**Research Analysts paper**

**Legal dimensions of peace agreements in internal conflicts**

**KEY POINTS**

* The legal status of peace agreements can be important, because suggestions that such agreements are not in fact binding can reduce parties’ confidence that the agreement will be implemented. Which, in turn, can undermine the prospects of reaching agreement.
* But the legal status of peace agreements in internal conflicts can be problematic. If the agreement is binding only under domestic law, non-state groups often fear the Government will use its law-making powers to renege on its commitments, or that an unfair judiciary will not interpret its terms fairly or as intended. While non-state groups’ uncertain ability to conclude international agreements narrows the scope for casting such agreements as treaties.
* Parties to peace negotiations have nevertheless used a range of devices to provide a legal dimension to their agreements, even if many of these fall short of providing legal certainty and judicial enforceability.

DETAIL

1. The legal status of any final agreement is a common question in peace negotiations in internal conflicts. It is related to parties’ inevitable concerns that their opponents may not honour their commitments under the agreement. But the legal aspect is particularly problematic as:

* Domestic law provides the most obvious and enforceable vehicle for an agreement, as a contract between the parties. Yet the Government’s law-making powers can enable it to abrogate or vary its obligations during the implementation phase, or a judiciary perceived to be biased may interpret the agreement in the Government’s favour. (All this is in addition to parties’ fears of non-implementation on grounds separate from legal factors.)
* Grounding the agreement in international law can give parties – particularly non-state groups – more confidence that obligations will be maintained and met. But doing so is made complex by such non-state groups’ potential lack of status to conclude international legal agreements. And, in any case, grounding peace agreements in international law does not in itself guarantee that compliance will be enforced.

2. Whether such peace agreements intrinsically *are* legally binding under international law has begun to receive attention. Courts have ruled that particular agreements have not been so: the ICJ in *Armed Activities* (2005), the Permanent Court of Arbitration in ‘Abyei arbitration’ (2009), and the Special Court for Sierra Leone in *Kallon* (2004). While some scholars have challenged this view, and have argued that at least some peace agreements can be internationally legally binding even if concluded purely between a Government and a non-State armed group.[[1]](#footnote-1) The central issue remains the competence of non-state groups to enter into international agreements.

3. For parties involved in peacemaking, however, the greater focus has tended to be less on legal analysis of whether their agreement would or would not ultimately be internationally legally binding, and more on finding and negotiating provisions to give a greater or lesser degree of legalization to their agreement. The following provides an illustrative list. But one must appreciate that:

* though they may provide a ‘legal dimension’ to an agreement, many, perhaps most, of these devices do not themselves make a peace agreement legally binding. Their function is more usually to reassure parties of their mutual desire to comply and to minimise subsequent disputes about interpretation, rather than provide legal certainty and judicial enforceability.
* the ‘legal dimension’ encompasses more than just whether an agreement is legally binding. It reaches into other aspects, particularly the role of outside actors in monitoring, assisting and/or enforcing compliance, or granting legitimacy to the process and its actors, through means not just legal, but also political and even military.

4. The range of devices used has been wide, and the categories below are suggestive rather than fixed. Individual peace agreements have combined many, in varying combinations. But they may be broadly categorised as:

a) **Witnessing of the agreement**, though signature by one or more of the following groups:

* external States and/or international organisations (Bosnia, Dayton Agreement, 1995; Somalia, Kampala Agreement, 2011; Sudan, Comprehensive Peace Agreement, 2005)
* mediators (Mozambique, General Peace Agreement, 1992; Burundi, Arusha Accords, 2000; Aceh, Memorandum of Understanding, 2005)
* prominent international individuals (Colombia, agreement with M-19, 1990)

b) **Nomination of external actors as “guarantors”** to the agreement, through:

* a standalone protocol or annex elaborating specific modalities for international guarantees for the agreement (Tajikistan peace agreement, 1997; Democratic Republic of the Congo, Sun City Accord, 2002)
* an article providing that certain external actors shall stand as “moral guarantors” for the agreement (Sierra Leone, Lome Peace Agreement, 1999)
* simply labelling of one or more external signatories to the agreement as a “guarantor” (South Sudan, Agreement to Resolve the Crisis, 2014)

c) **Giving the agreement some degree of international status**, such as:

* casting the agreement as a treaty amongst States, incorporating commitments made by non-state groups and submitting to the UN in its role as formal treaty depositary (Cambodia, Paris Peace Accord, 1991; Bosnia, Dayton Agreement, 1995; Northern Ireland, Belfast Agreement, 1998)
* using treaty-like language in the text of the agreement, such as “shall”, “obligations”, “agree” etc. (Sudan, Comprehensive Peace Agreement, 2005; Liberia, Comprehensive Peace Agreement, 2003)
* seeking UN Security Council actual “endorsement” of the agreement (unusual, but Ukraine, Package of measures for the Implementation of the Minsk Agreements, 2015 - UNSCR 2202; Cote d’Ivoire, Linas-Marcoussis Agreement, 2003 - UNSCR 1464; Afghanistan, Bonn Agreement, 2001 - UNSCR 1383)
* including language in a UN Security Council resolution “welcoming” signature of the agreement (Libyan Political Agreement, 2015 - UNSCR 2259; Nepal, Comprehensive Peace Agreement, 2007 - UNSCR 1740; Sudan, Comprehensive Peace Agreement, 2005 - UNSCR 1590)
* circulating the agreement as an official UN Security Council document (very common, but e.g. Angola, Lusaka Protocol, 1994; Guatemala, Agreement on the Basis for the Legal Integration of the URNG, 1996; Cote d’Ivoire, Ouagadougou Agreement, 2007)

d) Requesting **international involvement in the agreement’s implementation**, through provisions asking for one or more of:

* external (e.g. UN) verification of compliance with the agreement or parts of it (El Salvador, Chapultepec Agreement, 1992; Liberia, Comprehensive Peace Agreement, 2003; Guatemala, Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements, 1996)
* international assistance with implementation of the agreement (Cambodia, Paris Peace Accord, 1991; Bougainville Peace Agreement, 2001), including through ‘good offices’, mediation etc.
* an international role in arbitration relating to implementation (Comoros, Reconciliation Agreement, 2001; Bosnia, Dayton Agreement, 2005; Ethiopia-Eritrea, Algiers Agreement, 2000)
* an international military presence to enforce compliance with the agreement, using force if necessary (Bosnia, Dayton Agreement, 2005).

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1. See e.g. Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (Oxford: 2008). Also Scott Sheeran, ‘International law, peace agreements and self-determination: the case of the Sudan’, *International and Comparative Law Quarterly*, 60/2, April 2011; and Andrej Lang, ‘”Modus operandi”, “Lex pacificatoria” and the ICJ’s appraisal of the Lusaka Ceasefire Agreement in the *Armed Activities on the Territory of the Congo* Case’, IILJ Emerging Scholars Paper 2 (2007). [↑](#footnote-ref-1)