

## Tilburg University

### Review of the book On the Law of Peace

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Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria*, Oxford: Oxford University Press, 2008 (ISBN 978-0-19-922683-2 (Hbk.) and 978-0-19-922684-9 (Pbk.)).

Book review by Randall Lesaffer (Tilburg University/Catholic University of Leuven)

In 1598, Alberico Gentili published his major treatise on the laws of war, *De jure belli libri tres*. After having dealt with the *jus ad bellum* – the conditions under which a war is legitimate – and the *jus in bello* – the laws regulating warfare itself – in the first two books, he devoted the third book to the *jus post bellum*, the laws regulating the ending of war and the restoration of peace. Gentili discerned two major ways to do so: through victory – the *jus victoriae* – and through agreement – which I prefer to label the *jus ad pacem*. With this, he merged the *jus belli* and the *jus pacis* which traditionally had been the subjects of distinct treatises into one and made the *jus post bellum* into the logical third part of the ‘laws of war and peace’, which were henceforth increasingly known as the ‘laws of war’.

After him, few of the writers of the classical law of nations or of modern international law wrote as extensively on the *jus post bellum* as Gentili had done nor used this threefold division for structuring their work. Notwithstanding the fact that peace treaties became a crucial instrument of the legal and political order of Europe over the 17<sup>th</sup> to early 20<sup>th</sup> century and that in these treaties a complex and sophisticated set of customs and laws of peacemaking were articulated, the *jus ad pacem* was scarcely developed in the jurisprudence of international law.

For this neglect, three major explanations can be forwarded. First, although Gentili and other catalogued the *jus ad pacem* under the laws of war, it did not really sit well there. In fact, peace treaties are as much concerned with the establishment and definition of the relations between the parties during peacetime as they are with the legal consequences of war. As such, the *jus ad pacem* sits on the fence between the laws of war and the international law reigning during times of peace – which many modern writers in a historical incorrect way refer to as *jus pacis*. Second, whereas peace treaties are legal instruments covered by the law of treaties, they are also the reflection of political compromise. Increasingly, over the late 18<sup>th</sup> and 19<sup>th</sup> centuries, legal scholars have come to regard peace treaties one-sidedly as diplomatic instruments whose binding character was often challenged. This in turn has led them to underplay the constitutive role of peace treaties in the formation of international law. Third, peace treaties hover between the general and particular. Whereas between the 16<sup>th</sup> and 19<sup>th</sup> centuries, a rather complex and sophisticated body of general customs and laws of peacemaking common to most peace treaties was developed in practice, the content of each peace treaty is also determined by the negotiations leading up to that particular peace treaty. This ambiguity led scholars to turn their backs to the general customs and laws of peacemaking. These three explanations boil down to peace agreements being inherently ambiguous in terms of the traditional system and classifications of international law.

These and other ambiguities particular to the era since the end of the Cold War (1989) form the baseline of Christine Bell’s book. In *On the law of peace*, Bell tries to map out the law of peace, or the *lex pacificatoria* to use her term, as it has emerged over the last two decades. She does so on the basis of a study of almost 700 peace agreements relating to over a hundred armed conflicts, most of them intrastate. Her book grapples with the ambiguities inherent to these peace agreements and with their complex relation to an outdated state-centred understanding of international law. Her endeavour is one to define what are the main characteristics of the newly emerging *lex pacificatoria* as a self-standing but common body of peacemaking law, while also analysing the dialectical relation between that body of law and international law at large. To the aforementioned ambiguities, Bell adds some more. Most peace agreements now span the interstate and intrastate dimensions, cutting through the boundaries of international and domestic

law. Furthermore, Bell underscores the ambiguity or dilemma between process and substance. Whereas peace agreements are legal documents stating particular rights and obligations, nowadays many agreements are also stepping stones in a transitory and ongoing peace process as well as in a process of constitutional state (re)formation. It is because of the first of these two ambiguities that Bell prefers to label the law of peacemaking the *lex pacificatoria*. This, she explains comes with a nod to the *lex mercatoria*, the late-medieval 'transnational' laws of trade.

*On the Law of Peace* is a major undertaking Christine Bell comes particularly well armed for. Bell, who is now at the University of Ulster, had devoted most of her academic life to the law of peacemaking. Her major publications include *Peace Agreements and Human Rights* (Oxford, 2000) and an extensive article in the *American Journal of International Law* of 2006 that forms the basis for Part II of her new book. Moreover, having grown up and lived in Belfast, Bell brings to the subject a personal experience of a particular kind of armed conflict and peacemaking that spans both the interstate and the interstate levels. This has certainly helped her to understand the shortfalls of the traditional international legal approach to the subject.

The book falls into three parts. Part I, 'Understanding Peace Agreements', offers a survey of the history and recent evolution of peace agreements in general. In Chapter 2, Bell tries to explain why the number of intrastate armed conflicts has grown since the end of the Cold War. In Chapter 3, she offers a definition of peace agreements and proposes a threefold classification of agreements according to their role in the transition from conflict to peace. She distinguishes between pre-negotiations agreements preparing the ground for the actual negotiations, substantive/framework agreements which deal with the conflict itself and implementation agreements. Chapter 4 is a survey of the history of peace agreements since pre-classical Antiquity, based on secondary literature available in English. From this somewhat sketchy overview, Bell draws the conclusion that the current conflation of the international and the domestic is not new but rather a return to the days before the era of the so-called Westphalian international legal order, premised on the sovereign state. She rightly indicates that the Peace Treaties of Westphalia of 1648 were hardly 'Westphalian' as they themselves were spanning the divide between the international and the domestic. Whereas Bell's main conclusion from her reading of history is correct and the chapter serves its purpose in the book, it is not to be taken as a trustworthy summary of the legal history of peacemaking. For this, Bell misses the contextual knowledge on the periods she writes about. Part I ends with a Chapter that sets out what Bell considers the main concerns of contemporary peace agreements. According to Bell, these are mostly constitutional and turn around the question how power is to be held and exercised in the future. She discerns three core techniques which are generally used in post-Cold War peace agreements: state redefinition, disaggregation of power and dislocation of power. Under disaggregation, Bell classifies different techniques to divide and attenuate power. Dislocation stands at odds with traditional sovereignty. Dislocation can occur through international supervision or by cutting the link between nation and territorial state, thus giving competing nationalisms a stake in the state.

In Part II, 'Peace Agreements as Legal Documents: Towards a *lex pacificatoria*', the authors grapples with the ambiguous character of peace agreements as legal and political documents, in terms of their form (Chapter 7), their substance (Chapter 8) and their implementation and enforcement (Chapter 9). Rather than choosing between the two dimensions or keeping them apart, Bell prefers to speak in terms of shades and grades of 'legalisation' of the political process and of 'politisation' of the legal forms and substance. According to Bell, different grades of legalisation are more or less productive at different stages of what is mostly a complex and drawn out peace process. Whereas for short term matters such as the implementation of a ceasefire or the demobilisation of armed forces, precisely defined rights and obligations are necessary, precision and clarity are hardly ever conducive to a successful constitutional

transition in the long term. For such a process, the legal forms and rules of substance and implementation themselves need the capacity to evolve with the process.

In Part III, 'Peace Agreements and the Revision of International Law: The force of the *lex*', the author broaches the interaction between peace agreements and international law, highlighting the constitutive role of peace agreements in international law. In other words, Part III assesses and maps out the space the *lex pacificatoria* takes within, and without, international law. In Chapter 10, Bell explains that peace agreements have by now far overstepped just being instruments of conflict resolution between sovereign parties, and are as much instruments of a constitutional formation that breaks through the boundaries of domestic and international order. Bell analyses the *lex pacificatoria* and its relation to general international law in three domains: self-determination (Chapter 11), human rights and humanitarian law (Chapter 12) and third party enforcement (Chapter 12). For each subject, the author argues that the relevant rules of general international law, while being useful, are not and cannot be fully applied to peace agreements because of their inherent ambiguities. Whereas many international lawyers might experience this as problematic, Bell finds this should be valued in terms of the *lex pacificatoria*'s particular needs and of the contribution it makes to the development of international law.

With *On the Law of Peace*, Christine Bell helps to fill in an important hiatus in the literature of international law. Whereas peace agreements are as they have been for centuries important diplomatic and legal instruments, they are as they have been severely neglected in international legal writing. The ambition to write a comprehensive book on the law of peacemaking as it emerges from the hundreds of peace agreements made since the end of the Cold War is a huge one. In order to do so successfully, the author needs to combine the careful perusal of a huge amount of legal and political sources with an exercise of analytical and out-of-the-box thinking – that is the box of traditional international legal understandings. Bell, whose academic experience with the subject is second to none, has lived up to these challenges. She has succeeded in setting out the main characteristics and confines of the newly emerging law of peacemaking as a partially self-standing category, while at the same time allowing space for its relation to international at large. In doing so, she had transcended the ambiguities between international and domestic and between process and substance and made them into keys to understand the laws of peacemaking, rather the impediments.

*On the Law of Peace* is essentially an external study of the law of peacemaking. The author has chosen not to go into the substance of the law of peacemaking but remains at the level of their external characteristics; their form, their nature and their relation to international (and domestic law). As such, the book does not offer a detailed and profound study of the substance of the laws of conflict resolution and constitutional formation. In this, the book is rightly entitled **On the Law of Peace**. *The Law of Peace* remains a book yet to be written. But whoever wants to take up this task, will find an excellent analytical framework in Bell's work.