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ORIGINAL SCIENTIFIC ARTICLE

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# PEACE TREATIES IN THE 21st CENTURY: TREATY VALIDITY AT THE CROSSROADS OF THE PRINCIPLE OF PEACEFUL SETTLEMENT OF DISPUTES AND THE PROHIBITION OF THE USE OF FORCE

***Abstract:*** *Peace treaties remain the central instruments of war termination, yet their legal nature is under-theorized in light of the UN Charter's prohibition of the use of force and the duty of peaceful settlement. This article traces the historical evolution of peace treaties, analyzes their changing subject matter and third-party involvement, and examines how the Vienna Convention on the Law of Treaties (VCLT) regulates their conclusion and validity. Focusing on coercion and jus cogens, it argues that Articles 52, 53 and 75 VCLT, read together with the Charter regime, delegitimize results of aggression while preserving room for stabilising peace settlements. Drawing on Security Council practice and selected post-Cold War agreements, the article shows why states almost never invoke treaty invalidity against peace treaties and proposes criteria for distinguishing lawful stabilization from impermissible consolidation of aggression.*

**Key words:** Treaty, Peace, Invalidity, Dispute Settlement, Use of Force, Mediation, Guarantee.

## 1. Introduction

Peace treaties remain central legal instruments for terminating armed conflicts and reorganizing political and territorial relations. Yet their status under post-1945 international law is under-theorized, especially where they emerge from situations involving unlawful force. The interaction

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between the prohibition of the use of force, the duty of peaceful settlement of disputes, and the law of treaties raises difficult questions about how such agreements should be assessed.

Under the Vienna Convention on the Law of Treaties (VCLT), treaties procured by the threat or use of force in violation of the UN Charter, or conflicting with peremptory norms of general international law (jus cogens), are void. Read together with the jus cogens character of the prohibition of the use of force and the obligation to settle disputes peacefully, this seems to suggest that peace treaties extracted from an injured state by an aggressor should be invalid. At the same time, the VCLT also preserves obligations imposed on aggressor states pursuant to lawful collective-security measures, making the application of these rules to peace settlements less straightforward.

This article examines how the contemporary law of treaties applies to peace settlements situated at the crossroads of the prohibition of the use of force and the principle of peaceful settlement of disputes. It traces the evolution and characteristics of modern peace agreements and analyzes the VCLT regime on coercion and jus cogens in light of post-Cold War practice. The aim is to show that the law does not make peacemaking under coercive circumstances impossible, but instead structures a narrow space in which lawful stabilization can be reconciled with peremptory norms, and proposes criteria for distinguishing impermissible consolidation of aggression from acceptable post-conflict stabilization.

## 2. The Historical and Conceptual Framework of Peace Treaties

For centuries, peace treaties have been important instruments for ending wars and for the political and legal organization of the international community. By the beginning of the twentieth century, it had become natural to terminate armed conflicts with a written document possessing legal force. The proportion of wars ended by peace treaties rose from less than half in the sixteenth century to nearly 90 percent by the early twentieth century. Peace treaties played a fundamental role in the development of Europe's classical international law (1500–1815) and the West's modern international law (1815–1920).[1] The series of peace agreements starting with the Peace of Westphalia (1648) created several basic principles of the

1 Lesaffer, R., Peace Treaties and the Formation of International Law, in: Fassbender, B., Peters, A., (eds.), 2012, *The Oxford Handbook of the History of International Law*, online ed., Oxford, Oxford Academic.

international order, such as the principle of sovereign equality, religious neutrality, the shared responsibility of states for maintaining peace and stability, the special role of great powers in this regard, and the principle of the balance of power. Since 1945, the category of "peace treaty" has broadened to include not only classic interstate peace treaties, but also comprehensive peace agreements, ceasefire and framework accords, and related instruments forming a "peace settlement package". International relations scholarship tends to treat these instruments together as "peace agreements", and analyzes their design (*e.g.*, power-sharing, security guarantees, third-party roles) in terms of their effect on war termination and the durability of peace.[2] The main task of a peace treaty is to terminate the state of war de jure (an armistice terminates it de facto) and to lead the subjects of international law concerned back onto a peaceful, law-abiding path. Through a traditional peace treaty between states, the parties agree to renounce future violence, recognize each other as sovereign subjects of international law, settle the disputed issues between them, and place their relationship on a new legal footing.

The end of the Cold War marked a significant shift in both the locus and the design of peace settlements. During the Cold War, many conflicts were shaped by superpower rivalry, settlements often centered on ceasefires, disengagement and restoration of minimum stability, while deeper questions of governance were frequently deferred. After 1989, at least three interrelated trends emerge in conflict resolution practice: 1) expansion from a narrow focus on interstate stability to a broader "peacebuilding" agenda, integrating constitutional design, human rights, development and reconciliation; 2) increased participation of nongovernmental actors (NGOs, church and civil-society groups, private mediators) alongside states and international organizations as both parties to conflict and third parties; 3) growing concern with human security – protection of civilians, displacement, gender-based violence – in addition to traditional state security.[3] The multilateralization of peace processes is a very clear structural change after the Cold War. Rather than classic bilateral negotiations culminating in a single treaty text, many post-1990 settlements emerge from complex, multi-layered processes involving nonbelligerent states, contact groups of states, regional and universal organizations, and even nongovernmental organizations. International actors thus wield incentives and sanctions across the entire conflict cycle, radically expanding the space for

2 See, e.g., Hoogstraten, S. van *et al.*, (eds.), 2016, *The Art of Making Peace: Lessons Learned from Peace Treaties*, Leiden, Brill Publishing, p. 7.

3 Babbitt, E. F., 2009, The Evolution of International Conflict Resolution: From Cold War to Peacebuilding, *Negotiation Journal*, Vol. 25, No. 4, pp. 539–549.

negotiated outcomes, but also complicating ownership, legal and accountability structures.[4]

From a legal-textual standpoint, this multilateralization is manifested not only in the appearance of third parties as signatories or witnesses of the treaties, but is frequently cross-referenced in the texts of peace treaties to UN Security Council resolutions, regional instruments, international agreements, as well as establishing hybrid implementation bodies, such as joint commissions, mixed courts, internationalized police missions, *etc*. The Security Council's role in relation to peace agreements also evolved significantly after the Cold War. While it had already played a role in endorsing certain interstate settlements during the Cold War, the post-1990 practice shows an increase in resolutions that explicitly "welcome", "endorse", or "decide to remain seized of" comprehensive peace agreements, sometimes annexing them to the resolution text.[5] The deployment of such multidimensional peace operations is also more frequent, with mandates directly tied to implementation of specific agreement provisions.[6]

## 3. The Characteristics of Peace Treaties

### 3.1. THE SUBJECT MATTER OF PEACE TREATIES

From Westphalia to Versailles, peace treaties followed a fairly stable template that reflected a traditional *jus post bellum* concerned with sovereignty, territory and reparations. They almost invariably dealt with restoring or transfer of territory and borders, defining new frontiers, ceding provinces, or restoring lands to pre-war owners, often in very detailed geographic language. Alongside these territorial clauses, the treaties settled dynastic and political arrangements by confirming or altering succession rights, recognizing particular rulers and, at times, imposing new forms of government, including the recognition of new states or regimes. Security provisions formed another core element, ranging from the demilitarization of specified zones and limitations on fortifications to restrictions on fleets and armies, with the disarmament regime imposed on Germany after the First World War as a late but prominent example.[7] Economic

4 Fox, G. H., 2022, Old and New Peace Agreements, *Seton Hall Law Review*, Vol. 52, pp. 850–867.

5 More on such resolutions in Chapter 6 of this article.

6 Hageboutros, J., 2016, The Evolving Role of the Security Council in the Post-Cold War Period, *Swarthmore International Relations Journal*, Vol. 1, No. 1, pp. 10–18.

7 See, e.g., Treaty of Peace between the Allied and Associated Powers and Germany, signed at Versailles, 28 June 1919, 2 L.N.T.S. 188.

matters were addressed through reparations and related provisions, requiring defeated states to pay war indemnities, restore property and settle outstanding debts. The texts also regulated amnesties, prisoners of war and judicial questions, providing for the release of prisoners, mutual amnesties and, in some cases, the extradition of named individuals. Finally, many settlements were buttressed by guarantee and alliance clauses, under which great powers or coalitions guaranteed the treaty or transformed it into the basis of an alliance system intended to uphold the newly established balance of power.[8]

Since the second half of the twentieth century, and especially since the end of the Cold War, peace treaties and peace agreements have taken on several new subject matters that go well beyond the classic package.

First, governance and constitutional design have moved to the center of many post-1945, and particularly post-1990, settlements. Whereas earlier interstate treaties rarely touched domestic political structures, contemporary agreements often regulate power-sharing between former belligerents, create or reshape executive and legislative institutions, and prescribe electoral systems and decentralization schemes.[9] This reflects the dominance of intrastate conflicts and the need to structure how former adversaries will coexist within a single polity, rather than retreating to separate sovereign territories.[10]

Second, human rights and minority protection have become pervasive themes. Human rights clauses appeared already in the 1947 Paris Peace Treaties[11] and later agreements, but after 1990 an estimated 70% of peace agreements explicitly refer to international human rights standards or incorporate rights catalogues drawn from global and regional treaties.[12] These provisions may include general commitments to respect human rights, specific guarantees for minorities, women or indigenous peoples, and the creation or reform of national human rights institutions and courts.[13]

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8 United Nations, n.d., Peace Agreements Database, (https://peacemaker.un.org/en/areas-of-work/peace-agreements-database-and-language-of-peace-tool, 20. 5. 2026); Bell, C., 2008, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria*, Oxford, Oxford University Press, pp. 90–91; Lesaffer, R., 2012.

9 See, e.g., General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement), Nov. 21, 1995, U.N. Doc. A/50/810–S/1995/1021.

10 Lockhart, C., Sladojevic, A., 2019, Securing Stability through Peace Agreements, *Report of the Institute for State Effectiveness*, March, (https://effectivestates.org/publication/securing-stability-through-peace-agreements-2019, 20. 5. 2026).

11 See, e.g., Treaty of Peace with Hungary, Paris, 10 February 1947, UNTS Reg. No. 644; Treaty of Peace with Italy, Paris, 10 February 1947, UNTS Reg. No. 747.

12 See, e.g., Dayton Peace Agreement.

13 Pospisil, J., Peace Accords and Human Rights, in: MacGinty, R., Wanis-St. John, A., (eds.), 2022, *Contemporary Peacemaking*, Berlin, Springer, pp. 427–445.

Third, transitional justice and accountability now feature prominently. Many post-Cold War accords address amnesties, criminal prosecutions, truth commissions, vetting and reparations for victims, in an attempt to reconcile peace incentives with emerging obligations to investigate and punish serious international crimes.[14] This is a clear departure from earlier practice, where blanket amnesties and silence on past abuses were common components of settlements.[15]

Fourth, disarmament, demobilization and reintegration (DDR) and security sector reform have become standard technical chapters in contemporary peace agreements, especially when settling internal armed conflict within a state. They regulate the cantonment and disarmament of fighters, the restructuring of armed forces and police, and the integration or retirement of former combatants, often closely linked to timelines for elections and state-building.[16] These topics were largely absent from earlier interstate peace treaties, which tended instead to impose one-sided disarmament obligations on the defeated state, without detailed reintegration schemes.[17]

Fifth, post-1990 peace accords pay much greater attention to elections, participation and democratization as explicit objectives. Agreements such as the Dayton Peace Agreement for Bosnia and Herzegovina[18] contain annexes on elections, refugees and displaced persons, and the role of international organizations (*e.g.*, the OSCE, the UN) in organizing and supervising electoral processes. Similar provisions appear in settlements for Afghanistan, Liberia and other post-conflict contexts, where elections are framed as key milestones in the transition from war to peace.[19]

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14 See, e.g., Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (Lomé Peace Agreement) Lomé, 7 July 1999, UN Doc. No. S/1999/777; Comprehensive Peace Accord Signed Between Nepal Government and the Communist Party of Nepal (Maoist), Nov. 22, 2006, (https://peacemaker.un.org/en/node/9215, 1. 6. 2026).

15 Pospisil, J., 2022, pp. 432–434. For earlier practice, see Kertesz, S. D., 1949, Human Rights in the Peace Treaties, *Law and Contemporary Problems*, Vol. 14, No. 4, pp. 627–646.

16 See, e.g., Comprehensive Peace Agreement between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army, Naivasha, 9 January 2005, (https://peacemaker.un.org/en/documents/2005-sudanese-comprehensive-peace-agreement, 1. 6. 2026).

17 Lockhart, C., Sladojevic, A., 2019; Rusch, S., 2021, *Peace Agreements and Disarmament, Demobilization and Reintegration (DDR): Insights from the Central African Republic and Libya*, Zurich, Centre for Security Studies.

18 Dayton Peace Agreement.

19 Mezzera, M., Pavicic, M., Specker, L., 2009, *Governance Components in Peace Agreements: Fundamental Elements of State and Peace Building?*, The Hague, Clingendael Institute.

Sixth, there is a marked increase in socio-economic and development-related clauses. Modern agreements often include commitments on reconstruction, natural-resource management, land reform, return of property, and socio-economic reintegration of ex-combatants and affected communities.[20] These provisions echo broader UN thinking that sustainable peace must be pursued, "alongside sustainable development and human rights," integrating security, development and rights agendas, in a single peace framework.[21]

Seventh, the design of international and hybrid implementation mechanisms has become more elaborate. Contemporary treaties establish joint commissions, boundary and claims tribunals, human rights monitoring missions and international or hybrid courts, and they often spell out the role of the UN, regional organizations and donors in funding and supervising implementation. The Algiers Agreement between Ethiopia and Eritrea,[22] for example, created a boundary commission, a claims commission and an investigative body, embedding the peace settlement in a dense institutional architecture that goes far beyond traditional boundary clauses.[23]

### 3.2. FROM INTERSTATE TO INTRASTATE FOCUS

While the UN Charter was drafted with interstate wars in mind, conflict trends since 1945 show a notable shift toward non-international armed conflicts (civil wars, secessionist struggles, internationalized internal conflicts or conflicts with cross-border dimensions). This shift is reflected in the corpus of post-1945 peace agreements: a growing proportion are concluded between a state and one or more organized non-state armed group, sometimes with additional provisions addressing regional spillover. These instruments are often framed as "agreements", "accords", or "pacts" rather than treaties, but they are drafted to be binding and are frequently endorsed or incorporated into Security Council resolutions or domestic constitutional instruments, blurring classic distinctions between

20 See, e.g., Arusha Peace and Reconciliation Agreement for Burundi, 28 August 2000, (https://peacemaker.un.org/en/node/9168, 1. 6. 2026); Comprehensive Peace Agreement Between the Government of the Republic of Liberia, the Liberians United for Reconciliation and Democracy (LURD), the Movement for Democracy in Liberia (MODEL) and the Political Parties, Accra, 18 August 18, (https://peacemaker.un.org/en/node/9559, 1. 6. 2026).

21 UN Secretary General, 2023, *A New Agenda for Peace*, Our Common Agenda Policy Brief 9, July.

22 Agreement between the Government of the State of Eritrea and the Government of the Federal Democratic Republic of Ethiopia, Algiers, 12 December 2000, (https://peacemaker.un.org/en/node/9574, 20. 5. 2026).

23 Lockhart, C., Sladojevic, A., 2019.

interstate treaties and internal political compacts.[24] This is so despite the provisions of the VCLT expressly stating that the treaty law nature of a document is not determined by its name, but by its other material characteristics.[25]

This evolution has two consequences for the characteristics of peace agreements. First, design issues such as power-sharing, disarmament, demobilization, reintegration of soldiers, security sector reform, and transitional justice become central, because the agreement must restructure internal governance rather than simply restore *status quo ante bellum* borders. Provisions on elections, human rights, judicial reform, and socio-economic reconstruction become standard components of comprehensive peace agreements. Second, third-party involvement (such as mediators, facilitators, guarantors, peacekeepers, donors) becomes structurally embedded, because internal adversaries often lack mutual trust and resources to enforce a complex settlement without external support.[26] Somewhat parallel with these phenomena, it has also become evident that the involvement of third parties in the process of making peace treaties is the norm, rather than the exception.

### 3.3. THE NUMBER OF PARTIES AND THE ROLE OF THIRD STATES

Classical interstate peace treaties (*e.g.*, post-1945 peace between the Allied Powers and Italy, Japan) remained formally bilateral or plurilateral instruments among the belligerent states, even when negotiated in heavily multilateral conferences. This pattern continues after 1945: when the conflict is clearly interstate, the final peace instrument is usually structured as a bilateral (or small-numbered multilateral) treaty between the primary belligerents, sometimes embedded in a wider web of related agreements (alliances, demilitarization regimes, boundary treaties). Third states commonly appear as witnesses, depositaries, or guarantors, but not as full parties bearing all obligations of the belligerents; their legal role is therefore differentiated, even when their political influence is decisive.[27]

24 Babbitt, E. F., 2009, p. 542.

25 Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 331. Art. 2.

26 Chen, C., Beardsley, K., 2021, Once and Future Peacemakers: Continuity of Third-Party Involvement in Civil War Peace Processes, *International Peacekeeping*, Vol. 28, No. 2, pp. 289–290.

27 Weller, M., Retter, M., Varga, A., (eds.), 2021, *International Law and Peace Settlements*, Cambridge, Cambridge University Press; United Nations, n.d., Peace Agreements Database.

The "witness" and "guarantor" practices are widely used, but are particularly visible in Latin American and African peace treaties, where regional powers and organizations often sign as witnesses to the agreement and undertake specific support or monitoring functions without becoming belligerents. Third-party states and organizations increasingly move beyond classic "good offices" to assume formal roles as witnesses or guarantors in peace agreements. The witness state or organization is usually the one(s) who provided good offices or mediated the peace treaty. As witnesses, they signal political support and provide a reputational stake in the survival of the agreement. Guarantors guarantee that they defend the peaceful relations and secure respect for the treaty. As guarantors, they may undertake explicit obligations to monitor compliance, provide security guarantees, or deploy peace operations. Treaty texts reveal multiple modalities of such guarantees. These include political or diplomatic guarantees, in which third parties undertake to consult, mediate, or bring instances of non-compliance before international fora. They also encompass security guarantees, such as promises of defense, peacekeeping, or the supervision of demilitarized zones. In addition, there are financial and technical guarantees, under which donors commit to reconstruction assistance, disarmament-demobilization-reintegration funding, or institutional capacity-building, typically on the condition that the parties comply with the agreement.[28]

From an international relations scholarship point of view, these "third-party guarantees" are mechanisms to solve credible commitment problems; by putting their own reputation and resources at stake, guarantors can make threats to impose costs for defection more believable and help lock in the settlement.[29]

From an international legal perspective, such third-party clauses create a layered structure: 1) the core obligations of ceasefire, boundary settlement, and recognition remain strictly bilateral, while 2) the implementation, verification or assistance provisions can involve a broader circle of states and organizations.[30] From a treaty law perspective, witnessing a treaty does not entail legal obligations for the witness state. In accordance with the VCLT a treaty creates obligations and rights only for the

28 Weller, M., Retter, M., Varga, A., (eds.), 2021; United Nations, n.d., Peace Agreements Database.

29 Fox, G. H., 2022, p. 850.

30 For empirical analysis of how cease-fire agreements employ mechanisms such as monitoring, peacekeeping and external guarantees to strengthen the durability of peace, see Fortna, V. P., 2004, *Peace Time: Cease-Fire Agreements and the Durability of Peace*, Princeton, Princeton University Press.

contracting parties, and Article 34 clarifies that third states cannot obtain rights and obligations from a treaty without consent. This consent of the third-party state must be given expressly and in writing if the treaty establishes obligation for the third state (Art. 35). With respect to guarantees, the VCLT does not specify a special position, thus it also belongs to the general rules. This means that a guarantor state can either be a contracting party that undertakes obligations as any other contracting party, or signs the treaty as a witness state and is considered as a third state, subject to the VCLT rules mentioned above. A great example for the guarantor status as a contracting party is the position of the United States and the United Kingdom in the 1994 Budapest Memorandum,[31] where – among others – they affirmed their commitment to provide assistance to Ukraine in case it becomes the victim of an act of aggression. For the latter scenario, when one or more states provide guarantees outside of the frame of the treaty, *i.e.*, they are not contracting parties, an example is the case of the 1998 Presidential Act of Brasilia. Here the contracting parties are Ecuador and Peru, but the text of the treaty mentions that Argentina, Brazil, Chile and the United States signs it as guarantor states. The text of the treaty does not specify any obligations for them or how they will provide for this guarantee, thus from a legal point of view it establishes only political or diplomatic commitments. The guarantors signed the treaty as witnesses.[32]

A closer look at specific treaty texts helps to show how these political and legal roles are articulated in practice. The 1995 General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement)[33] is a paradigmatic example: while Annex 4 (the Constitution of Bosnia and Herzegovina) and Annex 1-A (Military Aspects of the Peace Settlement) are concluded primarily between the former belligerents, the Agreement as a whole is signed in the presence of the United States, the European Union and key European states, which thereby assumed distinct functions in supervising the implementation and providing security guarantees. The High Representative, created under Annex 10, is endowed with an internationally anchored mandate to "monitor the implementation" of the civilian aspects of the peace settlement and to coordinate the activities of the major international organizations and agencies involved,

31 Memorandum on security assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons, Budapest, 5 December 1994, UN Reg. No. 52241.

32 Presidential Act of Brasilia, 26 October 1998, Original in Spanish, English text available at: A/53/790 (1999) Report of the Secretary-General on the work of the Organization.

33 Dayton Peace Agreement.

illustrating how third-party guarantees are juridically "built into" the institutional architecture of peace.[34]

A different yet complementary model appears in the 2000 Algiers Agreement between Ethiopia and Eritrea. Formally, the Agreement is a bilateral treaty between the two states, but it was negotiated under the auspices of the Organization of African Unity, the United States, the European Union, and Algeria, whose representatives signed as witnesses. The treaty does not transform these mediating states and organizations into contracting parties with full-fledged obligations under the law of treaties, but it does entrust them, in practice, with key roles in establishing and supporting the Eritrea–Ethiopia Boundary Commission and the Claims Commission.[35] In this way, the "guarantee" element primarily operates through institutional design and sustained diplomatic engagement rather than through classic defense or enforcement clauses in the strict sense.

### 3.4. MEDIATION AS A NEAR-SYSTEMIC FEATURE

In international relations and international law, mediation is commonly understood as a non-binding, voluntary process in which a third party assists disputing states (or other conflict parties) to prevent, manage or resolve a dispute, without imposing a solution. Based on Bercovitch's widely cited works, mediation can be framed as a pacific approach to conflict resolution in which impartial third parties help disputants resolve conflicts through a process of information and social influence, without using violence or invoking the authority of a legal system.[36] This distinguishes mediation from negotiation (which is purely bilateral) and from arbitration or adjudication (which culminate in binding, authoritative third-party decisions).[37] Mediation is voluntary in the sense that the parties retain the right to accept or refuse the mediator's involvement and any proposed outcome. The outcome is legally non-binding as such; any binding force arises

34 UN Security Council, Resolution 1031 (1995), 15 December 1995, S/RES/1031 (1995).

35 Agreement between the Government of the State of Eritrea and the Government of the Federal Democratic Republic of Ethiopia, Algiers, Algeria, 12 December 2000, (https://peacemaker.un.org/en/node/9574, 20. 5. 2026).

36 See, e.g., Bercovitch, J., The structure and diversity of mediation in international relations, in: Bercovitch, J., Rubin, J., (ed.), 1994, *Mediation in International Relations: Multiple Approaches to Conflict Management*, London, Macmillan, p. 2; Bercovitch, J., Jackson, R., 2009, *Conflict Resolution in the Twenty-first Century*, Ann Arbor, University of Michigan Press, p. 33.

37 Zakowska, M., 2017, Mediation in Armed Conflict, *Security and Defence Quarterly*, Vol. 17, No. 4, pp. 74–75.

only if the parties subsequently embody the agreement in a treaty or other legal instrument. The mediator may be an individual, a state, a group of states, an international or regional organization, or even a non-governmental actor, provided it is not itself a belligerent in the dispute.[38]

Mediation, as a peaceful means of dispute settlement and a flexible third-party process, has become central to managing and ending contemporary armed conflicts. International mediation has become a pervasive tool in both interstate and, increasingly, intrastate conflicts. States, regional organizations and the UN provide "good offices", mediation or other means of peaceful settlement of disputes[39] at various stages: pre-negotiation, framework agreement, detailed peace settlement, and implementation review. Mediation is not universal, but it is sufficiently frequent that many scholars now treat the presence or absence of third-party mediation as a key explanatory variable for whether conflict ends in a negotiated settlement, and how durable the post-agreement peace is.[40] Studies suggest several regularities: mediation is more likely when conflicts are long, costly, or particularly salient to external actors, for instance because of regional spillovers, humanitarian crises, or great-power interests. They also indicate that complex agreements involving elements such as power-sharing, territorial autonomy or verification regimes are especially likely to have been concluded with the help of active third-party mediation. Moreover, the continuity of third-party involvement in the post-agreement phase – through peacekeeping, monitoring missions or verification bodies – tends to be associated with more robust implementation and longer-lasting peace, whereas "hit-and-run" mediation, with no meaningful follow-through, often results in fragile settlements.[41]

Mediation's growing prominence reflects a number of structural advantages compared to other peaceful means: flexibility, informality, preservation of party autonomy, capacity to manage complexity and power asymmetries, cost-efficiency, speed and potential for relationship-building. Mediation offers a highly adaptable framework: the mediator and par-

38 Bercovitch, J., Lee, S.-M., 2003, Mediating International Conflicts: Examining the Effectiveness of Directive Strategies, *The International Journal of Peace Studies*, Vol. 8, No. 1, pp. 1–17.

39 Charter of the United Nations, San Francisco, 1945, (https://www.un.org/en/about-us/un-charter, 1. 6. 2026), Art. 33.

40 Whitfield, T., New Arrangements for Peace Negotiation, in: Jones, B. D., Forman, S., Gowan, R., (eds.), 2009, *Cooperating for Peace and Security: Evolving Institutions and Arrangements in a Context of Changing U.S. Security Policy*, Cambridge, Cambridge University Press, pp. 227–246; Babbitt, E. F., 2009, pp. 539–549.

41 Dwyer, S. P., 2017, *Window for Peace: Determinants of Third-Party Guarantees in Intrastate Conflict Resolution*, Doctoral Thesis, Columbia University, p. 29.

ties can shape the agenda, procedures, and the level of formality according to the context. Procedural-formulative strategies allow the mediator to control the setting, sequence of issues, and flow of information, thereby creating an environment conducive to compromise without the rigidity of judicial or arbitral procedures.[42] Because the mediator lacks authority to impose an outcome, the parties retain ultimate control over their commitments, which is particularly important for sovereign states concerned about precedents and loss of face. This can make mediation politically more acceptable than adjudication, especially in high-salience territorial and security disputes.[43] Mediation is particularly suited to complex conflicts involving multiple issues (territory, security, governance, refugees) and pronounced power asymmetries. Directive strategies – where mediators propose concrete packages, provide incentives, or condition aid and recognition – can help weaker parties obtain acceptable terms and can rebalance negotiations that would otherwise reflect raw military power alone. Compared to long judicial proceedings or open-ended coercive measures, mediation can be relatively low-cost and rapid, especially when conducted under the auspices of existing international or regional organizations. For war-weary populations and fiscally constrained states, this is a non-trivial advantage.[44] Because mediation emphasizes communication, problem-solving, and incremental confidence-building, it can help transform relationships rather than merely terminate hostilities.[45]

Despite these advantages, mediation also has limitations and potential downsides that have generated considerable critical debate, including: a nonbinding character and enforcement deficits, dependence on the real motivation and willingness of the parties, bias and power politics, risk of injustice, information deficiencies. The non-binding nature of mediated outcomes means that success ultimately depends on the parties' willingness and capacity to implement their commitments. Without robust follow-up mechanisms – such as peacekeeping, monitoring missions or explicit guarantees – mediated settlements can unravel, especially where spoilers remain armed or where domestic constituencies resist compromise. Because mediation is voluntary, it cannot compel recalcitrant parties to negotiate or to make painful concessions. Where one party anticipates military victory, or where leaders derive domestic legitimacy from continued conflict, they may accept mediation only tactically – to gain time, international legitimacy or material benefits – without genuine intent to

42 Zakowska, M., 2017, pp. 80–82.

43 Bercovitch, J., Lee, S.-M., 2003, p. 12.

44 Zakowska, M., 2017, p. 80.

45 Bercovitch, J., Lee, S.-M., 2003, p. 5.

settle.[46] In practice, many mediators are not neutral but biased in favor of one side or strongly embedded in regional or great-power politics. While some bias can increase leverage and effectiveness (a "biased mediator" may better induce its protégé to compromise), it also risks peace terms that privilege certain interests and may be perceived as illegitimate or neo-imperial by local actors.[47] If mediation is poorly timed, poorly designed, or repeatedly fails, it can inadvertently prolong conflicts by offering spoilers opportunities to rearm or by displacing more decisive forms of pressure. Normatively, critics argue that mediation may pressure victims to accept amnesties or compromises inconsistent with emerging jus cogens-based obligations (*e.g.*, regarding genocide, crimes against humanity), especially in the absence of clear legal guidance for mediators.[48] Mediators rely on information provided by the parties and their own limited networks, which can lead to misperceptions of power balances, red lines, and domestic constraints. In multi-party conflicts, the presence of several mediators (states, regional organizations, NGOs) can lead to coordination problems, mixed signals and forum-shopping by the parties.[49]

## 4. The Impact to the Principle of Peaceful Settlement of Disputes

The ideas about preferring negotiation and third-party assistance to war appeared in diplomatic practice well before their codification, but the first major treaty framework was the 1899 Hague Convention for the Pacific Settlement of International Disputes.[50] This convention created the Permanent Court of Arbitration and obliged states to use good offices, mediation, commissions of inquiry and arbitration "as far as circumstances allow", to prevent armed conflict, giving a treaty form to the notion that war should be a last resort. The 1907 Hague revision preserved and refined these mechanisms, confirming pacific settlement as a shared commitment of the great powers of the time.[51] After the First World War,

46 Zakowska, M., 2017, p. 84; Bercovitch, J., Lee, S.-M., 2003, p. 16.

47 Greenberg, M. C., McGuinness, M. E., From Lisbon to Dayton: International Mediation and the Bosnia Crisis, in: Greenberg, M. C., Barton, J. H., McGuinness, M. E., (eds.), 2000, *Words over war: mediation and arbitration to prevent deadly conflict*, Carnegie, New York, p. 38.

48 Zakowska, M., 2017, p. 95; Bercovitch, J., Lee, S.-M., 2003, p. 10.

49 Greenberg, M. C., McGuinness, M. E., 2000, p. 45.

50 Hague Convention (I) for the Pacific Settlement of International Disputes, 29 July 1899.

51 Baker, B., 2009, Hague Peace Conferences (1899 and 1907), *Max Planck Encyclopedia of Public International Law*, Oxford, Oxford University Press, (https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e305, 20. 5. 2026).

the Covenant of the League of Nations further strengthened this idea by requiring members to submit disputes to arbitration or judicial settlement or to Council investigation, and to refrain from war until certain time-limits expired. Interwar instruments such as the Kellogg–Briand Pact (1928), which renounced war as an instrument of national policy, reinforced the trend away from war and towards organized peaceful settlement, even though enforcement possibilities were almost nonexistent.[52]

The decisive step was the Charter of the United Nations, which has elevated among its principles the obligation to settle disputes peacefully. In accordance with Article 2(3), states shall settle their international disputes by peaceful means, and Articles 33–38 specify the means and the related powers of the Security Council and the General Assembly. Among the non-exhaustive list of means, Article 33(1) mentions mediation. Nevertheless, the Charter itself does not define mediation (or other means of peaceful dispute settlement), which has resulted in the UN and regional organizations issuing guidance documents. The United Nations Guidance for Effective Mediation (2012), adopted following General Assembly Resolution 65/283, identifies key fundamentals (*e.g.*, consent, impartiality, inclusivity, respect for international law, *etc*.) that should govern mediation processes conducted by states and organizations.[53] Regional organizations, such as the Organization for Security and Co-operation in Europe (OSCE)[54], the African Union,[55] and the European Union,[56] have produced parallel concepts and handbooks on mediation.

Beyond written sources, the duty of peaceful settlement is supported by customary international law and general principles. Repeated treaty formulations – from the Hague Conventions and the League Covenant to the UN Charter – combined with consistent state rhetoric and practice, underpin the customary character of the obligation to seek peaceful settlement. Scholarly analysis and the caselaw of the International Court of Justice[57]

52 Shaw, M. N., 2017, *International Law*, 8th ed., Cambridge, Cambridge University Press, pp. 22, 764–802.

53 UN GA, Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution, A/RES/65/283, June 2012.

54 OSCE CPC, 2014, OSCE Reference Guide on Mediation and Dialogue Facilitation, 2014, (https://www.osce.org/secretariat/126646, 20. 5. 2026).

55 ACCORD, 2014, African Union Mediation Support Handbook, Umhlanga Rocks, ACCORD.

56 General Secretariat of the Council of the EU, 2009, Concept on Strengthening EU Mediation and Dialogue Capacities, Council of the European Union, No. 15779/09, 10 November 2009; General Secretariat of the Council of the EU, 2020, Concept on EU Peace Mediation, No. 13951/20, 11 December.

57 For example, ICJ, Corfu Channel (*United Kingdom v. Albania*), Merits, Judgment, 9 April 1949, ICJ Reports 1949, p. 4; ICJ, North Sea Continental Shelf (*Federal Republic*

generally accept that states must, at a minimum, make good-faith efforts to use peaceful means before resorting to any use of force, and that peaceful settlement mechanisms should be used in a way that does not itself threaten peace and justice.

The International Court of Justice caselaw does not often label the obligation of peaceful settlement in explicit jus cogens terms, but its judgments consistently treat the duty to resolve disputes by peaceful means as a structural principle of the UN Charter order, closely linked to other norms widely recognized as peremptory, such as the prohibition of the use of force. In doing so, the Court has repeatedly affirmed both the obligatory character of peaceful settlement and its status as part of the general law that constrains states regardless of specific treaty commitments.[58] The Court's reasoning in the *Military and Paramilitary Activities in and against Nicaragua* case is particularly important for this development. In its 1986 merits judgment, the Court distinguished between the UN Charter and customary international law, but held that the "principle of the non-use of force in international relations" and the "corollary" principle that disputes are to be settled by peaceful means both exist as norms of customary law binding on all states independently of the Charter.[59] Although the Court's statement that the prohibition of the use of force is a "conspicuous example of a rule of international law having the character of jus cogens" concerns Article 2(4) rather than Article 2(3), scholarly commentary has underlined that, in *Nicaragua v. United States of America*, the Court simultaneously confirmed the customary nature of the peaceful-settlement obligation and located it at the "heart" of the UN system for the maintenance of international peace and security, in a position closely associated with peremptory norms. Subsequent doctrine has argued, on the basis of this judgment, that the obligation of peaceful settlement forms part of the same peremptory normative complex as the prohibition of force, or at least it assumes a quasi-peremptory quality as the positive corollary of that prohibition.[60]

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*of Germany v. Denmark*; *Federal Republic of Germany v. Netherlands*), Judgment, 20 February 1969, ICJ Reports 1969, p. 3; ICJ, Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*), Merits, Judgment, 27 June 1986, ICJ Reports 1986, p. 14.

58 Danilenko, G. M., 1991, International Jus Cogens: Issues of Law-Making, *European Journal of International Law*, Vol. 2, No. 1, p. 47.

59 ICJ, Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*), Merits, Judgment, 27 June 1986, ICJ Reports 1986, p. 14.

60 *Ibid*.; Danilenko, G. M., 1991, p. 47; UN GA, 2019, Peremptory norms of general international law (*jus cogens*), *Report of the International Law Commission on the work of its seventy-first session*, A/74/10 (2019), Chapter, V., pp. 104–146.

Later cases have reinforced this understanding by treating Article 2(3) of the Charter and its customary counterpart as general principles that inform the interpretation of specific treaties and compromissory clauses. In the Aerial Incident of 10 August 1999 (*Pakistan v. India*) order on jurisdiction, for example, the Court recalled its earlier findings in *Nicaragua v. United States of America* and reiterated that states are bound to settle their disputes by peaceful means while retaining freedom to choose among such means, a formula that has been widely cited as confirmation of the customary-law nature of the obligation.[61] The Aerial Incident judgment explicitly relies on *Nicaragua v. United States of America* in presenting the peaceful-settlement duty as a general rule of conduct, and prominent commentators have read this line of reasoning as implying, if correctly interpreted, that the obligation possesses jus cogens status.[62]

At the same time, the Court's jurisprudence has clarified how this general obligation operates in practice. In the North Sea Continental Shelf judgment, the Court emphasized that good-faith negotiations aimed at reaching an equitable solution are required where a legal rule so stipulates, underlining that the "obligation to enter into negotiations with a view to arriving at an agreement" is not satisfied by a mere formal exchange of views.[63] This formulation has been widely used as a benchmark for the content of the peaceful-settlement obligation: states must engage seriously, in good faith and with a genuine intention to reach agreement when a relevant rule directs them to negotiate.[64] Later decisions on compromissory clauses, such as Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Georgia v. Russian Federation*), have similarly treated pre-negotiation requirements not as optional diplomatic niceties but as legal preconditions to seizing the Court, thereby confirming that resort to judicial settlement is embedded in, and conditioned by, a broader duty to attempt peaceful means.[65]

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61 ICJ, Aerial Incident of 10 August 1999 (*Pakistan v. India*), Jurisdiction, Judgment, 21 June 2000, ICJ Reports 2000, p. 12.

62 Pellet, A., Peaceful Settlement of Disputes, in: Peters, A., Wolfrum, R., (eds.), 2013, *Max Planck Encyclopedia of International Law*, Oxford, Oxford University Press, (https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e70, 20. 5. 2026).

63 ICJ, North Sea Continental Shelf (*Federal Republic of Germany v. Denmark*; *Federal Republic of Germany v. Netherlands*), Judgment, 20 February 1969, ICJ Reports 1969, p. 3.

64 Wood, M., 2011, *Peaceful settlement of disputes – working paper*, UN Doc. A/CN.4/641, 30 March, pp. 247–251; UN Office of Legal Affairs, 1992, Handbook on the Peaceful Settlement of Disputes between States, New York, United Nations.

65 ICJ, Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Georgia v. Russian Federation*), Preliminary Objections, Judgment, 1 April 2011, ICJ Reports 2011, p. 70.

In its advisory and contentious practice, the International Court of Justice also repeatedly affirms that the peaceful-settlement obligation, together with the prohibition of force, lies at the heart of the system established under the UN Charter for the maintenance of international peace and security, to quote the International Law Commission's restatement of the Court's approach.[66] The ILC relied on ICJ caselaw to characterize Article 2(3) and Article 33(1) of the Charter as expressing a principle that structures the entire collective-security system, and it noted that the Court has consistently treated this principle as a interpretative lens for rules on jurisdiction, admissibility and remedial discretion.[67] In practice, this means, for example, that when the Court interprets compromissory clauses, optional-clause declarations or reservations, it does so in a way that respects both state consent and the overarching imperative of peaceful settlement, carefully avoiding readings that would unduly frustrate recourse to peaceful means while still insisting on the consensual basis of its own jurisdiction.[68]

## 5. The Validity of Peace Treaties

### 5.1. THE PLACE OF PEACE TREATIES UNDER INTERNATIONAL TREATY LAW

In contemporary international law, "peace treaty" is not a term of art in the sense of a special treaty category under the 1969 Vienna Convention on the Law of Treaties (VCLT), but rather a functional label for agreements that terminate an armed conflict and structure post-war relations. In essence, the same rules apply to peace treaties as to any other international treaty, *i.e.*, the provisions of the VCLT and customary international law. The VCLT does not mention peace treaties separately anywhere, and the commentary of the International Law Commission only occasionally refers to peace treaties in connection with particular treaty-law institutions (for example, the provisions on treaty interpretation in Articles 31–33, on treaties concluded for the benefit or burden of third states in Articles 34–36, and on treaty amendment in Articles 39–41). Since 1945, one evergreen issue among these has been whether a peace treaty is a treaty concluded under the influence of force and, as such, whether it is invalid for that reason.

66 Wood, M., 2011, para. 6.

67 *Ibid*., p. 249.

68 Fabri, H. R., Stoppioni, E., 2021, *Jus Cogens* before International Courts: The Mega-Political Side of the Story, *Law and Contemporary Problems*, Vol. 84, p. 171.

With the UN Charter in 1945, states established the international legal norm of the prohibition of the use of force (Article 2 (4)), with the only exceptions being self-defense (Article 51) and the use of armed force pursuant to decisions of the UN Security Council, under Chapter VII of the Charter. On this basis, it can be said that if states complied with the prohibition of the use of force, there would be no international armed conflict and no need for peace treaties. In recent decades, armed conflicts between states have typically been launched in a manner contrary to international law; one could cite a long list of examples, ranging from the Arab–Israeli and Indian–Pakistani conflicts to the Eritrean–Ethiopian war and the Russian aggression in Ukraine. Regarding the law of treaties, this leads to the following questions: if the state of war came into being in a way contrary to international law, is the peace treaty concluded with the aggressor state by the attacked (injured) state a treaty concluded under the influence of force and therefore invalid in whole or in part? Can a lawful consequence arise from an unlawful situation, in line with the *ex iniuria ius non oritur* principle? Since international law considers a treaty concluded under force to be invalid, can any exception be envisaged in the case of peace treaties which would not render such a treaty invalid nevertheless?

## 5.2. THE CONCLUSION AND VALIDITY OF AN INTERNATIONAL TREATY

The VCLT lays down detailed rules on the conclusion of valid international treaties, crystallized from several thousand years of state practice.[69] The conclusion of a treaty is typically a lengthy process involving several bodies and representatives of the state. In drafting the text of the treaty, freedom of form and content is the guiding principle. There are several ways of expressing consent to be bound by a treaty, such as signature, ratification, exchange of instruments constituting the treaty, approval, acceptance, accession, or any other method agreed by the parties.[70] For a valid international treaty, it is of fundamental importance that a person authorized to represent the state act on its behalf and that the treaty come into being as the express, free meeting of wills of the contracting parties. The treaty must express the joint, genuine will of the contracting parties.

69 Schröder, M., Schwerdtfeger, A., Treaties, Validity, in: Peters, A., Wolfrum, R., (eds.), 2022, *Max Planck Encyclopedia of Public International Law*, Oxford, Oxford University Press, (https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1493, 1. 6. 2026).

70 VCLT, Art. 11.

Certain "defects" affecting the process of the conclusion of a treaty may result in its invalidity. In the science of international law, the grounds of invalidity are classified less by using the distinction between nullity and voidability and more by the French legal tradition's concepts of absolute and relative invalidity (although the VCLT does use the expression "void" in Article 52). Under the 1969 Vienna Convention, treaties concluded under the influence of force and treaties conflicting with peremptory norms of general international law (so-called jus cogens) are absolutely invalid. Relative invalidity covers treaties that conflict with internal law, treaties concluded in error or through fraud, and treaties concluded through corruption.[71]

## 5.3. TREATIES CONCLUDED UNDER THE INFLUENCE OF FORCE IN LEGAL DOCTRINE

One form of absolute invalidity is the treaty concluded under the influence of force. This may occur in three ways: the coercion/force may be directed against the representative of the state (1) or against the state itself (2), and even the threat of force/coercion against the state (3) falls into this category. The VCLT formulates this as follows:[72]

> "Article 51 Coercion of a representative of a State
>
> "The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect.
>
> "Article 52 Coercion of a State by the threat or use of force
>
> "A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations."

Classical doctrine prior to the end of the First World War started from the position that the validity of a treaty was not affected if it had been extracted by threats or force; owing to the wide freedom to resort to war (*jus ad bellum*), the law "accepted" such outcomes as well. After the Covenant of the League of Nations and especially after the Kellogg–Briand Pact, an increasingly strong legal view emerged that such "forced" treaties should no longer be regarded as legally valid. The criminalization of aggressive war in the statutes of the Nuremberg and Tokyo military tribunals, the clear prohibition of the use of force in Article 2(4) of the UN Charter, and UN practice as a whole reinforced this development.[73]

71 VCLT, Arts. 46–53.

72 VCLT, Arts. 51–52.

73 International Law Commission, 1966, Draft Articles on the Law of Treaties with Commentaries, *Yearbook of the International Law Commission*, Vol. II, pp. 246–247.

According to the International Law Commission, which drafted the Vienna Convention, by the 1960s it could be said that the invalidity of treaties compelled by illegal force or threats was a positive rule of international law (*lex lata*), not merely a moral requirement. In doing so, the Commission consciously broke with the old neutral approach and imported the UN Charter order into the law of treaties as well, *i.e.*, it normatively rejected the results of aggression. During the drafting of the text of the VCLT, the idea arose that political or economic pressure should also fall under the concept of coercion, but the Commission rejected this and defined the meaning of the provision by reference to the prohibition of the use of force in Article 2(4) of the UN Charter. The Commission consciously sought to formulate the rule in the simplest and most definite way possible.[74] It considered the categorical formulation of this ground of nullity to be legitimate and appropriate, in line with the Charter's principles on the use of force, which have become universal norms of general international law. The argument is further supported by the fact that Article 53 of the VCLT specifically highlights that treaties conflicting with peremptory norms of general international law (jus cogens) are void.[75]

With regard to peace treaties, it is also important to add Article 75 of the VCLT, which deals with the case of an aggressor state: "The provisions of the present Convention are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression."[76]

Read together, these provisions yield the following result: under Articles 52–53, a treaty forced through by the aggressor, in violation of the UN Charter, is void (protection of the victim state), but under Article 75 the burdensome obligations of the aggressor that arise as a consequence of lawful UN measures in response to aggression and are embodied in a treaty (sanctions, obligations of settlement) remain in force. In accordance with Article 75, the aggressor cannot invoke the VCLT to invalidate these obligations.[77] Together, the two rules create a structure that, on the one hand, delegitimizes the outcomes of aggression (coerced peace terms) and, on the other hand, prevents the

74 *Ibid*.

75 VCLT, Art. 53.

76 VCLT, Art. 75.

77 Forlati, S., Coercion as a Ground Affecting the Validity of Peace Treaties, in: Cannizzaro, E., (ed.), 2011, *The Law of Treaties Beyond the Vienna Convention*, Oxford, Oxford University Press, p. 320.

aggressor itself from relying on the law of treaties to free itself from obligations imposed on it by the UN.[78]

This doctrinal construction is further reinforced if one takes seriously the jus cogens character of the prohibition of the use of force and the closely related obligation of peaceful settlement of disputes. The International Court of Justice has described the prohibition of the use of force in Article 2(4) of the UN Charter as a conspicuous example of a peremptory norm, and has treated the duty to settle disputes by peaceful means as its necessary positive corollary.[79] From this perspective, Articles 52 and 75 VCLT can be read not only as technical rules on consent vitiated by coercion but as specific applications of a broader normative commitment: that the international legal order will not recognize, still less stabilize, legal situations brought about by unlawful force, except to the extent strictly necessary to restore or maintain peace under the Charter framework.[80]

At the same time, neither the VCLT nor the ICJ caselaw suggests that the jus cogens quality of the prohibition of force and of the peaceful-settlement obligation automatically invalidates all peace treaties concluded against the background of an unlawful armed conflict. What is rejected is the legal consolidation of the aggression's fruits – for example, a treaty that purports definitively to validate annexation achieved solely by force.[81] By contrast, peace treaties that are designed to terminate an ongoing violation and restore a measure of stability, under Security Council supervision or with broad third-party involvement, occupy a more ambivalent position. They may implicitly acknowledge certain faits accomplis or trade-offs, yet they serve the higher aim of reestablishing a situation in closer conformity with the Charter. The combined effect of Articles 52, 53 and 75 VCLT, read in light of jus cogens, is thus not to outlaw peace-making under coercive circumstances altogether, but to structure the space within which lawful stabilization is possible while denying legal validity to the most egregious outcomes of aggression.

78 Corten, O., Article 52 – Coercion of a State by the threat or use of force, in: Corten, O., Klein, P., 2011, *The Vienna Convention on the Law of Treaties, A Commentary*, Vol. II, Oxford, Oxford University Press, pp. 1201–1220.

79 ICJ, Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*), Merits, Judgment, 27 June 1986, ICJ Reports 1986, p. 14.

80 See, e.g., Tomuschat, C., Obligation of Peaceful Settlement of International Disputes, in: Fabri, H. R., (ed.), 2023, *Changing Character of International Dispute Settlement*, Cambridge, Cambridge University Press, pp. 15–44; Aust, A., 2013, *Modern Treaty Law and Practice*, 3rd ed., Cambridge, Cambridge University Press, pp. 292–302.

81 Corten, O., 2011, p. 1217.

# 6. UN Security Council Resolutions and Peace Treaties

## 6.1. SECURITY COUNCIL RESOLUTIONS ON AGGRESSION AND AUTHORIZATION TO USE FORCE

The references to the principles and provisions of the UN Charter in Articles 52 and 75 of the VCLT make it clear that no invalidity can be established for armistice agreements, peace treaties, or other treaties concluded under the influence of force ordered or authorized by the UN Security Council. The Security Council has the right to employ coercion for the maintenance and restoration of international peace and security, and such action may lead to agreements between the parties to a conflict. In Resolution 687 (1991), the Security Council laid down the ceasefire conditions in the so-called Gulf War between Iraq and Kuwait, where it had previously authorized the use of armed force against the aggressor Iraq. A vivid case is the 1994 agreement between Haiti and the United States, in which Raoul Cédras, the military leader exercising power over Haiti, agreed to resign and allow President Aristide's peaceful return to power. The agreement signed by Jimmy Carter, representing US President Bill Clinton, and Cédras was seemingly concluded under the influence of force, since American bombers were already en route during the negotiations, but it is not invalid because shortly before that UN Security Council Resolution 940 (1994) had authorized the use of force in Haiti to restore the lawful government.[82]

## 6.2. THE SECURITY COUNCIL DOES NOT DECLARE AGGRESSION OR AUTHORIZE THE USE OF FORCE BUT DEALS WITH THE CONFLICT

Very often, a Security Council resolution does not indicate who the aggressor is and does not state that aggression has occurred, so, based on a traditional textual interpretation, the situation does not fall under Article 75 of the VCLT. In many cases the Security Council does not characterize the nature of the conflict at all, but merely calls on the parties to cease hostilities and settle their disputes peacefully, and may order binding measures that do not authorize anyone to use force (for example, severance of diplomatic and other relations, embargo, asset-freezing). In such cases, on the basis of abovementioned doctrine, a treaty concluded by the state that

82 Aust, A., 2013, p. 318; UN Security Council, Resolution 940 (1994), 31 July 1994, SC/RES/940 (1994).

has suffered aggression should be deemed void. In practice, however, we see the opposite, particularly when other states and international organizations, in addition to the aggressor and injured state, participate in the conclusion of the peace treaty and when the Security Council, in a resolution, "welcomes", accepts, or recognizes an armistice agreement or peace treaty concluded by the parties to the armed conflict. In real life these two situations often merge and appear together.

Several Security Council resolutions were adopted pertaining to the Arab–Israeli conflicts, and the 1979 bilateral peace treaty between Egypt and Israel refers in its preamble to the fact that the parties, in accordance with Security Council Resolutions 242 and 338, are convinced of the urgent need to establish a just, comprehensive, and lasting peace in the Middle East. In addition to the two heads of state, US President Jimmy Carter, who played an active role as mediator, signed the treaty as a witness.[83] Although a Security Council resolution addresses the conflict, the peace treaty itself is not specifically welcomed. The same pattern appears in the 1994 peace treaty between Israel and Jordan.[84]

In the Yugoslav wars, which followed the breakup of the country, from 1991 onward, the UN Security Council adopted several resolutions but did not authorize armed intervention and did not characterize the nature of the conflict. The armed conflict between Bosnia and Herzegovina, Croatia and the remaining parts under the name Yugoslavia was brought to an end in 1995 by the Dayton Peace Agreement, which, in a framework treaty and its eleven annexes, regulates the sovereignty, international legal personality, borders, state structure, military issues, and international supervision of Bosnia and Herzegovina. After the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina, in Resolution 1031 (1995), the Security Council, "welcomed" the agreement, took note that it was intended to bring the Yugoslav conflict to an end, and authorized IFOR to implement its military provisions. In this way, the resolution framed the Dayton Agreement as an international peace settlement and explicitly linked UN mechanisms (IFOR, later SFOR) to the implementation of the agreement.[85]

The two-year long war between Eritrea and Ethiopia was concluded in December 2000 by the Algiers Agreement. Several states and international organizations played an active mediating role in the pursuit of peace, so

83 Treaty of Peace, Washington, 26 March 1979, UNTS Reg. No. 17813.

84 Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan, Arava/Araba Crossing Point, 26 October 1994, UNTS Reg. No. 35325.

85 UN Security Council, Resolution 1031 (1995), 15 December 1995, S/RES/1031 (1995).

the treaty was the fruit of months of efforts by the Organization of African Unity, the UN, and the United States, with Algeria hosting and mediating, and the EU joining as an additional witness and supporter.[86] The Algiers Agreement is a bilateral agreement signed by the heads of state of the two parties to the conflict, but the representatives of the abovementioned mediating states and organizations also signed it as witnesses.[87] In connection with the Eritrean–Ethiopian War, the Security Council adopted several resolutions calling for an immediate ceasefire, for the peaceful settlement of disputes, the acceptance of the 1999 framework agreement of the Organization of African Unity, and, in 2000, imposing an arms embargo under Chapter VII.[88] It was only the arbitral tribunal established under the peace agreement (the Eritrea–Ethiopia Claims Commission) that held that Eritrea had violated the prohibition of the use of force in Article 2(4) of the UN Charter. The bilateral peace agreement between the parties was "welcomed" by the Security Council in several subsequent resolutions.[89]

### 6.3. PEACE WITHOUT A SECURITY COUNCIL RESOLUTION

In some cases, the Security Council does not deliver any resolution in relation to a peace agreement. In 1971, India intervened in East Pakistan (on the territory of what would later become Bangladesh) in the Bangladeshi war of liberation against Pakistani forces. This escalated into a full-blown Indo–Pakistani war, which was concluded in 1972 by the Simla Agreement.[90] This is a classic bilateral agreement, concluded on India's initiative as a result of negotiations on Indian territory. The treaty was signed by the two heads of government, Indira Gandhi and Zulfikar Ali Bhutto; there were no witnesses or guarantor states, and the Security

86 Touati, A., 2000, Ethiopia and Eritrea Sign Peace Agreement, *reliefweb*, 12 December, (https://reliefweb.int/report/eritrea/ethiopia-and-eritrea-sign-peace-agreement, 20. 5. 2026).

87 Agreement between the Government of the State of Eritrea and the Government of the Federal Democratic Republic of Ethiopia, Algiers, Algeria, 12 December 2000, (https://peacemaker.un.org/en/node/9574, 20. 5. 2026).

88 UN Security Council, Resolution 1177 (1998), 26 June 1998, S/RES/1177 (1998); UN Security Council, Resolution 1226 (1999), 29 January 1999, S/RES/1226 (1999); UN Security Council, Resolution 1297 (2000), 12 May 2000, S/RES/1297 (2000); UN Security Council, Resolution 1298 (2000), 17 May 2000, S/RES/1298 (2000).

89 UN Security Council, Resolution 1312 (2000), 31 July 2000, S/RES/1312 (2000); UN Security Council, Resolution 1320 (2000), 19 September 2000, S/RES/1320 (2000); UN Security Council, Resolution 1430 (2002), 14 August 2002, S/RES/1430 (2002).

90 Agreement between the Government of India and the Government of the Islamic Republic of Pakistan on Bilateral Relations (Simla Agreement), 2 July 1972, (https://peacemaker.un.org/en/node/9234, 20. 5. 2026).

Council did not take note of or welcomed it in a resolution. The Cenepa War was a short but intense border war between Ecuador and Peru in 1995, over control of the Alto Cenepa Valley (in the Amazon region), as part of a long-standing border dispute dating back to 1941 and the Rio Protocol. The one-month conflict was directly ended by the Itamaraty ceasefire agreement, while the final peace treaty, settling the entire border dispute, was signed in Brasília in 1998.[91] In addition to the two heads of state concerned, the bilateral peace treaty was signed as witnesses by representatives of Argentina, Brazil, Chile, and the United States, which are regarded as guarantor powers – as expressed in the treaty itself.[92] The UN Security Council did not deal with the clash and did not welcome the peace treaty in a resolution.

In this scenario the UN system is fully left out of the final, peaceful settlement of a former armed conflict, thus the legal evaluation of the agreement is solely based on treaty law, with the principle of peaceful settlement of disputes and other jus cogens norms visible "in the background".

## 7. Consequences for Peace Treaties at the Crossroads of Treaty Validity, Prohibition of the Use of Force, and Principle of Peaceful Settlement of Disputes

The survey of state practice and treaty law suggests that, in formal legal terms, peace treaties are not treated as a special category of international agreements, yet they operate at a normative crossroads where several structural principles of the post-1945 order intersect. They are concluded in the shadow of the prohibition of the use of force, they purport to implement (rather than displace) the duty of peaceful settlement of disputes, and they are governed by the general rules on treaty conclusion and invalidity laid down in the 1969 Vienna Convention. In principle, this intersection should generate sharp doctrinal tensions whenever an armed conflict has been launched in manifest violation of the Charter: if aggression is unlawful and treaties concluded under the threat or use of force are void, how can a peace treaty produced in such circumstances ever be valid? The empirical picture painted in the earlier sections, however, is

91 Biato, M., 2016, The Ecuador-Peru Peace Process, *Contexto Internacional*, Vol. 38, No. 2, pp. 621–641.

92 Presidential Act of Brasilia, 26/10/1998, Original in Spanish, English text available at: A/53/790 (1999) Report of the Secretary-General on the work of the Organization.

more ambiguous. States almost never invoke Articles 51–52 VCLT to challenge the validity of peace treaties, even when they have clear arguments that the underlying conflict was unlawful. Instead, they overwhelmingly treat peace settlements – especially those brokered or endorsed by international organizations and third states – as legally and politically binding frameworks for moving beyond the unlawful use of force.

One important part of the explanation lies in the way the international community has chosen to reconcile the *lex iniuria non oritur* intuition with the practical necessities of conflict termination. The doctrinal architecture of the VCLT already embodies a compromise: Article 52 categorically invalidates treaties procured by force in violation of the Charter, while Article 75 simultaneously preserves burdensome obligations for the aggressor that flow from lawful collective-security measures adopted under the Charter. Rather than attempting to purge the international legal order of all trace of unlawful use of force, this scheme channels the delegitimization of aggression into a more focused inquiry: are we dealing with a treaty that crystallizes the results of aggression in favor of the aggressor, or with a treaty that, under UN auspices or wider multilateral supervision, seeks to restore or approximate a Charter-compliant situation, even at the cost of accepting some faits accomplis? In practice, as the case studies show, most contemporary peace treaties fall into the latter, more pragmatic category. They do not validate the aggression as such, but they do stabilize a new balance of rights and obligations which, while imperfect, is considered preferable to an open-ended unlawful situation or a return to hostilities.

A second, related factor is the temporal and procedural distance that usually separates the unlawful resort to force from the final peace settlement. Many peace treaties are concluded months or years after active hostilities have ceased, often following ceasefire agreements, prolonged negotiations and extensive third-party involvement. By the time the treaty is signed, the immediate coercive environment of the initial attack has typically given way to a more complex configuration of military stalemate, external pressure and mutual exhaustion. From the perspective of treaty law, this attenuates the link between a specific threat or use of force and the expression of consent to be bound by the peace treaty. The coercion that VCLT Articles 51–52 address is direct and contemporaneous; the political and strategic pressures that shape a negotiated peace in a protracted conflict are more diffuse. Treating such pressure as "coercion" in the sense of the VCLT would not only be doctrinally difficult, it would also risk undermining almost every major peace settlement of the late twentieth and early twenty-first centuries. The absence of serious state practice invoking

Article 52 against peace treaties can thus be interpreted as a tacit recognition that, beyond a certain temporal and procedural threshold, the law must distinguish between coercion that vitiates consent and the structural constraints inherent in any negotiation conducted in the shadow of past violence.

A third strand in the argument concerns the systemic role of the principle of peaceful settlement of disputes. If one accepts, along with the International Court of Justice and the International Law Commission, that the obligation to settle disputes by peaceful means belongs, together with the prohibition of the use of force, among the core principles of the Charter-based legal order, then peace treaties occupy a privileged functional position. They are not simply one option among many; they are the paradigmatic method by which states translate the abstract duty of peaceful settlement into a concrete, legally framed end of hostilities. From this vantage point, declaring a peace treaty void on the ground that it was concluded "under the influence of force" may appear normatively self-defeating, at least where the treaty represents a plausible attempt to restore peace and to prevent renewed violations of Article 2(4). In such circumstances, the imperative to re-establish a peaceful order, and thereby to give effect to a peremptory obligation of peaceful settlement, can weigh more heavily than a rigid application of the rule against treaties procured by force. This does not mean that any outcome is acceptable: it does, however, help to explain why the international community has been willing to tolerate considerable substantive inequality between aggressor and victim in peace settlements, as long as the broader trajectory is one of de-escalation, stabilization and reintegration into the Charter framework.

The pervasive involvement of third states and international organizations in the negotiation and implementation of peace treaties further contributes to their perceived legitimacy and stabilising function. As earlier chapters showed, contemporary peace settlements are rarely pure bilateral bargains between former belligerents. Mediators, witnesses, guarantor states, regional organizations and the United Nations itself are almost invariably present at the table, and their "midwifery" serves more than a symbolic purpose. By embedding peace treaties in wider institutional arrangements (joint commissions, monitoring missions, internationalized courts, donor coordination frameworks), third parties help to rebalance asymmetries between aggressor and victim, introduce external checks on implementation, and signal that the agreement reflects not only the immediate power relations on the ground but also broader normative expectations of the international community. This dense web of third-party roles makes it even more difficult, politically and legally, to characterize

peace treaties simply as bilateral products of coercion; instead, they appear as shared projects of conflict transformation in which a variety of actors invest reputational and material capital.

At the same time, the practice surveyed in the article highlights structural deficits in the current system. In the ideal scenario envisaged by the UN Charter, the Security Council identifies aggression, adopts measures to halt it, and shapes or endorses a peace settlement that both repairs the unlawful situation and protects the victim state from being forced into accepting unjust terms. That model underpins the logic of Article 75 VCLT and offers the clearest doctrinal route for reconciling jus cogens-based invalidity with the need for binding post-conflict arrangements. Yet this ideal is rarely realized. More often, the Security Council is paralyzed by political divisions, fails to determine the existence of aggression, or confines itself to generic calls for a ceasefire and negotiations. In such "default" cases, peace treaties emerge from a patchwork of regional initiatives, ad hoc contact groups and bilateral diplomacy, without a clear Charter-based framework that would distinguish between permissible stabilization and impermissible consolidation of aggression. The absence of a Security Council imprimatur does not strip these treaties of their legal effect under the VCLT, but it does narrow the normative guidance available when assessing whether particular provisions are compatible with the non-recognition of unlawful situations and the peremptory prohibition of force.

The cumulative lesson of this practice is therefore ambivalent. On the one hand, peace treaties remain indispensable tools for operationalizing the principles of peaceful settlement and the prohibition of force, and international law has proved sufficiently flexible to accommodate peace-making in imperfect, politically constrained circumstances. On the other hand, the reliance on political pragmatism and third-party "midwifery" to legitimate peace settlements leaves hard questions under-theorized: at what point do concessions to an aggressor in a peace treaty amount to unlawful recognition of territorial acquisition by force? How far can transitional justice compromises go without colliding with jus cogens obligations concerning serious international crimes? To what extent should the peremptory character of the peaceful-settlement obligation itself constrain states' freedom to challenge or denounce peace treaties ex post? The fact that states have so far avoided formal invalidity claims under Article 52 does not mean that these issues are resolved; it merely shows that, for now, they are managed more through political judgment and institutional practice than through strict application and/or explicit doctrinal clarification of treaty law.

## 8. Conclusion

The analysis carried out here suggests that any future development of the law on peace treaties will have to take seriously the triangular relationship between treaty validity, the prohibition of the use of force, and the principle of peaceful settlement. A purely bilateral conception of consent is no longer adequate in a world where peace agreements are routinely designed and implemented in a multilevel, multiactor environment. At the same time, an over-expansive reading of jus cogens-based invalidity risks depriving states of the very instruments they need to exit from unlawful conflicts. The challenge for doctrine is to articulate criteria that distinguish between peace treaties that legitimately stabilize a post-conflict order, however imperfect, and those rare cases in which the degree of coercion or the substantive entrenchment of aggression is so great that invalidity is the only acceptable legal response. Developing such criteria would not only align the law of treaties more closely with the UN Charter's core principles, it would also provide clearer guidance to mediators, negotiators and international institutions tasked with crafting the peace treaties of the twenty-first century.

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# MIROVNI UGOVORI U 21. VEKU: PUNOVAŽNOST UGOVORA NA RASKRŠĆU NAČELA MIRNOG REŠAVANJA SPOROVA I ZABRANE UPOTREBE SILE

Anikó Szalai

APSTRAKT

Mirovni ugovori ostaju centralni instrumenti za okončanje rata, ali njihova pravna priroda je nedovoljno teorijski proučavana u svetlu zabrane upotrebe sile Povelje UN i obaveze mirnog rešavanja sporova. Ovaj članak prati istorijski razvoj mirovnih ugovora, analizira njihovu promenljivu tematiku i učešće trećih strana, i ispituje kako Bečka konvencija o ugovornom pravu (BKUP) reguliše njihovo zaključivanje i punovažnost. Fokusirajući se na prinudu i *jus cogens*, tvrdi se da članovi 52, 53. i 75. BKUP, čitani zajedno sa režimom Povelje, delegitimišu rezultate agresije, a istovremeno čuvaju prostor za stabilizaciju mirovnih ugovora. Oslanjajući se na praksu Saveta bezbednosti i određene sporazume nakon Hladnog rata, članak pokazuje zašto se države gotovo nikada ne pozivaju na nepunovažnost ugovora za mirovne ugovore i predlaže kriterijume za razlikovanje zakonite stabilizacije od nedopustive konsolidacije agresije.

**Ključne reči:** ugovor, mir, nepunovažnost, rešavanje sporova, upotreba sile, medijacija, garancija.

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