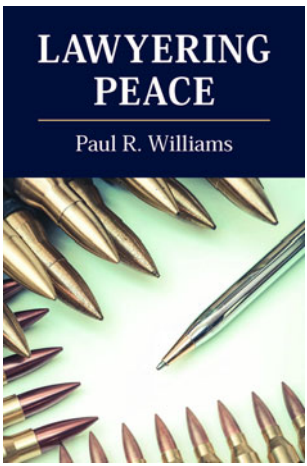
International Review of the Red Cross, Page 1 of 5.
doi:10.1017/S1816383124000213

IRRC

LIBRARIAN'S PICK



Lawyering Peace

By Paul R. Williams*

Book review by Charlotte Mohr, Reference Librarian, International Committee of the Red Cross, Geneva, Switzerland
Email: cmohr@icrc.org

Lawyering Peace is a book that cuts to the chase. It doesn't delve into debates about peace processes, their intricacies and flaws, nor does it include the author's recollections of the two dozen peace negotiations he has assisted as a world-renowned lawyer advising State and non-State actors, from the Dayton Accords to East Timor. Instead, *Lawyering Peace* is what it says on the back cover: an instruction manual for future peace negotiators on how to craft agreements that have a better chance of leading to lasting peace. Creating such a manual is, of course, no small feat. In less than 250 pages, Paul R. Williams identifies the key issues in peace negotiations, presents the puzzles they pose for negotiators, and

* Published by Cambridge University Press, Cambridge, 2021. Paul R. Williams holds the Rebecca I. Grazier Professorship in Law and International Relations at American University, where he teaches in the School of International Service and at the Washington College of Law. He co-founded the Public International Law and Policy Group, a non-profit, *pro bono* global law firm that advises States and non-State actors involved in peace negotiations, post-conflict constitution drafting and war crimes prosecutions. Over the course of his career, he has assisted over two dozen peace negotiation processes. His previous publications include *The Syrian Conflict's Impact on International Law* (Cambridge University Press, 2020) and the *Research Handbook on Post-Conflict State Building* (Edward Elgar, 2020).

ICRC Library

The "Librarian's Pick" is a regular section of the *Review* in which one of the International Committee of the Red Cross's (ICRC) librarians picks and writes about their favourite new book relating to international humanitarian law, policy or action, which they recommend to the readers of the journal.

The ICRC Library welcomes researchers interested in international humanitarian law (IHL) and the institution's work throughout the years. Its online catalogue is the gateway to the most recent scholarship on the subject, documents of diplomatic and international conferences, all ICRC publications, rare documents published between the founding of the ICRC and the end of the First World War, and a unique collection of military manuals. The Library Team also publishes research guides in order to help researchers access the full texts of the most relevant and reliable sources in the field of IHL and the ICRC, as well as a comprehensive IHL Bibliography, with three issues every year.

The online catalogue is available at: library.icrc.org. For more information on the research guides, see: blogs.icrc.org/cross-files/category/research-guide. To subscribe to the IHL Bibliography, email library@icrc.org with "IHL Bibliography subscription" in the subject line.

discusses paths to resolution. With a clear pedagogical aim, Williams puts to paper the lessons of his career and draws on the last thirty years of peace processes worldwide.

The book has a clear purpose, and a structure to match. It is divided into five chapters, each dealing with a key issue in peace negotiations: security, power-sharing, natural resources, self-determination and governance. Each issue is presented as a "puzzle", with each chapter being structured in a similar way. First, the author lays out the pieces and provides a conceptual and legal primer for understanding the subject matter at hand. Then, he gives a clear picture of the final motif, identifying the stakes of the issue for the negotiating parties. Finally, he selects one aspect of the issue worth exploring in more depth, illustrates how parties have solved (or attempted to solve) this particular puzzle in the past, and describes the process or decision that led to a successful, mixed or ill-fated outcome.

This systematic approach, although somewhat repetitive, serves the book well. The author has developed an effective strategy for unpacking complex issues while condensing the relevant State practice. The reader is brought up to speed by the primer that opens each chapter and is then made to understand the stakes of each issue, the related key trade-offs, and the potential pitfalls and unintended consequences. The author's ability to get to the heart of an issue while resisting oversimplification is a major strength of the book. The importance given to State practice ensures that the book remains very much rooted in the reality of peace processes and their myriad constraints.

https://doi.org/10.1017/S1816383124000213 Published online by Cambridge University Press

The first conundrum worthy of such examination is, quite logically, the question of post-conflict security. Chapter 1 deals with how to move from a conflict situation to the restoration of the State-held monopoly of force. It touches on disarmament, demobilization/reintegration and security sector reform issues, and zooms in on the involvement of international peacebuilding or peacekeeping forces. The author adopts the point of view of the parties to the conflict and details the risks and trade-offs of different paths, starting with the thorny issue of consent for the presence of international forces and how to include non-State actors in the process. He discusses how to define the mandate of an international force and tailor its nature and configuration, including its command structure, to that mandate. The constantly evolving – and at times misinterpreted – mandate of the United Nations forces operating in the territory of the former Yugoslavia provides the most striking case study of the opening chapter.

Because political marginalization is a major conflict driver, Chapter 2 looks at how to craft balanced and rational power-sharing arrangements in peace agreements. Just how far and how fast should decentralization go? To support a durable peace, the author stresses, power-sharing should be designed for democratic representation, not for getting a "yes" at the negotiating table. The chapter focuses on vertical power-sharing arrangements. Cautioning against using States with a long tradition of decentralization as models for previously highly centralized post-conflict States, Williams does not see federalism as a panacea and finds advantages in asymmetric structures. The case studies highlighted in this chapter include South Africa, Bosnia, Macedonia, Iraq and Yemen. They illustrate the author's two central concerns: the difficulty of implementing sweeping decentralization programmes, especially on a rushed timeline, and the importance of tailoring revenue distribution to properly fund any new devolution of power.

Chapter 3 addresses natural resources ownership, management and revenue allocation. Perhaps surprisingly, the author finds this issue to be significantly more difficult to negotiate than the topics covered in the first two chapters. The stakes are high, as natural resources are of paramount importance in the economy of many conflict States and inequitable access to these benefits is a major conflict driver. The chapter focuses on peace agreement provisions related to extractive natural resources, whether Aceh's oil and gas or Sierra Leone's infamous "blood diamonds". The author highlights the difficulty of crafting language about natural resource ownership – the temptation to include opaque language about ownership "by the people" (as in the 2005 Iraqi Constitution), symbolically important yet immensely difficult to implement, provides a good example of the tension between "getting to yes" and "building a durable peace" inherent to the peace agreement drafting process. Williams finds that details of management and revenue distribution for natural resources, which require extensive technical expertise, tend to be overlooked. The peace negotiations between Aceh and Indonesia, on the one hand, and Sudan and South Sudan, on the other, provide two compelling and contrasting case studies of the importance of timing in negotiations.

https://doi.org/10.1017/S1816383124000213 Published online by Cambridge University Press

Chapter 4, "Self-determination", deals with designing peace agreements for sovereignty-based conflicts. The chapter focuses on how to provide in the agreement a path for external self-determination as a means of resolving a conflict between a State and a sub-State entity seeking independence. It first discusses provisions on sharing, phasing in, conditioning or constraining the exercise of sovereignty before the final status of the sub-State entity is determined. The author then addresses what he identifies as the most contentious issue: how to conduct a referendum to assess the "will of the people". He raises a number of questions ("Who is eligible to vote in the referendum? What is the precise question to be put to the people? What percentage of the people must vote in favour of the question, and is there a minimum voter turnout required? Is the outcome of the referendum binding on the parent state?"[1]) and compiles how parties have answered each of these questions in the past. The author relies heavily on Algeria's independence from France as a case study, and draws insights from negotiations in Bougainville/Papua New Guinea, Macedonia, Bosnia, East Timor/Indonesia, Kosovo, Sudan/South Sudan and Western Sahara/Morocco.

Chapter 5, "Governance", focuses on the drafting of post-conflict constitutions. Echoing the conclusions of Chapter 2, the author cautions against rushing to draft a permanent constitution as part of peace negotiations, as this is likely to embed conflict dynamics in the text rather than serving the long-term interests of the State – but he also acknowledges that the parties are under immense pressure to make changes quickly and are pressed for time during peace negotiations. To illustrate this point, he recounts the "all or nothing" approach of the Dayton peace negotiations, which culminated in the inclusion of the new Bosnian Constitution as Annex 4 to the Dayton Accords. He links the drafting process of the new Constitution to the entrenchment of ethnic divisions in the Bosnian political system that persist to this day. South Africa is another important case study in this chapter: the 1993 peace agreement, which served as an interim constitution, set out a number of principles for the drafting of a new, democratic constitution, adopted three years later after a more inclusive process. The juxtaposition of these two case studies certainly invites the reader to connect the dots, but the author resists simple contrasts and conclusions. Far from making sweeping claims, he does not point to a "right" way forward or present the various choices made by the negotiating parties as "right" or "wrong". Each choice will present its own set of challenges; the value of the book lies in making those challenges explicit.

There is only so much one can discuss in 250 pages, however. Transitional justice issues, the repatriation of refugees and resettlement of displaced persons, and in general many human rights issues, like minority rights, remain largely unexplored in the book. Though he mentions that those topics merit examination, the author does not elaborate on why they are here deprioritized. Perhaps he found them less likely to be the most contentious issues blocking peace negotiations, despite their important role in fostering long-term peace. Such themes, however,

1 *Lawyering Peace*, p. 142.

https://doi.org/10.1017/S1816383124000213 Published online by Cambridge University Press

re-emerge in the appendix. Over forty pages, the author covers each context/conflict previously cited as a case study: Aceh/Indonesia, Angola, Bosnia and Herzegovina, Bougainville/Papua New Guinea, Burundi, Colombia, Darfur/Sudan, East Timor/Indonesia, Guatemala, Iraq, Kosovo/Serbia, Macedonia, Mindanao/Philippines, Mozambique, Nepal, Northern Ireland, Rwanda, Sierra Leone, South Africa, Sudan/South Sudan, Western Sahara/Morocco, and Yemen. For each, he summarizes what drove the conflict, how the peace process unfolded, the core elements of the peace agreement, and the agreement's current state of implementation. The appendix is a most valuable addition that goes beyond contextualizing the examples used in the book's five main chapters. It makes apparent, for example, how international law violations during the conflict impact peace negotiation efforts, how hasty decisions – sometimes made in good faith – can jeopardize peace longevity and post-conflict governance, or how ambiguous language in a peace agreement can help the parties get to "yes" but then give rise to substantial disagreement in interpretation and compromise implementation.

For current and future peace lawyers, *Lawyering Peace* will provide invaluable guidance on how to draft an agreement with longevity in mind, and an entry point into thirty years of comparative State practice. Meanwhile, non-lawyers will find a compelling description of the role of lawyers in peacebuilding and a clear-eyed account of how a peace agreement gets drafted, in a sharply constructed yet genuinely accessible book.

https://doi.org/10.1017/S1816383124000213 Published online by Cambridge University Press