GOOD AGREEMENT? BAD AGREEMENT? AN IMPLEMENTATION PERSPECTIVE

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Introduction

There is more than one school of thought when it comes to the role and importance of peace agreements within the overall process of reaching the negotiated settlement of an internal conflict. One approach, perhaps best described as "constitutive", views the substance of the peace agreement as key to the overall process, which will reflect its strengths and weaknesses, virtues and shortcomings. A "good" agreement will result in durable peace; a "bad" agreement will result in delays, setbacks, or even the collapse of the peace process. That approach thus stresses the stringent requirements that the provisions of an agreement should meet: precision of wording, technical feasibility, international legitimacy, detailed implementation timetable, among others. One implication is that a mediator is duty bound to ensure that negotiations between the parties meet these high standards, even if it means standing up to impatient by-standers and the parties themselves. While very different in other respects, the El Salvador (12 January 1992) and Guatemala (29 December 1996) peace agreements are good examples of the constitutive approach. Like genetic codes, both aspired to be precise and comprehensive blueprints that contain all steps to be taken by each warring party over a specific period of time in order to achieve an end to the war, the reform of state institutions, national reconciliation and the consolidation of democracy. During the implementation phase, the international community – the UN in these cases – becomes the guardian of the integrity of the agreement as a referee and a source of positive and negative incentives for the parties to comply faithfully with their undertakings.

The "instrumental" school does not ascribe the same centrality to the agreement, whose negotiation is but one of many stages in a complex transition. It should therefore not be made to bear alone the burden of the entire process. Concern over the agreement's imperfections in terms of wording, feasibility or legitimacy should be weighed against the paramount need to maintain the momentum of the overall transition. Ambiguities, lacunae, even stark impossibilities are acceptable costs. Over time ambiguities will be lifted, lacunae will be filled, amendments will be made to take account of impossibilities and, most importantly, the relevance of seemingly intractable issues will erode as the parties gradually learn to value accommodation over confrontation. Implementation, in that sense, not only cannot, but should not, be expected to be a mirror image of the original agreement. Much of its value resides indeed in the new opportunities and constraints that emerge during implementation to give the peace settlement its final shape. As to the international community, it should not aspire to fit forcibly the new political realities of the implementation period in the Procrustean bed of the old peace

agreement. Rather, it should promote a process of gradual accommodation between the peace agreement and realities on the ground, which is the only path towards a lasting peace. The best example of this approach is the Burundi Peace Agreement (30 August 2000) signed with deep lacunae (in the absence of some of the belligerents at the negotiating table, the peace agreement lacked agreed provisions on the cessation of hostilities) and extensive ambiguities (the signatories had reservations and diverging interpretations on a large number of provisions). These "imperfections" were considered acceptable and constructive by the mediators - and indeed by many among the signatory parties – in order to move the process forward. The expectation was that (a) the signing of the agreement would deprive the armed groups who remained outside the peace process of their political agenda and would pressure on them to cease the fighting; (b) the repatriation of opposition leaders in exile would lead the latter to become more realistic in their expectations and more accommodating in their demands; (c) the beginning of the implementation process, and particularly the formation of a broad-based coalition government including most opposition leaders, would give the latter the strongest incentive to make the process work, even at the expense of their initial political objectives. The major shortcoming of that plan, namely the refusal of the opposition to return because of a lingering fear of army repression, would be remedied through the provision of personal security for returning opposition leaders by international contingents.

This shortcoming deserves two comments: first, insofar as the mediators' game plan in Burundi hinged on the provision of personal security by international forces, its applicability was doubtful since neither the UN nor the majority of traditional troop contributing countries would normally agree to fulfill that function, particularly before a ceasefire was achieved[1]. Second, it illustrates a more general point, namely that whether the approach to an agreement is "constitutive" or "instrumental", whether implementation is viewed as replication or adaptation of the original peace agreement, the viability of the settlement will eventually depend on the extent to which problems that do surface at the implementation stage can be dealt with successfully by the parties; and that demands explicitly or implicitly placed on the international community, if any, can be met.

The last point is, of course, of particular relevance to the United Nations. The organization is often called upon to be the senior international actor in the implementation phase of a peace process. This is, generally, on the correct assumption that it possesses a variety of assets, including technical expertise, financial resources, international legitimacy, peacekeeping troops and implementation experience; and, sometimes, on the incorrect assumption that it has the power to enforce agreements reached or guarantee physical security. For the organization to be successful in this implementation role, it is important that it be able to identify in each case what kind of challenges are likely to emerge during implementation - be it as a result of formal requests from the parties or as a consequence of the terms of the settlement plan – and ascertain whether it is equipped to meet them.

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[1] Eventually, after much effort by mediator Nelson Mandela, the South African Government agreed to deploy contingents in that capacity.

That the UN should not unthinkingly accept responsibility for the implementation of any peace agreement is perhaps the main lesson to emerge from the critical appraisal of failures that occurred in the 90s. What it can accept, given the dynamics of peace settlements and the organization's own possibilities and limitations, is the subject of a growing literature[2]. The most notable outcome so far of that reflection is probably the unequivocal retreat from UN peace enforcement – one of the tenets of the peace agenda adopted by the organization in 1992. Far-reaching recommendations, to which I will revert later, are contained in the "Brahimi Report" of the Panel on Peace Operations issued in 2000[3], and endorsed since then by the United Nations. This paper responds to the same overall concern, namely to circumscribe the areas of UN effectiveness in the settlement of internal wars. Its starting point is the recognition that, as mentioned earlier, regardless of the different views that may exist about the nature of implementation, the success of the peace process will eventually depend on the way in which difficulties that occur during that period are managed. Specifically, it attempts to throw light (a) on the problems that typically mar implementation and the risks they entail for the parties and the peace process; (b) on the tools available – or not available - to the UN to confront them; and (c) on the requirements that a peace agreement must thus meet if the UN is to assist effectively in the peace settlement. It is written from the perspective of a practitioner of peacemaking and peacekeeping; and borrows many of its illustrations from the experience of the ongoing Guatemala peace process.[4] The advantage of the Guatemala standpoint for such an undertaking is that the approach to the negotiation of the agreement was, as noted above, very much a "constitutive" one. Much effort by many experts went into trying to ensure that no important issue be left to the implementation stage; that the provisions of the agreement conform strictly to the standards of international law and best practices; and that the implementation timetable be realistic in the view of the parties and international agencies expected to participate in its implementation. To that extent, the sobering lessons learned during implementation can be presumed to bear relevance mutatis mutandi to other peace processes as well as the "constitutive" vs. "instrumental" dichotomy.

Typology

Agreements underpinning implementation processes have been affected by at least three types of weaknesses that have undermined the momentum of implementation, put pressure on the relations between the belligerents and, in the worst case, led either belligerent to renege on its commitment to a peaceful settlement.

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[2] For the first internal report on UN peace operations, the need for selectivity and the criteria for triage, see "Enhancing the United Nations' Effectiveness in Peace and Security" by former Under-Secretary-General for Peace Keeping and Political Affairs Sir Marrack Goulding.

[3] Report of the Panel on United Nations Peace Operations, UN document A/55/305-S/2000/809, Annex III

[4] I had the opportunity to serve the Guatemala peace process for four and half years as Observer and then Mediator of the negotiations between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG); and for four more years as Special Representative of the Secretary-General for Guatemala and head of the UN implementation mission.

Capabilities

The most common and most benign of these weaknesses is overestimation of the parties' implementation capabilities, in terms of either the scope of the commitments they have undertaken or the timing of their implementation. However cautious the negotiators may be in trying to avoid this ordinary pitfall, reviewing the implementation timetable ("rescheduling") and/or reviewing the scope of its agenda ("prioritization") are two familiar features of the implementation landscape. Two risks are associated with this deficit: the relationship between the parties will be affected to the extent that lack of capability by one party is likely to be interpreted by the other as lack of political will. The relationship between the peace process and the public at large will also be affected, to the extent that the process' standing in public opinion follows closely its performance in meeting popular expectations. Disaffection in that respect is all the more frequent that the signing of a peace agreement is usually accompanied by a surge in popular expectations of a rapid improvement in the daily lives of the citizenry. Unfortunately, public security and economic well-being, two critical factors in the formation of public opinion, rarely see much improvement in the immediate aftermath of the cessation of hostilities.

Political constraints

A more serious problem stems from the relationship of the peace agreements with the general political situation in the country. At least four factors will contribute to make that relationship difficult: Two are structural problems that are inherent in the peace settlement itself and are, paradoxically, a consequence of its success. The first one derives from the fact that, by definition, the agreement reached will consist in compromises between the positions initially held by the two parties and their constituencies. Meanwhile, as a result of the polarization that accompanies a protracted war, the distribution of part at least of public opinion remains "in the extremes". As a result, and even when both parties strove to build support for the agreement within their respective constituencies during the negotiations, the middle ground contained in the agreements is bound to sit uncomfortably with several sectors of society.[5] The second problem is that, as society moves from wartime to peacetime, the leverage enjoyed by the two belligerents, the authority they exert over their followers and others, will tend to decrease and, with that, their ability to impose or sell the middle ground to domestic actors. After the war, politically speaking, bipolarity wanes but multipolarity, not consensus, waxes.

Against this background of diminished influence by the belligerents, two additional factors operate to the detriment of the political viability of a peace agreement: first, sectors, organizations, personalities opposed to concessions made in the peace agreement - whose hostility is ordinarily somewhat neutralized as negotiations progress towards a peace agreement - are likely to be spurred to mobilize by the prospect of

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[5] See George Modelski "International Setlement of Internal War", page 144 sqq. in "International Dimensions of Civil Conflict"; Rosenau ed., Princeton University Press 1964

imminent implementation of the provisions they oppose; second, the coalitions of social actors that were formed around the peace process to promote a peaceful settlement are likely to undergo the opposite process, namely a gradual unraveling, as the ceasefire takes hold, the fear of a resurgence of conflict fades, the political situation normalizes and political, institutional and personal rivalries, once suppressed, re-emerge.[6]

Political weakness is more dangerous than overestimation of capability because it is bound to have an impact on the political will of one or both parties to continue with the implementation process. If reluctant constituencies are important to either party – and they usually are - from a political, electoral, financial point of view or otherwise, that party will tend to delay implementation in order to relieve political pressure; or even to renege on its commitment altogether. When general elections are involved, the situation will become particularly acute as electoral effectiveness rather than the protection of the middle ground becomes the paramount concern of the parties. The risk resulting from this situation is again twofold: from the point of view of the relationship between the two parties, the danger is further escalation in distrust when one party suspects that the other party's failing political will means that issues vital to it – issues on which its commitment to continuing peace hinges - are in jeopardy. From the point of view of the relationship between the peace process and society at large, the risk is the shrinking and fragmentation of the agreement's social and political basis and the possibility of a resurgence of political polarization.

Political pressures from the environment are also likely to accentuate the weakness of those settlements in which the insurgency's fighting capability is the main source of its leverage at the negotiating table, as opposed to settlements where the insurgency also has the capacity to mobilize large sectors of the population (as is often the case in conflicts with an ethnic dimension). In the former case, the end of the war and subsequent dismantlement of the insurgency's military apparatus mean that part at least of the implementation process will take place in a context where the "balance of forces" between the two parties is very different from that prevailing when the agreement was signed. As a result, and unless this unbalance can be somewhat remedied, the weaker side will be unable to offset outside – or inner - pressures on the stronger side to delay compliance with its undertakings.

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[6] Attempting to sustain the mobilization of pro-agreement social forces by providing for direct participation in the process of implementation, as was done in the case of Guatemala, remedies in part this political weakness. At the same time, the direct involvement of social forces involves some risks: it can disrupt the finer compromises contained in the peace agreement; and trigger a process of competitive mobilization of pro- and anti-reform constituencies that leads to the resumption of polarization in the fragile aftermath of the war. The latter point is illustrated by the outcome of the referendum on the reform agenda contained in the peace agreement, which was held in Guatemala in 1999. For the first time in the country's electoral history, the population was split with ominous clarity along ethnic lines: the reform agenda won in areas populated by a majority of indigenous population; it lost elsewhere.

Vital concerns

A peace agreement's third and most serious flaw occurs when it appears during implementation that a number of issues vital to either party has not been adequately resolved. These vital issues typically relate to five areas:

(a) The physical security of the parties;
(b) Protection from judicial prosecution for actions relating to the conflict;
(c) The socioeconomic welfare of the leadership and combatants;
(d) The political viability of the parties, including their financial basis;
(e) Substantive aspirations that are deemed of vital interest by the parties, whether these imply access to Government positions (power-sharing), changes in the political regime (democratization - demilitarization, fair electoral procedures and respect for political rights) or reforms in the socioeconomic and cultural underpinnings of the distribution of power.

Not all breaches of a peace agreement threaten its collapse. It is a fact that, as the instrumental school suggests, implementation is a learning process as a result of which, confronted with new political developments, parties to a peace agreement will tolerate – and sometimes even welcome - delays, less-than-perfect implementation and even non-implementation of some commitments. At the same time, physical extermination, wholesale judicial prosecution, widespread socioeconomic hardship, political elimination or neutralization and failure to meet some fundamental substantive expectations can and will provide a case for the affected party, or fractions thereof, to renege on their commitment to the cessation of hostilities. Faced with these situations, the party affected will probably find more security in the uncertainties of war than the consolidation of a hopeless peace.

Strategies

Confronted with the emergence of these failings during implementation, three strategies are always available to the UN in order to prevent a breakdown of the process: The first one is based on mediation, the second one on substitution, the third one on verification.

Mediation

The first strategy consists for the UN to exercise its good offices in such a way as to obtain that, in the face of the variety of flaws and weaknesses mentioned above, the parties choose to maintain cooperation and to craft solutions that will make the continuation of the peace process the more attractive option for both.

Faced with non-compliance originating in lack of capacity, UN good offices will involve providing the parties with a diagnosis of the nature of the problem; assisting them in establishing more realistic benchmarks for implementation; and at the same time,

usually, more detailed procedures to monitor compliance. Success demands from the UN a credible monitoring capability, a record of impartiality so that neither party can suspect bias in the review of each party's performance, and the expertise to help design more appropriate goals. This approach helps to sustain the parties' will to continue with the peace process, but it fails to address the question of credibility in public opinion.

Confronted with pressures deriving from the political context, good offices will prod the parties to reach a joint understanding of the overall political situation; to recommit themselves to protecting the "middle ground" contained in the agreement; and to chart a course that enables them to manage dissatisfied constituencies while maintaining the broad terms of the agreement. At various junctures during implementation, this joint management can imply steps from the Government to assuage the misgivings of popular organizations; and from the guerrilla leadership to give assurances to the private sector. Both parties may decide to wage public information campaigns on certain issues; or to revise the implementation sequence in order to neutralize hostile groups and gain time to mobilize favorable constituencies. In more extreme situations, they can agree that both parties will occasionally indulge in mutual public accusations in order to regain ascendancy over disgruntled constituencies, and then steer them in the right direction.

Finally, confronted with unmet vital concerns, the mediation strategy requires engaging urgently the parties in full-fledged negotiations over potential remedies that can be found to satisfy these concerns. At that stage, however, the conditions for a successful negotiation are, of course, not optimal. Vital issues are to a large extent security issues; and a sense of acute vulnerability on either side, fanned by the possibility of a disastrous outcome, impels the parties to seek security in the familiar world of open conflict rather than the minefield of negotiations.

Substitution

The second strategy consists for the UN, in cooperation with other international actors, to intervene directly in remedying the failings of the peace agreement by replacing the parties in part or <u>in toto</u> in the fulfillment of their commitments and responsibilities. This is a common approach where capacity is concerned. The rationale behind international donor conferences, which have become a feature of peace settlements, is not only the rewarding of parties for good behavior; it is also the recognition that the international community must step in to fill the large gap between the requirements of political, social and economic development in the wake of a destructive conflict and the country's capacity to meet them.

In situations where mere implementation capacity is concerned, the intervention of the international community is usually, though not necessarily, in the provision of inputs - funding, training, and advice – while Government or non-Governmental national actors perform the execution. In cases where issues of credibility and legitimacy are involved, international intervention can extend to direct execution. Examples of the former are the establishment of a new police force, the modernization of the judiciary or

the creation of a land cadastre. Instances of the latter are the logistics of demobilization, which is often provided by the international peacekeeping force; the resettlement of refugees, where the lead is ordinarily provided by UNHCR; or the organization of registration and electoral operations, to which the UN can become directly associated.

International substitution is not limited to the "hardware" of the peace process: a well staffed UN mission broadly deployed throughout the country typically provides the leadership of the two parties with a capacity to administer the implementation process that it may not have otherwise. In a post-conflict context where sectors of the population are profoundly alienated from state institutions, the mission can also serve to contain or resolve social and political conflicts; to stimulate dialogue between sectors of civil society and state institutions; and to promote national reconciliation.

A substitution strategy is also available to address the political frailty of the peace agreements when confronted with challenges from a variety of political interests. To do so, the UN and its international partners will put their own political weight behind the peace accords and the "middle ground" it contains[7]. The extent to which the option of political substitution can be exercised will, of course, depend on the general philosophy of the agreement, and in particular its consistency with international law and the prevailing international consensus on liberal rights and institutions[8]. Measures can include broad public expressions of support to the peace settlement; specific advocacy on behalf of particular reforms; the publicized commitment of financial support to the peace process; lobbying specific constituencies hostile to the agreement or merely skeptical; and carrying out information and education campaigns directed at the population at large.[9]

The explicit purpose of political substitution it to relieve outside pressure on the two parties to defect from implementation. But is also serves to remedy power imbalances that may exist between the two parties during implementation. Indeed, the commitment of international actors to the substance of the agreements, and not just the end of the conflict, notifies the stronger party that it will have to contend with the weaker party <u>and</u> the international community if it should be tempted to go back on its undertakings.

Finally, the substitution strategy can also apply to the worst-case scenario, that of unsatisfied vital interests, but a brief overview of the situation shows that substitution is available to the UN only within narrow limits:

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[7] On the international community building up the "center" in internal conflicts, see George Modelski "International Settlement of Internal War", page 146 sqq. in "International Dimensions of Civil Conflict"; Rosenau ed., Princeton University Press, 1964.

[8] On liberal ideology, its rights and institutions, see Michael Doyle "Kant, Liberal Legacies and Foreign Affairs".

[9] The UN implementation mission in Guatemala took a step further in the substitution strategy by engaging directly NGOs and local communities on behalf of the reforms contained in the peace agreements in an attempt to offset the limited capacity of pro-agreement elites to mobilize popular support in the country's interior.

(a) With regard to the physical security of the parties, as mentioned earlier the UN can make no formal commitment, even though the presence on the ground of a peace mission, whether civilian or military, acts normally as a deterrent to political violence.

(b) With regard to protection from judicial prosecution, not only the UN cannot intervene on behalf of the parties' concern, but in light of the current evolution of international law, the organization is more and more likely to bring its own authority to bear on the side of prosecution and punishment of ex-combatants rather than their integration into the post-war society in conditions of legal security.

(c) Concerning the welfare of ex-combatants, the UN is in a better position to make a major contribution, even though experience so far has shown that the international community's ability to act in a timely manner and its willingness to see the process to its conclusion are still far from adequate[10].

(d) The issue of political survival is a complex one: Parties with strong and loyal constituencies and political experience can rely on the ability of the United Nations to provide an electoral framework that will guarantee them the possibility to translate their influence into political power. Indeed, UN assistance in devising fair electoral provisions; the nation-wide deployment of international staff to deter intimidation and promote the exercise of political freedoms; voter education campaigns; and the supervision or direct administration by the UN of the registration and electoral operations constitute an effective panoply against blatant electoral intimidation, manipulation and fraud. The relevance of international intervention, however, is much more doubtful when dealing with a situation where either warring party is weak in terms of popular support and/or unable to organize itself as a functioning political party. The effectiveness of the international community is equally in doubt with regard to funding. The question of financial resources is as critical to a party in peacetime as it is in wartime. In particular, the non-Governmental party will be under considerable pressure to revert to the status quo ante as long as no peaceful alternative to wartime extortion is found[11]. Sometimes – as was the case in Mozambique – the UN may be in a position to provide funding to one of the belligerents. But in a multiparty system, it is unlikely that the international community – let alone

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[10]A positive development in that respect would be the implementation of recommendation 2 c) in the Brahimi report, which reads: "the legislative bodies should consider bringing demobilization and reintegration programmes into the assessed budgets of complex peace operations for the first phase of the operation in order to facilitate the rapid disassembly of fighting factions and reduce the likelihood of resumed conflict" (Report of the Panel on United Nations Peace Operations, doc. A/55/305-S/2000/809, Annex III, page 54).

[11] The final phase of the Guatemala negotiations was shaken by an incident involving a high-profile kidnapping by one of the guerrilla factions. It had a negative and durable impact on the implementation phase. It might have been avoided if financial issues involved in the reintegration of the guerrilla had been squarely confronted early enough during the negotiations.

domestic actors - would find it legitimate to channel financial assistance to one party only.

(e) The question of international intervention in securing substantive gains will receive vastly different answers depending on the nature of these gains and is therefore too broad to be addressed within the limits of this paper. At any rate, a review of substantive reforms attempted in the context of peace agreements shows, as one would expect, that the international community can make non-compliance more costly and compliance more attractive in this area; it cannot, however, make the former impossible and the latter necessary.

Verification

Verification can claim to be the simplest and therefore the most reliable strategy to deal with the diversity of implementation failures, largely because it chooses to ignore that diversity. Indeed, in principle, verification disregards complex issues of capability vs. political will and the political intricacies of the domestic scene; it is directed only at the signatory parties and is preoccupied with one issue and one only, namely whether they comply or not with their commitments under the peace agreements. It is unassailable politically to the extent that the parties subject themselves voluntarily to the UN power to scrutinize their performance and publicize its findings. It can even claim to be the only strategy consistent with the notion that sustainability requires ownership of the peace process by its principal actors: indeed, the verification strategy places squarely on the parties the onus of ensuring the technical and political viability of their commitments.

At the same time, this seemingly perfect tool has also some stark limitations. Verification is by nature an instrument of coercion, often the only instrument of this kind in the UN toolbox. It is effective to the extent that a statement of non-compliance by the verification mission is followed by sanction, followed in turn by corrective action on the part of the guilty party. Its structural weakness stems from the fact that verification is not coercive in and of itself, and becomes effective only after the application of outside leverage. Each time sanction does not follow or is insufficient to produce correction, the verification mission runs the risk of developing a reputation of irrelevance that will be a drain on the authority it needs to perform a variety of other tasks. Of course, the political authority of the mission and that of the Security Council or the General Assembly to which it reports are part of the solution to the problem. But UN political influence is usually not sufficient unless it is backed by other sources of leverage[12]. What are these sources? And in what situations can the verifier rely on them?

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[12] This is not surprising. The UN mission is temporary and UN Headquarters are far; domestic actors are both close and permanent. The international community is useful in the exercise of power; domestic actors are decisive in getting it and losing it.

The first one exists when the party that is hurt by non-compliance has the means to retaliate against the guilty party[13]. In that sense, verification is most effective before demobilization, when both parties can sanction non-compliance simply by discontinuing the talks or the demobilization sequence.[14] In all other cases, effectiveness will depend on a third actor willing and able to put pressure on the parties. The actors usually targeted by international verification are two: (a) domestic public opinion as a repository of domestic legitimacy, political influence and electoral power; and (b) the international community as a repository of international legitimacy and economic and financial assistance.

Domestic media can be avid consumers of verification reports; and this can mislead a verification mission as to its actual impact on domestic social forces. As we discussed earlier, these social forces are often divided over provisions of the peace agreements. As a result, public statements of compliance or non-compliance with regard to specific issues will mobilize some sectors in favor of compliance; but they will mobilize other sectors against compliance. Examples drawn from the Guatemala process are the issues of indigenous rights and fiscal reform, in respect of which verification of non-compliance consistently drew the expected condemnation from some sectors of civil society but increased the malaise or outright opposition of several others. An extreme example borrowed from the same process is verification of due process surrounding the application of the death penalty, in which case the mission always operated "at a loss". It chose to continue to publish its findings because it valued an integral approach to human rights but paid the price in terms of almost flawless isolation in public opinion on this issue. Even in cases when verification reports do not lead to the mobilization of the "wrong" sectors, they are effective only to the extent that the "right" sectors' response is strong enough to influence the guilty party. This is far from being always the case, particularly in the immediate aftermath of a war, when large sectors of the population are politically passive and therefore unavailable for mobilization.[15] In conclusion, verification will benefit from domestic leverage within a narrow range of issues that reflect a broad national consensus. Outside that range, advocacy – a tool of the substitution strategy – rather than verification is the appropriate way to promote implementation of the peace agreement.

Within the international community, the donor community is usually a more readily available source of leverage for the verifier. So much so that donor conferences tend to displace political fora like the General Assembly and the Security Council as the

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[13] One example is the entry into Namibia of armed SWAPO fighters on 1 April 1989, which was denounced by SRSG Ahtisaari as a violation of the settlement plan and promptly suppressed by the South African Defense Force.

[14] As the FMLN did on repeated occasions to put pressure on the Salvadoran Government to comply.

[15] Guatemala offers an example of the way in which the reformist elite from civil society organizations, whose demands largely shaped the contents of the peace agreements, can find itself unable to generate "popular demand" for these reforms in ways that could be meaningful from an electoral point of view. From 1997-2000 while leaders of NGOs, academics and the UN mission worked hard to push for a judicial reform that would include strong guarantees of due process, public opinion never ceased clamor for vigilante justice, wholesale application of the death penalty and the re-militarization of security forces.

main repository of "sticks" and "carrots" to keep a peace process on track[16]. As donor influence increases so does the influence of the liberal agenda that most donors have now in common. The end result for the verifier is more leverage on more issues than the domestic situation would yield, but this dependence on donors is paid in various ways: (a) the international agenda of the moment rather than the peace agenda per se is benefited. This is of course no small gain, to the extent that the authority of the verification mission finds itself significantly enhanced when it comes to fundamental human rights, free and fair elections and, more recently, women rights, indigenous rights and broad issues of civic participation and poverty reduction. But other, no less essential issues tend to become overshadowed – the resettlement of ex-combatants is a case in point – or even de-legitimized altogether – legal protection or the provision of political funding for reintegration come to mind. In addition, extraneous, utopian demands placed on the peace process by donors can steer the process away from the course of political realism essential to its success at home. (b) In the end, to those few influential donors that are in long-standing partnership with the country concerned, assistance is a matter of pressing self-interest before it is a means to more distant goals of peacebuilding. At this deeper level of bilateral cooperation, realism rules and, in its shadow, accommodation with the interlocutor in power: historical links must be preserved; influence in the security forces and state apparatus, maintained; business opportunities, exploited; international competitors, kept at bay. That level of cooperation is relatively immune to political agitation in multilateral fora, at any rate as soon as a modicum of order and stability has been established. When this has happened, some key partners in the donor community should no longer be counted on to back verification in their area of interest with anything but lip service.

This circumstance also limits the opportunity for effective verification that exists when the Mission is also a donor and has economic resources that it can apply to a sanction policy of its own. Withdrawal of UN assistance to the police, the Judiciary or other government institutions when they fail to observe the peace agreements often weakens the UN more than it does the guilty institution. The UN loses access and influence while the institution is likely to find alternative sources of cooperation, and less demanding ones at that. This limitation can, in theory, be remedied by tighter coordination between donors in support of the peace agreements. In practice, for the reasons already mentioned, such close coordination will be difficult where key security institutions are concerned. Nevertheless, a group of friends with strong multilateral actors will improve the possibility of overcoming the propensity of bilateral donors towards accommodation.

In summary, verification is a credible instrument of coercion provided that the UN political authority is supplemented by the prospect of sanctions emanating from the affected party, the domestic consensus and the donor community, including the Mission itself. Outside these situations, it can be politically ineffective, and even counterproductive. Therefore, in contrast to advocacy, whose scope of application can

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[16] As a result, verification reports to donor conferences become at least as important as good reporting to the Governing Bodies of the UN: they are sometimes more likely to elicit a response from the parties concerned.

cover the full range of issues contained in the agreement, verification is not the simple, universal tool to address implementation problems, which it is sometimes believed to be. It must be applied selectively to those areas where leverage exists; and calibrated to match the contours of that leverage. Otherwise, it will entail an onerous expenditure of political capital. At any rate, it is important to recall that the coercive effects of verification in the specific cases of human rights and political freedoms should not lead the UN and the parties to a settlement to the erroneous, dangerous, but not uncommon assumption, that the UN has the option to implement a comprehensive strategy of coercion that would convert it into a guarantor of the peace settlement.[17]

General implications

From the foregoing several broad considerations flow with regard to the features of a viable peace settlement, at least from a UN standpoint:

The first consideration is that vital interests must be fully addressed within the negotiations and cannot be deferred to the implementation stage in the hope that better conditions will then exist for their resolution. As long as the parties believe that their physical, judicial, socioeconomic and political security is at risk and that critical substantive gains are in doubt, it is prudent to assume that the party or parties' commitment to the peace settlement is conditional and that the military option is still open. This does not mean that, within a peace process, no agreement can be implemented before vital issues are resolved. Quite the contrary, the implementation of partial agreements may be one way towards the resolution of vital issues. But if the UN becomes involved in this kind of in-conflict rather than post-conflict implementation, it must do so in the knowledge that the goal of the exercise is to produce a settlement, not to implement it; and manage expectations accordingly.

The second consideration is that the reliance of a settlement on the UN must be circumscribed to those inputs that the UN can effectively provide. With regard to their physical and judicial security; the political future of weak parties; and the completion of at least part of the substantive agenda, the parties are, essentially, on their own; and the only guarantees they will receive are those in their power to grant. This is not to belittle the UN contribution to the peace settlement. It will be argued later that it can be critical at all stages of the peace settlement provided that its windows of effectiveness are properly understood.

The third consideration is that vital issues should be framed in the peace agreement in such a way as to lend themselves to be implemented speedily, simultaneously and around the time of the signing of a peace agreement. Indeed, this is

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[17] One advantage of the constitutive approach to peace agreements is to bring the agreement, as an instrument, closest to the model of a regular contract between two parties, with the UN or other third parties serving explicitly as referees and, implicitly, as guarantors of the parties' compliance. This may instill in the parties a sense of obligation that may not otherwise be there. However, this legal model is also dangerous insofar as it can lure the parties as well as the international community into misconceptions as to the nature of the peace agreement and the international community's ability to serve as an effective enforcer.

a unique juncture in the peace process when the influence of the belligerents is still large and their relative bargaining power still even, when the pro-agreement forces are at their strongest and anti-agreement forces at their weakest.[18]   This being said, giving the implementation process this shape is not always possible or sufficient.   Indeed, frontloading the implementation schedule will normally involve the handover by the insurgency of a major asset in the negotiation, namely its fighting capability. At least one vital issue, for which the role of the international community is minimum, namely physical security, will become relevant precisely after the insurgency's demobilization has been completed. The implementation of other vital commitments – specifically socioeconomic integration and possibly some substantive issues – will also take time and is likely to last long after the insurgency's ability to wage war has been reduced. This is why the viability of the implementation process has to rest on two other features.

One is mutual trust between the belligerents' military chiefs. The capability of the armed wings of the belligerents, and particularly the governmental Army, to harm their former adversaries will not go away, even in the case when both armed forces are merged – one could add: particularly in the latter case. There is, therefore, no substitute for the armed forces' mutual confidence in their respective intentions. This is the main rationale for involving the Army High Command in negotiations, even though the agenda of the talks should be essentially political. The occasional reluctance of civilian leaders to include army officers in political negotiations – and objections from military chiefs themselves – must yield to the paramount requirement of building confidence over time between the only two actors able to serve as genuine guarantors of one another's physical security.

Another feature is the establishment of a mechanism that extends as much as possible into the implementation stage the kind of parity that existed at the negotiating table. Just as a negotiating framework must be devised so as to soften the impact of imbalances between military forces, the implementation framework must be established in such a way as to reduce the impact of imbalances between political forces insofar as implementation is concerned. This is not only in the obvious interest of keeping the weaker party involved in the peace settlement irrespective of its political fortunes and electoral setbacks, it is also in the interest of the implementation process in general and the lead international actor in particular. Indeed, it is one way to ensure that the politically weaker actor will maintain a measure of influence over the performance of the politically stronger actor, thereby lessening pressures on the international actor to step in to substitute the weaker party and, as we noted earlier, providing verification with its most effective source of leverage.

The conclusion is that, regardless of the political aspirations of either party, a properly designed power-sharing arrangement to manage the implementation of the peace

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[18] For similar reasons, depending on the domestic context, some measures are better kept completely outside the peace agreement when their formal inclusion is likely to generate more opposition than support within society at large. Purging security forces or the judiciary is a case in point; provisions on the advantages to be granted to ex-combatants for their reintegration are also best kept sketchy in the text of the peace agreement.

agreement should be a feature of any implementation process. If it has not been included in the peace agreement, the UN should consider including it as part of the conditions for its own involvement. The weaker the weak party, the stronger the powers of the joint management body should be, including the power that each party enjoys during the negotiation phase, namely that of interrupting the process if certain conditions are not met.[19]

The <u>fourth consideration</u> relates to mutual trust between the parties to a peace agreement. As was discussed earlier, the parties' disposition to cooperate when faced with obstacles during implementation is a key resource for the peace process in general, and the UN in particular. Indeed, the organization can hardly execute a strategy of mediation without a modicum of trust between the parties. Such a disposition, however, does not emerge overnight. In fact, creating among belligerents the presumption that cooperation between them is possible and desirable takes a long time. Generating that sense of mutual confidence, and not only reaching formal agreements, should therefore be, in itself, a central goal of the negotiation phase. This has implications for the type of negotiations that the UN should promote, namely one in which encouragement and rewards, rather than pressures and threats, predominate. Pressure serves a purpose occasionally, but it should not drive the negotiations. If it does, implementation too will have to be pressure-driven; and this takes it irrevocably outside the scope of the mediation, substitution and verification strategies available to the UN.

How can confidence be created during negotiations? Distrust is an overall response to a multiplicity of situations affecting the parties, which mediators must learn to distinguish and treat separately. One facet of that distrust relates to deeply held convictions regarding the fundamental motivation of the other party. The position of the Government and the insurgency usually mirror one another in that respect: The Government side typically distrusts the willingness and/or ability of the insurgency to accept a political settlement of the conflict. Conversely, the insurgency will distrust the willingness and/or ability of the Government to accept genuine changes to the status quo. Both believe that the motivation behind the other party's decision to negotiate is tactical and that its ultimate goal is deceit and destruction of the adversary.[20] Confronted with a situation of intense and justified mistrust, the mediator cannot limit itself to a search for common ground between the formal agendas of the two belligerents. Such common ground is irrelevant as long as the two parties are utterly skeptical of the other party's commitment to abide by it.

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[19] The mandate of the Follow up Commission in Guatemala included powers to revise bills relating to the implementation of the peace agreement; to amend the implementation timetable; to request and scrutinize international assistance; to coordinate commissions created under the peace agreement; and to summon ministers and entities involved in the implementation of the peace agreements. It should have included the faculty to stop implementation of items on the peace agenda when the performance of either party departed from the requirements of the peace agreements.

[20] This is, of course, a perfectly rational belief grounded on years of experience. The crude recipe for counterinsurgency as formulated by the Guatemalan Chief of Staff in 1982 was: "Trick them, find them, kill them".

In that situation, the UN – when it serves as a mediator in the negotiations - can resort to the three strategies available during implementation, namely mediation, substitution and verification. The first one consists in helping the parties to devise ways in which they can prove their commitment to move in the direction of the other party's concerns. The second one consists in making that demonstration possible through direct intervention[21]. The third one consists in bringing to bear, through verification, available domestic and international leverage on the fulfillment of these commitments. The nationwide deployment by the UN of a large human rights verification mission in Guatemala in 1994, two full years before the entry into force of a formal cease-fire, fulfilled this confidence-building objective: By accepting an unprecedented level of international scrutiny into Guatemalan domestic affairs, the Government was able to demonstrate its commitment to fundamental change in relation to human rights. By accepting that the mission's mandate should cover technical assistance to the police, the Judiciary and other state institutions, the guerrilla demonstrated its recognition of the legitimacy of the State and its commitment to its strengthening rather than its destruction. Incidentally, a few months after its installation the international verification mission set the stage for another unequivocal exchange of confidence-building commitments, when the guerrilla decided to participate indirectly in the 1995 national elections and the Government and the Army allowed personalities affiliated with the guerrilla to campaign free from intimidation.

In addition to the face-to-face dialogue between senior Army officers and guerrilla leaders across the negotiating table, another sequence of steps taken by the two parties to the Guatemala conflict over a period of five years from 1992 to 1996 made it possible to overcome another common facet of distrust, that relating to physical security: The relatively safe resettlement [22] of refugees, including leaders close to the guerrilla, from 1992 on; the already mentioned participation without incident of personalities close to the guerrilla in national elections in 1995; repeated meetings in the field between guerrilla commanders and Army officers during 1996 ultimately persuaded guerrilla leaders that, by the end of 1996, conditions existed for a formal ceasefire and their safe return to Guatemala.

In summary, in order for the negotiating phase to produce trust in addition to formal agreement, it may require a fair amount of pre-ceasefire implementation, which in turn can be facilitated by the direct involvement of the international community in a variety of ways, including field deployment when appropriate security conditions exist[23].

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[21] The substitution strategy, before and after the ceasefire, often consists in rewarding the stronger party for its cooperation, even though the weaker party is not in a position to make countervailing concessions.

[22] Only one serious incident occurred – the Xaman massacre in 1995; it was followed by the resignation of the Defense Minister.

[23] The complete list of pre-ceasefire confidence-building steps and partial implementation measures that paved the way for the finalization of the Guatemala conflict include: start of the repatriation of refugees (1992); entry into force of the agreement on human rights (Mar 1994) and deployment of a UN human rights verification mission (Nov 1994); cessation of guerrilla attacks against civilian targets (Jan 1995); participation of insurgency-affiliated personalities in the general elections and electoral observation by the UN mission (1995); forced retirement of hardliner Army officers (Jan 1996); start of an informal ceasefire and meetings between Army officers and guerrilla field commanders (Mar 1995); demobilization of Army

The <u>fifth consideration</u> relates to the role of international actors during implementation as part of the "substitution strategy". As discussed earlier, the range of roles played by international actors typically covers capacity-building and direct provision of services, broad advocacy of the peace settlement and more targeted lobbying of specific domestic actors. The skills, technical and financial means involved in the first two activities and the kind of "political ownership" required for the last two can hardly be obtained by last-minute improvisation in the wake of the signing of a peace agreement. More importantly, perhaps, an effective substitution strategy requires good coordination between donors and other international actors involved. Unfortunately, it is particularly difficult to obtain at the beginning of implementation owing to the kind of assistance frenzy that typically surrounds it: well-meaning bilaterals rush to carve a piece of the post-conflict action; starving multilaterals jockey to maximize their share of the financial windfall; a host of foreign peacebuilding NGOs descend upon the peace process to peddle their recipe for the attainment of "true peace"[24]. As a result, what already existed in terms of international coordination runs the risk of unraveling; and what was not achieved by then is in danger of not happening at all.

Of course, the value of international coordination is not the same across the range of technical assistance activities. In the immediate aftermath of the signing of a peace agreement, when popular expectations of a "peace dividend" are at their highest and the Government's capacity to provide it at its lowest, it can be argued that the requirement of donor coordination should yield to that of speed of delivery and access to remote areas in the countryside. In actual fact, a flow of uncoordinated outside resources – or the mere rumor of it - is almost certain to provoke new, or rekindle old intra- or inter-community conflicts, often along political lines inherited from the armed conflict.

At any rate, the requirement of international coordination is nowhere stronger – and unfortunately nowhere more vulnerable to competitive pressures within the donor community - than in the field of institutional reform. On issues of police, military, tax, economic, administrative, municipal, cultural or judicial reform, each donor will tend to push its own model, its own experience, its own priorities and sometimes its own set of implementing partners[25]. And the broader the reach of the peace agreement in terms of reconstruction and development, the more counter-productive international assistance can become as a result. International anarchy will also have a multiplier effect on domestic

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paramilitary units (June 1995); beginning of the restructuring of the police force (second semester of 1996). The return of guerrilla leaders and the signing of the final peace agreement took place in December 1996

[24] The case of Guatemala is almost comical in that respect: a distinctive feature of the peace process was the extent to which it provided for civil society participation: during the negotiations, a broad-based Assembly of Civil Society under the leadership of the Catholic Church made proposals to the parties on all agenda items and, after discussion of each signed agreement, endorsed them as "national commitments". Nevertheless, for two years after the final peace agreement was signed, no less than four international NGOs mobilized civil society leaders in separate "national dialogues" purporting to identify a genuine agenda that would bring to the country a deeper peace than the peace process could achieve. The benefit from these exercises is that they confirmed – as was to be expected – the agenda that resulted from three years of peace negotiations; the sad shortcoming, however, is that precious political time was forever lost in these duplications, to the detriment of "true peace" and simple peace as well.

[25] On this pattern in the particular context of democracy assistance, see Thomas Carothers :"Democracy Assistance: The Question of Strategy" in Democratization, Vol.4, No.3, Autumn 1997, page 121.

anarchy, at the level of both government agencies and non-governmental organizations, breeding a multiplicity of parallel agendas and special interests that make the political management of the post-conflict phase extremely difficult. This syndrome suggests the need for an addition to the functions of "groups of friends" and other international arrangements established in support of a peace process.

During the negotiation phase, groups of friends fulfill several important tasks[26]: (a) by investing their authority in support of the peace process - rather than one belligerent or the other -, they help to create a level negotiating format where the parties can expect that views, grievances and proposals will be addressed on their merit rather than as a mere function of military might. This will strengthen the weaker party's confidence in the possibility of a fair negotiated solution and will prod the stronger party to develop its ability to negotiate rather than rely on its potential to impose; (b) by publicly asserting the value of a negotiated settlement, they undermine the legitimacy of domestic opposition to the peace process and strengthen the hand of the pro-settlement camp within each belligerent; (c) as regular interlocutors of the parties, they assist the mediator in enforcing basic rules of negotiating procedure by penalizing delaying tactics, bad faith, inordinate demands, provocation, and by rewarding the opposite behavior; (d) in their capacity as states and donors, they serve to establish or strengthen communication between the peace process and international organizations as well as the donor community; (e) when long-standing links exist between some of the Friends and either party, they can add weight to the mediator's advices, suggestions and formal proposals; and last but not least (f) they serve to protect the peace process by deterring other international actors from distracting the negotiators. This is not a negligible contribution to a not insignificant issue. Peacemaking is a competitive business and a number of untiring "peace entrepreneurs" from all walks of life can be expected to try and lure the parties with alternative venues, innovative advice and new and improved channels of communication. A group of friends will help to limit the damage their initiatives can do to the peace process.

Implementation difficulties suggest that the membership of groups of friends and similar arrangements should be devised keeping in mind the functions that the international community will be called upon to fulfill in the aftermath of the negotiations: Performing the "political substitution" function, namely lobbying key domestic actors on behalf of implementation, requires that the group of friends include international actors with credibility among the sectors of public opinion most likely to resist the implementation of the peace accords. The need for quick and effective provision of capacity-building inputs and direct project execution recommends the inclusion of international actors with ample experience in the country concerned. For reasons already mentioned, in the interest of verification the group of friends should include donors that are not encumbered by too demanding bilateral agendas. (Prime candidates are multilateral donors and particularly the International Financial Institutions, who are less

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[26] A similar, though not identical, analysis of the Friends' functions is offered in "Keeping the Peace" Doyle, Johnstone, Orr ed., Cambridge University Press, 1997, page 376 sqq.

hampered by considerations of national interest[27]). Finally, the role of the friends is critical in the area of donor coordination. This role cannot be played by the UN alone; in the field of international assistance legitimacy is irrelevant without financial clout. There is therefore no substitute to partnerships between the UN and donors to minimize the disruptive impact of international cooperation and maximize it potential for the consolidation of the peace settlement.

The sixth and last consideration concerns the continuity of the peace process and of its international support system. It has been noted at the beginning that the United Nations is often called upon to be the lead international actor in the implementation of agreements it has not negotiated. This is in recognition of the fact that in several areas that are common features of peace implementation, namely ceasefire, demobilization and reintegration; the resettlement of refugees; the organization or supervision of electoral processes; the promotion of human rights in general and political rights in particular; humanitarian assistance; institution-building in various fields; and mobilization of donor assistance, the UN offers a unique mix of international legitimacy and know-how. This is indeed the case, even though the UN still lacks coordination/subordination mechanisms that would ensure that this powerful package is delivered in a genuinely integrated and timely way.

At the same time, limiting UN involvement to the implementation phase ignores the fact that, as discussed earlier, negotiation and implementation are not two separate worlds.[28] It has been argued here that in situations where high levels of distrust prevail, the negotiation phase will have to involve a measure of "demonstration" implementation. Pre-ceasefire implementation may also be the best way to achieve a genuine settlement when one of the belligerents is too weak politically to expect to maintain a modicum of bargaining power through the implementation phase. It has also been argued that commitments of vital concern to the parties should preferably be implemented taking advantage of the unique window of opportunity immediately around the time when the agreements are signed.

Besides, the continuum between negotiations and implementation is also reflected in the fact that strategies available to the UN are essentially the same during implementation and negotiations, namely mediation, substitution and verification. In that regard, almost all activities that are typical features of implementation can also become building blocks in the gradual construction of a solid agreement between the parties. The Guatemala peace process is a good example: indeed, refugee resettlement under the umbrella of UNHCR; nation-wide verification of human rights by a UN field mission; verification of political rights and national elections by the same mission; institution-building in the police force and the judiciary by a variety of UN agencies; capacity-building by the mission directed at indigenous organizations; and the mobilization of

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[27] In Guatemala, the IMF has been remarkably supportive of the peace process. Its persistence, five years after the signing of the peace agreement, in demanding from the Government that it comply with the fiscal targets included in the agreement has been key to ensuring the continuity of the peace process.

[28] See also Doyle, Johnston and Orr, op cit page 388

donors by the IFIs, were all carried out long before a ceasefire was achieved, and together contributed to making possible the end of the 36-year war.

The point here is that overdoing the separation between "before" and "after" the peace agreement and the notion of an international <u>implementation</u> support system different from the international <u>negotiation</u> support system can be a disservice to peace settlements. It diminishes the diversity of assistance that can be brought to bear on the negotiations, and it diminishes in the same measure the chances of success of the international community during implementation. The UN should therefore resist the notion that a "natural" division of labor confines it to implementation. Peacemaking is much more than a mediation exercise, and can benefit from the panoply of tools that the UN can deploy with legitimacy and expertise.[29]

The consequence is that the comment already made regarding the need for strong international partnerships to assist in handling the challenges of implementation applies equally to the negotiating phase: when the UN is not in the lead in mediation, it should nevertheless be associated to international initiatives to promote the settlement of an internal conflict. Not only because of the implementation role it may be called to play but also, and perhaps mainly, because of its peacemaking potential. [30]

International law vs. peace settlements

Before concluding, I will revert briefly to the peculiar predicament in which the UN finds itself with regard to protection from legal prosecution: indeed, as an international organization mandated to implement international law, the UN must fulfill its responsibility to enforce accountability for violations of human rights and humanitarian law committed during armed conflicts – be they internal or international. At the same time, in its capacity as a peacemaker, it cannot but recognize that a negotiated settlement that would translate into wholesale prosecution of combatants on either side would have few chances of survival. The conflict between the creation of a negotiated settlement and current international legal standards on criminal accountability is never as acute as when the UN also serves as a mediator. So far the UN has found two ways of overcoming this quandary: by distancing itself from broad amnesties passed in the context of a peace process (El Salvador, Sierra Leone); or by striving to reflect in the peace agreements the provisions that the human rights community has worked out in an

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[29] In "Why the UN fails", Saadia Touval rightly points out that "Part of the UN problem is that it has no readily accessible military or economic resources of its own" (*Foreign Affairs*, volume 73, No. 5,1994 p. 52). At the same time, he fails to recognize that the mix of tools that are at the UN disposal does provide a mediator with "the ability to alter the objective environment of the disputants" to quote Stephen John Stedman's definition of leverage (in Negotiation and Mediation in Internal Conflict, *The International Dimension of Internal Conflict*, Michael Brown, ed, MIT Press, 1996, p.358.

[30] Sir Marrack Goulding makes a similar recommendation in his report on "Enhancing the United Nations' effectiveness in Peace and Security": "It is therefore recommended that the Secretary-General's policy should be to associate the relevant regional organization (s) with his own efforts but not normally to hand over the problem to them in its entirety. The general approach should be that efforts to prevent, manage and resolve conflict in a region should be a joint venture between the United Nations and the regional organization(s), with the United Nations normally being the senior partner" (paragraph 10.08).

attempt to reconcile the two imperatives[31] (Guatemala). Neither solution is satisfactory. In the case of El Salvador and Sierra Leone, the belligerents enjoyed protection – at least before national jurisdictions – but to the detriment of the international legitimacy of the process. In the case of Guatemala, the price to be paid for keeping open the channels of judicial prosecution is the precariousness of the combatants' legal situation. Indeed if the terms of the Guatemalan National Reconciliation Law were strictly observed, which exclude from amnesty torture, enforced disappearances as well as abuses committed outside combat situations, wholesale judicial prosecution could be a very real prospect. In the end, de facto protection occurs through a combination of weaknesses in the Judiciary; and fear, resignation and lack of trust in the justice system on the part of the victims. It is unclear whether the interests of either peace or justice have been served as a result.

The primary motive for promoting peace negotiations is that military alternatives for ending the war appear not feasible or not desirable. The main *raison d'etre* - and often most tangible outcome – of such negotiated settlements is to put an end to a pattern of murders, torture, disappearances and other violations of human rights. It is not up to the UN Secretariat to make law, but it can and should promote continued discussion of this sensitive issue within the human rights community, until a less ambiguous solution is found to the conflict of values that places it before the unacceptable dilemma of violating either international law on criminal accountability or its mandate on peace and the protection of the fundamental right to life.

Conclusion

What does the examination of implementation problems tell us about the features of a "good agreement" and a "bad agreement"?   As the instrumental school would argue, the settlement process as a whole rather than a single peace agreement can be meaningfully qualified. Emphasis on a comprehensive formal agreement will suit some settlements. But other settlements will be better based on a series of partial agreements or very little formal agreement at all. At the same time, as the constitutive school would maintain, political "momentum" cannot be an adequate guide in directing the process. A process in which key substantive demands have not been addressed will be precarious at best. Similarly, a settlement that hinges on the international community meeting the parties' security requirement is likely to unravel. In fact, simple but strict conditions must be met for a settlement to be "implementable": that the parties provide one another with the guarantees that only they can provide and third parties provide the contributions that are within their reach.

The instrumental school is also right in pointing out that the political dynamics of a peace settlement cannot be frozen by the international community at the time of the signing of a peace agreement. Throughout implementation, adjustments will have to be made by all actors – international and domestic – to reflect changes in their situation relative to one another and to the social forces that are active in the transition from war to

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[31] "Principles to be followed in combating impunity", UN Commission on Human Rights, Rapporteur Louis Joinet, 1995. **CHECK**

peace. The implication, however, is not that the UN should limit itself to overseeing how a new balance of forces between the parties emerges in the post-conflict phase. It is that the settlement should be structured and supported in such a way that the belligerents' response to this evolving environment be the consolidation of peace and not the return to conflict.

With this imperative in mind, viable peace settlements can take a variety of shapes depending on the attributes of the parties and the substantive terms of the settlement: A process involving parties that have strong popular constituencies and where the peace agenda aims essentially at political democratization can tolerate what would in other contexts be a risky undertaking, namely a process in which implementation is concentrated in the post-ceasefire stage. Indeed UN know-how in terms of electoral operations and the liberal consensus within the international community embedded in the relations between the country concerned and its key political and economic partners will tend to combine to provide a relatively favorable environment for the translation of political influence into electoral support and the consolidation of democratic institutions. In contrast, a settlement involving parties with small constituencies and therefore an uncertain political future will increase its chances of success if implementation is concentrated during the period preceding the ceasefire and demobilization.

Viable settlements will also vary greatly with regard to the role of the international community. We have already reviewed several of the contributions that the UN can and cannot make to each stage of a peace settlement. The key point here is that while the organization must refrain from making commitments on some issues of importance to the parties, it can be instrumental in ensuring that these vital concerns are met. The Guatemala process is a case in point: while the UN never assumed any commitment with regard to the physical security of the parties, their legal protection or their political future, there is no doubt that the combination of UN inputs between 1990 and 1996 made the process possible. Bringing all the facets of what it <u>can</u> do to bear on the achievement of what it <u>cannot</u> is the art of UN peacemaking and, through a judicious combination of mediation, substitution and verification, much innovation in this field is possible.[32]

After reviewing past UN peace operations, the Panel on UN Peace Operations produced a number of recommendations to improve the organization's performance. Recommendation 4 a) stipulates that "before the Security Council agrees to implement a ceasefire or a peace agreement with a United Nations-led peacekeeping operation, the Council assure itself that the agreement meets threshold conditions, such as consistency with international human rights standards and practicability of specified tasks and

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[32] In this respect, the main lesson from the Guatemala peace process relates clearly to the peacemaking potential of the deployment of a civilian mission long before a ceasefire is envisaged and before the parties to the conflict have made the strategic decision to settle. As mentioned earlier, besides its specific mandate, such international presence provides a context in which a number of other peacemaking initiatives become possible. Of course, the deployment of a civilian mission while the conflict continues raises serious questions of security, which is one important reason, among others, why it must be requested by the parties themselves and not a separate international initiative.

timelines"[33]. More specifically, the Panel "believes that the Secretariat must be able to make a strong case to the Security Council that requests for UN implementation of ceasefires or peace agreements need to meet certain minimum conditions before the Council commits United Nations-led forces to implement such accords, including the opportunity to have adviser-observers present at the peace negotiations; that any agreement be consistent with prevailing human rights standards and humanitarian law; and that tasks to be undertaken by the United Nations are operationally achievable – with local responsibility for supporting them specified – and either contribute to addressing the sources of conflict or provide the space required for others to do so." [34]

Not surprisingly, the examination of implementation problems in the context of this paper bears out the conclusion in the Brahimi Report that not all mandates are achievable and that, therefore, not all agreements are liable to implementation, at least from a UN point of view. The rationale for various "threshold conditions" stated in the report is, in fact, strengthened by a detailed consideration of weaknesses common to peace agreements: This paper argues that UN participation in negotiations is required not only to ensure that the agreement takes account of the operational requirements of implementation but also because UN inputs could make it possible for the parties to take pre-ceasefire steps that will result in enhancing the viability of the settlement as a whole. It also argues that consistency with human rights law is essential if the UN and the international community is to put its own political weight behind the implementation process and if the UN is to use effectively the tool of international verification.

In the same vein as the recommendations of the Brahimi Report, what practical suggestions flow from the findings concerning "good" and "bad" settlements, when the UN finds itself in the unsatisfactory situation of being pressed to assist in implementing an agreement it has not helped to negotiate?

- Examine closely the solution given to each one of the vital concerns. Some of them may not be addressed explicitly in the peace agreement, but the UN must be privy to whatever confidential understanding may have been reached.
- If vital concerns have not been addressed or if their implementation is referred entirely to the international community, <u>it is prudent to assume that there is no settlement yet</u>. This does not suggest that the UN should turn its back on the peace process - it is usually neither politically feasible nor desirable. It does imply, however, that the UN should propose that additional steps be taken by the parties in order to reach an "implementable" settlement. Additionally, it can offer, if appropriate, substitution or verification steps of its own to facilitate the process. If the agreement has already been signed, the UN can insist on an "interim period" before the implementation timetable begins, in order to remedy the failings it has identified.[35]
- Consider that the parties can overestimate their political influence and that it is consequently safer to require in all cases a power-sharing mechanism that will

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[33] Report of the Panel on United Nations Peace Operations, doc. A/55/305-S/2000/809, Annex III, page 54
[34] Op Cit, paragraph 58, page 10
[35] Such period is generally required anyway, in order to allow for the deployment of a UN mission.

manage the implementation phase. It will serve as a fallback position to keep the weaker party interested in the peace process if it should suffer political difficulties. It will also increase the weaker party's leverage on the stronger party and, therefore, the effectiveness of UN verification. Power-sharing mechanisms can be extended beyond elections, if elections are to be held, to protect the process against major electoral setbacks.

- Remember that even when it is not mentioned explicitly in the agreement, the issue of the parties' financial resources is foremost in their list of priorities. Ascertain whether a solution has been found; and if not, require that it be found before implementation begins.

- Consider that if the substantive part of the settlement is likely to face significant domestic opposition – and weak international support -, its implementation should be front-loaded even if it means that the UN mission will not yet be present in the country. The operational constraints on UN deployment must not dictate the timing of a transaction on which the organization will have little leverage anyway.

- If it appears that little trust or no trust exists between the parties, the UN will find it difficult to implement a mediation strategy. Consider, in this case, the possibility of suggesting changes in the implementation timetable in order to introduce "demonstration implementation" at the beginning of the process, on which the parties' mutual confidence can be built up.

- If that mistrust affects the relationship between military leaders from both sides, unmanageable issues of physical security could well emerge during implementation. As a matter of utmost priority, bring about a rapprochement between them before demobilization begins.

- If the terms of the agreement depart from international law and the current liberal consensus, the tools of substitution and verification are in jeopardy, among other reasons because the international community will turn its back on the process. A country or group of countries with stakes in the settlement may be willing to replace the UN as "sponsors" of implementation.

- In the unfortunate case when a reliable group of friends has not been established yet, the UN should seek to create quickly a partnership with a few major donors and international organizations that are prepared to invest money and political authority on behalf of the peace settlement and to share responsibility for streamlining international assistance in terms of both technical and political inputs. The International Financial Institutions should be included. Like a weak party to a peace settlement, the UN should secure that partnership before it is formally committed to its implementation role. Its influence over donors, and even its own agencies, will decline afterwards.

- Among key issues that will demand international support, the reintegration of ex-combatants is a particularly difficult and lengthy undertaking, and one that tolerates few mistakes and little publicity. The UN should identify partners that are prepared to go the distance without the high profile often sought by donors.

- The manageability of the implementation process from a UN standpoint depends on the extent to which it is susceptible to a combination of "mediation", "substitution" and "verification" strategies. In all cases, consider that the organization will always be better at making cooperation between the parties

attractive than defection by either impossible. Therefore, ascertain that the settlement is - or can be made to be - driven by reward rather than coercion. If it is not, the only option may be to make the case to the Security Council that a multinational coalition, rather than a UN operation, is the appropriate arrangement to see the process to a successful conclusion.

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