If a process is designed that is not appropriate to the context, then it is defeated before it begins.
Our focus now turns to process – the question of designing best how to reach a settlement. What is offered in this chapter is a range of negotiation techniques and procedures which can be selected, rejected or adapted depending upon what contending parties regard as most helpful in advancing the management of their conflict.

3.1–3.2 Key elements in process design
3.3–3.4 Pre-negotiation: designing the process for talks
3.5–3.6 Basic negotiation techniques and tools to break deadlock
3.7 Role of third parties
3.8 Conclusion

Box 3 Key Elements in Designing a Negotiation Process (p. 66)
Box 4 Major Elements for Pre-Negotiation (p. 69)
Box 5 Negotiating Techniques: Some Basic Principles (p. 98)
Box 6 Breaking Deadlock (p. 103)
Box 7 Forms of Third-Party Intervention (p. 112)
A Menu of Options 1 Developing a Negotiation Process (pp. 114–118)


3.1 Introduction

Conflicts differ so markedly in history and context, issue and character, intensity and outcome, that processes to address them must be responsive to each circumstance. If a process is designed that is not appropriate to the context, then it is defeated before it begins. This assertion comes from a recognition of the uniqueness of each situation, which should save us from universal prescriptions. But the process of comparison can still be invaluable. The fact that an approach works in, say, Eritrea is no guarantee that it would be in any way effective in Palestine or Fiji. But certainly at a more specific level we might well look at the elements of a cease-fire in Chechnya for clues as to how to achieve a cease-fire in the Philippines. For all their differences, there are also common or comparable elements: regional armed insurrection against a central government, claims for self-determination, deep-rooted identity issues intertwined with perceptions of social and economic discrimination, a recent end to authoritarian structures of government, and so on. So while respecting the uniqueness of a particular conflict, we can still learn important lessons from other situations. Even developing an answer to the question, “Why wouldn’t that work here?” engenders an analysis of the situation that promotes definition of what could succeed.

3.2 Key Issues in Process Design

3.2.1 Commonly perceived deadlock

Conflicting parties come to the table only when they perceive it – willingly or grudgingly – to be in their interests. A confluence of factors must be operating to make this so. In particular, negotiation only tends to come about when there is a mutually perceived notion of deadlock. This is often referred to as a “hurting stalemate”. In many cases, only when the conviction grows on both sides that neither will win outright and that to continue with violent means will be costly without achieving victory, does the option of negotiation gain attraction. This does not require that the two sides be evenly matched in their military power and resources. That is rarely the case in internal conflict. All it requires is that the weaker can at least prevent the outright
victory of the stronger – this is the rule rather than the exception in most internal conflicts.

Various internal and external factors produced this kind of stalemate in South Africa. The rapprochement between the US and the Soviet Union, followed by the latter’s eventual break-up, was highly significant. As the East-West dichotomy began to crumble, some of the traditional support bases for both sides were removed. The international imposition of punitive sanctions and “pariah status” was chipping away cumulatively at the economic viability and moral legitimacy of the South Africans State. Internally, the costs of sustaining apartheid and separate development were spiraling. Population shifts to urban centres made implementation and control more problematic than ever, while the development of the various homelands and assorted separate councils and assemblies produced a vast and hopelessly inefficient bureaucracy. Internal and external resistance to the state escalated and gained huge momentum through the 1980s, proving ever more difficult and expensive to repress.

Similarly, after 25 years of continuing violence in Northern Ireland, by the 1990s both the paramilitary forces of the Irish Republican Army (IRA) and the generals of the British Army realized that neither side was capable militarily of securing total victory. The best each could do was to prevent the other from winning. The choice then became one between continuing to fight without hope of victory and at continuing high cost in human and financial terms, or to look at other non-military options.

So together a range of factors acted in both South Africa and Northern Ireland to bring about perceptions on all sides both of the pain of continued stalemate and of the attraction of negotiation. The second does not, of course, follow automatically from the first. In Sudan, in terms of human lives and suffering, environmental degradation, internal and external economic burdens, and so on, the cost of remaining in an ongoing stalemate has been huge; and yet, in the words of one scholar, even though Sudan “is a nation at the brink of total collapse ... leaders themselves have apparently not felt the personal threat of imminent demise”.

3.2.2 Seizing opportunities

Just the existence of stalemate, then, is not enough. It can produce a window of opportunity, a “ripe” moment for solution, but ripe moments must be recognized, seized and used. Negotiations do not simply emerge from the ashes of conflict. A commonly perceived notion of deadlock leaves contending parties with a perspective that they cannot win by war, but not necessarily with incentives to search for peace. So acknowledging stale-
Democracy and Deep-Rooted Conflict: Options for Negotiators

3.2 Key Issues in Process Design

mate is one thing. But other factors must act on the parties to move them towards negotiation. Stalemate is usually experienced as a sterile situation, which, by definition, precludes any opportunities for change or progress. But almost paradoxically, stalemate can be precisely the beginning of opportunity. That depends on the confluence of factors operating that will make negotiation viable. These factors can come from any aspect of the process, internal or external.

In Mozambique, the intervention of the Roman Catholic church, using the organization Sant’Egidio, via pastoral letters, its own contacts, and its active encouragement and persuasion of the actors, led to its success in facilitating talks involving FRELIMO and RENAMO in Rome between 1990 and 1992. In the Angolan context, the Bicesse accords of 1991 grew directly out of a major shift in superpower perspective which led to Soviet pressure on the MPLA, and US (and South African) pressure on UNITA to go to the table. In South Africa in 1990, President de Klerk abruptly announced the release of political prisoners and the unbanning of the ANC and other outlawed parties. Similarly, Anwar Sadat’s famous “flight to Jerusalem” in 1977 stunned the world by breaking the universal Arab taboo on Israeli recognition: he flew to Jerusalem and addressed the Israeli parliament. So much was implicit in the gesture – putting a huge crack in the universal Arab rejection of Israel’s right to exist, putting an equally heavy burden of reciprocation on Israel, and so on – that, like de Klerk’s speech, new possibilities and parameters for movement were developed out of long-standing stalemate.

So, while stalemate often comes about because of the absence of change, negotiation becomes an attractive proposition precisely because of changes in context – a new government or leader, a shift in support for one side or the other, a unilateral “circuit-breaking” initiative, and so on. Such a turning point in perceptions is required to transform a stalemate into a search for alternatives. There has to be a perception, originally conceived or induced, of the distinct possibility of a negotiated solution.

It is therefore important that an ongoing conflict be constantly evaluated and assessed to ensure “windows of opportunity” are not lost. Generally, such opportunities are rare and should be seized. The parties themselves, because of their proximity to the conflict, may not see such openings, and it may therefore require a third party to take the initiative.

3.2.3 The importance of trust

Negotiations tend to focus on issues, but their success depends on people. So good process also seeks to enhance the re-
relationship between the conflicting parties. This is not a matter of asking enemies to become friends. But there must be a functional working relationship between the parties so that, minimally, they can negotiate with a degree of good faith. To reach that minimal working level of respect is often an incremental process between old enemies. During violent struggle, demonization of the enemy is a standard tactic: visions of the other side as “psychopaths”, “terrorists” and “evil empires” help to legitimize the use of violence against them. But such visions must be dismantled in order to hold dialogue. Perceptions must be changed. Small concessions, often with low intrinsic value in themselves, can serve as tokens to demonstrate both one’s commitment to the process and one’s inclination and ability to deliver on one’s promises. When that is done reciprocally, both sides can be seen to be mutually as good as their word. The role of accurate information and the manner of its presentation to the parties can greatly assist the breaking down of incorrect perceptions.

In other words, good process moves the parties beyond an exclusive focus on the competition of bargaining to include a degree of co-operation: without co-operation, there will be no satisfactory outcome. Negotiation, in itself, implies movement and should be a problem-solving process. Participants must, to some degree, co-operate to find a solution to their problem.

The classic example of such a working relationship was that which grew between the chief South African negotiators, Roelf Meyer for the National Party and Cyril Ramaphosa for the ANC. Such was the substance of their relationship that it arguably salvaged the peace process in its darkest days. In the midst of negotiations, a serious outbreak of violence at Boipatong in June 1992 led the ANC to break off all contact with the government. For almost 18 months thereafter, the ‘Roelf and Cyril show’ remained the only open channel of communication between the sides. Meyer himself reflects on this point:

"Negotiators need to develop a common understanding of each other’s positions. In the case of Cyril and myself, that common understanding led to friendship. But what is very important in this process of coming to understand each other is that you have to put yourself in the shoes of the person on the other side ... The personal chemistry between negotiators is ... a very important ingredient of successful negotiations."
Democracy and Deep-Rooted Conflict: Options for Negotiators

In deep-rooted conflict, parties who come to the negotiating table carry with them an abiding experience of conflict, struggle and war. The exercise of force has been their dominant, perhaps only, mode of engagement. The key challenge in process design is to invert that experience, to get the contenders focused on fears, concerns and interests and the importance of reconciling them, on issues and the importance of resolving them. An effective process is one that will prove itself resilient and durable in the face of delays, deadlocks, walkouts, continuing violence, raised hopes, false expectations and angry words.

3.2.4 Flexibility

Negotiation is a creative process, a precarious journey of discovery. This means that the final outcome cannot always be foreseen at the beginning of the process. Clearly, the parties will have their own views on what they want to achieve, their own “models” of desirable settlements, but only those in a privileged or extremely powerful position will be able to define their objectives and get one hundred per cent of what they want. This is a daunting prospect for a negotiator or process designer. Consequently, while the parameters for the process need careful design and agreement (and will be examined in this chapter) the process needs to be flexible enough to cope with the unforeseen. A naturally protective mind-set at the start of negotiations means that negotiators often look to establish preconditions for dialogue – but too many preconditions make the process brittle and can inhibit or even throttle it at birth. Preconditions have a habit of turning around to bite their promoters. In some cases, negotiators have had to go back to their constituencies and attempt to persuade them that the conditions that they were so firm and voluble on were now not so important after all. If the negotiations really move into new territory, then preconditions, which made sense at the start, may become irrelevant or worse.

During the talks process, goals and targets can change, and the basic parameters and ground-rules of the process may need to be adapted. Over several years, for example, Sinhalese-Tamil dialogue in Sri Lanka shifted, according to what was possible, acceptable or appropriate, from bilateral negotiations through third-party mediation and an all-party conference, to informal and private engagements and subsequently to formal talks brokered by India. Needs will change, and so must process. Flexibility in process design does not mean lack of resilience or even a
lack of guiding principles. But it does require that parties con-
sciously avoid painting themselves into corners, or leaving them-
selves no alternative to breaking off dialogue. By taking a wider
view of the whole peace process, what looks like the end of talks
can often prove to be a catalyst that reinforces efforts to get ne-
gotiations back on track. Then we may be able to recognize what
has been called a step-break-gesture-step pattern. Conflicting
parties enter negotiations and take a step towards progress; then
the negotiations are broken off over some disagreement; later,
outside the talks process, some gesture is made that facilitates a
resumption of talks and a further step of progress at the table,
before another break occurs, and so on. While not easy to ach-
ieve, the greater the flexibility in the design, the greater the
chances of progress.

Box 3  Key Elements in Designing a Negotiation Process

1. Commonly Perceived Deadlock. Negotiation tends to
come about when there is a mutually perceived notion
of deadlock, often referred to as a “hurting stalemate”.

2. Seizing “Windows of Opportunity”. But the existence of
stalemate is not enough. It can produce a “ripe”
moment for solution, but ripe moments must be
recognized, seized and used. An ongoing conflict must
be constantly evaluated and assessed to ensure
“windows of opportunity” are not lost.

3. Importance of Trust. Enemies do not need to become
friends. But negotiation does demand a minimum of
co-operative effort.

4. Flexibility. The process of negotiation needs to remain
flexible. Too many preconditions can become obstacles
to dialogue.

3.3 Pre-Negotiation

Pre-negotiation is, in the Irish phrase, “talks about talks”. It is
concerned with setting up the framework within which issues
can subsequently be discussed, not with the issues themselves. In
this handbook’s terms, pre-negotiation does not address the
design of an outcome – that will wait until the forthcoming talks
actually begin – but focuses on process. It is, in effect, negotiation


3.3 Pre-Negotiation

Over process. Its subject matter will concern procedures, structures, roles, and agendas. One aim of pre-negotiation is to reach a joint definition of the problems and subject matter that will have to be addressed – but it does not tackle those issues beyond defining them for future reference. It can be carried out by very small delegations (or even individual representatives) either talking face-to-face or through a third party.

The importance of pre-negotiation cannot be overstated. Bad process will almost definitely lead to failure: what may seem dry and technical procedural questions need to be resolved prior to talks, otherwise they can become hugely significant or symbolic issues which may abruptly derail the process. In the handbook’s terms, good process facilitates good outcome; in practical terms, good procedural pre-negotiation facilitates good substantive negotiation. Additionally, an effective pre-negotiation phase helps to develop the vital working relationship discussed earlier. Especially if it is held out of the glare of publicity, quiet pre-negotiation offers an all-important opportunity to develop the habit of dialogue between opponents while no substantive issue is at stake.

Pre-negotiation is, of course, less neatly distinct in the real world than in this analytic presentation. Pre-negotiation can shade into negotiation if it goes extremely well, or substantive negotiation may need to recede back to procedural pre-negotiation temporarily. Like the entire dialogue process, it can arise through a voluntary desire among conflicting parties, or it can be imposed from outside by a powerful third party who enters the conflict and sets the terms for engagement.

Pre-negotiation can take place even if there is no intention to move on to full negotiations. Perhaps the sides are still too far apart for proper negotiation. Nonetheless initial contacts, aimed at simply increasing mutual understanding of the issues that divide through joint definition of the problem, can establish progress that may make negotiation more feasible at some future stage, or even bring the possibility of direct talks closer to reality. The Norwegian back-channel negotiations to broker the 1993 Middle East peace accord is an example. Initiated by a Norwegian diplomat, this involved highly confidential meetings in the diplomat’s private house in Norway between a high-ranking PLO member and an Israeli adviser. The two protagonists acted in completely unofficial capacities. Their conversations focused
on exploring mutual definitions of their problem, and then examining the obstacles to settlement and the possibilities for overcoming such obstacles. Such matters were in reality the ingredients of the pre-negotiation process of defining the agenda. The talks were exploratory, unofficial, deniable, without formal sanction, and included no expectation or commitment that they should lead further. However, when this pre-negotiation took on its own momentum (not least because of the developing trust between the two interlocutors), it made sense to feed it back into their respective formal structures: the PLO and the Israeli government. In the end, the dialogue led to full-blown negotiation within the official peace process. The point is that the small, private, exploratory pre-negotiation initiative had no conscious goal of a peace agreement at the time.

In a more formal example of pre-negotiation, the agenda for talks in South Africa was effectively outlined in preparatory form in three important statements that, to a large degree, outlined the agenda and the process for discussion. As one participant noted:

A common perception of deadlock seems to be critical, and the first phase of negotiation [i.e., pre-negotiation] seems to be taken up in exploring this deadlock and developing a common mental map. In the South African case the Groote Schuur Minute, the Pretoria Minute and the Record of Understanding were key moments when the major parties to the conflict spelt out their common perception of deadlock, and how to proceed away from it.

3.3.1 The pre-negotiation agenda

Developing a “common mental map”, and then devising the means to travel is the business of pre-negotiation. Putting the design of the negotiations together requires careful consideration and planning. The resulting process should be accepted by all parties as legitimate.
We will examine each of these issues in turn, presenting a menu of options for developing a negotiation system. At all times bearing in mind the influence of context and its potential to inspire completely novel options, parties should be able to design a process which will prove both resilient and durable. They must also, of course, be aware of the possibility that there exists within their own culture indigenous dispute resolution mechanisms: these can be adopted or adapted to further strengthen the whole design.

3.4 Developing a Specific Negotiation Process

3.4.1 Participants

In Nelson Mandela’s famous advice to Northern Irish politicians, “You don’t make peace by talking to your friends; you have to make peace with your enemies”. While it is tempting to exclude more extreme parties from the process, for fear of their disrupting or obstructing talks, the risk then increases that they will act as spoilers in undermining the agreement reached. Moderates will negotiate more easily, but what is implicit in Man-
dela’s words is the need to deal directly with those who are causing trouble, rather than to exclude and subsequently try to marginalize them. This was one reason for the failure of Northern Irish negotiations in 1991 and 1992. While the moderates tried to negotiate agreement around the table, armed extremists on both sides were excluded. The surrounding atmosphere, heavy with the threat of paramilitary violence, undermined the significance and efficacy of the talks.

Reviewing negotiation processes between various permutations of the parties to the Lebanese conflict since the mid-1970s, two leading scholars make the point convincingly:

In terms of structure, the most important deal in the Lebanese conflict revolved around who was included in the negotiations and who was excluded or chose not to join … [N]o solution to the conflict is likely to be successful if all the major parties to the conflict are not involved in the negotiations. Nor are substitutes likely to succeed … because they do not have the real power to implement the agreements.

The need to be inclusive refers not only to differing parties, but also to different opinion strands within parties. Especially for outsiders, it is tempting to see the sides to a conflict as homogeneous, monolithic blocs. This is rarely the case. There are usually a variety of constituencies within any one disputing party – political factions, old and young generations, gender groups, radicals, fundamentalists, peace-activists, business interests, military interests, and so on. Spoilers can come from within one’s own broader community – whether they are more extreme or more moderate members than one’s own faction – just as easily as from some totally excluded conflicting party.

Furthermore, those who carry out the negotiations must possess – and be seen by the opposition to have – adequate power and authority mandated to them from their own side. They need to be able to speak with authority, to offer deals with the capacity to deliver. To be, in short, the legitimate representatives to the talks. Often the most obviously powerful individuals for this role would seem to be the party/faction leaders themselves.
However, their own public personas and positions may in fact constrain their capacity to talk flexibly: their role outside the talks requires an integrity of position that cannot appear negotiable for fear of appearing “weak”. The judicious selection of negotiators who can bring to the table their leaders’ authority while retaining their own capacity for flexibility is a vital ingredient. It simultaneously makes life at the negotiating table more difficult, but increases the chances of producing a successful outcome, to include all those who can influence the process. But realistically, the minimum requirement is to include the mainstreams from all sides. Subsequently, those included either can strive to bring more of their excluded or unwilling strands into the process as talks gather momentum, or ultimately they can persuade, cajole or coerce their respective extremes into acceptance of the final outcome.

One element of inclusion is to forge cross-party coalitions among those in favour of the talks. Within any one camp in a conflict, there are likely to be differing opinions about the value of negotiation. To make the process work, it is important to build a coalition with all who support the process, however much they may still disagree about outcome. This applies not only within one’s own party, and among one’s allies, but – just as importantly – between opposing sides. Building momentum in favour of negotiation across the divide increases the possibility of effective outcomes, and feeds into the process of building trust and a good working relationship between opponents.

All those parties with a genuine stake in the conflict have a claim to be included, as have those whose co-operation and endorsement is needed to ensure that the outcome of talks becomes a reality. If they are not drawn in, they remain outside the camp, temporarily sidelined but ready (and motivated) to undermine the outcome. The list of participants may thus be extensive: political parties, faction leaders, external actors, and so on. Bigger numbers usually mean a slower process, but there are methods outlined in subsequent sections which will offset the tendency of size to work against efficiency.

Participation is a core issue, and remains a difficult one to resolve. Not only are there usually multiple parties and opinions within any deep-rooted conflict, but additionally both the nature of those parties and their permutations alter over time. An extreme example of an inclusive definition of participants is the number of participants in the Basque conflict in Spain. As many
as two dozen identifiable groups had a stake in the negotiations, which could be grouped into four categories: ETA itself, with all of its factions, members in prison or in exile, and their families; other Basque groups, including the Basque autonomous regional government and the political parties and media associated with it; the Spanish government and its associated political parties and media; and international groups, including governments of other nations (neighbouring France, which also has a Basque population, and Algeria) and organizations such as Amnesty International and Interpol.

Such a bewildering “universe of parties” is typical of the complexity of long-standing and deep-rooted conflicts. This may indicate a need to subgroup the participants, for example into external and internal parties, or to subgroup the issues around which negotiations can be structured. Techniques to do this are addressed in later sections. To take the Ethiopian example, the deep divisions between the groupings fighting for self-determination produced a situation in 1989 where two separate and distinct sets of dialogue processes were opened with the government: one with the EPLF and one with the TPLF. To divide the talks groups in this way can be effective, as long as its overall effect is not divisive. But the main point remains that exclusion, abstention or withdrawal of parties needs to be acknowledged, addressed and provided for during the pre-negotiation phase of process design.

A related and pressing question refers to the proportions in which parties should be represented. Does every party get an equal number of delegates? Or do bigger parties get more? Is there a good reason to assign spokesperson roles to some parties or some negotiators, and observer status to others? Is there a basic accreditation process which determines entry to talks?

**AMONG THE OPTIONS FOR RESOLVING THE QUESTION OF PARTICIPATION ARE:**

- to open channels of communication, however small or informal, in an attempt to start the contact and communication;
- to take the time to include all parties with a serious claim to be involved;
- to build a sufficient mainstream-based pro-negotiation coalition to open talks with some substantial hope of
achieving an outcome, and hope to co-opt abstainers, or persuade excluded parties to adapt their behaviour to fit the rules of entry;

– to open negotiations with a less than comprehensive range of parties, with the aim of achieving a settlement that excluded parties can be persuaded to live with;

– to limit participation only to those parties who enjoy substantial support, whether that is defined electorally or otherwise;

– to specify equal numbers of delegates per party;

– to allow variable delegation sizes based on electoral strength or status (where elections have been held);

– to place an electoral or other threshold to restrict or enable participation;

– to allow for different degrees of status in the process (e.g., participant and observer) for different parties;

– to distinguish any groupings within the negotiation process who may be opposed on some, possibly major, issues but share positions on others.

3.4.2 Preconditions and barriers to negotiations

Preconditions are core areas of concern that must be dealt with before initiating negotiation on the substantive issues. The early settling of certain preconditions – particularly regarding the use of violence – are frequently a necessary part of bringing negotiation into being. For many “rebel” groups in conflict with a government, the precondition of a cease-fire, or of disarming, is deeply threatening. And yet it can be a vital requirement for the government, who may see it primarily as a question of legitimizing their opposition. But for the rebels, participation in their rebellion has become a defining element of their identity. To give that up threatens their sense of self, their group coherence, the core of their existence, and the source of their power. Nonetheless, in various contexts, solutions to these core concerns have been devised.

In South Africa, the ANC’s agreement to suspend their armed struggle – notably and consciously distinct from abandoning it – facilitated a move towards dialogue. A government insistence on permanent disarming would have made progress impossible at
3.4 Developing a Specific Negotiation Process

that stage. In Angola, El Salvador and elsewhere the UN has effectively acted as a third-party recipient of decommissioned weaponry. In Northern Ireland, the question of paramilitary disarmament stalled negotiations for two years. Eventually, an independent commission devised a set of six principles of non-violence that every party would have to endorse to gain access to the negotiation process. These included a commitment to exclusively peaceful means of resolving political issues, and – significantly – a renunciation of force either to influence the negotiations or to alter their outcome. With all parties signed up to the principles, the obstacle of the disarmament precondition was bypassed, and its significance reduced to more manageable proportions. Inclusive talks began.

A similar, yet slightly different, problem can produce barriers to negotiation. This is where a party refuses to enter negotiations for one of two reasons: a refusal to talk to a particular person or group, or a refusal to accept a particular issue as negotiable. The first problem, rejection of a person or group, is usually based upon their actions in the history of the conflict. Someone now in a negotiating team is seen as responsible for inflicting particular wounds, physical or otherwise, on their opponents. The opponents feel they will not, or cannot be seen to, deal with such a person. They may be reacting to a past leader of a violent guerrilla campaign, or perhaps to a government minister who was responsible for particularly harsh oppressive measures. For whatever reason, something in the person’s past actions makes him or her unacceptable. It may be that persuasion, or pronouncements by the person concerned, will be enough to remove the objection. Perhaps some actions by them in the present can go far enough to soften the perception of them. But perhaps not.

Mandela’s words come to mind again in this instance: that one must make peace with one’s enemies. By definition, in this kind of context, enemies tend to have blood on their hands. One approach to this barrier is to set the personalities aside long enough to discuss and agree the general terms for admission to talks. Britain’s refusal to negotiate with the IRA in formal session was based in large part on the IRA’s history of killing British soldiers and the British tradition of, in the Thatcherite mantra, “not talking to terrorists” (or at least not being seen to be doing so). As noted, this proved an insuperable obstacle to progress until the issue was broadened to the more general level of the terms of admission to which all parties, including the IRA’s political party Sinn Fein, could agree.
There is a need to be creative when it is clear that the presence of a party is critical to the success of the talks and there is a refusal on the part of one party to even talk to the other. Thus the refusal by the Indonesia’s Suharto Government to enter into talks with the East Timorese over the issue of independence has led to a situation where the talks are now between Portugal and the Indonesian Government. Clearly the exclusion of the East Timorese is a major hurdle to the conducting of effective negotiations and needs to be addressed before substantive progress is likely to be made.

The problem can be just as difficult when one side identifies a particular issue as non-negotiable. They will talk with the opposition about a variety of other subjects, but this one in particular is too precious to them and they cannot compromise. Governments tend to feel this way about territorial integrity: rebels demanding secession are, to the government, asking the impossible. Conversely, anything that can be interpreted as surrender – including the handing in of weapons prior to a settlement – may be an impossibility to the rebels. No facile technique can be prescribed for progress. Either compensation can be offered, so that both sides resist or yield equally on the issue, or a broader debate on the underlying issues can bring wider perspective and redefinition of the terms for entry. But at bottom, the readiness or otherwise to enter talks with the enemy comes down to the parties’ real readiness to make peace or their depth of frustration in continuing to make war. Indeed, such barriers may be an expression that parties are not ready to enter a full talks phase.

Rather than try to achieve a settlement while such subjective and perceptual antagonisms remain strong, time might be best spent by a third party, through unofficial communication channels, facilitating intra-party discussion on the potential benefits of talks and the distance yet to be travelled before those benefits materialize. A parallel pre-negotiation process focused only on procedural issues may help to build the foundations of a working relationship and place distance between the violence of the past and the potential of the present.

On the other hand, there may be issues which are important to the parties and which can be agreed in advance as guiding principles that may serve as the basis for further possible discussions. In the conflict in the Sudan, which is still continuing, the contending parties nonetheless reached agreement in September 1994 on a “Declaration of Principles”, including matters
such as the maintenance of the unity of the Sudanese State and rights relating to self-determination.

**The options regarding preconditions comprise:**

- to drop preconditions to negotiations, and accept all comers and issues;
- to use the pre-negotiation process to work through preconditions and questions of legitimacy and recognition of spokespersons;
- to open out preconditions initially aimed at one party into a principled statement to which all parties can and must agree;
- to address preconditions and the commitment to the negotiation process in an unofficial discussion process prior to formal negotiation.

### 3.4.3 Levelling the playing-field

All too often, conflicting parties approach the end-game of conflict – the hurting stalemate – in an *asymmetrical* relationship. Asymmetry refers to their relative power positions: one is disadvantaged where the other holds formal power. They are not evenly matched, not symmetrical. William Zartman offers the classic scenario of asymmetrical power, where rebels contest with government: “The government has ... sovereignty, allies, arms, and access to resources. The insurgents have to fight for all of these. Moreover, the government determines ... the rules of the game for the rebellion’s struggle ... It is both participant and umpire”.

So while a government or central authority has ready access to power, controlling the nation’s financial and military resources, their opponents’ access to resources is usually a more difficult matter, often reliant on covert sources. But at the same time, the asymmetry is modified by several factors. First, the rebels’ intense commitment to their cause as the single defining mission of their existence creates an obvious challenge to the other’s straightforward application of its power. As any government knows well, a very small force, given adequate arms and training, can create a destabilizing effect out of all proportion to its size. That potential, of the small to thwart the powerful, constrains in very practical terms the government’s ability to exer-
cise its considerable power. Second, most governments have a multifaceted agenda whose scope reaches well beyond just containing or ending the rebellion; with their responsibility for all the other business of governing, their resources are spread broadly over a wider range of interests. Third, external factors can work indirectly to mitigate the differences in the power relations. An international perception of the justness of the rebel cause can constrain the government’s wielding of its power. Economic and other sanctions exercised against the South African and Rhodesian (Zimbabwean) regimes are clear examples of this. Fourth, weaker parties themselves often address the question by finding powerful allies, sometimes internal but more frequently external, to the conflict. The Liberation Tigers of Tamil Eelam (LTTE) drew at one stage of their struggle active support from powerful elements in India, including elements within the Indian Government itself. Similarly, in the cases of UNITA in Angola and of RENAMO in Mozambique, their continued ability to fight depended for some considerable time on the support of the South African regime. In a reverse example, in 1991 the PLO suffered a considerable setback and lost considerable resources from traditionally supportive Arab states when it declared itself in favour of Iraq during the Gulf War.

How do we make the playing-field level? How do we ensure that all parties regard the process as legitimate? The main concentration here is not in the power balance in the great scheme of things, but in the situation at the negotiating table. One leveling effect comes from the parties’ acceptance of each other’s right to be at the table. Simply agreeing to talk confers recognition and legitimacy on spokespersons. This mutual acceptance is an admission of some kind of equality. And even if that equality exists only while the parties are in the negotiation situation (and it may often be impossible for a powerful party to acknowledge such legitimacy anywhere else) that may be enough to facilitate talks.

However, simply within the talks context, there will often still remain a resource asymmetry. Good process design entails ensuring that resources on all sides are distributed equitably. That will mean allowing time for preparation, education and familiarization with the process of negotiation. A government with its full-scale administrative capacity, advisors and resources, is obviously at a huge negotiating advantage over a small insurrectionist movement with a handful of lieutenants more familiar with military tactics than political discourse. Suddenly, they must act as a
3.4 Developing a Specific Negotiation Process

fully fledged political party, when in fact they have had little opportunity to develop such skills.

And so time may be needed for preparation before talks. Political and technical education may be vital in order to reduce the relative disadvantage. This is not a patronizing expression of sympathy for the underdog; rather it is in everyone’s interests. If one side in the negotiation process is at a serious disadvantage in terms of skill and experience, the likelihood of either side coming away from the table satisfied is dramatically decreased. In any case, the need for such assistance and familiarization in political and negotiating processes – in particular, within the social context of the conflict – is by no means restricted to the relatively small or the weak.

Levelling the playing-field is about establishing equity in the negotiating process between all parties. It promotes equitable participation at the negotiation table, so that no party has a monopoly or a preponderance of legitimacy or authority. The procedural rules, agreed in advance, must deal with this.

IN ORDER TO LEVEL THE PLAYING-FIELD AND PERMIT EQUITABLE NEGOTIATIONS, THE OPTIONS INCLUDE:

- to accept, at least within the negotiation context, the right of all sides to be present;
- to agree on procedures permitting the involvement of previously excluded or restricted persons;
- to schedule time and resources to permit all parties to come to the table prepared;
- to make contact with, and learn from, counterparts from other contexts;
- to look to an external powerful mediator or chairperson both to bestow at least temporary legitimacy on all parties equally for the duration of talks, and to underwrite the equality of all parties at the table.

3.4.4 Resourcing the negotiations

Negotiations must be adequately resourced to ensure effective participation and efficient conduct of the proceedings. That means not only such mundane but important provisions as secretarial backup, financial support, communication and informa-
tion-gathering channels, residential facilities, and so on, but providing these resources equally to all parties. The larger the scale of the negotiations – because of a wide variety of parties and sizeable delegations of each – the greater the need for such practical and material resources on an equal footing. Prolonged negotiations will not come cheap, and it is almost assured that some parties will find it much easier to meet the cost than others. An external funder – an interested government or international agency, or a relevant NGO or foundation – may be in a position to underwrite the costs.

Experience overwhelmingly teaches that the negotiation process tends to be neither quick nor economical. Provision must be made for considerable time spent away from the formal sessions at the table. Many parties will have other responsibilities (running a country, dealing with constituents, maintaining press relations, and so on) which do not cease to intrude just because of the talks.

THE OPTIONS FOR RESOURCING COMPRISE:

- negotiations which are self-funded by each side;
- negotiations in which one party offers to resource most or all of the negotiations;
- negotiations in which contributions from other domestic actors are sought;
- negotiations funded by international bodies.

3.4.5 The form of negotiations

The form the negotiations take will be determined by the number of participants and the range of issues to be addressed. A brief survey of negotiations over the last quarter-century indicates a wide range of options, from internal and private discussions, through indirect (i.e., not face-to-face) talks, proximity talks (on the same site, but with bilateral communication mediated by a third party), round table discussions, all-party conferences, conventions and summits, to full-fledged direct and official negotiations, whether assisted by third parties or not.

The context will indicate some possibilities more than others. As ever, the best formula may be a mixture of several options at different stages.

Large-scale conferences can be immensely useful in signalling the opening of a negotiation process, as they can be appropriate
3.4 Developing a Specific Negotiation Process

for the presentation of a final settlement. They do not in general facilitate substantive discussions and deal making, because of their size and formality. (However, see the section on National Conferences in the following chapter for some counter-examples).

**Summits** of key spokespersons – high-profile short-term events with small numbers of delegates – can be useful for talking through key issues. The high rank of those present can guarantee their immediate official endorsement of any agreement. The public nature, however, raises the stakes considerably by putting extreme pressure on the participants for a result by the end of proceedings.

**Round table discussions** including all parties are a key element of any negotiation process. But the breadth of attendance and the formality of proceedings can encourage a stiff, rhetoric-based atmosphere not particularly conducive to real deal-making. Plenaries, however, can be the ideal place in which to formally endorse conclusions and agreements reached on agenda items.

**Subgroup or subcommittee discussions** – where each party is represented but in much smaller numbers than in plenary – facilitate substantive negotiation over specific agenda items, while also allowing a much faster process of information exchange and decision-making. They can also be the place for more plain speaking than formal meetings. But their smallness of scale and narrowness of agenda means they need to be backed up with endorsement from the fuller plenaries.

**Shuttle mediation** – meetings between the mediator and one party at a time – is a very useful way of indirectly channelling information through the third party to the other conflicting parties. It also provides an opportunity to make clear one’s own point of view without argument from opponents, in the knowledge that the clear expression of that view will reach them via the chair or mediator. If there is a problem bringing the parties into a face-to-face situation, either for the first time or because of some impasse reached in direct talks, then shuttling can be a very useful exercise in clarifying positions and maintaining contact. There is no strict rule here and the mediator may decide if it is necessary to put the parties together at any stage of the proceedings in order to clarify issues or to debate a point. **Proximity talks** are a similar, if not identical, version of this procedure: parties are located close by, in different rooms of the same building or perhaps in adjacent buildings. A chair shuttles between them one at a time, or calls them in separately for talks.
Bilateral discussions – i.e., face-to-face talks between two parties directly – can be official or unofficial. When they are unofficial, co-ordinated through confidential third parties, through unofficial communication channels, or in secret face-to-face encounters, they may have great value in clarifying perceptions of one side by another, and in defining the priorities of each and the distance between them. Once that has been achieved, though, unofficial talks lack the official imprimatur necessary to produce any formal or lasting agreement. But they can be a vital requirement in paving the way toward that goal.

Disaggregation – i.e., a mixture of plenaries and subgroups – involves dividing the workload between subgroups whose task is to prepare specific proposals on particular parts of the agenda, for consideration in plenary sessions. It is still important that all parties should be involved at all levels of the negotiation process. Every effort should be made to resolve differences at the disaggregated level because resolution becomes more difficult in larger and more formal forums. But the plenary sessions still carry more formality and official sanction, and should remain the ultimate authority for approving subgroup proposals. The subcommittees can work on a much smaller scale to deal with a specific issue, and report back to the fuller table. This not only saves time and avoids rhetoric, but additionally functions to chip off workable pieces of what can seem an overwhelmingly complex and daunting agenda.

The Northern Ireland talks process of 1997–1998 is an example of disaggregating agenda items according to which parties they pertain most closely to. The agenda was separated (during previous pre-negotiation efforts) into three strands. Strand One, concerning power-sharing structures within Northern Ireland, involved the Northern Irish political parties and the British Government; Strand Two, concerning the relationship between the two parts of Ireland, also brought in the Irish Republic’s Government; while Strand Three, focusing on a new British-Irish treaty, involved only the Irish and British Governments, with other parties included only as observers. The three strands were designed to run simultaneously, each with a different independent chair, and with regular reporting to full plenary sessions for appraisal.

In South Africa, a comprehensive disaggregating process was initiated in the Convention for a Democratic South Africa (CODESA), with three main elements. The negotiating forum formed the overall plenary authority in the process. Then five
working groups were given responsibility for specific elements of the agenda, reporting ultimately to the plenary forum. At a third level, technical committees, unlike the other elements, were explicitly not negotiating forums. They comprised not party negotiators, but rather non-party experts on the topic at hand, who were requested to prepare proposals for consideration by the plenary forum. Interestingly, while ultimate authority remained with the forum, the other levels exercised great influence on the process, with a “timeframes working group” virtually imposing deadlines on the process, and a “constitutional technical committee” completing the bulk of the all-important drafting of the new constitution.

Where disparate views emerge in subgroups, they may be reflected in alternative proposals that can be debated and decided upon in plenary session. Another strategy, although a potentially divisive one unless circumstances particularly encourage it, is to produce both majority and minority proposals or reports, which represent both the greater opinion grouping and the dissenting voice.

**A WIDE VARIETY OF OPTIONS FOR THE FORM THAT NEGOTIATIONS CAN TAKE INCLUDE:**

- Large-scale conferences;
- Summits of key spokespersons;
- Full round table sessions;
- Shuttle mediation;
- Bilateral discussions;
- A mixed formula of plenaries and subgroups;
- Acknowledgement of dissenting coalitions by means of minority reports;
- Defining different roles and capacities for negotiators and observers.

**3.4.6 Venue and location**

While the question of where to hold talks seems a straightforward consideration, it can become a highly divisive issue. A venue can carry deep symbolism. If talks are held on the “home territory” of one side, the other side may perceive an unfair bias against them. As with so many issues in the delicate dance of negotiation, even if in reality such a venue offers little or no advan-
tage to the “home team”, the perception of bias can be enough to obstruct progress.

A neutral venue, of course, circumvents this problem. But care needs to be taken in defining such neutrality. If talks are held in a third country, quite outside the conflict territory, is that third country perceived as being more friendly to one side than another? If so, neutrality disappears again. Even if the neutrality is accepted all round, is access to the host country evenly distributed? In a situation where the conflicting parties are a government and an insurgent movement, how free are the insurgents to travel across borders, in comparison to government personnel? While a government will usually have access to all the resources necessary – air transport, travel documents, finance, and so on – insurgents may, by definition, be denied passports and have limited resources for international travel. This was the position of West Bank/Gaza Palestinians for many years; since they were not permitted Israeli passports, unless they themselves possessed other nationalities which provided them with passports, it was difficult for them to travel to or from outside countries.

The arrangements at the venue itself need some consideration. The general principle holds that all manner of resources – from secretarial help to communication access, to private space, and so on – need to be seen to be provided equally to all. And thought needs to go into the situation beyond the formal facilities. Is there room for the equivalent of what was known at the 1978 Camp David talks between Israel, Egypt and the USA as a “walk in the woods”? This was the term coined for quiet, confidential and unofficial discussions between individuals away from the negotiating room. Former Finnish President Kekkonen was famous for holding sensitive foreign policy discussions with Soviet leaders in the relaxed and private environment of his estate’s sauna. Such unofficial exchanges do much to lubricate the wheels of the formal negotiation process. This is what former Norwegian diplomat Jan Egeland said of the talks in Oslo:

“One of the advantages of the Oslo channel over the traditional conference diplomacy was the informal and undisturbed venue … an atmosphere of mutual trust and affinity was allowed to develop between people who spent hundreds of hours working, quarrelling and eating together in front of Norwegian fireplaces and surrounded only by peaceful countryside.”
In general, then, both location and venue itself must be appropriate in terms of:

- **size** and **suitability**: from adequate space for plenaries and for formal as well as informal small-group work to such simple details as catering;
- **security**: of personnel as well as regarding confidentiality of discussions and papers;
- equal **accessibility**: to the venue as well as to means of travel to and from the location.

Some examples of differing venue formulas include the 1978 talks at Camp David, the isolated and well-protected presidential retreat in the US, where Israeli and Egyptian delegations could be housed in separate buildings within the compound, meeting in President Carter’s building; the 1991 London conference on the Ethiopian conflict, hosted by Britain but mediated by the US; the neutral location of Geneva for a 1983 conference on Lebanon mediated by Saudi Arabia; the 1991 Madrid conference which launched the Arab-Israeli peace process; Northern Ireland negotiations in 1992 which moved between locations in Belfast, Dublin and London to satisfy competing aspirations over the symbolism of location; and the 1990 church-hosted talks in Rome on the Mozambique conflict.

### Options for Venue Considerations Comprise:

- identifying a neutral venue, of no particular symbolism or support to any one party;
- agreeing on a domestic venue acceptable to all parties;
- assuring equal accessibility to the venue for all parties;
- the supplementing of official or formal discussion forums by unofficial, off-the-record and possibly deniable channels of communication outside and around the formal table.

### 3.4.7 Communication and Information Exchange

Transparency and confidentiality produce a difficult tension in the negotiating process. But whether proceedings are open or closed, in whole or in part, will depend upon how the parties
3.4 Developing a Specific Negotiation Process

choose to reconcile the interests of keeping the public informed with that of creating an environment where they can explore options and proposals in a secure and uninhibited way. Public support may be a necessary spur to the momentum of the talks process, or an obstacle that reduces the freedom of parties to engage in serious negotiation. Transparency helps reduce outside suspicion aroused by the confidentiality of the process, and it can be a vital preparation to “selling” the resulting outcome to the population at large.

Where the media is excluded, and the talks held in complete confidentiality, participants are obviously more free to speak openly, and more able to explore positions and outcomes without committing themselves. As long as the end result of the negotiations is agreed by all, confidentiality during the process permits a party to accept a loss on today’s agenda item in order to gain on tomorrow’s, without any accusations from outside of weakness in concession. One’s constituency outside the talks cannot constrain one’s freedom of operation.

This was a major advantage in pre-negotiations during the “Oslo channel” talks between Israel and the PLO. But that final result may be more of a surprise to constituents when presented as a fait accompli, which may breed resentment. Caught up in the momentum of positive but confidential talks, a party can find they have a “re-entry problem” when they leave the heat of negotiations in order to explain an agreement, which may contain compromises, to their larger constituency. This aspect, which we shall call “constituency lag”, can hold implications for the structure of the talks: it may be necessary to take frequent breaks to enable consultations with constituents.

On the other hand, the media can be actively used in order to make official one’s bargaining position at any given point, and also to help keep one’s constituency informed and abreast of progress. Regular media reports also serve to reduce suspicion among the public of “deals behind closed doors”. In particular, if there are excluded fringe elements outside the talks, the appearance of secret negotiations might well fuel their antagonism; greater transparency, by keeping the public informed, can be a strong defence against such antagonism and help to defuse the spoilers’ capacity.

The obvious way to inform the public is via the media. So the question of who deals with the media, and through what channels and processes, needs agreement prior to the beginning of
3.4 Developing a Specific Negotiation Process

the process. The importance of this cannot be overstressed: lack of forethought on the topic in Belfast in 1991, beyond a hastily agreed press embargo, led to a situation where parties manipulated the news-hungry media to their own ends, leaking (and in some cases selling for cash) their opponents’ confidential position papers.

Secondly, what facilities are there for communication between the conflicting parties? Away from the formal table, they may well need to communicate their thoughts on various topics to each other. This is often done by circulating position papers for consideration. Will a central secretariat fulfil such a function? Or can a subcommittee with members from all parties do the job?

**DEPENDING ON THE SPECIFIC SITUATION, PROCESS DESIGNERS CAN CHOOSE AMONG THE FOLLOWING PROCEDURES WITH RESPECT TO COMMUNICATION AND INFORMATION EXCHANGE:**

- secret negotiations out of all sight;
- closed negotiation sessions, with occasional or regular progress reports to the outside world, agreed by all parties;
- an agreed press embargo among all participants (with enforcement mechanisms to be negotiated among the parties);
- relations with the media being at each party’s discretion;
- ceding the public relations role by agreement to the chairperson or mediator;
- establishing a permanent press secretariat to manage media relations on behalf of all;
- establishing a central secretariat to channel information between the parties;
- forming a subcommittee with responsibility for inter-party communication.

3.4.8 Setting the agenda

Participants need to know and agree in advance the broad subject matter of the negotiations. It can be completely destabilizing to open up new and unforeseen substantive issues in the
midst of the negotiation process (unless, of course, it is part of extending or deepening the process by building on initial negotiating successes). So it is important to define the shape of the agenda, whether in a distinct pre-negotiation process, or in an initial phase of the formal negotiations. This does not involve actually addressing the substantive issues, but it does mean defining, listing and ordering them to the reasonable satisfaction of all.

The agenda for negotiations obviously depends very closely on the specific conflict. But at this preparation stage, it is important to agree at least minimally what the problems are, and what the requirements of their solution must cover. A generic example of the kind of basic structure needed is offered below.

**1. Measures to establish permanent peace:**
- Reconciliation
- Reparation
- Restoration
- Security
- Boundary drawing (where relevant)

**2. Measures to establish a democratic structure and to promote human rights:**
- A Constitution
- A Bill of Rights
- Institutions and levels of government

**3. Measures to promote economic reconstruction and development:**
- Aid
- Inward investment
- Strategic deployment of resources
- External relations

Beyond the ingredients of the agenda, agreement is needed on how to address it. Can “easier” and more “difficult” items be identified? If so, context alone can tell whether it will be more productive to tackle easier items first, the better to build momentum and co-operative attitudes, or whether difficult but key issues, on which there is little current agreement, must be tackled first.
because other issues cannot become clear except in the light of agreement over the core issues. A further aspect is what should happen if there is deadlock on a key issue: should it be deferred out to a separate structure for discussion or does it have to be resolved there and then? What is the correct approach to be taken? Is it desirable to start with “soft” issues to show the parties that the process can deliver, or is that not possible?

<table>
<thead>
<tr>
<th>CHOICES ON AGENDA SETTING WILL HAVE TO BE MADE BETWEEN:</th>
</tr>
</thead>
<tbody>
<tr>
<td>– establishing pre-negotiation processes, either public or private, and possibly with a reduced number of delegates, to define the agenda prior to formal negotiation;</td>
</tr>
<tr>
<td>– using the formal negotiation process to resolve procedural and agenda matters;</td>
</tr>
<tr>
<td>– ordering agenda items according to contentiousness and importance;</td>
</tr>
<tr>
<td>– adopting a long-range policy of a series of negotiations, each building on the achievements of the last.</td>
</tr>
</tbody>
</table>

3.4.9 Managing the proceedings

Who will chair and referee the proceedings? Under what standing orders? How will time be allotted to speakers? Is there a finite deadline for the end of talks? What ground-rules need to be agreed? What recording process will be used? Who will be responsible for it?

The key question of who chairs the proceedings needs to be agreed early on. Parties may devolve the responsibility on a rotating basis among themselves, or the responsibility may be assumed by an acceptable individual, a representative from an international agency, a friendly country, a wholly non-involved state, or from the country hosting the negotiations. Elements that must be considered will include not only the acceptability of the individual, organization or state to all participants, but also the relevance and particular suitability and skills of the individuals concerned. Of course, sometimes the question of a chair is not a matter of choice for the conflicting parties but is imposed upon them by an external sponsor or mediator.

In South Africa, a system was devised of rotating the chair among all parties equally. In Northern Ireland, a former US sen-
ator was installed as overall chair of the process, with a Canadian and a Finn as vice-chairs. For Bosnia, the chair/mediator was a state – the US at Dayton. In Mozambique, the chair was a religious NGO, Sant’Egidio.

**CONTEXT WILL SUGGEST WHICH IS THE MOST SUITABLE WAY TO MANAGE THE PROCEEDINGS:**

- negotiation of a system of sharing the chair in such a way that no one party can benefit from their chairing either in general or on key specific agenda items;
- selection of a party totally suitable to all concerned;
- selection of a party minimally acceptable to all concerned;
- identification of the key skills necessary for the function;
- selection of a party with authority to overrule all concerned if necessary;
- selection of an unempowered party dependent on continuing consensus among all concerned.

### 3.4.10 Timeframes

The question of *time* is central. Are the negotiations to be limited by a prearranged deadline? Or are they to be open-ended, continuing for however long it takes to build an outcome? This varies depending on the context, but “ripe moments” for negotiation tend to be short-lived, in effect providing their own deadline.

One side of the argument insists that deadlines are necessary to push people towards success. The other side of the argument is that with endless time available, the urgency to pressure participants into concessions and agreement is missing. Moreover, participants may be tempted to use delaying tactics if there is little or no time pressure. A party which is a reluctant participant – which sees the *status quo ante* as at least no worse than a likely outcome – can effectively draw out discussions and delay progress, if there is no pressure on them to make progress or take the blame for failure. This is what Unionists did in Northern Ireland in 1991 (partly because they did not believe the seriousness of the official deadline), and arguably what Israeli Prime Minister Netanyahu has done regarding talks with the Palestinians.
3.4 Developing a Specific Negotiation Process

On the other hand, deadlines may force people to move faster than they are comfortable with, producing a rushed and incomplete outcome. Surprisingly often, negotiations are given only days or weeks to put an end to years or even decades of bitter conflict. The fear of appearing to be the party who blocked a successful outcome by refusing to compromise can be a healthy spur, but it can also force an unwilling outcome which is subsequently undermined or disowned.

If there truly is a very limited time available, one response is to set limited goals for the negotiations – the establishment of a truce and verification mechanism, or the establishment of a body (agreeing on its participants, its procedural rules, defining its remit, and so on) which will subsequently continue the work. Achieving such limited but significant success can in itself renew the momentum for further negotiations and thus extend or enlarge the window of opportunity. The process becomes in effect one consisting of several negotiating stages.

The Dayton conference, hosted and tightly controlled by the US at all times, became almost the quintessential example of heavy deadline pressure being imposed from a third party (the US) on the negotiating Bosnian leaders. While the effect was to produce an agreement by the deadline, the quality, depth and applicability of the agreement, and the commitment of participants to its implementation, suffered as a result (see Bosnia Case Study). Similarly, the 1978 Camp David Accord was produced under very strong pressure from Carter on both Sadat and Begin to reach agreement before the end of the session or take the blame for failure. Such pressure has a positive side, focusing minds on the task at hand, and increasing the chance of concessions in order to avoid perceived failure. But again at Camp David, the breadth and long-term substance of the agreement suffered as a result.

Options on Timeframes Include:

- no time-limits: participants remain until the job is done;
- a pre-agreed time-limit;
- a realistic limit on the goals to be achieved within the time available;
- aiming for a comprehensive settlement of all aspects of the dispute;
- an option for further negotiating period/s following success in the initial period.
3.4 Developing a Specific Negotiation Process

3.4.11 Decision-making

At regular intervals during negotiations, decisions will have to be made. Are we agreed on this agenda point, and can we then build on that agreement to move on? Decisions must be reached in such a way that all – or most – of the parties accept the legitimacy and binding nature of the agreement. But it is important to establish this in advance. If a party can renege on an earlier agreed point at a later stage, there is a danger of the entire process falling apart before completion. Some mechanism must be established for defining binding agreement in the negotiation process.

Further, how is agreement to be confirmed? Do parties have an overnight period to confirm acceptance of the point by others (perhaps their political leaders) not present at the table? Again, is each point agreed permanently before moving on to the next? If that is so, it may mean that even if talks fall apart later, all the agreements established prior to the break-up remain. Or is there a banking principle at work, as in Northern Ireland? Under that system, “nothing is finally agreed until everything is agreed”. The parties put the agreed points “in the bank” for future reference, only to be finally agreed when the agenda had been completed.

The plus side of this is that a party can see the value of conceding on one point in order to gain on another, on the understanding that they will be able to calculate the balance of concessions and gains before finally approving the whole agreement. The down side is that this tends to produce an all-or-nothing character to the talks: if negotiations break off before full completion, then most or all of the agreements reached up to that point may be disowned, and any future process will have to begin all over again.

Cyril Ramaphosa described the South African decision-making formula thus: “All agreements and decisions were to be arrived at by general consensus among all the parties. When general consensus couldn’t be achieved, decisions were to be taken on the basis of sufficient consensus. Sufficient consensus was defined as a process of reaching agreement that would take us to the next step. Essentially, it finally meant that there had to be sufficient agreement between two parties or within two parties. Those parties were the National Party and the ANC. The parties who disagreed with the decision could have their objections formally recorded, but in the spirit of co-operation they understood
3.4 Developing a Specific Negotiation Process

that they could not hinder the process from moving forward.” Ramaphosa is quoted elsewhere more succinctly, admitting that, “sufficient consensus means if the ANC and the NP agree, the rest can get stuffed”.

The point is well made that “sufficient consensus” needs to be worked out for the specific context, with regard to the number of parties present, their relative strengths, commitment to the process and potential for disruption. Effectively, in this instance, it was the reality that if the two mainstream parties managed consensus, it was difficult for the other, much smaller, parties to challenge it in any effective way.

Similar considerations about facilitating the mainstreams on both sides led to a more intricately defined formula in Northern Ireland in 1997. There, “sufficient consensus” was calculated according to the electoral strengths of the negotiating parties assessed at the pre-talks election, and boiled down to the requirement that any decision had the support of a straight majority on each side – that is, the support of parties representing more than 50 per cent of Unionist voters as well as more than 50 per cent of Nationalist voters.

And how will the final agreement – the completed and agreed outcome – be officially endorsed or ratified? Is it enough if all parties make a joint announcement giving their approval to the result? Or is a referendum necessary among all the represented constituencies in order to bestow public and official endorsement on the outcome? There might need to be a calculation of the risk involved in taking the agreement to the people. They might possibly reject it (but that would indicate its unsuitability, in any case). Or the debate leading up to such a referendum could give excluded or spoiling parties the chance to forge support for their arguments in public in order to undermine the outcome. But certainly such public endorsement gives the outcome an unquestionable legitimacy, as demonstrated by the overwhelming support for the Northern Irish settlement in a referendum in 1998.

**The Most Suitable Formula for Decision-Making Must Be Agreed Among the Negotiating Parties. But Some of the Options Will Include:**

- Total agreement: all parties must endorse a point for it to be agreed;
3.5 Basic Techniques for Negotiation

Techniques and strategies for negotiation are highly dependent on context. Both the context and the creativity of the participants must guide and provide the choice of on-the-spot reaction to the specific situation. Extensive, high-quality books on the topic already exist (see “References and Further Reading” at the end of this chapter). However, some general, simple advice can be offered which may prove useful and applicable in a negotiation. Some are very personal and individual tips; others are simple tactics for improving one’s performance in talks. Depending on the situation, some are relatively straightforward while others will prove difficult. But all are worth considering throughout the process.

This advice is not aimed at helping a conflicting party win at the expense of the opposition. It is concerned with implementing good process, to the advantage of all. Underpinning every point mentioned in this section is one simple principle: good process helps everyone involved, because good process increases the chances of good outcome.

Underpinning every point mentioned in this section is one simple principle: good process helps everyone involved, because good process increases the chances of good outcome.
process helps *everyone* involved, because good process increases the chances of good outcome. Good process complements the natural competition of negotiation by generating co-operation. These aspects will help nurture and sustain the difficult process of negotiation.

### 3.5.1 Promote confidence building between the parties

Negotiators need to have some confidence in each other and in the process. This does not rule out skepticism on both counts, but there must be a degree of mutual trust that permits a basic working relationship, and there must be at least a minimal expectation that a quality outcome can result from the process. The following are some basic rules of the negotiation game:

**Ensure confidentiality.** A standard ground-rule for negotiation is that what is said is not repeated outside the negotiating room without permission. Each side needs that reassurance in order to discuss serious and sensitive issues with confidence. This should be agreed beforehand and reassurance on this subject must come at repeated intervals from all sides, and be demonstrated by subsequent behaviour. Confidentiality is a keystone of negotiation.

**Demonstrate competence and commitment.** Mutual respect grows from an awareness of the opponent’s ability to do the negotiation job and their willingness to stick with the process until the job is done. Competence and commitment in the negotiation process leads to confidence in the outcome. A party needs to demonstrate these qualities, early and repeatedly, in their behaviour, just as it needs to look for it in the other parties.

**Empathize.** Relating in a human way to old enemies is supremely difficult. There is no simple way to wipe out the history of previous warfare and the deeds it entails. But if one sees only demons across the table, agreement will never be reached with them. Although the effort required is often immense, it is important to view the opposing parties as human beings, to try at least to understand that they too have pain and anger stored up from the past, and to realize that they too must make the effort to overcome the same preconceptions of other parties.

**Retain belief in a solution.** If the frustrations of the process grow too great, consider the alternatives to negotiation. They will almost certainly be much worse than unpleasant and incessant talking. Remember the reasons that brought one’s party to the table, and the unpleasant consequences of a hasty departure. Expect bumps in the road, but maintain a commitment to keep travelling.
3.5 Basic Techniques for Negotiation

3.5.2 Promote clarity

Accurate information, even unpleasant information, is vital. Without full information no comprehensive and lasting decision can be reached on any point. And without lasting decisions, no solution will be achieved.

Question the other parties. To avoid the appearance of interrogation, use open questions where possible. Closed questions invite simple, yes-or-no answers: for example, “Do you want a new constitution?” is unlikely to elicit much useful discussion. In contrast, open questions demand complex answers, and draw forth richer information: for example, “What sort of constitution do you envisage?” Open questions often begin with “why?”, “how?”, “what if?”, and so on.

Paraphrase, clarify and summarize. After an open question is answered, play back a summary or a paraphrase to the responder, and check for accuracy. Paraphrases begin with, “So what you’re saying is...”, or “Am I right to summarize your point as...?”, and so on. Ask further questions for clarification. Continue the process until the responder is satisfied. This not only elicits accurate information, it reassures the responder that their argument has been heard and understood – exactly the situation that has been missing during the rhetoric of conflict.

Maintain focus on the issues. For the conflicting parties, the bedrock issues are deeply significant beyond their objective content. Each side will have years of pain and anger interwoven around the issues. Those emotions need to be expressed and understood. But for clarification purposes, cool question-and-answer sessions that remain focused on the substance of the issues help to extract vital information without raising the emotional temperature.

Defuse anger. Anger will appear in the negotiation process. It is only natural that it should, given the importance of the issues at stake. Simple de-escalating manoeuvres can defuse the anger without detracting from the significance of the issues: taking a short break to let tempers cool; mutually acknowledging the emotions on both sides; recognizing deep-seated fear, pain and anger in all the communities involved as a mutual problem for the negotiation process, and so on.

3.5.3 Promote understanding

Without full understanding, the process is doomed to failure. All issues must be understood fully by all in order to begin the
problem-solving phase of building a solution. Most of this will come from the parties themselves. Additional information can be gathered from outside. Suggested techniques include the following:

**Differentiate perceptions from issues.** Naturally, many of the issues at stake in the conflict have deep emotional or psychological reverberations for the parties involved. These should not be excluded or de-emphasized. But it is vital that, first, all objective issues of substance in the conflict are laid out for all to see and understand; second, that perceptions – feelings, memories of hurt and sacrifice, mutual views of each other – are also expressed and heard; and, third, that the difference between the two is made abundantly clear. It may be useful to distinguish between these in terms of *objective* issues (resource discrimination, territorial disputes, and so on) and *relationship* issues (perceptions, beliefs and images held by one side of and about another). Building a settlement in the negotiation process will concentrate on the former; but attention to the latter will need to be addressed at some stage and in some way, and the parties need to understand this. As the working relationship develops in a good process, these issues may indirectly be defused to some degree. A good mediator will be able to judge the appropriate moment when it may be either necessary or desirable for one or both parties to blow off steam, or “let a little blood” as it is sometimes known.

**Identify needs and interests.** Deep-seated needs underpin the expressed issues and demands in identity-related conflict. Listen carefully to the other parties talk and try to dig below and identify these needs. A demand for self-determination may reflect a deep-seated insecurity about a community’s future. A demand for political control may reflect an underlying need for recognition of identity through political participation. Political interests and issues are the stuff of political negotiation and settlement; but attention to and recognition of underlying needs can bring the parties to a fundamentally deeper understanding of their positions and their conflict. Additionally, often the underlying needs of all sides to the conflict, once reframed in terms of security or expression of identity, may be similar. This new perspective can provide important new information to parties, assisting the search for common ground and the drawing of parties into co-operative processes. By way of illustration, there is a tendency on the part of external actors, and, particularly the interna-
Democracy and Deep-Rooted Conflict: Options for Negotiators

3.5 Basic Techniques for Negotiation

Tional community, when an identity-based conflict arises, the immediate jump to the conclusion that some kind of territorial autonomy may be the solution. This is sometimes a dramatic response to an issue which may have as its real cause a resource or security issue, and which could be addressed by mechanisms which do not necessarily go to the heart of the state and its territorial integrity.

**Take expert advice.** Look outside the negotiating process for information, if necessary. This may be especially relevant to information about possible future scenarios or structures that are being debated at the table. This does not refer to information as ammunition to use against opponents, but rather information that can be shared and will enlighten discussions. By agreement with other parties, commission outside studies or reports for the negotiation process. *Fact-finding* projects can produce cool and impartial reports on subjects of contention within the talks. *Expert working groups* can take a contentious issue from the talks agenda, and produce clear proposals and possibilities for solution on the issue.

**3.5.4 Promote movement**

Eventually, when information gathering is over, when basic respect has been developed, and when positions have been made abundantly clear, the problem-solving phase begins. Some small techniques can simplify the daunting task in this difficult phase.

**Fractionate.** Often a major obstacle to movement is a sense of the overwhelming complexity of the agenda. Fractionating means to break down the elements of the agenda into smaller, more addressable issues. These can then be tackled in sequence across the table, or mandated to issue-oriented subcommittees for discussion and proposals, or delegated to outside working groups for attention and reports.

**Prioritize issues.** Another means to clarify a complex agenda is to order the items according to priority. They can then be addressed in order of importance, or in reverse order of difficulty, as the parties agree.

**Separate proposals from authors.** It is a characteristic of competitive negotiation that one side’s proposal for solution can be unacceptable to another side simply because of its origin. It may be eminently sensible in its content, but impossible to accept, because to do so would feel like conceding or losing a point. Try to assess an opposition proposal on its merits, not its origin.
3.5 Basic Techniques for Negotiation

Box 5 NEGOTIATING TECHNIQUES: SOME BASIC PRINCIPLES

1. Promote confidence building between the parties – There must be a degree of mutual trust which permits a basic working relationship. This can be fostered by:
   - ensuring confidentiality;
   - demonstrating competence and commitment;
   - empathizing; and
   - retaining belief in a solution.

2. Promote clarity – Without full and accurate information, no comprehensive and lasting decision can be reached. Elicit useful and clear discussions by:
   - Asking open questions (i.e., “What sort of constitution do you envisage?”), rather than closed or interrogative questions (i.e., “Do you want a new constitution?”);
   - Paraphrasing or summarizing the responder’s answers to ensure accuracy, and asking further questions for clarification;
   - Maintaining focus on the substance of the issues;
   - Defusing anger, by taking short breaks and mutually acknowledging emotions on both sides.

3. Promote understanding – All issues must be understood fully in order to begin the problem-solving phase of building a solution. This can be furthered by:
   - Differentiating perceptions from issues. First, all objective issues of substance must be spelled out and understood; second, perceptions, fears, mutual views of each other must be expressed and heard;
   - Identifying needs and interests. Focus on and recognize the underlying needs of all sides;
   - Taking expert advice. Outside information can be commissioned to enlighten discussions, through fact-finding projects or expert working groups.

4. Promote movement – Once information is gathered, respect has been developed, positions have been made clear – then problem solving can begin. This difficult phase can be facilitated by:
   - Fractionating, or breaking down the elements into smaller, more addressable issues;
   - Prioritizing issues either in order of importance or in reverse order of difficulty;
   - Building on other parties’ proposals;
   - Identifying common ground, even small areas of commonality, which can serve to encourage all participants and generate momentum;
   - Brokering concessions, particularly if views on all sides have hardened into set positions on a question.
3.6 Tools to Break Deadlock

A further mechanism to be considered is for a mediator or independent third party to listen to the parties and then prepare a draft for discussion, so that it is not perceived as coming from one particular party.

**Build on other parties’ proposals.** If an opposing party offers a proposal with at least some merit, they are likely to agree more easily to another proposal that both builds on and acknowledges their input.

**Identify common ground.** While on occasion it may feel like the negotiation process is merely underlining the differences between opposing sides, it is still valuable to cast the net widely and search for even small areas of common ground. A pre-agreed agenda, or a joint definition of the problem, are examples of such common ground, and proof that commonality can and has already been built among former enemies. Identifying even small areas of common ground during negotiations can be surprising and encouraging to all participants, helping to generate momentum towards co-operation and further commonality.

**Broker concessions.** Particularly if views on all sides have hardened into set positions on a question, unofficial channels may be the appropriate place to take on a brokering role. Try to look for compensations, *quid pro quos*, tit-for-tats. Deal making and compromise is the life-blood of negotiation.

3.6 Tools to Break Deadlock

With or without third parties, whether motivation is low or high, negotiations can hit moments of deadlock. In general, if the process design has incorporated sufficient flexibility, deadlock is easier to address. But additionally, there are tried and tested techniques which may be useful for overcoming such situations.

3.6.1 Coalition building

The idea of building a coalition of commitment between all those who value negotiations was mentioned before in Section 3.4.1. Such a coalition should cross all boundaries: intra-party as well as inter-party. It will also benefit if it includes sections of the negotiators’ wider constituencies: public opinion in favour of a negotiated settlement can be a powerful source of pressure, especially on politicians who need to court that public. Those who believe in the value of continued negotiation will be less strict about concessions than other less committed members. A strong pro-negotiation coalition can increase pressure on those causing
deadlock by the implicit threat that they will take the blame if talks stall or collapse. More positively, members of a cross-party coalition can co-operate in pressing their respective backers to do what is necessary to facilitate a solution to the problem.

3.6.2 Unofficial channels

Also mentioned earlier, in Section 3.4.6, was the need for unofficial channels of communication. These channels supplement and can at times circumvent the more official channels across the table or through a secretariat. They can take any appropriate form, but the more they exist the easier it is to continue discussion of a problem that, in the official setting, cannot be openly negotiated. At Camp David, the “walk in the woods” served this valuable purpose for a variety of permutations of participants. (The term was quite literal: the venue was surrounded by forest, which provided the ideal place to take a break.) In Northern Ireland, the indoor version of the same thing was termed “voices in the corridors”. In South Africa, the unofficial friendship that resulted in the “Roelf and Cyril show” permitted the development of what was somewhat prosaically termed “the channel”: a parallel conduit for communication to supplement the official process. In Finland, the sauna became the channel. In Norway, it was a fireside chat.

These kinds of channels evolve organically through the pre-negotiation and negotiation processes, and cannot in any real sense be predicted or prescribed. But it is vital that participants both recognize the importance of such mechanisms to lubricate the formal talks process, and remain aware of their possibilities as the opportunities occur. These channels may need to be deniable, and therefore may not involve party leaders or those with a high profile, unless a particular personal chemistry permits it. More often, they are quiet, behind-the-scenes chats between second-tier delegates, for the purpose of explaining in fuller terms the positions, problems, restraints and perceived obstacles between rival parties.

3.6.3 Subgroups

The idea of subgroups or subcommittees has been mentioned at various times as a means to fractionate or subdivide the agenda into more manageable ingredients. More specifically, when a particular obstacle creates deadlock over a certain agenda item, an ad hoc subgroup may be usefully convened to address the point. Away from the formal table, the smaller group can discuss
3.6 Tools to Break Deadlock

the problem in more forthright terms, and speculate more freely about ways to overcome it. The members will of course report back to their respective delegations, but the subgroup’s lack of formal minutes, the reduction in rhetoric, the removal of the need to protect public positions and the specificity of the one-item agenda can facilitate speedy, honest and co-operative deal making. In the words of one Northern Irish negotiator:

“When you get three or four people sitting down with one chairperson, you can get stuck in to the business. Because you have an opportunity to say, ‘Look, stop —ing around here, what is the problem with x?’ And the other guy says, ‘Well, what we’re really bothered about is a, b and c.’ And then you start addressing the issues. When you’re sitting with 40 people in a room, it’s much harder to say that.”

3.6.4 Shuttle mediation

When the formal plenary session of talks runs into problems over a particularly divisive issue, it may be best to leave the formal setting and enter into shuttle mediation: discussions held between the chair or mediator and one party at a time. This allows for a process of clarifying a given party’s stance on the subject, communicating accurately other parties’ positions (gained through other shuttle discussions) and defining each party’s needs, expectations and possibilities around the deadlocking issue. The chair or mediator, by this means, may well be able to draw a clearer picture of the situation than can be done in plenary, and can then communicate this picture in further bilaterals, along with possibilities for movement.

3.6.5 Proximity talks

A similar procedure to shuttle mediation is proximity talks. The difference here is that the parties actually move to the same specific location for the purposes of the talks, rather than remain in their own geographical bases to be visited by a mediator. Here, the party delegations reside close by each other, possibly in different rooms of the same building, but communicate entirely through bilateral discussion with the chair. This can be particularly useful as a prelude to face-to-face negotiation or for
3.6 Tools to Break Deadlock

The nearness and accessibility of the parties makes it feasible, without the need for actual meeting (which may be publicly unacceptable at this stage). But it can also be a means to relax the pressure when deadlock is blocking plenary discussion. Proximity keeps the focus on the subject matter, in a way that would be lost if the parties actually left the negotiation venue.

3.6.6 Referendums, consultations and mandates

On a rather larger scale, but nonetheless pertinent in the right situation, parties may want to seek wider endorsement of a proposed move. Particularly if progress in negotiation has been substantial up to this point, the deadlock may be caused by a fear of the reception which a particular concession or agreement might receive in the broader constituency which negotiators represent. Fearing to go too far without the express support of their constituency, a delegation may need to seek approval from a wider membership of their party or movement, or indeed from their supporters or their public at large. While this can be time-consuming and complicated, it may be worthwhile to produce an energizing endorsement for change and progress which can move the negotiations on to the fast track. An example is the 1992 whites-only referendum called by South African President F. W. de Klerk to renew his mandate for negotiating with anti-apartheid organizations. The referendum result, a decisive vote in favour of continued reform, provided an important boost to de Klerk and served to renew confidence in the reform movement.

Such referendums, of course, must be approached with great care. Despite the best-laid plans, referendums always carry the risk of rejection: the calculation must be made carefully, since a negative response will hugely hamper, or altogether destroy, the negotiation process.

3.6.7 Unofficial supplements to negotiation

Well beyond the negotiation process, including any unofficial or ad hoc channels, there usually exists a broader population which comprises the civil society of the country in conflict. These people are normally not part of the negotiation process, and yet they are part of the conflict and part of its potential solution. Among that population will be organizations, groups and individuals who have their own processes and communication channels – and their own expertise – of which negotiators can avail themselves. Such elements include religious institutions and
leaders, business interests, academic institutions, labour interests, peace groups, cross-community co-operative ventures, and so on. When deadlock ties the negotiations down, these elements remain available. They can function as supports for, or alternatives to, the talks process itself.

### Box 6: Breaking Deadlock

The following are some tried and tested techniques which may be useful in breaking deadlock:

1. **Coalition building** – Build a strong coalition of commitment between all those who value negotiations.

2. **Unofficial channels** – unofficial channels, such as the “walk in the woods” at Camp David, can supplement and at times circumvent the more official channels. The more they exist the easier it is to continue discussion of a problem that, in the official setting, cannot be openly negotiated.

3. **Subgroups** – When a particular obstacle creates deadlock over a certain agenda item, subgroups or subcommittees can discuss the problem in more forthright terms, away from the formal table.

4. **Shuttle mediation** – Discussions between the chair or mediator and one party at a time, which allows for a process of clarifying a given party’s stance on the subject, communicating accurately other parties’ positions, and defining each party’s needs and expectations around the deadlocking issue.

5. **Proximity talks** – Party delegations reside close by each other, possibly in different rooms of the same building, but communicate entirely through bilateral discussion with the chair.

6. **Referendums, consultations and mandates** – Parties may want to seek wider endorsement of a proposed move, for example through referendums, before going too far without the express support of their constituency.

7. **Unofficial supplements to negotiation** – The broader civil society in a country, including religious institutions and leaders, business interests, labour interests and peace groups, can function as supports for, or alternatives to, the talks process itself.
There may be good reason to utilize the services of an academic institution to facilitate, say, a problem-solving workshop on the point in question, where a small group of representatives can meet to discuss the subject matter in neutral surroundings and try to use co-operative analysis to produce new alternatives to deadlock. Religious leaders or groups may be able to venture across boundaries where official negotiators cannot to keep communication alive. Business interests may have very practical and well-established bases of communication and co-operation which can be called upon to assist in breaking the deadlock.

Again, the possibilities for the use of such unofficial entities depends on what is available in the given situation. But parties need to be aware of these possibilities, alive to the opportunities to use them, and in general on the lookout for any available additional means to supplement the more official processes at the negotiating venue.

### 3.7 Third-Party Assistance

#### 3.7.1 Introduction

Third-party intervention is increasingly popular in negotiation, either as a central feature of a talks process or as an ad hoc deadlock-breaking tool. Because of its wide potential applicability, it deserves attention as a mechanism in its own right.

A third party – a person, group, institution or country that is not identified directly or indirectly with any of the parties or interests to the conflict – can be very effective in chairing or facilitating the talks process. And a long-standing conflict, especially where there is considerable stalemate or just staleness of view, can benefit from the fresh perspective of newcomers. The first two important questions are: Do we need a third party? And, if so, who?

The South African peace process reached settlement without formal intervention by any third parties in the negotiation process itself, although third-party intervention did take place in relation to the participation of Inkatha in the election in 1994. A high-profile intervention by two former foreign policy heavyweights, Lord Peter Carrington of the UK and Henry Kissinger of the US, produced little result, while a lower high profile intervention by a Kenyan, Mr Okumu, was very successful. There is an increasing trend, voluntary or otherwise, to utilize intervenors or mediators from outside the conflict. Part of this trend must be attributed to a growing keenness in the international communi-
3.7 Third-Party Assistance

Democracy and Deep-Rooted Conflict: Options for Negotiators

Third parties must be generally acceptable to all sides. Usually, this is voiced in terms of the third party’s neutrality or impartiality. But no third party is truly impartial or neutral, since they will carry with them an agenda of their own – whether this is an external state with regional interests in the conflict, or simply an individual who may want to take credit for a successful outcome.

As important as impartiality or neutrality is the acceptability of the person or agency. Third parties can even come from within the conflict, even from one side of it – for example, religious figures or business or civil leaders – as long as there is sufficient
respect for them from all sides and for their capacity to act in a neutral manner. Perhaps the easiest way to summarize this quality of acceptability is to talk in terms of building the same kind of trust which, we argued earlier, must be developed between conflicting parties in order to develop a satisfactory working relationship. The intervenor needs the working trust of all parties in order to function.

3.7.2 Types of intervention

Third-party intervention is a wide-ranging concept. We will borrow the work of leading scholars to get a more focused picture of what it can entail, while always remembering that such a neat analysis is a simplification of the real world. The terms used in the following discussion are somewhat arbitrary; we use them here to clarify distinctions between types of intervention, rather than as recognized definitions.

Essentially, we identify five different, if overlapping, intervention roles, each appropriate at different stages and phases, or for different elements, of the process. Each can be played by separate parties or, more likely, an intervenor will find themselves moving between, or combining, several roles.

Conciliation

A conciliator provides a communication channel between the parties. The main aims of conciliation are to help identify the major issues of contention, to lower tensions between parties, and to move the parties closer to direct interaction (i.e., negotiation) over the identified issues. In our framework, conciliation is particularly beneficial at the pre-negotiation stage, where it has the effect of clarifying the agenda for subsequent discussion, encouraging the building of a “common mental map”; reducing tensions and facilitating greater understanding of each other’s aims and goals; and building the initial stages of a bridge between adversaries that will lead to more co-operative approaches. There is no requirement that the protagonists actually meet together during conciliation.

The work of the Quaker Adam Curle in the Nigerian conflict of 1967–1970 is an instance of conciliation. Although Curle and his colleagues never brought the Nigerian Government or the Biafran rebels together, they shuttled between the two sides with messages, engaging in bilateral discussions with each side in order to help them get a clearer picture of their position, their
3.7 Third-Party Assistance

view of the issues and their ideas for solution, floating possibilities for progress to each side, and so on.

Facilitation

A facilitator addresses the relationship and issues between conflicting parties. The facilitator brings representatives of the parties together, usually in a neutral environment. The facilitator chairs joint or separate meetings in order to examine mutual perceptions, and encourages communication in a safe and non-threatening way and joint analysis of the problem. Each party is encouraged to express its perceptions of the other, as well as its notion of the other’s perception of it. The facilitator assists the setting of ground-rules and manages the process of the discussions; the participants retain control of the content. This can take place when the parties are not able to agree on a chair for the meetings or the process. With mutual understanding thus increased, the parties move on to joint discussion of their situation and their problem, and eventually to joint co-operative analysis and problem-solving. Facilitation assumes that improved mutual knowledge, improved understanding and trust, and strengthened communication channels will assist in clearing the way for the parties to engage in direct substantive negotiation over the issues that divide them.

The Norwegian back-channel arguably functioned as facilitation – confidential, unofficial discussion and relationship-building in a neutral venue, with no expectation that agreement had to be reached. The problem-solving workshops facilitated by Herb Kelman, a US academic, between Israeli and Palestinian groups over a twenty-year period are excellent examples. Kelman identifies individuals with influence within their communities – policy advisers, second-tier politicians, academics, opinion-formers, and so on. He hosts three- to five-day joint meetings with them on neutral ground. Importantly, they come as individuals, whatever their official status at home. Led by a team of facilitators, they work through the agenda of swapping understandings of the conflict and of each other, of identifying and discussing obstacles to progress and then jointly brainstorming possible solutions to those obstacles. The confidentiality of the meetings, and the control of process retained by the facilitators, make the meetings non-threatening. They contribute to issue clarification as well as relationship building. The individuals take the results of the workshop – increased understanding and respect, clari-
Arbitration

A third party that functions as an arbitrator brings authority and legitimacy to the proceedings which permit the arbitrator to impose a solution equally on all the conflicting parties. The arbitrator listens to all sides of the argument, considers the merits of the respective cases, and then constructs a settlement in a fair and just way. The key distinctions of arbitration are two-fold. First, the solution comes from the third party, not the conflicting parties. They do not necessarily engage in discussions to construct that solution, beyond advocating their own point of view to the arbitrator. Second, the authority of the arbitrator is such that the conflicting parties are bound to the ruling its solution as binding. They may well be faced with rewards for compliance and punishments for non-compliance.

Arbitration rarely, if ever, serves as the sole approach to managing deep-rooted conflict: because of the depth of feeling involved in such conflict, solutions which are not “owned” by the disputants are usually inappropriate. The legal nature of arbitration can, however, be useful in contributing to a settlement. Regional and international intergovernmental organizations, (such as the United Nations, Organization of American States, and so forth) and regional and international courts (such as the European Court of Justice, the International Court of Justice, etc.) can sometimes play an arbiter’s role on more straightforward aspects of the conflict.

One recent example of the use of arbitration in a deep-rooted conflict situation was the appointment of an Arbitral Tribunal for Brčko, a war-ravaged multi-ethnic municipality in the northeast of Bosnia. When the Dayton peace agreement was signed, the issue of Brčko’s status was considered too contentious to be settled, and was left to later arbitration. Although the Brčko Arbitral Tribunal was not without its problems, its establishment did have the useful effect of defusing the issue and removing a potential stumbling block from the original Dayton agreement, to be dealt with at a later time.

Pure mediation

A pure mediator’s role is to facilitate direct negotiation on the substantive issues, with the aim of producing a lasting settle-
3.7 Third-Party Assistance

The use of the word “pure” implies no judgement as to its quality or morality. Put simply, the pure mediator has no power outside the negotiation situation, and any power within the negotiations rests at all times on the continued permission of the conflicting parties. Pure mediation involves the use of process skills, techniques and experience to urge the parties on, or ease their path, towards a solution which they themselves design, refine and ultimately implement. The conflicting parties at all times hold the initiative. The mediator merely uses reasoning, unforced persuasion, the control of information and the generation of alternatives to encourage them to reach agreement.

Additionally, the mediator can play a vital role in outlining the consequences of proposals and options: by putting him or herself in the shoes of the other side, a mediator can effectively “reality-test” a party’s proposal in advance. Throughout the process, the pure mediator’s role is a major one, but their status is minor in comparison to the conflicting parties. The pure mediator controls process but, beyond suggesting options and scenarios, has little or no direct input into the substance of the outcome. Jimmy Carter’s interventions in the Eritrean conflict, the Catholic church’s facilitation of talks on Angola, and many other behind-the-scenes dialogue processes are examples of pure mediation.

**Power mediation**

This builds on pure mediation, but with one huge difference: the mediator has power, drawn from its position outside the negotiation situation, to persuade the parties to obey. The power mediator shares all the aims of the pure mediator, but the means are different: the power mediator has leverage over the conflicting parties. It uses incentives and punishments – carrots and sticks – to persuade the parties to yield inflexible positions and to embrace compromise. But such movement is based on the power relations between the mediator and each party, rather than on the inter-party relationship. The power mediator takes the initiative in the process, rather than leaving it with the conflicting parties. The mediator’s status at all times constrains the activities of the conflicting parties; they need to consider carefully their relationship with the mediator, and the consequences of endangering that relationship. The power mediator has its own agenda, and frequently its own preferred outcome. And it has a degree of influence over the parties to move them towards
that outcome. Furthermore, unlike all the other intervenor roles except the arbitrator, the power mediator has the leverage to provide subsequent incentives (or punishments) to guarantee the agreed outcome and to ensure continued compliance.

Many examples exist. Indeed, most instances of hosted negotiations in the international arena tend to involve predominantly power mediation: President Carter at Camp David, US diplomats such as Richard Holbrooke at Dayton, joint US-Soviet influence at Bicesse, the UN Special Representative in the Iran-Iraq War, and so on. In reality, pure and power mediation are often not quite as distinct as our definitions here might suggest.

3.7.3 Official and unofficial intervention

The preceding five-part terminology, in which mediation represents only two types of intervention among five, is presented here in order to highlight the various approaches to third-party intervention. Another, simpler, way to distinguish between types of third-party roles is to group them under official and unofficial headings. Once again, such terms are offered only for the specific purpose of maintaining clarity in this discussion. Official intervention is also termed “track one” diplomacy (that is, part of the official international diplomatic discourse), in contrast to “track two” diplomacy, which is more of an unofficial or informal complement to the formal diplomatic process. Thus, formal negotiations convened between disputants by, say, a head of government are an instance of official intervention; informal dialogue between them assisted by, for example, a Quaker group, would constitute more unofficial intervention, which might supplement or lead to more formal dialogue.

Clearly facilitation, conciliation and, in particular, pure mediation have in common one central factor: the intervenor brings no real power or influence to bear on the proceedings, beyond that which is voluntarily given to them by the conflicting parties. In that sense, the mediator has no “official” status or power outside the negotiations.

By contrast, arbitration and power mediation base their authority on the “official” status and power levels which the intervenor wields in the outside world: as a judge, a regional leader or the head of an influential state, for example. To oversimplify for a moment, an unofficial intervenor might arrive and say, “I’m Bill, and I’m here to help”. An official intervenor might say,
3.7 Third-Party Assistance

“I’m President Bill Clinton, and I’m here to help”. Immediately, the latter brings with him all manner of influence and leverage over the conflicting parties that the former will not have. This is not to say, however, that the unofficial intervenor cannot have an influential effect on negotiations. Precisely the fact that they are unempowered from outside can give unofficial intervenors more ready access to the process – more acceptability to all sides – as well as free them to make suggestions without being suspected of ulterior motives or agendas. The point of being an official intervenor is to bring outside influence and legitimacy to bear on the negotiation. The point of being an unofficial intervenor is to operate free from such influence.

Both official and unofficial intervention – power and pure mediation – are valuable. Where all parties are anxious to reach agreement, unofficial intervention by a pure mediator might be best suited. Where there is reluctance to enter negotiations, or to offer substantive compromise towards an outcome, intervention by a power mediator may supply the muscle to overcome such obstacles. In the negotiation process, it is very important that the mediator’s role is recognized and its terms of reference are accepted and agreed at an early stage, even if that includes an acceptance that different status and different terms may be needed at different stages. Naturally, the terms of reference of the mediator are set by the parties.

There is no set protocol for the way in which mediators go about their work, but in general terms they will clarify the issues that divide parties, determine the degree of flexibility which parties have on those issues and the importance which parties attach to them, identify interests that lie behind parties’ stated positions, generate options and assist parties to formulate proposals, suggest trade-offs, communicate messages, reduce tensions, and encourage a rational appreciation of proposals that may be forthcoming. They will encourage concentration on the issues and constructive engagement between the parties. They may develop their own proposals for consideration by the parties which the parties do not own and therefore do not need to defend. They will reality-test parties’ perceptions, positions and proposals, to develop a realistic appreciation of whether these things are tenable. Good mediators will have sophisticated problem-solving skills which enable them to help parties to determine key problems, diagnose them, develop a range of approa-
The following are five different, if overlapping, intervention roles, each appropriate at different stages of the negotiating process. The terms used are to clarify distinctions between types of intervention, rather than as recognized definitions.

"Track One" Diplomacy (official intervention): intervenor holds “official” status and power internationally.

1. Arbitration – The arbitrator listens to all sides of the argument, considers the merits of the respective cases, and then constructs a settlement in a fair and just way. In an arbitration, the solution comes from the third party, not the conflicting parties; and the authority of the arbitrator is such that the conflicting parties are bound to accept its solution as binding.

For example: the Brko Arbitral Tribunal in Bosnia.

2. Power mediation – In this case the mediator has power to persuade the parties to obey. It uses incentives and punishments to persuade the parties to yield inflexible positions and to compromise.

For example: President Jimmy Carter at Camp David and US negotiators at Dayton.

"Track Two" Diplomacy (unofficial intervention): intervenor brings no real power or influence to bear on proceedings.

3. Conciliation – The conciliator provides a communication channel between the two parties. He or she helps to identify the major issues of contention, to lower tensions between parties, and to move the parties closer to direct interaction. There is no requirement that the protagonists actually meet together during conciliation.


4. Facilitation – The facilitator brings representatives of the parties together. He or she chairs joint or separate meetings in order to examine mutual perceptions and encourages communication in a safe and non-threatening way.

For example: the problem-solving workshops facilitated by Herb Kelman, a US academic, between Israeli and Palestinian groups over a twenty-year period.

5. Pure mediation – A pure mediator’s role is to facilitate or direct negotiation on the substantive issues, with the aim of producing lasting settlement. The pure mediator uses process skills and experience to urge the parties on towards a solution that they themselves design, refine and implement.

For example: the Catholic church’s facilitation of talks on Angola.
3.8 Conclusion

A wealth of detail needs to be addressed in order to get the optimum design for the circumstances. Nevertheless, the effort is vital.

This single chapter perhaps belies the amount of work required in process design. A wealth of detail needs to be addressed in order to get the optimum design for the circumstances. Nevertheless, the effort is vital. Without a properly designed and maintained process vehicle, the negotiations will never complete the journey towards a sustainable outcome. However, with sufficient work completed in analysing the conflict, and then in designing the process, we can finally move on to consider the question of designing an outcome. The contents of this outcome – the institutions and mechanisms which can be put in place to promote a sustainable democratic settlement – will be examined in the following chapter.
DEVELOPING A NEGOTIATION PROCESS

Below we outline the major elements that need to be pre-negotiated and present a menu of options for each.

1. PARTICIPANTS

- Open channels of communication, however small or informal, in an attempt to start the contact and communication;
- Include all parties with a serious claim to be involved;
- Build a sufficient mainstream-based pro-negotiation coalition to open talks with some substantial hope of achieving an outcome, and hope to co-opt abstainers, or persuade excluded parties to adapt their behaviour to fit the rules of entry;
- Open negotiations with a less than comprehensive range of parties, with the aim of achieving a settlement that excluded parties can be persuaded to live with;
- Allow equal numbers of delegates per party;
- Allow variable delegation sizes based on electoral strength or status (where elections have been held);
- Set an electoral or other threshold to restrict or enable participation;
- Limit participation only to those parties who enjoy substantial support;
- Allow for different degrees of status in the process (e.g., participant and observer) for different parties;
- Distinguish groupings within the negotiation process who may be opposed on some, possibly major, issues but share positions on others.

2. PRECONDITIONS AND BARRIERS TO NEGOTIATION

- Drop preconditions to negotiations, and accept all comers;
- Use the pre-negotiation process to work through preconditions and questions of legitimacy and recognition of spokespersons;
Open out preconditions initially aimed at one party into a principled statement to which all parties can and must agree;

Address preconditions and the commitment to the negotiation process in an unofficial discussion process prior to formal negotiation.

3. LEVELLING THE PLAYING-FIELD

Accept, at least within the negotiation context, the right of all sides to be present;
Agree on procedures permitting the involvement of previously excluded or restricted persons;
Schedule time and resources to permit all parties to come to the table prepared;
Make contact with, and learn from, counterparts from other contexts;
Look to an external powerful mediator or chairperson both to bestow at least temporary legitimacy on all parties equally for the duration of talks, and to underwrite the equality of all parties at the table.

4. RESOURCING THE NEGOTIATIONS

Negotiations which are self-funded by each side;
Negotiations in which one party offers to resource most or all of the negotiations;
Negotiations in which contributions from other domestic actors are sought;
Negotiations funded by international bodies.
5. Form of Negotiations

- Large-scale conferences;
- Summits of key spokespersons;
- Full round table sessions;
- Shuttle mediation;
- Bilateral discussions;
- A mixed formula of plenaries and subgroups;
- Acknowledgement of dissenting coalitions by means of minority reports;
- Defining different roles and capacities for negotiators and observers.

6. Venue and Location

- Identify a neutral venue, of no particular symbolism or support to any one party;
- Agree on a domestic venue acceptable to all parties;
- Assure equal accessibility to the venue for all parties;
- Supplement official or formal discussion forums by unofficial, off-the-record and possibly deniable channels of communication outside and around the formal table.

7. Communication and Information Exchange

- Secret negotiations out of all sight;
- Closed negotiation sessions, with occasional or regular progress reports to the outside world, agreed by all parties;
- An agreed press embargo among all participants (with enforcement mechanisms to be negotiated among the parties);

A Menu of Options 1 [p. 116]
Relations with the media being at each party’s discretion;
Ceding the public relations role by agreement to the chairperson or mediator;
Establishing a permanent press secretariat to manage media relations on behalf of all;
Establishing a central secretariat to channel information between the parties;
Forming a subcommittee with responsibility for inter-party communication.

8. Setting the Substantive Agenda

- Establish pre-negotiation processes, either public or private, and possibly with a reduced number of delegates, to define the agenda prior to formal negotiation;
- Use the formal negotiation process to resolve procedural and agenda matters;
- Order agenda items according to contentiousness and importance;
- Adopt a long-range policy of a series of negotiations, each building on the achievements of the last.

9. Managing the Proceedings

- Negotiation of a system of sharing the chair in such a way that no one party can benefit from their chairing either in general or on key specific agenda items;
- Selection of a party totally suitable to all concerned;
- Selection of a party minimally acceptable to all concerned;
- Identification of the key skills necessary for the function;
- Selection of a party with authority to overrule all concerned if necessary;
- Selection of an unempowered party dependent on continuing consensus among all concerned.

A Menu of Options 1 [p. 117]
10. **Timeframes**

- No time-limits: participants remain until the job is done;
- A pre-agreed time-limit;
- A realistic limit on the goals to be achieved within the time available;
- Aiming for a comprehensive settlement of all aspects of the dispute;
- An option for further negotiating period/s following success in the initial period.

11. **Decision-making Procedures**

- Total agreement: all parties must endorse a point for it to be agreed;
- Simple majority acceptance: more than half the parties or delegates agree;
- Consensus: the point is defined and refined until all can agree to it;
- Sufficient consensus: a certain specified proportion of the parties or delegates must agree the point (the exact proportion or criteria to be pre-agreed, and dependent on the number of parties, their relative sizes, and their ability to “sell” the agreement to their broader constituencies);
- Secret ballots to discover the degree of consensus;
- An open show of hands to discover the voting preferences;
- Final ratification by parties, or endorsement by referendum of the final outcome.
REFERENCES AND FURTHER READING


The Changing Nature of Conflict and Conflict Management
Case Study: Northern Ireland

NORTHERN IRELAND

The Plantation

Since English forces first arrived to claim the island of Ireland around 1170–1190 CE, centuries of complex Anglo-Irish history have produced Europe’s longest-standing identity-related conflict. Space permits no more than a sadly inadequate nod to that rich narrative.

The indigent population at the time of the English invasion were descendants of the Celts who had swept westward across Europe in the pre-Christian era. They had been converted to Christianity during the 5th and 6th centuries. They were rural, agriculturally based and formed a largely decentralized society. The Protestant reformation which took deep root in England mostly passed Ireland by, and its population remained almost wholly Catholic.

As a means of later subjugation, the English introduced the Plantation, an early but obvious form of colonialism. From the early 1600s, hundreds of thousands of settlers from England and lowland Scotland were offered plots of fertile agricultural land if they agreed to be permanently “planted” in Ireland. In the process, most native Irish were displaced from their homes into the barren hills.

The Plantation had two key effects. First, the land displacements created a deep and abiding Irish sense of criminal injustice on the part of the English. Second, the native population was completely Catholic while the settlers were overwhelmingly Protestant. In the context of the times, religion was a central defining factor of culture and politics, and so the two groups, natives and settlers, were instantly alien to each other. Matters were not helped by the Protestant zeal with which the Planters set about subduing the angry but powerless Irish. Oliver Cromwell – in the British context, an heroic revolutionary figure in the development of western democracy – slaughtered Irish Catholics by the thousand in a vicious programme of ethnic cleansing.

The Plantation flourished best in north-east Ireland. For the next 250 years, the history of Ireland developed along two main themes. On the one hand, there were regular but unsuccessful attempts at rebellion by the dispossessed Catholic Irish, during which a cumulative sense of Irish nationalism developed. On the other, the British-sponsored industrialization and economic development of the north-east raced ahead. The region’s central city, Belfast, became two things by Victorian times: a heavily industrialized port as integral to the British empire as Liverpool or Southampton (producing ships, textiles, heavy machinery, armaments and, later, aircraft) and a centre of strongly British-oriented culture dominated largely by Protestants. This abiding sense of a British identity translated itself politically into Unionism – support, that is, for the continued Union with Britain.
While Irish nationalism spread throughout the rest of Ireland, in the industrial north-east the Unionist focus remained resolutely tied to the British empire as the predominant source of wealth and international and domestic markets and as the channel of access to the outside world. While Irish Catholics increasingly mobilized around the cause of Irish independence, northern Protestants rallied to the cause of the British empire, busily filling its factories and patriotically fighting its wars. Religion had long ceased to be the issue of conflict between these two fundamentally opposed cultural communities, but continued to serve as the badge of identity for both sides.

So by 1900, there existed in Ireland two deeply separated communities, both with long-standing historical claims to the territory, both divided not only by religious labels but also in their politics, history, heritage, culture and economy, who saw their sources of support as different, their relationships to Europe as different, and especially their relationship with the superpower of the day (Britain) as diametrically opposed.

**Partition**

By the turn of the 20th century, Irish pressure for independence became irresistible. Northern Protestant opposition to the idea was equally strong. Both sides began to arm, each prepared to fight their cause against the British. Heavy-handed British suppression of an abortive 1916 rising in Dublin, the Irish capital, by rebels of the Irish Republican Army (IRA) produced the martyrs who inspired a mass liberation movement. In 1920, limited independence was granted to all 32 counties of Ireland, but the nine counties of the north-east (the province of Ulster) were given the option to opt out of the arrangement. Six of the nine, the ones with Protestant majorities, chose to remain with Britain in the UK, and the island was partitioned in 1921 between the 26 counties of the Irish Free State to the south, and the six counties of Northern Ireland. The Free State fought a bloody internal civil war for a year, before accepting the less-than-total independence on offer. (The Irish Republic declared full independence in 1937.)

Northern Ireland was given its own regional parliament in Belfast. Westminster, while retaining overall sovereignty, adopted a *laissez-faire* attitude and largely ignored Northern Ireland for the next 40 years. The 1.5 million population of the new sub-state had a 2:1 Protestant majority, reflected in its majority-rule parliament which effectively operated under permanent Unionist control. The discontented Catholics of Northern Ireland were viewed by this parliament – with some justification but much exaggeration – as subversive agents of the new and hostile foreign state to the south: they were not to be trusted or worked with, they were to be feared, controlled and excluded.
Case Study: Northern Ireland

With its permanent majority, and its deep-seated insecurities, the Northern Ireland State practised decades of discrimination against Catholics in employment, voting, education, housing, and so on. A highly segregated society developed, ruled by a permanently Unionist government who controlled a highly armed and 90 per cent Protestant police force. For 40 years, the society remained stagnant, with two almost totally separate communities living parallel lives in a patchwork of small segregated areas, each with their own housing, schools, shops, churches, factories, clubs, sports, etc.

The Troubles

The stagnation ended in the 1960s. Catholic university students, influenced by the US civil rights movement, took to the streets to demand an end to the discriminatory practices of the Northern state. The “Troubles” thus began as a conflict between Catholics and the state over civil rights. It escalated rapidly as the state and police responded brutally to a largely peaceful protest movement. In 1969, the Unionist Government realized that the situation was out of control, and requested the British army to intervene. A burgeoning of hard-line Unionism frustrated any last-minute attempts at moderate reform which might have quelled unrest. By 1972 the government was in complete disarray, but still resisting demands for reform, and Westminster stepped in to close down the Belfast Parliament and assume direct rule over Northern Ireland.

Britain moved rapidly to redress the more glaring civil rights grievances; but the British army acted towards the Catholic community in extremely heavy-handed fashion, rapidly alienating the Catholics it had arrived to protect. As Catholics rushed to defend themselves against the threat of armed British troops and a Protestant backlash, the IRA – almost defunct in the 1960s – was reborn. The British army has remained ever since.

From 1972, what had begun as a civil rights protest by the Catholic community towards the Protestant/Unionist Government was transformed into a war of liberation waged by the IRA against the British Government and army, and against the local police.

The next 20 years form a history of failed political initiatives, occasional short-lived cease-fires, an ebb and flow in the level of violence, economic and social devastation to the region, the institutionalization of violence in Northern Irish society, and an eventual military stalemate that neither side could win outright. In the process, both communities grew more polarized than ever, the sense of stagnation prevailed, and more than 3,000 people died violently as each community mythologized its contemporary martyrs and heroes.

The battle-lines were clearly drawn up. Catholics overwhelmingly supported the Irish nationalist cause, which aspired to a united and independent Ireland. The
main nationalist political party, the Social Democratic and Labour Party (SDLP), espoused peaceful means towards a more just political system in Northern Ireland and towards eventual Irish unity. Within nationalism, the smaller Republican movement, consisting of the paramilitary IRA and the political party Sinn Fein (in the Irish language, “Ourselves Alone”) advocated violent struggle to rid Ireland of the British presence. Protestants equally fervently supported the cause of Unionism (that is, a continuation of the union of Northern Ireland with Britain within the UK). Mainstream political opinion was represented by the Ulster Unionist Party (UUP), who had controlled the parliament until 1972, tempered by the smaller and more hard-line Democratic Unionist Party (DUP), formed in the late 1960s by Ian Paisley in response to perceived weakness within the UUP. On the fringes of Unionism were the loyalists, paramilitary and political counterparts to the Republicans, who adopted anti-nationalist violence to protect the Union.

**Peace Initiatives**

Having assumed direct rule of Northern Ireland in 1972, the British Government had managed by late 1973 to drag the mainstream political representatives of Unionism and Nationalism, and the Government of the Irish Republic in the South, to a shaky political agreement that involved a new power-sharing government in the North, and a new cross-border Council of Ireland to facilitate Southern input into the North’s affairs. The new government, consisting of both the UUP and the SDLP, lasted for the first five months of 1974, before massive and militant protest by the Protestant community, enraged by the proposed Council of Ireland, brought it to collapse and control reverted to Westminster. Direct rule continued uninterrupted until 1998.

Throughout the 1970s and 1980s, Britain made several further attempts at political settlement. From time to time, elections would be held for a new parliamentary assembly, but the resulting bodies were always boycotted by one side or the other. British policy was two-pronged. One aim was to enable a power-sharing government which would bring nationalists into a share in government within Northern Ireland. The other aim was known as the “Irish dimension”: placating nationalism by permitting the Irish Republic a degree of influence in Northern affairs. Unionists might accept some form of the first, but wholly rejected the second; while nationalists were deeply suspicious of the first without the second.

Throughout the period, paramilitaries in general, and Republicans in particular, were excluded from political consideration. By common consent, their adoption of violence precluded them from the democratic process. In return, the Republican movement totally and violently rejected any of the proposed solutions.

In 1981, in the relentless glare of international publicity, 10 IRA prisoners starved themselves to death in a stand-off with British Prime Minister Thatcher over their...
claims to be political prisoners of war (as opposed to criminals). The resulting wave of sympathy for Republicanism bolstered the fortunes of its political party, Sinn Fein which, at the same time, decided to end decades of abstentionism and begin contesting elections in both North and South.

In response to this perceived political threat from a resurgent Republican movement, the political parties of the Irish Republic and the SDLP met in the 1983 New Ireland Forum to develop a new definition of constitutional Irish nationalism. The resulting Forum Report effectively redesigned Irish nationalism, and its language and content were greatly influenced by the SDLP leader, John Hume. Old, simplistic anti-British sentiments were replaced with new tenets of commitment to peaceful politics and respect for the unionist tradition. The Irish Government took the thinking of the Report as a basis for entering negotiations with Britain over what became the 1985 Anglo-Irish Agreement, a melding of both governments’ aspirations towards peaceful resolution of the Northern question. The Agreement established several key factors formally: the governments’ commitment to work together for peace, an Intergovernmental Conference in which Irish ministers could regularly question and comment upon British policy in the North, and a secretariat of Irish officials located in a Belfast suburb.

This international treaty between the two sovereign nations had two powerful effects. First, it made the Republic of Ireland a partner with Britain in the process, in contrast to their previous history of antagonism over Northern Ireland. Political initiatives would now be authored not by Britain alone, but by both governments in partnership. The “Irish dimension” was thus moving closer to reality. But second, in contrast to Hume’s close, if unofficial, involvement in the drafting of the Agreement, Unionists were not consulted about the intergovernmental negotiations. They reacted with shocked anger to an Agreement that had both ignored their opinion in its construction and, in their view, weakened the link with the UK by allowing a “foreign” government to meddle in their affairs. Deeply alienated, Unionist politicians withdrew from all contact with the British Government.

By 1989, however, Unionist opposition had failed to prevent the Agreement from becoming an established fact. The Irish Government was now an engaged partner in the political process with Britain, and Unionist anger, initially and tellingly mobilized around the slogan “Ulster Says No!”, had turned to frustration. Realizing that continued non co-operation would only make things even worse, they finally agreed to enter discussions with the British about possible political structures, and eventually in 1991 the UUP and DUP entered British-facilitated negotiations with the SDLP and the small, cross-community Alliance Party. Those talks failed to make much progress, bogging down in early arguments over procedural issues. But they did serve to set and clarify the agenda for future discussions into three strands –
power-sharing arrangements for an internal Northern Ireland government under British rule as long as a majority of the Northern population voted to retain the Union; the practical shape of North-South institutions to strengthen the Irish dimension; and a more developed Irish-British treaty to replace the Agreement.

By the consent of all involved, paramilitary political parties from both communities were still excluded, until such times as they would renounce violence.

The following year, talks were resumed for a further four months, and made some progress on all three agenda strands, but eventually collapsed far short of agreement. Meanwhile, Hume had initiated dialogue with Sinn Fein with the ultimate aim of persuading them away from violence and into the political process. During these discussions, and even during subsequent secret British-Sinn Fein communications, IRA violence – bombs and shootings – continued against the British army and the Northern Ireland police, and spread to a devastating bombing campaign in England. At the same time, the two main loyalist paramilitary groups developed a new degree of sophistication both militarily, becoming much more active against Republicans, and politically, developing new political parties to represent their views and try to wean voters away from the mainstream Unionist parties. The Ulster Defence Association (UDA) developed the Ulster Democratic Party (UDP), and the Ulster Volunteer Force (UVF) produced the Progressive Unionist Party (PUP).

Sinn Fein, the UDP and PUP all began to increase their political profile, but all were strictly excluded from negotiations.

By 1994, however, Hume’s dialogue with Sinn Fein had developed into a wider nationalist consensus involving their two Northern parties, the Irish Government and Irish America (where a new and much less pro-British President Clinton had been installed). The pressure intensified on Sinn Fein leader Gerry Adams to accept the military stalemate and the necessity to engage democratically in the political process. The result was the IRA’s cessation of violence in August 1994, followed a month later by a loyalist cease-fire.

But political progress was too slow to satisfy Republicans. Supported by Unionists, the British at first demanded an IRA statement that the cease-fire was permanent – a concession which the IRA saw as tantamount to a surrender, and refused to give – and then insisted, equally ineffectually, that IRA weapons be handed over before Sinn Fein be permitted entry to negotiations. The British insisted on disarmament and then talks; the paramilitaries on both sides insisted on talks first and then subsequent disarming. All other discussions about progress foundered on this rock of the decommissioning of weapons. Until that issue was resolved, the British and the Unionists refused to admit paramilitary parties to any negotiations. Former US Senator George Mitchell was brought in to chair a commission into the question of
disarmament of paramilitaries as part of the broad peace process. The commission accepted that no group was going to disarm before talks, and suggested two compromises. First, disarming should happen during talks, in parallel to political progress and as part of confidence-building measures. Second, a set of six principles of non-violence were established, which all parties would have to endorse on entry to the negotiations. These included a commitment to purely peaceful means, and a renunciation of violence as a means either to achieve political ends or to undermine an unfavourable political outcome.

But attitudes all round had hardened in the period since the cease-fires, with all sides trying to use politics merely to wage war by other means. Eighteen months after the IRA cease-fire, Sinn Fein were no closer to inclusion in any substantive talks process, and in February 1996 the IRA suspended its cease-fire and returned to a limited military campaign, mostly aimed at British military and economic targets. The loyalist paramilitaries edgily maintained their own cease-fire agreement. Elections went ahead to identify participants to a talks process that started in June 1996, but Sinn Fein were excluded once again until such times as the IRA might call another cease-fire. The talks rambled on, but failed to get beyond the continuing procedural wrangles about decommissioning and the terms of Sinn Fein’s admission. With his parliamentary majority down to one, Conservative Prime Minister Major could exert little influence over the traditionally conservative UUP parliamentary group led by David Trimble, whose 10 MPs held a potential balance of power.

**Agreement**

But with the June 1997 installation of a Labour government with an unassailable parliamentary majority, the pace picked up once more. A new IRA cease-fire was called the following month, and inclusive talks began in September under the chair of George Mitchell. No weapons were handed in, but all parties signed up to the Mitchell principles of non-violence. For the very first time, Sinn Fein, the UDP and the PUP were all included around the table. In response, the DUP and another tiny Unionist political newcomer, the UK Unionist Party (UKUP) walked out. Around the table, long-standing suspicions and antagonisms were rife, and progress was interminably slow as historic foes sparred nervously with each other in an uncomfortable process. The two earlier talks attempts had exclusively involved only the four mainstream and non-violent parties and the two governments. This time around, the inclusion of the paramilitary politicians increased the chances that any potential settlement could be more comprehensive in effectively addressing the issues of violence, and in finally removing the gun from Irish politics. But at the same time, inclusiveness greatly widened the distance between the viewpoints represented around the table, and made compromise all the more difficult.
Three months of talks became rapidly bogged down once again in procedural issues, with parties fighting every point. Delays and obstructionism continued, as politicians on all sides were deeply challenged at the prospects both of facing their long-standing enemies across the table and of finally accepting a less-than-perfect negotiated compromise after decades of promoting absolutist positions of outright victory. Confidence-building measures ran in parallel to the talks, consisting largely of concessions by the two governments over paramilitary prisoners, and a lowering of the British army profile on the ground.

As the talks inched forward painfully into 1998, frustration grew at the extreme fringes on both sides. New anti-cease-fire paramilitary groupings emerged from both republicanism and loyalism, and bombings and shootings began once more. After a series of murders by the UDA, its political party the UDP was suspended for several weeks from the negotiations for a period of “quarantine” until the cease-fire had been restored. Shortly thereafter, Sinn Fein was suspended for two weeks because of similar IRA activity. The violence of the politically represented paramilitaries again subsided, but that of the uncontrolled extremes continued sporadically.

In late March, Mitchell finally announced a two-week deadline for the talks process. By this stage, he argued, all the relevant issues had been discussed. There was no need for further discussion or elaboration: what was needed now was a demonstration of the political will to reach agreement. He set the deadline of midnight on 9 April for an agreement.

Amidst heightened tension, signs appeared that his ultimatum, backed up by pressure from London, Dublin and Washington, might indeed produce results. Both Irish and British premiers arrived at the talks venue, and a hotline to the White House was established. The midnight deadline passed, talks continued through the night and another day, and finally, to universal surprise, after 32 hours of straight negotiation, an agreement was announced on 10 April.

The Agreement ran to over 10,000 words. It reflected closely the three-stranded agenda upon which it was negotiated. At its heart were the design and fast-track implementation of new core political structures and constitutional changes, supported by various commissions, each with specific deadlines for implementation, to oversee issues whose detail was yet to be filled in. The Agreement would be offered to the people of both North and South in simultaneous referendums in May 1998.

Of the core changes, the first would be the removal from the Irish Constitution of the territorial claim to the North, in parallel with a British repeal of outstanding legislation claiming jurisdiction over Ireland as a whole.

In Strand One, in June 1998, a 108-member Northern Ireland Assembly would be elected by a single transferable vote form of proportional representation, thus enabling the election of smaller parties. The Assembly’s consensus voting mecha-
Case Study: Northern Ireland

Consensus would require minimally 40 per cent support from each of the unionist and nationalist blocs, provided that comprised at least 60 per cent of the overall vote. Its early decisions would concern the election of a First Minister, Deputy First Minister and 10 ministers with departmental responsibilities. All these posts would be allocated in proportion to party strength.

In Strand Two, a North-South Ministerial Council would be established consisting of ministers from both the Irish Parliament and the Northern Irish Assembly. (The Assembly will not be permitted to continue in operation unless the Council is implemented.) Once constituted, the Council would devise cross-border implementation bodies with an “absolute commitment” to work together in at least 12 specified areas of common interest. Council decisions will be by agreement, and a strict timetable is specified for the operation of all these arrangements.

In Strand Three, a new Irish-British Treaty would replace and take over the workings of the 1985 Anglo-Irish Agreement, and would permit intergovernmental cooperation on Northern matters (including sensitive ones such as security, etc.) not yet devolved to the Assembly. A British-Irish Council to promote wider regional cooperation would be established, comprising representatives from the Irish and British governments, the Northern Assembly, and the forthcoming devolved assemblies to be established in Scotland and Wales.

Around these key structures, specific timetables were set for establishing other reinforcing mechanisms. The European Convention on Human Rights will be fully incorporated into Northern Irish law. A new Northern Ireland Human Rights Commission will co-operate through committee with its Irish counterpart. Commissions will also be established in Northern Ireland on equality, weapons decommissioning (to be completed within two years of the referendums), police reform, and the criminal justice system. Finally, mechanisms will be put in place by both governments to facilitate the accelerated release (within two years) of all paramilitary prisoners from groups continuing to observe cease-fires.

It was a tortuous document, produced through a tortuous process, and was not without a degree of the fudge that has characterized Irish negotiations for 10 years. When it came to voting in the Northern referendum and the Assembly election, the key divisive issues were not the core political structures that had entailed so much painstaking negotiation. Instead, the predominantly Unionist anti-Agreement vote rallied around the emotive issues of early prisoner release, victims’ rights, and doubts over the effectiveness of weapons decommissioning. The referendum revealed fundamental divisions within Unionism. Nationalists, Republicans, Alliance, loyalist parties and moderate Unionists won a 71 per cent pro-Agreement majority in the referendum, and a narrow but workable majority in the Assembly. The UUP’s Trimble was elected First Minister, with the SDLP deputy leader as his
Deputy. But the DUP, UKUP and significant UUP elements coalesced into a hard-line obstructionist tendency. The situation remained very tense throughout the summer of 1998. Anti-Agreement Unionist’s street protests waxed and waned, threatening the fragile majority consensus. A small but well-armed anti-ceasefire group split off from the IRA and embarked on a devastating bombing campaign in the North. As the politicians returned to work in September to begin implementing the provisions of the Agreement, there was still no certainty of success.