Introduction

Understanding Individualization

Jennifer Welsh, Dapo Akande, and David Rodin

The rights and responsibilities of the individual are at the centre of today's armed conflicts in a way that they have never been before. This process of 'individualization',[1] which challenges the primacy of the sovereign state, has two main drivers. The first are powerful normative developments related to human rights, which have elevated human-centric (vs state-centric) conceptions of security[2] and which have spawned new kinds of wars and peacekeeping missions, and a new class of international crimes.[3] The second are dramatic technological and strategic developments that can both empower individuals as military actors, and enable either the targeting or protection of particular individuals.[4]

The individualization of war forces us to confront the status of individuals in at least three different capacities: (1) as subject to violence but deserving of protection; (2) as liable to harm because of their responsibility for attacks on others; and (3) as agents who can be held accountable for the perpetration of crimes committed in the course of conflict. These three domains served as the organizing framework for a large-scale, interdisciplinary research project (funded by the European Research Council) which we co-directed, and for a gathering of leading thinkers from the fields of international relations, political science, and moral philosophy, who we encouraged to engage with the phenomenon of individualization. Their reflections and arguments further our understanding of not only how individualization is manifest in contemporary armed conflict—in theory and

[1] Gabriella Blum, 'The Individualization of War: From War to Policing in the Regulations of Armed Conflicts', in Austin Sarat, Lawrence Douglas, and Martha M. Umphrey (eds), *Law and War* (Redwood City, CA: Stanford University Press, 2014), p. 52; Jennifer M. Welsh, 'Humanitarian Actors and International Political Theory', in Chris Brown and Robyn Eckersley (eds), *The Oxford Handbook of International Political Theory* (Oxford: Oxford University Press, 2018); and Jennifer M. Welsh, 'The Individualization of War: Defining a Research Programme', *Annals of the Fondazione Luigi Einaudi 53*, no. 1 (2019), pp. 9–28.

[2] Matthew Weinert, *Making Human: World Order and Global Governance of Human Dignity* (Ann Arbor: University of Michigan Press, 2015).

[3] Ruti G. Teitel, *Humanity's Law* (New York: Oxford University Press, 2011); Thomas G. Weiss, *Humanitarian Intervention* (Malden, MA: Polity, 2nd ed., 2012); and Kathryn Sikkink, *The Justice Cascade* (New York: W. W. Norton, 2011).

[4] P. W. Singer, *Wired for War* (New York: Penguin Books, 2009); and Michael L. Gross, *Moral Dilemmas of Modern War* (Cambridge: Cambridge University Press, 2010).

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in practice—but also what challenges it poses for today's scholars and practitioners. Our collective research also integrates the currently segregated scholarship on individualization in moral philosophy, international law, and international relations, recognizing that—with some notable exceptions[5]—analysis of individualization has proceeded largely in separate streams, without recognition of the important links between law, morality, and politics that constitute the day-to-day reality for policy actors.

Our analysis of individualization starts from the assumption that while the human rights norms underpinning many aspects of individualization may be normatively desirable in themselves and enjoy relatively strong support, efforts to operationalize norms related to individual protection, liability to harm, and accountability are placing enormous strain on the actors and institutions most actively engaged in contemporary armed conflict: the governments and armed forces of states; international security organizations; and humanitarian agencies. More specifically, individualization is giving rise to a set of ethical, legal, and political dilemmas that are confounding contemporary policymakers and, in some cases, weakening the legitimacy of national, international, and non-governmental institutions.

For example, in the realm of protection, the UN Security Council remains caught between its state-centric constitution, which has traditionally demanded the even-handed treatment of parties to a conflict, and the recognition of its responsibility to protect individuals—illustrated in the contrast between the relative speed with which the Council was able to act in Libya in 2011, compared with its later failure to reach a consensus on how to respond to documented crimes against humanity in Syria. In the UN's most extensive peacekeeping mission in history, in the Democratic Republic of Congo, peacekeepers have faced agonizing strategic and operational dilemmas over how to fulfil their civilian protection mandate, which requires addressing atrocities perpetrated by either state or non-state actors, while at the same time avoiding criticism that might alienate the government of former President Kabila, whose consent has been critical to their continued presence (and which was eventually withdrawn).

Turning to the domain of harm, we see that Unmanned Aerial Vehicles (UAVs or 'drones') have seemingly offered state leaders and national militaries opportunities to target lethal force more precisely against a specific individual who poses a grave threat, thereby minimizing both collateral damage and the loss of their own personnel. Indeed, some moral philosophers have argued that there is an imperative to employ these more precise weapons.[6] On the other hand, the use of lethal force

[5] Larry May, *Crimes Against Humanity: A Normative Account* (Cambridge: CUP, 2005); Teitel, *Humanity's Law* (2011); Francessca Lessa and Leigh A. Payne (eds), *Amnesty in the Age of Human Rights Accountability* (Cambridge: CUP, 2012).

[6] Bradley J. Strawser, 'Moral Predators: The Duty to Employ Uninhabited Aerial Vehicles', *Journal of Military Ethics 9*, no. 4 (2010), pp. 342–368.

by the executive branch of governments, without judicial or legislative oversight, has called into question fundamental protections of a liberal-democratic society and arguably weakens some of the restraints embedded in Just War principles such as 'last resort'.[7] Moreover, other actors have also increasingly come to use these 'precision tools' of war, with uncertain and destabilizing effects on the both the nature of conflict and the rules that seek to govern it.

In the case of accountability, diplomatic actors continue to face a dilemma between pursuing criminal action against individual perpetrators (as they did in Libya in 2011), which can close off options for negotiation that might bring a more rapid end to conflict and civilian suffering, or privileging conflict resolution strategies that deny justice to some victims of international crimes and contradict rhetorical commitments about 'ending impunity'. Contemporary legal practices associated with accountability also place humanitarian agencies in a deeply uncomfortable position, since they are closer to the crimes of war than most other institutions and could potentially provide evidence in criminal proceedings. To give such evidence, however, could make their personnel the targets of violence or—as in the case of the International Criminal Court's investigations in Darfur in 2005–6—*persona non grata*, thereby rendering it impossible for them to continue to protect civilians on the ground.

These seemingly discrete dilemmas are all underpinned by a tension between the privileged moral and legal claims of individuals (and the technological changes that often enable them), and the more traditional ones of sovereign states. Methodologically, the project on which this volume draws entertains alternatives to the traditionally dominant, state-centric paradigm for the analysis and regulation of armed conflict in the disciplines of international relations, international law, and moral philosophy.[8] At the same time, we recognize that a great deal of existing literature on individualization is inherently progressivist. In international relations, for example, prominent scholars have posited that the commitment to individual human rights is now firmly embedded in norms and law, and that the most pressing task ahead is to design a better strategy and stronger institutions to ensure compliance with that commitment.[9] In moral philosophy, scholars mounting 'Revisionist' challenges to modern Just War theory[10] argue that while

[7] Jennifer M. Welsh, 'The Morality of 'Drone Warfare' in David Cortright, Rachel Fairhurst, and Kristen Wall (eds), *Drones and the Future of Armed Conflict: Ethical, Legal and Strategic Implications* (Chicago: Chicago University Press, 2015).

[8] Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 4th ed., 2006); and A. J. Coates, *The Ethics of War* (Manchester: Manchester University Press, 1997).

[9] Sikkink, *The Justice Cascade* (2011); and Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, *The Persistent Power of Human Rights* (Cambridge: CUP, 2013).

[10] Jeff McMahan, *Killing in War* (Oxford: OUP, 2009); David Rodin, *War and Self-Defense* (Oxford: OUP, 2002); Cécile Fabre, *Cosmopolitan War* (Oxford: OUP, 2012); and Helen Frowe, *Defensive Killing* (Oxford: OUP, 2014).

the current law of armed conflict is often incompatible with an ethics of war based on individual human rights, this disjuncture between law and morality is not sustainable—even if there are strong prudential reasons for maintaining it. And in international law, some analysts argue that individual human rights and accountability have transformed states' conceptions of their rights and responsibilities, and the relationship between the state and the individual.[11]

In this volume, we acknowledge that both in practice and in scholarship, individualization is not always held to be an unmitigated 'good'. Analysts have noted the potential for individualization to create problematic forms of asymmetry, in which only the powerful (most notably Western states) have the advanced means to 'individualize' protection, liability, and accountability and in which the reciprocal obligations of IHL are weakened.[12] Individualization has also been accompanied by double standards and hypocrisy: some of the loudest calls for respect for individual human rights come from those whose drone strikes lead to excessive civilian casualties.[13] At a more fundamental level, some have expressed deep unease with the way that individualization can work to transform war itself, either by depoliticizing conflict and delegitimizing particular actors[14] or by broadening the geographical reach of the battlefield.[15] Relatedly, critical theorists have taken issue with the methodological individualism that underpins recent ethical theorizing about armed conflict, arguing that it not only oversimplifies the nature of war, by depicting it as the aggregate of individual actions or decisions,[16] but also constructs a problematic and partial account of moral agency that 'reproduces existing privilege' and reflects a 'parochial historical imagination'.[17]

Given our core interest in analysing how individualization is manifest in the study and practice of armed conflict, and the tensions to which it gives rise, we do not explicitly engage with or in critical theorizing. Nonetheless, some of our contributing authors openly question the argument that individuals, or individualist values, should dominate the ethics, law, or politics of armed conflict, expanding on earlier observations about how the imperative to protect civilians or hold individual leaders accountable can conflict with other powerful norms,

[11] Teitel, *Humanity's Law* (2011); Antonio Cassese, *International Criminal Law* (Oxford: OUP, 2nd ed., 2008); and Mark A. Drumbl, *Atrocity, Punishment, and International Law* (Cambridge: CUP, 2007).

[12] Adam Roberts, 'The Principle of Equal Application of the Laws of War', in David Rodin and Henry Shue (eds), *Just and Unjust Warriors: The Legal and Moral Status of Soldiers* (Oxford: OUP, 2008).

[13] For further discussion of how hypocrisy and double standards has fueled the backlash against human rights, see Anne Peters, 'The Importance of Having Rights', *ZaöRV 81* (2021), pp. 7–22; and Stephen Hopgood, *The Endtimes of Human Rights* (Ithaca, NY: Cornell University Press, 2013).

[14] Eliav Lieblich, 'The Humanization of *Jus Ad Bellum*: Prospects and Perils', *European Journal of International Law 32*, no. 2 (2021), pp. 579–612.

[15] Derek Gregory, 'The Everywhere War', *The Geographical Journal 177*, no. 3 (2011), pp. 238–250.

[16] Maya Zehfuss, *War and the Politics of Ethics* (Oxford: OUP, 2018).

[17] Kimberly Hutchings, 'From Just War Theory to Ethico-Political Pacifism', *Critical Studies on Security 7*, no. 3 (2019a), pp. 191–198, at p. 195. See also Kimberly Hutchings, 'Cosmopolitan Just War and Coloniality', in Duncan Bell (ed), *Empire, Race and Global Justice* (Cambridge: CUP, 2019b).

such as non-intervention, impartiality, or the peaceful resolution of disputes.[18] We also elaborate on how the implications of individualization have become evident within national governments, as well as within international and non-governmental organizations, as they seek to navigate a new ethical and legal terrain. Humanitarian agencies, for example, experience profound disagreements within their own organizations over whether and how to cooperate with Western governments pursuing protection and accountability.[19] Concerns about individualization feature too in the evolution and contestation of the principle of the 'responsibility to protect', particularly in the discourse of practice of states that seek to emphasize the primary responsibility of national governments to protect their own populations and to downplay the remedial responsibilities of the international community.[20] Finally, non-Western states often point to the uncomfortable reality that the operationalization of norms related to individualization is often directed solely at countries in the Global South—manifest in the fact that humanitarian interventions have yet to occur in developed countries (with the exception of the former Yugoslavia) and that the criminal cases pursued by the International Criminal Court have related primarily to African countries.

More broadly, scholars and policymakers have pointed to a series of trends that are undermining the human rights advances that help to fuel key aspects of individualization. The international order has been experiencing a profound structural shift, which gives increased power to states such Xi Jinping's China and Vladimir Putin's Russia, both of which have openly challenged human rights and accountability norms and have promoted more 'Westphalian' conceptions of sovereignty.[21] Russia and China have exerted their own sovereignty by crushing dissent and secessionist stirrings at home and attempting to extend their power and jurisdiction over other self-determining communities. But they have also supported other regimes—including in Syria and the Philippines—to reassert sovereign control and limit external interference. Elsewhere, the nationalist-populist revolt in Western democracies has targeted human rights institutions as well as the global economic system in which they are embedded. For his part, former US President Trump did little to stem the tide against globalization and liberal

[18] Andrew Hurrell, *On Global Order* (Oxford: OUP, 2007); Brad R. Roth, *Sovereign Equality and Moral Disagreement* (New York: Oxford University Press, 2011); and Jean L. Cohen, *Globalization and Sovereignty* (Cambridge: CUP, 2012).

[19] Antonio Donini, *The Golden Fleece* (Boulder, CO: Kumarian Press, 2012); and Claire Magone, Michael Neumann, and Fabrice Weissman (eds), *Humanitarian Negotiations Revealed: The MSF Experience* (New York, NY: Columbia University Press, 2012).

[20] Jennifer Welsh, 'Norm Robustness and the Responsibility to Protect', *Journal of Global Security Studies 4*, no. 1 (2019), pp. 53–72.

[21] Roland Paris, 'The Right to Dominate: How Old Ideas About Sovereignty Pose New Challenges for World Order, *International Organization 74*, no. 3 (2020), pp. 453–489. Paris also argues that circulating within the discourse of major powers like China and Russia is the return of older, non-Westphalian conceptions of sovereignty that emphasize the power of rulers to act outside the constraints of formal rules and institutions—what is sometimes referred to as 'extra-legal sovereignty'.

internationalism, preferring instead the rhetoric of 'America first' and rejecting what he has disparagingly referred to as the ideology of 'globalism'.

All of these forces, it has been suggested, are challenging post-Westphalian visions of a shared global order and 'giving way to an era of resurgent sovereignty'.[22] Within this context, there is greater momentum behind the argument that individuals should be subsumed morally and politically *into* the state in times of war,[23] rather than made a specific focus of norms or law related to armed conflict. Even long-standing principles of international humanitarian law are now routinely under attack, including by liberal democracies—whether through their own actions or those of their proxy fighters. Not only are legal rules being violated, but actors are increasingly questioning the standing of and rationale for such rules. Indeed, the legal advisor for the International Committee of the Red Cross (ICRC) has warned against creating a vicious cycle, in which not respecting the laws of war becomes the 'new normal' as states and armed groups 'seek to justify their violations as inevitable and realistic behaviour in armed conflict'.[24]

These critiques and forms of push-back therefore cast doubt on linear, teleological models of normative change, and call for an approach that both accepts and analyses the potential for ongoing contestation of individualization and the norm conflict that it can entail.[25] In other words, we do not assume that efforts to operationalize individual rights, liability, or accountability in the context of war necessarily fix the meaning of norms associated with individualization, or ends the debate about either their desirability or applicability in particular cases. An appreciation of the reality of contestation not only enriches our study of the dilemmas associated with individualization, but also requires us to look beyond 'technical' solutions, such as better coordination or more resources, for ways to address them. They also suggest that the trajectory of individualization remains unclear—a theme we return to later.

In the rest of this Introduction, we further elucidate our concept of individualization, and how it challenges more traditional collective entities and values; identify some of the tensions to which it gives rise and how they are being resolved; and posit the different ways in which individualization is (currently) being contested. We conclude by providing an overview of the subsequent chapters, in which

[22] Sebastian Strangio, 'Welcome to the Post-Human Rights World', *Foreign Policy*, 7 March 2017.

[23] We thank Tony Lang for this particular phrasing of the contemporary push-back against individualization.

[24] Helen Durham, 'Atrocities in conflict mean we need the Geneva Conventions more than ever', *The Guardian*, 5 May 2016.

[25] For a discussion of norm conflict in the fields of international relations and international law, see, for example, Antje Wiener, 'Enacting Meaning-In-Use: Qualitative Research on Norms and International Relations', *Review of International Studies 35*, no. 1 (2009), pp. 175–193; and Marko Milanovic, 'Norm Conflict in International Law: Whither Human Rights?', *Duke Journal of Comparative & International Law 20*, no. 1 (2010), pp. 69–132.

international lawyers, philosophers, and political scientists further engage with the potential and limitations of the individualization of war.

1. Conceptualizing Individualization

In its most general form, individualization is a process in which individuals, rather than collectives, increase in salience—both empirically and normatively. To arrive at a more specific definition for use in the context of armed conflict, there are two distinctions that are central to analysis and normative assessment.

The first is the distinction between an *agent* (actor) and a *subject*[26] (acted upon):

a. Individualization is the process in which the agency of individuals, rather than of collective actors, increases in importance in the causes, conduct, and consequences[27] of war.
b. Individualization is the process in which the effects on individual, rather than collective, subjects increase in importance in the causes, conduct, and consequences of war.

The second is the distinction between the role that individuals play in *explanations* and *normative assessments* of the phenomenon of war:

c. Individualization is the process in which individual agents and subjects play an increasingly important role in our descriptions and explanations of the causes, conduct, and consequences of war.
d. Individualization is the process in which individual agents and subjects play an increasingly important in role in our normative assessment of the causes, conduct, and consequences of war (where normative assessment entails assessing reasons for action including ethical, legal, and strategic reasons for action).

1.1 The Domains of Individualization: Protection, Harm, and Accountability

By integrating these two aspects, we define individualization *as a process in which individuals (both as agents and as subjects) increase in importance compared with*

[26] We acknowledge that in legal analysis a 'subject' is usually deemed to have legal personality, which suggests that the term 'object' would be more appropriate here. However, given our interdisciplinary analysis, we prefer the term 'subject' as a means of acknowledging how individuals can be affected and empowered by changes in armed conflict, even if such changes do not confer legal personality.

[27] By consequences, we are primarily referring to responses to conflict (such as reparations or criminal justice).

collective entities for the purposes of explaining and normatively assessing the causes, conduct, and consequences of war. We further suggest that individualization in the context of war forces us to confront the status of individuals in at least three different domains: (1) as subject to violence but deserving of protection (given their individual right to life); (2) as liable to harm because of their responsibility for attacks on or threats posed to others; and (3) as agents who can be held accountable for the perpetration of crimes committed in the course of conflict. The process of individualization can thus be conceived as affecting the ways in which individuals are protected in war, and the bases under which—and ways in which—they can be legitimately harmed or held to account for their actions.

The first major aspect of individualization is the move to make the individual—and his or her rights—one of the central reasons or causes for engaging in armed conflict (what is referred to in Just War literature as *jus ad bellum*). Whereas conflicts in previous centuries were primarily about the gain of territory or resources, defence of the state against attack, or—in exceptional cases—the rescue of minority groups in neighbouring states, many contemporary conflicts have as one of their central and explicit purposes the protection of individuals' security. The NATO-led action in Libya in 2011 was one highly visible manifestation of this trend, but the practice stretches back to the significant shifts in UN Security Council practice in the early decades of the post–Cold War period, which enabled the United Nations to broaden its definition of what constitutes a threat to international peace and security, and to the endorsement by UN member states in 2005 of the principle of the 'responsibility to protect'.[28]

In addition to justifying the use of force, the protection of civilians has transformed the practice of peacekeeping. Beginning with the conflict in Sierra Leone in 1999, the UN Security Council routinely began to include civilian protection in peacekeeping mandates, calling on member states' contingents to respond to and prevent extreme violations of human rights. Hence, while during the Cold War era, peacekeepers practised a more passive kind of impartiality, in which they were beholden to the wishes of the parties to a conflict, contemporary peacekeepers have been expected and mandated to be robust and assertive, by penalizing infractions against the peace process or broader international norms and principles. Today's blue helmets are now being tasked with roles akin to those of police officers and 'expected to search for, and then side with, the victims' of violence.[29]

[28] Jennifer M. Welsh, 'The Security Council and Humanitarian Intervention', in Vaughan Lowe et al. (eds), *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945* (Oxford: OUP, 2008), pp. 535–562.

[29] Emily Paddon Rhoads, *Taking Sides: Impartiality and the Future of the United Nations* (Oxford: OUP, 2016), p. 66, at p. 1. For a discussion of the development, evolution, and interrelationship between the norms of protection of civilians and responsibility to protect, see Emily Paddon Rhoads and Jennifer M. Welsh, 'Close Cousins in Protection: The Evolution of Two Norms', *International Affairs 95*, no. 3 (2019), pp. 597–717.

The second key dimension of individualization concerns the ways in which individuals can legitimately be subjected to harm—such as lethal force or detention—in the context of armed conflict. Analysis here has focused particularly on the move to both establish and act upon individual liability, rather than conflict status, in the conduct of armed conflict (what is commonly referred to as the domain of *jus in bello* rules). Modern Just War theory and the contemporary law of armed conflict assert that principles of liability and immunity derive from a person's status or membership in a particular group: combatants or non-combatants.[30] But a powerful stream within moral philosophy—Just War Revisionism—has challenged this status-based approach to the ethics of war using the framework of individual human rights.[31] If all persons have rights, and if important rights such as the right to life can only be lost or forfeited on the basis of some responsible action of the right-bearer him or herself, then it seems to follow that liability can only be established by examining the particular circumstances of individual actors within a conflict.

There are three important implications of this logic. First, human rights premises raise the question of which combatants are liable to be targeted in armed conflict—thereby challenging the Traditional Just War position of the 'moral equality of soldiers'.[32] According to the Revisionists, rights-bearing individuals can only become liable to lethal violence when they are responsible for inflicting grave unjust harm on others. This conclusion suggests that 'just combatants' (those fighting a morally or legally justified war) are not liable to be intentionally targeted; individual soldiers are only liable if they are fighting in a war that is illegal or unjust.[33] A position in favour of asymmetrical rights and responsibilities also has dramatic implications for how the practice of military establishments would need to be configured, as exemplified by the Rules of Engagement of UK forces in Afghanistan, which permitted engaging the enemy only if it posed an imminent threat to others.

In addition, individualization has implications for the status of civilians in war, who have long enjoyed protected status under the legal and moral principle of distinction. But some philosophers have begun to argue that certain non-combatants (such as the leaders of so-called rogue regimes or terrorist organizations) can be liable to intentional attack if they are responsible for sufficiently grave unjust

[30] Walzer, *Just and Unjust Wars* (2006).

[31] See McMahan, *Killing in War* (2009); Rodin, *War and Self-Defense* (2002); Frowe, *Defensive Killing* (2014); and Fabre, *Cosmopolitan War* (2012). For further discussion of the features of Traditional and Revisionist Just War theory, see Seth Lazar, 'Just War Theory: Revisionists Versus Traditionalists', *Annual Review of Political Science 20*, no. 1 (2017), pp. 37–54. For more on debate over how attention to individual rights affects our moral assessment of the use of force in self-defense, see Cecil Fabre and Seth Lazar (eds), *The Morality of Defensive War* (Oxford: OUP, 2014).

[32] Walzer, *Just and Unjust Wars* (2006).

[33] For various philosophical formulations of this argument, see McMahan, *Killing in War* (2009); Frowe, *Defensive Killing* (2014); and Fabre, *Cosmopolitan War* (2012). For further discussion of the debate over the morality of the use of force in self-defense, see Cecil Fabre and Seth Lazar (eds), *The Morality of Defensive War* (Oxford: OUP, 2014).

threats against others.[34] At the same time, technological advances—as described above—have enabled states to operationalize individual liability, particularly as part of counterterrorism operations, through the use of remotely controlled UAVs.

The final implication of Revisionism relates to how, if at all, the tenets of individual liability to attack can be compatible with current or modestly amended interpretations of international humanitarian law.[35] While some critics maintain that the circumstances of war are so unique, and so devastating, that war must be regulated by its own form of morality and law,[36] human rights principles are already intersecting with—and in some cases challenging—the nature and scope of the law of armed conflict. Legal analysis of the increasing 'co-application' of international human rights law (IHRL) and international humanitarian law (IHL)[37] is based not only on reference to and application of IHRL to conflict situations by courts and treaty bodies,[38] but also on more normative arguments that warring parties must be accountable for how they treat rights-bearing individuals in the context of armed conflict and that the more traditional 'status-based' determination of who can be killed or detained violates core rights.[39]

Attempts to give effect to the norms and laws regulating armed conflict have traditionally focused on the imposition of obligations on states and state-like actors. Over the course of the last century, however, specific obligations have been imposed directly on individuals (as either leaders or soldiers), breaches of which give rise to accountability for criminal acts undertaken during the course of war. This third and final domain of individualization culminated in the 1998

[34] McMahan, *Killing in War* (2009); Gross, *Moral Dilemmas of Modern War* (2010); and Fabre, *Cosmopolitan War* (2012). For further discussion of potential civilian liability, see Helen Frowe, 'Intervening Agency and Civilian Liability', *Criminal Law and Philosophy* (2022). doi: 10.1007/s11572-020-09555-4.

[35] Seth Lazar, 'The Morality and Law of War', in Andrei Marmor (ed), *The Routledge Companion to the Philosophy of Law* (New York: Routledge, 2012), pp. 364–379; and Jeff McMahan, 'Laws of War' in S. Besson and J. Tasioulas (eds), *The Philosophy of International Law* (New York: OUP, 2010), pp. 493–510.

[36] Janina Dill, 'Towards a Moral Division of Labour Between International Humanitarian Law and International Human Rights Law during the Conduct of Hostilities', in Z. Bohrer, J. Dill, and H. Duffy (eds), *Laws Applicable to Warfare* (Cambridge: CUP, 2020), pp. 197–265.

[37] Daragh Murray et al. (eds), *Practitioners' Guide to Human Rights Law in Armed Conflict* (Oxford: OUP, 2016).

[38] Helen Duffy, 'Trials and Tribulations: Co-application of International Humanitarian Law and Human Rights Law in the Age of Adjudication', in Z. Bohrer, J. Dill, and H. Duffy (eds), *Laws Applicable to Warfare* (Cambridge: CUP, 2020), pp. 15–105. For further discussion of the relationship between IHRL and IHL, see Cordula Droege, 'The Interplay between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict', *Israel Law Review*, 40 (2007), pp. 310–355; Noam Lubell, 'Parallel Application of International Humanitarian Law and International Human Rights Law: An Examination of the Debate', *Israel Law Review 40* (2007), pp. 648–660; Alexander Orakhelashvili, 'The Interaction between Human Rights and Humanitarian Law', *European Journal of International Law 19* (2008), pp. 161–182; Christian Tomuschat, 'Human Rights and International Humanitarian Law', *European Journal of International Law 21* (2010), pp. 15–23; Orna Ben-Naftali (ed), *International Humanitarian Law and International Human Rights Law* (Oxford: OUP, 2011).

[39] Guglielmo Verdirame, 'Human Rights in Wartime', *European Human Rights Law Review 6* (2008), pp. 689–705; and Anne Peters, *Beyond Human Rights: The Legal Status of the Individual in International Law* (Cambridge: CUP, 2014).

Rome Statute creating the International Criminal Court (ICC). There are two main challenges that this aspect of individualization poses for existing mechanisms for preventing, managing, and resolving armed conflicts, and for existing principles of international law.

The first set of challenges arises from the ICC's status as a permanent court, with universal jurisdiction that can activate investigations of individuals independent of the consent of states. Consequently, recent decades have witnessed the increased engagement of the Court in ongoing armed conflicts as well as the threat of prosecution as a 'tool' of coercive diplomacy in situations where atrocity crimes have been committed or are imminent. Although these powers of the ICC enhance the prospects for accountability, they have had a number of further (in some cases unintended) consequences and raise important theoretical and practical questions about the relationship between peace and justice.[40] Furthermore, there are significant issues with using criminal justice instrumentally as part of international diplomacy, including: the possibility that these strategies potentially destabilize existing mechanisms for resolving conflicts peacefully and challenge the United Nations' traditional approach to treating conflict parties even-handedly;[41] and the increased role for domestic, as opposed to international, courts in the prosecution of international crimes or in the making of decisions on questions of war and peace.[42] As a result of this latter development, domestic courts are being called upon to assess the legality of acts of foreign governments, which has a direct impact on the international relations of the state within which that court is located.

The second set of issues arising from the quest for accountability relate to the Kampala Amendments to the Statute of the ICC to provide for jurisdiction over the crime of aggression, which came into force in 2017.[43] Though the criminalization of aggression seeks individual accountability, it may also require or involve establishing *state* responsibility for the initiation of unlawful wars, thereby raising questions about whether the ICC can operate in the same way when it exercises jurisdiction over aggression as it does with regard to other international crimes.

[40] For analysis of the impact of the ICC's pursuit of accountability in the context of conflict, see Sarah Nouwen, 'The International Criminal Court: A Peacebuilder in Africa?', in D. Curtis and G.A. Dzinesa (eds), *Peacebuilding, Power and Politics in Africa* (Athens: Ohio University Press, 2012); Patrick S. Wegner, *The International Criminal Court in Ongoing Intrastate Conflicts: Navigating the Peace-Justice Divide* (Cambridge: CUP, 2015); Mark Kersten, *Justice in Conflict: The Effects of the International Criminal Court's Interventions on Ending Wars and Building Peace* (Oxford: OUP, 2016); and Phil Clark, *Distant Justice: The Impact of the International Criminal Court on African Politics* (Cambridge: CUP, 2018).

[41] For discussion of how the pursuit of accountability by the ICC can affect UN peace operations, see Thomas Buitelaar and Gisela Hirschmann, 'Criminal Accountability at What Cost? Norm conflict, peace operations, and the International Criminal Court', *European Journal of International Relations 27*, no. 2 (2021), pp. 548–571.

[42] Dapo Akande and Sangeeta Shah, 'Immunities of State Officials, International Crimes, and Foreign Domestic Courts', *European Journal of International Law 21*, no. 4 (2010), pp. 815–852.

[43] For analysis and debate on the criminalization of aggression and its different effects, see the Special Symposium, 'The Crime of Aggression before the International Criminal Court', *European Journal of International Law 29*, no. 3 (2018).

What is more, the jurisdiction granted to the ICC is seen by some to undermine the historically central role of the Security Council as the body designated in the UN Charter with the power to determine whether aggression has taken place.[44] Finally, although the criminalization of aggression can be viewed as a further step in the individualization of war, the definition of aggression enshrined at Kampala arguably inhibits attempts to use force for humanitarian or protection purposes, as such uses of force may be construed as being in violation of the new prohibition.[45]

This latter possibility suggests that analysts need to attend to potential incompatibilities between the fulfilment of the three strands of individualization we identify here. However, there are other forms of normative argumentation relating to the crime of aggression that extend and deepen our understanding of individual human rights and bring the streams closer together. Though aggression has long been conceived as a violation of state sovereignty, it has also come to be seen as a particular 'species' of crimes against humanity, given its unleashing of unjustified killing and humanitarian suffering.[46] Most normative and legal accounts of the crime of aggression rightly focus their concern on the rights of civilians and soldiers in the state that is attacked.[47] One recent line of inquiry, which draws on the 2018 adoption of the Human Rights Committee of its General Comment (no. 36),[48] analyses how interpreting aggression through the lens of international human rights law breaks with the traditional view that *jus ad bellum* is wholly an interstate matter. Aggression would not only be deemed to violate the rules of *jus ad bellum*, but the killings it entails would also necessarily be violations of the right to life, *even in cases* where these killings would be lawful under the rules of *jus in bello*.[49]

Some legal and normative theorists have adopted an even more radical interpretation of the relevance of individual human rights, by drawing attention to the ways in which both civilians and combatants in the attacking state are put in harm's way by that state's decision to commit aggression.[50] In this case, it is argued, the

[44] For discussion of the institutional effects of the ICC's jurisdiction on the UN Security Council, see Sean D. Murphy, 'The Crime of Aggression at the International Criminal Court', in Marc Weller (ed), *The Oxford Handbook of the Use of Force in International Law* (Oxford: OUP, 2015).

[45] Beth Van Schaack, 'The Crime of Aggression and Humanitarian Intervention on Behalf of Women', *International Criminal Law Review 11*, no. 3 (2011), pp. 477–493.

[46] See for example, Tom Dannenbaum, 'Why Have We Criminalized Aggressive War?', *Yale Law Journal 126*, no. 5 (2017); pp. 1242–1318; and Frédéric Mégret, 'What Is the Specific Evil of Aggression?' (28 March 2012). Available at: SSRN: https://ssrn.com/abstract=2546732 or http://dx.doi.org/10.2139/ssrn.2546732

[47] Dannenbaum, 'Why Have We Criminalized Aggressive War?' (2017); and *The Crime of Aggression, Humanity, and the Soldier* (Cambridge: CUP, 2018).

[48] United Nations Human Rights Committee, General Comment no. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life (GC 36). UN doc. CCPR/C/GC/36, 30 October 2018.

[49] Lieblich, 'The Humanization of *Jus Ad Bellum*' (2021).

[50] Frédéric Mégret and Chiara Redaelli, 'The Crime of Aggression as a Violation of the Rights of One's Own Population', *Journal of the Use of Force in International Law 9*, no. 1 (2022), pp. 99–127. Lieblich also hints at this possibility in his discussion of how a state's failure to reasonably attempt

competition that has developed between IHL and IHRL largely evaporates, as the focus is not on the extra-territorial application of human rights law but rather on the relationship between a state and its own population, where human rights law is most comfortable and relevant.[51] With respect to civilians, the voluntary waging of aggressive war by a state would entail a failure to fulfil its human rights obligations to protect its population from harm—including harm from war. But the violation of rights could also extend to soldiers, whose lives are usually viewed as 'expendable' in the pursuit of war.[52] While legal proceedings have already acknowledged that a state can violate the human rights of soldiers by exposing them to unnecessary risk on the battlefield[53]—which amounts to an '*in bello*' reading of soldiers' rights—this further application of human rights would extend to the realm of *ad bellum*, claiming that soldiers' rights can be violated when they are deployed for illegal ends.[54] By conceiving of aggression as a form of '*self*-harm',[55] this account focuses on the responsibility of sovereign states to protect all individual persons within their jurisdiction, and therefore strengthens the prohibition of war in ways that connect domestic and international law.

2. Individualization as a Process

If individualization is conceived as a process, the logic underpinning it is one of 'from-to': there are collectives that are becoming less central as individuals become more prominent. In the context of war, we can conceive of at least four kinds of collectives that are under challenge. Once again, however, the examples below illustrate that this process is not necessarily linear. The subsequent chapters will reveal that there remains strong evidence for the continued influence of forms of collective authority, agency, and subjectivity both in the theory and in the practice of armed conflict.

2.1 Sovereign States

In each of the domains of individualization we identified above, activities that were once directed at or concerned with the behaviour of sovereign states are experiencing an increased role for individuals (as either agents or subjects). In the realm of liability to harm, for example, we have witnessed uses of force which are aimed

to resolve disputes peacefully could amount to a violation of the duty to ensure the right to life of its people. See 'The Humanization of *Jus Ad Bellum*' (2021), at pp. 606–611.

[51] Mégret and Redaelli, 'The Crime of Aggression', p. 109.

[52] Ibid., p. 116.

[53] See, for example, Smith and others v. Ministry of Defence, 18 June 2013, UK Supreme Court 41.

[54] Mégret and Redaelli, 'The Crime of Aggression', p. 117.

[55] Ibid., p. 101. Emphasis added.

not at the sovereign state per se, but rather at those individuals deemed particularly responsible for threats posed to others (through practices of targeted killing).

Similarly, the field of international justice has undergone a shift from what Kathryn Sikkink calls the 'state accountability model',[56] in which the state as a whole was held accountable for human rights violations or the commission of crimes and was expected to remedy the situation (frequently through reparations), toward an 'individual accountability model', in which particular individuals (though often in certain roles) are held criminally responsible. In the state-centric model, the actual individuals committing, ordering, or planning international criminal acts are beyond reach (as entailed by the principle of head of state immunity). In the individual-centric model, the possibility of directly establishing criminal responsibility for individuals without the mediation of the domestic judiciary poses a challenge to the sovereign authority of the state. We can also see individualization transforming the nature of the target of violence, from a broader concept of 'society' or 'oppressed group', to the individual victim. Even if victims are in reality members of important collectives and are often targeted on the basis of a connection to a particular collective (such as a religious or ethnic group), they are sometimes understood within international criminal justice as discrete individuals—with names, faces, and rights. One of the noteworthy aspects of the International Criminal Court, for example, is that it allows for the direct participation of victims in criminal proceedings—whereas in the earlier ad hoc tribunals victims were legally relevant only as witnesses.[57]

At the same time, however, both the architecture and the practice of international criminal justice requires active and ongoing cooperation from states and their representatives in order to achieve accountability for those individuals who are alleged to have committed international crimes.[58] Similarly, while prosecutors and judges at the ICC claim to give voice to victims and to represent their interests, there are limits to the degree to which victims' identities are truly represented. Indeed, some legal scholars contend that the manner in which victims are represented in ICC trials leads not only to a narrowing of victimhood—through its categorization of who is legally relevant—but also to the creation of an abstract entity—The Victim—that transcends the actual experiences and identities of the individual victims of international crimes.[59]

[56] Sikkink, *The Justice Cascade* (2011).

[57] Claude Jorda and Jerôme de Hemptinne, 'The Status and Role of the Victim', in A. Cassesse, P. Gaeta, and J.R.W.D. Jones (eds), *The Rome Statute of the International Criminal Court: A Commentary* (Oxford: Oxford University Press, 2002), pp. 1378–1388.

[58] See, for example, Bruce Broomhall, *International Justice and the International Criminal Court: Between Sovereignty and the Rule of Law* (Oxford: OUP, 2004).

[59] Sara Kendall and Sarah Nouwen, 'Representational Practices at the International Criminal Court: The Gap Between Juridified and Abstract Victimhood', *Law and Contemporary Problems 76* (2014), pp. 235–262.

2.2 Combatants and Non-Combatants

Individualization's impact has also extended to international humanitarian law (IHL), where there has been a growing emphasis on the individual in addition to the collective actors—combatants and non-combatants—that have traditionally featured in treaties and conventions regulating armed conflict. While IHL was one of the first areas of public international law to limit states' scope of action in order to grant protection to individuals, this was framed not in terms of individual rights, but rather in terms of prohibitions on what parties to armed conflict were entitled to do, or of their obligations towards particular groups of people (for example, the wounded and sick, or the civilian population in occupied territories).

Over the past two decades, however, the interplay between international human rights law and international humanitarian law has resulted in greater attention paid to individuals. This is particularly so on the combatant side, through—as we noted earlier—the legal recognition given to an individual soldier or detainee's rights. The European Court of Human Rights' evolving (and expanding) interpretation of its jurisdiction[60] has made it difficult for a state party to the European Convention on Human Rights to deny that it owes obligations to its military personnel, wherever they are located. Similarly, efforts by the Council of Europe to ensure military officials are afforded human rights have added to the pressure to acknowledge the relevance of rights claims and arguments.

Individualization of this kind is also prominent within the ethics of war,[61] through challenges to Michael Walzer's concept of the 'moral equality of soldiers'[62] (discussed above), and through philosophical attempts to distinguish among non-combatants some of which (controversially) may be more liable to attack.[63] More generally, Revisionist Just War theory is sceptical of the idea that collectives in war can be proper units of moral responsibility in any basic sense; as a moral matter, a person's liability to attack must be derived from her own choices and actions, and not merely from the group to which she belongs. Finally, it is worth noting that—despite what legal or ethical principles might prescribe—the unpacking of the non-combatant category is a 'real-world' practice. In various conflict settings,

[60] One example is with respect to fair trial rights in military courts. See *Findlay v. The United Kingdom*, 110/1995/616/706, Council of Europe: European Court of Human Rights, 25 February 1997. The extent to which domestic courts recognize states' human rights obligations toward members of their armed forces varies across jurisdictions. In rendering its judgment in 2013 in the case of Smith and others v. Ministry of Defence, the UK Supreme Court held that deceased soldiers were under the UK's jurisdiction for the purposes of Article 2 of the European Convention on Human Rights at the time of their deaths (on duty, in Iraq). See UKSC 41, op. cit. US courts, by contrast, have generally resisted the extraterritorial application of human rights law in conflict settings.

[61] Janina Dill, 'Just War Theory in Times of Individual Rights', in Chris Brown and Robin Eckersley (eds), *The Oxford Handbook of International Political Theory* (Oxford: OUP, 2018).

[62] Christian Barry and Lars Christie, 'The Moral Equality of Combatants', in Seth Lazar and Helen Frowe (eds), *The Oxford Handbook of Ethics of War* (Oxford: OUP, 2018), pp. 339–357.

[63] Frowe, 'Intervening Agency and Civilian Liability' (2022).

actors on the ground recognize different degrees of 'civilianness' and, in the case of some humanitarian organizations, engage in competition to claim a special type of civilian status.[64]

2.3 Conflict Parties

In non-international armed conflicts, the relevant collective entities have traditionally been 'warring parties'. After 1949, IHL expanded its imposition of obligations (and rights) to include organized armed groups, although the treaty rules applicable are more limited than those applying to states engaged in international armed conflict. It is also important to note that the precise nature and scope of such organized armed groups' obligations, and their interplay with those of states, are not completely settled as matters of law (particularly with respect to responsibilities for meeting the needs of civilians under the effective control of such groups). For our purposes here, the question is less about the legal obligations of entities which are not sovereign states, and more about whether *particular members* of those non-state entities can incur obligations and be held accountable for their violation. One significant move in this direction is the growing practice, reflected in Security Council Resolution 2178, of identifying the individual 'foreign terrorist fighter', rather than the 'organized armed group', as the key subject of policy and legal regulation. The provisions of Resolution 2178 are notable in that they are addressed specifically to individuals and prohibit them not only from engaging in terrorist acts but also from forging identity papers or from travelling to combat zones where terrorist groups are active.[65] The resolution also blurs definitions of terrorism and armed conflict, thereby creating ambiguity about the status of legal regimes and potentially undermining the equality of parties within an armed conflict.

Within international criminal justice, the move to hold individuals accountable for core international crimes has also shifted the focus of political and legal discourse away from conflict parties, towards the acts of particular individuals. For example, during the Security Council debate in May 2014 which discussed the referral of the situation in Syria to the ICC, then US permanent representative to the UN, Samantha Power, stated that 'the representative of Syria and perhaps of Russia may suggest that the draft resolution voted on today was biased, and I agree. It was biased in the direction of establishing facts and tilted in the direction of a peace that comes from holding accountable individuals, not entire groups,

[64] Rebecca Sutton, *The Humanitarian Civilian: How the Idea of Distinction Circulates Within and Beyond International Humanitarian Law* (Oxford: OUP, 2021).

[65] Anne Peters, 'Security Council Resolution 2178 (2014): The "Foreign Terrorist Fighter" as an International Legal Person', EJILtalk! Available at: https://www.ejiltalk.org/security-council-resolution-2178-2014-the-foreign-terrorist-fighter-as-an-international-legal-person-part-i/

such as the Alawites, Sunnis, or Kurds.'[66] What is more, developments in international criminal law—particularly the broadening of the scope of the crimes against humanity and war crimes to include acts committed in non-international armed conflicts—have enabled the establishment of individual criminal responsibility not only for leaders or representatives of states but also for individual members of non-state armed groups.[67] These steps, along with others, have helped to address what was previously an imbalance in the impunity enjoyed by non-state and state actors. It is now the gravity of the crime, rather than the requirement of statehood, that has become crucial—at least theoretically[68]—for criminal accountability.

2.4 State Consent

In addition to these collective entities, we can identify core collective *values* that underpin the traditional regulation and assessment of the causes and conduct of war, and which are being significantly affected by individualization. A prominent example is the consent of states, which can be conceptualized as a kind of 'proxy' for the self-determination and sovereignty of peoples and which serves as a crucial source of positive law. State consent has long operated as an important principle in the practice and regulation of armed conflict, as well as a precondition for the deployment of UN peacekeeping operations. Similarly, consent is a bedrock principle in the legal framework regulating humanitarian relief operations (in which humanitarian actors can only 'offer' assistance and require the prior consent of the state in order to operate).

As a result of individualization, however, the value of state consent is arguably being eroded, or in some cases counterbalanced, by imperatives to protect individual human rights. This logic is perhaps most visible in arguments in the debate over the legitimacy of humanitarian intervention.[69] The prevailing consensus is that while Security Council authorized action for humanitarian purposes is legal, the use of force by a state or group of states outside of the UN Charter

[66] UN doc. S/PV.7180, 22 May 2014.

[67] William Schabas, 'Punishment of Non-State actors in Non-International Armed Conflict', *Fordham International Law Journal 26*, no. 4 (2002), pp. 907–933.

[68] In practice, aspects of the imbalance remain, as national governments have proven willing to cooperate with criminal justice mechanisms when they involve arrest warrants against non-state actors, but are less so when these warrants pertain to state officials. We thank Sarah Nouwen for pointing out this continuing discrepancy.

[69] We define humanitarian intervention as 'the use of force by a state (or group of states acting together) aimed at preventing or ending a humanitarian catastrophe affecting individuals other than its own citizens, without the permission of the state within whose territory force is applied.' See International Law Association, *Final Report on Aggression and the Use of Force* (2018), p. 20. Available at: https://www.ila-hq.org/images/ILA/DraftReports/DraftReport_UseOfForce.pdf

framework—what is known in international law as 'unilateral humanitarian intervention'[70]—does not pass the hurdle of legality.[71] Nonetheless, some states and legal commentators continue to argue that in exceptional cases the nature and scale of humanitarian or human rights crises justify forms of coercive military action (i.e., without the consent of the target state) that do not conform to the exceptions to the prohibition on the use of force explicitly set out in the Charter. In August 2013, in relation to the Syrian government's alleged use of chemical weapons, the British government asserted that 'a legal basis [to use force was] … available, under the doctrine of humanitarian intervention [subject to certain conditions].'[72] It followed up with a similar argument in April 2018, justifying its involvement in the coalition air strikes as protecting the Syrian population from further attacks.[73]

The status and meaning of consent have also been debated in other contexts. Turning to peacekeeping, the United Nations has claimed since the 2000 Brahimi Report that its operations will no longer be constrained by the injunction to ensure the continued consent of all parties in situations of imminent threat to vulnerable civilians.[74] With respect to the legal rules governing humanitarian relief in armed conflict, legal attempts to interpret what amounts to the 'arbitrary withholding of consent' by states to offers to provide humanitarian assistance have drawn on international human rights law.[75] More controversially, some legal scholars have argued that in response to such an arbitrary withholding of consent, international agencies would be entitled to engage in unauthorized and cross-border deliveries of humanitarian relief.[76]

Finally, within the domain of accountability, the shift in the locus of responsibility under international law from states to individuals calls into question the

[70] This term refers to a use of force that does not have Security Council authorization. Thus, the use of the word 'unilateral' does not mean that a state is acting alone. States can act collectively, but unilaterally, if they act without the Council's imprimatur.

[71] For a review of legal opinion, see Vaughan Lowe and Antonios Tzanakopoulos, 'Humanitarian Intervention', in Rudiger Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law* (Oxford: OUPS, 2012), Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1701560; and Nigel Rodley, 'Humanitarian Intervention', in Marc Weller (ed), *The Oxford Handbook on the Use of Force in International Law* (Oxford: OUP, 2015), pp. 775–776.

[72] Prime Minister's Office, 'Chemical Weapon use by Syrian Regime: UK Government Legal Position', Policy Paper, 29 August 2013. Available at: www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position/chemical-weapon-use-by-syrian-regime-uk-government-legal-position-html-version. The Danish government published an opinion arguing along the same lines. See 'General Principled Considerations on the Legal Basis for a Possible Military Operation in Syria', UPN Alm.del Bilag, 30 August 2013. Available at: www.ft.dk/samling/20121/almdel/upn/bilag/298/1276299/index.htm.

[73] See, for example, the statement of British diplomats at the emergency session of the Security Council. UN Doc. S/Pv.8233, 14 April 2018.

[74] Paddon Rhoads, *Taking Sides* (2016).

[75] Dapo Akande and Emanuela-Chiara Gillard, 'Arbitrary Withholding of Consent to Humanitarian Relief Operations in Armed Conflict', *International Law Studies 92* (2016), p. 483.

[76] Payam Akhavan et al., *Open Letter to the UN on Humanitarian Aid*, 28 April 2014. Available at: https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=73b714fb-cb63-4ae7-bbaf-76947ab8cac6

relevance of state consent when asserting international criminal jurisdiction.[77] Some scholars have described the Rome Conference creating the ICC as a quasi-legislative process, in which—by a non-unanimous vote—the Statute asserts, on behalf of the international community, prescriptive jurisdiction beyond its states parties.[78] Others, however, contest this view of the source of the ICC's authority, and maintain that state consent remains a significant value in international criminal justice[79]—one that has been reasserted through the process to amend the Rome Statute to define the crime of aggression and new war crimes. This more recent history underscores the ICC's founding in a multilateral treaty, and, by extension, its consent-based 'jurisdictional scheme'.[80]

2.5 State Responsibility

The notion that states—as distinct from individuals—can be assigned responsibility for certain actions or held responsible for violations of certain rules and norms has been a prominent feature of modern international law and politics.[81] It is this logic that has informed various sanctions regimes, claims for debt repayment or reparations, or calls for official apologies for historic wrongdoings. The 2001 adoption of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts[82] has significantly advanced, through both codification and progressive development, the legal rules regarding when a state obligation has been breached and the legal consequences of that violation. Rather than asserting that states, like individuals, are moral agents that can be held responsible, the Draft Articles develop a 'functional' theory of state responsibility, in which states, as legal persons, act *through* their agents and representatives who perform state functions.[83]

[77] Gerry Simpson, 'Men and Abstract Entities: Individual Responsibility and Collective Guilt in International Criminal Law', in Andre Nollkaemper and Harman van der Wilt (eds), *System Criminality in International Law* (Cambridge: CUP, 2009), pp. 69–100.

[78] Alexandre Skander Galand, 'The Nature of the Rome Statute of the International Criminal Court (and its Amended Jurisdictional Scheme', *Journal of International Criminal Justice 17*, no. 5 (2019), pp. 933–956.

[79] Dapo Akande, 'Prosecuting Aggression: The Consent Problem and the Role of the Security Council', *Oxford Legal Research Paper Series*, Paper No. 10/2011.

[80] Galand, 'The Nature of the Rome Statute' (2019), at p. 950.

[81] For one recent attempt to theorize state responsibility and apply it to these different practices, see Sean Fleming, *Leviathan on a Leash: A Theory of State Responsibility* (Princeton: Princeton University Press, 2020).

[82] *Draft Articles on the Responsibility of States for Internationally Wrongful Acts*, Report of the International Law Commission on the Work of its Fifty-third Session, UN GAOR. UN doc. A/56/10 (2001).

[83] On the contrast between an 'agential' and 'functional' theory of state responsibility, see Fleming, *Leviathan on Leash*, pp. 32–34. Proponents of the agential approach include Peter French, *Collective and Corporate Responsibility* (New York: Columbia University Press, 1984); and Toni Erskine, 'Assigning Responsibility to Institutional Moral Agents: The Case of States and Quasi-States', *Ethics & International Affairs* 15, no. 2 (2001), pp. 67–85. For more on the functional approach to conceiving

Beyond the legal sphere, however, the theory and practice of state responsibility has also had its detractors, particularly among philosophers and normative theorists who worry about the potential for harming individuals in the process of punishing states.[84] This concern has been particularly prevalent with respect to economic sanctions,[85] which in the past two decades have become much more targeted, or 'individualized', in order to direct punitive action at those deemed most responsible for wrongdoing.[86] The significant steps taken in international criminal law, beginning with the Nuremberg and Tokyo trails, are also part of the broader effort to individualize responsibility for state acts.

But although individual criminal accountability for actions undertaken during armed conflict is one of the most notable normative and legal developments associated with the individualization of war, the notion of state responsibility remains an important part of efforts to prevent and punish international crimes such as genocide. For example, in the Bosnia v. Serbia case before the International Court of Justice, the question of state responsibility—in this case, relating to Serbia's failure to prevent the genocide in Srebrenica—was central to the interpretation of the provisions of the Genocide Convention as extending beyond a state's obligation to prevent and punish genocidal acts occurring within its own territory, to the duty of neighbouring states to use means at their disposal to deter those suspected of preparing genocide.[87] Legal scholars have demonstrated that state responsibility and individual responsibility can in fact work side by side—as opposed to the latter supplanting the former.[88] For their part, some normative theorists have suggested that individual responsibility should not and cannot supplant state responsibility, since state officials lack sufficient resources to pay reparations for large-scale wrongdoing and that states remain the main bearers of treaty obligations.[89]

of state responsibility, see James Crawford, *State Responsibility: The General Part* (Cambridge: CUP, 2013).

[84] Toni Erskine, 'Kicking Bodies and Damning Souls: The Danger of Harming "Innocent" Individuals while Punishing "Delinquent" States', *Ethics & International Affairs 24*, no. 3 (2010), pp. 261–285; and Anna Stilz, 'Collective Responsibility and the State', *Journal of Political Philosophy 19*, no. 2 (2011), pp. 190–208.

[85] See, for example, Joy Gordon's analysis of the sanctions imposed on Iraq from 1990 to 2003, following the first Guld War. *Invisible War: The United States and the Iraq Sanctions* (Cambridge, MA: Harvard University Press, 2010.

[86] Arne Tostensen and Beate Bull, 'Are Smart Sanctions Feasible?', *World Politics 54*, no. 3 (2002), pp. 373–403; and Daniel Drezner, 'Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice', *International Studies Review 13*, no. 1 (2011), pp. 96–108.

[87] International Court of Justice, Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro). General List, no. 91, 26 February 2007. For further discussion of the ICJ's jurisprudence on genocide, see Anthony F. Lang, Jr., 'Punishing Genocide: A Critical Reading of the International Court of Justice', in Tracy Isaacs and Richard Vernon (eds), *Accountability for Collective Wrongdoings* (Cambridge: CUP, 2011).

[88] André Nolkaemper, 'Concurrence between Individual Responsibility and State Responsibility in International Law', *International and Comparative Law Quarterly 52*, no. 3 (2003), pp. 615–640.

[89] Fleming, *Leviathan on a Leash*, p. 179.

3. Tensions Arising from Individualization

We began this introductory chapter by pointing to the possible tensions, or dilemmas, that the individualization of war poses for key actors engaged in or associated with armed conflict. These tensions can be roughly divided into three main types, all of which feature in subsequent chapters by our contributors.

The first set of tensions arises at the normative level such that it appears conceptually or normatively impossible to fully realize two important values. A prominent example is the tension between maintaining impartiality in peacekeeping operations and punishing one party to a conflict for infringement of human rights. A further example is the tension within Traditional Just War theory that arises when a war that is considered unjust from a *jus ad bellum* perspective (i.e., fought for unjust cause), but that is conducted justly from a *jus in bello* perspective (i.e., adhering to the rules of right conduct). In this case the war would be considered unjust in totality, even if the individual acts of soldiers that together constitute the war are considered just.

A second set of tensions associated with the individualization of war exists at a practical level. Here, there are two possibilities. First, tensions can arise from practical attempts to achieve or operationalize two important values, due to intrinsic and unavoidable facts about the world. One example is the oft-noted tension between the achievement of peace (between conflict parties) and justice (to address crimes committed in war) given the political nature of conflict resolution. But there are also tensions confronting practical attempts to achieve or operationalize values that are due to more contingent facts about the world. A case in point would be the difficulty of achieving humanitarian objectives with armed forces and strategic doctrines that are tailored to large-scale counterforce operations; another would be the financial constraints on wide-ranging protection mandates in peacekeeping operations and the political reluctance of troop-contributing countries to use robust force to protect civilians.

And finally, there are tensions that arise between different manifestations and domains of individualization—or what we might conceive as 'cross-cutting' tensions. One illustration, hinted at the outset of this Introduction, is the dilemma facing humanitarian actors who may be requested to provide assistance to mechanisms established to bring accountability for violations of international criminal law or international human rights law (such as international and national tribunals, commissions of inquiry, or the imposition of targeted sanctions), while at the same time ensuring continued access to individual civilians in need.[90] Although humanitarians frequently have valuable first-hand information on

[90] Sara Kendall and Sarah Nouwen, 'International Criminal Justice and Humanitarianism', in K.J. Heller, F. Mégret, S.Nouwen, J. Ohlin, and D. Robinson (eds), *The Oxford Handbook of International Criminal Law* (Oxford: OUP, 2020).

violations or are in direct contact with affected communities, the sharing of such information with accountability mechanisms risks undermining their operations and, in some cases, putting their staff and beneficiaries at risk. Another case of cross-cutting tensions emerges with respect to the doctrine of so-called command responsibility, which on the one hand has been created to further individual accountability for the perpetration of atrocity crimes but which on the other hand seeks to protect victims of armed conflict. Here, there is a tension between designing a model of command responsibility that ensures that commanders will act to prevent subordinates from committing war crimes against civilians, or punish them for doing so, while retaining respect for the fundamental rights of the commander (in particular, his right not be punished for an act in which he did not participate).[91] Similarly, analysis of the connection between the International Criminal Court and the principle of the 'responsibility to protect' has shown that the relationship between the pursuit of accountability and the pursuit of protection is not always one of 'win–win'. In the cases of Darfur and Libya, the Security Council's use of its referral power to the ICC to address impunity and protect populations from atrocity crimes not only failed to meet these objectives, but also arguably had the effect of weakening the ICC by exposing the limitations of its enforcement powers.[92]

4. Resolving the Tensions from Individualization: A Spectrum of Approaches

How (if at all) can the tensions arising from individualization be resolved? What strategies are the actors engaged in armed conflict currently adopting to address them? We conceive of a spectrum of approaches ranging from, at one end, a principled and general attempt to integrate two sets of important values, to more ad hoc strategies that respond with a particular, context-specific solution to tensions that emanate from individualization. In between these two extremes would sit various forms of reconciliation and institutional adaptation, which enable actors to reduce the frequency and severity of the tensions arising from individualization (if not completely eliminate them).

[91] Alexandre Skander Galand, 'Bemba and the Individualization of War: Reconciling Command Responsibility under Article 28 of Rome Statute with Individual Criminal Responsibility', *International Criminal Law Review 20*, no. 4 (2020), pp. 669–700.

[92] Ruben Reike, 'Book Review Essay: The International Criminal Court and its Effects on Active Armed Conflict', *Journal of Intervention and Statebuilding 11*, no. 4 (2017), pp. 555–559.

4.1 Reconceptualization

The first approach for addressing the tensions arising from individualization pursues the reconceptualization of a normative terrain, such that one value or norm is consistently prioritized over another. An illustration from the domain of protection is the notion of 'sovereignty as responsibility': the doctrine which claims that state sovereignty, while a bedrock norm of international society, is no longer understood as undisputed control over territory but rather as comprising a set of conditional rights, dependent upon a state's respect for a minimum standard of human rights for its citizens.[93] Under this reconceptualization of sovereignty, while states are seen as the primary agents responsible for protecting their populations, outside actors can take on a remedial responsibility for protection without compromising sovereignty or the norm of non-intervention. Rather than viewing state sovereignty as limited by human rights, sovereignty and human rights thus become integrated in pursuit of the same (ultimate) objective.[94]

Another example of reconceptualization features centrally in Revisionist Just War theory. Unlike more conventional accounts of the ethics of war, which grant normative status to both states and individuals (thereby generating deep conceptual dilemmas), Revisionist theorists attribute clear normative primacy to individual human rights bearers. In short, they are both 'descriptive individualists' (claiming that only individuals—not collectives—act in war) and 'evaluative individualists' (arguing that only individuals morally matter in war).[95] This reconceptualization resolves a number of tensions raised by Traditional Just War theory, by building a coherent ethics of war from a human rights foundation. In doing so, however, it also raises new practical challenges relating to the difficulties and epistemic barriers in making micro-level judgements about the normative status of individuals in conflict situations.[96]

[93] For one key non-Western figure to address the conflict between sovereignty and human rights, see Francis Deng et al., *Sovereignty as Responsibility: Conflict Management in Africa* (Washington: Brookings Institution Press, 1996). For further discussion of the connection between sovereignty as responsibility and the 'responsibility to protect', see Jennifer M. Welsh, 'Implementing the Responsibility to Protect: Catalysing Debate and Building Capacity', in Alexander Betts and Phil Orchard (eds), *Implementation and World Politics: How Norms Change Practice* (Oxford: OUP, 2014), pp. 124–143; and Luke Glanville, *Sovereignty and the Responsibility to Protect: A New History* (Chicago: University of Chicago Press, 2013).

[94] In a similar formulation, Anne Peters develops the concept of 'humanized sovereignty', in which sovereignty exists to further the normative ends of humanity and implies responsibility for the protection of human rights. See 'Humanity as the A and Ω of Sovereignty', *European Journal of International Relations 20*, no. 3 (2009), pp. 513–544.

[95] Seth Lazar, 'Just War Theory: Revisionists Versus Traditionalists', *Annual Review of Political Science 20*, no. 1 (2017), pp. 37–54, at p. 40.

[96] See Dill, 'Towards a Moral Division of Labour' (2020); and Zehfuss, *War and the Politics of Ethics* (2018).

4.2 Reconciliation

A second approach along the spectrum, reconciliation, seeks not a general solution—prioritizing one norm over another—but rather the creation of context-specific relationships between competing norms and values. An illustration is the legal practice of 'interpretive complementarity', which is applied to situations where there are two legal regimes considered relevant and appropriate, with neither necessarily subordinate to the other. Both regimes thus apply, non-exclusively, to the same set of circumstances, often with one normative framework supplementing the other. Nehal Bhuta has explained how interpretive complementarity plays out in the case of armed conflict, where both international humanitarian law and international human rights law are said to have jurisdiction. Through interpretive complementarity, 'IHR rules and principles are used to inform and "humanize" IHL rules; or IHL rules are used to give content to IHR rules in certain exceptional states. In either case, one body of law supplements the other although the direction of this "supplementation" is not fixed.'[97] Similarly, in her analysis of the relationship between IHL and IHR rules, Helen Duffy observes courts and treaty bodies increasingly employing 'harmonious interpretation',[98] based on the common principles and values of both bodies of law, rather than denying the relevance of one or the other through the logic of *lex specialis*.

Another instance of reconciliation can be found in the legal framework regarding humanitarian relief operations in armed conflict. While the 1977 Additional Protocols to the Geneva Conventions provide that in cases where a civilian population is inadequately supplied with items indispensable for survival, humanitarian relief actions shall be undertaken, it also conditions such operations on the consent of the state to whose territory such action is to be conducted. In other words, there is both an obligation to conduct (and to accept) such humanitarian relief operations *and* a degree of discretion as to whether to accept them. The tension between these rules is resolved by accepting that while consent is required, such consent shall not be arbitrarily withheld and by a careful working out as to the circumstances in which it can be said that lack of consent is arbitrary. In this way, the requirements of both principles of law (which appear inconsistent) are met.[99]

4.3 Institutional Adaptation

A third way in which actors seek to resolve the tensions raised by individualization is through institutional adaptation: the design of policies or mechanisms to

[97] Nehal Bhuta, 'States of Exception: Regulating Targeted Killing in a "Global Civil War"', in P. Alston and E. Macdonald (eds), *Human Rights, Intervention, and the Use of Force* (Oxford: OUP, 2008), Ch. 7, at p. 252.

[98] Helen Duffy, 'Trials and Tribulations' (2020), at pp. 71–83.

[99] Dapo Akande and Emanuela-Chiara Gillard, 'Arbitrary Withholding of Consent to Humanitarian Relief Operations in Armed Conflict', *International Law Studies 92* (2016), p. 483.

address dilemmas that arise between individual and collective values in certain contexts. One illustrative example is the Human Rights Due Diligence Policy of the United Nations, which responds to the potential for institutional complicity with armed actors engaged in violence against civilians. The policy stipulates that in the context of its peace operations, the UN cannot provide support to non-UN armed actors 'where there are substantial grounds for believing there is a real risk of the receiving entities committing grave violations of international humanitarian, human rights or refugee law'.[100] The UN's Human Rights Up Front initiative, launched in 2013, was an even more comprehensive form of institutional adaptation designed to address a central dilemma confronting the organization—namely, its need to retain the support of a government to help in delivering assistance to populations in need, while at the same responding to serious violations of international law that may require the UN to issue criticism of that same government. Human Rights Up Front represented a system-wide effort to prioritize the protection of populations from violence, through changes in the way that information is gathered and analysed, new training for all UN staff, and reform of the organization's decision-making structure.[101]

4.4 Ad Hoc Responses

Finally, the furthest end of the spectrum of strategies of resolution is marked by the *lack* of any systematic approach to addressing value conflicts. Where normative frameworks are seen as incompatible, analysts have identified at least three options for response: paralysis—i.e., no action; sequencing (whereby one value is pursued first and then the other); or principled inconsistency, through a case-by-case assessment of which value to privilege in any given situation.[102] While it would be tempting to see the second and third options as mere forms of 'organized hypocrisy', they can be underpinned by an actor's genuine commitment to both values and a reluctance to abandon either as part of its identity.

A well-known example is the 'peace first, justice later', or sequencing approach, to addressing the dilemmas that arise from efforts to pursue individual accountability for perpetrators of international crimes in situations of armed conflict.[103] Another illustration of a case-by-case assessment of which value to privilege in

[100] United Nations. Human rights due diligence policy on United Nations support to non-UN security forces. UN doc. A/67/775-S/2013/110, 5 March 2013.

[101] The initiative was prompted by the criticism of the UN's performance in the closing phase of the conflict in Sri Lanka in 2008-9. See Welsh, 'Humanitarian Actors and International Political Theory' (2018).

[102] Anchalee Ruland has conceptualized these response strategies—as well as others—in the context of analysing individual states' responses to situations of norm conflict. See *Norms in Conflict: Southeast Asia's Response to Human Rights Violations in Myanmar* (Lexington: The University Press of Kentucky, forthcoming 2022).

[103] For one influential argument that politics should 'lead, and justice 'follow', see Jack Snyder and Leslie Vinjamuri, 'Trials and Errors: Principle and Pragmatism in Strategies of International Justice', *International Security 28*, no. 3 (2004), pp. 5–44.

a given situation is the provision in Article 53 of the ICC Statute, under which the Court may decline to prosecute international crimes where it would not be in the interests of justice. De Souza Dias and Akande provide an interpretive framework for this provision which would allow the Court to assess the circumstances in which temporarily setting aside criminal proceedings may lead to a form of justice that—in terms of quality and scope—is more desirable. This may be the case, they argue, in cases where negotiations are attentive to justice concerns and the interests of victims.[104]

5. The Contestation of Individualization

While we have theorized individualization as a 'from–to' process, involving the increased prominence of individuals, we do not assume a linear trajectory. Individualization has been and can be contested, in ways illuminated by the contributors to this volume. This leaves open the possibility that there may be moves backwards as well as forwards in the trajectory of individualization. Therefore, as a final feature of our conceptual framework, we adapt from the current literature on norm contestation within the field of international relations[105] to identify three kinds of contestation of the process of individualization:

- ***validity contestation:*** This form of contestation questions the very legitimacy of a move away from collectives towards individuals. It often takes the form of denying that individuals have any status or rights in armed conflict—as either agents or subjects—and arguing that collective and status-based categories best structure the practice of war and its normative assessment. One obvious example is the view of those states that question the extraterritorial application of international human rights law in situations in which these states are engaged in foreign armed conflicts, as Russia did before the European Court of Human Rights in the case regarding the 2008 Georgian–Russian war. The Court itself was ultimately divided on certain aspects of the case, including whether Russia could be held responsible for violation of the European Convention on Human Rights extraterritorially in an international armed conflict, and treated these aspects as matters of international humanitarian law.[106]

[104] Talita de Souza Dias and Dapo Akande, 'Peace Negotiations as "Interests of Justice"', in Richard H. Steinberg (ed), *The International Criminal Court: Contemporary Challenges and Reform Proposals* (Leiden: Brill Nijhoff, 2020), pp. 344–357.

[105] Nicole Deitelhoff and Lisbeth Zimmermann, 'Things We Lost in the Fire: How Different Types of Contestation Affect the Robustness of International Norms', *International Studies Review 22*, no. 1 (2020), pp. 51–76.

[106] In its long-awaited judgment, the Court did not establish that Russia had jurisdiction over territories in the war zone during the 'active period of hostilities' in August 2008, with the majority of judges

Other illustrations of validity contestation can be found in the scholarly literature, such as the counter-argument within the ethics of war to the practice of targeted killing, which denies the legitimacy of identifying 'high value' civilian targets,[107] or critiques of Revisionist Just War theory that either question whether the best rules to regulate war emanate from moral prescriptions related to human rights[108] or that defend a more collectivist approach.[109] Critical theorists, as we have noted, also express fundamental objections to individualization, by insisting that war is a particular 'institution, ideology and set of practices' that is not susceptible to forms of ethical reasoning that employ methodological individualism.[110]

- ***institutional contestation:*** A second form of contestation does not deny the legitimacy of placing increased emphasis on individuals as agents and subjects, but objects to the way in which individualization is currently institutionalized. An example can be found within the field of international criminal justice, where individual criminal responsibility per se is (usually) not contested, but rather the particular structure of the ICC or the way in which it has exercised its jurisdiction. This can be seen in efforts to set up a regional African criminal court as well as in the efforts to establish a hybrid tribunal for South Sudan. For its part, the African Union's contestation of the ICC is particularly focused the Court's application of its Statute to non-party states; most of its members do not challenge whether crimes committed by nationals or in the territory of states parties can generally fall within ICC jurisdiction. In the realm of peacekeeping, we can also see forms of institutional contestation concerning the Security Council's control of decision-making with respect to mission mandates and a perceived lack of consultation with troop-contributing countries.
- ***applicatory contestation:*** This type of contestation, like the one above, does not deny the legitimacy of individualization as such, but questions whether individualization should apply to a particular case of (or within) an armed conflict. Some legal scholars, for example, have argued that while there may

arguing that the 'very reality of armed confrontation and fighting between enemy military forces .... *In a context of chaos* means that there is no control over an area' (emphasis added). European Court of Justice, *Georgia v. Russia (II)*, 21 January 2021, para. 126. The Court did argue, however, that events after the active period of the war fell within Russia's jurisdiction and that Russia violated Articles 2, 3, and 8 of the European Convention.

[107] Jeremy Waldron, 'Death Squads and Death Lists: Targeted Killing and the Character of the State', *Constellations 23*, no. 2 (2016), pp. 292–307.

[108] Janina Dill and Henry Shue, 'Limiting Killing in War: Military Necessity and the St. Petersburg Assumption', *Ethics & International Affairs 26*, no. 3 (2013), pp. 311–333.

[109] See, for example, Lazar, 'Just War Theory'; and Saba Barzargan, 'Complicitous Liability in War', *Philosophical Studies 165*, no. 1 (2013), pp. 177–195.

[110] Hutchings, 'From Just War Theory to Ethico-Political Pacifism', p. 193. See also Zehfuss, *War and the Politics of Ethics*.

be sound ethical reasons to apply international human rights law to considerations of both *jus ad bellum,* such a practice carries the risk of both depoliticizing war and securitizing human rights.[111] Within the domain of international criminal justice, applicatory contestation is manifest in the views of some scholars and diplomats that individual criminal accountability should not be pursued in the context of ongoing armed conflicts and, especially, during ongoing peace talks. Another example of this kind of contestation can be seen in relation to the principle of the 'responsibility to protect', where states debate whether the remedial responsibility of the international community has been activated, or whether states should be given greater time and scope to address threats to populations within their jurisdiction. Applicatory contestation is also apparent in debates among states as to whether the norm of 'protection of civilians' or the 'responsibility to protect' should apply to a given situation.[112]

6. Outline of the Volume

Building on the conceptualization presented above, our contributing authors address the different domains of the individualization of war and significantly advance our interdisciplinary understanding of its nature, effects, and controversies. The chapters that follow investigate individualization as both a normative claim—debated in the scholarship on the ethics of war—and an empirical phenomenon—manifest in 'real world' changes in the law and the practice of key actors engaged in armed conflict settings. Given that individualization has been explicitly and closely analysed in the philosophical literature, the book engages closely with the debate between so-called Revisionists and Traditionalists, featuring some of the leading scholars in this discussion who take the debate further forward in important new ways. But our examination of individualization extends beyond this particular philosophical exchange, to include legal and political analysis of how aspects of individualization affect the law of armed conflict, international institutions, and other related policy agendas.

The volume begins with essays that seek to extend the logic of individualization in the ethics and law of armed conflict. In Chapter 1, **Adil Haque** encourages us to rethink key aspects of the debate between Traditionalist and Revisionist just war scholars. Reductive individualists, such as Jeff McMahan, argue for the *application* of ordinary morality to the *factual* reality of war, while conventional collectivists, such as Michael Walzer, insist on the *adaptation* of ordinary morality to the *moral* reality of war. Haque contends that these distinctions rest on a fundamental mistake, insofar as the 'legal precept' of the Just War convention no longer exists in

[111] Lieblich, 'The Humanization of *Jus Ad Bellum*' (2021).
[112] Paddon Rhoads and Welsh, 'Close Cousins in Protection' (2019).

the wake of the Kellogg–Briand Pact's delegitimization of war as a legal institution. This prohibition of aggressive war, as he demonstrates, has transformed the law of armed conflict, its enforcement, and its relationship to other bodies of law. Nevertheless, these transformations are not complete within human rights law, which still imposes obligations on states (rather than on individuals), or within international criminal law (where there is no liability for ordinary soldiers for the crime of aggression). Haque concludes, however, by asserting that international law today more closely resembles the reductive individualism of Just War Revisionists. If this view prevails, and if the war convention adapts, he suggests that lawyers and philosophers alike will be better able to study the overall pattern of the law of armed conflict and ethically ground its rights and obligations.

In Chapter 2, **Anne Peters** analyses the individualization of international humanitarian law (IHL)—a process she argues has still not reached its limits. She begins by observing that when ascribing individual rights, there is a difference between legal rules which embody 'objective' standards of protection that impose obligations or duties on obligors, and rules which *additionally* confer 'subjective' rights on those persons whom the rules seek to protect. She then goes on to examine whether, and under what conditions, IHL generates such individual rights, and against whom. She argues that since case law has yet to settle which rules in IHL actually generate individual rights, this question must be determined in each case by interpreting the provisions or by clarifying the content of the underlying norm of customary law. In so doing, Peters suggests that the acknowledgement of IHL-based rights endorses the individual human being as the normative reference point of IHL. The principal modern purpose of IHL—to protect humans from the calamities of war—is best pursued, she concludes, by acknowledging direct IHL-based, special individual rights, rather than falling in the two extremes: either applying human rights across the board or denying individual rights altogether.

In Chapter 3, **Bradley Jay Strawser** focuses on how individualization affects those most engaged in waging war. Revisionist Just War theorists have argued that soldiers who serve in the military take on a risk that they will act in morally impermissible ways (if, for example, they are commanded to fight in a war that is objectively unjust) and that this provides a moral reason against participating in military service—especially in the absence of strong provisions for selective conscientious objection. Strawser strikingly turns this reasoning on its head, however, arguing instead that by voluntarily assuming a risk of moral wrongdoing, soldiers are actually performing a *noble* and morally supererogatory act. His 'Noble Risk Argument' starts from the premise that state militaries are at least in some cases both necessary and morally justified; we therefore require some individuals within our society to assume the risks of wrongdoing that military service entails. Those who serve in the military shoulder this moral burden on our behalf—knowing that they may thereby commit a severe moral wrong. Strawser then teases out the elements of this claim by showing how the assumption of moral risk closely tracks the

praiseworthy way in which individuals may assume risk or harm in other contexts in order to help a society achieve important collective goals. He also examines how the idea of assuming risk connects with the way that soldiers frequently view their own activity and how the Noble Risk Argument provides support for a policy of conscription in order to fairly share the burden of moral risk.

The second section of the book invites us to rethink aspects of individualization, drawing on literature from moral philosophy and psychology. In Chapter 4, **Victor Tadros** provides a meta-analysis of the dispute between collectivists (such as Walzer) who conceive of war as a conflict between groups, and individualists (such as McMahan) who argue that the morality of war is straightforwardly reducible to the moral considerations that arise in the interpersonal conflict between individuals. Tadros's central task is to challenge the latter 'reductivist' account, by exploring three ways in which group membership can plausibly affect the morality of war. First, groups can have duties, and therefore can engage in wrongdoing, even if they are not moral agents in an ontological sense. Second, group membership can ground liability to harm in war, if we accept that attributing liability to harm on the basis of group membership may be the only way to fairly distribute the risks and harms entailed by fighting in a war within a community. Third, group membership can affect whether an individual is permitted, required, or prohibited from fighting in a just or unjust war due to the moral importance of the special relationships they share with other groups members. Although the role groups play in the morality of war leads Tadros to reject reductive individualism, it does not mean he supports the 'orthodox' interpretation of Just War theory. Rather, it suggests for him an even more radical form of Revisionism than that proposed by classic individualists like McMahan, because group membership on this view may support a more radical and far-reaching form of non-combatant liability to harm.

The defenders of traditional Just War theory—the collectivists—have in recent years forwarded both normative and practical objections to individualist Revisionists. In Chapter 5, **Benjamin Valentino** presents another crucial practical defence of the traditional view: 'situationism', which contends that human beings tend to *overestimate* the power of stable personal character traits while *underestimating* the effects external environment and context have in shaping behaviour. Valentino asserts that when applied to situations of war, situationism ought to have profound consequences for how we think about individual moral responsibility and justice, how we apportion blame and assign punishment, and how we regulate the conduct of war. In short, an appreciation of situationism ought to inform the ways we attempt to apply individualization to war in the real world. In taking situationism seriously, Valentino argues that we would do better to focus our efforts on restructuring the situations and institutions that encourage immoral behaviour in the first place—either by dividing authority to prevent one person from commanding total obedience, or by encouraging diversity among peer groups to prevent destructive conformity and peer pressure.

In the book's third section, our contributors elaborate on some of the key consequences of individualization, particularly for international law and international organizations. In Chapter 6, **Paola Gaeta and Abhimanyu George Jain** analyse the implications for IHL that stem from processes of criminalization. They begin by noting that while violations of IHL rules primarily implicate the responsibility of the parties to the conflict (usually states and non-state armed groups), it is widely acknowledged that wars are waged by people and that individuals may incur international criminal responsibility when charged with war crimes. In their view, this form of individualization—which prioritizes individual criminal accountability over state responsibility and other forms of collective international responsibility—has both desirable and undesirable consequences. In particular, they show that the individualization of IHL effectively places short-term gains over long-term rehabilitation of the flaws in the collective dimension of the international responsibility system, and consequently, potentially compromises the broader enforceability of IHL. The authors also identify a set of factors that are revealing the limitations of individual criminal responsibility, including a limited perspective of justice, false universalism, sexism, racism, and neocolonialism.

In Chapter 7, **Sarah Nouwen** engages with our conceptual framework by expanding on the tensions that the individualization of accountability can generate for different policy agendas related to armed conflict—including peacemaking; providing humanitarian relief IHL promotion; military action to address atrocity crimes; peacekeeping; economic cooperation; human rights promotion; rule-of-law promotion and democratization. Crucially, while international criminal law may itself create tensions, she focuses on the tensions created by the pursuit of individual criminal *accountability*—that is, attempts to transform liability into accountability through criminal proceedings. In so doing, Nouwen also evaluates the strengths and limitations of some of the strategies of resolution that we have set out in the Introduction. She concludes by suggesting that most of the tensions arising from individualization do not in fact exist at the normative level—the objectives themselves are not conflicting—but result from diverging logics: what is deemed necessary to pursue those objectives. She also notes that some of the tensions associated with individualization are not fully resolved but rather addressed through prioritization of one objective over another. Whether through law or ad hoc, these prioritizations are largely determined by political choice.

Chapter 8, by **Paul Williams,** returns to the first domain of individualization, protection, by analysing the evolution and consequences of 'protection of civilians' (PoC) mandates for UN peacekeepers. Since the end of the Cold War there has been a marked increase in UN peacekeeping operations seeking to stabilize war-torn countries, many of which are active sites of armed conflict where there is no peace to keep. Yet, until 1999, peacekeepers were not explicitly tasked to protect civilians in these conflict zones. Williams's review of practice in the first decades of the twenty-first century reveal that PoC mandates have been a useful addition

despite raising local and international expectations about what UN peacekeepers can achieve in the field. Yet, while peacekeepers have been relatively successful in stopping, reducing, and mitigating many threats of physical violence to civilians, the underlying governance and political problems which generate these threats have largely been left unaddressed. In this sense, UN peacekeeping has witnessed both operational and tactical benefits for civilians but simultaneously a lack of strategic progress. Consequently, the UN's High-Level Independent Panel on Peace Operations (HIPPO) report, released in 2016, recommended that all UN peace operations ultimately be guided by *political* solutions to the conflict or crisis in question.

The final section of the book takes a different approach to analysing individualization, by acknowledging that while formal armed conflict is still a key feature of contemporary international relations, it is not the only or even the most important form of conflict and violence that takes place today. The Small Arms Survey Report of 2016 shows that out of the 560,000 violent deaths that occurred in that year, only 18 per cent were *direct conflict deaths*. Furthermore, of the five countries with the highest number of violent deaths in 2016, only two were experiencing active armed conflict.[113] The growing phenomenon of generalized violence accounts for the preponderant share of violent deaths around the world, and is concentrated in countries such as El Salvador, Guatemala, Brazil, Mexico, and Venezuela. In fact, the use of military force or militarized police operations against organized crime in Latin America has shown levels of destruction, death, and other forms of harm comparable to those situations of civil war. These 'situations other than war', as the ICRC refers to them, create particular challenges for actors seeking to protect individuals from harm—in part because they create ambiguity in the status of particular individuals and raise questions about what legal obligations (if any) fall upon states and non-state actors.

Chapter 9, by **Pablo Kalmanovitz** and **Miriam Bradley**, shines a spotlight on these violent contexts which frequently do not meet the IHL thresholds for armed conflict and thus formally fall under a law enforcement or IHRL paradigm. Through a case of study of Mexico's war on organized crime, they illustrate how the qualification of a situation of organized violence as a non-international armed conflict (NIAC) or below the NIAC threshold has major implications for how processes of individualization operate. Starting from an IHRL baseline, Kalmanovitz and Bradley suggest that in contexts of criminal violence we are in fact encountering a form of 'collectivization', in which collective designations become more prominent and normatively significant in the domains of protection and liability to harm. They further examine this process through a 'reverse analogy' with the

[113] Claire Mc Envoy and Gergely Hideg, 'Global Violent Deaths 2017: Time to Decide' *Small Arms Survey*, December 2017. Available at: https://www.smallarmssurvey.org/sites/default/files/resources/SAS-Report-GVD2017.pdf

process of individualization in armed conflict, and conclude that collectivization in these situations lacks an adequate underlying international legal framework, and therefore does not offer the same level of protection for individuals as exists in contexts of war. In forwarding this argument, they also illuminate the underlying structure of the process of individualization—its assumptions and conditions—and how it ultimately falls short of the move towards peacetime regulation of violence under IHRL.

References

Akande, D. (with C. Heyns, L. Hill-Cawthorne, and T. Chengeta). (2016) 'The International Law Framework Regulating the Use of Armed Drones', *International Comparative Law Quarterly*, 65, pp. 791.

Akande, D. and Gillard, E. (2016). 'Arbitrary Withholding of Consent to Humanitarian Relief Operations in Armed Conflict', *International Law Studies*, 92, p. 483.

Akande, D. and Shah, S. (2010) 'Immunities of States Officials, International Crimes, and Foreign Domestic Courts', *European Journal of International Law*, 21(4), pp. 815–852.

Akande, D. and Tzanakopoulous, A. (2018) 'The Crime of Aggression before the International Criminal Court: Introduction to the Symposium', *European Journal of International Law*, 29(30), pp. 829–833.

Akhavan, P. et al. (2014) *Open Letter to the UN on Humanitarian Aid*, 28 April 2014. Available at: https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=73b714fb-cb63-4ae7-bbaf-76947ab8cac6

Barry, C. and Christie, L. (2018) 'Moral Equality of Combatants', in S. Lazar and H. Frowe (eds), *The Oxford Handbook of Ethics of War*. Oxford: Oxford University Press, pp. 339–357.

Barzargan, S. (2013) 'Complicitous Liability in War', *Philosophical Studies*, 165(1), pp. 177–195.

Ben-Naftali, O. (ed.) (2011) *International Humanitarian Law and International Human Rights Law*. Oxford: Oxford University Press.

Bhuta, N. (2008) 'States of Exception: Regulating Targeted Killing in a "Global Civil War"', in P. Alston and E. Macdonald (eds), *Human Rights, Intervention, and the Use of Force*. Oxford: Oxford University Press, Ch. 7.

Blum, G. (2014) 'The Individualization of War: From War to Policing in the Regulations of Armed Conflicts', in A. Sarat, L. Douglas, and M. Umphrey (eds), *Law and War*. Redwood City, CA: Stanford University Press, pp. 48–83.

Bohrer, Z., Dill, J. and Duffy, H. (2020) *Law Applicable to Armed Conflict*. Cambridge: Cambridge University Press (Max Planck Trialogues).

Broomhall, B. (2004) *International Justice and the International Criminal Court: Between Sovereignty and the Rule of Law*. Oxford: Oxford University Press.

Buitelaar, T. and Hirschmann, G. (2021) 'Criminal Accountability at What Cost? Norm conflict, peace operations, and the International Criminal Court', *European Journal of International Relations*, 27(2), pp. 548–571

Coates, A.J. (1997) *The Ethics of War*. Manchester: Manchester University Press.

Crawford, J. (2013) *State Responsibility: The General Part*. Cambridge: Cambridge University Press.

Dannenbaum, T. (2017) 'Why Have We Criminalized Aggressive War?', *Yale Law Journal*, 126(5), pp. 1242–1318.
Dannenbaum, T. (2018) *The Crime of Aggression, Humanity, and the Soldier*. Cambridge: Cambridge University Press.
De Souza Dias, T. and Akande, D. (2020) 'Peace Negotiations as "Interests of Justice"', in R. Steinberg (ed.), *The International Criminal Court: Contemporary Challenges and Reform Proposals*. Leiden: Brill Nijhoff, Chapter 31.
Deitelhoff, N. and Zimmerman, L. (2020) 'Things We Lost in the Fire: How Different Types of Contestation Affect the Robustness of International Norms', *International Studies Review*, 22(1), pp. 51–76.
Deng, F., Kimaro, S., Lyons, T., Rothchild, D., and Zartman, W. (1996) *Sovereignty as Responsibility: Conflict Management in Africa*. Washington, D.C.: Brookings Institution Press.
Dill, J. (2018) 'Just War Theory in Times of Individual Rights', in C. Brown and R. Eckersley (eds), *The Oxford Handbook of International Political Theory*. Oxford: Oxford University Press, Chapter 17.
Dill, J. (2019) 'Do Attackers Have a Legal Duty of Care? Limits to the "Individualization of War"', *International Theory*, 11(1), pp. 1–25.
Dill, J. and Shue, H. (2013) 'Limiting Killing in War: Military Necessity and the St. Petersburg Assumption', *Ethics & International Affairs*, 26(3), pp. 311–333.
Donini, A. (ed) (2012) *The Golden Fleece*. Boulder, CO: Kumarian Press.
Drezner, D. (2011) 'Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice', *International Studies Review*, 13(1), pp. 96–108.
Droege, C. (2007) 'The Interplay between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict', *Israel Law Review*, 40, pp. 310–355.
Drumbl, M. (2007) *Atrocity, Punishment, and International Law*. Cambridge: Cambridge University Press.
Erskine, T. (2001) 'Assigning Responsibility to Institutional Moral Agents: The Case of States and Quasi-States', *Ethics & International Affairs*, 15(2), pp. 67–85.
Erskine, T. (2010) 'Kicking Bodies and Damning Souls: The Danger of Harming "Innocent" Individuals while Punishing "Delinquent" States', *Ethics & International Affairs*, 24(3), pp. 261–285
European Court of Justice. (2021) *Georgia v. Russia (II)*, 21 January 2021.
Fabre, C. (2012) *Cosmopolitan War*. Oxford: Oxford University Press.
Fabre, C. and Lazar, S. (eds) (2014) *The Morality of Defensive War*. Oxford: Oxford University Press.
Fleming, S. (2020) *Leviathan on a Leash: A Theory of State Responsibility*. Princeton: Princeton University Press.
French, P. (1984) *Collective and Corporate Responsibility*. New York: Columbia University Press.
Frowe, H. (2014) *Defensive Killing*. Oxford: Oxford University Press.
Frowe, H. (2022) 'Intervening Agency and Civilian Liability', *Criminal Law and Philosophy*, 16(1), pp. 181–191. doi: 10.1007/s11572-020-09555-4.
Galand, A.S. (2020) 'Bemba and the Individualization of War: Reconciling Command Responsibility under Article 28 of Rome Statute with Individual Criminal Responsibility', *International Criminal Law Review*, 20(4), pp. 669–700.
Gordon J. (2010) *Invisible War: The United States and the Iraq Sanctions*. Cambridge, MA: Harvard University Press.

Gregory, D. (2011) 'The Everywhere War', *The Geographical Journal*, 177(3), pp. 238–250.
Gross, M. (2010) *Moral Dilemmas of Modern War*. Cambridge: Cambridge University Press.
Hakimi, M. (2012) 'A Functional Approach to Targeting and Detention, *Michigan Law Review*, 110, pp. 1365–1420.
Haque, A. (2017) *Law and Morality at War*. Oxford: Oxford University Press.
Hopgood, S. (2013) *The Endtimes of Human Rights*, Ithaca, NY: Cornell University Press.
Hutchings, K. (2019a) 'From Just War Theory to Ethico-Political Pacifism', *Critical Studies on Security*, 7(3), pp. 191–198.
Hutchings, K. (2019b) 'Cosmopolitan Just War and Coloniality', in D. Bell (ed.), *Empire, Race and Global Justice*. Cambridge: Cambridge University Press, pp. 211–227.
International Court of Justice. (2007) *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*. General List, no. 91, 26 February 2007.
Jorda, C. and de Hemptinne, J. (2002) 'The Status and Role of the Victim', in A. Cassesse, P. Gaeta, and J.R.W.D. Jones (eds), *The Rome Statute of the International Criminal Court: A Commentary*. Oxford: Oxford University Press, pp. 1378–1388.
Kendall, S. and Nouwen, S. (2014) 'Representational Practices at the International Criminal Court: The Gap between Juridified and Abstract Victimhood', *Law and Contemporary Problems*, 76, pp. 235–262.
Kendall, S. and Nouwen S. (2020) 'International Criminal Justice and Humanitarianism', in K.J. Heller, F. Mégret, S. Nouwen, J. Ohlin, and D. Robinson (eds), *The Oxford Handbook of International Criminal Law*. Oxford: Oxford University Press, Chapter 31.
Kersten, M. (2016) *Justice in Conflict: The Effects of the International Criminal Court's Interventions on Ending Wars and Building Peace*. Oxford: Oxford University Press.
Lang, Jr., A.F. (2011) 'Punishing Genocide: A Critical Reading of the International Court of Justice', in T. Isaacs and R. Vernon (eds), *Accountability for Collective Wrongdoings*. Cambridge: Cambridge University Press, pp. 92–118.
Lazar, S. (2017) 'Just War Theory: Revisionists Versus Traditionalists', *Annual Review of Political Science*, 20(1), pp. 37–54. doi: 10.1146/annurev-polisci-060314-112706.
Lazar, S. and Frowe, H. (eds) (2015) *The Oxford Handbook of Ethics of War*. New York: Oxford University Press.
Lieblich, E. (2021) 'The Humanization of *Jus Ad Bellum*: Prospects and Perils', *European Journal of International Law*, 32(2), pp. 579–612.
Lubell, N. (2007) 'Parallel Application of International Humanitarian Law and International Human Rights Law: An Examination of the Debate', *Israel Law Review*, 40, pp. 48–60.
Magone, C., Neumann, M., and Weissman, F. (eds). (2012) *Humanitarian Negotiations Revealed: The MSF Experience*. New York: Columbia University Press.
Mc Envoy, C. and Hideg, G. (2017) 'Global Violent Deaths 2017: Time to Decide' *Small Arms Survey*. Available at: https://www.smallarmssurvey.org/sites/default/files/resources/SAS-Report-GVD2017.pdf
McMahan, J. (2009) *Killing in War*. Oxford: Oxford University Press.
McMahan, J. (2010) 'Laws of War', in S. Besson and J. Tasioulas (eds), *The Philosophy of International Law*. New York: Oxford University Press, Chapter 24.

McMahan, J. (2016) 'The Limits of Self-Defense', in C. Coons and M. Weber (eds), *The Ethics of Self-Defense*. Oxford: Oxford University Press, Chapter 10.
Mégret, F. (2012) 'What Is the Specific Evil of Aggression?', Publisher unknown: http://dx.doi.org/10.2139/ssrn.2546732
Mégret, F. and Redaelli, C. (2022) 'The Crime of Aggression as a Violation of the Rights of One's Own Population', *Journal of the Use of Force in International Law*, 9(1), pp. 99–127.
Milanovic, M. (2010) 'Norm Conflict in International Law: Whither Human Rights?', *Duke Journal of Comparative & International Law*, 20(1), pp. 69–132.
Milanovic, M. (2016) 'The Lost Origins of *Lex Specialis*: Rethinking the Relationship between Human Rights and International Humanitarian Law', in J.D. Ohlin (ed.), *Theoretical Boundaries of Armed Conflict and Human Rights*. New York: Oxford University Press, pp. 78–117.
Murphy, S.D. (2015) 'The Crime of Aggression at the International Criminal Court', in M. Weller (ed.), *The Oxford Handbook of the Use of Force in International Law*. Oxford: Oxford University Press, Chapter 24.
Murray, D. et al. (consultant eds.). (2016) *Practitioners' Guide to Human Rights Law in Armed Conflict*. Oxford: Oxford University Press.
Nolkaemper, A. (2003) 'Concurrence between Individual Responsibility and State Responsibility in International Law', *International and Comparative Law* Quarterly, 52(3), pp. 615–640.
Nouwen, S. (2012) 'The International Criminal Court: A Peacebuilder in Africa?', in D. Curtis and G.A. Dzinesa (eds), *Peacebuilding, Power and Politics in Africa*. Athens: Ohio University Press, Chapter 9.
Orakhelashvili, A. (2008) 'The Interaction between Human Rights and Humanitarian Law', *European Journal of International Law*, 19, pp. 161–182.
Paddon Rhoads, E. (2016) *Taking Sides: Impartiality and the Future of the United Nations*. Oxford: Oxford University Press.
Paddon Rhoads, E. and Welsh, J.M. (2019) 'Close Cousins in Protection: The Evolution of Two Norms', *International Affairs*, 95(3), pp. 597–717.
Peters, A. (2009) 'Humanity as the A and Ω of Sovereignty', *European Journal of International Relations*, 20(3), pp. 513–544.
Peters, A. (2014) *Beyond Human Rights: The Legal Status of the Individual in International Law*. Cambridge: Cambridge University Press.
Peters, A. (2021) 'The Importance of Having Rights', *ZaöRV*, 81(1), pp. 7–22.
Reike, R. (2017) 'Book Review Essay: The International Criminal Court and Its Effects on Active Armed Conflict', *Journal of Intervention and Statebuilding*, 11(4), pp. 555–559.
Risse, T., Ropp, S.C., and Sikkink, K. (eds). (2013) *The Persistent Power of Human Rights*. Cambridge: Cambridge University Press.
Roberts, A. (2008) 'The Principle of Equal Application of the Laws of War', in D. Rodin and H. Shue (eds), *Just and Unjust Warriors: The Legal and Moral Status of Soldiers*. Oxford: Oxford University Press, Chapter 12.
Rodin, D. (2002) *War and Self-Defense*, Oxford: Oxford University Press.
Ruland, A. (2022) *Norms in Conflict: Southeast Asia's Response to Human Rights Violations in Myanmar*. Lexington: The University Press of Kentucky, forthcoming.
Schabas, W. (2002) 'Punishment of Non-State Actors in Non-International Armed Conflict', *Fordham International Law Journal*, 26(4), pp. 907–933.
Sikkink, K. (2011) *The Justice Cascade*. New York: W.W. Norton.

Simpson, G. (2009) 'Men and Abstract Entities: Individual Responsibility and Collective Guilt in International Criminal Law', in A. Nollkaemper and H. van der Wilt (eds), *System Criminality in International Law*. Cambridge: Cambridge University Press, Chapter 4.
Singer, P.W. (2009) *Wired for War*. New York: Penguin Books.
Snyder, J. and Vinjamuri, L. (2004) 'Trials and Errors: Principle and Pragmatism in Strategies of International Justice', *International Security*, 28(3), pp. 5–44.
Stilz, A. (2011) 'Collective Responsibility and the State', *Journal of Political Philosophy*, 19(2), pp. 190–208.
Strawser, B.J. (2010) 'Moral Predators: The Duty to Employ Uninhabited Aerial Vehicles', *Journal of Military Ethics*, 9(4), pp. 342–368.
Tadros, V. (2020) *To Do, To Die, To Reason Why: Individual Ethics in War*. Oxford: Oxford University Press.
Tomuschat, C. (2010) 'Human Rights and International Humanitarian Law', *European Journal of International Law*, 21, pp. 15–23.
Tostensen, A. and Bull, B. (2002) 'Are Smart Sanctions Feasible?', *World Politics*, 54(3), pp. 373–403.
United Nations. (2001) *Draft Articles on the Responsibility of States for Internationally Wrongful Acts*, Report of the International Law Commission on the Work of its Fifty-third Session, UN GAOR. UN doc. A/56/10.
United Nations. (2008) *United Nations Peacekeeping Operations: Principles and Guidelines*. New York: Department of Peacekeeping Operations.
United Nations (2013) *Human Rights Due Diligence Policy on United Nations Support to Non-un Security Forces*. UN doc. A/67/775-S/2013/110, 5 March 2013.
United Nations. (2018) *General Comment no. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life (GC 36)*. UN doc. CCPR/C/GC/36, 30 October 2018.
Van Schaack, B. (2011) 'The Crime of Aggression and Humanitarian Intervention on Behalf of Women', *International Criminal Law Review*, 11(3), pp. 477–493.
Verdirame, G. (2008) 'Human Rights in Wartime', *European Human Rights Law Review*, 6, pp. 689–705.
Waldron, J. (2015) 'Death Squads and Death Lists: Targeted Killing and the Character of the State', New York University Public Law and Legal Theory Working Papers. Paper 519. Available at: http://lsr.nellco.org/nyu_plltwp/519
Walzer, M. (2006) *Just and Unjust Wars*. New York: Basic Books.
Wegner, P.S. (2015) *The International Criminal Court in Ongoing Intrastate Conflicts: Navigating the Peace-Justice Divide*. Cambridge: Cambridge University Press.
Weinert, M. (2015) *Making Human: World Order and the Global Governance of Human Dignity*. Ann Arbor: University of Michigan Press.
Welsh, J.M. (2008) 'The Security Council and Humanitarian Intervention', in V. Lowe et al. (eds), *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945*. Oxford: Oxford University Press, pp. 535–562.
Welsh, J.M. (2014) 'Implementing the Responsibility to Protect: Catalyzing Debate and Building Capacity', in A. Betts and P. Orchard (eds), *Implementation and World Politics: How Norms Change Practice*. Oxford: Oxford University Press, pp. 124–143.
Welsh, J.M. (2015) 'The Morality of 'Drone Warfare', in D. Cortright, R. Fairhurst, and K. Wall (eds), *Drones and the Future of Armed Conflict: Ethical, Legal and Strategic Implications*. Chicago: Chicago University Press, Ch. 2.

Welsh, J.M. (2016) 'The Responsibility to Protect after Libya and Syria', *Daedalus: Journal of the American Academy of Arts and Sciences*, 145(4), pp. 75–87.
Welsh, J.M. (2018) 'Humanitarian Actors and International Political Theory', in C. Brown and R. Eckersley (eds), *The Oxford Handbook of International Political Theory*. Oxford: Oxford University Press, Chapter 24.
Welsh, J.M. (2019a) 'Norm Robustness and the Responsibility to Protect', *Journal of Global Security Studies*, 4(1), pp. 53–57
Welsh, J.M. (2019b), 'The Individualization of War: Defining a Research Programme', *Annals of the Fondazione Luigi Einaudi*, 53 (1), pp. 9-28.
Zehfuss, M. (2018) *War and the Politics of Ethics*. Oxford: Oxford University Press.