Just War and Human Rights
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Published by State University of New York Press

Burkhardt, Todd.  
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Updating the Fourth Geneva Convention

The postwar phase has an established history in just war theory, and it has received a considerable amount of attention over the last decade. Although the postwar phase seems to be the focus of many current just war debates and philosophical works, law and practice concerning the postwar phase has received considerably less attention over the same period. International law regarding the *ad bellum* and *in bello* (of and in war) phases is currently more developed than international law stemming from the moral principles that are relevant to the *post bellum* (after war) phase.

For instance, in the prewar phase, the international community, represented by the United Nations, oversees the conduct of war according to the UN Charter, which specifically defines when a state has the moral and legal right to resort to war (in cases requiring either collective defense or self-defense, according to Articles 2.4 and 51). States recognize that they should petition the UN for approval before initiating any military endeavor that is different from the traditional definitions of acting in collective or self-defense, which include preemption, law enforcement, military intervention, etc. Regarding the war phase, the international community has signed treaties (Hague and Geneva Conventions) derived from moral norms and customary law regarding how and when states and their armies can morally and legally engage in war.

Both the *ad bellum* and *in bello* phases operate within moral and legal guidelines, but the *post bellum* phase lacks these directions. This
can be rectified not only by expanding the range of *jus post bellum* moral norms to include fighting with right intention but also by giving legal embodiment to those norms. That is, obligations stemming from the norm of right intention should be realized not only as morally prescribed but as legally binding as well. If civilians/noncombatants are to be “at all times humanely treated, and protected against all acts of violence or threats thereof,” then belligerents should attempt to indemnify civilians from the harmful effects of war as comprehensively as possible. Although it is accepted that civilians are to be protected in wartime, belligerents’ obligations to civilians can be ambiguous, because the current international treaties regarding the treatment of civilians do not adequately define those obligations.

This shortcoming needs to be addressed, because when their basic human rights are abrogated, it is the civilians who suffer the consequences most harshly, often fatally. Their core human rights must be safeguarded in a fashion that will guarantee their access to life-sustaining goods and services, including food and water, shelter, security, and medical attention. There needs to be a guarantee of a social minimum, the absence of which signals a failure to secure human rights.

States that act with right intention do so recognizing that basic human rights must be reasonably safeguarded during and after war. Fighting with right intention entails a robust account of securing core human rights, which the principle of noncombatant immunity already recognizes. Immunizing civilians from harms that threaten basic human rights fits into any plausible account of what the principle of noncombatant immunity requires, because noncombatant immunity entitles civilians to protection of more than just their basic human rights (e.g., respecting religious conviction and practices, honoring manners and customs, and barring threats and insults). Therefore, belligerents acting with right intention and in accord the principle of noncombatant immunity are required to protect civilians from the harms of war. I am not suggesting that war cannot be waged when civilians are in the proximity. Article 28 (Part III: Status and Treatment of Protected Persons) of the GCIV states that “the presence of a protected person [noncombatant/civilian] may not be used to render certain points or areas immune from military operations.” However, belligerents should be accountable for the destruction they cause and should take reasonable measures (as the situation dictates) to at least insulate civilians from standard threats to their basic human rights (physical security, subsistence, and basic liberty).
Although there has been a lot of attention paid to the moral principles of *jus post bellum*, standards governing the transition and postwar phases of war should be expanded to include not only the goal of lasting peace but also the ideals of justice. Legal embodiment of these standards is also essential. Without legal embodiment of those relevant moral norms in place to govern the transition phase, postwar obligations are left to the interpretation of the victor.

Furthermore, occupation law, which codifies the primary legal regulations for governing during the postwar period, is outdated, inadequate, underdeveloped, and vague. As it currently stands, there is a normative gap (that is, what is morally required has not yet been codified) in the law of transition from war to peace. Although current occupation law provides a framework that, if fulfilled, might achieve some level of peace, it does not aim at peace with justice. Moreover, if the long-term aim of just war is to establish a just and lasting peace, substantive legal embodiment of the relevant moral principles is necessary to bring occupation law into line with this goal. This is necessary not only to point the parties involved more squarely in the direction of justice but also to inform them of what is required of them. If we do not have clear legal rules, justice becomes difficult to secure and maintain and a state's duties, obligations, and restrictions are left to interpretation and bargaining.

As it currently stands, occupation law fails to adequately address the positive efforts needed both for basic human rights fulfillment and for reasonable political self-determination—both of which give content to peace with justice. As a result, “the law of occupation is inadequate to the realities of modern occupation, and to the demands of modern peacebuilding and post-conflict reconstruction.”

My argument will entail a three-section analysis of relevant postwar moral norms and their legal embodiment. In the first section, I intend to show that the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, which is the treaty that covers the treatment of civilians during and after war, does not reflect current moral norms regarding human rights. Therefore, the Fourth Geneva Convention needs substantive reform in order to set forth the legal embodiment of relevant moral principles. In the second section, I will argue that ad hoc legal arrangements are problematic because these obligations are determined *ex post*, which is too late. Rather, overarching legal rules (ones that always pertain to any conflict) should be formulated and instituted ahead of time. In addition, ad hoc legal arrangements cite specific treaties that
belligerents should comply with, but those very treaties favor the victor and do not allow for political self-determination. In the third section, I will propose that the UN needs to take a larger role in postwar operations. The reason is twofold: (1) the UN is the global entity whose mandate is to foster the cooperation of states regarding issues of peace and security; and (2) the UN has the responsibility to monitor and report compliance failures, as it already does with regard to human rights violations.

**REVISED GENEVA CONVENTION**

The 1907 Hague Convention IV and the 1949 Fourth Geneva Convention (Section III: Occupied Territories) comprise what is commonly referred to as occupation law. At the conclusion of a conflict, an occupation force may or may not be deployed, because it is not always evident that such a force is permissible or required for an effective transition to peace with justice in every case. Moreover, I am not suggesting that every war that has a clear victor is followed by the installation of an occupation force. For example, the 1991 Gulf War did not result in Coalition forces leaving behind an occupation force, but the 2001 war in Afghanistan and the 2003 war in Iraq did.

The placement of an occupation force (if warranted) can play an essential role in enabling a war-torn state to become autonomous once again. The functions of an occupation force is generally express themselves in six main areas: conduct of combat operations against any hostile state or nonstate actors that have refused to surrender; reestablishment of the rule of law; training the vanquished state’s internal defense forces; repair and restoration of essential facilities and infrastructure that uphold core human rights; fostering legitimate governance; and promoting economic pluralism. The final post bellum goal is restoration of the losing state as an independent sovereign state that is internally legitimate and externally peaceful. Depending on the situation, an occupation force may or may not contribute to bringing about this end.

Occupation law “establishes the rights and duties of the occupier, the duties of the civilian population of the occupied lands, the limitations on exercises of power against the civilian population, and the continuing rights of the ousted sovereign.” However, these stipulations only help maintain the status quo ante (negative duty of do not harm) and focus on conflict termination but not on peacebuilding. But, as Kristen
Boon notes, “peace is no longer limited to a minimalist negative core but increasingly contains positive duties linked to the conditions that make peace practicable.”

Although occupation law, in particular the GCIV, was ratified in 1949 after the implementation of the 1948 UDHR, the GCIV needs to be revised so it is consistent with the human rights movement that has gained considerable momentum over the last forty years. The realization that human rights are essential to developing and maintaining international peace and stability has since been slow and intermittent. It has taken decades to move from the UDHR to the two main conventions, and then decades more for those conventions to become anything close to effective. But human rights standards have taken hold, and “the rise of human rights obligations have set certain benchmarks for behavior.”

Human rights “provide protections of basic human interests against standard threats to those interests; the character of the standard threats and what serves as adequate protections against them both reflect the nature of the kind of social world in which human beings now find themselves.” Just as human rights should be realized not only as moral but also as (international) legal rights in order to hold states accountable for providing adequate protection against standard threats, so too the norms of just war that follow from right intention should be realized not only as moral norms but as (international) legal rights. If we can adequately identify the character of standard threats in our social world then we can also adequately identify the character of standard threats that harm civilians during and after war.

Empirical evidence provides plenty of reliable information “about what makes for human misery and degradation” in modern war. As Allen Buchanan notes, “Once we appreciate the importance of factual premises, it becomes clear that the task of specifying human-rights norms is ongoing: as conditions change, new threats to basic interests may present themselves and new institutional arrangements for countering them may be needed.”

Just as we have updated and revised human rights treaties in order to better reflect our world, we must do the same with treaties that concern human rights and the welfare of civilians in the postwar period. The point is that we need to update and revise international treaties regarding war in order to adequately accommodate our commitment to right intention and human rights. Moreover, if resorting to war justly is more than vindicating a just cause but is also conducting war in such
a manner that will set necessary conditions for a just and lasting peace, then new (updated) institutional arrangements are needed in order to counter those new or at least newly recognized threats to basic interests.

On another note, institutionalizing norms is not “merely a mechanism for translating independently justified moral rights into legal ones.” Rather, these institutions constitute, as Buchanan notes, “modes of public practical reasoning [structured by legal institutions] that contribute to our understanding of moral rights and to their justification.” Public practical reasoning allows for greater “inclusive representation of interests and viewpoints than is likely to be available at the domestic level and to that extent can mitigate the risk of culturally biased understandings of basic human interests, of what threatens them, and of what institutional arrangements are needed to counter the threats.”

Allowing for public practical reasoning structured by legal institutions can help us know “what our obligations are regarding human rights by providing principled, authoritative specifications of human rights when there is a range of reasonable alternative specifications.” Of course there will be differences, even reasonable disagreement, but public practical reasoning provides a forum to discuss the issues of occupation and transition law as the two components of a legally embodied jus post bellum regime. Engaging in such a discussion would not only shed light on the current inadequacies of legal protection that the GCIV specifies for civilians in the postwar phase, but also address the question of what authoritative specifications are needed in order to adequately account for protecting civilians’ core human rights (physical security, subsistence, and basic liberty).

Historically, the GCIV was instituted as a way to capture considerations that the 1907 Hague Convention IV Military Authority Over the Territory of the Hostile State never addressed, because, “The experience of Axis belligerent occupation during World War II made it clear that more precise standards and enforcement mechanisms were necessary for the security of civilians and their property in occupied territories.” But the 1907 Hague Convention IV left much open to interpretation regarding the rights of the civilians in occupied territory. Articles 43 and 46 of the Hague Convention IV state that the “lives of persons must be respected, private property cannot be confiscated, and that the Occupying Power shall take all measures to ensure as far as possible public order and safety,” but it does not provide a specific account of what constitutes public order and safety. In addition, it does not make
any reference to ensuring that the civilian population has food, water, shelter, or medical supplies or that the occupying power has any positive obligation to facilitate the delivery of these necessities.

The primary focus of occupation law is the following: "The occupier must take necessary steps to identify and register children in an attempt to reunite families, ensure food and medical supplies of the populations, maintain public health and hygiene services, ensure that penal laws of the occupied state remain, allow relief schemes by other states and/or the Red Cross, not compel protected persons (civilians) to work unless they are over eighteen years of age, not restrict employment opportunities, and must not conscript protected persons into its own army."\(^{21}\)

Since the ratification of the CGIV in 1949, occupation law has applied in the Six Day War (1967) where Israel occupied former territories of Egypt (the Gaza Strip), Jordan (the West Bank), and Syria (the Golan Heights); the 1976 Syrian occupation of Lebanon; the invasion of Kuwait by Iraq (1990), the U.S. invasions of Grenada (1983) and Panama (1989), as well as the invasion of Afghanistan (2001) and Iraq (2003) by the United States and UK.

Some states have flat out denied their obligations under occupation law. For example, Israel believed that occupation law was not relevant because it had a legitimate claim in annexing the occupied territories that it gained during the Six Day War, and "Iraq did not apply the law of occupation to Kuwait, insisting that it was the nineteenth province of Iraq."\(^{22}\)

Though more explicit than the Hague Convention IV, the CGIV neither fully reflects nor aligns with the human rights movement. Article 55 of the GC IV states, "To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate."\(^{23}\) In addition, Article 56 states, "The Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics."\(^{24}\)

Although Articles 55 and 56 of the GCIV are clear improvements to the Hague Convention IV, this still is inadequate. For example, ensuring the food and medical supplies of the population does not mean that
the occupying power has to provide any particular sort of access to these supplies. It just suggests that the occupying power has to provide these supplies, most likely at centralized locations such as refugee or displaced persons camps. In addition, Article 56 notes that prophylactic and preventive measures must be enacted in order to combat the spread of contagious diseases and epidemics. But this article does not elaborate on what that actually entails. Administering vaccinations, washing hands, breast feeding, and eating fruits and vegetables are all prophylactic and preventive measures. Is an occupation force that only supplies vaccines, hand soap, and fruits and vegetables doing all that is required within the spirit of the law?

It may be the case that articles rarely specify details because that is left to other documents and procedures. However, again this sounds like a bargaining process where powerful states have the upper hand in negotiating those procedures. I am not suggesting that articles in a general convention must incorporate all details. This would not only be overly taxing but most likely impossible. The level of specificity appropriate to a general convention must be at least at a level that addresses essential requirements. Otherwise, the article fails to give any definitive guidance. For example, articles governing the conduct of an occupation must include baseline criteria such as identifying the rudimentary prophylactic and preventive measures that are required, as well as provide more detail about what supplying “access” to food and medical supplies actually requires.

Infrastructural services are an essential element of prophylactic and preventive medicine, but the CGIV makes no reference to this. I would suggest that both Articles 55 and 56 need to be significantly revised or additional articles ought to be added to the GCIV that articulate the need for the occupying power to assist the host state with sewage disposal, trash removal, and electricity. These basic services are essential to a state’s ability to safeguard the core human rights of its people. In addition, the civilian population must have access to potable water, food, and medical supplies, which the occupying power is responsible for providing if the defeated state cannot. This means that roads, highways, bridges, and rail lines will have to be repaired in order to grant the civilian population access to these necessities.

Article 64 of the GCIV states, “Penal laws of the occupied territory shall remain in force.” Just because these penal laws remain does not entail that they can be reasonably enforced when the infrastructure has been decimated. Rather, the occupying power would have to assist
in repairing the infrastructure necessary to enable the rule of law, but the current GCIV does not address this.

Civilians should reasonably be immunized from harms that compromise their basic human rights. Civilians should have potable water, food, shelter, physical security, sewage and trash removal, and access to medical attention. In addition, civilians require a state that can effectively secure those rights for them, which is to say, road networks, power grids, courts, police stations, etc. are going to have to be operational. We cannot leave the civilian victims of war without these institutional prerequisites to their human rights.

The 1977 Geneva Protocol I Additional to the Geneva Conventions (1949) and Relating to the Protection of Victims of International Armed Conflicts calls for additional protection of the civilian population of a war-torn state. Article 69 of Protocol I states, “In addition to the duties specified in Article 55 of the Fourth Geneva Convention concerning food and medical supplies, the Occupying Power shall also ensure the provision of clothing, bedding, means of shelter, and other supplies essential to the survival of the civilian population of the occupied territory.” This is clearly an improvement, because the original GCIV does not mention anything about the occupying power being responsible for clothing, bedding, or shelter. However, as stated previously, infrastructure needs to be operational in order for civilians to have their basic human rights reasonably secured. Furthermore, neither the GCIV nor Protocol I address other serious issues such as the repatriation and resettlement of refugees and displaced persons, children returning to school, and integrating combatants into the civilian population. Maybe it is believed that all of these issues will work themselves out in due time. However, not addressing or implementing positive measures in order to accommodate these issues is a serious shortcoming. Civilians returning home, children attending school, and former soldiers and other civilians finding work are essential to a country striving to return to a state of normalcy.

AD HOC LEGAL ARRANGEMENTS

Historically, international law regarding the relationship between states has been broken into two categories: war and peace. The problem is that this binary split does not properly account for the period of transition from conflict to peace, which creates a normative gap in the law.
Twentieth-century pre and post–World War II international law focused on developing and demarcating two sets of rules (the law of war and the law of peace). Consequently, “the transition from war to peace was not treated as a paradigm in terms of law.” International law should not be binary (war or peace), because both International Humanitarian Law and International Human Rights Law apply in war’s aftermath.

Although human rights law applies before, during, and after war, International Humanitarian Law (IHL) is a set of international rules that are specifically intended to solve humanitarian problems directly arising from international or noninternational armed conflicts. IHL’s main treaty sources are the four Geneva Conventions (1949) and their Additional Protocol I (1977). International Human Rights Law (IHRL) is a set of international rules on the basis of which individuals and groups can expect and/or claim certain behavior or benefits from governments. IHRL’s main treaty sources are the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (1966) as well as the Convention on Genocide (1948). While IHL and IHRL have historically developed separately, recent treaties, such as the Participation of Children in Armed Conflict and the Rome Statute of the International Criminal Court, include provisions from both.

The period between conflict termination and the establishment of a just and lasting peace cannot adequately be subsumed by the laws of war and the laws of peace because these laws do not adequately address either the positive efforts needed to secure human rights in the postwar phase or the moral right to political self-determination and international toleration needed to establish peace with justice. Postwar is a confluence of both categories (war and peace) and needs its own division and classification of transitional law.

Attempting to address postwar issues by incorporating them into the laws pertaining to the conduct of war is insufficient because that corpus of law is centered on fighting and not on rebuilding. Ad hoc legal arrangements are insufficient because constituting such legal arrangements after the conflict not only delays postwar implementation but also creates shortfalls. In addition, before a war begins, states and international organizations (the UN, IMF, World Bank, WHO, etc.) are sometimes unaware of their respective postwar obligations and responsibilities, which leads to inadequacies. “These inadequacies have created complexities on the ground because the duties and obligations of the various international actors are uneven and often unclear.”
Furthermore, because “there is not a consensus on the obligations that unilateral or multilateral actors incur when they engage in transformative occupations and interventions; powerful states jockey for resolutions that favor their own interests.”

Working through and establishing a legal framework that could be implemented in all postwar scenarios would greatly reduce issues that surface in the postwar phase. In addition to its political or practical application of having a legal document that encompasses all specific rules, regulations, and responsibilities of all parties regarding postwar, an updated convention on postwar would bring international focus onto the importance of the postwar phase. It would also provide a comprehensive listing of what is required of warring parties before states ever resort to war, instead of waiting until after the war to see and agree upon what is required. Agreeing to postwar stipulations after the conflict seems too late. Rather, rules need to be developed and articulated before the conflict.

Having an updated preexisting legal document would (hopefully) guide a state’s actions. For example, if the United States had been more willing to consider its obligations in the postwar phase, it would not have disbanded the Iraqi civil service after the 2003 invasion of Iraq. Disbanding the civil service created a nonfunctioning government almost overnight, which fostered animosity, chaos, fear, and lack of physical security and exposed the civilians of that state to greater harms than necessary.

It can be argued that the United States did not adequately anticipate the consequences of disbanding the civil service. But the decision that the United States made was a problem of principle and not just misjudging the facts on the ground. There was no preplanning or planning for the postwar period until immediately before the six week war began. This is too late. In addition, there was not any interagency planning and coordination between the state and defense departments, although the U.S. State Department would oversee the political rehabilitation of Iraq. On another note, Iraq is an example of why it is important to have an updated, preexisting codification of the relevant moral norms regarding occupation and postwar obligations. Given the existence of such a document, every state would know ahead of time what was required of it in the postwar phase. If anything, an updated Fourth Geneva Convention regarding occupation law might quite plausibly have informed U.S. planners that the effects of disbanding the Iraqi civil service would have been catastrophic where any attempt to enabling any form of governance in that defeated country was concerned.
Additionally, the absence of a preestablished fixed legal framework gives rise to the very real potential of the exercise of undue influence by powerful states or a hegemon, which has historically been the case during postwar negotiations. That is, “peacemaking itself largely was conceived as a process governed by the discretion of states”\(^\text{33}\) with the victor having the largest degree of discretion. Negotiation between victor and vanquished does not exactly facilitate a neutral, evenhanded approach to securing peace with justice. As a result, the terms of agreement are, essentially, “set by a bargaining process of the victors of the rights and obligations of the vanquished.”\(^\text{34}\) Carsten Stahn posits, “Self-determination was not viewed as a binding legal principle, but as a flexible principle; it had to yield where it conflicted with overriding strategic interests of the victorious powers.”\(^\text{35}\) Victors have been prone to make extensive internal legal and institutional reforms of the vanquished state most of which have had nothing to do with improving the war-torn state but have been imposed because “the occupant usually wishes to export its own institutions, or to establish a regime that will be friendly to its security interests.”\(^\text{36}\)

If anything, “the presumption of neutrality during occupations has generally been disproved in practice.”\(^\text{37}\) Citizens of the war-torn state do not necessarily agree to the reform but welcome it as a “pragmatic desire for the rule of law.”\(^\text{38}\) In other words, citizens want physical security, so they acquiesce to the occupier’s reforms. However, we need to put limits on powerful states in the post bellum context. One way to do this is by having an updated, preestablished, and fixed legal framework that embodies the relevant moral norm of reasonable political self-determination and will foster political inclusiveness, popular legitimacy, and international toleration. As it currently stands, resolutions (formulated ex post) cite outdated treaties, which favor the victor. The GCIV was written shortly after the formulation of the UN Charter (Chapter 1, Article 1.2), which “calls for respect for the principle of equal rights and self-determination of peoples.”\(^\text{39}\) However, the norm of reasonable political self-determination has “evolved from a principle into a right under international law,”\(^\text{40}\) and that evolution should be reflected in the GCIV.

After a conflict, a United Nations Security Council Resolution (UNSCR) is usually drafted and adopted as a way to encapsulate all of the considerations to be applied to postwar justice. However, these resolutions cite outdated and unhelpful regulations. For example, both the 2003 UNSCR 1483 on Iraq and the 2009 UNSCR 1885 on Liberia
“[call] upon all concerned to comply fully with their obligations under international law including in particular the Geneva Conventions of 1949 and the Hague Regulations of 1907.” But the Fourth Geneva Convention and Hague Convention IV, which are referenced specifically as the treaties that need to be fully complied with, do not reflect human rights standards of the twenty-first century (as discussed earlier).

In addition, UNSCR 1483 “stresses the right of the Iraqi people freely to determine their own political future and welcomes the commitment of all parties concerned to support this.” However, Article 54 of the Fourth Geneva Convention (which is the primary reference for an occupying power) gives “the right of the Occupying Power to remove public officials from their posts.” The GCIV does not provide any additional information for what would constitute reasonable removal of public officials from their positions; it just gives the occupying force permission to do so. In other words, the GCIV allows the occupying power to decide what is best. Thus, clearly, the authority given to the occupying force can obstruct a peoples’ right to reasonable political self-determination. Article 54 favors the victor and the victor’s interests. Article 54 of the CGIV does not reflect Part I, Article 1 of both the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), which states, “All peoples have the right of self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” In many cases, the defeated state or government did not itself express or constitute the reasonable political self-determination of the population over which it ruled, and so if the occupying force is to foster reasonable political self-determination, it may have to remove officials and provide for a transitional process such as a new constitutional convention. However, the GCIV does not adequately address this concept. It states only that the victor may remove public officials from their posts, instead of making explicit the stipulation that the victor may remove public officials from their posts as a way to help facilitate a people’s right to freely choose their own form of governance.

I am not discounting the importance of resolutions arrived at after a conflict, but these should be used to address specific case-by-case issues, whereas an updated Geneva Convention might be used as a uniform legal document to regulate the postwar phase to the level at which the prewar and war phases are currently regulated. I suspect that there will always be a need for ad hoc legal arrangements that cover the specific issues
of a given case. However, currently ad hoc legal arrangements reference outdated treaties (CGIV and Hague Convention IV) as the primary legal documents by which belligerents must abide. This is unhelpful if we are trying to establish conditions for a just and lasting peace. Rather, we need to allow for political self-determination as well as protect the basic human rights of the civilian populace and enable or repair the institutions that can reasonably do just that.

Fostering political self-determination is consistent with right intention and establishes conditions that aim at a lasting peace with justice. In order permissibly to go to war, a state having right intention must not only have a just cause and limit its war-making activity to the steps necessary to vindicate the just cause, but it must also seek to vindicate its just cause in a manner likely to yield a just and lasting peace. Vindicating a just cause with right intention means vindicating it in a way that brings about a lasting peace with justice, and the only way to secure a lasting peace with justice is to allow a significant degree of political self-determination to be exercised by peaceful peoples that respect human rights.

Some scholars, lawyers, and politicians might suggest that a substantive legal framework for *post bellum* obligations is not necessary on the grounds that every *post bellum* context or circumstance is unique, so that only ad hoc responses make sense. I grant that every war is different from every other war and has its own unique intricacies. However, I would think that we might all agree that at minimum the treaty (GCIV) that is referenced by ad hoc legal arrangements should be updated in order to better reflect the positive efforts needed to reasonably secure the core human rights of the civilian populace.

**THE UNITED NATIONS POSTWAR OBLIGATIONS**

The UN is the appropriate institution not only to facilitate this process but also to play a role in institutionally expressing and adjudicating any relevant treaty. First, the UN is the global structure that specifically deals with fostering the cooperation of states regarding issues of peace and security. Second, the UN should monitor and report compliance failures, much as it already does when it comes to human rights violations.\(^45\)

Regardless of the states involved in a conflict, the UN should oversee the postwar phase. Although the international community (signatories
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to the UN Charter) has delegated to the UN this power in Article 39
(Chapter VII, UN Charter),\(^46\) which stipulates that the UN can decide
what measures shall be taken in order to maintain or restore international
peace and security, there are still shortcomings that need to be addressed.

For example, the UN primarily focuses on peace and security,
rather than peace with justice. In addition, the states that comprise
the UN have heterogeneous political perspectives, which can lead to
inaction, competing interests, and even adversarial relationships within
the community of states. Members of the UNSC have different concep-
tions of domestic and international justice, as is evidenced by the two
most powerful states in the Council: the United States and China. But
although member states have different political perspectives, the UN is
still the best international organization to oversee the implementation
of an updated and revised GCIV as long as there exists a common
definition of international justice that all members of the UN might be
expected reasonably to accept.

Given the various disagreements between nations over what justice
requires, it might be difficult to designate what a commitment to an
enduring peace with justice requires in terms of a specific legal embodi-
ment of noncombatant immunity and post bellum norms. However, the
GCIV should at least reflect a commitment to safeguarding basic human
rights to physical security, subsistence, and basic liberty, as well as the
right of people to self-determination in an occupied territory. In a sense,
this would provide a baseline definition of what justice requires, given
that, at present, a consensus on the application of such a requirement
to any but the most obvious cases would be difficult to formulate, adopt,
and ratify in the international arena.

Although the international community adopted the Genocide Con-
vention in 1948 as a way to define and punish genocide in legal terms so
as better to prevent it, it still saw a need to develop the Responsibility
to Protect (R2P) in 2001 as a complementary legal doctrine. R2P is a
holistic attempt to stop genocide by understanding all three phases of
conflict (before, during, and after): the Responsibility to Prevent, React,
and Rebuild. The recognition of these three phases is very important
because it “implies the responsibility not just to prevent and react, but
to follow through and rebuild.”\(^47\) This means that if military interven-
tion is undertaken “there should be a genuine commitment to helping
to build a durable peace and promoting good governance and sustain-
able development.”\(^48\) That is, R2P is not just a commitment to stopping
egregious human rights abuses, but also a commitment to securing institutions necessary to assure peace with justice.\textsuperscript{49} This is important because the International Commission on Intervention and State Sovereignty (ICISS), which was commissioned by the UN to find the best way to implement R2P, recognized that “[c]onditions of public safety and order have to be reconstituted by international agents acting in partnership with local authorities, with the goal of progressively transferring to them authority and responsibility to rebuild.”\textsuperscript{50}

One can reasonably infer that this is not only essential to cases of genocide but to other conflicts, in addition to R2P military intervention. Non-R2P wars and conflicts must also incorporate a rebuilding (postwar) phase in which there needs to be genuine commitment to building a durable peace and promoting good governance. Conditions of public safety and order have to be reconstituted by international agents acting in partnership with local authorities, with the goal of progressively transferring authority back to the host state.

If the UN and the ICISS have recognized that there needs to be a genuine commitment to building a durable peace and promoting good governance and sustainable development for R2P cases, then surely the same must apply to all postwar scenarios. The UN is currently the only organization with sufficient scope to orchestrate a concerted effort of states to review, update, and amend the CGIV so that that international treaty might readily articulate the legal embodiment of the relevant moral norms. This would be much like what the UN and international community have done regarding their analysis on genocide, developing doctrine that focuses on preventing, reacting, and rebuilding in order to adequately deal with the situation from beginning to end. R2P doctrine has significantly evolved from its original sourcing document (the 1948 Genocide Convention) and so must the Fourth Geneva Convention of 1949.

This does raise questions, though, regarding a post-\textit{bellum} legal order that aims squarely at peace with justice, which might prove controversial or problematic, as the R2P platform has. Just as there are questions and concerns regarding what level of “justice” R2P actually aims at, so will there be concerns regarding an updated post-\textit{bellum} legal order. However, a commitment to safeguarding civilians’ core human rights and a people’s right to political self-determination should not be controversial, and I believe that this level of justice is one that liberal and decent well-ordered states could reasonably affirm. Although the R2P doctrine
is oriented toward peace with justice, it is centered on only intervening in order to protect persons from grave physical security rights violations. However, the R2P doctrine would also have to protect other core rights (subsistence and basic liberty), as I have suggested in chapter 3, if it is to be truly oriented toward peace with justice.

On a different but related note, the ICISS also recognizes, “Too often in the past the responsibility to rebuild has been insufficiently recognized, the exit of the interveners has been poorly managed, the commitment to help with reconstruction has been inadequate, and countries have found themselves at the end of the day still wrestling with the underlying problems that produced the original intervention action.”51 This is also analogous to postwar scenarios. If the ICISS and UN recognize this shortcoming when it comes to military intervention, surely it recognizes that these issues are commonplace in other types of conflict as well and should position itself as the multilateral organization that is best situated to oversee postwar guidelines and as the appropriate institution at the center of this process—presumably, its offices being used to monitor, report, and even adjudicate the relevant law.

The UN has also recognized that it should assist in reestablishing the rule of law in postconflict situations outside of just R2P cases. UN Secretary-General Kofi Annan stated, “The modern international legal system comprised of international human rights law, international humanitarian law, international criminal law, and international refugee law represents the universally applicable standards adopted under the auspices of the United Nations and must therefore serve as the normative basis for all United Nations activities in support of justice and the rule of law.”52

As a result, in 2005, the UN instituted the Peacebuilding Commission (PBC) as a way to help advance the rule of law in postconflict states.53 The PBC has a “mandate to integrate peacebuilding strategies from the outset of UN interventions and is emerging as a coordinating power dedicated to peacebuilding strategies that have a more representative basis than traditional UN activities.”54 Although this is a step in the right direction, the PBC comes with significant drawbacks. First, it needs to focus on peace with justice instead of peace and security.

In addition to helping secure basic human rights, the PBC also needs to support reasonable political self-determination and just institutions. Second, the PBC is only an advisory board, and it is not designed to operate in an environment where security is lacking. “Therefore, they
[the PBC] support countries in a situation of positive peace not those in a situation of negative peace, the latter being the starting point of application of a *jus post bellum* framework. In order for the UN to be able to effectively monitor and assist in all postconflict situations, the PBC must be implemented in a negative peace situation right after cessation of major combat operations. The occupation forces could provide security for the PBC, and the PBC could help provide direction to both victor and vanquished.

**CONCLUSION**

Although belligerents must abide by the existing occupation law, it is outdated, vague, favors the victor, and fails to adequately address many issues that peacebuilding and establishing a just and lasting peace require. The legal embodiment of the relevant *jus post bellum* norms ought to be welcomed by states committed to the idea that undergirding and unifying just war theory is the idea that military force must be deployed always and only with the right intention of achieving an enduring peace with justice.

Updating the Fourth Geneva Convention would point parties more squarely toward justice and also would inform parties (states as well as international organizations) of their role and what is required of them. If we do not have clear legal rules then justice becomes much more difficult to secure or maintain. Without clear governing rules, a state’s duties, obligations, and restrictions are left to interpretation and bargaining. An updated convention would articulate the conditions necessary for establishing a just and lasting peace, and would provide legal accountability for a state’s failure to abide by relevant governing norms. Although ad hoc legal arrangements will most likely always be necessary, this does not entail that the Fourth Geneva Convention should not be updated in order to institute legal rules that would apply in all situations, for instance, the securing of basic human rights and allowing for political self-determination.

The UN is the organization best suited to oversee the facilitation of a revised Fourth Geneva Convention, because the UN is specifically charged with the responsibility of fostering the cooperation of states regarding issues of peace, security, and international justice. Second, the UN should monitor and report compliance failures, much as it
already does in instances of grave human rights violations. In addition to having developed the Responsibility to Protect and the Peacebuilding Commission as instruments to assist in the rebuilding of war-torn states, the UN has proven experience dealing with postwar issues and provides the forum for instituting a multilateral approach to rebuilding. With some adjustments, the UN could assist in establishing conditions for a just and lasting peace.