African intrastate peace agreements and self-determination

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Table of common abbreviations

AJIL	American Journal of International Law
AUSocLegPhilB	Australian Bulletin of Society of Legal Philosophy
AYIL	African Yearbook of International Law / Annuaire Africain de Droit International
Afr. J. Int'l & Comp L.	African Journal of International and Comparative Law
Am Political Sci Rev	American Political Science Review
AU	African Union
BYIL	British Yearbook of International Law
CUP	Cambridge University Press
CEMAC	Central African Economic and Monetary Community
CEN-SAD	Community of Sahel-Saharan States
Corn ILJ	Cornell International Law Journal
DCLR	Detroit College of Law Review
ECOWAS	Economic Community of Western African States
EJIL	European Journal of International Law
GG	Global Governance
GYIL	German Yearbook of International Law
Ga J Int'l & Comp L	Georgia Journal of International and Comparative Law
HRQ	Human Rights Quarterly
HarvIntlLJ	Harvard International Law Journal
Houston L Rev	Houston Law Review
ICC	International Criminal Court
ICLQ	International and Comparative Law Quarterly
IGAD	Intergovernmental Authority on

	Development
IYIL	Irish Yearbook of International Law
Int'l Comm L Rev	International Community Law Review
IO	International Organization
Int Secur	International Security
Israel L Rev	Israel Law Review
J. Afr. Law	Journal of African Law
J Conflict and Sec L	Journal of Conflict and Security Law
J Democr	Journal of Democracy
J Peace Res	Journal of Peace Research
J Politics	Journal of Politics
ICC	International Criminal Court
ICCPR	International Covenant of Civil and Political Rights
ICESCR	International Covenant of Economic Social and Cultural Rights
ICLQ	International and Comparative Law Quarterly
IJIL	Indian Journal of International Law
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
LJIL	Leiden Journal of International Law
MLR	Modern Law Review
Max Planck UNYB	Max Planck Yearbook of United Nations Law
NATO	Northern Atlantic Treaty Organisation
NILR	Netherlands International Law Review
NYBIL	Netherlands Yearbook of International Law
OAU	Organisation of African Unity

OIC	Organisation of Islamic Cooperation (formerly the Organisation of Islamic Conference)
OIF	International Association of the Francophonie
OUP	Oxford University Press
Penn S L Rev	Pennsylvania State Law Review
SADC	Southern African Development Community
Southwestern JL & Trade Am	Southwestern Journal of Law and Trade in the Americas
Stan J I L	Stanford Journal of International Law
UN	United Nations
VJIL	Virginia Journal of International Law
Wash Lee L Rev	Washington and Lee Law Review
Windsor YB Access Just	Windsor Yearbook of Access to Justice
Yale J Int'l L	Yale International Law Journal
UDHR	Universal Declaration of Human Rights
UN YB	Yearbook of the United Nations

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I. Introduction

1. Background

Peace agreements are products of diplomacy, crafted and signed by both warring parties and the self-identified international community of states, international organisations, and others.[1] Hardly ever are they produced without the assistance (or pressure) of outsiders, since the latter are essential in their brokering and their implementation. International lawyers are familiar with the story and the style of the Dayton Peace negotiation, also remembered as 'Holbrooke's aggressive tutelage' in the words of US Secretary of State Warren Christopher. These negotiations amongst tough participants would conclude amidst unsuccessful bluffs and a final one-hour ultimatum.[2]

Peace agreements are compromises: all parties win to a degree, but all parties lose as well: right after the post-electoral violence in Kenya, the government and the opposition admitted quite frankly that 'given the current situation, neither side can realistically govern the country without the other'.[3] Thus, they conceded to a set of peace agreements. Peace agreements can kill: the historic Arafat-Rabin handshake that marked the conclusion of the first of the Oslo Accords, cost Yitzak Rabin his life; he was assassinated when attending a peace rally by a right-wing extremist opposing the Oslo Accords.[4] Peace agreements can

[1] The term 'international community' is frequently used in African peace agreements and thus used by this work; see amongst others N'Djamena Accord (2007) (Chad), art. 5 para 3; Pointe-Noire Ceasefire (1999) (Congo), art. 7(c), Brazzaville Ceasefire (1999) (Congo), section VII, art. 13; Armed Forces Joint Declaration (2003) (Côte d'Ivoire), preamb.para 11; Reform Agreement(2001)(Djibouti),art.6(c); Ouagadougou Declaration (2010)(Guinea), art.11; Principles Agreement (2008) (Kenya), section III, para 3; Maputo Political Accord (2009) (Madagascar), preamb. para 10, art.6, Transitional Charter (2009) (Madagascar), arts 20,34,36; General Peace Agreement (1992) (Mozambique), protocol II, art.7 (c), protocol V, section III, art.2; Arusha Accord (1993) (Rwanda), preamb. para 18; Refugee/IDP Protocol (1993) (Rwanda), art.15; Rule of Law Protocol (1992) (Rwanda), ch. IV, art. 14; Lomé Peace Agreement (1999) (Sierra Leone), preamb. para 2, arts. II (3), III (4), XII (4), XVI (4), XXVI (3), XXVIII (1), XXIX, XXX, XXXV; General Agreement (1993) (Somalia), preamb. para 3, Addis Ababa Agreement (1993) (Somalia), section I, clause 9, section IV, clause 1 para c, section V, clause 4; Eldoret Ceasefire (2002) (Somalia), preamb. paras 6 and 8, art.2 para 5, art.5 para 1, art.6 para 1, Kampala Accord (2011) (Somalia), art. 4, para q.

[2] Richard Holbrooke, *To End a War* (Random House 1998), 275, 293-394, 305.

[3] Acting together for Kenya Agreement (2008), preamb. para 2.

[4] Agreement between the Government of Israel and PLO, known as 'Oslo I Accord', part of the Oslo Accords, signed at Washington in 13 September 1993; Rabin was assassinated on 4 November 1995 in a peace rally in support of the Oslo Accords; For one of the Oslo Accords' architect's account, see

generate discord within the ranks of signatory parties.[5] Some of their prominent members refuse to comply, thus becoming 'spoilers' during the implementation stage, or splinter groups that renew fighting,[6] implicitly or explicitly renouncing peace agreements, as did the M-23 rebels in the DRC.

A significant number of these agreements breaks down within five years after their conclusion, causing regular cycles of violence, described by political scientists as the 'recurrence rate' of conflict.[7] In other words, peace agreements regularly fail, followed by tragic events, such as the Rwandan Genocide.[8] In the words of the High-Level Panel, 'if two peace agreements, the 1991 Bicesse Agreement for Angola and the 1993 Arusha Accords for Rwanda, had been successfully implemented, deaths attributable to war in the 1990s would have been reduced by several million.'[9]

The discussion about the success or failure of peace agreements usually centres around two major factors: the clarity or ambiguity of their content, and the delegation of implementation capacities to actors (states or international organisations different from the warring parties signing up to these agreements). The agreements are concluded during peace processes that bear a striking resemblance to deliberations at international organisations, in terms of multilingualism, and the use of legal language in the drafting of

Yissai Belin, *Touching Peace: From the Oslo Accord to a Final Agreement* (Weidenfeld & Nicholson 1999), prologue, 3, 129-132, 135-137.

[5] The rebel group M-23 took its name after the Goma peace agreement signed on the 23d of March 2009, in response to the ongoing disturbances in DRC; see Goma Peace Agreement (2009).

[6] See, Stephen J. Stedman, 'Spoiler Problems in Peace Processes,' (1997) 22(2) Int Secur 5–53; spoilers include dissenters within a movement unhappy with the compromises needed for achieving the agreement.

[7] See Michael J. Quinn et al*,* 'Sustaining the peace: Determinants of civil war recurrence' (2007) 33(2) *International Interactions*, 167-193*,* Barbara Walter, 'Does conflict beget conflict? Explaining recurring civil war' (2004) 41(3) J Peace Res*,* 371-388; Virginia P. Fortna, *Peace Time; Cease-Fire Agreements and the Durability of Peace* (Princeton University Press 2004).

[8] The Rwandan Genocide started once the concluded Arusha Accord and its five related protocols broke down after the plane carrying Rwandan President Juvénal Habyarimana was shot down (possibly by Hutu extremists opposing the Arusha Accords), on 6 April 1994. See Arusha Accord (1993), Rule of Law Protocol (1992), Power-sharing Protocol (1993), Refugee/IDP Protocol (1993), Armed Forces Protocol (1993), Miscellaneous Issues Protocol (1993), S/26915- A/48/824.

[9] UN General Assembly, Report of the High-level Panel on Threats, Challenges and Change, 'A more secure world : our shared responsibility', 2 December 2004, A/59/565, para 86.

political compromises.[10] Regarding the former, the multiple working languages, also indicate antagonisms in the running and the managing of the peace process.[11] As for the latter, peacemakers often put forward the ambiguity (or indeterminacy) of the texts, as a negotiation strategy. Such technique, termed by negotiators as 'constructive ambiguity', is thought to be increasing the chances of success of the agreement.[12] Although the idea of ambiguity as a drafting (legislating) strategy has been discussed by legal analysis elsewhere,[13] it is worth noting that, since these texts are drafted with the use of international legal language, ambiguity (or indeterminacy) is not an exceptional feature of peace agreements, but an inherent element, 'for indeterminacy follows as a structural property of the international legal language itself. It is not an externally induced distortion.[14]

This work does not fully address the debated topic of the measurement of peace agreement results.[15] Still, it is worth pointing out, that of all the ways the success of a

[10] 'Multilingualism', Report of the Secretary-General, UN Doc A/54/478 (1999); Mala Tabory, *Multilingualism in International Law and Institutions* (Sijthoff & Noordhoff 1980); on judicial discourse as a form of argumentative practice (deliberation) in international law and institutions see Ian Johnstone, *The Power of Deliberation, International Law, Politics, and Organizations* (OUP 2011), 4-54.

[11] For definitions of peace processes see Bertrand Ramcharan, 'Peace Process' in Vincent Chetail (ed), *Post-conflict peacebuilding: A Lexicon* (OUP 2009), 242-243; For a list of the original and authoritative languages of the African intrastate peace agreements, see Table II-African Intrastate peace agreements, appended in the bibliography; on the three tables used by this work, see below, section 2.2., p. 14: in the vast majority, at least one of the original languages is either English or French, and when the international community is involved, the language of negotiations (English/French) usually takes precedence.

[12] Constructive ambiguity, as negotiation technique advocates that an ambiguously worded text can create opportunities for advancing the interests of both parties; the term is attributed to Henry Kissinger; Walter Isaacson, *Kissinger: a biography* (Faber and Faber 1992), 556, 481-482 (definition); also Henry Kissinger, *Years of upheaval* (Weidenfeld and Nicolson and M. Joseph 1982), 783, 779-781; John G. Stoessinger, *Nations in darkness-China, Russia, and America* (McGraw-Hill, 1990),101; Eric Eisenberg, 'Ambiguity as Strategy in Organizational Communication,' (1984) 51 Communication Monographs 227-242; for a critical discussion in relation to the Oslo accords see Aharon Klieman, *Compromising Palestine: A Guide to Final Status Negotiations* (Columbia University Press 2000); for more illustrations of constructive ambiguity see Christine Bell, *Lex Pacificatoria* (n 19), 165-169.

[13] Bernard S. Jackson, *Semiotics and Legal Theory* (Routledge & Kegan Paul 1985), 163-166, discussing 'motivated indeterminacy' as a legislative strategy, as opposed to 'linguistic indeterminacy'.

[14] Martti Koskenniemi, *From Apology to Utopia: the structure of the international legal argument* (reissue with new epilogue, OUP 2005), 62.

[15] Although not underestimating them, the research does not address all issues of success/failure that depend for instance on the relative power of negotiating parties before, during and after the

peace agreement could be measured, first and foremost, one would have to evaluate whether the peace pact delivered what was agreed. Therefore, the understanding and (related) authoritative interpretation of what was agreed in the text becomes a central point. Such agreements, usually not interpreted by courts or judges, raise more general issues of interpretation in relation to the context of their conclusion, which are familiar to lawyers and international lawyers.[16]

Peace agreement analysis has re-emerged as a field of study.[17] The study of peace agreements has gained prominence because of two interrelated factual developments: peace agreement proliferation, and public coverage of peace processes. Peace agreements seem to be a standard way of conflict termination, out of noble, cynical, or legal(istic) considerations. A sceptic can always question whether warring factions would, instead of concluding an agreement, pursue brutal victories, similar to the victory of Sri Lanka's government against Liberation Tigers of Tamil Eelam in 2009,[18] were they able and equipped, or assisted to do so.[19] Nonetheless, irrespective of its positive or negative implications, peace agreement proliferation is a factual development, which has generated a considerable amount of primary materials worth studying, as well as related secondary materials from legal and non-legal literature.[20]

agreement; the presence and absence of key armed and unarmed non-state actors; and the relative capacities/interest of non-state actors to govern.

[16] 'the determining force of law […] is always contextual', Ibid, 36-41; also, 341, on the relative determinacy of international law.

[17] For two recent legal studies on peace agreements see Christine Bell, *On the Law of Peace: Peace agreements and the Lex Pacificatoria* (OUP 2008); Jeremy I. Levitt, *Illegal Peace in Africa: An Inquiry into the Legality of Power Sharing with Warlords, Rebels, and Junta* (CUP 2012); for earlier works see Paul Fauchille, *Traité de droit international public* (Vol. 1, Rousseau 1921); Georg Schwarzenberger, 'Peace Treaties Before International Courts and Tribunals' (1968) 8 IJIL 1; Sydney D. Bailey, 'Ceasefires, Truces, Armistices in the Practice of the UN Security Council' (1977) 71(3) AJIL 112; Alexander Hold-Ferneck, 'Zur Frage der Rechtsverbindlichkeit des Friedensvertrages von Versailles' (1922) 30 Zeitschrift für Internationales Recht 110; Antoine Pillet, *Le traité de Paix de Versailles* (Rivière 1920).

[18] Report of the Secretary General's Panel of Experts on Accountability in Sri-Lanka, 31 March 2011 < http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf>

[19] The Libyan victory in 2011, backed by the UN/NATO could also come to mind.

[20] Christine Bell, *Lex Pacificatoria* (n 16), 29; the 'profusion of settlements' noted by Marc Weller in 'Settling Self-Determination Conflicts: Recent Developments' (2009) 20(1) EJIL 111, 114-115; *Escaping the Self-determination Trap* (Martinus Nijhoff 2008), 22.

Those secondary materials have benefited from the post-Cold War promotion of 'public diplomacy' and formal or informal reporting of high-profile cases like Sudan, Kenya and Somalia. Not only are many peace agreements concluded, but their drafts and texts are more accessible, appearing on journalistic sites, or blogs, at the time of their making. The professionalisation of private peacemaking, known as 'Track II diplomacy', has impacted on the availability of materials too.[21] Private mediators, keen to provide concrete evidence of their contribution, diligently publish their results, appending the texts or summaries of agreements, alongside progress reports, policy briefs, and widely distributed newsletters and press releases, and related (live streamed) events.

In the absence of the UN peacemaker database of the Department of Political Affairs,[22] an international lawyer would wonder whether there exist official publications of peace agreements, and where exactly, at the national, or international level, that publication, a possible indication of their legal nature. It is worth noting that most agreements are not published in the international legal materials, with a few exceptions, such as the Dayton Peace agreements, the Israel-PLO accords, the ones in Cambodia and El-Salvador, as well as a few African agreements.[23]

[21]Such 'private actors' involved in peace processes in terms of negotiation, advice and technical support include the Centre for Humanitarian Dialogue (HD), the Crisis Management Initiative (CMI), the Carter Centre's Conflict Resolution Programme, and the United States Institute of Peace (USIP); for track II diplomacy see Bertrand Ramcharan, 'Peace Process' and Giles Carbonier, 'Private Sector' in in Vincent Chetail (ed), *Post-conflict peacebuilding: A Lexicon* (OUP 2009), 232-234 and 251-253 respectively; see also Clapham's chapter on 'the privatisation of diplomacy in Africa' in Christopher Clapham, *Africa and the International System: The Politics of State* survival (CUP 1996), 244-266; also 'Conflict Resolution: Privatising Peace' The Economist, 30 June 2011 <www.economist.com/node/18895458>.

[22] UN Peacemaker Database launched by the Department of Political Affairs; for a list of sources of intrastate peace agreements see Appendix I and relevant commentary.

[23] Dayton peace agreement 35 (1) I.L.M. 75 (1996) and related agreements in that volume; the Oslo accords, Declaration of Principles on Interim Self-Government Arrangements, (known as Oslo I) 32 ILM 1527 (1993); and Interim Agreement on the West Banks and the Gaza Strip Oslo II 36(3) I.L.M. 551(1997) the Cairo summit of the conference on Mideast Peace and Decisions on new Institutions 35(5) I.L.M. 1280 (1996); the Paris Peace accords for Cambodia 30(1) I.L.M. 174 (1991); the Guatemalan accords for a firm and lasting peace; Agreement on a Firm and Lasting Peace, and the 10 Integral Agreements Covering Human Rights, Resettlement, Human Rights Violations, Indigenous Peoples, Social and Economic Issues, Civilian Power and the Armed Forces, Definitive Ceasefire, Constitutional and Electoral Reforms, the Legal Integration of URNG, and Implementation, Compliance and Verification, 36 I.L.M. 274 (1997); the Cairo Declaration on Somalia 37(4) I.L.M. 780 (1998); the agreement in Guinea Bissau Agreement between the Government of Guinea Bissau and the Self-Proclaimed Military Junta 38 I.L.M. 28 (1999).

Hence, peace agreements, if used as research materials, would have to pass a careful evaluation by students and scholars of international law regarding their legal form and related treatment for the following two reasons. Peace agreements constitute a rather generic category including, peace treaties, and intrastate peace agreements.[24] They are concluded in the aftermath of different types of conflicts and crises, between many types of warring parties, not necessarily organised armed groups.

Their genesis is intrinsically linked to emergency, if not exceptional circumstances that range between low-level electoral violence, violent *coups,* and protracted conflict. Their implementation in the post-conflict phase, also termed here peace transition phase, raises issues of applicable legal rules, partly touched upon by the *jus post bellum* discussion.[25] The research is limited to intrastate peace agreements, the legal status of which remains highly contested and unclear, as they seem to fall outside the scope of the 1969 Vienna Convention on the Law of Treaties (hereinafter the 1969 Vienna Convention).[26] Such agreements *prima facie* raise issues of form and legal status, simply by the fact that they are concluded between state and non-statal parties, most of which, as explained in later chapters, are not non-state actors with treaty making capacity under general international law.[27]

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[24] Peace treaties are interstate peace agreements, which are international treaties. The term intrastate peace agreement is defined as opposed to interstate peace agreement –an agreement concluded between the government of a state and other parties, subjects or non-subjects of international law. More shall be said on the definitional problems in the second chapter.

[25] On the idea of *jus post bellum* as a concept see for instance, Francisco Suarez, "The Three Theological Virtues," Disputation XIII, in: Selections From Three Works, ed. G. L. Williams, A. Brown, and J. Waldon, Classics of International Law, Vol. 2, ed. James Brown Scott (Clarendon 1944), 836. Carsten Stahn and Jan Kleffner (eds), *Jus post bellum* (TMC Asser Press 2008), and Inge Osterdahl and Esther van Zadel, 'What Will Jus Post Bellum Mean? Of New Wine and Old Bottles' (2009) 14 J Conflict and Sec L 14 175, 205-207.

[26] Vienna Convention on the Law of Treaties, 22 May 1969 entered force 27 January 1980, *UNTS* vol. 1155, p. 331, art. 2 (1) (a) provides the definition of 'international treaty' for the purposes of the Vienna Convention, and art. 3 a definition of other international agreements, understood as 'an international agreement concluded between States and other subjects of international law or between such other subjects of international law'; see infra, note 53, and section 2.1, p 11-12, below.

[27] These include armed opposition groups, movements, or political parties and forces. A few of these non-statal actors, could be regarded as armed groups under the strict definition of Armed Protocol II; see Protocol Additional to the Geneva Conventions of August 1949, Relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II), 1977 1125 UNTS 609, Art. 1. However, except for the Frente POLISARIO in Africa, they are not recognised as 'an armed group struggling for its self-determination against colonial rule, a racist regime, or alien occupation', under

At the same time, these peace agreements that are not international treaties constitute a rupture in the national (domestic) legal order: interestingly, intrastate peace agreements are produced without reference to a municipal (domestic) (constitutional or not) procedure; instead, they implicitly or explicitly modify that national legal order with the use of international law. The paradox lies within the fact that intrastate peace agreements are usually domestic documents that in terms of their governing law, set aside domestic (municipal) law in favour of international law.

Legal research either tackles the legal form of peace agreements on a case-by-case basis,[28] as a side issue, or by devising a theoretical,[29] legal-historical[30] or socio-legal approach.[31] Their content triggers equally pertinent questions surrounding the application of international legal principles, rules, standards and related language. Consequently, writers use a combination of approaches to explain the disparities between legal form and applicable law. The use of a combination of approaches is not entirely new to international legal analysis, previously identified and pointed out in relation to treaty law by McNair,[32] and recently in relation to humanitarian law,[33] as well as international legal history.[34]

Additional Protocol I; See Protocol Additional to the Geneva Convention of 12 August 1949, Relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), 12 December 1977, 1125 UNTS 3, art. I (4); the Western Sahara peace agreements are outside the scope of the thesis for material and temporal reasons shown infra, note 63, section 2.2, p. 14.

[28] Scott P. Sheeran, 'International Law, Peace Agreements and Self-Determination: The Case of the Sudan' (2011) 60(2) ICLQ, 423; Laura Betancur Restrepo, 'The Legal Status of the Colombian Peace Agreement' (2016) 10 AJIL Unbound 188; Steven Quingley, 'The PLO-Israeli Peace Agreements: are they Treaties?' (1997) 30 Corn ILJ 717; Elizabeth Cousens, 'Making Peace in Bosnia Work' (1997) 30(3) Corn ILJ 789; Geoffrey R. Watson, *the Oslo Accords and International Law* (OUP 2000).

[29] See Olivier Corten and Pierre Klein, 'Are agreements between States and Non-State Entities Rooted in the International Legal Order?' in Enzo Canizzaro, *The Law of Treaties Beyond the Vienna Convention* (OUP 2011) 1-23, overviewing a limited sample of peace agreements provided by the UCDP, namely 17 (out of 90) in 12 African countries (Angola, Burundi, CAR, Côte d'Ivoire, DRC, Liberia, Niger, Rwanda, Senegal, Sierra-Leone, Sudan, and Uganda).

[30] Jeremy I. Levitt, *Illegal Peace* (n 16).

[31] Christine Bell, *Lex Pacificatoria* (n 16); 88, 127, 108, 144, 149, 183In terms of their legal form, peace agreements are viewed as hybrid documents, with treaty and constitution attributes that challenge the public/private and international/domestic law divide.

[32] '[…] the task of deciding these disputes will be made easier if we free ourselves from the traditional notion that the instrument known as the treaty is governed by a single set of rules […]', Arnold McNair, 'The Functions and Differing Legal Character of Treaties' (1930) 11 BYBIL, 100, 108.

[33] Anthea Roberts and Sandesh Sivakumaran, 'Lawmaking by Nonstate Actors: Engaging Armed Groups in the Creation of International Humanitarian Law' (2012) 37(1) Yale J Int'l L 108, 143-146.

[34] Ronald G. Ash, 'The *ius foederis* re-examined : the Peace of Westphalia and the of the Holy Roman Empire', in Randall Lesaffer (ed), *Peace Treaties and International Law in European History :From the Late Middle Ages to World War One* (CUP 2004), 319-337, 319, 330-331, 337.

2. Scope of the thesis

2.1 Research Questions

The thesis examines if and on what basis the law of self-determination applies to intrastate peace agreements. In order to address this general research question, this work develops a conceptual framework, which helps break down the research question in two sets of particular questions: how to understand and interpret the use of self-determination for the former warring/hostile parties (immediate parties to the agreements) and to what degree the law of self-determination could be applicable for outside parties (international community),[35] including patterns, consistencies and inconsistencies and related tensions. The thesis answers these questions guided by African practice, using the respective texts as the main source of analysis. The research findings in relation to these two categories of immediate parties and outside parties, are conceptualised later in this work in terms of positive and negative findings.

In exploring the application of self-determination to African intrastate peace agreements, the emphasis is on the law of self-determination, [36] though not downplaying or ignoring its political dimension (and origins), thus using the overview of Crawford as political principle, legal principle, and legal right.[37] This work also builds upon the distinction between legal principle and right (or rules), not least for the matters covered herein.[38] The interplay between principle and right, found in the original documents,[39] could be pertinent for

[35] Term further explained
[36] UN Charter arts. 1, 55, Chapters XI and XII. ICCPR arts 1, 25, 27, ICESR art.1; also, the General Assembly Resolutions GA Res 61/295, United Nations Declaration on the Rights of Indigenous Peoples, 2007, GA Res 1541 (XV), Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter, 1960, GA Res 1514 (XV), Declaration on Granting of Independence to Colonial Countries and Peoples, 1960, GA Res 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 1970.
[37] James Crawford, *The Creation of States in International Law* (2nd edn, OUP 2007), 85-102.
[38] For international legal principles see Oscar Schacter, *International Law in Theory and Practice* (Martinus Nijhoff 1991), 43-51, three functions of self-determination as a principle see Antonio Cassese, *Self-Determination of Peoples: A legal reappraisal* (2nd edn, CUP 1995), 129-133.
[39] UN Charter art. 1 (principle) and UN Charter art. 55 and art. 1 of ICCPR and ICESCR; See International Covenant on Civil and Political Rights 999 UNTS 171, entered force 23 March 1976,

understanding and interpreting peace agreement texts. For the purpose of such analysis, it would be valid to look at self-determination as both a legal principle and as a right, since they have differing functions in terms of peace agreement analysis and interpretation.[40] More specifically, the sub-question on the use of self-determination for immediate parties is answered by reference to the right of self-determination, and in particular the content of internal self-determination.[41] On the other hand, the negative findings in relation to the use of self-determination for outside parties are explored and evaluated in light of the legal principle of self-determination.

Consequently, these sets of secondary research questions make a separate contribution to the international legal literature. By exploring the use of internal self-determination language for immediate parties, the thesis raises issues of content and beneficiaries relating to the internal aspects of self-determination,[42] for which there might not be answers, not least from the jurisprudence of the International Court of Justice. As the second chapter further explains, the Court might have settled the issue of the normative value of self-determination in the Namibia advisory opinion and affirmed that self-determination is 'one of the essential principles of contemporary international law', but,

and International Covenant on Economic, Social and Cultural Rights 993 UNTS 3, entered force 3 January 1976, respectively.

[40] For the principle as standard of interpretation, and of use in cases not covered by specific rules see Antonio Cassese, *Self-Determination* (n 36), 128-133.

[41] The distinction between internal and external self-determination, to a degree supported by the international legal instruments, is standard in self-determination writings; for good examples see Michla Pomerance, *Self-determination in Law and Practice* (Martinus Nijhoff 1982), 37-42, and 36, describing as an act of external self-determination the act with which a people determine their future status and liberate themselves from alien rule and internal the selection of the desired system of government and the substantive nature of the regime selected (democratic socialist other etc).

[42] Allan Rossas, 'Internal Self-Determination' in Christian Tomuschat (ed*), Modern Law of Self-Determination* (Martinus Nijhoff 1994), 225, 227-240, 249-252, Jean Salmon, Internal Aspects of the Right to Self-Determination : towards a Democratic Legitimacy Principle' in Christian Tomuschat (ed), *Modern Law of Self-Determination* (Martinus Nijhoff 1994), 253-283; Michla Pomerance, *Self-determination* (n 39), Antonio Cassese, *Self-Determination* (n 36); Marc Weller, *Escaping the Self-determination Trap* (Martinus Nijhoff 2008), 23-24; Thomas M. Franck, 'The Emerging Right to Democratic Governance', (1992) 86(1) AJIL 46.

as Cassese observes, 'historical and political circumstances led the court to deal with only the most "classical"' or "traditional" dimension of self-determination.'[43]

By pairing peace agreements and self-determination in relation to outside parties, the thesis stresses that self-determination is of continuing importance when dealing with a post-conflict state. As such, the study shares a similar focus with other works on post-conflict reconstruction and rebuilding. Critical accounts have observed as to how international involvement in the various peacebuilding projects have been a positive engagement of the international community.[44] Outside Africa, in instances of international administration, (East Timor, Bosnia-Herzegovina, Kosovo), the presence and the role of the international community has not been questioned, but presumed as legitimate. As Orford notes, '[t]he idea that the international community has a legitimate role as administrator of post-conflict territories has gained increasing acceptance at the international level. These developments in international relations flow from a new faith in the international community as a benign, even civilising administrator.'[45]

When those works point out that the international engagement could be in tension with a state's independence, they acknowledge that the principle of self-determination is relevant for such contexts.[46] This work contributes to this wider discussion by

[43] Antonio Cassese, 'The International Court of Justice and the right of peoples to self-determination' in Vaughan Lowe and Malgosia Fitzmaurice (eds), *Fifty Years of the International Court of Justice: essays in honour of Sir Robert Jennings* (CUP 1996), 351-364, 352.
[44] Ralph Wilde, *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away* (OUP 2008), 294-299; Frederic Kratocwhil, *The Status of Law in World Society: Meditations on the Role and Rule of Law* (CUP 2015), 101-134; Brett Bowden, Hilary Charlesworth, Jeremy Farrall, *The role of International Law in Rebuilding Societies after Conflict- Great Expectations* (CUP 2009), 1-14.
[45] Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law*, (CUP 2003), p. 128; also, Stephen D. Krasner, 'Building Democracy After Conflict: The Case for Shared Sovereignty' (2005) 16(1) J Democr 69, 70; Steven R. Ratner 'The Cambodia Settlement Agreements' (1993) 87 AJIL 1, 10; Guglielmo Verdirame, *The UN and Human Rights Who Guards the Guardians?* (CUP 2011), 242-243.
[46] For a good discussion of self-determination in relation to post-conflict reconstruction see Matthew W. Saul, 'International Law and the Will of the People in Post-Conflict Rebuilding in *The Future of Statebuilding: Ethics, Power and Responsibility in International Relations*, www.westminster.ac.uk/ data/assets/pdf file/0009/81594/Saul.pdf; Matthew W. Saul, 'Local Ownership of Post-Conflict Reconstruction in International Law: The Initiation of International Involvement' (2011) 16(1) J Conflict and Sec L 165.

addressing these issues from a different perspective, as the focus is not on the process of peacebuilding itself, but the texts of peace agreements to the extent they govern this process, and those peace agreements raise issues in instances of consensual international engagement.

The overall contribution of this work lies within its understanding of how peace agreements and self-determination could fit together, and whether this is a result of the practice of peace agreements giving rise to an obligation, or the result of a pre-existing obligation influencing their drafting. The pairing of peace agreements and self-determination has been initially influenced by historical ties between peace agreements and self-determination, of self-determination to inter-war, decolonisation, and contemporary peace agreements, traced and further presented in the second chapter. The first multilateral treaty where the term 'self-determination' appears was the UN Charter, and some of the documents leading to its establishment.[47] However, the principle of self-determination found its way into the international law lexicon through its incorporation in peace treaties.[48] Not only did self-determination form the basis of peace negotiations,[49] but, as scholars observe, 'in the peace settlement the principle was to have a dispositive and normative effect greater than that of many long accepted rules of law.'[50] It is envisaged that these two particular questions on the use of self-determination for immediate and outside parties to intrastate peace agreements, could then be synthesised into more general conclusions, including interpretation suggestions based on alternative ways of

[47] Joint declaration released by U.S. President Franklin D. Roosevelt and British Prime Minister Winston Churchill on August 14, 1941, known as 'Atlantic Charter', point III.
[48] See Peace Treaty between Latvia and Russia signed on 11 August 11, 1920, known as the Riga Treaty, League of Nations Treaty Series Vol. 2, 1920-1921, p. 213, art. II; Peace Treaty between Lithuania and Russia, singed on 12 July,1920, known as the Moscow Treaty, League of Nations Treaty Series Vol., pp. 122-123, art. I; Peace Treaty between Estonia and Russia signed on 2 February 1920, known as Tartu Treaty, League of Nations Treaty Series, vol. 11, pp. 30-71, art. III.
[49] Alfred Cobban, *Nation State and National Self-determination* (Crowell 1969), 57-75; Harold Nicolson, Peacemaking 1919 (Grosset and Dunlap 1965), 13; such basis was the acceptance of the principles enunciated by the famous fourteen points by President Woodrow Wilson, stating *inter alia*, that 'the settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship, upon the basis of the free acceptance of that settlement by the people immediately concerned' see Address of President Wilson delivered at Mount Vernon, 4 July 1918 Wilson, Woodrow, 1856-1924. Washington [Govt. print. off.] 1918, 4-5.
[50] Ian Brownlie, 'An Essay in the History of the Principle of Self-Determination', in Charles Henry Alexandrowitcz, (ed), *Grotian Society Papers 1968* (Martinus Nijhoff 1970) 91, 94.

thinking about self-determination. Therefore, its contribution does not lie within its ability to develop an original self-determination treatise, but rather situating its research questions within three major issues within the body of international law: the articulation of self-determination as a (legal) principle in the UN Charter and as a right in both Covenants; issues of content and beneficiaries; and issues of process and substance in the context of peace transitions.

As such, the thesis does not investigate matters of external self-determination (secession), and its relationship with *uti possidetis*, simply because the inspected African intrastate peace agreements build upon the premise that the establishment of peace would not affect the territorial integrity of the state in question, as further explained in the first chapter.

2.2 Sources and approach

The thesis adopts an international legal approach.[51] The thesis has sampled its primary materials guided by the doctrine of sources,[52] it develops an international legal framework for assessing the primary materials, whilst subscribing to an international legal approach to interpretation, by using the 1969 Vienna Convention interpretation methods as reflecting customary international law, assisted by literature on international legal principles when needed. [53]

[51] Steven R. Ratner and Anne Marie Slaughter, 'Appraising the Methods of International Law: A Prospectus for Readers (1999) 93 AJIL 291, 291-292; also, Robert Cryer, Tamara Hervey and Bal Sokhi-Bulley, *Research Methodologies in EU and International Law* (Hart 2010), 1-7, 16-42.
[52] Statute of the International Court of Justice art. 38(1), June 26, 1945, 59 Stat. 1055, 33 U.N.T.S. 993.
[53] According to the general rule on interpretation 'A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty. 3. There shall be taken into account, together with the context (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) any relevant rules of international law applicable in the relations between the parties. Art. 31 of the 1969 Vienna Convention on the Law of Treaties; According to the ICJ, arts 31-32 of the 1969 Vienna Convention reflect customary international law: see Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Judgment, 15 February 1995, I.C.J. Reports

Although peace agreements could be considered a distinct (interdisciplinary) field of study, this work only looks at intrastate peace agreements, as opposed to peace treaties. There are many ways an international lawyer could tell the story of peace agreements.[54] This work demonstrates the merits of viewing contemporary intrastate peace agreements through the lens of international law, not by arguing that they are international treaties or international agreements,[55] but because they are a legitimate (evidentiary) source of state practice.[56] The term intrastate peace agreement is defined as opposed to interstate peace agreement –an agreement concluded between the government of a state and other parties, subjects or non-subjects of international law, and further conceptualised in Chapter 1.

When sampling intrastate peace agreements, this work has used customary international law, as a methodological guidance on what to study.[57] By selecting the texts of intrastate peace agreements, the thesis had to choose where state practice was to be found, as any traditional legal analysis would be searching for 'usage', in the way the International Court

(1995), p. 47, 59, Territorial Dispute (Libyan Arab Jamahiriya v Chad), Judgment, 3 February 1994, I.C.J. Reports 1994, p. 6, 21-22.

[54] For an interesting presentation of peace processes, ceremonies and agreements in Shakespeare's Troilus and Cressida, King Henry V, The first part of King Henry VI, and Coriolanus, see Theodore Meron, *Bloody constraint: war and chivalry in Shakespeare* (OUP 1998), 43, n.8, 50, 61-63,68-71, 89-90, 142-143, 315-317.

[55] See the 1969 Vienna Convention on the Law of Treaties; According to art 2(1)a, an international treaty is 'an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.'; According to art 3, 'The fact that the present articles do not relate: (a) To international agreements concluded between States and other subjects of international law or between such other subjects of international law; […] shall not affect the legal force of such agreements or the application to them of any of the rules set forth in the present articles to which they would be subject independently of these articles.'

[56] State practice together with *opinio juris (sive necessitatis)* are the two elements of custom, defined by the Statute of the International Court of Justice as 'evidence of a general practice accepted as law', Statute of the International Court of Justice art. 38(1) (b), June 26, 1945, 59 Stat. 1055, 33 U.N.T.S. 993.

[57] Hugh Thirlway, *Sources of International Law* (OUP 2014), 53-93; Michael Akehurst, 'Custom as a Source of International law' (1974-75) 47 BYIL 1,3; Michael Byers, *Custom, Power and the Power of Rules* (CUP 1999), 129-136, 162-166, 183-195; Anthony D'Amato, *The Concept of Custom in International Law* (Cornell University Press 1971), 74–76, 160–66; Anthea Roberts, 'Traditional and Modern Approaches to Customary International Law: A Reconciliation' (2001) 95 AJIL 757.

of Justice has spoken about the 'constant and uniform usage' that is to be found in the practice of states.[58]

The methodological guidance has been assisted by the lists and indicative examples of state practice and evidence of state practice of the International Law Commission,[59] as well as those of learned jurists, that are quite liberal in what to include. For instance, Brownlie adds policy statements, press releases, and official manuals on legal questions (military law manuals), executive decisions and practices, comments by governments on drafts produced by the International Law Commission.[60] In the same direction, Harris, whilst commenting on the evidence of state practice and difficulties tracing it, offers the examples of parliamentary papers, law reports and newspapers, in addition to diplomatic correspondence and other governmental confidential reports.[61] Cassese, in his study on self-determination asserts that state practice can be studied through national digests and UN proceedings.[62] Guided by this rudimentary method, the work appreciates its primary materials as evidentiary sources of state practice.

The overviewed primary materials have been concluded in thirty-five African countries during the post-Cold War era (1989 and 2016). The estimated number of concluded peace agreements is 254, out of which, 233 have been inspected.[63] Works on peace agreements identify the differing qualities of post-Cold War agreements.[64] The fact is that, excluding

[58] Defined as 'the constant and uniform usage accepted as law' See amongst others Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, (hereinafter Nuclear Weapons Advisory Opinion) 8 July 1996, I.C.J. Reports 1996, p.226, pp.253-254, paras 64-65; Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, 3 June 1985, I.C.J. Reports 1985, p. 13, pp.29-30, para 27; Colombian-Peruvian asylum case, Judgment, 20 November 1950, I.C.J. Reports 1950, p.266, pp.276-277.
[59] The list includes treaties, decisions on international and national courts, national legislation, diplomatic correspondence, opinions of national legal advisers and the practice of international organisations, II Yearbook of the International Law Commission, (1950), 368-372.
[60] James R. Crawford, *Brownlie's Principles of Public International Law* (8th edn, OUP 2012), 24.
[61] David J. Harris, *Cases and Materials on International Law* (7th edn, Sweet and Maxwell 2010), 23-24.
[62] Antonio Cassese, *Self-Determination* (n 38), 2.
[63] See Table I-Countries and Agreements and Table II- African Intrastate peace agreements explained below.
[64]Christine Bell, *Lex Pacificatoria* (n 16), 28-46.

the Western Saharan[65] and South African agreements,[66] most agreements are ostensibly concluded outside the context of colonial and similar situations (apartheid).

African peace agreements have been selected for the following reasons, mainly for the occurrence of internal and internationalised conflicts, large-scale atrocities, and numerous *coups* and related violence.[67] For this, Africa is infamously labelled the 'hot-bed of conflict',[68] or is usually referred to as the 'bloodied continent' by former UN officials.[69] Such absence of peace means multiple findings, as the attempts to establish peace, proliferate peace agreements, forming the bulk of the research. Secondly, for the international lawyer, Africa is a continent consisting of fifty-four very different states, fifty-four equal subjects of international law, as well as members of the African Union, a regional international organisation of continental reach, claiming to be the embodiment of 'Africa', aiming to unite and integrate African states through observance of (self-proclaimed) shared values. In addition to traditional difficulties of engaging with values in international

[65] See the 'Settlement Proposals' of 30 August 1988, accepted (in principle) by Morocco and Frente POLISARIO; they consist of a settlement proposal (part 1), prepared and presented by the UN Secretary-General and the OAU chairman, under the mandate conferred by the General Assembly in its resolution 40/50 (1985), and in conformity with GA Res 1514 (XV) (1960), and the Implementation Plan (part 2), proposed by the Secretary-General pursuant to the Security Council Resolution 621 (1988); see UN Document S/21360 (18 June 1990); Section IV, para 50 of the Implementation Plan (part 2), establishes a transitional period between the ceasefire and the proclamations of the result of the referendum, which, still, has not taken place; see also follow-up agreements: London Compromise Agreement on Outstanding Identification Issues (Results of the second round of direct talks), 20 July 1997, Lisbon Compromise (Results of the third round of direct talks), 29 August 1997, Results of the fourth round of direct talks (Houston Talks), 16 September 1997, UN Document S/1997/742, Annexes I, II, and III respectively.

[66] Groote Schuur Minute (1990), Pretoria Minute (1990), National Peace Accord (1991).

[67] For information on current conflicts see the data from the Uppsala Conflict and Peace Dataset as published by *Harbom, Lotta & Peter Wallensteen 'Armed Conflicts, 1946-2009.' (2010) 47 (4) Journal of Peace Research 501-509; also the data from the Human Security Centre, University of British Columbia,* 'Human Security Brief 2006" <http://www.hsrgroup.org/human-security-reports/20092010/text.aspx>; see also the Report of the Secretary-General on the Causes of Conflict in Africa 1998, paras 3-5.

[68] 'We must release Africa's negative image as a hotbed of clashes and conflicts, and restore the lost dignity of our peoples by stirring to spare them the untold suffering brought about by conflicts.' 'Yaoundé Decaration (Africa Preparing for the 21st Century)', Declaration of the OAU Assembly of Heads of State and Government, adopted during the thirty-second ordinary session held at Yaoundé, 8-10 July 1996, OAU Doc. AHG/Decl.3 (XXXII), para 25.

[69] 'Africa: A Fragile Peace on a bloodied continent', International Herald Tribune,29 January 2004, article of the (former) UN Under-Secretary for peacekeeping Jean-Marie Guéhenno, (director of the Centre for Humanitarian Dialogue), at <www.un.org/en/peacekeeping/articles/article290104.htm>

legal research,[70] the reference to themes of Pan-Africanism as such and tied to African anti-colonialist struggles, bring in the legal space wider issues of Africanism, African identity and competing visions of international law, obliging a standard black-letter analysis to fit them in. As stated by Chinua Achebe: 'Africa is not only a geographical expression; it is also a metaphysical landscape; it is in fact a view of the world and of the whole cosmos perceived from a position.[71] This pertinent metaphor, though uttered for the African novel, can in fact influence the structure and content of an international law thesis, as reminded throughout.

This study has compiled the primary materials into three tables, Countries and Agreements (Table I), African Intrastate peace agreements (Table II), and Outside Party Involvement for a list of all involved actors and signatories (Table III). Table I is included in this section, whilst the most elaborate tables II and III are appended in the thesis, and referenced throughout the thesis in the footnotes.

The first table below, lists the exact number of concluded African intrastate peace agreements and breaks down the African agreements by country. The second fully references these primary materials: it includes their full (official or unofficial) name, date and place of conclusion, and language of the text, it assigns them with the shortened names consistently used throughout this work for reasons of expediency; it also lists the immediate parties with a few necessary clarifications of their status at the time of conclusion (e.g. government, opposition, faction, or political party, or movement), as well as some brief explanatory remarks about the relationship between some initial (framework) and subsequent (clarification or follow-up) agreements, which might be part

[70] For a good discussion of values by White see Nigel D. White, 'The Ties that Bind: the EU, the UN and International Law' (2006) 37 NYBIL 57, 59-61; in general Rosalyn Higgins, *Problems and process: International Law and how we use it* (Clarendon Press 1994); 2-16; Alexander Orakhelashvili, *Collective Security* (OUP 2011), 180-194, Martii Koskenniemi, 'The Fate of Public International Law: Between Technique and Politics' (2007) 70(1) MLR 1, 15-24; Philip Allott*, Eutopia: New Philosophy and New Law for a Troubled World* (Elgar 2017), 55, 221.
[71] Chinua Achebe, 'Thoughts on the African Novel' in Chinua Achebe, *Hopes and impediments: Selected Essays* (Anchor Books 1990), 92.

of the same process, or the result of the interruption of the implementation of the initial peace agreement by a renewed cycle of violence.

Table I –Countries and Agreements

Country	Peace Agreements
Angola (Republic of Angola)	8
*__Burkina__ Faso	1
Burundi (Republic of Burundi)	11
*__CAR__ (Central African Republic)	14
Chad (The Republic of Chad)	4 +(16 PA listed not accessed))
Comoros (Union of the Comoros)	7+ (1 not accessed)
Congo (Republic of the Congo)	2
Côte d'Ivoire (Republic of Côte d'Ivoire)	14 (2 SC listed in databases)
Djibouti (Republic of Djibouti)	3
DRC (Democratic Republic of the Congo)	8, UN peacemaker lists 10 (2 regional)
Eritrea (State of Eritrea)	3
Ethiopia (Federal Democratic Republic of Ethiopia)	2 + (1 not accessed)
Gabon (Gabonese Republic)	1
Guinea (Republic of Guinea)	1
Guinea-Bissau (Republic of Guinea-Bissau)	5
Kenya (Republic of Kenya)	5
Madagascar (Republic of Madagascar)	9
Mauritania (Republic of Mauritania)	1
Lesotho (Kingdom of Lesotho)	3 + (1 not accessed)
Liberia (Republic of Liberia)	9
*__Libya__ (Great Socialist Peoples' Libyan Arab Jamahiriya)	1
Malawi (Republic of Malawi)	1
*__Mali__ (Republic of Mali)	7
Mozambique (Republic of Mozambique)	4
Niger (Republic of Niger)	5- 1 summary only
Rwanda (Republic of Rwanda)	7 (Arusha and its 5 protocols separate)
Senegal (Republic of Senegal)	1 – (2 not accessed)
Sierra-Leone (Republic of Sierra Leone)	5
*__Somalia__ (Somali Republic)	30
South Africa (Republic of South Africa)	3
*__Sudan__ (Republic of the Sudan)	37
*__South Sudan__	4
Togo (Togolese Republic)	2
Uganda (Republic of Uganda)	13
Zimbabwe (Republic of Zimbabwe)	2
Total	***254 233 (21-not accessible)***

Source: *Own compilation; Information retracted from UN Peacemaker, INCORE, UCDP, Marshall, HD, C-R, OIF et al -see Appendix I on sources. [approx. 9-10% not accessible-]*

Countries marked with an asterisk (*) ongoing at the time of writing.

This does not mean that in gathering all materials there were no problems of accessibility and verification. The research has attempted to get the figures as accurate as possible by cross-referencing the selected data. When estimating the number of concluded peace

agreements, the listings of the UN peacemaker have been compared and complemented mainly with the listings of four other research institutes, the INCORE database,[72] the Uppsala Peace and Conflict Database,[73] the Conciliation Resources collection,[74] and Marshall's listings.[75] Sometimes, the information is used with caution, as, agreements can be listed with a name other than their official.[76] Due to the fact that some negotiations remain secret, thus rendering a few primary materials inaccessible, a rough estimate of eighty percent of the concluded post-Cold War African peace agreements form this work's primary materials and are listed in table I above, and table II appended in the bibliography.

The actual texts are sourced from the UN peacemaker,[77] cross-verified, or complemented with texts from research databases, such as the USIP peace agreements digital collection,[78] the online collection of the International association of Francophonie,[79] governmental sites and official journals,[80] and specialised NGO websites.[81] Some agreements come in their official form.[82] Others, come from the African Union or the ECOWAS, the actual texts having the relevant emblems and logos of the respective organisations, though not numbered according to the organisations' own internal

[72] The database provided by the Transitional Justice Institute of Ulster University, <http://www.peaceagreements.ulster.ac.uk>F/ ; offering the most comprehensive list of peace agreements and their relevant sources as of 2005; the database offers a list of peace agreements and the sources for retracting the texts, not the texts themselves (with a few exceptions).
[73] <www.ucdp.uu.se/gpdatabase/search.php>
[74] Conciliation Resources Database provided by ACCORD <www.c-r.org/resources/peace-agreements.php>.
[75] Monty Marshall's online list of African peace agreements <www.systemicpeace.org/africa/ACPPAnnex5.pdf >
[76] For instance, the Fomboni Accord (Comoros) (2001) is mentioned as the 'Famboni' (sic) Agreement in both Marshall and Uppsala.
[77] Countries include Angola, Burundi, CAR, Congo, CI, DRC, Guinea-Bissau, Kenya, Liberia, Mozambique, Rwanda, Sierra-Leone, Somalia, Sudan, Uganda and Zimbabwe.
[78]See http://www.usip.org/publications-tools/latest?filter1=**ALL**&filter0=**ALL**&filter2=2223&filter3=**ALL**&filter4= ; Countries include Angola, Burundi, Congo, DRC, Guinea-Bissau, Liberia, Sierra-Leone, Somalia, and Sudan.
[79] See <http://democratie.francophonie.org/rubrique.php3?id_rubrique=184>; countries include Burundi, CAR, Comoros, Côte d'Ivoire, DRC, Mali, Niger and Togo.
[80] For instance, the agreements in Djibouti are all available in the online version of the official journal of the government.
[81] See for instance BeyondJumba.org focusing on Uganda and providing all texts concluded during the Jumba peace process, as well as previous peace agreements in Uganda, not available elsewhere, such as the Yumbe peace agreement (Uganda) (2002).
[82] Countries include Djibouti, CAR and DRC.

documentation system.[83] Several agreements are listed as official UN Security Council Documents, having been annexed to letters sent to the UN and circulated through the Security Council.[84] Others are unverified and are provided to these interactive websites by 'informal negotiators' or researchers.[85] A small number, like private contracts, are not available to the public, though mentioned by databases.[86]

The texts of African peace agreements that form the bulk of the research have shaped the research questions accordingly. It is thus evident that the research questions are answered by reference to the texts rather than the preceding conflicts and crises, or the process of peace transitions. Such choice impacts on the scope of the thesis as well indicating that its contribution lies primarily in offering a simple and general international legal framework which could be used a preliminary criterion for interpreting, understanding and evaluating the success of a peace agreement. As such, this work does not aim to conclude on what and 'ideal' (African) intrastate peace should include, *de lege ferenda*, but to suggest for both peace agreement implementation and legal analysis, a bespoke international legal framework inferred from the analysis and categorisation of empirical evidence, drawn from primary materials.

International lawyers are not always at ease with using a traditional interpretative framework, for fear it might offer limited assistance. It seems that the task of legal

[83] For instance the Principles Agreement/Declaration (Darfur, Sudan) (2005)is provided by the AU.
[84] Countries include Angola, Burundi, CAR, Chad, Côte d'Ivoire, DRC, Guinea-Bissau, Liberia, Mozambique, Rwanda, Sierra Leone, and Somalia; for a complete list of the peace agreements in these 12 countries and their respective document numbers, per the UN official documentation system see Appendix II -Peace Agreements-in the UN documentation system.
[85] Countries include Burundi, Côte d'Ivoire, Congo, DRC, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe.
[86] These include sixteen early agreements in Chad, and four other in Eritrea, Niger, and Senegal; Government-National Front Agreement (1992) El Geina Agreement (1992) Tripoli 1 Agreement (1993) Abeche Agreement (1994) Bangui 2 Agreement (1994) Dougia Agreement (1995) Government-Action for Unity Agreement (1996)Government-FARF Agreement (1997) Government-Frolinat-FAP Agreement (1997)National Reconciliation Agreement (1997) Donya Agreement (1998) Reconciliation Agreement (1999) Government-Armed Resistance Agreement (2000) Draft Government-National Resistance Army Agreement (2003), Government –MDJT Agreement (2003) and Yeribou Agreement (2005); also Paris Accord (Gabon) (1994), the Paris Accord (Niger) (1993), the Casamance Agreement I (Senegal) (1991) and the Casamance Agreement II (Senegal) (2001)- See Table II-African Intrastate peace agreements- these agreements are listed there with a note, indicating that they were not accessible.

interpretation becomes more appealing, when the analysis searches for 'something more than black letter', the 'moral subtext of a legal text, that is its implied or deeper meaning. This includes the different notions of justice underlying a legal argument which make it necessary also to read between the lines.'[87]

However, any adopted interpretative approach had better be consistent with the main discipline, within which the analysis locates itself. In other words, substituting an (imperfect) set of interpretative tools for another, from a less familiar discipline would not by itself add value to research findings, bearing also in mind that in international law, the actor authentically interpreting the law is equally important with the possible interpretations of the law. In the case of peace agreements, authentic interpretation becomes important, since judicial actors are not usually involved in interpretation and implementation; instead, the branches of the international and domestic executive are involved though in different configurations. Consequently, the aim is not to provide a fully developed interpretative framework excluding all other possible solutions, but to develop a set of interpretation guidelines consistent with the approach of the thesis, but also consistent with the text of the agreements, since the agreements themselves, if read carefully, offer some guidance on (their) interpretation.

3. Outline of the thesis

The thesis is divided in a two-part conceptual framework and a two-part application test. In the first part of the thesis, (Chapters 1-2) the three components of the relationship in question are examined in pairs. In examining African practice, it is more expository, and evaluative, to the degree it includes some internal critique of the law. In other words, [its] 'position is that of a professional lawyer. I am not associated with any pressure group and my role will be that of the chorus in Greek tragedy. That is to say, I shall speak as an

[87] Amanda Perry-Kessaris, *Socio-legal Approaches to International Economic Law: Text, context, subtext* (Routledge 2012), 6; Christine Bell, *Lex Pacificatoria* (n 16), 187, 205, 234.

"interested spectator", sympathising with the fortunes of the characters, and giving expression to the legal and moral critique evoked by the action of the play.'[88]

As such, the work only engages with external critiques of the law, only when providing a theoretical background informing and explaining problematic concepts, or discussing themes of 'antagonism' between the UN (universal) and Africa (regional),[89] but not being a servant to theoretical concepts.[90]

Chapter 1 conceptualises the key self-determination concepts used in the research. It then explores the relationship between Africa and self-determination as found at the UN and African level, to identify dynamics shaping the understanding of self-determination, which could then inform the evaluation of different uses of self-determination in peace agreement provisions and related interpretation matters in the second part.

After this introductory chapter, Chapter 2 locates international law within an intrastate peace agreement. In doing so, it does not make a general claim about the applicability the entire body of international law to these agreements; it seeks to explain why, of all relevant areas, self-determination is essential if peace agreements are to be studied through the lens of international law. It conceptualises intrastate peace agreement by explaining that they are not international treaties or international agreements, but

[88] Ian Brownlie, 'The rights of peoples in Modern International Law' (1985) 9 AUSocLegPhilB 104, 104.
[89] This outside critique is usually part of TWAIL, Third World Approaches to International Law, a branch of Critical Legal Studies; Makau W. Mutua, 'What is TWAIL' (2000) 94 *ASIL Proceedings*, 31, 38; also James T. Gathii, 'TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography' (2011) 3 Journal of Trade Law and Development 26, identifying two strands of critique, labelled elsewhere as integrationists (or assimilationists) and contributionists; also Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP 2005), Antony Anghie,'TWAIL: Past and Future', (2008) 10(4) Int'l Comm L Rev 479-482 ; Antony Anghie, Bhuphinder Chimni, Karin Mickelson and Obiora Okafor, (eds), *The Third World and International Legal Order: Law, Politics and Globalization* (Martinus Nijhoff 2004); Richard Falk, Balakrishnan Rajagopal and Jacquelin Stevens (eds*), International Law and the Third World: Reshaping Justice* (Routledge-Cavendish 2008); Taslim O. Elias, *New Horizons in International Law* (revised and edited by Francis M. Ssekandi, 2nd rev. edn, Martinus Nijhoff 1992); Fleur Johns, Thomas Skouteris and Wouter Werner, 'Editors' Introduction: Taslim Olawale Elias in the Periphery Series' (2008) 21 LJIL 289-290; Jeremy I. Levitt (ed), *Africa: Mapping New Boundaries in International Law* (Hart 2008); Ademola Abass (ed), *Protecting Human Security in Africa* (OUP 2010), 4.
[90] Ian Brownlie, 'Recognition in Theory and in practice' 53 (1982) *BYBIL*.

municipal law documents applying or domesticating international law produced in response to non-forcible measures of international organisations, and/or the choices of the peacemakers, which are usually informal groups of states and organisations.

Chapter 3 presents African intrastate peace agreements, considering commonalities and diversities in terms of form, content, and outside actors. The underlying argument is that despite diversities, some initial trends can be identified regarding the use of self-determination for former warring parties as well as problems arising of outside involvement. It argues that of all relevant international law areas, the law of self-determination is essential to a legal analysis of peace agreements, for its intrinsic relevance to matters covered and regulated by these agreements, and its overreaching applicability to an array of matters of form, content, and outside involvement.

The second part of the thesis (Chapters 3-4) discusses select examples of African practice which are qualitatively different from case-studies.[91] Although there is no similar comprehensive study of the application of self-determination to peace agreements, there are studies on peace agreements or peacebuilding processes, most of which deploy case-studies.[92] Similar to previous observations about processes and not the (peace agreement) texts being the standard subject of study, it is worth iterating here that case-studies of conflict-resolution, peacemaking, or peacebuilding, also use the processes, or the background conflicts as case-study 'units'.

[91] For definitions and overview of case-studies see, Sheila Stark and Harry Torrance, 'Case-study', in Bridget Somekh and Cathy Lewin, (eds) *Research Methods in the Social Sciences* (Sage 2005); Robert Stake, *The art of case-study research* (Sage 1995), Robert Burns, *Introduction to Research Methods* (Sage 2000); Michael Bassey, *Case-study research in educational settings* (Open University Press 1999) 47 ff.

[92] For a study of the human rights components of peace agreements through four case-studies (Bosnia Herzegovina, South Africa, N. Ireland, Israel/Palestine) in a broader comparative context, see Christine Bell, *Peace agreements and Human Rights* (OUP 2001), 7-8; for the study of power-sharing provisions of peace agreements through three case-studies (Liberia, Guinea-Bissau, and Sierra Leone), see Jeremy I. Levitt, *Illegal Peace* (n 16), 23, note 71, and 52-57.

In these works, the option of case-studies is regarded a standard way of researching and presenting the findings in contextually-related research questions, not least because the studies themselves usually do not offer much explanation of their own methods.[93]

Although considered to be a mere qualitative strategy, the thesis uses the term case-study 'not as a methodological choice, but a choice of what is to be studied'.[94] As a form of research, *case-study* is *defined by interest in individual cases*, not by the methods of inquiry used.[95] Most descriptions stress that the essence of a case-study is not about the collected data, not the evidence itself, but how the evidence, once collected, is to be studied and analysed. Case-studies may include description, explanation, evaluation, and prediction.[96] Consequently, as a method, case-study could be equally used by a legal, a socio-legal, or any other interdisciplinary analysis. For example, peace agreement legal analyses, which could be said to be using case-studies, would include articles analysing the Oslo peace accords,[97] the Dayton accords,[98] the CPA in Sudan,[99] the Paris accords in Cambodia,[100] the Guatemalan Accord[101], the peace settlement in Iraq.[102]Writers choose to study these agreements as exemplary of applying, or further developing specific international law rules, whilst drawing some observations, to an extent generalised, or linked to wider themes of international law.[103]

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[93] For good enumerations of factors for selecting case-studies see Oliver Furley and Roy May, 'Introduction' in Oliver Furley and Roy May (eds), *Ending Africa's Wars: progressing to peace* (Ashgate 2006), 1-3; also Jeremy I. Levitt, *Illegal Peace* (n16), 7-8, 52-57,and 23, note 71.
[94]Robert Stake, 'Qualitative Case Studies' in Denzin and Lincoln, (eds), *Handbook of Qualitative Research* (SageThousand Oaks 2005), 443.
[95] Robert Stake, *The art of case-study research* (Sage 1995), 133.
[96] Robert Thomas, *Conducting Educational Research: A comparative view* (Bergin and Harvey 1998).
[97] Steven Quingley, 'The PLO-Israeli Peace Agreements: are they Treaties?' (1997) 30 Corn ILJ 717; Elizabeth Cousens, 'Making Peace in Bosnia Work' (1997) 30(3) Corn ILJ 789; Geoffrey R. Watson, *the Oslo Accords and International Law* (OUP 2000).
[98]Anonymous, 'Human Rights in Peace Negotiations' (1999) 18(2) HRQ 249; Anthony D'Amato, 'Peace Vs. Accountability in Bosnia' (1994) 88 AJIL 500.
[99] Scott P. Sheeran, 'International Law, Peace Agreements and Self-Determination: The Case of the Sudan' (2011) 60(2) ICLQ, 423.
[100] Stephen R. Ratner, 'The Cambodia Settlement Agreements' (1993) 87 AJIL 1.
[101] Robert E. Lutz, 'A Piece of the Peace: The Human Rights Accord and the Guatemalan Peace Process' (1995) 2 Southwestern JL & Trade Am 183.
[102] Alexander Orakhelashvili, 'The Post-War Settlement in Iraq: the UN Secuity Council Resolution 1483(2003) and General International Law,' (2003) 8(2) J Conflict and Sec L, 307-314.
[103] For other methods, see Bell's presentation of examples of peace agreements illustrating her findings on state redefinition, disaggregation, and dislocation of power under the three (criteria) categories of ethnic, secessionist, and ideological conflict, though, as the author acknowledges, this

This work understands that the essential feature of a genuine case-study, or a set of case-studies, is the emphasis on the singular, irrespective of any subsequent intentional or incidental generalisation of its findings. The examples of African practice are not disguised case-studies, termed in a different fashion, for fear of the method's incompatibility with its methodological approach. For such examples are deployed to illustrate and to discern trends, patterns of uniform regional practice, in the use of self-determination to peace agreements. It is not the intensity and depth of analysis that differentiates examples from case-studies, but their different aims. The aim of most case-studies is to understand something historically unique, and avoid generalisations, whereas here, the analysis seeks to (roughly) group and generalise its findings under its developed international legal framework (conceptual framework).

Chapter 5 concludes the thesis.

grouping would be problematic for most African agreements, Christine Bell, *Lex Pacificatoria* (n 16), 105-123.

1. Africa and Self-determination friends or foes?

The role of Africa in shaping the understanding of self-determination

Introduction

In highlighting the importance of self-determination for international law, the International Court of Justice often mentions its *erga omnes* character.[1] It sounds simple and straightforward: 'All peoples have the right to self-determination. By that right they freely determine their political status and freely pursue their economic, social and cultural development.[2] But, as scholars have observed, there is significant 'lack of certainty on such fundamental aspects of the principle' which 'underlies the fact that it was essentially a child of its time, rooted in the movement for decolonization and unsure of its role beyond that context.[3]

The decolonisation context is essential in reminding how the legal rules on self-determination have developed historically, and understanding the interplay between self-determination as legal principle and right. However, the uncertainty over its precise contours, or facets (internal and external self-determination), goes further back to the competing nationalist and liberal, or democratic aspirations that informed the making of self-determination.[4] Those were consolidated by the universal (UN) legal order, through the affirmation of the respect for the self-determination of peoples, and the elaboration of its internal and external dimensions, both in the UN Charter and the International Covenants' provisions.[5] The international law of self-determination includes a right of all

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[1] Case Concerning East Timor (Portugal v. Australia) Judgment, 30 June 1995 I.C.J. Reports, p. 90, para. 29.
[2] International Covenant on Civil and Political Rights 999 UNTS 171, entered force 23 March 1976, (hereinafter ICCPR)and International Covenant on Economic, Social and Cultural Rights 993 UNTS 3, entered force 3 January 1976, (hereinafter ICESR), (opening) art. 1.
[3] Vaughan Lowe, *International Law* (OUP 2007), 114.
[4] Address of President Wilson delivered at Mount Vernon, 4 July 1918 Wilson, Woodrow, 1856-1924. Washington [Govt. print. off.] 1918, 4-5. Fourteen Points; Vladimir Ilyich Lenin, 'The Right of Nations to Self-Determination' in *Collected Works* (Progress Publishers 1972), 393-454; for a comparison of those two David Raic, *Statehood and the Law of Self-Determination* (The Hague, Kluwer Law International 2002), 177-184, 184-188, 220-221; also Antonio Cassese, *Self-Determination of Peoples: A legal reappraisal* (2nd edn, CUP 1995), 14-21.
[5] UN Charter art. 1 (principle) and UN Charter art. 55 and art. 1 of ICCPR and ICESCR.

peoples to be free from external interference at the international level, and a right for representative government for the peoples of a state (representativeness of a people's own government). Although these two facets seem to be complementarity, if not interlinked, there are still the usual assumptions and scholarly biases about external self-determination being more important, more genuine, than internal self-determination. [6]

Nevertheless, internal and external self-determination are two threads joined together by the safeguard clause of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, (hereinafter the Friendly Relations Declaration).[7] The Friendly Relations Declaration, which, is nowadays accepted to be crystallising international law,[8] notes that '[n]othing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.'[9] So long as the people of a state are enjoying their right to be ruled by a representative government without distinction as to race, creed, or colour, there is no need to debate, if, and whether external self-determination comes into play.

The aim of the present chapter is to unravel the relationship between Africa and self-determination, by looking at how Africa understands and applies self-determination. Its

[6] For the assumption of self-determination meaning independence see amongst others, Rosalyn Higgins, *Problems and process: international law and how we use it* (Clarendon Press 1994) 111, 118-119.
[7] UN General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, 24 October 1970, A/RES/2625(XXV).
[8] Rosalyn Higgins, *The Development of International Law Through the Political Organs of the General Assembly* (OUP 1963), 38; Vaughan Lowe, International Law (OUP 2007), 100-101; Gaetano Aranjo-Ruiz, *The United Nations declaration on friendly relations and the system of the sources of international law* (Sitjhoff 1979); Oscar Garibaldi, 'The Legal Status of General Assembly Resolutions: Some Conceptual Observations' (1979) 73 *Proc. Am. Soc. Int'l L.* 324
[9] Friendly Relations Declaration, on the principle of equal rights and self-determination (principle five), para 7.

sections analyse self-determination, but this chapter is not a self-determination treatise, since it is quite selective in its exposition of key issues of the law of self-determination. The points of inquiry have been restricted to issues directly related to the research question and the 'African focus' of the thesis, to present key concepts.

Writing about self-determination is not an easy task: it is one of the most covered international law subjects. Looking at the ratio between primary and secondary materials one cannot avoid mentioning the few rules versus the vast amount of literature.[10] The vast amount of literature is a result of self-determination being important, divisive and *lex obscura* at the same time.[11] Some of the highly-esteemed scholars have admitted their everlasting fascination, or even obsession with self-determination.[12] Secondary materials categorise classic or canonical secondary materials.[13] It is thus hard for the researcher to digest the vast amount of literature. In this sense, selectivity could be a virtue: the explained parameters that were used to limit the self-determination inquiry can support the choice to exclude, just mention or refer to some secondary materials. Works tend to use historic or thematic parameters. Here the emphasis is on primary materials, including

[10] UN Charter arts. 1, 55, Chapters XI and XII; Art. 1 of the International Covenant on Civil and Political Rights (ICCPR) and Art. 1 of the International Covenant on Economic Cultural and Social Rights (ICECSR); ICCPR arts 1, 25, 27; see also the General Assembly Resolutions GA Res 61/295, United Nations Declaration on the Rights of Indigenous Peoples, 2007, GA Res 1541 (XV), Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter, 1960, GA Res 1514 (XV), Declaration on Granting of Independence to Colonial Countries and Peoples, 1960, GA Res 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 1970.

[11] James R. Crawford 'Self-Determination in International Law: Its Development and Future' in Philip Alston (ed), *People's Rights* (OUP 2001), 7, 10.

[12] See Antonio Cassese, *Self-Determination of Peoples: A legal reappraisal* (2nd edn, CUP 1995) preface, xv, his 'thirty-odd years of thinking about the matter'; and Falk, admitting that '[l]ike the person who discovered he was writing prose all his life, in some ways I have discovered that I have been interested in self-determination all of my life' in, Richard Falk, 'Legitimacy Wars, Self-Determination and the Rise of Soft Power' 21 October 2010 (transcript) <https://lisd.princeton.edu/sites/lisd/files/falk_2010transcript.pdf>.

[13] Some recent examples include Xanthaki's 'minimalist' and 'maximalist' and Knop's 'categories' and 'coherence' approach; see Xanthaki 'The right to self-determination: meaning and scope' in Nazila Ghanea and Alexandra Xanthaki (eds), *Minorities, Peoples and Self-Determination* (Martinus Nijhoff 2005)15-33; Karen Knop, *Diversity and Self-Determination in International Law* (CUP 2002).

hard law and soft law[14] to present this work's key concepts. Secondary materials are only complementing the primary materials, aiding when needed.

The chapter is thus, (partly) similar with, but also (partly) different from other writings on self-determination. It develops around the doctrine of self-determination, and discusses the essential self-determination materials. Its twist lies in the fact that the law and the understanding of self-determination is explored in relation to Africa, as demonstrated below.

For this chapter, Africa is both the collection of states and the continental pan-African organisations, which possess a distinct legal personality from their constituent members, and between them have established a separate African legal order. Such inquiry should tackle as a caveat the interplay between African states, as distinct subjects of international law, and the international organisation consisting of these states.[15]

The chapter is organised chronologically and thematically. Firstly, it is divided into past and present. The past covers the UN era till the establishment of the African Union in 2002, and the present is understood as the 'AU era'. In this sense, it does not offer a comprehensive historical overview.[16] Therefore, the past includes establishment of the UN legal order, and the promulgation of key self-determination rules, the decolonisation phase and the creation of African states as well the first forms of interstate cooperation between African states and the creation of a pan-African organisation, with its own self-determination provisions. These key self-determination moments are not presented in a linear chronological fashion.

[14] Term attributed to Lord McNair, see APV Tammes, A., 'Soft Law' in *Essays on International and Comparative Law in Honour of Judge Lambertus Erades* (TMC Asser 1983) ,187.
[15] For the (objective legal personality) of international organisations, see Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion) [1949] ICJ Rep 174, 179; for the legal personality of the OAU, see El-Nekheily v OAU (Comm 12/1988, 7th ACHPR AAR, Annex IX (1993-1994); for the legal personality of the AU, see Atabong Denis Atemnkeng v. AU (App. 014/2011), 15 Mar. 2013, para; Femi Falana v AU (App 001/2011, 26 Jun 2012), para 68.
[16] Andrés Rigo Sureda, *The evolution of the right of self-determination. A study of United Nations practice* (Sijthoff, 1973).

As the chapter argues, an enquiry into the African understanding can be achieved by separately looking at three different dynamics that have shaped the understanding of self-determination; the making of self-determination, the dynamics underpinning self-determination claims at the UN/universal level, and the dynamic underpinning the regionalisation of self-determination law, through its incorporation in the OAU/AU legal order. These dynamics guide the thematic overview of key self-determination concepts. The same method is used for the present, though the emphasis is on the dynamic of regionalisation of self-determination within the African Union.

In its final section, the chapter summarises the concept of 'a multidimensional' understanding of self-determination as the basis of its legal framework. Though not singular and one-dimensional, the relationship between Africa and self-determination is a relationship worth unravelling, to properly frame the analysis of African intrastate peace agreements.

1.1 African dynamics in the past: making, claiming and regionalising self-determination

In asking what the relationship between Africa and self-determination is, the answer might vary, depending on what is to be understood as 'Africa'. This can be witnessed in self-determination literature, where Africa is a favourite *leitmotiv*, though not defined and conceptualised in relation to self-determination.

As previously explained, the reference to Africa is not always done in a fully conceptualised manner. One way of mentioning Africa is as a collection of individual African states. While appraising the role of Africa in relation to self-determination, Hannum observes that 'African states, which were among the leaders in developing the post-1945 right to self-determination in the context of decolonization, have adopted a very narrow interpretation of the right in the post-colonial context of independence', whilst concluding that 'Africa

may simply be more honest than the rest of the world in admitting that self-determination of the state has replaced the theoretical self-determination of peoples that if taken to its logical conclusion could result in some instances in secession.[17] Sometimes, the word Africa is interchangeably used with the term African states and the term African continent: it seems that Africa is the group of states of the African continent. An additional means of referring to Africa in relation to self-determination is the exploration of the 'African understanding' of self-determination; the emphasis here is on secondary materials produced by scholars self-identifying as Africanists, scholars of the South, or TWAIL scholars (twailers).[18] It is thus commonplace for writers like Cassese to list several works as 'African' or 'Asian' works/understandings of self-determination.[19]

To understand the relationship between Africa and self-determination, the aim is to look at state practice. The inquiry is not limited to individual states but is to be found in the values and the principles underpinning the two major continental organisations, the (now defunct) OAU and its successor AU. Both self-identified as the embodiment of Africa: both have established a separate legal order in Africa, both have continental reach, a strong emphasis on African unity and solidarity, pan-Africanism, and relevant references to African commonalities and values.

During the decolonisation period, most African states become UN members, thus gaining access to the UN universal forum, whilst aligning themselves under anti-colonialism

[17] Hurst Hannum, *Autonomy, Sovereignty and Self-Determination: The Accommodation of Conflicting Rights* (University of Pennsylvania Press 1990), 47.
[18] TWAIL, Third World Approaches to International Law, a branch of Critical Legal Studies; Makau W. Mutua, 'What is TWAIL' (2000) 94 *ASIL Proceedings*, 31, 38; also James T. Gathii, 'TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography' (2011) 3 Journal of Trade Law and Development 26, identifying two strands of critique, labelled elsewhere as TWAIL I (first-generation twailers or contributionists, grouped as such by current scholarship) and TWAIL II [integrationists (or assimilationists)]; George R.B. Gallindo, 'Splitting TWAIL?' (2016) 33(3) Windsor YB Access Just 37, 44-47; Antony Anghie, 'TWAIL: Past and Future', (2008) 10(4) Int'l Comm L Rev 479-482; Antony Anghie, Bhuphinder Chimni, Karin Mickelson and Obiora Okafor, (eds), *The Third World and International Legal Order: Law, Politics and Globalization* (Martinus Nijhoff 2004).
[19] Antonio Cassese, *Self-Determination of Peoples: A legal reappraisal*, (2nd edn, CUP 1995); African conception of self-determination see Ibrahima Fall, Contribution à l'étude du droit des peuples à disposer d'eux-mêmes en Afrique (Daguerre, 1972),159-160, 180-192, 285- 297, 365-382, 487-493, 527-534, 540-547.

strategies, both at the African, and the Afro-Asian level,[20] and supporting ideas of a common African personality. Therefore, unity and the fight against colonialism in all its manifestations have formed part of the founding documents of continental African institutions.

The idea of Africa, African identity, philosophy and moral values enter, and have remained since, in the international law arena, as these themes appear in the founding documents of both OAU [hereinafter Addis Ababa Charter] and AU (Constitutive Act of the AU), as well as the preceding resolutions of the informal conferences of independent African states, and the preparatory works and the provisions of the African Charter of Human and Peoples' rights (hereinafter Banjul Charter).[21] In one of the first meeting of experts on the Banjul Charter, it was submitted that 'The African charter should take as a pattern the African philosophy of law and meet the needs of Africa'.[22] Thus the thesis refers to and explores those themes, to the extent that it is relevant and necessary for a legal analysis, However, ideas influencing and found in the treaties of these institutions, such as Pan-Africanism, are as Legum notes a 'pantechnicon for the convenient assembly of related ideas […] that 'jostle or even contradict themselves'; [23] taking this into consideration, they will be considered but not studied in detail or tested as such.[24]

The relationship of Africa with self-determination is presented, but no singular or 'timeless' African understanding is discussed; on the contrary, the overview is grouped under different moments in the UN era, and shows that, depending on what was at stake during these defining moments, the relevant dynamics regarding self-determination, impacting

[20] Bandung Conference Institute of Pacific Relations, 'Selected Documents of Bandung Conference,' 26 May 1955.
[21] African Charter on Human and Peoples' Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982) (entered into force Oct. 23, 1986) (hereinafter the Banjul Charter).
[22] Meeting of Experts for the Preparation of the Draft African Charter of Human and Peoples' Rights, Dakar, 28 Nov to 8 Dec. 1979 OAU Doc. CAB/lEG/67/3/Rev, p 1.
[23] Colin Legum 'The Roots of Pan-Africanism' in Colin Legum (ed), *Africa Handbook (*2nd rev edn, Penguin 1969).
[24] For more in-depth analysis, Valentin Mudibe, *The invention of Africa* (Indiana University Press 1984).

on the development of different facets of the law of self-determination. The past is thus broken down into three sections dealing with the making of self-determination, its application, in the form of claims articulated at the UN universal level and the regionalisation of the law, through its incorporation within the African legal order.

1.1.1 Africa and the making of self-determination

San Francisco & Manchester: The parallels of self-determination

In this section, the role of Africa examined in relation to the making of self-determination, namely the self-determination provisions laid down in the UN Charter, the first multilateral international instrument that espoused the principle of self-determination at the universal level.[25] Until then, self-determination existed as a political principle,[26] and, though referred to and applied in the context of peace treaties of 1919-1923, is not included in the Covenant of the League of Nations,[27] but elaborated as a political postulate in Western and non-Western thought.[28] Scholars observe that 'in 1914 or in 1919 when the machinery

[25] United Nations, Charter of the United Nations, signed at San Francisco on 26 June 1945, entered into force in 24 October 1945, 1 UNTS XVI, hereinafter UN Charter, arts 1(2), and 55; For the application of self-determination to peace treaties see Alfred Cobban, *Nation State and National Self-determination* (Crowell 1969), 57-75; for the pre-UN era of self-determination see Theodore Woolsey, 'Self-determination' (1919) 13(2) AJIL 302-305; also, Hurst Hannum, 'The Rights of Self-Determination in the Twenty-First Century' (1998) 55 Wash Lee L Rev 774.

[26] Report of the International Commission of Jurists Entrusted by the Council of the League of Nations with the Task of Giving an Advisory Opinion upon the Legal Aspecs of the Aalan Islands Question, League of Nations Official Journal, Special Supplement No. 3 (October 1920), 5-6.

[27] The League of Nations Covenant did not adopt self-determination; as a substitute, for 'those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world,' adopted the 'principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant' thus establishing the mandate system as 'The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League'; art. 22 of the Covenant of the League, part. I of the Treaty of Peace Concluded between Germany and the Allied and Associated Powers, signed at Versailles, 28 June 1919 (Versailles Treaty)] (1919) UKTS 4 Cmd. 153).

[28] Treaty of Peace between Germany and the Allied Powers Versailles, signed at Versailles, 28 June 1919, art. 22; See Peace Treaty between Latvia and Russia signed on 11 August 11, 1920, known as the Riga Treaty, League of Nations Treaty Series Vol. 2, 1920-1921, p. 213, art. II; Peace Treaty between Lithuania and Russia, singed on 12 July,1920, known as the Moscow Treaty, League of Nations Treaty Series Vol., pp. 122-123, art.I; Peace Treaty between Estonia and Russia signed on 2 February 1920, known as Tartu Treaty, League of Nations Treaty Series, vol. 11, pp. 30-71, art. III.

of peace settlement was at work, it would have been difficult to conclude that as a matter of positive law States accepted the principle of self-determination. Nevertheless, in the peace settlement the principle was to have a dispositive and normative effect greater than that of many long accepted rules of law.'[29]

This section emphasises San Francisco for two reasons, one general, one self-determination specific. Notwithstanding the importance of the previous phases leading to its establishment, it was in San Francisco that the final text of the UN Charter was adopted by the fifty signatory states in 25 June 1945, entering into force in October of that year, and thus marking the UN era as we know it today.[30] Furthermore, the Charter's two self-determination provisions, as well as the related chapters XI and XII on trust and non-self-governing territories, which do not mention self-determination as such, but were in essence about self-determination, were absent in the Dumbarton Oaks proposals and appeared for the first time during the San Francisco conference.[31]

The phrase "based on respect for the principle of equal rights and self-determination of peoples" concerning the second UN purpose of developing friendly relations among nations was introduced at the San Francisco Conference. Regarding art. 1 (2) it was the four

[29] Ian Brownlie, 'An Essay in the History of the Principle of Self-Determination', in Charles Henry Alexandrowitcz, (ed), *Grotian Society Papers 1968* (Martinus Nijhoff 1970) 91, 94.

[30] Key moments leading to San Francisco include the Declaration of St James Palace (June 1941), by fourteen representatives of the Allied powers (Australia, Belgium, Canada, Czechoslovakia, France, Greece, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Union of South Africa, UK, and Yugoslavia) the Atlantic Charter (Joint declaration released by U.S. President Franklin D. Roosevelt and British Prime Minister Winston Churchill on 14 August 1941), the Declaration by United Nations, (UN Declaration) of 2 January 1942, signed by twenty-six and later adhered by additional twenty-one of the Allied Powers, (affirming the principles of the Atlantic Charter), the Moscow Conference (UK, US, China, Soviet Union) (18 October to 11 November 1943), the Tehran Conference (28 November to 1 December 1943), the Yalta (Crimea) Conference, 4-12 February 1945), and the Dumbarton Oaks Conversations; see 'Origin and Evolution of the United Nations' (1946-47) (1) UN YB, 1-50.

[31] The issue of trusteeship was first raised during the Yalta (Crimea) Conference; see Protocol of Proceedings of the Crimea Conference, 13 February 1945, released to the press by the US State Department 24 March 1947, and controversially declassified and published by the Department of State's Foreign Relations of the United States (FRUS) Series Foreign Relations of the United States: Diplomatic Papers. Conferences at Malta and Yalta, 1945, (1955) Document 498, 978; the text recommended 'territorial trusteeship' for three instances: 'existing mandates of the League of Nations; territories detached from the enemy because of the present war; any other territory which might voluntarily be placed under trusteeship.'

sponsors (US, UK, Soviet Union and China) that added 'respect for self-determination of peoples' in their joint amendment proposal whilst the thematic committee made no further discussion.[32] Regarding the provisions for trust and non-self-governing territories both were introduced at the San Francisco conference after proposals from France, the United Kingdom, and the United States.[33] In its official account, the UN notes that 'on this matter there was much debate.' Before the final version, as produced after Dumbarton Oaks, the debate was on whether the aim of the trusteeship would be "independence" or "self-government".[34]

During the Dumbarton Oaks and the San Francisco conference, the two historic moments preceding the adoption of the UN Charter, only four states existed in the African continent: Egypt, Ethiopia, Liberia, and the Union of South Africa.[35] All four took part in the San Francisco conference, where fifty countries debated the proposals drafted at Dumbarton Oaks by the 'four sponsors', US, UK and USSR and China.[36]

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[32] See 'Amendments Proposed by the Governments of the United States, the United Kingdom, the Soviet Union and China' 5 May 1945, UNCIO Doc. 2 G/29, page 621, chapter I, para 2, chapter IX , section A, para 1, UNCIO vol. III, p 622, 626; see Verbatim minutes of second meeting of Commission I, Opera House, 15 June 1945, UNCIO Doc 1123 I/8 of 20 June 1945, p5247, UNCIO vol VI, Commission I General Provisions, 65.

[33] Relevant information stresses different approaches, in the sense that the French for instance emphasise on 'tutelage', while the Soviets press the inclusion of a reference to self-determination. <http://www.un.org/en/aboutun/history/sanfrancisco_conference.shtml.>; in the end, as the French delegate clarifies, the term 'tutelle internationale' is accepted as an accurate translation of 'trusteeship' Summary Report of Eight Meeting of Committee II/4 (23 May 1945), UNCIO Doc. 512 II/4/1 of 23 May 1945, 1985, UNCIO Documents, Vol X, 468.

[34] <www.un.org/en/aboutun/history/sanfrancisco_conference.shtml>; see also, Summary Report of Sixth Meeting of Committee II/4 (17 May 1945), UNCIO Doc. 404 II/4/17 of 18 May 1945, 1620, UNCIO documents Vol X, 453-454; Summary Report of thirteenth meeting of Committee II/4 (8 June 1945) UNCIO Doc. 877 II/4/35 of 9 June 1945, 4086, UNCIO Documents Vol X, 514.

[35] Liberia, Africa's oldest republic, declares its independence on 26 July 1847, <http://onliberia.org/con_declaration.htm> together with Ethiopia (the Ethiopian Empire), they were the two African countries to remain independent during colonisation, known also as the 'scramble for Africa'; following the Egyptian Revolution of 1919, the United Kingdom terminates its protectorate over Egypt and recognises its independence in 28 February see Communication to the Sultan and declaration to Egypt from Great Britain, Parliamentary Papers 1922, Egypt No1, Cmd1592; Foreign Office Circular from Egypt No2 Cmd 1627; the Union of South Africa was proclaimed on 31 May 1910.

[36] Proposals for the Establishment of a General International Organization, 7 October 1944, 48 UN YB, 4-5; For a general discussion see Wilhelm G. Grewe & Daniel-Erasmus Khan, 'Drafting History,' in Bruno Simma et al (eds), *The Charter of the United Nations: A Commentary* (2nd edn, OUP 2002); for early analyses see Clyde Eagleton, 'The Charter Adopted at San Francisco' (1945) 39(5) American Political Science Review, 934, 937-8 for resemblances and differences to the League, and 942 for disagreement in the drafting of trusteeship provisions; for a recent slightly different account of the

The Union of South Africa, whose contribution to the UN Charter drafting has received most attention, though formally an independent state, was still part of the 'white man' rule.[37] Indeed, South Africa, was one of the twenty-six signatories of the UN Declaration of 1942.[38] By contrast, the three remaining independent African states were subsequent adherents to the UN Declaration.[39] More importantly, it is the emphasis on the preamble of the Charter and the foundational values of the UN and its paradoxical relationship with the country's domestic policies that has generated attention.[40] In the words of a recent historical account, to mention a good example, devotes much of its critique at the imperial foundations of the UN, on the role of Jan Smuts and his contribution to the making of the UN Charter. As argued, the '*help of the South African statesman draft the UN's stirring preamble'*, highlights the antithesis between the statesman Jan Smuts at the United Nations conference contradicting his policies of racial discrimination within his own state.[41] In the words of Nelson Mandela, 'Smuts promoted freedom around the world but repressed

proceedings in Dumbarton Oaks and San Francisco, see Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (CUP 2004), 165-193.

[37] Though 'apartheid' was formally enacted in 1948 by National Party leaders D. F. Malan and Hendrik F. Verwoerd, policies of racial segregation were previously enacted by president Jan Christian Smuts; see, amongst others, the Native (Urban Areas) Act No 21 of 1923, 16 June 1923 and the Native (Urban Areas) Consolidation Act No 25 of 1945, 1 June 1945.

[38] Declaration by United Nations, (UN Declaration) of 2 January 1942, originally signed by the United States of America, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, China, Australia, Belgium, Canada, Costa Rica, Cuba, Czechoslovakia, Dominican Republic, El Salvador, Greece, Guatemala, Haiti, Honduras, India, Luxembourg, Netherlands, New Zealand, Nicaragua, Norway, Panama, Poland, Union of South Africa, Yugoslavia; subsequently adhered to by Mexico, Philippines, Ethiopia, Iraq, Brazil, Bolivia, Iran, Colombia, Liberia, France, Ecuador, Peru, Chile, Paraguay, Venezuela, Uruguay, Turkey, Egypt, Saudi Arabia, Syria, Lebanon; see 'Origin and Evolution of the United Nations' (1946-47) (1) UN YB 1-2 (1947).

[39] The UN Declaration (1942) was adhered (in order of signature) by: Mexico, Philippines, Ethiopia, Iraq, Brazil, Bolivia, Iran, Colombia, Liberia, France, Ecuador, Peru, Chile, Paraguay, Venezuela, Uruguay, Turkey, Egypt, Saudi Arabia, Syria, Lebanon. <www.un.org/en/sections/history-united-nations-charter/1942-declaration-united-nations/index.html>

[40] For the South African proposal on the UN preamble see Draft Preamble to the Charter proposed by the Union of South Africa, 26 April 1945, UNCIO Doc. 2 G/14 (d), 243, UNCIO Documents vol III, 474, Preamble to the Charter submitted by the South African Delegation in revision of draft of April 26, 1945, 3 May 1945 UNCIO Doc. 2 G/14 (d) 1, 375, UNCIO Documents vol III, 476; for an assessment see Christof Heyns, 'The Preamble of the UN Charter: The Contribution of Jan Smuts' (1995) 7 Afr. J. Int'L & Comp. L. 329, 333-336.

[41] See Mark Mazower, *No Enchanted Palace: the end of empire and the ideological origins of the United Nations* (Princeton University Press 2009) see introduction, 1-28, at 19 and 26-27 and chapter 1 'Jan Smuts and Imperial Internationalism', 28-66; for the general theme of the 'ideology' of the UN cf Mazower with Carl J. Friedrich, 'The Ideology of the United Nations Charter and the Philosophy of Peace of Immanuel Kant 1795-1945' (1947) 9(1) J Politics, 1.

freedom at home.'[42] Indeed, Committee I/1 accepted as a working basis the Preamble submitted by the Union of South Africa.[43]

In the meantime, somewhere in Manchester in 1945 a team of Pan-Africanists hosted an interesting gathering,[44] subsequently labelled as either the fourth or the fifth Pan-African Congress.[45] In one of its declarations to colonial powers, the right of self-determination is clearly espoused as applicable to instances of colonialism, its content including the right of peoples to gain emancipation as shown below.[46]

Miles away from San Francisco, those gathered in Manchester affirmed through their declarations 'the right of all colonial peoples to control their own destiny. All colonies must be free from foreign imperialist control, whether political or economic.'[47] They also stressed how the right to self-government could lead to total emancipation. In their own words 'the peoples of the colonies must have the right to elect their own governments, without restrictions from foreign powers. We say to the peoples of the colonies that they must fight for these ends at their disposal. The object of imperialist powers is to exploit. By granting the right to colonial peoples to govern themselves that object is defeated. Therefore, the struggle for political power by colonial and subject peoples is the first step towards, and the prerequisite to, complete social, economic, and political emancipation.'[48]

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[42] Nelson Mandela, *Long Walk To Freedom: the Autobiography of Nelson Mandela* (Abacus 2004), 58-59.
[43] See supra, (n).
[44] For the Manchester Pan-African Congress see Colin Legum, *Pan-Africanism: a short political guide* (rev edn, Pall Mall Press 1962); George Padmore, History of the Pan African Congress (1945); Hakim Adi and Marika Sherwood, *The 1945 Manchester Pan-African Congress Revisited* (New Beacon Books 1995); participants in the conference included William Edward Burghardt 'W. E. B.' Du Bois, the 'father of modern pan-africanism', George Padmore, Kwame Nkrumah, who would later become president of Ghana; the famous writer Peter Abrahams for the ANC, Hastings Banda from Malawi, Obafemi Awolowo, key figure in Nigeria's independence movement, and Jomo Kenyatta, who would become Kenya's first president.
[45] For a list of the resolutions adopted Colin Legum, *Pan-Africanism: a short political guide* (rev edn, Pall Mall Press 1962), 24- 80, 151-308; also, Rayford W. Logan, 'The Historical Aspects of Pan Africanism: A Personal Chronicle' (1965) 1 (1) African Forum, 90-104.
[46] Declaration to colonial peoples, paras 1-3.
[47] Declaration to colonial peoples, para 2.
[48]Declaration to colonial peoples, para 3.

It is the only alternative forum at the time, where Africans of the diaspora, self-identified as a diverse set of 'African voices', produced a set of demands to the colonial powers, framed as a response to the Atlantic Charter.[49] Of the resolutions issued, the two most important were the Resolution to the colonial powers and the Resolution to colonial peoples, where the right of all peoples to exist and to control their own destiny, the right to provide/receive assistance to peoples striving for independence, as well as adherence to the principles of the Atlantic Charter were espoused.[50]

It should be noted that these voices were quite marginal, when those events occurred.[51] Their claims would count for nothing more than a (political) movement, an aspiration, not having immediate effect and significance on the international plane, being considered as the law between sovereign states. The Manchester conference received poor coverage in the press, its resolutions were to be found in two subsequent works on pan Africanism by Legum[52] and Padmore,[53] and later listed by Son.[54] Its significance seems to have been re-invented, not least reimagined *ex-post facto.* Four decades later, those historians brought attention to the Manchester conference and outside the former town hall in Manchester a red commemorative plaque was erected in 1985, proudly claiming that 'decisions taken at the conference led to liberation of African Countries.'[55]

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[49] Atlantic Charter, (see supra, note 29), point III; out of eight principles contained in the Atlantic Charter, the third espoused that the countries in their policies would 'respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them'.

[50] See Declarations appended by Legum in Colin Legum, *Pan-Africanism: a short political guide* (rev edn, Pall Mall Press 1962), appendix 2, 153-155.

[51]The Colonial Office, though invited to attend as observer, sent undercover police instead.

[52] Colin Legum, *Pan-Africanism: a short political guide*, (rev edn, Pall Mall Press1962), appendix 2 153-155.

[53] George Padmore is also one of the organisers and participants in the Manchester Pan-African Conference and includes excerpts of the Congress resolutions in George Padmore, *Colonial and Coloured Unity: a programme of Action and History of the Pan-African Congress* (Panaf 1947), also reprinted in Hakim Adi and Marika Sherwood, *the 1945 Manchester Pan-African Congress Revisited* (New Beacon Books 1995).

[54] Louis B. Sohn, Basic Documents of African Regional Organizations Inter-American Institute of International Legal Studies 1971, 12.

[55] See the plaque commemorating the Fifth Pan African Conference/Congress held in Manchester in 1945, in the front of the former Chorlton-upon-Medlock Town Hall, at Cavendish Street, Manchester, UK <http://manchesterhistory.net/manchester/tours/tour8/area8Apage18.html>

Nevertheless, self-determination appeared in the declarations to both colonial powers and colonial peoples. Most importantly, these resolutions adopted a more radical understanding of self-determination in terms of its phrasing, as opposed to the way self-determination was included in the UN Charter and interpreted by scholars in the first decade of the adoption of the Charter.[56] Summarising the apparent intention of the drafters of the Charter, as understood in the drafting committee of art 1(2), the Syrian rapporteur Farid Zeineldin explained that 'the committee understands that the principle of equal rights of peoples and that of self-determination are two complementary parts of one standard of conduct; that the respect of that principle is a basis for the development of friendly relations and is one of the measures to strengthen universal peace; that an essential element of the principle in question is a free and genuine expression of the will of the people, which avoids cases of the alleged expression of the popular will, such as those used for their own ends by Germany and Italy in later years'.[57] Self-determination in the charter appeared as a principle to be respected by states, a means of dispute-settlement, and, according to some, subordinate to peace.[58] In the Manchester resolutions, it was framed as a right of all peoples.

All in all, during the immediate post-war period, reference to rights of peoples in the African context are to be found in intellectual and political-social movements taking place outside the international conferences leading to the creation of the United Nations. These movements' resolutions might have influenced the (subsequent) foundational treaties of African institutions. However, when made, they merely constituted an ideological exercise

[56] Clyde Eagleton, 'Self-determination in the United Nations, (1953) 47(1) AJIL 88-93; See Vernon Van Dyke, *Human Rights, the United states and the World Community'* (OUP 1971), See Kelsen's two possible interpretations of art. 1 (2) of the UN Charter, in, Hans Kelsen, *The Law of the United Nations A Critical Analysis of Its Fundamental Problems (*Praeger 1950), 50-53; Clyde Eagleton, 'Self-determination in the United Nations (1953) 47 (1) AJIL 88-93; Manfred Lachs, 'The Law in and of the United Nations (Some reflections on the principle of self-determination)' (1961) 1(4) IJIL 429, 432, in Cot and Pellet, La Charte, 1070-1083.

[57] Report of the Rapporteur of Committee I to Commission I, UNCIO Doc. 885 I/I/34, 9 June 1945, 4122, UNCIO Documents vol VI, 396.

[58] For the idea of self-determination as 'secondary to the goal of peace' and 'a means for achieving peaceful relations among states and not as a goal' see Antonio Cassese, 'The Helsinki Declaration and Self-Determination', in Thomas Buergenthal (ed), *Human rights, international law and the Helsinki Accord* (Allanheld, Osmun 1977) 83-110, 84, 105 also Gerry Simpson, 'The Diffusion of Sovereignty' (1996) 32 Stan J I L 266.

of the diverse Pan-African movement supporters, which till that point was not necessarily understood as limited to and within the African continent, but rather associated with 'blackness' or 'negritude'.[59]

The theme in the literature that self-determination was made without Africa can be deemed quite accurate, not least regarding the making of the principle of self-determination as laid down in art. 1(2) of the UN Charter. That absence was threefold, since it can be identified at three different levels, as follows.

Obviously, it is the absence of representation (or minimal representation) at the Conference; apart from the four independent states of the continent, '[w]hen the United Nations was founded, over ninety percent of the African continent was under European colonial and imperialistic subjugation; thus, Africa had virtually no influence in the genesis of this remarkable organization'.[60]

Most importantly, there was no united and unified African approach of these few states present at the deliberations in San Francisco; thirdly, the absence of self-determination in the submissions of African states[61] is worth remembering, as their individual contributions either did not cover the matter, or those relating to trusteeship provisions, were not adopted. Therefore, the participating African states in San Francisco, do not seem to have contributed in the making of the principle of self-determination, perhaps except for a more forward submission by Egypt.[62]

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[59] For the francophone concept of 'negritude' see Aimé Césaire, *Discourse on Colonialism*, (Monthly Review Press, 2000); Senghor, Léopold Sédar Senghor, *Ce que je crois* (Grasset, 1988); for a critique as anti-racism racism see amongst others, Jean-Paul Sartre, Jean-Paul. 'Orphée Noir' in Léopold Senghor (ed), *Anthologie de la nouvelle poésie nègre et malgache* ed. Léopold Senghor. (PUF 1948), xiv.

[60] Wellington Winter Nyangoni, *Africa in the United Nations System* (Associated University Presses 1984), 39.

[61] Memorandum of the Liberian Government on the Dumbarton Oaks Proposals, 25 April 1945, UNCIO Doc.2 G/14 (a) of 2 May 1945, 276, UNCIO Documents, vol III, 464 no unjustifiable interference in the internal affairs of nations in matters of cooperation in economic, social, and humanitarian problems.

[62] Suggestions of the Egyptian Government on the Tentative Proposals of Dumbarton Oaks under Examination at the United Nations Conference at San Francisco, 16 April 1945, UNCIO Doc. 2 G/7 (q), 66, UNCIO Documents vol III, 448 and Amendments to the Dumbarton Oaks Proposals

At San Francisco, Africa was nothing but the diametrically-opposed presences of White-man rule South Africa, and the other three individual African submissions. On the one hand, Jan Smuts' powerful speech on the preambular provisions of the Charter,[63] not only stressed that 'the Charter envisages also a social and economic organization of the peoples, intended to raise the levels and standards of life and work for all, and, by thus removing social unrest and injustice to strike at the very roots of war,[64] but also concluded 'and so, in faith and trust we hand down our Charter to the future and may Heaven's blessing rest on it.'[65] On the other hand, Egypt's submissions were centred around the respect for international law and morality and adherence to the principles of the Atlantic Charter as part of art. 1.

In the making of self-determination, Africa was nothing more than the four individual states represented at San Francisco. Their commonality lies in the fact that self-determination provisions were certainly not their focus: still, their state representatives are physically present in their making. In contrast, during the simultaneous events of Manchester, the idea of a common African approach regarding key self-determination provisions clearly emerged though crafted in the form of a political manifesto parallel to the law-making process of those states gathering in San Francisco.

Presented by the Egyptian Delegation, UNCIO Doc. 2 G/7 (q) (1), 5 May 1945, 517, UNCIO Documents, vol III, 453, -454.

[63] Mark Mazower, *No enchanted palace*: *the end of empire and the ideological origins of the United Nations* (Princeton University Press 2009), see supra, note 38.

[64] Verbatim Minutes of the closing plenary session (26 June 1945), UNCIO Doc. 1209, p/19 of 27 June 1945, 5510, 21, UNCIO Documents vol I, 678.

[65] Verbatim Minutes of the closing plenary session (26 June 1945), UNCIO Doc. 1209, p/19 of 27 June 1945, 5510, 22, UNCIO Documents vol I, 679.

1.1.2 Africa claiming self-determination (decolonisation)

'The liberation movement of Africa is perhaps the greatest single political phenomenon of this century, and it is our hope that with the spread of this movement all the other States which are still not free will soon become independent and enter our great international family, thus bringing the United Nations still closer to the objective of universality.'[66]

This section moves from the promulgation of the Charter, more specifically arts. 1(2) and 55 of the UN Charter (making of self-determination) to the application of self-determination to colonial situations, and other similar situations (Declaration on Colonialism, Friendly Relations Declaration). The section does not in any case underestimate the past debates and the submissions on the normative status of these resolutions.[67] In light however of their general acceptance of their normative qualities, as they are generally explained in standard textbooks in the field, and for expediency purposes, the content of these Declarations is presented is dealt with under the section of self-determination claims at the universal (UN) level.

The section on self-determination claims also covers the elaboration of the principle through the promulgation of relevant provisions in the human rights Covenants. Art. 1 of the Covenant on civil and political rights as well as the Covenant on economic, social and cultural rights provide that 'All peoples have the right of self-determination. By that right they freely determine their political status and freely pursue their economic, social and cultural development.'[68] These provisions clarified, and transformed, a rule that had already been introduced in the UN legal order, through the legal basis of arts 1(2) and 55 of the UN Charter.

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[66] Statement of the representative of Ceylon in the fifteenth session of the General Assembly, Verbatim record of the fifteenth session of the General Assembly, held in 20 Sept. 1960, A.PV. 864.e, para 119.

[67] See for instance Gaetano Aranjo-Ruiz, *The normative role of the General Assembly of the United Nations and the Declaration of Principles of Friendly Relations amongst states* Recueil de Cours, 137 (1972, 3), 561-571.

[68] See International Covenant on Civil and Political Rights 999 UNTS 171, entered into force 23 March 1976, and International Covenant on Economic, Social and Cultural Rights 993 UNTS 3, entered into force 3 January 1976, respectively.

By grouping these materials under the claims section, the study is not focused on interpreting those instruments as such, but uses them to identify the voice of Africa and to what extent it benefited from self-determination, by appealing to the interpretation/elaboration of self-determination, in the form of 'claims' at the UN level (universal level). Obviously, these primary materials deserve to be studied, and have been studied for their law-making quality and their relationship to the existing self-determination principle, but, for this work's purposes, they could also serve as evidence of African submissions at the universal (UN) level, as it is also the time when the UN admits new members from the third world (Africa).

This choice is the result of the ICJ self-determination jurisprudence being rather incomplete, as shown in the following section: this would render the inquiry on self-determination problematic, if the aim was to focus not on the ICJ's self-determination *dicta* as such, but on court submissions, as evidence of individual or common African practice.

1.1.2.1 Knocking on ICJ's door

The ICJ has not pronounced upon self-determination in many instances.[69] During the decolonisation period, the ICJ only dealt with self-determination in the Frontier dispute, in the Namibia dispute, in the Western Sahara and in the South West Africa advisory opinions. In fact, self-determination, despite its importance, is in few instances the object of adjudication at the universal level, as its beneficiaries, lack standing and thus are not able to make a relevant claim.[70]

[69] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 9 July 2004, I.C.J. Reports 2004, p. 136; East Timor (Portugal v. Australia), Judgment, 30 June 1995, I.C.J. Reports 1995, p. 90; Frontier Dispute, Judgment, 22 December 1986, I.C.J. Reports 1986, p. 554; Western Sahara, Advisory Opinion, 16 October 1975, I.C.J. Reports 1975, p. 12; Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) not withstanding Security Council Resolution 276 (1970), Advisory Opinion, 21 June 1971, I.C.J. Reports 1971, p. 16;South-West Africa-Voting Procedure, Advisory Opinion, 7 June 1955, I.C.J. Reports 1955, p. 67.

[70] Statute of the International Court of Justice art. 38(1), June 26, 1945, 59 Stat. 1055, 33 U.N.T.S. 993, art. 34 para 1.

Moreover, the self-determination rules are likely to be applicable to highly politicised disputes, and although the Court has repeatedly stated that 'the fact that a question has political aspects does not suffice to deprive it of its character as a legal question', it cannot be excluded that in such settings, a Court could be either unwilling or sensitive about drawing the demarcation between 'legal' and 'political' disputes.[71] Still, the World Court has pronounced on the importance, the status and the content of self-determination, though doing so in cases that were related to the colonial context (*Western Sahara Case, East Timor Case*, and *Wall Advisory Opinion*).[72]

In the two most recent cases (*Wall Advisory Opinion* and *Kosovo Advisory Opinion*) the Court either summarised its previous jurisprudence or did not look at self-determination. Whereas in the Wall advisory opinion the Court affirmed that self-determination is 'one of the essential principles of contemporary international law',[73] in the *Kosovo Advisory Opinion* it decided not to consider self-determination as irrelevant.[74]

Still the Court has settled the issue of the normative value of self-determination in the Namibia Advisory Opinion. Subsequently in its judgement on the Western Sahara Case the Court emphasised the procedural aspects of the norm on self-determination, by highlighting that the essence of self-determination lies within 'establishing a fair process

[71] For the approach of the Court in the issue of legal and political questions see amongst others Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, 12 July 1973, I.C.J. Reports 1973, p.166, p. 172, para. 14; For the issue of legal and political disputes and the divergent approaches of the bench in relation to self-determination disputes see James Crawford, 'General Assembly, the International Court and Self-determination', in Vaughan Lowe and Malgosia Fitzmaurice (eds), *Fifty Years of the International Court of Justice: essays in honour of Sir Robert Jennings* (CUP 1996) 585-606, 587.

[72] Case Concerning East Timor (Portugal v. Australia) Judgment, 30 June 1995 I.C.J. Reports 1995, p. 90, para. 29; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. Reports 2004, p. 136, para. 88.

[73] Case Concerning East Timor (Portugal v. Australia) Judgment, 30 June 1995, I.C.J. Reports 1995, p.102, para 29.

[74] 'The Court considers that it is not necessary to resolve these questions in the present case [...] Debates regarding the extent of the right of self-determination and the existence of any right of "remedial secession", however, concern the right to separate from a State. As the Court has already noted (see paragraphs 49 to 56 above), and as almost all participants agreed, that issue is beyond the scope of the question posed by the General Assembly.' Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo Advisory Opinion, I.C.J. 22 July 2010, I.C.J. Reports 2010, p.403, p. 438, para 82.

to be heard, and not on achieving a specific outcome'.[75] In observing the divides in the court's self-determination jurisprudence, Crawford identifies a thematic divide between a 'strong affirmative approach to self-determination within the colonial context [..] and a 'comparative silence on general problems of self-determination.'[76]

But going back again, on November 4th of 1960, Liberia and Ethiopia made submissions to the International Court of Justice regarding their dispute with South Africa on the interpretation and application of the mandate for South West Africa.[77] The Territory of South West Africa had been entrusted to South Africa in 1920 as a Mandate under the League of Nations Covenant.[78] The African countries were denied *locus standi*, as the Court rejected their application and effort to terminate the South African Mandate.[79]

This case has been viewed by Dame Rosalyn Higgins as a backslide of the Court.[80] In her own words, 'the 1966 Judgment is, by common consent, to be regarded as an aberration.'[81] Crawford fully seconds this view by observing that 'the judgment raised a storm of indignation in the General Assembly and there was little tendency to defend it in the literature', and to be 'widely credited with having discredited the Court in the eyes of the General Assembly majority (since 1960 increasingly a Third-World majority) and even with being a cause of the long fallout period of the Court in the years after 1966'.[82] Judge

[75] For an assessment of World Court's jurisprudence as narrow see Jan Klabbers, 'The Right to Be Taken Seriously: Self-Determination in International Law'(2006) 28 HRQ, 186-206.
[76] James R. Crawford, 'General Assembly, the International Court and Self-determination', in Vaughan Lowe and Malgosia Fitzmaurice (eds), *Fifty Years of the International Court of Justice: essays in honour of Sir Robert Jennings* (CUP 1996) 585-606, 586; for a similar observation on the Court's divides, elsewhere termed dichotomies, and presented as temporal, thematic, and substantive, see 'the General Assembly, the International Court and Self-determination, in James R. Crawford (ed), International Law as an Open System (Cameron May 2002), 176.
[77] See submissions of Liberia and Ethiopia initiating proceedings against the Union of South Africa at <www.icj-cij.org/docket/files/10/8933.pdf>
[78] For the League of Nations mandate system see art. 22 of the Covenant of the League, part. I of the Treaty of Peace Concluded between Germany and the Allied and Associated Powers, signed at Versailles, 28 June 1919 (Versailles Treaty)] (1919) UKTS 4 Cmd. 153).
[79] The two states were unsuccessful in terminating the mandate. In contrast, it was the General Assembly that passed resolution 2145 (XXI) in 1966, which declared the Mandate terminated and that the Republic of South Africa had no further right to administer South-West Africa.
[80] See Rosalyn Higgins, 'The International Court of Justice and Africa' in Emile Yakpo (ed), *Liber Amicorum Judge Mohammed Bedjaoui* (Martinus Nijhoff 1994) 343-372, 352-353.
[81] Ibid, 359; see also Rosalyn Higgins, 'The International Court and South-West Africa: The Implications of the Judgment' (1966) 42(4) International Affairs 573, 589 and 596.
[82] James R. Crawford, 'General Assembly, the International Court and Self-determination', in Vaughan Lowe and Malgosia Fitzmaurice (eds), *Fifty Years of the International Court of Justice:*

Weeramantry mentions that of the two major crises, witnessed by the International Court of Justice, the first was triggered 'in the wake of the South West Africa judgment of 18 July 1966, when *for nearly three years*, *no fresh cases were instituted*'.[83]

In the subsequent cases, the International Court of Justice seemed to distance itself from its previous approach,[84] by rectifying 'what has since always been regarded by most international lawyers as a *volte verte*.'[85] Still, the impact of the judgment on the African states and their willingness to bring further disputes in the International Court of Justice was tremendous. 'African States had been less enthusiastic the failure of the Court to pronounce on the merits of the dispute (i.e. to essentially examine the incompatibility with international law of the apartheid policies that South Africa applied to South West Africa) eliminated any hope that the Court would promote Community interests and the advancement of human rights, at least in contentious proceedings. [86] It should be borne in mind that even in the instances of the three Advisory Opinions, where the Court would have had the opportunity to look at self-determination related issues the African written or oral submissions number were only a few.[87]

Therefore, the *Namibia Case* not only were a missed opportunity for the Court to pronounce on the substance of self-determination, but had a negative impact on the attitudes and the perceptions of African states of the International Court of Justice, including their willingness to engage with this UN organ. Thus, the Decolonisation process at the UN, once Liberia and Ethiopia had been denied standing before the UN judicial forum,

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essays in honour of Sir Robert Jennings (CUP 1996) 585-606, 587-588; also James R. Crawford (ed), International Law as an Open System (Selected Essays, Cameron May 2002), 176, 178-179.

[83] Christopher Weeramantry, 'Expanding the potential of the World Court' in Nandasiri Jasentuliyana (ed), *Perspectives on International Law* (Kluwer 1995), 314 (emphasis added).

[84] See the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) Advisory Opinion, ICJ Reports 1971, p.16, pp. 31-32, paras 51-53.

[85] Taslim Olawale Elias, 'The Role of the International Court of Justice in Africa' 1989 (1) Afr. J. Int'l & Comp. L 1, 11.

[86] John Dugard, '1966 and all that. The South-West Africa Judgment Revisited in the East Timor Case' (1996) 8 (3) Afr. J. Int'l & Comp. L 549, 552.

[87] No African state makes submissions in Western Sahara (France, Panama, Nicaragua, The Netherlands, Guatemala, Dominican Republic, Ecuador, Costa Rica, Colombia, Spain make submissions), in Wall only Cameroon, Guinea, Egypt, Morocco, Senegal, Sudan, South Africa and Namibia, and in Kosovo, Libya, Egypt, Sierra Leone, and Burundi (oral submission only).

became an issue of emphasis at the alternative forum of the UN, the General Assembly. The General Assembly would have been perceived as the only available forum, as well as the only legitimate forum, where all UN member states would have equal voting powers.[88] Bearing this in mind, the following section presents the relevant milestone resolution, but also includes the drafting process of the self-determination provisions of the two International Human Rights Covenants.

1.1.2.2 The alternative forum: Claiming Self-determination in the General Assembly- 1514 and beyond

Whilst the threshold of the International Court of Justice seemed too high for the African states, the winds of change started affecting the General Assembly membership. Once independent, the African states would gain membership to the United Nations, also aligning with other states, to either influence the General Assembly agenda, by bringing forward, or sponsoring draft resolutions, attempting to initiate discussions on Algeria and the Portuguese territories, or just leaving their mark and their voices in the verbatim record of General Assembly meetings.[89]

In the historical Declaration on the Granting Independence to Colonial peoples (hereinafter the Colonial Declaration),[90] the draft finally adopted was sponsored by a group of new states, including all the African states that were then members of the UN.[91] Not

[88] See the recent account of Gerry Simpson on the dialectical structure and antagonism between the General Assembly (as a forum of sovereign/legislative equality) and the Security Council (as a forum of hierarchy/legalised hegemony), Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (CUP 2004), 165-193, in particular, 184-193.

[89] General Assembly, Declaration on the Granting of Independence to Colonial Countries and Peoples (hereinafter Colonial Declaration), 15th plenary session, General Assembly, Verbatim records of plenary meetings Nos. 925 to 939 and 944 to 947, held from 28 November to 7 December 1960 and from 13 December to 14 December 1960; For African submissions see 925th plenary meeting, APV. 925, para 60; 927th, APV. 927, para 48, 928th, APV. 928, para 11, 930th, APV. 930, para 48, 932th, APV. 932, paras 80-81 and 114, 935th, APV. 935, paras 37-39, 936th, APV. 936, para 77, 938th, APV. 938 paras 59-60, 947th, APV. 947, para 161.

[90] GA Res 1514 (XV), Declaration on Granting of Independence to Colonial Countries and Peoples, 1960 (14 December 1966).

[91] The Power draft resolution (UN Document, A/L. 323 add 1-6), sponsored by Afghanistan, Burma, Cambodia, Cameroon, CAR, Ceylon, Chad, Congo (Brazzaville), Congo (Leopoldville), Cyprus, Dahomey, Ethiopia, Federation of Malaya, Gabon, Ghana, Guinea, India, Indonesia, Iran, Iraq, Ivory

only are African and Asian states the sponsors of the so-called '43-power Afro-Asian draft resolution', but when another (Soviet) draft was put forward, Mr. Quaison-Sackey of Ghana makes an emphatic appeal to Mr Zorin of USSR to withdraw the amendment and para. 8 of the proposed USSR draft. He pinpointed the conflict between draft arts. 5 of the Afro-Asian draft concerning the immediate transfer of powers to trust, non-self-governing territories and all other territories having not achieved independence in contrast with the Soviet proposal found in draft art. 8, providing for the duty of colonial powers to enter negotiations for the transfer of powers.[92]

The priorities and concerns of the Afro-Asian group were designed to ensure that the Declaration would not only urge a speedy end to colonialism in its opening paragraphs, but would also include more specific provisions on the modalities of achieving it. Here, the emphasis was on self-determination as the solution/remedy to colonialism, and all African states were represented through the same African-Asian bloc sponsoring the resolution, and emphasising the need for a speedy end to colonialism.

Outside the application of self-determination to colonial or tantamount situations, self-determination is included in the opening articles of the two Human Rights Covenants.[93] Their drafting history highlights a paradox in the relationship between African states and self-determination at the universal (UN) level. The role of African states in the period of

Coast, Jordan, Laos, Lebanon, Liberia, Libya, Madagascar, Mali, Morocco, Nepal, Niger, Nigeria, Pakistan, Philippines, Saudi Arabia, Senegal, Somalia, Sudan , Togo, Tunisia, Turkey, United Arab Republic, Upper Volta,- debated during 925th-939th and 944th-947th plenary meetings of the fifteenth GA session (28 November- 14 December1960), adopted by roll call vote of 80-0-9.

[92] Statement of the representative of Ghana, United Nations Audio-visual Library of International Law at <untreaty.un.org/cod/avl/ha/dicc/dicc_audio.html>; for the deliberations on the 43-power Afro-Asian draft resolution and the Declaration see 'The General Assembly's Declaration on Colonialism' United Nations Review, January 1961, Vol. 8(1) at 6-9 and 49-50.

[93] for the decision to include self-determination in the opening section of the Covenants see General Assembly Resolution 545 (VI), of 5 February 1952, para 1; also, General Assembly Resolution 421 (D), of 4 December 1950, section D, para 6.; GA Resolution 421 A (V) of 4 December 1950; 637 A (VIII).

drafting and the adoption of the Covenants can be either studied separately or through the prism of the 'African' or the 'Third World contribution' to the making of the Covenants.

Such an account must take into consideration that the drafting starts in 1947[94] and the process ends in 1966 with the adoption of the two Covenants by the General Assembly in 1966.[95] In the beginning, only four countries in Africa were independent, which meant that self-determination as a mode of achieving independence and the peoples' right to existence was at stake. When the Covenants were finally adopted, the process of decolonisation was in its final stages, and the African states had not only gained independence, but the creation of the conference of African independent states in Accra and the summits of African Head of States had established the Organisation of the African Unity (OAU), the African regional organisation with continental reach.[96]

Changes in the UN led to developments that take place outside the Organization producing effects within it. Fifty-seven states came into being since the beginning of this century. Many more nations were on the verge of acquiring independence. That is how life implements the principle of self-determination'.[97] Interestingly, most of the African submissions can be found in the later years, and come from Egypt, Libya, Ethiopia and Liberia, when, most African states had gained independence.

[94] The drafting starts at 1947, with the Drafting Committee, a sub-organ of the Commission on Human Rights, consisting off eight members-none African- (Australia, Chile, China, France, Lebanon, Union of Soviet Socialist Republics, UK, and US); the basic document is a document drafted by the Secretariat (outline-document number E/CN.4/21, annex A) prepared by the UN Division of HRs and a British Draft convention (E/CN.4.21, annex B).
[95]The Covenants are adopted in 16 December 2006 with 66 votes/2 against and 38 abstentions; see GA Resolution 2200 A (XXII) (1966).
[96] First Conference of African Independent States, Accra, April 15-22 1958, Second Conference of African Independent States, Addis Ababa, June 15-24 1960, Casablanca Conference January 3-7 1961, Monrovia Conference of Heads of States, May 8-12 1961, Accra meeting, 27-29 April 1961, Summit Conference of African Independent States, Addis Ababa, May 22-25 1963.
[97] Manfred Lachs, 'The Law in and of the United Nations (Some reflections on the principle of self-determination)' (1961) 1(4) IJIL 429, 441.

Regarding the Covenants' opening article on self-determination, Egypt,[98] Libya,[99] Ethiopia,[100] and Liberia[101] made different submissions. Some referred to the universal character of the right and its application at all times. Ethiopia for instance made a claim on the universality of the civil and political rights for all times in general,[102] while Egypt focused on the universal character of self-determination in particular.[103] Regarding the content of self-determination, there were also claims by three African states: Liberia observed that the internal aspect of self-determination, being the right of a nation already constituted as a state to choose its own policies, was frequently ignored by the most fervent adherents of external self-determination,[104] while both Egypt and Libya pinpointed the link between self-determination and elections.[105] In this sense, the Covenants claims are slightly different from the rest of the self-determination made at the same time at the General Assembly.

The self-determination claims highlight issues of content and issues of context: in terms of content, although internal dimensions of self-determination were not explicitly denied in the submissions regarding art.1 of the Covenants, the focus was on self-determination in relation to colonial and tantamount situations;[106] the priority of African claims was to

[98] EGYPT (distinction between the principle of SD of peoples as referred to in Arts 1 and 55 of the UN Charter and the reference to self-government or independence in articles 73 b and 76 b E/CN.4/SR. 256. P. 9-10); (right being collective, but also affecting the individual A/C.3/SR.651 Para 34); (link between SD and elections A/C.3/SR.651 Para 35);(suggesting the creation of a special committee to study the nature, scope and limits of the right to SD A/C.3/SR. 651 Para 30); (GA drafting a specific Declaration on SD A/C.3/SR.651 Paras 23-27 or special international conference to prepare such declaration SD A/C.3/SR.651 Para 28) (deletion of the article (3d committee session 1955) SD A/C.3/SR.651 Para 29);(Universal character (3d committee session 8-1952) E/CN.4/SR 255);(content –meaning of SD E/CN.4/SR. 255 p.9 (Commission on HRs 8th session-1952); (relationship between the covenant and the Charter 3d committee 10th session 1955 A/C.3/SR.675 Para 16).

[99] LIBYA (SD though being a pre-condition for the enjoyment of human rights has been omitted from the Universal Declaration A/C.3/SR. 366 Para 28); (trust and non- self-governing territories A/C.3/SR.400 Para 9); (Link between SD and elections A/C.3/SR.400 Para 8).

[100] ETHIOPIA (positioning SD at the forefront of the Covenants A/C.3/SR.399 Para 45); (universality of the rights for all times A/C.3/SR.312 Para 3).

[101] LIBERIA (the internal aspect of SD A/C.3/SR.366 Para 24-26);(positioning SD right at the forefront of the Covenants A/C.3/SR. 572 Para 50).

[102] A/C.3/SR.312 para 3.

[103] 3d committee session 8-1952 E/CN.4/SR 255.

[104] A/C.3/SR.366 paras 24-26.

[105] Egypt A/C.3/SR.651 Para 35; Libya A/C.3/SR.400, para 8.

[106] Antonio Cassese, *Self-Determination of Peoples: A legal reappraisal* (2nd edn, CUP 1995), 45.

push for a speedy end to colonialism, framed as a violation of self-determination, and thus, apply the general principle as a remedy for colonialism. In relation to the context, these claims were voiced and not necessarily put forward as African claims, but rather as claims of the wider third world bloc, which tried to establish itself at the universal level, most notably in the General Assembly, vis-à-vis the Western and Soviet Cold War blocs.

So, the Africa of self-determination claims, was very different from Africa establishing its own regional legal order and incorporating self-determination, as shown in the later section. Still, the Africa of self-determination claims, which is the group of Third-World states, is the Africa of anti-colonialism, as seen in the Declaration on Colonialism, and more specific resolutions on Algeria and the Portuguese territories, as well as in milder claims in relation to the more general provisions of the two Covenants.

In this sense, Cassese's observation that for Third World states self-determination in the Covenants meant three things: 'the fight against colonialism and racism, the struggle against the domination of any alien oppressor illegally occupying a territory, and the struggle against all manifestations of neo-colonialism and in particular the exploitation by Alien Powers of the natural resources of developing countries',[107] can be deemed accurate for Africa and self-determination claims. In the words of another scholar, 'internal self-determination has not been the focus of Third World concern in the United Nations except in special selective cases, pre-eminently those in which the issue arose in a white/black racial context.'[108] The following sections move from the universal (UN) to the regional (OAU and later-on AU) level.

[107] Ibid.
[108] Michla Pomerance, op. cit 40.

1.1.3 Africa incorporating self-determination

The African Legal Order: from Accra to Addis Ababa

The first step is to win independence; the second is to knit together the newly freed peoples.'[109]

This section explores how the interest of newly independent African states began to shift in devising ways of closer intergovernmental cooperation within Africa, and its impact on the African understanding of self-determination. The dynamic of regionalisation appeared at this pivotal moment, since the African states gradually established a separate legal order with its own rules and understanding of self-determination.

In 1958, Liberia, Egypt, and Ethiopia, and the newly independent Ghana, Libya, Morocco, Sudan, and Tunisia got together in the first conference of African independent states in Ghana, Accra.[110] The conference was followed by a second ordinary session in Addis Ababa in 1960, where the attendees now numbered fifteen: the Provisional Government of Algeria, Cameroon, Ethiopia, Ghana, Guinea, Libya, Liberia, Morocco, Nigeria, Somalia, Sudan, Tunisia, and the United Arab Republic (Egypt's short-lived political union with Syria). This permanent conference structure (also holding a special emergency session regarding Algeria) would later transform into the Organisation of the African Unity, albeit that this is only briefly mentioned in the literature. Naldi, for example notes that the 'conception of a pan-African organisation (referring to OAU) may be said to have been the culmination of series of ministerial conferences held throughout 1961 and 1962.'[111]

[109] Rupert Emerson, 'Pan-Africanism' (1962) 16(2) International Organization 175, 284.
[110] Held between 15-22 April 1958; not to be confused with the (non-governmental) All-African Peoples' Conference also held in Accra, between 5-13 December 1958; see Colin Legum, *Pan-Africanism: a short political guide* (rev edn, Pall Mall Press 1962); 'All-African Peoples' Conferences' (1962) 16(2) IO, 429-434; Resolutions of the All African Peoples' Congress (1959) (37) (215) Current History, 41-46.
[111] Gino Naldi, *The Organization of African Unity: An analysis of its Role* (2d edn, Mansell 1999), 1.

The conference of independent states could have been said to possess a separate existence but not a separate will from its member states,[112] although the states clearly expressed their intention to 'assert a *distinctive African personality* which will speak with *a concerted voice in the cause of Peace* in co-operation with other peace-loving nations at the United Nations and other international forums.'[113] During these summits there was the beginning, too, of a new policy of non-alignment as between 'the two antagonistic blocs' in the world; and a determination to establish 'an African Personality' in world affairs by working for 'a fundamental unity' between African States on Foreign questions'.[114]

These two Conferences (Accra and Addis) also produced significant resolutions relating to self-determination and colonialism, which at the time was framed as a violation of self-determination. [115] The resolutions concern three self-determination issues: the achievement of independence, the issue of assistance for peoples not having achieved independence and the Algerian revolution.

Specifically, the resolutions called upon 'the Administering Powers to respect the Charter of the United Nations in this regard and to take rapid steps to implement the provisions of the Charter and the political aspirations of the people, namely self-determination and independence, according to the will of the people'. [116] In terms of assistance, the conference 'recommends that all Participating Governments should give all possible

[112] For the distinction between separate existence and separate will with examples of the G7 re the former see Nigel White, *The Law of International Organisations* (2d edn, MUP 2005), 31-32 and 51-52.
[113] Resolution 1 'Exchange of Views on Foreign Policy of the First Conference of Independent African States, op. para 3-available by Legum, Colin Legum, *Pan-Africanism: a short political guide* (rev. edn, Pall Mall Press 1962) Appendix 4, 158-159. (emphasis added)
[114] Colin Legum, *Pan-Africanism: a short political guide* (rev. edn, Pall Mall Press 1962), 42.
[115] See Resolution II of the Independent African States on the future of dependent territories in Africa adopted at the First Conference of Independent African States in Accra, Ghana 1958, and Resolution V of the Independent African States on Non-Independent Territories adopted at the Second Conference of Independent African States in Addis Ababa, Ethiopia 1960, as found in Colin Legum, *Pan-Africanism: a short political guide* (rev. edn, Pall Mall Press 1962), appendices 4 and 5 respectively, 159 and 169; Resolution II is also quoted by the Sudanese delegate and included in the verbatim record of the Colonialism Declaration see 935th meeting para 37.
[116] Resolution II on 'the Future of the Dependent Territories in Africa 'by the Conference of African Independent States, operative paragraph 1 available by Legum, appendix 4, at 159-160.

assistance to the dependent peoples in their struggle to achieve self-determination and independence'.[117]

Against this background, the Addis Ababa Charter, the founding treaty of the Organisation of African Unity was adopted, when the Emperor Haile Selassie invited two informal groups, the 'Monrovia group' and the 'Casablanca group' to Addis Ababa.[118] The OAU[119] existed until July 2002.[120] According to its constitutive instrument, the Addis Ababa Charter, the OAU had five main purposes.[121] Two major themes underpinning the African legal order can be identified from these purposes: the eradication of colonialism in all its manifestations, and the achievement of African Unity.

The OAU established an African legal order, claimed to be the embodiment of Africa, its membership being near continental, and encompassed the ideas of a united Africa and liberation from colonialism in all its forms and manifestations. It follows that self-determination was present in both the founding treaty of the OAU, as well the subsequent Banjul Charter on Human and Peoples rights, as shown below.

[117] Resolution II on 'the Future of the Dependent Territories in Africa' by the Conference of African Independent States, operative paragraph 4 available by Legum, appendix 4, at 159-160.
[118] These two groups differed in their approach on African integration, the Casablanca group (Ghana, Algeria, Guinea, Egypt, Libya, Mail, Morocco) being in favour of federalism, the Monrovia group (Senegal, Nigeria, Liberia, Ethiopia) in favour of economic cooperation before gradual federation.
[119] On the OAU and its organs see Gino Naldi, *The Organization of African Unity: An analysis of its Role* (2d edn, Mansell 1999); for an appraisal of its performance see the collected editions by Yassin El-Ayouty: Yassin El-Ayouty (ed), *The Organization of African Unity After 20 years* (Praeger 1984) and Yassin El-Ayouty (ed), *The Organization of African Unity After 30 years* (Praeger 1994).
[120] The basic OAU organs were the Assembly of the Heads of States and Governments, the Council of Ministers, the Secretariat, and the Commission of Mediation and Conciliation See art. VII-XIX of the Addis Ababa Charter.
[121] See Art. II of the Addis Ababa Charter; To promote the unity and solidarity of the African States; to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa; to defend their sovereignty, their territorial integrity and independence; to eradicate all forms of colonialism from Africa; and to promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.

1.1.3.1 Self-determination in the Addis Ababa Charter

Though not mentioned as such, self-determination was espoused in two different instances in the founding treaty of the OAU, known as the Addis Ababa Charter,[122] one general, one in the decolonisation context.

First, self-determination appeared as the right of all peoples to control their own destiny. In both its preamble and its operative part (OAU founding principles), the contracting states confirmed 'the inalienable right of all people to control their own destiny'.[123] The second reference concerns colonial issues, as self-determination was espoused in relation to dependent territories, as one of the seven founding principles of the pan-African institution. As per the Charter, a basic principle of the OAU was 'absolute dedication to the total emancipation of the African territories which are still dependent.'[124]

Such iterations, however, seem to be tying self-determination to contextual or historical themes and competing cardinal rules framing the establishment of an African organisation of such continental reach. For this reason, relevant analysis, seems to emphasise not on self-determination as such but on self-determination in relation to territorial integrity and the Charter's provisions on sovereignty, reference is always made to the interplay between self-determination and *uti possidetis*. It is worth clarifying that *uti possidetis* would only be applicable for the singular moment that a state gains its independence, to delineate its international borders.

Much has been written on the artificiality of borders, works either emphasising the issue of how the European Powers delimitated the lines of boundaries without any knowledge of

[122] For general works see Boutros Boutros Ghali, *The Addis Ababa Charter* (Carnegie Endowment for International Peace 1971); Zdenek Cervenka, *OAU and its Charter* (Praeger 1969).
[123] Addis Ababa Charter, preamb. para 2, art. III, para 2; the OAU had seven foundational principles, the sovereign equality of all member states, non-interference in the internal affairs of states, respect for the territorial integrity of states and their right to exist, peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration, unreserved condemnation of political assassinations and other subversive activities in foreign states, absolute dedication to the emancipation of African territories still dependent, and non-alignment.
[124] Addis Ababa Charter, art. III, para 6.

topography and the like,[125] or on the implications of Africa not challenging this colonial burden/legacy,[126] but again the chapter takes it as a given, the OAU stuck to the borders, as expressly laid down in both the OAU Charter,[127] the Cairo Declaration on Borders,[128] adhering to the principle of *uti possidetis*. The principle, which was (singularly) applicable at the time the African states gained their independence, has been explained by the relevant ICJ jurisprudence when settling territorial disputes between African neighbours. In pronouncing on the value of the Cairo Declaration on Borders, the Court confirmed that the Cairo Declaration was not a mere practice, but 'application of a rule of general scope in Africa'.[129]

Within this context, the African states integrated self-determination in their (then) nascent regional legal order. It follows that the dynamic of regionalisation/incorporation of Africa's relationship with self-determination, is to be found both in the making and the basic principles of the OAU as found in the Addis Ababa Charter, as opposed to the subsequent adoption of the Charter of Human and Peoples rights (the Banjul Charter).[130]

When having the chance to pronounce its stance and policy regarding self-determination the OAU has done so in the instance of Biafra, rejecting secession in line with the UN understanding. In the OAU resolution on Biafra, the Assembly of Heads of States and Governments recognised *'that the situation is an internal affair, the solution of which is*

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[125] Jeffery Herbst, 'The Creation and Maintenance of National Boundaries in Africa' (1989) 43(4) IO 673, 674-676, 678-683; Garth Abraham, 'Lines Upon Maps' Africa and the Sanctity of African Boundaries' (2007) 15 Afr. J. Int'l & Comp. L. 61, 62; P.F Gonidec, 'La Crise Africaine: Une Crise de l' État' (1995) 7 Afr. J. Int'l & Comp. L. 6, 7-9.

[126] See Christopher S. Clapham, *Africa and the International System: The politics of State Survival* (CUP 1996), 28-32; Steven R. Ratner, 'Drawing a Better Line: *Uti Possidetis* and Borders of New States' (1996) 90(4) AJIL 590, 595.

[127] Addis Ababa Charter, art. III para 3 (principle of sovereignty and territorial integrity of member states).

[128] Art. 2 of the Declaration on Border Disputes among African States (hereinafter Cairo Declaration on Borders), adopted by the first ordinary session of the Assembly of Heads of State and Government of the OAU held in Cairo, UAR, 16-21 July 1964, AHG/Res. 16(I); <www.au.int/en/sites/default/files/ASSEMBLY_EN_17_21_JULY_1964_ASSEMBLY_HEADS_STATE_GOVERNMENT_FIRST_ORDINARY_SESSION.pdf>

[129] See Frontier Dispute (Burkina Faso v. Mali), Judgment, 22 December 1986, I.C.J. Reports 1986, p. 554, paras 21-22; jurisprudence reaffirmed in Frontier Dispute (Benin/Niger), Judgment, 12 July 2005, I.C.J. Reports 2005, p. 90, p.108, para 23.

[130] Infra, note

primarily the responsibility of Nigerians themselves', and reposed *'their trust and confidence in the Federal Government of Nigeria*'.[131] Thus, the OAU aligned itself with the attitude of the UN, as expressed by the UN Secretary-General: *'as far as the question of secession of a section of a state is concerned, the United Nations is unequivocal. As an international organisation, the United Nations has never accepted and does not accept and I do not believe it will ever accept the principle of secession as part of its member state*.[132]

It is worth remembering that other secessionist or separatist claims from Somalia, or Anjouan in the Comoros have been consistently rejected by the OAU Assembly of Heads of State and Government, so the well-known reaction to Biafran claims was not a one-off reaction of the OAU political organs, but the beginning of a consistent stance. [133] Interestingly, even Sudan's 2005 independence referendum issue has not been addressed by the Assembly itself, not explicitly pronouncing upon the situation, or condoning it. The matter was solved at the national level through its internationally mediated agreement, which 'in pursuance of the commitment of the Parties to a negotiated settlement based on a democratic system of governance which,' on the one hand recognized 'the right of the people of Southern Sudan to self-determination' and at the same time, by appealing to territorial integrity, sought 'to make *unity attractive* during the Interim Period.'[134]

[131] Resolution of the Assembly of Heads of State and Government of the OAU on the situation in Nigeria, OAU Doc AHG/Res. 51 (IV), adopted at the fourth ordinary session held at Kinshasa, 11-14 Sep 1967, preamb. paras 1-2, and 4, <www.au.int/en/sites/default/files/decisions/9516-assembly_en_11_14_september_1967_assembly_heads_state_government_fourth_ordinary_session.pdf>; see also M.G. Kaladharan Nayar, 'Self-determination beyond the Colonial Context: Biafra in Retrospect', (1975) 10 Texas International Law Journal, 321-345.
[132] Statement of U-Thant in Dakar (press conference), UN Chronicle Vol. 7, February 1970, 40.
[133] Decision of the OAU Assembly of Heads of State and Government on Somalia adopted during the thirty-sixth ordinary session held at Lomé, OAU Doc. AHG/Dec 146 (XXXVI); on Comoros (AHG) Dec 149 (XXXVI).
[134] CPA Chapeau (2005), preamb. para 5.

1.1.3.2 Self-determination in the Banjul Charter on Human and Peoples' Rights

The Banjul Charter, the first African multilateral human rights instrument of general scope, containing individual and group rights,[135] enunciates that 'All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen'.[136]

Its provisions have been authoritatively interpreted by the African Commission on Human and Peoples Rights (ACHPR).[137] Unlike the Human Rights Council, restrictively interpreting its competence to hear individual complaints, and thus rejecting individual communications regarding the application of art. 1 of the Covenant (ICCPR),[138] the Commission has pronounced upon the significance and the scope of external aspects of self-determination, as well as its internal dimensions, political, economic and cultural.[139]

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[135] Richard Gittleman, 'The Banjul Charter on Human and Peoples' Rights: A Legal Analysis' in, Claude E. Welch and Robert I. Meltzer (eds), *Human Rights and Development in Africa* (State University of NY Press 1984), 159 ff; Hassan Jallow, *The Law of the African (Banjul) Charter on Human and Peoples' Rights (1988-2006)* (Trafford Publishing 2008); Fatsah Ouguergouz*, The African Charter on Human and Peoples' Rights: A comprehensive agenda for human rights* (Kluwer Law International 2003); Oji Umozurike, *The African Charter on Human and Peoples' Rights* (Kluwer Law International 1997).

[136]Art. 20 para 1 (Part. I chapter I) of the Banjul Charter; paras 2 and 3 provide that Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community' and All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.' Interestingly the right over permanent resources is espoused in a separate article, see art 21, para 1.

[137] For this quasi-judicial body, its mandate, procedure and applicable principles see art. 45 (Part II chapter II), arts 46-59 (Part. II Chapter III), and arts. 60-63 (Part. II chapter IV) of the Banjul Charter; see also Rachel Murray, *The African Commission on Human and Peoples' Rights and International Law* (Hart 2000), 173-174.

[138] Optional protocol to the Covenant on Civil and Political Rights adopted by GA Resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976, as applied by the Human Rights Committee in Mikmaq v Canada, Communication No. 78/1980, views adopted on 29 July 1984, Lubicon Lake Band v Canada, Communication No. 167/1984, Views adopted on 26 March 1990, Kitok v Sweden, Communication No. 197/1985, Views adopted on 27 July 1988, Vid. Marshall et al v Canada, Communication No. 205/1986, Views adopted on 4 November 2006; E.P. et al v Colombia, Communication No. 318/1988, Views adopted on 25 July 1990; A.B. et al v Italy, Communication No. 413/1990, Views adopted on 5 November 1991; R.L. et al v Canada, Communication No. 358/1989, Views adopted on 2 November 1991; Apirana Mahuika et al v New Zealand, Communication No. 547/1993, Views adopted on 20 October 2000; J.G.A. Diergaardt et al v Namibia, Communication No. 760/1996, Views adopted on 25 July 2000; and Gillot et al v France, Communication No. 932/2000, Views adopted on 15 July 2002.

[139] Most important communications of the Commission include the Communications No. 75/92: Congrès du Peuple Katangais / Zaire; Communications No. 147/95 and 149/96: Sir Dawda K. Jawara

In relation to the external aspect of self-determination, when asked on the matter, the Commission has rejected the right to secession for entities within existing states in response to the facts at hand.[140] In its most known communication, on the Katangese peoples' independence, the Commission accepted in principle that external self-determination would apply, *only if modes of achieving internal self-determination were not respected*, thus, interpreting the relevant provision of the African Charter in light of the safeguard clause of the Friendly Relations Declaration.[141] However, when relating the law to the facts at hand, it proclaimed that 'in the absence of concrete evidence of violations of human rights to the point that the territorial integrity of Zaire should be called to question and in the absence of evidence that the people of Katanga are denied the right to participate in government as guaranteed by Article 13.1 of the African Charter, the Commission holds the view that Katanga is obliged to exercise a variant of self-determination that is compatible with the sovereignty and territorial integrity of Zaire in relation to internal dimensions of self-determination.[142]

Unlike the other (political) organs of the OAU, the Commission has affirmed the interrelationship between political and economic component of the human right to self-determination.[143] Still, it is worth bearing in mind that the text of the Banjul Charter keeps the political aspect of self-determination (art. 20) separate from its other facets (art 21).

Therefore, the Commission's essential contribution in the African legal order lies within its consistent approach of interpreting the internal political aspect of self-determination. The Commission has unequivocally stated that elections are an exercise of the peoples' right to freely determine their political status. [144] In addition, in line with universal

/ The Gambia; Communication No. 227/99: Democratic Republic of Congo / Burundi, Rwanda and Uganda; Communication No. 268/03: Ilesanmi / Nigeria-Communication No. 273/03: Centre for Advancement of Democracy, Social Justice, Conflict Resolution and Human Welfare / Nigeria.

[140] See the Communications No. 75/92 : Congrès du Peuple Katangais / Zaire ; para 4.

[141] Friendly Relations Declaration (n7).

[142] Ibid, para 6.

[143]Kevin Mgwanga Gunme v. Cameroon, Communication No. 266/2003, and as discussed by Shelton in Dinah Shelton 'Self-determination in Human Rights Law: From Kosovo to Cameroon' (2011) 105 AJIL 60, 75-78.

[144] Communication No 102/93, para 53.

pronunciations on genuine and periodic elections (UN General Assembly Resolutions on genuine and periodic elections), the Commission has stressed the importance of free and fair elections as a basic premise of international law in instances of *coups*, admitting that the ultimate arbitrator of the conduct of elections is international and not law.

In the Commission's own words, 'a basic premise of international human rights law is that certain standards must be constant across national borders, and governments must be held accountable to these standards. The criteria for what constitutes free and fair elections are internationally agreed upon, and international observers are put in place to apply these criteria. It would be contrary to the logic of international law if a national government with a vested interest in the outcome of an election, were the final arbiter of whether the election took place in accordance with international standards. In the case the government does not even attempt to defend its decision to overrule the judgement of international observers.'[145]

This also means that a government that has gained power by force is in principle not compatible with the rights of peoples to freely determine their political future.[146] This is why the Commission pronounced that a military *coup*, as such, was a grave violation of the right of the Gambian people to freely choose their government, irrespective of whether the conduct of those involved was or was not violent;[147] It then went on to mention as *obiter* that the ballot box is evidence of the will of the people.[148]

[145] Communication No 102/93, para 48.
[146] Communications Nos 105/93, 128/94, 130/94, 152/96.
[147] Communications No 147/95 and 149/96, Sir Dawda K Jawara v The Gambia, para 73.
[148] 'It is true that the military regime came to power by force, albeit, peacefully. This was not through the will of the people who have known only the ballot box since independence, as a means of choosing their political leaders. The military *coup* was therefore a grave violation of the right of Gambian people to freely choose their government as entrenched in Article 20(1) of the Charter', Communications No 147/95 and 149/96, Sir Dawda K Jawara v The Gambia, para 73.

Most analyses of the African Charter of Human and Peoples rights (Banjul Charter)[149] either focus on the African Commission's jurisprudence and related interpretive approaches to human rights provisions, or appraise the special features of the African Charter.[150] Such characteristics often correlated with African traditions, and are often understood as influencing the Charter's (particular, or novel) understanding of certain (group) rights and related obligations, or related to African history as shaped by the legacy of colonialism.

When discussing the Charter and Africa, commentators refer to the inclusion of peoples' rights, the list of duties, and the appeal to moral values. The method of looking at these issues varies from one author to another, though there are resemblances in their overall approach. Some briefly refer to the 'African philosophy of law and conception of human rights'[151] underpinning the Charter, whilst elaborating on their arguments about the Charter's innovations as African features.[152]

For Umozurike,[153] the African understanding is a central argument of his analysis, which is devoted to highlighting the autochthony of the Charter. As he explains, 'by the term autochthony of the Charter we mean the extent to which it has grown or sprung from African soil, has been deeply rooted in the African *milieu* or has characteristics that are

[149] On the background of the promulgation of the Banjul Charter see Hassan Jallow, *The Law of the African (Banjul) Charter on Human and Peoples' Rights (1988-2006)* (Trafford Publishing 2008), chs 1-2.
[150] For general works see Oji Umozurike, *The African Charter on Human and Peoples' Rights* (Kluwer Law International 1997), Fatsah Ouguergouz*, The African Charter on Human and Peoples' Rights: A comprehensive agenda for human rights* (Kluwer Law International 2003), Hassan Jallow, *The Law of the African (Banjul) Charter on Human and Peoples' Rights (1988-2006)* (Trafford Publishing 2008); Christof Heyns, and Morne van der Linde (eds), *Human Rights Law in Africa* (Martinus Nijhoff 2004); Malcolm Evans, and Rachel Murray (eds), *The African Charter on Human and Peoples' Rights – The System in Practice 1986 – 2000* (CUP 2002); Christof Heyns, 'The African regional human rights system: The African Charter' (2004) 108 Penn S L Rev, 679.
[151] Gino Naldi, *The Organization of African Unity: An analysis of its Role* (2d edn, Mansell 1999).
[152] Fatsah Ouguergouz*, The African Charter on Human and Peoples' Rights: A comprehensive agenda for human rights* (Kluwer 2003).
[153] Ozi Umozurike, *The African Charter on Human and Peoples' Rights* (Martinus Nijhoff 1997); Umozurike is listed as part of TWAIL I (contributionist), see supra note 9.

peculiarly African. Put differently, to what extent can it be said that the African Charter is autochthonous or an autochthon of African soil, its product and outgrowth.'[154]

For Umozurike, the autochthony can be found in the following elements: in the concept of peoples' rights, the inclusion of individual duties, in non-justifiability in dispute-settlement consistent with commission … African traditional dispute settlement [that] places a premium on the improvement of relations between the parties more on the basis of equity, good conscience, and fair play than on strict legality', on the theme of 'anticolonialism', 'whereas other Charters are concerned with the human rights of individuals, the African Charter appears to be smarting under a sense of grievance', and finally the appeal to morality.[155]

Along the same line, two other authors list the peculiarities of the Charter: Benedeck highlights the inclusion of peoples' rights and a list of individual duties.[156] Balanda, among a list of eight features, stresses emphasis on solidarity and cooperation against foreign domination (anti-colonialism theme) and the enunciation of peoples' rights as well as the equality of peoples.[157]

These submissions focus on extra-legal terms, to explain or attach legitimacy to the promulgation or even legal basis of the Banjul Charter, bearing in mind, that the critique in the literature questions whether peoples' rights in the African context are simply

[154]Ibid, 87.
[155] Ibid, 87-96.
[156] Wolfgang Benedek, 'Peoples' Rights and Individual Duties as special features of the African Charter on Human and Peoples' Rights' in Philip Kunig, Wolfgang Benedek, Costa Ricky Mahalu, *Regional Protection of Human Rights by International Law: the Emerging African System* (Nomos 1985), 59-74.
[157] Mikuin Leliel Balanda, 'African Charter on Human and Peoples' Rights' in Donna K. Ginther and Wolfgang Benedek, (eds), *New Perspectives and Conceptions of International Law – An Afro-European Dialogue* (Osterreichische Zeitschrift für Offentliches Recht und Völkerrecht, Supplementum 6, 1983), 135-137; emphasis on solidarity and cooperation against foreign domination (anti-colonialism theme), the enunciation of peoples' rights, the equality of peoples, the duties to the community, the preservation of African moral values, the inclusion of economic, social and cultural rights including, development, the right to information, and the rights of the disabled.

aspirational and exhortatory and whether the Commission's function is simply promotional.[158]

In this sense, the analysis of the Banjul Charter has paid significant attention to Africa and African identity and understandings of human rights, to highlight the Charter's originality. The introduction of peoples, for some commentators has been the reflection of the more communitarian traditions of the African continent, as contrasted with the liberal tradition of first generation rights, and the focus on the individual against the state in the traditional western nation state of the 18th and 19th centuries. 'The African notion of man in society is one of harmony, for only in society can man find the fulfilment of his aspirations. Far from being a relationship of subordination, it is one of "complementarity, participation and dialogue"'.[159]

The importance that secondary materials attach to the contextual elements of the Banjul Charter, including its particularities as a human rights instrument, go beyond traditional human rights analyses. They emphasise how in fact the new African legal order (OAU) shows its capacities and capabilities in regionalising international standards, whilst adding an additional, regional-informed layer of protection, to disassociate the Banjul Charter with 'Western' or other influences.

As such, this strand of thought is the most elaborated attempt to conceptualise and discuss Africa in relation to human rights, including group rights and self-determination. Interestingly, such discussion is used to legitimise the creation of the Banjul Charter as an African product, and not a transplanted Western model, to interweave its making and legal basis with African history and identity. The discussion does not cover the interpretative

[158] For the legal quality of the Commission's communications see Hassan Jallow, *The Law of the African (Banjul) Charter on Human and Peoples' Rights (1988-2006)* (Trafford Publishing 2008), 105.

[159] Ozi Umozurike, *The African Charter on Human and Peoples' Rights* (Martinus Nijhoff 1997), 70 ; Mohammed Bedjaoui, ''Le droit des peuples à l'autodétermination revisité : l'imprescriptibilité d'un ''droit-témoin'' ou d'un ''droit-étalon'', introduction in Diarra Boniface, *Le droit des peuples à l'autodétermination dans le monde contemporain* (Les éditions du Vautour, Sainte-Foi 2004) 13-16.

aspects of the Banjul Charter's content, including related self-determination provisions, which in fact, duplicate pre-existing rules espoused at the universal (UN) level.

1.2 Present Dynamics: the 'AU era' and the continuing regionalisation of self-determination

1.2.1 From the OAU to the AU: from non-interference to non-indifference

The two main objectives of the OAU were the eradication of colonialism in all its manifestations and the promotion of African Unity.[160] With all member-states achieving independence, including Namibia,[161] pending the issue of Western Sahara and the Republic of the Sahrawi's,[162] and the decolonisation era becoming part of the past, the OAU was then left with achieving African unity through further integration.[163]

In its appraisal of the role of the OAU in promoting African unity, the overwhelming majority of literature is critical. Despite its 'normative panoply', including key Addis Ababa Charter provisions,[164] the Banjul Charter human rights provisions,[165] and the Cairo conflict prevention mechanism,[166] the OAU is mildly or more strongly criticised for its failure to respond to African conflicts and atrocities, including the Rwandan genocide, and 'Africa's world war' in the DRC.

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[160] As presented in section 1.1.3.
[161] The Republic of Namibia officially became independent on 21 March 1990.
[162] See the 'Settlement Proposals' of 30 August 1988, UN Document S/21360 (18 June 1990); introduction, note 86, p 14.
[163] However, the General Assembly has launched a Third International Decade for the Eradication of Colonialism, See UN General Assembly Resolution 65/219 of 10 December 2010, A/Res/65/219, paras 1-2.
[164] Addis Ababa Charter, arts. II, para 2 (a), III para 4, VII, para 4, XIX.
[165] Banjul Charter,art. 23, para 1, (right to national and international peace) also arts. 47-49, and 53-54 (competence and functions of the African Commission on Human and Peoples Rights).
[166]Declaration of the Assembly of Heads of State and Government of the Organisation of African Unity on the Establishment Within the OAU of a Mechanism for Conflict Prevention, Management and Resolution, AHG/Dec 3 XXIX (hereinafter Cairo Conflict Prevention Mechanism), adopted during its twenty-ninth ordinary session of 28-30 June 1993, with the reservations of Eritrea and Sudan, having its principal aim the anticipation and prevention of conflicts; see paras 15-16.

Critique highlights the OAU peace and security architecture constraints and disappointing subsequent practice, the poor record of human rights protection, including the inconsistency between interstate commitments of the Heads of States and Governments at the formal OAU summits and domestic policies towards their own people. Put bluntly, the OAU is labelled 'the dictator's club'.[167]

In peace and security terms, critique exposes 'deficiencies in the critical areas of mediation, conciliation and arbitration'.[168] Tracing the problem back to two OAU founding principles, the 'sanctity of domestic jurisdiction' and the 'sanctity of the inherited border', Ayouty stresses their impact on the reluctance of states to resort to the conflict resolution mechanisms.[169] In the same vein, Jonah, an insider to a few peace processes, raises similar points by looking at the involvement of the OAU in internal conflicts in Chad, Zaire (now DRC), Ethiopia, and Sudan.[170]

The idea of launching a new, more integrated 'Pan-African organisation' constantly discussed at the ministerial level of the OAU in the nineties, could thus hardly come as a surprise. Culminating the process already envisaged in the AEC treaty,[171] the OAU convened its fourth extraordinary summit at the invitation of Muammar Quadafi, 'an active supporter of African Unity' in Sirte, Libya. On 9th September of 1999, the Declaration of Sirte was adopted.[172] This Declaration provided for the creation of the African Union and

[167] See Ulf Engel and João Gomes Porto (eds), *Africa's New Peace and Security Architecture: Promoting Norms, Institutionalizing Solutions* (Ashgate 2010); Deidre Badejo, *The African Union*, (Chelsea House Publications 2008), 33; Martin Meredith, *Africa* (Portobello Books 2006), 608; see also related journalistic coverage 'African Union replaces dictator's club' 8 July 2002. <http://news.bbc.co.uk/1/hi/world/africa/2115736.stm>
[168] Yassin El-Ayouty, 'An OAU for the future' in Yassin El-Ayouty (ed), *The Organization of African Unity After 30 years* (Praeger 1994) 180, 185.
[169] Ibid, 180, 186-188.
[170] James O. C. Jonah, 'The OAU: Peacekeeping and Conflict Resolution' in Yassin El-Ayouty (ed), *The Organization of African Unity After 30 years* (Praeger 1994) 1, 11-12.
[171] Treaty establishing the African Economic Community (AEC), known as the Abuja Treaty, signed on 3 June 1991 by fifty-one African states, entered into force on 12 May 1994 30 I.L.M. 1242.
[172] See Sirte Declaration/ Déclaration de Syrte, adopted at the Fourth Extraordinary Session of the Assembly of Heads of State and Government in Sirte Libya, 8-9 September 1999, OAU document, EAHG/Draft/Decl. (IV) Rev.1 reprinted in (1999) 7 AYIL 411-420 (in English and French).

carved out the path for its establishment. At the following summit in Lomé, the Constitutive Act of the African Union was adopted, and finally in Lusaka, the plan for the implementation of the African Union was adopted in 2001. The first session of the Assembly of the African Union was held in Durban on 9 July 2002.[173]

Retrospectively the replacement of the OAU by the AU has been celebrated as an event envisaged by the 'founding fathers' and major supporters of 'Pan-Africanism', such as Kwame Nkrumah.[174] As such, the momentum of the creation is described as 'an event of great magnitude in the institutional evolution of the continent', a step towards 'accelerating the process of integration in the continent to enable it to play its rightful role in the global economy while addressing multifaceted social, economic and political problems compounded as they are by certain negative aspects of globalisation.[175]

Therefore, attention is paid to the novel features of the AU. Speaking at the Security Council, the interim Secretary-General of the Organization of African Unity/African Union, Amara Essy, iterated that '[f]or us, and for the African heads of State and Government, the African Union must not become OAU, part two. This is not a simple name change. We want it to reflect a renewed aspiration to integration on the part of African States and genuine progress towards African unity.'[176]

The so-called 'shift from non-interference to non-indifference', a catch-phrase encapsulating the ideological difference between the OAU and AU, is much emphasised in first accounts in the literature as well.[177] Supporting argumentation is drawn out of the

[173] See Corinne A.A. Packer and Donald Rukare, 'The New African Union and Its Constitutive Act' (2002) 36(2) AJIL 365-379.
[174] See 'African Union in a nutshell' < www.au.int/en/about/nutshell>.
[175] Supra < www.au.int/en/about/nutshell>.
[176] See Security Council 4460th meeting of 29 January 2002 on the situation in Africa, S/PV.4460, verbatim record, 8.
[177] Paul D. Williams, 'From Non-interference to Non-indifference: the origins and the development of Africa's security culture' (2007) African Affairs, 253-279; Jeremy Sarkin, 'Humanitarian Intervention and the Responsibility to Protect in Africa' in Daniel S. Zimbler and John Akokpari (eds), *Africa's Human Rights Architecture* (Fanele 2008), 45-67.

Constitutive act's new provision of art. 4h.[178] Murithi, to mention one example, whilst comparing the AU and OAU in peace and security, uses art. 4h of the Constitutive Act to support his argument that the AU is more 'interventionist' than the OAU, which remained intact in the face of past human rights abuses.[179]

1.2.2 From self-determination to democracy and good governance: the continuing regionalisation of self-determination

Self-determination appears within the AU legal order, since, not only is the Banjul Charter part of the AU legal order, but the AU further elaborates and regionalises the law of self-determination. This section explains how the AU, despite not making use of the term 'self-determination' as such, has in fact been developing its understanding of 'democracy' as part of internal self-determination, as espoused at the UN (universal level) as well as previously interpreted by the jurisprudence of the African Commission, emphasising on the political variant of self-determination.

Such practice can be witnessed in terms of new or elaborated rules, but also in terms of practice in the first fifteen years of its existence. So far, not only has the AU produced new instruments relating to internal aspects of self-determination, but has taken-up cases under its peace and security powers.

It is noteworthy, that the OAU already contained provisions that could be interpreted as promoting democracy, not least affirming that a government should be representative of its people. Abass, for example, whilst referring to the norms of arts 13 (1) and 20 (1) of the Banjul Charter observes that 'the combining effect of these provisions is to guarantee democratic governance.'[180] In addition, in the post-Cold War era, the OAU adopted the

[178] Art 4(h) affirms 'the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity' as one of the AU's sixteen founding principles.
[179] Timothy Murithi*, The AU Pan Africanism peace building and development* (Ashgate 2005), 109.
[180] Ademola Abass, *Protecting Human Security in Africa* (OUP 2010), 275-276.

Lomé Declaration on Unconstitutional Changes in Government.[181] In line with prevision Decisions, such as the Algiers Declaration, rejecting 'any unconstitutional change as an unacceptable and anachronistic act, which is in contradiction of our commitment to promote democratic principles and conditions'.[182] The Lomé Declaration of July 2000 on the framework for an OAU response to unconstitutional changes of government built-upon relevant pre-existing principles of both the Banjul and the Addis Ababa Charter and gave the OAU an initial framework of guidance for assessing whether political aspects of self-determination are observed in practice.

This is done through sanctions (termed as such by the AU's Constitutive Act) that include the suspension of membership of states whose governments have come to power and remain there through unconstitutional means. The AU's legal framework for imposing sanctions consists of provisions found in the organisation's Constitutive Act, [183] complemented and elaborated, on the one hand with the OAU resolutions (Algiers Declaration), remaining in force after the OAU was replaced with and succeeded by the AU, and, on the other hand, the subsequent AU Charter on Democracy and Elections (2007), which entered into force in 2012, as well as the AU Peace and Security Council Protocol.[184]

In line with its predecessor, the AU, not only elaborated such provisions in its Constitutive document, but adopted the African Charter on Elections and Democracy in 2007. The

[181] Lomé Declaration of July 2000 on the framework for an OAU response to unconstitutional changes of government (AHG/Decl.5 (XXXVI).
[182] See Decision AHG/Dec.141 (XXXV), adopted during the Thirty-Fifth Ordinary Session of the Assembly of Heads of State and Government in Algiers, Algeria, 1999.
[183] AU Constitutive Act, art 30.
[184] Art. 25 of the AU Peace and Security Council Protocol, provides that 'when the Peace and Security Council observes that there has been an unconstitutional change of government in a State Party, and that diplomatic initiatives have failed, it shall suspend the said State Party from the exercise of its right to participate in the activities of the Union in accordance with the provisions of articles 30 of the Constitutive Act and 7 (g) of the Protocol. The suspension shall take effect immediately'.

major contribution of this instrument, which entered into force in 2012 lies in its definition of 'unconstitutional change in government'.[185]

For the purposes of the Charter, an unconstitutional change is defined as either a 'military coup d'état against a democratically elected Government; an intervention by mercenaries [to] replace a democratically elected Government; the replacement of democratically elected Governments by armed dissident groups and rebel movements; the refusal by an incumbent government to relinquish power to the winning party after free, fair and regular elections. Finally, any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government, is the fourth type, for situations not covered by the other three.[186]

The AU Peace and Security Council, in exercising its competence, has suspended Mauritania, Niger, Madagascar, Guinea, Ivory Coast, Egypt and CAR from AU membership, when unconstitutional changes in their governments occurred. Specifically, the AU suspended Mauritania twice, once in 2005 the dictator Maaouya Ould Sid'Ahmed Taya was ousted by the military of Mauritania and the second time from August 2008 till June 2009, when coups staged by Mohamed Ould Abdel Aziz, overthrew Mauritanian President Sidi Mohamed Ould Cheikh Abdallahi.[187] Togo was also suspended from February till May 2005.[188]

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[185] African Charter on Democracy, Elections and Governance, AU Doc, adopted by the eighth ordinary session of the Assembly, held in Addis Ababa, Ethiopia, (30 January 2007), entered into force on 25 February 2012 (hereinafter Democracy Charter); The Charter has been ratified by twenty-three countries: Benin, Burkina Faso, Cameroon, Chad, Côte d'Ivoire, Djibouti, Ethiopia, Ghana, Guinea-Bissau, Guinea, Lesotho, Malawi, Mali, Mauritania, Niger, Nigeria, Rwanda, Sahrawi Arab Republic, Sierra Leone, South Africa, Sudan, Togo, and Zambia; Singed only by Algeria, Angola, Burundi, CAR, Cape Verde, Comoros, Congo, DRC, Equatorial Guinea, Gabon, Gambia, Kenya, Liberia, Madagascar, Mauritius, Mozambique, Namibia, Sao Tome, Senegal, Somalia, South Sudan, Swaziland, Tunisia, and Uganda; those not signatories to the Charter see art. 4 (m) of the AU Act, and Lomé Declaration of July 2000 on the framework for an OAU response to unconstitutional changes of government (AHG/Decl.5 (XXXVI), esp. para 8.

[186] Democracy Charter (n 185), art. 23, paras 1-5.

[187] Decision of the Peace and Security Council,7 August 2008, AU Document, Peace and Security Council Communiqué PSC/PR/Comm(CLIV), op. para 3. <www.peaceau.org/uploads/communiqueeng.pdf>

[188] Communiqué of the 25th meeting of the Peace and Security Council, 25 February 2005, AU Document, PSC/PR/COMM (XXV), op. para 3 <www.peaceau.org/uploads/communiqueeng-25th.pdf>; lifted by the PSC Communiqué of the 30th meeting, 27 May 2005, AU Document, PSC/PR/COMM (XXX), op. para 3, <www.peaceau.org/uploads/communiqueeng-30th.pdf>.

The AU suspended Niger from 19 February 2010 till 16 March 2011,[189] following the military coup which ousted then President Mamadou Tandja from power after an illegal term extension. Similarly, the AU suspended Guinea from 29 December until 9 December 2010[190] and the Ivory Coast after the refusal of Laurent Gbabgbo to handle power, once defeated in the 2010 elections by his opponent Alassane Ouattara.

Finally, after the ousting of the Elected President Marc Ravalomanana, who handled the power to a group of militaries later installing Andy Rajoelina in power, the AU Peace and Security Council in its Decision of 20 March 2009 suspended Madagascar,[191] with the case under consideration for a long period alongside peace negotiations.[192]

Currently, CAR is suspended from its membership. CAR was suspended on 25 March 2013 from membership of the African Union.[193] In its twenty-first ordinary session (May 2013), the AU Assembly of Heads of State and Government commended the 'illegal seizure of power in Central African Republic and the serious violations of human rights committed by the Seleka rebel group', endorsed the previous Peace and Security Council Decision on the matter and called for renewed efforts to restore security and ensure the return to constitutional order.'[194] As of today, CAR remains a suspended member of the AU.

As Abass notes, Africa's trouble with unconstitutional governments dates to the era of the OAU when African states regarded the way a government came to power as a matter squarely within the domestic jurisdiction of every state, a constitutional stance that was secured by the international law principle of non-interference'.[195] However, it is the AU

[189] See Communiqué of the 226th meeting of the Peace and Security Council,19 February 2010, AU Document, PSC/PR/COMM.2(CCXVI) op. para 5; Communiqué of the 266th meeting of the Peace and Security Council, 16 March 2011, AU Document, PSC/PR/COMM(CCLXVI), op. para 6.
[190] See Decision of the Peace and Security Council of 29 December 2008 in its meeting, op. para 3.
[191] See Communiqué op. para 4 –suspension till the constitution al order is restored.
[192] 16 March 2009 (179th meeting), 17 March 2009 (180th meeting), 20 March 2009 (181st meeting),21 August 2009 (200th meeting), 10 September 2009 (202nd meeting), 9 November 2009 (208th meeting) and 7 December 2009 (211th meeting).
[193] Decision of the AU Peace and Security Council, AU Doc. (PSC/PR/COMM.(CCCLXIII)).
[194] Declaration on the Report of the Peace and Security Council on its Activities and the state of Peace and Security in Africa during its 21st session, held at Addis Ababa, Ethiopia, 26-27 May 2013, AU Doc. Assembly/AU/Decl.1(XXI), para 10.
[195] Ademola Abass 'African Peace and Security Architecture and Protection of Human Security in Abass (ed), *Protecting Human Security in Africa* (OUP 2010), 247-283, 275.

that has authoritatively interpreted 'unconstitutional change in government' in a legally binding instrument and has made significant use of its sanctioning competences.

Interestingly, the resolutions sanctioning the respective states, are in effect excluding them from AU membership, until they restore the internal/national normalcy.[196] Yet at the same time, they urge the states to cooperate to politically resolve these issues parallel to the aforementioned sanctions.[197] This means that an unconstitutional change, framed as the violation of internal self-determination as determined by the AU Peace and Security Council, only affects the membership of states to the AU and not their government (directly) at the national level.[198]

The states need to cooperate with the organisation imposing the sanctions, to end the illegal situation on the ground, either by the governments stepping down, or by diplomatic means. If the state complies with the AU sanctions, by the *coup* perpetrators handling power, or holding elections for instance, the situation would be resolved. If the state in question does not cooperate, the sanctions remain at the regional (international level), but as regards the domestic level, further political negotiations are usually instituted, sometimes ending up with the conclusion of an intrastate peace agreement, mediated by AU appointees.

Most importantly, art 25 (4) of the Democracy Charter provides that the perpetrators of an unconstitutional change of government shall not be allowed to participate in elections held to restore the democratic order or hold any position of responsibility in political institutions of their State.[199] It is worth noting that, a similar trend can found in intrastate peace agreements where the members of transitional government are barred from

[196] AU Constitutive Act, arts 3 (g),(h), 4 (m), (p), and 30.
[197] See Decision of the Peace and Security Council of 29 December 2008 in its meeting, op. para 3; See Communiqué of the 226th meeting of the Peace and Security Council,19 February 2010, AU Document, PSC/PR/COMM.2(CCXVI) op. paras 6, 8;
[198] AU Constitutive Act, art. 30.
[199] The perpetrators of unconstitutional change of government shall not be allowed to participate in elections held to restore the democratic order or hold any position of responsibility in political institutions of their State', Democracy Charter (n185), art. 25, para 4.

participating in general elections, namely Madagascar[200] and Guinea,[201] influenced by these developments at the regional level.

Africa has regionalised self-determination by developing the internal element, by affirming that self-determination is about elections and much more, and by linking it with peace and security. Obviously, such developments are the result of the interplay between the political organs of the AU such as the Assembly of Heads of State and the Peace and Security Council on the one hand, and the Commission on the other hand. Whilst determining the existence of unconstitutional changes in government, the organs seem to be relying on the use self-determination as a yardstick for imposing or interpreting political (AU membership) sanctions. The paradox is that sanctions require cooperation from the state that is the object of these sanctions, and usually act as leverage, or as a triggering mechanism for further diplomatic, or political settlement, in the form of AU missions or AU-mediated peace agreements.

Concluding Remarks: Africa's multidimensional understanding of self-determination

The chapter discussed self-determination in relation to Africa, to tease out the scope of the theme of an African understanding of self-determination. Instead of concluding with a single yes or no, the aim was to show that the understanding, if traced in state practice and policy of African organisations, is certainly far from one-dimensional.

For this reason, such understanding has been investigated in different contexts, dynamics, and levels, to conclude that by looking at African practice, we could deduct a

[200] 'Les membres du Gouvernement de Transition s'engagent *à ne pas se présenter à l'élection présidentielle organisée par la Transition*, Maputo Political Accord (2009), art.5. (emphasis added).
[201] 'L'organisation [...] de *l'élection présidentielle à laquelle ne participeront pas* les membres du Conseil National de Transition, Le Chef d'Etat de Transition, les membres du CNDD, le Premier Ministre, les membres du Gouvernement d'Union Nationale et les membres des Forces de Décence et de Sécurité en activité Ouagadougou Declaration (2010) (Guinea), para 8 ; (emphasis added).

'multidimensional understanding' of self-determination. Looking at the past and the present, three themes have been identified: these correspond to the dynamics of making, claiming and regionalising self-determination. This kind of analysis demonstrates that the understanding and (related) content of self-determination is dependent on the context within which these dynamics have operated in the past and present.

As such, the multidimensional understanding is not the direct result of a clearly identifiable African contribution, but rather the result of the law of self-determination itself possessing different facets, which have been claimed and developed within different contexts (decolonisation, regionalisation), depending on what was at stake. One perhaps could also see the (secondary) influence of universal or regional historical events, or the interplay between judicial and political organs of universal and regional institutions on the resulting multidimensional understanding.

In terms of present dynamics, irrespective of the context of application, the AU's emphasis is on the political aspects of self-determination.[202] This is the result of the drafting choices of the Banjul Charter, which separated self-determination from permanent sovereignty over resources (arts 20 and 21 correspondingly), and related interpretation of the African Commission (AHPRC). This also due to the interweaving between internal self-determination and peace and security in AU hard and soft law, as well as related practice with regards to sanctions imposed on non-democratically elected governments. It seems that despite the African influence on permanent sovereignty over natural resources and, more broadly, economic self-determination, African leaders remember that 'the drive by developed countries to create a new International Economic Order ended on the whole in failure.[203]

[202] For a critique see Michael Addo, Political Self-determination within the context of the African Charter on Human and peoples' Rights' (1982) 33 (2) J. Afr. Law, 182.
[203] Antony Anghie, Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law' (1999) 40(1) HarvIntlLJ, 75.

Therefore, the AU pays attention and develops the political element of self-determination in two directions: the government being representative of its people and using basic elements of democracy to appraise/test the government of a member state. As such, the AU has shifted the emphasis from external to internal self-determination, and through the protocol on democracy and good governance-practice with regards to unconstitutional changes in government (art. 4 (m) of the AU Act)], has linked democracy and good governance with (internal) self-determination.

This comes as no surprise, since at the universal (UN level), one of the undisputed facets of internal self-determination is that the government should be representative of its people without distinction as to race, and religion, *per* the Friendly Relations Declaration.[204] By looking at the relevant General Assembly Resolutions on genuine and periodic elections, it can be said that elections seem to function as a 'presumption' of that undisputed rule: the existence of elections, either described as genuine and periodic in the early post-Cold War stages, or later, after the Vienna Declaration as free and fair, could be said to serve as evidence of the rule of representative government being applied unless otherwise shown, or proved, by either.[205] As shown in this chapter, a very similar approach has been adopted by the African Commission jurisprudence, when interpreting the Banjul Charter self-determination provisions.

This jurisprudence has been then consolidated in the new AU instruments (Democracy Charter), and further applied by the AU Peace and Security Council in the context of peace and security.[206] It is worth keeping in mind that in contrast with the OAU, such decisions of the Assembly of Heads of States have binding force. It is thus normatively important

[204] Arts 1 ICCPR, ICESR, also art. 21 Universal Declaration of Human Rights (UDHR), adopted by General Assembly Resolution 217 A(III) of 10 December 1948.
[205]See UNGA resolutions on 'Enhancing the effectiveness of the principle of periodic and genuine elections since 1989 till today; UNGA Resolution 44/146 of 15 December 1989, paras 1-2 and 4; also UNGA Resolutions 45/150 of 18 December 1990, paras 3-4, 48/131 of 20 December 1993, paras 2-4 49/190 of 23 December 1994, 50/185 of 2 December 1995, 54/173 of 17 December 1999, 58/180 of 22 December 2003, 60/162 of 16 December 2005, 62/150 of 18 December 2007, 64/155 of 18 December 200965/223 of 21 December 2010, 66/163 of 19 December 2011.
[206] Democracy Charter (n 185), art 25; Communications Nos 105/93, 128/94, 130/94, 152/96 147/95 and 149/96, as discussed in pp 59-60.

that such language is linked with peace and security. As literature shows, this interlinking has been done by other regional organisations as well.[207]

Moving towards the research questions, these dynamics could bear relevance in the study of peace agreements which essentially function as peace transition frameworks. In terms of the understanding of self-determination, in relation to peace agreements, the dynamic of regionalisation is extremely relevant, but not the only one. In addition to this, intrastate peace agreements have been concluded in thirty-five different states and deal with the reconfiguration of these states and issues of inclusion and access to power in interim periods regarding an individual state, which is member of the AU, but a distinct subject of international law.

As highlighted here, the understanding of self-determination within the AU is different from the understanding of self-determination found in individual state practice. Again, individual state practice differs, depending on whether the context examined is judicial proceedings or any other claims at the UN universal level, or transitions from conflict to peace within the predefined territory of the state.

If asked to summarise on the relationship between Africa and self-determination that task would be impossible if trying to squeeze all in one picture. The picture of how Africa understands self-determination when appearing through individual states at the '*Vredeispaleis',* the seat of the Court of Justice, as witnessed in the recent Kosovo advisory proceedings, is diametrically opposed to the unified focus of the AU on internal and political dimensions of self-determination. In the submissions of Egypt, Libya, Sierra Leone to the International Court of Justice, one can distinguish two extreme positions; Burundi, which limits the relevance and applicability of self-determination to colonial situations, and the various layers of self-determination as put forward by Egypt. On the one hand Burundi

[207] Richard Burchill, 'Regional Organizations and the promotion and protection of democracy as a contribution to international peace and security' in Richard Burchill, Nigel D. White and Justin Morris (eds), *International Conflict and Security Law* (CUP 2005), 210; looking at democracy in the context of peace and security in the OAS and the OSCE.

asks the court to 'établir une fois pour toute que le droit (incontesté) des peuples à disposer d'eux-mêmes est, dans sa dimension externe, *strictement limité* à la décolonisation et à certaines situations assimilées et qu'il n'existe aucun droit international pour un groupement infra-étatique à constituer un Etat indépendant'.[208] On the other hand, Egypt distinguishes between the right to self-determination within the context of colonial domination, recognised by international law, and 'the right to internal self-determination, in accordance with national legislation, to be established in certain circumstances in line with human rights norms.'[209] The concerted African voices of the African Union, have solved the matter differently. Leaving any reference to external self-determination in their glorious past, and in their claims left for posterity in the Verbatim Records of the UN General Assembly, they have shifted their attention to internal variants of self-determination within the wider security context.

These considerations could inform this work on how to further examine and distinguish some patterns of the use of self-determination in the texts of peace agreements. Above all, it is still valid to look at self-determination as a legal principle and a right, though literature might suggest the opposite. It is understandable that 'the transformation of self-determination from an international principle to a human right after the Second World War was largely consequence of the decolonizing process brought about by the war itself.'[210]

'The Charter deliberately refers to self-determination as a 'principle' rather than a 'right'. It is only later in both human rights and decolonization settings that official UN terminology confirms that peoples enjoy a right of self-determination. Arguably, this distinction is inconsequential as a substantive aspect of international law. To the extent that such a principle exists and is actualized, it implies the existence of rights and duties to ensure its application, or at least encompasses the prospects that such rights will, as appropriate, be

[208] See oral pleadings of Burundi (Jean d'Aspremont) Verbatim Record of Kosovo proceedings, 4 December 2009, CR 2009/28, at 39-40.
[209] See written statement of the Arab Republic of Egypt, 16 April 2009, p. 20 paras 71-73 http://www.icj-cij.org/docket/files/141/15622.pdf
[210] Robert Friedlander, 'Self-determination: a legal-political enquiry' (1975) DCLR 71-91, 89.

specified and realized.'[211] Still, the relevance of self-determination remains for other contexts and problems of today, and its content is shaped accordingly, depending on what is at stake. Self-determination as legal principle alongside the right. The generating principle of legal character remains relevant for an inquiry outside the colonial context, where the legal rules on self-determination, as not addressed by international judicial bodies continue to remain unclear and underdeveloped.[212] But, as said above, issues of content are inevitably to be linked to issues of context. This is evident in the context of peace transitions, a highly politicised context, within which the peace agreements are effectively operating, whilst engaging in a rule-drafting and policy-making exercise at the same time.

In response, thus to the question with which the chapter opened, on whether Africa and self-determination are friends or foes, the answer would be neither friends nor foes, as the relationship between Africa and self-determination would have to be multidimensional. It remains to be seen whether this multidimensional African understanding corresponds to examples of African practice, or could inform the understanding and interpretation of African peace agreements.

[211] Richard Falk, 'Self-determination Under International Law: the Coherence of Doctrine Versus the Incoherence of Experience' in Wolfgang Danspeckgruber (ed), *The self-determination of peoples: community, nation, and state in an interdependent world* (Lynne Rienner Publishers 2002), 41.
[212] See Namibia Advisory Opinion, paras 52-53; James R. Crawford, 'General Assembly, the International Court and Self-determination', in Vaughan Lowe and Malgosia Fitzmaurice (eds), *Fifty Years of the International Court of Justice: essays in honour of Sir Robert Jennings* (CUP 1996), 585-606, 590.

2. Situating International Law within African Intrastate Peace Agreements

Introduction

African intrastate peace agreements are legally binding compromises between statal and non-statal parties, (immediate parties) facilitated by informal groups of states and international organisations (peacemakers), aiming to establish peace by political, instead of military means, constituting the framework for peace consolidation and related peacebuilding.[1] Although standard in primary and secondary materials,[2] the term 'peace agreement' is not a legal term of art. There is no generally accepted definition of peace agreements, let alone intrastate peace agreements. [3] Being critical enough, Bell demonstrates in her own work that 'the term "peace agreement" has no core meaning'.[4]

Unlike interstate peace agreements, which are concluded between states, the traditional and undisputed international law subjects, (or participants),[5] intrastate agreements are

[1] In the Secretary-General's Report, *An Agenda for Peace,* post-conflict peace building is defined as "action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse to conflict", 'An Agenda for Peace, Preventive Diplomacy, peacemaking and peace-keeping', Report of the Secretary-General, A/47/277-S/24111, 17 June 1992, paras 21, 55-59.

[2] For the exact terms used by the documents themselves, see Table II (African Intrastate Peace Agreements), appended in the bibliography; Term used by peace agreement digital collections including the UN Peacemaker, the INCORE database, the Uppsala Peace and Conflict Database, the Kroc Institute Peace Accords Matrix, the Conciliation Resources collection, and Monty Marshall's listings; for the use of 'political settlements' see <www.politicalsettlements.org>.

[3] Definitions of peace agreements are usually offered by peace agreement datasets. The UN peacemaker, defines peace agreements as 'contracts intended to end or significantly transform a violent conflict so that it may be addressed more constructively'; this definition is based upon the knowledge base essay by Nita Ywanarajah and Julian Quellet, 'Peace Agreements' in Guy and Heidi Burgess (eds), Beyond intractability (Conflict Research Consortium University of Colorado 2003) <htttp://peacemaker.unlb.org/role.php?p=11> (The UN peacemaker was created in 2006, and its site was substantially changed and relaunched in 2012); other peace agreement digital collections include the INCORE database, the Uppsala Peace and Conflict Database, the Kroc Institute Peace Accords Matrix, the Conciliation Resources collection, and Monty Marshall's listings.

[4] Christine Bell, *On the Law of Peace: Peace agreements and the Lex Pacificatoria* (OUP 2008), 47; Bell defines peace agreements as 'documents produced after discussion with some or all of the conflict's protagonists, which address military violent conflict with a view to ending it', 53.

[5] For suggested abandonment of the concept of 'international law subjects' see Rosalyn Higgins, *Problems and Process: International Law and How we Use it*, (Claredon 1994), ch.3, 39-56; also, 'Conceptual Thinking about the individual in International Law 1978 BYBIL, 1,5; Philip Allot, *Eunomia: New order for A new World* (OUP 1990), 372; Jane Elisabeth Nijman, The Concept of international Legal personality: an inquiry into the history and theory of international law (TMC Asser Press 2004), 27, 87, 126-127.

concluded between actors within a single state.[6] Such agreements *prima facie* raise issues of form and legal status, simply by the fact that they are concluded between statal and non-statal parties.[7] These include armed opposition groups, movements, or political parties and forces, as later explained. Therefore, the overviewed African intrastate peace agreements research is limited to intrastate peace agreements, the legal status of which remains highly contested and unclear, as they seem to fall outside the scope of the 1969 Vienna Convention on the Law of Treaties (hereinafter the 1969 Vienna Convention).[8]

This chapter does not set out to analyse the legal status of intrastate peace agreements under international law in general. Instead, it aims to explore the application of international law to these documents. Whilst explaining how international law makes its way to African intrastate peace agreements, the thesis then narrows its scope to identifying and prioritising key international law themes for the understanding and interpretation of intrastate peace agreements, further inquired later-on.

Nevertheless, this chapter's arguments, when considered altogether, do not aim to form a general claim about the applicability of international law. In fact, international lawyers and international human rights lawyers seem to consider the application of international human rights law to peace agreements as straightforward, without even considering how international law makes its way through intrastate peace agreements. However, such international law application to intrastate agreements is not as straightforward as in peace treaties, since, as explained therein, international law is not their default applicable law. Its application is reliant upon prior determination or choice by the drafters (immediate

[6] The 'external'/'outside' actors also involved international organisations or other states, but these have the role of outside parties to the agreement and the matter will be returned to in the section on peacemakers; infra, pp 108 ff.
[7] France v. Serbia [1929] PCIJ 5, Series A, No. 21 and 22 (12 July 1929, judgment no. 14) and Brazil v. France [1929] PCIJ Ser. A, No. 21. According to Serbian Loans and Brazilian Loans case: '[t]out contrat qui n'est pas un contrat entre des Etats en tant que sujet du droit international a son fondement dans une loi nationale', PCIJ, series A, No. 20, 41.
[8] Vienna Convention on the Law of Treaties, 22 May 1969, entered into force on 27 January 1980, *UNTS* vol. 1155, p. 331.

parties and assisting peacemakers), demonstrated during three stages, the stage of UN organs making use of their peace-related competences, the stage of peacemakers, acting as informal groups of states and organisations, and the final stage of the immediate parties, agreeing upon the content of African intrastate peace agreements, as shown below.

In discussing these three stages, the thesis explains that the fact that international law does not govern the form of African intrastate peace agreements, since they are not international treaties or international agreements, does not automatically preclude the relevance or use of international law in their substantive components (content). In understanding international law within African intrastate peace agreements, it is vital to distinguish between the documents themselves, including their status as international treaties, and the use of international law as regards their drafting process, legal basis, and content.

In explaining how international law finds its way to intrastate peace agreements, the sections of this chapter consider the relevant international law provisions against the background of the establishment of peace in the UN era and most notably the post-cold-war era, and related understanding of the consolidation of peace, understood as something more than the absence of armed conflict. Such background developments are concretised by the acts of international organisations urging the parties to find a 'political solution', and the peacemakers facilitating the conclusion of these documents. Those interrelated developments, understood in light of the main object and purpose of African intrastate peace agreements, suggest that these documents, not only reference, but apply international law, an application that is further scrutinised through the lens of the (thematically relevant) self-determination factor of African intrastate peace agreements in subsequent chapters.

2.1 Form and legal status of intrastate peace agreements

Peace agreements are legally binding political compromises. [9] The intention of the parties to be bound by the peace agreements is demonstrated by the explicit mentioning of the binding character of these documents, as well as second-order duties of the parties, which include the (positive) obligation to ensure implementation, by fulfilling all relevant tasks, material or legal (subsequent legislation),[10] and the (negative) obligation not to defeat the object and purpose of the agreements, including the duty to abstain from all acts that could compromise their implementation. Such secondary duties are standard in the overviewed materials. For instance, as regards the Somali peace agreements, the provisions make clear that 'the parties will work with all other relevant Somali stakeholders to ensure the full and effective implementation of this agreement.[11] Moreover, 'to ensure the effective implementation of this Agreement, the Parties agree to 'refrain from declarations and actions inconsistent with the peaceful spirit of this Agreement'.[12]

In the only instance that the validity of a peace treaty (not an intrastate agreement) was challenged on grounds of coercion, the decisive criterion about the existence of a treaty of peace was the consent and the signature of the defeated State as affirmed. Any concerns about unequal treaties were entertained by the fact that 'the inequality of every treaty of peace following a victory exists and is manifested, not in the capacity of the international subjects which conclude it, but rather in the very contents of the treaty'.[13]

[9] See amongst others, Arusha Agreement (2000), Burundi, art. 1, Principles Declaration (2001) DRC, Part II, para 8; Brazzaville Ceasefire (1999) Congo, ch. VII, art. 14; Abidjan Agreement (1996) Sierra-Leone, art 2; Comprehensive Peace agreement (2008) Zimbabwe, art. XXVIII; Darfur Peace Agreement, (2006), ch. 5, art 509, para 2; Doha Framework Agreement (2010) Sudan, art. 32.
[10] See amongst others, Arusha Agreement (2000), Burundi, art. 3; Comprehensive Peace agreement (2008) Zimbabwe, art. XXVIII; Darfur Peace Agreement, (2006), ch. 5, art 509, para 2; Doha Framework Agreement (2010) Sudan, art. 11; (2014) Somalia, art.
[11] Djibouti Agreement (2008), art. 10.
[12] Djibouti Agreement (2008) (Somalia), art. 8, para b.
[13] The Italian-United States Conciliation Commission, Mergé Case—Decision No. 55 of 10 June 1955, (1965) 14 RIAA 236, 241.

In contrast, the International Law Commission, in its fragmentation study has theoretically mentioned the possibility of a potential conflict between the need to uphold the binding force of peace treaties and the principle laid down in Article 52 of the 1969 Vienna Convention ("invalidity in case of coercion of a State by the threat of force"), indicating an example of norm conflict that might not be soluble within the confines of the Vienna Convention.[14] Still, the binding character of African intrastate peace agreements does not seem challengeable, as any type of 'coercion' is,[15] as explained in the following sections, nothing but the result of international actors making use of UN Charter sanctioned powers and related competences in the field of international peace and security, as discussed therein.[16]

When enquiring the relevance of international law for intrastate peace agreements, legal analyses demonstrate some of its limitations, and non-legal approaches tend to be either dismissive, or simply overlooking the law. The latter vary from the realist tradition in international relations, characterising them 'scraps of paper' with 'no independent effect on international behaviour',[17] judging the specific legal or non-legal form on a case-by-case basis. One,[18] compiling lessons learned and proposing guidelines for negotiators, observes that '[u]sually, *political considerations precede legal dimensions* at the initial

[14] 'Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, Report of the Study Group of the International Law Commission' (13 April 2006) UN Doc A/CN.4/L.682., para 167.
[15] A treaty is void, if at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character; art 53 of the 1969 Vienna Convention.
[16] Anthonie Anghie (ed), *The Third World and international order : law, politics, and globalization* (Kluwer 2003), 73, for a critique on economic coercion as part of the context of conlusion of legal documents.
[17] Arguments presented with regard to interstate agreements by Virginia Fortna, 'Scraps of Paper? Agreements and the Durability of Peace' (2003) 57 IO 337, 338.
[18] Peter Wallenstein and Eriksson, *Negotiating Peace: Lessons from Three Comprehensive Peace Agreements*, Report of the Department of Peace and Conflict Research, Uppsala University, <http://www.pcr.uu.se/pcr_doc/other_pub/Negotiating%20Peace.pdf> 31-32 (emphasis added).

stages of negotiations. Legal provisions can often be worked out once violence has stopped'.[19]

When inspecting the UN documents, policy briefs, research papers and related literature, the generic term 'agreement' is standard, while the word 'treaty' is absent. The UN seems to equally prefer the words 'agreement' and 'accord', using them interchangeably. In its relevant papers on the principles and guidelines of Peace Operations, (Capstone Doctrine)[20] ceasefires are referred to as agreements and general peace agreements are referred to either as accords or agreements. The absence of the word treaty indicates they raise issues of form, since the signatories include statal and non-statal parties.

According to Bell, any inquiry into the form of peace agreements, would have to engage in a 'circular exercise of identifying what treaty making power/international legal personality and treaty mean'.[21] Before explaining why African intrastate peace agreements are not international treaties or international agreements, it needs to be clarified that African intrastate peace agreements are not governed by international humanitarian law, but by the law of peace.[22] This is not primarily due to the fact that not all parties to African peace agreements do not possess treaty-making capacity for the purposes of international humanitarian law, which is in itself a serious issue. Rather, it is the result of the overviewed agreements regulating a subject-matter not covered by international humanitarian law, but by the law of peace. Thus, although there could be argued that armed organised groups could possess partial treaty-making capacity for the purposes of international

[19] Wallenstein and Eriksson, *Negotiating Peace: Lessons from Three Comprehensive Peace Agreements*, Report of the Department of Peace and Conflict Research, Uppsala University, 32.
[20]'United Nations Peacekeeping Operations Principles and Guidelines "Capstone Doctrine" (2008). <http://www.peacekeepingbestpractices.unlb.org/Pbps/Library/Capstone_Doctrine_ENG.pdf>
[21] Christine Bell, *On the Law of Peace: Peace agreements and the Lex Pacificatoria* (OUP 2008), chapter 6, 139-141 also, 384.
[22] By the term 'international humanitarian law' 'these two branches of the law applicable in armed conflict have become so closely interrelated that they are considered to have gradually formed one single complex system, known today as international humanitarian law. The provisions of the Additional Protocols of 1977 give expression and attest to the unity and complexity of that law'. Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 8 July 1996, I.C.J. Reports, p. 226, 256.

humanitarian law,[23] that treaty making capacity would not cover all matters regulated by peace agreements.

As this chapter explains throughout its sections, the agreements' primary object and purpose is to establish peace through the regulation of these warring parties' behaviour/conduct. Hence, intrastate peace agreements are not special agreements concluded by armed opposition groups, provided by the by the law of armed conflict, to bring effect to its provisions, and ensure IHL compliance.[24] Rather, they seek to replace IHL application with the law of peace.

Beginning with the immediate parties, this part focuses on the former warring parties concluding the agreements and their diversity in terms of their international legal status, and related rights and obligations. For the research, the immediate parties are the former warring parties, the parties to the conflict/crisis the agreement is supposed to be regulating.

The term 'former warring parties' does in no circumstance mean that there is a 'war' (or armed conflict) preceding all African intrastate peace agreements. As the well-known definition of armed conflict in the *Tadić* case reminds: '[A]n armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and *organized* armed groups or between such groups within a State' [25] Two are the decisive criteria: intensive and protracted violence. As regards

[23] Jan Kleffner, 'The Applicability of International Humanitarian Law to Organized Armed Groups' (2011) 93 Intl Rev Red Cross 443.

[24] Convention (I) for the Amelioration of the Condition for the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 12 Aug. 1949, entered into force in 21 Oct. 1950; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Arrmed Forces at Sea (Second Geneva Convention); Geneva Convention (III) relative to the Treatment of Prisoners of War (Third Convention); Convention (IV) relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention); According to Common Article 3 to these four Geneva Conventions, 'the Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.'

[25] See Prosecutor v Tadic ICTY (appeals chamber), Case No IO-94-1-AR72 Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para.30; see Mary Ellen O'Connell, 'Defining Armed Conflict' (2008) 13(3) J Conflict and Sec L 393-400; Mary Ellen O'Connell (ed), What is War? (Brill 2012); the ICC confirming that the Rome statute does not define 'armed conflict' and accepting the Tadic criterion; see ICC Prosecutor v Bemba Gombo (Bemba Gombo Trial

organised armed groups, the same UN tribunal in its Boskoski case stated that a group would need to have 'some hierarchical structure' and that as a minimum, the group must be able to implement the basic obligations of Common Article 3. It added five elements that could help identify the degree of organization of an armed group (the existence of a command structure, the fact that the group could carry out operations in an organised manner, a level of sophistication with respect to logistics, the existence of internal discipline; and the ability of the entity in question to speak with 'one voice').[26]

A typical African peace agreement is not necessarily concluded between a government and an organised armed group under the notion of Common Article 3 of the 1949 Geneva Conventions, or the Second Additional Protocol to the 1949 Geneva Conventions.[27] Certainly, some agreements have been concluded between a government and an armed group; these include the Angolan peace agreements;[28] in Burundi, the Dar-Es-Salaam Ceasefire;[29] in Rwanda, the Arusha agreement and its five related protocols;[30] in Sierra Leone, the Lomé Agreement.[31] The peace agreements in Liberia, following a multi-partied renewed conflict have been concluded between three major parties, the government and two armed movements.[32]

Judgment), Judgment, 21 March 2016, para 128;Prosecutor v Thomas Lubanga Dyilo ICC-01/04-01/06, Judgment, 14 March 2012 (Lubanga Trial Judgment), para 531.

[26] Prosecutor v Boskoski, Judgment, Trial Chamber, ICTY (Case No IT-04-82-T) 10 July 2008, para. 195 ff.

[27] See Protocol Additional to the Geneva Convention of 12 August 1949, Relating to the Protection of Victims of International Armed Conflicts (Additional Protocol II), 12 December 1977, 1125. UNTS 3, art. I (4); Common Article 3 of the 1949 Geneva Conventions.

[28] See the Bicesse Accords (1991) and the Lusaka Protocol (1994) signed between the Government of the Republic of Angola and UNITA, the Luanda Protocol (1999) and the Luena Agreement (2002) (signed between the Government of Angola and UNITA Renovada.

[29] See Dar-Es-Salaam Ceasefire (2006) signed between the transitional Government of Burundi and the FNL/Palipehutu.

[30] See Arusha Agreement (1993), Power sharing Protocol (1993), Rule of Law Protocol (1992), the Armed Forces Protocol (1993), IDPs Protocol (1993) and Miscellaneous Issues Protocol (1993) signed between the Government of the Republic of Rwanda and the Rwandese Patriotic Front (RPF).

[31] See Lomé Peace Agreement (Sierra Leone) (1999) signed between the Government and the Revolutionary United Front (RUF).

[32] See the Accra Ceasefire (2003) and the Accra Agreement (2003) concluded between between the Government of the Republic of Liberia, the Liberians United for Reconciliation and Democracy, (LURD) the Movement of Democracy in Liberia (MODEL) and the Political Parties.

In the cases of Sudan and Angola the armed opposition groups, SPLM/A and UNITA/UNITA Renovada respectively, would also meet the stricter criteria of an armed group under Common article 3. However, the peace agreements concluded in Djibouti,[33] in Ethiopia,[34] in Kenya,[35] and in Zimbabwe[36] to mention a few examples are not, since the non-statal signatories cannot be considered armed organised groups, capable of concluding special agreements, to observe humanitarian law.

This is because, African intrastate peace agreements have been concluded in the aftermath of post-electoral violence between the government and the opposition. For instance, the two agreements in Zimbabwe were concluded between the Zimbabwe National Union Patriotic Front (ZANU) (government) and the Movement for Democratic Change (MDC).[37] The five Kenyan agreements of 2008 were concluded between (PNU), (Government) and the (ODM; [38] and of course, not to underestimate the complexity of immediate parties, one needs to take into account examples of agreements concluded in Côte d'Ivoire, Burundi and DRC: the agreements in these countries have been signed by a mixture of actors including political forces and political parties in addition to traditional armed groups.[39]

[33] See Peace and Reconciliation Agreement (1994), Framework Reform Agreement (2000) and Reform Agreement (2001).
[34] Reform Agreement (1993), listed by INCORE.
[35] See the Public Statement (2008), Acting together for Kenya (2008), Kenyan Dialogue/Reconciliation –TRC (2008), Kenyan Dialogue/Reconciliation-Review (2008), Kenyan Dialogue/Reconciliation-Principles (2008).
[36] See the ZANU-MDC Memorandum (2008) and the Comprehensive Peace Agreement (2008).
[37] See the ZANU-MDC Memorandum (2008) and the Comprehensive Peace Agreement (2008) concluded between the Zimbabwe African National Union-Patriotic Front (ZANU) and the two Movement for Democratic Change (MDC) Formations on Resolving the Challenges Facing Zimbabwe.
[38] See the Public Statement (2008); Acting together for Kenya (2008), Kenyan Dialogue/Reconciliation–TRC (2008), Kenyan Dialogue/Reconiliation-Review(2008), Kenyan Dialogue/Reconciliation-Principles (2008) concluded between the Party of the National Unity (PNU) and the Orange Democratic Movement (ODM).
[39] See the Arusha Agreement (Burundi) (2000), signed by 'Parti Socialiste et Panafricaniste' (INKINZO), The 'Parti pour le Redressement National' (PARENA), the 'Parti Indépendant des Travailleurs' (PIT), the 'Parti Libéral' (PL), the 'Parti du Peuple' (PP), the 'Parti pour la Economique et Social (RADDES), the 'Rassemblement du Peuple Burundais' (RPB) and the 'Union pour le Progrès National' (UPRONA) in addition to the government and the armed forces; see also the Linas-Marcoussis Agreement (Côte d'Ivoire) (2003) signed by Ivorian 'political forces', namely FPI, MFA, MJP, MPCI, MPIGO, PDCI-RDA, PIT, RDR, UDCY and UDPCI; see also the Pretoria Agreement (DRC) (2002), the Sun-City (2003) Agreement, The North and South Kivu Agreements (2008), signed also by a group of parties listed under the heading 'unarmed opposition', in addition to 'armed forces'; see Table II-African Intrastate peace agreements.

This is why research that extensively relies on preceding situations, substitutes the legal categories of armed conflict with the 'military violent conflict' term, classified by the widely accepted Uppsala (political science) definition, which evaluates the situations in quantitative terms and distinguishes three types of violence: armed conflict, non-state violence and one-sided violence.[40] 'Armed conflict' is furthermore divided into war and minor conflict: war is an armed conflict that reaches the threshold of more than a thousand battle-related deaths per year, whereas the rest are classified as minor conflicts.[41] As the director of the programme explains, the most important criterion is the political character of the fight, the 'incompatibility', understood as disagreement over territory or government.[42]

Factually speaking, not all African parties to peace agreements could qualify as organised armed groups. Most importantly however, the point of humanitarian law is to independently govern *jus in bello*, irrespective of the start and the end of 'bellum'. Just as the start of armed conflict is a matter of the law of peace, the end is equally a matter of the law of peace.

Peace transitions, might seem a grey normative area[43] between the cessation of hostilities and the post-conflict setting within which the peace agreements are implemented and/or altered, a theme partially touched upon by the current discussion on *jus post bellum*.[44]

[40] The 'Uppsala definition' of armed conflict reads as: a contested incompatibility that concerns government and/or territory where the use of armed force between the two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths in one calendar year. For a further explanation battle-related deaths are defined as: conflict behavior between warring parties in the conflict dyad, which is directly related to the incompatibility i.e. carried out with the purpose of realizing the goal of the incompatibility and results in deaths < www.pcr.uu.se/research/UCDP/data_and_publications/definitions_all.htm#peaceagr>
[41] <http://www.pcr.uu.se/research/UCDP/data_and_publications/definitions_all.htm#peaceagr>.
[42] Interview with Peter Wallenstein, (2009) 91 No. 873 IRRC 7-19, 10.
[43]Antonia Chayes, 'Chapter VII½: Is Jus Post Bellum Possible?' 24 (2013) EJIL, 304-305.
[44] On the idea of *jus post bellum* as a concept see for instance, Francisco Suarez, "The Three Theological Virtues," Disputation XIII, in: Selections From Three Works, ed. G. L. Williams, A. Brown, and J. Waldon, Classics of International Law, Vol. 2, ed. James Brown Scott (Clarendon Press 1944), 836; Carsten Stahn and Jan Kleffner (eds), *Jus post bellum* (TMC Asser Press 2008); Inge Osterdahl and Esther van Zadel, 'What Will Jus Post Bellum Mean? Of New Wine and Old Bottles' (2009) 14 J of Conflct and Sec L14 (2009) 175, 205-207.

The study, though not necessary in agreement with the conclusions of the literature on *jus post bellum*, makes note of its two observations: the fragility of the on-the-ground situation, with patterns of instability common in these situations; secondly, the uncertainty and potential overlapping of applicable legal rules, though this not necessarily needing to be resolved de *lege ferenda* by reforming these rules or by envisaging a body of law (either jus post bellum or jus ex bello[45]) as the continuation or part of humanitarian law.

This argument should not be blurred with any possible reference to international humanitarian law, either in preambular provisions, or in ceasefire provisions of peace agreements. Such provisions that are to be observed by the signatory, are thus not indicative of the applicability of this branch of international law, rather the opposite (the exception). In these cases, unless the agreement lists all relevant international standards *en bloc*, the inclusion of humanitarian law references rather extends their application through the post-conflict stage, whilst possibly implicitly indicating that these might have applied to a degree in the preceding situation. It does not cover the main subject-matter regulated by these agreements, which is not the formal ending of violence, but the establishment of peace by political means, as shown later herein. If that is the case, then these immediate parties to these agreements, only, acknowledge in the document, that they are and have been previously bound by humanitarian law provisions on the conduct of hostilities, which is independent of the subject-matter of the peace agreement. Therefore, such provisions could be said to be of limited guidance regarding the warring parties' capacity to terminate these hostilities not only laying down arms, but also, concluding an agreement on the (limited task) of the cessation of hostilities.

Intrastate peace agreements are neither international treaties nor international agreements. They seem to fall outside the scope of the 1969 Vienna Convention.[46]

[45] Darrel Moellendorf, 'Two Doctrines of Jus ex Bello' (2015) 125 (3) Ethics, 653-673.
[46] Vienna Convention on the Law of Treaties, (n 8).

According to Art.2 of the 1969 Vienna Convention, an international treaty is 'an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.'[47] Consequently, only interstate peace agreements would *prima facie* qualify as 'treaties', provided they meet the other requirements of the said Convention.

Still, the inquiry into their legal nature would be far from exhausted, since this definition is solely for the purposes of the 1969 Vienna Convention.[48] Its narrow definition does not prejudice the status of other agreements between states and other subjects of international law, or between those subjects. As art. 3 of the 1969 Vienna Convention stipulates: 'The fact that the present articles do not relate: (a) To international agreements concluded between States and other subjects of international law or between such other subjects of international law; […] shall not affect the legal force of such agreements or the application to them of any of the rules set forth in the present articles to which they would be subject independently of these articles.'[49] The International Law Commission, in its relevant commentary, stresses that such strict definition shall not give the impression that treaties between states and other subjects of international law, such as international organisations, should fall beyond the purview of the 'law of treaties'.[50] The term 'other subjects of international law' is used in plural in both the text of the Convention and in the ILC commentary. International organisations are mentioned in the ILC commentary as one example of other subjects of international law.

Begging questions include whether signatories could qualify as 'other subjects of international law'. Such legal controversy arose in relation the agreement between Israel and the Palestine Liberation Organisation (PLO), which, contrary to African peace

[47] Vienna Convention on the Law of Treaties, Art. 2 (a).
[48] Vienna Convention on the Law of Treaties, Art. 2.
[49] Vienna Convention on the Law of Treaties, Art. 3.
[50] Commentary on art. 3, Yearbook of the 18th session of the ILC, vol.2, A/CN.4/SER. A/1966/Add. 1, <http://untreaty.un.org/ilc/texts/instruments/english/commentaries/1_1_1966.pdf>

agreement signatories was considered a national liberation movement. After the conclusion of the Oslo Accords,[51] scholars debated whether they constituted international instruments. One argument, in doubt, focused on the status of PLO in international law and its lack of statehood.[52] This concern was raised for PLO, an entity that had been recognised as a national liberation movement with the right to self-determination,[53] and in practice seems to have acquired the status of a 'partial subject of international law'.[54]

However, one cannot apply such argument for any other peace agreements other than those concluded after armed conflicts, which have been recognised as self-determination struggles, prior to their conclusion, such as the Western Saharan agreements, not included in the research sample. Only these, might, especially their peace and security part, possess elements akin to an international treaty concluded between other subjects of international law and governed by general international law, in the sense of art. 3 of the 1969 Vienna Convention, as both subjects of an armed conflict under Additional Protocol I could be said to have at least some limited treaty-making capacity to conclude treaties terminating the hostilities.[55]

Such arguments are thus inapplicable to the sample of African intrastate peace agreements, understood here as national documents. In the words of the Special Court of Sierra Leone, when asked to consider the legal nature of the Lomé peace agreement, the fact that the 'Agreement is neither a treaty nor an agreement in the nature of a treaty' does not preclude its ability to create 'binding obligations and rights between the parties to the agreement in municipal law. The consequence of its not being a treaty or an

[51] Declaration of Principles on Interim Self-Government Arrangements, 13 September 1993
[52]Katherine W. Meighan, 'The Israel-PLO Declaration of Principles: Prelude to a Peace?' (1994) 34 (2) VJIL 435, 451-453 and Yehuda Z. Blum, 'From Camp David to Oslo' (1994) 28 Israel L Rev 211, 213; contra Geoffrey R. Watson, *the Oslo Accords and International Law* (OUP 2000); Eyal Benvenisti, 'The Israel-Palestinian Declaration of Principles: A Framework for Future Settlement' (1993) 4 EJIL 541, 544; Steven Quingley, 'The PLO-Israeli Peace Agreements: are they Treaties?' (1997) 30 Corn ILJ 717.
[53] Art. 1, para 4 of Additional Protocol I.
[54] See Antonio Cassese, *International Law* (2nd edn, OUP 2005).
[55]See, Scott P. Sheeran, 'International Law, Peace Agreements and Self-Determination:The Case of the Sudan' (2011) 60(2) ICLQ 423.

agreement in the nature of a treaty is that it does not create an obligation in international law.[56]

Secondly, bearing in mind that peace agreements address both conflicts and crises, the corresponding signatory parties could possess varying (differing) degrees of international legal personality. But even if limiting the inquiry into that special category of immediate parties bearing a limited international legal personality, matters would remain complicated by the fact the legal personality before signing the agreements and the signing itself as recognition of their treaty-making capacity are quite circular,[57] but also dependent on recognition of non-state actors.[58] The ambiguities are the result of not only 'the current regulation of the conditions for insurgents to acquire international legal personality is rather unclear, but also because 'states prefer to treat insurgency as a domestic occurrence'.[59]

Two strands of arguments have been put forward. Cassese considers insurgents state-like subjects for they exhibit all the major features of states, but that subjectivity is limited, because of their provisional, transient character and their limited capacity (limited rights and duties, and association with a limited number of states, i.e. those who recognise them). This argument is based on analogous application of third party provisions of the Vienna Convention.[60]

A differentiated argument is premised upon the organised armed groups being international law addressees in acts of international organisations, and thus tacitly recognised to be possessing treaty-making capacity. In some instances, parties to a conflict are addressed by the UN: examples include the Tamil Tigers, controlling territory,

[56] Prosecutor v Kallon and Kamara (Decision on Challenge to Jurisdiction: Lomé Accord Amnesty) SCSL-2004-15-AR72(E) and SCSL-2004-15-AR72(E) (13 March 2004), para 49.
[57] For the right to enter into international engagements as an attribute of state sovereignty see The Wimbledon case, PCIJ Ser. A, I, 25.
[58] See the debate on its declarative or constitutive nature in V.D. Anzilotti, Cours de droit international (1929, reed. P.-M. Dupuy and C. Leben, 1999) and Hans Blix, 'Contemporary Aspects of Recognition', 130 RCADI (1970) 587.
[59] Antonio Cassese, *International Law* (2nd edn, OUP 2005), 125.
[60] Cassese, ibid, 130.

or in the PLO Oslo Accords, the PLO, who has been previously recognised as possessing international legal personality; if not recognised or addressed as a duty-bearer, the SNC and Cambodia Paris agreements.[61] The fact that the Security Council has addressed the African parties after the conclusion of agreements in the DRC[62] and Sudan,[63] and in other instances[64] cannot be considered as a strong argument to support their treaty making capacity: these actors have been addressed after the conclusion of intrastate peace agreements, and under the peace and security competence exercised by the Security Council , acting under chapter VII of the UN Charter.

In one of the few instances, the International Court of Justice referred to the Dayton Peace Agreement. Responding to Yugoslavia's (Serbia) preliminary objections that the president of Bosnia and Herzegovina Alija Izetbegovic could not file and application and institute proceedings in the Genocide Case, the Court used his participation and signature in the Dayton-Paris agreements as evidence of his recognition by the UN as head of state. As a result, Alija Izetbegovic was presumed to be able to act on behalf of the State in international relations, per the 1969 Vienna Convention provision. [65] According to international law, there is no doubt that every Head of State is presumed to be able to act on behalf of the State in its international relations.[66] Instead of pronouncing upon any issues of legal personality, the Court, thus satisfied itself with the criterion of recognition,

[61] Steven R. Ratner, 'The Cambodia Settlement Agreements' (1993) 87 AJIL 1, 10.
[62] S/Res/1332 (2000) after the conclusion of Lusaka Ceasefire (1999) and its domestic counterpart (Principles Declaration) (2000); see also, S/Res/1376 (2001); PRST/2008/2 (30 January 2008) after the conclusion of North Kivu Pledge and South Kivu Pledge (2008).
[63] S/PRST/2005/67 21 December 2005.
[64] DRC [S/Res/1291 (1998)], addressing 'parties to the conflict; [S/1181 (1998)], addressing all factions and forces; DRC 1234/1999 5 April; Liberia [S/Res/1001 (1995)]; Rwanda S/Res/912/918; Angola 864/1993, S/Res/1127 (1997), post Lusaka; Cote d'Ivoire S/Res/1528 (2004) and S/Res/1572 (2004) after the conclusion of Linas-Marcoussis Agreement; (Burundi), 1556/2004, 1593/2009, 1778 of 2007.
[65] Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia) Preliminary Objections, Judgment, 11 July 1996, I.C.J. Reports 1995, p. 595, 621-622, para 44.
[66] 1969 Vienna Convention on the Law of Treaties, Art. 7, para. 2 (a).

evidenced through the invitation to participate in a peace process and the signature of its related documents.

A third argument that could be made with respect to the fact that the Security Council might be endorsing or circulating a peace agreement, as done with documents in relation to Angola [67] Burundi, [68] CAR, [69] Côte d'Ivoire, [70] DRC, [71] Guinea-Bissau, [72] Liberia, [73] Mozambique,[74] Rwanda,[75] Sierra Leone,[76]Somalia[77], and Sudan.[78] However, this does not automatically alter the form of these agreements, thus, 'transforming' them into international agreements. The same applies in relation to similar endorsements under other international (regional and sub-regional) organisations.

All these considered, though some of the aforementioned arguments might be debatable for a few intrastate agreements, they cannot substantiate a sound conclusion that the materials sampled here are special agreements for ensuring compliance with humanitarian law, or governed by humanitarian law in full. This becomes evident, when these agreements are scrutinised in terms of the needs they address: intrastate peace agreements aim to bind immediate parties, so as to give up violence *in lieu* of a political solution to the conflict. Intrastate peace agreements thus seek to constrain and protect these parties, all operating within a single state, primarily at the national level, rather than

[67] Bicesse Accords (1991), S/1991/22609; Lusaka Protocol (1994) S/1994/1441; Luanda Protocol (1999) S/1999/268; Luena Agreement (2002) S/2002/483.
[68] Pretoria Protocol (2003) S/2003/971; Global Ceasefire Agreement (2003) S/2003/1105.
[69] Preliminary Agreement on National Reconciliation Pact (1997) and Bangui Accords (1997) S/1997/561; National Reconciliation Pact (1998)
[70] Linas-Marcoussis Agreement (2003) S/2003/99; Armed Forces Joint Declaration (2003) S/2003/704; Pretoria I Agreement (2005) S/2005/270.
[71] Fundamental Principles Declaration (2001) S/2001/466.
[72] Abuja Accord (1998) S/1998/825; Abuja Protocol (1998) S/1998/1025.
[73] Cotonou Agreement (1993) S/26272 (1993); Akosombo Agreement (1994) S/1994/1174; Accra Clarification (1994) S/995/7; Abuja Accord (1995) S/1995/742; Accra Ceasefire (2003) S/2003/657; Accra Agreement (2003) S/2003/850.
[74] General Peace Agreement (1992) S/24636 (1992).
[75] Arusha Accord (1993), Rule of Law Protocol (1992), Power-sharing Protocol (1993), Refugee/IDP Protocol (1993), Armed Forces Protocol (1993), Miscellaneous Issues Protocol (1993), S/26915. (The Arusha Accord and the five said protocols have also been circulated through the UN General Assembly as well, see A/48/824).
[76]Abidjan Peace Agreement (1996) S/1996/1034; Conakry Peace Plan (1997) S/1997/824; Lomé Ceasefire (1999) S/1999/585.
[77] Eldoret Ceasefire (2002) S/2002/1359.
[78] Declaration on the Conclusion of IGAD Negotiations on Peace in the Sudan (2004) S/2004/1574.

at the international level. Any internationalisation of the agreements, does not make any logical sense.

2.2 Establishing peace in the UN era

What we seek to protect reflects what we value. The Charter of the United Nations seeks to protect all States, not because they are intrinsically good but because they are necessary to achieve the dignity, justice, worth and safety of their citizens.[79]

Intrastate peace agreements are documents intended to establish peace, hinting also that the establishment, or as termed elsewhere, the consolidation of peace, is neither straightforward nor the reverse or the (mere) absence of conflict. It is thus important to the understanding of peace in international law, considering the universal approaches to establishing peace, but looking at recent UN practice, including its related post-cold-war peacebuilding policy.[80]

2.2.1 Peace at the universal (UN) level

For the discipline of international law, peace could be said to constitute a riddle, not only being conceptually difficult to grasp, but also having different legal facets. Naturally, the starting point of modern international law is the rejection (outlawry) of war, which has been crystallised in the UN Charter.[81] The UN Charter did not just outlaw war, by prohibiting the use of force between states as general rule.[82] The establishment and maintenance of international peace and security became the *raison d'être* of the United

[79]'A More Secure World: Our Shared Responsibility', Report of the High-level Panel on Threats Challenges and Change, hereinafter 'A more secure world report', 2 December 2004, UN Doc A/59/565, para 30.
[80] Report of the Secretary General, *An Agenda for Peace, Preventive Diplomacy Peacemaking and Peacekeeping*, 18 December 1992, A/RES/47/120, para. 21.
[81] United Nations, Charter of the United Nations, signed at San Francisco on 26 June 1945, entered force 24 October 1945, 1 UNTS XVI, hereinafter 'UN Charter'.
[82] Art 2(4) UN Charter (with the exceptions on self-defence (art 53), and authorised Security Council action (ch VII, in particular).

Nations legal order, and thus, the attainment of peace the primary purpose of the UN Charter.[83]

In explaining the relationship between the four main purposes of the organisation as set forth in article 1 of the UN Charter, the International Court of Justice admitted that 'the primary place ascribed to international peace and security is natural, since the fulfilment of the other purposes will be dependent upon the attainment of that basic condition.'[84]

Peace in international law is articulated at different levels, so that in fact, peace seems to be a value, a legal principle, and arguably a right.[85] Its importance is not limited to its varying legal degrees of protection, but is also reflected in the related competences of principal UN organs, including the Security Council, the UN General Assembly,[86] and the powers of the Secretary-General as well.[87] The competences of UN organs in relation to peace are situated within the dichotomy between chapter VI, which regulates the pacific settlement of disputes, and chapter VII, concerning threats to international peace and security, and related interpretation of said articles.

In exercising its competence for peace, the Security Council has led the UN to espouse (to a degree) the idea that international law does not limit itself to interstate relationships, but pierces through the sovereignty veil of the state, when situations create a threat to

[83] Art 1(1) UN Charter; The first of the four listed purposed of the UN is '(t)o maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and inconformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace'.
[84] Certain expenses of the United Nations (Article 17, paragraph 2, of the UN Charter), Advisory Opinion, 20 July 1962, I.C.J. Reports 1962, p.151, pp.167-168.
[85] Arts 98-99 UN Charter.
[86] See arts. 10, 11, paras 2-3, 14 (competence), 12, 18 para 2 (two-third majority voting required for relevant decisions), 22 (capacity to establish subsidiary organs, such as the Peacebuilding Commission) UN Charter.
[87] See arts. 98-99 UN Charter; for a history of the Secretariat and the role of the six Secretaries (excluding Ban Ki-Moon and António Guterres) in mediation, see *The Secretariat (1946-2006)* (USIP 2006); also, Bertrand Ramcharan, *The Use of Good Offices of the Secretary General* (Martinus Nijhoff 2003).

peace and security.[88] To this end, the Security Council has been increasingly involved in civil conflicts, making use of its chapter VII powers.[89] The UN has been addressing internal situations under chapter VII during the Cold War. However, the increasing use of chapter VII powers for internal situations has been manifested in the post-Cold War era.[90] This expansion has taken place by the interpretation of the term 'threat to peace' and the situations it entails, calling for action under the Charter's chapter VII.[91]

As a result, it is generally accepted that internal situations can, under specific circumstances pose a threat to international peace and security.[92] As observed by commentators, the Security Council has 'consistently taken a wide view of the phrase "threat to international peace and security" under art. 39'.[93] Although the Security Council is consistent in abandoning a strict literal interpretation of the UN Charter and in particular the wording of art. 39, it does not seem to have been equally consistent in qualifying situations of internal conflict under art. 39.[94] Consistent or not, the Security Council has used its power to authoritatively interpret the notion of 'threat to peace, or breach of the peace', effectively expanding vastly its activity'.[95]

Whilst in the Cold War, instead of verbal condemnation, admonition, economic sanctions, and enforcement measures, 'at times, when the political will did not exist, the UN resorted to procrastination or simply benign neglect',[96] in the post-Cold War era, the Security

[88] For an analysis of early UN Security Council resolutions on the observance of Human Rights during civil strife, see Hilaire McCoubrey and Nigel D. White, *International Organizations and Civil Wars* (Dartmouth Press 1995), ch. 10.
[89] Alexander Orakhelashvili, 'The Power of the UN Security Council to Determine the Existence of a 'Threat to Peace', (2006) 1 IYIL 61-100.
[90] Causes of Conflict in Africa and Promotion of Peace and sustainable development 20 July 210 Report of the UN Secretary-General, UN Document, A/65152/-S2010/526, para 101.
[91] For the difference between danger (chapter VI of the UN Charter) and threat to peace (chapter VII) see Nigel D. White, *Keeping the Peace* (MUP 1993), 38-48.
[92] Karel Wellens, 'Threat to Peace Back to the Future (2003) 8 (1) J Conflict Sec L, 15, with further references.
[93]Christine Gray, *International Law and the Use of Force* (3d edn, OUP 2008), 257, with further references.
[94] Karel Wellens op.cit 92, with further references.
[95] Christine Gray, *International Law and The Use of Force* (3d edn, OUP 2008), 326.
[96]With reference to Namibia, Kampuchea (todays Cambodia), Afghanistan and Kasmir, see Nabin Elaraby, 'Preventive Diplomacy, Peacemaking and Peacekeeping in the Context of International Law' in Nandasiri Jasentuliyana (ed), *Perspectives on International Law* (Kluwer Law International 1995), 314.

Council has addressed the internal situations of Liberia, Angola, Rwanda, Burundi, Zaire (today's DRC), Albania, CAR, Sierra Leone, and East Timor, by qualifying those internal situations as threats to international peace and security, either them as such, or, whilst relying upon their cross-border consequences and their destabilising effect in the respective regions.[97]

Obviously, the Security Council has primary but not exclusive competence for peace. In the words of the International Court of Justice, '[u]nder Article 24 of the Charter the Security Council has "primary responsibility for the maintenance of international peace and security". In that regard it can impose on States "an explicit obligation of compliance if for example it issues an order or command . . . under Chapter VII" and can, to that end, "require enforcement by coercive action". However, the Court would emphasize that Article 24 refers to a *primary, but not necessarily exclusive, competence*. The General Assembly does have the power, inter alia, under Article 14 of the Charter, to "recommend measures for the peaceful adjustment" of various situations.'[98]

In line with the Court's pronunciation, the General Assembly has also made use of its competence not only to make specific recommendations, but to champion the right of peoples to peace at the universal level, estimating that such proclamation would contribute to the efforts aimed at the strengthening of international peace and security. To this end, it adopted the Declaration on the Right of Peoples to Peace, proclaiming '*that the peoples of our planet have a sacred right to peace'*. It also declared '*that the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of each State*'.[99] Drawing upon this series of General Assembly resolutions, the

[97] Jochen Frowein and Nico Krisch 'Art. 39', in Bruno Simma (ed), *The Charter of the United Nations: A Commentary* (2nd edn, OUP 2002), 723-724 with further references.
[98]Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I. C. J. Reports 1962, p. 163, para 26.
[99] General Assembly Resolution A/RES/39/11 of 12 November 1984, paras 1-2, subsequently reaffirmed in resolutions A/RES/57/216 of 18 December 2002, paras 1-2, A/RES/60/163 of 16 December 2005, paras 3 and 7; for the iteration of the right as a prerequisite for a democratic and equitable international order A/RES/63/189 of 18 December 2008, paras 4(d) and 8; (the section

Human Rights Council has increasingly been focusing on the right to peace and adopted a resolution on the promotion of the peoples' right to peace, [100] the content of which needs to be further looked into.[101] Despite its contested status, the right is consistently conceived as a collective right of all peoples similar to other third generation rights, like self-determination and the right to development, albeit not included in all standard human rights textbooks.[102]

It is questionable however, what the corresponding duty to protect and promote peace and related international engagement in the consolidation of peace through peacemaking and subsequent peacebuilding would be. That could be envisaged as an inferred general commitment that would require 'negotiated solutions', in the style of Woodrow Wilson's aspiration for 'open covenants of peace openly arrived at'.[103] That would be quite a self-evident prescription for a peace agreement, since peace agreements are produced through negotiations of some short.[104]

Any discussion on the extent of corresponding duties and their bearers would currently remain at a *lege ferenda* stage: perhaps an obligation to preserve the collective right of all peoples to peace could trigger a positive duty of its duty-bearer (members of the international community) to promote peace in the form of consistent engagement or support for peace negotiations and (financial) support for their successful implementation.

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also excludes UNESCO soft law, referring to the right to peace slightly differently as both an individual and collective right also in relation to development and self-determination).

[100] UN Human Rights Council, *Promotion of the right of peoples to peace*, 30 June 2010, A/HRC/RES/14/3, (31-1-14), 11th session 31-1-14; also HRC Res 20/15 of 5 July 2012 and A/HRC 17/39 of 1 April 2011.

[101] Conclusions of the Expert Workshop, para 9 (a) <http://www2.ohchr.org/english/issues/rule_of_law/workshop/index.htm>

[102] Daniel Moeckli, Sangheeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (3d edn, OUP 2017); Alston however includes it in the so-called group rights; The right is listed alongside self-determination, the right to development, the right to environment, the right to existence, minority rights and indigenous people's rights Philip Alston, 'Introduction' in Philip Alston (ed), *People's Rights: Collected Courses of the Academy of European Law* (OUP 2001), 1-2; also, Christian Tomuschat, *Human Rights: Between Idealism and Realism* (3d edn, OUP 2014), 150-151; Nsongurua J. Udombana, 'The right to a peaceful world order' in Mashood Baderin and Manisuli Ssenionjo*, International Human Rights: Sixty Years after the UDHR and beyond* (Ashgate 2013), 137-155.

[103]Address of President Wilson delivered at Mount Vernon, 4 July 1918 Wilson, Woodrow, 1856-1924. Washington [Govt. print. off.] 1918, 4-5. Fourteen Points, point i.

[104]For the 'composite right to peace' see, Theo Van Boven, 'Rights', in Daniel Moeckli, Sangheeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (3d edn, OUP 2017), 147.

In absence of such prescriptions that could regulate the content of intrastate peace agreements not only the General Assembly but the pronouncements of the Secretaries-General are equally important, in showing the underlying understandings that have made way into the peace processes via the peacemakers and the related intrastate peace agreements. The increasing expansion of the UN activities has been consistently advocated by the Organisation's recent Secretaries-General, from Boutros Boutros-Ghali's use of the term 'peacebuilding' in the Agenda for peace,[105] to Kofi Annan's understanding of intervention arising out of the concept of two sovereignties (state sovereignty and popular sovereignty), leading to Ban Ki-Moon's concept of human protection.[106]

This statement has built-upon the 'Agenda for Peace' clearly states that 'through agreements ending civil strife, these may include disarming the previously warring parties and the restoration of order, the custody and possible destruction of weapons, repatriating refugees, advisory and training support for security personnel, monitoring elections, advancing efforts to protect human rights, reforming or strengthening governmental institutions and promoting formal and informal processes of political participation.[107]

Beside UN organs, regional and sub-regional organisations, such as the AU are also competent in the field of dispute-settlement, per their own constitutive documents, as shown in the previous chapter, in addition to their 'dispute resolution' type of rights or obligations arising out of the UN Charter.[108] The cumulation of competences often becomes

[105] 'An Agenda for Peace, Preventive Diplomacy, peacemaking and peace-keeping', Report of the Secretary-General, A/47/277-S/24111, 17 June 1992, paras 21, 55-59.

[106] 'Human protection is a subset of the more encompassing concept of human security', used in the context of and reflected in 'broader Ban-Ki Moon, 'Human Protection and the 21st Century United Nations' Cyril Foster Lecture 2011 delivered at Oxford University, 2 February 2011, <www.un.org/apps/news/infocus/sgspeeches/search_full.asp?statID=1064>

[107] 'An Agenda for Peace, Preventive Diplomacy, peacemaking and peace-keeping', Report of the Secretary-General, A/47/277-S/24111, 17 June 1992, para 55.

[108] See the detailed obligations of the ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security (2001), and the ECOWAS Conflict Prevention Framework, adopted at Ouagadougou on 16 January 2008, Regulation MSC/REG.1/01/08; for the SADC conflict resolution protocol see 'Protocol on Politics, Defence and Security Co-operation, signed on 14 August 2001, entered force 2 March 2004, esp. arts 11(1)c, (2)b,(4),15, <www.sadc.int/files/3613/5292/8367/Protocol_on_Politics_Defence_and_Security20001.pdf>; in

a source of confusion, if not bickering, between international organisation s and their respective bodies. This is the result of a dormant antagonism between the regional actors and the universal one, which is reflected in the division of competences between the UN and regional organisations. [109]

Besides self-defence that does not concern this work, regional organisations are competent for two types of action: enforcement and peaceful settlement of disputes.[110] With regards to the first, the requirement of authorisation makes it clear that the original idea was that regional organisations were to be subordinate to the UN; if the system of collective security was to be effective the monopoly of the 'policing powers of the Security Council' was to be preserved. [111] This has been described as 'functional federalism' [112] or constitutional subordination.[113] With regards to peaceful settlement of disputes, there has been an attempt to talk about a complementarity regime.[114] There was supposed to be a division of tasks amongst UN and regional organisations. However, as practice shows, regional organisations have been constantly challenging the primacy of UN, as did the ECOWAS in Liberia[115] and in Sierra Leone.[116] Art. 53 authorisation has been interpreted in a way that implicit or tacit authorisation would be sufficient, as well as ex-post facto endorsement.[117] Some writers have even assumed that there has been an emerging right of regional organisations to independently undertake enforcement action according to their own

general, see arts. 53, 54 (Chapter VIII), 103 of the UN Charter on the relationship between the UN and regional organisations.

[109]Waldemar Hummer & Schweitzer, 'Article 52', in Bruno Simma (ed), *The Charter of the United Nations. A Commentary* (OUP 1995), 683-722.

[110] Arts. 53 and 54 UN Charter respectively.

[111] Hans Kelsen, *The Law of the United Nations A Critical Analysis of Its Fundamental Problems (*Praeger 1950), 651.

[112] Alain Pellet, *Droit International Public* (7th edn, L.G.D.G. 2002), 1009.

[113] Nigel D. White, *Keeping the Peace* (MUP 1993), 231.

[114] See art. 52 paras 2-3 of the UN Charter 2.The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve *pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council*. (emphasis added)

[115] Christine Gray, *International Law and the Use of Force* (3d edn, OUP 2008), 403-405, 411-415.

[116]Christine Gray, ibid, 400-402, 418-419.

[117] Zusanna Deen-Racsmany, 'A redistribution of authority between the UN and regional organisations in the field of maintenance of peace and security?' (2000) 13 LJIL, 297; Christine Gray, *International Law and the Use of Force* (3d edn, OUP 2008), 417.

constitutive charter[118].Enforcement action itself has been narrowly interpreted, so that only military enforcement would require authorisation and economic sanctions would fall outside the scope of art. 53.[119] The debate between a dynamic interpretation of the UN Charter, on the basis of subsequent state practice or interpretation with a fixed meaning, established in 1945, on the basis of the meaning of the words at that date in the light of the preparatory works and the aims of the founders, shows what has never gone away: The underlying tension between the regional and the universal.[120]

Such antagonism is reflected not only in enforcement matters (which might be a possibility for the pressure to conclude or the implementation of a peace agreement) but in dispute-settlement as well, which is pertinent for the understanding of how African intrastate peace agreements are brought into effect. On the one hand, the UN wants to use regional organisations, for their expertise and proximity, but any forms of cooperation remain vague in terms of actual coordination, depending on the crisis at hand, as well as competent regional and sub-regional organisations.[121] Regional organisations want to retain their primacy in matters affecting their region of their interest, but are constrained by from the lack of resources, reluctantly involving the UN support and endorsement.[122]

Two observations made by legal scholars are worth mentioning here. Trying to understand the difference of contemporary peace agreements, Bell argues that contemporary peace agreements are a mutation of their precursors due to four reasons: the involvement of non-state actors, being nowadays formal parties to the internationalized negotiations producing the agreements, the international institutional context in which they are brokered, the different normative background relevant to intrastate conflict and the

[118] Ademola Abass, Regional Organisations and the Development of Collective Security ch. 5, especially p.161 et seq. For an argumentation against that, see Erica De Wet, Nordic Journal of international law, 15.
[119] For the issue of economic sanctions see infra. Also, Gray, ibid, 397.
[120] See Ademola Abass, Regional Organisations and the Development of Collective Security conclusion, 64.
[121] High-Level Panel, UN Doc A/59/565 (2004) paras.270-273, In Larger Freedom, UN Doc A/59/2005 (2005) paras 213-215.
[122] ECOWAS mission see infra note.

ambiguous solutions for the transfer of sovereignty and territory. Leaving the third and the fourth reasons aside for a moment, the first two reasons (internationalized negotiations between the conflicts' protagonists and international institutional context) make an important contribution to the understanding of intrastate peace agreements, to which they seem to be mostly referring. Bell gives a first idea of the implications and the impact of international involvement and in the negotiation and the conclusion of peace agreements. From his side, Neff seems to be pointing at the same direction.

When examining interstate peace agreements and related peacemaking, Neff suggests that as conflict becomes a matter of interest of the international community, instead of a bilateral issue between the warring parties, analogously conflict termination and the conclusion of peace treaties is not entirely a freely negotiable pact of the parties, but a matter of community interest.[123] His argument is drawn from the provisions of art 19 of the League of Nations Covenant[124] and its UN Charter (milder) counterpart art. 14,[125] the non-recognition of unlawful situations, as well as *ad hoc* (positive) Security Council guidelines for peace settlement, and (negative) General Assembly reaction to the content of the peace treaty between Israel and Egypt, ignoring the (previously recognised) self-determination right of PLO (1979). This interesting remark concerns interstate peace agreements, the author remaining silent on possible analogies for intrastate agreements. Such shift from contractual bilateral stipulations, reflecting the intention of the parties, to

[123] Stephen C Neff, 'Conflict Termination and Peace-Making in the Law of Nations: a historical perspective' in Carsten Stahn and Jan Kleffner (eds), *Jus post bellum* (TMC Asser Press 2008) 77, 85-88, and 91.
[124] 'The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.' Art. 19 of the League of Nations Covenant, part. I of the Treaty of Peace Concluded between Germany and the Allied and Associated Powers, signed at Versailles, 28 June 1919 (Versailles Treaty) (1919) UKTS 4 Cmd. 153).
[125] 'Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.' Art. 14, UN Charter.

them falling under the subject-matter situation limitations to the understanding of peacemaking being a matter of *jus dispositivum*.[126]

As previously mentioned intrastate peace agreements seem to understand the establishment of peace as containing positive peace. Though the right to peace, might not offer any guidance on what peacebuilding tasks it might practically entail, the UN soft law documents, which have introduced the term 'post-conflict peacebuilding' in the UN lexicon, have described and thematically grouped the related functions of a peace agreement of that sort. Avoiding the counterproductive effects of armed intervention, whether unilateral or multilateral, the UN can be the legitimating broker in the making, keeping and building of peace that takes the first steps toward the opening of political space for human rights and participatory communal self-expression, as the UN did in Cambodia, El Salvador, and Eastern Slavonia. [127] The following section shows what international actors act in fact as brokers to the African intrastate peace agreements.

Strictly speaking, there is no legal (hard law) document containing specific prescriptions on what an intrastate peace agreement should contain. However, there are three types of hard and soft law provisions that come into play at the universal level: those referring to what the UN cannot do, for instance (negotiate terms of blanket amnesties for core crimes), what the UN can do (UN competence provisions of the UN Charter), and how to do that (policy papers on post-conflict peacebuilding, including the reports of the Secretary-General). In relation to what the UN can do, the starting point lies in deciding to use either chapter VI or chapter VIII provisions, or art. 99 of the Charter to either authorise a person, or a body to set out a peace initiative, or to address the parties by urging them to conclude a peace agreement. This method has been used. In terms of

[126] Alfred Verdross , 'Jus Dispositivum and Jus Cogens in International Law' (1996) 60 AJIL 55.
[127] Michael Doyle, 'The UN Intervention and National Sovereignty' in Wofgang F. Danspeckgruber (ed), *The Self-Determination of Peoples*: *Community*, *Nation*, *and State in an Interdependent World* (Lynne Rienner 2002), 100.

what the UN cannot do, its bodies must respect the prohibition on the use of force and the territorial integrity of states.

The response must either address a crisis that has not reached the threshold of armed conflict, but the government in question lacks legitimacy for being unconstitutional, or if the crisis (triggered sometimes from such an unconstitutional change) has divided the people resulting in the government not being in effective control of the entire territory. The response to these very different situations that seem to threaten the stability of a given state as well as the security and well-being of its people seems to be forged by two considerations: first, that the continuity of the state (and its international legal personality) should be ensured, whilst someone has to govern. This consideration is line with the respect of the territorial integrity of the state. Not disrupting the state and thus, not affecting its international legal personality, even in instances, where the government in place does not have effective control over its entire territory,[128] is not just a pragmatic choice for UN organs and regional organisations, but also a normative prescription. In exercising their peace-related competences by addressing enemies of a state, they are bound the relevant provisions of the UN Charter. The suggested response to violence, and fragility in order to establish peace entails substituting the military response with a political solution, which consists of addressing short-term and long-term viability of the state and its governmental functions. This implies that of the elements that constitute the international legal state definition, defined territory, population, and government, it can address the element of government.[129] In terms of the rules it can use, it can address the issue of 'government', this being distinct from the state in question.

[128] Cairo Declaration (1997), para 39, Aden Declaration (2006), art. 69, (1) and (2), both regarding Somalia.

[129] The traditional criteria of statehood are set out in Article 1 of the Montevideo Convention. They are: (a) permanent population; (b) defined territory; (c) government; and (d) capacity to enter into relations with other States. There are traditional criteria, as reflected in the 1933 Montevideo Convention on the Rights and Duties of States, that are generally acknowledged as the minimum yardstick that an entity needs to fulfil in order to acquire statehood; see James Crawford, *The Creation of States in International Law* (2nd edn, OUP 2007).

In terms of what type of government, they need to address, the peace agreements can address two different categories (or scenarios) of crisis. If there is civil war, there is the presumption of an effective government, though not in total control of its entire territory.[130] If there is an unconstitutional change in government, as understood within the AU legal order, there is the duty not to recognise the illegitimate government; such government however can be in effective control of the (entire) territory of the state. Any sanctions however, operate on the international plane. The state in question might have its membership status to regional organisations suspended, or face targeted sanctions at the universal level, but the day-to-day functioning of the domestic sphere is not affected. The illegitimate government either handles power or refuses to do so; still the international actors need to find a channel of cooperation, in order to return to normalcy.

In response to the 2012 coup in Mali, the Security Council, 'mindful of the sovereignty, unity and territorial integrity of Mali', called upon the Malian rebel groups to enter into an appropriate political dialogue with the Transitional authorities of Mali to this end'.[131] It went further into delimitating the framework of that dialogue by deciding that this would be operationalised through the conclusion of 'a road map setting out the tasks to be carried out peacefully during the Transition so as to ensure the consolidation of the institutions of the Republic of Mali, especially the reorganization and restructuring of the Malian defence and security forces, the restoration of State authority throughout the territory of Mali, and the organization of free, transparent and fair presidential elections within 12 months of the signing of the Framework Agreement for the restoration of constitutional order.'[132]

[130] On the distinction between state and effective government see James Crawford, *The Creation of States in International Law* (2nd edn, OUP 2007), 34-35.
[131] Peace and Security in Africa, Resolution 2056 of 2012, 5 July 2012op. para 11; see also the related Presidential Statements of 26 March 2012 (S/PRST/2012/7) and of 4 April 2012.(S/PRST/2012/9) as well as its Press Statements on Mali of 22 March 2012, 9 April 2012 and of 18 June 2012.
[132] Ibid, op para 8.

In response to the situation in Burundi, the General Assembly urged 'all political parties, military leaders, the media and civil society to dissociate themselves from extremist forces, to reject all extremism and all ethnic or political fanaticism, to settle disputes through negotiation and dialogue and to unite in order to bring about national reconciliation and respect for human rights' further guiding that this would include the organisation of 'a national debate on the country's basic problems with a view to the conclusion of a national covenant and the adoption of a constitution adapted to the current socio-political requirements'.[133]

In addressing the parties to the conflict in Sudan, the General Assembly strongly urged 'all parties to the hostilities to redouble their efforts to negotiate an equitable solution to the civil conflict to ensure respect for the human rights and fundamental freedoms of the Sudanese people, thereby creating the necessary conditions to end the exodus of Sudanese refugees to neighbouring countries and to facilitate their early return to the Sudan, and welcomes efforts to facilitate dialogue to that end among the parties'.[134]

In all the examples, the urging concerns the parties reaching a 'political solution'.[135] The content of the term 'political solution' is first of to be understood as opposed to military solution. The essence of the international bodies' 'intervention' in addressing internal conflicts and crisis, is to communicate to the parties that their situation is not to be resolved by violent means, rather by replacing violence with a negotiated framework. In doing so, the international bodies, tacitly point-out to the enemies of that since 'civil strife/wars (and related crises) are high stakes conflicts over the organizing principles and

[133] A/Res/50/159 (1996), op. paras 4, 8.
[134] 'Situation of human rights in the Sudan (13 March 1995), A/Res/49/198 (1995), op. para 9.
[135] The term political solution is of course far-reaching. In interpreting the term 'political settlement' contained in Security Council resolution 1244 (1999), the Court of Justice stated that 'the phrase "political settlement", often cited in the present proceedings, does not modify this conclusion. First, that reference is made within the context of enumerating the responsibilities of the international civil presence, i.e., the Special Representative of the Secretary-General in Kosovo and UNMIK, and not of other actors. Secondly, as the diverging views presented to the Court on this matter illustrate, the term "political settlement" is subject to various interpretations. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo Advisory Opinion, I.C.J. 22 July 2010, I.C.J. Reports 2010, p.403, para 118.

fundamental rules of the polity', their political resolution lies within reshaping the organising rules and principles of the polity.[136]

The crux of the solution put forward, is as simple as this: if you share statal power, you have no reason to revolt. Whoever thus becomes part of the state, or has a fair chance to be part of the state, is likely not to disrupt and undermine it. And this is to be done by giving power to the main players, some of which, with their actions have undermined the state. In other words, the redistribution of power resembles the construction or reconstruction of the hypothetical social contract of a given state, including the reestablishment of legitimate authority in the short and the longer term. Likewise, the outsiders, members of the international community can maintain some degree of impartiality, by not directly interfering or siding with one warring party, but simply facilitating the political process, through their support to an agreed political solution.

The response of the international community lies in the following: making sure there is authority governing the state and ensuring the continuity of the state, as, in addition to the day-to-day running of the state, someone has to administer the return of refugees, the disarmament and reintegration of factions and individuals, wider reconstruction and recovery. The transitional government is to fulfil all these roles, whilst replacing the ineffective or the illegitimate situation; as such, it would have to be inclusive, and recognised as the legitimate authority till a more permanent solution is found through elections, and or constitutional and other rule of law reforms, producing a new internal order. As such, international support is to ensure that the transitional government is able in law and in fact to perform all these functions. Such support is channelled through financial and technical assistance to such interim governments, whilst subjecting such a government to an *ad hoc* set of regulations and constraints, including not making new

[136] Donald Rothchild, 'Settlement Terms and Post-Agreement Stability 'in Stephen J. Stendman, Donald Rothchild and Elizabeth M. Cousens, *Ending Civil Wars: The Implementation of Peace Agreements* (Lynne Rienner 2002), 134.

financial commitments and burden, save for tasks intrinsically linked to peace agreement implementation and related priorities.[137]

2.2 The peacemakers

A typical African intrastate peace agreement is concluded between the parties to the conflict/crisis, either all, or some, but not them alone. Overall, of the overviewed primary materials, only a few are concluded without any outside involvement whatsoever, in countries like Djibouti,[138] Côte d'Ivoire,[139] in Ethiopia,[140] in Eritrea,[141] and in Uganda.[142] Instead of direct talks between them, the former enemies make use of diplomatic dispute-settlement techniques (mediation), which involve outside actors acting as intermediaries.[143]

The particularity of African intrastate peace agreements lies within the fact that although they seek to regulate the conduct of warring parties within a single state and address a crisis or conflict that possesses domestic elements, international actors, states and organisations, understood herein as outsiders, are essential in the making and the implementation of these agreements.

With the exception of the Ugandan Yumbe Ceasefire (2002), which was almost secret/private, and the subsequent Yumbe Peace Agreement (2002) that was mediated by the Aringa Obongi Peace Initiative Commission (AROPIC) mediation team, consisting of locals from affected communities, later remunerated for their assistance,[144] the majority

[137] Lusaka Protocol (1994) (Angola), annex 6, para 6; also, Cotonou Agreement (Liberia) (1993), part II (political issues), Section B, art. 14 para 6; DPA (2006) (Sudan), arts 101-103, 20, 437, 505.
[138] See Peace and Reconciliation Agreement (1994), Framework Reform and reconciliation agreement (2000) and Reform and Reconciliation Agreement (2001).
[139] See Abidjan Ceasefire (2003).
[140]Reform Agreement (1991), listed by INCORE.
[141] Constitutional Commission of Eritrea Draft Constitution (1996).
[142] Yumbe Ceasefire (2002) and Yumbe Peace Agreement (2002) concluded between the Government of Uganda and the Uganda National Rescue Front II.
[143] 'Negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means.' Art. 33, UN Charter.
[144] Yumbe Peace Agreement (2002), article VIII, para 1.

of the overviewed agreements have been facilitated by mediators, or held under the 'auspices' of another state or international organisation.[145] In this sense, the outside involvement is the rule than the exception.

The peace agreements are thus the result of the encounter between outsiders and immediate parties. In literature, this is portrayed as the law of the peacemaker.[146] Because the peace agreements are produced after the interaction between national and international actors, they are often understood in literature as products of a transnational process. The agreements are thus understood to be norm-shaping: this is why the 'law of the peacemaker' is described as 'hybrid (meaning both international and domestic) common practice of the peacemaker', the term practice not understood in terms of state practice in international law.[147]

The texts of African intrastate peace agreements, however, do not fully support such interpretation, as a number of them specifically define the conflict/crisis protagonists (i.e. the former warring parties) as 'parties', or 'signing parties' to the agreement, as opposed to the mediator(s), and/or the rest of the international signatories.[148] The peacemakers

[145]Term 'facilitation' found in many: Arusha Declaration (1998) , Arusha Agreement (2000) CNDD ceasefire (2002), Pretoria I Protocol (2003) Power-sharing Agreement (2004), art 25, Dar-es-Salaam Principles Agreement (2006) in Burundi, Linas-Marcoussis Agreements (2003), Ouagadougou I Accord (2007), (Côte d'Ivoire),Gaborone Pledge (2001), North Kivu Pledge (2008), South Kivu Pledge (2008) (mentioning all five (the UN, the EU, the AU, the International Conference on the Great Lakes Region, and US as international facilitators), Goma Agreement (2009) DRC, Abuja Agreement (1998) (Guinea-Bissau), Pointe-Noire Ceasefire (1999) Congo, Lomé Peace Agreement (1999), Cairo Declaration (1997) , Djibouti Agreement (2008) Somalia), Lomé Peace Agreement (1999), Humanitarian Ceasefire (2004) (Sudan), Lomé Framework Agreement (1999) (Sierra Leone), Global Political Agreement (2006) (Togo).

[146]Term analogously crafted with *Lex Mercatoria*, in order to show the transnational character, the underpinning legal pluralism and the bottom-up approach adopted by the author; Christine Bell, *On the Law of Peace: Peace agreements and the Lex Pacificatoria* (OUP 2008), 287-288.

[147] Bell, ibid,293, and, 217, 219 lex pacificatoria as developing law, the 'jurisprudence of transition', or a set of normative expectations.

[148] Good examples include Bamako Pact (1994) (Mali), preamb. para 1, title II paras 6, 8A, 14,title VI, para 62 title VII paras 76-82, 84, Tamanrasset Ceasefire (1991) (Mali), arts. 2,10, Bamako Ceasefire (2014, art.1, Moroni Agreement (2003) (Comoros), titles I, II, III para 1, section a paras 1-2, 9-10, section b, IV, V para.1, VI para.3, Brazzaville Ceasefire (2014) (CAR), art.12, Fomboni accord (2001) (Comoros), preamb. para 1, titles IV, para 23, V, para 27, Chad, Maseru Memorandum (1998) (Lesotho), 5.1.1, Memorandum (1999), preamb. para 1, art. 10, Definitive Peace Agreement (1995) (Definitive Peace Agreement (1995) (Niger), arts 1,12, General Peace Agreement (1992) (Mozambique), prot.I, arts.3,5, prot. IV, title I arts. 2(b), 5,6 and title IV amongst other provisions, Arusha Accord (1993) Rwanda, art. 3, Djibouti Agreement (2008) (Somalia),

are clearly distinct from the former enemies that sign as parties: the former are the protagonists, the enemies within a single state, whose behaviour is the main subject of regulation in the peace agreement; the latter, are the members of the international community, conceived in the widest possible sense.[149] Additionally, if guided by the object and the purpose of those agreements, which pertains to the conduct of former warring parties, these peacemakers, whether signatories or not, should rather be considered outsiders (or even better, outside parties), as opposed to the immediate parties.

Such division is unfortunately not dully regarded, since it does not correspond to a division between agreement signatories and non-signatories. The peacemakers, though not self-identified as parties to the agreements, do sign those documents. Their signature is affixed in a separate section right after the signatures of the immediate parties. These signatures

arts.1,2,7,10-11, Kampala Accord (2011) (Somalia), arts. 3-7, Comprehensive Peace Agreement (2008) (Zimbabwe), art. I(1), paras 1-2.

[149] The term is used as often found in the texts of peace agreements; it is thus followed in the research, no matter how vaguely deployed in the context of peace agreements, and perhaps similar to the understandings of international community in international relations; it is wider than 'international community of states'.

are further distinguished from the signatures of immediate parties by indications that these actors are witnesses,[150] observers,[151] cosignatories,[152] or moral guarantors.[153]

It is thus evident, that the criterion of signature deployed by the 1969 Vienna Convention when defining the parties to an agreement fails to explain this distinction. The signature which is one of the ways expressing consent to be bound by the agreement, is decisive for the 1969 Vienna Convention in distinguishing between a party and a non-party state.[154] Put together, parties and outsiders, signify the paradoxical, sometimes 'schizophrenic' role of the international actors in African intrastate peace agreements.[155] The schizophrenia lies within the fact that the actors are according to the documents, presumed external to the conflict/crisis, as not directly involved in the conflict, and they are not self-

[150] This seems to be the preferred option for the overwhelming majority of inspected agreements: the outside parties are either labelled 'witnesses', or sing in witness of/thereof: see for instance CNDD Ceasefire Agreement (Burundi) (2002), Dar-Es-Salaam FNL Ceasefire (Burundi) (2006), Sun City Agreement (DRC) (2001), Acting Together for Kenya (2008), Kenyan Dialogue/Reconciliation – TRC(2008), Kenyan Di alogue/Reconciliation-Review (2008), Kenyan Dialogue/Reconciliation-Principles (2008), (Panel of Eminent African Personalities), Abuja Accord (Guinea-Bissau) (1998)(OAU ECOWAS UN, Nigeria, Zambia Togo) , Akosombo Agreement (Liberia) (1993) (UN, ECOWAS), Abuja Agreement (1994), (UN, ECOWAS) the Accra Ceasefire (Liberia) (2003) (ECOWAS, AU, UN, EU and Ghana as part of the International Contact Group on Liberia, co-chaired by Ghana and EU), Conakry Peace Plan (Sierra-Leone) (1997), Lomé Peace Agreement (Sierra Leone) (1999) (OAU, ECOWAS, USA), Eldoret Ceasefire (Somalia) (2002) (Ethiopia, Djibouti, IGAD), Good Will Agreement (Sudan) (2009) (Qatar, AU-UN), Accountability Annexure (Uganda) (2008) (DRC, Kenya, Tanzania, South Africa, Mozambique, Norway, USA, EU).

[151] See Bicesse Accords (Angola) (1991) (USA, USSR observers), N'Djamena Accord (Chad) (2007), (EU observer), General Peace Agreement (Mozambique) (1991) (UN, USA, France, Portugal, UK observers), Arusha Agreement (Rwanda) (1993) (Uganda, Burundi, Germany, Belgium, United States of America, France, Nigeria and Zimbabwe (Observer countries)); Djibouti Accord (Somalia) (2008) (France, UK, Saudi Arabia, Djibouti (observer states) and AU, League of Arab States, OIC, EU (observer groups)).

[152] See for instance the Arusha Agreement (Burundi) (2000), and the Dar-Es-Salaam Principles Agreement (2006) where the term cosignatories appears in the text of the agreement, and the Ceasefire Agreement (Guinea-Bissau) (1998),where the term cosignatories is deployed in the letter addressed to the Security Council (S/1998/825).

[153] See Abidjan Peace Agreement (Sierra Leone) (1996), art. 28, where 'Côte d'Ivoire, the Commonwealth, the UN and the OAU 'shall stand as moral guarantors that the agreement is implemented with integrity and good faith'.

[154] See the definitions of art. 2 of 1969 Vienna Convention, in conjuction with arts 11-12; for a good analysis Jan Klabbers, *The Concept of Treaty in International Law* (Kluwer Law International 1996), 36 ff, and Anthony Aust, *Modern Treaty Law and Practice* (2d edn, CUP 2007), 16-24 and 94-100.

[155]See the detailed obligations of the ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security (2001), and the ECOWAS Conflict Prevention Framework, adopted at Ouagadougou on 16 January 2008, Regulation MSC/REG.1/01/08; for the SADC conflict resolution protocol see 'Protocol on Politics, Defence and Security Co-operation, signed on 14 August 2001, entered into force on 2 March 2004, esp. arts 11(1)c, (2)b,(4),15, at <www.sadc.int/files/3613/5292/8367/Protocol_on_Politics_Defence_and_Security20001.pdf>; in general, see arts. 53, 54 (Chapter VIII), 103 of the UN Charter on the relationship between the UN and regional organisations.

identified as parties to the agreements; simultaneously, they sign the documents, as essential in their making, in other words, as peacemakers. They might be part of brokering (and the implementation, as shown in later chapters), but in an essentially different role: to ensure that a peace agreement is concluded, and to make sure it works. Consequently, different terms are used to describe the international actors acting as peacemakers, such as 'outsiders'[156] or 'externals'.[157]

The outsiders are essential in the making and the implementation of the agreements, not only for providing their auspices for mediation, technical and financial support, yet at the same time their behaviour is not directly regulated by the agreements in question. The form of involvement varies, their roles rudimentary grouped as mediators, guarantors and witnesses in literature,[158] a grouping that will be returned to. Sometimes they assume multiple roles, the mediator of an agreement for instance, signing as witness, or co-signatory, making it quite often difficult to identify to what these outsiders have signed-up to, and how these terms, systematically read alongside any special powers, competences granted to them by the agreements could translate to specific undertakings, commitments, duties, and obligations.

By the term outside parties, the research groups all actors not being the immediate parties to the overview. It includes neighbouring states, friendly-states, or former colonisers, international organisations, such as the UN, the African Union, five out of the six Regional Economic Communities of Africa, CEN-SAD, [159] SADC, [160] CEMAC, [161] IGAD, [162] and

[156] Stephen M. Saideman and Marie-Joëlle Zahar (eds), *Insecurity in Intra-State Conflicts: Governments, Rebels, and Outsiders* (Routledge 2008).
[157] Christopher Mitchell, 'External peacemaking initiatives' and international conflict, in Manus Midlarsky (ed), *The Internationalization of Communal Strife* (Routledge 1992).
[158] Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (OUP 2008) 175-181.
[159]Countries of involvement include Chad (Syrte Accord), (Tripoli III Accord) (2009).
[160] Countries of involvement include DRC (Lusaka Ceasefire) (1999), Madagascar (Maputo Political Accord) (2009), and Zimbabwe (Comprehensive Peace Agreement) (2008).
[161] Countries of involvement include CAR (APRD Ceasefire).
[162]Countries of involvement include Sudan (Chapeau CPA).

ECOWAS,[163] the EU,[164] the Organisation of the Islamic Cooperation,[165] the League of Arab States,[166] as well as the International Organisation of Francophonie[167] the Commonwealth Organisation,[168] eminent personalities in their personal capacity and not in their official capacity.

In their launching of the Peace and Security Council, one of the main organs of the African Union,[169] the heads of state and government made it clear 'there will be *no conflict on our continent that will be out of bounds for the African Union*'.[170] In its first decade (and a bit more) of existence, the African Union has taken up different roles in peace agreements concluded after August 2002. It should be borne in mind that in these thirteen years, which could be termed as the 'AU era', peace agreements have been concluded in Angola,[171] Burkina Faso,[172] Burundi,[173] CAR,[174] Chad,[175] Comoros,[176] Côte Ivoire,[177]

[163] Countries of involvement include Côte d'Ivoire, Guinea-Bissau, Liberia, Sierra Leone (Conakry Peace plan), (Ceasefire Agreement).
[164] Countries of involvement include CAR (Global Ceasefire), Comoros (Fomboni Accord) (2001) and (Moroni Agreement) (2003), Chad (N'Djamena Accord) (2007), Somalia(Djibouti Agreement) (2008) Sudan (Darfur Peace Agreement) (2005), Togo (Lomé Political Agreement) (2006), Uganda.
[165] Countries of involvement include Somalia (Djibouti Agreement) (2008).
[166] Countries include Comoros, Somalia, Sudan (Chapeau CPA) (2004), (DPA) (2005).
[167] Countries of involvement include Burundi, CAR, Comoros, Côte d'Ivoire, DRC, Mali, Niger, and Togo.
[168] Sierra-Leone (Abidjan Peace Agreement) (1996).
[169] The Organs of the AU are the Assembly, The AU Commission, The Executive Council, The Commission, the Peace and Security Council (PSC), the Pan-African Parliament, The Court of Justice, The Permanent Representatives' Committee, the Specialised Technical Committees, and the Financial Institutions; see Constitutive Act of the African Union, 1 July 2000, art. 5.
[170] Statement of Commitment to Peace and Security in Africa, issued by the Heads of State and Government of Member states of the Peace and Security Council of the African Union of 25 May 2004, PSC/AHGST, (X), para.7 (emphasis added).
[171] Cabinda Peace Memorandum (2006).
[172] Transitional Charter (2014).
[173] CNDD Ceasefire Agreement (December 2002), Pretoria I protocol (2003), Pretoria II protocol (2003) Forces Technical Agreement, Global Ceasefire Agreement (2003)Power-sharing Agreement (2004)-Dar-es-Salaam Principles Agreement (2006), Dar-es-Salaam/ FNL Ceasefire (2006)
[174] Sirte Ceasefire (2007) APRD Ceasefire (2008) Global Peace Agreement (2008), Libreville Declaration (2013), Libreville Ceasefire (2013), Libreville Political Agreement (2013), Brazzaville Ceasefire (2014), Republican Pact (2015).
[175] Government –MDJT Agreement (2003) Yeribou Agreement (2005), N'Djamena Accord (2007) Syrte Accord (2007), Tripoli III Accord (2009).
[176] Moroni Agreement (2003); Moroni Memorandum (2009) ; Interim period Accord (2010).
[177] Accra I Agreement (2002); Bouaké Ceasefire (2002) Lomé Accords (2002), Linas-Marcoussis Agreement (2003) -Paris Conclusions (2003) -Accra II Accord (2003) -Abidjan Ceasefire (2003) -Joint Declaration (2003) -Accra III Agreement (2004) -Pretoria I Agreement (2005) -Pretoria II Declaration(2005), Ouagadougou I Accord (2007) ,Ouagadougou II Accord (2007) , Ouagadougou III Accord (2007).

DRC,[178] Guinea, Guinea-Bissau, Kenya,[179] Liberia,[180] Madagascar,[181], Mali, Senegal,[182] Somalia,[183] Sudan,[184] Togo,[185] Uganda,[186] and Zimbabwe.[187]

Notwithstanding its absence in the Chadian agreements,[188] in the Togolese and the Senegalese agreement regarding Casamance,[189] still the African Union gets involved by either taking the lead in some instances, or in concert and coordination with other groups, states and international organisations.[190] The African Union acts as part of the mediation

[178] Pretoria Agreement (2002) , Army Reformation Memorandum (2003) , Sun city Agreement (2003) , North-Kivu Agreement (2008) , South-Kivu Agreement (2008) , Goma Peace Agreement (2009).
[179] Public Statement (2008), Acting Together for Kenya (2008) , Kenyan Dialogue/Reconciliation – TRC (2008) , Kenyan Dialogue/Reconciliation-Review (2008),Kenyan Dialogue/Reconciliation-Principles (2008).
[180] Accra Ceasefire (2003), Accra Peace Agreement (2003).
[181] Maputo Political Accord (2009); Transitional Charter (2009);Charter of Values (2009); Sub-Accord 1 (2009); Sub-Accord 2 (2009); Sub-Accord 3 (2009); Addis Additional Act (2009); Antananarivo Roadmap (2011).
[182] Casamance General Peace Agreement (2004).
[183] Eldoret Ceasefire (2002),Transitional Federal Charter (2004); Aden Declaration (2006), Communiqué issued by the meeting of ministerial committee on Somalia (2006)-Djibouti Agreement (2008),Modalities for the implementation of the cessation of armed confrontation (2008), Djibouti Agreement (2008), Kampala Accord (2011).
[184] Eastern Sudan Agreement (2006), Humanitarian Ceasefire (2004),N'Djamena Agreement (2004),Addis Ababa Agreement (2004), Abuja Protocol (2004), Principles Agreement/Declaration (2005), DPA (2006), Arusha Consensus (2007), Good Will Agreement (2009), Machakos Protocol (2004) ,MoU Cessation of Hostilities (2004) -MoU on Aspects and Structures of Government (2004) Addendum to the MoU on Cessation of Hostilities (2004).
Capacity Building Agreement (2004), Security Arrangements Agreement (2003), Wealth-Sharing Agreement (2004), The Abyei Protocol (2004), Power Sharing Protocol (2004 , Nuba Mountains Protocol (2004), Nairobi Declaration (2004), IGAD Declaration (2004) , Permanent Ceasefire (2004), CPA Chapeau (2005).
[185] Global Political Agreement (2006).
[186] Yumbe Peace Agreement (2002) ,Juba Agreement/Ceasefire (2006), Ri-Kwangba Agreement (2007), Comprehensive solutions Agreement (2007), Accountability Agreement (2007), Accountability Annexure (2008) , Implementation Protocol (2008), Permanent Ceasefire (2008), Implementation Agreement (2008) , Disarmament Agreement (2008).
[187] ZANU-MDC Memorandum (2008) Comprehensive Peace Agreement (2008).
[188] Syrte Accord (2007) mediated by the Community of Sahel-Saharan States and Sudan.
[189] Regarding Togo, the Global political Agreement (2006) is facilitated and signed by Burkina Faso, and observed by both the European Union and ECOWAS, and the Lomé Framework Agreement (1999) signed by the facilitators (the International Organisation of the Francophonie, the European Union, Germany and France); the Casamance Peace Agreement (2004) is signed by Burkina Faso as chair of the mediator ECOWAS.
[190]Issues of concert, coordination and cooperation are always pertinent; see arts 53-54 of the UN Charter see also UN Security Council, Security Council Resolution 1631 (2005) Cooperation between the United Nations and regional organizations in maintaining international peace and security, 17 October 2005, S/RES/1631 (2005), UN Security Council, Security Council resolution 2167 (2014) [on enhancing the relationship between the United Nations and regional and subregional organizations, in particular the African Union] , 28 July 2014, S/RES/2167(2014) (unanimously adopted), para 5; 2-3, 7; on groups of friends and relationship between international and regional organisations, see chapter 1, 59-68.

team in the Doha agreement regarding Sudan (Darfur), in the Pretoria agreement of Côte d'Ivoire, in peace plans regarding Libya not signed by all parties to the conflict. The African Union signs several peace agreements as witness, as we can see in the recent Acting together for Kenya agreement of 2008, as well as earlier agreements in Liberia and Somalia.[191] In other instances, the African Union signs as observer,[192] international facilitator, or cosignatory,[193] or, despite not signing the actual text, is sometimes mentioned as guarantor of the overall implementation (Zimbabwe),[194] or more specifically competent for transitional period functions, such as the provision of civilian and military observers (Comoros).[195]

The term 'peacemaker' should not give the impression that it refers to the UN or the AU alone. The outsiders acting as peacemakers are in fact informal groups of states and international organisations, acting on an *ad hoc* basis, managed by an eminent personality, or one of the group taking up a managerial role, or coordinated by a regional organisation of their summits, using the powers their constitutive instruments, or at the invitation of the government of the state in question, consent to dispute settlement,[196] or request, with or without the appeal of a mediator of a regional organisation.[197]

The key international law issue thus lies not in how to qualify the diplomatic dispute-settlement technique that led to the conclusion of an intrastate peace agreement, but rather understanding how informal groups come together, for reasons of overlapping competence, related interests and underpinning antagonisms, as well as for being able to marshal resources for peace agreement implementation and support, including financing,

[191] Accra Agreement (2003) (Liberia), Accra Ceasefire (2003).
[192] See Djibouti Agreement (Somalia) (2008): the AU, alongside the Arab League, the Organisation of Islamic Cooperation (at the time Organisation of Islamic Conference) and the European Union is one of the observer groups, signing next to the observer states (France, Djibouti, Saudi Arabia, the UK and the United States).
[193] Arusha Agreement (2000) and Dar-es-Salaam Principles Agreement (2006) (Burundi).
[194] Comprehensive Peace Agreement (2008) (Zimbabwe) XXII, 22(6).
[195] Moroni Agreement (2003) (Comoros), Section IV.
[196] Lomé Framework Agreement (1999) (Togo), preamb.paras 3-4, 'sollicitent' the quartet of EU, France, Germany, and the International Organisation of the Francophonie.
[197] N'Djamena Accord (2007), preamb. paras 5, 8; Syrte Accord (2007), preamb.paras 1-2, both regarding Chad.

which a singular peacemaker would be unable to cover on their own. The examples mentioned below vary accordingly.

For instance, the Economic Community of the Great Lakes Countries (ECGLC) got involved in the peace process for Rwanda, culminating in the Arusha agreements of 1993.[198] The regional peace initiative for Burundi was first initiated by Julius Nuyrere, and was the initiative that concluded the Burundian peace agreements between 1998 and 2006.[199]

Sometimes, the conflict takes so long, the peacemakers change not only because of shifting interests, but also new international actors emerge. The DRC peace agreements of 2008-2009[200] were facilitated and witnessed by the UN special envoy on the Great Lakes and AU and Conference on the Great Lakes Regions the joint special envoy for the great lakes region, as well as the International Conference on the Great Lakes Region, which is a regional post-conflict organisation as described in art. 33 of the UN Charter.[201]

Other times, these informal groups often act as quartets. In Togo, the quartet consisted of the EU, France, Germany, and the International Organisation of the Francophonie (OIF).[202] A few years later that quartet would turn into a looser group of Burkina Faso, acting as a facilitator, and the ECOWAS and the EU acting as observers.[203] The Malagasy peace agreements concluded during 2009, were the result of the peace process coordinated by a mediation quartet, consisting of the UN, the AU, the International Organisation for the Francophonie (OIF), and the SADC.[204] Later-on, the SADC took a more

[198] Arusha Accord (1993), Rule of Law Protocol (1992), Power-sharing Protocol (1993), Refugee/IDP Protocol (1993), Armed Forces Protocol (1993), Miscellaneous Issues Protocol (1993), S/26915. (The Arusha Accord and the five said protocols have also been circulated through the UN General Assembly as well, see A/48/824).
[199] Arusha Declaration (1998); Arusha Agreement (2000); CNDD ceasefire (2002); Pretoria I Protocol (2003); Pretoria II Protocol (2003); The Forces Technical Agreement (2003); The Global Ceasefire Agreement (2003); Power-sharing Agreement (2004); Dar-es-Salaam Principles Agreement (2006); FNL Ceasefire (2006).
[200] North Kivu Pledge (2008); South Kivu Pledge (2008); Goma Peace Agreement (2009).
[201] Goma Agreement (2009).
[202] Lomé Framework Agreement (1999).
[203] Global Political Agreement (2006).
[204] Maputo Political Accord (2009); Transitional Charter (2009); Charter of Values (2009); Sub-Accord 1 (2009); Sub-Accord 2 (2009); Sub-Accord 3 (2009); Addis Additional Act (2009).

proactive role in the follow-up, using its mediation troika, consisting of South Africa, Tanzania, and Zambia, alongside the presence of the UN and Indian Ocean Commission.[205]

Getting inspiration from the International Contact Group for the Balkans,[206] the ECOWAS Contact Group has initiated processes leading to the conclusion of peace agreements in Cote d'Ivoire, Liberia, Guinea, and Guinea Bissau. More specifically, the Praia Ceasefire (1998) was concluded by Committee of Seven of ECOWAS, the Contact Group of the Community of Portuguese-speaking Countries (CPLP) those two acting as joint chairs. The Abuja Agreement (1998) was reached during ECOWAS summit with OAU, ECOWAS UN, Nigeria, Gambia Togo acting as witnesses. The Abuja Protocol (1998) Nigeria, Niger, Togo, Senegal, ECOWAS (in the presence of). In Zimbabwe, following the SADC imposed sanctions on the country, the SADC (facilitator) (Thambo Mbeki), AU agreement in fulfilment of the material mandate handed down by the SADC Extraordinary

Summit on 29th March 2007 and endorsed by SADC in Lusaka, Zambia and adopted by the African Union Summit in Sharm El-Sheikh, Egypt. In response, Zimbabwe concludes the peace agreements.[207] Finally, there are also instances, when more traditional mediators of groups of states are deployed: In Niger, both peace agreements[208] have been mediated by a group of three states Algeria, France, Burkina Faso (acting as mediators).[209]

The informal groups of states are distinct from regional organisations, defined as regional arrangements by the UN Charter. Usually, peace processes and any informal groups of states and organisations participating in those processes as facilitators or witnesses are mentioned as background facts, without any legal qualification by the International Court

[205] Antananarivo Roadmap (2011).
[206] Concluding Statement by the Participants in the Bosnia Proximity Talks (21 November 1995), part of the Dayton Accords (1995), circulated as UN Document by both the General Assembly and the Security Council, A/50/790-S/1995/999, 30 November 1995 paras 1, 5.
[207] ZANU-MDC Memorandum (2008) and the Comprehensive Peace Agreement (2008).
[208] Ouagadougou I (1994); Definitive Peace Agreement (1995).
[209] Ouagadougou I (1994), art. 26; Definitive Peace Agreement (1995), art. 26.

of Justice. In the *Wall Advisory Opinion*, the mediation quartet is mentioned too, but only, as a background fact.[210]

When adjudicating Nicaragua, the US raised as admissibility plea that Nicaragua had been part of the Contadora Group.[211] Responding to that plea, the International Court of Justice rejected this admissibility challenge. In its reasoning, the Court did however, acknowledge that the Contadora Group, although not being a 'regional arrangement',[212] was still bound by art. 103 of the UN Charter[213] as all regional, bilateral, and even multilateral, arrangements that the Parties to this case may have made, touching on the issue of settlement of disputes or the jurisdiction of the International Court of Justice'.[214]

As noted the outsiders that are described in literature as peacemakers are essential in the making of such agreements, but their role is not limited to the drafting of such texts. In addition to mediating, negotiating, or by any means facilitating and managing the peace processes, those actors save for themselves a part in the implementation of the agreements. Since the outsiders have been involved in the drafting of these texts, as well as financing and supporting their implementation, including peace operations, demobilisation, disarmament, and reintegration, and other security aspects of the agreement, so that the warring parties can focus on the redistribution of statal power as part of the political process, they are to somehow ensure that the peace prevails, instead

[210] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. Reports 2004, p. 136 paras 22.
[211] This informal Group was created by the Ministers of Foreign Affairs of Panama, Colombia, Mexico, Venezuela, January 1983, at Contadora Island, Panama; see 'Declaración de Contadora para pacificar Centroamérica', 9 de Enero de 1983 (9 Jan 1983). It was later joined by Argentina, Brazil, Peru, Uruguay and rebranded Contadora Support Group till its disbanding in 1986; UN Security Council, *Security Council resolution 530 (1983) [2437th meeting]*, 19 May 1983, S/RES/1970 (1983).
[212] 'The Court does not consider that the Contadora process, whatever its merits, can properly be regarded as a "regional arrangement' for the purposes of Chapter VII of the Charter of the United Nations', Nicaragua, para 107.
[213] 'In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.'
[214] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, p. 39.

of the peace agreement collapsing within a short period of time, in other words to provide safeguards, to guarantee implementation.

However, this section emphasises on their role during the drafting and conclusion of the peace agreement and not the post agreement stage (implementation), to illustrate their contribution to making international law a part of the peace agreement, in terms of referencing and application. Similarly, the peacemakers are understood as agents facilitating such application irrespective of whether their contribution if occurring before the occurrence of conflict would be viewed as preventive diplomacy, or peacemaking, after a dispute has become an armed conflict.[215]

2.3 Finding International Law in Intrastate Peace Agreements.

When analysing the peace agreement as a legal document, the following approaches have put forward. If not assessed on a case-by-case basis, the documents in question are either treated as municipal or international documents. Others adopt more socio-legal approaches, or even reject the dichotomy between national and international. Bell for instance, [216] after examining compliance theories, Bell adopts the 'concept of legalization' articulated by Kehoane and others.[217]

The use of such concept results in the legal characterisation of a document, through the examination of three features: the legal form of the agreement, its substance (the way obligations are articulated) and the enforcement mechanisms provided (delegation of powers to a third party). Cleverly bypassing the legal/non-legal question, she can then shift her attention from the form of those documents to the framing of obligations contained therein, including, the language and intention of the parties, and third party delegation. Therefore, she can conclude on the legal/legalised form of peace agreements.

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[215] Connie Peck, *The United National as a dispute settlement system : improving mechanisms for the prevention and resolution of conflict* (Kluwer Martinus Nijhoff 1996); also John Merrils, *The Settlement of International Disputes* (CUP 2007), 36.

[216] Christine Bell, *On the Law of Peace: Peace agreements and the Lex Pacificatoria* (OUP 2008), chapter 6, 139-141 also, 384.

[217]Robert Kehoane, Anne-Marie Slaughter, Kenneth Abbott, Andrew Moravcsik and Duncan Snidal, 'The Concept of Legalization' (2000) 54 IO 401.

This work's approach is to argue that, although intrastate peace agreements cannot as a category be qualified as international treaties or international agreements, in terms of form, in teams of content, they reference international law. That reference, as the following section explains, goes beyond using international law as the legal basis of conclusion, and includes the use of international law in its content, is an application of international law.[218] The aim here is not to argue for the applicability of all key areas of international law to all intrastate peace agreements. The section aims to identify which international law rules, principles, and standards could be of importance, either by influencing, governing, and being applied or used in the text of intrastate peace agreements. The emphasis thus shifts from analysing the peace agreement as a legal document, to analysing how the peace agreement as a legal document applies international law, since, as previously indicated that international law does not apply as default law to intrastate peace agreements.

The role of 'domestic legal operators' is essential in furthering compliance with international law. 'The truly legal function of international law essentially is found in the internal legal systems of states. Only through the domestic legal operators, can we describe the binding character of international law or its ability to be implemented in a concrete and stable fashion'.[219] In other words, the key question worth examining, is not why states comply with international law, but, how states do so, by finding empirical evidence and modes of international law implementation from the executive and/or judicial branches of states. Such modes are often practical and framed under interpretative arguments of international law, and not based on theoretical debates about monism or dualism.

[218] The term 'application of international law is standard in related literature. For good examples see, Dinah Shelton, *International Law and Domestic Legal Systems: Incorporation, Transformation, and Persuasion* (OUP 2011); Benedetto Conforti, *International Law and the Role of Domestic Legal Systems* (Martinus Nijhoff 1993), 8-10; David F. Klein, 'A Theory for the Application of the Customary International Law of Human Rights by Domestic Courts' (1988) 13 Yale J Intl L 332.
[219] For the use of the term 'domestic legal operators' see Benedetto Conforti, ibid, 9.

Consequently, the analysis here would have to set aside abstract references to theories about the nature of international law, including compliance theories,[220] and related arguments forming part of the wider debate between realism and idealism.[221] This is no way underestimates their importance.

The crux of intrastate peace agreements is in fact not about the nature of international law as such, but rather the choice of applying international law, the application loosely understood, and how, once such application triggered, identifying key applicable international law areas whilst anticipating their interfaces with national (municipal) law.

2.3.1 The Content of intrastate peace agreements: modes of applying international law

African Intrastate peace agreements are not international treaties or international agreements, but municipal legal documents. The fact that they are domestic documents in form, does not necessarily indicate that their content is automatically governed by domestic law, as the form of a legal document and the choice of applicable law are distinct. This is a matter that domestic Courts, have failed to point out. For instance, although, the Special Court for Sierra-Leone correctly identified that 'the Lomé Agreement is not a treaty or an agreement in the nature of a treaty', it assumed that 'the rights and obligations it created are to be regulated by the domestic laws of Sierra Leone', thus, merging two separate matters, the form of an agreement, and its applicable law.[222] This is where the

[220] Abraham and Antonia Chayes,'On Compliance' (1993) 47 IO 175–206; Abraham and Antonia Chayes, *The Sew Sovereignty* (Harvard University Press 1995), 1-29.
[221] For recent appraisals and overviews of the debates, see, amongst others, Stephen Ratner, *The Thin Justice of International Law: A Moral Reckoning of the Law of Nations* (OUP 2015) 21-27; David Bederman, *The Spirit of International Law* (The University of Georgia Press 2002), 49-79; Jutta Brunnée & Stephen J. Toope, *Legitimacy and Legality in International Law: An Interactional Account* (CUP 2010), 65-85; Frederic Kratocwhil, *The Status of Law in World Society: Meditations on the Role and Rule of Law* (CUP 2015), 50-75; Brian Z. Tamanaha, *A Realistic Theory of Law* (CUP 2017), 24-26.
[222] Prosecutor v Kallon and Kamara (Decision on Challenge to Jurisdiction: Lomé Accord Amnesty) SCSL-2004-15-AR72(E) and SCSL-2004-15-AR72(E) (13 March 2004), para 49.

Kallon Decision got it wrong: although, it correctly came to the conclusion that the Lomé Accord was not an international agreement in form, it automatically assumed that its provisions would not be governed by international law, simply because of this, thus, failing to distinguish between the agreement's form and content (provisions/substantive components).

In fact, as illustrated below, the issues of form and content should be treated as separate, as, the drafters might explicitly or implicitly select a different branch of law as applicable. As this section argues, these agreements apply international law. In referencing international legal language and international legal law in the peace agreement provisions, the drafters and signatories of intrastate peace agreements do not intend to create obligations under international law. On the contrary, they use international law in a subject-matter not governed by national (municipal) law, that is supposed to regulate the establishment of peace and the related behaviour of former enemies strictly at the national level. This is the framework for peace, which references international law and bypasses those states' ordinary municipal proceedings of domesticating international law.

This is how they apply international law. Considering the diversity of African legal systems and their different ways of domesticating international law,[223] the thesis uses the term application of international law, in the widest possible sense, this including integration, incorporation, or reception, referencing, or drawing upon international law rules principles, and standards. Most importantly, despite having such municipal provisions for the reception of international law, the overviewed African peace agreements do not rely upon them, but, use their own text as a point of reception of international law.

[223] For a good overview regarding both the legal systems and the ways of domesticating international human rights law see Frans Viljoen, *International Human Rights Law in Africa* (2d edn, OUP 2012), 462-464,517-525.

The application of international law to African peace agreements is the rather framed as the result of an international organisation's prior determination, or choice that the situation at hand instead of being part of 'internal matters', for which international law shall remain agnostic, triggers the application of either dispute-settlement duties or peace and security duties of the involved organisations. Correspondingly, the peacemakers and the immediate parties (of a given state) use peace agreements as a way 'to accept and carry out the decisions of the of the Security Council in accordance with the present Charter.'[224]

Peace agreement becomes the mechanism for respecting/ensuring compliance with binding forcible or non-forcible measures of international organisations in the field of peace and security. As such, the application of international law to such peace agreements also 'lies within the willingness of either the organs of states or exceptionally organs acting under external direction to apply international law internally and externally'.[225] These include both immediate parties and peacemakers, acting as the intermediaries between the universal (UN) level and the national level, and their use of presumption of conformity of national law with international law.[226]

The fact that agreements apply international law, and the reasons why this method of application is chosen can be evidenced in the first observations drawn from the study of the texts of the overviewed primary materials.

First off, African intrastate peace agreements avoid relying on municipal provisions of international law reception, because the subject-matter covered by peace agreements is not regulated by national law, as well as because the agreements are a response to acts of international organisations addressing the crisis by urging the parties to find a 'political solution' instead of a military response. Evidence from the text of the peace agreement can be used to attest to this argument, as some illustrations show right below.

[224] Art. 25 UN Charter.
[225] James R. Crawford, *Brownlie's Principles of Public International Law* (8th edn, OUP 2012), 110.
[226] Shelton (n), at 19, Conforti, at 42.

As previously presented,[227] the relevance of international law is at first brought in, by either the conflict/crisis protagonist selecting, or appealing to an international actor to mediate, or the act of an international organisation, both implicitly acknowledging that the settlement of these disputes does not constitute a purely internal affair. This indication is further channelled via the peace process into the concluded documents, which are not mentioning international law as a background fact in their preambular provisions, but extend those references throughout their provisions.

These documents enter into force from the date of signature.[228] This implies that their validity is not dependent upon subsequent (national) legislation, but rather relies on the actions preceding their conclusion. In response to the Security Council Resolution urging the parties to 'immediately cease hostilities and agree to a cease-fire and to promote the process of reconciliation and of political settlement in Somalia'.[229] In response, the Somali factions,[230] as identified and informally invited by the Secretary-General, concluded the peace agreements.[231] In the agreement they recognised the need to peacefully resolve their problems, more specifically through a national reconciliation conference, which would address the issues.[232] Mirroring the UN's recommendation to find a political solution, the signatories 'resolved to put an end to armed conflict and to reconcile our differences

[227] See section 2.2. (Peacemakers), pp 108.
[228] Arusha Accord (1993) (Rwanda), art. 11 'The present Peace Agreement shall come into force upon its signing by the parties.'; Accra Agreement (2003) (Liberia), part eleven, art. XXXVII; Comprehensive Peace agreement (2008) (Zimbabwe), art XXV; Fomboni Accord (2001) (Comoros) section V, art 30. 'Cet Accord cadre entre en vigeur à la date de sa signature.' Similarly see Transitional Charter (2014) (Burkina Faso), art. 24; Transitional Charter (2009) (Madagascar), art. 45; Ouagadougou Preliminary Agreement (2013) (Mali), art. 25; Casamance General Peace Agreement (2004) (Senegal), art. 5; See amongst others, Arusha Agreement (2000) (Burundi), art. 5, Ogaden Agreement (2010) (Ethiopia) arta7, contra Transitional Period Charter (1991) (Ethiopia), part 5, art.20 (upon publication in the Government Official Gazette).
[229] Resolution 733 (1992) 23 January 1992.
[230] These were the Somali Africans Muki Organization (SAMO), the Somali Democratic Alliance (SDA), the Somali Democratic Movement (SDM), the Somali National Democratic Union (SNDU), the Somali National Front (SNF), the Somali National Union (SNU), the Somali Patriotic Movement (SPM), the Somali Patriotic Movement (SPM), the Somali Salvation Democratic Front (SSDF), the Southern Somali National Movement (SSNM), the United Somali Congress (USC), the United Somali Congress (USC), the United Somali Front (USF), and the United Somali Party (USP).
[231] General Agreement (1993) (Somalia); see also its follow-up agreements, Addis Agreement (1993); Addis Modalities Agreement (1993); Addis Ababa Agreement (1993).
[232] Addis Ababa Agreement (1993), concluded after the first session of the National Reconciliation Conference on 27 March 1993.

through peaceful means,' and agreed that 'national reconciliation is now the most fervent wish of the Somali people'.[233] This would materialise through the building of democratic institutions, and the 'rebuilding of political and administrative structures that would provide the people as a whole with the opportunity to participate in shaping the future of the country'.[234]

In Madagascar, following the presidential coup, the AU imposed sanctions on its member state urging it to cooperate to put an end to the situation. In response to the AU Peace and Security Council resolutions, the Malagasy parties[235] concluded with the assistance of the mediation quartet[236] a set of agreements,[237] which set in place a transitional government that would have to be neutral, inclusive, peaceful, and consensual.

Against the background of the Arab Spring, and the collapse of government structures in Libya, the wider Sahel region[238] saw the circulation of small arms and weapons in countries neighbouring Libya.[239] This, seems to have had a profound effect on neighbouring countries, Mali, where the old conflict between rebel groups in Azawad (Northern Mali Province), settled with the Bamako Pact, and related reforms in the late nineties,[240] was refuelled again in 2012. In Mali, following the 2012 *coup*, violence resurged. As a result, the UN Security Council urged the parties, including Malian rebel groups to enter into an

[233] Ibid, para 4.
[234] Ibid, section IV paras 2-3.
[235] Mouvance Andry Rajoelina, Mouvance Didier Ratsiraka, Mouvance Marc Ravalomana, Mouvance Albert Zafy.
[236] The mediation quartet consisted of SADC, AU, OIF, and the UN.
[237] Maputo Political Accord (2009); Transitional Charter (2009); Charter of Values (2009).
[238] The term 'Sahel' (=coast) is used to describe Senegal, Mauritania, Mali, Burkina Faso, Niger, Nigeria, Sudan, Chad.
[239] Small Arms Survey, Geneva, 'Expanding Arsenals: Insurgent Arms in Northern Mali' *Small Arms Survey 2015: Weapons and the World* (CUP 2015), 156-169.
[240] Bamako Pact (1994).

appropriate political dialogue with the Transitional authorities of Mali.[241] In response, the warring parties[242] concluded the agreements.[243]

At the same time, following the April 2012 coup in Guinea-Bissau, the contending parties concluded the Political Transition Pact (2012). They agreed to return to constitutional normalcy, whilst respecting the continuity of the state and the upholding of the country's international obligations.[244] And the preceding situation is not explicitly indicated, only alluded to by reference to the ECOWAS extraordinary summit, of 3 May 2012 in Dakar, taking up the situation. By mentioning the recommendations of the Communiqué of the Extraordinary Summit of ECOWAS Heads of state and government (3 May 2012), the Political Transition Pact (2012), makes it clear how it came into effect.

These four examples of the peacemakers' involvement illustrate the different ways with which, the peacemakers are brought in during an intermediate stage, the peace process being used as a bridge to help translate international law addressed at the establishment of peace after internal conflict and crisis at the international level, to the national level. The odd thing lies within the fact that the documents, that are supposed to 'translate' this at the national level, are not produced using each state's modes of internalising international law, per its own constitutional/national procedures. Instead, the peace agreements are produced with reference to international law.

In this sense, this is a form of domestication, or, as elsewhere described by Harold Koh, 'legal internalization'.[245] That internalisation, though similar with legislative or judicial legal internalisation terms of function, is slightly different but effectuated by the immediate

[241] Peace and Security in Africa, Resolution 2056 of 2012, 5 July 2012, op. paras , 8.
[242] Coordination des Mouvements et forces patriotiques de résistance, Mouvement arabe de l'Azawad.
[243] Ouagadougou Preliminary Agreement (2013); Ouagadougou Declaration (2013) ; Bamako Peace Agreement (2015).
[244] Political Transition Pact (201), preamb. paras 3-4, arts. 1-2.
[245] 'Legal internalization occurs when an international norm is incorporated into the domestic legal system and becomes domestic law through executive action, legislative action, judicial interpretation, or a combination of the three'. This definition is provided by Harold Hongju Koh, 'Bringing International Law Home', 35 Houston L Rev, 642; Harold Hongju Koh, 'Why do Nations Obey International Law' 106 (1997) Yale L J 2599, 2656-2657.

parties to peace agreements, who, are not organs of the executive branch, as described, but former enemies.[246] At a secondary level , the peacemakers are also acting as (auxiliary) agents of domestication,[247] since, their role is supportive, and the peace agreement does not principally concern them. The peacemakers' role centres around helping the peace agreement succeed as its primary function is not to regulate their behaviour.

The internationalisation of African peace agreements is clearly indicated by the fact that they explicitly set aside constitutional provisions and/or entire constitutions.[248] Such agreements are designated as 'the framework for peace in the country', or as 'the framework for lasting peace or a peaceful solution and return to normalcy'. Some examples include the main agreements in Liberia[249] and Guinea-Bissau,[250] and Madagascar.[251] These almost-lookalike opening sentences in the preambular paragraphs or in the opening articles of peace agreements are capable of possessing a degree of normativity or at least

[246] Besides 'legal internalization', which corresponds to reception or domestication of international law, Koh identified two additional (informal) modes of 'internalization', identified as political and social, see Harold H. Koh, 'The 1998 Frankel Lecture: Bringing International Law Home' (1998) 35 Houston L Rev, 642-646.

[247] Transnational norm entrepreneurs, governmental norm sponsors, transnational issue networks, interpretative communities and law-declaring fora, burreaucratic compliance procedures, or a combination of the former categories. see Harold H. Koh, ibid, 647-655.

[248]The Fomboni Accord (2001) (Comoros), art. 29, declares null and void every contrary existing provision of the constitution; for similar formulations see the Transitional Federal Charter (2004) (Somalia), art. 3 para 2; the Arusha Accord (1993) (Rwanda), art. 3 paras 1-2; the Transitional Period Charter (1991) (Ethiopia), art. 18; the Bangui Accords (CAR) (1997) affirm (in general) the constitution stays in force, but still introduce amendments; in the Accountability Agreement (2007) (Rwanda), such necessary amendments are to be introduced by the government to promote the agreement's principles, see clause 5.6; the Cotonou Accord (Liberia) (1993) though not setting it aside, leaves room for amendment as the actual provisions say '[t]he Parties further agree that the transitional Government shall operate as closely as practicable (emphasis added)under the Constitution and laws of Liberia; the Arusha Agreement (2000) clearly indicates that '[w]hen there is any conflict between that Constitution and the Agreement, the provisions of the Agreement shall prevail.' ; Arusha Agreement (2000), Burundi, Prot II, Chapter II, art. 15 (2); for a similar provision, of municipal law remaining in force only if not in contravention with the peace agreement, see also Charter of Values (2009) (Madagascar), art. 43; the Transitional Charter of Burkina Faso is 'complementary' to the constitution of 1991, but *lex specialis*, since, 'in the event of conflict (between the two)[...] the provisions of the Charter shall prevail, Transitional Charter (Burkina Faso) (2014), preamb. para 12, and art 25 (1).

[249] The Akosombo Agreement (Liberia) (1994), art. 1 describes the agreement as the 'framework for peace.

[250] The Abuja Protocol (Guinea-Bissau) (1998), para II describes the original Abuja Agreement as the 'framework for lasting peace and normal political life'.

[251] The Malagasy Charter of Values describing itself as the constitutional law of the transition; 'La présente Charte de la Transition constitue la loi constitutionnelle de la transition',Charter of Values (2009) (Madagascar), art. 42.

some normative value.[252] The conclusion of intrastate peace agreements is an exceptional event, a rupture in the national legal order, not just because they follow a conflict, or, a crisis. It goes beyond the national (municipal) rules of constitutional normalcy; this does not mean that municipal law of the state is set aside in its entirety, but for this specific situation of establishing peace, peace agreements explicitly set aside constitutional provisions and/or entire constitutions, in favour of their own substantive provisions, thus effectively.[253] In most instances, peace agreements, entering into force upon their signature[254] introduce significant departures and modifications that can be grouped under the following categories: the establishment of an interim period till the holding of elections/referendum or constitution promulgation and the establishment of a transitional government with law-making powers; introduction of electoral reforms, institutional reforms, and the restructuring of the national army and police. Thus, the opening sentences on the peace agreement being the framework for peace seem to be reinforcing these submissions.

[252] A similar point has been raised in relation to opening sentences of the friendship treaty in Oil Platforms 1996, p 815, para 31, and separate opinion by Ranjeva (p 845) the opening article of the pa was not just hortatory but had relevance for the interpretation of the rest of the peace treaty (systematic interpretation).

[253]The Fomboni Accord (2001) (Comoros), art. 29, declares null and void every contrary existing provision of the constitution; for similar formulations see the Transitional Federal Charter (2004) (Somalia), art. 3 para 2; the Arusha Accord (1993) (Rwanda), art. 3 paras 1-2; the Transitional Period Charter (1991) (Ethiopia), art. 18; the Bangui Accords (CAR) (1997) affirm (in general) the constitution stays in force, but still introduce amendments; in the Accountability Agreement (2007) (Rwanda), such necessary amendments are to be introduced by the government to promote the agreement's principles, see clause 5.6; the Cotonou Accord (Liberia) (1993) though not setting it aside, leaves room for amendment as the actual provisions say '[t]he Parties further agree that the transitional Government shall operate as closely as practicable (emphasis added)under the Constitution and laws of Liberia; the Arusha Agreement (2000) clearly indicates that '[w]hen there is any conflict between that Constitution and the Agreement, the provisions of the Agreement shall prevail.' ; Arusha Agreement (2000), Burundi, Prot II, Chapter II, art. 15 (2); for a similar provision, of municipal law remaining in force only if not in contravention with the peace agreement, see also Charter of Values (2009) (Madagascar), art. 43; the Transitional Charter of Burkina Faso is 'complementary' to the constitution of 1991, but *lex specialis*, since, 'in the event of conflict (between the two)[...] the provisions of the Charter shall prevail, Transitional Charter (Burkina Faso) (2014), preamb. para 12, and art 25 (1).

[254]See amongst others, Arusha Agreement (2000) (Burundi), art. 5, Ogaden Agreement (2010) (Ethiopia) arta7, *contra* Transitional Period Charter (1991) (Ethiopia), part 5, art.20 (upon publication in the Government Official Gazette).

2.3.2 The framework for peace: intrastate peace agreements and peacebuilding

As previously indicated in the definition of intrastate peace agreements, their main purpose is the establishment of peace, understood as positive peace. That objective is usually termed as consolidation of peace, or return to lasting peace, sustainable peace, or just peace.

Current intrastate peace agreements are thus portrayed as the 'maps' for subsequent peacebuilding, as they envisage, prioritise and sequence the tasks with which locals and international actors are going to be engaged, also iterating applicable principles and processes.[255] In this sense, intrastate peace agreements are documents that seek not to just put an end to the preceding conflict or crisis, but also to establish peace, these two not being perceived as identical functions. Seeking to better describe intrastate peace agreements, one could define them as documents produced after discussion with some or all the conflict's protagonists, which address military violent conflict with a view to ending it, *by establishing peace*.

This means that the establishment of peace does not simply entail halting violence, but encompasses wider tasks. In the absence of UN hard or soft law prescriptions on what intrastate peace agreements should include, the groupings of databases that have inferred rudimentary thematic categories, can offer a good empirical overview of what those agreements usually contain in their substantive components. Per the relevant databases,[256] the tasks a typical peace agreement has to address are the cessation of hostilities and the provision of military security, including demobilisation, disarmament and disintegration of combatants, and tasks leading to the establishment of a positive peace, including justice and reconciliation. These tasks include return and repatriation of refugees, the establishment of provisional governments and mechanisms till the holding

[255]'An Agenda for Peace, Preventive Diplomacy, Peacemaking and Peace-keeping', Report of the UN Secretary-General, A/47/277-S/24111, 17 June 1992, para 55.
[256] See the UN peacemaker and the INCORE websites.

of elections/referenda/constitution promulgation, and relevant reforms (including institution and capacity-building, and economy reforms) in the interim period.[257]

This is a perhaps a trend, or result of two background developments: the acknowledgment that violence occurring in the form of conflict or crisis has a military and a political aspect, necessitating thus a solution that not only addressing both aspects, but subjects the military to the political aspect, as addressed and agreed to be resolved by the parties to the agreement.

Secondly, in the absence of prescriptions, the 'theory' of peacebuilding, understood as the compendium of varying (minimalist/maximalist) conceptions of peacebuilding by peace researchers, such as Johan Galtung and Jean-Paul Lederach,[258] that has influenced the policy and practice of the UN early nineties till today. This influences the sequencing of the tasks of the post-agreement stage, as found in peace agreement provisions.

The varied understandings of peace understood in more negative and positive terms, have been part of the UN legal order, however these differentiated gained more prominence, once the term 'post-conflict peacebuilding' became part of the UN lexicon in 1992. Although, previously used by Dag Hammarskjold during his lectures,[259] the term was introduced as a key UN concept during Boutros Boutros-Ghali's tenure with the Secretary-General's *Agenda for Peace* (1992). [260] The agenda conceptualised peacemaking, peacebuilding, and preventive diplomacy.[261] Except for the '*Supplement to an Agenda for Peace',*[262] UN peacebuilding is consistently conceived and operated as 'post-conflict', a process following successful peacemaking.

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[257] See the UN peacemaker and the INCORE websites.
[258] For an overview, <www.peacebuildinginitiative.org>.
[259] Dag Hammarskjold, 'The Element of Privacy in Peacemaking' Address at Ohio University, 5 February 1958, Athens, Ohio, UN Press Release, SG 656, 3 February 1958.
[260] 'An Agenda for Peace, Preventive Diplomacy, peacemaking and peace-keeping', Report of the Secretary-General, A/47/277-S/24111, 17 June 1992.
[261] Ibid.
[262] 'Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fifteenth Anniversary ', Report of the Secretary-General, A/50/60 - S/1995/1, 3 January 1995; para 49.

UN peacebuilding activities are either part of complex peace operations, combining elements of both peacekeeping and peacebuilding in their mandate, or part of field missions launched by the Department of Political Affairs (DPA).[263] In the *Agenda for Peace* (1992), post-conflict peacebuilding defined as 'action to identify and support structures which will tend to strengthen and solidify peace to avoid a relapse to conflict'. As the Department of Political Affairs explains, it is a process including 'measures seeking to enhance the capacity of the state to legitimately exercise its functions to legislate and manage in the areas of the security sector, human rights protection, and rule of law institutions, public administration, and public finance and market regulation, natural resources.'[264]

The theory and practice of peacebuilding are neither consistent nor uniform; the term peacebuilding is in itself vague. A study inspecting the mandates and practices of over twenty-four actors, within and outside the UN system shows diversity in terminology, conceptions, and implementation strategies.[265] By adopting the term, the UN has effectively gained an umbrella term able to accommodate various peace transitions, albeit with its inherent ambiguities. What groups those tasks together, is the aim of finding a political solution.

As explained, the peace agreements *are intended to be* of limited applicability *ratione materiae* and *ratione temporis* only regulating replacement of violence with a political solution, effectuated through the establishment of peace understood as return to normalcy, or stability.[266] However, as the return to normalcy or the establishment of peace (understood as both negative and positive peace) might take years, alongside renewed

[263] <www.un.org/wcm/content/site/undpa/main/about/field_operations>.
[264] <http://peacemaker.unlb.org/index1.php>.
[265] Michael Barnett Hunjoon Kim, Madalene O'Donnell, and Laura Sitea 'Peacebuilding: What Is in a name?' (2007) 13(1) GG, 35-58.
[266] Interestingly, from early on Oppenheim observes 'all treaties of peace belong to this class. It cannot be denied that history records innumerable cases in which treaties of peace have not established an everlasting condition of things, since one or both of the contracting States took up arms again as soon as they recovered from the exhausting effect of the previous war.' This pattern seems to have survived the subsequent outlawry of war and be topical for peace agreements too; Lassa Oppenheim, *International Law: a treatise*, (first edn, 1905),Vol 1., 65.

fighting, the peace agreement not only interacts with existing national law, but also with subsequent peace agreements not necessarily concluded pursuant to the previous agreements, but also modifying the original 'framework for peace'.

A clear hierarchy between the general-law-enabling agreement and the implementing ones is thus not always established. In some of these cases, the subsequent agreements explicitly reaffirm the primacy of the principal agreement.[267] In other cases, in the fashion of *lex posterior* the subsequent agreement not only clarifies, but explicitly (fully or partially) amends the former by replacing specific provisions, with the case of Liberia offering a very telling example of four peace agreements designed to clarify, partially modify and reaffirm the original agreement, all these coexisting and integrated as a unified framework for peace.[268]

Considering the above, it is safe to conclude that the peace agreements in Africa set, or at least modify the legal environment for an interim period, whose duration cannot be anticipated to the fullest extent.[269] It is this fluid period of transitioning to peace, stability, and order that the peace agreement provisions govern; multi-layered framework for peace: their provisions effectively affect and determine the actors that will have a say in the processes that will alter the power structures within a given state.

[267] For the primacy of Lusaka Ceasefire (DRC) (1999) see Fundamental Principles Declaration (2001), point 14; see also Accountability Annexure (2008), clauses 1 and 2 affirming the primacy of the Accountability Agreement (2007) in Uganda.

[268]Akosombo Agreement (1994), section H, art. 20, Accra Clarification (1994), section H, art. 20, Abuja Accord (1995), section G, art 8, and Abuja Supplementary Agreement (1996), arts 1,3, in relation to the Cotonou Agreement (1993).

[269] Cf the Sudan Peace Agreement CPA (2005) Machakos Protocol (Chapter 1 of the CPA) (2002), art. 2.5 setting a six-year interim period; also Permanent Ceasefire (2004) Annexure I of the CPA, arts 7.1.2, 7.1.3; with Côte d'Ivoire and Madagascar; in both cases the holding of elections has been postponed and the transitional period extended by virtue of AU decisions, endorsed by Security Council resolutions or SADC decisions; see decision of the Peace and Security Council of the African Union adopted at its 40th meeting at the level of the Heads of State and Government held on 6 October 2005 in Addis Ababa (S/2005/639), endorsed by SC Resolutions 1633(2005) and the decision of the Peace and Security Council of the African Union adopted at its 64th meeting at the level of Heads of State and Government, held on 17 October 2006 in Addis Ababa (S/2006/829), endorsed by SC Resolution 1721 (2006) Paras. 3, 5, 6.

When examining peace agreements, literature[270] divides them into three general types: negotiation, framework/comprehensive and implementation agreements. This initial three-stage divide (adopted by others with some variations) is subdivided.[271] Such classification reinforces the submission that peace agreements are the products and part of a wider peace process.[272] Such analysis could be viewed as linear, as these three types of agreements are concluded during a separate phase of the same peace process, and follow each other in a sequential manner.

The various sets of agreements, be they preliminary, comprehensive/framework, or implementation should not only be viewed in linear terms of separate stages within a peace process, but also as 'the principal framework' for those peace transitions, when hostilities occur and often lead to them either being partially amended or simply collapsing.

During peace transitions, the international aspects of the state remain unchanged; as the peace agreements stress, the continuity of the state is to preserved.[273] At the same time that these processes of power-restructuring seem to be something akin (or comparable) to the creation of a state, as the territory of a state might not be altered in most of the cases, but the internal reconfiguration of power leads to the establishment/re-establishment of an effective government within the given state and this is part of the conditions of returning to peace.

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[270]Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (OUP 2008), 46-77.

[271] The UN peacemaker would subdivide them in truce/ceasefire, preliminary pre-negotiation, framework, interim, comprehensive, sub-agreements and implementation agreements; see <http://peacemaker.unlb.org/index1.php>; after its relaunch in 2012, the new version of Peacemaker uses the division between framework and implementation agreements with further subdivisions, albeit omitting its earlier definitions and descriptions <http://peacemaker.un.org/document-search>

[272] For an overview of the term peace process, see *Introduction*, pp 3-5; see also,Bertrand Ramcharan, 'Peace Process' in Vincent Chetail (ed), *Post-conflict peacebuilding: A Lexicon* (OUP 2009), 238-243.

[273] La mission de la Transition est de : Assurer la continuité de l'Etat et le respect de ses engagements nationaux et internationaux ; See Maputo Political Accord (2009), art. 3, Transitional Charter (2009), art.4

Conclusions

African intrastate peace agreements are in the grey area where international law means (pre)national law. As this chapter argues, although they are not international agreements in form, in terms of content they refer and apply international law, as a result, or choice of their drafters, the peacemakers, understood as informal groups of states and international organisations acting in response to measures of international organisations urging the warring parties to find a political solution. The adoption of a particular legal form takes into account that 'the type of agreement determines expectation as well as outcome and general character of the peace process' and that the 'legal implications will vary accordingly'.[274]

The implications are twofold. Since the overviewed African agreements are not international treaties in their entirety, their consistent appeal and drawing upon international law, in conjunction with setting themselves outside municipal legal processes by being self-termed as the framework for peace, favour the application of international law instead of national law. If they apply international law in this fashion, then international law is the relevant law for their interpretation, even if not explicitly mentioned, and irrespective of whether such agreements can have binding effects at the international level, or just the national level. Thematically speaking, the relevant law of interpretation, rules of interpretation reflecting customary international law, but it is fair to say that for the 'self-determination factor' of peace agreements and thematically related areas, the international legal principle of self-determination would come into play.

[274] Wallenstein and Eriksson, *Negotiating Peace: Lessons from Three Comprehensive Peace Agreements*, Report of the Department of Peace and Conflict Research, Uppsala University, 32.

3. The self-determination factor of African Intrastate Peace Agreements: immediate parties

I. Introduction

This chapter introduces the 'self-determination factor' of African intrastate peace agreements. Under this umbrella term, the two-level inquiry of the use of self-determination by African intrastate peace agreements as regards immediate parties and as regards outside assistance and support is presented as follows. This section explains what the research what the 'self-determination factor' within an African peace agreement as regards its use for immediate parties, summarised in the form of 'positive findings'. In doing so, the chapter does not discuss the substantive components in their entirety, this going beyond this work's scope, but focuses on the primary object and purpose of these documents.

In the beginning of this chapter, the substantive components of peace agreements are presented with a view to identifying provisions relating to self-determination, widely understood as influence, language or drawing upon the law. These, interpreted systematically, constitute the self-determination factor of peace agreements. They also are the positive findings of this work. These findings are evaluated against this work's understanding of self-determination, in terms of rights, standards.

The 'self-determination factor', identified as language and drawing upon the law of self-determination in more general or more specific terms and in relation to participating in the state functions or elections during these interim periods. Once thematically identified and grouped together as positive findings, the inquiry then demonstrates how such use of self-determination language raises interpretative issues in terms of standards, rights/entitlements stemming from the law of self-determination.

The aim of this chapter could have emphasised on good examples of the use/application of self-determination for immediate parties, in search for either lessons learnt and blueprint or more theoretically speaking, a 'weber-styled' *idealtypus* of the use of self-determination for peace agreements.[1] This thesis is not primarily interested in identifying such typological conclusions as such; for, if it did, it would assume that self-determination would primarily be an end to be fully achieved with the conclusion of the transition, thus, saving for self-determination a singular application, rather than highlighting its continuous relevance for the post-conflict stage. This is why the examples are not measured or evaluated against the background of international law in terms of affirming or denying self-determination.

The aim here is to identify what the different ways of drawing upon self-determination are, and what repercussions they have in terms of entitlement and beneficiaries. It goes without saying that the emphasis is on different layers and aspects of political self-determination. This is the result of the what the agreements set forth as their main objective. Obviously, the right to self-determination includes the right to freely determine and participate in the political, economic and social life of a state, there could be different patterns or ways of looking at the use of self-determination for immediate parties, for instance political and economic self-determination.

Still, looking at the object and purpose of these documents, already illustrated in the preceding chapter, it is quite clear that in the peace agreements most findings relate to political self-determination and not that much too economic or cultural (aspects of) self-determination; most importantly, these findings on political self-determination present

[1] Max Weber, 'Die "Objektivita¨t" sozialwissenschaftlicher und sozialpolitischer Erkenntnis' (The Objectivity of the Sociological and Social-Political Knowledge) in *Gesammelte Aufsätze zur Wissenschaftslehre* (Collected Essays on Epistemology) (Historisches Virtschaftsarchiv 2015), 194-206.

significant diversity which requires elaborate attention. Any mentioning of economic and cultural aspects of self-determination would be more of a critique of negative findings and as such would shift the attention to a more theoretical critique. Bearing in mind that such contrast between the few examples of economic self-determination and many of political self-determination, could be the object of separate inquiry in a subsequent work complementing this chapter, it makes sense focusing on such varying degrees of use of self-determination. Consequently, the chapter is more analytical than critical.

3.1 The African peace agreements between text and context

The analysis presents examples of the use of self-determination for immediate parties, as found in the texts of peace agreements. As such, it relies upon traditional tools of interpretation of legal texts, such as textual, contextual, systematic, and teleological interpretation.[2] Being text-oriented, does in no circumstance imply blatant disregard for the power-balancing exercise between two or more warring factions, in the likes of a 'tug-of-war' game: this is what produces a compromise, more or less facilitated, or 'pressed upon' them by the international involvement, as shown in the previous chapter. They are essentially political compromises that are binding according to the intention of the parties.

It is however based upon the premise that the text, usually entering into force once concluded, becomes autonomous from the preceding peace process, not least for being a legal document, which could be interpreted with the use of traditional methods of interpretation, as codified in international instruments.[3] In this sense, there is (in principle) nothing dissimilar between peace agreements and any other legal document.

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[2]Richard Gardiner,*Treaty Interpretation* (OUP 2015); Alexander Orakhelashvili, *The Interpretation of Acts and Rules in Public International Law* (OUP 2008); Robert Kolb, Interprétation et création du droit international. Esquisse d'une herméneutique juridique moderne pour le droit international public (Bruylant 2006); Jan Klabbers, 'Virtuous Interpretation', in Malgosia Fitzmaurice, Olufemi A. Elias, and Panos Merkouris (eds), *Treaty Interpretation and the Vienna Convention on the Law of Treaties (*2010); *Andrea Bianchi, Daniel Peat and Matthew Windsor, Interpretation in International Law* (OUP 2015).

[3]Vienna Convention on the Law of Treaties, 22 May 1969 entered force 27 January 1980, *UNTS* vol. 1155, p. 331; According to the International Court of Justice, arts 31-32 of the 1969 Vienna Convention reflect customary international law: see Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Judgment, 15 February 1995, I.C.J. Reports (1995), p. 47, 59,

The autonomy of the text is yet challenged by the peace agreements' following two features. The text of the agreement, though formally independent of the preceding situation, is at same time dependent upon that same situation, to the degree its main purpose is the avoidance of any returning or relapsing to that previous (singular) conflict, or crisis, which was the reason for concluding the agreement in the first place. Consequently, the preceding situation underpins the objects of the peace agreements even if not explicitly referenced. Secondly, some of the texts seem to formalise such connections, by including a preambular, or a (rather general) operative reference to the preceding situation, often characterising it as a war, a violent or a political crisis. Now, it is worth repeating that these situations, neutrally termed as such here, include an array, and combination of conflicts and crises, *coups*, electoral crises, phases of low and intense civil wars. Instead of being in strict legal terms, such textual characterisations, reflect what Bell describes as the '*metaconflict'* of the agreement, agreeing and disagreeing on what the conflict was about.[4]

For these two reasons, the preceding situation evidently becomes part of the text of the peace agreement. If that is the case, this would beg the question of how to treat this phenomenon in terms of interpretation. In other words, such phenomenon could ostensibly claim impact on a potential selection process amongst the main methods of interpretation of art. 31 of the 1969 Vienna Convention.[5] Moreover, in the case of supplementary means of interpretation, there could be similarities between the preceding situation and what the Vienna Convention describes as circumstances around which a treaty was concluded. Considering the reasonableness of this supplementary method, one would have to balance this against the aims of the peace agreements, equally seeking to move away from the

Territorial Dispute (Libyan Arab Jamahiriya v Chad), Judgment, 3 February 1994, I.C.J. Reports 1994, p. 6, 21-22.

[4] The Arusha Agreement includes a provision on the nature of the conflict in Burundi, characterising it as political, with ethnic dimensions, stemming from the struggle of the political class to accede and/or to remain in power; the Arusha Agreement (2000), art. 4.

[5] According to the general rule on interpretation 'A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose'.

preceding situation by establishing peace in the manner stipulated by its relevant provisions.[6]

Additionally, diversity in conflicts/crises, diverse actors, as discussed below, diversity in drafting language(s),[7] document size, and length.[8] It is essential for such analysis to juxtapose the theme of 'diversity', with the underpinning 'unification' a result of the study of all documents under the prism of the 'African context'. What brings them together as a research unit, is their primary object and purpose of establishing peace via political instead of military means, and a similar understanding of how to materialise this goal, in terms of their deployed method (establishing a transitional phase and a transitional authority to govern) and the prioritisation of related tasks.

When using the term 'African peace agreements' the thesis in no case whatsoever advocating for a one-size-fits-all or implying the necessity of having a blueprint or model agreement overlooking the particularities on the ground; rather the thesis aims to identifying similar features, through the systematic interpretation of peace agreement provisions.

These specific problems of interpretation are to be considered alongside the more general problems of traditional interpretation, being selected as part of the international law perspective and adjacent framework of the thesis, though analogously applied to an array of peace agreement provisions, especially provisions of the peacebuilding part of the

[6] Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.

[7] For a detailed list of the original and authoritative languages of the overviewed materials, see Table II-African Intrastate peace agreements, appended in the bibliography; in most cases, at least one of the original languages is either English or French, and when the international community is involved, the language of negotiations (English/French) usually takes precedence.

[8] For instance cf the Kenyan peace agreements Public Statement(2008), Acting Together for Kenya (2008), Kenyan Dialogue/Reconciliation–TRC(2008), Kenyan Dialogue/Reconciliation-Review(2008), being one-page long and the Global Peace Agreement (2008) and the UFDR-FPDC Ceasefire (2007)agreements in CAR being 2 pages long, the Good Will Agreement (Sudan) (2009) 1-page, the Syrte Accord (Chad) (2007), the Casamance General Peace Agreement (Senegal) (2004) 3-page long, with the Bicesse Accords (Angola) (1993), 55-pages long, the Darfur Peace Agreement (Sudan) (2005) 115 pages-long, and the Arusha Agreement (Burundi) (2000) counting 92 pages.

agreements. This categorisation followed throughout the thesis, not only is assisting the overview of all findings, but also permanently reminding how peace agreements are relying upon this double understanding of positive and negative peace.

3.2 The primary object and purpose of peace agreements: peace and security, and peacebuilding

African intrastate peace agreements constitute the framework for establishing peace. The aim is to replace violence with a political solution, which would include the former warring parties, whilst the state is being restructured. This is the main phase of the transition to peace, usually called transitional, or interim, or sometimes the immediate post-conflict period.[9] The phase is of importance for the following symbolic, pragmatic, and normative considerations. Being the period after the conclusion of the agreement, it constitutes the most unstable phase, with a significant recurrence rate.[10] Not all hostilities have formally or ended, this ostensibly adding a layer of ambiguity to the applicable legal framework on the ground.[11]

It has great symbolic importance, as it marks the return of order and stability, as some degree of peace is gradually being established. It requires the performance of a variety of tasks: in some instances, not all hostilities have formally ended, but they are scheduled to end, and the peace and security provisions, not just disarmament and reintegration,

[9] The term immediate post-conflict period or more accurately 'immediate aftermath of conflict' is part of the UN terminology and has a limited temporal scope, understood as the first two years after the initial cessation of hostilities; see Report of the Secretary-General to the General Assembly and the Security Council on peacebuilding in the immediate aftermath of conflict, 11 June 2009, A/63/881–S/2009/304, 3, para.2; also Progress report of the Secretary-General on peacebuilding in the immediate aftermath of conflict – Report of the Secretary-General 16 July 2010, A/64/866*–S/2010/386*, Peacebuilding in the aftermath of conflict, Report of the Secretary-General to the General Assembly and the Security Council , October 2012, A/69/399-S/2012/746; Report of the Secretary-General on Peacebuilding in the aftermath of conflict (2014) 23 September 2014.

[10] For the meaning of the recurrence rate see section 2.1.2 of the second chapter, 89-98.

[11] For this reason, some agreements provide for the application of humanitarian law in their operative part, or generally might refer to humanitarian law principles or obligations in order to cast any doubt on its relevance for these limited instances, in addition to a general reference in preambular and opening sentences; see Accra Agreement (2003) (Liberia), art. XV 'The Parties undertake to respect as well as encourage the Liberian populace to also respect the principles and rules of International Humanitarian law in *postconflict* Liberia.' (emphasis added); also, North-Kivu Agreement (2008) (DRC), art III, South-Kivu Agreement (DRC)(2008), art.III; also, Doha Document for Peace (DDPD) (2011) (Sudan), art. 2(3).

are taking place, whilst international observers or traditional peacekeeping or more complex missions are being deployed in parts of the territory of the state.

At the same time the state should be governed: the state has to deliver its basic functions towards its people, in addition to preparing for the modalities of the first elections that will mark a tangible step of progress, signifying even for the most suspicious beginning of the return to some degree of normalcy; in the past, this 'vacuum consideration' has led to international organisations assuming governing functions.[12]

In the absence of ITA models of governance in Africa in the post-Cold-War era,[13] and after calls for return to a more 'light-footed' approaches to reconstruction,[14] the standard practice of the agreements is to create, or recognise the existence of a caretaker government consisting of all the immediate parties, as the previous governing actor, would be linked to the crisis, or the conflict, or more generally speaking the preceding dispute.[15] Whilst all these are occurring, important milestones to be achieved also include the promulgation of a new constitution, or constitutional amendments and other significant (e.g. electoral) reforms.

The transitions are defined in similar terms by the agreements, in the sense that there is a pattern of sequencing the tasks of peacebuilding against benchmarks and milestones,

[12]Defined as the 'legitimate temporary takeover of government functions and administrative control over a territory by international organizations and reasons for establishing the international territorial administration including the governance/authority vacuum, see Ralph Wilde, 'From Danzig to East Timor and Beyond: the Role of International Territorial Administration,' (2001) 95(3) AJIL 583, 583, 592; also, under the term 'transitional administration', Simon Chesterman, *You, The People: The United Nations, Transitional Administration, and State-Building* (OUP 2004), 3-9.

[13] For the transitional governing authority in Namibia see UN Security Council resolution 632 (1989) of 16 February 1989; Ralph Wilde, *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away* (OUP 2008), 383.

[14] On the international presence leaving 'a light expatriate "footing"' see 'The situation in Afghanistan and its implications for peace and security', Report of the Secretary-General, 18 March 2002, A/56/875/S/2002/278, para 98; Lakhdar Brahimi, 'State Building in Crisis and Post Conflict Countries, (Paper Delivered in A 2007), stressing that the 'light footprint approach' is based on patient identification and systematic use of the human and institutional assets that do exist in the country concerned, even in post conflict environments'; for his description of the 'assistance model' in Haiti, Sierra-Leone, Liberia, Afghanistan, and Iraq, where a domestic government administers the reconstruction process' see Matthew Saul, 'From Haiti to Somalia; the assistance model and the paradox of state reconstruction in International Law' (2009) 11(1) Int'l Comm L Rev 119, 128.

[15] See chapter 2, pp 106-107.

indicating the gradual establishment of peace; what each agreement considers as important milestones to be achieved during that transition reveals choices and compromises made in response to a particular conflict or crisis. As a result, the peace agreements define the phases and the end of their transitions primarily by reference to tasks and future events, thus ensuring some flexibly in time,[16] but they slightly differ on which event has been chosen to symbolise the end of the main transitional period. Whilst for some agreements, in line with early UN-guidance, the organisation of the first general elections is framed as a sufficient condition for the establishment of relevant degree of peace, for others, such elections are conditioned upon, or complemented with a constitutional amendment, or the promulgation of a new constitution, which are placed at the heart of the process of returning to peace;[17] in such instances, the transition either ends with the adoption of that constitution with or without a referendum, or when elections, in accordance with the new or reformed constitutional processes, have taken place.[18]

Three observations should be made at this stage. First, no matter how diverse these factual backgrounds might be, one could safely say that it is the element of violence, though of a different degree, or category, that links both agreements following a crisis and agreements following a conflict. This is what subsequent soft law documents have called

[16] Time, in the form of minimum and maximum periods, is used as a subsidiary criterion for designing and defining the transition; see Maseru Memorandum (1998)(Lesotho), 2.1.1;also Maputo Political Accord (2009) (Madagascar), art. 2, setting a maximum timeframe of fifteen (15) months; see also Arusha Agreement (2000) Burundi, Prot. II, chapter II, art. 13(1), The transition period shall commence from the time that the conditions necessary for installing the transitional Government in accordance with the applicable instruments have been met, which shall be as soon as possible after three months, and in any event not later than six months, from the date of signature of the Agreement'.

[17] For instance the Arusha Agreement in Burundi (2000), Prot.I, para.1, Prot. II, chapter II, arts. 5(1), and 12(2) a, the Pretoria Agreement in the DRC (2001), VII (a) and (d), aiming for a transitional constitution, the Cairo Declaration on Somalia (1997), paras 34-35, the Maputo Political Accord (2009) Madagascar, arts 3,6,19,the Principles Agreement in Kenya (2008), the Comprehensive Peace Agreement in Zimbabwe (2008), art. VI.

[18] See Cairo Declaration (1997) (Somalia), op. para 35, the transition would end once the constitution would be drafted, and elections would take place according to the new constitution; cf with the transitional period in the DRC, according to the Pretoria Agreement of 2002, the transitional government, would organise elections whilst preparing and promulgating the constitution that was subsequently adopted by the Sun City Agreement (2003).

fragility.[19] This could be said for electoral-related violence peace agreements,[20] as well as agreements after a violent coup,[21] or a coup escalating with the use of significant violence. Sometimes the factual backgrounds of these agreements are further complicated, since, they seek to address cases of an incident of violence, gradually escalating, and leading to conflicts of low or higher intensity.

Contrary to the unconstitutional changes in government *coups* not leading to low civil war (Madagascar or Togo), there have been coups that have triggered civil wars, with the attempted 1998 *coup* against João Bernardo "Nino" Vieira in Guinea Bissau being a good example: the first attempted *coup* of 7 June 1998 led to the civil war, in response to which the Praia ceasefire was concluded;[22] a second *coup* followed, disrupting the holding of general and presidential elections that were being organised, according to the provisions of Praia Ceasefire, culminating in the conclusion of the Abuja Agreement.[23] After the 2000 general and presidential elections, another *coup* followed in 2003,[24] deposing Kumba Yala, and leading to another crisis. The assassination of Vieria in 2009 was taken up by the AU Peace and Security Council[25] and a further crisis was addressed, with the mediation of ECOWAS with leading Political Transition Pact of 2012.[26]

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[19] Report of the High-Level Panel on Fragile States titled "Ending Conflict and Building Peace in Africa: A Call to Action", presented to, and endorsed by, the 22nd Ordinary Session of the Assembly of the African Union, held in Malabo, Equatorial Guinea, (26-27 June 2014) [Assembly/AU/ Dec.512(XXII)], 8-10, 16-18; Report of the Chairperson of the Commission on the Follow-up to the Peace and Security Council Communiqué of 27 October 2014 on Structural Conflict Prevention (29 April 2015) (AU Doc. PSC/PR/2(D)), para 8.

[20] Countries included Kenya, Zimbabwe, Lesotho, Togo.

[21] Countries include Togo, Mali, CAR.

[22] Praia Ceasefire (1998), Annex II, para 10 refers to the military junta and the government as the parties to the 'conflict' signing a 'truce' (rather a ceasefire) jointly mediated by the Community of Portuguese Speaking States and ECOWAS; for reference to the 'conflict' see also Abuja Accord (1998), preamb. para 1.

[23] Abuja Accord (1998), preamb. para 4.

[24] For the *Coup* of 14 September 1999, which took place whilst preparations for general and presidential elections were underway, in accordance with Praia Ceasefire (1998) provisions, see Progress Report of the Secretary General on the Recommendation of the Security Council Mission to West Africa, 5 December 2003, UN Doc, S/2003/1147, paras 4-5.

[25]Communiqué of the Peace and Security Council, 3 March 2009 AU Document, PSC/PR/Comm (CLCCIV), paras 1-2 <www.peaceau.org/uploads/guineebissaufr-174th.pdf>.

[26] Political Transition Pact (2012), preamb. paras 3-4, arts. 1-2; though the aim of returning to constitutional normalcy through the continuity of the state and the upholding of the country's international obligations is mentioned, the preceding situation is not explicitly indicated, only alluded to by reference to the ECOWAS extraordinary summit, of 3 May 2012 in Dakar, taking up the situation.

Similarly, in the Central African Republic, after the Bangui accords of 1997, repeated *coups* led to violence reaching a more protracted level, in response to which the Global Agreement of 2006 was concluded. However, the violence returned in 2012, and most importantly with the emergence of the vigilante groups such as the Balaka. respectively. Following the conclusion of the Republican Pact (2015), elections were held in February 2016, with the former Prime Minister Faustin-Archange Touadéra being elected president, but the fighting in areas outside Bangui continues, as other militant groups have appeared since then.

To make matters more complicated, some of the agreements, do include a reference to the factual background behind the peace agreement, whilst explicitly qualifying it as a war, a conflict, or a crisis. Sometimes the words conflict, violence, politico-military crisis are interchangeably used,[27] whereas in others there is more clarity, with Rwanda being one example.[28]

For the above reasons, to the extent that referring to the factual backgrounds of the agreements is necessary, the thesis has not dwelled upon dividing the agreements as agreements concluded after conflict and crisis, bearing in mind that it would have not any major legal repercussion in this chapter's questions.[29] For the following sections, these agreements, irrespective of their diverse and factual backgrounds could be linked by a common theme. This theme corresponds to the agreements' primary object and purpose, briefly introduced in the previous chapter.[30] In deciding what is at stake what is the point

[27] The Linas-Marcoussis Agreement (2003) (Cote d'Ivoire) refers to overcoming the 'crisis', whilst the Armed Forces Joint Declaration (2003), complementing both Linas Marcoussis, and the Accra II Accord (2003), and regulating the military aspects, clearly mentions the war since 19 September 2002; see, Linas-Marcoussis Agreement (2003), preamb. para 2; Armed Forces Joint Declaration (2003) preamb. para 2, op para 1.

[28] Situation recognised as 'war situation confronting the Rwandese people since 1 October 1991' Arusha Accord (1993) (Rwanda), preamble, para 2; also, preamble para 5, art. 1 'the war between the Government of the Republic of Rwanda and the Rwandese Patriotic Front is hereby brought to an end.'

[29] The Arusha Agreement (2000) (Burundi), preamb. para mentions putting an end to the 'recurring state of violence, bloodshed, insecurity, political instability, genocide and exclusion', whilst its operative part, refers to the 'conflict'; Arusha Agreement (2000), preamb para 6, and Protocol I, art. 4.

[30] See chapter 2, pp 108-109.

for the return to normalcy, sometimes only elections and some reforms, sometimes general and presidential elections, sometimes constitution promulgated or constitution amended.

In addition to establishing peace, by the cessation of hostilities and the warring parties have to give up arms and return to normalcy. This is what the peace agreements set out to do via the transition. This normalcy is signified when the first selections are concluded, and sometimes when a new constitution is adopted. To this end the free movement of persons is mentioned,[31] but interestingly most peace agreements contain more provisions on how the warring parties as such are to be included through transformation to political forces, movements or parties.

Despite the diversity of the preceding conflicts and crises, the concluded peace agreements, do include similar patterns on the restructuring of the state, irrespective of whether these agreements were concluded in relation to a conflict or a crisis. As briefly introduced in the previous chapter, those peace agreements as 'the legal framework for peace transitions', modifying the existing legal environment. Such modifications include the establishment of a transitional period till the holding of elections,[32] a referendum, and or constitution promulgation,[33] or constitutional amendments,[34] the establishment of a transitional government[35] with law-making powers, governing and administering during the transition; in addition to daily tasks of administration, transitional governments are

[31] See amongst others, Sun City Agreement (2002), (DRC), Resolutions No 5 (DIC/CPJ/05, 1 and No 35 (DIC/CPR/06), 1e; Ouagadougou Preliminary Agreement (2013) (Mali), art. 14; Lusaka Protocol (1994), annex 3, section I, para 3, section II para 7, section III 15, annex 7, para 2.
[32] Countries include Angola (Bicesse Accords) (1991) (Lusaka Protocol) (1994) Côte d'Ivoire, (Linas-Marcoussis Agreement (2003), Pretoria I Agreement (2005) Pretoria II Declaration (2005),) Liberia, (Cotonou Agreement, Akosombo Agreement , Abuja Agreement) Guinea-Bissau (Abuja Accord (1998) Abuja Protocol (1998), Sierra Leone (Conackry Peace Plan) (1997) Togo (Lomé Framework Agreement (1999), Zimbabwe (Comprehensive Peace Agreement) (2008).
[33] Countries include Burundi (Arusha Agreement) (2000), DRC (Pretoria Agreement) (2002) Madagascar (Maputo Political Accord) (2009), Kenya (Principles-Longer Term Issues Agreement) !2008), Somalia (Cairo Declaration) (1997) (Djibouti Agreement) (2008), and Zimbabwe (Comprehensive Peace Agreement) (2008).
[34] Countries include Djibouti, Lesotho.
[35] Countries include Burundi, CAR, Comoros, Cote d'Ivoire, Djibouti, Guinea-Bissau, Kenya, Liberia, Sierra-Leone, Somalia, Sudan, Togo, Zimbabwe, Uganda; See Arusha Agreement (2000) (Burundi), Fomboni Accord (2001), Moroni Agreement (2003) (Comoros), Linas-Marcoussis Accords (Côte d'Ivoire) (2002), Accra Peace Agreement (Liberia) Lomé Framework Agreement (Togo) (1999).

also delegated significant powers, those varying from the introduction of electoral reforms, wider institutional reforms, and the restructuring of the national army and police.

This is the reason why the peace agreements concluded after crises in countries such as Comoros,[36] Lesotho,[37] Madagascar,[38] Zimbabwe[39] do try to restructure the state and contain the related provisions in a way similar with agreements concluded in response to conflicts in Angola,[40] Mozambique,[41] Djibouti,[42] Rwanda,[43] Burundi,[44] and the DRC.[45]

Relying upon the double understanding of peace as negative and positive peace, the corresponding provisions of intrastate peace agreements could be grouped, under two broad categories: provisions relating to ceasefire/cessation of hostilities ('peace and security provisions/part'), and provisions relating to positive peace and/or peacebuilding (termed 'peacebuilding provisions/part'). The peace and security part and peacebuilding part is used throughout the research, and takes precedence over existing groupings, as reflecting the issues arising of the understanding of peace in the various normative systems where peace agreements are called to be located and the perceptions and choices about peace of the actors involved in the drafting and the implementation of these agreements.

[36] Fomboni Declaration (2001); Fomboni Accord (2001); Moroni Agreement (2003); Moroni Memorandum (2009); Interim period Accord (2010).
[37] Maseru Memorandum (1998); Lesotho Memorandum (1999); Electoral Law Bill Agreement (2011).
[38] Maputo Political Accord (2009); Transitional Charter (2009); Charter of Values (2009); Sub-Accord 1 (2009); Sub-Accord 2 (2009); Sub-Accord 3 (2009); Addis Additional Act (2009); Antananarivo Roadmap (2011).
[39] Moroni Agreement (2003).
[40] Maseru Memorandum (1998).
[41] General Peace Agreement (1992).
[42] Peace and Reconciliation Agreement (1994); Framework Reform agreement (2000); Reform Agreement (2001).
[43] Rule of Law Agreement (1993).
[44] Arusha Declaration (1998); Arusha Agreement (2000) and its complementing agreements [CNDD Ceasefire Agreement (2002); Pretoria I Protocol (2003); Pretoria II Protocol (2003); Forces Technical Agreement (2003); Global Ceasefire Agreement (2003); Power-sharing Agreement (2004); Dar-es-Salaam Principles Agreement (2006); Dar-es-Salaam/ FNL Ceasefire (2006)].
[45] Pretoria Agreement (2001); Sun-City Agreement (2002).

When analysing peace agreements, research institutes and datasets use two types of categorisation: classification, based on their, or thematic grouping.[46] Those two classification-type and thematic groupings though not rejected, are rather referred to and discussed in relation to the peace and security/peacebuilding parts of African peace agreements. On the classification-type grouping, i.e. the tripartite distinction between divides negotiation, framework/comprehensive and implementation agreements, mentioned in the previous section,[47] it should be noted here, that 'peace and security' provisions and 'peacebuilding' provisions can be found in all three types of peace agreements, negotiation, framework and implementation.

On the thematic grouping of peace agreements, looking at the typical tasks that a peace agreement has to regulate, the research often uses thematic classification: whilst analysing peace agreements, the various institutes have employed the following key themes: The UN peacemaker database uses eighteen key terms/themes, out of which, fifteen are directly related to the substantive provisions of peace agreements.[48] The INCORE database, uses similar key themes.[49] Looking at these categorisations, three broader themes are prominent: security, justice and self-determination; thus, the study will at the same time rely upon the keywords, but also place them within the bigger picture

[46] See the peace agreement digital collections including the UN Peacemaker, the INCORE database, the Uppsala Peace and Conflict Database, the Kroc Institute Peace Accords Matrix, the Conciliation Resources collection.
[47] See section 1, the agreements, p 18, also Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (OUP 2008), 46-77 and for variations, see the UN peacemaker database < http://peacemaker.unlb.org/index1.php>.
[48] These are Security: Military, police DDR etc, Constitution and political system structure/institutions, Rule of Law and the administration of justice, Electoral Framework, Human Rights, Women, Children, minorities/Indigenous Peoples/Other Groups, Humanitarian and Refugee Issues, Socio-Economic and Development, Media and Information, Transitional Security, Governance and Institutional Arrangements, Transitional Justice, Traditional and Local Actors, Statehood and Identity. See UN peacemaker database < http://peacemaker.unlb.org/index1.php>
[49] Out of 18 key themes, 14 relate to substantive provisions- women, children, statehood and identity, and development and socio-economic issues are identical, the theme of transitional justice is split into 3 sub-themes of amnesty, victims and past-mechanism, the theme of Human Rights is split into the 2 sub-themes of Human Rights Framework and National Human Rights Institutions, the Rule of Law and the administration of justice is split into the sub-themes of governance and democratic institutions, criminal justice reform and judicial reform, the Security theme is split into the sub-themes of policing and prisoner release, and the theme of refugees is grouped with land issues; see INCORE database.

of security, self-determination and justice, by referring to the self-determination factor and the other factors of an intrastate peace agreement, and also these factors in the peace and security part and the peacebuilding part of a peace agreement.

3.3. The self-determination factor of peace agreements : language, rhetoric, influence

When looking at the substantive components, the research has selected the elements could be systematically interpreted to be comprising the 'self-determination factor', by relying on the definition of internal self-determination, as found in international human rights instruments.

Whilst the term 'self-determination', a much contested and politicised term itself does not necessarily come across, but in cases like Sudan,[50] and Burundi,[51] a careful reading of the substantive components reveals the influence of 'internal self-determination language' in the drafting of these texts. In search for the 'self-determination factor, the thesis is exploratory and open-ended, looking at provisions relating to electoral and other reforms, broad human rights standards of governance, and the processes and principles governing the transitional governments, including their powers during the interim periods.

The 'self-determination factor' is widely understood at this stage, but does not cover all peace agreement provisions, indicating that the thesis, no matter how comprehensive in self-determination matters, does not cover all matters of African intrastate peace agreements. To this end, the main objective of 'finding a political solution' to the crisis or conflict, that permeates the rationale of overviewed agreements, has been used as a common underlying thread. Internal self-determination offers guidance on how to materialise this general objective, if understood to be offering modes of inclusion within

[50] Term found in Machakos Protocol (2002) see 'Agreed Text on the Right to Self-Determination for the People of South Sudan', art. 1.3.
[51] The Arusha Agreement (2000) sets as a basic requirement the government to be representative of the will of the Burundian people; see section II, art. 1.

an established state;[52] thus, the related political solution can be related to addressing the government of a state, by restoring the right to govern yourself and freely determine its political future.

Findings also include provisions that though not explicitly mentioning the term, mirror some (internal) self-determination influence; the same goes for provisions acknowledged and mentioned by overlapping research from the field of human rights and or the rule of law, albeit relying upon a similar (internal self-determination) understanding. These provisions could be understood to be operationalising the 'political solution' by setting out modes of including former warring parties into the state during the transitional period.

It is with regards to these provisions that the use of self-determination language comes into play, and where the research has tried to identify 'self-determination factor' in these peace agreements. The research has identified the self-determination factor, by putting together different types of peace agreement provisions. The provisions that relate to the objectives of the main phase of the transitions, such as to the holding of elections, including, but not limited to, the requirement of free and fair elections found in various agreements,[53] and the related right of former armed groups to transform into political parties and participate therein.

Bearing this in mind, such findings also relate to what the research calls the provisions on power-sharing (political, military, wealth/resources) during the interim transitional period. Power-sharing is not a legal term of art, for an international law research, attention is shifted towards the language and normative degree of such entitlements, their reciprocal nature, and the beneficiaries. When assessing the substantive provisions of these agreements, the relevance of self-determination as a right is important for the research

[52] Paul R. Williams and Sabrineh Ardalan, 'The Northern Ireland Peace Agreement: Evolving the Principle of Self-determination', (1999) 12 Leiden Journal of International Law, 155-171, 165; Marc Weller, *Escaping the Self-determination Trap* (Martinus Nijhoff 2008); Thomas M. Franck, 'The Emerging Right to Democratic Governance', 86(1) AJIL (1992) 46.

[53] See for instance Bicesse Accords (1991) and Lusaka Protocol (1994) in Angola, the General Peace Agreement in Mozambique (1991), the Lomé Framework Agreement (1999) in Togo, the Moroni Agreement (2003), principle II.

both in terms of content, but also in terms of beneficiaries. With regard to the beneficiaries, what needs to be inquired is whether the accommodation of former warring parties, be they governments, armed opposition groups, politico-military movements, political parties, or indigenous and other groups, with these power-sharing provisions or general principles of participation, is or not eroding the established understanding of beneficiaries under the doctrine of self-determination.

Existing rule of law/human rights works seem to be overlapping with what the research calls the self-determination factor within a peace agreement. In secondary literature, Ramcharan concludes that 'the practice of the Security Council in dealing with internal conflicts shows a strong emphasis on human rights in processes of peacemaking. The Council has placed its authority behind negotiated solutions, national dialogue, democracy, the rule of law, respect for human rights, and justice for the victims of gross violations.'[54] However, Ramcharan refers to international human rights law in the widest sense possible, including the rule of law and general principles of international law, pinpointing at self-determination, when talking about negotiated solutions and national dialogue.

In the first stages of research, the thesis also relied upon themes used by the research institutes relating to 'self-determination factor', these including the themes of Security, Constitution and political system structure/institutions, Rule of Law and the administration of justice, Electoral Framework, Human Rights, minorities/Indigenous Peoples/Other Groups, Transitional Security, Governance and Institutional Arrangements, Traditional and Local Actors, Statehood and Identity, bearing in mind that some of these overlap with research on human rights and /or the rule of law.[55]

The other group of findings relied upon, are the provisions that set processes and principles for the accommodation of former warring parties and their access to power. This is done

[54] Bertrand G. Ramcharan, *The Security Council and the Protection of Human Rights* (Martinus Nijhoff Publishers 2002), 103-104.
[55] These themes are used by peace agreement digital collections including the UN Peacemaker, the INCORE database, see above, (n8).

by either injecting a general principle of 'political participation' in the key agreement[56] or a principle of inclusive political dialogue, or by more detailed provisions of 'power-sharing'. Power-sharing as a term appears in some agreements, but in others not.[57] These power-sharing provisions can be related to political matters, defence and security matters, or wealth and resources. Political matters can vary from the executive, judiciary and legislature, to public enterprises, local government/authorities etc. For instance, in Burundi, power-sharing has been provided in detail for all these political matters and defence and security matters in detail. Thus, the peace agreements have been regulating the amount of ethnic representation regarding all these issues. Other examples of explicit references to power-sharing arrangements include Sierra-Leone.[58] In other cases, power-sharing, though not termed as such can be found in the provisions relating to the formation of governments of national unity, their structures and the ways of distribution of power and representation, with Guinea-Bissau being an illustrative example.[59]

Literature on power-sharing has focused on cases peace agreements in Rwanda,[60] in Sudan,[61] in Burundi,[62] Côte d'Ivoire,[63] Liberia,[64] DRC,[65] and the Congo.[66] It should be

[56] See for instance the Global Peace Agreement (CAR) (2006) affirming the principle of political participation; Art 6.
[57] For examples of power-sharing being part of the agreements' full name, see Pretoria I Protocol (Burundi) (2003) and Pretoria II Protocol (Burundi) (2003), Power-sharing Protocol (Rwanda) (1992) and Power-sharing Protocol (Sudan) (2004); for explicit reference to power-sharing see Abuja Protocol (Guinea-Bissau) (1998).
[58] See Conakry Peace Plan (1997), art. 5.
[59] See Abuja Protocol (Guinea-Bissau) (1998), Annex II on the Formation of the Government of national Unity, arts 1-2, Cotonou Agreement (Liberia) (1993), Section B, art. 14 on the structure of government, Abuja Accord (Liberia) (1993) Part. II, Section A, on the formation of transitional government and the participation of former warring parties to the ministries and the public entities.
[60] Arusha Accord (1993), preamb.para 10, and its five related protocols, namely the Power sharing Protocol (1992), ch.II, art.3, ch III, art. 4, Section 1, arts 5-6, Section 2, arts 13-15, ch VII, Sub-section 4, arts 47-79, especially arts 55-58, and 60-63.
[61] Machakos Protocol (2002); also Darfur Peace Agreement (2006), arts 1(8), 2, 16, and 33.
[62] Arusha Agreement (2000), Pretoria I Protocol (2003).
[63] Linas-Marcoussis Agreement (2003), clause 3(d) and related annex, especially titles I, II, V, VI and VIII.
[64] Accra I Agreement (1993).
[65] Pretoria Agreement (2002); title III 7, title V, 1 C (h), 1 D (k), 2 (c) and (g), and Annex I on division of responsibilities.
[66] Donald Rothchild, 'Africa's power sharing institutions as a response to insecurity: Assurance without deterrence' in Stephen Saiderman and Marie-Joelle Zahar (eds), *Intrastate Conflict Governments and Security* (Routledge 2009), 138-160, 142-148.

noted that the term power-sharing[67] is not a legal term of art. Rather, it can be found in political science and peace research scholarship, in particular in works focusing on conflict analysis and conflict prevention. As a technique, it has been analysed with regard to 'self-determination disputes'.[68] The analysis emphasises on two major types/approaches, the 'consociational',[69] and the integrative approach,[70] considering issues of success and lessons-learnt.

The literature has paid attention to the cases of power-sharing in Rwanda,[71] in Sudan,[72] in Burundi,[73] Côte d'Ivoire,[74] Liberia,[75] DRC,[76] and the Congo.[77] From the viewpoint of international law, the attention is more to, and there are significant gaps in looking at the framing of these power-sharing provisions as 'principles' with the use of 'internal self-determination' language and standards and also with regard to the parties that benefit

[67] Timothy Sisk, *Power-sharing and International Mediation in Ethnic Conflicts* (US Institute of Peace 1996), and Marc Weller, Barbara Metzger, Niall Johnson (eds), *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice (Brill 2008).*

[68] By referring to self-determination disputes, political scientists mean secessionist movements; their way of analysing violence (which can be a *stricto sensu* armed conflict or violence falling short of the armed conflict threshold in international law) is centralist or secessionist. The first is the one when the opposing parties are seeking access to power, the latter is the one where the opposing party is aiming at seceding and establishing its own structures of power.

[69] Hugely influenced by Lipjard, consisting of techniques that include granting groups territorial autonomy, employing proportional representation in administrative appointments and parliamentary elections, and recognizing group rights, and 'integrative', containing techniques that focus on creating a unitary, inclusive central state Lijphart and Waisman (eds), *Institutional Design in New Democracies* (Boulder: Westview) (1996) and Arendt Lijphart*, Democracies: Patterns of Majoritarian & Consensus Government in Twenty-one Countries* (Yale University Press 1984); Arendt Lijphart, *Democracy in Plural Societies* (1977), 25-52.

[70] This approach relies on ethnically neutral majoritarian decision-making, ethnicity-blind public policies, and adoption of an electoral system which encourages political and ethnic coalitions See Timothy Sisk, *Power-sharing and International Mediation in Ethnic Conflicts* (US Institute of Peace 1996), chapter 3.

[71] Arusha Agreement (1993) and its five related protocols, namely the Power sharing Protocol (1992).

[72] Machakos Protocol (2002).

[73] Arusha Agreement (2000), Pretoria I Protocol (2003).

[74] Linas-Markousis Accords (2003).

[75] Accra I Agreement (1993).

[76] Pretoria Agreement (2002).

[77] Donald Rothchild, 'Africa's power sharing institutions as a response to insecurity: Assurance without deterrence in Stephen Saiderman an Marie-Joelle Zahar (eds), *Intrastate Conflict Governments and Security* (Routledge 2009), 138-160, 142-148.

from these provisions, this irrespective of whether the preceding conflict/crisis has been 'secessionist' or 'centralist'.[78]

This section has presented some examples of general or more specific provisions in the substantive components of intrastate peace agreements that adopt or seem to have been influenced by self-determination language or standards; these have been labelled the self-determination factor of intrastate peace agreements and what can be identified at this stage is the increasing use in the drafting of peace agreements. The increasing use of or drawing upon international standards can be pictured in qualitative terms by looking at the research institutes themselves. According to the old version of the UN peacemaker database, which used key themes of analysis,[79] 61 African intrastate peace agreements deal with Human Rights.[80] 80 African intrastate peace agreements deal with issues relating to the key theme Constitution and Political System/structure/institutions;[81] 60 African Intrastate peace agreements deal the key theme of statehood and identity;[82] 11 African intrastate peace agreements deal with the key theme of traditional and local actors.[83]

3.4. Positive Findings

The self-determination factor for immediate parties to African peace agreements is an interpretative lens to systematise modes of operationalising the main objective of peace transitions, which lies in establishing peace through political means. Essentially, after a careful overview of African materials, it could be inferred that in response to both conflicts and crises, the solution put forward constructs a transitional or interim government comprising most warring parties and factions as a new (temporary) legitimate authority

[78] Power-sharing Protocol (1993) (Rwanda), art.1, ch. II, art.3, ch. III, art. 4, Section 1, arts. 5-6; also DPA (2006) (Sudan), art.1.
[79] http://peacemaker.unlb.org/index1.php.
[80] Countries include Angola, Burundi, CAR, Cote d'Ivoire, Kenya, Liberia, Rwanda, Sierra Leone, Somalia, Sudan, and Zimbabwe.
[81] Countries include CAR, Côte d'Ivoire, DRC, Somalia, Sudan, Uganda, and Zimbabwe.
[82] Countries include Angola, Burundi, Côte d'Ivoire, Liberia, Rwanda, Somalia, and Sudan.
[83] Countries include Burundi, Chad, Guinea, Kenya, Liberia, Sierra Leone, South Africa, Sudan, South Sudan, and Uganda.

to govern whist peace is being established through the achievement of benchmarks that include elections, electoral changes, and other rule of law reforms, constitutional amendments, or even promulgation of new constitutions.

In other words, the peace agreements materialise the political solution, by addressing the issue of a state's government and governmental representativeness, in three ways, which essentially have one teleological function: to replace military strife with political strife, and to transform former enemies into political units.

The three categories of provisions (transformation of former warring parties, electoral provisions relating to the conduct of former enemies, their modalities for post-transition, or more general issues, and the restructuring of the internal order through reforms) are not thus entirely separate from each other, since, not only they are systematically drafted in peace agreements, but sometimes they are framed as part of singular provisions, in rather general terms. These three categories (the right to be recognised as a political party, the right to participate in elections, and the right to take part in the restructuring of the state) will be discussed by reference to the overviewed materials.

3.4.1 The right to be recognised as a political party

The political resolution of the African crises and conflicts entails the transformation of former warring parties into regular political forces. For the purpose of transitioning from conflict to peace, internal self-determination is used in the form of standards injected for accommodating former warring parties. The provisions that set processes and principles for the accommodation of former warring parties and their access to power, the most relevant are obviously the provisions relating to the transformation of former warring factions to political parties. Such clauses and related provisions are used, in order to enable former warring groups to be accommodated within existing states, thus, not towards the withering of the state but towards reconfiguring its power structures and institutions. To

this end, 'inclusiveness',[84] 'participation'[85] or the 'will of the people',[86] referred to in separate provisions, or altogether[87] are used as standards to be benefited and observed by the former warring parties. Interestingly, these clauses are not drafted as particular and standalone entitlements for the immediate parties; rather, they are enunciated in relation to peace and security provisions, and conditioned upon disarmament, as explained below, thus raising the possibility of systematic interpretation.

One of the earliest examples of post-Cold War practice that seems to have been followed is the provision that enables UNITA in Angola to transform from a warring party to a political party since according to the peace agreement, 'at the time of entry into force of the ceasefire UNITA will acquire the right to conduct and freely participate in political activities;[88] such right not only is conditioned upon the ceasefire, but at the same time UNITA is has a duty to disarm, which corresponds to such right in a straightforward reciprocal fashion.

The exact content is further elaborated in the protocol of Estoril, yet at the same the right to conduct and freely participate in political activities of UNITA is repeated and systematically juxtaposed with the a duty of 'recognition by UNITA of the Angolan State, of President Jose Eduardo do Santos and of the Angolan Government until the general elections are held.'[89] A similar mode is followed in the peace agreement in Mozambique, where RENAMO is placed under a duty to give up violence, and observe the constitution

[84] Maseru Memorandum (1998), 3.1, 'The parties agreed to the review the electoral system with a view to ensuring greater and inclusive participation in the political affairs of Lesotho.'
[85] General Peace Agreement (1992), protocol III, art. V, para d.
[86] Machakos Protocol (2002) art. 1.3; Arusha Agreement (2000) (Burundi), section II, art. 1
[87] Lusaka Protocol (1994) (Angola), annex 7 stipulates that 'as in every democratic and multi-party society, the participation of all citizens in the definition of the national political, social and economic guidelines and options as well as in the free choice of the country's leaders, is guaranteed by respect for the principle of the expression of the people's will in periodic, free and fair elections.'
[88] The eight related rights include freedom of expression, the right to publicly present its political programme, to recruit members, to hold meetings and demonstrations, to access government media, to present candidates in the elections, to open headquarters and offices throughout the country, and the right to free movement and personal safety of its members, Bicesse Accords, Protocol of Estoril, IV para 1 (a-h).
[89] Bicesse Accords (1992), Fundamental Principles, Point 1.

and laws of the country, in order to be able to be registered as a political party, according to the modalities of the related protocol. [90]

More recent agreements do contain a similar pattern of framing the entitlements and duties of government and other parties in a synallagmatic fashion. In Burundi, a similar approach is adopted, albeit stricter for the faction CNDD-FDD, not an original party to the Arusha Agreement of 2000, but acceding in a way to the peace two years after the Arusha agreement was concluded. For CNDD, its transformation to a political party is dependent on cantonement, and is provided in the final of the three agreements it concluded with the transitional government of Burundi,[91] already established by the Arusha Agreement.

In the most recent agreement in the DRC, (Goma Agreement 2009) the relevant provision concerning the transformation of the National Congress for Peoples' Defence (CNDP) is articulated at two levels.[92] The provisions contain a mutual acceptance of the principle of the participation of CNDP in the political life of Congo,[93] as well as specific undertakings on behalf of the CNDP and the government. Within the same provision, concerning the 'transformation' of the CNDP, two reciprocal commitments are contained: the CNDP has to cease acting its politico-military movement, by undertaking to firstly 'integrate its police force and its armed units into the Congolese National Police and the Armed Forces of the Democratic Republic of the Congo, b) transform into a political party' by observing all legal formalities, and to pursue its aims 'through political means and in accordance with the institutional order and laws of the state.[94] Correspondingly, the Government is under

[90] General Peace Agreement (1992), protocol II, arts 3-5.
[91] Pretoria I Protocol (2002), Forces Technical Agreement (2003), Pretoria II Protocol (2003).
[92] Goma Agreement (2009) DRC, art. 1.
[93] '[L]es parties acceptent le principe de participation du CNDP dans la vie politique de la RDC' ; Goma Agreement (2009), art. 1.3.
[94] 'Le CNDP confirme le caractère irréversible de sa décision de mettre fin à son existence comme mouvement politico-militaire. Il s'engage : a) à intégrer ses éléments de police et ses unités armées respectivement dans la Police Nationale Congolaise et les Forces Armées de la République Démocratique du Congo; b) à se muer en parti politique et à remplir les formalités légalement requises à cette fin; c) à poursuivre dorénavant la quête de solutions à ses préoccupations par des voies strictement politiques et dans le respect de l'ordre institutionnel et des lois de la République' ; Goma Agreement (2009), art. 1.1 (a), (b), and (c).

the obligation to address the issue of recognition of CNDP.[95] The Government's undertaking, is complemented by the duties to release and repatriate CNDP political prisoners, and to reinsert former CNDP members, which were executive administrative employees into the country's public administration.[96]

It seems that the early nineties provisions, in the wake the Rwandan catastrophe, adopt strictly-worded bilateral entitlements and corresponding duties, in order to bind former enemies with reciprocal commitments. In other words, their right to become political units is conditioned upon each party fulfilling a set of duties, within the same timeframe.

Sometimes, peace agreement provisions do not explicitly speak about the right of these former warring parties to be recognised as political parties, rather frame their provisions with respect to modalities of the transformation of different military factions. Whereas in Liberia, the preoccupation is with the modalities of the transitional government,[97] in other instances, the focus in on transforming political parties. In addressing the issue of Transformation of the RUF into a political party, the related provisions suggest that 'Immediately upon the signing of the present Agreement, the RUF shall commence to organize itself to function as a political movement, with the rights, privileges and duties accorded to all political parties in Sierra Leone. These include the freedom to publish, unhindered access to the media, freedom of association, freedom of expression, freedom of assembly, and the right to mobilize and associate freely. Correspondingly, the

[95] 'Le Gouvernement s'engage à traiter avec célérité la demande d'agrément du CNDP comme parti politique.' Goma Agreement (2009), art 1.2.
[96] 'Conformément aux Actes d'engagement de Goma, le Gouvernement s'engage à procéder à la libération de ces prisonniers. Le Gouvernement s'engage également à assurer leur rapatriement dans leurs lieux d'habitation'; 'Le Gouvernement s'engage à apporter une solution politique au problème de la réinsertion professionnelle des cadres administratifs ayant adhéré au CNDP, sans préjudice, pour autant, des textes légaux en vigueur.'Goma Agreement (2009), arts 2.3 and 12.1 respectively.
[97] Cotonou Agreement (1993), Section B, art. 14, section C, art. 14, art. 15, para 6; Abuja Accord (Liberia) (1993) Part. II, Section A, on the formation of transitional government and the participation of former warring parties to the ministries and the public entities.
[97] Arusha Accord (1993), preamb.para 10, and its five related protocols, namely the Power sharing Protocol (1992), ch.II, art.3, ch III, art. 4, Section 1, arts 5-6, Section 2, arts 13-15, ch VII, Sub-section 4, arts 47-79, especially arts 55-58, and 60-63.

Government of Sierra Leone shall accord every facility to the RUF to transform itself into a political party and enter the mainstream of the democratic process. [98]

In some instances, both electoral guarantees as well as recognition of political parties are covered by the peace agreement. However, the Transitional Charter of Ethiopia concluded in Ethiopia in 1991 after the military régime of Deng was overthrown, and before Ethiopia's accession to the Covenant in June 1993, explicitly includes the provisions of the Universal Declaration as the basis of its provision on democratic rights, and more specifically the right to participate in the central government'.[99] Still reference to elections and their related standards as a duty of the parties seems to imply passive (tacit) recognition of the said warring parties and their entering into normal political existence.

For instance, in the early 1994 agreement in Djibouti the opposition has the right to transform into a political party, in that agreement there is no mentioning of free and fair elections in general or international standards, only a general provision on democracy. In the latter 2001 agreement, concluded between the government and a faction of the aforementioned party that did not conform the agreement but continued fighting, in the same country we can see similar provisions, relating to FRUD, with the obligation of the parties to ensure free and fair elections as provided. Similarly, according to the Moroni agreement of 2003, the Comorian parties commit to holding free, fair and democratic elections throughout the entire territory of the Comoros. [100] This is of particular importance for a country like Comoros where, a crisis, or constitutional crisis, following a bloodless coup, has witnessed since then many attempted coups and a separatist island.

[98] Lomé Peace Agreement (1999), art. III (1-3); 2. 3. Within a period of thirty days, following the signing of the present Agreement, the necessary legal steps shall be taken by the Government of Sierra Leone to enable the RUF to register as a political party; whereas in the previous Abidjan Agreement (1997), art. 17, the parties only commit to 'approach the international community with a view to mobilizing resources which will be used to establish a trust fund to enable the RUF/SL to transform itself into a political party.'

[99] Transitional Charter (1991), part 2, art.2.

[100] 'Les parties comoriennes s' engagent à oeuvrer à la tenue des elections libres justes et démocratiques sur toute l' étendue du territoire comorien' Moroni Agreement, Principes, principle II, 1.

A similar provision can be found in the Cabinda agreement, concerning the separatist movement.[101]

In Madagascar, the signatory parties, self-identified as (political) movements, are recognised upon the condition of upholding electoral standards.[102] This formula resembles the provisions of the peace agreement of Lesotho (Maseru Memorandum) concluded after *a coup* as well.[103] In that agreement, the parties agreed to uphold electoral guarantees.

In Togo (political parties 1.2.2) (2006), are under the duty to bring forth all necessary reforms in order to ensure that the elections would be free, fair, transparent, and open to all.[104] The primary provisions are complemented by the corresponding duty of immediate parties to accept international electoral observers and to further devise contingency plans as regards modalities for the safety of electoral observers[105] others facilitating, for instance the free access to media[106] and access to financing for political parties.[107]

In Burkina Faso following the uprising of 2 December 2014 in Ouagadougou over contested constitutional amendments, since there was no protracted violence, the transformation of the crisis protagonists, is effectuated in a slightly different manner. They are given the right to participate in the electoral college that elects the interim President for the transitional period designated to last for a year, then followed by presidential elections (held in October 2015). The stakeholders are entitled to suggest a list of candidates, if they met the conditions set out by the peace agreement provisions.[108]

[101] Cabinda Peace Memorandum (2006) (Angola), art. 8.1.
[102] Madgascar (2009), art 4 (2).
[103] 'The parties agree to abide by and respect the outcome of the elections' […] 'The parties agreed to formulate a code of conduct for political parties which will ensure inter alia the creation of a climate conducive for free political activity and further agree to immediately desist from making inflammatory statements', Maseru Memorandum (1998), 2.1.2, and 2.1.4; Lesotho Memorandum (1999) (Lesotho), op.para 1 (the Electoral Model).
[104] 'Toutes les Parties prenantes au Dialogue libre, democratique, transparent, ouvert à tous les Togolais.' Global Political Agreement (2006), 1.2.2.
[105] Global Political Agreement (2006) (Togo), 1.2.8.
[106] Global Political Agreement (2006) (Togo), 1.2.10.
[107] Global Political Agreement (2006) (Togo), 1.2.1
[108] Transitional Charter (2014) (Burkina Faso), art. 7.

The fact that in post-crisis peace agreements the implicit recognition of former enemies goes hand in hand with their ability or duty to observe electoral standards, or take all necessary steps to amend them into more inclusive (democratic) direction, highlights that the provisions regarding elections are quite contextual, and need to be understood and interpreted in light of both international standards, as well as the context, and the purpose of peace transitions.

3.4.2 The right to participate in elections

As briefly introduced in the first chapter, when reference is made to elections as *indicia* of the existence of a representative government, while the starting point is art. 1 of ICCPR, when it comes to interpreting the right to have a representative government of all people within a given state, the soft law tools that are used by international bodies are the Universal Declaration of Human Rights related provisions (art 21)[109] [110]and subsequent UN soft law, including the Vienna Declaration and Programme of Action, and the resolutions on genuine and periodic elections, including international standards guiding electoral codes of conduct and electoral observation guidelines.[111]

The inclusion of such language in the peace agreements mirrors the use of 'genuine and periodic elections' an element that complicates the analysis. As such, the requirement of

[109] Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948).
[110] UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23, endorsed by the General Assembly Resolution 48/121, of 20 December 1993; para 66 mentions 'free and fair elections', by requiring that 'Special emphasis should be given to measures to assist in the strengthening and building of institutions relating to human rights, strengthening of a pluralistic civil society and the protection of groups which have been rendered vulnerable. In this context, assistance provided upon the request of Governments for the conduct of free and fair elections, including assistance in the human rights aspects.'
[111] See UNGA resolutions on 'Enhancing the effectiveness of the principle of periodic and genuine elections since 1989 till today; UNGA Resolution 44/146 of 15 December 1989, paras 1-2 and 4; also UNGA Resolutions 45/150 of 18 December 1990, , paras 3-4, 48/131 of 20 December 1993, paras 2-4 49/190 of 23 December 1994, 50/185 of 2 December 1995, 54/173 of 17 December 1999, 58/180 of 22 December 2003, 60/162 of 16 December 2005, 62/150 of 18 December 2007, 64/155 of 18 December 200965/223 of 21 December 2010, 66/163 of 19 December 2011.

free and fair elections found in these materials[112] can be viewed as the result of borrowing of such language from the above soft-law documents.

The provisions usually read as follows. Either the provisions iterate that 'Elections shall be free, fair and regular', as did the Arusha Agreement in Burundi,[113] or by regulating that 'Free and fair elections for the new Government will take place under the supervision of international elections observers, who will remain in Angola until they certify that the elections were free and air and that the results have been officially announced.'[114]

Depending on whether provisions refer to the one-off elections marking the end of transitions or are articulated more broadly, can raise interpretative as well as issues of content and wider implications. The inspiration comes from the language of Article 21 of the UDHR, which provides that 'everyone has the right to take part in the government of his country, directly or through freely chosen representatives.' It makes use of the language of General Assembly Resolutions that the 'will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.' The requirement of free and fair elections might seem straightforward in its application, however in the context of peace transitions it becomes problematic in such texts, and what it does actually mean and entail, as shown below.

First, because, the requirement of free and fair elections was not always part of the national laws This could be seen in the provisions of agreements concluded in the early nineties: of Mozambique for instance acceded to the ICCPR in July 1993,[115] thus the

[112] Good examples include, Maseru Memorandum (1998) (Lesotho), 4.1.1; Lesotho Memorandum (1999), preamb. para 5; Moroni Agreement (2003) (Comoros) principle II; Bicesse Accords (1991), Lusaka Protocol (1994) (Angola); General Peace Agreement (1992) (Mozambique), protocol III, art.VI, paras a-c; Arusha Agreement (2000), protocol on Democracy and Good Governance; Cotonou Agreement (1993) (Liberia), section C, art. 14; Lomé Framework Agreement (Togo) (1999), para 19.
[113] Arusha Agreement (2000), protocol on Democracy and Good Governance, art. 5.
[114] Lusaka Protocol (1994), see also, Fundamental Principles for the Establishment of peace in Angola, point 4.
[115] The date of accession to the International Covenant are provided by the UN treaty collection treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en>; see also the OHCHR <http://indicators.ohchr.org/>.

inclusion of the provision of elections in the General peace agreement of 1992[116] is of particular importance and could be considered as direct application of international law, as that self-determination provision was not part of national law at the time of the conclusion (and entry into force) of the peace agreement .[117] This could be highlighted for instance in the case of similar provisions for elections in two Angolan peace agreements, the Bicesse Accords of 1991 and the Lusaka Protocol of 1994.[118] The provisions might read similar. However, considering the accession of Angola to ICCPR on January 1992,[119] alongside its amended constitution of March 1992,[120] introducing similar provisions the requirement of free and fair elections in the Portuguese-mediated and US and Soviet-observed Bicesse accords could be of different legal quality, not least significance compared to the inclusion of the similar provision on elections in the UN-mediated Lusaka protocol.[121]

A later example is that the provisions of both the Abuja Accord and Abuja Protocol both of 1998 regarding Guinea-Bissau,[122] bearing in mind the country acceded to the ICCPR in September 2000.[123] Two more recent examples that of the Agreement of 2001 in Djibouti,

[116] General Peace Agreement (1992)
[117] The date of accession to the International Covenant are provided by the UN treaty collection treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en>; see also the OHCHR <http://indicators.ohchr.org/>.
[118] Bicesse Accords (1991), Fundamental Principles for the Establishment of peace in Angola, point 4; Lusaka Protocol (1994), annexes VI and VII.
[119]The date of accession to the International Covenant are provided by the UN treaty collection treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en>; see also the OHCHR <http://indicators.ohchr.org/>.
[120]'As normas constitucionais e legais relativas aos direitos fundamentais devem ser interpretadas e integradas de harmonia com a Declaração Universal dos Direitos do Homem, da Carta Africana dos Direitos dos Homens e dos Povos e dos demais instrumentos internacionais de que Angola seja parte', Constituição da Républica de Angola, Constituição da Républica de Angola (1975), as amended with Lei 23/92 de Revisão Constitucional (13 September 1992), art. 21 (2).
[121] Lusaka Protocol (1994) (Angola), annex VI, para 2, and annex V Lusaka Protocol (1994) (Angola), annex VI, para 2, and annex VII.
[122] Abuja Accord (1998) section 5, Abuja Protocol (1994), section 4.
[123] The date of accession to the International Covenant are provided by the UN treaty collection treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en>; see also the OHCHR <http://indicators.ohchr.org/>.

acceding the ICCPR 2002,[124] and a more recent example is that of Moroni Agreement of 2003,[125] bearing in mind that Comoros acceded to ICCPR just in September of 2008.[126]

What makes them slightly different is the reference to the Universal Declaration of Human rights in both countries' constitutions in force at the time: whereas in the Comorian constitution of 2001 the Universal Declaration is mentioned in the preamble,[127] in line with the French tradition of drafting such texts, in Guinea-Bissau, there is mentioning of the duty of harmonious interpretation, in the sense that '(c)constitutional and legal procedures relating to fundamental rights have to be interpreted in harmony with the Universal Declaration of Human Rights'.[128]

One could argue that that here the application of international law is not as direct as in the previous examples, since the legal orders of both have to a different degree, even generally referred to relevant international law standards. This is typical of many African countries that have literally enshrined the UDHR[129] in their constitutions but that does not mean that they live up to either the letter of the spirit of the UDHR in practice. Therefore, it might be worth while considering the implications of the constitutional turn to the UDHR in practice.

[124] The date of accession to the International Covenant are provided by the UN treaty collection treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en>; see also the OHCHR <http://indicators.ohchr.org/>.
[125] Moroni Agreement (2003), principle II.
[126] The date of accession to the International Covenant is provided by the UN treaty collection treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en>; see also the OHCHR <http://indicators.ohchr.org/>
[127] 'Le peuple comorien, affirme solennellement sa volonté de : marquer son attachement aux principes et droits fondamentaux tels qu'ils sont définis par la Charte des Nations Unies, celle de l'Organisation de l'Unité Africaine, le Pacte de la Ligue des Etats Arabes, la Déclaration Universelle des Droits de l'Homme des Nations Unies et la Charte africaine des Droits de l'Homme et des Peuples, ainsi que les conventions internationales notamment celles relatives aux droits de l'enfant et de la femme' La Constitution Comorienne, adopted (by referendum) on 23 December 2001, preamb para 5.
[128] Art. 29(2) of the Constitution of 1996 reads: 'Os preceitos constitucionais e legais relativos aos direitos fundamentais devem ser interpretados de harmonia com a Declaração Universal dos Direitos do Homem.' República da Guiné-Bissau, Assembleia Nacional Popular, 1996.
[129] Hurst Hannum,'The status of the Universal Delaration of Human Rights in national and international law' (1996) 25 Ga J Int'l & Comp L 287, 298-311, 312-317, 355-374 (Annex with related national constitutional provisions making reference to the UDHR).

In the context of these somehow special transition elections, the reference to election provisions in the peace agreements constitutes at least reiteration/indirect application of international law provisions. In addition to these similar examples of Comorian and Bissauan peace agreement provisions another example of indirect application of international law provisions could be included. At the time of concluding the Cotonou Agreement of 1993, Liberia had signed since 1967 but not ratified the ICCPR, meaning that the inclusion of relevant election standards in the peace agreement could be a way of fulfilling its obligation not to defeat the object and purpose of the Covenant.[130] In case of doubt, in that UN Security Council circulated document, there is more than mere mentioning of the requirement of 'free and fair elections'.[131] The initial provision is further explained in the more specific section on the modalities of elections and the reference to international standards is framed as an undertaking of the immediate parties as they '…agree that the elections to be conducted shall conform to the several United Nations and internationally accepted codes of conduct …].'[132]

Quite differently, in the third group of examples we could mention Madagascar, acceding to the ICCPR in June 1971, Togo, acceding to ICCPR in May 1984, and Côte d'Ivoire acceding to the ICCPR in March 1992.[133]This third category could be said to be significantly different from the above two, as, formally speaking, the inclusion of election standards could be considered an unnecessary duplication of standards already part of the respective legal orders within which these agreements are going to function; quite the opposite it is seems: obviously, one could observe that in countries suffering form crisis and conflicts seeks, where in reality the relevant standards have been systematically violated, and in

[130] On the obligation not to defeat the object and purpose of the treaty see art. 18 of the Vienna Convention on the Law of Treaties, entered into force on 27 January 1980, *UNTS* vol. 1155, p. 331.
[131] Cotonou Agreement (1993), section C, art. 14.
[132] Cotonou Agreement (1993), section C, art. 15, para 6.
[133] The date of accession to the International Covenant are provided by the UN treaty collection treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en>; see also the OHCHR <http://indicators.ohchr.org/>.

more recent peace agreements those electoral misconduct being at the forefront of the crisis, it would be illogical not to include those standards.

This is no way implies that these provisions simply aspirational, and having no particular legal implication for immediate parties to the agreement. Even if similar provisions exist in national law, or these international human rights standards have been domesticated, still the peace agreement takes precedence as the particular legal framework of the transition. The requirement of free and fair elections [134] is to be upheld by the immediate parties, thus the general standard is re-iterated in the transitional context as a duty of the former warring factions, now parties to the agreements. Consequently, it obtains a special legal significance for them, since it directly makes them (as a group that signed the agreement, and not as member of the transitional government) the addressees of such duty or obligation. In addition, these provisions apply for the transitional period, when the transitional government performs its tasks; the transitional government, an actor set-up and governed by the peace agreement provisions, is also bound. Essentially, these provisions are intended to bind immediate parties individually, and the transitional government, consisting of the same immediate parties in a different configuration.

Additionally, such provisions could serve as the legal basis for a subsequent request for electoral observation and monitoring. Since the UN has espoused that only after a country specific request is such an electoral assistance possible,[135] the relevant provisions, could be said to provide the necessary legal basis, and the agreed consent of the immediate parties for such future request on behalf of the transitional government for instance, even in the absence of specific provisions in the respective peace agreement. Even if peace agreements would not include direct provisions the way it was done in the Bicesse

[134] See General Assembly resolution A/49/675 of 17 November 1994, Annex II.
[135] Ibid.

Accords,[136] and the Lusaka protocol regarding Angola,[137] or in the General peace agreement regarding Mozambique,[138] such provisions could be said to authorise the transitional government to make a request, or at least render such request permissible. This is of importance, bearing in mind that the actor making such a request on behalf of the state (transitional government) would be different from the immediate parties signing up to these electoral provisions, and thus, implicitly or not, expressing their consent to international assistance, (or implicitly relinquishing any subsequent opposition or complaint) regarding the conduct of elections.

3.4.3 Self-determination for restructuring the state

The inquiry on the use of self-determination for immediate parties though focused on the main transition, deals with modes of establishing peace through political means, by addressing the issue of having a representative government in the short and the long term. Such language, extends, beyond the main transition for the following two types of incidental reasons. First, as previously hinted, even though used for the restructuring of the state, these provisions, once implemented, become the basis of the restructured state, and in a way, survive the transition. In line with this, some of the provisions are not framed as the undertaking of the immediate parties, the way it was demonstrated the findings of the previous sections were in relation to participation in the interim period. This could be the result and the influence of the more universal tendency of referring to governance and or the rule of law. Regarding the latter, replacing conflict with the rule of law. The task of identifying examples of the use of self-determination becomes relevant for post-transition.

[136] Bicesse Accords (1992); Concepts for resolving pending issues between the Government and UNITA, para. 6 'Free and fair elections for the new Government will take place under the supervision of international elections observers, who will remain in Angola until they certify that the elections were free and air and that the results have been officially announced.'; see also, Fundamental Principles for the Establishment of peace in Angola, point 4.
[137] Lusaka Protocol (1994), annex II, para 2, annex 8, and section I , 4, section II, 2.7, 4.6
[138] General Peace Agreement (1992) (Mozambique), protocol III, art.VI, paras a-c.

This occurs because e periods after the (official and anticipated) end of hostilities until the elections, when there is also an additional task of the adoption of a new constitution (Constitutional promulgation countries include Burundi [139] DRC [140] Madagascar [141] Zimbabwe[142] Somalia[143] Kenya[144]), or constitutional amendments, and other significant general reforms. These modalities effectively shape the national legal order, by restructuring it via the peace agreement provisions.

In Angola, the Lusaka protocol, which devotes one of its ten annexes on national reconciliation provisions, defines national reconciliation as 'the expression of the people's will, which is translated unequivocally by the political will of the Government of the Republic of Angola and UNITA to live together […]reaffirming particularly their respect for the principles of accepting the will of the people expressed through free and fair elections and the right to opposition.'[145] It goes on to add that reconciliation, inter alia, implies 'respect for the principles of the rule of law, for the fundamental human rights and freedoms' the way they are defined by both national legislation, international instruments to which Angola is a party and the peace agreements.

Following the collapse, the Rwandan peace agreements, and the tragedy of the Genocide of 1994, the peace agreement in a neighbouring country, in response to similar ethnically fuelled conflict was significantly different: The Arusha peace and reconciliation agreement of Burundi was an agreement concluded with significant international involvement, in relation to outside parties involved, as well the reference to international standards. The reconciliation agreement for Burundi, not only regulated the transitional period, with the provision of transitional institutions and the adoption of a transitional constitution, but in

[139] Arusha Agreement (2000).
[140] Pretoria Agreement (2002).
[141] Maputo Political Agreement (2009).
[142] Comprehensive Peace Agreement (2008).
[143] Cairo Declaration (1997); Djibouti Agreement (2008).
[144] Principles-Longer Term Issues Agreement (2008).
[145] Lusaka Protocol (1994) (Angola), annex VI, para 2.

its second protocol on democracy and good governance lists the constitutional principles with which the post-transition constitution would have to abide.[146]

So, the agreement clearly intends not to only provide for the transitional period, but to ensure that immediate parties are bound to conclude, to promulgate a constitution, compliant with a set of rules and principles included in the agreement. It should be noted that the protocol on democracy and good governance,[147] in its eleven articles, has exhaustively dealt with most issues a typical constitution would cover. Most importantly, in relation to the use of self-determination, as the fundamental value of the state, 'the Government shall be based on the will of the Burundian people, shall be accountable to the, and shall respect their fundamental rights and freedoms'.[148] The following paragraph also adds that the Government of Burundi 'should be so structured as to ensure that all Burundians are represented in and by it.[149]

In DRC, the Congolese parties (Government, Congolese Rally for Democracy, and the Movement for the Liberation of Congo) concluded amongst others, as a means of rebuilding the country to create a new 'political order'.[150] The Inter-Congolese dialogue would produce binding resolutions.

In Somalia, the Cairo Declaration, acknowledges that there is a need for a permanent constitution to be drafted during the transitional period, which enshrines, inter alia, the fundamental rights, liberties and duties of the Somali people; and a system of checks and balances on the power of the Government should be established and approved through a national referendum.[151]

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[146] Arusha Agreement (2000) (Burundi), Protocol II on Democracy and Good Governance includes provisions on fundamental values (art. 1) and general principles (art.2), a bill of rights (art.3), and additional provisions on elections (art. 5) and multiparty system (art.4), as well as organisational matters of the state (arts.6 -11).
[147] Arusha Agreement (2000) (Burundi), Protocol II on Democracy and Good Governance.
[148] Arusha Agreement (2000)(Burundi), Protocol II, chapter 1, art. 1(3).
[149] Arusha Agreement (2000)(Burundi), Protocol II, chapter 1, art. 1(4).
[150] Principles Agreement (2001) DRC, II, para 3.
[151] Cairo Declaration (1997).

Such tendencies seem not to be limited to post-civil war agreements, but increasingly a similar pattern could be identified in recent agreements. In Madagascar too, the adoption of a new constitution is the object of the agreement, but the Charter of Values lays the following guidelines that should be included in the new constitutional project, leading to a (permanent not transitional) constitution.[152] These guidelines would include amongst others, the modalities of the election of the President, and the duration of the terms, the submission to a referendum of any constitutional amendment relating to the nature of the state as well as the organisation and the functioning of public authority. [153]
These provisions were followed by the relapse to conflict, at the same time the Genocide in Rwanda was unfolding.[154]

After the Arusha peace agreement, could be said to be the adoption of such tendency in other documents; in addition to general preambular stipulations on such values and principles,[155] similar provisions not only are included in the operative parts of peace agreements, but are framed as central principles guiding not only the conclusion of subsequent peace agreement, but to an extent the transition and post transition.

[152] Madagascar (2009).
[153] Le projet de Constitution prévoit en outre les dispositions suivantes : Le Président de la République est élu au suffrage universel direct pour un mandat de cinq ans renouvelable une fois ; Toute révision de la Constitution touchant à l'organisation ou au fonctionnement des pouvoirs publics ainsi qu'à la forme de l'Etat doit être ratifiée par référendum. Le projet de Constitution soumis au référendum inclura les recommandations de la conférence nationale organisée par le Conseil National de Réconciliation, Charter of Values (2009) (Madagascar), art. 35.
[154] Rule of Law Protocol (1992)(Rwanda), art. 17; and related (light) duties of the immediate parties (Government and RPF) in arts 6 and 11.
[155] Arusha Agreement (2000) (Burundi),preamb. para 2 democratic system of government[…] founded on the values of unity without exclusion; N'Djamena Accord (2007) (Chad), preamb. Paras 7-8, referring to free and fair elections and the establishment of the rule of law; Fomboni Accord (2001) (Comoros), preamb. para 1 IV, on the necessity to establish democracy, good governance, and respect for human rights and civil liberties ; Brazzaville Ceasefire (1999) (Congo), title I, para 1, mentioning democracy alongside development; Ouagadougou I Accord (2007), preamb. Para 7(e), on the need to hold free open transparent and democratic elections; Ouagadougou Preliminary Agreement (2013), preamb. para 2, reference to the rule of law and respect for human rights; Arusha Accord (1993) (Rwanda), preamb. para 7, referring to principles underlying the rule of law, including democracy; Cairo Declaration (1997) (Somalia), preamb. paras 8-9, mentioning the principles of democracy, equality, social justice and the constitutional guarantees of individual human rights as provided by international conventions and declarations, and the re-establishment of the rule of law and the institution of a federal democratic system of governance respectively; Lomé Framework Agreement (1999) (Togo), preamb. para 8, noting that the immediate parties despite their differences subscribe to democracy.
Principles Declaration, op. paras 2, and 16.

For instance, the Declaration of Principles for the resolution of the Conflict in Darfur adopts a list of principles, which would be the 'l basis of settlement of the conflict in Darfur', following values, and principles are listed in the same provision. That basis would be 'Democracy, political pluralism, freedom a vibrant and dynamic civil society, the rule of law, the independence of the judiciary, the freedom of the media, accountability and transparency, with justice and equality for all, regardless of ethnicity, religion and gender, are a basis for the effective participation of all Sudanese citizens in the management of their own affairs and decision-making processes at all levels of governance.[156] In instances of Sudan, as well as Somalia, and DRC, the tendency is to produce an interim constitution or charter (the object of negotiation) before the constitution is to be adopted. In Somalia until a permanent constitution is adopted a transitional is put in place[157] following previous commitments[158] however 'there is a need for a permanent constitution to be drafted during the transitional period, which enshrines, inter alia, the fundamental rights, liberties and duties of the Somali people; and a system of checks and balances on the power of the Government should be established and approved through a national referendum' The present Charter shall be the basis for the federal constitution whose draft shall be completed within two and half (2 1/2) years and be adopted by popular referendum during the final year of the transitional period.[159]

These provisions clearly seek to use such standards for post-transition. These standards are normatively different from preambular standards for making the transition inclusive, and related dialogue, as well as general preambular references to democracy, good governance, respect for the rule of law and human rights; such references might serve as guidance for interpretation of the text of the agreement. In contrast, the examples of use presented here also raise two separate problems. Such inclusion could beg the question

[156] Principles Declaration, op. paras 2, and 16.
[157] Transitional Federal Charter (2004).
[158] Cairo Declaration (1997), preamb. para 11, op. para 6; Eldoret Ceasefire (2002).
[159] Cairo Declaration (1997), paras 35-36 ; Transitional Federal Charter (2004), chapter fourteen, art. 71 para 9; the charter meant to form the basis of the permanent constitution contains fourteen chapters (sections) and seventy-one articles regulating the identity and form of the state, the division of power (executive- legislative- judiciary) organisational and administrative matters, and a catalogue of basc human rights.

of whether, if there is not controversial to include in the regulatory scope of intrastate peace agreements such wide-reaching standards the political solution.

In any case, the (indirect) effect of such technique of incorporating internal self-determination standard would lead to a singular incident (the conclusion of the peace agreement), and the related text of limited applicability *ratione temporis* and *ratione personae* laying the foundations of the restructured state and effectively functioning as a pre(constitutional) event; in a way, by including such provisions the status of peace agreements is in fact 'elevated', glorified, by becoming the event that regulates the (new or amended) domestic legal order. Leaving aside the problems of what interpretation arising of the combination of these diverse grouping of values and principles in a single provision, the impression is that thus, the provisions for the transitional period, ostensibly time-limited, seem to can survive the transition by underwriting the restructured state through the constitutional and other reforms. This double temporal reach of self-determination provisions operates alongside the increasing tendency to overload agreements with generally-framed references to values and principles of inclusiveness, democracy and the rule of law as necessary preconditions and characteristics of the state's reformed identity underpinning, establishing, laying the foundations of the post-transition phase.[160]

3.5 Uniting Former Enemies: self-determination as a dispute settlement technique.

To understand the use of self-determination language in African peace provisions, the previous sections have identified three categories where positive findings can be inquired. The positive findings consist of three distinct groups that if read or interpreted together

[160] For a summary of how replacing conflict with the rule of law is conceived, if not assumed as a blueprint, see Richard Jolly, Louis Emmerij, Thomas G. Weiss, *UN Ideas that changed the world* (United Nations Intellectual History Project, Indiana University Press 2009), 163-165.

could shed light on how the peace agreements understand and implement the political solution. This solution is located between short-term and long-term goals, at the hands of former enemies, as immediate parties, or as participants.

In observing examples of peace agreement provisions regarding elections, the previous sections highlighted that elections not only mark the end of the main transitional phase, or mere abstract standards for such period, but in some cases seem to function the carrot and stick for the former warring parties, since explicitly or implicitly grant an entitlement for the parties in order to give up on fighting and disarm (stripping them of more incentives to use the arms that by definition not all of them are going to be handled); in other cases the requirement of free and fair elections could be either viewed as a restatement of the law and reiteration of its importance in this particular process, thus the inclusion and reference in the peace agreement document –or additionally the basis for the follow-up request for international assistance and supervision/monitoring of the electoral process.

As explained in the previous chapter, the peace agreement becomes of direct applicability, circumventing issues of ratification, that could either delay, or provide an excuse for immediate parties to further renegotiate terms. The peace agreement becomes the point of reception not of abstract international legal rules, but the applicable international legal framework for each situation, as identified by resolutions of international organisations, or informal communications of cooperating states and international institutions, invited to support and finance the peace processes.

This identifies a rudimentary framework for the main transition period, as well as making sure that the caretakers are not later not regarded as competent and legitimate. The caretaker government does not just sort out things, but is designed by the peace agreement as the actor who represents the authority during the main transition, and who can run for elections.

The debates about the content of the rules of self-determination outside the colonial context, besides mentioning their uncertainty, often point out that, in envisaging them,

one would expect self-determination to contain non-self-executing provisions. Crawford has summarised such concerns by admitting that at least outside colonial or quasi-colonial contexts, both self-determination and the cognate right to democratic self-government are inherently non-self-executing. Instead, they are critical standards; they can be used to disqualify institutions or outcomes which are evidently inconsistent with self-determination or democratic rule, and to justify attempts to remedy them.[161]

The African peace agreement provisions, somehow differentiate themselves from these theoretical discussions. This is not just because, peace agreements are directly applicable as such, since they are the (temporary) framework for peace in each state. Most importantly, those in the case of peace agreements, the self-determination factor contains provisions that could be understood to be self-executing, not least the bilateral duties of former warring parties, in exchange for their right to be part of the interim government of the state. The provisions on elections could be interpreted in light of these considerations.

Former warring parties seem to benefit in the short term, but in a way elections and related standards become the vehicle of the warring parties acceding to power, sharing statal power, and thus having no reason to resort to violence, making the establishment of peace a possibility. In a way, former warring parties do become (sometimes) de facto beneficiaries of such provisions, however in the long-term such provisions emphasise on the dispute settlement function of self-determination as used in peace agreement provisions, conditioned upon the object of the establishment of a peaceful and stable state, where power-structures have been modified, to make room for former enemies, and to prevent further subversion, or relapse into abnormality, and related violence.

For transitioning from conflict to peace, it seems that self-determination is ostensibly used (in a novel way) in the form of standards injected for accommodating former warring parties. In the cases, where there is a clear demarcation of a transitional period,[162] Some

[161] James Crawford, 'The right of self-determination in international law' in Philip Alston (ed), *Peoples' Rights* (OUP 2001), 66.
[162] See supra, note 103.

of the provisions on inclusion, participation and the like are crafted with regards to this period and only, a period leading to stability and peace, including the return to constitutional normalcy. However, in the peacebuilding part of the peace agreements, one can carefully find general standards regarding the form of the state to be rebuilt, without any specific reference or ties to the interim period only.

In a pragmatic fashion, the emphasis is on the 'entitlements' rather than the 'beneficiaries' so to speak with traditional self-determination terms. Still, when making the logical connection between the provisions and who benefits from those provisions, then the entitlements governing the interim period of transitioning from conflict/crisis to peace are for ensuring the inclusion of former warring parties be they governments, armed opposition groups, politico-military movements and/or political factions and parties.

One could comment on the political parties recognised after a war and thus this recognition conditioned and conditional upon giving up arms. These are clear bilateral, reciprocal duties, which place the former warring parties at a privileged position, not least for the immediate post-conflict period. This is in contrast to a post-crisis agreement, which reinforces and existing obligation of the host state encapsulated in various international instruments, in a fashion similar to that of art. 25 of ICCPR;[163] what perhaps makes it slightly different is that any reference to art. 25 is made in the way the general commentary on self-determination makes reference to individual art. 25 guarantees as a manifestation of the group right to self-determination. This way of referencing corresponds to what Cassese describes of this internal aspect of the right of self-determination as the "manifestation of the totality of rights embodied in the Covenant".[164] Or perhaps as a reflection, a demonstration of the internal aspect of self-determination as

[163] Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.

[164] Antonio Casesse , *Self-determination of Peoples*¸(CUP 1995), 53.

found in both Covenants, the way it has been explained by the African Commission on Human and Peoples Rights (ACHPR) in relation to the African Charter on Human and Peoples Rights, in the 'Cameroon' and 'Katangese Peoples cases.[165]

3.6.1 Tensions: Whose self-determination?

Whist presenting the more general findings on the self-determination factor of peace agreements, it was highlighted that the emphasis is on the 'entitlements' rather than the 'beneficiaries' so to speak in traditional self-determination terms.[166] That preliminary observation triggers two interpretation-related concerns. First, the importance of questioning who benefits from these provisions, no matter how implicit, or even silent the respective texts might be. Secondly, any interpretation that would logically link the former warring parties (governments, armed opposition groups, politico-military movements and/or political factions) would *prima facie* surprise anyone familiar with the established understanding of beneficiaries under the doctrine of self-determination.[167] Appraising the 'self-determination factor' in the light of more specific internal self-determination entitlements for immediate parties, these questions are raised within this section.

The drafting of African intrastate peace agreements seems to be drawing upon internal self-determination language, rhetoric, or influence widely understood. The use of self-determination as a whole in the drafting of these peace agreements is subtle: providing the standards to be observed during the interim period when a state reconfigures its internal power structures. Internal self-determination clauses and related provisions are used, in order to enable former warring groups to be accommodated within existing states, thus, not towards the withering of the state but towards reconfiguring its power structures

[165]ACHPR Communication No. 266/2003 Kevin Mgwanga Gunme/Cameroon; ACHPR Communication No. 75/92: Congrès du Peuple Katangais / Zaire, para 4; see also, Reference re Secession of Quebec [1998] 2 SCR 217, para 154.
[166] James R. Crawford, 'Self-Determination in International Law: Its Development and Future' in Alston (ed) *People's Rights* (OUP 2001); Robert McCorquodale, 'Self-Determination: A Human Rights Approach' 43(4) (1994) ICLQ 857.
[167] For a full list of immediate parties see, Table II; see also, chapter 1, pp 60-63.

and institutions. To this end, 'inclusiveness', 'participation' or the 'will of the people' are used as standards to be benefited and observed by the former warring parties, not just the governments.

The provisions for elections and political parties seem to stipulated for ensuring the constructing of the sovereign authority, the government governing in the transition. They are neither people of a territorial unit, but an elite, identified by the peace agreement to be representative of some group/people, as indicated through its role in the crisis or the conflict. Once stabilised, then other peace agreement provisions contain relevant principles making sure the state functions, the government representative of the people and the basis of the new and reformed state. This observation might at this stage seem straightforward and self-evident. Its importance however could not be stressed enough for the following two reasons.

It is essential in understanding the discussion about the legality of peace agreements and how the peace agreement fits in the legal order and ensures the state moves on. It is also important for how to treat it in terms of interpretation: if it's the former, it's more of limited application and human rights considerations and methods of interpretation could be used possibly yes, possibly not or self-executing, no need to have further municipal legislation clear and identifiable contractual type right of limited applicability however how is it enforced no idea the corresponding duty of the other party signing up to the agreement perhaps, any danger to this consider; the other separate provisions are to be treated differently and the works on the continuing character of self-determination would be relevant here and could complement the interpretation instead of other traditional tools and methods of interpreting these more or less vague provisions. Self-determination applies in interpretation, but more specifically international legal rules of interpretation are applicable, once these provisions are contextually understood in the light of self-determination.

Two observations must be made however, to avoid any premature conclusions: as shown, the degree varies from a general provision to an entitlement framing specifically identifying the beneficiaries, or the bearers, thus sometimes hard to tell what exactly the parties have signed up to.

in addition, the use of self-determination language relates to the interim period between the cessation of hostilities and the establishment of positive peace, marked by either the adoption of a new constitution, or other reforms or the holding of elections/referenda; however hard this might be to define, the use of these standards is rather limited to a given timeframe. Thus, in the following chapters on self-determination and on the relationship between African intrastate peace agreements and self-determination more scrutiny will be made on the use of this language, and the analysis will focus on the varying degrees self-determination standards in various instances. More is to be inquired regarding the framing of these provisions as entitlements or standards to be observed by the warring parties and the ramifications of using such provisions for the traditional understanding of self-determination beneficiaries.

3.6.2 Tensions: the Temporal reach of the self-determination factor

The positive findings relate to shorter and longer term goals of the transitional period. The transitional period is defined in the relevant peace agreements, as the previous section explained. In broader or more specific terms it is usually designed as the period between the cessation of hostilities or the relevant period of the crisis (a coup or an electoral dispute) that included some protracted or less protracted violence and either the first general elections and, or the adoption of a new or amended constitution, with or without a referendum.

The previous section focused on the examples of the use of self-determination during the main transition, as defined and governed by the peace agreements. By focusing on this

important yet unstable transitional period, the sections looked at the periods after the (official and anticipated) end of hostilities till the elections, and, or adoption of a new constitution, or constitutional amendments, and other significant general reforms. The inquiry on the use of self-determination for immediate parties is not limited to the main transition, as such use, extends, beyond the main transition for the following two types of unpredicted and deliberate reasons. First, as previously hinted, even though used for the restructuring of the state, these provisions, once implemented, become the basis of the restructured state, and in a way, survive the transition.

Additionally, no matter how clearly defined transitional periods may be in terms of their beginning (date) and ending (usually the first elections), it is quite difficult to estimate the exact date of their ending, in law, and in fact, and the subsequent post-transition phase, indirectly becomes part of the reach of the 'self-determination factor'.

Peace agreements quite often fail. As usually shown by related peace research, one in four peace agreements collapses within five years after its conclusion.[168] So if agreements fail, it means that peace agreements are not fully implemented and some are partially implemented, which in turn has implications for any research on the texts of peace agreements and their definition of the transitional period. As the examples illustrate right below, the end of the transitional period even if scheduled ahead, is usually further delayed due to partial implementation of the agreements, further amendments by subsequently concluded agreements. In even worst instances the transitional period framework fully collapses with parties resorting to violence rendering it necessary for a new peace agreement to either reaffirm or re-establish another transition.

In Côte d'Ivoire, the central Linas-Marcoussis agreement was concluded in 2003 having its aim to lead to presidential elections. Leaving the organisational issues aside as

[168] UCDP/PRIO Armed Conflict Dataset V-4 (2009) <www.prio.org/Data/Armed-Conflict/UCDP-PRIO/>; see also, Human Security Report 2012, 173-174; Barbara F. Walters 'Designing Transitions From Civil War: Demobilization, Democratization, and Commitment to Peace (1999) 24 (1) International Security, 127.

addressed for instance by subsequent agreements,[169] the elections finally took place in 2010, not without trouble, as the defeated candidate Laurent Gbagbo would not step down triggering international response to pressure him to step down. After the related international response, and after fighting the Second Ivorian Civil War, Gbagbo was forcefully removed from office and Ouattara took office as the undisputed president on 11 April 2012.

In Madagascar, the initial Maputo political accords, concluded as a response to the military coup against the elected president Marc Ravalomana, and the subsequent instauration of Andry Rajoelina, originally set a transitional period of fifteen months till the holding of credible, internationally supervised elections. These elections, anticipated to take place in 2010, finally took place after have been postponed to September 2011, May 2012, November 2012, May 2013, July 2013 and August 2013 as per the relevant AU, the necessary conditions had not been met. The elections finally took place in October 25 and December 20, 2013.

In Liberia, the original Cotonou accord has been amended by the subsequent Abuja and Accra agreements, some of which have been termed as clarifications to the previous agreements.[170] In the case of Somalia, the peace agreements signed in response to a two-decade period of interchanging phases of conflict and crisis,[171] the state seems to be in constant transition, periodically being renewed, through the transitional federal government, which under differing mediation teams, concludes respective agreements.[172]

[169] See Ouagadougou I Accord (2007).
[170] Akosombo Agreement (1994), section H, art. 20, Accra Clarification (1994), section H, art. 20, Abuja Accord (1995), section G, art 8, and Abuja Supplementary Agreement (1996), arts 1,3, in relation to the Cotonou Agreement (1993).
[171] General Agreement (1993), Addis Agreement (1993), Addis Modalities Agreement (1993), and Addis Ababa Agreement (1993); once those collapsed, Cairo Declaration (1997), reaffirmed their reach; renewed peace processes produced the Eldoret Ceasefire (2002); the Transitional Federal Charter (2004), the Aden Declaration (2006), and the Djibouti Agreement (2008); see also, Kampala Accord (2011).
[172]See for instance, the Transitional Federal Charter (2004), the Aden Declaration (2006), and the Djibouti Agreement (2008); see also, Kampala Accord (2011).

3.6.3 Vertical Tensions

In discussing the relevance of international law for intrastate peace agreements in widest possible terms, much of the emphasis was on identifying the multiple facets of international (hard and soft) law that could be applicable to peace agreements, in the absence of clear prescriptions, and the *ad hoc* conditions of their drafting.

The different negotiating modalities of by the peacemakers, also impact on the peace agreements' open-ended, if not deliberately ambiguous drafting of the provisions. This has been evident in the previous sections, which came up with three types of categories, inspired by, and framed through a self-determination lens. Such lens, was informed by the first chapter, which contextualised the multidimensional understanding of self-determination. There, it was mentioned that it would be worth inquiring whether and how this differing emphasis on aspects of the law of self-determination could be found in the peace agreements, not least for them being drafted in the interface between international, regional and national.

In this section, some of these tensions are to be considered, as a way of relating to the conceptual framework. They are called tensions, because the thesis understands the overviewed peace agreements, as municipal law documents applying self-determination standards, promulgated at the universal level and regionally incorporated by the African regional organisation. As such, the thesis could not deal with them as norm conflict of international law[173] rather than tensions arising out of the interface between national law and international law in a context where the limits and distinction between the national and the international become rather difficult to demarcate. The tensions summarised below, are called vertical for two reasons: they are not the only tensions to be raised by the thesis; they are the result of the interaction between the universal, the regional, and

[173] For the meaning of 'norm conflict' in the strict sense see the early and influential work of Wilfred Jenks, 'The Conflict of Law-Making Treaties' (1953) 30 BYIL 401, 426.

the national legal orders: these orders might be parallel to each other, but to a degree there is some functional hierarchy amongst the three, in the field.

As indicated in the first chapter, the essential content of the undisputed facets of internal self-determination is that the government should be representative of its people. By looking at the relevant General Assembly resolutions, it can be said that elections seem to function as a 'presumption' of that undisputed rule: the existence of elections, either described as genuine and periodic in the early post-Cold War stages,[174] or later, after the Vienna Declaration as free and fair, [175] could be said to serve as evidence of the rule of representative government being applied unless otherwise shown, or proved, by either. Viewed as such, then the constantly reaffirmed 'aim of harmonizing the methods and standards of the many intergovernmental and non-governmental organizations engaged in observing elections, and subsequent the Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observers, which elaborate guidelines for international electoral observation'.[176] If elections are viewed as a presumption, with the burden of proof on those contesting their conduct reversing, the guidelines and standards for international observers could be seen as a way of establishing a restrictive list of conditions for reversing that presumption. Taking these into

[174] See UNGA resolutions on 'Enhancing the effectiveness of the principle of periodic and genuine elections since 1989 till today; UNGA Resolution 44/146 of 15 December 1989, paras 1-2 and 4; also UNGA Resolutions 45/150 of 18 December 1990, , paras 3-4, 48/131 of 20 December 1993, paras 2-4 49/190 of 23 December 1994, 50/185 of 2 December 1995, 54/173 of 17 December 1999, 58/180 of 22 December 2003, 60/162 of 16 December 2005, 62/150 of 18 December 2007, 64/155 of 18 December 200965/223 of 21 December 2010, 66/163 of 19 December 2011.

[175] UN General Assembly, *Vienna Declaration and Programme of Action*, 12 July 1993, A/CONF.157/23, endorsed by the General Assembly Resolution 48/121, of 20 December 1993; para 66 mentions 'free and fair elections', by requiring that 'Special emphasis should be given to measures to assist in the strengthening and building of institutions relating to human rights, strengthening of a pluralistic civil society and the protection of groups which have been rendered vulnerable. In this context, *assistance provided upon the request of Governments for the conduct of free and fair elections*, including assistance in the human rights aspects of elections and public information about elections, *is of particular importance*.' (emphasis added)

[176] See amongst others Enhancing the Effectiveness of the principle of periodic and genuine elections, Report of the Secretary-General to the General Assembly, Annex III, "Guidelines for Member States considering the formulation of Requests for Electoral Supervision" 17 November 1994 A/49/675; also United Nations Electoral Assistance Division (UNEAD), National Democratic Institute and the Carter Center, and related Code of Conduct for International Election Observers commemorated at the United Nations in 2005 and endorsed by a broad range of organizations conducting election observation throughout the world.

consideration one could with some degree of certainty conclude on the e of universal consensus of a rule of determination of the existence of that primary rule of representative government.

How does the above universal practice relate to African peace agreements regulating or referring to a similar subject-matter in the specific context of establishing peace? As explored in the previous section, the reference to elections could be said to form an integral part of the peacebuilding part of peace agreements, not least the framework and comprehensive agreements. The analysis showed their different functions: elections are either listed in the general provisions, or included in the sections of political matters of the agreements, or general principles, or as parts of the functions and competences of the transitional government caretaking for the organisation of that first election of the immediate post-conflict period. No matter how these provisions are to be qualified, depending on whether they constitute a direct or indirect application of international law, or mere reiteration or reference by a more or less national document, sometimes later endorsed by international subjects, or in a few exceptions fully internationalised, they all are in line with this universal practice. Not only have they used elections to mark the normalcy, normal political life.

An analysis only focusing on elections provisions of African peace agreements would thus detect no tensions between the universal and the national, the national as evidenced by those texts; on the contrary it would notice that either there has been considerable attention to using the same wording that appears in the relevant UN resolutions, without of course the same tenacity to cite the legal instruments in full the way we would see in a General Assembly resolution; still, no discrepancies in the drafting, as the language of the provisions, if read out of contexts reads the same. However, the illustrations in the previous sections might make someone suspect that this is one part of the picture.

Before the elections, as seen the standard practice consists of the establishment of an interim government, termed either transitional or government of national unity with the

caretaker and peace-implementation functions that were described in the previous sections of this chapter. As already noticed, in most instances, and especially after coups escalating to violence and civil conflict, as well as more protracted civil conflict that interim government instituted by agreement is actually representative of the factions involved the conflict. It is as if the people of that given state have been divided down constitute they could we see them as units of self-determination. If that is the case, those units of self-determination could be more limited in time and entitlement from those the traditional self-determination theory describes. Certainly, if that practice is to be understood in these terms, it would be different from traditional understandings of beneficiaries.

Therefore, parallel to the settled and accepted way of evidencing the rule of representative government, the use of transitional government with mixed caretaker and peace implementation functions could be said to provide an alternative way of constructing or viewing representativeness of government in the transitional period. This merits more attention. This approach is not of course without problems, not only in terms of legal cohesion but also in terms of its implications for peace agreement legitimacy and implementation prospects: on the one hand, the representativeness of the transitional government could be emphasised as a guarantee securing the performance of the peace agreement; on the other hand, such emphasis renders the risk of formally admitting those who fought are those who rewarded, thus rendering such provisions with powers and potential of a double-edged sword in a way the same legal document that institutes the restructuring of the state, makes that restructuring dependent on the previous conflict/crisis that it once sought to break away from, by recognising the forces who undermined the state as the founding forces of the process leading to the restructured state.

Concluding Remarks

This chapter discussed select examples of African practice, to distil the self-determination factor of peace agreements. The aim was to identify differing or comparable groups or

patterns of examples of the use of self-determination for immediate parties, conceptualised as positive findings. Such findings are temporally distinguished between those relating to the initial post-agreement transition, providing for the restructuring of the state, and those of the period post-transition, once the state has been restructured. The chapter observed that in regards to the (main) transitional period, the following entitlements could be identified. The right to participate in the division of power of the day-to-day tasks, and the right to participate in the restructuring functions that could compare to the exercise of constituent power, these restructuring functions understood as the promulgation of a new constitution, significantly amending an existing constitution, or seminal reforms deeply affecting or capable of impacting on the power structures of the existing state, all these occurring outside settled or established municipal (constitutional) procedures and processes.

Finally, by interpreting the provisions on free and fair elections, and mostly in post-conflict instances aided by the wording of the provision, one could identify the right to participate in the one-off elections, a special milestone concluding the initial stages of the establishment of peace, being framed as the reward for giving up arms, as well as a parallel duty of the ensuring the character of these elections, or consent to international monitoring and support.

These three types of entitlements can be found in the overviewed materials in different combinations, are modes of transforming former enemies from military units to political units within a state. The balancing of these entitlements during the drafting process seems to have implications for interpretation and implementation of the agreements. The texts of these agreements do not seem to always strike the same balance amongst different types of entitlements for immediate parties, as well as framing the respective undertakings, and or duties of the immediate parties against each other in reciprocal terms. This is particularly pertinent for the period of restructuring the state; it might as well reflect the unequal footing of the parties before and during negotiations, if not

somehow revealing that conflict and crisis-related inequalities having made their way into the peace deal.

If that is the case, the problem of interpretation lies within the following: would the interpreting duty be to equalise, to balance these duties and restore the equal footing of the parties? Or would the interpretation adopt a more literal approach and treat this as an incurable limitation of the dispute-settlement solution that was accepted by the parties in question? By favouring such literal interpretation, one would champion the intention of the parties and highlight the contract-type framing of the provisions, also accepting, to a degree the dependency of the text on the peace process. If one would be willing to argue for a more efficient interpretation, thus adopting a more teleological stance, this approach would have to be justified further. Such justification would be made with reference to the argument that the inclusive and participatory function of these provisions could in itself be treated as a safeguard, a possible guarantee, securing the performance of these agreements.

Another set of interpretation problems arises from the temporal reach of provisions, which sometimes seem to have two slightly different functions: a time-limited and a timeless function. As a result, the provisions for the transitional period, ostensibly time-limited, seem to have the ability to survive the transition by underwriting the restructured state through the constitutional and other reforms; this double temporal reach of self-determination provisions operates alongside the increasing tendency to overload agreements with generally-framed references to values and principles of inclusiveness, democracy and the rule of law as necessary preconditions and characteristics of the state's reformed identity. The problem is further pilled-up by the fact that time-constrained transitions do often get extended, revised, or repeated, once the warring parties reasonably, or unreasonably decide take a short violence break thus disrupting their implementation.

The most illustrative example of such an interpretation riddle would be the inclusion of electoral standards, drawn from international (universal and regional) practice, including the African Commission's human rights jurisprudence.[177] These electoral standards though ostensibly clear and undisputed and in line with international standards, are, if not often framed as rewards, and, or duties for the parties, standards, linked, but not necessarily limited to the special one-off elections of the transition. An effective interpretative approach would additionally regard these provisions on elections as the legal basis and explicit authorisation of the transitional government to formally request monitoring and observation of elections, as it has happened in the instances of Angola, Mozambique, Côte d'Ivoire and so on and so forth. This shows the interrelationship with outside involvement, and gives an idea why the test on the relationship between self-determination and peace agreements has to include both immediate and outside parties. The test is to be continued by exploring the issue of the use of self-determination outside parties in terms of their international assistance and support.

[177] Communications No. 147/95 and 149/96: Sir Dawda K. Jawara / The Gambia; see the relevant analysis, pp 62-63.

4. The self-determination factor of African intrastate peace agreements: outside assistance and support to immediate parties

Introduction

In this chapter, the inquiry into the self-determination factor of African intrastate peace agreements switches its attention from immediate to the outside parties. Its sections are auxiliary to the previous chapter, in the sense that, the outsiders are not strictly speaking part of the peace agreements' main regulatory reach: the main object and purpose of the overviewed materials is to bring together the former enemies under a political solution, establishing peace, and addressing temporary and more permanent governmental aspects within a given state.

In doing so, the immediate parties are in need of outside assistance and support from the members of the international community, both in pre- and post-agreement stages. These actors were already identified as essential in the making of African intrastate peace agreements, and their role was discussed as part of the process that leads to these agreements referencing and applying international legal language.[1]

In this chapter, the attention is shifted towards and the role of self-determination in relation to the implementation of African peace agreements. Therefore, the discussion and typology of the roles of outside parties, is different from the overview of their roles as peacemakers, in the second chapter.[2] The following sections on outside parties though separate, are not entirely isolated from those on immediate parties. This is the result of outsiders possessing a supportive, if not minimal role during the post-agreement stage, as governed by the overviewed materials. Correspondingly, the self-determination factor is inquired as regards them, but, normally, would be supportive or even subsidiary to the

[1] Chapter 2, pp 130-134.
[2] Chapter 2, p 108 ff.

use of internal self-determination for immediate parties. The relationship between these two, including related tensions, is considered at a general level in the concluding section.

Although, similarly the previous, this chapter identifies findings in relation to the 'self-determination factor of African intrastate peace agreements', such findings are labelled 'negative findings'. They are termed as such, because, contrary to the peace agreement provisions regulating the behaviour of immediate parties, the provisions regulating the role of outsiders do not seem to draw upon self-determination language at first sight. This would seem odd, as one peace research hypothesis would suggest that once the commitments or declarations are finalised in paper (peace agreements), their whole success would depend on adequate backing from the international community, in the form of getting involved in monitoring compliance and being delegated enforcement powers. However, the fact that the ongoing or unsuccessful cases have attracted significant international involvement, in overall terms, indicates the need to distinguish different types of involvement during the post-agreement (implementation) phase, and relate the issues.

To explain the outside involvement, the sections have relied upon the level of international engagement, as a suitable and practical criterion, with which the roles of outside parties were rudimentarily categorised. This part builds upon this general finding, whilst acknowledging the implications of such categorisation and subsequent presentation of findings for this chapter's content and the conclusions. Once outlined, these three categories of outsiders' roles are then further scrutinised using selected examples, to raise issues of interpretation, including self-determination-related problems. The final section tries to put together the use of self-determination for outside parties and the use of self-determination for immediate parties, to understand how these could fit together, or raise any tensions, which might be pilled-up to those tensions inherent within the law of self-determination itself.

The structure is as follows: the opening sections conceptualise negative findings, by highlighting a few examples, aiding in understanding the range and patterns (if any) in each category of outside involvement; the thematically presented instances of post-agreement involvement have been selected for being exemplary in raising interpretation and implementation issues. These highlights begin with issues of high outside involvement, understood as supervision-enforcement, continue with intermediate involvement, a wider category containing interpretation and implementation capacities, as shown below, and conclude with (the much wider) low-level involvement, termed as legal-political support, and its related problems. Since the categorisation is thematic, the discussion of examples of African practice is also done thematically, rather than chronologically.

In discussing some key examples, the following sections focus on the advantages and the limits of the reliance on tools of interpretation from international law. The thesis has identified that most African intrastate peace agreements, though bearing similarities with peace treaties, are not international treaties in their entirety. They are municipal law documents applying international law, in the form of internalising international law standards, including *ad hoc* measures and recommendations issued by international organisations; since they design themselves as the framework for peace and the *lex specialis* in relation to existing municipal law.

This is why, it would not be illogical to resort to general international law for general issues of interpretation and implementation either directly or analogously applied. These would have to be either general rules of interpretation of international law[3] as found in the Vienna Convention on the Law of Treaties (hereinafter the 1969 Vienna Convention),[4] or general

[3]Richard Gardiner, *Treaty Interpretation* (OUP 2015); Alexander Orakhelashvili, *The Interpretation of Acts and Rules in Public International Law* (OUP 2008); Robert Kolb, Interprétation et création du droit international. Esquisse d'une herméneutique juridique moderne pour le droit international public (Bruylant 2006); Jan Klabbers, 'Virtuous Interpretation', in Malgosia Fitzmaurice, Olufemi A. Elias, and Panos Merkouris (eds), *Treaty Interpretation and the Vienna Convention on the Law of Treaties (*2010); *Andrea Bianchi, Daniel Peat and Matthew Windsor, Interpretation in International Law* (OUP 2015).

[4] Vienna Convention on the Law of Treaties, 22 May 1969 entered force 27 January 1980, *UNTS* vol. 1155, p. 331.

international legal principles thematically linked to the content of the provisions in question.[5] In the conceptual framework, these issues raised in *general*. 'Many of the "rules" and "principles" offered are general, question-begging, and contradictory.'[6]

Here, the relevant points out which of these preliminary thoughts would work or not, in the absence of much practice or related work. Therefore, the following sections are discussed by reference to the primary materials, and this work's related analytical framework, in the absence of directly relevant secondary materials. The guidance from courts is also minimal, as the agreements are not interpreted as such, they are rather referenced either as background facts, preliminary issues, or as the legal basis for national legislation, scrutinised by those courts.[7] It is quite clear that the way those issues are handled is significantly determined by choices made throughout the thesis; conscious of the viable alternatives of scrutinising the role of the international actors participating in the implementation of these agreements, the test cannot avoid addressing the matter in the bridging section below.

4.1 The self-determination factor: The principle of self-determination and negative findings

But Africa remains vigilant and refuses to be taken in by the pedlars of good intentions.[8]

In the case of peace agreements, one could argue that the ability of a people within a given state [9]to decide the terms of receiving the assistance of the international community is not at all compromised. on the contrary, peacebuilding seems to have a consensual

[5] For legal principles see Ronald Dworkin, *Taking Rights Seriously* (1977), 22; also 35-40.
[6]James R. Crawford, *Brownlie's Principles of Public International Law* (8th edn, OUP 2012), 379.
[7] Christopher McCrudden and Brendan O'Leary, *Courts and consociations : human rights versus power-sharing* (OUP 2013), mentioning the Dayton agreement and the special political climate of peace process, to a degree taken into consideration by the European Court of Human Rights in Sejdić and Finci v. Bosnia and Herzegovina (Application nos. 27996/06 and 34836/06) 22 December 2009; Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece); Constitutional Court of South Africa, Case CCT 17/96, July 25, 1996 (Azapo v Republic of South Africa); Colombian Constitutional Court, Ruling No C-225/95; Colombian Constitutional Court, Ruling No C-630/17, 11 October 2017.
[8] Speech of the delegate of Congo (today's DRC) to the United Nations General Assembly, Declaration on Colonialism, 15th plenary session, 925th plenary meeting, 28 November 1960, APV. 25, p. 986, para 60.
[9]

basis, in accordance with self-determination; it is the peace agreement providing for basic principles, procedures and oversight mechanisms of peacebuilding that constitutes the act of providing consent to international involvement; and that consent is given by all former warring parties signing up to the agreement, not just the government of the state in question. However, the use of self-determination in such cases of consent would not be rendered irrelevant since it shall be reminded that the very reason underpinning outside involvement in intrastate agreements is the objective of facilitating and supporting access of former warring factions to power, and thus redesigning statal power to maintain a stable and viable state with legitimate authority.

One need not forget the importance that the participants of the peace process they seem to attach to the central document of the process, the peace agreement, the only document gathering the signatures and the mentioning of the main players/participants of the transition to peace, a document also necessary for the deployment of a related peace operation.

In this sense, this chapter complements the previous chapter, both addressing 'the self-determination factor' of African intrastate peace agreements. Whereas in the previous chapter, the emphasis was on positive findings, pertaining to the use of internal self-determination language for immediate parties, the sections grapple with negative findings. The term negative findings are conceptualised as provisions where self-determination. Understood as negative, they are opposed to the previous chapter. They are also termed negative findings instead of gaps and silences in the documents.

Because the provisions regarding the role of outsiders ostensibly avoid any specific reference to self-determination, this does not necessarily imply that the inquiry into the 'self-determination factor' of African intrastate peace agreements would be exhausted: as the following paragraphs, will show, the provisions of peace agreements provide for various forms and degrees of involvement, often making it difficult to understand what the international involvement is about. This is why self-determination, conceived as an

international legal principle could be of significance: to assist in identifying, interpreting and evaluating the various forms and the amount of this involvement. Self-determination, is not just thematically relevant, but also hierarchically important, because of its *erga omnes* character.

The International Court of Justice in the *East Timor* Case referred to the concept of '*erga omnes'* developed in the Barcelona Traction Case: 'In the Court's view, Portugal's assertion that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable'.[10] However, it did not articulate in positive terms what exactly the legal consequences of this qualification are. The Court only held what *erga omnes* did not mean, more specifically that, when self-determination is at stake, this would not be a (procedural) basis for affirming jurisdiction despite the lack of consent of a State. In doing so, the Court only distinguished that '[E]rga omnes character of a norm and the rule of consent to jurisdiction are two different things'[11]

Still, even without much guidance on how the character of self-determination would be relevant in a non-judicial context, it can additionally justify its relevance for the analysis. In the context of African intrastate peace agreements, one could argue that the requirement for a consensual basis between the people of a given state and the representatives of international community as regards assistance would in principle be satisfied simply by the existing agreed settlement, providing for basic principles, procedures and oversight mechanisms. However, if that duty were to be understood as continuing during the pre-and post-agreement stages, and not one-off, (time of conclusion), self-determination would remain relevant in stages following the act of providing consent for the presence of the international community. In other words, it would

[10] East Timor para. 29; see also Barcelona Traction (Second Phase) para. 33.
[11] Case Concerning East Timor (Portugal v. Australia) Judgment, 30 June 1995 I.C.J. Reports, p. 90, para. 29., para. 29; also Maurizio Ragazzi, *The Concept of International Obligations Erga Omnes* (Claredon 1997), 24-27.

serve as a standard, emphasising on the ability of a people to decide the terms of receiving this assistance of the international community.

In envisaging, how this *erga omnes* concept would translate to that problem of interpreting the roles of outside parties, one could think of using the assistance of the principle to identify, clarify, prioritise and limit the support only in circumstances provided, envisaged in the agreement. If support is to be prioritised according to the deal made in the agreement, and if support is restrictively interpreted exclusive list of instances of assistance, not only do both immediate and outside parties have legitimate expectation regarding the implementation stage, but al so such reading of the role of outside parties properly balances the encounter of the groups of a state and the international community.

So, when it comes to the issue of international involvement in the drafting (peacemaking) and the implementation (peacebuilding) of these agreements, self-determination, though relevant, seems to be articulated in rather contextual terms, or as part of the background of peace agreements. That background includes the outsiders, acting, in their peacemaking capacity, as agents of internalising international law. It is thus to be borne in mind, that self-determination could be of significance when looking at the weakly articulated or sometimes unclear roles of outsiders.

The main concern is if, and to what extent, the principle of self-determination could be deployed as an international legal principle, to affirm relevant duties for those external actors, the outside parties.[12] This is a tricky issue to address. First and foremost, because a question like the above could be answered de *lege ferenda*, or in terms of interpretation of the overviewed documents, as they have been concluded as a given. Conceiving of self-determination as a principle, in addition to a right, it can equally assist to identify gaps (or negative findings, as understood here) in obligations/duties.

[12] Oscar Schacter, *International Law in Theory and Practice* (Martinus Nijhoff 1991), 43-51, three functions of self-determination as a principle see Antonio Cassese, *Self-Determination of Peoples: A legal reappraisal* (2nd edn, CUP 1995), 129-133.

Thus, Cassese's analysis that self-determination, understood as an international legal principle could contribute to international law, by having three normative functions, could be applied in this instance. More specifically, the principle of self-determination could be raised to its full potential by having three normative functions: as affirming duties in the case of gaps and silences in the agreements, as interpretive in the case of unclear undertakings, and as evaluative, by being a general standard for appraising international involvement.

Thus, even where the precise contours of the rule of self-determination remain uncertain, the principle could nevertheless assist in the most difficult implementation stages. In other words, it could be used in principle, when inquiring why outside parties, whose behaviour is not to be regulated by the main provisions of the peace agreements, have subscribed and affixed their signatures to these documents; or, it could be deployed as an interpretative tool when examining the role of outsiders, and the extent of their involvement in supporting implementation, and ensuring the peace prevails.

Only when having a general overview of the thematical variety of implementation support, and the general, if not open-ended wording of many primary materials, one can start grasping, why it would be quite futile to search for blueprint or de *lege ferenda* solutions and suggestions for drafting these texts, and rather, focus on inferring methods of categorising and interpreting such provisions. The presentation of the types of outside involvement in implementation can first and foremost illustrate why such resort to interpretation would be necessary, although, the aim is to highlight those interpretative concerns, instead of construing a blueprint of detailed interpretation guidelines.

4.2 The outside parties

Similar to what said in the previous chapter, the term 'outside parties' itself is a term used by the research, though not necessarily a standard term in relevant legal, socio-legal, or non-legal analysis.[13] They could have been termed international actors, or internationals, externals, or third parties, the first three terms being perhaps too general, the later, quite specific and automatically directing any international legal analysis to only considering the 1969 Vienna Convention and the Vienna Convention on the Law of treaties between states and international organisations (hereinafter 1986 Vienna Convention) provisions and relevant literature on third parties.[14] The term 'outside parties' is not fully devoid of shortcomings, but, compared to the other considered terms, vividly captures the essence of the strange, if not 'schizophrenic' role of those actors, whilst encapsulating some premises of this particular analysis. The term 'schizophrenic' wants to illustrate that, although they are external to the main object of the peace transition, as it does not concern their conduct, still they are more than third parties, as they are essential in implementation as shown in the following sections.

Returning now to the roles of outside parties, the research has rudimentary divided them into three groups, depending on the level of international engagement. The categorisation of three major types of involvement, which could be portrayed as high, intermediate, and low involvement, depending on the level of intrusion, will be labelled here under three very generic thematic categories, supervision/enforcement, interpretation-implementation, and legal-political support, and will be followed throughout this chapter. In lieu of a definition, the categories could be described

The first category, which includes a high degree of international involvement centres around clearly identified roles to supervise the implementation of particular peace

[13] Stephen J. Stendman, Donald Rothchild and Elizabeth M. Cousens, *Ending Civil Wars: The Implementation of Peace Agreements* (Lynne Rienner 2002), Mieke Boltjes (ed), Implementing Negotiated Agreements: the real challenge to intrastate peace (The Hague, TMC Asser Press and Kreddha International 2007).

[14] Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (adopted 21 March 1986, not yet entered into force) UN Doc. A/CONF.129/15.

agreement provisions. The relevant provisions are often found in the peace and security part of the peace agreements; such clearly identified supervision or enforcement roles are essential and found in the ceasefire provisions, but not (thematically) limited to them. Similar roles can be found in other provisions, which, though sometimes not listed or included as part of a ceasefire, to the degree they are linked to wider security, as understood in the agreements. These could include any assistance in the demobilisation and reintegration of members of the warring parties, or the observation, or securing of the repatriation of displaced persons.

The second category of intermediate involvement is titled interpretation-implementation. Interpretation is mentioned alongside implementation, though interpretation could be said to be an integral part of implementation. It is placed alongside implementation, since, in the absence of judicial interpretation, this type of interpretation is probably the only interpretation of peace agreements. It is an important category, since Courts are hardly ever involved in the interpretation of African intrastate peace agreements

It should be noted that there is a direct relationship between the actors drafting, interpreting, and implementing the peace agreements. Usually, interpretation is not just limited to disputes arising out of implementation, but expands to wider issues (of coordination) relating to the peace agreement and is vested either within the immediate parties, the outsiders, or a combination of these two.

This complicates the task of implementation, because the actors implementing the agreement are the ones who interpret it at the same time, though not in the same configuration and relationship. Suffice it to say that, for disputes arising out of interpretation there is hardly any provision for a court having competence to adjudicate, or a similar judicial institution. In the most specific instances it will be a special body with the power of arbitration instead of adjudication for the disputes arising out the agreement, though the respective provisions might vary in their wording.

The third category is need of utmost clarification, as it has been the most challenging to put together, partly because of its parochialism, partly for including very different provisions, some of which would make no apparent strict legal meaning. It includes both material and moral support. By material support, the thesis understands economic or financial assistance as well as technical assistance in relation to an array of governance issues. By moral support we mean the expressed support of outside parties, framed in moral terms, and its problematic standing; notwithstanding their dubious legal character, the thesis felt important not to simply dismiss them as mere aspirations, but to reflect on interpretation issues in the light of their interaction with the other two categories. The category of moral support also contains provisions making reference to the securing of international aid, sponsoring or lifting of sanctions, economic or other sanctions with economic repercussions. This type of support has not in principle been secured at the time of the conclusion and signing of the agreement, but is to be requested by the immediate parties, or the transitional government acting on their behalf.

In using the level and degree of engagement and the legal significance as a criterion to understand types of post-agreement involvement of outside parties it would have in terms of the undertaking and the applicable law in interpreting that undertaking.

One way of proceeding with the analysis would include comparing and contrasting the involvement of outside parties in the peace and security part and in the peacebuilding part of peace agreements. However, since the differences between these two have been indicated in the second chapter of the thesis, such analysis would not add to this chapter's questions as much as anticipated. One way of looking at the roles of outsiders would be to distinguish between pre- and post-agreement involvement, in other words comparing and contrasting the involvement in the making and the implementation of peace agreements.

However, since the second chapter has synthesised the international involvement during the pre-agreement stage, by listing the relevant roles, as designed by the texts of these

agreements, it would be fruitful for the thesis to test the outside involvement through an additional lens at this stage. The following sections present exemplary provisions of supervision and enforcement powers, interpretation-implementation roles, and legal-political support, and highlight commonalities and differences, as well as the interpretation problems they raise.

4.2 Identifying roles and duties

4.2.1 Military Supervision and enforcement

As already explained in the second chapter of the thesis, the high degree of international involvement can be found in the supervisory and enforcement powers delegated to the outsiders, the representatives of the international community taking part in joint verification and monitoring mechanisms, primarily related to security aspects of the peace agreements, and most notable ceasefire provisions. The actors would include the UN, through its organs acting under the delegation of power under either the Security Council, or the Secretary-General, or other international organisations, in particular African regional organisations, such as the Economic Community of Western African States (ECOWAS). these organisations would also act in concert, (concert or cooperation), thus with those roles being provided for in the peace agreements for either joint UN/AU, or joint UN/ECOWAS missions with specific oversight powers regarding the military aspects of these agreements.

Most specifically in Liberia, in the respective peace and security provisions, the ECOWAS as well the (then) OAU have been delegated enforcement powers not limited within the ceasefire provisions, including the clause on self-defence as part of the mandate with which the ECOMOG force of ECOWAS and UN observer mission would operate.[15] In such early agreements, not only do ECOMOG and UNOMIL are initially having supervisory and

[15] UNOMIL was the first United Nations peacekeeping mission undertaken in cooperation with a peacekeeping operation already established by another organisation; see United Nations Security Council Resolution 866 of 22 September 1993, S/Res/866, op. para 2-3, 12.

monitoring powers of the Cotonou peace agreement together with the transitional government of Liberia, with the agreement echoing in their drafting traditional peacekeeping tasks, such as the creation of buffer zones by ECOMOG, as well as traditional peacekeeping principles, namely neutrality.[16] In subsequent agreements, following the complications of renewed fighting, he ECOMOG and the UN mission continue to gain ceasefire verification competence (Accra Clarification),[17] as well as ceasefire enforcement powers according to the Abuja agreement (1995).[18]

A wider supervision formula has been adopted for Burundi in the Arusha agreement: the ceasefire commission, consists of immediate parties, the UN, the OAU, and the Regional peace initiative, and decides by consensus, implements the ceasefire and the peacekeeping force at a second stage, and verifies the implementation. The agreement provides authorisation for the peacekeeping force,[19] established four years after the agreement.[20]

Similar patterns are used in Sierra Leone: the Lomé Ceasefire of 1999 provides for UN military observers to oversee the implementation of the ceasefire.[21] In addition, the following the later Abuja ceasefire of 2000, provides two different types of supervision: the UNAMISIL has a strict supervisory of the ceasefire provisions, which include reporting and investigation powers with respect to ceasefire violations, whist the ceasefire itself is

[16] 'The ECOMOG and the United Nations Observer Mission shall supervise and monitor the implementation of this Agreement. The Parties hereby expressly recognize the neutrality and authority of the Economic Community of West Africa States (ECOWAS) Military Observer Group (ECOMOG) and the United Nations Observer Mission in respect of the foregoing. Accordingly, the ECOMOG and United Nations observers shall enjoy complete freedom of movement throughout Liberia.' Cotonou Agreement (1993), Section B, art. 3(1); also, paras 2-3; for ceasefire violations see Section C, art. 4 (i).
[17] Accra Clarification (1994), Section A, art. 1, Section C, art. 4.
[18] Abuja Accord (1995),Section G, art. 8, para 1, 'Enforcement of violations of cease-fire shall be in accordance with the terms of the Cotonou Accord'; also Section A, art. 1.
[19] Arusha Agreement (2000), protocol II, art. 27, para 5, protocol V, art. 8.
[20] ONUB was established by Security Council Resolution 1545 of 21 May 2004 and concluded its tasks by SC report 1719 of 25 October 2006; see also Report S/20004/210 of the Secretary-General of 16 March 2004.
[21]See Lomé Ceasefire (1999), art.6 requests the United Nations, subject to the Security Council's authorisation 'to deploy military observers as soon as possible to observe compliance by the Government forces (ECOMOG and Civil Defence Forces) and the RUF, including former AFRC forces, with this ceasefire agreement; also, Lomé Peace Agreement (1999) arts II(1), XV.

to be reviewed within thirty days, with the participation of the ECOWAS committee of six alongside the United Nations.[22] Also in the recent developments in Somalia, the Djibouti agreement of 2008 provides for the deployment of the international stabilisation force. [23]

The above provisions found in the text of peace agreements are later complemented by relevant resolutions of the respective organisations.[24] In some instances however, these two separate acts are incorporated in peace agreements bearing resemblance with guarantee-treaty stipulations: In the Central African Republic, to mention a good example, the Bangui accords, include in addition to the National Reconciliation Pact, the second appendix is the agreement between the government of Central African Republic and the inter-African monitoring force of the peace agreement, the mandate of which is also part of the agreement.[25] This technique is followed five years later in Côte d'Ivoire: the Linas-Marcoussis agreement, a reconciliation agreement, is transmitted to the Security Council alongside with the Paris Conclusions (2003).[26] In these conclusions, the members of the international community, not only formally endorse the agreement,[27] but also decide to

[22] Abuja Ceasefire (2000), in art. 3, the immediate parties (RUF-Government) '[..]agree that the United Nations Mission in Sierra Leone shall supervise and monitor the cease-fire. The United Nations Mission in Sierra Leone shall also investigate and report on any acts of cease-fire violation.' See also arts 9 (i-v) the defining ceasefire violations that UN operation would report and investigate, and art. 10 on the power to review the ceasefire.
[23] Djibouti Agreement (2008), art. 7 (a)(b).
[24] For Sierra Leone see the respective Security Council resolution 1270 (1999) of 22 October 1999, and Security Council resolution 1289 (2000) of 7 February 2000, revising, acting under Chapter VII of the UN Charter, UNAMISIL concluded its role in December 2005, and replaced by United Nations Integrated Peacebuilding Office (UNPISIL) Security Council Resolution (1829) of 4th August, 2008 (2006-2014); for Somalia see UN Security Council, Resolution 1814 (2008) 15 May 2008, S/RES/1814(2008), and the post-Djibouti Security Council Resolution 1844 (2008) 20 November 2008, S/RES/1844 (2008),op. para 8(a) (under ch. VII).
[25] 'The objective of MISAB is to help restore peace and security by monitoring the implementation of the agreements signed on 25 January 1997 in Bangui' Inter-African Force Mandate (1997), appendix II of the Bangui Accords, art. 2; see also The separate parts of the agreements on the monitoring force comprising African states this part resembling a guarantee treaty concluded between CAR and the head of Gabon representing the heads of states contributing to the inter-african monitoring force and also France providing logistical and financial support, (arts. 5, 11); CAR and the states participating in the force (Burkina Faso, Gabon, Mali, Chad, Senegal, Togo) also sign the status of forces agreement appended in the Bangui Accords (appendix III).
[26] Paris Conclusions (2003); if considered separate, one could argue they consist an interstate peace agreement in relation to intrastate conflict.
[27] Paris Conclusions (2003), para.6

participate in the monitoring committee, which will oversee the implementation, and in addition prepare recommendations for donors to be involved in economic recovery plans.[28]

It could be argued that the role of outside parties in the peace and security part of the agreements, in particular their overall power to supervise the ceasefire provisions seems to be designed in quite similar patterns, and thus a general degree of consistency can be identified. In a way, the formula adopted in Angola where 'overall supervision, control, and verification of the re-established ceasefire will be the responsibility of the United Nations actin within the framework of its new mandate, with the participation of the Government and UNITA, further elaborating, setting up of verification and monitoring mechanisms, information gathering from the immediate parties regarding the composition of their forces, armament equipment and locations, supervision of the disengagement of the federal armed forces, the quartering of UNITA, and competence to collect, store and UNITA's armament during quartering.[29]

5.2.2 Interpretation-implementation

5.2.2.1 Guiding the interpretation and the implementation

The African agreements are not to be interpreted by Courts. On the contrary, interpretation becomes a 'tug-of-war' between the peacemakers and the immediate parties. The African Union having consultation powers regarding the interpretation of the agreement in the Case of Pretoria Agreement in Côte d'Ivoire. In this particular example the interpretation powers are given to the same organisation that was the mediator.[30]

Consistently, in Ivorian peace agreements, the outside support in implementation covers all matters of the peace agreement in terms of interpretation. In the Accra Agreement (2003), the ECOWAS, UN, AU, and Contact Group dispute-settlement power (through

[28] Paris Conclusions (2003), paras 9-11, and 19.
[29] Lusaka Protocol, annex III, title I para 4, title II, paras 2-5, 8 and 9; title III, paras, see also UNSC resolution 864. 5, 6 and 11, annex IV, para 1.
[30] Pretoria I Agreement (2005).

mediation) re interpretation of the agreement,[31] whilst in the subsequent Ouagadougou I Accord (2007), the ECOWAS arbitration power re interpretation disputes.[32]

The outside support in interpretation is not straightforward. In Darfurian peace agreements, the interpretation issues are to be referred to the AU commission, a solution adopted by both the Abuja Protocol (2004), and the Darfur Peace Agreement, (2006).[33] But in other instances, the actor tasked with interpretation assistance power, is none other than an informal group of states and organisations. This not only happened in early Ivorian peace agreements, In the Accra Agreement (2003), the ECOWAS, UN, AU, and Contact Group dispute-settlement power (through mediation) re interpretation of the agreement.[34]

Also, in Uganda, according to the Implementation and Monitoring Mechanisms Agreement (2002), the oversight forum with monitoring and oversight as well as peace agreement interpretation would consist of the mediator, the UN special Envoy, the EU representative, one representative from AU witness country and 1 from the other witnesses.[35]

A more recent agreement seems to balance the interpretation issue a bit different: the solution put forward by the Malian agreement regarding the presidential election of 2013 and the initiation of inclusive peace talks with a view to concluding a global peace agreement, is a two-stage process for disputes arising out of issues relating to the interpretation or the implementation of the agreement. In this preliminary agreement, the ECOWAS, having acted as the mediator, as well the representatives of the UN and the African Union, both signing as witnesses, only gain conciliation powers, if the immediate parties fail to reach a solution by direct consultation.[36]

[31] Accra Agreement (2003).
[32] Ouagadougou I Accord (2007).
[33] Abuja Protocol (2004); Darfur Peace Agreement, (2006).
[34] Accra Agreement (2003).
[35] Implementation and Monitoring Mechanisms Agreement (2002) (Uganda).
[36] See Ouagadougou Preliminary Agreement (2003), art. 23; the original French text reads as follows: 'En cas de difficulté de mise en œuvre ou d' interprétation des dispositions du présent Accord, les Parties s' engagent à trouver une solution par la concentration. A défaut d' un accord par la concentration, elles s' en remettront à la conciliation du représentant de l' Union Africaine, du représentant des Nations Unies, et du représentant du Médiateur de la CEDEAO.'

Parallel to these forms of guidance, the issue of periodic reporting on behalf of the international actors becomes another tool of guiding implementation. In the Kenyan Agreement, the device of periodic monitoring is used. Sometimes, to ensure the effective application of the agreement, functions relating to monitoring, such as reporting, are complemented with other implementation roles.

In the Goma Agreement (2009), the implementation task is given to a national implementation committee; however, that committee is supervised by an international committee, periodically evaluating its progress. In addition to that specific provision, the Goma agreement, co-facilitated by both the UN and the African Union, through the UN special envoy for the Great Lakes Region and the AU special envoy for the Great Lakes Region, stipulates that the three, the UN the African Union, and the International Conference on the Great Lakes Region are (in addition to facilitators, witnesses, and to ensure the effective application of the agreement.[37]

That pattern of multiple roles for the internationals has been occasionally used in the peace agreements concerning the conflict in DRC; in the North and South Kivu Pledges, both concluded in 2008,[38] after the, the international witnesses are both observers and guarantors of the agreement, especially through the technical commission.[39] The use of the word *'notament'*, indicates that the participation of the internationals as in the form of the internationals co-presiding the Mixed Peace and Security Technical Commission overseeing the peace and security provisions of disarmament, demobilisation, and reintegration, and issues of refugees and displaced persons is one specific example of a more general competence of overseeing implementation.

[37] According to art. 15(1) of the Goma Agreement (2009), 'L' ONU, l'Union Africaine et la Conférence Internationale sur la Région des Grands Lacs sont les témoins internationaux de cet Accord et assueront le suivi de sa mise en œuvre effective par les parties …]' ; see also 15(2) (3) for the mandate of the international committee, and 14 (1) (2) for the mandate of the national committee.
[38] North Kivu Pledge (2008); South Kivu Pledge (2008).
[39] Art. IV, para 6 of the North Kivu Pledge reads: 'Les singnataires du présent acte d' engagement affirment que les facilitateurs internationaux sont à la fois observateurs et garants de sa bonne fin, notamment à travers la Commission Technique prévue à l'article 2'; *mutatis mutandis* in the South Kivu Pledge, art. IV, para 6.

In addition to monitoring the peace through reporting, the outsiders are also delegated arbitration powers in response to their power to authoritatively interpret the peace agreement provisions. In the case of Togo, not only is the progress of the peace agreement is monitored by the follow-up committee, where both the facilitator (Burkina Faso) and the observers (ECOWAS, and the EU) participate, but most importantly, the facilitator has arbitration powers in case of disagreement of the immediate parties[40]. The same powers are provided in the Chadian Agreements, where the CEN-Sad appointed mediator also has arbitration powers for implementation disputes.[41]

4.2.2 Guarantees and guarantors: interpreting confusion

In some instances, as the example of the Zimbabwean peace agreement shows, the implementation role of the outside parties is framed as 'a general guarantee of the implementation' of the agreement, which probably would be understood as an umbrella term. However, the issue gets slightly complicated, because these provisions, if viewed against similar examples of uses of the words guarantor and guarantee in relation to the implementation of peace agreements.

In Sierra-Leonean agreements the term moral guarantor was introduced: both in the Abidjan and the Lomé Agreements. In the former, the government of Côte d'Ivoire, (in its capacity as the ECOWAS chair), the United Nations, the Organization of African Unity and the Commonwealth shall stand as moral guarantors that this Peace Agreement is implemented with integrity and in good faith by both parties.[42] And the Lomé peace agreements, where the UN, the Organisation of African Unity and the Commonwealth, are joined by the government of Togo, in its capacity as the ECOWAS chair.[43] It seems the

[40] Global Political Agreement (2006) (Togo); 5.8 'En cas de différend sur l'interprétation de tout ou partie du présent Accord, y compris les modalités d'organisation et de déroulement des opérations électorales, les parties signataires conviennent de s'en remettre à l'arbitrage du Facilitateur.'
[41] Tripoli III Accord (2009) (Chad).
[42] Abidjan Agreement (1997), art. 28.
[43] Lomé Peace Agreement (1999), art. XXXIV.

term was championed so much after Dayton, that it is being followed in subsequent agreements.[44]

The word guarantee and guarantor is problematic in terms of interpretation, as it brings into the discussion the species of guarantee treaties. This in itself brings the issue of what provisions from international treaty law could be directly or analogously applied regarding the roles of outside parties, as expressed in those provisions, besides general interpretation provisions, which are understood to be reflecting customary international law.

In the case of the various roles of outsiders in intrastate peace agreements the most relevant provisions would be the ones providing for obligations or rights for third states. As such, Article 35 of the 1969 Vienna Convention, and Article 35 of the 1986 Vienna Convention),[45] include provisions for either rights or duties for third parties. Again, if directly or analogously considered third parties, this is of importance not for their being objects to the general rule of *pacta tertiis* but being bound by its exceptions, providing for rights, and duties.

In both cases the provisions point to inquiring into the clarity with which a right or an obligation is established, the intention of the parties, and in the case of right the consent, in case of obligations the express acceptance of the third party. This is however problematic for African intrastate peace agreements, since, as regards outside parties, it is difficult to infer such arguments from the very general and diverse provisions, shown before.

Regarding the powers of general implementation of the peacebuilding part of a peace agreement, or a peace agreement in general, the language used varies. Whereas, when provisions delegate enforcement/sanction powers to outside parties, it could be argued

[44] Dayton Peace Agreement 35 (1) I.L.M. 75 (1996).
[45] Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (adopted 21 March 1986, not yet entered into force) UN Doc. A/CONF.129/15.

that the signature of outside parties could be tantamount to express acceptance/consent to be bound by the relevant provisions of peace agreements relating to their role as supporters, or enforcers, and thus, signing up to these commitments to this end, the same cannot be easily argued for general interpretation or implementation duties exposed in this section. Also, any such arguments would infer a 'right' of the outside parties. Thus, art. 35 of the 1969 Vienna Convention would be more relevant than 36 of the 1969 Vienna Convention, as most of these provisions either 'appeal' to those outside parties, or employ right-based, rather than duty-based language.

In the example of guarantees, the problem lies in the object and the nature of guarantees of African intrastate peace agreements. Essentially, when guaranteeing the implementation of the peace agreement, outsiders are to ensure that peace prevails.

According to Oppenheim, treaties of guarantee are 'conventions by which one of the parties engages to do what is in its power to secure a certain object to the other party. They may be concluded by two States only or by several States jointly.[46]In the latter case, the single guarantors may give their guarantee severally, or collectively, or both'. [...] and one of the numerous objectives could be the fulfilment of a treaty concluded by a third State. For Vattel, the guarantee is an obligation undertaken by the guarantor; it is to his benefit but to the benefit of the contracting parties and that distinguishes a contracting party from a guarantor for Vattel.[47]

In this sense, the treaty of guarantee is a species or a type of treaty, and at the same time the treaty of guarantee is a means of securing observance of a treaty, so it is secondary or accessory to another treaty or to the primary object of a treaty. Here, if the specific guarantee provisions could be understood as such, that would signify that a national document (peace agreement) contains a separate international obligation

[46] Lassa Oppenheim *International Law: a treatise* (first edn, London, Longmans, Green 1905-1906) paras 574, (page 738) 575-576.
[47] Emerich de Vattel, *Le droit des gens, ou, des Principes de la loi naturelle: appliqués à la conduite et aux affaires des nations et des souverains* (Nouv. éd. J. P. Aillaud), para 236.

between the outside parties (individually, or as informal groups) and either the immediate parties as such, or the transitional government (consisting of the immediate parties) construed by the peace agreement,

In other words, it is a means of ensuring compliance with a treaty provision/maintaining a particular régime status protected by a treaty. If a possible analogy to be made here would be the outside parties collectively or severally guaranteeing the implementation of an intrastate peace agreement, by signing as guarantors/cosignatories and giving consent to detailed provisions that grant them some specific enforcement powers (e.g. sanctions for non-abiding parties). Still, it remains more problematic to interpret their general support, or guidance in implementation as discussed above to be tantamount to classic guarantee treaties; the issue will be returned to, but not before presenting the third type of international engagement.

In both cases the provisions point to inquiring into the clarity with which a right or an obligation is established, the intention of the parties, and in the case of right the consent, in case of obligations the express acceptance of the third party.

Regarding the powers of general implementation of the peacebuilding part of a peace agreement, or a peace agreement in general, the language used varies. When provisions delegate enforcement/sanction powers to outside parties, it could be argued that the signature of outside parties could be tantamount to express acceptance/consent to be bound by the relevant provisions of peace agreements relating to their role supporters, or enforcers, and thus, signing up to these commitments to this end, art. 35 of the 1969 Vienna Convention would be more relevant than 36 of the 1969 Vienna Convention, as most of these provisions either 'appeal' to those outside parties, or employ right-based than duty-based language. In limited instances these two features are put together in a separate part of the agreement, their drafting comparable to treaties of guarantee; in these separate parts of the agreements on the monitoring force comprising of African states-and this part resembling a guarantee treaty concluded between CAR and the head

of Gabon representing the heads of states contributing to the monitoring force and also France providing logistical and financial support signing the status of forces agreement Argue for a relationship between these two documents? One between the former warring parties and one guarantee-type document of the international actors.

In that instance, the provisions for states and international organisations bear resemblance to the situation of 'stipulation pour autrui' described by the provision of art. 36 of the Vienna Convention. In such scenarios, most of the emphasis is on determining whether the state in question, i.e. that state for which a right has been intended to be accorded, 'asserts thereto'.[48] The assent of the third state (and similarly the organisation) 'is 'shall be presumed', if 'the contrary is not identified. The relevant analysis illustrated that this should be expressed either by a declaration or unmistakable behaviour, or by silence, yet demonstrating the problematic stipulation of this provisions and interpretation-related issues, which are to date unresolved.[49]

It seems that such provisions have but limited relevance in interpretation of the role of outside parties, safe for guarantee-type stipulations in relation to the security part of the peace agreements. However, the tricky attempt to use and expand the provisions on third states reveals two contrasting concerns: the concern of the applicable law in the (non-judicial) interpretation of peace agreements in the absence of any clear direction, and the risk of such interpretation further blurring the relationship and balance between immediate parties and outside parties as achieved through the negotiated solution of the peace agreement.

The international lawyer would be keen to read these provisions as delegating powers in a liberal way, for fear of having no real alternatives of interpretation. If not third parties under international treaty law, what kind of law do they apply, domestic law of another country, IL standards, the law, since the peace agreements hardly reference the

[48] Art, 36 (1) of the 1969 Vienna Convention.
[49] Taslim Olawale Elias, *The Modern Law of Treaties* (Oceana Publications 1974), 66; Malgosia Fitzmaurice, 'Third parties and the Law of Treaties' (2002) 6(1) Max Planck UNYB 63.

international rules and soft law they apply, let alone shedding light on such second-order matters. Still, such interpretation would seem to be at odds with the role of international actors as mere 'supporters' of the peace process and its implementation, and the entitlement of the immediate parties to ownership of the peace process. This, also having in mind that as seen in more recent peace agreements, such as in Kenya, 2008, the shift it toward affirming the people within a state owning the process of implementation, in particular with regard to the peacemaking part of the agreement.

4.2.3 Legal-political support: The international community's eye of providence?

The third category remains the most diverse, interesting, albeit problematic, including provisions relating to various forms and types of assistance and support. The provisions are quite striking for three reasons: they seem to be encompassing every possible type of material and moral support a smart and imaginative drafters could possibly think of; the deployed language which describes and directs such involvement, is ostensibly on the verge between commitment, rhetoric, and wishful thinking.

Thirdly, as shown, by emphasising on the need or the pledge of immediate parties to seek support from outside, rather the specifics of that support, or any related constraints on those offering support, these provisions seem to be reinforcing the idea of positive engagement of the international community; in other words, the engagement of the representatives of the international community is presumed and imagined as a benevolent act, incapable of harming, destabilising, or trumping the implementation of those peace agreements. The repercussions of such provisions and their underpinning assumptions are to be teased out here.

Let us bring an example to the discussion. It has already been established that international, or outside involvement is standard practice in the making of intrastate peace

agreements, sometimes apparent and eye-catching, sometimes not so much. Whilst inspecting the Casamance peace agreement of 2004, there is no international actor signing the text of the agreement. However, in the agreement, the international community is being mentioned, but in rather nebulous terms. The government of Senegal and the Movement of the Democratic forces of Casamance (MFDC) are not alone in the signing ceremony taking place in Ziguinchor. As the preamble informs, they sign the agreement 'in the presence of ambassadors of friendly states, representatives of regional, international, humanitarian and non-governmental organisations'.[50] So, the agreement acknowledges them, but does not specifically tell who they are.

It is not unusual for the 'international community' to be present in the conclusion of these agreements, as this has been noted from the introduction, through the reference to texts as well as photographic evidence.[51] The presence is portrayed in ceremonial terms and phrased in emotionally charged language, often making its way to the texts through paternalistic terms. In the Chadian Syrte Accord of 2007, Moammar Al Quaddafi, one of the two mediators acting under the auspices of CEN-SAD, is being mentioned as the '*Frère Guide'*, the guiding brother.[52] In the photos of formal ceremonies of conclusion of peace agreements, the emblems of the international organisation under whose auspices the peace process has taken place are in prominent display. If the pictures do not capture a handshake,[53] then they must capture the UN logo, or the African Union logo, or bunter, meticulously placed close underneath, or above the signing tables. Correspondingly, that reminder of constant presence of the 'international community' is inserted in the preambular or general provisions of the texts. In the Comorian peace agreements following the Moroni agreement of 2003, which had already established the significant outside involvement, the parties would then be subtly reminded in the subsequent memorandum,

[50] Casamance General Peace Agreement (2004) (Senegal),preamb. para 1 :'les parties, *en présence* d'ambassadeurs d'Etats amis, de représentants d'organisations régionales, internationales, humanitaires et non gouvernementales'. (emphasis added)
[51] See introduction, concluding remarks.
[52] Syrte Accord (2007) (Chad), preamb. para 2.
[53] See the Kwibaki-Odinga handshake in Kenya; also described in Kofi A. Annan, *Interventions: A Life in War and Peace* (Penguin Books 2012).

that the inter-Comorian dialogue on constitutional, reform and division of competence matters is 'placed under the *aegis* of the international community'.[54]

The representatives of the international community are there to ensure that even if not specifically mentioned, or specifically tasked with implementation, they have duly noted the conclusion of these agreements, and their existence as well as implementation is not going to go unnoticed. Based on observations made in the conceptual framework, such reminders could be the result of the role of outsiders being essential in the making of these agreements, both their legal drafting as well as their financing. This is why the assisting role of the representatives of the international community is not just briefly mentioned in the preambular provisions of such texts.

In addition to the general presence of the international community being embedded in the provisions of peace agreements, and the terms of economic or other material support are crafted likewise most of the peace agreements provisions either contain a general appeal to the 'international community' as a whole, or an appeal to international organisations in general, for economic support, or the objective of technical and economic assistance is crafted rather as the undertaking of the immediate parties to seek support from outside parties, which have or have not been involved in the peace process.

In Djibouti, the two immediate parties, the government and the FRUD, launch a 'solemn appeal to brotherly and friendly states for their support and contribution to the funding of the agreement.[55] in the later reform agreement of 2001, the same appeal is repeated for both financial and technical support. At that stage, the technical support seems to be more general, able to possibly cover more aspects of the subsequent peacebuilding process than

[54] Moroni Memorandum (2009) (Comoros) (emphasis added); see also the African Union being mentioned as the coordinator of the international community in the Interim period memorandum (2010), preamb. para 6 'expriment notre appréciation à l'endroit de la Communauté Internationale sous la coordination de l' Union Africaine pour son appui à la recherche d' un consensus inter Comorien.'

[55]Peace and Reconciliation Agreement (1994) title X, para 3 'Les deux parties lancent un appel solennel aux pays frères et amis pour apporter leur soutien et contribution au raffermissement et à la consolidation du présent accord ainsi qu' à la réhabilitation.'; see mutatis mutandis, Reform Agreement (2001), title V, art. 23 (a).

the support of the earlier agreement of 1994. The same approach is followed by Comoros and Zimbabwe, and Sierra Leone, and Côte d'Ivoire (Ouagadougou I accord).[56] Financial support seems to be primarily at stake, though sometimes this is paired with technical assistance, and, or advice, either limited to specific tasks, or more generally mentioned. Who is to offer this support is not always clear, as the international actors are named or described as friendly, brotherly countries, or members of the international community. What is of particular importance is that the provision of assistance is a future event that has yet to be secured. It is the immediate parties that have to do the job and secure the assistance, and all previously mentioned provisions present that support as a task to be achieved through the commitment, the undertaking of all the immediate parties signing up to the agreement.

With an interesting exception: the peace agreements regarding the conflict in Niger use similar terminology for support, but they differ on who must mobilise to secure it. The Ouagadougou Accords of 1994 and 1995 between the government of Niger and the Organisation of Armed resistance (ORA), though mediated by France, Algeria and Burkina Faso, have no apparent implementation powers or roles for outside parties. They seem to be very traditional in articulating a limited role for three mediators. The only exception with two provisions providing that the Government shall initially search amongst brotherly and friendly states and international organisations the necessary financial and material means to implement the 1994 agreement, and later 'organise a round table of friendly states and international organisations for the financing of the economic and social programs of the (1995) agreement'.[57] Interestingly, the burden of these provisions here

[56] Ouagadougou I Accord (1994).
[57] Ouagadougou Accord (1994), art. 17 'Le Gouvernement de la République s'engage à rechercher auprès des pays amis et frères et des organisations internationales les moyens financiers et matériels nécessaires à la mise en œuvre du présent Accord' ; also, Definitive Peace Agreement (1995), art. 23, 'Le gouvernement organisera une table ronde regroupant les pays amis du Niger et les Organisations internationales pour le financement du programme économique et social du présent Accord.'

seems to be on one of the immediate parties, (the government) on taking these steps, and the other party possibly accepting (acquiescing).

The appeal to the international community can also be immaterial. For instance in the case of Somali peace agreements, there is an appeal to the international community 'that we need the help of, and appeal to the international community to recognize and support the Transitional Government of National Unity of Somalia upon its formation.[58] In the case of Somalia the inclusion of such appeals has become standard practice, as in the peace agreements the immediate parties again and again '[...] invite the international community and the regional actors to guarantee this political undertaking'.[59]

In this category of immaterial assistance, the provisions might include the equally interesting appeal to the mediator to assist in lifting the imposed sanctions through the UN Security council, the African Union and ECOWAS. Good examples include Côte d'Ivoire considering the peace agreement was concluded whilst, or within the 'framework' of resolutions 1633 and 1721 endorsing the sanctions imposed by the African Union.[60]

As we saw the point is to get support, assistance. Whereas one could remark that peace agreement references to support could not get vaguer than this, then reality points towards different directions; peace agreement references can get even vaguer. The following examples[61] are even more general in their appeal to members of the international community. In Chad, in the N'Djamena accord, the immediate parties to the agreement (government and opposition) commit to engage the African Union.[62] In one of the early peace agreements regarding the North-South conflict in Sudan, a provision in a text titled as 'political charter', but listed under 'principles' agreed by the Sudanese

[58] Cairo Declaration (1997), op. para. 39.
[59] Kampala Accord (2011), art. 8.
[60] Ouagadougou I Accord (2007), Section VI, art. 6.4.
[61] Art. 6.4 of Section VI of the Ouagadougou political accord reads: ' Les parties au présent Accord conviennent de saisir l'Union Africaine par l'intermédiaire des sanctions individuelles frappant les acteurs de la crise ivorienne.'
[62] N'Djamena Accord (2007), art. 5 para 10 'Pour la mise en oeuvre du présent Accord Politique, les partis politiques de la Majorité présidentielle et les partis politiques de l'Opposition démocratique sollicitent l'appui des partenaires internationaux, notamment l'Union africaine, l'Union européenne, les Nations Unies et l'Organisation Internationale de la Francophonie.'

government and the then United Sudanese Peoples Liberation Army/Movement, stipulates that 'the Sudan will interact with African and Arab nations on the basis of its effective Sudanese identity for the benefit of the country and the world community at large'.[63]

As observed in the opening paragraphs of this section, the international actors, even if not specifically involved, or in conjunction with some degree of pre and post agreement involvement, make sure their presence is duly noted in the text of peace agreements, often in rather emotionally charged, general, if not vague terms, deploring a significant degree of paternalism, as if they would like to ensure the warring parties not to agonise, for the international community is watching over them.

Correspondingly, the immediate parties include appeals, if not desperate cries for financial support for the implementation of the concluded agreements, sometimes paired with request for specific or general technical support. It has been already noted that the intention is not so much to bind the international actors to provide that assistance, but to bind the immediate parties on seeking that support in the future, and thus including a (secondary) due diligence duty for those implementing the agreement. Nevertheless, these two types of appeals, if systematically interpreted or juxtaposed are quite telling. More will be said on the following section adding problems of interpretation to the overviewed examples.

As for the case of financial and moral support, it is evident that no such assistance, or support could be considered as a right; it would be the imposition of a duty on a state or organisation, in most instances not involved, or mentioned in the agreement in other ways: to compare these provisions with the provisions on third parties as discussed in the previous section, would be to distort their ordinary meaning; such *contra legem* interpretation would be inadmissible. The same could be argued for technical assistance.

[63] Political Charter (1995), para 12.

In any case, however, as shown in the section discussing legal-political support, the problem lies elsewhere. It is more or less evident that the intention of the parties is to frame the request for these types of assistance as an undertaking of the immediate parties. This is what they sign up to, the agreement to seek a form of assistance. The international actors to be approached are not always individually identified, but rather referred to as belonging to the 'identified by the peace' group of the international community. Bearing in mind that the assistance is to be sought during the transition, one should not forget that the provisions have significance for the transitional government, which is a different actor from the immediate parties signing up to this commitment, in the sense that if not authorising, they are permitting, and thus precluding any legal, and, or political challenging of such a request, even if occurring in a future stage of the conclusion of the agreement.

4.3 Negative Findings

The second chapter started with a general disclaimer that locating international law within an intrastate peace agreement does not automatically lead to a general claim about the applicability of the entire body of international law to such an agreement in its entirety. The inquiry into the relevance of international law for an intrastate peace agreement was at that stage the result of the underpinning methodology of the thesis, the way it was explained in the introduction: narrating a story about intrastate peace agreements using an (rather traditional) international law method. In the subsequent chapters, it was demonstrated that international law, though not default law for intrastate peace agreements, since they are not treaties in their entirety, could be applicable in their interpretation.[64] Since, as shown in the second chapter, these texts are said to be deriving their legal basis from international law measures and acts, whilst designed as specific extra-legal documents applying international law standards. It then follows that

[64] Chapter 1, p 134.

interpretative tools from both treaty law and customary law would come into play, if the parties needed to authoritatively interpret the agreement during its implementation phase.

Relating this chapter's examples to the issues doctrinally introduced in relation to peace agreements in general, at the abstract level, rather assists in identifying problems in their interpretation that can be difficultly rectified. It is thus not just tying this chapter to the chapter (interim level) but also the first chapter (general level), to deduct conclusions regarding interpretation, including a rudimentary list of guidelines both African peace agreements, and possibly any typical peace agreements possessing similar features to those overviewed in the thesis.

Two strands of provisions could be of use: either third party provisions, as reflecting international customary law, or other provisions on third states and organisation applied analogously, or by analogy, and last but not least, international legal principles, with self-determination being the most relevant, due to its elevated status as *egra omnes*, as well as its thematical relevance and overreaching potential.

Such provisions would relate to economic support as well as other immaterial support, such as the lifting of sanctions, or the restoration of the international image of divided countries. Interestingly, addressees are the locals, the immediate parties; It seems that the peace agreement provisions, though mentioning the actors involved in such supporting roles, do not seem to address them; rather ensure that the former warring parties, the appeal for support, could be understood as a light duty of care, a due diligence duty not to hamper the implementation process as agreed at the moment the main compromise was reached and crystallised in the text of the agreement –paradoxically most of the financing comes from the outsiders ; does the peace agreement understand this side of implementation as a prerogative of the international community, or simply a matter regulated elsewhere? By other rules not even mentioned in the peace agreement; the regulation of the peace agreement limits itself to determining how the national actors are going to receive that assistance.

Where does such interpretation lead to? Such interpretation leads to tying in the conclusions of the first chapter that the understanding of self-determination is multi-dimensional and dependent upon the context within which it is articulated.[65] The way the African understanding of self-determination varied depending on whether the states and organisations claiming to be representative of Africa or the embodiment of Africa were concerned with making, claiming, or regionalising self-determination.

What was said for the African states making self-determination claims at the universal (General Assembly) level, claims not of court-room fashion, could perhaps be used to understand the provisions of assistance and support of peace agreements. The way those claims were enunciated in a more sophisticated, if not underlying manner, since any African submissions to the General Assembly could be unorthodoxically viewed as 'self-determination claims' at the only available UN forum at the time, likewise the peace agreement document is operating in a parallel fashion.

Whereas the African states, achieved self-determination outside the UN, when most of were admitted, to the UN Nations, and received to the General Assembly, they could become part of the UN forum and include their voices in the verbatim record of a historic declaration addressing self-determination.

With the conclusion of the peace agreement the warring factions of a given state have their chance to insert into a national document their voices of how outside assistance is to be received, although the outsiders do not seem to frame their roles in the document as such. Until that moment, such discussions are debated either at the Security Council, or the regional organisations either as part of their regular sessions, or in ad hoc conferences of groups of states and friends consulting at the sides of such regular sessions. With the document of the peace agreement, the immediate parties have more chances of making an input, at the national level. Compared to deliberations at the Security Council where they might not be members, or have an African counterpart that would vouch for them,

[65] Chapter 1, pp 75-77.

or at the regional organisation issuing a communique or a recommendation, or peace plan, where they are perhaps more concerned, the peace agreements; these very light mentioning of financial and technical support, could be interpreted in this light.

4.4 The self-determination factor of peace agreements: paradoxes and 'Horizontal' Tensions

As the chapters, have separately presented the use of self-determination for immediate parties and the use of the principle of self-determination as a guiding principle and interpretative tool, one could legitimately wonder whether how these two are to co-exist in a single peace agreement. Indeed, these different uses of facets of the law of self-determination reveal the possibilities of having a multi-faceted understanding like what was concluded in the first chapter.

At the same time, it is reasonable to wonder how these understandings, could fit together, and to what extent they could reflect either tensions of the peace agreements, or tensions inherent within self-determination itself, understood as independence (negative) and as inclusion and participation (affirmative/positive). It seems the underpinning assumption is that if not having international support, the peace agreement cannot be properly implemented, and therefore succeed.

Strangely enough, though relying upon different considerations both legal and non-legal literature concur on this observation. If intrastate peace agreements are to establish peace by regulating the conduct of immediate parties, and if, at the same time, international involvement is the one and only guarantee securing the performance of these peace agreements are we not faced with a paradox? We seem to be overemphasising the role of outside parties, and even if not explicitly accepting its applicability, ending up to the guarantee treaty paradigm for the peace agreements in their entirety, also not getting the self-determination balance right. In the light of what the above section raised, one must think of possible interpretative techniques of elevating the role of immediate parties during the stage of implementation.

Peace agreements are paradoxical in the sense that they bring not just any parties with competing interests, but real enemies, real warring parties, to agree, by compromising, thus capitulating to a degree. Though not compromising is the far worse option, such agreements would be both tricky to implement in good faith as well as would meet the critique and resistance from and by their most vivid supporters and members of these warring parties.[66] The agreements tend to tease their anticipated dubious intentions, by providing for confidence-building measures in the early stages, to establish relative trust. It comes with no surprise that during these negotiations, the warring parties emphatically request for safeguards and guarantees to sing the peace agreements. But does this mean that guarantees for the performance of peace agreements are to be sought exclusively in the conduct of outside parties? To elaborate on this concern: when the warring parties that participate in a given peace process, in other words the immediate parties commit to a particular conduct as part of confidence-building measures, in order to secure the continuation of a peace process and the conclusion of follow-up documents, they admit to having some role in securing the performance of their initial pledges; it would be inconsistent not to treat some similar provisions accordingly: thus provisions regulating their conduct during the transition could be understood or interpreted *qua* safeguards and guarantees.

In light of these, let us reflect on one of the positive and negative findings. We have seen that a major finding regarding the use of self-determination for immediate parties relates to the right to take part in the interim government performing both day-to-day/administrative tasks as well taking part in the overall oversight of peace and security provisions (ceasefire) and the organising of the first elections of the transition. It was noted that this type of transitional solution is championed instead of the government that was in place, and a government that was perhaps part of the problem, for not being

[66] See, Stephen J. Stedman, 'Spoiler Problems in Peace Processes,' (1997) 22(2) Int Secur 5–53; spoilers include any dissenters within a movement that are unhappy with the compromises needed for achieving the agreement.

legitimate, and, or, ineffective, and instead of an international administrator. Although the previous section raised the problems of such formula, at this stage, the participation of the immediate parties gains a different meaning vis -a -vis the outside parties, if the representativeness in the composition of the interim government, in some agreements termed as inclusiveness, could itself be considered as guarantee for implementation of tantamount importance to the outsiders.

These two read together might be the way of re-drawing the balance of the encounter between immediate parties and outside parties in the implementation phases of the peace agreements.[67] As an alternative to fully internationalised peace agreement and greater degree of outside involvement, the identifiable one-off, not least time-constrained right of the immediate parties to the agreement to participate in the provisional government of the transitional period which takes hold of the main political aspects of peacebuilding, in other words temporary governing/administering the country, and determining the processes relating to the redistribution of power. Once that right has been exercised, these time-constrained entitlements underpin the restructured state, now becoming the foundational principles of state.

Concluding Remarks

This chapter has completed (for the purposes of this thesis) the test of the conceptual framework, by identifying and discussing the use of self-determination for outside parties. To trace such use, it offered a framework for understanding the roles of outside parties, by looking at specific examples of differing levels of engagement, understood as supervision/enforcement, interpretation-implementation, and legal-political support.

The relevant examples highlighted issues of interpretation arising out of the framing of these forms of engagement in the implementation of African intrastate peace agreements,

[67]For the theme of encounter between representatives of Africa and representatives of international community, further narrowed-down to the encounter between immediate and outside parties see pp 108-113.

bearing in mind that the use of self-determination, though not apparent might come into play through its interpretative function as an international legal principle; Before elaborating on this, the chapter emphasised on two issues: first, on the limited applicability of international law provisions on third parties, being analogously and not directly applied in most instances of supervision and enforcement, mostly found in the peace and security provisions of the agreements. This in turn, highlighted the potential of international law provisions with a more general reach, the principle of self-determination being the one to come into play for its relevance as well as its elevated normative value as being applicable *erga omnes*.

By juxtaposing the use of self-determination for outside parties with the use of self-determination for immediate parties, some remarks have been made on how these could fit together or be at tension. It seems that there would be the case of striking a balance between ownership of the agreement and related peacebuilding (implementation) and successful implementation of the agreements; if one were to attach to the outside involvement a *conditio sine qua non* for successful implementation, that would have to be carefully measured and evaluated against what they set to do; the only way to overcome such issues would be to (either) raise the role of immediate parties or leave room for challenging the outside involvement.

5. Conclusions

The thesis has sought to explore if and to what degree self-determination applies to African intrastate peace agreements. As all intrastate peace agreements, the African intrastate peace agreements are political compromises. They are extremely unpopular. They are concluded between former enemies, once they realise they have no other option, but to live within the same state. These reluctant signatories are brought together with the assistance of outsiders. The understanding and related interpretation of the provisions of these documents is important, if these agreements are to be interpreted and implemented, thus maximising their chances of success. The case is pertinent for the sampled African materials, which display a multitude of complexity in terms of their diversity (factual backgrounds, signatory parties, substantive components), as well as convergence in terms of the solutions put forward by these documents.

The thesis answered the research question, with the assistance of an international legal approach. Such approach informed the treatment of the sampled materials as evidence of African state practice, as well as the method of addressing the question of application of self-detemination to intrastate peace agreements.

The research question has been addressed in two parts (Chapters 1-2 and Chapters 3-4). The first part devised an international legal framework, whilst the second, further elaborated on the research question, by dividing it into two sub-questions: how is self-determination used for immediate parties to African intrastate peace agreements, and how self-determination relates to the outsiders (or outside parties) to these agreements.

At first, the thesis identified ties between Africa (understood as the collection of African states as well as the pan-African organisations) and self-determination, during three key UN era phases: the making of the UN legal order, the decolonisation phases, and the creation of the African legal order initially through the OAU and later through its successor organisation, the AU. The aim was to conceptualise the thesis' understanding of self-determination as a multi-dimensional concept, which, depending on the context, has been

developed accordingly, in terms of emphasis on its external or internal aspects, or its form as right or principle. (Chapter 1)

Before taking on the applicability of self-determination as right or principle in relation to immediate and outside parties to African peace agreements respectively, the thesis established how international law is relevant and applicable for the overviewed materials. In explaining the relevance of international law for African intrastate peace agreements, an international legal research would have to rely either on international treaty law or customary law. This work started by clarifying that the overviewed materials are not international treaties or international agreements. The other route was customary law, or state practice leading towards emerging customary law, which was what this work essentially did. In essence, the approach adopted understood how these documents could be studied with the same legal tools that international lawyers use to discern evidentiary state practice, since African intrastate peace agreements are national documents applying international law.

In construing such argument, the first chapter distinguished between general international law and specialist branches of international law, such as international humanitarian law, as well as between the form and content of those documents. It thus demonstrated that the crux in situating international law within African intrastate peace agreements lies not within their being in the grey area between conflict/crisis and peace, but rather their existence, legal basis, and related content being in the grey area where international law meets pre(national) law.

Chapter 2 argued that the application of international law to those peace agreements is the result of the peacemakers acting as informal groups of states and organisations cooperating on an ad *hoc basis*, a peace initiative or a peace process in the margins of international summits, using a mixture of diplomatic dispute-settlement techniques, as described in the UN Charter, guided by a UN Charter framework, as espoused via an international organisation measure or recommendation. The peacemakers act as

intermediaries, in the sense that they assist in channelling that international measure through that informal peace process. The result is a set of intrastate peace agreements, internalising those recommendations, not by duplicating them, but, by further elaborating them, whilst relying upon them as background fact and legal basis.

In internalising (or domesticating) such recommendations, the African agreements, not only are designed as the framework for peace in the country, but apply international law, in order to fulfil the said function. The application of international law by those peace agreements, is the result of municipal law being set aside in law, and in fact.

To link the connection between conceptual framework and Chapters 3 and 4, Chapter 2 showed how municipal law is set aside not just because of the preceding conflict or crisis, but also, since the essence of establishing peace in the aftermath of such conflicts and crises lies within restoring the law in that country. The object of addressing the preceding situation not by military means but by political means, implies the restructuring of the political game and the political institutions at the national level, a matter that is not governed by national law. This is where international law comes into play, as evidenced by the texts of the overviewed materials. The main object and purpose of these agreements, if read together with their entry into force provisions, together with provisions for overriding or setting aside municipal law, as well as, preambular and operative use of international legal language serve as indicia of such application, despite those agreements not explicitly dealing with the 'choice of law' under a singular provision.

Once these issues were clarified, as part of the conceptual framework, the following chapters dealt with how self-determination is applied or applies to the overviewed documents, by trying to identify the self-determination factor of peace agreements. (Chapters 3-4). The self-determination factor of African intrastate peace agreements is a descriptive and interpretative framework that comprises two types of findings: positive and negative findings. These findings are derived from different backgrounds, and raise different issues. Positive findings were drawn upon self-determination as right, whereas

negative findings were derived from self-determination as principle. Positive findings are the result of peace agreement drafting applying and elaborating international law, whereas negative findings are discerned from general international law.

In terms of law, the self-determination factor of peace agreements is the result of both direct and indirect application of international law. Direct, because the substantive components of peace agreements regulate a subject-matter that is not governed in law and in fact by national legislation. In support of this argument, the study of peace agreements has used their binding character, their immediate entry into force outside procedures of promulgation or incorporation, their reference to international law that is not exhausted in preambular sections and paragraphs but permeates their operative parts, and most notably their primary object and purpose which can be summarised to replacing the military treatment with a political regulation of the crisis or conflict. (Chapters 2-3)

More specifically Chapter 3 observed that in regards to the transitional period, three entitlements could be identified: the right to participate in the division of power of the day-to-day tasks, and the right to participate in the restructuring functions that are akin to the exercise of constituent power, understood as the issuing of a new constitution, significantly amending an existing constitution, or significant reforms relating to the power structures of the existing state, all these occurring outside settled or established municipal (constitutional) procedures and processes, underwritten by differing degrees of explicit or implicit recognition of former warring parties, in the form of transformation to a political party conditioned upon disarmament. Thirdly, the electoral provisions, explicitly or implicitly through interpretation could be granting the time-constrained right to participate in the one-off elections of the transition, this in some instances being framed as the reward for giving up arms, as well as a parallel duty of the ensuring the character of these elections, or consent to international monitoring and support.

These three types of entitlements are to be found in the overviewed materials in different combinations. The balancing of these entitlements during the drafting process seems to

have implications for interpretation and implementation of the agreements. The texts of these agreements do not seem to always strike the same balance amongst different types of entitlements for immediate parties, as well as framing the respective undertakings, and or duties of the immediate parties against each other in reciprocal terms. This is particularly pertinent for the period of restructuring the state. It might as well reflect the unequal footing of the parties before and during negotiations, if not somehow revealing that conflict and crisis-related inequalities having made their way into the peace deal. Such entitlements are significantly different from modes of relying upon internal-self-determination standards governing the post-transition phase.

The self-determination factor also contains indirect application of the law, which means application for the purposes of interpretation of peace agreements. Unpacking the meaning of peace agreement, the thesis has offered the following approach and related guidelines regarding the interpretation of intrastate peace agreements. Intrastate peace agreements are not in principle international treaties in their entirety. International law can nevertheless be located within a typical intrastate peace agreement primarily in terms of content (substantive components) and outside involvement. Intrastate peace agreements do not just contain references to values, principles, and standards of international law, but to a degree could be understood as municipal law documents applying international law; such application, widely understood as domestication of international law, depending on the modes of each national legal order for the reception of international law is found throughout the peace and security, and peacebuilding provisions of peace agreements including, restructuring the governmental functions temporarily (transitional government) and more permanently (constitution promulgation, electoral and other reforms according to particular standards contained in therein). The application complies with and elaborates on recommendations of international organisations, issued either under their dispute-settlement capacities, their alone, or alongside invocation of 'threat to peace' competence.

In other terms, these agreements, could be seen as domesticating or internalising international law, the way this process has been identified and described in standard international law literature and more specific incorporation theories. The application is independent of subsequent endorsement of the agreement by sub-regional, regional, and international organisations and the separate question of internationalisation, or general impact on the form and status of those agreements. Naturally, the peace agreements interact with such acts of international organisations and become part of the post-conflict framework for the establishment of peace that includes both municipal and international law. However, the peace agreement is either explicitly or more implicitly designed as the specific law governing the transition to peace, (*lex specialis*) obviously operating alongside existing law, but also setting it aside, in the event of discrepancies.

Bearing in mind that the peace agreement is in a way *lex specialis* to existing municipal law, such autonomy of its status, should have bearing upon the law governing its interpretation. Since international law is an essential part within a typical intrastate peace agreement, it has a role to play in its interpretation; the Vienna Convention on the law of Treaties might not be directly applicable, but the provisions on interpretation, reflecting customary law, should be the starting point of interpretation. Regarding more specific guidance, the content of the particular provision in question should thematically point out to relevant general international law in instances of unclear provisions and gaps. Since the thesis pointed out that a major part of the agreements could be understood as the 'self-determination factor', then a side conclusion would imply resorting to the principle of self-determination as a counterpart key method of interpretation. This is reinforced by limitations of more specific provisions on third parties, the limited guidance of Court decisions, a result of the (prevailing) reluctance of courts to engage in actual interpretation of peace agreements.

Chapters 3 and 4 also raised different drafting and interpretative concerns for the use of self-determination for both immediate and outside parties, in particular different types of

rights, entitlements, duties and commitments, of differing normative degree, modes of applicability, temporal reach, and synallagmatic character. The fact that provisions of the peacebuilding part of peace agreements, as drafted, seem to move away from the international treaty model but this does not automatically lead to a constitutional interpretation; despite analyses of peace agreements as a distinctive form of internationalised constitutionalism, there are still strong elements of bilateral reciprocal duties for the immediate parties regarding the sharing of power in the main transition; the value-oriented approach is left for post-transition provisions, and for these one could resort to international legal general principles.The thesis developed an international legal framework for assessing the use of internal self-determination language as a dispute-settlement technique, which redistributes statal power amongst former warring parties whilst reconfiguring, but not (territorially disrupting existing states. It brought into the discussion the relevance and applicability of self-determination regarding international involvement in key implementation tasks for the transition and post-transition phases, as these designed and (at least partially) governed by those peace agreements. In this regard, the thesis did not just affirm that an international legal analysis is an essential (preliminary or intermediate) step of understanding the content and aims of a peace agreement, before assessing its implementation and measuring the success of such goals. More importantly the thesis demonstrated that it is possible to set out and international legal method and related interpretative guidelines to understand national (municipal) pre-constitutional documents, which contain internationally mediated and internationally mandated measures addressing internal crises, and wider international standards.

The relationship between self-determination and peace agreement brings insights on the relationship between international law and municipal law. The conclusions drawn from the study of intrastate peace agreements are pertinent for that relationship, since the texts of intrastate peace agreements being an example of interfaces between international and municipal law. Obviously, the thesis is not underestimating the differences in the incorporation of international law by the respective legal orders of African states, nor the

varying degrees of internationalised commitments and provisions included in the peace and security provisions of the agreements. Still, intrastate agreements could be regarded as exemplary municipal law documents applying international law whilst underwriting essential pre-constitutional and constitutional provisions regarding the distribution of power. The agreements appeal to international law in extreme periods of peace transitions: they use international law, so as to include in the state's power structures, the warring parties, the same warring parties that not long ago would challenge the legitimacy of the state's government, and, or its ability to effectively govern.

The use of international law in the peace agreements becomes the medium for the significant altering of the internal (legal) order: in doing so, the appeal to international law might temporarily, and to a degree incidentally be for the benefit of the parties, but primarily it is to ensure the continuation of the state. The fact that most African peace agreements, in line with the relevant universal and regional practice build the restructuring of the state upon the axiomatic acceptance of the 'sanctity of borders' is also attesting to this. But one should not be complacent about the fact that the parties designed to participate in the immediate redistributing power, renegotiating social contract, or mending social contract.

The internal reconfiguration occurring through international law via the peace agreements would not be affecting the existence and international legal personality of the state, and thus its rights and duties towards the other members of the international community. In this sense, the intrastate peace agreement becomes a case comparable to the cases of revolution or *coup d'état*, and their treatment by traditional international law. In those instances, the tensions between effectiveness and legitimacy are the result of international law's efforts to contain the force outside the law, which led to rupture in the domestic sphere, but also to leave room for these ruptures to happen, provided the international legal order is not put at significant risk. If that is the case, from the perspective of international law the analysis moves beyond a *stricto sensu* illegality of peace agreements;

rather shift our questions on how peace agreements attempt to strike this balance, through the use of international law, and more specifically by applying and drawing upon a multifaceted understanding of self-determination.

The overviewed intrastate peace agreements are in many ways imperfect legal documents. They are high risk documents in law and in fact. Their rationale explains the split between form and content. They seek to regulate the behaviour of former warring parties at the national level. At the same time, binding those former enemies at the national level, can only be effectuated through the channelling of international law, since the matters regulated are beyond the purview of national law and national legality.

Their fusion of categories and standards from different branches of law is pertinent. To focus on the black letter of the law, their use of international law is contested, but workable. To focus, on the actors essential in their making, they raise issues at the pre- and post-agreement stage. In terms of the actors vested with the implementation of these texts, there are the capabilities and the limitations. To focus on their viability, they are high likely to fail, the failure also including subsequent contestation, or misapplication. This is the result of both immediate and outside parties being keen to take credit for the making of these documents, by affixing their signatures, and posing for pictures, once the lights of the peace ceremonies go off, no actor would want to assume the full capabilities of their role in implementation. That role is deferred to the other signatories by making use of peace agreement provisions as escape-clauses: the immediate parties can either use or manipulate the reciprocal nature of their commitments by deferring their own till the other party fulfils its part, while the outsiders frame their support in legal-political terms, to avoid tight timeframes and.

At the end of the day, if that is the price to pay for an agreed compromise, it would be worth having, if the content of provisions and its possible interpretative strategies are well understood and communicated amongst key players. What cannot be ignored however, is that the burden of poor understanding and interpretation of those agreements ultimately

lies within the state and the people that the immediate parties fought for. At the end of the day, if the implementation of peace agreement goes sour, the peacemakers can always depart the country in question, and take on another case. But the immediate parties have no other country to live in and fight for.

TABLE II: African Peace agreements

COUNTRY	PEACE AGREEMENT (full name, language, place, date)	PEACE AGREEMENT (shortened name)	IMMEDIATE PARTIES	ADDITIONAL INFORMATION	Comments on SOURCES
ANGOLA					
	Accordos de Paz para Angola Peace Accords for Angola (Bicesse Accords) Portuguese, English Lisbon, Portugal 21 May 1991	Bicesse Accords (1991)	-Government of the People's Republic of Angola -National Union for the Total Independence of Angola (Uniao Nacional Para a Independencia Total de Angola UNITA)	Also known as Estoril accords Consist of four documents -Ceasefire agreement - fundamental principles for the establishment of peace in Angola - concepts for resolving the issues still pending between the Government and UNITA -Protocol of Estoril	
	Lusaka Protocol English and French Lusaka, Zambia 15 November 1994	Lusaka Protocol (1994)	-The Government of the Republic of Angola (GRA) -UNITA	Contains 10 annexes Agenda for the Talks, Legal Instruments, Military Issues, Political Issues, National Reconciliation, Electoral Process, the role of the United Nations, Timetable for Implementation and other relevant matters.	
	Agreement signed by the Government of the Republic of Angola and UNITA Renovada (Luanda Protocol) Portuguese, English Luanda, Angola	Luanda Protocol (1999)	-Government - Uniâo Nacional para a Independencia Total de Angola (UNITA) Restoration Committee	Follow-up to Lusaka	

	18 February 1999		(UNITA Renovada) Contains 3 separate agreements INCORE lists them seperately		
	Memorandum of Understanding (Luena Agreement) Luanda, Angola 4 April 2002	Luena Memorandum (2002)	-Government (Delegation of the Armed Forces) -UNITA Renovada (Delegation of the Armed Forces)	Memorandum complementing the Lusaka protocol	
	Cabinda Enclave				
	Agreement between Government of Angola and the Front for the Liberation of the Cabinda Enclave Portuguese April 1996	Cabinda Agreement (1996)	-Government - Força de Libertação do Enclave de Cabinda (FLEC)		
	Memorando de Entendimento para a Paz *e* Reconciliação em Cabinda (Memorandum of Understanding for peace and reconciliation in the enclave of Cabinda) Namibe, Angola	Cabinda Peace Memorandum (2006)	-Government - Fórum Cabindês para o Diálogo (Cabindan Forum for Dialogue)		

	1 August 2006				
BURKINA FASO					
	Charte de la transition French 13 November 2014	Transitional Charter (2014)	-Political Parties affiliated with CFOP -other Political Parties - Civil society organisations -Defence and security forces -Traditional and religious authorities		
BURUNDI					
	Declaration by the participants to the peace negotiations on Burundi,involving all the parties to the Burundi conflict Arusha, Tanzania 21 June 1998	Arusha Declaration (1998)	-Government of the Republic of Burundi, - The National Assembly, - Alliance Burundo-Africaine pour le Salut (ABASA), -Alliance Nationale pour le Droit et le Développement (ANADDE),-Alliance des Vaillants (AV-INTWARI),-Conseil National pour la Défense de la Démocratie (CNDD),-Front pour la Démocratie		

			au Burundi (FRODEBU),- Front pour la Libération Nationale (FROLINA),- Parti Socialiste et Panafricaniste (INKINZO),-Parti pour la Libération du Peuple Hutu (PALIPEHUTU),- Parti pour le Redressement National (PARENA),-Parti Indépendant des Travailleurs (PIT), -Parti Libéral (PL), -Parti du Peuple (PP), -Parti pour la Réconciliation du Peuple (PRP), -Parti Social-Démocrate (PSD), -Ralliement pour la Démocratie et le Développement Economique et Social (RADDES), - Rassemblement du Peuple Burundais (RPB) and -Union pour le Progrès National (UPRONA)		
	Arusha Peace and Reconciliation Agreement for Burundi French (original), English Arusha, Tanzania 28 August 2000	Arusha Agreement (2000)	Same as in Arusha Declaration	Contains five protocols - the nature of the conflict; - democracy and good governance - questions of peace and security - reconstruction and development (economic matters) - guaranties on	

				implementation of the agreement.	
	Ceasefire Agreement between the Transitional Government of Burundi and the Conseil National pour la Défense de la Démocratie-Forces pour la Défense de la Démocratie English, French Arusha, Tanzania 02 December 2002	CNDD Ceasefire Agreement (2002)	-Transitional Government of Burundi -Conseil National pour la Défense de la Démocratie-Forces pour la Défense de la Démocratie (CNDD-FDD)	Complementing the Arusha agreement	
	Joint Declaration of Agreement on the final cessation of hostilities. 27 January 2003		Same as above		
	Pretoria Protocol on Political, Defence and Security Power-Sharing in Burundi (the Pretoria Protocol) English, French Pretoria, South Africa 08 October 2003	Pretoria I Protocol (2003)	Same as above	Same as above	
	Protocol on Outstanding Issues of Political, Defence and Security Power-Sharing in Burundi	Pretoria II Protocol (2003)	Same as above	Same as above	

	(Pretoria II Protocol) English, French Pretoria, South Africa 02 November 2003				
	Forces Technical Agreement between the Transitional Government of the Republic of Burundi and the Conseil National pour la Defense de la Democratie-Forces pour la Defense de la Democratie (CNDD-FDD) Pretoria, South Africa 2 November 2003	Forces Technical Agreement (2003)	same as above		
	The Global Ceasefire Agreement French (original) English Dar-Es-Salaam, Tanzania 16 November 2003	Global Ceasefire Agreement (2003)	same as above	Incorporating all CNDD-FDD agreements Amending Arusha Agreement in relation to CNDD-FDD	
	Accord de Partage de Pouvoir au Burundi French Pretoria, South Africa 6 August 2004	Power-sharing Agreement (2004)	Same parties as in Arusha Agreement (2000) see above (the Transitional government instead of Plus CNDD-FDD	Implementing Arusha Only Peacebuilding Part Non-signatory parties listed as well	

	Dar-es-Salaam Agreement on Principles Towards Lasting Peace, Security and Stability in Burundi French (original) English, Kirundi, Kiswhahili Dar-Es-Salaam, Tanzania 18 June 2006	Dar-es-Salaam Principles Agreement (2006)	-Government of the Republic of Burundi -FNL Palipehutu		
	Comprehensive Ceasefire Agreement between the Government of Burundi and the Palipehutu/FNL Dar-Es-Salaam, Tanzania 15/12/2006	Dar-es-Salaam/ FNL Ceasefire (2006)	Government of the Republic of Burundi -FNL Palipehutu		
CAR					
	Preliminary Agreement on National Reconciliation Pact Bangui, CAR 18 January 1997	Preliminary Agreement (1997)	-Association Centrafricaine de Lutte contre la Torture et l'Abolition de la Peina de Mort(ACAT) -Alliance pour la Démocratie et le Progrès AEEC Association des Eglises Evangéliques Centrafricaines (ADP) AFJC Association des - Femmes juristes de Centrafrique (AFJC) Confédération Chrétienne		

			des Travailleurs Centrafricains (CCTC) -Conférence Episcopale Centrafricaine (CECA) Communauté Islamique Centrafricaine (CICA) Convention Nationale (CN) Confédération Nationale des Travailleurs Centrafricains (CNTC) CSTC Confédération Syndicale des Travailleurs Centrafricains (CSTC) Effort Libéral en Afrique Noire (ELAN) Forum Civique (FC) FPP Front Patriotique pour le Progès GERDDES (FPP) Groupement d'Etudes et de Recherches pour la Démocratie et le Développement Economique et Social GILA/MND GILA- Mouvement National pour la Démocratie		

			J EUNESSE Comité Ad Hoc de la Jeunesse Ligue Centrafricaine des Droits de l'Homme LCDH Mouvement pour la Démocratie et le Développement (MDD) Mouvement pour la Défense des Droits de l'Homme (MDDH) MDI/PS Mouvement pour la Démocratie, l'Indépendance et le Progrès Social (MDI/PS) MDREC Mouvement pour la Démocratie en République Centrafricaine (MDREC) Mouvement d'Evolution Sociale de l'Afrique Noire MESAN/B Mouvement d'Evolution Sociale de l'Afrique Noire/Barthélémy Boganda (MESAN) Mouvement de Libération du Peuple Centrafricain (MLPC) Mouvement de National		

			pour le Renouveau (MNR) MSCA Mouvement Socialiste Centrafricain (MSCA) Observatoire Centrafricain des Droits de l'Homme (OCDH) OFCA Organisation des Femmes Centrafricaines (OFCA) Organisation des Syndicats Libres des Secteurs Public, Para-Public et Privé (OSLP) Parti Républicain Libéral (PARELI) Union Nationale du Patronat Centrafricain (UNPC) PCD Parti Chrétien Démocrate (PCD) Parti Libéral Democrate (PLD) Parti Républicain Centrafricain (PRC)		

			Parti Social Démocrate (PSD) Rassemblement du Peuple Centrafricain (RDC) UND/FK Union Démocratie Républicaine/Fini Kodro (UND/FK) UDRP Union pour la Démocratie et le Renouveau Panafricain (UDRP) Union Nationale pour la Défense de la Démocratie (UNDD) Union du Peuple pour le Développement Economique et Social (UPDES) Union pour la République(UPR) Union Syndicale des Travailleurs de Centrafrique (USTC)		
	The Bangui Accords Bangui, CAR	Bangui Accords (1997)	Same as in previous see above		

	25 January 1997				
	Mandate of the Inter-African force to monitor the Bangui Accords Bangui, CAR 6 March 1997	Inter-African Force Mandate (1997)	-CAR (government) -France -Heads of African States	Listed by UN Peacemaker	
	National Reconciliation Pact French, English Bangui, CAR 5 March 1998	National Reconciliation Pact (1998)	President of the Republic Government National Assembly Judiciary Armed Forces of the Central African Republic Association of Mayors And the political parties, associations and members of the civil society signing Bangui preliminary agreement see above		
	Accord de Paix entre le Gouvernement de la Republique Centrafricaine et Les Mouvements Politico-Militaires ci-apres designes: FDPC et UFDR Syrte, Libya 2 February 2007 Constitution and Political	Syrte Ceasefire (2007)	Government FDPC (list full names) UFDR	Monitoring committee established in art. 7 # Art 7 : (Les parties signataires mettent en place une commission de suivi de l'application du présent Accord. La Commission de suivi de l'application du présent Accord peut faire appel à toute personne qualifiée susceptible de l'éclairer.)	

	System/Structure/Institutions			CHECK art. 9 some sort of intentional or deliberate material breach by one of the parties, giving the right to disengage from the obligations for the other party	
	Accord de Cessez-le-Feu et de Paix enter le Gouvernement de la Republique Centrafircaine et Le Mouvement Politique Centrafricain (APRD) Libreville, CAR 5 May 2008	APRD Ceasefire (2008)	Government APRD		
	Accord de Paix Global entre le Gouvernement de la Republique Centrafricaine et les Mouvements politico-militaires centrafricains designes ci-apres: APRD, FDPC, UFDR Libreville, CAR 21 June 2008	Global Peace Agreement (2008)	Government FDPC UFDR APRD	CHECK art. 9 some sort of intentional or deliberate material breach by one of the parties, giving the right to disengage from the obligations for the other party	
	Acte d'adhésion de la CPJP à l'accord de paix global de Libreville French	Accession Agreement (2012)			

	25 August 2012				
	Déclaration de principe des parties aux négociations de Libreville sur la crise Centrafricaine Libreville 11 January 2013	Libreville Declaration (2013)			
	Accord de cessez-le-feu entre le Gouvernement de la République Centrafricaine et la Coalition Seleka French Libreville 11 January 2013	Libreville Ceasefire (2013)	-Government -SELEKA coalition		
	Accord politique de Libreville sur la résolution de la crise politico-sécuritaire en République Centrafricaine French Libreville 11 January 2013	Libreville Political Agreement (2013)			
	D6clarations de Ndjamena de 2013 et 2014				
	Accord de cessation des hostilités en République centrafricaine French Brazzaville, Congo 23 July 2014	Brazzaville Ceasefire (2014)			

	Pacte républicain pour la paix, la réconciliation et la reconstruction French Bangui 12 May 2015	Republican Pact (2015)			HD
CHAD					
	Agreement between Government of Chad and Chadian National Front September 1992	Government-National Front Agreement (1992)			Not accessed
	El Geina Agreement 31 October 1992	El Geina Agreement (1992)			Not accessed
	Tripoli 1 Agreement 16 October 1993	Tripoli 1 Agreement (1993)			Not accessed
	Abeche Agreement 12 October 1994	Abeche Agreement (1994)			Not accessed
	Bangui 2 Agreement Bangui, CAR 11 August 1994	Bangui 2 Agreement (1994)			Not accessed
	The Dougia Accord 22 November 1995	Dougia Agreement (1995)			Not accessed
	Agreement between the Government of Chad and Action for Unity and Development	Government-Action for Unity Agreement (1996)			Not accessed

	January 1996				
	Agreement between Government of Chad and the Armed Forces for a Federal Republic (FARF) April 1997	Government-FARF Agreement (1997)			Not accessed
	Agreement between Government of Chad and the Chadian National Liberation Front- People's Armed Force (Frolinat-FAP) August 1997	Government-Frolinat-FAP Agreement (1997)			Not accessed
	National Reconciliation Agreement 3 October 1997	National Reconciliation Agreement (1997)			Not accessed
	Donya Agreement 7 May 1998	Donya Agreement (1998)			Not accessed
	Reconciliation Agreement 3 July 1999	Reconciliation Agreement (1999)			Not accessed
	Agreement between Government of Chad and the Armed Resistance against Anti-Democratic Forces June 2000	Government-Armed Resistance Agreement (2000)			Not accessed
	Peace Agreement Between the Government of the Republic of Chad and the Movement for	Tripoli II Agreement (2002)	-Government of the Republic of Chad		

	Democracy and Justice in Chad (MDJT) Rebels Arabic, French (both original) English Tripoli, Libya 7 January 2002 French and Arabic		-Movement for Democracy and Justice in Chad (MDJT)		
	Draft Agreement between the Government of Chad and the National Resistance Army January 2003	Draft Government – Resistance Army Agreement (2003)			Not accessed
	Agreement between the Government of Chad and the Movement for Democracy and Justice in Chad December 2003	Government –MDJT Agreement (2003)			Not accessed
	Yeribou Agreement 18 August 2005	Yeribou Agreement (2005)			Not accessed
	Accord politique en vue du Renforcement du Processus Démocratique au Tchad 13 August 2007 N'Djamena, Chad	N'Djamena Accord (2007)	-Government -Opposition		
	Accord de Paix entre le Gouvernement de la République du Tchad et les Mouvements ci après : Union Mouvement des Forces pour le	Syrte Accord (2007)	Government Union des Forces pour le Développement et la Démocratie (UFDD)		

	Développement et la Démocratie UFDD ; Rassemblement des Forces pour le Changement RF m Concorde Nationale Tchadienne CNT Union dez Forces pour la Démocratie et le Développement Fondamentale UFDDF French Syrte, Libya 25 October 2007		Rassemblement des Forces pour le Changement (RFC) Concorde Nationale Tchadienne (CNT) Union des Forces pour la Démocratie et le Développement Fondamentale (UFDDF)		
	Accord de paix entre le gouvernement de la République du Tchad et le Mouvement National (MN) 25 July 2009 Tripoli, Libya	Tripoli III Accord (2009)	-Government -Mouvement National(MN)		
COMOROS					
	Addis Ababa Agreement English Addis Ababa, Ethiopia 13 December 1997	Addis Agreement (1997)	-Government - Anjouan (Ndzuwani) - Moheli (Mwali) -Grande Comore (Ngazidja) -Opposition (Forum/Federation/PRC) -National Union for Development/National		

			Front for Justice		
	Communiqué de Mohéli French 28 January 1998				
	Antananarivo Agreement French Antananarivo, Madagascar 23 April 1999	Antananarivo Agreement (1999)	Same as in Addis Agreement	Parties sign with reservations	
	Déclaration Commune de Fomboni French 26 August 2001 Fomboni Mohéli Comoros	Fomboni Declaration (2001) Alt. Name Famboni I	-Republic of the Comoros -Government of the island of Anjouan		
	Accord cadre de réconciliation Nationale au Comores (French) Fomboni, Mohéli/ Mwali, Comoros 17 February 2001	Fomboni Accord (2001)	-President Federal autonomous islands Anjouan Grande Comore Mwali		
	Accord sur les dispositions transitoires aux Comores Agreement on Transitional Arrangements in the Comoros/Anjouan French (original) Englishh	Moroni Agreement (2003) Alt name Accord de Beit-Salam	Same as above		

	(Beit-Salam Palace, Moroni, Grande Comore/N'gazidja, Comoros 20 December 2003				
	Memorandum sur la reforme constitutionelle a Comoros French Moroni, Grande Comore/N'gazidja, Comoros 5 March 2009	Moroni Memorandum (2009)	Same as above		
	Accord pour la gestion de periode interimaire French Beit-Salam, Moroni, Grande Comore/N'gazidja, Comoros 15 June 2010	Interim period Accord (2010)	Same as above		
CONGO					
	Accord de cessation des Hostilites en Rebublique du Congo French Pointe-Noire, Congo 16 November 1999	Pointe-Noire Ceasefire (1999)	- Cobras - Mouvement National de Liberation du Congo (M.N.L.C.) - Mouvement National de Liberation du Congo – Renové (M.N.L.C.R.) - Bana Dol		

			- Resistance Sud Sud - Ninjas		
	Accord de Cessez-le-Feu et de Cessation des Hostilités entre le Haut Commandement de la Force Publique et le Haut Commandement des Forces d' Autodéfense de la Résistance (FADR) en République du Congo Brazzaville French Brazzaville, Congo 29 December 1999	Brazzaville Ceasefire (1999)	-Haut Commandement des la Force Publique (Government forces) Haut Commandement Des Forces D Autodéfense de la Résistance FADR -(Conseil National de la Résistance CNR) (opposition forces)		
COTE D'IVOIRE					
	Sommet Extraordinaire des Chefs d'État de Governement sur la Situation en Côte d'Ivoire: Accra I (French) Accra, Ghana 29 September 2002	Accra I Agreement (2002)		Listed as agreement by UN peacemaker Actually communique of E(owaS calling on parties to abstain from the use of force and to initiate dialogue	
	Accord des Cessation Des Hostilites (French)	Bouaké Ceasefire (2002)	-Mutins et pour le MPCI (Mouvement patriotique	Also known as Dakar plan	

	Bouaké, Cote D'Ivoire 17 October 2002	Dakar plan	de Côte d'Ivoire, branche politique de la rebellion -Government (through previous declaration announcing cessation of hostilities)		
	Accords de Lomé French Lomé, Togo 1 November 2002	Lomé Accords (2002)	-Government -Mouvement patriotique de Côte d'Ivoire (MPCI)		
	Linas Marcoussis Agreement English, French (original) Paris, France 23 January 2003	Linas-Marcoussis Agreement (2003)	First part signed by 'Ivorian Political Forces' defined as such by the document itself FPI, MFA, MJP, MPCI, MPIGO, PDCI-RDA (Parti Démocratique), PIT, RDR (Rassemblement des Républicains) , UDCY,and UDPCI.		
	Paris Conclusions Paris, France 26 January 2003 HRs TS, Governance and	Paris Conclusions (2003)		Listed by UN peacemaker Annexed together with Linas Marcoussis when transmitted to the UNSC	

	Institutional arrangements			If considered separate, interstate peace agreement in relation to intrastate conflict Appears right after the Linas Markousis Accords- signed by the internationals involved in the peace process for CI; could be considered a guarantee-type agreement	
	Accord Accra II sur la Crise en Cote D'Ivoire French Accra, Ghana 7 March 2003	Accra II Accord (2003)	Same as in Linas-Marcoussis		
	Accord de Cessez-le-Feu French Abidjan, Cote D'Ivorie 3 May 2003	Abidjan Ceasefire (2003)	-Forces Armées Nationales de Cote D Ivoire Fanci (Government Forces) -Forces Nouvelles		
	Joint Declaration of the Defence and Security Forces of CI French (original), English Abidjan, Cote d'Ivoire 4 July 2003	Armed Forces Joint Declaration (2003)	Same as above	Complementing Linas Marcoussis, and Accra II	

	Accra III Agreement on Cote d'Ivoire French, English (both original) Accra, Ghana 30 July 2004	Accra III Agreement (2004)	-President -Government of National Reconciliation -The Ivorian political forces of Linas Marcoussis (see above)		
	Pretoria Agreement on the Peace Process in CI (Pretoria I) French, English (both original) Pretoria, South Africa 06 April 2005	Pretoria I Agreement (2005)			
	Declaration on the implementation of the Pretoria Peace Agreement on the peace process in CI (Pretoria II) French, English (both original) Pretoria, South Africa 29 June 2005	Pretoria II Declaration(2005)	Same as above		
	SC Resolution 1633/2005			Listed by UN peacemaker as implementation agreement Not intrastate agreement,but modifying	

				the PA-framework	
	SC Resolution 1721/2006			as above	
	Accord Politique de Ouagadougou French Ouagadougou, Burkina Faso 4 March 2007	Ouagadougou I Accord (2007)	-President of CI (interim presidency till elections) -Forces Nouvelles		
	Deuxieme Accord Complementaire a l'Accord Politique de Ouagadougou French Ouagadougou, Burkina Faso 28 November 2007	Ouagadougou II Accord (2007)	as above		
	Troisieme Accord Complementaire a l'Accord Politique de Ouagadougou French Ouagadougou, Burkina Faso 28 November 2007	Ouagadougou III Accord (2007)	as above		
	Quatrième accord complémentaire à l'accord politique de Ouagadougou	Ouagadougou IV Accord (2008)			

	Ouagadougou, Burkina Faso 22 December 2008				
DRC					
	Ceasefire Agreement (Lusaka Agreement) French, English, Portuguese (equally authentic) Lusaka, Zambia 10 July 1999	Lusaka Ceasefire (1999)		Listed by UN peacemaker Regional agreement by Angola, DRC, Namibia, Uganda, Rwanda,and Zimbabwe addressing intrastate internationalised intrastate conflict Framework for the subsequent inter-congolese negotiation and intrastate agreements	
	Declaration of Fundamental Principles of the Inter-Congolese Political Negotiations French (original), English Lusaka, Zambia 4 May 2001	Fundamental Principles Declaration (2001)	-Government -Movement for the Liberation of Congo (MLC) -Congolese Rally for Democracy (RCD) -Congolese Rally for Democracy-ML	Implementing Lusaka	
	Acte d'Engagement Gaborone French Gaborone, Botswana 24 August 2001	Gaborone Pledge of Commitment (or Gaborone Pledge) (2001)	Government, MLC, RCD, political opposition, civil society		

	Global and Inclusive Agreement on Transition in the DRC (Pretoria Agreement) Pretoria, South Africa 16 December 2002	Pretoria Agreement (2002)	-Government, MDC, MLC, RDC/ML, Mai-Mai, political opposition, civil society		
	Memorandum sur le Mechanisme pour la formation d'une Armée Nationale, Restructurée et Intergrée French Pretoria, South Africa 7 March 2003	Army Formation Memorandum (2003)		Implementing Pretoria on Army formation issues	
	Inter-Congolese negotiations The final act (Sun city agreement) Sun City, South Africa 2 April 2003	Sun city Agreement (2003)	Same parties as in Pretoria Agreement-See above		
	Acte d'engagement Sud-Kivu French Goma, DRC 23 January 2008	South-Kivu Agreement or South-Kivu Pledge (2008)	Congrès National Pour la Défense du Peuple CNDP, PARECO/FAP, Mai-Mai Kasindien, Mai-Mai KIFUAFUA, Mai-Mai VUrondo, Mai-Mai Mongol, UJPS, Mai-Mai Rwemzori, Simba	Exact translation is pledge of committment	

	Acte d'engagement Nord Kivu French Goma, DRC 23 January 2008	North-Kivu Agreement/North Kivu Pledge(2008)	FPF, Groupe Yakutumba,Groupe Zabuloni, Mai-Mai Kirikicho, Pareco/S-K, Raia Mutomboki, Mai-Mai Kapopo, Mai-Mai SHikito, Mai-Mai Ny'Kirimba, Mudundu 40,Simba Mai-Mai, Mai-Mai habunda		
	Accord de Paix Entre le Gouvernement et le Congres National Pour la Defense du Peuple (CNDP) French Goma, DRC 23 March 2009	Goma Peace Agreement (2009)	-Government - (CNDP)		
DJIBOUTI					
	Accord de paix et de réconciliation nationale French Djibouti 26 December 1994	Peace and Reconciliation Agreement (1994)	-Government -Front pour la Restauration de l'Unité et de la Démocratie (FRUD) (Opposition)		
	Accord cadre de Réforme et de Concorde civile French Djibouti 7 February 2000	Framework Reform agreement (2000)	-Government -FRUD-armé (Opposition)		
	Accord de Réforme et de	Reform agreement	-Government	The opposition is a the	

	Concorde Civile French Djibouti 12 May 2001	(2001)	-FRUD-armé(Opposition)	faction not observing previous agreements but resuming fighting	
ERITREA					
	Proclamation 23/1992 Tigrinya			(art.5)	
	Proclamation No. 37/1993 Adopted by the Provisional government constituted after the referendum of independence Tigrinya				
	Constitutional Commission of Eritrea Draft Constitution July 1996			Listed by Incore	Not accessed
ETHIOPIA					
	Transitional Period Charter of Ethiopia English, Amharic Addis Ababa 22 July 1991	Transitional Period Charter (1991)	Ethiopian Political Forces		
		Washington Ceasefire	-Government -Ogaden National Liberation Front (ONLF)	Mentioned in the agreement below	
	Agreement between the	Ogaden Agreement	as above		http://www.somalia-

	Government of the Federal Republic of Ethiopia and the Ogaden National Liberation Front on the Termination of the State of Insurgency 12 October 2010	(2010)			aktuell.de/dokumente/Agreement_signed_12_10_2010.pdf
GABON					
	Accords de Paris French Paris 27 September 1994	Paris Accord (1994)	-Government (president of the Republic) -Opposition (grouped under Haut conseil de la Résistance (HCH))		
GUINEA					
	Ouagadougou Joint Declaration English French 15 January 2010	Ouagadougou Declaration (2010)	-President (president of Conseil National pour la Démocratie et le Développement CNDD) -Interim President (vice-president of CNDD)		
GUINEA-BISSAU					
	Memorandum of Understanding between the Government and the self-proclaimed military Junta 28 July 1998	Bissau Memorandum (1998)			
	Ceasefire Agreement in Guinea-Bissau English, French, Portuguese Praia, Cape Verde 26 August 1998	Praia Ceasefire (1998)	-Government -Self-denominated military junta	Contains -ceasefire signed by immediate parties –a unilateral declaration of the junta before the chairing contact group on	

				laying down arms -the communiqué of the co-chairing ECOWAS and Community of Portuguese-speaking countries	
	Agreement between the Government of Guinea-Bissau and the Self-proclaimed Military Junta English, French Abuja, Nigeria 1 November 1998	Abuja Accord (1998)	As above		
	Additional Protocol to the Abuja Accord of 1 November 1998 Concerning the Formation of a Government of National Unity in Guinea Bissau English, French Lomé Togo 15 December 1998	Abuja Protocol (1998)	as above		
	Pacto de Transição Política Portuguese Guinea-Bissau 16 May 2012	Political Transition Pact (2012)	-President of the National Assembly, and Political Parties		
KENYA					

	Agreement between Mwai Kibaki (President) and Raila Odinga, (ODM) announced in 24 January 2008 and reaffirmed in 28 January 2008 Nairobi, Kenya	County Hall Joint Communiqué (2008)	-Government (PNU) -Orange Democratic Movement (ODM)	Joint Communiqué/(Oral Declaration) issued directly to the press and media (Cf ICJ jurisprudence)	
	Public Statement-Kenya National Dialogue and Reconciliation English Nairobi, Kenya 4 February 2008	Public Statement (2008)	as above	Contains Public statement and annotated agenda	
	Acting together for Kenya- Agreement on the Principles and Partnership of the Coalition Government English Nairobi, Kenya 28 February 2008	Acting Together for Kenya (2008)	as above	Part of Kenyan National Dialogue and Reconciliation process Includes the National Accord and Reconciliation Act of 200, later published in the Official Gazette	
	Kenyan National Dialogue and Reconciliation-Truth, Justice and Reconciliation Commission English Nairobi, Kenya 4 March 2008	Truth Justice and Reconciliation Agreement (2008)	as above	as above	
	Commission of Inquiry on	Commission of	as above	as above	

	Post-Election Violence English 4 March 2008	Inquiry Agreement (2008)			
	Kenya National Dialogue on Reconciliation-Longer Term issues and solutions: Constitutional Review English 4 March 2008	Longer Term Issues Agreement (2008)	as above	as above	
	Statement of Principles on Long-Term Issues and Solutions English Nairobi, Kenya 23 May2008	Principles Agreement (2008)	as above	as above	
	Nakuru County Peace Accord 19 August 2012	Nakuru Accord (2012)	members from the Kalenjin , Agikuyu and other communities in Nakuru County	Listed by UN peacemaker Termed peace accord by the signatories (a bit problematic)	
LESOTHO					
	Memorandum of Understanding and Measures and Procedures Relating to the Restoration of Constitutional Order in			Mentioned in the initial report of Lesotho regarding the implementation of Banjul Charter pursuant to art. 61 http://www.achpr.org/files	Not accessed

	Lesotho, Between His Majesty King Letsie III and the Prime Minister Dr. Ntsu Mokhehle, 14 September, 1994			/sessions/31st/state-reports/1st-1991-2000/achpr31_staterep_lesotho_2002_eng.pdf	
	Memorandum of Agreement reached in Maseru Maseru, Lesotho 2 October 1998	Maseru Memorandum (1998)		Mentioned in the preamble of Lesotho Memorandum below	http://www.polity.org.za/polity/govdocs/pr/1998/pr1003b.html
	Memorandum of Agreement between the Government of Lesotho and the Interim Political Authority (IPA) French, English 3 December 1999	Lesotho Memorandum (1999)	-Government -Interim Political Authority		
	Agreement among Lesotho Political Parties regarding the Electoral Law Bill English Maseru, Lesotho 9 March 2011	Electoral Law Bill Agreement (2011)	Agreement between eleven political parties of Lesotho	Listed by UN peacemaker	
LIBERIA					
	The Final Communique of the Fourth Meeting of the Committee of Five of the Economic Community of West African States of the Liberian Crisis held in Yamoussoukro IV on the 29 and 30 of October	Yamoussoukro Communiqué (1991)	-interim government -National Patriotic Front of Liberia (NPFL) (Taylor faction)	Listed by UN peacemaker Peace plan issued by the ECOWAS meeting and singed by warring factions	

	1991 English, French Yamoussoukro, Cote d'Ivoire 30 October 1991				
	Cotonou Agreement English Cotonou, Benin 25 July 1993	Cotonou Agreement (1993)	-Interim Government of National Unity of Liberia -National Patriotic Front of Liberia (NPFL/NPRAG) -United Liberation Movement of Liberia for Democracy (ULIMO)		
	Akosombo Agreement English Akosombo, Ghana 12 September 1994	Akosombo Agreement (1994)	-National Patriotic Front of Liberia (NPFL/NPRAG) -United Liberation Movement of Liberia for Democracy (ULIMO) -Armed Forces of Liberia (AFL)		
	Agreement on the Clarification of the Akosombo Agreement (Accra Clarification) English Accra, Ghana 21 December 1994	Accra Clarification (1994)	-United Liberation Movement of Liberia for Democracy (ULIMO) -Lofa Defense Force (LDF) -Central Revolutionary Council(CRC-NPFL)	Contains two documents -an accession agreement signed by ULIMO, LDF, CRC-NPFL, LPC, LNC -the Clarification agreement signed by ULIMO, NFPL, and Armed	

			-Liberian Peace Council (LPC) Liberia National Conference (LNC) ---------- -National Patriotic Front (NFPL)	Forces of Liberia	
	Abuja Agreement to supplement the Cotonou and Akosombo Agreements As subsequently Clarified by the Accra Agreement English Abuja, Nigeria 19 August 1995	Abuja Accord (1995)	as above		
	Supplement to the Abuja Accord 17 August 1996	Abuja Supplementary Agreement (1996)	Armed forces of Liberia, ULIMO, NFPL, ULIMO-J, NPFL-CRC, LDF, LNC		
	Agreement on Ceasefire and Cessation of Hostilities between the Government of the Republic of Liberia, the Liberians United for Reconciliation and Democracy, the	Tripartite Ceasefire Agreement, or Accra Ceasefire (2003)	-Government -Liberians United for Reconciliation and Democracy (LURD) -Movement of Democracy in Liberia		

	Movement of Democracy in Liberia and the Political Parties English Accra, Ghana 17 June 2003		(MODEL)		
	Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy, the Movement of Democracy in Liberia and the Political Parties (alternate name: Comprehensive Peace agreement) English Accra, Ghana 18 August 2003	Tripartite Peace Agreement or Accra Agreement (2003) (INCORE mentions it as 'comprehensive peace agreement)	-Government -Liberians United for Reconciliation and Democracy (LURD) -Movement of Democracy in Liberia (MODEL) <u>Political Parties</u>: (National Patriotic Party, Unity Party, Liberian Peoples' Party, National Reformation Party, Labor Party, Liberia Unification Party, Liberian Action Party, Peoples' Democratic Party, National Democratic Party, Free Democratic Party, Reformation Alliance Party, All-Liberian Coalition Party, True Whig Party, United Peoples' Party, Liberia National Union, Equal Rights Party, Progressive Peoples' Party, New Deal		

			movement		
LIBYA					
	Draft Constitutional Charter for the Transitional Stage Arabic, English 3 August 2011	Transitional Charter (2011)		Included in the list of peace agreements by UN peacemaker	
	Libyan Political Agreement English, Arabic 17 December 2015	Libyan Political Agreement (2015)	Participants in the National Political Dialogue		
MADAGASCAR					
	Accord politique de Maputo French, Malagasy Maputo, Mozambique 8 August 2009	Maputo Political Accord (2009)	- mouvance Andry RAJOELINA - mouvance Marc RAVALOMANANA - la mouvance Didier RATSIRAKA - la mouvance Albert ZAFY	Sets a transitional period of 15 months (Nov 2010) till the holding of credible, internationally supervised elections Sets in place a transitional government described as neutral-inclusive-peaceful-consensual (preamble) Consisting of a prime minister- 3 deputies and 28 ministers	
	Charte De La Transition French, Malagasy Maputo, Mozambique 9 August 2009	Transitional Charter (2009)	as above		

	Charte Des valeurs French, Malagasy Maputo, Mozambique August 2009	Charter of Values (2009)	as above		
	Accord No 1 de Maputo sur l annulations des condamnations liéés aux évènements de 2002 à Madagascar French, Malagasy	Sub-Accord 1 (2009)	as above		
	Accord No 2 de Maputo relative au cas du Président Ravalomanana French, Malagasy Maputo, Mozambique 9 August 2009	Sub-Accord 2 (2009)	as above		
	Accord No 3 sur l annulations des condamnations envers des personnalités politiques civiles et militaries sous le regime Ravalomanana French and Malagasy Maputo, Mozambique 8 August 2009	Sub-Accord 3 (2009)	as above		

	Adhésion à la charte nationale de transition French Antananarivo, Madagascar 22 August 2009	Transitional Charter Acceding Agreement (2009)	The Transitional Charter is acceded to by political parties and other key stakeholders		
	Acte additionnel d'Addis Abeba à la charte de transition malgache French Addis Ababa, Ethiopia 6 November 2009	Addis Additional Act (2009)			
	Feuille de Route pour la fin de la Crise à Madagascar French, English Antananarivo, Madagascar 16 September 2011	Antananarivo Roadmap (2011)	Singed by political parties and major stakeholders- (Mouvance Ratsiraka, Mouvance Ravalomana, mouvance Zafy) Plus AREMA, Autres Sensibilites, Escopol, HPM,MDM, Monima.Uamad, Tgv, UDR-C	Amending previous agreements	
MALAWI					
	Lilongwe Peace Declaration (LPD) - Taking a Stand against Violence in Malawi during and after Elections 15 April 2014	Lilongwe Peace Declaration (2014)	-Chipani Cha Pfuko (CCP) -Democratic Progressive Party (DPP) -Malawi Congress Party (MCP) -Malawi Forum for Unity and Development/Tisintha		

			Alliance (MFUD) -National Salvation Front (NASAF) -New Labour Party (LP) -Peoples Party (PP) -Peoples Proressive Movemement (PPM) -Peoples Progressive Party (PETRA) -Umodzi Party (UP) -United Democratic Front (UDF) -United Independent party (UIP)		
MALI					
	Accord sur la cessation des Hostilités French, Arabic Tamanrasset, Algeria 6 January 1991	Tamnarasset Ceasefire (1991)	Government of the Republic of Mali -Mouvement Populaire de l' Azaouad and Front Islamique Arabe		
	Pacte National (Azawad Agreement)/alternate name: Bamako Peace Pact (1994) French Bamako, Mali	Bamako Pact (1994)	Government of the Republic of Mali -Mouvements et Fronts		

	1994		Unifiés de l'Azawad		
	Accord d'Alger pour la Restauration de la Paix, de la Sécurité et du Développement dans la région de Kidal French 04/07/2006	Algiers Agreement (2006)			
	Accord cadre de mise en œuvre de l'engagement solennel du 1er Avril 2012 French 6 April 2012	Framework Agreement (2012)			
	Accord préliminaire à l'élection présidentielle et aux pourparlers inclusifs de paix au Mali (Accord préliminaire de Ouagadougou) French Ouagadougou 18 June 2013	Ouagadougou Preliminary Agreement (2013)		Open to accession	
	Déclaration d'adhésion à l'accord préliminaire à l'élection présidentielle et aux pourparlers inclusifs de paix au Mali French Ouagadougou 18 June 2013	Ouagadougou Declaration (2013)	Mouvement arabe de l'Azawad Coordination des Mouvements et forces patriotiques de résistance	Acceding to the above agreemen	
	Accord de cessez-le-feu 23 May 2014	Bamako Ceasefire (2014)			

	l'Accord définitif de paix et de réconciliation nationale initated at ALgiers, signed at Bamako	Bamako Peace Agreement (2015)			
MAURITANIA					
	Accord cadre de Dakar entre les trois grands poles politiques Mauritaniens Dakar Nouakchott 3 June 2009	Dakar tripartite agreement (2009)			
MOZAMBIQUE					
	General Peace Agreement for Mozambique Portuguese, English San Egidio, Rome, Italy 4 October 1992	General Peace Agreement (1992)		Contains seven protocols and four other agreements <u>Protocols:</u> Protocol I on Basic Principles, Protocol No. II on Establishment and Recognition of Political Parties, Protocol III on Principles of the Electoral Act, Protocol IV on Military Issues, Protocol V on Guarantees, Protocol VI Ceasefire of 1992, and Protocol VII on the Donor Conference Also: Joint Communiqué	

				on the initiation of negotiations of the Agreement on a Partial Ceasefire, the Declaration on Humanitarian Assistance , and the Joint Declaration on the Conclusion of the Peace Process)	
	Declaração de Cessação das Hostilidades Militares Maputo, Mozambique 25 August 2014				
	Memorando de entendimento Maputo Mozambique			Includes two annexes Mecanismos de Garantia Termos de Referencia da Eqÿipa Militar de Observadores]nternacioua is da Cessnção des Hostilidades Militates - EMOCHM	
				Same as above	
NIGER					
	Accord de Paris 13 October 1993	Paris Accord (1993)			Not accessed
	Premier accord de paix entre les Organisations politico-militaires touarègues et l'État du Niger Ouagadougou I Ouagadougou, Burkina Faso 9 October 1994	Ouagadougou agreement (1994)	-République (Government) -Coordination de la Résistance Armé (C. R. A.)		

	French				
	Accords définitifs entre la Résistance touarègue et l'État du Niger Ouagadougou, Burkina Faso 15 April 1995	Definitive Peace Agreement (1995)	-République -Organisation de la Résistance Armée (ORA)		
	Protocol d' accord additionnel entre le Gouvernement de la République du Niger et l'Union des Forces de la Résistance Armée (FPLS, MUR, FAR) et les Forces Armées Révolutionaires du Sahara, 28 November 1997				
RWANDA					
	N'sele Ceasefire Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front Arusha, Tanzania 12 July 1992	N'sele Ceasefire (1992)	-Government -Rwandese Patriotic Front (RPF)		
	Protocol of Agreement between the Government of the Republic of Rwanda	Rule of Law Protocol (1992)	as above		

	and the Rwandese Patriotic Front on the Rule of Law Arusha, Tanzania 18 August 1992				
	Protocol of Agreement on Power-Sharing within the Framework of a Broad-Based Transitional Government between the Government of the Republic of Rwanda and the Rwandese Patriotic Front Arusha, Tanzania 9 January 1993	Power-sharing Protocol (1993)	as above		
	Protocol of Agreement between the Government of Rwanda and the Rwandese Patriotic Front on the Repatriation of Rwandese Refugees and the Resettlement of Displaced Persons Arusha , Tanzania 9 June 1993	Refugee/IDP Protocol (1993)	as above		
	Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandese	Armed Forces Protocol (1993)	as above		

	Patriotic Front on the Integration of the Armed Forces of the Two Parties Arusha, Tanzania 3 August 1993				
	Protocol of the Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on Miscellaneous Issues and Final Provisions Arusha, Tanzania 30 August 1993	Miscellaneous Issues Protocol (1993)	as above		
	Peace agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front Arusha Tanzania 4 August 1993	Arusha Accord (1993)	as above	Agreement and 5 related protocols- previously signed and subsequently incorporated in the principal agreement as its integral part	
SENEGAL					
	Agreement between Government of Senegal and the Movement for Democratic Forces of Casamance	Camance Agreeement I (1991)	Government of the Republic of Senegal -Mouvement des Forces Démocratiques de la		Not Accessed

	May 1991		Casamance (MFDC)		
	Agreement between the Government of Senegal and the Movement for Democratic Forces of Casamance March 2001	Casamance Agreement II (2001)	-Government -Mouvement des Forces Démocratiques de la Casamance (MFDC)		Not Accessed
	Accord General de Paix entre le Gouvernement de la Republique du Senegal et le Mouvement des Forces Démocratiques de la Casamance (French) Ziguinchor, Casamance, Senegal 30 December 2004	Casamance General Peace Agreement (2004)	as above		
SIERRA-LEONE					
	Peace Agreement between the Government of the Republic of Sierra-Leone and the Revolutionary United Front of Sierra-Leone done at Abidjan, on 30 November 1996 Abidjan, Cote D'Ivoire 30 November 1996	Abidjan Agreement (1996)	-Government -Revolutionary United front of Sierra-Leone (RUF)		

	Conakry Peace Plan Conakry, Guinea 23 October 1997	Conakry Peace Plan (1997)	as above	Listed by UN peacemaker	
	Agreement on Ceasefire in Sierra Leone French (original) English Lomé, Togo 18 May 1999	Lomé Ceasefire (1999)	as above		
	Peace Agreement between the Government of Sierra-Leone and the Revolutionary United Front of Sierra-Leone – the Lomé Peace Agreement French, English Lomé, Togo 7 July 1999	Lomé Peace Agreement (1999)	as above		
	Ceasefire Agreement between the Government and the RUF English Abuja, Nigeria 10 November 2000	Abuja Ceasefire (2000)	as above		Unverified version – signatures section missing

SOMALIA					
	The General Agreement English Addis Ababa, Ethiopia 8 January 1993	General Agreement (1993)	15 signatories (political leaders) Somali Africans Muki Organization (SAMO) Somali Democratic Alliance (SDA) Somali Democratic Movement (SDM) Somali National Democratic Union (SNDU) Somali National Front (SNF) Somali National Union (SNU) Somali Patriotic Movement (SPM) Somali Patriotic Movement (SPM)(sna) Somali Salvation Democratic Front (SSDF) Southern Somali National Movement (SSNM)	Also attending the meeting were the Secretaries-General of the League of Arab States (LAS), the Organization of African Unity (OAU), the Organization of the Islamic Conference (OIC) and the Chairman of the Standing Committee of the Countries of the Horn, as well as the representative of the current Chairman of the Movement of Non-Aligned Countries	

			United Somali Congress (USC) United Somali Congress (USC) United Somali Front (USF) United Somali Party (USP)		
	Agreement on the Establishment of an Ad Hoc Committee Addis Ababa, Ethiopia 15 January 1993	Addis Agreement (1993)	signatories as above		
	Agreement on Implementing the Cease-fire and on Modalities of Disarmament Addis Ababa, Ethiopia 15 January 1993	Addis Modalities Agreement (1993)	1. Somali Africans Muki Organization (SAMO) Mr. Mohamed Ramadan Arbow, Chairman 2. Somali Democratic Alliance (SDA) Mr. Mohamed Farah Abdullahi, Chairman 3. Somali Democratic Movement (SDM) Mr. Abdi Muse Mayow, Chairman Col. Mohamed Nur Aliyou, Chairman (SNA) 4. Somali National Democratic Union (SNDU) Mr. Ali Ismael Abdi, Chairman 5. Somali National Front (SNF) General Omar Hagi Mohamed Hersi, Chairman		

			6. Somali National Union (SNU) Dr. Mohamed Ragis Mohamed, Chairman 7. Somali Patriotic Movement (SPM) General Aden Abdillahi Noor, Chairman 8. Somali Patriotic Movement (SPM) (sna) Col. Ahmed Omar Jess, Chairman 9. Somali Salvation Democratic Front (SSDF) General Mohamed Abshir Musse, Chairman10. Southern Somali National Movement (SSNM) (sna) Col. Abdi Warsame Isaaq, Chairman 11. United Somali Congress (USC) (sna) General Mohamed Farah Aidid, Chairman 12. United Somali Congress (USC) Mr. Mohamed Qanyare Afrah, Chairman 13. United Somali Front (USF) Mr. Abdurahman Dualeh Ali, Chairman 14. United Somali Party (USP) Mr. Mohamed Abdi Hashi, Chairman 15 January		
	Agreement concluded at the first session of the	Addis Ababa Agreement (1993)			

	Conference on National Reconciliation in Somalia Addis Ababa, Ethiopia 27 March 1993				
	The Cairo Declaration on Somalia Cairo, Egypt 22 December 1997	Cairo Declaration (1997)			Unverified
	Declaration on Cessation of Hostilities and the Structures and Principles of the Somalia National Reconciliation Process Eldoret, Kenya 27 October 2002	Eldoret Ceasefire (2002)	)Hassan Abshif Prime Minister of Transitional National Government President of Puntland State of Somalia Speaker of the Transitional National Assembly Co-Chairman of Somalia Reconciliation and Restoration Council (SRRC) Chairman of RRA Chair Col. HaSsan Abdulla Qalad Chairman of HPAUSC/SSA/SRRC i Chairman of	Witnessed by In the presence of	

			USC/SNA/SRRC Nakuru Col. AbdMzak l/akBihi Chairman of SNF Mowlid Ma'ane Moharaoud Chairman, S AMO/SRRC Nakuni Omar MehUnioud Mohsfmed Mohamed Sayym^den Chairman of SNF/SRRC , Deputy SPM Chairman		
	The Transitional Federal Charter of the Somali Republic Nairobi, Kenya 29 January 2004	Transitional Federal Charter (2004)	Delegates –political parties and political groups		
	Aden Declaration on Somalia English 5 January 2006 Aden, Yemen	Aden Declaration (2006)	-Speaker of the Transitional Federal Parliament (TFP) -President of the Somali Republic	with the facilitation of the Government of Yemen, of the 'brotherly role'	

	Communiqué issued by the meeting of ministerial committee on Somalia 22 June 2006	Communiqué (2006)			
	Final Communiqué of the 2d round of Talks between the Transitional Federal Government and the Islamic Courts (ARABIC) 4 September 2006	Final Communiqué (2006)			
	Agreement between the Transitional Federal Government of Somalia (TFG) and the Alliance for the re-liberation of Somalia (ARS)- Djibouti Agreement Djibouti 9 June 2008	Djibouti Agreement (2008)	Transitional Federal Govt and ARS	UN facilitated Joint security committee chaired by the UN UN stabilization force The agreement refers to war and conflict and 18year-old crisis interchangeably	Summary: This Agreement establishes a cessation of hostilities between the two parties for an initial period of 90 days. The parties call for the deployment of a UN stabilization force, and sets up a Joint Security Committee to follow up the implementation of security arrangements.
	Joint Statement between the Transitional Federal Government (TFG) and the Alliance for the Re-liberation of Somalia				

	(ARS) on Somalia Emergency and Drought Relief 21 September 2008				
	Modalities for the implementation of the cessation of armed confrontation 26 October 2008			Follow-up to the Djibouti Agreement/contains ceasefire provisions	
	Joint Declaration between the Transitional Federal Government of Somalia and the Alliance for the Re-liberation of Somalia 26 October 2008				
	Decision on the High Level Committee Djibouti Agreement 25 November 2008				
	Declaration of Cooperation between Ahlu Sunnah Wal Jamaa and the Government of Somalia 21 June 2009				
	Agreement between Transitional Federal Government and the Puntland Regional State of Somalia (Galcayo Agreement)				

	23 August 2009				
	Agreement between the Transitional Federal Government of Somalia and Ahlu Sunna Waljama'a 15 March 2010				
	Kampala Accord Kampala, Uganda 9 June 2011	Kampala Accord (2011)			
	End of the Transition Roadmap 6 September 2011				
	Protocol Establishing the Signatories Technical Facilitation Committee 22 June 2012				
	Protocol Establishing the Somali New Federal Parliament 22 June 2012				
	Protocol Establishing the Somali National Constituent Assembly 22 June 2012				
	Protocol Establishing the Technical Selection Committee 22 June 2012				
	Joint Communiqué of the Consultative Meeting of the Signatories of the				

	Process for Ending the Transition 22 June 2012				
	Agreement between the Federal Government of Somalia and Jubba Delegation 27 August 2013				
	Agreement: An Inclusive Interim Administration for the South West Regions of Somalia (Bay, Bakol and Lower Shabelle) 22 June 2014				
	Central Regions State Formation Agreement (Mudug and Galgadug) 30 July 2014				
	Agreement between the Federal Government of Somalia and Puntland State of Somalia 14 October 2014				
	Interim ceasefire agreement reached today between the Federal Government of Somalia and the Ahlu Sunna Wal Jama'a (ASWJ)				Not yet available Mentioned in
SOUTH AFRICA					
	Groote Schuur Minute				

	4 May 1990	Groote Schuur Minute (1990)			
	Pretoria Minute 6 August 1990	Pretoria Minute (1990)			
	National Peace Accord 14 September 1991	National Peace Accord (1991)			
SOUTH SUDAN					
	Agreement between the Government of the Republic of South Sudan (GRSS) and the South Sudan Democratic Movement/Army (SSDM/A) 27 February 2013				
	Agreement on Cessation of Hostilities between the Government of the Republic of South Sudan (GRSS) and the Sudan People's Liberation Movement/Army (In Opposition) (SPLM/A in Opposition) 23 January 2014				
	Agreement on a Cessation of Hostilities between the Government				

	of the Republic of South Sudan and the South Sudan Democratic Movement/Defense Army, Cobra Faction 30 January 2014				
	Recommitment to Humanitarian Matters of the Cessation of Hostilities Agreement Between the Government of the Republic of South Sudan and the Sudan People's Liberation Movement/Army in Opposition SPLM/SPLA (in Opposition) 4 May 2014				
	Agreement to Resolve the Conflict in South Sudan 9 May 2014				
	Agreement on the Resolution of the Conflict in Jonglei State between the Government of the Republic of South Sudan and the South Sudan Democratic Movement/South Sudan Defence Army (SSDM/SSDA-Cobra Faction) 9 May 2014				
	SPLM/A Framework for Intra-SPLM Dialogue 20 October 2014				
	Agreement on the reunification of the Sudan People's Liberation				

	Movement (Arusha Agreement) English Arusha, Tanzania 21 January 2015				
	Agreement on the Resolution of the Conflict in South Sudan 17 August 2015				
SUDAN					
Eastern Sudan	Eastern Sudan Peace Agreement Arabic (authoritative) English Asmara, Eritrea 14 October 2006	Eastern Sudan Agreement (2006)	-Government -Eastern Sudan Authorities	The agreement appendices two previous agreements -Declaration of Principles for the Resolution of Conflict in Eastern Sudan (19 June 2006) -Agreement to conduce atmosphere for peace (19 June 2006)	
Sudan (Darfur)					
	Humanitarian Ceasefire Agreement on the Conflict in Darfur Arabic, French, English N'Djna, Chad 08 April 2004	Humanitarian Ceasefire (2004)	-Government of the Sudan -Sudan Liberation Movement/Army (SPLM/A) and -Sudanese Justice and Equality Movement (JEM)		
	Agreement between the Government of Sudan, the Sudan Liberation Movement, and the Justice and Equality	N'Djamena Agreement (2004)	as above		

	Movement Arabic, English, French N'Djamena, Chad 25 April 2004				
	Agreement with the Sudanese Parties on the Modalities for the Establishment of the Ceasefire Commission and the Deployment of Observers in the Darfur Addis Ababa, Ethiopia 28 May 2004	Addis Ababa Agreement (2004)	as above	Providing modalities for implementing Humanitarian Ceasefire (2004)	
	Protocol between the Government of the Sudan, the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM) on the Enhancement of the Security Situation in Darfur in accordance with the N'Dna Agreement English Abuja, Nigeria 9 November 2004	Abuja Protocol (2004)	as above	Implementing N'Djamena Agreement (2004)	
	Declaration of Principles for the Resolution of the Sudanese Conflict in Darfur, Abuja, Nigeria 5 July 2005	Principles Declaration (2005)	as above		
	Darfur Peace Agreement,	DPA (2006)	as above	Annexes all previous	

	(DPA) Arabic, English, French Abuja, Nigeria 5 May 2006			agreements (Humanitarian Ceasefire, N'dna Agreement, Addis Ababa Agreement, Abuja Protocol, Principles Declaration)	
	Chairman's conclusions from the Arusha Consultations (2007) Ngurdoto, Arusha 6 August 2007	Arusha Consensus (2007)		Listed by UN peacemaker as an agreement Rather managing and coordinating consultations amongst outside parties Subsequent talks in Libya (Syrte) in October 2007 were boycotted by JEM	
	Agreement of Good Will for the settlement of the conflict in Darfur (2009) Arabic, English, French Doha, Qatar January 2009	Good Will Agreement (2009)	Government of National Unity of Sudan -Justice and Equality Movement (JEM)		
	Framework Agreement to Resolve the conflict in Darfur between the Government of Sudan (Gos) and the Justice and Doha, Qatar 23 February 2010	Doha Framework Agreement (2010)	as above		
	Doha Document for Peace	Doha Document for			

	in Darfur (DDPD) Doha Qatar 31 May 2011	Peace (DDPD) (2011)			
	Agreement between the Government of Sudan and the LJM for the Adoption of the Doha Document for Peace in Darfur Doha Qatar 14 July 2011				
	Protocol on the Political Participation of the Liberation and Justice Movement (LJM) and Integration of its Forces Doha Qatar 16 July 2011	Participation Protocol (2011)			
	Declaration of Cessation of Hostilities and Commitment to the Peace Process between the Government of Sudan and the Justice and Equality Movement Sudan (JEM) Doha Qatar 22 October2012	Doha Declaration (2012)	as above		
	Ceasefire Agreement between the Government of Sudan and the Justice and Equality Movement-Sudan (JEM) Doha Qatar	Doha Ceasefire (2013)	as above		

	10 February 2013				
	Protocol on the Participation of JEM-Sudan at the different levels of Government and on the Integration of its Forces Arabic, English equally authentic (Arabic prevailing) Doha Qatar 29 March 2013	Doha Protocol (2013)	as above		
	Agreement between the Government of Sudan and the Justice and Equality Movement-Sudan on the Basis of the Doha Document for Peace in Darfur Arabic and English (Arabic prevailing) Doha, Qatar 13 April 2013		as above	Integrated into the Doha Document for Peace in Darfur (DDPD)	
Sudan (North-South)					
	Political Charter between the Government of Sudan and the SPLA (United) English 26 April 1995	Political Charter (1995)	-Government -SPLA/M (United)		

	The Sudan Peace Agreement 21 April 1997	Sudan Peace Agreement (1997)	Government -South Sudan United Democratic Salvation Front (UDSF)		
	Nuba Mountains Ceasefire Agreement on Sudan 19 January 2002	Nuba Ceasefire (2002)	-Government -SPLA/M		
	Machakos Protocol English and Arabic (English taking precedence as the negotiating language) Machakos, Kenya 20 July 2002	Machakos Protocol (2002)	-Government -SPLA/M	Chapter I of the CPA	
	Memorandum of Understanding on Cessation of Hostilities between the Government of the Sudan and the Sudan People's Liberation Movement/Army Machakos, Kenya 15 October 2002		as above		
	Memorandum of Understanding between the Government of Sudan and the Sudan People's Liberation Army on	Governance Memorandum (2002)	as above		

	Aspects and Structures of Government Nairobi, Kenya 18 November 2002				
	Addendum to the Memorandum of Understanding on Cessation of Hostilities Between the Government of Sudan (GOS) and The Sudan Peoples Liberation Movement/Army(SPLM/A) Nairobi, Kenya 4 February 2003	Ceasefire Memorandum (2003)	as above		
	Agreement between the Government of Sudan and the Sudan People's Liberation Movement on Capacity Building and the Creation of A joint Planning Mechanism from the Sudan Technical Meeting Nairobi,Kenya 10 May 2003	Capacity-Building Agreement (2003)	as above		
	Agreement on Security Arrangements during the Interim Period Naivasha, Kenya 25 September 2003	Security Arrangements Agreement (2003)		Chapter VI of the CPA	

	Fwork Agreement on Wealth Sharing during the Pre-Interim Period between the Government of Sudan and the People's Liberation Army/Movement] Naivasha,Kenya 7 January 2004	Wealth-Sharing Agreement (2004)	as above	Chapter III of the CPA	
	Protocol between the Government of the Sudan and the Sudan People's Liberation Movement (SPLM) on Power Sharing 26 May 2004	Power-sharing Protocol (2004)	as above	Chapter II of the CPA	
	The Protocol Between the Government of Sudan and the People's Liberation Army/Movement on the Resolution of Abyei Conflict Naivasha, Kenya 26 May 2004	Abyei Protocol (2004)		Chapter IV of the CPA	
	Protocol between the Government of Sudan and the Sudan People's Liberation Army/Movement on the resolution of the Conflict in Southern	Nuba Mountains Protocol (2004)		Chapter V of the CPA	

	Kordofan/Nuba Mountains and Blue Nile States Naivasha, Kenya 26 May 2005				
	The Nairobi Declaration on the Final Phase of Peace in Sudan Nairobi, Kenya 5 June 2004	Nairobi Declaration(2004)		Reaffirming Machakos Protocol, Interim Period Arrangement, Wealth-sharing agreement, Power-sharing protocol, Nuba Mountains Protocol, Abyei Protocol	
	Declaration on the Conclusion of IGAD Negotiations on Peace in the Sudan 19 November 2004			Listed by UN peacemaker as an agreement Rather progress report and coordination of outside parties, also calling upon UN to endorse the CPA	
	Permanent Ceasefire between the Government of the Republic of Sudan and the Sudan Peoples' Liberation Movement/Army, Naivasha, Kenya 31 December 2004	Permanent Ceasefire (2004)	as above	Annexure I of the CPA	

	Chapeau of the Comprehensive Peace Agreement, 9 January 2005 Juba Declaration on Dialogue and National Consensus Juba, Sudan 30 September 2009	CPA Chapeau (2005)		Part of the CPA	
	Framework agreement between the Government of Sudan and Sudan Peoples' Liberation Movement (North) on political partnership between NCP and SPLMN and political and security arrangements in the Blue Nile and Southern Kordofan States Addis Ababa 18 June 2011	Two Areas Agreement (2011)	-Government -Sudan Peoples' Liberation Movement		
TOGO					
	Accord-Cadre de Lomé French Lomé, Togo 29 July 1999	Lomé Framework Agreement (1999)	Mouvance présidentiel- Convention des Forces Nouvelles (CFN) Rassemblement du		

			Peuple Togolais (RPT) (govt) Comité d'Action pour le Renouveau (CAR), -Convention Démocratique des Peuples Africains (CDPA) Parti pour la Démocratie et le Renouveau (PDR) -Union des Forces de Changement (UFC) -Union Togolaise pour la Démocratie (UTD) -Parti de l'Action pour le Développement (PAD) - Parti Démocratique pour l'Unité (PDU) -Union pour la Démocratie et la Solidarité (UDS)		
	Accord politique global french Lomé, Togo 2 June 2006	Global Political Agreement (2006)	Same signatories as in Lomé Framework Agreement (1999)-See above		
	Dialogue inter-togolais: memorandum des partis				

	politiques signataires de l'Accord Politique Global et représentés à l'Assemblée Nationale French 7 August 2008				
UGANDA					
	Ceasefire Agreement between the Government of the Republic of Uganda and the Uganda National Rescue Front II English Yumbe, Uganda 15 June 2002	Yumbe Ceasefire (2002)	-Government of the Republic of Uganda -Uganda National Rescue Front (UNRF) II		
	Peace Agreement between the Government of the Republic of Uganda and the Uganda National Rescue Front II English Yumbe, Uganda 24 December 2002	Yumbe Peace Agreement (2002)	-Government of the Republic of Uganda -UNRF II		
	Agreement on Cessation of Hostilities Between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement (LRA/M)	Juba Agreement/Ceasefire (2006)	-Government -Lord's Resistance Army (LRA)	Agreement with 6 annexures	

	26 August 2006 Juba, Sudan				
	Agreement between the Government of the Republic of Uganda and the Lord's Resistance Army at Ri-Kwangba 14 April 2007	Ri-Kwangba Agreement (2007)	-Government -LRA		
	Agreement on Comprehensive Solutions between the Government of the Republic of Uganda and the Lord's Resistance Army, Juba 2 May 2007	Comprehensive solutions Agreement (2007)	as above		
	Agreement on Accountability and Reconciliation 9 June 2007	Accountability Agreement (2007)	as above		
	Any document signed on 3 November 2007??? ADDENDUM 4				
	The rest of the ADDENDA to BE ADDED				
	Annexure to the Agreement on	Accountability Annexure (2008)	as above		

	Accountability and reconciliation Juba, Sudan 19 February 2008				
`	Implementation Protocol to the Agreement on Comprehensive Solutions Juba, Sudan 22 February 2008	Implementation Protocol (2008)	as above		
	Agreement on a Permanent Ceasefire 23 February 2008	Permanent Ceasefire (2008)			
	Agreement on Implementation and Monitoring Mechanisms Juba, Sudan 29 February 2008	Implementation Agreement (2008)	-Government -LRA		
	Agreement on Disarmament, Demobilization and Reintegration Juba, Sudan 29 February 2008	Disarmament Agreement (2008)	as above		
	Addendum 6 to the	Cessation Of	as above		

	Cessation of Hostilities Agreement 1 March 2008	Hostilities (2008)			
	Declaration of Stakeholders' consultation on the Juba peace process, Munyonyo, Kampala 5 November 2008		Declaration of mediator and UN special envoy on LRA	Listed as an agreement by Beyond Jumba	
ZIMBABWE					
	Memorandum of Understanding between the Zimbabwe African National Union (Patriotic Front) and the two Movement for the Democratic Change Formations English Harare, Zimbabwe 21 July 2008	ZANU-MDC Memorandum (2008)	-Zimbabwe African National Union- Patriotic Front (ZANU) (government) -two Movement for Democratic Change (MDC) Formations	Included in the Comprehensive Agreement below as annexure	
	Agreement between the Zimbabwe African National Union- Patriotic Front (ZANU) and the two Movement for Democratic Change (MDC) Formations on Resolving the Challenges Facing Zimbabwe Harare, Zimbabwe 15 September 2008	Comprehensive Peace agreement (2008)	as above		

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