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IRREGULAR FORCES, IRREGULAR ENFORCEMENT: MAKING PEACE AGREEMENTS IN NON-INTERNATIONAL ARMED CONFLICTS DURABLE

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INTRODUCTION

In December 2018, the conclusion of a preliminary agreement in Sweden between Yemen's warring parties raised hopes of ending the conflict that has raged there for four years.[2] Commonly known as the Stockholm Agreement, the deal was signed by Yemen's internationally recognized government and the Houthi rebels, a northern faction that seized control of the capital in 2014.[3] The agreement called for a range of confidence-building measures aimed at improving humanitarian conditions and enabling the negotiation of more central issues.[4] Yet while the media breathlessly hailed the Stockholm Agreement as a major breakthrough,[5] informed observers cautioned that what was written on paper might not be easily translated to reality.[6] These warnings have proven prophetic, as implementation has stagnated at tragic civilian cost.[7]

2. Peter Salisbury, *What Does the Stockholm Agreement Mean for Yemen?*, WASH. POST (Dec. 21, 2018), https://www.washingtonpost.com/news/monkey-cage/wp/2018/12/21/what-does-the-stockholm-agreement-mean-for-yemen/ [https://perma.cc/G2W8-UVT6].

3. *Id.*; *How Yemen's Capital Sanaa Was Seized by Houthi Rebels*, BBC (Sept. 27, 2014), https://www.bbc.com/news/world-29380668 [https://perma.cc/8GN2-E5TQ].

4. *Full Text of the Stockholm Agreement*, OFFICE OF THE SPECIAL ENVOY OF THE SECRETARY GENERAL FOR YEMEN (Dec. 13, 2018), https://osesgy.unmissions.org/full-text-stockholm-agreement [https://perma.cc/7EBG-TDA8].

5. Aziz El Yaakoubi & Johan Sennero, *Yemen's Warring Parties Agree to Ceasefire in Hodeidah and U.N. Role*, REUTERS (Dec. 13, 2018), https://www.reuters.com/article/us-yemen-security/yemens-warring-parties-agree-to-ceasefire-in-hodeidah-and-un-role-idUSKBN1OC0G4 [https://perma.cc/7A3B-5EGY]; Declan Walsh, *U.N.-Brokered Hudayda Truce Is Big Step in Yemen War*, N.Y. TIMES (Dec. 13, 2018), https://www.nytimes.com/2018/12/13/world/middleeast/yemen-ceasefire-un.html [https://perma.cc/7FCS-QZZX].

6. Osama Al-Rawhani, *The Good and the Bad in the New Peace Agreement on Yemen*, AL JAZEERA (Dec. 19, 2018), https://www.aljazeera.com/indepth/opinion/good-bad-peace-agreement-yemen-181218082222574.html [https://perma.cc/SW2L-DR9E]; Peter Salisbury, *Making Yemen's Hodeida Deal Stick*, INTERNATIONAL CRISIS GROUP (Dec. 19, 2018), https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/yemen/making-yemens-hodeida-deal-stick [https://perma.cc/PBL5-XR9E].

7. *A Quarter Million Yemenis Newly Displaced Six Months Since Stockholm Ceasefire*, NORWEGIAN REFUGEE COUNCIL (June 11, 2019),

While hardly the primary cause of its faltering progress to date, the Stockholm Agreement is not served by its indeterminate status in international law.[8] Because the Houthis are non-state actors (NSAs), the agreement does not carry the binding force of international treaties, which may only be brokered between states.[9] This legal complication is not unique to Yemen; in fact, the global prevalence of non-international armed conflict (NIAC) in the modern era[10] has meant that peace agreements are increasingly being concluded with non-state armed opposition groups (AOGs) like the Houthis.

Juridically regarded neither as full legal persons nor as legal nullities, AOGs' ascension onto the international plane poses a defining challenge to the classical, Westphalian model of international law.[11] The ambiguous position that they occupy in international law has further cast a pall of uncertainty over the legal status of the agreements AOGs conclude, such as the Stockholm Agreement. While decidedly not treaties, it is possible that NIAC peace agreements, armistices, and ceasefire agreements – which, by definition, include at least one non-state party[12] – are international contracts of another type.

In Part I, this article begins by commenting upon the practical and legal consequences of this ambiguous status, including its implications

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https://www.nrc.no/news/2019/june/yemen-six-month-since-ceasefire/ [https://perma.cc/3WJS-YCER].

8. *See* Haydee Dijkstal, *Yemen and the Stockholm Agreement: Background, Context, and the Significance of the Agreement*, AM. SOCIETY OF INT'L L. (May 31, 2019), https://www.asil.org/insights/volume/23/issue/5/yemen-and-stockholm-agreement-background-context-and-significance [https://perma.cc/568P-XYG2] (noting the uncertainty as to what obligations the Agreement places on non-state actors to the conflict, given their status as non-states).

9. *See id.*; *International Humanitarian Law*, INT'L J. RESOURCE CTR. https://ijrcenter.org/international-humanitarian-law/ [https://perma.cc/CE3E-3XAM].

10. Gregory H. Fox, Kristen E. Boon, & Isaac Jenkins, *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, 651 (2018).

11. NATIONAL INTELLIGENCE COUNCIL, GLOBAL TRENDS 2025: A TRANSFORMED WORLD, 81 (2008), https://www.dni.gov/files/documents/Newsroom/Reports%20and%20Pubs/2025_Global_Trends_Final_Report.pdf [https://perma.cc/XSW6-PRVQ].

12. *See* INT'L COMMITTEE OF THE RED CROSS, HOW IS THE TERM "ARMED CONFLICT" DEFINED IN INTERNATIONAL HUMANITARIAN LAW? 1 (2008), https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf [https://perma.cc/QA2Z-BPVB] (defining a NIAC as an armed conflict "between governmental forces and non-governmental armed groups, or between such groups only").

for compliance and enforcement, for subsequent legislative and judicial action, and for the foundations of international law. Part of the difficulty of NIAC peace agreements are the tradeoffs that their legal cognizance would entail. While states may at times wish to be able to hold AOGs to their word, they often do not want to legitimize them as full international legal actors. This same ambivalence is reflected in a confused and conflicting judicial treatment of the issue.

Given the muddled state of the law, Part II of this article aims to elucidate the matter by examining the legal standing of AOGs in greater detail and under various sources of law. In doing so, it presents arguments that, in limited contexts, they might possess an international legal personality that would empower them to enter into treaties or treaty-like agreements. Even if arguments based on AOG legal personality are ultimately rejected, Part III illustrates how agreements between states and AOGs, like the Stockholm Agreement, might still be considered legally binding through other legal theories. Part IV closes by relating strategies that the drafters of NIAC peace agreements have employed in an effort to lend their handiwork a legally binding flavor.

I. AOG TREATY-MAKING POWER: A POLITICAL AND LEGAL CONTROVERSY

In its classical formulation, international law is founded on a positivist, consent-based paradigm in which legal personality is limited to states.[13] Exemplifying the state-centric view, the Vienna Convention on the Law of Treaties (VCLT) defines a treaty as an agreement between states alone.[14] Nonetheless, it allows in Article 3 that its own inapplicability to "international agreements concluded between States and other subjects of international law or between such other subjects of international law…shall not affect the legal force of such agreements."[15] This reservation implies that international law may recognize agreements between states and NSAs or agreements among NSAs to the extent that each participating NSA is considered a "subject[ ] of international law."

13. This may also include international organizations whose memberships are comprised of states. Janne E. Nijman, *Non-State Actors and the International Rule of Law: Revisiting the 'Realist Theory' of International Legal Personality*, *in* NON-STATE ACTOR DYNAMICS IN INTERNATIONAL LAW 91, 111 (Math Noortmann and Cedric Ryngaert, eds., 2010).

14. Vienna Convention on the Law of Treaties, art. 2(1)(a), May 23, 1969, 1155 U.N.T.S. 331.

15. *Id.* at art. 3.

International legal subjectivity is usually considered synonymous with international legal personality,[16] or the capacity to hold international rights and obligations.[17] States are the archetypal legal persons in international law.[18] There is no consensus, however, as to the legal personality of entities that share in some, but not all, of the rights and obligations of states.[19] As it regards the capacity of AOGs and other NSAs to enter into treaties, this debate is not merely academic. This section discusses its practical import and reviews the split in judicial authority on the matter.

A. The Stakes of the Issue

1. The Practical Significance of Legal Recognition: In an anarchic international system without an enforcement apparatus, why does it matter if a NIAC peace agreement is technically considered legally binding? The first reply given by the international law literature is an empirical one: compliance is statistically more likely when a covenant has legal effect.[20] The theory underlying this observation is that states care about their reputations among their peers.[21] The same logic might apply to AOGs that are repeat players on the international stage and aspire to state-like capacity.

A second consequence of legal recognition for NIAC peace agreements is the resultant respect for their terms accorded by other legal actors. For example, some peace agreements provide for full or partial amnesty.[22] These clauses will only restrain future prosecution by domestic courts or international tribunals if found to be legally valid. Cases concerning the enforceability of amnesty (or non-amnesty) provisions have in fact been the primary impetus for the limited international legal scrutiny directed towards NIAC peace agreements.[23]

2. The Inadequacy of Domestic Law: Could NIAC peace agreements instead be subject to domestic law? Unlike international law, domestic legal regimes have a well-established law enforcement

16. Nijman, *supra* note 13, at 93 n.5.

17. Worster, *Relative International Legal Personality of Non-State Actors*, 42 BROOK. J. OF INT'L. L. 207, 210 207, 210 (2016).

18. *International Legal Personality*, ICELANDIC HUM. RTS. CTR., http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/human-rights-actors/international-legal-personality [https://perma.cc/7Y2L-NZU5].

19. Worster, *supra* note 17, at 210-211.

20. Fox et al., *supra* note 10, at 285; Christine Bell, *Peace Agreements: Their Nature and Legal Status*, 100 AM. J. OF INT'L. L. 373, 384 (2006).

21. Fox et al., *supra* note 10; Bell, *supra* note 19, at 386.

22. Fox et al., *supra* note 10, at 675.

23. *See* discussion *infra* Section I.B.

machinery that typically assures high rates of compliance.[24] But the state's monopoly over the domestic legal sphere makes it a disproportionately powerful and possibly untrustworthy negotiating party. An AOG signing an agreement with the state would have no guarantee that the executive would enforce it evenhandedly, the judiciary would interpret it fairly, and the legislature would not subsequently undermine or annul it.[25] In addition, the scope of a NIAC may not be contained within the territorial jurisdiction of just one state.[26]

3. AOGs and Treaty-making Power: Systemic Consequences: The power to form agreements binding under international law is conventionally viewed as "an attribute of State sovereignty."[27] Extending this capacity – even if only partially – to AOGs involved in NIACs would therefore be a consequential and controversial development in the field. Proponents nevertheless theorize that it would improve compliance, based on the reputational theory discussed above and the status boost that AOGs would gain by acquiring a competence typically reserved to an elite few.[28]

Conversely, states are likely to perceive an elevation in the standing of AOGs as a concomitant degradation of their own. Implicit in a state's binding agreement with an AOG to refrain from hostilities or to alter political conditions is an admission that it does not have sole authority over the use of force or the determination of political realities within its territory.[29] As the "gate-keepers of the system," states have jealously guarded against any incremental subsidence of their own sovereignty that would result from their assent to any concessions to other actors.[30]

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24. Oona A. Hathaway & Scott J. Shapiro, *Outcasting: Enforcement in Domestic and International Law*, 121 YALE L. J. 252, 257–58 (2011).

25. Ezequiel Heffes & Marcos D. Kotlik, *Special Agreements as a Means of Enhancing Compliance with IHL in Non-International Armed Conflicts: An Inquiry into the Governing Legal Regime*, 96 INT'L REV. OF THE RED CROSS 1195, 1213 (2014).

26. *Id.*

27. S.S. Wimbledon (U.K., Fr., It. & Japan v. Ger.), Majority Opinion, 1923 P.C.I.J. (ser. A) No. 1, ¶ 35 (Aug. 17).

28. Bell, *supra* note 20, at 387.

29. Olivier Corten & Pierre Klein, *Are Agreements between States and Non-State Entities Rooted in the International Legal Order?*, *in* THE LAW OF TREATIES BEYOND THE VIENNA CONVENTION 3, 5 (Enzo Cannizzaro, ed., 2011).

30. Jan Klabbers, *(I Can't Get No) Recognition: Subjects Doctrine and the Emergence of Non-State Actors*, *in* NORDIC COSMOPOLITANISM: ESSAYS IN INTERNATIONAL LAW FOR MARTTI KOSKENNIEMI 351, 365 (Jarna Petman & Jan Klabbers, eds., 2003).

A second set of objections to conferring treaty-making power to AOGs springs from their unpredictable and sometimes deplorable behavior. Questions of sovereignty aside, states often shun any form of engagement with rogue actors that would politically or morally legitimate them.[31] More concerning from a legal standpoint is the contention that AOG participation in lawmaking will lead to a substantive regression in the rules consecrated into international law.[32]

B. Authoritative Interpretation of NIAC Peace Agreements

The complexity of the political debate over the legal status of agreements with AOGs is mirrored by a split in the courts. At least five judicial authorities—four international and one domestic—have in some form weighed in on the matter, reaching sharply divided conclusions: one refused to credit the agreement before it; two left the matter unsettled; and two more honored the subject agreements without substantively engaging with the question of their legal status.[33] The UN Security Council (UNSC), whose resolutions are binding on all states, has undertaken review of many NIAC peace agreements and consistently embraced them.[34] This Part reviews these judgments and resolutions. While it is difficult to conclude much from this fractured landscape, international law might be said to be weakly trending toward recognition of NIAC peace agreements.

1. Non-Recognition: The Special Court for Sierra Leone (SCSL) is the only court to have methodically assessed the possibility of AOGs entering into agreements creating binding obligations under international law. It is also the only court to have rejected such a possibility outright. In *Prosecutor v. Kallon*, the SCSL considered whether an amnesty provision in an agreement between the government of Sierra Leone and an AOG, the Revolutionary United Front (RUF), deprived it of criminal jurisdiction.[35] It held that it did not.[36] Unmoved by the participation of international guarantors in the agreement[37] and the RUF's high degree of organization,[38] the Court focused on the lack

31. Anthea Roberts & Sandesh Sivakumaran, *Lawmaking by Nonstate Actors: Engaging Armed Groups in the Creation of International Humanitarian Law*, 37 YALE J. OF INT'L L. 107, 135–36 (2012).

32. *Id.* at 138.

33. *See* discussion *infra* Section I.B.1–3.

34. Fox et al., *supra* note 10, at 676–77.

35. Prosecutor v. Kallon et al., Case No. SCSL-2004-15-AR72(E), Decision on Challenge to Jurisdiction, ¶ 88 (Special Court for Sierra Leone Mar. 13, 2004).

36. *Id.*

37. *Id.* ¶¶ 39–41.

38. *Id.* ¶ 48.

of recognition of the RUF as an independent entity by the community of nations and by Sierra Leone itself.[39] The SCSL's conclusion that the RUF therefore lacked legal personality has drawn criticism from acclaimed scholars.[40]

2. Indeterminacy: Two courts have managed to either avoid the question of the legal status of agreements involving AOGs or to give only a partial response.[41] But dissenting opinions and dicta in those decisions accepting that AOGs have contracting power may offer valuable insight into the courts' stances.[42]

THE INTERNATIONAL COURT OF JUSTICE (ICJ)—A year after the *Kallon* decision, the legal status of NIAC peace agreements came before the ICJ in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda).*[43] The Court sidestepped the question entirely by determining for other reasons that the subject ceasefire represented a temporary "*modus operandi*" rather than a legally enforceable compact.[44] This approach has been criticized as "downgrading the legal status of peace agreements" and undermining their effectiveness by rendering them nonbinding and nonjusticiable.[45]

In a separate opinion in the *Armed Activities* case, Justice Kooijmans expressed the alternative view that the rebel groups who

39. *Id.* ¶ 47 ("[T]here is nothing to show that any other State had granted the RUF recognition as an entity with which it could enter into legal relations or that the Government of Sierra Leone regarded it as an entity other than a faction within Sierra Leone.").

40. *See*, *e.g.*, Antonio Cassese, *The Special Court and International Law: The Decision Concerning the Lomé Agreement Amnesty*, 2 J. OF INT'L CRIM. JUST. 1130 (2004).

41. Robarts & Sivakumaran, *supra* note 31, at 371–72.

42. *See generally,* Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General ¶¶ 172–174 (Jan. 25, 2005), *available at* https://www.un.org/ruleoflaw/files/com_inq_darfur.pdf [https://perma.cc/DQR5-UTVU]; Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. Rep. 14, ¶¶ 216–218 (June 27).

43. *See* Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), 2005 I.C.J. 168 (Dec. 19, 2005).

44. *Id.* at 211("The [Lusaka] Agreement took as its starting point the realities on the ground…The arrangements made at Lusaka…were directed at these factors on the ground…The provisions of the Lusaka Agreement thus represented an agreed *modus operandi* for the parties. They stipulated how the parties should move forward. They did not purport to qualify the Ugandan military presence in legal terms.")

45. 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. OF INT'L L. & POLITICS 107, 132–42 (2008).

were party to the accord "upgraded" their legal status – that is, attained legal personality – by signing the agreement.[46] In his view, a ceasefire agreement cannot alter legal definitions, in this case, occupation, "in normal circumstances."[47] But the scope of the subject agreement extended far beyond the mere cessation of hostilities, "la[ying] the foundation for the re-establishment of an integrated Congolese State structure."[48] The involvement of AOGs in the statemaking process as "formal participants in the open national dialogue" signaled their elevation in legal stature.[49] According to Kooijmans, therefore, a NIAC peace agreement takes legal effect when it amounts to a recognition by the state that its territorial authority is no longer exclusive.[50]

CONSTITUTIONAL COURT OF COLOMBIA—On the occasion of its accession in 1995 to the Protocol Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Colombia's Constitutional Court engaged in a comprehensive review of the compatibility of that treaty with its own national constitution.[51] Among the elements that it considered were the "special agreements" between parties to a NIAC or other armed conflict referred to in Common Article 3 (discussed in greater detail below).[52] The Court determined unobjectionably that, while practically valuable, these covenants are not treaties.[53] It did not elaborate further on their legal status.[54]

From its brief commentary on the subject, it is difficult to discern the Court's attitude toward the legality of special agreements. On one hand, some of its language suggests that AOGs' legal subjectivity under IHL forecloses the possibility of a more generalized legal subjectivity

46. Dem. Rep. Congo v. Uganda, 2005 I.C.J. 319–20 (separate opinion of J. Kooijmans).

47. *Id.* at 319.

48. *Id.*

49. *Id.*

50. *Id.* at 320.

51. *Constitutional Review of the "Protocol Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)" signed in Geneva 8 June, 1977, and of Law 171 of 16 December, 1994, approving the Protocol*, Case No. C-225/95, ¶ 1 (Constitutional Court of Colombia 1995).

52. *See* discussion *infra* Section II.B.

53. *Constitutional Case No. C-225/95*, ¶ 17 (Colom.).

54. *Id.*

that would enable them to draft contracts.[55] On the other, it touts special agreements as "politically desirable" and encourages the government to effectuate them in order to "make the application of [IHL] more effective."[56] Two decades later, this ambiguous judicial stance attained renewed relevance when the 2016 final peace agreement between the Colombian government and the FARC rebels was explicitly styled as a "special agreement."[57]

3. Recognition: Though giving scant attention to the issue of legal personality, two international adjudicative bodies have implicitly validated the terms of NIAC peace agreements. In addition, the UNSC has been unambiguous in its acknowledgment of the same.

THE PERMANENT COURT OF ARBITRATION (PCA)—In a 2008 agreement, the government of Sudan and an AOG called the Sudan People's Liberation Movement/Army (SPLM/A) agreed to refer their border dispute regarding the Abyei region to the PCA.[58] In determining the applicable governing law, the PCA first observed that the arbitration agreement was not a treaty because it was concluded with an AOG.[59] Nonetheless, the PCA opted to apply international law, among other sources, to the agreement based on its reading of the parties' intent.[60] Among the indicators that it relied on in reaching this conclusion were the inherently international nature of border disputes, the parties' consent to dispute resolution before an international panel, and the common understanding that "general principles of law" – a phrase used in the arbitration agreement's section on applicable law[61] – include international law in the context of boundary disputes.[62] This treatment amounts to an implicit acknowledgement that the subject agreement with the SPLM/A is enforceable in international law.

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55. *Id.* (commenting that special agreements "are not, strictly speaking, treaties, as they are not established between entities subject to public international law but between the parties to an internal conflict, which are subject to international humanitarian law.").

56. *Id.*

57. *Final Agreement to End Armed Conflict and Build a Stable and Lasting Peace*, Colom.-F.A.R.C., preamble, Nov. 14, 2016, *available at* http://especiales.presidencia.gov.co/Documents/20170620-dejacion-armas/acuerdos/acuerdo-final-ingles.pdf [https://perma.cc/F8V2-9M34].

58. *See* Gov't of Sudan v. The Sudan People's Liberation Movement/Army, Case No. 2008-07 (Perm. Ct. Arb. 2009), *available at* https://pcacases.com/web/sendAttach/698 [https://perma.cc/G6ZD-L2C2].

59. *Id.* at 153.

60. *Id.*

61. *Id.* at 153–55.

62. *Id.*

INTER-AMERICAN COURT OF HUMAN RIGHTS (IACHR)—As in the SCSL's *Kallon* case, amnesty proved to be a source of controversy in the IACHR's *Massacres of El Mozote and Nearby Places v. El Salvador*.[63] This time, however, the situation was reversed: El Salvador had passed a general amnesty law that directly contravened provisions in an earlier NIAC peace accord demanding an "end to impunity."[64] Without questioning the legal authority of the peace agreement, the Court recognized it as a valid legal source in conducting its analysis.[65] The Court construed the amnesty law as "contrary to the letter and spirit of the Peace Accords."[66] It proceeded to void the law, in part based on its violation of the principles of the American Convention,[67] but also because it "explicitly contradicted" the intent of the parties to the peace agreement.[68] The Court's apparent belief that the terms of the underlying peace agreement are inviolable represents an assumption that it formed a legally sound contract.[69]

UN SECURITY COUNCIL AND STATE PRACTICE—UNSC resolutions frequently communicate the Council's blessing of NIAC peace agreements.[70] In their weakest form, these resolutions merely urge or call on the parties to reach an agreement.[71] Alternatively, the Council may communicate its approval more directly by welcoming or endorsing an agreement between the parties.[72] The clearest indication

63. Massacres of El Mozote and Nearby Places v. El Salvador, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶¶ 2–3 (Oct. 25, 2012).

64. *Id.* ¶¶ 284, 287.

65. *Id.* ¶ 284.

66. *Id.* ¶ 295.

67. *Id.* ¶¶ 295–96 (citing articles of the Convention guaranteeing victims the rights to judicial protection and to a judicial hearing). *See also* American Convention on Human Rights, art. 1(1), 8(1), 25, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S.123.

68. Gov't of Sudan v. The Sudan People's Liberation Movement/Army, Case No. 2008-07, ¶ 292 (Perm. Ct. Arb. 2009).

69. *See id.*

70. Fox et al., *supra* note 10, at 651–52.

71. *See, e.g.,* S.C. Res. 924, ¶ 1 (June 1, 1994) ("[c]alls for an immediate ceasefire [in Yemen]"); S.C. Res 1701, ¶ 9 (Aug. 11, 2006) ("[i]nvites the Secretary-General to support efforts to secure as soon as possible agreements in principle from the Government of Lebanon and the Government of Israel to the principles and elements for a long-term solution"); S.C. Res. 2401, ¶ 1 (Feb. 24, 2018) ("[d]emands that all parties [in Syria] cease hostilities without delay").

72. *See, e.g.,* S.C. Res. 1464, ¶ 1 (Feb. 4, 2003) ("[e]ndorses the agreement signed by the Ivorian political forces in Linas-Marcoussis"); S.C. Res. 2307, preamble (Sept. 13, 2016) ("[w]elcoming the Final Agreement for Ending the Conflict and Building a Stable and Long Lasting Peace reached between the Government of Colombia and the Revolutionary

that the UNSC considers NIAC peace agreements to be legally binding, however, are resolutions demanding that the parties comply with obligations they have assumed through those pacts.[73] One study found that the Council had ordered AOGs to comply with the terms of their agreements in 83% of the conflicts in which such agreements existed.[74] The UNSC has established monitoring missions to ensure compliance with these agreements[75] and punished state and AOG violators, especially through arms embargoes.[76]

Though not quite representing either state practice or *opinio juris*, the two foundational components of customary international law, Gregory H. Fox, Kristen E. Boon, and Isaac Jenkins argue convincingly that UNSC practice in the field of NIAC peace agreements should nevertheless be understood as evidence of international custom.[77] First, the UNSC occupies a unique role in peace and security law, with the

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Armed Forces of Colombia–People's Army (FARC-EP)"); S.C. Res. 2451, ¶ 2 (Dec. 21, 2018) ("[e]ndorses the agreements reached by the parties… as set out in the Stockholm Agreement").

73. *See, e.g.,* S.C. Res. 999, ¶ 10 (June 16, 1995) ("[e]mphasizes the absolute necessity for the parties to comply fully with all the obligations they have assumed and urges them, in particular, to observe strictly the Agreement of 17 September 1994"); S.C. Res. 1572, ¶ 4 (Nov. 15, 2004) ("[u]rges… [the parties] immediately to begin resolutely implementing all the commitments they have made under these agreements"); S.C. Res. 1643, ¶ 2 (Dec. 15, 2005) ("demands that the Forces nouvelles establish without delay a comprehensive list of armaments in their possession, in accordance with their obligations").

74. Fox et al., *supra* note 10, at 677.

75. *See, e.g.,* S.C. Res. 968, ¶ 2 (Dec. 16, 1994) (establishing the United Nations Mission of Observers in Takijistan (UNMOT) "(a) …to monitor the implementation of the Agreement of 17 September 1994; [and] (b) [t]o investigate reports of cease-fire violations"); S.C. Res. 1609, ¶ 3 (June 24, 2005) (including in the mandate of the United Nations Operation in Côte d'Ivoire (UNOCI) "[t]o observe and monitor implementation of the joint declaration of the end of the war…and to investigate violations of the ceasefire"); S.C. Res. 2452, ¶ 2 (Jan. 16, 2019) (establishing the United Nations Mission to Support the Hodeidah Agreement (UNMHA) "(b) to monitor the compliance of the parties to the ceasefire in Hodeidah governorate and the mutual redeployment of forces").

76. *See, e.g.,* S.C. Res. 1521, ¶ 2(a) (Dec. 22, 2003) (imposing an arms embargo against Liberia); S.C. Res. 1132, ¶ 6 (Oct. 8, 1997) (imposing an oil and weapons embargo against Sierra Leone); S.C. Res. 1572, ¶ 6–7 (Nov. 15, 2004) (imposing an arms embargo against the Ivory Coast and strengthening the UN peacekeeping mission); S.C. Res. 1493, ¶¶ 18, 20 (July 28, 2003) (banning military and financial assistance to armed groups in the DRC and imposing an arms embargo against all armed groups and militias operating in certain regions and those not party to a peace agreement).

77. Fox et al., *supra* note 10, at 722–24.

competencies to legitimize or condemn uses of force, to bind state and non-state actors alike, and to intervene in domestic affairs (such as NIACs), including by taking enforcement action.[78] Aggregated data reveals that the UNSC does in fact frequently involve itself in NIACs and executes consistent responses.[79] The authors further describe the UNSC as the appointed agent of UN member states in the domain of international peace and security, with the practice of the former therefore attributable to the latter.[80] Finally, six international courts have acknowledged UNSC practice as contributory to customary international law.[81] In light of the UNSC's abiding belief in the enforceability of NIAC peace agreements, this interpretation strongly supports their legal legitimacy.

The legal contracting capacity of AOGs bears important implications for compliance with the agreements they sign and the restraints those agreements impose upon subsequent legal action. Recognition of this power may be normatively desirable in order to bind NSAs to commitments they make in the context of NIACs. But doing so has the collateral effect of contributing to the erosion of the state-based international legal order. The SCSL stands out for its studied refusal to permit this leveling of the international system. Globally, however, judicial and state practice appears to be evolving in a less ideological direction.

II. THE LEGAL PERSONALITY OF AOGS

In its famed *Reparations for Injuries* case, the ICJ took the first steps toward expanding the concept of legal personality beyond state boundaries.[82] In that case, the Court explained that various subjects of international law may differ in their rights and duties according to "the needs of the community."[83] Building off of this flexible prescription, legal personality has evolved toward a functionalist test dependent upon the manner in which the particular actor participates in the international system.[84]

In the years since the *Reparations* opinion, the legal standing of NSAs in the international arena has been clarified only marginally.

78. *See id.* at 697–705, 719–21.

79. *See id.* at 713–19.

80. *Id.* at 707–12.

81. *Id.* at 722.

82. Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, 1949 I.C.J. 174, 178 (Apr. 11).

83. *Id.*

84. William Thomas Worster, *Relative International Legal Personality of Non-State Actors*, 42 BROOK. J. OF INT'L L. 207, 211–12 (2016).

NSAs clearly do not owe the same obligations as states—international courts, for instance, have yet to allow for either a civil or criminal case to proceed against them.[85] Nor do they enjoy the same rights, including a recognized power to enter into treaties.[86] Nonetheless, there is a general consensus that certain classes of NSAs, such as international organizations,[87] national liberation movements,[88] and indigenous peoples,[89] may attain to at least limited legal personality.

As for AOGs, considerable ambiguity persists as to their legal status and contracting capacity. The remainder of this Part presents a case for the contextual legal personality of AOGs drawn from five different sources of international law: (1) international humanitarian law (IHL), (2) customary international law (CIL), (3) international human rights law (IHRL), (4) international criminal law, and (5) the UN Charter. In an exercise intended to convert legal theory into pragmatic prescriptions, this Part uses Yemen's Houthis as a case study to which these rules may be applied. In doing so, it builds a case for legally affirming the Stockholm Agreement by ascribing legal personality to the Houthis under unique sources of international law.

85. Andrew Clapham, *Focusing on Armed Non-State Actors*, *in* THE OXFORD HANDBOOK OF INTERNATIONAL LAW AND ARMED CONFLICT 770, 776 (Andrew Clapham et al., eds., 2014).

86. *See* Worster, *supra* note 84, at 235.

87. International organizations have at least two possible claims to legal personality. In one sense, they possess a collective legal personality derived from the individual personality of their member states. This form of personality is usually understood to be subjective, meaning that it obtains only with respect to the constituent states. A second form of legal personality available to international organizations is constructed functionally. Thus, legal personality is achieved if the organization's mandate grants it the capability to undertake meaningful action independent of its member states. *See* Worster, *supra* note 84, at 215-21.

88. The international right of self-determination lends legal personality to national liberation movements (NLMs) representing peoples seeking independence from subjugation. The Palestinian Liberation Organization (PLO) is a paradigmatic example. Worster, *supra* note 85, at 222–24. Based on this right, the ICJ has taken to permitting certain NLMs to participate in advisory opinions concerning their status. Shana Tabak, *Aspiring States*, 64 BUFFALO L. REV. 499, 547–562 (2016). Unlike most AOGs, armed conflicts involving NLMs are considered IACs. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 1(4), June 8, 1977, 1125 U.N.T.S. 3.

89. Indigenous peoples—even those not struggling for independence—may be parties to international agreements. *See* Worster, *supra* note 84, at 224–29.

A. International Humanitarian Law

Despite the general rule that treaties do not bind non-parties, the international community is nearly unanimous in holding AOGs involved in NIACs to the applicable portions of the Geneva Conventions.[90] There are several theories justifying this approach. First, states are recognized as having the power to create obligations for individuals and groups within their jurisdiction.[91] Second, IHL is founded on the principle of equality of belligerents in their rights and obligations.[92] And third, several articles of the Geneva Conventions are today a part of customary international law.[93]

In addition to the imputed applicability of the Geneva Conventions to AOGs, a few IHL conventions apply to AOGs by their own terms. Common Article 3 to the Geneva Conventions and Article 19 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict ("Hague Convention of 1954") both direct each party to a NIAC "occurring in the territory of one of the High Contracting Parties" to abide by certain minimum standards of conduct.[94] The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (CCW) applies in its entirety to NIAC parties on the same basis.[95]

As a party to a NIAC, the Houthis are unquestionably bound by applicable clauses of the Geneva Conventions and other customary provisions of IHL.[96] The UN Group of Experts on Yemen confirmed as much in a 2018 report finding that all parties to the conflict bear "international humanitarian law obligations aris[ing] under both treaty

90. Clapham, *supra* note 85, at 772–75. *See also* Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. Rep. 14, ¶ 220 (June 27).

91. Clapham, *supra* note 85, at 772–73.

92. Heffes & Kotlik, *supra* note 25, at 1201.

93. Clapham, *supra* note 85, at 774. For a further discussion of customary IHL, *see* discussion *infra* Section II.B.

94. Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), art. 3, Aug. 12, 1949, 75 U.N.T.S. 135; Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 19(1), May 14, 1954, 249 U.N.T.S. 215.

95. Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, art. 1(3), Oct. 10, 1980, 1342 U.N.T.S. 137.

96. *Q&A on the Conflict in Yemen and International Law*, HUMAN RIGHTS WATCH (Apr. 6, 2015), https://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law# [https://perma.cc/V84H-RZT].

and customary law."[97] The report went on to document numerous potential violations of IHL committed by the Houthis, including shelling civilians, deploying indiscriminate weapons, restricting humanitarian access, and recruiting children.[98]

B. Customary International Law

While the Geneva Conventions and other treaties form the basis of IHL, much of the corpus is customary.[99] In 1995, the International Criminal Tribunal for Yugoslavia (ICTY) established that the customary rules of IHL apply in NIAC settings.[100] They will therefore bind AOGs involved in a NIAC, provided that they survive a two-part inquiry.[101] First, the altercation must attain a sufficient scale and intensity so as to qualify as an "armed conflict" in the first place.[102] Scale and intensity are measured according to factors such as:

> the number, duration, and intensity of individual confrontations; the type of weapons and other military equipment used; the number and calibre of munitions fired; the number of persons and type of forces partaking in the fighting; the number of casualties; the extent of material destruction; and the number of civilians fleeing combat zones.[103]

The Yemen conflict, in which confrontations regularly involve advanced weaponry, have taken an acute humanitarian toll, and have been ongoing for several years, clearly fits these criteria.[104]

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97. U.N. High Comm'r for Human Rights, *Situation of Human rights in Yemen, Including Violations and Abuses Since September 2014*, ¶ 15, U.N. Doc. A/HRC/39/43 (Aug. 17, 2018) [hereinafter *Situation of Human Rights in Yemen*].

98. *Id.* ¶¶ 41–45, 60–64, 95–99.

99. Prosecutor v. Tadić, Case No. IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ¶ 116 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995).

100. *See id.* ¶¶ 96–127.

101. INT'L COMM'N OF JURISTS, BEARING THE BRUNT OF THE WAR IN YEMEN: INTERNATIONAL LAW VIOLATIONS AND THEIR IMPACT ON THE CIVILIAN POPULATION 5 (July 2018), http://www.icj.org/wp-content/uploads/2018/09/Yemen-War-impact-on-populations-Advocacy-Analysis-Brief-2018-ENG.pdf [https://perma.cc/GE6Z-NSQW].

102. Prosecutor v. Tadić, Case No. IT-94-l, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ¶¶ 66–70 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995).

103. Prosecutor v. Haradinaj, Case No. IT-04-84-84-T, Judgment, ¶ 49 (Int'l Crim. Trib. for the Former Yugoslavia Apr. 3, 2008).

104. *Situation of Human Rights in Yemen*, *supra* note 97, ¶ 15; INT'L COMM'N OF JURISTS, *supra* note 101, at 5–6; *Non-International Armed Conflicts in Yemen*, GENEVA ACAD. RULE OF LAW IN ARMED CONFLICTS, (May 14, 2019),

Second, the AOG must itself "have reached a certain threshold of organization, stability, and effective control of territory" in order to bear customary obligations.[105] This standard is judged according to indicators including:

> the existence of a command structure and disciplinary rules and mechanisms within the group; the existence of a headquarters; the fact that the group controls a certain territory; the ability of the group to gain access to weapons, other military equipment, recruits, and military training; its ability to plan, coordinate, and carry out military operations, including troop movements and logistics; its ability to define a unified military strategy and use military tactics; and its ability to speak with one voice and negotiate and conclude agreements such as cease-fire or peace accords.[106]

The Houthis quite clearly meet this qualification, too. They operate according to a regimented organizational hierarchy, control significant territory, have demonstrated an ability to carry out intricate attacks and military operations, and have participated in peace negotiations and concluded agreements.[107] Accordingly, the UN Group of Experts unequivocally declared the Houthis to be bound by customary IHL.[108]

Outside of the context of a NIAC, AOGs may be subject to other elements of CIL. In its Alien Tort Statute (ATS) jurisprudence, the United States has led the way in imposing civil liability on NSAs for violations of customary international norms.[109] While the non-state defendants in these cases have most often been either individuals or corporations,[110] a not insignificant number of ATS cases have been

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http://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-yemen#collapse1accord [https://perma.cc/2V3X-J3J7].

105. Int'l Comm'n of Inquiry on Darfur, *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General*, ¶ 172 (Jan. 25, 2005), https://www.un.org/ruleoflaw/files/com_inq_darfur.pdf [https://perma.cc/96PN-Z3PM].

106. *Haradinaj*, Case No. IT-04-84-84-T, ¶ 60.

107. *See* Sama'a Al-Hamdani, *Understanding the Houthi Faction in Yemen*, LAWFARE (Apr. 7, 2019, 10:00 AM), https://www.lawfareblog.com/understanding-houthi-faction-yemen [https://perma.cc/EL7V-WGLH].

108. *Situation of Human Rights in Yemen*, *supra* note 97, ¶ 15.

109. Kadic v. Karadzic, 70 F.3d 232, 239–42 (2d Cir. 1995) (recognizing for the first time that a NSA can be held civilly liable for violating CIL).

110. *See*, *e.g.*, Kiobel v. Royal Dutch Petroleum Co., 569 U.S. 108 (2012); Sosa v. Alvarez-Machain, 542 U.S. 692 (2004); Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980).

brought against AOGs and terrorist organizations, albeit without much success.[111]

In addition to being conditionally constrained by CIL, it is worth noting as concerns the legal personality of AOGs that there is some support for the proposition that they can contribute to that body of law as well.[112] The ICTY, for one, has cited AOG practice as evidence of international custom.[113] Some scholars have even promoted the recognition of a *sui generis* category of IHL drawn from AOG conduct.[114] Most authorities, however, do not assign to AOGs a role in the creation of CIL.[115]

C. International Human Rights Law

As the preeminent repositories of legislative, judicial, and executive functions, states are the primary objects of IHRL.[116] Indeed, very few human rights treaties address NSAs at all.[117] Instead, IHRL's "responsibility to protect" doctrine places the onus upon the state to prevent abuses committed by AOGs.[118]

Despite their omission from its foundational conventions, AOGs are not entirely exempt from IHRL obligations. At minimum, they are

111. *See*, *e.g.*, Tel-Oren v. Libyan Arab Republic, 726 F.2d 774 (D.C. Cir. 1984) (stating claims against the Palestine Liberation Organization, among others); Rosenberg v. Lashkar-E-Taiba, 980 F.Supp.2d 336 (E.D.N.Y. 2013); Mwani v. Al Qaeda, No. 99-125(JMF), 2014 WL 4749182 (D.D.C. Sept. 25, 2014).

112. Worster, *supra* note 17, at 236.

113. Prosecutor v. Tadić, Case No. IT-94-1, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, ¶¶ 102–08 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995).

114. *See* Sophie Rondeau, *Participation of Armed Groups in the Development of the Law Applicable to Armed Conflicts*, 93 INT'L REV. OF THE RED CROSS 649 (2011); Marco Sassòli, *Taking Armed Groups Seriously: Ways to Improve Their Compliance with International Humanitarian Law*, 1 J. INT'L HUMAN. LEGAL STUD. 5 (2010).

115. Worster, *supra* note 17, at 237–38.

116. *See* Jost Delbruck, *International Protection of Human Rights and State Sovereignty*, 57 IND. L. J. 567, 567–68 (1982).

117. But see the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, art. 4(1), May 25, 2000, 39 I.L.M. 1285, and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, art. 7, Oct. 23, 2009, 52 I.L.M. 397 [hereinafter Kampala Convention], as notable exceptions.

118. INT'L COMM'N ON INTERVENTION & STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT 17 (2001), http://responsibilitytoprotect.org/ICISS%20Report.pdf [https://perma.cc/6T9M-34PW].

compelled to observe peremptory norms (*jus cogens*),[119] including the protections of the rights to life, freedom of thought, and human dignity and the prohibitions of torture, slavery, and forced abduction.[120] They have a further duty to avoid complicity in a state's human rights violations.[121]

The UN Human Rights Council (HRC), among others, has staked out the more innovative position that IHRL applies not to state governments but to state territories, regardless of the authority that controls them.[122] Thus, AOGs that evolve into de facto regimes will be considered bound by the IHRL applicable to the region.[123] Relying upon this understanding, the HRC, UNSC, and various UN commissions of inquiry have repeatedly condemned the human rights violations of AOGs that assume territorial dominance.[124]

In addition to their *jus cogens* obligations, the Houthis constitute an archetypical de facto regime to which the whole of IHRL may be applicable. Since overtaking Sana'a in 2014, they have exercised durable control over a large territory and population and erected a functioning bureaucratic and law-enforcement machinery.[125] The UN Group of Experts apparently accepted this premise, applying the term "de facto authorities" to refer to the Houthis and declaring them bound by IHRL "given their exercise of government-like functions in the areas

119. Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, U.N. Doc. A/HRC/19/69, at 20 (Feb. 22, 2012).

120. *See* International Convention on Civil and Political Rights, art. 4, Dec. 16, 1966, 999 U.N.T.S. 171; Office of the High Comm'r for Human Rights, *General Comment No. 29: Article 4: Derogations During a State of Emergency*, ¶ 7, CCPR/C/21/Rev.1/Add.11 (2001).

121. Jan Arno Hessbruegge, *Human Rights Violations Arising from Conduct of Non-State Actors*, 11 BUFFALO HUM. RTS. L. REV. 21, 36–39 (2005).

122. *Id.* at 40.

123. *Id.* at 39–41.

124. Clapham, *supra* note 85, at 793–802.

125. *See Yemen's War: Four Years On, What Houthi Rule Looks Like*, AL JAZEERA (Mar. 26, 2019), https://www.aljazeera.com/news/2019/03/yemen-war-years-houthi-rule-190323080134193.html [https://perma.cc/8JE7-2GQX].

they effectively control."[126] Other watchdogs have relied on the same theory in accusing the Houthis of a litany of human rights violations.[127]

D. International Criminal Law

The Rome Statute of the International Criminal Court (ICC) confines personal jurisdiction to "natural persons,"[128] a model largely adopted by regional criminal tribunals as well.[129] While AOGs therefore cannot be tried collectively, their individual members are frequently the targets of international prosecutions for war crimes, genocide, and crimes against humanity.[130] Liability for the latter requires that an attack have been committed "pursuant to or in furtherance of a State or organizational policy."[131] The ICC has ruled that AOGs—even those that have relatively few state-like qualities—are sufficiently sophisticated to promulgate organizational policies that satisfy this condition.[132]

While it did not discuss crimes against humanity, the UN Group of Experts implicated individual members of the Houthis in potential war crimes including cruel treatment and torture, outrages upon personal

126. U.N. High Comm'r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses Since September 2014*, ¶ 12, U.N. Doc. A/HRC42/17 (Aug. 9, 2019). *See also* U.N. High Comm'r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses Since September 2014*, ¶¶ 5, 107, U.N. Doc. A/HRC/39/43 (Aug. 17, 2018).

127. Mwatana for Human Rights et al., *Submission to the UN Universal Periodic Review* 4–5 (Jan. 2019), https://www.upr-info.org/sites/default/files/document/yemen/session_32_-_january_2019/js5_upr32_yem_e_main.pdf [https://perma.cc/5KXF-WLT8]; Foreign & Commonwealth Office, *Human Rights and Democracy: The 2017 Foreign and Commonwealth Office Report* (Oct. 5, 2018), https://www.gov.uk/government/publications/human-rights-and-democracy-report-2017/human-rights-and-democracy-the-2017-foreign-and-commonwealth-office-report#chapter-5-human-rights-priority-countries [https://perma.cc/YM62-M7J6].

128. Rome Statute of the International Criminal Court. art 25(1), July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute].

129. Caroline Kaeb, *The Shifting Sands of Corporate Liability under International Criminal Law*, 49 GEO. WASH. U. L. REV. 351, 371 (2016).

130. Clapham, *supra* note 85, at 805–06.

131. Rome Statute, *supra* note 128, art. 7(2)(a).

132. *See* Situation in the Republic of Kenya, Case No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, ¶ 90 (Mar. 31, 2010).

dignity, and child enlistment.[133] Human rights groups have added to this list, demanding that Houthi fighters be held to account for targeting civilian objects, planting antipersonnel mines, and using human shields.[134]

E. UN Charter and the Use of Force

Article 2(4) of the UN Charter prohibits members from engaging in "the threat or use of force against the territorial integrity or political independence of any state, or in any other matter inconsistent with the Purposes of the United Nations."[135] A state may waive this privilege by consenting to a foreign actor's use of force.[136] However, its ability to do so may be constrained by its effective control over territory within its borders.[137] When a state forfeits enough control to a rival within its sovereign borders, some authorities have even extended Article 2(4) protection to the de facto regime that emerge, such as Abkhazia, South Ossetia,[138] Taiwan,[139] and pre-independence South Korea.[140] It is not uncommon for AOGs to attain to similar levels of effective control,

133. U.N. High Comm'r for Human Rights, *Situation of Human rights in Yemen, Including Violations and Abuses Since September 2014*, ¶ 108(c), U.N. Doc. A/HRC/39/43 (Aug. 17, 2018).

134. *Yemen: Attack on Saudi Airport Apparent War Crime*, HUMAN RIGHTS WATCH (June 14, 2019, 2:00 PM), https://www.hrw.org/news/2019/06/14/yemen-attack-saudi-airport-apparent-war-crime [https://perma.cc/H475-SFA7]; *Yemen: Key Concerns for Hodeida Battle*, HUMAN RIGHTS WATCH (June 15, 2018, 12:00 AM), https://www.hrw.org/news/2018/06/15/yemen-key-concerns-hodeida-battle [https://perma.cc/ZB4N-BMM6].

135. U.N. Charter, art. 2, para. 4.

136. International Law Commission, Responsibility of States for Internationally Wrongful Acts, art. 20 (Dec. 12, 2001).

137. Zachary Vermeer, *The Jus Ad Bellum and the Airstrikes in Yemen: Double Standards for Decamping Presidents?* EJIL: TALK! (Apr. 30, 2015), https://www.ejiltalk.org/the-jus-ad-bellum-and-the-airstrikes-in-yemen-double-standards-for-decamping-presidents/ [https://perma.cc/8GDG-5837].

138. *See* INDEPENDENT INTERNATIONAL FACT-FINDING MISSION ON THE CONFLICT IN GEORGIA REPORT VOL. II, 39–43 (2009), http://www.mpil.de/files/pdf4/IIFFMCG_Volume_II1.pdf [https://perma.cc/4253-LAF6].

139. Worster, *supra* note 17, at 240(citing James Crawford, THE CREATION OF STATES IN INTERNATIONAL LAW 191 (2006)).

140. *Id.* (citing JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 470 (2006)); S.C. Res. 82 (June 25, 1950).

political organization, and popular legitimacy[141] that would seem to entitle them to the same security guarantee under the Charter.[142]

As a UN member, Yemen is a beneficiary of the Article 2(4) non-intervention clause. But its president, Abdrabbuh Mansur Hadi, arguably waived this right when he petitioned the UNSC and the Gulf Cooperation Council (GCC) for military assistance in 2015.[143] On the other hand, some scholars have questioned whether Hadi had the legal capacity to authorize such action due to the Yemeni state's lack of effective control over the Houthi-dominated north.[144] Judged by their territorial dominion, governance architecture, and military prowess, the Houthis are as much a de facto state as any other, and therefore may themselves be entitled to claim Article 2(4) as a shield against foreign uses of force.[145]

Just as they may benefit from the UN Charter's embrace of territorial sovereignty in Article 2(4), AOGs may be subject to its self-defense exception. In Article 51, the Charter preserves UN members' "inherent right of individual or collective self-defense" against "armed attack."[146] Thus, if AOGs enjoy the Article 2(4) protection against foreign uses of force, then they may forfeit that privilege by mounting an "armed attack" against another state.

141. Scott Pegg, *De Facto States in the International System* 1–2, (Inst. of Int'l Relations, Univ. of B.C., Working Paper No. 21, 1998).

142. *See* Jonte van Essen, *De Facto Regimes in International Law*, 28 UTRECHT J. OF INT'L & EUR. L. 31, 37 (2012).

143. Michelle Nichols, *Yemen Asks U.N. to Back Military Action by "Willing Countries"*, REUTERS (Mar. 24, 2015, 6:03 PM), https://www.reuters.com/article/us-yemen-security-un/yemen-asks-u-n-to-back-military-action-by-willing-countries-idUSKBN0MK2OP20150324 [https://perma.cc/R949-N7DD]; *GCC Statement: Gulf Countries Response to Letter from Yemen President*, THE NATIONAL (Mar. 26, 2015), https://www.thenational.ae/uae/gcc-statement-gulf-countries-response-to-letter-from-yemen-president-1.4831 [https://perma.cc/73UD-UT2X].

144. Vermeer, *supra* note 139; Robert Chesney, *U.S. Support for the Saudi Air Campaign in Yemen: The Legal Issues*, LAWFARE (Apr. 15, 2015, 3:02 PM), https://www.lawfareblog.com/us-support-saudi-air-campaign-yemen-legal-issues [https://perma.cc/Y68C-KFC5].

145. *See Situation of Human Rights in Yemen, Including Violations and Abuses Since September 2014*, *supra* note 128; Ben Watson, *The War in Yemen and the Making of a Chaos State*, THE ATLANTIC (Feb. 3, 2018), https://www.theatlantic.com/international/archive/2018/02/the-war-in-yemen-and-the-making-of-a-chaos-state/551987/ [https://perma.cc/L7Q4-4WH6].

146. U.N. Charter, art. 51.

The ICJ has confined the Article 51 right to self-defense to attacks committed by or attributable to other states.[147] After all, to permit defensive force against an AOG operating from within a host state would seem to violate the host's sovereignty under Article 2(4).[148] The UNSC, however, has apparently adopted a different interpretation.[149] In two resolutions issued in the aftermath of the September 11 attacks, it referenced the Charter's right of self-defense as a basis for counterterrorism operations,[150] indicating its belief that AOGs can activate Article 51[151]. It might follow from this assessment that reprisal actions taken against an AOG launching an "armed attack" are not considered intrusions upon the sovereignty of their host state, suggesting that the offending AOG possesses some independent legal status.

Relying on President Hadi's invitation in order to avoid the matter of their interference with Yemeni sovereignty, various parties to the Yemen conflict have likewise interpreted Houthi aggression as sufficient cause to prompt defensive action.[152] The Saudis continue to base their military presence in Yemen on the principle of self-defense, characterizing their fight against the Houthis as "essential to the national security of Saudi Arabia and other GCC nations."[153] In a 2018 letter to Congress, U.S. Secretary of Defense James Mattis supported this position, describing the Saudi-led coalition's operations as a "legitimate exercise of self-defense."[154] In 2016, the U.S. again claimed

147. Nicar. v. U.S., 1986 I.C.J. Rep. ¶ 195. *See also* Dem. Rep. Congo v. Uganda, 2005 I.C.J. Rep. ¶ 146; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 2004 I.C.J. Rep. 136, ¶ 139 (July 9).

148. Kenneth Anderson, *Readings: Can Non-State Actors Mount an Armed Attack? by Kimberly N. Trapp* LAWFARE (June 11, 2014, 3:29 PM), https://www.lawfareblog.com/readings-can-non-state-actors-mount-armed-attack-kimberly-n-trapp [https://perma.cc/VZY4-8F75].

149. *See* S.C. Res. 1368 (Sept. 12, 2001); S.C. Res. 1373, (Sept. 28, 2001).

150. *Id.*

151. *See id.*

152. *See* MINISTRY OF FOREIGN AFFAIRS, SAUDI ARABIA AND THE YEMEN CONFLICT 27 (2017).

153. *Id.* at 7.

154. Letter from James Mattis, U.S. Secretary of Defense, to Mitchell McConnell, Majority Leader, U.S. Senate (Mar. 14, 2018), http://apps.washingtonpost.com/g/documents/world/defense-secretary-jim-mattiss-letter-to-congressional-leaders/2837/ [https://perma.cc/6AJ5-529C].

self-defense to support its own use of force against the Houthis after they fired on Navy ships.[155]

The foregoing analysis demonstrates that AOGs may, and that the Houthis in fact do, bear rights and obligations under a wide range of sources of international law. During a NIAC, AOGs are on equal footing with states under IHL conventions and are further held to *jus cogens* norms.[156] When they attain sufficient organizational sophistication or assume effective control over territory, they are subject to customary IHL and, arguably, IHRL. And while they cannot be prosecuted organizationally, their constituents have become some of the primary targets of hybrid courts and international criminal tribunals. Lastly, AOGs with a state-like control over territory may be protected by the UN Charter from state acts of aggression, while simultaneously capable of triggering another state's right of self-defense through offensives of their own.

Considered in aggregate, this evidence overwhelmingly confirms that AOGs are endowed with legal personality in many different contexts. There is therefore a strong case that they should be considered "subjects of international law" under the terms of the VCLT, implicitly capable of striking deals with "legal force."[157] Recognition of their contracting capacity might promote more effective implementation of the Stockholm Agreement and other NIAC peace agreements.

III. NIAC PEACE AGREEMENTS AS INTERNATIONAL INSTRUMENTS

While hardly a radical concept, the argument presented in the preceding section that AOGs possess some form of treaty-making power remains debatable. Fortunately, parties seeking to enforce NIAC peace agreements under international law need not resort to a legal construct as consequential as AOG legal personality.[158] Instead, there are several existing doctrines in international law under which the Stockholm

155. Oona A. Hathaway et al., *Yemen: Is the U.S. Breaking the Law?* 10 HARV. NAT'L SEC. J. 1, 61 (2019).

156. *See Situation of Human rights in Yemen*, *supra* note 126.

157. Vienna Convention on the Law of Treaties, art. 3, May 23, 1969, 1155 U.N.T.S. 331.

158. *See* Gov't of Sudan v. The Sudan People's Liberation Movement/Army, Case No. 2008-07, ¶¶ 401, 430 (Perm. Ct. Arb. 2009), *available at* https://pcacases.com/web/sendAttach/698 [https://perma.cc/G6ZD-L2C2] (explaining that although a party to the arbitration agreement was an AOG, the arbitration agreement would still be enforceable under international law); *see also* Fox et al., *supra* note 10, at 698–99 (explaining that the Security Council has the unique authority to bind non-state actors).

Agreement (and others like it) might be considered binding on the parties. These include (1) its endorsement by the UNSC, (2) its potential status as a special agreement, and (3) potential Houthi (or other AOG) statehood under the Montevideo Convention.[159]

A. UNSC Endorsement

As described above, the UNSC frequently stamps its approval on NIAC peace agreements through a ratifying resolution, which may be followed by an order to comply and enforcement action.[160] In Yemen, the UNSC announced its endorsement of the Stockholm Agreement in a resolution published a week after the negotiations concluded.[161] The resolution called for full respect of the terms of the agreement by the "parties" and requested reports on the progress of its implementation.[162] The UNSC further signaled its commitment to the deal by establishing a UN political mission to monitor and support its implementation.[163]

A UNSC resolution of this type may convert an otherwise non-binding understanding into a binding set of commitments. At minimum, UNSC resolutions are binding on UN member states, which, by acceding to the UN Charter, have consented to "accept and carry out the decisions of the Security Council."[164] State obligations to the UNSC are unaffected by their membership on the Council or their opposition to its actions.[165]

The legal effect of UNSC resolutions with respect to AOGs is less clear. The classical view, expressed in a 1971 ICJ decision, is that, in keeping with the law of treaties, the UNSC may not bind non-parties to the UN Charter, such as non-states.[166] The quasi-constitutional status that the UN Charter now enjoys within the international

159. *See* Fox et al., *supra* note 10, at 698–99 (explaining that the Security Council has the unique authority to bind non-state actors); *see also* Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), art. 3, Aug. 12, 1949, 75 U.N.T.S. 135; Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 19(2), May 14, 1954, 249 U.N.T.S. 215; Montevideo Convention on the Rights and Duties of States, art. 1, Dec. 12, 1933, 165 U.N.T.S. 21.

160. *See supra* Section I.B.3.

161. S.C. Res. 2451, ¶ 2 (Dec. 21, 2018).

162. *Id.* ¶¶ 3, 7.

163. S.C. Res. 2452, ¶¶ 1–2 (Jan. 16, 2019).

164. U.N. Charter, art. 25.

165. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 I.C.J. Rep. 16, ¶ 116 (June 21).

166. *Id.* ¶ 126.

community casts doubt on that literalist interpretation.[167] Moreover, the UNSC now presumes the authority to directly regulate the behavior of individuals, international organizations, and AOGs.[168] This trend has been most conspicuous in its pronouncements on terrorism, including demands that terrorist groups disarm and cease terrorist activity.[169] In 2019, the UNSC issued a general resolution on the issue of persons reported missing during armed conflict that was addressed to "all parties to armed conflict," states and non-states alike.[170] And in the early days of the current iteration of the Yemeni conflict, the UNSC ordered the Houthis to withdraw from Sana'a, partially disarm and demilitarize, and cease child recruitment.[171]

A 2010 ICJ advisory opinion implicitly approved of this UNSC practice in the context of NIACs.[172] In that case, the Court considered whether UNSC Resolution 1244, which demanded that the Kosovo Liberation Army (KLA) and other AOGs cease hostilities and demilitarize,[173] precluded the Kosovo Albanian political leadership from subsequently declaring independence.[174] In doing so, it compared Resolution 1244 to a series of other UNSC resolutions addressing the Kosovo Albanian leadership directly, illustrating that Resolution 1244 was directed only toward the KLA and not toward the political authorities.[175] The Court gave no indication of disfavor for the Council's general practice of issuing directives to NSAs and impliedly acknowledged its ability to impose binding obligations upon AOGs, including by endorsement of the agreements they sign.[176]

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167. Vincent-Joel Proulx, *International Civil Individual Responsibility and the Security Council: Building the Foundations of a General Regime*, 40 MICH. J. OF INT'L L. 215, 251 (2019).

168. *Id.* at 251–53.

169. S.C. Res. 2170, ¶ 4 (Aug. 15, 2014); S.C. Res. 2178, ¶ 1 (Sept. 24, 2014).

170. The applicability of this resolution to AOGs may be inferred from its imposition of obligations upon states specifically along with the broader category of "parties to armed conflict." S.C. Res. 2474, ¶ 15 (June 11, 2019).

171. S.C. Res. 2216, ¶ 1 (Apr. 14, 2015).

172. *See* Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 403, 450 (July 22).

173. S.C. Res. 1244, ¶ 15 (June 10, 1999).

174. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, *supra* note 172, at 449-50.

175. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, *supra* note 172, at 450-50.

176. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, *supra* note 172, at 450.

B. Special Agreement

Beyond the minimum duties that they impose upon AOGs, the Geneva Conventions and the Hague Convention of 1954 both encourage the parties of a NIAC to voluntarily commit to their remaining provisions by concluding "special agreements."[177] The scope of these agreements may even extend beyond the express demands of the Conventions, encompassing customary IHL rules, specific weapons bans, or IHRL to the extent that it overlaps with IHL.[178] Articles of a general peace agreement or ceasefire concerning IHL may be considered special agreements that may enter into force should hostilities continue.[179] Similarly, a special agreement may come in the form of a unilateral declaration, such as military codes of conduct or the "Deeds of Commitment" that many AOGs have undertaken in response to the Geneva Call's initiative to eliminate landmines.[180]

To avoid confusion with treaties, both the Geneva Conventions and the Hague Convention of 1954 caution that special agreements do not affect the legal status of the negotiating parties.[181] Neither instrument specifies the body of law intended to govern such agreements, leaving their position in international law unclear.[182] Nonetheless, they offer states and AOGs another mechanism through which to undertake reciprocal commitments.[183]

The most prominent special agreement in recent history was the 2016 comprehensive compact signed by the government of Colombia

177. *See* Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), *supra* note 159, at art. 3; Convention for the Protection of Cultural Property in the Event of Armed Conflict, *supra* note 159, at art. 19(2).

178. International Committee of the Red Cross, *Commentary on the First Geneva Convention*, ¶¶ 846, 851 (2016), https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6CDFA490736C1C1257F7D004BA0EC#_Toc465169951 [https://perma.cc/7MRX-FKKH].

179. *Id.* ¶ 850.

180. *Id.* ¶¶ 856–58; Clapham, *supra* note 85, at 783–85, 802–04.

181. *See* Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), *supra* note 159, at art. 3; Convention for the Protection of Cultural Property in the Event of Armed Conflict, *supra* note 159, at art. 19(4).

182. *See generally* Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), *supra* note 159; Convention for the Protection of Cultural Property in the Event of Armed Conflict, *supra* note 159.

183. *See* Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), *supra* note 159, at art. 6; Convention for the Protection of Cultural Property in the Event of Armed Conflict, *supra* note 159, at art. 19(2).

and the FARC rebels.[184] The agreement itself states that it is a "Special Agreement pursuant to Article 3, common to the 1949 Geneva Conventions."[185] With chapters dedicated to social, economic, political, and security reform,[186] the expansive scope of the agreement illustrates Colombia's belief that special agreements can extend beyond the realm of IHL.

Although Colombia's agreement is the most recent example of committing parties to adhere to the Geneva Conventions, it is not the only one. A special agreement, entitled, The Protocol on the Establishment of Humanitarian Assistance in Darfur, signed on April 8, 2004, by the Government of the Sudan with two AOGs, the Sudanese Liberation Movement and the Justice and Equality Movement, stated as follows:

> The concept and execution of the humanitarian assistance in Darfur will be conform [sic] to the international principles with a view to guarantee that it will be credible, transparent and inclusive, notably: the 1949 Geneva Conventions and its two 1977 Additional Protocols; the 1948 Universal Declaration on Human Rights, the 1966 International Convention [sic] on Civil and Public [sic] Rights, the 1952 Geneva Convention on Refugees [sic], the Guiding Principles on Internal Displacement (Deng Principles) and the provisions of General Assembly resolution 46/182.[187]

And even earlier, in 1992, the Republic of Bosnia-Herzegovina entered into an agreement with four NSAs to not only abide by Article 3 of the Geneva Conventions but to also undertake a "Special Agreement" to abide by the provisions of the Geneva Conventions that would otherwise only apply to international – not internal – armed conflicts.[188]

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184. *See Final Agreement To End The Armed Conflict And Build A Stable And Lasting Peace*, *supra* note 57, at 5 ("The National Government and the FARC-EP agree that the Final Agreement to end the conflict and build a stable and lasting peace shall be signed as a special agreement under the terms of Common Article 3 of the 1949 Geneva Conventions.").

185. *Id.*

186. *Id.* at 6.

187. Protocol on the Establishment of Humanitarian Assistance in Darfur, Preamble (Sudan 2004), *available at* https://reliefweb.int/report/sudan/sudan-protocol-establishment-humanitarian-assistance-darfur [https://perma.cc/276Z-LZ2G].

188. Bosnia and Herzegovina, Agreement No. 1 of May 22, 1992 arts. 1-2, https://casebook.icrc.org/case-study/former-yugoslavia-special-agreements-between-parties-conflicts#toc-b-bosnia-and-herzegovina-agreement-no-1-of-may-22-1992 [https://perma.cc/QJ87-3GVU].

Portions of the Stockholm Agreement that touch on IHL—such as provisions instituting a ceasefire, calling for the withdrawal of military forces and for demining operations, and demanding the protection of civilian freedom of movement and humanitarian access—could arguably be classified as a special agreement.[189] That argument would be stronger if it were explicitly fashioned as such or if it cited specific protections in the Geneva Conventions as applicable.

C. The Montevideo Convention

The cumulative proof compiled in Part II notwithstanding, the clearest pathway to legal personality and treaty-making power for an AOG is its ascendance to statehood. While strictly limiting its scope to compacts signed between states, the VCLT does not itself define the term "state."[190] The authoritative international text on that subject is the Montevideo Convention on the Rights and Duties of States ("Montevideo Convention"), which enumerates four attributes of statehood for the purposes of international law: "(a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states."[191] Reading the Montevideo Convention and the VCLT together, therefore, suggests that a treaty may be formed by any entity that satisfies these criteria.

Many NSAs arguably do fit these guidelines. Some have even won judicial recognition of their statehood. For instance, in 1995 the United States' Second Circuit acknowledged the self-proclaimed Republic of Srpska as a state through an application of the Montevideo principles.[192] Based on this precedent, similarly situated NSAs might have a compelling case for the same legal treatment. But they may encounter an obstacle in their lack of recognition by other states.

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189. *Full Text of the Stockholm Agreement*, OFFICE OF THE SPECIAL ENVOY OF THE SECRETARY GENERAL FOR YEMEN (Dec. 13, 2018), *available at* https://osesgy.unmissions.org/full-text-stockholm-agreement [https://perma.cc/FP8X-99GH].

190. Vienna Convention on the Law of Treaties, art. 1–2, May 23, 1969, 1155 U.N.T.S. 331.

191. Montevideo Convention on the Rights and Duties of States, *supra* note 159, at art. 1.

192. Kadic v. Karadzic, 70 F.3d 232, 245 (2d Cir. 1995). U.S. courts have continually rejected granting the same recognition to Palestine or the PLO, however. *See, e.g.,* Ungar v. Palestine Liberation Organization, 402 F.3d 274, 288–92 (1st Cir. 2005); Knox v. Palestine Liberation Organization, 306 F.Supp.2d 424, 433–38 (S.D.N.Y. 2004). In *Doe v. Islamic Salvation Front (FIS)*, 993 F. Supp. 3, 9 (D.D.C. 1998), the D.C. District Court concluded that further facts were required to determine whether an Algerian political group qualified as a "de facto state" under Montevideo.

The Montevideo Convention declares that statehood is "independent of recognition by the other states,"[193] a proposition known as the "declaratory theory."[194] While the declaratory theory represents the dominant view, it is not the consensus opinion.[195] According to the competing "constitutive theory," statehood is premised entirely upon recognition by the community of nations.[196] There are ready counter-examples to both theories: Transnistria, a territory in Moldova, seems to meet the Montevideo criteria, but has been denied statehood by the international community;[197] Palestine is recognized by more than 100 UN member states, but faces long odds to becoming a member in its own right and may fail the Montevideo "government" test.[198]

Under the declaratory theory, there exists an argument that the Houthis have formed a state as defined by the Montevideo Convention. While acknowledging that state recognition or non-recognition often comes down to political calculations,[199] the remainder of this section applies the Montevideo rules to the Houthis.

1. Permanent population and defined territory: The requirement of a permanent population is generally not considered burdensome. There is no minimum threshold, nor does the population need to be fixed provided that it identifies with the region of control.[200] Nor must the putative state's territory be strictly defined. Borders may remain uncertain or disputed as long as the NSA retains effective control over

193. Montevideo Convention on the Rights and Duties of States, art. 3, Dec. 12, 1933, 165 U.N.T.S. 21.

194. Robert J. Delahunty, *Statehood and the Third Geneva Convention*, 46 VA. J. INT'L L. 131, 142 (2005).

195. Glen Anderson, *Unilateral Non-Colonial Secession and Internal Self-Determination: A Right of Newly Seceded Peoples to Democracy?*, 34 ARIZ. J. OF INT'L AND COMP. L. 1, 20 n.66 (2017).

196. Delahunty, *supra* note 194, at 142.

197. Anderson, supra note 195, at 19–20.

198. Joshua Berzak, *The Palestinian Bid for Statehood: Its Repercussions for Business and International Law*, 12 J. INT'L BUS. L. 89, 96–98, 101–04 (2013).

199. Joshua Downer, *Towards a Declaratory School of Government Recognition*, 46 VAND. J. TRANSNAT'L L. 581, 583 (2013).

200. Eli Bernstein, *Is the Islamic State a "State" in International Law?* UNIVERSITY OF WESTERN AUSTRALIA (Nov. 18, 2015), https://casetext.com/analysis/is-the-islamic-state-a-state-in-international-law [https://perma.cc/Y6BR-NBPD]; Amichai Cohen, Yuval Shany, & Tal Mimran, *ISIS: Is the Islamic State Really a State?* THE ISRAEL DEMOCRACY INSTITUTE (Sept. 14, 2014), https://en.idi.org.il/articles/5219[https://perma.cc/CT97-RZ39]; Michael Anderson, *Reconceptualizing Aggression*, 60 DUKE L. J. 411, 423–24 (2010).

a consistent region.[201] Once established, statehood is not extinguished by subsequent territorial losses or foreign occupation.[202]

From their base in Saada governorate to the other northern territories into which they have expanded during the course of the war, the Houthis control a large swath of Yemen's land mass and population. While the frontlines continue to shift, the Houthis' grip on Sana'a and other northern strongholds has hardly slipped since the onset of the conflict. Millions are living under their rule across at least half of Yemen's governorates.[203]

2. Effective and independent government: While the Montevideo Convention includes no such qualifiers, the third criterion is often rendered as an effective and independent government.[204] That is, a government which, regardless of its form, capably and exclusively exercises the functions of a state within its territory, including the enforcement of law and order.[205] This element is typically considered the most salient factor in the Montevideo analysis.[206]

Since ejecting the Yemeni armed forces from Saada in 2011, the Houthis have erected an elaborate governance infrastructure by capturing existing state institutions and co-opting personnel.[207] Led by an executive body called the Supreme Political Council, the Houthis' Sana'a-based National Salvation Government has announced bold government programs.[208] It collects import taxes,[209] operates a judicial

201. Bernstein, *supra* note 200; Cohen et al., *supra* note 200; Anderson, *supra* note 200, at 423.

202. Bernstein, *supra* note 200; RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 201 cmt. b (AM. LAW INST. 1987).

203. *See Interactive Map of Yemen War*, LIVE UNIVERSAL AWARENESS MAP (June 5, 2019), https://yemen.liveuamap.com[https://perma.cc/C276-ZQ6Y].

204. *See* Bernstein, *supra* note 200; Cohen et al., *supra* note 200; Anderson, *supra* note 200, at 422.

205. *See* Bernstein, *supra* note 200; Cohen et al., *supra* note 200.

206. *See Ungar v. Palestine Liberation Organization*, 402 F.3d 274, 288 (1st Cir. 2005).

207. *See* Michael Knights, *The Houthi War Machine: From Guerrilla War to State Capture*, 11 CTC SENTINEL 15, 17 (2018).

208. *See* Ahmed Abdulkareem, *Yemen's Houthi Movement Unveils "National Vision" to Heal, Rebuild, and Modernize Their War-Torn Nation*, MINT PRESS NEWS (May 7, 2019), *at* https://www.mintpressnews.com/houthi-movement-unveils-new-national-vision-heal-rebuild-modernize-yemen/258274/[https://perma.cc/8UB9-R5W5].

209. *See* Elana DeLozier, *In Damning Report, UN Panel Details War Economy in Yemen*, THE WASHINGTON INST. FOR NEAR EAST POLICY (Jan. 25, 2019), https://www.washingtoninstitute.org/policy-analysis/view/in-

system,[210] and enjoys the protection of a sophisticated military and intelligence apparatus.[211]

3. Capacity to enter into relations with the other states: The ability to conduct foreign relations is considered to be the least important among the Montevideo factors.[212] To meet this standard, an aspiring state need not actually engage in diplomatic relations (which, according to international law, are founded upon mutual consent[213]); it merely must possess the technical, political, and financial capability to do so.[214] Through their cultivation of close ties to Iran (including the appointment of an ambassador)[215] and their engagement in the UN peace process,[216] the Houthis have arguably proven this capacity.

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Therefore, even if it were conceded that AOGs lack the requisite legal personality to sign onto pledges that are inherently binding, there may yet be cause to enforce those agreements under international law. UNSC endorsement of an agreement has an unambiguously compulsory effect on states, and most likely obliges AOGs to comply as well. Accords focused on issues related to IHL – and perhaps even those that extend beyond that realm – can be labeled special agreements under

damning-report-un-panel-details-war-economy-in-yemen [https://perma.cc/8N2N-HHR2].

210. *See Yemen: Mass Executions in Houthi Group Courts*, EURO-MEDITERRANEAN HUMAN RIGHTS MONITOR (May 5, 2018), https://euromedmonitor.org/en/article/2377/Yemen:-Mass-executions-in-Houthi-group-courts[https://perma.cc/YAB5-KRDQ].

211. Knights, *supra* note 207, at 17.

212. *See* Amichai Cohen, Yuval Shany, & Tal Mimran, *ISIS: Is the Islamic State Really a State?* THE ISRAEL DEMOCRACY INSTITUTE (Sept. 14, 2014), https://en.idi.org.il/articles/5219 [https://perma.cc/5RYD-H8BB].

213. *See* Vienna Convention on Diplomatic Relations art. 2, Apr. 18, 1961, 500 U.N.T.S. 95.

214. *See* RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 201 cmt. e (AM. LAW INST. 1987); Amichai Cohen et al., *supra* note 200; Eli Bernstein, *supra* note 200.

215. *See* Gerald M. Feierstein, *Iran's Role in Yemen and Prospects for Peace*, THE IRAN PRIMER (Dec. 5, 2018), https://iranprimer.usip.org/blog/2018/dec/05/iran's-role-yemen-and-prospects-peace [https://perma.cc/3NUT-LWYK]; Mohammed Hatem, *Yemen Shiite Rebels Appoint an Ambassador to Iran for First Time*, BLOOMBERG (Aug. 18, 2019, 3:45 AM), https://www.bloomberg.com/news/articles/2019-08-18/yemen-shiite-rebels-appoint-an-ambassador-to-iran-for-first-time [https://perma.cc/7B2L-QNGP].

216. *See* Osama Al-Rawhani, *The Good and the Bad in the New Peace Agreement on Yemen*, AL JAZEERA (Dec. 19, 2018), https://www.aljazeera.com/indepth/opinion/good-bad-peace-agreement-yemen-181218082222574.html[https://perma.cc/2ZMU-VKZF].

the Geneva Conventions or the Hague Convention of 1954. And if the AOG fulfills the Montevideo conditions of statehood, the agreement might even be construed as a treaty under the VCLT.

IV. STRATEGIES FOR LEGALIZING NIAC PEACE AGREEMENTS

Perhaps aware of the murky legal waters, parties to NIACs have adopted a variety of different techniques designed to craft agreements with artificial legal gravitas. Broadly speaking, these legalization tactics fall under three categories: (1) fashioning the agreement into a contrived legal format, (2) using legalistic language and citing binding sources of international law, and (3) incorporating external state parties and international organizations as agents of legitimization. Drawing upon the work of Christine Bell, this section assesses these strategies and offers recommendations.

A. Legal Form

Creative drafters can manipulate NIAC peace agreements into established legal formats by: (1) formally structuring them as interstate treaties, (2) designating them as constitutional frameworks, (3) incorporating them into the democratic process, (4) casting them as special agreements, or (5) following a sequencing template borrowed from interstate treaties or UNSC practice.

1. Treaty Format: Ireland's Belfast Agreement, Bosnia's Dayton Peace Accords (DPA), and Cambodia's Paris Accords are all instances of peace agreements resolving NIACs that have been drafted as treaties between states.[217] In each case, states external to the conflict have essentially acted as the guarantors of the AOGs involved, ensuring that their non-state allies will both fulfill their commitments and receive the benefits of their bargain.[218] Signatory states are legally bound to these accords as they would be to any other treaty. In some cases, AOGs sign onto companion agreements appended as annexes to the central treaty.[219]

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217. *See* Christine Bell, *Peace Agreements: Their Nature and Legal Status*, 100 AM. J. INT'L L. 373, 389 (2006). *See generally Agreement Reached in Multi-Party Negotiations* (1998), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf [https://perma.cc/MAF9-TKNR]; *The General Framework for Peace in Bosnia and Herzegovina* (1995), https://www.osce.org/bih/126173?download=true [https://perma.cc/377W-GFN8]; U.N. Secretary-General, *Framework for a Comprehensive Political Settlement of the Cambodia Conflict,* U.N. Doc. A/46/608- S/23177 (Oct. 30, 1991).

218. *See* Bell, *supra* note 217, at 389.

219. *See id.* at 389–90.

While they stand on firm legal footing, treaties of this ilk suffer from several practical disadvantages. Most obviously, their effectiveness is wholly dependent upon the underwriter states' ability to compel the compliance of non-signatory AOGs. Similarly, it is the states, rather than the AOGs, who bear the reputational costs of noncompliance.[220] Recognizing the discontinuity between the parties to the agreement and the parties to the conflict, peace-agreement treaties often feature difficult-to-enforce calls for further negotiations in a continuing peace process.[221]

2. Constitutional Format: An alternative method of situating peace agreements within a settled legal mode is to frame them as constitutions. South Africa, for example, positioned its Interim Constitution as the primary instrument embodying outcomes of the peace process.[222] Constitutions were also components of Bosnia's DPA, Kosovo's Rambouillet Accords, and Papua New Guinea's Bougainville Peace Agreement.[223] Integrating the terms of a peace agreement into a new constitution anchors the arrangement in domestic law and offers an opportunity for the state to chart a new future for itself.

But peace-agreement constitutions, too, have their drawbacks. The adversarial nature of the negotiating process often precipitates provisions more closely resembling the term sheet of a singular, private transaction than the foundational and universal principles of a social contract.[224] Relatedly, such constitutions are often explicitly transitional rather than permanent.[225] Furthermore, the contentious *travaux préparatoires* may cause constitutional interpretation, a fraught enterprise in any context, to become especially politicized.[226] Lastly, engaging in constitutional revision or replacement outside of the

220. *See id.* at 390.

221. *See id.* at 390–91.

222. *See id.* at 391. *See generally* S. AFR. CONST., 1994.

223. *See* Bell, *supra* note 217, at 392; General Framework Agreement for Peace in Bosnia and Herzegovina, Bosn. & Herz.-Croat.-Yugoslavia, Nov. 30 1995, 7 SUPPLEMENT DEP'T OF STATE DISPATCH 1, 25 (1996); Permanent Rep. of France to the U.N., Letter dated 4 June 1999 from the Permanent Rep. of France to the United Nations addressed to the Secretary-General, U.N. Doc. S/1999/648, annex, Rambouillet Accords (Jun. 7, 1999); Permanent Rep. of Papua New Guinea to the U.N., Letter dated 22 October 2001 from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/2001/988, encl. II, Bougainville Peace Agreement (Oct. 23, 2001).

224. *See* Bell, *supra* note 217, at 392.

225. *See id.*

226. *See id.* at 393.

established amendment process may invite challenges to the document's legitimacy.[227]

3. Incorporation into the Democratic Process: Rather than assiduously molding a peace agreement into the shape of a constitution, NIAC peace negotiators can curry democratic legitimacy through other means. One available track is to incorporate the peace agreement into the constitution by a constitutional amendment. Colombia's final peace agreement provided for the constitutional incorporation of certain elements;[228] it was ultimately incorporated in its entirety.[229] Likewise, South Sudan's revitalized peace agreement established a National Constitutional Amendment Committee to guide the integration of the agreement into the transitional constitution.[230] Converting a peace agreement into a constitutional amendment can etch it into domestic law in a less disruptive manner than forging a new constitution.

Instead of amending the constitution, the legislature can also ratify a NIAC peace agreement through legislation.[231] Along with the constitutional track, the Colombian agreement included language encouraging its legislative enactment, too.[232] Its congress formally adopted the agreement within a week of its signing.[233] Similarly, the legislatures of Sierra Leone and South Sudan passed ratifying legislation

227. *See id.* at 393–94.

228. *Final Agreement to End Armed Conflict and Build a Stable and Lasting Peace*, Colom.-F.A.R.C., art. 6.1.9(b)–(c), Nov. 14, 2016, *available at* http://especiales.presidencia.gov.co/Documents/20170620-dejacion-armas/acuerdos/acuerdo-final-ingles.pdf [https://perma.cc/F8V2-9M34].

229. *See* L. 50.230, Mayo 11, 2017, D.O. (Colom.). *See generally* Courte Constitucional [C.C] [Constitutional Court], Octubre 11, 2017, Sentencia C-630/17 (Colom.) (upholding and clarifying the amendment).

230. *See* Revitalised Agreement on the Resolution of Conflict in the Republic of South Sudan art. 1.1, Sept. 12, 2018, *available at* http://ctsamm.org/wp-content/uploads/2019/06/R-ARCSS-2018.pdf [https://perma.cc/T5DB-Q8D3].

231. *See* Gregory H. Fox, Kristen E. Boone & Isaac Jenkins, *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, 713 (2018).

232. *Final Agreement to End Armed Conflict and Build a Stable and Lasting Peace*, Colom.-F.A.R.C., art 6.1.9 Nov. 14, 2016, *available at* http://especiales.presidencia.gov.co/Documents/20170620-dejacion-armas/acuerdos/acuerdo-final-ingles.pdf [https://perma.cc/F8V2-9M34].

233. *See* Joshua Partlow & Nick Miroff, Columbia's Congress Approves Historic Peace Deal with FARC Rebels, WASH. POST (Nov. 30, 2016), https://www.washingtonpost.com/world/the_americas/colombian-congress-approves-historic-peace-deal/2016/11/30/9b2fda92-b5a7-11e6-939c-91749443c5e5_story.html [https://perma.cc/7AQJ-KM88].

with respect to their own NIAC peace agreements.[234] Ratification not only welcomes a NIAC peace agreement into the domestic legal framework, it makes it procedurally look like an international treaty.

Lastly, some NIAC peace agreements have been put to public referendum. The overwhelming majorities in Ireland and Northern Ireland that voted in favor of the Belfast Agreement in 1999 have since been cited as proof of popular will opposing any measures to undermine it.[235] Colombia, on the other hand, represents a notable failure of the referendum option, with a narrow majority of voters rejecting the deal.[236] The contrast between these two cases illustrate the risks and rewards of a public vote. While allowing for broader democratic engagement, referenda can also result in polarizing rhetoric, deepened societal divisions, and a refusal to accept the outcome.[237]

4. Special Agreement Format: Peace agreements can constitute special agreements so long as they "bring into existence further obligations drawn from the Geneva Conventions and/or their Additional Protocols."[238] Status as a special agreement might not make the entire agreement between a state and an AOG legally binding, but it arguably obligates the parties to at least adhere to the terms of the agreement related to the Geneva Conventions.[239] If nothing else, stating explicitly within a peace agreement that it is a special agreement under

234. Chargé d'affaires ad interim, Letter dated 12 July 1999 from the Chargé d'affaires ad interim of the Permanent Mission of Togo to the United Nations Addressed to the President of the Security Council, U.N. Doc. S/1999/777 (July 12, 1999) (explaining Sierra Leone's use of the legislative tool); Press Release, Sudan Tribune, South Sudanese Parliament Ratifies Peace Agreement with SPLM-IO (Sept. 10, 2015) (explaining South Sudan's use of the legislative tool).

235. Marie O'Halloran, Respect Irish Vote on Belfast Agreement, Taoiseach Tells Brexiteers, THE IRISH TIMES (Feb. 28, 2018), https://www.irishtimes.com/news/politics/oireachtas/respect-irish-vote-on-belfast-agreement-taoiseach-tells-brexiteers-1.3409232 [https://perma.cc/JT8Y-MDSS].

236. *See* Colombia Referendum: Voters Reject Farc Peace Deal, BBC (Oct. 3, 2016), https://www.bbc.com/news/world-latin-america-37537252 [https://perma.cc/9UL8-2W76].

237. *See* Jack Stuart, Bougainville: Is the Delayed Independence Referendum a Step Toward Peace? U.S. INST. OF PEACE (Mar. 5, 2019), https://www.usip.org/blog/2019/03/bougainville-delayed-independence-referendum-next-step-toward-peace [https://perma.cc/Z8JG-GQBY].

238. Commentary of 2016, Article 3: Conflicts of an International Character, no. 850, (construing Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field).

239. *See* Ezequiel Heffes & Marcos D. Kotlik, *Special Agreements as a Means of Enhancing Compliance with IHL in Non-International Armed Conflicts: An Inquiry into the Governing Legal Regime*, 96 INT'L REV. OF THE RED CROSS 1195, 1211–12, 1223 (2014).

Common Article 3 at least lodges it within the international legal realm and offers an opportunity for a review of its compliance with IHL.[240]

5. Agreements Pursuant to UNSC Mandates for Peacebuilding: As noted above, the UNSC unequivocally considers NIAC peace agreements to be legally binding. At times, it takes charge of the peace process itself by issuing a resolution articulating guiding principles and sketching a roadmap for future discussions. All subsequent agreements reached within this framework are implicitly graced by the UNSC's binding imprimatur. The peace processes in Afghanistan,[241] East Timor,[242] Kosovo,[243] and Syria[244] have all proceeded under this form of UNSC stewardship. Typical milestones on this pathway include forming a transitional government, conducting elections, and reforming the constitution.[245]

B. Legal Drafting

1. Legalistic Language: Regardless of their form, peace agreements cultivate authority by couching their terms in legal stylization. By using precise and compulsory language to delineate an interlocking network of reciprocal commitments, they assume a contractual tenor.[246] This legalistic tone, in turn, amplifies their "compliance pull," or perceived legitimacy.[247] Research in fact suggests a positive correlation between an agreement's specificity and its durability.[248]

Precision is most attainable with respect to short-term conflict-resolution measures, such as ceasefire, demobilization, and demilitarization plans.[249] It becomes less practical when it comes to long-term legal reform and constitutionalization, forcing agreements to instead introduce a set of more vaguely stated principles and processes to guide future developments.[250] This, too, can bolster compliance in

240. *See id.* at 1196.

241. *See* S.C. Res. 1378 (Nov. 14, 2001).

242. *See* S.C. Res. 1272 (Oct. 25, 1999).

243. *See* S.C. Res. 1244 (June 10, 1999).

244. *See* S.C. Res. 2254 (Dec. 18, 2015).

245. *See e.g.* Christine Bell, *Peace Agreements: Their Nature and Legal Status*, 100 AM. J. INT'L L. 373, 391 (2006).

246. *See id.* at 396–97.

247. *Id.* at 395, quoting Thomas M. Franck, THE POWER OF LEGITIMACY AMONG NATIONS 46 (1990).

248. *See* Virginia Page Fortna, *Scraps of Paper? Agreements and the Durability of Peace*, 57 INT'L ORG. 337, 362 (2003).

249. *See* Christine Bell, *Peace Agreements: Their Nature and Legal Status*, 100 AM. J. INT'L L. 373, 396 (2006).

250. *See id.* at 397–98.

its own way by enabling broader civic participation in the ongoing peacebuilding endeavors.[251]

2. Incorporating International Law that is Binding on Each Party: Another method for increasing the likelihood that peace agreements with AOGs will be deemed enforceable by the international community is to incorporate sources of international law that supports their clauses. Peace and political agreements have cited to all of the sources of international law discussed above that impute legal responsibility on AOGs, including the Geneva Conventions,[252] UN Security Council Resolutions,[253] international human rights law,[254] and the UN Charter.[255] By showing that its provisions are consistent with or required by international law, an agreement may situate itself in the international legal realm and create an international legal framework by which non-compliance can be judged.

3. Setting Implementation Milestones: A third way to legalize an agreement between a state and an AOG is to detail the stages of its implementation. Listing requirements for how an agreement must be

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251. *See id.* at 399.

252. *See, e.g.*, SPLM-United/Operation Lifeline Sudan Agreement on Ground Rules, Sudan, Jan. 5, 1996 (expresses support for the Geneva Conventions of 1949 and the 1877 Protocols additional to the Geneva Conventions).

253. *See, e.g.*, Global and Inclusive Political Agreement of the Interdiocesan Center of Kinsasha, Dem. Rep. Congo Dec. 31, 2016 ("Whereas this pursuit of inclusivity must be done in accord with the Constitution of the DRC, the pertinent resolutions of the United Nations Security Council, particularly Resolution 2277"); Gali Protocol of 8th October 2003 on Reducing the Tension and Improving the Mechanisms for Security in the Conflict Zone, Oct. 8, 2003 ("…underlining the importance of the resolutions by the Security Council of the UN").

254. *See, e.g.,* Ceasefire Agreement between the Government of Sudan and the Justice and Equality Movement-Sudan, Feb. 10, 2013 ("Determined to respect all international conventions, charters, resolutions, and protocols ratified by Sudan . . . ."); Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, Nov. 24, 2016 (". . . . the parties, always and at every stage, have upheld the spirit and scope of the rules of the National Constitution, the principles of international law, international human rights law, international humanitarian law (its conventions and protocols), the stipulations of the Rome Statute (international criminal law), the decisions of the Inter-American Court of Human Rights concerning conflicts and conflict termination, and other resolutions of universally recognised jurisdictions and authoritative pronouncements relating to the subject matters agreed upon . . . .").

255. *See, e.g.*, Ceasefire Agreement between the Government of Sudan and the Justice and Equality Movement-Sudan, Feb. 10, 2013 ("In accordance with the United Nations Charter and principles…"); Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, Nov. 24, 2016 ("The state has the autonomy to establish special jurisdictions or legal systems, deriving from the provisions of the UN Charter . . . .").

activated serves as a type of deliverable, reminiscent of clauses in a contract in domestic law. Some peace agreements contain implementation schedules,[256] and some even assign who is responsible for the implementation itself[257] and for its oversight.[258] While detailing specific milestones does not make an agreement more legally binding, it does provide a metric by which compliance with the peace agreement can be judged. Moreover, drafters can enhance the legal quality of their handicraft, at least superficially, by borrowing from the frameworks of UNSC-driven plans. Even if not proceeding pursuant to a blueprint drawn up by the UNSC itself, drafters of NIAC peace agreements could incorporate similar milestones to support an argument that their agreements should be afforded similar legal weight.

C. Third-Party Involvement

A defining trait of legal documents is the participation of third parties at particular phases of their lifetimes.[259] NIAC peace agreements follow this formula religiously, trading freely on the legitimacy of international organizations and external states by inviting their inclusion in the deal's various stages. Specifically, international third parties commonly engage in NIAC peace agreements through mediation and countersignature, implementation and monitoring assistance, and dispute resolution and enforcement.

1. Mediation and Signature: Foreign states, international organizations, or international NGOs are frequently called in to serve

256. *See, e.g.,* Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, Nov. 24, 2016; Arusha Peace and Reconciliation Accord for Burundi, Aug. 28, 2000; Comprehensive Peace Agreement between Government of Liberia and LURD, MODEL, and the Political Parties Aug. 18, 2003; Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, July 7, 1999.

257. *See, e.g.*, Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, July 7, 1999.

258. *See, e.g.*, *Agreement on a Permanent Ceasefire* art. 4.12, Uganda-LRA/M, Feb. 23, 2008 (Uganda, 2008), *available at* http://www.peaceau.org/uploads/lra-gu-ceasefire.pdf [https://perma.cc/YY7P-9PJQ] (stating that the responsibilities of the monitoring team shall include "(a) taking full responsibility for the management of the Assembly Area; (b) monitoring the implementation of this Agreement; (c) amicable resolution of any disagreement arising out of the implementation or interpretation of this Agreement; (d) analyzing and reporting events and trends to the Mediator, who will brief the Parties accordingly . . . .").

259. Christine Bell, *Peace Agreements: Their Nature and Legal Status*, 100 AM. J. INT'L L. 373, 385 (2006), citing Kenneth W. Abbott et al., *The Concept of Legalization*, 54 INT'L ORG. 401 (2000).

as mediators to facilitate negotiations between parties to a NIAC.[260] When the agreement is formalized, they may subsequently be asked to sign on as witnesses, guarantors, or observers.[261] International participation and approval at this early stage signals the agreement's internalization of accepted global norms.[262] In addition, it heightens the compliance pull by making the obligations multilateral rather than merely bilateral.[263]

2. Implementation and Monitoring Assistance: International actors may execute a variety of different implementation tasks at the request of the contracting parties.[264] International organizations with recognized expertise may supervise discrete operations within their competencies: the UN High Commissioner for Refugees commonly manages the return of refugees and displaced persons; the International Committee of the Red Cross oversees prisoner exchanges; a number of different organizations may be charged with elections monitoring.[265] There are also opportunities for long-term international participation in more gradual state-building processes, including legal and institutional reform, national reconciliation, and civil society development.[266]

In addition to actively supporting implementation procedures, international organizations may be further called upon to verify the parties' compliance with the agreement or specific parts of it.[267] Agreements can establish monitoring or implementation commissions comprised of international organizations or actors to document and evaluate adherence to the peace agreement or to provide logistical support or expertise.[268]

260. Christine Bell, *supra* note 259, at 400; Foreign & Commonwealth Office, *Legal Dimensions of Peace Agreements in Internal Conflicts* (July 2016).

261. Christine Bell, *supra* note 259, at 400; Foreign & Commonwealth Office, *supra* note 260.

262. Christine Bell, *supra* note 259, at 401.

263. *Id.* at 401–02.

264. *See, e.g.*, Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties art. IV(5) (2003) ("The Parties to this Agreement call on the ISF to remain in place until otherwise determined by the UN Security Council and the elected Government of Liberia").

265. Christine Bell, *supra* note 259, at 403.

266. Christine Bell, *supra* note 259, at 404.

267. *See* Foreign & Commonwealth Office, *supra* note 261.

268. Jane Boulden, *The Verification and Monitoring of Peace Accord*, Disarmament Forum, July 2000, at 45, *available at* https://www.unidir.org/files/publications/pdfs/peacekeeping-evolution-or-extinction-en-362.pdf [https://perma.cc/44YV-V9MZ]. *See, e.g.*,

3. Dispute Resolution and Enforcement: Just as domestic contracts may be enforced in national courts, international agreements may be submitted before a range of impartial, third-party dispute-resolution mechanisms. The aforementioned Abyei agreement reflects a general trend of referring disagreements arising under NIAC peace agreements to international arbitration.[269] As the *Abyei* panel itself noted, the NIAC parties' choice of an international adjudicative tribunal signals an intent to be governed by international law.[270]

NIAC peace agreements may further rely on international actors for their enforcement. Most visibly, they may request an international military presence to guarantee compliance.[271] Alternatively, they may seek UNSC endorsement,[272] knowing that it comes with the threat of sanctions against transgressors.[273] State parties soliciting UNSC endorsement may bring an agreement to the attention of the Council by requesting a referral from the Secretary-General.[274] In addition, some UNSC endorsement resolutions have taken notice of joint declarations released by heads of states affirming their support for the subject NIAC peace agreement.[275]

General Peace Agreement for Mozambique Protocol I, art. 5, Oct. 4, 1992; Arusha Peace and Reconciliation Agreement for Burundi Protocol II art. 13, 20 & Protocol V art. 3, Aug. 28, 2000; Peace Agreement Between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone annex, Nov. 1, 1996; ECOWAS Six-Month Peace Plan for Sierra Leone 23 October 1997–22 April 1998 Preamble Para. 2, art. 1–4, 7, Oct. 23, 1997; Lusaka Protocol Annex 8, Nov. 15, 1994; Cotonou Agreement art. 3, 12, July 25, 1993.

269. Christine Bell, *supra* note 259, at 402; Foreign & Commonwealth Office, *supra* note 261.

270. *Liberation Movement/Army on Delimiting Abyei Area*, Final Award, at 154 (Perm. Ct. Arb. 2009), https://pcacases.com/web/sendAttach/698 [https://perma.cc/X2GU-CZ56].

271. Foreign & Commonwealth Office, *supra* note 261.

272. *Id.* at 3.

273. *See Final Agreement to End Armed Conflict and Build a Stable and Lasting Peace Preamble*, *supra* note 57.

274. U.N. Secretary-General, Letter dated 29 March 2017 from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/2017/272 (Apr. 21, 2017), *available at* https://reliefweb.int/sites/reliefweb.int/files/resources/N1710911.pdf [https://perma.cc/8RPN-J32D]; U.N. Secretary-General, Letter dated 5 December 2001 from the Secretary-General addressed to the President of the Security Council, S/2001/1154 (Dec. 5, 2001), *available at* https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Afgh%20S2001%201154.pdf [https://perma.cc/E535-NS7U].

275. S.C. Res. 1464, ¶ 1 (Feb. 4, 2003); S.C. Res. 2202, ¶ 1(Feb. 17, 2015).

4. Publicizing an Agreement's Terms: Informing relevant stakeholders – including the general public and international community – of each party's obligations under a peace agreement makes it more difficult for a party to misrepresent or avoid its obligations. Peace agreements can include specific provisions requiring this communication to help ensure accountability for compliance with their terms.[276]

CONCLUSION

The legal status of NIAC peace agreements is a matter that remains unresolved. While it is clear that AOGs may attain international legal personality in some contexts, authoritative sources of interpretation have not reached a consensus with respect to their capacity to create contracts. In Part I, this Article reviewed the controversy over AOG treaty-making power and the split within the courts on the issue. In Part II, it illustrated the many different areas of international law under which AOGs are held to possess legal personality, suggesting that they could be able to accede to binding treaties. Part III showed that even if AOGs cannot ordinarily enter into treaties of their own right, there are other theories that support enforcing certain agreements that they sign. Finally, Part IV recounted some of the strategies that NIAC parties have innovated to bootstrap their pacts into binding documents. How these efforts are evaluated in the future will have implications that range from the odds of compliance with NIAC peace agreements to the nature of statehood in international law.

276. *See e.g.*, The Lomé Agreement: Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone art. XX (July 7, 1999), *available at* https://peaceaccords.nd.edu/sites/default/files/accords/The_Lome_Peace_Agreement-_1999_0.pdf [https://perma.cc/SSG2-GSR7] ("Each party shall ensure that the terms of the present Agreement, and written orders requiring compliance, are immediately communicated to all of its forces."); *see also* Cotonou Agreement art. 9(3) (July 25, 1993), *available at* https://peacemaker.un.org/sites/peacemaker.un.org/files/LR_930725_CotonouAgreement.pdf [https://perma.cc/Y88D-VJH3] ("It is agreed by the Parties hereto that each party shall immediately commence a community information or educational programme, explaining to the public be means of communication devices or any form of media, the essence and purpose of the cease-fire, encampment, disarmament and demobilization.").