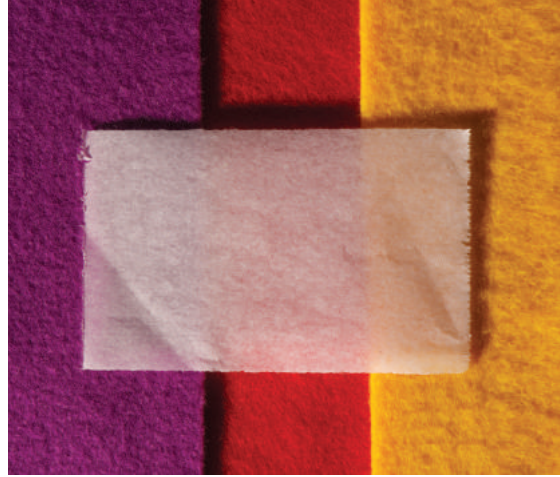




PSRP REPORT: IMPLEMENTATION



Implementing Peace Agreements through Domestic Law

Brooke Davies



This research draws on the PA-X Peace Agreements Database (www.peaceagreements.org), a database of all peace agreements at any stage of the peace process from 1990 to 2020. The database is fully searchable and supports both qualitative and quantitative examination of peace agreements.

Authors: Brooke Davies
Political Settlements Research Programme (PSRP)
School of Law
Old College
The University of Edinburgh
South Bridge
Edinburgh
EH8 9YL

Tel. +44 (0)131 651 4566
Fax. +44 (0)131 650 2005
E-mail: PoliticalSettlements@ed.ac.uk
www.politicalsettlements.org
[@PolSettlements](https://twitter.com/PolSettlements)

Acknowledgements: This research is an output from the Political Settlements Research Programme (PSRP), funded by UK Aid from the UK Foreign, Commonwealth & Development Office (FCDO) for the benefit of developing countries. The information and views set out in this publication are those of the author. Nothing herein constitutes the views of FCDO. Any use of this work should acknowledge the author and the Political Settlements Research Programme. For online use, we ask readers to link to the original resource on the PSRP website.

Acknowledgements: The author would like to thank Professor Christine Bell for her edits and guidance on this report, as well as Zaid Al-Ali, Yasmine El-Maghraby, Professor Tom Ginsburg, Professor Noah Feldman, and Professor Christina Murray for their feedback and advice during the research and drafting process. Thanks to Harriet Cornell and Rick Smith of Smith Design Agency for proofreading and production work.

About the author: Brooke Davies is a 2021-2022 Satter Human Rights Fellow seconded to the Tunis Office of the International Institute for Democracy and Electoral Assistance (IDEA), on issues related to constitution building. Previously, she was a clinical researcher with the Harvard Negotiation and Mediation Clinical Program.

Cover images: All images may be subject to copyright.

Contents

Executive Summary	01
<hr/>	
Introduction	07
<hr/>	
I. A Typology of Domestic Legalization Provisions	09
<hr/>	
II. Legislation and Executive Decree Provisions	15
<hr/>	
III. Constitutional Amendment Provisions	22
<hr/>	
IV. Constitutional Replacement Provisions	29
<hr/>	
V. Factors for Assessing When to Rupture to Implement an Agreement	38
<hr/>	
Conclusion	43
<hr/>	

Executive Summary

This research report explores how state and non-state parties can grant their peace agreements legal status through domestic law. In particular, it provides a typology for how parties have granted peace agreements legal status through these domestic processes and evaluates the benefits and risks of each legalization route. The report concludes with a set of factors parties in the future should consider when attempting to do the same.

The report argues that, while state and non-state parties to a peace agreement have great interest in giving it a legal status, only agreements between states are granted treaty status under international law. Domestic law, therefore, can be (and has been) one way to legalize the entirety of their agreements. By turning to domestic law, parties must think carefully about how best to bring their state's legal order in line with the terms of the peace agreement, many of which may reorganize the nature of the state itself. This report also emphasizes that the design of the legalization process can have enormous implications for the success of the post-conflict implementation period. Poor design can open the door to successful challenge by spoilers, to the frustration of implementation efforts, and even, in part, to resumption of the conflict. It is thus paramount that parties and practitioners both understand the options available to them and their associated risks.

The first part of this report draws on comparative examples to provide a comprehensive description of what each of those options can and have looked like. The second part puts forward a set of factors parties and practitioners can use to evaluate which choice may best fit their particular context. In doing so, it fills a gap in the literature on the legal status of peace agreements, which has thus far focused predominantly on international law's potential to grant legal status.

Findings

- ▶ Legalization matters greatly to parties for two chief reasons. One, legalization helps to mitigate commitment problems, because it places a legal bind on the parties that becomes costly to break. And two, legalization establishes exactly how the domestic legal order is going to look when it is brought in line with the peace agreement's terms. As such, it's an enormously important part of the implementation process.
- ▶ To grant their peace agreement legal status through domestic law, parties must make two sets of choices.
 - ▶ First, they must decide whether to give domestic legal status to their agreement through (1) legislation or executive decree; (2) constitutional amendment; and/or (3) constitutional replacement.
 - ▶ Secondly, they must decide whether to pass this legislation/decreed, amendment, or replacement in line with procedures prescribed by the constitution ("legal continuity") or through procedures that break in whole or in part with the constitution ("legal rupture").
- ▶ When designing and implementing these procedures, parties will often include the legalization route they wish to take in the peace agreement itself, either through an implied or express provision of which arrangements should be legalized, and how. Such provisions can come in a variety of forms.
 - ▶ They may be expressly transitional, or they may establish the permanent law of the land.
 - ▶ They may outline the specific language to be incorporated into the legal order, or merely state the need for legalization along with a list of general principles.
 - ▶ They may lay out a legalization procedure that is conditional on future developments, or they may insist that the procedures are permanent as written. The parties may prescribe just one provision type for the entire agreement, or they may combine legalization provision types throughout.

- ▶ Legislative/decreed provisions can be used to 'constitutionalize' the agreement and/or merely give legal status to discrete tasks that must be implemented in the course of the transitional phase, like the demobilization of arms or deployment of the police force. Legislative/decreed rupture from established legal processes can take several forms. These peace process provisions may create an ad hoc cabinet to pass legislation that the permanent legislature must actually pass; they may give a direction for the legislature to pass a law, or the head of state to sign a decree, that should have been passed through constitutional amendment instead; or they may demand that the parties do nothing to challenge an action or arrangement that would have otherwise been illegal.
- ▶ Constitutional amendment provisions are commonly used, and often in tandem with legislative/decreed provisions. Parties using an amendment provision often wish to revise parts of the constitution that are necessary to implement the peace agreement without overhauling the entire order, although these amendments can be so comprehensive as to comprise a de facto replacement. Amendment provisions that rupture the constitutional order may prescribe the amendment's passage through procedures that differ from the procedures in the constitution; abrogate specific articles in the constitution without further comment; or create a new cabinet or council to pass an amendment that the permanent legislature must have passed instead.
- ▶ Constitutional replacement provisions necessarily stand as a substantive break with the old order, but in certain instances they will prescribe that the parties do so through the amendment procedures of the old order. However, the majority of constitutional replacement provisions rupture with the old constitution, both in substance and procedure. They can do so in a variety of ways, including by replacing the old constitution with a new constitution included in the peace agreement itself; by placing the agreement as higher law above the constitution without any other legalization procedure to grant it such a status; or by replacing the constitution through a constituent assembly that does not have the power to do so in the old constitution.

- ▶ When thinking about whether to engage in legal continuity or rupture, it is impossible (and unwise) to prescribe one way forward for every context. This report, however, offers five factors that parties, policymakers, and advisers should consider when weighing the relative risks of continuity or rupture, and how to mitigate them. Those factors are: (1) practicability; (2) perceptions of the old order's legitimacy; (3) the parties' positions and relative strength; (4) the threat of spoilers; and (5) the international community's preferences.

Recommendations

Parties, policymakers, and advisers should:

1. Remember that peace agreement legalization provisions are first and foremost creatures of necessity. They are the mechanisms by which the parties will concretize their political arrangements in law, and often they must do so in a highly volatile post-conflict context. As such, the political, sociological, and symbolic considerations of these provisions should be carefully taken into account, in addition to the legal considerations.
2. Think carefully about whether rupture or continuity is most appropriate given the circumstances of the context. In particular, the following factors and accompanying questions should be considered:
 - ▶ **Practicability.** Is it actually possible for the parties to engage in legal continuity, or should rupture be used instead to avoid constitutional procedures that are too logistically, politically, and/or financially costly?
 - ▶ **Perceptions of the old order's legitimacy.** If the old order is widely seen as illegitimate, would legal continuity delegitimize the current process? Or if the old order is perceived as legitimate, would rupture undermine the credibility of the process with the conflict's chief stakeholders?
 - ▶ **The parties' positions and relative strength.** Do the main parties generally skew towards rupture or continuity? If there is a divergence of preferences, where do the stakeholders with the strongest position fall on this choice, and how much does this decision matter to them?
 - ▶ **The threat of spoilers.** How likely is it that a powerful party to the conflict could (and would) spoil the process if it did not get its preference on this question? Is there a risk that spoilers already looking to undermine the process could capitalize on a ruptured legalization of the agreement?
 - ▶ **The international community's preferences.** Do powerful international stakeholders have a strong desire for rupture or continuity? Would and could they exact hurting consequences on the parties if that desire is not met?

3. Consider the types of legalization procedures that might be best suited to the country context. In particular, they should look at the political arrangements included in the peace agreement and ask:
 - ▶ If the parties care about continuity, are the legalization provisions included in the agreement truly in line with the current constitutional order?
 - ▶ If the parties are indifferent to rupture, or outright prefer it, is the rupture structured such that it minimizes the risks named in point 2 above?
 - ▶ Are these provisions leveraging their relative strengths and opportunities to the greatest extent possible, such that they are maximizing the parties' ability to reach durable agreement?
4. Ensure, where possible, that all stakeholders are satisfied with the form of legalization process. In particular, policymakers, mediators, and advisers must ensure that the parties fully understand the potential legal consequences their selected legalization provisions will have on their domestic order.
5. Try as much as possible to clearly outline the details of the desired legalization procedure in the peace agreement.

Introduction

At a dialogue session in 2019 with members of the internationally recognized government ('IRG') of Yemen, two members of the governing coalition began a debate over the country's constitution. The first insisted that a future comprehensive peace agreement ('CPA') signed with the Houthi rebels ('Ansar Allah') must not conflict with any provision in the current constitution. After all, he argued, the constitution was closely tied to the IRG's claims of legitimacy. The second member disagreed, arguing that the IRG could not reach a deal with Ansar Allah without agreeing to terms that deviated from the constitution. Ansar Allah members had called the constitution "rotten" in past discussions - they would never accept a deal that propped up the status quo. Together the back and forth raised an important and still-unanswered question: *what exactly should the legal relationship be between an eventual CPA and the current constitution, "rotten" or not? And how should the government proceed with establishing it?*

The Yemeni leadership is certainly not the first of its kind to face down those two questions when attempting to reach a peace agreement to end intrastate conflict. This report builds on the work exploring the possible legal status that can be given to peace agreements first articulated by Christine Bell, and then further developed by Cindy Wittke and Philipp Kastner.¹ However, rather than addressing the well-trodden ground of how peace agreements can gain legal status through international law, it seeks to describe when and how peace agreements can be given a *domestic* legal status. This report argues that the process of domestic legalization raises two sets of choices. The first is a choice over the form of legalization, as between through (1) ordinary legislation/decrees; (2) constitutional amendment; and/or (3) constitutional replacement. The second choice is between legal continuity or legal rupture. In other words, whether the parties design the legalization process to adhere to the established constitutional rules for enacting that legal change ("legal continuity") or break the existing constitutional order in part or in whole ("legal rupture").

This domestic legalization process is crucially - and sometimes fatally - linked to the peace agreement's implementation. Modern intrastate peace agreements perform a far more complex role than simply a mechanism to end the fighting. They often call for wholesale transformation of the state's governing structures.² They may seek to redesign the legislative process,³ strip a head of state of his powers,⁴ or establish institutional representation of an ethnic group in political life.⁵ They are both a process and a final agreement; a short-term solution to address immediate security needs and a long-term plan for institutional rebuilding; and they can reach levels of such complexity and comprehensiveness as to serve as the blueprint for building a new state altogether.⁶ As such, a peace agreement's domestic legalization process can be conceptualized as the blueprint for how those new political arrangements in the peace agreement will be brought to legal "life" in a state's domestic law.

Moreover, the design of the legalization process also implicates important moral and sociological questions of legitimacy and popular ownership: who should get to decide what the new legal regime looks like, and how will they do it? Who should be left out of that process? And if brought about by rupture, how does that rupture increase or decrease perceptions of legitimacy, and what mitigating steps can be taken? These design questions in part ensure the success or failure of a peace agreement's implementation, and by extension the end or resumption of war. The provisions that create them thus demand closer attention.

This report proceeds in six parts. Part I introduces a typology describing the domestic legalization options available to parties. This typology was created through a study of nineteen intrastate peace agreements from seventeen country contexts. Parts II through IV expand on the three available legalization forms of legislation/decrees (II), amendment (III), and replacement (IV), providing an overview in each Part of that form's relative benefits and risks. Part V then offers a list of factors parties and practitioners should consider when deciding whether to implement those legalization processes through legal continuity or rupture.

I. A Typology of Domestic Legalization Provisions

A. Introduction to the Typology

It is by now well-established that there currently exists no route for a state and non-state actor to directly conclude an intrastate peace agreement that is binding under international law as a treaty.⁷ While a peace agreement between a state and non-state actor can certainly layer in obligations that are binding under international law, as has happened in contexts like Colombia and Bosnia, parties wishing to give legal status to their agreement even in these situations will at some point have to turn to their own domestic order. To grant that legal status, parties have written legalization provisions into their peace agreements that dictate how the parties wish for their domestic law to be brought in line with the peace agreement's terms. In these instances, the parties are not binding their peace agreement to a legal regime to give it force as they would a treaty through ratification. Instead, they are molding the state's domestic law to their peace agreements - and in some cases, they are doing so extra-constitutionally.

The use of these legalization provisions has coincided with the rise in intrastate comprehensive peace agreements themselves. They first appeared in the late 1980s with the [Taif Accord](#) in Lebanon in 1989, which ended a decades-long civil war between the Lebanese government and Maronite Christian and Muslim armed groups and reallocated the state's powers to old and new institutions.⁸ Shortly after Taif followed a wave of peace agreements containing legalization provisions in the 1990s and early 2000s, including [Cambodia's Paris Agreement](#) (1991), [El Salvador's Chapultepec Agreement](#) (1992), [South Africa's Interim Constitution](#) (1993),⁹ [Angola's Lusaka Protocol](#) (1994), [Bosnia and Herzegovina's Dayton Agreement](#) (1995), [Guatemala's Agreement on a Firm and Lasting Peace](#) (1996), [Bangladesh's Chittagong Hill Tracts Agreement](#) (1997), [Northern Ireland's Good Friday Agreement](#) (1998), [Kosovo's Rambouillet Accord](#) (1999), [Sierra Leone's Lomé Agreement](#) (1999), [Burundi's Arusha Accords](#) (2000), [Kosovo's Constitutional Framework](#) (2001), [Papua New Guinea's Bougainville Peace Agreement](#) (2001), [Macedonia's Ohrid Agreement](#) (2001), [Liberia's Accra Agreement](#) (2003), [Sudan's 2005 CPA](#) (2005), [Nepal's 2006 CPA](#) (2006), [Côte d'Ivoire's Ouagadougou Agreement](#) (2007), and others.

A second, promised wave of peace agreements post-Arab Spring has yet to materialize. The two qualifiers thus far are perhaps Sudan's 2019 Constitutional Declaration¹⁰ and Libya's failed 2015 Political Agreement.¹¹

These peace agreements developed in different contexts, stages of war, and under a cascade of converging and competing party needs and interests. Drawing generalizable lessons for future processes from such specific contexts is no less complicated. However, it is possible to derive some common indicators that provide insight into the types of routes parties take to legalize their agreements, why they take them, and what that means for others attempting to do the same in the future.

This report argues that these legalization provisions reflect two choices the parties must make. First, they must decide whether to give domestic legal status to their agreement by (1) legislation or executive decree; (2) constitutional amendment; and/or (3) constitutional replacement. Secondly, they must decide whether to pass this legislation, amendment, or replacement in line with procedures prescribed by the constitution (“legal continuity”) or through procedures that break in whole or in part with the constitution (“legal rupture”). These choices are laid out in the table below, with accompanying cases that will be touched upon throughout this report.

TABLE 1. *A Typology of Domestic Legalization Provisions*

Legislation/Executive Decree	Constitutional Amendment	Constitutional Replacement	
Lebanon (<i>Taif Accord</i>) Macedonia (<i>Ohrid Agreement</i>) Northern Ireland (<i>Good Friday Agreement</i>) Guatemala (<i>Accord for a Firm and Lasting Peace</i>)	Lebanon (<i>Taif Accord</i>) Macedonia (<i>Ohrid Agreement</i>) Northern Ireland (<i>Good Friday Agreement</i>) Guatemala (<i>Accord for a Firm and Lasting Peace</i>) El Salvador (<i>Chapultepec Agreement</i>)	Sudan (<i>2005 CPA</i>) South Africa (<i>Interim Constitution</i>)	Legal Continuity
Côte D'Ivoire (<i>Ouagadougou Agreement</i>) Sierra Leone (<i>Lomé Agreement</i>) Bangladesh (<i>Chittagong Hill Tracts Agreement</i>) Angola (<i>Lusaka Protocol</i>) Libya (<i>2015 Political Agreement</i>) El Salvador (<i>Chapultepec Agreement</i>)	Liberia (<i>Accra Agreement</i>) Angola (<i>Lusaka Protocol</i>) Libya (<i>2015 Political Agreement</i>)	Kosovo (<i>Rambouillet Accord</i>) Kosovo (<i>Constitutional Framework</i>) Burundi (<i>Arusha Accords</i>) Bosnia (<i>Dayton Agreement</i>) Cambodia (<i>Paris Agreement</i>) Sudan (<i>2019 Constitutional Declaration</i>)	Legal Rupture

In instances of legal continuity, the legalization provision laid out in the peace agreement will be the same as what the constitution would also demand. In essence, the legalization provision and the constitution will match. This holds true even if, in a case like [South Africa](#), the constitutional replacement constitutes a substantive rupture, while at the same time adhering to the constitution's amendment procedures. Legal rupture, by contrast, occurs in instances when the provision prescribes an extra-constitutional legalization procedure. Those provisions may simply fabricate a new procedure. They might add new procedures that the constitution doesn't prescribe, or omit some of the procedures that it does. They might prescribe the correct procedure but vest the responsibility to complete it in a body that does not have the power to do so under the constitution. In such instances of rupture, the parties are making new law by breaking old law.

To be sure, this rupture can be either impliedly or expressly stated in the peace agreement. The agreement may not mention the old legal order while offering an entirely new constitution in its text. Or, noting the rupture it is undertaking, the agreement may state outright that it abrogates all previous laws with which it conflicts without completing the constitutionally prescribed procedure to do so. Relatedly, in some contexts, parties eager to build a constitutional culture may even present the peace agreement's legalization procedures as continuity with the past legal order even though they depart from the legally required processes. **However it is characterized, implicit or explicit, as continuity or not, rupture exists if the legal change is brought about through procedures other than those prescribed in the state's existing legal order.**

B. Why Legalization Procedures Matter

In the cascade of arrangements and mechanisms that must be negotiated in the course of a single peace process - the modification, creation, and collapse of political institutions, the deployment of humanitarian aid to alleviate mass suffering, the return of displaced persons, and the sequencing of demobilization efforts, to name just a few - it may appear legalistic and formal to suggest that parties think carefully about the procedures they wish to use to grant their agreement legal status. However, even in the face of other pressing matters, parties often care immensely about the binding nature of their agreements, and there are two primary reasons why they do (and should) give it great attention.

One, legalization mitigates the commitment problems that plague intrastate conflict.¹² Though Abbott's "legalization theory" is centered on international agreements between states, as Bell demonstrated it can be an instructive analog to internal peace-building.¹³ According to Abbott and Snidal, legalization can help parties "reduce transactions costs, strengthen the credibility of their commitments, expand their available political strategies, and resolve problems of incomplete contracting."¹⁴ Legalization prevents self-serving "auto-interpretation" of vague provisions by taking the interpretive work out of the hands of parties seeking to exploit ambiguity and putting it onto the dockets of domestic courts and legislative institutions.¹⁵ Courts in particular impose higher reputational costs on parties it finds to be in violation of the agreement's terms. Reneging parties feel the sting of their defection more acutely if they are not just breaking an agreement's terms, but the law - especially if those parties are non-state actors with a reputation to lose and legitimacy to gain on the international stage. By delegating the implementation power to the state through legalization, parties have increased their incentives to comply by raising the costs of defection.¹⁶ Moreover, the very existence of a "legal status" for a peace agreement creates incentives to comply. There is reason to believe that parties are more likely to adhere to an agreement's terms when it is legalized purely out of a sense of its inherent legitimacy as a legal document.¹⁷ Conversely, parties are more likely to renege from peace agreements if they view them as simple - and shreddable - "pieces of paper."

Second, domestic legalization answers the crucial question of what precisely will be the peace agreement's place in the state's domestic law. In cases of interstate treaty-making, state parties will legalize their agreements through prescribed, general ratification procedures already included within their constitution. Every treaty in Bangladesh, for example, must be submitted to the President and then presented to Parliament.¹⁸ Every treaty in Bahrain must be concluded by the King, communicated to the appropriate legislative organs, and then published in its Official Gazette.¹⁹ Of the 197 constitutions currently in force, 177 of them have a general treaty ratification procedure.²⁰ Constitutions also commonly include provisions that give treaties a defined place in their hierarchy of laws; there is little question of what law would prevail in the event of a constitutional challenge.

Intrastate legalization processes, by contrast, face dilemmas on both fronts. As described above, most constitutions have no general legalization procedure for peace agreements with non-state actors, and parties must invent them on an ad hoc basis. Moreover, intrastate peace agreements commonly reorganize the very nature of the state. They create new governance provisions that may be incompatible with existing law. For that reason, parties cannot simply sign such a peace agreement into law as a legislature might ratify a treaty. Those incompatible provisions in the peace agreement would be void under a constitutional challenge. Instead, **parties must stitch their peace agreements into their existing legal system**. It is often not a process of ratifying the peace agreement into the legal order, but rather the other way around: the parties must bring their domestic law in line with the terms of the peace agreement. Sierra Leone's **Lomé Agreement** expressed this goal outright when its legalization provision stated, "no constitutional or any other legal provision prevents the implementation of the present Agreement" and then established a Constitutional Review Committee to propose amendments to make the constitution comply with the agreement's terms.²¹ In the **Lomé Agreement** and others, domestic legalization provisions have become the mechanism by which parties will reconcile the agreement's terms and the country's domestic legal order. They are the mode of transition between the state as it was to the state as the parties now wish it to become.²²

C. The Various Forms of Legalization Provisions

Due to the case-by-case nature of these legalization provisions, along with the diversity of purposes they serve, they have also taken a variety of forms. Below are some of the most common areas of diversity:

- ▶ **Transitional versus permanent**. Some provisions may be expressly transitional, while others seek to establish the permanent law of the land. South Africa's **interim constitution** was designed to expire once the parties drafted a permanent document,²³ and Article 35 of Liberia's **Accra Agreement** abrogated several of the state's constitutional provisions with the express statement that they would be "restored with the inauguration of the elected Government by January 2006."²⁴ Bosnia's **Dayton Accords**, by contrast, included included a constitution in its annex that was intended to be the state's permanent version.²⁵

- ▶ **Degree of specificity.** These domestic legalization provisions will also range in specificity. Some will simply recognize the need for legalization. In the provision disbanding its paramilitary bodies, El Salvador's [Chapultepec Peace Agreement](#) merely stated, "The laws, regulations, and orders in force on this subject shall be made compatible with the terms of this Agreement."²⁶ Other provisions will outline the broad principles that must be included in any future law, and others still might provide the precise wording that must be incorporated into the legal order. Cambodia's [Paris Accords](#), for example, include instances of all three degrees of specificity.²⁷
- ▶ **Conditionality.** The legalization provisions may also lay out a process conditional on other developments, or they might contain the final terms to be legalized. Lebanon's [Taif Accords](#) did both. It enumerated an exact Christian-Muslim ratio of 50-50 representation in Parliament, for example, while committing the parties to following a "detailed one-year plan" to reestablish sovereignty over Lebanon's territory that had yet to actually be drafted.²⁸
- ▶ **Provision location.** The provisions also vary in their placement in the agreement. Some peace agreements include a dedicated implementation section near the end of the document or attached as an annex, while others might include a specific provision at the end of each substantive section.
- ▶ **Hybrid models.** By their nature as creatures of necessity, parties must sometimes mix and match procedures in order to give proper legal effect to the arrangements they have set out in the peace agreement. As a result, hybrid models prescribing both a legislative/debate and amendment procedure are quite common. Parties may wish to use legislation to implement discrete programmatic tasks in the peace agreement, all the while prescribing an amendment procedure to shift the underlying structure of the state.

Despite this diversity in form, placement, and language, these legalization provisions have always fallen into one or more of the three categories enumerated above: legislation/debate; constitutional amendment; and/or constitutional replacement. Parts II, III, and IV below will expand on each category in turn. They will include an overview of the category's general characteristics, provide case studies of peace agreements with legally continuous or ruptured provisions, and conclude with recommendations for why and how parties might go about drafting such a provision.

II. Legislation and Executive Decree Provisions

This type of legalization provision includes all changes to the legal order implemented through legislation or executive decree. A peace agreement might call for a legislative body to pass statutes implementing the terms of the agreement, or for the head of state or government to issue a decree. Some also call on the administrative state to promulgate regulations that bring its policies in line with a peace agreement's terms.

Legislation is used to serve a variety of purposes during the implementation of a peace agreement, but with regard to the granting of legal status it appears in two broad categories: (1) provisions to give the entire document a constitutional status through legislation/decrees; and (2) provisions to merely implement discrete pieces of the agreement. The first category was most notably used in the [Good Friday Agreement](#) ending the conflict in Northern Ireland, where the agreement was the basis of the Northern Ireland Act of 1998, a de facto sub-state constitution.²⁹ Thus in this first category of legislative/decrees legalization, legislation is being used to implement constitutional change.

The second category of legislation/decrees legalization procedure, by contrast, serves a narrower purpose of agreement implementation. These procedures often come as a legislative programmatic package designed to carry out discrete tasks included in the peace agreement, such as the demobilization or decommissioning of weapons, redeployment of the administrative state, or program financing, to name just a few. Such provisions are usually already subject to regulation by ordinary law, and as such legislation to implement them is often uncontroversial. Legalizing the agreement framework through legislation or decree can therefore be the path of least resistance, so to speak. The [Ouagadougou Political Agreement](#), a classic example, has more of the appearance of a logistical memo than a quasi-constitutional proclamation.³⁰ Its preamble, unlike agreements that may speak at length about the political aspirations of the people or the state's status as a modern democracy,³¹ instead recounts the discussions at which the [Ouagadougou Political Agreement](#) came to be signed and lists six principles by which the parties must abide.

The rest of the agreement then calls for the redeployment of mobile courts to issue birth certificates; reconstruction of lost or destroyed birth registers; a standardized national identification program; an electoral roll registration process; a mechanism for integrating the army and Forces Nouvelles fighters; an embargo on the importation of arms; the dissolution of the zone of confidence; an extension of a 2003 amnesty law; and other matters.³² These terms largely concern the mechanics of programs or policies already established by statute, rather than a fundamental reformation of those bodies themselves.

As stated above, it is also quite common for the agreement to prescribe both a legislative and amendment legalization procedure. The peace agreements in [Lebanon](#), [Macedonia](#), [Northern Ireland](#), [Libya](#), [Guatemala](#), [El Salvador](#), [Angola](#), and others all took such a route. These hybrid legalization provisions may prescribe legislative reform where possible, and constitutional amendment where necessary. Of course, this should not be taken to mean that legislative reforms are by any measure “easier” to implement. Lebanon’s [Taif Accord](#) prescribed both a constitutional amendment and legislative procedure, and the latter was by far a more hard-fought, politically charged, and controversial implementation process.³³ Macedonia’s [Ohrid Agreement](#) is also a chief example of a hybrid procedure. It mandated new statutes to be passed on issues of local government financing; fair representation of minority communities in administrative posts; municipal boundaries; the role of the police; and others. However, the [Ohrid Agreement](#) was in essence a renegotiation of ethnic Albanians’ place in the country’s political, cultural, and economic life, and many of its terms involved the recentralization of authority in local governments; new “fundamental values of the constitutional order;” shifting the voting thresholds in the legislature for issues of culture and history; reorganizing the composition of the Constitutional Court; and others - terms which would all conflict with the current constitution if only passed through legislation. As a result, the [Ohrid Agreement](#) included one annex prescribing a list of “legislative modifications” with accompanying principles to which the legislature must adhere, and then another that dictated word-for-word a new preamble and fifteen constitutional amendments.³⁴ Per the agreement’s terms, the Assembly passed the amendments in November 2001, and the proposed language was incorporated almost verbatim into the constitution.³⁵

A. Legal Rupture in Legislative/Decree Provisions

Legislative/decreed provisions can rupture from the constitutionally prescribed procedures in three primary ways: (1) they will prescribe the constitutionally correct procedure but vest its execution in the incorrect body; (2) they will call for the correct body to legalize a part of the peace agreement through legislation that would have technically required a constitutional amendment; and/or (3) they will expressly allow an otherwise illegal or unconstitutional action or program to continue to exist without providing for its legalization at all (Table 2). As this report will discuss further below, different contextual dynamics often promote one or the other of these options.

TABLE 2. *Forms of legislative/decreed rupture and some of their instances*

Type	Example	Country	Year	Agreement
Type 1	Creation of an ad hoc cabinet or council to pass legislation that the legislature must pass.	Côte d'Ivoire	2007	Ouagadougou Agreement
		Libya	2015	Political Agreement
Type 2	Prescription for the head of state to issue a unilateral decree where the substance of that decree would have required constitutional amendment instead.	Côte d'Ivoire	2007	Ouagadougou Agreement
		Sierra Leone	1999	Lomé Agreement
Type 2	Prescription to pass legislation where the substance of that legislation would have required constitutional amendment instead.	Bangladesh	1997	Chittagong Hill Tracts Agreement
		El Salvador	1992	Chapultepec Agreement
Type 3	Prescription that the parties accept actions taken by a person or organization that would otherwise be unconstitutional or statutorily illegal.	Angola	1994	Lusaka Protocol

As stated above, Côte d'Ivoire's [Ouagadougou Agreement](#) chose a Type 1 legislative/decreed rupture. To implement its provisions, the agreement stated that the parties "decided to establish a new institutional framework for implementation" and created a Government of Transition to implement the terms of the agreement.³⁶ The agreement gave the transitional government a mandate to implement terms ranging from voter registration programs and identity document creation to the establishment of a new electoral roll. However, the power to legislate on electoral law, citizenship, and civic rights belonged solely to the National Assembly per Article 71 of the 2000 Constitution. The Agreement thus constituted a clear Type 1 breach in the proper allocation of powers reserved to the legislature under the constitution.

Sierra Leone's [Lomé Peace Agreement](#) is an example of a Type 2 legislative/decreed rupture. The Lomé Agreement attempted to end a decade-spanning cycle of violence between the government of Sierra Leone and the rebel group RUF, yet the violence only officially stopped in 2002.³⁷ The [Lomé Agreement](#) directed the legislature to take all "legislative and other measures necessary" to give legal effect to its provisions, and it established a Constitutional Review Committee "to review the provisions of the present Constitution, and where deemed appropriate, recommend revisions and amendments, in accordance with Part V, Section 108 of the Constitution of 1991."³⁸ By directing the legislature to implement the agreement through statutes, and to delay the recommendation and passage of amendments, the Lomé Agreement ruptured with its existing constitution on two substantive areas.

The first stemmed from its grant of a blanket "pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives." Sierra Leone's constitution grants the President the ability to pardon, yet that pardon may only be granted to those who have been convicted.³⁹ It does not allow for pre-conviction pardons or blanket amnesties against general actions taken in the name of an organization. Thus, as Levitt put it, "the Lomé Agreement either knowingly or unknowingly misuses the terms pardon and reprieve rather than amnesty," which the government does not have the power to grant under the constitution.⁴⁰ Second, there was also a cascade of legal questions raised by the Lomé Agreement's power-sharing provisions, but this section will explore just one as an example. The Lomé Agreement required the government of Sierra Leone to appoint Foday Sankoh as Vice President, yet under Article 56 of the constitution, a person can only qualify to be Vice President if, among other requirements, he is a member of a political party (which RUF was not yet designated) and if he is nominated as a candidate for office by a Presidential candidate before a Presidential election.⁴¹ Sankoh met neither requirement and was thus appointed unconstitutionally. If the parliament wanted to appoint him legally, it would have had to pass a constitutional amendment, which it did not do.

By prescribing such procedures, the [Lomé Agreement](#) directed the parties to put in place a new order that broke with the 1991 constitution it claimed to adhere to. However, the government justified doing so on grounds that it was facing an emergency situation that required drastic action to be taken for restoring constitutional order. While there clearly was rupture, then, it appears that it was not rupture merely for rupture's sake.

Angola's [Lusaka Protocol](#), as a final example, committed a Type 3 legislative/decreed rupture. The 1994 Lusaka Protocol reinstated a ceasefire previously struck in 1991 between the government and rebel group UNITA, although the violence continued until 2002. Angola's press laws banned private short-wave radio stations, which for years UNITA and other dissenters used as an anti-government propaganda platform. However, the Lusaka Protocol explicitly provided that "VORGAN, UNITA's shortwave radio station, in the interests of National Reconciliation, shall continue, exceptionally, to broadcast in the context of the awareness campaign referred to in paragraph I of the Specific Principles, until D-Day + 9 months."⁴² The [Lusaka Protocol](#) seems to even acknowledge its rupture with the word "exceptionally"- yet crucially, that exception is not rooted in any legal basis. VORGAN was allowed to continue because the Protocol mandated it, not because the legislature or other legal authority provided that exception.⁴³

Lusaka's rupture represents a key feature of legal rupture cases: that the peace agreement's legitimacy stands on no other basis than the agreement itself. It takes on a legal and binding force simply by the fact of its existence.

B. Lessons For Legislative/Decree Legalization

There are several benefits to legislative/decree legalization provisions. First, as the [Taif Accord](#) demonstrates, while the drafting of that legislation may be just as contentious as a constitutional amendment or replacement process, its passage is often significantly simpler.⁴⁴ Constitutional amendments are often subject to higher voting thresholds or financially and logistically costly referenda. They are, by their very nature, harder to pass. Legislation, on the other hand, may only require a simple majority in the legislature. A decree might simply demand the head of state's signature. Thus, parties daunted by their constitution's amendment procedures, especially if already contending with weakened or collapsed state institutions, may find legislation an easier route than constitutional-level changes.

Furthermore, constitutional amendments and replacements are as hard to get rid of as they are to pass. As Andonovski points out, "constitutional arrangements contained in peace agreements often underestimate the complexity of conflicting issues at stake, both in goal setting, procedural dynamics, and substantive endurance."⁴⁵ In the rapidly evolving landscapes of post-conflict states, parties may desire more legal flexibility as their needs and interests develop. Amendment and replacement create a sense of finality and rigidity that parties may come to regret down the road.

However, that very ease of implementation can also become a liability for parties. The lower threshold needed to overturn legislation also makes it susceptible to ambitious opposition parties looking to spoil the implementation of the agreement.⁴⁶ Bell points, in particular, to Macedonia, Bangladesh, and Israel as examples of successful hijacking by opposition political parties.⁴⁷ Moreover, legislation is also susceptible to constitutional challenge if passed extra-legally. The [Guatemalan Agreement](#), for example, mandated that the government pass a National Reconciliation Act containing an amnesty provision for URNG forces that "extinguish[es] criminal liability for common crimes."⁴⁸ Congress passed the act, and NGOs and victims almost immediately challenged its constitutionality in court.⁴⁹ Many of them eventually succeeded,⁵⁰ and the amnesty provision has been a thorn in the government's side in the decades since.⁵¹

If parties are considering legislative or decree legalization, they are likely to face the fewest problems when it can be done consistently with the constitution, and there is little risk of opposition forces taking power or asserting control over the process. If the parties choose to legalize the peace agreement's terms through legislative processes that rupture with the constitution, they risk not only a declaration of unconstitutionality, but years of costly and controversial litigation that may put the entire process at risk. Amnesty laws in Guatemala, Senegal, and Sierra Leone, for example, have not only attracted the rancor of human rights activists, international rights groups, and even the UN, but they have sparked a series of lawsuits that have dragged down both court dockets and the states' reputation in the decades since their passage.⁵² Providing a secure constitutional basis for legislation by amending the constitution may be just as politically controversial, but their legality would be irrefutable. In such instances, a hybrid legislative-amendment model might instead be wiser, where the peace agreement prescribes legislative legalization procedures where it can, and amendment procedures where needed to avoid the shadow of constitutional challenge.

III. Constitutional Amendment Provisions

Constitutional amendment legalization provisions are fairly common. Joshi, Quinn, and Regan found that 19 of 34 CPAs concluded since 1989 contained express provisions outlining constitutional changes, and 15 of those 19 CPAs had fully implemented those changes.⁵³ Within that commonality, however, also come a diversity of forms. Amendment legalization provisions might be enumerated word-for-word in an annex - such as Northern Ireland's [Good Friday Agreement](#) and Macedonia's [Ohrid Agreement](#) - or merely nod to the need for amendment, like Angola's [Lusaka Protocol](#) or Lebanon's [Taif Accord](#).⁵⁴ They may stop short of enumerating exact language and instead outline a set of general principles that an amendment must follow, like Guatemala's [agreement](#),⁵⁵ or they might outline specific articles to be abrogated without suggesting replacements. Liberia's [Accra Agreement](#) followed the latter route.

Despite their diversity in form, these legalization provisions share a common function - to revise whatever constitutional provisions are necessary to institutionalize the newly agreed political settlement. These provisions often involve a renegotiation of important constitutional terms, rather than the beginning of an entirely new order.⁵⁶ For example, Lebanon's [Taif Accord](#) shifted the religious composition of its parliament and cabinet by a few percentage points in favor of greater Muslim representation. Macedonia's [Ohrid Agreement](#) lowered the threshold to become an official language from a requirement that 50 percent of citizens speak it to 20 percent. These are significant changes, no doubt. They were hard-fought, controversial, and they accompanied a great deal of other reforms. However, while they work largely within the constitutional framework, they also attempt to reform the political settlement to which it relates. The attempt to do so through amendment, rather than wholesale replacement, can be driven by a number of factors, including the desire to build a sense of legitimacy and authority through constitutional continuity. This was certainly the case in Lebanon and Macedonia, for example.⁵⁷

However, there are instances in which the amendment procedure is used to replace the constitution altogether. In Sudan, the [2005 CPA](#) required that the parties draft and ratify a new constitution via the old constitution's amendment procedures. The South African parties did the same with the [interim constitution](#) - they replaced the constitution, but they did so through the old order's amendment procedures. And in some instances, what may appear to be a simple amendment procedure becomes so wide-reaching and comprehensive that it appears to be a form of de facto replacement. [Guatemala's agreement](#), a mammoth set of ten agreements spanning 175 pages, both ended the war between the government and the URNG rebels and also called for reform to almost every institution in Guatemalan life, from tax law modifications to a constitutional redesign of the three branches of government.⁵⁸ While these modifications were prescribed as constitutional amendments to be ratified through popular referendum - which, disastrously, failed to pass - the changes were so sweeping and fundamental to the state's legal order that it bordered on de facto replacement. Guatemala's agreement thus stands as one instance in particular where the lines between the typology laid out in this report can and do become blurred.

Parties that choose legal continuity will prescribe amendment procedures that match their existing constitutional amendment process. The [Guatemalan Agreement](#), for example, repeatedly stressed the importance and legitimacy of its existing constitution. It referred to the state's responsibility to "comply with its constitutional commitments;" used the constitution as a limit on state emergency powers; stressed that a revised military doctrine must "encompass respects for the Guatemalan constitution;" and mandated that any archival data be "handled in strict compliance with article 31 of the Political constitution."⁵⁹ While it prescribed a roster of changes to almost every Guatemalan institution, it also demanded that those changes remain within the legal procedures outlined in the constitution. In the agreement's verification timetable, it stated that the Congress of the Republic must adopt the amendments and then send them to a referendum for final passage, which matches the procedures outlined in the unamended constitution.⁶⁰ The dangers of such a referendum, demonstrated by the Guatemalan example, are outlined in more detail below.

A. Legal Rupture in Amendment Legalization Provisions

Of course, similarly to legislative/decreed legalization provisions, just because amendment provisions seek to remain within the existing constitutional order does not mean they will observe the constitution's amendment procedures. These legalization provisions can also deviate from the constitution in terms of whom they vest with the authority for amendment and how they prescribe the parties go about amending it (Table 3).

TABLE 3. *Forms of amendment rupture and some of their instances*

Example	Country	Year	Agreement
Prescription to pass an amendment through procedures that differ from those specified in the constitution using existing institutions.	Angola	1994	Lusaka Protocol
Abrogation of specific articles in the constitution without further legalization procedures specified.	Liberia	2003	Accra Agreement
Creation of a new cabinet or council to pass an amendment that the legislature or other body must pass.	Libya	2015	Political Agreement

Liberia's 2003 [Accra Agreement](#), signed between the government, LURD, and MODEL rebel groups, took a particularly blunt view of its extra-constitutionality. The Accra Agreement explicitly mandated that the parties deviate - yet not break entirely - from the constitutional order. Article 35 stated:

- a. In order to give effect to paragraph 8(i) of the Ceasefire Agreement of 17th June 2003 signed by the GOL, the LURD and the MODEL, for the formation of a Transitional Government, the Parties agree on the need for an extra-Constitutional arrangement that will facilitate its formation and take into account the establishment and proper functioning of the entire transitional arrangement.
- b. Accordingly, the provisions of the present Constitution of the Republic of Liberia, the Statutes and all other Liberian laws, which relate to the establishment, composition and powers of the Executive, the Legislative and Judicial branches of the Government, are hereby suspended.
- c. For the avoidance of doubt, relevant provisions of the Constitution, statutes and other laws of Liberia which are inconsistent with the provisions of this Agreement are also hereby suspended.
- d. All other provisions of the 1986 Constitution of the Republic of Liberia shall remain in force.⁶¹

Rather than dictating which amendments to add into the new constitution, the parties excised the provisions that conflicted with it. They brought their domestic law in line with the peace agreement's terms by outright abrogating any existing or potentially inconsistent statute or constitutional provision. Moreover, they did so on the authority of the agreement alone. The parties did not point to a constitutional grant of power, nor did they prescribe a legalization provision that would give them one. The glaring absence of any legalization provision created the rupture, because the [Accra Agreement](#) was its own legal authority.⁶² Other agreements that do this - albeit through replacement rather than amendment - include Sudan's 2019 constitutional declaration.

Interestingly, Liberia's deviation was also temporary. Article 35(e) states, "[a]ll suspended provisions of the Constitution, Statutes and other laws of Liberia, affected as a result of this Agreement, shall be deemed to be restored with the inauguration of the elected Government by January 2006."⁶³ This abrogation was thus expressly transitional - it was designed to ferry the parties through the period after signing and up until the establishment of a new permanent government.

This phenomenon seems to be an enduring characteristic of amendment and legislative/decree legal rupture: the parties seemed to recognize that, in order to remain in their constitutional order, they had to first step out of it. The parties here had sidled up to - but not fully grasped - the full revolutionary *pouvoir constituant* of constitutional replacement processes.⁶⁴

B. Lessons for Constitutional Amendment Legalization Provisions

Constitutional amendment legalization's chief benefit is its occupation of the middle ground between legislation and replacement. Parties can give their terms a constitutional character - and thus a higher hurdle for overturning them - without going through the political and legal rigor of beginning an entirely new order. Constitutional replacement can be an unwieldy and lengthy process, and one that might open up more terms for renegotiation than the parties desire. Amendment, by contrast, can signal constitutional continuity even if the totality of the changes amount to a *de facto* replacement.

Yemen's recent constitution-drafting process in 2014 and 2015 following its popular uprising in 2011 exemplifies some of the risks of constitutional replacement that amendment legalization provisions can avoid. The Yemeni parties first constituted a National Dialogue Committee (NDC) representative of the various Yemeni factions to provide a constituent assembly (the CDC) "with principles to be included in the final constitution." The NDC's deliberations ballooned into 1,800 outcomes, however, many of which were incompatible with each other.⁶⁵ In 2014, when President Abd Rabu Mansour Hadi formed the CDC, its composition immediately sparked protests from the Socialist and Islah parties, as well as youth organizations, who were dissatisfied with their exclusion from the process. Others questioned the CDC members' qualifications to design such a complex federalist system.⁶⁶ And others still levied accusations against the CDC's independence, alleging that it was merely a front for political parties to advance their agenda.⁶⁷ Moreover, the enormity of the CDC's task led to long delays in the drafting process, plunging Yemen into a "void" of legal uncertainty.⁶⁸ Eventually, the process gave way under the very forces that had bogged it down in the first place. Ansar Allah refused to work with the CDC, began a campaign to sink its legitimacy, and eventually launched the offensive that began the civil war still raging today.⁶⁹

Amendment legalization provisions can sidestep many of these potential pitfalls. Usually, an institution already exists - the legislature - with defined procedures for drafting, deliberation, and adoption of amendments. As a democratically elected body, the legislature can mitigate accusations of illegitimacy and bias. Amending the constitution through that institution also sidesteps several transaction costs: it would make an amendment process easier to establish and coordinate, officials and staff who know the nuts and bolts of drafting legal language already exist in the proper roles, and as such the government can sidestep an unwieldy and politically charged appointment or election process. Furthermore, an amendment process can keep the parties from opening the Pandora's box that is a renegotiation of the constitution. When only two or three issues are on the table, it is less likely that recommendations for their change will balloon into the thousands, as they did in Yemen. For parties that wish to legalize terms that might reorganize the state but do not overhaul it entirely, amendment legalization may thus be an attractive option.

Yet parties that choose legal continuity might have to think carefully about how they are going to go about developing popular buy-in, as the failed Guatemalan constitutional process illustrates. Comprehensive peace agreements, by their very nature, are traditionally “undemocratic” documents. They are negotiated largely by armed political factions and hurting or unpopular governments who have together sewn chaos and destruction by fighting over control of the country. They have taken lives and livelihoods from their people, and now the peace agreement to end the fighting might divide up choice positions and representational quotas for the very parties that many in the country detest. If the parties decide to legalize their agreement through amendment procedures that require popular input like a referendum, they may be at risk of failing in the face of a divided and angry populace. The [Guatemalan Agreement](#), which ordered the parties to hold a referendum to pass 50 constitutional amendments crucial to its implementation, stands as a particularly salient cautionary tale. Under one million voters - approximately seventeen percent of the population - voted by fifty-seven percent to reject the constitutional amendments.⁷⁰ The main political parties’ lukewarm public support for the agreement,⁷¹ a limited education campaign,⁷² the prevention of state agencies from promoting the amendments,⁷³ and serious ethnic divisions all plagued the process. The last obstacle was a crucial, and fatal, one. The Guatemalan Agreement called for new and controversial protections for Guatemala’s indigenous population, and tellingly, every municipality that did not have a majority indigenous population voted “no” in the referendum.⁷⁴

Guatemala’s process stands as a stark warning for parties. On the one hand, popular buy-in might be crucial to the success of the agreement. Yet on the other, it may be that very process of popular consultation that kills a peace agreement’s legalization. Parties need to ensure that their processes are well-resourced, that all signatories and factions participate in its promotion, and that they are able to mount wide-reaching and sophisticated public education campaigns.

IV. Constitutional Replacement

A. The Theory of Constitutional Replacement

Constitutional replacement through extra-constitutional means has traditionally sparked more conceptual debate than legislative/decreed or amendment legalization, and as such its theoretical underpinnings warrant a brief overview. Under the "revolutionary" tradition⁷⁵ first explored in writing by Abbé Sieyès and in practice by America and France in the late 18th century,⁷⁶ the process of constitutional replacement was rooted in the seizure of the *pouvoir constituant*: the "constituent power" uniquely vested in the people of a nation to end their constitutional order and begin anew.⁷⁷ It is a rupture legitimized and justified, as Sieyès put it, by the very fact that the nation "remained outside and above all governments and all laws."⁷⁸ By seizing the constituent power, parties have stepped out of their order and entered a legal twilight - into "the state of nature," per Sieyès - that they will only return from upon a new constitution's establishment. Andrew Arato calls this transition period between two constitutions a "revolutionary hiatus - a condition *ex lex* - in which the only source of legitimate authority is the constituent power."⁷⁹ In this conception of revolutionary constitution-making, the *pouvoir constituant* is a paroxysmal act of self-determination: a group of citizens have come together in the revolutionary spirit to reconstitute their nation in the image they wish it to become.⁸⁰ Of course, that vision of replacement as a sacrosanct national process has been complicated by the increasing presence of international actors in the drafting process.⁸¹

Carl Schmitt's doctrine of "sovereign dictatorship" then built upon Sieyès, stating that the constitution-drafting process must be vested in a constituent assembly that also takes on the functions of the legislative, executive, and judicial organs at the same time. An assembly tasked with drafting a new constitutional order alongside a government operating within the old one were legally incompatible.⁸² This blessing of plenary power in the constituent assembly was legitimized when the people of the nation "identified" with it, namely through a referendum or other popular ratification procedure.⁸³

Hannah Arendt, a final, towering figure in the revolutionary literature, took issue with Schmitt's analysis and separated the concepts of democratic popular sovereignty and the importance of deriving legal authority from the constitution. She rejected Schmitt's assertion that the constituent power cannot be bound by legal restrictions or limitation, arguing that any constitution derived solely from the "will of the nation" is, to her, "ever-changing by definition, and that a structure built on it as its foundation is built on quicksand."⁸⁴ Looking to the failures of the French Revolution, Arendt warned that such constituent assemblies will suffer from allegations of unconstitutionality that would block them from laying down the law of the land with legitimacy. Instead, she advocated for the American revolutionary model, which had "the great good fortune . . . that the people of the colonies, prior to their conflict with England, were organized in self-governing bodies." In Arendt's view, there was never a question of the American framers' *pouvoir constituant* - they had derived their national constitution-making authority from the authority of their subsidiary units.⁸⁵ Thus the power to remake their laws were given to the Convention delegates by the very laws and limits they might overturn.⁸⁶

This cleavage between Sieyès and Schmitt on one side and Arendt on the other reflects to a remarkably close degree the rupture and continuity framework set out in this paper. Within that framework is a fundamental question of where the constituent power should lie: Is the constituent power inherent in all belonging to the "nation," or granted to a few under the current rule of law? Is it the people of the nation, or the established institutions they already have, that confer legitimacy upon a new constitution?

Constitutional replacement provisions are defined almost exactly along the lines of those tensions. Some parties have sided with Arendt and vested the constituent power in their existing institutions and in accordance with the old constitutional amendment procedure. However, with constitutional replacement provisions, it appears that rupture is a far more common preference. Along Schmitt's and Sieyès' tradition, these parties might claim the constituent power for themselves, as they did in Bosnia, and write a new constitution as part and parcel of the agreement. They might also hoist the constituent power onto members of a constitutional convention, a constitutional review committee, or a constituent assembly tasked with drafting and adopting a new constitution, as happened in Cambodia.⁸⁷ That assembly or convention may be appointed by the parties themselves or selected through elections that incorporate the wider voice of the people.⁸⁸

B. Legal Rupture in Replacement Legalization Provisions

Cases of constitutional replacement rupture fall largely into two categories: the parties will (Type 1) wield the constituent power on their own, or (Type 2) vest that power in another body. As stated above, the difference is in which body the constituent power lies.

TABLE 4. *Forms of replacement procedural rupture and some of their instances*

Type	Example	Country	Year	Agreement
Type 1	Replacement by the existence of the new constitution as the peace agreement itself.	Sudan	2019	Constitutional Declaration
		Kosovo	2001	Constitutional Framework
Type 1	Placement of the agreement as higher law above the constitution without a provision for that agreement's legalization.	Burundi	2000	Arusha Accords
Type 1	Replacement by the inclusion of a new constitution in the text of the peace agreement.	Bosnia and Herzegovina	1995	Dayton Agreement
		Kosovo	1999	Rambouillet Accord
Type 2	Replacement by a constituent assembly, convention, or review committee which will draft and adopt a new constitution outside the prescribed procedures of the old one.	Cambodia	1991	Paris Agreement
		Nepal	2006	Comprehensive Peace Agreement
		Burundi	2000	Arusha Accords

Bosnia's 1995 [Dayton Agreement](#) is the archetype of a Type 1 replacement rupture. Annex 4 of the Agreement included a new constitution to replace the old, and Article XII stated that "[t]his Constitution shall enter into force upon signature of the General Framework Agreement as a constitutional act amending and superseding the Constitution of the Republic of Bosnia and Herzegovina."⁸⁹ This procedure is a stark departure from the pre-conflict constitution's amendment procedures, which stated that any amendment must be drafted by the Assembly at a joint session, presented for public discussion, and then passed in the Assembly by a two-thirds majority. Instead, it was the parties' constituent power itself that served as the legal authority upon which the new constitutional order stood.⁹⁰ The preamble of the new constitution explicitly stated that the "Bosniacs, Croats, and Serbs" were the "constituent peoples" who were bringing the new constitution into force. Sienho Yee likened this definition of "constituent peoples" as an allusion to the phrase "We the People" from the United States Constitution, which stood for the popular sovereignty's role as "the most legitimate source of authority."⁹¹

As is common with these processes, such a decision was taken largely out of necessity. Throughout the negotiation process, Milosevic had wielded legalism as a blunt instrument, using the constitutionally prescribed procedures as a delay tactic to slow and frustrate the process. It was ultimately decided that the only way to move the process along was to break with the existing constitutional order - which, prior to the conflict was a sub-state order - and simply include a constitution in the Dayton Agreement itself, rather than give Milosevic another shot at spoiling the peace.

Type 2 replacement ruptures, by contrast to the Type 1 procedure Bosnia chose, have taken a far different approach to the constituent power: they vest that power not in the negotiating parties themselves, but in another body. Cambodia's [Paris Agreement](#), for example, directed an elected constituent assembly to draft and adopt a new constitution by two-thirds majority vote on behalf of the parties and the people of the state.⁹² In contrast to the Dayton Agreement, its primary justification for the elected assembly was that "[t]he Cambodian people shall have the right to determine their own political future." The parties had deliberately taken the constituent power and put it in the hands of the public via their elected representatives. Of course, as with all cases of legal rupture, this process too deviated from the constitutionally prescribed amendment process.⁹³

Curiously, despite its emphasis on public participation in the drafting of a new constitution, Cambodia's process qualified that constituent power with guidelines that the transitional bodies had to abide by. The peace agreement outlined six principles the constituent assembly must adhere to, such as the inclusion of a declaration of fundamental rights, an independent judiciary, a statement of Cambodia's commitment to liberal democracy, a declaration of Cambodia's sovereignty and neutrality, and others.⁹⁴ The agreement was in some manner quasi-constitutional itself in its sweeping prescriptions for how the new state must be organized, taking many of the substantive questions out of the hands of the transitional government.⁹⁵ For that reason, it appears that even parties who presume to vest that constituent power in others - be it through referendum, constituent assembly, transitional government, or otherwise - may often retain some of it for themselves.

C. Lessons for Constitutional Replacement Legalization Provisions

Political scientists and constitutional scholars alike have appraised the various benefits of constitutional replacement. Some tout its tendency to reduce conflict recurrence.⁹⁶ Others note its symbolic role in beginning a new democratic project.⁹⁷ And some commend the open field it gives parties to generate and implement a new state as they envision it.⁹⁸ Moreover, as a practical matter, it is largely the only option for parties wishing for a clean break from their old order.

Yet the risks of constitutional replacement should not be underestimated; and for some parties, they may be so great that constitutional amendment might be a wiser route. The first risk of constitutional replacement - especially in a state of legal rupture - is a potential loss of legitimacy. Arendt's explanation of the French Revolution's failure centers on the cycle of delegitimization from one faction claiming the constituent power to the next.⁹⁹ When unmoored from a constitutional order dictating who is in charge and what powers are granted to them, each assembly leveled the accusation of unconstitutionality against the other until none could viably claim the power to set down a new order.¹⁰⁰ That very anxiety has been echoed almost word-for-word by elites in Yemen, who in their own sessions with each other have conflated the current constitution with that of their "legitimacy." In their eyes, if they let go of their legitimacy, they let go of their claim to establish the next order.¹⁰¹ These leaders seem to equate abandoning the constitution with stepping off of a legal cliff without a safety net below; they have no idea how they are going to reach the bottom and survive.

Of course, by the same token, if the parties are transitioning from a perceived illegitimate regime, such as in Burundi, complete constitutional rupture may help actually establish legitimacy. The parties are divorcing the new order from the past, thereby establishing a clean slate upon which a legitimate government can be built. As such, parties might be wise when evaluating whether to replace their constitution through continuity or rupture to first evaluate the perceived legitimacy of the old regime. More on perceptions of legitimacy and the decision to rupture is provided for in Part IV below.

The second risk of constitutional replacement is that of uncertainty. Parties seeking to replace their constitution as part of the peace agreement's implementation - especially those engaging in Type 1 procedural rupture - are locking in processes in tandem with the chaotic and rapidly evolving project of stopping a war. Widner envisions replacement procedures to be composed of "bundles" of processes: the establishment of ground rules for drafting; the creation of general principles; initial drafting and revision procedures; deliberation of the final draft; ratification procedures; and so on. The more of the bundle the peace agreement's replacement provision locks in, the less room parties will have to adjust as they actually go about implementing the agreement's terms.¹⁰² This exact issue arose in Nepal's 2006 constitution-drafting process. Per the [2006 CPA](#), the parties wrote an interim constitution that an elected constituent assembly was then tasked with expanding on in greater detail in a final constitutional document, yet that assembly unexpectedly dissolved in 2012 after a political crisis. The interim constitution never imagined such a scenario, as the parties always assumed it would dissolve with a final version's adoption. Moreover, the interim constitution contained no procedures for its own amendment, and the only body with the sole power to amend the old constitution - the parliament - no longer existed.¹⁰³ As a result, the constitution-drafting process was delayed until 2015, when the parties finally decided to elect a second constituent assembly to finish the first assembly's work.¹⁰⁴ However, that second assembly was plagued by repudiations from significant stakeholders who have continued to resist accepting the constitution's legitimacy to this day and have stymied significant portions of its implementation.¹⁰⁵

Despite the danger these risks pose to a peace agreement's implementation, there are ways to mitigate them. One chief strategy is to stretch out the process and take an incrementalist approach that can, in the spirit of Arendt's recommendations, gradually build rule of law and constitutionalism.¹⁰⁶ That incrementalism could look like Arato's two-step process, by which the parties craft an interim constitution and then establish a provisional government to draft a final version informed by the first's innovations (as well as its mistakes).¹⁰⁷ He envisions the first constitution to be drafted by "a round table of major political forces," and then the final document to be realized by "a freely elected body."¹⁰⁸ This incrementalist approach can also include other mechanisms that expand the opportunities for public input and legitimation of the new constitution. Those mechanisms could look like an initial consultation phase whereby a body of political parties, civil society organizations, youth groups, and other relevant stakeholders allow wide swaths of the country to speak to their own vision of the constitution's principles. Such a process can help generate a feeling of joint ownership in a mutual project of institution-building and raise important objections the parties may have missed in their own deliberations.¹⁰⁹ From there, a drafting phase may proceed under an elected or appointed body potentially bound, or merely guided by, a set of rules in the form of an interim constitution or list of general principles. Ratification and/or adoption may also take a number of forms, such as passage by the legislature, signature by the parties and/or head of state, and a popular referendum or other mechanism for the public to "bless" the new constitution.

As Arato notes, incrementalist approaches that more gradually build the constitutional order can mitigate both the problems of legitimacy and uncertainty named above.¹¹⁰ Incrementalism creates a sense of legitimacy by expanding the opportunities for public input. Including various mechanisms by which the public at large - or the parties and factions that represent them - can speak to their vision of the constitution generates feelings of ownership over the process. Cheryl Saunders closely ties this sense of ownership to legitimacy, noting that such sentiments "build support for implementation and provide a foundation on which the effectiveness of the Constitution can develop further over time."¹¹¹

Incrementalism also mitigates the problem of uncertainty in several ways: it allows time for greater “constitutional learning” and subsequent adjustment, as Arato argues,¹¹² and it gives parties the space to develop a clearer vision of their interests once the fog of war has cleared.¹¹³ When parties attempt to both reach a peace agreement and a new constitution at the same time - essentially tackling two monumental tasks at once - the enormity of the work before them can inhibit the long-term thinking needed to design institutions that will last.¹¹⁴ Slowing down the process and engaging in several procedural steps may allow for the flexibility the parties need to adjust when the implementation phase eventually hits an obstacle, as it undoubtedly will.

V. Factors for Assessing When to Rupture to Implement an Agreement

Like other recommendations throughout this report, it is difficult - and unwise - to definitively prescribe one path forward on a subject that is deeply context-dependent. The question of when to choose procedural rupture over continuity is no exception. There are countless variables that tilt a peace agreement's implementation toward success or failure, the type of legalization provision being only one. Moreover, post-conflict implementation is a notoriously fluid and complex process. Parties may choose one provision believing it is "right" for them in the moment, only for the circumstances to change in such a way that the provision becomes a liability. Or, they may prefer continuity, but the political context requires them to accept a rupture despite those preferences.

However, if parties have the freedom to decide whether to rupture or not, it is possible to sketch a general framework for assessing the potential benefits and risks of one legalization path or the other. This report puts forward an assessment tool of the five biggest factors that should guide parties and international advisers when thinking about the risks of rupture or continuity, and how to mitigate them:

1. Practicability;
2. Perceptions of the old order's legitimacy;
3. The parties' positions and relative strength;
4. The threat of spoilers; and
5. The international community's preferences.

To be sure, one factor may carry more weight than others in a given context. Parties are dealt different cards, and as such they must play their hand in the way that is the most appropriate for their situation. However, together these factors can help parties determine the biggest risks to the peace agreement's legal viability, and how might that risk be minimized by choosing either rupture or continuity. Each of them are discussed in turn below.

Practicability. Theories of necessity state that rupture can be excusable in times of great upheaval or revolution. As Yee noted, in such times “the niceties of normal procedure may need to be sacrificed.”¹¹⁵ Additionally, in such times the normal procedure may no longer exist as an option at all. Many states in the grip of civil war face near or total collapse. Their institutions may be disbanded, government buildings reduced to rubble, and top officials missing or killed. This was certainly the case in Cambodia, where the constitution-drafting process was essentially an attempt to resurrect a conflict-affected state with entirely new institutions and under the auspices of an UN-controlled administration.¹¹⁶ The parties could not choose a procedurally continuous procedure because the institutions and infrastructure required to do so largely no longer existed. By contrast, while nine members of Lebanon’s 71-member Parliament had died in the course of the war, the body continued to meet intermittently throughout the conflict.¹¹⁷ For that reason, it was possible for the Lebanese parties to prescribe a procedurally continuous amendment process that involved parliamentary action.¹¹⁸ Constitution-drafters will have to balance their desire for procedural continuity with the realities of war’s destruction.¹¹⁹

When evaluating an ongoing conflict like Yemen, practicability might point to the need to choose a rupture procedure. One of the root causes of the conflict is over the breadth of presidential powers and a broader dissatisfaction with the allocation of powers. It is likely then that any peace agreement will redistribute the powers of the state institutions quite significantly, thus making the need for wholesale constitutional amendment or replacement likely. Under Yemen’s 2001 constitution, changes to the balance of power within the executive and other branches will require a popular referendum, in addition to a vote in the House of Representatives.¹²⁰ However, the country is in an unprecedented state of disrepair, and it is unlikely that the parties could successfully organize a free and fair referendum. Yemen has been labeled the 21st century’s worst humanitarian crisis, with a looming famine threatening millions, key supply routes obliterated, the resurgence of a deadly cholera outbreak, little to no international aid allowed past its ports, and now the scourge of COVID-19.¹²¹ If parties cannot deploy food and medicine throughout the country, it is unlikely they will be able to deploy ballot boxes either. When designing their legalization provisions, the parties will have to take such logistical realities into account. If Yemen’s condition continues to deteriorate, some form of ruptured legalization procedure might be warranted, to avoid the risks of staging a referendum.

Perceptions of the old order's legitimacy. Procedurally ruptured legalization processes can live and die based on the perceptions of their legitimacy. As Bell notes, "A peace agreement's claim to constitutional validity lies in the lack of legitimacy of the previous constitution (and by implication the state), and the need to negotiate an end to the violence that reflects the question mark over the state's legitimacy."¹²²

Yet on the other hand, in post-conflict rehabilitation the legitimacy of the law itself must be rebuilt. Thus, the legality of the new order's adoption matters.¹²³ In his theory of process legitimacy, Max Weber also found that parties are more likely to comply with rules if those rules themselves have complied with the terms by which they should have been made. Essentially, citizens will follow the law more often if they believe that law was made through the proper process.¹²⁴ In his exploration of "compliance pull," Thomas Franck echoed Weber's sentiments when he defined legitimacy as "that quality of a rule which derives from a perception on the part of those to whom it is addressed that it has come into being in accordance with right process."¹²⁵

Together, these observations suggest that legitimacy matters greatly to the success of a peace agreement's implementation, and that process matters greatly to the formation of legitimacy. If neither party cares about the laws of the old order, as Bell suggested, then they are less inclined to see rupture as an illegitimate process. However, if one or both sides have an incentive to uphold the old order's legitimacy, then they may find legal rupture less palatable.

This dynamic is exemplified by Sudan's two recent constitutional replacement processes in 2005 and 2019. In 2005, the parties had a strong political incentive to legitimate the old regime. While the [2005 CPA](#) called for a new constitution to implement a variety of changes to the state's governing institutions, the government itself was a continuation of the old order. President Omar al-Bashir remained in power throughout the new constitution's drafting and after its ratification, and his party retained a majority share of seats in the Government of National Unity.¹²⁶ For that reason, there was an incentive to emphasize the enduring legitimacy of the old constitutional order even as it was coming to an end. It is not surprising then that the 2005 CPA mandated that the new constitution must be ratified in line with the old version's procedures.

Fourteen years later, when members of the military and protesters under the coalition movement Forces for Freedom and Change ousted Bashir in 2019, the parties chose a dramatically different path.¹²⁷ In August 2019, the parties signed a new [constitutional declaration](#) in a clear act of rupture: their signature alone brought the new constitution into legal effect. In the declaration's preamble, it made explicit reference to a break from the old regime, stating that it drew "inspiration from the Sudanese people's struggles over the course of history and during the years of the former dictatorial regime from the time that undermined the constitutional regime on 30 June 1989," the year Bashir took power.¹²⁸ In contrast to Sudan's [2005 CPA](#), the constitutional declaration was the epitome of *pouvoir constituant*-style legal rupture. Revolutionary forces ousted their leader, took control of the government, and created a new order themselves.

[The interests and relative strength of the parties.](#) As stated in the above example, rupture may be a relatively straightforward choice when both parties feel strongly about doing so. However, when the parties are split on the issue, their interests and relative strength can come more into play. Whether or not parties decide to rupture can turn on what the strongest party wants, and how much they are willing to walk away if they do not get it. In Yemen, for example, Ansar Allah has demanded that any peace agreement supersede and abrogate the old constitution as a condition of their signature. While some, but not all, coalition members of the IRG would vehemently reject that request, many have also recognized that they are in a far weaker negotiating position now than they were at the start of the war. Ansar Allah now presides as the *de facto* government over much of the Yemeni state. The IRG's forces have not been able to contend with Ansar Allah on the battlefield absent heavy support from the Saudi-led coalition, which seems to be waning as the years of aerial bombing drag on.¹²⁹ Thus, it is not unlikely that Ansar Allah would find their negotiating strength - and thus the potency of their demands *vis-à-vis* the constitution - to only grow in the coming months and years. The IRG may soon find itself in a position where it cannot reject Ansar Allah's position any longer. Thus, rupture could become a bargaining chip like any other: subject to the game of who has the stronger position.

The threat of spoilers. One of the biggest risks of engaging in legal rupture is that of spoilers and holdouts wishing to leverage the extra-constitutionality of the peace agreement to their advantage.¹³⁰ These groups and factions, feeling left out of the process and marginalized by its terms, may seek to challenge the agreement in other fora beyond the negotiation table, be it through the courts or on the battlefield. Libya's 2015 [Political Agreement](#) fell prey to these very forces. After the signing of the agreement - which a majority of Libya's armed and political factions did not - an eastern group led by General Khalifa Haftar announced that his group had nothing to do with the process and stressed that he would continue to use force. Haftar and those armed groups essentially ignored the agreement, continued to fight as he had promised, and the war raged on.¹³¹ Parties considering designing a ruptured process will have to think about how potential spoilers could allege its illegality as a way to undermine the process, either through the courts of law or public opinion. If those spoilers are strong enough, then the parties might be wiser to design a legally continuous provision.

Preferences of the international community. The international community has a well-documented ambivalence towards procedural continuity. In the Bosnian case, a highly internationalized process by which regional and international elites largely set the agenda and pushed the parties towards a settlement, the international parties obviously preferred the inclusion of a new constitution in the [Dayton Agreement](#) annex and thus the rupture of its old constitutional order.¹³² It was obvious to commentators and participants at the time that the international community's top priority was not to build the new state on a solid legal foundation, but rather a cessation of violence and the establishment of a new, ethnically integrated Bosnian society.¹³³ As Aolain put it, "there was little hope that the parties negotiating settlement were in a position to avoid the imposition of a constitution."¹³⁴ Thus, in highly internationalized processes, parties should expect little support for continuity from international partners, as well as perhaps outright advocacy for rupture. If they are committed to procedural continuity, they will likely have to find support for it elsewhere and/or prepare to withstand pressure from external interests.

Conclusion

To give their peace agreements legal life, state and non-state parties have invented domestic legalization mechanisms designed to bring their law in line with the terms of their agreements. Those mechanisms have taken a variety of forms, either through legislation/decreed, amendment, or replacement, and they have either adhered to the current constitution's procedures or broken with the order entirely. Each come with their own risks, as well as their own opportunities for close tailoring to the needs and interests of the parties. Whether parties choose to legalize through legislation/decreed, amendment, or replacement, and by breaking their constitution or adhering to it, depends on a variety of factors specific to their interests, stakeholders, situation, and strengths, including practicability; perceptions of the old order's legitimacy; the interests and relative strengths of the parties; the threat of spoilers; and the preferences of the international community.

While post-conflict implementation can be a hazardous and constantly evolving maze to navigate, the proper legalization provision can help parties come out on the other side confident in the future of their institutions and the new order they have established together.

Agreement References

1. General Framework Agreement for Peace in Bosnia and Herzegovina, Nov. 11, 1995, available at; <https://www.peaceagreements.org/viewmasterdocument/389> [hereinafter Dayton Agreement].
2. Taif Accord, Oct. 22 1989, available at; <https://peaceaccords.nd.edu/accord/taif-accord>
3. Framework Agreement, Aug. 13, 2001, available at; <https://www.peaceagreements.org/viewmasterdocument/381> [hereinafter Ohrid Agreement].
4. Interim Constitutional Accord, Nov. 17, 1993, available at; <https://www.peaceagreements.org/viewmasterdocument/407> [hereinafter Interim Constitution].
5. Libyan Political Agreement (Suhkairat Agreement), Dec. 17, 2015, available at; <https://www.peaceagreements.org/viewmasterdocument/1370> [hereinafter Political Agreement].
6. Peace Agreement between the Government of Sierra Leone and the RUF, Jul. 7, 1999, available at; <https://www.peaceagreements.org/viewmasterdocument/478> [hereinafter Lomé Agreement].
7. Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy (LURD), the Movement of Democracy in Liberia (MODEL) and the Political Parties, Aug. 18, 2003, available at; <https://www.peaceagreements.org/viewmasterdocument/338> [hereinafter Accra Agreement].
8. Chapultepec Agreement, Jan. 16, 1992, available at; <https://www.peaceagreements.org/viewmasterdocument/474>
9. Framework for a Comprehensive Political Settlement of the Cambodia Conflict, Oct. 23, 1991, available at; <https://www.peaceagreements.org/viewmasterdocument/243> [hereinafter Paris Agreement].
10. Comprehensive Peace Agreement between the Government of Sudan and the SPLM/SPLA, Jan. 9, 2005, available at; <https://www.peaceagreements.org/viewmasterdocument/337> [hereinafter 2005 CPA].
11. Accord Politique de Ouagadougou, Mar. 4, 2007, available at; <https://www.peaceagreements.org/viewmasterdocument/119> [hereinafter Ouagadougou Agreement].

12. Lusaka Protocol, Nov. 15, 1994, available at; <https://www.peaceagreements.org/viewmasterdocument/439>
13. Agreement on a Firm and Lasting Peace, Dec. 29, 1996, available at; <https://www.peaceagreements.org/viewmasterdocument/254> [hereinafter Guatemalan Agreement].
14. Northern Ireland Peace Agreement (The Good Friday Agreement), Apr. 10, 1998, available at; <https://www.peaceagreements.org/viewmasterdocument/556> [hereinafter Good Friday Agreement].
15. Arusha Peace and Reconciliation Agreement for Burundi, Aug. 28, 2000, available at; <https://www.peaceagreements.org/viewmasterdocument/306> [hereinafter Arusha Accords].
16. Agreement between the National Committee on Chittagong Hill Tracts Constituted by the Government and The Parbattya Chattagram Janasanghati Samity, Dec. 2, 1997, available at; <https://www.peaceagreements.org/viewmasterdocument/238> [hereinafter Chittagong Hill Tracts Agreement]
17. Interim Agreement for Peace and Self-Government in Kosovo (Rambouillet Accord), Feb. 23, 1999, available at; <https://www.peaceagreements.org/viewmasterdocument/405>
18. Bougainville Peace Agreement, Aug. 30, 2001, available at; <https://www.peaceagreements.org/viewmasterdocument/312>
19. SUDAN CONST (2019), available at; <https://constitutionnet.org/vl/item/sudan-constitutional-declaration-august-2019>
20. Comprehensive Agreement concluded between the Government of Nepal and the Communist Party of Nepal (Maoist), Nov. 21, 2006, available at; <https://www.peaceagreements.org/viewmasterdocument/333> [hereinafter 2006 CPA].
21. Constitutional Framework for Provisional Self-Government in Kosovo, May 15, 2001, available at; <https://www.ifes.org/election-materials/constitutional-framework-provisional-self-government-kosovo> [hereinafter Constitutional Framework].

Endnotes

¹ See CHRISTINE BELL, ON THE LAW OF PEACE (2008); CINDY WITTKKE, LAW IN THE TWILIGHT: INTERNATIONAL COURTS AND TRIBUNALS, THE SECURITY COUNCIL AND THE INTERNATIONALISATION OF PEACE AGREEMENTS BETWEEN STATE AND NON-STATE PARTIES (2018); PHILIPP KASTNER, LEGAL NORMATIVITY IN THE RESOLUTION OF ARMED CONFLICT (2015); Christine Bell, *Peace Agreements: Their Nature and Legal Status*, 100 AM. J. INT'L L. 373, 373 (2006).

² See, e.g., Alexia Solomou, *Comparing the Impact of the Interpretation of Peace Agreements by International Courts and Tribunals on Legal Accountability and Legal Certainty in Post-Conflict Societies*, 27 LEIDEN J. INT'L L. 497 (2014); Wakako Maekawa, Baris Ari, and Theodora-Ismene Gizelis, *UN involvement and civil war peace agreement implementation*, 178 PUB. CHOICE 397, 402 (2019).

³ See General Framework Agreement for Peace in Bosnia and Herzegovina, Nov. 11, 1995, available at: <https://www.peaceagreements.org/viewmasterdocument/389> [hereinafter Dayton Agreement].

⁴ See Taif Accord, Oct. 22 1989, available at: <https://peaceaccords.nd.edu/accord/taif-accord>.

⁵ See Framework Agreement, Aug. 13, 2001, available at: <https://www.peaceagreements.org/viewmasterdocument/381> [hereinafter Ohrid Agreement].

⁶ See Stefan Andonovski, *The Effects of Post-conflict Constitutional Designs: the "Ohrid Framework Agreement" and the Macedonian Constitution*, 81 CROATIAN INT'L REL. REV. 23, 25–30 ("The set goals [of the Ohrid Framework Agreement] went beyond stopping and de-escalation of the violence. They also entailed securing the democratic future, development of closer and integrated relations with Euro-Atlantic institutions, peaceful and harmonious development of the civil society and respect for ethnic identity and the interests of all.").

⁷ BELL, *supra* note 1 WITTKKE, *supra* note 1; KASTNER, *supra* note 1; Solomou, *supra* note 2; Bell, *supra* note 1.

⁸ Matthijs Bogaards, *Formal and Informal Consociational Institutions*, 25 NATIONALISM AND ETHNIC POL. 27, 32 (2019).

⁹ While the violence and internal strife leading up to the fall of the Apartheid regime in South Africa never grew to the intensity of a true civil war, South Africa's 1993 Interim Constitution is traditionally referred to as a Comprehensive Peace Agreement. See Interim Constitutional Accord, Nov. 17, 1993, available at: <https://www.peaceagreements.org/viewmasterdocument/407> [hereinafter Interim Constitution] [hereinafter Interim Constitution].

¹⁰ SUDAN CONST. art. 2 § a.

¹¹ Libyan Political Agreement (Suhkairat Agreement), Dec. 17, 2015, available at: <https://www.peaceagreements.org/viewmasterdocument/1370> [hereinafter Political Agreement].

¹² See, e.g., Barbara F. Walter, *The Critical Barrier to Civil War Settlement*, 51 INT'L ORG. 335, 339–41 (1997); Kenneth W. Abbott and Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT'L ORG. 421 (2000); Bell, *supra* note 1 at 378 ("Once framework agreements are reached in formal talks, their implementation requires parties to make fundamental compromises with respect to their preferred outcome and their use of force. They will do so only if they feel that the commitments they obtained from the other side are going to be implemented. This need for reciprocity is reflected in the attention the parties pay to the detail of the wording of agreements and the frequent use of lawyers during negotiations.").

¹³ Bell, *supra* note 1 at 385.

¹⁴ See Abbott and Snidal, *supra* note 12 at 422.

¹⁵ Abbott and Snidal here are referring to delegations to international courts. In the domestic court context, they note that these compliance forces may even be stronger because of the enforcement power of domestic law. See *id.* at 427.

¹⁶ See *id.* at 428 (noting some of the benefits of agreements that are domestically legalized, such as how they "can now be applied by well-established systems of courts and administrative agencies; private actors can often initiate legal proceedings; and lawyers have incentives to invoke the rules. . . [they] can more easily be enforced against private persons and their assets . . . [they] mobilize legally oriented interest and advocacy groups, such as the organized bar, and legitimize their participation in domestic decision making. They also expand the role of legal bureaucracies within foreign offices and other government agencies. Finally, so long as domestic actors understand legal agreements to be serious undertakings, they will modify their plans and actions in reliance on such commitments, increasing the audience costs of violations.").

¹⁷ See, e.g., Thomas M. Franck, Legitimacy in the International System, 82 AJIL 705, 706 (1988).

¹⁸ BANGLADESH CONST. art. 145 § A.

¹⁹ BAHRAIN CONST. art. 37.

²⁰ See Constitute Project (2020), available at; https://constituteproject.org/search?lang=en&key=treat&status=in_force&status=is_draft.

²¹ See Peace Agreement between the Government of Sierra Leone and the RUF, Jul. 7, 1999, available at; <https://www.peaceagreements.org/viewmasterdocument/478> [hereinafter Lomé Agreement].

²² See, e.g., Jamal Benomar, *Constitution-Making and Peace Building: Lessons Learned from the Constitution-Making Processes of Post-Conflict Countries*, UNITED NATIONS DEVELOPMENT PROGRAMME 3 (2003) ("Societies emerging from conflict face the difficult task of channeling future political contestation through institutional paths."); Bell, *supra* note 1 at 396 ("The mechanics of the transfer of political power [in peace agreements] are just as important to the parties, not least because they are linked to the vulnerability created by demobilization commitments. However, precision is also needed in dealing with the technical legal issues that the transition raises as to the applicable legal regime, such as what laws are in force, the specific timing of when and how the legal regime will change, and the detail of the effect of these changes on political and legal institutions like the presidency, the police, and the courts.").

²³ Interim Constitution, *supra* note 9.

²⁴ See, e.g., Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy (LURD), the Movement of Democracy in Liberia (MODEL) and the Political Parties, Aug. 18, 2003, available at; <https://www.peaceagreements.org/viewmasterdocument/338> [hereinafter Accra Agreement]; JEREMY L. LEVITT, ILLEGAL PEACE IN AFRICA: AN INQUIRY INTO THE LEGALITY OF POWER SHARING WITH WARLORDS, REBELS, AND JUNTA 87 (1999).

²⁵ Dayton Agreement, *supra* note 3 at 59.

²⁶ Chapultepec Agreement, Jan. 16, 1992, available at; <https://www.peaceagreements.org/viewmasterdocument/474>.

²⁷ Framework for a Comprehensive Political Settlement of the Cambodia Conflict, Oct. 23, 1991, available at: <https://www.peaceagreements.org/viewmasterdocument/243> [hereinafter Paris Agreement].

²⁸ Karam Karam, *The Taif Agreement: New order, old framework*, 24 ACCORD 36 (2012).

²⁹ Relatedly, Annex B of the agreement also included drafted legislative language to amend the Irish constitution.

³⁰ Côte D'Ivoire: *Can the Ouagadougou Agreement Bring Peace?* INTERNATIONAL CRISIS GROUP, June 2007, <https://www.crisisgroup.org/africa/west-africa/c%3%B4te-divoire/cote-d-ivoire-can-ouagadougou-agreement-bring-peace> ("The agreement they signed is more a deal between two sides looking for an escape route that protects their own interests than a compromise which guarantees lasting peace. It does not break with the political practices that led to war in the first place.").

³¹ See, e.g., Comprehensive Peace Agreement between the Government of Sudan and the SPLM/SPLA, Jan. 9, 2005, available at: <https://www.peaceagreements.org/viewmasterdocument/337> [hereinafter 2005 CPA] ("Aware of the fact that peace, stability and development are aspirations shared by all people of the Sudan"); Accra Agreement, *supra* note 24 at 1 ("Moved by the imperative need to respond to the ardent desire of the people of Liberia for genuine lasting peace, national unity and reconciliation;"); Interim Constitution, *supra* note 9 at 3 ("there is a need to create a new order in which all South Africans will be entitled to a common South African citizenship in a sovereign and democratic constitutional state in which there is equality between men and women and people of all races so that all citizens shall be able to enjoy and exercise their fundamental rights and freedoms;"); Ohrid Agreement, *supra* note 5 at 1 ("A modern democratic state in its natural course of development and maturation must continually ensure that its Constitution fully meets the needs of all its citizens and comports with the highest international standards, which themselves continue to evolve.").

³² Accord Politique de Ouagadougou, Mar. 4, 2007, available at: <https://www.peaceagreements.org/viewmasterdocument/119> [hereinafter Ouagadougou Agreement].

³³ Marie-Joelle Zahar, *Peace by Unconventional Means: Lebanon's Ta'if Agreement*, in ENDING CIVIL WARS (Stephen John Stedman, Donald Rothchild, and Elizabeth M. Cousens eds., 2002), 579.

³⁴ Ohrid Agreement, *supra* note 5 at 3 ("The legislative modifications identified in Annex B will be adopted in accordance with the timetables specified therein.").

³⁵ Carlotta Gall, *Standoff in Macedonia Threatening NATO-Backed Peace Plan*, N.Y. TIMES, Nov. 15, 2001, <https://timesmachine.nytimes.com/timesmachine/2001/11/15/200107.html?pageNumber=9>.

³⁶ Ouagadougou Political Agreement, *supra* note 32 at 8–9.

³⁷ See Abdul Tejan-Cole, *Painful peace: Amnesty under the Lomé Peace Agreement in Sierra Leone*, 3 L., DEMOCRACY & DEV. 239, 240 (1999).

³⁸ Lomé Agreement, *supra* note 21 at 9.

³⁹ See Tejan-Cole, *supra* note 37 at 242 (“A free pardon is defined as putting an end to the execution of a penalty: a reprieve is defined as to delay the punishment of (as a condemned prisoner) or to grant relief or pardon for a time. In the exercise of his prerogative of mercy, section 63(l) of the Constitution gives the President powers to grant to any person convicted of any offence in Sierra Leone a pardon, either free or subject to lawful conditions, or to grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence.”).

⁴⁰ LEVITT, *supra* note 24 at 113.

⁴¹ See *id.*

⁴² Lusaka Protocol, Nov. 15, 1994, available at: <https://www.peaceagreements.org/viewmasterdocument/439>.

⁴³ *Id.* at 28.

⁴⁴ See Zahar, *supra* note 33 at 579.

⁴⁵ Andonovski, *supra* note 6 at 24.

⁴⁶ Bell, *supra* note 1 at 404 (“Translating commitments into simple legislative form involves opposition groups with opposition agendas, who were not primary parties to the deal. In contrast to accepted processes of treaty ratification, the lack of formal legal status of peace agreements leaves the parameters of the incorporation debate more open. Opposition groups may force the government to back-track on commitments so as to respond to its primary domestic constituency.”).

⁴⁷ *Id.*

⁴⁸ Agreement on a Firm and Lasting Peace, Dec. 29, 1996, available at: <https://www.peaceagreements.org/viewmasterdocument/254> [hereinafter Guatemalan agreement].

⁴⁹ See Margaret Popkin, *Guatemala's National Reconciliation Law: Combating Impunity or Continuing it?* 24 REVISTA IIDH 173, 173 (1997) (“Guatemalan human rights groups condemned the law and challenged its constitutionality, as its terms appeared to leave open the possibility that amnesty would be granted to those responsible for serious human rights violations.”).

⁵⁰ Francisco Goldman, *In Guatemala, All is Forgotten*, N.Y. TIMES, Dec. 23, 1996, <https://www.nytimes.com/1996/12/23/opinion/in-guatemala-all-is-forgotten.html>.

⁵¹ See, e.g., Sandra Cuffe, *Guatemala war crime survivors challenge amnesty bill*, AL JAZEERA, Feb. 13, 2019, <https://www.aljazeera.com/news/2019/02/guatemala-war-crime-survivors-challenge-amnesty-bill-190213234804759.html>; IACHR Asks Guatemalan State Not to Amend National Reconciliation Law, ORGANIZATION OF AMERICAN STATES, Jan. 25, 2019, https://www.oas.org/en/iachr/media_center/PReleases/2019/014.asp.

⁵² See, e.g., Cuffe, *supra* note 51; Tidiane Sy, *Senegal Opposition to Amnesty Law*, BBC, Jan. 11, 2005, <http://news.bbc.co.uk/2/hi/africa/4166291.stm>.

⁵³ Madhav Joshi, Jason Michael Quinn & Patrick M. Regan, *Annualized implementation data on comprehensive intrastate peace accords, 1989–2012*, 52 J. PEACE RES. 551, 556 (2015).

⁵⁴ Northern Ireland Peace Agreement (The Good Friday Agreement), Apr. 10, 1998, available at; <https://www.peaceagreements.org/viewmasterdocument/556> [hereinafter Good Friday Agreement].

⁵⁵ Just one of many examples in the Guatemalan Agreement is its prescriptions for constitutional amendments regarding indigenous rights. See Guatemalan Agreement, *supra* note 48 at 11–15.

⁵⁶ Cheryl Saunders, *International Involvement in Constitution Making*, MELBOURNE L. STUD. RES. PAPER SERIES NO. 839, 22 (2019) (noting that parties to a constitution-making process should ask whether new arrangements may fit with the ones that already exist in order to maintain minimal disruption).

⁵⁷ See Laura Nuzzi O'Shaughnessy and Michael Dodson, *Political Bargaining and Democratic Transitions: A Comparison of Nicaragua and El Salvador*, 31 J. LATIN AMER. STUD. 99, 99 (1999).

⁵⁸ Guatemalan Agreement, *supra* note 48.

⁵⁹ *Id.* at 14–27.

⁶⁰ *Id.* at 4.

⁶¹ Accra Agreement, *supra* note 24 at 23.

⁶² LEVITT, *supra* note 24 at 86 (“The Accra, Lomé, and Abuja accords did not offer any legal basis or authority to legitimize their power-sharing provisions, let alone the accords themselves; rather, they prescribed extralegal rules and processes for sharing power that abrogated constitutionally based superior rules. The legitimizing authority for power sharing seems to have rested solely in the accords themselves.”).

⁶³ Accra Agreement, *supra* note 24 at 23.

⁶⁴ Mattias Kumm, *Constituent Power, Cosmopolitan Constitutionalism, and Post-positivist law*, 14 ICON 697, 701 (2016) (“The particular normative function of the idea of constituent power is to justify transformative political actions as exercises of legitimate authority that cannot be justified with reference to existing legal rules. Whereas within the constitutional tradition politics is imagined as taking place within the framework of laws, and the authority of ordinary laws is generally tied to the constitution as the highest law, the idea of constituent power is used to justify changes in law and actions in politics that cannot be derived from within the existing legal framework.”).

⁶⁵ Darin E.W. Johnson, *Conflict Constitution-Making in Libya and Yemen*, 39 U. PA. J. INT’L L. 294, 326 (2017).

⁶⁶ See *id.* at 324.

⁶⁷ Ashraf al-Falahi, *Yemen's Fraught Constitution Drafting Committee*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, May 2, 2014, <https://carnegieendowment.org/sada/55496> (“Seeing as the composition of the CDC combines technocratic and partisan aspects, there are concerns that the members will remain loyal to the parties they represent—particularly Islah and General People’s Congress.”).

⁶⁸ See *id.* (noting that the enormity of the CDC’s task was likely to take beyond the one-year timeframe it was given, which would in turn extend the time in which Yemen was stuck in a state of “uncertainty about a range of issues”).

⁶⁹ Johnson, *supra* note 65 at 326–7 (“The Houthis were also spoilers and they limited their involvement in the CDC as they began to accomplish their political objectives through military means. Unlike the Houthis, the Southern separatists did not pursue their objectives militarily while the CDC was active; rather, they sought to undermine the CDC’s work by using delaying tactics and rejecting negotiated solutions to difficult issues.”).

⁷⁰ See Enrique Alvarez and Tania Palencia Pradi, *Guatemala’s peace process: Context, analysis, and evaluation*, 13 ACCORD 38, 41 (2002).

⁷¹ See United Nations, General Assembly, *United Nations Verification Mission in Guatemala: Report of the Secretary-General*, A/54/526 (11 Nov. 1999) (“This does not diminish the responsibility of the political parties, all of which - with the exception of the main opposition party- kept a very low profile during the campaign in favour of the constitutional reform; this contrasted with their publicly stated commitment to the reform and the Peace Agreements.”).

⁷² Alvarez and Pradi, *supra* note 70 at 42.

⁷³ See United Nations, *supra* note 71 at 16.

⁷⁴ See *id.*

⁷⁵ There is also a second, “evolutionary” tradition that explores the incremental juridification of the constitution and its grant of power. However, since only the “revolutionary” tradition is relevant to this paper, it will not be discussed further. For more on the distinction between the two, see Philipp Dann and Zaid Al-Ali, *The internationalized Pouvoir Constituant - Constitution-making Under External Influence in Iraq, Sudan, and East-Timor*, 10 MAX PLANCK UNYB 424, 426 (2006). Another line of theory that deserves mention is of course Hans Kelsen’s theory of revolutionary legality, in which he posited that a revolution truly succeeds only when the entirety of the old order - including the jurists presiding over its interpretation—ceases to be recognized as legitimate and the validity of a new one is accepted. HANS KELSEN, *GENERAL THEORY OF LAW AND STATE* (1961). However, since this paper does not wade into the issue of judicial recognition and challenge, Kelsen’s work will not be mentioned further.

⁷⁶ EMMANUEL JOSEPH SIEYÈS, QU’EST-CE QUE LE TIERS ÉTAT? (1789)

⁷⁷ See, e.g., Nico Krisch, *Pouvoir constituant and pouvoir irritant in the postnational order*, 14 ICON 657, 658–9 (2016); SIEYÈS, *supra* note 76 at 12 (“In every free nation, and every nation ought to be free, there is only one way of settling disputes about the constitution. One must not call upon Notables, but upon the nation itself. If we have no constitution, it must be made, and only the nation has the right to make it.”).

⁷⁸ HANNAH ARENDT, *ON REVOLUTION* 163 (1963).

⁷⁹ See Andrew Arato, *Forms of Constitution Making and Theories of Democracy*, 17 CARDOZO L. REV. 191, 202 (1995).

⁸⁰ Dann and Al-Ali, *supra* note 75 at 426.

⁸¹ Post-conflict constitutions have certainly come into "vogue" within the international community in the past couple decades and have become a staple of their conflict resolution strategies. They are now considered by institutions from the OECD to the UNDP to be part of the "best practice" package of peacebuilding responses. Their enduring dominance in the peace-builder's toolkit was no more apparent than in the highly internationalized post-Arab Spring scramble to design new constitutions in Tunisia, Egypt, Yemen, and Libya. See, e.g., Charmaine Rodrigues, *Letting off steam: Interim constitutions as a safety valve to the pressure-cooker of transitions in conflict-affected states?*, 6 GLOBAL CONSTITUTIONALISM 33, 34 (2017) ("local and international actors have tended to design constitution-making processes which envisage a final constitution being drafted and agreed in a relatively short period of time that will nonetheless have sufficient legitimacy to permanently guide the country's governance into the foreseeable future."); Bell, *supra* note 1 at 100; Dann and Al-Ali, *supra* note 75 at 424 ("Constitution-making, traditionally the hallmark of sovereignty and the ultimate expression of national self-determination, is increasingly becoming an object of international law. Be it Bosnia-Herzegovina, Afghanistan or most recently Iraq, several instances spring to mind in which international actors were not only instrumental in bringing about a new constitution from a factual point of view but in which international law played an important role in governing the process of constitution-making."); Saunders, *supra* note 56 at 24 ("International involvement is now a familiar feature of constitution-making in all regions of the world. While it often performs a useful function and sometimes is essential, it raises a series of problems from the standpoint of both principle and practice.").

⁸² See Arato, *supra* note 79 at 202 (Noting that, in Schmitt's view, "the constituent assembly, with whom the constituent power of the people identifies, is only commissioned to carry out the task of constitution making. He also believed that, for the duration of constitution making, the assembly must exercise all powers, constituent as well as legislative, executive, and judicial, since no powers outside the representative assembly can be legally provided for without the constitution that is yet to be made").

⁸³ See *id.* at 203.

⁸⁴ ARENDT, *supra* note 78 at 162.

⁸⁵ *Id.* at 165–6 ("The delegates to the provincial congresses or popular conventions which drafted the constitutions for state governments had derived their authority from a number of subordinate, duly authorized bodies - districts, counties, townships; to preserve these bodies unimpaired in their power was to preserve the source of their own authority intact.").

⁸⁶ *Id.* ("Those who received the power to constitute, to frame constitutions, were duly elected delegates of constituted bodies; they received their authority from below, and when they held fast to the Roman principle that the seat of power lay in the people, they did not think in terms of a fiction and an absolute, the nation above all authority and absolved from all laws, but in terms of a working reality, the organized multitude whose power was exerted in accordance with laws and limited by them.").

⁸⁷ See Arato, *supra* note 79 at 194 ("Moreover, the assemblies that Arendt considered "revolutionary" can take one of two forms. The first, known as a convention, deals only with constitution making, while other assemblies deal with daily political business. The second type of assembly is an extraordinary body that, while drafting a constitution, exercises the plenitude of all political powers.").

⁸⁸ See Dann and Al-Ali, *supra* note 75 at 426.

⁸⁹ Dayton Agreement, *supra* note 3 at 74.

⁹⁰ See, e.g., Sienho Yee, *The New Constitution of Bosnia and Herzegovina*, 7 EJIL 176, 177–8 (1996); Bell, *supra* note 1 at 393–4 (“The constitution of the [Dayton Peace Agreement], for example, did not refer or acknowledge the previous Bosnian constitution, or attempt to work within its legal framework.”).

⁹¹ See Yee, *supra* note 93 at *Id.* at 180

⁹² Paris Agreement, *supra* note 27 at 13–4.

⁹³ See Kristine Höglund and Mimmi Söderberg Kovacs, *Beyond the absence of war: the diversity of peace in post-settlement societies*, 36 R. INT’L STUD. 367, 380 (2010) (noting that the 1993 elections created “an unconstitutional power-sharing arrangement”).

⁹⁴ Paris Agreement, *supra* note 27 at 46–7.

⁹⁵ Arusha Peace and Reconciliation Agreement for Burundi, Aug. 28, 2000, available at; <https://www.peaceagreements.org/viewmasterdocument/306> [hereinafter Arusha Accords].

⁹⁶ See Charlotte Fiedler, *Why Writing a New Constitution after Conflict can Contribute to Peace*, GERMAN DEVELOPMENT INSTITUTE 1, 1 (2019).

⁹⁷ SIEYÈS, *supra* note 76.

⁹⁸ Arato, *Redeeming the Still Redeemable: Post Sovereign Constitution Making*, 22 INT’L J. POL. CULT. SOC. 427, 430 (2009).

⁹⁹ See ARENDT, *supra* note 78 at 165 (“The great and fateful misfortune of the French Revolution was that none of the constituent assemblies could command enough authority to lay down the law of the land”).

¹⁰⁰ See *id.*

¹⁰¹ This comes from observations of a dialogue session I attended in 2019.

¹⁰² Jennifer Widner, *Constitution Writing in Post-conflict Settings: An Overview*, 49 WM. & MARY L. REV. 1513, 1522 (2008).

¹⁰³ See Rohan Edrisinha, *Challenges of Post Peace Agreement Constitution Making: Some Lessons from Nepal*, 9 J. HUM. RTS. PRAC. 436, 442 (2017).

¹⁰⁴ See *id.* at 443.

¹⁰⁵ See *id.*

¹⁰⁶ Widner, *supra* note 102 at 1534.

¹⁰⁷ Arato, *supra* note 98 at 430.

¹⁰⁸ See *id.* at 430–1.

¹⁰⁹ Armin von Bogdandy et al., *State-Building, Nation-Building, and Constitutional Politics in Post-Conflict Situations: Conceptual Clarifications and an Appraisal of Different Approaches*, 9 MAX PLANCK UNYB 579, 598 (2005) (noting that the drafting process should reflect the diversity of the populace “and allow for representation of as many groups as possible”).

¹¹⁰ Widner, *supra* note 102 at 1534.

¹¹¹ Saunders, *supra* note 56 at 19.

¹¹² Arato, *supra* note 98 at 430.

¹¹³ Widner, *supra* note 102 at 1534.

¹¹⁴ Benomar, *supra* note 22 (“there are benefits in separating the termination of violence conflict and the signing of a peace agreement from the process of drafting the constitution. The cases surveyed point out that, when these two processes are collapsed into one, long-term concerns of institutions building may be compromised”).

¹¹⁵ Yee, *supra* note 90 at 179.

¹¹⁶ Gerardo L. Munck and Chetan Kumar, *Civil Conflicts and the Conditions for Successful Intervention: A Comparative Study of Cambodia and El Salvador*, 21 REV. INT’L STUD. 159, 168 (1995) (“The [Paris Agreement] entailed some unique aspects, given that they attempted something never tried before: to revive a failed state by effectively taking over the administration of a country.”).

¹¹⁷ Zahar, *supra* note 33 at 567.

¹¹⁸ Taif Accord, *supra* note 4 at 9 (“A national accord cabinet shall be formed, and the political reforms shall be approved constitutionally.”)

¹¹⁹ Saunders, *supra* note 56 at 20 (“Practical considerations that may be relevant to this aspect of process include political tensions, security problems and socio-economic conditions all of which may have a bearing, for example, on whether a referendum is practicable or not.”).

¹²⁰ YEMEN CONST. art. 158.

¹²¹ See, e.g., Andrew England, *World’s worst humanitarian crisis deepens as Coronavirus hits Yemen*, FINANCIAL TIMES, Apr. 10, 2020, <https://www.ft.com/content/507d62b9-7d11-438c-805a-09cffff6d69b>; Ben Watson, *The War in Yemen and the Making of a Chaos State*, The Atlantic, Feb. 3, 2020, <https://www.theatlantic.com/international/archive/2018/02/the-war-in-yemen-and-the-making-of-a-chaos-state/551987/>.

¹²² Bell, *supra* note 1 at 394.

¹²³ Fionnuala Ni Aolain, *The Fractured Soul of the Dayton Peace Agreement: A Legal Analysis*, 19 MICH. INT'L L. J. 957, 961 (1998) ("The descent to conflict is a rejection of law and legality in its most crude form. Rehabilitation of the legal system is not only about rebuilding courthouses and appointing unbiased court officials to interpret the reinvented rules. The rehabilitation process is far more fundamental than that. It requires no less than re-establishing the legitimacy of law itself.").

¹²⁴ Franck, *supra* note 17 at 709.

¹²⁵ *Id.* at 706.

¹²⁶ 2005 CPA, *supra* note 31 at 24.

¹²⁷ See Rebecca Hamilton, *The Enemies of Sudan's Democracy are Lurking Everywhere*, FOREIGN POLICY (Dec. 6, 2019), <https://foreignpolicy.com/2019/12/06/sudan-democracy-enemies-everywhere-bashir/>.

¹²⁸ SUDAN CONST., *supra* note 10.

¹²⁹ Alexandra Stark, *Mohammed bin Salman's Collapsing Coalition in Yemen Means Trouble for Trump*, FOREIGN POLICY, Aug. 23, 2020, <https://foreignpolicy.com/2019/08/23/mohammed-bin-salmans-coalition-in-yemen-is-collapsing-that-means-trouble-for-trump-uae-saudi-arabia-aden/>.

¹³⁰ Bell, *supra* note 1 at 394 ("Lack of constitutional continuity, coupled with the international involvement that tends to be required to broker agreement in these circumstances, leaves the peace agreement and new regime open to charges of illegitimacy as a constitutional rupture, and an externally imposed one at that. These arguments are often manipulated by opponents of the agreement on the side of the former state.").

¹³¹ Fadil Aliriza, *Libya's Bad Peace Deal is Worse than no Peace Deal*, FOREIGN POLICY, Aug. 7, 2015, <https://foreignpolicy.com/2015/08/07/libyas-bad-peace-deal-is-worse-than-no-peace-deal/>.

¹³² Aolain, *supra* note 123 at 965.

¹³³ See *id.* at 963–8.

¹³⁴ *Id.* at 972.

About Us

The Political Settlements Research Programme (PSRP) is centrally concerned with how political settlements can be made both more stable, and more inclusive of those affected by them beyond political elites. In particular, the programme examines the relationship between stability and inclusion, sometimes understood as a relationship between peace-making and justice.

The programme is addressing three broad research questions relating to political settlements:

1. How do different types of political settlements emerge, and what are the actors, institutions, resources, and practices that shape them?
2. How can political settlements be improved by internally-driven initiatives, including the impact of gender-inclusive processes and the rule of law institutions?
3. How, and with what interventions, can external actors change political settlements?

The PSRP is a research consortium, of which University of Edinburgh is the lead organisation, with partners including: Austrian Study Centre for Peace and Conflict Resolution (ASPR), Conciliation Resources (CR), International IDEA, The Institute for Security Studies (ISS), The Rift Valley Institute (RVI), and the Transitional Justice Institute (TJI, Ulster University).

Find out more at: www.politicalsettlements.org

