorial autonomy do include human rights provisions, such as in Northern Ireland and Macedonia, others do not.⁸⁹ For example, the agreements for Bodoland and the Chittagong Hills Tract offer only limited autonomy but include neither overarching rights nor human rights institutions. Other variables, in particular rebel strength, would appear to be of importance. The central government will often be reluctant to concede to human rights reforms and the rebels may lack the bargaining power to insist on it. Limited autonomy or its complete absence is itself often the result of a weak bargaining position. The significance of relative capacity will be discussed below.

At the other end of the autonomy spectrum, we find a clearer pattern. All settlements with high levels of autonomy also include human rights provisions (both overarching rights and institutions). This may seem surprising given the overall findings regarding the effects of territorial autonomy on human rights provisions. However, the demand for human rights provisions is in this context likely to come from the centre. Extensive autonomy often raises concerns over secessionist pressures and the future dismantling of the state.⁹⁰ Human rights provisions can in this context act as a counterweight to the settlement's centrifugal dynamics. The agreements for Bougainville (Papua New Guinea) and Sudan both promise the holding of an independence referendum following a period of autonomy,⁹¹ and the central government therefore has an incentive to emphasise integrative measures. This helps explain the human rights institutions found in these agreements. Similarly, in the case of Bosnia, the aim of the human rights institutions was to 'claw back the unitary state from the separate entities': human rights protections were the price to be paid for ethnically defined mini-states.⁹³ Extensive autonomy could also lead to fears that minorities in the autonomous region will be discriminated against and therefore lead to pressure from the centre for human rights protections. Significant international involvement was moreover an important factor in these conflicts, which were all either highly protracted and/or violent. This again points to the interaction of several variables.

Minority/rebel relative strength

We could expect demands for human rights reforms at the centre, perhaps as a counterweight to limited autonomy, to be less likely to succeed if the rebels are in a weak position. Several indicators for the relative strength of the rebels, or the minority group they claim to represent, were therefore examined. However, not all were of significance. For example, the size of the minority relative to the country's total population did not show a clear trend: we find very small minorities in both agreements with human rights provisions (for example, Bougainville) and without such provisions (for example, Bodoland). The effect of the relative military strength of the rebels is also less than clear. Data from the Non-State Actors in Armed Conflict Dataset (NSA)⁹⁴ suggests that the agreements that include human rights provisions were negotiated by rebels whose military capacity, relative to the government forces, range from parity to much weaker. Cases without human rights provisions include rebel forces that are either weaker or much weaker than their opponents (see Table 3).

⁸⁹This variable is adapted from data in Caspersen, *Peace Agreements*, pp. 22, 193, which includes both territorial and non-territorial autonomy.

⁹⁰See, for example, Roeder, 'Ethnofederalism and the mismanagement of conflicting nationalisms'.

⁹¹See also Marc Weller, 'Self-governance in interim settlements: the case of Sudan', in Weller and Wolff (eds), *Autonomy, Self-Governance and Conflict Resolution*.

⁹³Bell, *Peace Agreements and Human Rights*, pp. 159, 196.

⁹⁴David E. Cunningham, Kristian Skrede Gleditsch, and Idean Salehyan, 'Non-State Actor Data, Version 3.4' (2013), available at: {<http://kskgleditsch.com/eacd.html>}, last accessed 24 January 2019.

Table 3. Human rights in territorial peace agreements: Context variables.

Case	Overarching rights	Human rights institutions	Level of Territorial Autonomy ^a	Rebel military strength ^b	Rebel territorial control ^c	International mediators ^d	International mission ^e	Regime type ^f
Bosnia	Yes	Yes	High	Parity	Yes	Yes	Yes	NF
East Timor	Yes	No	High	Much weaker	No	Yes	Yes	PF
Aceh	Yes	Yes	High	Weaker	Yes	Yes	Yes	PF
Bougainville	Yes	Yes	High	Parity	Yes	Yes	Yes	F
Sudan	Yes	Yes	High	Weaker	Yes	Yes	Yes	NF
Macedonia	Yes	Yes	No	Much weaker	No	Yes	Yes	PF
Northern Ireland	Yes	Yes	No	Much weaker	No	Yes	Yes	F
Senegal	No	No	No	Weaker	Yes	No ⁹²	No	F
Eastern Slavonia Slavonia	No	No	No	Weaker	Yes	Yes	Yes	PF
Chittagong Hills Tract	No	No	Low	Weaker	No	No	No	PF
Bodoland	No	No	Low	Much weaker	No	No	No	PF
Niger	No	No	Low	Weaker	No	Yes	No	PF
Israel/Palestine	No	No	Medium	Much weaker	No	Yes	No	F
Mali	No	No	Medium	Weaker	No	Yes	No	F
Mindanao	No	No	Medium	Weaker	No	Yes	No	F

Notes:

a, d, and e: Data from Nina Caspersen, *Peace Agreements: Finding Solutions to Intra-State Conflicts* (Cambridge: Polity, 2017).

b and c: Data from the Non-State Actors in Armed Conflict Dataset (NSA).

f: F=Free, PF=Partly free, NF=Non-Free. Data from Freedom House, 'Freedom in the World Data and Resources' (2018).

⁹²There was an international presence at the talks, but no mediation. Senegal had significantly reduced the earlier involvement of neighbouring Guinea Bissau and Gambia. Aïssatou Fall, *Understanding the Casamance Conflict: A Background*, KAIPTC Monograph No. 7 (Accra, 2010), p. 26.

However, one indicator shows a clearer pattern: rebel territorial control (also from NSA data). In the cases where we find human rights provisions *and* high levels of territorial autonomy, the rebels enjoyed territorial control, to a moderate or high degree. The only exception is East Timor, which is discussed below. This relatively strong position of the rebels helps to explain the high levels of autonomy included in the agreements and has likely added to fears of future secession, thereby strengthening the government's call for human rights provisions. Moreover, this strength could also have enabled the rebel groups to push for reforms at the centre, which less powerful groups will find harder to achieve.

If we look at the agreements without human rights provisions, there are only two cases of rebel territorial control: in Croatia (Eastern Slavonia) and Senegal (Casamance). In both of these cases the rebels were, by the time of the agreement, weakened by other factors. This helps explain the lack of both autonomy and human rights provisions. In Eastern Slavonia, the rebels were effectively defeated by August 1995. The main part of the Serb entity, Republika Srpska Krajina, had been overrun by Croatian forces and the leaders in Eastern Slavonia knew that they were next unless they agreed to a negotiated settlement.⁹⁵ In Casamance, the Movement of Democratic Forces of Casamance (MDFC) never achieved anything more than low territorial control, the rebels were plagued by factionalisation, and many of the leaders were reportedly driven by monetary objectives. These incentives were addressed by the Senegalese Government through offers of aid and money.⁹⁶

The remaining agreements without human rights provisions were negotiated by rebels with limited capacity: they did not control any territory and their military capacity was weaker or much weaker than the government forces. Some of these cases, such as the Bodoland conflict, are highly asymmetrical. This limited capacity is likely to force the rebels to focus the negotiations on their key demands and these are, as argued above, centred on group rights. Group rights will be offered some protection by territorial autonomy, even if relatively few powers are devolved. Effective human rights provisions are therefore less likely to be prioritised and could in fact undermine the limited autonomy that was achieved. In the case of the Chittagong Hills Tract, demands for forms of 'complex power-sharing' within the autonomous region have, as noted above, been resisted. Similarly, in the case of Bodoland, the rights of the non-tribal population have also proved explosive. In 2012, the Bodoland Territorial Council was alleged to have removed a signboard from a mosque, which it claimed was an illegal structure occupying forest land.⁹⁷ This dispute over rights sparked extreme violence, which left 42 people dead and 150,000 displaced.

However, agreements with human rights provisions were also negotiated in three conflicts where the rebels did not have territorial control and were militarily much weaker than the government forces. But in these cases, the rebels either represented fairly large minority groups (Northern Ireland and Macedonia) or their right to independence had been internationally recognised. The latter applies to East Timor, which was recognised by the UN as a non-self-governing territory. This international recognition was an alternative source of strength for the rebels. Moreover, in all three cases we see a high level of international involvement.

International involvement

International pressure has been argued to be a key factor explaining the inclusion of human rights in peace agreements: it is the price the conflict actors have to pay for international support.⁹⁸ However, as is apparent from Table 3, international mediation on its own is not decisive. Almost all of these peace processes included third-party mediation, but this did not necessarily lead to the inclusion of human rights provisions. For example, the Oslo Accords for Israel/Palestine resulted from Norwegian and US mediation efforts, while Mali's National Pact was mediated and guaranteed by Algeria, and two other international mediators (from France and

⁹⁵Caspersen, *Contested Nationalism*.

⁹⁶Fall, *Understanding the Casamance Conflict*.

⁹⁷Samrat, 'Violence in Assam has deep roots', *The New York Times* (26 July 2012).

⁹⁸Bell, *Navigating Inclusion in Peace Settlements*, p. 13.

Mauritania) also played a role in the peace process.⁹⁹ More significant international involvement appears to be needed for the inclusion of human rights. The territorial agreements that included human rights provisions were all negotiated with the help of international mediators *and* an international mission was deployed to assist the implementation of the agreement.¹⁰⁰ Some of these missions included armed peacekeepers, others only deployed unarmed observers, while still others set up international commissions to find solutions to outstanding issues.

International involvement led to pressure on both governments and rebels to prioritise human rights and international experts frequently drafted the provisions. Paul Szasz argues that in the case of Bosnia almost none of the human rights provisions originated in Bosnia itself.¹⁰¹ International experts also played an important part in the drafting of Sudan's Comprehensive Peace Agreement and John Young argues that this explains what he regards as its inappropriate legalism.¹⁰² As will be discussed below, this may have consequences for the implementation of human rights provisions. Bell has argued that a lack of domestic roots makes such provisions less effective,¹⁰³ and international mediators may be prepared to accept a lack of detail. In the case of Aceh, the mediator, Martti Ahtisaari insisted on including human rights,¹⁰⁴ but the provisions lack potentially explosive details: it is, for example, not specified if the Human Rights Court will have retroactive powers.¹⁰⁵

Although a high degree of international involvement, indicated by the willingness to deploy an international mission, therefore appears to be a necessary condition for the inclusion of human rights provisions in territorial peace agreements, it is not sufficient. One of the agreements without human rights provisions, the Erdut agreement for Eastern Slavonia, did include a high level of international involvement. It was the result of international mediation and a transitional international administration was deployed. This case suggests that the relative capacity of the rebels also matters, and the Serb separatists were, as argued above, virtually defeated.

Regime type

Regime type is another variable that could be assumed to be of importance, with democracies being more willing to accept human rights provisions or at least make reference to existing safeguards. Authoritarian regimes would be much less likely to accept such reforms. The cases were coded according to their Freedom House ranking the year the peace agreement was signed: free, partly free, or non-free.¹⁰⁶ However, no clear pattern emerges. The agreements with human rights provisions were signed by governments classed as free, partly free, and non-free, while agreements without such provisions were signed in the context of both partly free and free regimes. One difficulty is that the wars impact on the regime systems and few democratic systems are able to withstand the pressures of a full-scale civil war.

Pathways to the inclusion or exclusion of human rights

Based on the discussion above, the variables measuring rebel strength have been combined. Strong rebel movements (STRONG in Table 4) cover rebel movements that enjoyed a high level of territorial control or whose claim to independence was internationally recognised.

⁹⁹This variable draws on data from Caspersen, *Peace Agreements*, pp. 163–6.

¹⁰⁰Data from *ibid.*

¹⁰¹Paul Szasz, 'The protection of human rights through the Dayton/Paris peace agreement on Bosnia', *American Journal of International Law*, 90:2 (1996).

¹⁰²John Young, *The Fate of Sudan: The Origins and Consequences of a Flawed Peace Process* (London: Zed Books, 2013), pp. 108–09.

¹⁰³Bell, *Peace Agreements and Human Rights*, p. 231.

¹⁰⁴Katri Merikallio and Tapani Ruokanen, *The Mediator: A Biography of Martti Ahtisaari* (London: Hurst, 2015), p. 302.

¹⁰⁵Faisal Hadi, 'Human rights and injustice in Aceh: the long and winding road', in Aguswandi and Judith Large (eds), *Reconfiguring Politics: The Indonesia-Aceh Peace Process* (London: Conciliation Resources, 2008).

¹⁰⁶Freedom House, 'Freedom in the World Data and Resources' (2018).

Weak rebel movements are militarily weaker or much weaker than the central government and do not control territory. Inclusion of human rights is defined widely to denote the inclusion of overarching rights.

Two sets of conditions lead to the inclusion of human rights in territorial peace agreements (see Table 4). The most common scenario combines high levels of autonomy, a strong rebel position, and an international peace mission (Bosnia, Sudan, Bougainville, Aceh, East Timor). The central government either pushed for human rights provisions as a strategy for tying the region to the centre, or accepted reforms at the centre in the face of strong rebel demands and extensive international involvement. The second set of conditions include settlements with no territorial autonomy and an international mission (Macedonia and Northern Ireland). In this scenario, the limited territorial autonomy led to greater rebel demands for human rights provisions, to ensure group protections. These demands were strengthened by international pressures. The rebel movements are not militarily strong in these cases, but their demands do enjoy some external support and they represent a sizeable minority group.

Two sets of conditions were also found to lead to human rights being excluded from territorial peace agreements. The most common pathway included low or medium levels of territorial autonomy, a weak rebel position, and the absence of an international mission (Bodoland, Chittagong Hills Tract, Israel/Palestine, Mali, Mindanao, Niger). In cases of low levels of territorial autonomy, human rights provisions may have been demanded by the rebel side to ensure group protections. However, such provisions at the regional level could have undermined the territorial autonomy that they had achieved, while their weak position and the lack of extensive international involvement made them unable to ensure reforms at the centre. The final pattern includes agreements with no territorial autonomy and rebels that were in such a weak position, either due to imminent defeat (Eastern Slavonia) or due to internal divisions and lack of international involvement (Casamance), that they were unable to push for human rights provisions.

Implementing human rights

The above analysis has found that territorial peace agreements are less likely to include human rights provisions than peace agreements signed in non-territorial conflicts. Moreover, the territorial peace agreements that do include such provisions tend to be the result of significant international involvement and often coincide with considerable rebel strength and extensive territorial autonomy. This context is also likely to affect the implementation of such provisions.

Human rights provisions are often difficult to implement,¹⁰⁷ but many *are* implemented, even if imperfectly. Data from the Peace Accords Matrix, which tracks implementation of different parts of peace settlements, shows that all 14 agreements that included a section on human rights implemented at least some of these provisions. Human rights were categorised as ‘fully implemented’ in five of the cases, ‘intermediate’ in seven cases, and ‘minimum’ in only two.¹⁰⁸ Moreover, the PAM data supports the hypothesis that implementation difficulties are more severe in territorial agreements. Among the five territorial conflicts whose settlement includes a human rights section, we only find one case (20 per cent) of ‘full implementation’ (Northern Ireland), and none of the settlements with territorial autonomy have fully implemented their human rights provisions. Among the non-territorial settlements there are four such settlements with fully implemented human rights provisions (44 per cent). This does not simply reflect a lower implementation score overall for territorial settlements. In fact, settlements signed in territorial conflicts have been more successfully implemented than settlements signed in non-territorial

¹⁰⁷Joshi, Lee, and Mac Ginty, ‘Just how liberal is the liberal peace?’, p. 377.

¹⁰⁸Peace Accords Matrix (2019).

Table 4. Pathways to inclusion or exclusion of human rights.

Outcome	Solution term	Cases covered	Coverage	Consistency
Inclusion	HIGHAUT*STRONG*INTMIS	Bosnia, Sudan, Bougainville, Aceh, East Timor	0.71	1.00
Inclusion	NOAUT*INTMIS	Northern Ireland, Macedonia	0.29	1.00
Exclusion	LIMAUT*strong*intmis	Bodoland, Chittagong Hills Tract, Israel/Palestine, Mali, Mindanao, Niger	0.75	1.00
Exclusion	NOAUT*strong	Eastern Slavonia, Casamance	0.25	1.00

Notes: STRONG = rebel movement in a strong position; INTMIS = international mission; HIGHAUT – high level of territorial autonomy; NOAUT = no territorial autonomy; LIMAUT = limited territorial autonomy, which includes low and medium levels. Capital letters denote that a condition is present, lower case that it is absent.

conflicts: the average implementation scores for the settlement as a whole are 87 per cent and 81 per cent, respectively.¹⁰⁹

Although this is clearly an area in need of further research, this data suggests that human rights provisions are particularly difficult to implement in the context of a territorial conflict and especially if the settlement includes territorial autonomy. This could be explained by the lack of detailed provisions and a lack of genuine commitment. In the case of Aceh, Faisal Hadi argues that the articles on human rights were simply ‘too vague to be effective’, given the resistance they faced.¹¹⁰ Human rights provisions in territorial peace agreements tend to be the result of international pressure, and this lack of commitment from the conflict parties is likely to make them harder to implement. Moreover, territorial autonomy – especially the high levels found in many of the territorial agreements that include human rights provisions – constitute a potential obstacle to the implementation of these provisions. In the case of Bosnia, only the two federal entities were able to effectively enforce human rights protections, but they refused to take on this task.¹¹¹ This helps explain why the human rights provisions in the Dayton settlement are still not fully implemented,¹¹² despite the very high level of international involvement.

The content of a peace agreement does not, of course, determine future human rights developments. We find several examples of unimplemented human rights provisions, such as Aceh’s Human Rights Court.¹¹³ Moreover, a peace settlement is only one part of the legal framework, and human rights protections may for example already be included in the Constitution. Yet the absence of human rights provisions in peace agreements still suggests that this is not an area that will be prioritised. Moreover, my data also points to a potential spillover between the acceptance of future-oriented provisions and a willingness to address past abuses in a settlement. While there is no difference between territorial and non-territorial conflicts when it comes to retributive measures,¹¹⁴ settlements signed in non-territorial conflicts are significantly more likely to include alternative forms of accountability for past abuses, such as truth commissions, compensation for victims, or lustration (see Figure 3). Eight of fourteen agreements (57 per cent) signed in non-territorial conflicts include such measures, compared to only 27 per cent (4/15) of the agreements signed in territorial conflicts. Similarly, 56 per cent (9/16) of agreements without territorial autonomy include alternative accountability measures; compared to only 23 per cent (3/13) of agreements with such a core deal. These differences are, however, not statistically

¹⁰⁹Ibid.

¹¹⁰Hadi, ‘Human rights and injustice in Aceh’.

¹¹¹Bell, *Peace Agreements and Human Rights*, p. 227.

¹¹²Peace Accords Matrix (2019).

¹¹³Amnesty International, ‘Indonesia: Victims of the Aceh Conflict Still Waiting for Truth, Justice and Reparation’ (London, 2013), available at: {<https://www.amnesty.org/en/latest/news/2013/04/indonesia-victims-aceh-conflict-still-waiting-truth-justice-and-reparation/>} last accessed 24 January 2019; Hadi, ‘Human rights and injustice in Aceh’.

¹¹⁴General amnesty is included in 5/15 of the territorial agreements and in 5/14 of the non-territorial agreements. Retributive justice, for example, in the form of war crimes tribunal is very rarely included. In fact, it is explicitly included in only one territorial agreement and one non-territorial agreement, while a couple of agreements in each group mention the possibility of such a process.

significant (p-values 0.096 and 0.071). The highest proportion of such provisions is again found in agreements without territorial autonomy signed in non-territorial conflicts: 67 per cent (8/12) of these include alternative forms of accountability. This difference is statistically significant (p-value 0.020). As Bell has suggested, the inclusion of human rights helps create a political space for reforms.¹¹⁵ It empowers activists to push for human rights to be prioritised.

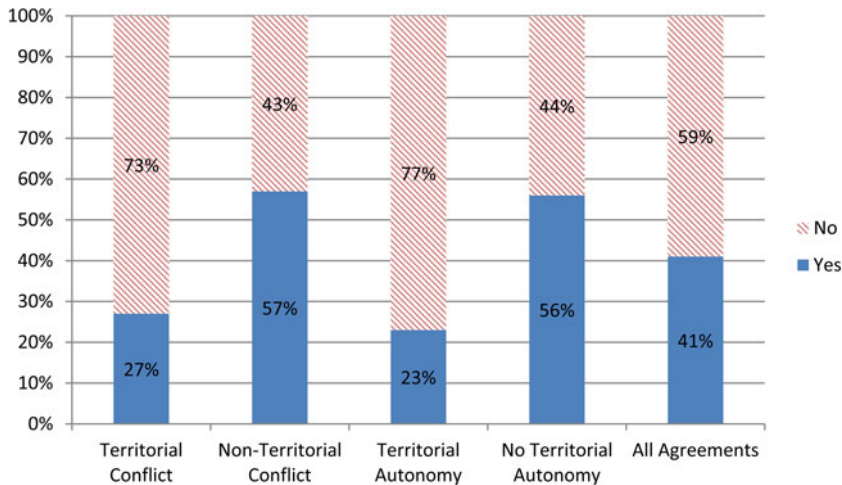


Figure 3. Alternative accountability in peace agreements (1990–2010).

There is reason to believe that the exclusion of human rights provisions will impact on the durability of the negotiated peace. The content of a peace agreement affects the stability of peace,¹¹⁶ and more comprehensive agreements are more likely to succeed. Ramzi Badran finds that every additional mechanism, including human rights protections, reduces the risk of peace failure by one sixth.¹¹⁷ There is no study focused on the specific impact of human rights provisions on durability, but Barbara Walter finds that political and legal constraints on government powers significantly reduce the risk of civil war recurrence,¹¹⁸ while Desirée Nilsson argues that the inclusion of civil society actors, who are more likely to demand human rights protections, increase the durability of peace.¹¹⁹ If human rights are not prioritised in a peace agreement, the obvious risk is that they will never be viewed as a priority. For example, the agreement for the Chittagong Hill Tracts made no reference to the massive human rights violations committed during the conflict, and no accountability measures or provisions for improved human rights protections were included.¹²⁰

¹¹⁵Bell, *Navigating Inclusion in Peace Settlements*, p. 54.

¹¹⁶See, for example, Caroline Hartzell and Matthew Hoddie, 'Institutionalizing peace: Power sharing and post-civil war conflict management', *American Journal of Political Science*, 47:2 (2003); Michaela Mattes and Burcu Savun, 'Fostering peace after civil war: Commitment problems and agreement design', *International Studies Quarterly*, 53:3 (2009).

¹¹⁷Badran, 'Intrastate peace agreements', p. 204.

¹¹⁸Barbara F. Walter, 'Conflict Relapse and the Sustainability of Post-Conflict Peace', World Development Report (Washington, DC: World Bank, 2010).

¹¹⁹Desirée Nilsson, 'Anchoring the peace: Civil society actors in peace accords and durable peace', *International Interactions*, 38:2 (2012).

¹²⁰Mohsin, *The Chittagong Hill Tracts Bangladesh*, pp. 54–5.

This is likely a contributing factor in the continuation of human rights abuses by the army in the post-settlement period and a lack of law and order.¹²¹ When human rights are excluded, it therefore matters both for the population in the conflict-affected state and for the likely sustainability of a negotiated peace.

Conclusion

Post-Cold War peace agreements are almost all written in the language of human rights, but the degree to which they provide a basis for effective human rights protections depends significantly on the type of conflict the agreement is trying to resolve and the 'core deal'. Agreements signed in territorial conflicts are considerably less likely to include human rights provisions – in the sense of enforceable rights and human rights institutions – than agreements signed in non-territorial conflicts. This is particularly the case if the agreement includes territorial autonomy. The demands made in territorial conflicts are focused on the rights of groups, not individuals, and territorial autonomy provides for self-determination and protections without necessitating reforms at the centre. Effective human rights protections could undermine such guarantees, as well as the powers of the leaders. The territorial agreements that do include human rights provisions were found to be the result of significant international involvement and most were negotiated by strong rebel forces that had achieved significant territorial autonomy. This context impacted negatively on the implementation of human rights protections.

These findings provide an important contribution to existing debates on human rights in peace agreements.¹²² It suggests that Bell's new Law on Peace¹²³ faces significantly greater obstacles in some conflict context than others. Demands for human rights are much less likely to come from the conflict parties in case of territorial conflicts and may be actively resisted if there is a promise of territorial autonomy. Proponents of territorial autonomy stress the need to incorporate robust human rights protections and local power sharing,¹²⁴ but this article has pointed to the genuine dilemmas this presents, and the resistance it is likely to meet from leaders keen to keep their power as unconstrained as possible. International mediators may push for human rights protections to be included but the problems faced during the implementation phase point to the need for robust mechanisms and possibly continued international involvement.

Finally, these findings also have implications for the wider debates over liberal peacebuilding, which has been described, by its critics, as 'a peace from IKEA: a flat-pack peace from standardised components'.¹²⁵ This article suggests that in territorial conflicts, the flat-pack 'liberal peace' agreement is often missing a screw: effective human rights provisions. Therefore, it may not be quite as liberal as it appears.

¹²¹Mikkelsen, *The Indigenous World 2015*, pp. 315–16; Cæcilie Mikkelsen, *The Indigenous World 2009* (Copenhagen: International Work Group for Indigenous Affairs, 2009), p. 380; Virginia P. Fortna, *Does Peacekeeping Work? Shaping Belligerents Choices after Civil War* (Princeton: Princeton University Press, 2008), p. 134.

¹²²See, for example, Joshi, Lee, and Mac Ginty, 'Just how liberal is the liberal peace?'; Selby, 'The myth of liberal peace-building'.

¹²³Bell, *On the Law of Peace*.

¹²⁴See, for example, Wolff, 'Managing ethno-national conflict'.

¹²⁵Neil Cooper, Mandy Turner, and Michael Pugh, 'The end of history and the last liberal peacebuilder: a reply to Roland Paris', *Review of International Studies*, 37:4 (2011), pp. 1997–8.

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Nina Caspersen is Professor of Politics at the University of York. Her research focuses on intra-state conflicts, peace processes, and peace agreements. Her most recent book is *Peace Agreements: Finding Solutions to Intra-State Conflicts* (Polity Press, 2017).