PEACE AGREEMENTS AND THE PERSUASIVE AUTHORITY OF INTERNATIONAL LAW

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Abstract

Non-international armed conflicts, or "NIACs," are the most common form of warfare in the contemporary era. Not surprisingly, agreements ending NIACs are the most common type of peace agreement. But NIAC agreements appear permanently suspended in an international legal limbo: they do not qualify as binding treaties and neither international actors nor scholars agree on another legal status for these critical instruments.

This article is the second in a series to explore alternatives to the binding/non-binding dichotomy in understanding NIAC agreements' relation to international law. We argue that the agreements regularly incorporate principles of international law embodied in a range of widely ratified treaties. This is a direct engagement with the substance of international norms, rather than an understanding of the agreements' functions being regulated by international norms. The latter would be the consequence of the agreements being legally binding.

As evidence, we collected and coded all final NIAC agreements from 1991 to 2017 for incorporation of international law principles, grouped primarily as those related to governance in the post-conflict state and those pertaining to transitional justice. We proposed a series of hypotheses as to why some agreements might have higher rates of incorporation and

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some lower.

> Our primary findings reveal: (i) a notable increase in the incorporation of transitional justice principles, not governance principles, when the United Nations assumes roles such as party, mediator, observer, or witness; (ii) a decrease in international law incorporation, when regional organizations are involved in any capacity; and (iii) an associated decrease in overall international law incorporation, specifically governance principles, as conflicts become more lethal or focus on territorial disputes.
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> The UN's association with higher inclusion of international norms, as well as the ubiquity of including governance norms when any third party joins a NIAC peace process, casts the agreements as important vehicles for implementing and enforcing international legal principles. This role for international law is not dependent on the agreements' formal status. But the critical participation of the UN—an organization not only built on fidelity to international law but that instructs its representatives to employ international law as a framework for peace process—is also a marker of this role's fragility. Recent gridlock in the UN may have dire implications for this mode of legal influence.

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Introduction

Non-international armed conflicts, or "NIACs," are the most common form of warfare in the contemporary era. NIACs are better known as civil wars.[3] Since 1991, 92% of armed conflicts around the world have been NIACs, far surpassing international armed conflicts, or "IACs."[4]Not surprisingly, agreements ending NIACs are now the most common type of peace agreement.[5] According to the PA-X Dataset, there were 85 final and comprehensive NIAC peace agreements from January 1, 1990, to January 1, 2024.[6] During the same period, PA-X recorded only 7 final peace agreements for IACs.[7]

The prevalence of NIAC agreements alone might suggest they are an important focus of international law. But the agreements also raise a host of specific legal questions not presented by their IAC counterparts. Will an agreement permit prosecution of either government or rebel leaders, or will it provide for amnesty or a mechanism of "transitional justice?" Will third parties to the agreement oversee implementation of new institutions and laws? If they do, what role will they have in holding the parties to their agreed

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3. There are several competing definitions of NIACs in international law, most of which arise in the context of international humanitarian law. *See* Marko Milanovic & Vidan Hadzi-Vidanovic, *A Taxonomy of Armed Conflict*, *in* RESEARCH HANDBOOK ON INTERNATIONAL CONFLICT AND SECURITY LAW 256 (Nigel White & Christian Henderson eds. 2012). None of the subtle differences among NIAC definitions are relevant to the issues addressed here. The Uppsala Conflict Data Program, from which the data discussed in this article is drawn, refers instead to "intrastate conflicts," which it defines as ones in which "side A is always a government; side B is always one or more rebel groups." THERESE PETTERSSON, UCDP/PRIO ARMED CONFLICT DATASET CODEBOOK VERSION 23.1, at 5 (2023), https://ucdp.uu.se/downloads/ucdpprio/ucdp-prio-acd-231.pdf (citing Nils Petter Gleditsch et al., *Armed Conflict 1946–2001: A New Dataset*, 39 J. PEACE RSCH. 615, 615–37 (2002); Shawn Davies et al., *Organized Violence 1989-2022, and the Return of Conflict Between States*, 60, J. PEACE RSCH., 691 (2023). This bare-bones definition is suitable for our purposes.

4. This figure is drawn from the dataset of the Uppsala Conflict Data Program (UCDP). Shawn Davies et al, *Organized Violence 1989–2022, and the Return of Conflict Between States*, 60 J. PEACE RES. 691, 695 (2023). UCDP defines an armed conflict as "a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths in one calendar year." *Armed Conflict*, *UCDP Definitions*, DEP'T OF PEACE & CONFLICT RES., https://www.uu.se/en/department/peace-and-conflict-research/research/ucdp/ucdp-definitions (last modified May 29, 2024).

5. *See PA-X Analytics Peace and Transition Process Data*, UNIV. EDINBURGH, https://www.peaceagreements.org/searchadv (last visited Sept. 5, 2024).

6. The numbers are the result of searches for framework/substantive-comprehensive agreements in, respectively, intrastate conflicts and interstate/interstate conflicts. *See id.*

7. See *id.*

terms? Will they have authority, for example, as provided in the 1995 Dayton Peace Accords, to nullify or impose new laws or fire elected officials who obstruct implementation of the agreement?[8] If the agreement calls for the UN Security Council to perform oversight or enforcement functions, does the Council have authority to condemn or sanction non-state rebel groups?[9] Do any international courts have jurisdiction to hear claims that an agreement has been breached?

Most important of all, are NIAC agreements even subject to international law? Are they "treaties"—which create binding legal obligations and are governed by a host of well-established rules—or are they non-binding and thus beyond the formal reach of the international legal system?

In light of these questions, as well as NIAC agreements' prevalence, one would expect to find a well-established practice among states and international organizations applying and interpreting the agreements. This has not occurred.[10] Few international courts or tribunals have reached definitive conclusions on the legal status of NIAC peace agreements.[11] The International Court of Justice had an opportunity to address the issue in the *Armed Activities Case* but failed to do so clearly.[12] Two other international tribunals, the Special Tribunal for Sierra Leone and the Permanent Court of Arbitration, held with little explanation or analysis that NIAC agreements are not treaties.[13] Both decisions were met with

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8. The position of High Representative for Bosnia and Herzegovina was created by the 1995 Dayton Peace Accords and its authority was substantially augmented in 1997 by the so-called "Bonn Powers." *See* Tim Banning, *The 'Bonn Powers' of the High Representative in Bosnia Herzegovina: Tracing a Legal Figment*, 6 GOETTINGEN J. INT'L L. 259, 302 (2014) (describing measures the High Representative has taken to enforce the Accords, including the "amendment and violation of constitutional provisions, the imposition of substantial legislation, the removal of democratically elected officials, as well as the annulment of decisions of the Bosnian Constitutional Court.").

9. See Leonardo Borlini, The Security Council and Non-State Domestic Actors: Changes in Non-Forcible Measures between International Lawmaking and Peacebuilding, 61 VA. J. INT'L L. 489, 531 (2021) (analyzing whether the Security Council has the authority to impose obligations on non-state domestic actors).

10. See Asli Ozcelik, Entrenching Peace in Law: Do Peace Agreements Possess International Legal Status?, 21 MELB. J. INT'L L. 190, 192 (2020)

11. *Id.* ("Despite the attempts of peacemaking parties and the assertions of some scholars that peace agreements possess international legal status, domestic and international courts have not followed suit to date.").

12. Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Judgment, 2005 I.C.J.168, ¶ 99 (Dec. 19) (describing a ceasefire agreement between various states and rebel groups as "*modus operandi*.").

13. Prosecutor v. Kallon, Case No. SCSL-2004-15-AR72(E), Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, ¶ 86 (Mar. 13, 2004); Sudan v. Sudan People's Liberation Movement/Army, Case No. 2008-07, PCA Case Repository 153–156 (Perm. Ct. Arb. 2009), https://pca-cpa.org/en/cases/92/.

criticism.[14] The military manuals of major powers barely discuss NIAC agreements.[15] The parties to the agreements themselves apparently do not believe they are treaties, as none of the accords in the dataset discussed in this article have been deposited with the UN Secretary-General, a legal requirement for all "treaties."[16] While some scholars have parsed this meager set of primary sources for markers of the agreements' legal status, the results have been understandably inconclusive.[17]

This legal uncertainty is magnified by the binary approach taken by many analyses of NIAC agreements. As in the discussion above, the focus is often centered on whether the agreements qualify as treaties.[18] The question arises because a "treaty" is defined in international law as an agreement between states.[19] NIAC agreements

14. Markus Böckenförde, The Abyei Award: Fitting a Diplomatic Square Peg into a Legal Round Hole, 23 LEIDEN J. INT'L L. 555, 567–68 (2010); Antonio Cassese, The Special Court and International Law: The Decision Concerning the Lomé Agreement Amnesty, 2 J. INT'L CRIM. JUST. 1130, 1133–34 (2004).

15. U.S. DEP'T DEF., LAW OF WAR MANUAL, § 3.8.1.1 (2015) (discussing peace agreements with no specific discussion of NIAC agreements); Gregory H. Fox, *Old and New Peace Agreements*, 52 SETON HALL L. REV. 797, 801 (2022) (military manuals of other major powers do not address NIAC agreements).

16. Fox, *supra* note 15, at 830. Article 102(1) of the U.N. Charter provides that "Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it." U.N. Charter art. 102, ¶ 1. The Secretariat follows the widely accepted definition of a "treaty" contained in the Vienna Convention on the Law of Treaties art. 2(1)(a), May 23, 1969, 1155 U.N.T.S. 331 [hereinafter Vienna Convention]. *See* Fox, *supra* note 15, at 830 n.130.

17. *See* Ozcelik, *supra* note 10, at 213–19; Margaux J. Day & Eian Katz, *Irregular Forces, Irregular Enforcement: Making Peace Agreements in Non-International Armed Conflicts Durable*, 52 CASE W. RSRV. J. INT'L L. 225, 266 (2020); Laura Betancur Restrepo, *The Legal Status of the Colombian Peace Agreement,* 110 AJIL UNBOUND 188, 189–90 (2016). Christine Bell's early and important description of NIAC agreements as comprising a "lex pacificatoria" has not been taken up by international legal actors themselves. *See* CHRISTINE BELL, ON THE LAW OF PEACE: PEACE AGREEMENTS AND THE LEX PACIFICTORIA 287, 289 (2008).

18. *See, e.g.*, Laura Edwards & Jonathan Worboys, *The Interpretation and Implementation of Peace Agreements*, *in* INTERNATIONAL LAW AND PEACE SETTLEMENTS 111, 112 (Marc Weller et al. eds., 2021).

19. Vienna Convention, *supra* note 16, art. 2(1)(a) (defining a treaty as "an international agreement concluded *between States* in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation." (emphasis added). The possibility that NIAC agreements might nonetheless possess binding legal force derives from a savings clause in Article 3, which provides that "the fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law . . . shall not affect: (a) the legal force of such agreements." *Id.* art. 3(a). If non-state parties to NIAC agreements are "subjects of international law," the agreements may thus qualify as binding. Christine Bell, *Peace*

necessarily include at least one non-state actor, usually the opposition group fighting the government. If the agreements are treaties, then international law prescribes a set of clear standards governing their interpretation, application and breach, as well as their relation to the post-conflict legal order.[20] But if they are not treaties and not binding, the agreements are understood to fall largely outside the scope of international law and to be unenforceable by international courts.[21] Few have argued that NIACs are binding treaties.[22] Despite some heroic scholarly efforts to attribute at least partial international legal status to the agreements, and despite the agreements deploying language and structure that often mimic the form of binding treaties, "the current state of international law does not seem to attribute treaty-making capacity to [armed opposition groups] or international legal status to peace agreements concluded between governments and [armed opposition groups]."[23]

This lack of clarity is surely not helped by the circularity of

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Agreements: Their Nature and Legal Status, 100 AM. J. INT'L L. 373, 380–81 (2006).

20. *See* Vienna Convention, *supra* note 16, pt. 2 (conclusion and entry into force of treaties), pt. 3 (observance, application, and interpretation of treaties), pt. 4 (amendment and modification of treaties), pt. 5 (invalidity, termination, and suspension of the operation of treaties). The post-conflict state could not, under international law, resist implementation of binding treaty provisions on the grounds that they were incompatible with national law. Article 27 of the Vienna Convention provides that "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." *Id.* art. 27.

21. The jurisdiction of international courts is limited to disputes involving recognized sources of international law, which excludes disputes involving non-treaty NIAC agreements. *See* Andrej Lang, *"Modus Operandi" and the ICJ's Appraisal of the Lusaka Ceasefire Agreement in the* Armed Activities *Case: The Role of Peace Agreements in International Conflict Resolution*, 40 N.Y.U. J. INT'L L. & POL. 107, 124 (2008) (explaining that in International Court of Justice cases involving NIAC agreements, "the Court assigned peace agreements a legal status that renders them largely irrelevant in the realm of international law."); *see also* Gene Carolan, *Mightier than the Sword: Peace Agreement Design and the Law* 27 (Oct. 2017) (Ph.D. thesis, Maynooth University) (on file with Maynooth University Research Archive Library).

22. One of the few is the late Antonio Cassese, who argued that "[i]nsurgents in a civil war may acquire international standing and the capacity to enter into international agreements if they show effective control over some part of the territory and the armed conflict is large-scale and protracted." Cassese, *supra* note 14, at 1134.

23. Ozcelik, *supra* note 10, at 203; *see also* Philipp Kastner, *Interactions between Peace Agreements and International Law*, *in* INTERNATIONAL LAW AND PEACE SETTLEMENTS 176 (Marc Weller et al. eds., 2021) ("[A] consistent peace-making practice that would confer legal status on peace agreements and amount to customary international law has not yet emerged."); Cindy Wittke, *The Minsk Agreements—More than "Scraps of Paper"?*, 35 E. EUR. POL. 264, 276–77 (2019) ("[C]ontemporary peace agreements like the Minsk Agreements tend to operate as extra-constitutional agreements. Usually they are neither international treaties of a state nor documents of a constitutional character nor domestic agreements between the state and a 'private' or 'public' entity under the constitution.").

reasoning behind the bindingness claim. Rebel groups, it is argued, can enter into treaties if they have sufficient international legal personality to do so. How do we know if they possess such legal personality? Because they are capable of making and giving effect to treaties.

If NIAC agreements are not treaties and are not fully regulated by international law, how are they to be understood and classified? Are they non-binding "soft law" or "gentlemen's" agreements? Are they governed by the domestic law of the state in which the NIAC takes place, akin to commercial contracts? Alternatively, even if the agreements do not begin as binding instruments, can their extra-legal status be changed or "cured" by the parties' intention to make them binding, by the presence of third-party state guarantors or by an endorsement of the UN Security Council under Chapter VII of the UN Charter? All of these claims appear in the literature with none gaining clear predominance.[24] The binding/non-binding debate thus appears to be a dead end and will likely remain so absent a substantial new body of state practice.

In a prior article, we urged departure from a single-minded focus on the agreements' formal status.[25] We argued instead for examining indirect interactions with international law that more accurately reflect both the practice of states and international organizations and how international law actually helps shape the agreements. That inquiry identified two areas where international norms and institutions are deeply enmeshed in NIAC agreements in ways that to not depend on their formal status.

The first is that the vast majority of NIAC agreements have emerged from complex multilateral processes convened by international organizations (IOs). After helping initiate and mediate negotiations, the same international organizations regularly go on to monitor their implementation. Peacekeeping missions are the most high-profile monitoring mechanism, but both the UN and regional organizations have deployed many other strategies.[26] Because the IOs owe their existence to international law and take promoting adherence to international law as part of their core missions, the multilateralization of NIAC peace processes can be understood as a

24. *See* Bell, *supra* note 19; Day & Katz, *supra* note 17, at 248; Edwards & Worboys, *supra* note 18, at 112–19; Kastner, *supra* note 23, at 170–76.

25. Fox, *supra* note 15, at 833–42.

26. *See* Mats Berdal, *The Afterlife of Peace Agreements*, *in* INTERNATIONAL LAW AND PEACE SETTLEMENTS 137 (Marc Weller et al. eds., 2021); Karl DeRouen Jr. et al., *Civil War Peace Agreement Implementation and State Capacity*, 47 J. PEACE RSCH. 333 (2010).

project to implement and enforce relevant international norms.[27]

The second is that the agreements themselves create roadmaps for governing post-conflict societies that appear to be guided by international legal principles. Our prior article noted this phenomenon by examining the agreements' common design and through a series of examples.[28] It explained that unlike IAC agreements, NIAC accords necessarily focus on governance arrangements in the warring state:

IAC agreements can seek to achieve peace in two ways: (1) by physically separating the parties across recognized borders and (2) employing the reciprocal levers of interstate relations to compel and incentivize peaceful behavior. NIAC agreements cannot follow suit. In post-NIAC states, governments and rebel groups must live side-by-side on the same territory and remain subject to the same laws and political institutions.[29]

As a result, "NIAC agreements must be largely inward-looking—reforming domestic laws and institutions, even drafting new constitutions—to displace modes of governance whose legitimacy was shattered during years of conflict."[30] Building on this necessity of a governance focus, the article reviewed a number of recent NIAC agreements that mandated domestic reforms: democratic elections, an independent judiciary, prohibitions on discrimination s and structures to prevent corruption. It also reviewed provisions on transitional justice, such as the granting of amnesties. The article showed that each of these areas of reform called for by the agreements found a direct foundation in widely ratified human rights and other treaties.[31]

This article expands on this second mode of engagement with international law. Using an original dataset, we seek to deepen and broaden the prior article's focus on NIAC agreements' incorporation of international law principles by asking two new research questions. First, to what extent have *all* comprehensive NIAC peace agreements since 1991 incorporated international law principles on governance?

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27. Fox, *supra* note 15, at 840–41. The argument is not that international organizations have mediated peace agreements in most or all recent NIACs. Their involvement has in fact been in slow decline since approximately 2012. Tetsuro Iji, *The UN as an International Mediator: From the Post–Cold War Era to the Twenty-First Century*, 23 GLOB. GOVERNANCE 83, 87 (2017). The argument is rather that most NIAC peace agreements that *were* completed in the post-Cold War era have emerged from peacemaking efforts largely led by international organizations.

28. Fox, *supra* note 15, at 833.

29. *Id.*

30. *Id*. at 834.

31. *Id.* at 838–42.

Second, which factors have contributed to the frequency of including international legal principles in the agreements? This effort strives to introduce methodological rigor to hypotheses of incorporation that, up to now, lacked empirical validation. While not aiming to establish definitive causal relationships, we do seek to illuminate significant correlations that exist among our hypothesized explanatory variables and their association with the integration of international law principles. What explains, in other words, why some peace agreements have higher rates of international law incorporation and others much lower rates?

The discussion will proceed as follows. Section II sets the stakes for finding a meaningful role for international law in NIAC peace processes and agreements. It describes a number of difficult legal questions raised by the unique circumstances and function of NIAC agreements that international law has yet to address comprehensively. Section III describes the methodology of our dataset assembly and assessment of the frequency of international law incorporation into NIAC agreements. It then presents several hypothesized explanations for higher and lower rates of incorporation. Section IV presents findings for each of our hypotheses.

Section V addresses the hypothesis most robustly supported by our data: that the presence of the United Nations as a party, witness, mediator, or observer is associated with a higher incorporation of transitional justice norms. It does so by exploring the theory that third parties like the UN provide a "credible commitment" to implement a peace agreement that would be otherwise missing, and which is shown to be critical to incentivizing the parties to reach final agreement. Credible commitments, however, are usually understood as tangible carrots and sticks, such as peacekeeping missions or sanctions imposed on parties acting as spoilers. The section then explores whether UN support for international law provisions could serve as a credible commitment. Section VI addresses our perhaps most surprising finding that the involvement of regional organizations is negatively associated with the presence of international law incorporation. We suggest this is likely due both to the organizations' mediators lack of a robust commitment to the norms themselves and their lack of experience and resources relative to the United Nations, with whom they almost always partner. Section VII briefly addresses our hypotheses concerning conflict characteristics. Is the lethality or length of a NIAC, as well as whether a conflict concerns governance or territory, associated with higher levels of norm inclusion? Section VIII presents some final conclusions.

I. THE IMPORTANCE OF A NORMATIVE FRAMEWORK

International law is largely playing catch-up in seeking to account for the normative significance of NIAC agreements. Practice has run well ahead of legal theory on a variety of fronts. Before investigating the specific question of whether international law affects NIAC agreements by informing their substance, it is worth understanding how the international community's investment in NIAC agreements has raised a host of legal questions lacking clear answers.

First, are there any legal consequences to negotiated solutions being the international community's preferred outcome for internal conflicts?[32] The Security Council has called for halts in fighting in virtually every NIAC it has addressed, and almost as frequently urged the parties to negotiate.[33] This goal is securely grounded in research on conflict resolution, which shows a substantially higher likelihood of reaching peace agreements when third party mediators or guarantors are involved. The old assumption that international law neither prevents rebels from seeking to change a government nor prevents the state from responding forcefully to rebellions does not seem to hold in Security Council practice. Indeed, the Council and regional organizations have pursued negotiated settlements despite other evidence that NIACs fought to victory by one side are less likely to reoccur and thus lead to a more lasting peace.[34]

One view of this Council-led preference for negotiated solutions is that it is a policy choice unmoored from any legal obligations of the parties themselves. But after nearly three decades of consistent Council practice, much of it involving Chapter VII of the Charter, this

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32. International mediation of NIACs has fluctuated over time, reaching its height in the 2000–2012 period. Giulia Piccolino, *The Resolution of Civil Wars: Changing International Norms of Peace-Making and the Academic Consensus*, 25 CIV. WARS 290 (2023). While after the 9/11 attacks NIACs involving "terrorist" groups were less likely to be mediated, "wars that do not involve terrorists still generally end in negotiation or low activity." Lise Morjé Howard & Alexandra Stark, *How Civil Wars End: The International System, Norms, and the Role of External Actors*, 42 INT'L SEC. 127, 170 (2018).

33. Gregory H. Fox et al., The Contributions of United Nations Security Council Resolutions to the Law of Non-International Armed Conflict: New Evidence of Customary International Law, 67 AM. U. L. REV. 649, 683–84 (2018).

34. *See* Corinne Bara et al., *Civil War Recurrence and Postwar Violence: Toward an Integrated Research Agenda*, EUR. J. INT'L REL. 913, 921 (2021) ("[A] well-established finding is that military victories reduce the risk of civil war recurrence."); Monica Duffy Toft, *Ending Civil Wars: A Case for Rebel Victory?*, 34 INT'L SEC. 7 (2010). *But see* Thorsten Gromes & Florian Ranft, *Preventing Civil War Recurrence: Do Military Victories Really Perform Better than Peace Agreements? Causal Claim and Underpinning Assumptions Revisited*, 23 CIV. WARS 612, 613 (2021) (disputing conclusions of prior studies).

view is at least open to question. Some scholars have identified a nascent legal obligation for NIAC parties to resolve their differences peacefully in the same manner that the UN Charter imposes such an obligation on states.[35] State consent to NIAC peace agreements would be critical evidence of such an obligation.

Second, while we have coded only final agreements and prior agreements they incorporate by reference, "peace agreement" is an umbrella term that encompasses a wide array of instruments negotiated at different times and designed for a variety of purposes. According to the PA-X dataset, there were 1327 NIAC peace agreements from 1991 to 2021, only 84 of which were "substantive and comprehensive."[36] PA-X codes for six other categories of agreement: pre-negotiation process, framework-substantive, partial, implementation/renegotiation, renewal, ceasefire and other.[37] These categories are further divided into multiple sub-categories.[38] Each represents an effort by conflict parties and the international actors assisting them to achieve goals that are simultaneously consistent (to achieve a lasting peace) but also temporally and strategically distinct. Is there different legal significance to the different types of agreement? International law in the pre-UN Charter era, addressing IACs, ascribed different legal effects to an armistice, "preliminaries of peace," and a full peace agreement.[39] Should similarly distinct legal categories follow into the era of NIACs?

Third, despite NIAC agreements substantially outnumbering IAC agreements in the post-WWII era, that asymmetry exists within a larger universe of norms regulating armed conflict that is asymmetrical in the opposite direction. IACs are addressed by a comprehensive set of rules on the lawful use of military force (the *jus*

35. Article 33(1) of the UN Charter provides, "the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." U.N. Charter art. 33, ¶ 1. *See* Eliav Lieblich, *Can There be a Crime of Internal Aggression*, *in* RETHINKING THE CRIME OF AGGRESSION: INTERNATIONAL AND INTERDISCIPLINARY PERSPECTIVES (Eckart Conze & Stefanie Bock, eds. 2022); Eliav Lieblich, *Internal Jus ad Bellum*, 67 Hastings L.J. 687, 691 (2016).

36. PA-X codes as "Framework-substantive, Comprehensive" those "agreements that concern parties that are engaged in discussion and agreeing to substantive issues to resolve the conflict and appear to be set out as a comprehensive attempt to resolve the conflict." CHRISTINE BELL ET AL., PEACE AGREEMENTS DATABASE AND DATASET CODEBOOK 8 (Version 7, 2023), https://www.peaceagreements.org/files/PA-X_codebook_Version7-converted.pdf.

37. *Id.* at 8–9.

38. *Id.* at 9–10.

39. *See* 2 LASSA OPPENHEIM, WAR AND NEUTRALITY 243–55, 281–89 (1905).

ad bellum) and an even denser set of rules on permissible actions during the course of armed conflict (the *jus in bello* or international humanitarian law).[40] Additional IAC rules concern threats of force before hostilities begin and the occupation of territory after full hostilities have ended.[41] By contrast, virtually all states and scholars agree there is, at present, no *jus ad bellum* for NIACs (despite the Security Council practice mentioned above) or law concerning threats or occupation.[42] NIAC *jus in bello* rules have traditionally comprised a smaller subset of the IAC rules, though they have expanded since the 1948 Geneva Conventions and the precise scope of the NIAC *jus in bello* is highly contested.[43]

This is an uncomfortable anomaly: the most common and deadly form of armed conflict is subject to vastly fewer legal constraints than its rarer and less deadly counterpart. The forces opposing equalization of this asymmetry are substantial, as most states regard rebellions as purely internal matters of treason to be dealt with by

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40. *See generally* Christian Henderson, The Use of Force and International Law (2d ed. 2024) (*jus ad bellum*); Marco Sassòli, International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare (2019) (*jus in bello*).

41. Article 2(4) of the UN Charter obliges all member states to "refrain . . . from the *threat* or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." U.N. Charter, art. 2 ¶ 4 (emphasis added). *See generally* NIKOLAS STÜRCHLER, THE THREAT OF FORCE IN INTERNATIONAL LAW (2007). The international law of occupation is set out in the 1905 Hague Regulations, the Fourth Geneva Convention of 1949 and customary international law. *See generally* YORAM DINSTEIN, THE INTERNATIONAL LAW OF BELLIGERENT OCCUPATION (2d ed. 2009).

42. *See* YORAM DINSTEIN, WAR, AGGRESSION AND SELF-DEFENCE 89–90 (6th ed. 2017); Tom Ruys, *The Quest for an Internal Jus ad Bellum: International Law's Missing Link, Mere Distraction, or Pandora's Box?*, *in* NECESSITY AND PROPORTIONALITY IN INTERNATIONAL PEACE AND SECURITY LAW 169 (Claus Kreß & Robert Lawless eds. 2020).

43. The four original Geneva Conventions of 1949 only addressed NIACs in a single article, known as Common Article 3. Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 3, Aug. 12, 1949, 75 U.N.T.S. 135; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea art. 3, Aug. 12, 1949, 75 U.N.T.S. 85; Geneva Convention (III) Relative to the Treatment of Prisoners of War art. 3, Aug. 12, 1949, 75 U.N.T.S. 135; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War art. 3, Aug. 12, 1949, 75 U.N.T.S. 287. The 1977 Second Protocol to the 1949 Geneva Conventions elaborated a detailed series of rules for NIACs that parallels many but not all those applicable to IACs. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125 U.N.T.S. 609. Yoram Dinstein argues that despite a growing convergence between the *jus in bello* applicable to IACs and NIACs, "the notion of their amalgamation is purely academic and quite implausible. There is a fundamental divergence barring such merger, and general State practice does not divulge the slightest propensity to outflank it any time soon." YORAM DINSTEIN, NON-INTERNATIONAL ARMED CONFLICTS IN INTERNATIONAL LAW 318 (2d ed. 2021) [hereinafter NIACS IN INTERNATIONAL LAW].

national law and resist outside intervention unless they request help.[44] As Brad Roth puts it, states just want to fight their civil wars in peace.[45] Nevertheless, human rights law is now understood to apply to many governmental acts in NIACs.[46] International criminal law applies similar (though not identical) categories of criminal responsibility to IACs and NIACs.[47] The scope of the *jus in bello* for NIACs in customary international law has steadily expanded.[48] And, as noted, the Security Council has created a shadow *jus ad bellum* for NIACs by regularly invoking Chapter VII of the UN Charter to demand that NIAC parties cease their hostilities. Arguably then, an emerging legal engagement with NIAC peace agreements would not be an unprecedented first step into regulation of domestic conflicts but part of a trend to right the normative asymmetry with IACs.

Finally, there is the question of how international law conceives of the post-conflict period in NIACs. A host of international initiatives now regularly follows the conclusion of NIAC peace agreements. These include the dispatch of peacekeeping missions, domestic legal reforms including the drafting of new constitutions, the demobilization of combatants, the creation of transitional justice mechanisms (including the question of amnesty), cooperation with international criminal tribunals and continued international supervision of compliance with peace agreements.[49] One can view NIAC peace agreements as simply one more of these post-conflict tools or as the lynchpin of the entire enterprise.[50] The conventional

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44. See, e.g., Brad R. Roth, Secessions, Coups and the International Rule of Law: Assessing the Decline of the Effective Control Doctrine, 11 MELB. J. INT'L L. 393 (2010).

45. *Id.* at 394.

46. NIACS IN INTERNATIONAL LAW, *supra* note 43, at 293–317.

47. Criminal responsibility for the breach of international humanitarian law norms in the two types of conflicts is still distinct, though with substantial overlap. *Compare* Rome Statute of the International Criminal Court art. 8(2)(a)–(b), July 17, 1998, 2187 U.N.T.S. 90 (crimes with respect to IACs), *with id.* art. 8(2)(c)–(e) (crimes with respect to NIACs). Responsibility for genocide and crimes against humanity does not require connection to an armed conflict of any kind. *See id*. art. 6 (genocide), art. 7 (crimes against humanity).

48. There are some areas such as detention of combatants, combatant immunity and occupation that will (for defensible reasons) likely remain limited to IACs. *See* NIACS IN INTERNATIONAL LAW, *supra* note 43, at 288–92.

49. *See generally* Edwards & Worboys, *supra* note 18.

50. Berdal, *supra* note 26, at 137, 147–48 (stating an important reminder that saying peace agreements serve critical agenda and expectation-setting functions does not mean each performs those functions equally well. Some agreements' provisions "can make for weak, inherently unstable or, *in extremis*, unworkable documents." By contrast, "a strong or more credible agreement can counteract these tendencies [toward instability], helping instead to mitigate the centrifugal forces that make for renewed war, while empowering more progressive political actors and processes.").

view is that each of these efforts is legally distinct, siloed in its own set of normative origins and constraints. Some scholars have proposed new legal categories to encompass some or all of the post-conflict actions, such as Christine Bell's "lex pacificatoria" and Carsten Stahn's "jus post bellum."[51] Whether NIAC agreements fit in either of these conceptions, or others, requires that they first have some discernible relation to international law.

II. METHODOLOGY

A. THE DATASET

We designed our dataset to determine (i) the extent of international law incorporation into NIAC peace agreements, and (ii) the characteristics of conflicts and peace processes that might account for higher and lower rates of incorporation.[52] To these ends, the dataset has three critical components: NIAC agreements, principles of international law present (or not present) in those agreements, and a series of conflict characteristics that might influence the principles' respective inclusions. In this section we briefly describe each in turn.

First, we compiled a comprehensive list of agreements from the UCDP Peace Agreement Dataset spanning from 1991 to 2017.[53] Our selection was confined to agreements deemed "full," indicating an attempt by belligerents to address all dimensions of the conflict. We also confined our selection to agreements that resolved conflicts characterized by the UCDP as internal (involving the incumbent government and one or more rebel groups) or internationalized internal (involving the incumbent government, one or more rebel groups, and either side receiving troop support from another government).[54] Applying these criteria, we examined a total of 56 NIAC

51. *See generally* Christine Bell, On the Law of Peace: Peace Agreements and the *Lex Pacificatoria* (Oxford Univ. Press 2008); *Jus Post Bellum*: Mapping the Normative Foundations (Carsten Stahn et al. eds., Oxford Univ. Press 2014).

52. All the data can be found at https://doi.org/10.7910/DVN/ZNGSGF. Gregory H. Fox & Timothy L. Jones, *Data for: Peace Agreements and the Persuasive Authority of International Law*, HARV. DATAVERSE, (Dec. 28, 2023). In order to minimize an over-long discussion of methodological issues, we have put more detailed aspects of our data collection and analysis in the article's Appendix. *See infra* pp. 55–63. The Appendix includes our coding manual.

53. *See infra* Figure 1: NIAC Peace Agreement Dataset (1991–2017) (deriving datapoints from Therse Pettersson & Magnus Öberg, *Organized Violence, 1989–2019*, 57 J. PEACE RSCH. 597 (2020). The UCDP dataset can be found at https://ucdp.uu.se/downloads/index.html - peaceagreement.

54. Nils Petter Gleditsch et al., *Armed Conflict, 1946-2001: A New Dataset*, 39 J. PEACE RSCH. 615 (2002); Pettersson & Öberg, *Organized Violence, 1989-2019*, *supra*

peace agreements from 1991 to 2017.[55] Notably, in instances where a final or comprehensive agreement incorporated previous agreements through reference, we treated the amalgamated agreements as a unified entity and coded the provisions of both, thereby ensuring comprehensive coverage of all the obligations assumed by the parties throughout the peace process.[56]

Second, we examined the agreements' incorporation of 30 international law principles derived from widely ratified multilateral treaties or codifications of customary law principles.[57] These principles were our dependent variables. We confined the principles to those accepted by the vast majority of states in order to eliminate any controversy about their status in international law. The principles concern diverse aspects of post-conflict governance within the state, including transitional justice, political participation, civil and political rights, anti-corruption measures, judicial independence and the rule of law, economic and social rights, environmental protection, and others.[58]

Third, we examined various conflict characteristics to assess their correlation with the prevalence of international law provisions. The characteristics were our independent variable. One set of characteristics concerned third party involvement in a peace process as either a party or as a mediator, observer, or witness. The third parties we assessed were the United Nations, a series of regional and sub-regional organizations, neighboring states, non-state actors, and prominent individuals. An additional set of characteristics concerned the conflicts themselves: the duration of the conflict, the number of battle-related fatalities in the final year of hostilities, whether the cumulative number of battle-related fatalities over the course of the

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note 53, at 607.

55. Despite a diligent search, we could not locate the full text of two agreements concerning Chad that met our selection criteria. *See* Gleditsch et al., *supra* note 54, at 634.

56. This approach distinguishes our coding from other datasets—for example, the Peace Agreements X dataset—that code all agreements independently, whether preliminary or final, and whether they incorporate obligations contained in prior agreements. *See* BELL, *supra* note 36.

57. See *infra* Table A-2 for a list of sources for the international law variables.

58. See *infra* Section VIII. Appendix on Methodology, Coding Manual, indicators 11–41 for the list of the 30 governance variables analyzed in this study. Additional categories of indicators, not related to international law incorporation, concern UN Security Council actions related to the agreement. *See id.*, indicators 42–57. Variables 42–52 relate to Council actions taken up to one year prior to the signing of the agreement, and variables 53–57 concern Council actions taken up to three months after the signing of the agreement. *See infra* Section VIII. Appendix on Methodology, Section 3. Conflict Characteristic Coding.

conflict surpassed a threshold of 1,000 deaths, and whether the conflict revolved around issues of governance or territory.[59]

B. How Frequently Do International Law Principles Appear in NIAC Agreements?

Our first set of results concerns the overall frequency of international law principles in the agreements. While inclusion is widespread, there is no uniformity in the number or type of principles incorporated. Among the 56 peace agreements analyzed in this study, there was an average of 11 (out of a possible 30) international law principles concerning transitional justice and post-conflict reform adopted. Approximately one quarter of the agreements encompassed 4 or fewer provisions associated with these principles. Three-quarters of the agreements contained 18 or fewer of the international law provisions.

When we disaggregate the international law principles into those pertaining to *transitional justice* issues and those concerning *post-conflict legal and political order*, however, the frequency of inclusion changed substantially. Post-conflict legal and political order principles are more commonly incorporated than transitional justice principles. Fifty-three (94%) of the peace agreements in this study incorporated at least one legal principle concerning the post-conflict legal and political order. These principles address issues of governance: elections, human rights, the rule of law, borders, corruption, and other structural components envisioned for the newly reformed state. By contrast, only 34 (60%) of peace agreements included at least one provision related to transitional justice. (See *Table 1*) This indicates that just over half of the agreements addressed matters of immunity, amnesty, sexual or gender-based violence in armed conflict, or the implementation of truth-telling mechanisms.

59. Descriptive statistics for these variables are set out in Table A-5 in the Appendix. *See infra* Table A-5.

Table 1: NIAC Peace Agreement Descriptive Statistics

	N	Mean	SD	Min	1st Quartile	Median	3rd Quartile	Max
Total International Law Principles (11-41)	56	11.2	8.0	0	3.75	11.0	18	28
Transitional Justice Principles (11-15)	56	1.1	1.1	0	0	1.0	2.0	5
Post-Conflict Legal & Order Principles (16-41)	56	10.1	7.6	0	3.0	9.5	17.25	25

The frequency of inclusion varied by region (See *Table 2*). In the Americas and Africa, the average number of international law principles was 16 and 12, respectively. Peace agreements in Europe and Asia had a slightly lower average of 10 and 9 international law principles. No transitional justice principles were adopted in the European peace agreements included in our study.

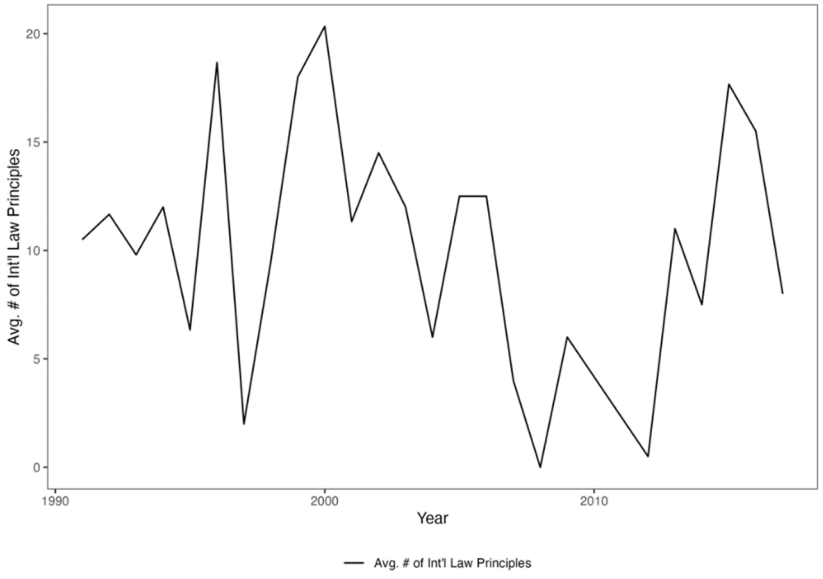
Table 2: Regional NAI Peace Agreement Descriptive Statistics

	N	Mean	SD	Min	1st Quartile	Median	3rd Quartile	Max
Americas								
Total International Law Principles (11-41)	4	16.25	11.5	1	11.5	18	22.75	28
Transitional Justice Principles (11-15)	4	1.75	1.26	0	1.5	2	2.3	3
Post-Conflict Legal & Order Principles (16-41)	4	14.5	10.2	1	10	16	20.5	25
Africa								
Total International Law Principles (11-41)	36	11.7	8.0	0	4	11.5	18.5	25
Transitional Justice Principles (11-15)	36	1.3	1.1	0	0	1	2	5
Post-Conflict Legal & Order Principles (16-41)	36	10.4	7.7	0	3	9.5	17.3	24
Asia								
Total International Law Principles (11-41)	11	8.5	7.2	1	2.5	8	12.5	21

Transitional Justice Principles (11-15)	11	0.6	0.8	0	0	0	1	2
Post-Conflict Legal & Order Principles (16-41)	11	8.0	6.8	1	2.5	7	11.5	20
Europe								
Total International Law Principles (11-41)	5	9.6	7.0	1	4.0	11.0	14.0	18
Transitional Justice Principles (11-15)	5	0	0	0	0	0	0	0
Post-Conflict Legal & Order Principles (16-41)	5	9.6	7.0	1	4.0	11.0	14.0	18

Finally, we found little evidence of variation trends over time. As illustrated in *Figure 1*, there is almost no relationship between the date the agreement was signed and the percentage of international law provisions included in the accords.

Figure 1: NIAC Peace Agreement Dataset (1991-2017)



C. HYPOTHESES EXPLAINING GREATER OR LESSER RATES OF INCLUSION

What factors make international law principles more likely to be included in NIAC peace agreements? We argue that characteristics of the mediation process and dimensions of the conflict will influence the form and nature of the final peace agreements. Specifically, we propose that the participation of the United Nations in the peace process and certain dynamics of conflicts will affect the likelihood of adopting international law principles. In general, we expect peace agreements for NIACs with UN involvement will include more international law provisions. We argue that this is the case in part because of the explicit guidelines the Secretary-General offers to UN Mediators. Additionally, support for international law makes up a core operating principle of the UN. Assuming regional organizations, neighboring states or eminent individuals lack similar mediation guidelines and, to a lesser extent, similar core principles, we would not expect equivalent rates of incorporation. Our first four hypotheses seek to test these propositions.

H1a: UN involvement as an observer, witness, or mediator in a peace process will result in a higher number of total international law principles adopted.

H1b: The UN's additional presence as a party or co-signatory to the agreement will result in an even higher number of total international law principles adopted than cases where UN involvement is only as an observer, witness, or mediator alone.

H2a: The presence of an additional state, regional organization, individual, or entity, other than those covered above, as an observer, witness, or mediator will not have an effect on the number of international principles adopted.

H2b: The presence of an additional state, regional organization, individual, or entity, other than those covered above, as a party or co-signatory to an agreement, will not have an effect on the number of international principles adopted.

We also expect that certain dimensions of conflicts will help explain the variation in international law inclusion. Specifically, conflicts that are longer in duration and more violent (as indicated by higher battle-related fatalities) may be more difficult to solve than others. In these cases, by definition the most intractable, the liberal paradigm in international relations theory would support using international law to design peace agreements that promote respect for human rights, the rule of law, and other principles that reflect and promote the peaceful resolution of conflict.[60] The following

60. *See* Andrew Moravcsik, *Taking Preferences Seriously: A Liberal Theory of*

hypotheses test whether conflict duration or fatality rates influence the likelihood of international law in agreements.

H3: Peace agreements that respond to conflicts of longer duration are likely to include a higher number of international law principles.

H4: Peace agreements that respond to more violent conflicts (as indicated by higher battle-related fatalities in the final year of the conflict) are likely to include a higher number of international law principles.

H5: Peace agreements for conflicts that have more than 1,000 total battle-related deaths in the final year of conflict are likely to include a higher number of international law principles.[61]

Finally, the goals of the parties to a conflict are also expected to influence the propensity of adopting international law provisions. One of the most robust findings in studies of intrastate conflict is that wars over territory last longer and are more difficult to resolve than wars over governance.[62] Conflicts over territory also tend to develop lasting rivalries.[63] As a result, belligerents may be less willing to adopt

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International Politics, 51 INT'L ORG. 513, 513 (1997); Anne-Marie Slaughter, *International Law in a World of Liberal States*, 6 EUR. J. INT'L L. 503, 504–05, 510 (1995); Andrew Moravcsik, *Explaining International Human Rights Regimes: Liberal Theory and Western Europe*, 1 EUR. J. INT'L REL. 157, 158–59 (1995); Beth Ann Simmons & Allison Danner, *Credible Commitments and the International Criminal Court*, 64 INT'L ORG., 225, 225 (2010).

61. Due to the difficulty in obtaining accurate fatality numbers and differences in methodological approaches used by organizations to generate counts, estimations of battle- related deaths are not always reliable and are often contentious. *See* Michael Spagat et al., *Estimating War Deaths: An Arena of Contestation*, 53 J. CONFLICT RESOL. 934, 934–38 (2009) (discussing debate over the quality of battle-related death data). Additionally, the number of fatalities in the final year of the conflict may not reflect the level of violence experienced throughout its duration. Therefore, we also distinguish minor armed conflicts (defined as at least 25 battle-related deaths per year and fewer than 1,000 total battle-related deaths) from those in which the cumulative intensity of the conflict surpassed 1,000 battle-related deaths. *See* Gleditsch, *supra* note 54, at 617. We posit that peace agreements for conflicts that exceeded this threshold are more likely to adopt international law principles.

62. GARY GOERTZ & PAUL F. DIEHL, TERRITORIAL CHANGES AND INTERNATIONAL CONFLICT 3, 105, 123 (1992); Matthew Fuhrmann & Jaroslav Tir, *Territorial Dimensions of Enduring Internal Rivalries Conflict Management and Peace Science*, 26 CONFLICT MGMT. & PEACE SCI. 307, 312 (2009); David R. Dreyer, *Issue Intractability and the Persistence of International Rivalry*, 29 CONFLICT MGMT. & PEACE SCI. 471, 471–72 (2012); Monica Duffy Toft, *Territory and War*, 51 J. PEACE RSCH., 185, 186–87 (2014). UCDP/PRIO codes NIAC incompatibility, or general incompatible positions, as concerning government when the conflict is over the type of political system, the replacement of the central government, or the change of its composition. UCDP/PRIO codes NIAC incompatibility as over territory when it concerns secession or autonomy.

63. Gary Goertz & Paul F. Diehl, *Enduring Rivalries: Theoretical Constructs and Empirical Patterns*, 37 INT'L STUD. Q. 147, 148 (1993); Fuhrmann & Tir, *supra* note 62, at 308–12; David R. Dreyer, *Issue Conflict Accumulation and the Dynamics of Strategic*

international law provisions, which may lend credibility to respective claims over the territory in such disputes and prevent future challenges to these claims.[64] We thus test the following last hypothesis.

H6: Conflicts over territory are less likely to include international law principles than wars over governance.

III. FINDINGS

At the most general level, we found that when any additional party, beyond the belligerents, is signatory to a NIAC agreement, we observe a higher average number of international law principles. The average number of principles incorporated into the agreements increases further when the UN is involved as a mediator, observer, witness, or is party to an agreement.

Table 3: Summary of Empirical Findings

	Model 1		Model 2		Model 3	
	Total International Law Principles (11-41)		Transitional Justice Principles (11-15)		Post Conflict Legal & Order Principles (16-41)	
	Relationship	Statistically Significant	Relationship	Statistically Significant	Relationship	Statistically Significant
Explanatory Variable						
UN Involve = 1, UN Party = 0	-	No	+	Yes	-	No
UN Involve = 1, UN Party = 1	+	Yes	+	Yes	+	No
Regional Party = 1	-	Yes	-	No	-	Yes
State Involve = 1	+	No	+	No	+	No
Other Party = 1	+	No	+	No	+	No
Duration (years)	+	No	+	Yes	+	No
# of Battle-Deaths (100s)	-	Yes	-	No	-	Yes
Cumulative Intensity = 1	+	No	-	No	+	No
Incompatibility (Territory = 1)	-	Yes	-	No	-	Yes

Rivalry, 54 INT'L STUD. Q. 779, 779, 791–90 (2010).

64. Conflicts that combine control over both territory and government are considered even more complex. However, UCDP coded our sample of 56 peace agreements as concerning either governance or territory but not both. This may speak to the difficulty in reaching a peace agreement for such complex cases, but as such it does not allow us to empirically explore this additional hypothesis. *See infra* Table A-2.

These observations suggest that the presence of an additional actor, particularly the UN, as a party to these peace agreements exerts a discernible influence on the inclusion of more international law principles. However, when the UN serves as a mediator, observer, or witness, that relationship appears to be restricted to principles concerning transitional justice.

This generally favorable influence of third parties on norm inclusion conceals a substantially more complex relationship once we examine the particular parties and norms involved. The answers to our hypotheses address these complexities. One in particular we have already noted—the differential effect of UN involvement on the inclusion of all coded international law principles as opposed to the inclusion of only transitional justice principles— requires particular attention. We will therefore separately analyze the inclusion of all principles as *Model 1*, the inclusion of just transitional justice principles as *Model 2*, and the inclusion of only governance principles as *Model 3*. Table 3 summarizes the results for our propositions on the inclusion of international law principles and full details and tables from the empirical analysis discussed below can be found in the Appendix.

A. THE UNITED NATIONS INVOLVEMENT OR AS A PARTY TO PEACE AGREEMENTS (H1A AND H1B)

In our base model (*Model 1*), we do not observe a significant relationship between the UN's involvement as an observer, witness, or mediator in a peace process and the total number of international law principles adopted (H1a). However, the results change when we examine the relationship with only transitional justice principles (*Model 2*), where we observe a positive and statistically significant relationship. The coefficient of 0.64 suggests that, while holding all other variables constant, UN involvement is associated with a 90% increase in the expected count of the number of international law provisions related to transitional justice. Conversely, when we focus solely on the relationship between UN involvement and post-conflict governance variables (*Model 3*), the coefficient is negative but not statistically significant.

Next, our findings indicate that when the UN is party or co-signatory to the agreement (H1b), there is an increase in the adoption of international law principles. This relationship is positive across all three models but only statistically significant with the total number of international law principles (*Model 1*, coefficient of 0.46) and when only with regard to transitional justice principles (*Model 2*, coefficient

of 0.80). This implies that, on average, the additional presence of the UN as a party or co-signatory is associated with an estimated increase of approximately 58.6% in the count of total international law provisions and approximately 122.5% in the count of transitional justice provisions, holding all other variables constant.

B. THE PRESENCE OF OTHER PARTIES IN PEACE AGREEMENTS (H2A, H2B, H2C)

We next consider the relationship between the presence of parties other than the UN with inclusion of international law principles. First, we observe a negative relationship between the presence of a regional organization as a party or co-signatory to the agreement. This finding is statistically significant with a coefficient of -0.76 when considering the total number international law principles (*Model 1*) and -0.83 when considering the relationship with post-conflict governance principles (*Model 3*). This suggests that, on average, the presence of a regional organization as a party or co-signatory to a NIAC peace agreement is associated with an estimated decrease of approximately 47% in the count of total international law provisions and a decrease of approximately 57% in the count of post-conflict governance provisions.

In contrast, our analysis reveals a positive relationship between the involvement of other states as an observer, witness, or mediator in the peace process (H2b) and the number of international law principles adopted in a peace agreement. However, this positive relationship is not statistically significant in our three models. Similarly, our analysis does not find evidence of a relationship between the presence of other individuals or entities, other than those considered above, as a party or co-signatory of an agreement (H2c) and the number of international law provisions adopted. The coefficient across all three models is, again, positive but not statistically significant.

C. CONFLICT DURATION (H3)

Next, we examine the relationship between conflict characteristics and the incorporation of international law principles in NIAC peace agreements. Our analysis considers the duration of the conflict (H3). We find a statistically significant positive relationship between the duration of the conflict and the adoption of transitional justice principles. The coefficient of 0.02 suggests that, holding all other variables constant, each additional year of conflict is associated

with an estimated increase of approximately 2% in the count of transitional justice provisions.

D. CONFLICT SEVERITY (H4 AND H5)

Next, we explore whether the level of violence in a conflict influences the number of international law principles. Specifically, we examine the estimated number of battle-related deaths in the last year of fighting (H4). Our findings reveal a consistent negative relationship between the number of fatalities (measured in the hundreds) and the number of international law principles incorporated into a peace agreement. The coefficient of -0.01 is statistically significant in both *Model 1* (total international law principles) and *Model 3* (post-conflict governance principles). This indicates that, on average, for every additional 100 deaths, there is an estimated 1% decrease in the number of principles adopted.

Estimating the precise number of battle-related deaths in conflicts can be challenging and subject to limitations. Additionally, the number of battle-related deaths in the last year of hostilities may not reflect the overall level of violence prior to signing the agreement. To account for these factors, we also consider an alternative measure of the level of violence by using a binary variable that indicates whether a conflict exceeded a threshold of 1,000 battle-related deaths across the entirety of the conflict (referred to as cumulative intensity, H5). However, our analysis does not find a statistically significant relationship between cumulative intensity and the adoption of international law principles.

E. GOVERNANCE VERSUS TERRITORIAL CONFLICTS (H6)

Finally, we evaluate whether conflicts over territory, as opposed to those over governance, have an impact on the number and type of international law principles included in a peace agreement (H6). We find a consistently negative relationship and in both *Model 1* (total international law principles) and *Model 3* (post-conflict governance principles) this relationship is statistically significant. The coefficient of -0.43 (*Model 1*) and -0.46 (*Model 2*) suggests an estimated decrease of approximately 35% in the total number of international law provisions and a decrease of approximately 37% in the count of post-conflict governance provisions.

IV. THE CRITICAL ROLE OF THE UNITED NATIONS

What accounts for our central findings that (i) when the UN is party to a peace agreement there is an approximately 50% increase in the number of total international law provisions, and (ii) that when the UN serves as a witness, mediator, or observer there is an increase of 97% in transitional justice provisions? Answering these questions begins with understanding the role of third parties like the UN in NIAC peace processes more generally.

A substantial political science literature argues that the presence of third parties can change NIAC parties' incentives in peace negotiation and implementation.[65]Negotiating environments filled with distrust and misinformation can be altered if credible third parties commit to help implement peace agreements and supply accurate information about the parties' compliance.[66] While this literature has examined the impact of a third party presence on the durability of peace agreements,[67] the length of conflicts[68] and a conflict's lethality (*i.e.* body count),[69] we are not aware of any study focusing on how the presence of third parties affects the substance of peace agreements. Facing this question is a critical starting point. If including more international law provisions in peace agreements is consistent with the recalibrated incentives created by a third party's presence, then the literature's insights on these other conflict dynamics may have important implications for the incorporation of international law principles.

65. See Madhav Joshi & Jason Michael Quinn, Is the Sum Greater than the Parts? The Terms of Civil War Peace Agreements and the Commitment Problem Revisited, 31 NEGOT. J. 7 (2015); Baris Ari & Theodora-Ismene Gizelis, Civil Conflict Fragmentation and the Effectiveness of UN Peacekeeping Operations, 27 INT'L PEACEKEEPING 617, 623–25 (2020); Andrea Ruggeri et al., Winning the Peace Locally: UN Peacekeeping and Local Conflict, 71 INT'L ORG. 163, 165–66 (2016).

66. James D. Fearon, *Civil War & the Current International System*, 146 DAEDALUS 18, 25 (2017); BARBARA F. WALTER, COMMITTING TO PEACE 79 (2002).

67. Bara et al., *supra* note 34, at 927.

68. *See generally* Melanie Sauter, *A Shrinking Humanitarian Space: Peacekeeping Stabilization Projects and Violence in Mali*, 29 INT'L PEACEKEEPING 624 (2022) (finding that peacekeeping stabilization activities increase violence against civilians in the short term).

69. Constantin Ruhe, Impeding Fatal Violence Through Third-Party Diplomacy: The Effect of Mediation on Conflict Intensity, 58 J. PEACE RSCH. 687, 688, 698 (2021).

A. THE INCENTIVE STRUCTURE OF NIAC PEACE NEGOTIATIONS

1. The Problem of a Credible Commitment Gap

For NIAC parties to reach a peace agreement, they must overcome multiple levels of distrust. As Barbara Walter argued in a seminal 1997 article, the move from war to peace requires civil war parties to lay down their arms and abandon armed force as their primary means of attaining power.[70] Both are essential to creating a new political system that allows each side to compete for votes and air their positions without fear of lethal reprisal. But neither party would seem to have reason to take these steps. Having fought each other for years, the parties have little or no trust that the other side will adhere to the terms of a peace agreement. Acting on this distrust, parties will often become spoilers, seeking to capitalize on the other side's willingness to comply by using violence and coercion to improve their bargaining positions. As Alina Matanock observes, "[t]he first demobilization phase often poses a clear risk to peace, as a temporarily stronger side, in relative terms, can attack its opponent more successfully."[71]

Unlike opponents in an interstate conflict, NIAC parties cannot retreat to their respective territories to make themselves less vulnerable to attack. Instead, they must secure their own safety while at the same time living side-by-side with their former adversaries, disarming, and participating with those adversaries in the same post-conflict political institutions. These twin goals of security and co-existence are almost certain to conflict. As Barbara Walter observes, "combatants in domestic disputes become progressively more vulnerable and less able to enforce an agreement the more they implement its terms."[72] NIAC agreements have this vulnerability built in, requiring parties to accept the possibility that the other side may defect but nonetheless trust that their own unilateral renunciation of force and entry into democratic politics will be met by similar steps on the other side.

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70. Barbara F. Walter, *The Critical Barrier to Civil War Settlement*, 51 INT'L ORG. 335, 338 (1997).

71. AILA M. MATANOCK, ELECTING PEACE: FROM CIVIL CONFLICT TO POLITICAL PARTICIPATION 34 (2017); *see also* Valerie Sticher, *Negotiating Peace with Your Enemy: The Problem of Costly Concessions,* 6 J. GLOB. SEC. STUD. 1, 3 (2021) (stating that in NIAC peace scenarios, "the non-state actor is usually required to demobilize and disarm as part of conflict settlement, to return the monopoly on the use of force to the state. This leaves them vulnerable to defection by the state actor.").

72. Barbara F. Walter, *Bargaining Failures and Civil Wars*, 12 ANN. REV. POL. SCI. 243, 246 (2009).

Spoiler threats may continue even after an agreement is signed. A government may delay "integrating a rebel group into the state's power structure to allow the government to maintain more power, perhaps passing laws favorable to its platform before integrating into the legislature."[73] Or disarmed soldiers may reappear as lightly armed but fully intimidating militias. These violent and non-violent tactics seek to create leverage for acquiring more power than would be possible through political competition. In addition, as Ari and Gizelis argue, these tactics allow hard-liners to silence factions within their own party that are more inclined toward adherence to an agreement.[74] Furthermore, parties may receive inaccurate information about their opponents or read actions with benign explanations through the lens of distrust. Bad information may jeopardize peace processes even when parties are acting in good faith.[75]

This pervasive distrust undermines peace processes primarily through its effect on the government side. NIACs begin because rebels find some or all aspects of a governing system unacceptable. Reform of that system, whether piecemeal or sweeping, is the principal concession the government side can offer to induce rebels to suspend hostilities and disarm.[76] Governments thus have much to lose in agreeing to a peace deal. Most governments also have greater resources than rebels to continue fighting instead of making needed concessions, including the ability under international law to invite foreign troops to help fight the rebels.[77] As a result, many governments choose continued fighting over conceding power through negotiated reforms, or initially commit to peace but later renege.[78]

Aware that (i) governments will need to make painful concessions to achieve peace, and (ii) for this reason, will often choose to keep fighting, rebels will often respond by demanding a wide range of protections for themselves as a "hedge" against governmental

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73. Ayokunu Adedokun, Post-Conflict Peacebuilding: A Critical Survey of the Literature and Avenues for Future Research, 5 J. GLOB. PEACE & CONFLICT 25 (2017).

74. Ari & Gizelis, *supra* note 65, at 621.

75. MATANOCK, *supra* note 71, at 35.

76. Joshi & Quinn, *supra* note 65, at 11("An agreement with few provisions will leave most government sectors unaffected and is unlikely to convince the broader rebel constituency that its benefits outweigh the costs and risks associated with disarming and demobilizing.").

77. *See generally* Gregory H. Fox, *Invitations to Intervene After the Cold War: Toward a New Collective Model*, *in* ARMED INTERVENTION AND CONSENT 179 (Anne Peters & Christian Marxsen eds., 2023).

78. Walter, *Bargaining Failures and Civil Wars*, *supra* note 72, at 246.

noncompliance. Hedges take the form of political and legal checks against the government clawing back powers it gave up in an agreement. "By spreading the objectives of the agreements across multiple areas of government, hedging techniques are designed to minimize the risks that a failure to implement some provisions of an agreement will undermine the overall objectives of the agreement."[79] Such maximalist demands, of course, make the prospect of governmental concessions even less likely.

Walter's great contribution to understanding these multiple incentives arrayed against successful negotiation and implementation was her finding that when third parties enter a peace process, they can provide a "credible commitment" that lowers distrust and bridges information gaps.[80] Peace negotiations fail, Walter argued, because "civil war opponents are asked to do what they consider unthinkable," namely "at a time when no legitimate government and no legal institutions exist to enforce a contract, they are asked to demobilize, disarm, and disengage their military forces and prepare for peace."[81] Third parties, however, can commit to enforcing peace agreements without encountering any the spoiler incentives operating for parties. They "can ensure that the payoffs from cheating on a civil war agreement no longer exceed the payoffs from faithfully executing its terms. Once cheating becomes difficult and costly, promises to cooperate gain credibility and cooperation becomes more likely."[82]

Since Walter's article, "[c]redible commitment theory has, arguably, become the dominant theoretical approach to negotiations in civil wars in the field of political science."[83]A growing literature has analyzed cases of third party involvement and concluded their guarantees can substantially enhance the likelihood of NIACs ending in a negotiated settlement.[84] Recent NIACs that have defied peaceful resolution—notably, Yemen, Libya and Syria—have lacked credible

79. Joshi & Quinn, *supra* note 65, at 12.

80. Walter, *The Critical Barrier to Civil War Settlement*, *supra* note 70, at 361–62.

81. *Id.* at 335–36.

82. *Id.* at 340; *see also* Matthew Hauenstein & Madhav Joshi, *Remaining Seized of the Matter: UN Resolutions and Peace Implementation*, 64 INT'L STUD. Q. 834, 835 (2020) (citations omitted) ("Third parties can induce cooperation between armed actors by imposing costs for noncompliance; overcoming resource constraints by mobilizing external resources; and by bringing regional, international, and local actors together in implementing peace in the form of 'hybridity.'").

83. Joshi & Quinn, *supra* note 65, at 8.

84. Carline A. Hartzell, *Negotiated Peace: Power Sharing in Peace Agreements*, *in* WHAT DO WE KNOW ABOUT CIVIL WARS? 121 (T. David Mason & Sara McLoughlin Mitchell eds., 2d ed. 2023); Howard & Stark, *supra* note 32, at 137; Walter, *Bargaining Failures and Civil Wars*, *supra* note 72, at 255.

third party interlocutors.[85] Credible commitment is not the only viable explanation for the rise in NIAC peace agreements; some scholars point to domestic conditions making many conflicts newly "ripe" for resolution.[86] But given the many factors militating against settlement in the absence of an external commitment, the uptick in peace agreements in an era when third parties have been omnipresent in conflict resolution makes the credible commitment theory compelling.

2. The Substance of Peace Agreements and Credible Commitment

Can credible commitment theory help explain the higher presence of transitional justice provisions in peace agreements when the UN is a party, observer, witness, or mediator? Initially one would think not. Virtually all the analyses of UN credible commitments focus on the tangible carrots and sticks it brings to a peace process. The most obvious is the dispatch of peacekeeping forces. Stefanie Dwyer provides a typical description of peacekeeping as a credible guarantee: "A potential guarantor's fulfillment capacity reflects its actual ability to provide a guarantee *on the ground* based on its *material capacity* to deploy a peace operation mandated to fulfill that guarantee."[87] Similarly, Andrea Ruggeri and her co-authors find that the "presence of peacekeepers in specific localities matters because it commits leaders to act locally in line with centrally agreed-upon principles."[88] Adding transitional justice provisions to peace agreements obviously involves nothing like the on-the-ground security presence of peacekeepers, some of whose mandates include offensive military capabilities.[89] How can the substance of peace agreements overcome the disincentives to negotiate that credible commitment theory tells us must be countered by the tangible presence of third-parties?

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85. Each of these cases has involved intervention by powerful patron states, overwhelming the peace-inducing capacity of would-be mediators, as well as precluding UN involvement by creating division among Security Council permanent members. *See* MURIEL ASSEBURG ET AL., MISSION IMPOSSIBLE? UN MEDIATION IN LIBYA, SYRIA AND YEMEN, GERMAN INST. FOR INT'L & SEC. AFFS. 15 (2018).

86. *See* Eamonn O'Kane, *When Can Conflicts be Resolved? A Critique of Ripeness*, 8 CIV. WARS 268, 269, 277 (2006) (discussing William Zartman's theory of "ripeness").

87. Stefanie P. Dwyer, Window for Peace: Determinants of Third-Party Guarantees in Intrastate Conflict Resolution 31 (2017) (Ph.D. thesis, Columbia University) (on file with Columbia University Libraries) (emphasis added).

88. Andrea Ruggeri et al., Winning the Peace Locally: UN Peacekeeping and Local Conflict, 71 INT'L ORG. 163, 165 (2016).

89. *See*, *e.g.*, S.C. Res. 2098, ¶ 12(b) (Mar. 28, 2013) (creating an "intervention brigade" for the DR Congo).

The answer is that they may not need to do so. Power-sharing arrangements in NIAC agreements provide an example of how a provision not involving tangible enforcement mechanisms can nonetheless function to ease parties' distrust of commitment. If power-sharing can bridge commitment gaps without peacekeeping or other on-the-ground enforcement tools, then skepticism that international law provisions can also provide credible commitments may be overcome.

Power-sharing appears in many NIAC agreements brokered by third parties and involves a variety of political arrangements that "in addition to defining how decisions will be made by groups within the polity, allocate decision-making rights, including access to state resources, among collectivities competing for power."[90] Power-sharing can take the form of shared or rotating presidencies, the allocation of government ministries, and quotas of seats in a Parliament among others.[91]

During negotiations, however, power sharing presents only the *prospect* of checking political overreach by opposing parties: its success depends on the parties' later willingness to abjure violence and not act as a spoiler. Power-sharing, in other words, appears to be a form of credible commitment that parties find compelling on its own terms, separate from any third-party enforcement mechanisms. Why would parties hold this view? Chelsea Johnson argues that power-sharing addresses mutual distrust by serving "as a signal of parties' willingness to bear costs and, thus, commitment to abandoning the fight."[92] She points to empirical evidence that certain power-sharing mechanisms "... significantly increase the willingness of rebel signatories to accept the risk of demobilization."[93] Johnson's findings are consistent with UN and other mediators belief that proposing power-sharing makes parties more likely to reach agreement.[94] This is an important finding, given clear evidence that *after signature*, power sharing does not effectively resolve many disputes underlying

90. Caroline A. Hartzell & Matthew Hoddie, Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management, 47 AM. J. POL. SCI. 318, 320 (2003); see also Allison McCulloch & Joanne McEvoy, The International Mediation of Power-sharing Settlements, 53 COOP. & CONFLICT 467, 468–69 (2018) (describing "the new wave of power-sharing democracy").

91. *See* Caroline A. Hartzell & Matthew Hoddie, *Power Sharing and the Rule of Law in the Aftermath of Civil War*, 63 INT'L STUD. Q. 641, 643, 650 (2019) (discussing power-sharing and citing examples in various countries, such as Liberia).

92. Chelsea Johnson, Power-sharing, Conflict Resolution, and the Logic of Pre-emptive Defection, 58 J. PEACE RSCH 734, 737 (2020).

93. *Id.* at 744.

94. *See* McCulloch & McEvoy, *supra* note 90, at 474–80.

conflicts and instead tends to produce governmental *instability* over the longer term.[95]

The example of power-sharing provides a reason why credible commitments need not involve tangible enforcement mechanisms, and instead may be compelling on their own terms.[96] But that example does not tell us whether any other provisions might play a similar role. The second part of this argument, therefore, must show that international law provisions can also mitigate the parties' negative incentives and provide a credible commitment similar to that of power-sharing.

Scholars have identified two reasons this might be the case. First, international law principles are perceived as neutral because they are not associated with any of the conflict parties. Neutrality enhances the law's legitimacy as a framework for resolving disputes and implementing agreements.[97] As the UN Secretary-General reported after consulting with a range of international actors involved in conflict mediation, "consistency with international law and norms contributes to reinforcing the legitimacy of a process and the durability of a peace agreement."[98] Non-state actors in peace negotiations "have been particularly motivated to use international legal argumentation during peace negotiations as a way of legitimizing themselves in front of international audiences."[99] The UN underlines international law's distinctiveness from the parties' political demands by refusing to approve aspects of agreements that deviate from international norms.[100] Recall that credible commitments must counter parties' fears that the other side will not reciprocate their moves to disarm and engage with new political

95. *Id.*

96. *See* Joshi & Quinn, *supra* note 65, at 8 (listing power sharing provisions alongside tangible third-party oversight as NIAC party enforcement mechanisms that researchers have focused on).

97. *See* Kyle Rapp, *Law and Contestation in International Negotiations*, 46 REV. INT'L STUD. 672, 672–73 (2020) (international law's proffered neutrality makes legal arguments by mediators harder to challenge); *see also* Hyeran Jo, *Non-State Armed Actors and International Legal Argumentation: Patterns, Processes, and Putative Effects*, *in* TALKING INTERNATIONAL LAW: LEGAL ARGUMENTATION OUTSIDE THE COURTROOM 182, 197 (Ian Johnstone & Steven Ratner eds. 2021).

98. U.N. Secretary-General, Report of the Secretary-General: Strengthening the Role of Mediation in the Peaceful Settlement of Disputes, Conflict Prevention and Resolution, ¶ 41, 28 U.N. Doc. A/66/811 (June 25, 2012).

99. Ian Johnstone & Steven Ratner, *Toward a Theory of Legal Argumentation*, *in* TALKING INTERNATIONAL LAW 339, 346 (Ian Johnstone & Steven Ratner eds., 2021).

100. See Guidelines for United Nations Representatives on Certain Aspects of Negotiations for Conflict Resolution, 2006 U.N. Jurid. Y.B. 497, U.N. Doc. ST/LEG/SER.C/44.

institutions. If both sides perceive such moves as justified by neutral and legitimate legal principles rather than pure self-interest, those suspicions may be abated.

Second, international law offers a framework for sustainable peace by providing long-term solutions that transcend the immediate interests of the conflicting parties. By agreeing to abide by international legal standards, parties signal their commitment to maintaining peace beyond the immediate cessation of hostilities. Tom Ginsburg and others have argued that states often take on international legal obligations as a "precommitment" to ensure the long-term stability of their own constitutional orders.[101] The international obligations can outlast changes in national leadership and thus enhance the credibility of the commitments made in peace agreements. Precommitment theory suggests that a party tying its own hands by accepting international legal obligations presents a much more reliable negotiating partner than one who simply offers its own word.

B. INTERNATIONAL LAW PROVISIONS AND A UN CREDIBLE COMMITMENT

If international law provisions generally can provide a credible commitment, the next issue is how this proposition relates to our empirical findings. In this section we seek explanations for two critical findings. The first is why the UN in particular appears to provide a credible commitment. The second is why international law provisions on transitional justice would be part of this commitment and not provisions on governance questions bound up in the post-conflict legal and political order.

1. A General UN Credible Commitment

There are several straightforward answers to the first question of why the UN. The first is that the UN is a creature of international law, created by and dedicated to understanding, codifying, and

101. *See* Tom Ginsburg et al., *Commitment and Diffusion: How and Why National Constitutions Incorporate International Law Incorporate International Law*, 2008 U. ILL. L. REV. 201, 202, 210–12 (2008) (explaining precommitment theory, and how democratic constitutions, international law, and international legal agreements act as precommitments or precommitment strategies); *see also* Tom Ginsburg, *Locking in Democracy: Constitutions, Commitment, and International Law*, 38 N.Y.U. J. INT'L L. & POL. 707, 721, 724–25 (2006) (explaining precommitment theory and how international law and agreements can be precommitments to guard against preference shifts).

enforcing global norms.[102] The UN's International Court of Justice is the only international judicial body capable of hearing claims under any source of international law.[103] The UN International Law Commission has drafted treaties basic to the international legal order as well as codified foundational principles.[104] If the UN itself violates applicable international legal principles it may incur responsibility.[105]Additionally, UN organs use a variety of tools to secure compliance with legal obligations, from sanctions and the authorization of military force by the Security Council to the creation of international criminal tribunals.[106] Of course UN bodies miss many opportunities to condemn violations of international law, but the question of norm inclusion involves not missed versus taken opportunities for condemnation , but whether the UN helps facilitate inclusion in peace processes in which it is *already* involved.

The second reason is a reification of the first: the UN Secretary-General (UNSG) has instructed his representatives to structure their approach to peace negotiations within the boundaries of international

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102. U.N. Charter pmbl., ¶ 3 (describing its drafters' determination "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained."). UN bodies that specifically promote respect for international law include the UN Commission on International Trade Law, the Division for Ocean Affairs, the International Law Commission, the Office of Legal Affairs, and others. *See Uphold International Law*, UNITED NATIONS, https://www.un.org/en/our-work/uphold-international-law (last visited Oct. 10, 2024).

103. *See* Statute of the International Court of Justice art. 36, ¶ 2b, June 26, 1945, 59 Stat. 1055, T.S. No. 993 (stating that upon appropriate consent by UN member states, the International Court of Justice can hear cases involving "any question of international law.").

104. *Analytical Guide to the Work of the International Law Commission*, INT'L L. COMM'N, https://legal.un.org/ilc/guide/gfra.shtml (last updated Aug. 9, 2023) (listing the work undertaken by the ILC in the fields of treaties and codification, as well as providing links to source material).

105. See Report of the International Law Commission to the General Assembly, Responsibility of International Organizations at 52, U.N. Doc. A/66/10 (2011), reprinted in 2 Y.B. Int'l L. Comm'n 39–40, U.N. Doc. A/CN.4/SER.A/2011/Add.1; Christiane Ahlborn, The Rules of International Organizations and the Law of International Responsibility, 8 INT'L ORGS. L. REV. 397, 435–36, 441–45, 448, 450, 459, 461–65 (2011).

106. For a discussion of Council-authorized uses of force, *see* HENDERSON, *supra* note 40, at 175–218. For a list of UN sanctions regimes, see United Nations Department of Political and Peacebuilding Affairs, FACT SHEET: SUBSIDIARY ORGANS OF THE UNITED NATIONS SECURITY COUNCIL 1–41 (2023), https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/subsidiary_organs_series_7sep23_.pdf. For an overview of the UN's role in creating international criminal tribunals, see *International and Hybrid Criminal Courts and Tribunals*, UNITED NATIONS AND THE RULE OF LAW, https://www.un.org/ruleoflaw/thematic-areas/international-law-courts-tribunals/international-hybrid-criminal-courts-tribunals/(last visited Oct. 10, 2024).

law. In his 2012 Guidance on Effective Mediation, the UNSG explained that UN mediators "conduct their work within the framework constituted by the rules of international law that govern the given situation, most prominently global and regional conventions, international humanitarian law, human rights and refugee laws and international criminal law, including, where applicable, the Rome International Criminal Court."[107] UN guidance has focused in particular on international standards concerning the rule of law[108], human rights[109], the protection of minority groups[110] and, most prominently, amnesty for international crimes.[111]

Except for the question of amnesty, addressed below, the instructions do not take the form of mandates requiring UN mediators to insist on specific principles or language. The UNSG makes the obvious point that "balancing the demands of conflict parties with the normative and legal frameworks can be a complex process,"[112] and must allow for deviation from international standards in some circumstances. In our view, this pragmatism does not diminish the SG's directive as an explanatory factor for international law inclusion. Some negotiations simply do not address topics covered by international law; as the UNSG instructs, norms should be applied to the "given situation."[113] Other negotiations have no need for

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107. U.N. Secretary-General, *United Nations Guidance for Effective Mediation* 16 (2012), https://peacemaker.un.org/sites/default/files/document/files/2022/08/guidanceeffectivemediationundpa2012english0.pdf.

108. U.N. Secretary-General, *Guidance Note of the Secretary-General: UN Approach to Rule of Law Assistance* 2 (Apr. 14, 2008), https://www.refworld.org/policy/legalguidance/unsecgen/2008/en/68452 ("UN rule of law assistance is based normatively on the Charter, international law, and the host of UN treaties, declarations, guidelines and bodies of principles developed in furtherance of national societies and an international order based on the rule of law.").

109. *Id*. at 3.

110. *Id*. ("In providing assistance, the UN must not overlook the entitlements that have been established under international law for women, children, minorities, refugees and displaced persons, and other groups that may be subjected to marginalization and discrimination in the country.").

111. U.N. Secretary-General, *Report of the Secretary-General, The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* 21, U.N. Doc. S/2004/616 (Aug. 23, 2004) (peace agreements must "[r]eject any endorsement of amnesty for genocide, war crimes, or crimes against humanity, including those relating to ethnic, gender and sexually based international crimes, ensure that no such amnesty previously granted is a bar to prosecution before any United Nations-created or assisted court.").

112. *U.N. Guidance for Effective Mediation*, *supra* note 107, at 16.

113. *Id*. Ceasefires, disarmament, the demobilization of combatants and the reintegration of former combatants into society are common features of peace agreements but not topics addressed by international law in any meaningful way.

normative incorporation because domestic constitutional or statutory law already addresses issues embodied in international instruments.[114] In others, the parties may simply oppose normative incorporation, at which point UN mediators are instructed to "[b]alance the need to adhere to international norms without overtly taking on an advocacy role."[115] These factors all explain why in some circumstances, normative incorporation is either unnecessary or counterproductive, and as a result absent from an agreement. They do not suggest a lesser commitment by the UN to incorporation where necessary and possible. Nor do they suggest such commitments are a lesser form of "credible commitment."

The third reason for higher international law content in UN-involved agreements continues in sequence with the first two: the UN is a repeat player across multiple NIAC peace processes. The UN was party to 9 of the 56 NIAC agreements in our dataset and a witness, observer, or mediator in an additional 30, meaning overall it had a role in 69% (39/56) of the agreements. By contrast, all the various regional organizations involved were present in only 50% (28/56) of agreements. The African Union, the single most active regional organization, participated in only 18 total agreements.[116] The UN thus acquired both more experience than any other single third party and did so in multiple areas of the world inaccessible by definition to any given regional organization.

Studies of repeat players in legal processes suggest this experience plays an important role in the UN's approach to peace negotiations. Repeat players acquire unique information, expertise, and strategic acumen that provide clear advantages over one-time or episodic participants.[117] Repeat players also have incentives to "play for rules" – to seek influence over the structure of future legal processes in which they may be involved.[118] The UN's pioneering and relatively well-resourced Mediation Support Unit embodies such a lessons-learned and future-oriented approach to mediation.[119]

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114. There would be no need, for example, for a peace agreement to call for free and fair elections if elections are already scheduled under national law and the applicable legal framework meets basic criteria of fairness and inclusion.

115. *U.N. Guidance for Effective Mediation*, *supra* note 107, at 17.

116. We coded the African Union and its predecessor, the Organization of African Unity, as a single entity.

117. Marc Galanter, Why the "Haves" Come out Ahead: Speculations on the Limits of Legal Change, 9 LAW & SOC'Y REV. 95, 98–100 (1974); Lisa B. Bingham, On Repeat Players, Adhesive Contracts, and the Use of Statistics in Judicial Review of Employment Arbitration Awards, 29 MCGEORGE L. REV. 223 (1998).

118. Galanter, *supra* note 117, at 100–03.

119. See U.N. Secretary-General, Report of the Secretary-General: United Nations

Scholars have observed similar repeat player dynamics in the World Trade Organization and human rights bodies.[120]

For repeat conflict mediators like the UN, knowledge and expertise can be acquired in a variety of ways. Mediators working on a conflict in one state learn from and adopt techniques used in negotiations in other states.[121] Mediators with "inside knowledge" of conflict parties, gained through repeated exposure to their culture and institutions, have been shown to be particularly successful.[122] Bercovitch and Gartner have observed this dynamic at work for mediators who repeat within a single conflict:

In an environment of risk and uncertainty, mediators may use information from previous efforts or build on any rapport they may have had with the parties. Here we anticipate that previous mediation and in particular, previously mediated agreements, influence the likelihood of current mediation efforts. Previous mediation efforts can establish norms and a certain rapport between the parties, and these can affect their current disposition and behavior. There is an element of reinforcement and learning occasioned by previous experience of mediation.[123]

Advocating for the inclusion of international law principles appears to follow on the UN being a repeat player. Mediation experience obviously informs UN mediators about the full range of international norms applicable to post-conflict societies. Once deployed successfully they are likely to be deployed again and again in future mediations. The Mediation Unit's conscious effort to incorporate "lessons learned" creates a positive feedback-loop within the UN mediation system. And the UN advocating for rules of international law is almost the definition of a repeat actor "playing for the rules" to bolster its long-term interests.

Finally, one can view UN mediation as a package of interdependent credible commitments: along with the tangible

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Activities in Support of Mediation, U.N. Doc. A/72/115 (June 27, 2017).

120. Joseph A. Conti, Learning to Dispute: Repeat Participation, Expertise, and Reputation at the World Trade Organization, 35 LAW & SOC. INQUIRY 625, 625–27, 631–33 (2010); Francesca Parente, Settle or Litigate? Consequences of Institutional Design in the Inter-American System of Human Rights Protection, 17 REV. INT'L ORGS. 39, 50–51 (2022); Vaughan Lowe, The Function of Litigation in International Society, 61 INT'L & COMPAR. L. Q. 209, 213 (2012).

121. Tobias Böhmelt, The Importance of Conflict Characteristics for the Diffusion of International Mediation, 53 J. PEACE RSCH. 378, 378 (2016).

122. Krista Wiegand et al., *Third-party Knowledge and Success in Civil War Mediation*, 23 BRIT. J. POL. & INT'L REL. 3, 3–4 (2021).

123. Jacob Bercovitch & Scott Sigmund Gartner, Is There Method in the Madness of Mediation? Some Lessons for Mediators from Quantitative Studies of Mediation, 32 INT'L INTERACTIONS 329, 340 (2006) (citations omitted).

carrots and sticks such as the Security Council's unique sanctioning power, its dispatch of peacekeepers and its ability to coordinate among multiple international actors, comes the UN's commitment to international norms. Parties seeking assistance cannot have one without the other. The UNSG reports that leverage enjoyed by UN mediators just as often flows from their credibility as from tangible rewards and sanctions.[124] Fidelity to core principles in vastly different settings enhances that credibility. In addition, conflict parties that seek tangible credible commitments but resist normative incorporation, would need to ask the UN to expend funds and political capital in support of a peace that lacks legal attributes it considers critical. While some conflict parties may be willing to bite the UN's feeding hand in this manner, many will not.

2. Why a Credible Commitment for Transitional Justice and not Governance Issues?

A. GOVERNANCE ISSUES

The second question is more puzzling: why is a UN presence positively associated with transitional justice provisions but not governance issues? After all, many NIAC agreements directly address rebel groups' grievances about how their state is governed and, as a positive incentive, offer an opportunity for both sides to realize their agendas by acquiring political power through peaceful means. As many have quipped, political settlements in peace agreements offer the continuation of warfare by other means. The challenge for peacemakers is to structure post-conflict political institutions so that they are received as legitimate by both sides and thus accepted as a viable alternative to violence. The UN's approach to this problem for decades has been to pursue a "liberal peace," which invariably requires new laws and institutions.[125] Given this history, one would expect UN involvement to be positively associated with the regular inclusion of governance norms.

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124. U.N. Secretary-General, *Report of the Secretary-General on Enhancing Mediation and its Support Activities* 10, U.N. Doc. S/2009/189, (Apr. 8, 2009) ("In United Nations mediation, the most effective leverage is often the mediator's relationship with the parties, his or her moral persuasion, and intangible incentives such as recognition, assistance or legitimacy.").

125. Roger Mac Ginty et al., *Liberal Peace Implementation and the Durability of Post-war Peace,* 26 INT'L PEACEKEEPING 457, 459 (2019). For a discussion of UN support for elections, rule of law, human rights, and other aspects of liberal peacebuilding, see GREGORY H. FOX, HUMANITARIAN OCCUPATION (2008).

The lack of a positive association with the UN may be explained in part by the ubiquity of governance norms themselves. The elements of liberal peace are reflected in peace agreement provisions mirroring international law on elections, free speech, rule of law, judicial independence and non-discrimination. At least one of these governance principles appears in 95% of all NIAC agreements in our dataset, which include agreements mediated by the UN, regional organizations, states and private actors.[126] The standing guidelines for UN and regional mediators both emphasize the liberal peace model.[127] Governance norms are not positively associated with the UN, in other words, because a UN presence does not produce a variance from the general practice of mediators to seek liberal democratic outcomes in post-conflict states.

Another reason for the lack of positive association with governance is that several of the UN-involved agreements came in circumstances in which governance reforms were not necessary to achieve the parties' objectives. The 2016 Kabul Agreement for Afghanistan, for example, containing only 3/24 coded governance provisions, was designed to bring a then-marginalized and exiled warlord into an alliance with the government in the hope that he would facilitate important peace talks with the Taliban.[128] The 2008 Agreement in Burundi, with no coded governance provisions, was designed only to remove specific obstacles to implementation of a prior ceasefire agreement.[129] The 1995 Erdut Agreement created a temporary transitional administration for Serb-controlled areas of Croatia and referred to governance issues only once in general terms, leaving the specifics of governance to the UN Security Council, which

126. The U.N. was involved in 29 peace agreements, regional organizations were involved in 28, states were involved in 27, and private actors were involved in 13 peace agreements. The full text of virtually all the coded peace agreements can be found on the Peace Agreements X website: https://www.peaceagreements.org/search.

127. Guidance Note of the Secretary-General: UN Approach to Rule of Law Assistance, supra note 108, at 1–2; Michal Natorski, The European Union Peacebuilding Approach: Governance and Practices of the Instrument for Stability, 111 PEACE RSCH. INST. FRANKFURT 17–21 (2011); Afr. Union, Policy on Post-Conflict Reconstruction and Development 34 (2006), https://au.int/sites/default/files/documents/39185-doc-141._african_union_policy_on_post-conflict_reconstruction_and_development.pdf.

128. Agreement Between Goira & Hezb-E-Islami of Afghanistan Led By Gulbuddin Hekmatyar (Sept. 22, 2016), https://pax.peaceagreements.org/media/documents/ag1739_58da7308182a2.pdf.

129. Déclaration du Sommet des chefs d'Etats et de gouvernements de l'initiative régionale sur le processus de Paix au Burundi (Dec. 4, 2008), https://pax.peaceagreements.org/media/documents/ag712_57ac4dc7cac13.pdf.

was tasked with creating the administration.[130] The purpose of the agreement was to begin restoring Croatian government control over those areas, not to establish permanent governing structures.[131] If in these and other cases the UN helped the parties achieve goals unrelated to governance, the lack of governance provisions says little about the UN's approach to agreement design relative to that of other third parties.

A third possible explanation for the lack of an association with governance norms is the prevalence of power-sharing arrangements in NIAC agreements.[132] As discussed above, these are constitutional-like rules that guarantee certain groups prescribed levels of control over governing institutions or issue-areas. Instead of groups waiting for the results of elections to find out if the new institutions will reflect their interests, power-sharing arrangements reassure parties prospectively that, in limited areas, their interests will in fact be represented. Power-sharing is thus designed to "pre-load" the institutions' legitimacy. If power-sharing largely addresses NIAC parties' concerns for legitimate governance, our coding would not reflect that outcome even if the UN were party or otherwise involved in the agreement.[133]

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130. Permanent Rep. of Croatia to the U.N., Letter *in* letter dated Nov. 15, 1995 from the Permanent Rep. of Croatia to the United Nations addressed to the Secretary-General, U.N. Doc. A/50/757 & S/1995/951, annex, Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium, ¶ 1–3 (Nov. 15, 1995).

131. *Id.* ("The United Nations Security Council is requested to establish a Transitional Administration, which shall govern the region during the transitional period . . . .").

132. Chelsea Johnson, *Power-Sharing, Conflict Resolution, and The Logic of Preemptive Defection*, 58 J. PEACE RSCH. 734, 734 (2021) ("While agreements to share power were relatively rare prior to 1990, more than two-thirds of settlements have entailed some form of power-sharing in the period since"); Laurie Nathan, *The International Peacekeeping Dilemma: Ousting or Including the Villains?*, 26 SWISS POL. SCI. REV. 468, 472 (2020) ("The vast majority of negotiated settlements entail power-sharing, which can take the form of political, security, territorial and other institutional arrangements."). We did not code power-sharing arrangements in our dataset, as noted previously in the text, because they are not supported by international legal principles. The PA-X dataset, which codes a much wider set of provisions, identifies 454 peace agreements (final and non-final) in intra-state conflicts since 1990 with power sharing provisions.

133. For example, the 1998 Abuja Accord for Guinea Bissau prescribed a "government of national unity," which PA-X coded as a power-sharing arrangement. However, the same agreement in our coding contains only one (of 24 possible) governance principles. *See* Permanent Rep. of Nigeria to the U.N., Letter dated Nov. 3, 1998 from the Permanent Rep. of Nigeria to the United Nations addressed to the President of the Security Council, U.N. Doc. S/1998/1028, annex, Agreement Between the Government of Guinea-Bissau and the Self-proclaimed Military Junta (Nov. 3, 1998) (1/24).

B. TRANSITIONAL JUSTICE ISSUES

What of the UN's positive association with transitional justice norms? Transitional justice is an umbrella term for mechanisms by which new regimes respond to the criminal acts of prior regimes.[134] Options range from truth commissions to commitments to prosecute at the domestic level to commitments to cooperate with international criminal tribunals.[135] The positive association with the UN is in one respect not surprising, since on one very specific aspect of transitional justice—whether peace agreements may grant amnesties for international crimes—the UNSG has instructed his mediators that "United Nations-endorsed peace agreements can never promise amnesties for genocide, war crimes, crimes against humanity or gross violations of human rights."[136] The UN has been particularly critical of amnesties where the International Criminal Court has begun an investigation.[137]

The refusal to countenance impunity for international crimes has the negative consequence of precluding amnesty provisions in peace agreements. But it also has the positive consequence of creating the need for accountability mechanisms, which can be incorporated into peace agreements. These range from simple calls for accountability to non-penal mechanisms (such as truth commissions) to specific means of facilitating prosecution. We found such mechanism in 53% of the UN-involved agreements. Among the 30 agreements associated with

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134. *See generally* Wen-Chen Chang & Yi-Li Lee, *Transitional Justice: Institutional Mechanisms and Contextual Dynamics*, *in* MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 1 (2016).

135. *See generally* Monika Nalepa, After Authoritarianism: Transitional Justice and Democratic Stability (2022); Gerhard Werle & Moritz Vormbaum, Transitional Justice: The Legal Framework (2022).

136. U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, ¶ 10, U.N. Doc. S/2004/616 (Aug. 23, 2004). Whether specific human rights and humanitarian law treaties prohibit blanket amnesties, and whether an obligation to at least investigate serious human rights violations has entered customary international law, is the subject of debate among scholars, though most agree that blanket amnesties for international crimes are prohibited. *See* Anja Seibert-Fohr, *Amnesties*, *in* MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (2018).

137. UNITED NATIONS INST. FOR TRAINING & RSCH, A MANUAL FOR UN MEDIATORS: ADVICE FROM UN REPRESENTATIVES AND ENVOYS 49 (2010) ("Where serious crimes have been committed and are under investigation by the ICC, pursuing international justice during mediation can generate considerable tension, since those being investigated or those indicted may cease cooperation and actively obstruct the process. Ignoring the administration of justice, however, leads to a culture of impunity that will undermine sustainable peace. Mediators should make the international legal obligations clear to the parties and parties should understand that, once ICC jurisdiction is established, it is essential that the Court rules on matters before it and that its independence is preserved.").

the UN, eight explicitly declare there shall be no immunity for serious crimes committed by the previous regime or during the conflict. Additionally, two agreements entail a commitment to investigate and/or prosecute individuals suspected of perpetrating serious crimes of sexual violence during the conflict, while one agreement pledges to investigate and/or prosecute those suspected of committing acts of violence against women. Sixteen agreements advocate for the establishment of institutional truth-telling mechanisms.

The UNSG's anti-amnesty position draws on a long history of the UN supporting accountability mechanisms. In the 1990s it established or help establish criminal tribunals for the former Yugoslavia, Rwanda, Cambodia, Sierra Leone, East Timor and Lebanon.[138] While the International Criminal Court (ICC) is not formally a UN body, the UN and ICC have a relationship agreement and the ICC statute provides that the Security Council can refer situations to the Court.[139] Many peacekeeping missions are mandated to help host states cooperate with ICC investigations.[140]

In an effort to centralize disparate UN accountability efforts, in 2006 the UNSG designated the UN High Commissioner for Human Rights as the focal point for UN transitional justice activities.[141] By the time a new Secretary-General issued a Guidance Note on the United Nations Approach to Transitional Justice in 2010, which declared that the "UN should consistently promote the compliance of transitional justice processes and mechanisms with international norms and standards,"[142] the organization had already integrated transitional justice into a wide variety of tasks: "United Nations rule of law and transitional justice activities include developing standards and best practices, assisting in the design and implementation of transitional justice mechanisms, providing technical, material and financial support, and promoting the inclusion of human rights and transitional

138. *See* Leila Nadya Sadat, *International Criminal Courts and Tribunals*, *in* MAX PLANCK ENCYCLOPEDIA OF INTERNATIONAL LAW 1 (2020).

139. G.A. Res. 58/318, ¶ 3 (Sept. 20, 2004); Int'l Crim. Ct., Rome Statute of the International Criminal Court art. 13(b), July 17, 1998, 2187 U.N.T.S. 90 (Court may exercise jurisdiction over a "situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations.").

140. Shilpa A. Venigandla, *Protection, Justice, and Accountability: Cooperation between the International Criminal Court and UN Peacekeeping Operations*, 5–7INT'L PEACE INST. (May 2021), https://www.ipinst.org/wp-content/uploads/2021/05/IPI-E-RPT-Protection-Justice-ICC.pdf.

141. BELL, *supra* note 17, at 182–83.

142. U.N. Secretary-General, Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice, 3, U.N. Doc. ST/SG(09)/A652 (Mar. 2010).

justice considerations in peace agreements."[143]

The UN's robust anti-amnesty position rendered its support for transitional justice mechanisms all but inevitable. That support is also consistent with the UN's overall support for liberal peacebuilding, which envisions the creation of new institutions.

V. THE PUZZLING NEGATIVE INFLUENCE OF REGIONAL ORGANIZATIONS

In contrast to the UN's positive effect on inclusion of transitional justice principles, the presence of regional organizations as a party or co-signatory to NIAC peace agreements leads to an estimated *decrease* of approximately 47% in total international law provisions and a decrease of approximately 57% in post-conflict governance provisions.[144] These are surprising results. Regional organizations are generally understood as adding critical value to peace-making efforts, either on their own or in combination with the United Nations. They are seen as better informed about crises in their region,[145] able to respond faster,[146] and possessing a greater legitimacy in the eyes of conflict parties.[147] These traits are posited as explanations for why regional and sub-regional organizations have become more active in peacemaking and peacekeeping in the 21st century.[148] The result has been a crowded field of mediators, with many peace processes staffed by a combination of UN, regional, sub-regional and non-governmental mediators.[149]

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143. *Id.*

144. *See supra* Section III(B).

145. Jori Breslawski et al., Regional Organizations and Conflict Management 2 (Oct. 6, 22022) (unpublished manuscript) (on SSRN), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4239908 (noting that regional organizations "are located in the region where a violent conflict would take place, and frequently have information about disputes earlier than other, more distant actors.").

146. Annie Wattman, With or Without a UN Mandate? Exploring the Conflict Mitigating Abilities of Non-UN Peace Operations 12 (2022) (M.A. thesis, Uppsala University) (on file with Uppsala University) ("non-UN peace operations more often deploy as 'first responders', meaning they are the first to enter a conflict or post-conflict context.").

147. Allard Durrsma observes that "African third parties are effective in mediating civil wars in Africa because of a high degree of legitimacy flowing from the African solutions norm" and his data demonstrate that African mediators outperform non-Africans in successful mediation. Allard Duursma, *African Solutions to African Challenges: The Role of Legitimacy in Mediating Civil Wars in Africa*, 74 INT'L ORG. 295, 296 (2020).

148. Magnus Lundgren, Which Type of International Organizations Can Settle Civil Wars?, 12 REV. INT'L ORGS. 613, 614 (2016).

149. Iji, *supra* note 27, at 87.

While the positive attributes of regional organizations may be evident in the aggregate, an explanation for the negative correlations in our data may lie in the *particular* regional organizations most frequently involved in peace negotiations. Of the 56 peace agreements we coded, regional organizations were parties, witnesses, mediators, or observers in 28. Of these, 75% (21/28) were African regional or sub-regional organizations (the AU, the OAU, ECOWAS, ECCAS and IGAD). The EU participated in only four agreements, none as a party. The organizational and regional dynamics responsible for large decreases in international law inclusion, in other words, are overwhelmingly African.[150]

Several facets of these organizations may help explain their negative association with international law inclusion. First, whereas the UN and EU instruct their mediators to employ international law as a framework for guiding peace negotiations, the guidelines of most African regional organizations are either equivocal on the role of international law or wholly silent. As previously discussed, in 2012 the UN instructed its mediators to conduct their work "within the framework constituted by the rules of international law that govern the given situation."[151] The European Council in 2020 stressed "the importance of supporting inclusive peace processes that comply with international law."[152] The EU specifically incorporates human rights, equality, and popular governance mechanisms into its approach to mediation.[153]

By contrast, the AU's 2014 Mediation Support Handbook does not mention international law, human rights, democracy or transitional

150. This is not by accident. "The maxim of 'African solutions to African problems' is an assertion of self-reliance, responsibility, and ownership, as well as resistance to Western interventions on the continent . . . In the realm of peace and security, it reflects a global tendency of regional organizations to play a prominent role in conflict prevention and resolution in their respective geographic domains." Laurie Nathan, *African Mediation in High-Intensity Conflict: How African?, in* ROUTLEDGE HANDBOOK OF AFRICAN PEACEBUILDING 73, 73 (Bruno Charbonneau & Maxime Ricard eds., 1st ed. 2022).

151. *United Nations Guidance for Effective Mediation*, *supra* note 107, at 16.

152. Council of the European Union, Council Conclusions on EU Peace Mediation, No. 13573/20 (Annex) ¶ 4 (2020), https://data.consilium.europa.eu/doc/document/ST-13573-2020-INIT/en/pdf.

153. General Secretariat of the Council of the European Union, Concept on EU Peace Mediation, 13951/20, at 4 (2020), https://eeas.europa.eu/sites/default/files/st13951.en20.pdf ("The EU should consistently engage on the basis of its foundational values which include respect for human dignity, freedom, democracy, the rule of law and the respect for human rights, including the rights of persons belonging to minorities as well as pluralism, non-discrimination, tolerance, justice, solidarity and gender equality.").

justice as guideposts or goals for its mediators.[154] This is puzzling, since African-wide standards on human rights and democratic governance had by then been in place for some time.[155] Instead of describing its mediation tactics as aligned with international law, the AU Handbook focuses overwhelmingly on procedure and consensus-building strategies.[156] It argues that a non-judgmental, content-neutral approach is more likely to bring warring parties to agreement:

> Since the mediator can only gain trust and credibility if the mediation effort is mainly geared towards the parties taking responsibility for their own involvement in the conflict and its potential resolution, he/she needs to work with the various parties in an even-handed manner, without condemning them. The non-condemning approach does not mean that perpetrators of human rights violations or even war crimes should not be addressed, tried and judged; yet, it is not the mediator's role to implement ethical considerations. His/her job is to focus solely on the mediation mandate and to bring the violent conflict to an end.[157]

One manifestation of this pragmatism has been a preference by African mediators for power-sharing arrangements over simple majority for winners of elections.[158] In Côte d'Ivoire in 2010, for example, an AU High Level Panel recommended a power-sharing arrangement to resolve a crisis stemming from the incumbent President, Laurent Gbagbo, refusing to concede power after losing an internationally monitored election.[159]

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154. ACCORD & AFR. UNION, AFRICAN UNION MEDIATION SUPPORT HANDBOOK 149 (2014), https://www.peaceau.org/uploads/au-mediation-support-handbook-2014-1-.pdf. The OAU, the AU's predecessor, created a Mechanism for Conflict Prevention, Management and Resolution in 1992. But it was largely tasked with conflict prevention rather than mediation or peacekeeping, "both because that role was less threatening to the sovereignty of member states and because the organization did not have the managerial or financial capability to undertake peacekeeping operations." GORDON S. BROWN & NICHOLAS COOK, THE ORGANIZATION OF AFRICAN UNITY 2, 3 (2001), https://www.everycrsreport.com/files/20010621_RS20945_d60ee4531efb49e6e3dce9ce9ded391a2cb893bd.pdf.

155. African Charter on Human and Peoples' Rights, June 27, 1981, 1520 U.N.T.S. 217; African Charter on Democracy, Elections and Governance Jan. 30, 2007, https://au.int/sites/default/files/treaties/36384-treaty-african-charter-on-democracy-and-governance.pdf. The AU's commitment to electoral integrity appeared particularly robust. Laurie Nathan reports that the AU imposed sanctions in 73% of coups occurring in its member states from 2003-2017. Nathan, *African Mediation in High-Intensity Conflict: How African?*, *supra* note 150, at 76.

156. Nathan, *African Mediation in High-Intensity Conflict: How African?*, *supra* note 150.

157. *Id*. at 83.

158. *Id.* at 79–80.

159. Laurie Nathan, The International Peacemaking Dilemma: Ousting or

The AU's pragmatism is critical to understanding the lack of incorporation by African regional organizations, since it was a party to or otherwise participated in *all* the African peace agreements in our dataset. Other African organizations participated in only a few conflicts – ECOWAS (4), ECCAS (1) and IGAD (1) – but always alongside the AU. The AU's leading rule is important, since the other organizations have varied approaches. ECOWAS mediation guidelines directly incorporate international law principles, including those related to transitional justice and inclusive post-conflict governance.[160] Clearly those guidelines, which resemble UN and EU approaches more than they do the AU's, had little impact on peace processes, since African peace agreements in our dataset had an insubstantial rate of international law incorporation. ECCAS had only a marginal role in the one peace process in which it was involved (the Central African Republic).[161] While IGAD nominally organized and took the lead in the 2005 Sudan peace process, "it had the least influence on the mediation of any of the groups" involved.[162] In sum, none of these other three African groups was positioned to counteract the AU' as the dominant regional player, and thus to counteract its lack of a mandate to promote inclusion of international law principles.

A second explanation for the negative association is a relative lack of resources on the part of the African Union. In 2014, toward the end of our dataset's timeline, Paul Williams and Arthur Boutellis reported a vast disparity in peacemaking and peacekeeping resources between the AU and UN.[163] In missions where both participated there

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Including the Villains?, 26 SWISS POL. SCI. REV. 468, 473–74 (2020).

160. *See* ECOWAS COMMISSION, ECOWAS MEDIATION GUIDELINES 57 (2018) ("[T]he ECOWAS Mediator must contribute to the promotion and consolidation of democratic governments and institutions, good governance and the rule of law, the protection of fundamental human rights and freedoms and the rule of international humanitarian law; and sustainable development").

161. ECCAS was one of eight "international partners" of the Central African Republic in negotiating the 2015 Republican Pact for Peace, National Reconciliation and Reconstruction in the Central African Republic. U.N. Secretary-General, *Report of the Secretary-General on the Situation in the Central African Republic*, ¶ 4, U.N. Doc. S/2015/576 (June 29, 2015).

162. John Young, *Sudan IGAD Peace Process: An Evaluation*, SUDAN TRIB., May 30, 2007, at 39, https://sudantribune.com/wp-content/uploads/2008/01/pdf_Igad_in_Sudan_Peace_Process.pdf.

163. Paul D. Williams & Arthur Boutellis, *Partnership Peacekeeping: Challenge and Opportunities in the United Nations—African Union Relationship*, 113 AFR. AFFS. 254, 277 (2014) ("While the UN Department of Peacekeeping Operations is over 20 years old, can draw on over 60 years of peacekeeping experience, regularly manages over 100,000 uniformed and civilian personnel in the field, and has a budget of over $7 billion per year, the AU is just over a decade old, has virtually no dedicated peace operations budget and limited headquarters, planning, and logistics capacities.").

was an "unequal relationship" reflecting "the UN's greater ability to maintain institutional knowledge and information management tools."[164] The AU did not have a focal point for conflict mediation until 2019, when it created a Mediation Support Unit. As of 2020 the Unit had just five staff members. Only at this point could the AU begin training its mediators, including passing along lessons learned from prior ad hoc missions.[165] Under-resourced and less experienced mediators are less likely to find points of common agreement in complex conflicts.[166] If this is true generally, then it is not surprising that AU mediators are less successful in brokering agreements that incorporate principles the conflict parties often see as unnecessary or flatly oppose.[167] In the Côte D'Ivoire (2010-11) and Libyan (2011) peace processes, for example, AU mediators sought to subordinate norms of justice, accountability and democratization to peace and security interests, while UN mediators in the same conflicts "argued that peace, security and democratization were unattainable for as long as the villains held power."[168]

VI. CONFLICT CHARACTERISTICS AND INTERNATIONAL LAW INCLUSION

Quite apart from the question of whether third parties influence the inclusion of international law principles, we also hypothesized that longer conflicts (H3), more deadly conflicts (H4 and 5) and conflicts over governance as opposed to territory (H6) might involve higher rates of inclusion. While previous studies have considered the role of conflict characteristics on the likelihood of mediation,[169] to the

164. *Id*. at 278.

165. MANUEL BUSTAMANTE & GUSTAVO DE CARVALHO, THE AU AND THE DRIVE FOR MEDIATION SUPPORT 5–6 (2020), https://trainingforpeace.org/wp-content/uploads/AUMSU_Report_TfP_v5.pdf.

166. Laurie Nathan, *Mediation in African Conflicts: The Gap Between Mandate and Capacity*, 10 (Afr. Mediators' Retreat, 2007), https://hdcentre.org/insights/mediation-in-african-conflicts-the-gap-between-mandate-and-capacity/ ("Mediators who are skilled and experienced will not be successful in every instance, but they are more likely to succeed than inexperienced mediators. They are more familiar with mediation strategies and tactics, giving them a wider range of options and tools, and they are less likely to make mistakes.").

167. BARNEY AFAKO, A FIELD OF DILEMMAS: MANAGING TRANSITIONAL JUSTICE IN PEACE PROCESSES 1, 13 (2022), https://www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/SG-GuidanceNote-Brief-Field-Dilemmas-digital.pdf.

168. Nathan, *The International Peacemaking Dilemma: Ousting or Including the Villains?*, *supra* note 159, at 480.

169. See generally Jacob Bercovitch & Scott Sigmund Gartner, Is There a Method in

authors' knowledge this is the first analysis of how those characteristics impact the inclusion or exclusion of international law principles in peace agreements. After controlling for the inclusion of any third actor involvement or party to agreements, our analysis revealed that longer wars are more likely to exhibit an increase in international law principles in associated peace agreements. The average length of a NIAC in this study is approximately 18 years, with the most extended conflict spanning 52 years (the Colombia Civil War from 1964 to 2016) and incorporating 28 out of 30 international law principles. Prolonged conflicts are expected to attract heightened international attention and become focal points for mediation endeavors.[170] Moreover, protracted conflicts could reflect a complex tapestry of multiple stakeholders, including international actors, vested interests, and unresolved grievances among the parties engaged in hostilities.[171] In such situations, international law may serve as a structured framework to navigate the multifaceted challenges and power dynamics inherent in conflict resolution efforts.

Importantly, although the coefficient associated with conflict duration yielded positive values across all models, its statistical significance materialized specifically when examining transitional justice principles. This subset of principles encompasses vital aspects such as amnesty, accountability, respect for human rights, and mechanisms for truth-telling. For belligerents and the affected populations, these transitional justice mechanisms hold profound implications. They may be perceived as instrumental tools to mitigate the likelihood of a resumption of hostilities by offering avenues for reparation, reconciliation, and redress. As such, the integration of these principles into peace agreements is likely perceived as a strategic step toward fostering lasting stability and preventing the recurrence of violence for a population that has known little peace for potentially decades.

Conversely, we found that other conflict dynamics yield an opposing effect. Specifically, our analysis highlighted that NIACs

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the Madness of Mediation? Some Lessons for Mediators from Quantitative Studies of Mediation, 32 INT'L INTERACTIONS 329 (2006); Kyle Beardsley et al., Mediation Style and Crisis Outcomes, 50 J. CONFLICT RESOL. 58 (2006); Michael Greig, Stepping Into the Fray: When do Mediators Mediate?, 49 AM. J. POL. SCI. 249 (2005); Michael Greig, Moments of Opportunity: Recognizing Conditions of Ripeness for International Mediation between Enduring Rivals, 45 J. CONFLICT RESOL. 691 (2001); Karl DeRouen et al., Introducing the Civil Wars Mediation (CWM) Dataset, 48 J. PEACE RSCH. 663 (2011).

170. Greig, Stepping Into the Fray: When do Mediators Mediate?, supra note 169, at 251–52; Greig, Moments of Opportunity: Recognizing Conditions of Ripeness for International Mediation between Enduring Rivals, supra note 169, at 694.

171. DeRouen et al., *supra* note 169, at 670.

marked by elevated fatality rates in the final year of hostilities and conflicts revolving around territorial disputes demonstrated a diminished propensity to integrate international law principles into their peace agreements, particularly those related to post-conflict legal and political order provisions. This finding may reflect that parties embroiled in conflicts with higher fatalities might be compelled by a sense of urgency to expedite conflict resolution over the inclusion of comprehensive international legal provisions.[172]

Our findings indicate that conflicts centering around territorial issues display a similar pattern. This trend may simply reflect that there are more international law norms on governance than on territory. Previous studies have shown that NIACs over issues of territorial claims are more likely to attract international mediation.[173] However, given the entrenched nature of territorial claims, parties might perceive the adoption of international law principles into a treaty or agreement as a potential risk to the perceived legitimacy of respective claims over territory, particularly when the agreement is viewed as suboptimal by either party.[174] Additionally, the notion of external arbitration arising from the integration of international law might be viewed as an affront to national sovereignty, rendering its adoption politically unpalatable.

VII. CONCLUSIONS

Asking whether NIAC peace agreements qualify as binding treaties is not a useful way to assess their relation to international law. None of the agreements has been registered with the United Nations as a "treaty" and other authoritative sources are either divided on the question of bindingness or simply unclear. International lawyers have an understandable impulse to join agreements structured like treaties and filled with the language of obligation to a familiar legal category. But the weak source material will not bear the weight of this effort.

Equating NIAC agreements with their clearly binding IAC brethren, moreover, promises few concrete benefits. Binding NIAC agreements would not lead to more adjudication of disputes over compliance, since no standing international court has jurisdiction to

172. *Id*. at 678.

173. *Id*. at 668.

174. James D. Fearon, Why Do Some Civil Wars Last So Much Longer than Others?, 41 J. PEACE RSCH. 275, 297–98 (2004); Monica Duffy Toft, Issue Indivisibility and Time Horizons as Rationalist Explanations for War, 15 SEC. STUD. 34,34, 65 (2006); Govinda Clayton, Relative Rebel Strength and the Onset and Outcome of Civil War Mediation, 50 J. PEACE RSCH. 609, 610–11 (2013).

hear cases involving non-state rebel groups.[175] Because the parties cannot be told with assurance they are signing binding treaties, the legitimacy and "compliance-pull" that some scholars argue follows on the conclusion of binding inter-state agreements cannot be ascribed to NIAC agreements.[176] A claim of bindingness is also unlikely to lead the UN Security Council – the one international body that regularly engages with NIACs using tangible carrots and sticks – to regard the agreements as more legitimate or worthy of enforcement. The Security Council already endorses and supports the vast majority of NIAC agreements, effectively treating them as binding.[177] The Council is absent only from conflicts that divide the permanent members, and the reasons for those divisions are wholly unrelated to the agreements' legal status. Finally, there is little in the substantial literature on incentives operating in NIAC peace negotiations to suggest that parties will be more likely to reach agreement and support implementation efforts if the instruments are understood as binding treaties (likely because no one involved in the negotiations has ever made this claim).

We thus abandoned the binding/non-binding framework in order to explore a more fruitful mode of interaction: the extent to which international legal principles have become incorporated into the agreements. Using a new dataset, we found that virtually all final peace agreements from 1990 to 2017 incorporated international law principles on governance and transitional justice, though the levels of incorporation varied widely. The disaggregation of the data on incorporation into distinct categories of transitional justice and the post-conflict legal and political order provided a new perspective on NIAC peace negotiations. By isolating these categories, the analysis enables a more nuanced examination of the specific legal principles embedded in the accords. We found that when the UN was a mediator,

175. The Statute of the International Court of Justice, for example, provides that "[o]nly states may be parties in cases before the Court." Statute of the International Court of Justice art 34(1), June 26, 1945, 59 Stat. 1055, T.S. No. 993. Human rights bodies can hear only claims of individuals against states. For a discussion of international courts and tribunals with jurisdiction to hear claims by non-state actors—none of which include rebel groups—see Francisco Orrego Vicua, *Individuals and Non-State Entities before International Courts and Tribunals*, 5 Max Planck Y.B. U.N.L. 53, 58 (2001).

176. The idea of compliance pull is central to Thomas Franck's conception of the legitimacy of international rules. *See* THOMAS M. FRANCK, THE POWER OF LEGITIMACY AMONG NATIONS 25 (1990). For the argument that binding inter-state agreements induce more compliance than non-binding agreements, *see* Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT'L ORG. 421, 421–22 (2000).

177. Fox et al., *supra* note 33, at 663–64.

witness or observer, rates of incorporation rose for transitional justice but not governance principles. We found further that when a regional organization was involved—more specifically, the African Union, which was by far the most frequent regional IO in our dataset—there was an associated decrease in incorporation of both types of norms. We argue that the substantial difference between UN and regional rates of incorporation is likely due to the differing levels of commitment to international law as a framework for peace negotiations.

This indirect form of influence obviously does not offer a comprehensive theory of the agreements' legal status and operation. It is not equivalent to the law of treaties in providing a catalogue of rules on "how, when, where and between whom [treaties] should apply; how they can be terminated or suspended (if at all); what happens if they are breached; whether they survive the demise of their parties, and much more."[178] Absent such an all-encompassing regulatory function, how should we conceive of international law's more modest role of influencing the substance of NIAC agreements? Future scholarship might well explore at least three possibilities.

First, the appearance of international law principles in the agreements without any direct compulsion from authoritative institutions echoes the theory of bargaining "in the shadow of the law."[179] In domestic legal systems, agreements between private parties reached without formal adjudication or regulatory compulsion nonetheless often follow the contours of relevant law. This is because the parties understand that if they demand a right or obligation the law does not support, the other party can simply abandon negotiations and resort to the courts or alert regulators. This threat of compulsory resolution ensures the parties' adherence to applicable legal rules despite the absence of actual adjudication or regulatory intervention. The role of law in such circumstances is not to impose "order from above" but rather to provide "a framework within which" parties can determine their rights and responsibilities.[180]

Obviously, no international court or other institution poses a comparable threat of compelling NIAC parties to incorporate international norms in peace agreements. But that does not mean

178. Christian J. Tams et al., *Introduction*, *in* RESEARCH HANDBOOK ON THE LAW OF TREATIES, at x, xi (Christian J. Tams et al. eds., 2014).

179. *See* Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950, 997 (1979); Herbert Jacob, *The Elusive Shadow of the Law*, 26 L. & SOC. REV. 565, 565 (1992).

180. Mnookin & Kornhauser, *supra* note 179, at 950.

rejecting norms is cost-free. International law may cast a dimmer but still discernable shadow. The UN, whose presence we have shown increases certain types of norm inclusion, may refuse to endorse or help implement the agreement, as it has done for those providing amnesty for international crimes. International organizations dedicated to norm promotion may abandon negotiations altogether if the parties insist on terms that would be unacceptable to their members or core mission.[181] The incentives created by a looming withdrawal of vital multilateral assistance can represent a version of the law's shadow, as the alternative to a peace agreement consistent with international law would involve a much worse outcome for the party resisting norm inclusion.[182]

Second, the positive association of a UN presence with transitional justice principles suggests that international law shapes agreements to the extent a third party uniquely committed to those principles participates in negotiations. This actor-based perspective merges the argument made in the prior article -- that international organizations are both creatures and proponents of international law -- with this article's empirical findings that a UN presence is positively associated with internationalizing the substance of NIAC agreements. In other words, the latter is more likely because of the former. This perspective would cast the UN in a promotional role as a "norm entrepreneur" or "norm diffuser."[183] Much of the literature on actors engaging in norm promotion has focused on their effect on states.[184] Norm promotion for NIAC peace agreements would expand this conception to non-state parties to the agreements.

Third, the appeal of international law principles to NIAC parties may be conceived as a question of perceived legitimacy. As we have

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181. The United Nations Special Envoy ceased involvement in negotiations between Kosovo and Serbia after concluding parties would not agree on his plan that would have given Kosovo "a constitution enshrining the needed principles, to protect the rights of all communities, including culture, language, education, and symbols, as well granting specific representation for non-Albanians in key public institutions and requiring that certain laws may only be enacted if a majority of the Kosovo non-Albanian legislative members agree." United Nations, *Kosovo: declaring end to future status talks, UN envoy to present 'realistic compromise*, U.N. NEWS (Mar. 12, 2007), https://news.un.org/en/story/2007/03/211642.

182. A further wrinkle to be explored is whether the presence of the UN or other third-party mediators does in fact involve a form of compulsion. This would distinguish NIAC negotiations from the purely bilateral and private negotiations usually discussed in the shadow of the law literature.

183. See Susan Park, Theorizing Norm Diffusion Within International Organizations, 43 INT'L POL. 342, 343–45, 349 (2006); Jonas Tallberg et al., Why International Organizations Commit to Liberal Norms, 64 INT'L STUD. Q. 626 (2020).

184. *See, e.g.*, Park, *supra* note 183, at 345.

discussed, little turns on whether NIAC agreements can be classified as treaties. For this reason, bindingness is unlikely to enhance the appeal of a peace agreement. The critical question for peace negotiations is thus whether other aspects of the process, including third party involvement and an instrument's substance, may enhance the agreements' attractiveness to the parties. In his study of legitimacy and international law, Thomas Franck addressed the similar (and perennial) question of whether international law is really "law" in the classic positivist sense. Franck argued that those who argue international law fits the traditional criteria of "law" miss the essential point that it may induce compliance even *without* meeting those criteria:

> Those who see international 'law' as just another legal system severely discount one of the most extraordinary things about the international system . . . which is the occurrence of a not inconsequential amount of habitual state obedience to rules and acceptance of obligations despite the underdeveloped condition of the system's structures, processes, and, of course, enforcement mechanisms. Notwithstanding these shortcomings, most states much of the time act in conformity with a quite sophisticated set of international rules. Surely it is more useful to examine why these unenforced rules, which are not sovereign commands, are so often obeyed (and, by contrast, why some are not obeyed) than to deploy fictions in an effort to make reality out of what, at most, is a dysfunctional, or misleading, metaphor.[185]

So here, the more useful question may be whether NIAC agreements with higher international law incorporation are perceived as more legitimate, and thus, in Franck's language, exert a greater "compliance pull" on the parties.[186] This would require investigating the relation, if any, between norm incorporation and party compliance with agreements. The purported shortcomings of the incorporation perspective – that it cannot replicate the comprehensive regulatory role of treaty law --- might be wholly irrelevant to such a legitimacy inquiry.

Each of these theories needs further investigation and elaboration. But at this early stage one can certainly identify their fragility. Each relies on the UN and perhaps other international organizations serving as credible and trusted third parties, demonstrably dedicated to transitional justice norms and, secondarily, norms of governance. But the UN may be trending away

185. FRANCK, *supra* note 176, at 33–34.
186. *Id*. at 25–26.

from such a role. Today, the Security Council is deadlocked on the world's most high-profile conflicts with some permanent members explicitly rejecting the liberal model of peacebuilding that guided almost all prior interventions. Moreover, there were only two final NIAC peace agreements and 49 total agreements from 2020-2023. As Table 4 shows, this contrasts to 10 final and 128 total from 2015-2020 and even higher numbers from earlier periods in the post-Cold War era. This decrease is not necessarily indicative of UN failure; it could result from the successful resolution of NIACs in earlier periods or a decrease in the number of new conflicts. But if the slow-down is due to UN reluctance to serve as a reliable advocate for the norms incorporated into peace agreements up to 2017—the year our dataset ends—then any of these theoretical conceptions of norm incorporation will face a real and perhaps existential challenge.

Table 4: Peace Agreements 1990-2024[187]

Years	Total Peace Agreements	Full Peace Agreements
1990-1994	300	21
1995-1999	270	9
2000-2004	228	17
2005-2009	180	16
2010-2014	172	9
2015-2019	128	10
2020-2024	49	2
Total:	1327	84

187. PA-X Analytics Peace and Transition Process Data, supra note 5.

VIII. APPENDIX ON METHODOLOGY

Peace Agreements and the Persuasive Authority of International Law

Gregory H. Fox & Timothy Jones

1. Peace Agreement Selection

We compiled a comprehensive list of agreements from the UCDP Peace Agreement Dataset spanning the period between 1991 and 2017.[188] These are listed in **Table A-1**. Our selection was confined to agreements deemed "full," indicating an attempt by belligerents to address all dimensions of the conflict. We also confined our selection to agreements that resolved conflicts characterized by the UCDP as internal (involving the incumbent government and one or more rebel groups) or internationalized internal (involving the incumbent government, one or more rebel groups, and either side receiving troop support from another government).[189] Applying these criteria, we examined a total of 56 NIAC peace agreements concluded between 1991 and 2017.[190]

Some full agreements incorporate prior agreements by reference. When that occurred, we treated both the final and incorporated agreements as a single final agreement and coded the provisions of both. If the UCDP listed a peace agreement as "full," we coded it separately, regardless of whether a later agreement incorporated the agreement by reference. However, if a prior agreement was not on our list but is incorporated by reference, then we treated as incorporated and coded it as part of the later agreement. This allowed us to code all the obligations represented by a particular agreement. In order to incorporate a prior agreement by reference, a final agreement must do more than simply note the prior agreement's existence. It must, at a minimum, reaffirm that the parties are bound

188. *See supra* note 53. The UCDP dataset can be found at https://ucdp.uu.se/downloads/index.html#peaceagreement. The full text of virtually all the coded peace agreements can be found on the Peace Agreements X website: https://www.peaceagreements.org/search.

189. *See supra* note 53; *see* Gleditsch, *supra* note 54. *UCDP/PRIO Armed Conflict Dataset Codebook v 21.1.*, UPPSALA CONFLICT DATA PROGRAM, https://ucdp.uu.se/downloads/olddw.html (last visited Oct. 11, 2024); *see supra* Figure 1: NIAC Peace Agreement Dataset (1991–2017).

190. Despite a diligent search, we could not locate the full text of two agreements concerning Chad that met our selection criteria.

by its terms.

Table A-1 - List of Coded Peace Agreements

Year	Country	Agreement
1991	Colombia	Framework for a Comprehensive Politic (The Paris Agreement)
1991	Colombia	Acuerdo Final entre el Gobierno Nacional y el Ejercito Popular de Liberacion (EPL)
1992	El Salvador	Chapultepec Peace Agreement
1992	Mali	Pacte National conclu entre le Gouvernement de la République du Mali et les mouvements et fronts unifiés de l'Azawad consacrant le statut particulier du Nord au Mali
1992	Mozambique	General Peace Agreement for Mozambique
1993	South Africa	Interim Constitution
1993	India	Memorandum of settlement and Bodoland Autonomous council act, 1993
1993	India	Memorandum of Settlement - 23 August 1993
1993	Rwanda	Peace Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front
1993	Yugoslavia	The Vance-Owen Plan
1994	Djibouti	Peace and National Reconciliation Agreement
1994	Angola	Lusaka Protocol
1995	Niger	Agreement establishing permanent peace between the government of Niger and ORA
1995	Croatia	Erdut Agreement
1995	Bosnia and Herzegovina	Dayton Agreement
1996	Guatemala	Agreement on firm and lasting peace

1996	Sierra Leone	Peace Agreement between the Government of the Republic of Sierra Leone and the RUF/SL (Abidjan Peace Agreement)
1996	Philippines	Final agreement on the implementation of the 1976 Tripoli Agreement between the Government of the Republic of the Philippines (GRP) and the Moro National Liberation Front (MNLF)
1997	Bangladesh	Chittagong Hill Tracts Peace Accords
1997	Tajikistan	The Moscow Declaration
1998	United Kingdom	Good Friday Agreement
1998	Guinea-Bissau	Agreement between the Government of Guinea Bissau and the Self-proclaimed Military Junta (Abuja Peace Agreement)
1999	Sierra Leone	Peace Agreement between the Government of Sierra Leone and the RUF
2000	Djibouti	Accord cadre de Reforme et de Concorde Civile
2000	Burundi	Arusha Peace and Reconciliation Agreement for Burundi
2000	Sierra Leone	Agreement of Ceasefire and Cessation of Hostilities between the Sierra Leone Government and the Revolutionary United Front (RUF)
2001	Papua New Guinea	Bougainville Peace Agreement
2001	Djibouti	Accord de Reforme et de Concorde Civile
2001	Macedonia	The Ohrid Agreement
2002	Angola	Memorandum of Understanding (Luena Agreement)
2002	Democratic Republic of Congo	Global and Inclusive Agreement on Transition

2003	Liberia	Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy (LURD), the Movement of Democracy in Liberia (MODEL) and the Political Parties (Includes Ceasefire and Cessation of hostilities agreement)
2003	Comoros	Accord sur les dispositions transitoires aux Comores (Accord de Maroni)
2003	Democratic Republic of Congo	Inter-Congolese Political Negotiations - The Final Act
2003	Burundi	Global Ceasefire Agreement
2004	Cote d'Ivoire	Accra III
2005	Indonesia	Memorandum of understanding between the government of the Republic of Indonesia and the free Aceh Movement
2005	Sudan	Agreement between the GoS and the NDA (Cairo Agreement)
2005	Sudan	Comprehensive Peace Agreement between the Government of Sudan and the SPLM/SPLA
2005	Cote d'Ivoire	Pretoria Agreement on the peace Accords in Cote D' Ivoire (Pretoria I)
2006	Chad	Peace Agreement between the Chadian Republic and the United Front for Democratic Change (FUC)
2006	Nepal	Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal (Maoist)
2007	Cote d'Ivoire	Accord Politique de Ouagadougou/ Ouagadougou Political agreement
2008	Burundi	Declaration du sommet des chefs d'etats et de gouvernements de l'initiative regionale sur le processus de paix au Burundi

2009	Democratic Republic of Congo	Peace Agreement Between the Government and Le Congres National Pour La Defense du Peuple (CNDP)
2012	South Sudan	Agreement between the Government of the Republic of South Sudan (GRSS) and the South Sudan Democratic Movement/Army (SSDM/A)
2012	Central African Republic	Acte d'Adhésion de la Convention des Patriotes pour la Justice et la Paix (CPJP) à l'Accord de Paix Global de Libreville
2013	Mali	Declaration of Adherence to the Preliminary Agreement for the presidential election and inclusive peace negotiations in Mali
2014	Philippines	Comprehensive Agreement on the Bangsamoro
2014	South Sudan	Agreement on the Resolution of the Conflict in Jonglei state
2015	Mali	Accord Pour la Paix et la Reconciliation au Mali - Issu du Processus d'Alger
2015	South Sudan	Agreement on the Resolution of the Conflict in the Republic of South Sudan
2015	Central African Republic	Republican Pact for Peace, National Reconciliation, and Reconstruction in the Central African Republic
2016	Colombia	Final Agreement To End The Armed Conflict And Build A Stable And Lasting Peace
2016	Afghanistan	Kabul Agreement
2017	Central African Republic	Political Agreement for Peace in the Central African Republic

2. Peace Agreement Coding

We coded a total of 57 variables across 56 NIAC peace agreements. These variables are listed in the Coding Manual reproduced below. We coded Variables 1- 41 based on the text of the peace agreement. These variables fall into three broad categories: nature of the agreement (1-10), transitional justice (11-15), and the state's post-conflict legal and political order (16-41). The fourth category of indicators are Security Council Actions related to the Agreement (indicators 42-57). Variables 42-52 are related to Security Council actions taken up to one year prior to the signing of the agreement. Variables 53-57 relate to actions taken by the Security Council up to three months after the signing of the agreement. The international law variables tested (11-41) are based on widely agreed principles, embodied primarily in multilateral treaties but in some cases derived from customary international law and codified by international bodies. The international legal origins of these principles are set out in **Table A.2**.

Table A-2 – International Law Origins of Coded Principles

Coding Variable	Issue	International Law Source	Specific Reference
11	Amnesty	UN High Commissioner for Human Rights, Rule-Of-Law Tools For Post-Conflict States	p. 11 ff
12	Amnesty	UN High Commissioner for Human Rights, Rule-Of-Law Tools For Post-Conflict States	p.11 ff
13	Gender-based violence	UN DPKO Guidance: Addressing Conflict-Related Sexual Violence in Ceasefire and	pp. 6-9

		Peace Agreements	
14	Gender-based violence	UN DPKO Guidance: Addressing Conflict-Related Sexual Violence in Ceasefire and Peace Agreements	pp. 6-9
15	Truth-telling mechanism	Guidance Note Of The Secretary-General, United Nations Approach to Transitional Justice	pp. 2-3
16	Popular Elections	International Covenant on Civil and Political Rights	Article 25
17	Election Procedures	International Covenant on Civil and Political Rights	Article 25
18	Eligibility to Vote	International Covenant on Civil and Political Rights	Article 25
19	Candidate eligibility	International Covenant on Civil and Political Rights	Article 25
20	Women's participation in Government	Convention on the Elimination of All Forms of Discrimination Against Women	Article 7
21	Human Rights generally	Universal Declaration of Human Rights	All articles
22	Equal treatment	International	Article 2

	and non-discrimination	Covenant on Civil and Political Rights	
23	Women's rights	Convention on the Elimination of All Forms of Discrimination Against Women	All articles
24	Children's rights	Convention on the Rights of the Child	All articles
25	Prohibition on torture	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	All articles
26	Prohibition on prolonged, arbitrary detention	International Covenant on Civil and Political Rights	Article 9
27	Principles of fair trial and due process	International Covenant on Civil and Political Rights	Article 9
28	Freedoms of speech, the press and expression	International Covenant on Civil and Political Rights	Article 19
29	Freedoms of assembly and association	International Covenant on Civil and Political Rights	Articles 21 & 22
30	Sanctity of existing borders	International Court of Justice, Burkina Faso/Mali Case	p. 568
31	Anti-corruption principles	UN Convention Against Corruption	All articles
32	Judicial independence	United Nations Basic Principles	All articles

		on the Independence of the Judiciary	
33	Rule of Law	Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels	Entire declaration
34	Economic and Social Rights	International Covenant on Economic, Social and Cultural Rights	All articles
35	Right to Health	International Covenant on Economic, Social and Cultural Rights	Article 12
36	Right to Adequate Housing	International Covenant on Economic, Social and Cultural Rights	Article 11
37	Right to Education	International Covenant on Economic, Social and Cultural Rights	Article 13
38	Workers'/Labor Rights	International Covenant on Economic, Social and Cultural Rights	Article 7
39	Environmental Protection	Rio Declaration on Environment and Development	All principles
40	Funding Terrorist Groups	International Convention for the Suppression of the Financing	Entire Convention

		of Terrorism	
41	Supremacy of International Law	Vienna Convention on the Law of Treaties; International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts	Vienna Convention, article 27; State Responsibility articles, article 32

We completed coding the peace agreements over a period of several months and followed up with our coders to re-code or revise coding that contained errors. Our primary working language is English, so we hired a law student fluent in French and English to code a small set of agreements available only in French (in Mali, Djibouti, and the Central African Republic). We could not find texts for some of the agreements listed in UCDP that met our criteria.[191]

We coded the entire text of the peace agreements, including the preambular and operative sections.

Coding Manual

Definition of terms used throughout coding:

A. *Peace Agreement* – A final agreement to end a conflict. The agreement could be embodied in a single document or in several documents if prior documents are incorporated by reference in the last document in the sequence.

B. *Party or Parties* – Groups, governments, states or international organizations that have signed a peace agreements and incurred obligations under that agreement.

C. *Witness* – Groups, governments, states or international organizations that have signed a peace agreement and are designated as a "witness" by that agreement. Witnesses do not

191. The missing agreements are the Peace Agreement Between the Government of the Republic of Chad and the Movement for Democracy and Justice in Chad (MDJT) (Tripoli Agreement) (2002), and the Yebibou Agreement (2005). The agreement texts are not included in any of the major peace treaty databases. We did not receive responses from inquiries to the states concerned.

incur obligations under the agreement they sign.

D. *Mediator* – Groups, governments, states, or international organizations that convene, facilitate, or otherwise assist in the negotiation of a peace agreement. Mediators do not incur obligations under peace agreements.

E. *Conflict* – An armed conflict that immediately preceded a peace agreement and is ended by a peace agreement.

F. *Serious crimes* - Genocide, torture, crimes against humanity, and war crimes.

G. *Investigate and Prosecute* – this includes all commitments to address past serious crimes, for example a commitment to seek justice.

Coding Categories and Variables Explained:

I. THE AGREEMENT AND ITS PARTIES

A. NATURE OF THE AGREEMENT AND ITS PARTICIPANTS (1-10)

This section concerns the structure of the peace agreement, the parties that acquire obligations under its terms, and others who have participated in its negotiation or execution.

1. Is the agreement the sole document embodying the peace accords? Some agreements embody the entirety of all obligations undertaken between the parties. But other agreements refer to prior accords or agreements between the parties and incorporate them by reference. In order to incorporate a prior agreement by reference, a final agreement must do more than simply note the prior agreement's existence. It must, at a minimum, reaffirm that the parties are bound by its terms. If that is the case, then this element is fulfilled.

2. Governmental parties to the agreement? Is at least one government of a state[192] party to the agreement?

192. This would include transitional governments.

3. Non-governmental parties to the agreement? Is at least one non-government party to the agreement? The most prominent example is a rebel group.

4. United Nations party to the agreement? Is the United Nations a party or co-signatory to the agreement? The person signing may be a Special Representative of the Secretary-General or other UN official. Note: this element involves the UN as a signatory party, meaning it undertakes obligations under the agreement. The UN as an observer or witness is covered by item 5.

5. United Nations as observer, witness or mediator. Does the United Nations sign the agreement as an observer, witness or mediator? Note: this is in contrast to the UN as a party in item 4 above.

6. Regional organization party to the agreement? Is a regional organization a party to the agreement? A regional organization is an international organization with member states in a particular region of the world. Note: this element involves a regional organization as a signatory party, meaning it undertakes obligations under the agreement. The regional organization as an observer or witness is covered by item 7.

7. Regional organization as observer, witness or mediator? Does the regional organization sign the agreement as an observer, witness or mediator? Note: this is in contrast to the regional organization as a party in item 6 above.

8. Other state as observer, witness or mediator? Does another state – that is, a state other than the one in which the conflict takes place – sign the agreement as an observer, witness or mediator?

9. Other parties to the agreement? Are there other individuals or entities signing the agreement as parties besides those covered in items 2-8 above? Examples of such other parties would be prominent individuals and non-governmental organizations.

10. Other individuals or entities as observers, witnesses or mediators? Are there other individuals or entities other than those covered in items 2-8 above who, sign the

agreement as observers, witnesses or mediators? Examples of such other observers, witnesses, or mediators would be prominent individuals and non-governmental organizations.

II. TRANSITIONAL JUSTICE (11-15)

B. AMNESTY AND IMPUNITY

This section concerns how the peace agreement addresses (or does not address) serious crimes committed during the conflict. Because international law, at most, prohibits amnesties for "serious crimes" (i.e. genocide, torture, crimes against humanity, and war crimes) we limit our inquiry to amnesty or anti-impunity provisions related to those crimes.

11. Does the agreement state in general terms that there shall be no immunity for serious crimes committed during the conflict or by prior regimes? Does the agreement state that those who may have committed serious crimes during the conflict shall not be immune from prosecution? It may say there shall be no impunity with no more detail than that. Or it may describe which categories of individuals, specific individuals, or groups of individuals who shall be susceptible to prosecution for their past crimes. The statement may be in positive terms (individuals shall be prosecuted) or in negative terms (individuals shall not be immune from prosecution). Statements of no immunity for crimes committed during the conflict are distinct from immunity for individuals acting at other times.

12. Does the agreement grant amnesty to individuals or groups of individuals for serious crimes committed during the conflict, or allow for the granting of such amnesties in the future? The amnesty can be phrased in general terms or it can be related to specific crimes or categories of crimes. (Do not code for Amnesties for non-serious crimes such as economic or political crimes).

13. Is there a commitment to investigate and/or prosecute those suspected of committing serious crimes of sexual violence during the conflict? Does the agreement speak specifically to investigating the commission of crimes of sexual violence during the conflict? The statement may be

in general terms, or it may relate to specific individuals or categories of individuals.

14. Is there a commitment to investigate and/or prosecute those suspected of committing acts of violence against women or gender-based crimes during the conflict? Such acts and crimes include forced marriage and trafficking.

C. ACCOUNTABILITY

This section concerns mechanisms created by the agreement to document human rights violations occurring prior to the agreement.

15. Does the agreement call for institutional truth-telling mechanisms that address human rights violations committed during the conflict or by prior regimes? These mechanisms could include truth commissions, reports, investigations or mechanisms allowing individual victims to tell their stories. The mechanisms should not include prosecutions. The agreement must refer to the creation of a specific institution created by the state or another entity.

III. THE STATE'S POST-CONFLICT LEGAL AND POLITICAL ORDER (16-41)

D. POLITICAL PARTICIPATION

This section concerns democratic institutions that a peace agreement prescribes for the post-conflict state. The primary focus is on elections and their administration but other means of political participation are also included.

16. The agreement calls for popular elections. The peace agreement must refer explicitly to the use of popular elections to select leaders.

17. The agreement describes specific procedures for popular elections. These could include a secret ballot, a procedure for tabulating ballots, mechanisms to ensure the integrity of ballot boxes and/or electronic voting machines and rights of candidates and parties. The procedures must apply to all elections at every level of government. The

creation of a central electoral authority, commission, or other oversight body should be coded affirmatively. Monitoring of elections by outside observers is not included in this category.

18. The agreement speaks to eligibility to vote in elections. The statement may be quite general, such as declaring that all citizens have the right to vote in elections. Or it may address specific groups of voters, for example, women.

19. The agreement speaks to who is eligible to run as a candidate in elections. The statement must be phrased in positive terms, saying all citizens or specific groups of citizens may run as candidates. Another form of positive statement would be that certain individuals, groups or parties shall not be excluded as candidates. The agreement speaks to who is not eligible to run as a candidate in elections.

20. The agreement speaks to women's participation in government. The statements need not be limited to voting or running as candidates in elections but can address participation in the civil service or other government positions. This issue would also include provisions for a certain number or percentage of seats in the legislature or cabinet positions to be filled by women.

E. CIVIL OR POLITICAL RIGHTS

This section concerns the place of civil or political rights in the state's post-conflict legal order. It does not address past human rights violations or accountability for those violations. Rather, it addresses how the legal and political institutions and laws of the post-conflict state will address issues related to civil or political rights. The language should refer to the protection or guarantee of these rights, or their embodiment in law.

21. Does the agreement include a general reference to human rights being part of the post-conflict political or legal order? This could include general requirements that human rights will be respected in the post-conflict state or specific requirements that human rights be included in a new constitution or in new laws. The reference could be to "human rights" generally or to specific types of human rights. The

reference can be to "rights," "individual rights" or "citizens' rights" rather than "human rights."

22. Does the agreement provide that the post-conflict legal order will contain general principles of equal treatment and non-discrimination? These references could be general, or they could specifically call for their inclusion in the post-conflict constitution, laws or other parts of the legal system.

23. Does the agreement provide that the post-conflict legal order will reflect principles of women's rights? These references could be general or could relate to gender equality in specific contexts, such as political participation, owning property, entering contracts, or custody of children.

24. Does the agreement provide that the post-conflict legal order will reflect principles of children's rights? These references could be general, or they could specifically call for the rights' inclusion in the post-conflict constitution, laws, or other parts of the legal system. Any reference should apply to the rights of "children," rather than a more general term such as "youth."

25. Does the agreement provide that the post-conflict legal order will contain a prohibition on torture? The reference could be to a general principle that torture will be prohibited or to a commitment to prosecute and punish those who commit torture.

26. Does the agreement provide that the post-conflict legal order will contain a prohibition on prolonged arbitrary detention? These references could be general, or they could specifically call for the rights' inclusion in the post-conflict constitution, laws, or other parts of the legal system.

27. Does the agreement provide that the post-conflict legal order will contain obligations to follow fair trial principles and guarantee due process? These references could be general, or they could specifically call for the rights' inclusion in the post-conflict constitution, laws, or other parts of the legal system.

28. Does the agreement provide that the post-conflict

legal order will contain guarantees of freedom of speech, freedom of expression, or freedom of the press? These references could be general, or they could specifically call for the rights' inclusion in the post-conflict constitution, laws, or other parts of the legal system.

29. Does the agreement provide that the post-conflict legal and/or political order will contain guarantees of freedom of assembly or freedom of association? These references could be general, or they could specifically call for the rights' inclusion in the post-conflict constitution, laws, or other parts of the legal system.

F. BOUNDARIES

This section concerns the continuity of the international borders of the post-conflict state.

30. Does the agreement provide that the existing borders of the state will be respected? This embodies the principle of "uti possidetis." The principle does not prevent the consensual redrawing of boundaries via agreements negotiated between the state and adjacent states. It does preclude the unilateral alteration of existing borders. Note the borders in question are *international* borders, not internal provincial or other similar borders. References to maintaining the territorial integrity of the state should be coded affirmatively.

G. ANTI-CORRUPTION

This section concerns efforts to curb official corruption in the post-conflict state.

31. Does the agreement provide that the p**ost-conflict legal order will contain anti-corruption principles?** The agreement could refer to "corruption" or "unjust enrichment," "cronyism," "nepotism" or any other similar term for self-interested action by public officials that harms the public good. References to promote transparency and accountability of public sector officials in the discharge of their public duties shall be coded affirmatively.

H. JUDICIAL INDEPENDENCE/RULE OF LAW

This section concerns the agreement's support for the rule of law and judicial independence in the post-conflict state.

Does the agreement provide that the post-conflict legal order will ensure the independence of the judiciary? Does the agreement state a general policy that the judiciary shall be independent of political influence?

Does the agreement contain general references to the importance of the rule of law in the post-conflict state?

I. ECONOMIC AND SOCIAL RIGHTS

This section concerns the agreement's support for certain economic and social rights in the post-conflict state.

34. Does the agreement contain a general guarantee to protect economic and social rights?

35. Does the agreement contain a guarantee of the right to health?

36. Does the agreement contain a guarantee of the right to adequate housing?

37. Does the agreement contain a guarantee of the right to education?

38. Does the agreement contain a guarantee of workers' rights?

J. ENVIRONMENTAL PROTECTION

This section concerns the agreement's support for protection of the natural environment in the post-conflict state.

39. Does the agreement contain a general obligation to protect the environment?

K. MISCELLANEOUS LEGAL PROVISIONS

This section concerns two areas of post-conflict domestic law that do not fit into the other categories listed above.

40. Does the agreement contain an obligation to address the funding of transnational terrorist groups? (This would include funding from state sources, private sources, or the use of financial institutions to transfer funds).

L. INTERNATIONAL OVERSIGHT MECHANISMS

This section concerns the extent to which the agreement calls for the post-conflict legal order to respect its obligations under international law in the event those obligations come into conflict with provisions of domestic law. The issue arises both when there is a conflict with an international obligation itself or a conflict with the decision of an international court or tribunal.

41. Does the agreement provide that the post-conflict legal order will accept the supremacy of international law generally? In the event of a conflict between an international legal obligation and the state's domestic law, will the international obligation prevail? The international legal obligation can take the form of a treaty, customary law or practice, or the decision of an international court or tribunal.

IV. SECURITY COUNCIL ACTIONS RELATED TO THE AGREEMENT (42-57)

M. PRE-SIGNATURE SECURITY COUNCIL ACTIONS

This section concerns actions by the Security Council prior to the completion of a peace agreement in which the Council calls for the parties to address certain issues. We coded actions made by the Security Council up to one year prior to the date of the agreement. The Council's call needs not be specific to the agreement, i.e. "the peace agreement should provide for democratic elections." The call can just be for the goal to be achieved, i.e. "the state should hold democratic elections as soon as possible." The object in this section is to establish whether the Council created substantive goals for the parties in their drafting of the agreement.

42. Did the Security Council call for a peace agreement?

43. Did the Security Council call for the prosecution of those who may have committed serious crimes[193] during the conflict?

44. Did the Council state that there should be no immunity for those who may have committed serious crimes during the conflict?

45. Did the Council call for institutional reconciliation mechanisms that address human rights violations committed during the conflict or by prior regimes?

46. Did the Council call for elections?[194]

47. Did the Council call for an end to human rights violations?

48. Did the Council address issues related to the citizenship[195] of individuals in the state?

49. Did the Council call for the existing borders of the state to be respected?

50. Did the Council call for the state to respect its obligations under international law?

51. Did the Council condemn corruption in the state?

52. Did the Council call for respect for the rule of law in the state?

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193. We looked for Security Council references to *prosecution* or '*no immunity/no impunity*' or their synonyms. We defined serious crimes as genocide, torture, crimes against humanity, and war crimes. Mentions of particular violations, such as mass killing, would not be coded affirmatively unless the text explicitly mentioned that the violation: a) was considered a serious crime, and b) would be prosecuted. We did not code references to the prosecution of violations of international humanitarian law unless those violations were defined or designated as "serious crimes."

194. This was coded affirmatively only if the Security Council called for future elections.

195. We coded references to 'citizens' and did not code references to 'displaced people.'

N. POST-SIGNATURE UNITED NATIONS ACTIONS

This section concerns actions taken by the Security Council up to three months after the agreement is signed. It also asks whether the agreement was registered with the UN Secretary-General pursuant to Article 102 of the UN Charter.

53. Did the Security Council approve the agreement?

54. Did the Council invoke Chapter VII of the Charter when it approved the agreement?

55. Did the Council approve a peace-keeping mission[196] to the state?

56. Did the Council create any kind of position or entity other than a peace-keeping mission[197] related to the state?

57. Was the Agreement registered with the United Nations? Was the agreement sent to the UN Secretary-General for registration in accordance with Article 102 of the Charter, and subsequently published in "Treaties on Deposit with the Secretary-General?"

3. Conflict Characteristics Coding

Third, we examined various conflict characteristics to assess their correlation with the prevalence of international law provisions: the duration of the conflict, the number of battle-related fatalities in the final year of hostilities, whether the cumulative number of battle-related fatalities over the course of the conflict surpassed a threshold of 1,000 deaths, and whether the conflict revolved around issues of governance or territory. Coding of these variables and sources is in **Table A-3**.

196. The peacekeeping mission may have begun earlier than the final comprehensive peace agreement. It could include a mission to monitor the ceasefire and could include a reaffirmation or restatement or renewal of prior or existing mission. We also coded affirmatively for this provision if the Security Council added to the previous mission's mandate any tasks related to implementing the peace agreement.

197. Id.

Table A-3. Conflict Characteristics

Data Source	Variable Type	Variable Name	Variable Description	Type
UCDP/PRIO Armed Conflict Data set, 20.1	Explanatory	Intensity Level	The intensity level in the conflict per calendar year. The intensity variable is coded in two categories: 1. Minor: between 25 and 999 battle-related deaths in a given year. 2. War: at least 1,000 battle-related deaths in a given year	Integer
UCDP/PRIO Armed Conflict Data set, 20.1	Explanatory	Incompatibility	1= Incompatibility about territory 2= Incompatibility about government 3= Incompatibility about government AND territory	Integer
UCDP/PRIO Armed Conflict Data set, 20.1	Explanatory	Duration	Duration of conflict in days. This is the difference between the episode end date and the start date in the UCDP Armed Conflict Data. Start date: "The date, as precise as possible, of the first battle-related death in the conflict. The date is set after the conflict fulfils all criteria required in the definition of an armed conflict, except for the number of deaths." End date: This variable is only coded in years where episode end has the value 1. If a conflict year is followed by at least one year of conflict inactivity, the episode end date variable lists, as precise as	Continuous; Integer

			possible, the date when conflict activity ended.	
UCDP Battle-related Deaths Dataset Codebook Version 20.1	Explanatory	Battle-Related Deaths	The UCDP Best estimate consist of the aggregated most reliable numbers for all battle-related incidents during a year. If different reports provide different estimates, an examination is made as to what source is most reliable. If no such distinction can be made, UCDP as a rule include the lower figure given	Integer
UCDP/PRIO Armed Conflict Data set, 20.1	Explanatory	Cumulative Intensity	This variable takes into account the temporal dimension of the conflict. It is a dummy variable that codes whether the conflict since the onset has exceeded 1,000 battle-related deaths. For conflicts with a history prior to 1946, it does not take into account the fatalities incurred in preceding years. A conflict is coded as 0 as long as it has not over time resulted in more than 1,000 battle-related deaths. Once a conflict reaches this threshold, it is coded as 1.	Binary

4. Descriptive Statistics

Table A-4 provides descriptive statistics for the peace agreements and the type of third-party actors involved in the agreements as either a mediator, observer, witness or party. Notably, a consistent observation is that the average number of international law principles incorporated into agreements increases when the UN is involved. This average is higher when the UN serves party to an agreement. Additionally, the average number of international law principles is reduced when the external actor is a regional

Table A-4. NIAC Peace Agreement Descriptive Statistics (Additional Actors)

	N	Mean	SD	Min	1st Quartile	Median	3rd Quartile	Max
Total International Principles (11-41)								
Third Party (any) = 1	17	12.1	8.6	0	5.0	9.0	21.0	25
UN Involve (mediate, observe, or witness) = 1	30	12.4	8.3	0	5.3	13.5	20.0	25
UN Party = 1	9	15.8	8.7	1	9.0	21.0	22.0	25
Regional Organization Party = 1	8	7.63	7.5	0	3.3	5.5	10.0	23
State Involve (mediate, observe, or witness) = 1	27	13.2	7.5	1	8.0	12.0	19.0	28
Other Party (e.g., individual) = 1	8	12.3	8.9	0	6.8	10.5	21.3	23
Transitional Justice Principles (11-15)								
Third Party (any) = 1	17	1.2	0.9	0	1.0	1.0	2.0	3
UN Involve (mediate, observe, or witness) = 1	30	1.4	1.2	0	0	1.5	2.0	5
UN Party = 1	9	1.4	0.9	0	1.0	1.0	2.0	3
Regional Organization Party = 1	8	1.1	1.1	0	0	1.0	2.0	3
State Involve (mediate, observe, or witness) = 1	27	1.2	1.3	0	0	1.0	2.0	5
Other Party (e.g., individual) = 1	8	1.4	0.9	0	0.8	2.0	2.0	2
Post-Conflict Legal & Order Principles (16-41)								
Third Party (any) = 1	17	10.8	8.2	0	4.0	7.0	20.0	24
UN Involve (mediate, observe, or witness) = 1	30	11.0	7.8	0	4.0	11.5	18.0	24
UN Party = 1	9	14.3	8.6	1	6.0	20.0	20.0	24
Regional Organization Party = 1	8	6.5	6.8	0	2.5	5.0	7.3	21
State Involve (mediate, observe, or witness) = 1	27	12.0	7.2	1	6.0	11.0	18.0	25
Other Party (e.g., individual) = 1	8	10.9	8.2	0	5.3	9.0	19.3	21

organization.

Table A-5 provides descriptive statistics for our conflict characteristic explanatory variables. The average duration of NIAC in this study is 18 years, roughly 60% of NIACs experienced over 1,000 battle-related deaths in the course of the conflict, 30% of NIACs were fought over issues of territory and 70% concerned issues of governance.

Table A-5. Conflict Descriptive Statistics

	N	Mean	SD	Min	1st Quartile	Median	3rd Quartile	Max
Duration (years)	56	18.0	15.6	0	3.6	13.0	29.4	52.0
# of Battle-Deaths (100s)	56	7.6	21.9	0.3	0.5	1.9	4.7	157.8
Cumulative Intensity = 1	56	0.6	0.5	0	0	1	1.0	1
Incompatibility (Territory = 1)	56	0.3	0.5	0	0	0	1.0	1

5. Empirical Analysis

To begin our analysis, we explore the potential relationships among the variables of interest. Examining the pairwise correlations, there is a modest correlation between the cumulative intensity and the duration of the conflict (0.58), as longer wars are more likely to surpass the threshold of a 1,000 total battle-related fatalities. In robustness checks, we re-ran our analysis omitting this variable to account for any potential multi-collinearity.

The pairwise correlations depicted in Table A-6 check for potential multi-collinearity among the total international law principles and the explanatory variables. The explanatory variables do not appear strongly correlated with one another with the exception of a moderate relationship between cumulative intensity and duration of conflict. This correlation is not surprising, as longer conflicts are likely to surpass the 1,000 battle-related deaths benchmark. However, in robustness checks we re-ran the models omitting duration and then cumulative intensity and the findings are consistent. We also conducted the pairwise correlation check for the relationship between our explanatory variables and only principles concerning transitional justice (**Table A-7**) and then only post-conflict & legal order principles (**Table A-8**). The findings are consistent.

Table A-6. Pairwise Correlation (Total International Principles)

	Total IL Principles	UN Involve = 1	UN Party = 1	Regional Organization = 1	State Involve =1	Other Party =1	Duration (years)	Battle-Related Deaths (100s)	Cumulative Intensity =1	Incompatibility (Territory = 1)
Total International Law Principles	1.00									
UN Involve = 1	0.16	1.00								
UN Party = 1	0.25	0.41	1.00							
Regional Organization = 1	-0.18	0.18	0.38	1.00						
State Involve = 1	0.24	0.25	0.06	0.01	1.00					
Other Party = 1	0.05	0.18	0.10	0.27	0.01	1.00				
Duration (years)	0.33	-0.03	0.06	-0.22	-0.10	0.05	1.00			
Battle-Related Deaths (100s)	-0.07	-0.02	0.05	-0.09	-0.12	0.31	0.17	1.00		
Cumulative Intensity = 1	0.32	0.20	0.12	-0.23	-0.03	-0.12	0.58	0.23	1.00	
Incompatibility (Territory = 1)	0.26	0.12	0.28	0.26	-0.02	0.15	0.20	0.11	0.11	1.00

Table A-7. Pairwise Correlation (Transitional Justice Principles)

	Transitional Justice Principles	UN Involve = 1	UN Party = 1	Regional Organization = 1	State Involve =1	Other Party =1	Duration (years)	Battle-Related Deaths (100s)	Cumulative Intensity =1	Incompatibility (Territory = 1)
Transitional Justice Principles	1.00									
UN Involve = 1	0.31	1.00								
UN Party = 1	0.16	0.41	1.00							
Regional Organization = 1	0.03	0.18	0.38	1.00						
State Involve = 1	0.15	0.25	0.06	0.01	1.00					
Other Party = 1	0.12	0.18	0.10	0.27	0.01	1.00				
Duration (years)	0.23	-0.03	0.06	-0.22	-0.10	0.05	1.00			
Battle-Related Deaths (100s)	-0.13	-0.02	0.05	-0.09	-0.12	0.31	0.17	1.00		
Cumulative Intensity = 1	0.10	0.20	0.12	-0.23	-0.03	-0.12	0.58	0.23	1.00	
Incompatibility (Territory = 1)	0.10	0.12	0.28	0.26	-0.02	0.15	0.20	0.11	0.11	1.00

Table A-8. Pairwise Correlation (Post Conflict & Legal Order Principles)

	Post Conflict & Legal Order Principles	UN Involve = 1	UN Party = 1	Regional Organization = 1	State Involve =1	Other Party =1	Duration (years)	Duration (years)	Battle-Related Deaths (100s)	Incompatibility (Territory = 1)
Post Conflict & Legal Order Principles	1.00									
UN Involve = 1	0.12	1.00								
UN Party = 1	0.24	0.41	1.00							
Regional Organization = 1	-0.20	0.18	0.38	1.00						
State Involve = 1	0.23	0.25	0.06	0.01	1.00					
Other Party = 1	0.04	0.18	0.10	0.27	0.01	1.00				
Duration (years)	0.31	-0.03	0.06	-0.22	-0.10	0.05	1.00			
Battle-Related Deaths (100s)	-0.05	-0.02	0.05	-0.09	-0.12	0.31	0.17	1.00		
Cumulative Intensity = 1	0.32	0.20	0.12	-0.23	-0.03	-0.12	0.58	0.23	1.00	
Incompatibility (Territory = 1)	0.26	0.12	0.28	0.26	-0.02	0.15	0.20	0.11	0.11	1.00

Next, we conduct a Mann-Whitney U test, a nonparametric statistical test appropriate for comparing central tendencies of two sample groups without requiring a normal distribution assumption.[198] These tests allow for a preliminary understanding of how our primary factors might influence the adoption of international law principles before we conduct additional empirical analysis.

The results of the Mann-Whitney U tests indicate that the disparity in international law principles observed in **Table 4** is not statistically significant when any additional third actor (e.g., state, regional organization, individual) serves as party to an agreement ($U = 289.5$, p-value > 0.05). However, the observed average increase is statistically significant when the third party is the United Nations ($U = 121$, p-value < 0.05).

We also observed an increase in the number of total international law principles adopted when the UN was involved in a NIAC peace agreement as a mediator, observer, or witness (**Table 4**). The Mann-Whitney U test found this is not statistically significant ($U = 323$, p-value > 0.05). However, when we only consider the increase in the transitional justice principles included in an agreement, the finding becomes statistically significant ($U = 266$, p-value < 0.05).

In summary, these preliminary findings substantiate the intuition that the presence of the UN influences the inclusion of international law principles within NIAC peace agreements. However, when the UN is serving as a mediator, observer, or witness, that relationship appears to be restricted to principles concerning transitional justice.

Next, we conduct additional analysis for each hypothesis using a count regression model. A summary of the findings is presented in **Table A-9** and the full coefficient estimates and robust standard errors are detailed in **Table A-10**. The negative binomial model was chosen for several reasons. First, our primary dependent variables are counts representing the total number of international law provisions and specific provision types (transitional justice or post-conflict legal and political order). Due to their discrete and non-negative nature, ordinary least squares (OLS) regression is unsuitable as the count data exhibits positive skewness and cannot be transformed into a normal distribution. Furthermore, a linear regression model may produce negative predicted values, which are theoretically implausible in this case. Instead, we employ count models. Given the

198. The Mann-Whitney U test, also known as the Wilcoxson rank sum test, is a suitable statistical method for comparing the central tendencies of two sample groups and does not require the assumption of normal distribution for the data like the standard t-test. Frank Wilcoxon, *Individual Comparisons by Ranking Methods,* 1 BIOMETRICS BULL. 80, 80 (1945).

overdispersion of our data, where the variance exceeds the mean, a negative binomial model is preferable to a Poisson model.

Table A-9 presents the sign and statistical significance of each of the models and T**able A-10** includes the coefficients and standard errors. The substantive takeaway for each of the findings is discussed in the primary text. We applied the negative binomial model to analyze the dependent variables: Model 1 considers that total number substantive international law provisions

Table A-9. Summary of Empirical Findings

	Model 1		*Model 2*		*Model 3*	
	Total International Law Principles (11-41)		*Transitional Justice Principles (11-15)*		*Post Conflict Legal & Order Principles (16-41)*	
	Relationship	*Statistically Significant*	*Relationship*	*Statistically Significant*	*Relationship*	*Statistically Significant*
Explanatory Variable						
UN Involve = 1, UN Party = 0	-	No	+	Yes	-	No
UN Involve = 1, UN Party = 1	+	Yes	+	Yes	+	No
Regional Party = 1	-	Yes	-	No	-	Yes
State Involve = 1	+	No	+	No	+	No
Other Party = 1	+	No	+	No	+	No
Duration (years)	+	No	+	Yes	+	No
# of Battle-Deaths (100s)	-	Yes	-	No	-	Yes
Cumulative Intensity = 1	+	No	-	No	+	No
Incompatibility (Territory = 1)	-	Yes	-	No	-	Yes

(variables 11-41), Model 2 is the total number of transitional justice provisions (variables 11-15), and Model 3 is the total number of post-conflict order provisions (variables 16-41).[199] Robust standard errors are reported.

[199] The regression coefficients in the negative binomial models can be interpreted as follows: a one-unit change in the predictor variable is expected to result in a corresponding change in the logs of the expected counts of the response variable. In other words, the coefficients represent a percent increase in incidence, calculated as (exp(β1)-1)*100%, where β1 denotes the negative binomial regression coefficient for the treatment variable.

Table A-10. Negative Binomial Regression Results

	Model 1 Total International Law Principles (11-41)	*Model 2 Transitional Justice Principles (11-15)*	*Model 3 Post-Conflict Legal & Order Principles (16-41)*
UN Involve = 1, UN Party = 0	-0.09	0.64*	-0.18
	(0.23)	(0.30)	(0.24)
UN Involve = 1, UN Party = 1	0.46*	0.80*	0.42
	(0.23)	(0.35)	(0.25)
Regional Party = 1	-0.76*	-0.15	-0.83*
	(0.31)	(0.35)	(0.33)
State Involve =1	0.36	0.21	0.36
	(0.19)	(0.25)	(0.19)
Other Party = 1	0.37	0.32	0.41
	(0.25)	(0.28)	(0.27)
Duration (years)	0.01	0.02*	0.00
	(0.01)	(0.01)	(0.01)
# of Battle-Deaths (100s)	-0.01***	-0.02	-0.01***
	(0.00)	(0.01)	(0.00)
Cumulative Intensity = 1	0.32	-0.10	0.39
	(0.27)	(0.39)	(0.27)
Incompatibility (Territory = 1)	-0.43*	-0.03	-0.46*
	(0.20)	(0.41)	(0.21)
Constant	2.03***	-0.71	1.97***
	(0.28)	(0.38)	(0.30)
Observations	56	56	56

Note: *p<0.1;
**p<0.05,
***P<0.01

To further enhance the clarity of our findings, we also present the estimates in a coefficient plot displayed in **Figure A-1**. Each marker in the plot represents the point estimate, while the bar surrounding the point represents the 95% confidence interval. When the bar does not overlap with the reference line, it indicates statistical significance.

Figure A-1 Coefficient Plot