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REVIEW ESSAY

Back to the Future: Promoting Peace through International Law

MIKAEL BAAZ*

Cecilia Marcela Bailliet and Kjetil Mujezinović Larsen (eds.), *Promoting Peace Through International Law*, Oxford, Oxford University Press, 2015, 496 pp., ISBN 9780198722731, £70.00.

1. INTRODUCTION

The world as a whole has not been at peace since 1914, and it is definitely not at peace today.[1] David J. Dunn argues that this state of affairs may be due, in no small part, to aspects of the conventional wisdom that informs practical foreign policy and diplomacy. For example, the ancient notion *si vis pacem, para bellum* [if you desire peace, prepare for war] (Vegetius) or the nineteenth century idea that argues '[w]e have no eternal allies, and we have no perpetual enemies. Our interests are eternal and perpetual, and those interests it is our duty to follow' (Lord Palmerston). These 'insights' neatly summarize the intellectual core of political realism; in particular, the 'balance-of-power' doctrine.[2]

However, following the First World War, this wisdom was increasingly challenged, not only by politicians but also by progressive scholars from different camps, including international law. In 1919, the League of Nations, which was based on the notion of 'collective security' rather than power-of-balance, was established to replace the out-dated 'Concert of Europe'. The official goal was to make world politics and interstate diplomacy not only more transparent, but also more 'rational'. The belief was that in due time, common sense and good offices would prevail, making the use of force unnecessary and the world more peaceful and secure.[3] The Covenant of the League of Nations (1919/1924) clearly indicates that the signatory states imagined that the institution of international law would play a central role in realizing this vision.

Another response to the war was to develop knowledge associated with not only the question of how war could happen, but also of how it could be prevented in

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1 E. Hobsbawm, 'War and Peace', *The Guardian*, 23 February 2002.
2 D.J. Dunn, *The First Fifty Years of Peace Research: A Survey and Interpretation* (2005), 1.
3 Dunn, *supra* note 2, at 1.

the future. Questions like these contributed to the establishment of 'International Politics/Relations' as an academic discipline in its own right.[4] The world's first Department of International Politics was established at the University College of Wales, Aberystwyth, in 1919. It was set up with the help of a generous endowment given by industrialist David Davies,[5] who:

> was [ultimately] moved by a global vision, forged in the fires of war, aimed at repairing the shattered family of nations and, more ambitiously, to redeem the claims of men and women in a great global commonwealth – the League of Nations.[6]

University departments with similar purposes were shortly after established also at Oxford University and the London School of Economics. Most academics that joined these new departments were 'classically' trained and had a disciplinary background in, e.g., International Law, History and Philosophy. In New York, the Council of Foreign Relations was established and university departments soon followed – the most conspicuous being the rapidly developing University of Chicago, from which came Political Scientists such as Charles Merriam and Harold D. Lasswell. In Chicago, the methodological approach differed from the one in the UK.[7] Here, Merriam was in the forefront of seeking to direct the social sciences away from their political theory and legal orientation towards 'behavioralism'.[8]

Regardless of the chosen methodological approach, the chief, but not sole purpose, of the new discipline was to create relevant knowledge that could serve as a basis for the performance of governments – especially considering the potential for disorder and subsequent violence, which could turn more destructive and dangerous in modern mass societies where rapid developments in technological change and organizational capacity were snowballing.[9] A sincere hope after the First World War was that another war be avoided. This provided an important impulse for the new discipline. The early International Politics therefore qualifies in great part as what we today would consider to be Peace Studies.[10]

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4 What separates the concepts of 'International Politics' and 'International Relations' is a matter of debate and is best described as unclear. In order to avoid confusion, the former concept is used systematically in this essay. See further M. Baaz, *A Meta-theoretical Foundation for the Study of International Relations in a Global Era. A Social Constructivist Approach* (2002).

5 B. Porter, 'David Davies and the Enforcement of Peace', in D. Long and P. Wilson (eds.), *Thinkers of the Twenty Years' Crisis: Inter-war Idealism Reassessed* (1995), 59.

6 Department of International Politics: History, 2016, available at www.aber.ac.uk/en/interpol/about/ (accessed 31 March 2017).

7 Dunn, *supra* note 2, at 30; R. Dahl, 'The Behavioral Approach in Political Science: Epitaph for a Monument to a Successful Protest', (1961) 55 *The American Political Science Review* 763–72.

8 See further M. Baaz, 'Harold D. Lasswell and the Social Study of Personal Insecurity', in M. Cochran and C. Navari (eds.), *Progressivism and US Foreign Policy* (forthcoming).

9 Dunn, *supra* note 2, at 31.

10 Baaz, *supra* note 4. Cf. the contributions in D. Long and B.C. Schmidt (eds.) *Imperialism and Internationalism in the Discipline of International Relations* (2005), which, departing from the dual themes of imperialism and internationalism rather than the more commonly recognized couplet of realism and idealism, emphasizes that the beginnings of International Politics as an academic discipline have resonance with the recently picked-up discourse of empire and the global status and policies of the United States as the world's only hyperpower. Regarding the relation between International Law, empire and imperialism see, e.g., M. Baaz, 'Hegemony, Power, and Jurisprudence: The Never-Ending Story of Legal Imperialism and Extraterritoriality', (2013) 15 *International Studies Review* 292–4; M. Koskenniemi, W. Rech and M.J. Fonseca, *International Law and Empire: Historical Explorations* (2017).

The dominating (theoretical) approach during the interwar period was optimistic and put great faith in human rationality, progress and public opinion. It was assumed that reason, knowledge as well as international law not only could, but also would lead to a better, more peaceful and secure world.[11] One particularly influential scholar of the time was Phillip Noel-Baker. Today, he is mainly renowned for championing the cause of disarmament, but he also had another string to his bow during the interwar years, namely *peace through law*.[12] Disarmament, which sought 'a reduction of armed forces so drastic that no nation will be able to wage aggressive war', had to be, he argued, supplemented by 'the substitution of the rule of law for the arbitrament of force'.[13] Generally speaking, the peace through law approach was important in the thinking during the interwar years and played a crucial role in the attempts to establish peace and security through the League of Nations. In essence, the goal was to make law and not war the last resort between states.[14]

In order to establish the reign of justice and abolish war, international law and state practice had, it was argued, to contain three crucial components common to domestic legal systems. The Covenant of the League of Nations provided two of them: (i) an international court; and (ii) the abolition of the right of instant recourse to war; however, the third crucial component, which would 'make the system completely effective', was missing. That was the '*obligation* on every state to appear before the tribunal if summoned there, on the demand of another state'.[15] Put differently, the core of the peace through law approach, as understood by Noel-Baker and others during the interwar years, was compulsory adjudication.

However, in spite of vivid campaigning, the idea of compulsory adjudication was never realized. Eventually the League system also failed, mainly due to the inherent contradiction of the 'collective security' concept,[16] which is founded on the idea that all states have an equally strong interest in preventing aggression and, by extension, are willing to take the same risks to achieve peace. At the end of the day, the League could only function to the degree that the member states were able to agree. As time passed, the willingness to agree declined completely and the role of the League hereby became out-dated.[17]

The Second World War, just as the First, led to a reconsideration of the basic premises for many of those involved in the study of International Politics and International Law. In spite of the establishment of the United Nations (UN), the

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11 Dunn, *supra* note 2, at 31.

12 L. Lloyd, 'Philip Noel-Baker and Peace Through Law', in D. Long and P. Wilson (eds.), *Thinkers of the Twenty Years' Crisis: Inter-war Idealism Reassessed* (1995), 25.

13 P. Noel-Baker, *The Arms Race: A Programme for World Disarmament* (1958), quoted in 1995 in Lloyd, *supra* note 12, at 25.

14 Noel-Baker, Lloyd, *supra* note 12, at 50. Cf. Long and Wilson, *supra* note 12.

15 P. Noel-Baker, 'The Permanent Court of International Justice', in H.V. Temperley (ed.), *A History of the Peace Conference of Paris* (1924), quoted in 1995 in Lloyd, *supra* note 12, at 33, italics added.

16 See further P. Wrange, 'Protecting Which Peace for Whom against What? A Conceptual Analysis of Collective Security', in C.M. Bailliet and K. Mujezinović Larsen (eds.), *Promoting Peace Through International Law* (2015), 86.

17 M. Baaz, *The Use of Force and International Society* (2017), 120.

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zeitgeist this time was more pessimistic.[18] This 'intellectual' change meant a number of things, including the reappearance of political realism as the dominant approach in the field,[19] the separation between International Politics and International Law,[20] the establishment of Peace Studies as an academic discipline in its own right,[21] and a methodological reorientation in the social sciences in order to make knowledge production more 'scientific'.[22]

It is against the background presented above – as well as in the light of the dramatic changes that have taken place in world politics since the end of the Cold War, which once again challenges what is considered to be the conventional wisdom of the day – that we preferably should read *Promoting Peace Through International Law*.

2. A SHORT INTRODUCTION TO THE VOLUME

The volume – which contains no less than 20 chapters and is written by 22 authors with various academic backgrounds – emanates from a conference held in Oslo in 2013. Together the contributions provide a good overview of the wide range of topics addressed at the conference, including not only discussions on a promoting peace through law approach and the 'right to peace', but also on the normative foundation of the international law of peace, the concept of collective security, human rights and their protection, the environment, trade, arms trade regulation, civil society participation, refugees, transitional justice, international criminal law, fact-finding missions as well as the constitutional dimension of peace.

The chapters, except for the Introduction, are organized in four parts that deal with (in the following order): (i) the normative scope of peace and its exceptions; (ii) preconditions of peace; (iii) civil party participation in the promotion and safeguarding of peace; and (iv) institutional implementation of peace. Next, follows a section on the points of departure for the volume, including necessary positioning, definitions and delimitations.

3. PROMOTING PEACE THROUGH INTERNATIONAL LAW

The starting point for the volume is that 'peace' is an inherently elusive concept, which varies in definition and valuation depending on the historical period and

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18 Historian Mark Mazower, writing on the origins and early development of the UN, in the book, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (2008), even argues that its creators envisioned an international organization that ultimately would protect the interest of empire rather than promote 'human security'.

19 E.H. Carr, *The Twenty Years' Crisis (1919–1939): An Introduction to the Study of International Relations* (1939); H.F. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (1948).

20 H.F. Morgenthau, 'Positivism, Functionalism, and International Law', (1940) 34 *American Journal of International Law* 260–84.

21 Dunn, *supra* note 2, at 2.

22 Ibid., at 3–4; see further Baaz, *supra* note 8; H. Bull, 'The Case for a Classical Approach', (1966) 18 *World Politics* 361–77; H.D. Lasswell, *World Politics and Personal Insecurity* (1935); H.D. Lasswell and M.S. McDougal, *Jurisprudence for a Free Society: Studies in Law, Science and Policy* (1992), Vol. 1; M.A. Kaplan, *System and Processes in International Politics* (1957); M.A. Kaplan, 'The New Great Debate: Traditionalism versus Science in International Relations', in K. Knorr and J. N. Rosenau (eds.), *Contending Approaches to International Politics* (1969).

contextual application within different cultures, institutions, civil society groups and academic disciplines. Within the realm of international law, the concept is considered to be particularly vague, at least in the wake of the Second World War, when the 'international legal literature largely abandoned the establishment of peace as an independent, overarching aim of international law'.[23]

By returning to what is considered a Lauterpachtian understanding of international law, the volume seeks to enquire 'to what extent peace is promoted through existing international and national normative and institutional frameworks'.[24] By this, it locates itself in the nexus between International Law and Peace Studies. Whether it should be considered to be primarily legally-oriented work on Peace Studies or peace-oriented work on International Law is left open. The more important premise for the volume is, the editors argue, rather that it attempts to build a bridge between the two disciplines, which have a lot in common but have also developed remarkably in isolation.[25]

In defining the elusive concept of peace, the editors chose to follow Johan Galtung to distinguish between (i) 'negative peace' (i.e., the *absence* of violence) and (ii) 'positive peace' (i.e., the *presence* of social justice through equal opportunity, a fair distribution of power and resources, equal protection and impartial enforcement of law).[26] With reference to the UN Charter as a pragmatic document, Cecilia Marcela Bailliet and Kjetil Mujezinović Larsen rightly do not consider peace to be limited to a negative understanding of the concept, but also embrace its positive dimensions.[27]

Having shown this, they continue by arguing that one crucial question remains – namely whether there is a *right to peace*. This question has turned out to be increasingly controversial and there is a considerable amount of disagreement on this notion among academics and policymakers alike. One reason for this is that many are afraid of weakening the right to use force in line with the UN Charter (Chapter VII measures and self-defence) or even identify a right to peace as being aligned with communist ideology. The volume editors believe that legal studies have an important role to play in reorienting discussions and practices towards the direction of realizing peaceful objectives, within as well as between states, without thereby advocating the existence of a right to peace but rather 'components of peace'.[28]

Ultimately, the volume is an attempt to revitalize the old, somewhat narrow and for various reasons discredited, interwar idea of promoting peace through international law.[29] This is a highly desirable and commendable project.

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[23] C.M. Bailliet and K. Mujezinović Larsen, 'Introduction: Promoting Peace through International Law', in Bailliet and Mujezinović Larsen, *supra* note 16, at 1.
[24] Ibid., at 2.
[25] Ibid.
[26] See further J. Galtung, 'An Editorial', (1964) 1 *Journal of Peace Research* 1–4; J. Galtung, 'Violence, Peace, and Peace Research', (1969) 6 *Journal of Peace Research* 167–91.
[27] Bailliet and Mujezinović Larsen, *supra* note 16, at 3–8.
[28] Ibid., at 8.
[29] Ibid., at 18.

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4. The normative scope of peace and its exceptions

Kristoffer Lidén and Henrik Syse open the first part of the volume by addressing the origins of a liberal, rights-based understanding of peace in the political thought of Hobbes, Locke and Kant. Chapter 2 outlines the ways in which this classical understanding of peace is manifested in contemporary perspectives of international law as a source of peace, with a view to the positions of 'Realism', 'Internationalism', and 'Cosmopolitanism'. It displays how the argument for widening the scope of peace in International Law beyond international order relates to a liberal 'Cosmopolitan' challenge to the Westphalian international society, as defended by 'Internationalism'. Additionally, the chapter discusses why 'Realists' reject such a move and instead insist on subjecting concerns for positive peace (or justice) to the principle of state sovereignty. Considering the influence of the 'liberal peace' theory over recent decades, this approach is used as a vantage point for a critical analysis of the assumptions underlying the contemporary legal debate on peace and conflict. Without neglecting the voices of non-liberal and non-Western perspectives, Lidén and Syse show how an individual-centred understanding of rights, in contrast to a more collective understanding of peace and order, has played an important role in the liberal peace theory, which in turn has played a crucial role in world politics. Together this has resulted in a justification of political authority and the sovereign state that focuses on the protection of individual rights of its citizens.[30] A crucial question in this regard, however, as put forward in the chapter, is: what happens if the power and potential of the state to protect peace, order and rights diminishes? The handling of such situations, Lidén and Syse conclude, requires 'an adjustment of the principles of international law'.[31]

In Chapter 3, Bailliet explores the development of the international law of peace from the idea of a 'right to peaceful coexistence' to the *de lege lata* perspective of a 'human right to peace', which is a current initiative within the UN Human Rights Council. The chapter seeks to offer an explanation of why achieving normative clarity within international law – not least regarding a universal definition of peace and a correlative right to peace – is still a huge challenge. It suggests that in order to overcome this problem, it might be constructive to focus on institutions that address the components and preconditions of peace. The reason offered by Bailliet on why it is difficult to achieve a universal definition of peace and correlative right to peace under international law is simply that international society at present is divided regarding the necessity and/or possibility of establishing such normative clarity. Put simply, the necessary (political) consensus is lacking.[32]

The aim of Chapter 4, written by Simon O'Connor and Bailliet, is to illustrate the character of obligations that states have in relation to the maintenance of peace

[30] Ibid., at 11.

[31] K. Lidén and H. Syse, 'The Politics of Peace and Law: Realism, Internationalism and the Cosmopolitan Challenge', in Bailliet and Mujezinović Larsen *supra* note 16, 21 at 23.

[32] Bailliet and Mujezinović Larsen, *supra* note 16, at 11; C.M. Bailliet, 'Normative Foundation of the International Law of Peace', in Bailliet and Mujezinović Larsen, *supra* note 16, at 43, 62; Cf. M. Baaz, 'International Law is Different in Different Places: Russian Interpretations and Outlooks, (2016) 14 *International Journal of Constitutional Law* 262–76.

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between (and within) themselves. In this, the authors focus on the unique character of the UN Charter in order to emphasize the role that these obligations have for resolving disputes peacefully and for preventing the escalation of conflict. This interesting chapter is concluded by an argument that states should significantly develop the strength of negotiation and meditation institutions at all levels in international society; put more straightforwardly, to develop and move 'alternative dispute resolution' to the centre of the international law of peace.[33]

In Chapter 5, Pål Wrange carries out an analysis of the concept of 'collective security', not only as currently understood within the UN but also as a general concept. This exercise is informed by critical traditions in International Law and International Politics. The overall, somewhat insipid, conclusion reached following the analysis is that, regardless of which perspective is chosen, the concept of 'collective security is inherently paradoxical' and that total collective security is impossible. But the fact that total collective security is impossible, does not make collective security impossible *per se*. The UN can prevent and end wars as well as make life more tolerable for many people in spite of the theoretical problems highlighted in the chapter. And as Wrange concludes, that is the best one can expect since no system can cope with a 'maximalist' analysis. The fact is, he continues, 'international law ... has been good at using various tricks ... to cover up these contradictions in order to make the system work'. The very merit in the concept of collective security is its vagueness – '... the fact that collective security contains paradoxes also means that there is space'.[34] He ends the chapter by arguing that:

> There is nothing in the collective security or the UN Charter that necessarily leads to peace and security. But it is possible to utilize the procedures, rules, and doctrines that it contains and to exploit the contingencies for good. At any rate, there are no plausible alternatives on the horizon.[35]

This statement, as I read it, reflects a pragmatist understanding of international law and a social constructivist approach to international peace and security. It would have been interesting if the author had developed these ideas more thoroughly.

Chapter 6, written by Ola Engdahl, evaluates the relationship between the concept of the Responsibility to Protect (R2P) and the proposed right to peace as expressed in the Draft Declaration of the Human Rights Council. In this, Engdahl focuses on the relationship between the maintenance of international peace and security, and protection of human rights – a relationship that can also be described as that between negative and positive peace, or for that matter, between order and justice.[36]

The chapter then discusses how peace could be achieved by the use of military force. The doctrine of R2P has emerged from a perceived need to protect individuals against grave violations of human rights in cases when the United Nations Security

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33 Bailliet and Mujezinović Larsen, *supra* note 16, at 11; S. O'Connor and C. Bailliet, 'The Good Faith Obligation to Maintain International Peace and Security and the Pacific Settlements of Disputes', in Bailliet and Mujezinović Larsen, *supra* note 16, 66 at 85.

34 Wrange, *supra* note 16, at 88, 107.

35 Ibid., at 108.

36 See further Baaz *supra* note 17; M. Baaz, 'Beyond Order versus Justice Middle Ground Ethics and the Responsibility to Protect', in C. Navari (ed.), *Ethical Reasoning in International Affairs* (2013), 127.

Council (UNSC) has, for various reasons, been unable to respond adequately. International law, however, does not provide states with a right to intervene with military force to safeguard individual human rights – not without a mandate from the UNSC. This together, Engdahl argues, demands addressing the questions: (i) how respect for human rights contributes to the maintenance of peace (ii) how peace contributes to the protection of human rights; and (iii) whether one could exist without the other.[37] He concludes that it would be beneficial to both international peace and security, and the protection of human rights if concepts like R2P, the 'right to peace' and 'human security' could adopt a similar language in relation to the common ground between them. If so, there would be an opportunity for strengthening the crucial link between peace and security, as well as the protection of human rights in short- and long-term perspectives.[38]

Together, the contributions in the first part of the volume present a multi-faceted picture of the normative scope of peace and its exception.

5. Preconditions of peace

In Chapter 7, Kjersti Skarstad investigates whether human rights violations increase the risk of domestic violent conflict between a government and rebel groups. Through the use of longitudinal regression analyses, she shows that not only do human rights violations work as conflict facilitators, in the sense that they can contribute to the creation of conditions where conflicts are more likely to occur, but that they are also conflict multipliers, in the sense that they can escalate and aggravate underlying disputes. Violations of basic social, economic and physical integrity rights increase the risk of civil wars, while the effects of other civil and political rights are minor.[39] From the investigation follows that human rights policies and the enforcement of human rights law are worth pursuing in order to reduce conflict risk and to promote peace.[40]

Chapter 8, written by Bård A. Andreassen, takes a critical view of the maxim *si vis pacem, cole justitiam* [if you desire peace, cultivate justice] by reference to empirical studies. Compared with much of the existing literature on the subject, the chapter argues that negative peace is a crucial precondition for development. Put somewhat differently, the main constraint on development is perhaps not what could be called 'poverty traps' (that is, people living in poverty lack capacities and access to productive resources that could make them leave poverty behind), but rather 'traps of violence', which traps development and cements poverty.[41]

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37 Bailliet and Mujezinović Larsen, *supra* note 16, at 12.

38 O. Engdah, 'Protection of Human Rights and the Maintenance of International Peace and Security: Necessary Precondition or a Clash of Interests', in Bailliet and Mujezinović Larsen, *supra* note 16, 109 at 129.

39 Bailliet and Mujezinović Larsen, *supra* note 16, at 13.

40 K. Skarstad, 'Human Rights Violations and Conflict Risk: A Theoretical and Empirical Assessment', in Bailliet and Mujezinović Larsen, *supra* note 16, 133 at 147.

41 Bailliet and Mujezinović Larsen, *supra* note 16, at 13; B.A. Andreassen, 'Traps of Violence: A Human Rights Analysis of Relationships between Peace and Development', in Bailliet and Mujezinović Larsen, *supra* note 16, at 148, 167.

In Chapter 9, Christina Voigt argues that a safe, clean and productive environment is contributing to the establishment and maintenance of peace and human security, while environmental stress is both a cause and effect of political and military tension. The global environment cannot be managed at the national level. International co-operation is necessary in order to reach significant concessions on the sovereignty of states to exploit their natural resources in order to stop, reverse and prevent environmental degradation. At the same time, environmental protection in order to serve as a foundation for peace should be connected to sustainable development. But, as illustrated in the chapter, international environmental law, i.e., the branch of international law that aims to translate the conditions described above into institutional and implementation strategies, is slow in progress. What is needed, Voigt concludes, is a shift in the 'quality' of international law – one that recognizes the fundamental importance of sound ecological conditions.[42]

The next chapter is about the relationship between peace and trade. Ole Kristian Fauchald discusses the World Trade Organization (WTO) Agreement and the general level of conflict and tension between and within states in general, and the dispute settlement mechanism (DSM) of the WTO in particular. The chapter argues that in cases relating to conflicts between states, the DSM is likely to reduce such conflicts. It also argues that in these cases, the DSM benefits smaller and weaker states. In the case of intrastate conflicts, however, the chapter finds the opposite. In such conflicts, the DSM is more likely to increase them as well as benefitting bigger and more powerful states.[43]

In Chapter 11, Gro Nystuen and Kjølv Egeland evaluate the potential of the Arms Trade Agreement (ATT) in promoting peace. The conclusion reached is that the ATT does not prevent arms transfers *per se*, but rather it aims at safeguarding that arms transferred are consistent with the requirements of international humanitarian law, and that they are used in accordance with various regulations in international law that protect human rights. By this, the ATT holds the potential to contribute to peace, particularly if peace is understood in 'negative' terms. Generally speaking, Nystuen and Egeland argue that the Agreement holds the potential to reduce violations of international humanitarian law and human rights law.[44]

Over and above this, the chapter also assigns one section to explicitly reflect on the relationship between Peace Studies and International Law. Here it is argued that even though the relationship is strong, they should not be conflated. The arguments for this position are as follows. Peace Studies is a 'multi-disciplinary' field of inquiry in which practitioners from different scholarly backgrounds come together in a shared enterprise of research into the conditions – past, present and future – for realizing peace. Peace Studies is thus defined by the discipline's aim of 'realizing global security and creating social justice through academic inquiry'.[45]

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42 Bailliet and Mujezinović Larsen, *supra* note 16, at 13–14.
43 Ibid., at 14.
44 Ibid.
45 G. Nystuen and K. Egeland, 'The Potential of the Arms Trade Treaty to Reduce Violations of International Humanitarian Law and Human Rights Law', in Bailliet and Mujezinović Larsen, *supra* note 16, 209 at 223.

While Peace Studies is quite easy to distinguish from the object its practitioners seek to inquire, it is, according to Nystuen and Egeland, more difficult to distinguish the object of international law from its vocation. International law is not only a body of rules and customs in international society, but also the study of them. The already indistinct borders are further obscured by the fact that international legal practitioners often have dual roles as academics *and* civil servants.[46]

It is further argued that while Peace Studies is founded on the goal of creating peace, International Law is not. International Law is inherently tied to the interests of states, which form complex considerations where ethics and humanitarian concerns are considered to various degrees. Nystuen and Egeland conclude:

> [I]nternational law is no more than its creators want it to be; while a peace student by definition could not be a peace student and simultaneously research the conditions for realizing war, it is entirely possible to practice law in the service of war.[47]

6. Civil society participation in the promotion and safeguarding of peace

This part begins with a contribution on non-discrimination and equality as the foundations of peace, which is written by Vibeke Blaker Strand. Chapter 12 discusses the relationship between (i) human rights norms relating to equality and non-discrimination and (ii) peace. It presents a number of examples on how civil society agents have historically played a crucial role in promoting equality and non-discrimination. Additionally, the chapter: (i) discusses the close relationship between substantive equality and peace, in particular positive peace; (ii) in broad terms, outlines various ways that non-discrimination and equality contribute to the founding of peace; and (iii) addresses the road ahead, emphasizing the importance that 'civil society and the legal sphere pull together as both are essential to the foundations of peace'.[48] The chief message is that 'a society based on inequality and discrimination is not a society where people live peacefully together. It is not a society in peace'.[49]

Chapter 13 explores the link between refugee-hood and peace. Firstly, Maja Janmyr examines how peace activism could constitute a specific ground for asylum and how individuals who are engaged in crimes against peace and other atrocities are clearly excluded from refugee status, as well as how international refugee law relates notions of peace to grounds for asylum and refugee status. Secondly, the chapter considers peace and threats against peace in exile by displaying the ways in which international society has emphasized the peaceful and humanitarian nature of asylum ever since the inception of the modern refuge regime – in particular the principle of the civilian and humanitarian character of asylum. Thirdly, it demonstrates how refugees in various important respects can be seen as agents that contribute to peace. And finally,

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46 Ibid., at 223–4.
47 Ibid., at 224–5.
48 V. Blaker Strand, 'Non-Discrimination and Equality as the Foundation of Peace', in Bailliet and Mujezinović Larsen, *supra* note 16, 229 at 232.
49 Bailliet and Mujezinović Larsen, *supra* note 16, at 15.

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the chapter displays how resolving displacement is closely related to achieving peace.[50]

In Chapter 14, the last in this section, Cornelia Weiss addresses the important issue of the inclusion of women as peacemakers, peacekeepers and peace-builders in international law and practice.[51] The chapter explores the status and effect of the Convention on the Elimination of Discrimination Against Women (1979) as well as various UNSC resolutions that address women's participation in various peace efforts. Weiss does not only investigate compliance measures and how they can be used, but also addresses options to influence practice when the law does not. The main argument of the chapter is that the pursuit of peace is illusory if half of the population is excluded. If peace should be achieved, the inclusion of women in various roles is absolutely crucial. Weiss concludes that it requires new and creative thinking in order to get there.[52]

7. Institutional implementation of peace

In Chapter 15, Mujezinović Larsen opens the section by writing on the notion of 'peace' in international peace operations with a UNSC mandate, and how international law promotes or prevents the achievements of such peace.[53] Mujezinović Larsen demonstrates that international peace generally pursues a 'liberal peace' as well as the ways in which this general concept of peace is translated into concrete functions in particular operations. Additionally, he also shows that international law does little to promote peace through the creation of peace operations, since international law neither requires nor encourages the creation of them even though it permits them. He discusses the ways in which international humanitarian law, international human rights law and other regimes that regulate the conduct of personnel could contribute to the realization of peace in peace operations. By way of conclusion, it is argued that it seems clear that international law allows the creation of peace operations, but it does not do very much to actively support them. It is also rather clear, Mujezinović Larsen continues, that peace operations pursue a concept of 'liberal peace', but it is more questionable if this is what peace operations actually should do or, for that matter, how one decides if an operation has been successful in the pursuit of its goal. All in all:

> … the promotion of 'peace' in international peace operations is in general not actively facilitated by international law and much may be gained if international courts and tribunals and other [agents] continue the search for a coherent body of international law applicable to peace operations.[54]

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50 M. Janmyr, 'Refugees and Peace', in Bailliet and Mujezinović Larsen, *supra* note 16, 252 at 253, 272–3.
51 C. Weiss, 'Barely Begun: The Inclusion of Women Peacemakers, Peacekeepers, and Peacebuilders in International Law and Practice', in Bailliet and Mujezinović Larsen, *supra* note 16, at 274.
52 Bailliet and Mujezinović Larsen, *supra* note 16, at 15; Weiss, *supra* note 51, at 296.
53 K. Mujezinović Larsen, 'United Nations Peace Operations an International law: What Kind of Law Promotes What Kind of Peace?', in Bailliet and Mujezinović Larsen, *supra* note 16, at 299.
54 Ibid., at 320.

Next, Jemima García-Godos writes about transitional justice. Departing from the notion that accountability plays a crucial role in the pursuit of long-term peace in Latin America, she advances a simple, yet vital argument: 'to acknowledge the rights of victims, victimizers, and ex-combatants is essential for long-term peace'. Put somewhat differently, transitional justice is considered a fundamental element of positive peace since it contributes to rebuilding relations of trust in post-conflict societies.[55]

In Chapter 17, the overall role and impact of international courts and tribunals in the promotion of peace is discussed. Gentian Zyberi argues here that courts and tribunals, together with non-judicial means and methods of settling disputes, can play a crucial role in various efforts that aim at maintaining or restoring interstate or intrastate peace and/or security. The chapter discusses the role and contribution of some of the most important international courts and tribunals. The conclusion is that, even though courts and tribunals have made a contribution, historically as well as today, their role in maintaining and/or restoring peace is not without limitations.[56]

Cecilie Hellestveit discusses different types of international 'fact-finding' missions and mechanisms with a particular focus on their role in the promotion of peace in Chapter 18. Here she shows that not only have these missions and mechanisms gained ground as means by which the international society responds to man-made threats to peace and security, but also that they give rise to various dilemmas. The chapter asks a number of crucial questions in this regard, for example: (i) Do international fact-finding missions serve to gloss over violations of international law and hiding insufficiencies in the ability of international law to adequately respond to not only armed conflict but also grave abuses of human rights? (ii) Or is fact-finding an increasingly decisive means in the architecture of the international law of peace and security and its potential to ease recovery from violent conflict by responding to the difficulties of fact-finding as an important weapon in the armoury of maintaining international order?[57] Irrespective of the answers to these questions, Hellestveit concludes that the future success of international fact-finding 'is likely to depend on the ability of international institutions to handle and adequately balance the various concerns and practical challenges deriving from this' and similar in-built tensions associated with the practice.[58]

In Chapter 19, Azin Tadjdini asks the question: What is the role of domestic constitutions in preservation and promotion of peace? After having established, based on Kant, the significant role of constitutions in these regards, she turns to

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55 Bailliet and Mujezinović Larsen, *supra* note 16, at 16; J García-Godos, 'It's About Trust: Transitional Justice and Accountability in the Search for Peace', in Bailliet and Mujezinović Larsen, *supra* note 16, 321 at 323; Cf. M. Baaz, 'Dissident Voices in International Criminal Law', (2015a) 28 *Leiden Journal of International Law* 673–89; M. Baaz, 'Bringing the Khmer Rouge to Trial: An Extraordinary Experiment in International Criminal Law, (2015b) 61 *Scandinavian Studies in Law* 292–338; M. Baaz, 'The "Dark Side" of International Law. The Extraordinary Chambers in the Courts of Cambodia', (2015c) 60 *Scandinavian Studies in Law* 157–86.

56 Bailliet and Mujezinović Larsen, *supra* note 16, at 16.

57 Ibid., at 17.

58 C. Hellestveit, 'International Fact-Finding Mechanisms: Lighting Candles or Cursing Darkness?', in Bailliet and Mujezinović Larsen, *supra* note 16, 368 at 394.

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an analysis of peace-promoting and peace-threatening characteristics in past and contemporary constitutions. Tadjdini argues that if we accept that the goal of peace is respect for all human beings, then we can identify constitutional characteristics that are negative to peace more easily, since the characteristics will not consider each individual as an end in itself. In the conclusion she argues that individual-centric constitutions are more effective in preserving and promoting peace than those that are state-centric.[59]

In an epilogue, Maria D. Sommardahl argues that education on the various components of peace discussed in the other chapters of the volume is crucial for the institutional implementation of peace. She explores and suggests a concrete approach to education on peace, as well as explaining its importance in the promotion of peace. At a general level, this chapter argues in favour of not only a greater emphasis on research for the sake of greater knowledge about local meanings and experiences, but also on research as a form of evaluation of peace education.[60] Sommardahl concludes that if this could be realized, it would respond to a currently existing gap between policy, practice and research of peace education.[61]

8. Back to the future

Due to the high levels of ambition and thematic breadth of the volume, the strongest impression after having read the book is that the individual chapters are stronger than the book as a whole. The editors simply seek to embrace too much and it is not absolutely clear how the different chapters and parts relate to one another. This weakness is enhanced by (i) a somewhat hollow introduction, which in parts confuses rather than clarifies; (ii) the lack of coherent introductions to each of the four parts; and, even more so, (iii) the lack of a concluding chapter that ties together the various contributions.

The interdisciplinary ambition of the Oslo conference, which the volume reports on, is unfortunately not particularly well reflected in the book. In this regard, much more could have been done. The volume, as it stands, is more of a collection of various mono-disciplinary and individual contributions on issues related to peace through law and the right to peace, rather than a work that seeks to combine perspectives and think across disciplinary boundaries, which would, by integration, establish something new. This weakness is clearly displayed in Chapter 11, where the authors explicitly reflect upon the relationship between Peace Studies and International Law. The chief concern does not seem to be addition or integration of the two, but rather to avoid conflation – to safeguard what is considered one's own territory, to patrol established boundaries, and to limit the extent to which ideas travel from one field to another. This position is not only regrettable but appears to be contrary to the purpose of the book.

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59 Bailliet and Mujezinović Larsen, *supra* note 16, at 17.
60 Ibid., at 17; M.D. Sommardahl, 'Education for Peace: Epilogue', in Bailliet and Mujezinović Larsen, *supra* note 16, 416 at 416–17.
61 Ibid., at 429.

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Even if the individual chapters are better than the volume as a whole, not all chapters are equally good. Their quality is uneven in several respects, reaching from the degree of importance of the chosen problem to the chosen analytical perspective, the analytical consistency, the degree to which the arguments convince, the disposition and the use of language. These issues could probably, at least partly, be explained by the fact that the volume is not as 'international' as the preface indicates. Of the 22 contributors, no less than 19 were born in, or are currently working in, Norway; of the remaining three, two are from Sweden and the other from the US. Most scholars have their disciplinary background in Peace Studies or Law. Hence, the lookout is quite limited, not only regarding the geographical but also the disciplinary backgrounds of the contributors.

Despite the criticism presented above, it should be emphasized that the book is an important one and contributes to both Peace Studies and International Law. It contains several interesting and well-written individual chapters. In this regard, Chapters 4, 14 and 17 stand out. The volume is also important as a whole, mainly in regard to the overall ambition of addressing the need to build bridges between Peace Studies and International Law and, in particular by taking a broad look on the (old) idea of promoting peace through law. The call for a 'reunification' is refreshing and important. By this premise, the volume also joins a broader trend in the 'social sciences', namely the slow and gradual reunion of International Law, International Politics and Peace Studies, that we have witnessed since the end of the Cold War.[62]

Considering the (short) historical background presented above, there is a lot to be gained by contextualizing the attempt of building bridges between Peace Studies and International Law within the wider project of bringing International Politics and International Law closer together. To build bridges between disciplines, let alone to seek to integrate or transcend them involves certain problems; not only because different disciplines have different 'starting points', but also because various disciplines are, more or less, internally divided. International Politics, but also to a lesser extent International Law and Peace Studies could be described as divided, if not dividing, disciplines.

International Politics, International Law and Peace Studies are three separate, but overlapping disciplines with a common pedigree. International Politics is, however, interested in much broader phenomena than only the legal 'regulation' of world politics and/or international peace, security and justice. The discipline is interested in understanding the behaviour of states and other international actors, the nature of the international society and the role international actors, processes and discourses.[63] By this, International Politics holds the potential to serve as the 'outer framework' within which the issues employing scholars of International Law and Peace Studies as well as other disciplines interested in various other international or global phenomena, could be addressed.

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62 See, e.g., D. Armstrong, T. Farrell and H. Lambert, *International Law and International Relations* (2012); M. Byers, *The Role of Law in International Politics* (2000); B. Cali (ed.), *International Law for International Relations* (2009); C. Reus-Smit, *Politics of International Law* (2004).

63 Cali, *supra* note 62, at 7.

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However, as indicated above, International Politics houses a large number of different theoretical approaches, including not only mainstream approaches such as Political Realism, Rationalism, Radicalism (or Liberalism) and Revolutionism (or Marxism), but also various alternative or dissident ones, such as Post-Modernism, Critical Theory, Feminism and Post-Colonialism.[64] Even though Legal Positivism holds a stronger grip on International Law than Political Realism does on International Politics, the approach is still divided and includes various theoretical strands, including Natural Law, Legal Realism, Marxism as well as more alternative positions, including Critical Legal studies, Feminism and Third World Approaches to International Law, just to mention a few.[65] Peace Studies is, in spite of being the most homogeneous discipline of those discussed here, divided into at least two main approaches – negative peace and positive peace.

If the aim is to build bridges, then an approach is needed that can function as a *via media* between various approaches not only within the disciplines, but also between them. For reasons that will be developed further below, the most promising candidate in this regard is the English School (ES) (of International Politics); this approach, which derives from 'philosophy, history and law … is characterized above all by the explicit reliance upon the exercise of judgement'.[66]

By 'the exercise of judgement', Hedley Bull means that scholars should fully understand that international politics sometimes present difficult moral choices to the actors involved – i.e., choices about conflicting political values and goals. Scholars should, it is argued, be able to evaluate those choices in terms of the situations in which they are made, as well as the values at stake.[67]

The chief idea and distinctive marker of the ES is the concept of 'international society', which is commonly understood as:

> … a group of states (or more generally, a group of independent political communities) which not merely form a system, in the sense that the behaviour of each is a necessary factor in the calculations of the others, but also have established by dialogue and consent common rules and institutions [i.e., 'the balance of power, international law, the diplomatic mechanism, the managerial system of the great powers and war'] for the conduct of their relations, and recognise their common interest in maintaining these arrangements.[68]

The ES thus rests on a holistic conception of international society; an 'anarchical society', but a society even so, constituted by common values, rules and institutions. At least two additional key features define the approach. Firstly, scholars within the approach deny the relevance of what is known as 'the domestic analogy' – that is, an order dependent on hierarchical authority – drawing attention to not

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64 See, e.g., Baaz, *supra* note 4; J. Baylis, S. Smith and P. Owens, *The Globalization of World Politics: An Introduction to International Relations* (2013).

65 M. Baaz, *Law and Politics in International Society* (forthcoming).

66 Bull, *supra* note 22, at 361.

67 R.H. Jackson and G. Sørensen, *Introduction to International Relations: Theories and Approaches* (2007), 130.

68 H. Bull and A. Watson (eds.), *The Expansion of International Society* (1984), 1; H. Bull, *The Anarchical Society: A Study of Order in World Politics* (2012), 71 (italics added). The concept of international society has also been fundamental to international law since at least the nineteenth century; B. Buzan, *An Introduction to the English School of International Relations* (2014), 5.

only the possibility but also existence of a non-hierarchical order. Secondly, even if the approach is somewhat split between more or less state-centric conceptions of international society, it is a matter of degree rather than kind.[69]

From its central location within a divided field, the ES holds the potential to serve as a *via media*, not only between different approaches within a divided discipline, but also between International Politics, International Law and Peace Studies. Put simply, it is an approach that makes possible contact between disciplines that have a lot in common but which, for various reasons that are becoming increasingly difficult to justify, have developed in isolation.

By tradition, the central concern of the ES has been order/negative peace, while the pursuit of justice/positive peace has been considered secondary and something that possibly could challenge the maintenance of peace and security in international society by earlier generations of *pluralist* scholars.[70]

With the end of the Cold War and in light of the view that certain values concerning human well-being were now becoming more universally shared, reconsiderations of the traditional ES position began to appear. There was more support for a *solidarist* belief that international society should not, as earlier, focus chiefly on order but also seek to promote greater justice, especially concerning human rights and the maintenance and enforcement of such rights. Moreover, increasingly powerful arguments appeared that order was dependent on the satisfaction of different justice claims – that order and justice were, in fact, two sides of the same coin (peace and justice or peace and development). It was argued that the new, post-Cold War, international society should embrace, inter alia, 'peace-building' (including regime change and military intervention on humanitarian grounds), 'transitional justice' (focusing on reconstruction and reconciliation as well democratization and the overcoming of poverty) and, by extension, the 'ending of impunity' (by, e.g., international criminal law).[71] It was also argued that there could be no stable and/or legitimate international order without justice.[72] Following this reorientation – not seeking to replace justice with order, but by promoting justice as an equally legitimate value of international society as order – a key dilemma emerges, namely: What if advancing justice/positive peace challenges order and, by extension, threatens international peace and security? Which value – order or justice – should be given priority, when and why?

According to Hedley Bull, there is (often) no rational way of choosing between moral ends.[73] Considering this, international law stands out as a promising alternative to serve as the ethical basis for international society, since, as indicated above,

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69 K.E. Jørgensen, *International Relations Theory: A New Introduction* (2010), 102. See also Baaz *supra* note 17, at 35–42.

70 See, e.g., Jørgensen, *supra* note 69, at 102–25.

71 R. Foot, 'Introduction', in R. Foot, J.L. Gaddis and A. Hurrell (eds.) *Order and Justice in International Relations* (2003), at 1; A. Hurrell, 'Order and Justice in International Relations: What is at Stake?', ibid., 24 at 31. See also M. Baaz and M. Lilja, 'Understanding Hybrid Democracy in Cambodia: The Nexus Between Liberal Democracy, the State, Civil Society and a "Politics of Presence"', (2013) 6 *Asian Politics and Policy* 5–24; Baaz, 2015a, 2015b, 2015c, *supra* note 55.

72 Cf. I. Clark, *Legitimacy in International Society* (2005), 26–9.

73 H. Bull, 'Natural Law and International Relations', (1979) 5 *British Journal of International Studies* 171, at 181.

'international society is not merely regulated by international law, but constituted by it'.[74] By this, international law provides the ultimate evidence for the existence of international society – *ubi jus ibi societas est*. International law locates international society 'like a miner's lamp locat[es] gas'.[75]

In spite of the centrality given to international law in international society, international law remains the least studied of the three pillars on which the ES is based. History and Philosophy have been subjected to much greater attention than International Law. It is surprising that the ES has not taken International Law more seriously.[76] The main reason for this is simply that the ES, due to disciplinary isolation, has for long time not had the intellectual resources within their ranks to do so. Even though some improvements have been seen recently, much work remains to be done.

Generally speaking, the 'strand' of the ES, which is inspired by 'legal positivism', considers the chief objective of international law to be to maintain 'order'. It emphasizes the sovereign will of the state and argues that law and morality should be kept apart. The legal approach is basically 'formalistic'. The 'solidarist' strand of the ES on the contrary, which is inspired by 'natural law' thinking, considers the chief objective of international law to be the promotion of 'justice'. It emphasizes human dignity/rights and favours a close connection between law and morality. The legal approach is essentially 'instrumental'.

All in all, pluralism and solidarism, order and justice, negative and positive peace as well as formalism and instrumentalism, respectively, are positions that appear to mirror one another, and are irresolvably in conflict with each other. The handling of this conflict stands out as a crucial task for scholars of International Politics, International Law and Peace Studies, in particular for those interested in promoting peace through international law.

This is, for obvious reasons, not the place for seeking to contribute more details to this important work. It is, however, possible to point out one potential direction for 'creative' thinking in this regard. Seeking to solve the above-mentioned conflict by trying to set a position in contradistinction to the one being opposed will almost certainly result in falling into the 'mirror-image' trap.[77] It would be more constructive to attempt to move beyond this and instead to revisit 'legal realism'; inparticular Scandinavian legal realism,[78] and by extension, as argued by Martti Koskenniemi, accept 'international law as a political project'. In doing so, international law, as an institution of international society, could simultaneously function as a means for advancing various claims and a relatively autonomous formal technique. By bringing these two aspects of international law together, follows that there is no fixed goal, purpose, principal or value that is existing somewhere 'outside' or 'beyond'

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74 T. Nardin, 'Legal Positivism as a Theory of International Society', in D.R. Mapel and T. Nardin, *International Society: Diverse Ethical Perspectives* (1998), 17 at 20.

75 R.J. Vincent, 'Order in International Politics', in J.D.B. Miller and R.J. Vincent (eds.), *Order and Violence: Hedley Bull and International Relations* (1990), 55.

76 T. Dunne, *Inventing International Society: A History of the English School* (1998), 121–2.

77 See T. Skocpol, 'Wallersteins World Capitalist System Perspective: A Theoretical and Historical Critique', (1977) 82 *American Journal of Sociology* 1075–90.

78 See Baaz, *supra* note 36.

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international law *per se*; they are always and only the objectives of different actors with different opinions. International law is an instrument, but what it is an instrument for is not possible to fix outside the political process of which it is an integrated and complex part. By this, the objective of international law is not only international law *per se*, but international law also exists as a promise of justice.[79]

9. Conclusion

If the volume is judged generously and foremost by its heuristics value, it constitutes a valuable contribution not only to the discussion on promoting peace through international law, but also to the wider discussion on the relation between International Politics, International Law and Peace Studies as academic enterprises. It contributes to the widening of the scope of the traditional peace through law approach, beyond simply compulsory adjudication, as well as opening up a new space for the margin between disciplines that have much in common. By this, the volume encourages dialogue and could function as a revitalizing and much needed catalyst. This is enough to justify it. The fact that it leaves something to be desired in certain regards should be mentioned, but not exaggerated. The book serves as an excellent starting-point to a big and crucial undertaking, namely to produce knowledge that is driven by relevant problems rather than disciplinary boundaries. Above all, it inspires us go back to the future and relate to the 'conventional' wisdom more wisely.

[79] M. Koskenniemi, 'What is International Law for?', in M. Evans (ed.), *International Law* (2010), 32 at 38–9, 52–3. See further Baaz, *supra* note 65.

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