

# The International Legal Order and Restraint of Violence in Civil Wars: How Issue Areas of Conflicts Matter?

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## Abstract

This research aims at conducting a dissertation of understanding how issue areas influence the implementation of international legal order in restraining violence toward civilians in civil wars. I treat conflict as continuum. When a civil war is newly developed, tangible issues such as competition for resources, territory, and political position will dominate. These issues are negotiable, and belligerents tend to follow the rule in order to avoid being punished by the international community. However, when conflict escalates, intangible issues such as ethnic resentment and social hatred will interfere, drive out emotions and make the situation more complicated. This will make belligerents act less rationally and disobey the international legal order owing to the emotional-oriented domestic support. I intend to prove my argument through three case studies: The Bosnian War (1992–1995), the Kosovo War (1996–1999), and the Darfur Crisis (2003–2006).

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## Keywords

civil war, international legal order, tangible issues, intangible issues, escalation of conflict, continuum

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## Introduction

One of the major characteristics of civil wars is that they involve violence toward civilians from both government and rebel groups, which generate grave violations of human rights such as destruction of property, forced eviction, rape, and massacres. To restrain the behavior of belligerents, international legal order is necessary. This is a set of rules to ensure belligerents act properly and protect civilians from harm during civil wars.<sup>1</sup> However, international legal order is not panacea because belligerents might choose to not “choose to follow rules.”<sup>2</sup> Why? I argue that issue areas in a conflict matter. We should treat conflict as continuum rather than a set of discrete factors. When a conflict starts, belligerents generally consider tangible issues, such as natural resources, territory, and political position. In this period, they tend to follow the international legal order and restrain their behavior toward civilians because tangible issues are negotiable, and “follow the rule” can help them attain a platform for negotiation and avoid punishment by international society. However, when conflict escalate, intangible issues like ethnic resentment and social hatred interfere with the situation and make it more complicated. This phenomenon will generate hostility to civilians. Belligerents will treat them as potential enemies, devalue and scapegoat them, and finally use harsh violence. Also, intangible issues will push belligerents

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- 1 Examples of the international legal order for the protection of civilians during civil wars are the 1949 Geneva Conventions and the 1977 Geneva Protocol I and II. These documents state regulations governing belligerents’ treatment of civilians during internal and international armed conflicts, such as how to treat those not active in hostilities in a humane way and care for the wounded and sick. There are also examples of how to regulate the behavior of belligerents in case studies under the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) that adopted by the UN General Assembly on 9 December 1948.
  - 2 The UN Security Council plays role in enforcing and implementing relevant norms through tactics such as imposing sanctions and military intervention. The International Criminal Court also has the power to prosecute individuals for the international crimes of genocide, crimes against humanity, and war crimes. However, States may lack consensus in implementing the international legal order, and this will lead to increased conflict and greater violation of human rights.

think less rational. Abstract factors are more likely to generate emotions. This, combine with a more complicated situation, will make belligerents less able to calculate cost and benefit accurately when they act harshly to civilians. Complicated situation will push belligerents “act inwardly” because they need to fulfill the desires of their emotional-oriented supporters rather than pursuing “moral value.” Therefore, they will tend not to obey the international legal order because domestic support will make them think they do not need to fear being punished by the international community.

Studies of whether belligerents will abide by international legal order and control violence toward civilians during civil wars are fruitful, but existing literature does not provide many answers to why and how issue areas matter. The literature discusses the relevant issues in several ways. One is the approach of liberal institutionalism, which focuses on analyzing principles, norms, rules, and decision-making procedures, and how these elements bind actors and restrain parties’ behavior in conflicts (Ikenberry, 2011: 61–66; Keohane, 2005: 59). Another is the rational thinking approach. Belligerents will calculate the benefits from international support and decide whether they choose to follow the international legal order, and/or the punishment they will receive if they choose not to follow (Morrow, 2007: 559; Stanton, 2016: 61).

This research proposal aims to construct a discussion to talk about relations between issue areas and the facility of international legal order to restrain belligerents’ behavior during civil wars. The remainder of this paper is as follows. Based on an analysis of previous studies, I begin by introducing the relation between international legal order and belligerents during civil wars, with the focus on the reasons belligerents choose to follow the rules or not. Next, I outline the framework for developing my argument more thoroughly. I then describe three case studies for testing my argument—the Bosnian War (1992–1995), the Kosovo War (1996–1999), and the Darfur Crisis (2003–2006). The last part set out the research methods that I intend to use when I develop this paper further. Through this research, I wish to contribute a systematic analysis on how different issue areas affects the implementation of the international legal order in restraining the behavior of belligerent toward civilians during civil wars. Most importantly, treating the development of issue areas in conflict as continuum will help understand the transformation in the thinking of belligerents when conflict escalates. This will contribute to understanding why their decision not to “follow the rule”

is not rational when they face intangible issues. Practically, I wish to provide policymakers, international organizations, and NGOs more insight in the relevant fields in order to construct new conflict resolution policies to solve human rights violations in areas of the world affected by conflict.

## Literature Review

### 1. The Authority of the International Legal Order to Deter Aggressive Behaviors

Liberal Institutionalism describes the institutionalized order—the international regime, as “set of rules, norms, principles, and decision making procedures” (Keohane, 2005: 59). These factors are constructed by states, and they prescribe certain actions of states and obligations that states should follow if they participate in this kind of order. The rules that facilitate the institutionalized order are based on consent, which means states “agree” that they will be bound by these regulations (Ikenberry, 2011: 61). However, that does not mean the rules are useless. In fact, once states have common interests, they are willing to be bound by the order in order to secure their interests, which thereby “legalize” the rules and order (Ikenberry, 2001: 30–31).

International legal order, in this sense, is a kind of order that regulates the behavior of States and other actors through rules and norms. Traditionally, related studies focus on how international legal order guides the determination of the means and ends of wise diplomacy (Herz, 1951: 18; Morgenthau, 1985: 13; Wright, 1961: 32). At the end of the Cold War, scholars began to concentrate on how the international legal order is embedded in domestic politics (Keohane, Moravcsik, & Slaughter, 2000: 466). As the international system lacks a top authority to regulate states’ behaviors, implementation of the international law in the international realm is problematic. Therefore, through the exercise these legal regulations by individual government—the idea of “domestic embeddedness”—the political significance of the international legal order is raised (Keohane et al., 2000: 466). Proper methods for doing this include legal corporation and constitutional recognition (Keohane et al., 2000: 468).

The end of Cold War signifies that world politics is more complicated, and actors other than States are facing legal action. A burst of civil wars and

the diversity of human rights violations has helped the international legal order to evolve, such that individuals accused of war crimes are facing more systematic trial (Goldstein, Kahler, Keohane, & Slaughter, 2000: 385). For example, The International Criminal Tribunal for the Former Yugoslavia (ICTY) that established in 1993 is the first international court that appeal to the Genocide Convention in order to accuse criminals that committed crime against humanity. Later on, the Rome Treaty that ratified in 1998 led to the establishment of the International Criminal Court (ICC). In 2005 World Summit, all member States of the United Nations endorsed a worldwide commitment to address key concerns to prevent genocide, war crimes, ethnic cleansing and crimes against humanity—the so-called Responsibility to Protect (R to P). This principle is based upon norms of international law and means that sovereign States have the obligation to protect their civilians from mass atrocity and violations of human rights (ICISS, 2001). The international society provides a frameworks to allow measures such as mediation, early warning system, economic sanctions, and the use of Chapter VII of the UN Charter in order to protect civilians from human rights violations when sovereign States intend to harm civilians or when States are unwilling to protect them (ICISS, 2001).<sup>3</sup> If necessary, the UN Security Council has the authority to use force (as a last resort). These orders have set a framework to protect civilians from harm and deter individuals and sovereign States from acting aggressively to them. Leaders from States that suffer human rights' violations understand that they should follow the rules and act decently toward civilians if they want to avoid punishment by the international society.

## 2. Rational Thinking Approach

Rational thinking approach holds that belligerents will rationally calculate the cost and benefit of following the international legal order and restrain their behavior to civilians. Since the end of Cold War, international humanitarian norms have become more widely accept by international society (Hafner-Burton & Tsutsui, 2007: 407). Belligerents who target civilians during a civil war will earn criticism and both governments and rebel groups will lose international support (Stanton, 2016: 39). Furthermore,

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3 Chapter VII of the United Nations Charter sets out the UN Security Council's powers to maintain peace. It allows the Council to "determine the existence of any threat to the peace, breach of the peace, or act of aggression" and to take military and nonmilitary action to "restore international peace and security."

belligerents follow the international legal order because they believe their opponents will do so (Morrow, 2007: 559–572). The perception of reciprocity will make them more likely to abide by international legal order. However, that does not mean that belligerents will always follow the rule. International support, diasporas, and even the expectation of foreign intervention may give belligerents opportunities to win a war, thereby escalate the conflict and impose severe violence on civilians (Fearon & Laitin, 2003: 81; Kuperman, 2008: 49).

Another trend of the rational thinking approach looks at the domestic costs of violence. Regime type, political inclusiveness,<sup>4</sup> and political stability will affect belligerents' willingness to restrain their behavior toward civilians (Stanton, 2016: 32). Compared with authoritarian states, leaders of both governments and rebel groups in democratic regimes are sensitive to public opinion because they are accountable to civilians, and the value of democratic regime will help them restrain their behavior (Stanton, 2016: 32–33). These factors lead governments and rebel leaders to limit violence toward civilians during civil wars if they are in a democratic regime. Also, if political leaders from both government and rebel group garner a wide range of power sharing, they are more likely to respect the opinion of minority groups and take their criticism of governmental policies seriously (Cederman, Wimmer, & Min, 2010: 113). This will push them to adopt moderate policies toward civilians. Last, governments and rebel groups that cannot consolidate their power will have greater likelihood of restraining their behavior toward civilians (Cunningham, 2011: 275; Stanton, 2016: 41). This idea is linked to their need for international support. Belligerents that cannot maintain internal stabilization tend to adopt moderate policies because they need international support (Stanton, 2016: 41). This idea can also be looked at in reverse. When belligerents are unable to maintain stable political power, they tend to adopt severe policies toward civilians to generate fear (Cohen, 2016: 54; Roessler, 2016: 61).

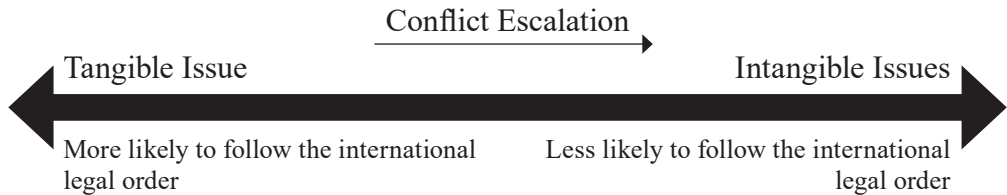
## My Argument

I argue that during civil wars, conflictual issue areas will determine whether belligerents will follow the international legal order and restrain violence toward civilians, and the development of the issue areas is

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4 Whether a regime can include multiple groups in decision making.

determined by the escalation of conflict. This thesis is as illustrated below:



**Figure 1:** Belligerents' perception on whether to follow the international legal order during the escalation of conflict and the transformation of dominance of issue area.

When the civil war is newly developed, competition over tangible issues, such as land, resource, and political position, play the main role. Belligerents in this period tend to follow the international legal order and restrain violence to civilians. This is because those issues are negotiable and following the international legal order will help them solve the conflict peacefully. Also, belligerents will avoid punishment generate by disobeying the international legal order. What they seek is to reach a deal and achieve tangible goals. However, when conflict escalates, intangible issues will interfere and make the situation more complicated. Abstract factors such as ethnic hatred and social resentment will generate emotions, and push belligerents towards hostility to innocent civilians, treat them as potential enemies. This will lead to devaluating and scapegoating them and finally result in harsh violence (Staub, 1989: 21). As the situation becomes more complicated, belligerents will not act rationally in perceiving whether to obey the international legal order in order to avoid punishment, and they will tend to fulfill their domestic desires, which they perceive will give them support. Therefore, if they think that domestic support can override the international punishment, they will tend not to obey the international legal order.

## Case Selection

My case studies are mainly of civil wars happened in the post-Cold War era. It is because after the bipolar competition between two superpowers, conflicts within states become one of the major problems in the world. It is also the time when international humanitarian law takes more responsibility to solve international disputes.

## 1. Bosnian War (1992–1995)

The Bosnian War began in 1992 because of different opinions from a diversity of groups of peoples regarding the possible independence of the country—known as Bosnia-Herzegovina. With support from the Serbian government of Slobodan Milošević and the Yugoslav People’s Army (JNA), Bosnia Serbs mobilized their forces to secure their ethnic territory against the Muslim Bosniaks and Catholic Croats, then war soon spread across the country, accompanied with ethnic cleansing like the Srebrenica massacre. The conflict only ended when the UN Security Council invite NATO to implement military intervention in 1995 (Power, 2002: 437–441).

Violence in this conflict originated from the resentment of Bosnian Serbs over the independence of Bosnia-Herzegovina. This was a situation of political competition, a tangible issue. But after the Serbian government intervened, the situation quickly escalated to ethnic conflict, an intangible issue. Worst of all, ethnic cleansing happened in this civil war despite “the intervention of the UN.” It is worth analyzing why the international legal order could not be fully implemented and why the Bosnian Serbs did not care about international law.

## 2. The Kosovo War (1996–1999)

The Kosovo War resulted from the unequal treatment of ethnic Albanians living in the State Union of Serbia and Montenegro. As the Serbian government modified its constitution to limit the right to autonomy of the Albanians in 1989, those Albanians living in Kosovo began to strive forcefully for independence (Hill, 2015: 121). In 1996, the Kosovo Liberation Army (KLA) began to use violence to achieve independence. The Serbian government acted harshly to repress the rebel groups and stationed police and army personnel in Kosovo, with ethnic cleansing that resulted in a huge flow of refugees. The war ended in 1999 after NATO bombed Serbia (Power, 2002: 458–460).

The civil war was generated by the demand for Albanian autonomy, which is a tangible issue. However, when the Albanians requested independence, the conflict escalated, resulting in grave human rights violations. Ethnic cleansing by the Serbian government was an action contrary to the international legal order. I intend to find out the reason why the Serbian government disobeyed the rules when the conflict escalated.



### 3. The Darfur Crisis (2003–2006)

The Darfur Crisis was an armed conflict that happened in the Darfur region of Sudan and that began in February 2003. It involved fighting between the Sudanese government and the Sudan Liberation Movement (SLM) and the Justice and Equality Movement (JEM). These rebel groups accused the Sudanese government of opposing non-Arab citizens in Darfur. (BBC, 2010) In response, the government imposed coercive action on the non-Arab population in Darfur, include ethnic cleansing (Straus, 2015: 250). This resulted in hundreds and thousands of people dying and the Sudanese president, Omar al-Bashir, was accused of genocide, war crimes, and crimes against humanity by the International Criminal Court.

It is obvious that the violence of the conflict came from the Sudanese government. In fact, there were many peacekeepers in the region that helped to moderate the situation during the fighting, including UNAMID, a joint African Union-UN peacekeeping mission. Also, international actors such as Qatar, the UN, the African Union (AU), the Arab League, and Chad have all helped to arrange peace talks between Khartoum and JEM over the past few years (BBC, 2010). However, the situation has never fully been resolved. I intend to look into the views of the Sudanese government, to find out the reasons why it decided to go against international law. I will also examine the proposition of the rebel groups, to find reasons that they tend to deal with the issue through armed conflict.

## Research Methods

### 1. Document Analysis Method

Documents considered include journals, books, and news articles about civil wars that can contribute to this research. Also, I shall study how the transformation of issue areas is a focal point in these conflicts, policies and reports from governments and think tanks are an important resource for analysis.

### 2. Comparative Analysis Method

Comparative analysis method aims at comparing different cases in order to find differences and similarities (DeFelice, 1986: 415–437; Lijphart, 1975: 158–159). Comparing the transformation of issue areas in different cases

will help us understand why belligerents tend to follow the international legal order when tangible issues dominate during civil wars, and why when conflict escalate, intangible issues will block out rational thinking and push belligerents against the rule.

### 3. Content Analysis

Since civil wars result from deep-rooted social problems, it is necessary to know the “true content” of the situation through field study. Moreover, one never knows exactly how international legal order implement using only second-hand research. I intend to fulfill my research through interviews and field trips to related government agencies, think tanks, NGOs, and even my target countries. Groups such as International Crisis Group, CSIS, Red Cross, centers of the UN Peacekeeping Missions, and local related NGOs are places where I intend to conduct field study and interview.

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# 內戰時國際法制秩序對限制暴力的影響探討：議題領域如何作用？

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## 摘要

本研究將探討內戰時議題領域的變化如何影響國際法制秩序限制交戰各造對平民的暴力行為。本人認為在內戰時，衝突的變化應被視為連續體。當內戰剛剛發生時，具象的議題領域，例如對資源、領土、以及政治地位的爭奪等，會使交戰雙方傾向於接受國際法制秩序的限制，這是由於這些議題是可被談判的，而遵守國際法制秩序可使交戰各造避免被國際社會懲罰，藉以避開不必要的成本。但當衝突升高時，抽象議題—例如種族與社會方面的憎恨—將會介入衝突，此會使交戰各造做出不理性的決定，且由於內部團體被情緒所激發，使交戰各造誤認為受到支持，因此會錯估情勢，不遵守國際法制規範，並造成侵害人權的行為。本人將藉由以下三個案例分析來證明本人的論點：波士尼亞戰爭（1992–1995）、盧安達內戰（1990–1994）、哥倫比亞內戰（1964–2016）。

## 關鍵字

內戰、國際法制秩序、具象議題、抽象議題、衝突升高、連續體

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